| Chapter 3 |

Ecclesiastical Jurisdiction in Medieval East Central Europe

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ABSTRACT

To understand the legal-geographical aspect of the theme indicated in the title, it is necessary to know that medieval Europe was divided north-south, roughly between the countries north and south of the Alps. The term 'East-Central Europe' is a modern concept and cannot simply be traced back to the Middle Ages. The legal institutions discussed in this chapter covered, to a greater or lesser extent, the territories of present-day Bavaria, Austria, the Czech Republic, Slovakia, Slovenia, Croatia, Serbia and Poland. This region encompassed both European legal regions in terms of medieval ecclesiastical jurisdiction, since the German, Czech and Polish territories tended to be governed by the northern type of official jurisdiction, while the Hungarian kingdom's canonical jurisdiction was of the southern type, vicarial jurisdiction. It is important to stress, however, that there are several combined elements of the two models of adjudication, and I will discuss these features in detail in this chapter. A separate sub-chapter will be devoted to ecclesiastical judicature in medieval Bohemia.

The ecclesiastical judiciary focused on the dioceses, so organizational and jurisdictional rules are included in its main elements in the study. The more detailed section of the Bavarian judiciary presents all important litigants. When discussing institutions in Poland and Hungary, I also tried to highlight the parallels and differences that can be related to each other, and thus, the chapter engages in a comparative discussion of the institutions of ecclesiastical justice in Central and Eastern Europe, as promised in the title.

KEYWORDS

Bavaria, Bohemia, Poland, Hungary, bishop, archbishop, *consistorium*, *officialis*, *vicarius*, canon law, Roman law, customary law, *Tripartitum*, *iudex delegatus*, *iurisperiti*, *assessores*, *procuratores*, notaries, *privilegium fori*, *Regestrum Varadinense*, *doctores decretorum*, *mandatum transmissionale*.

Introduction

To understand the chapter's title accurately, it is necessary to know that medieval Europe was neither legally nor politically divided into east–west; rather, it was divided into northern and southern regions. Contemporary vocabulary most often defined it by referencing positions south and north of the Alps. Clearly, this was an expression

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of a lasting attitude toward the ancient Roman empire and its legal culture. So-called 'Latin Europe,' that is, the territories that were also organizationally dominated by the Roman Church, was bordered on the north by the Scandinavian countries, on the south by Sicily, on the west by the Irish islands, and on the east by the Hungarian and Polish kingdoms. Within this, moving from west to east, of course, the general conditions of development were visible, but it is the judicial mechanism of the church's organization that is the best evidence that categorical and significant differences did not develop between the eastern and western countries of Europe. Here, in the east central segment of this region, we also find general European institutions, with many local specialties, of course.

The north–south division is best captured in the difference in the status of the officer in charge of the diocesan court. While in the north, it is the *officialis*, in the south, the *vicarius* led the diocesan forum.[1] This discrepancy was, of course, not just a matter of terminology; behind the different names, we can also find slightly different competencies. The countries presented in this chapter provide examples of models for both regions: While the Bavarian and Polish dioceses were under the jurisdiction of the *officialis*, Hungary was part of southern Europe's vicarious courts. However, similarities can also be detected between the different models.[2]

It turned out, for example, that the Hungarian vicariates and Polish officials developed into a very similar institution by the end of the Middle Ages. Both were headed – regardless of their different names – by a person who was both the bishop's general deputy for ecclesiastical administration and a permanent judge acting on behalf of the bishop.[3]

Add to this the fact that the judge of the archbishop's chair in Salzburg, the *officialis*, was also the archbishop's general deputy, and it can be seen that the northern and southern models show a very colorful picture in reality.

1. The focus of judgment in the ecclesiastical court: the diocese

Following the provisions of the Fourth Council of Lateran (1215), the legal practice that the court of general jurisdiction and most often the court of first instance is the episcopal sacrament has been consolidated. The bishops' weight of in the organization of the church, given that they possessed the most spiritual power and were the descendants of the apostles, increased considerably in the Gregorian age. It is natural, therefore, that they played a prominent role in both ecclesiastical legislature and jurisdiction. The episcopal chair was the custodian of the judiciary in the ecclesiastical court; from here, the lower forums gained their procedural jurisdiction.

1 According to the literature, Spain and Portugal can also be included here. Cf. Garçia y Garçia, 1988.
2 For the characteristics of the ecclesiastical judiciary of the period and of the region, see Erdő 2016.
3 Cf. Erdő, 1994.

The only higher forum with the possibility of appeal was essentially the Roman *curia*, the *Sacra Rota Romana*, the reason for which, in light of the Catholic Church's hierarchical system, need not be explained in more detail.[4]

At time of the formation of the office of bishop (*officialatus*), the bishop judged personally, and only from the 10th century onward was this task taken over by the archdeacon as his deputy (*vicarius episcopi*). This activity is described as *Sendgerichtsbarkeit* in the German language. The activity of this chair, growing out of its originally substitute function, became independent (*iurisdictio propria et ordinaria*). The rapidly strengthening ecclesiastical judiciary in the 12th century created the need for the bishop to appoint a person who had been specifically educated and was deemed to be fit for the exclusive purpose of judging (*Offizial*).

These individuals came from among clerics who initially played an important role not only in the judiciary but also in the episcopal administration, hence the name *officialis*. However, this church official who quickly acquired a great career in the 12th century was not yet the bishop's other self (*alter ego*). Such people who were experienced in law were favored not only by the bishop but also by the larger monasteries and other ecclesiastical institutions (*Stiftskirchen*). They were also well known to secular princes and authorities. The term *officialis* has become a collective term for all those who have acted officially as professional representatives on behalf of the church. Initially, there was no question of being limited to adjudication.

It is generally believed that the first permanent ecclesiastical judges began their work in the last decades of the 12th century in France (Reims).[5] In fact, it was a further development of the institution of papal sentenced judges (*iudices delegati*); furthermore, the archbishop of Reims was the papal *legatus*, and, at the same time, the papal *iudex delegatus*. From the second half of the 12th century, the activity of delegated judges, who were increasingly likely to be chosen from among legal experts (*iurisperiti*),[6] was significantly strengthened. The office of sent judges was institutionalized by the 13th century, but this usually meant single judges. The term *iudices*, then, essentially referred to the office itself, the institution of the court. In larger dioceses, it can be observed that the institution of sent judges was not relegated to the background after the establishment of the permanent sacraments, but a certain, partly territorial, partly partisan division of responsibilities took place between the two ecclesiastical courts.

4 Cf. Szuromi, 2011.

5 This view is also represented by Georg May, who, in his monograph on the ecclesiastical court of Erfurt, measures the jurisdiction of judges against French patterns: "*Sie waren ordentliche Richter mit stellvertretender Jurisdiction. Ihre Gerichtsbarkeit kam ihnen zu auf Grund ihres Amtes, mit dem sie bleibend verbunden war. Ihr Amt war ihnen nicht für ständig, sondern auf Widerruf übertragen. Jeder von ihnen hatte die volle Ausrüstung des französischen Einzeloffizials*." Peter Aspelt, archbishop of Mainz, founder of the *Generalgericht* of Erfurt, modeled the office model from Cologne. Cf. Michel, 1953, p. 24.

6 In Hungarian: 'jogtudók' (word made up by György Bónis).

Before introducing the organization of the episcopal judiciary in Central and Eastern Europe, it is worth taking a look at contemporary Europe because although medieval Europe has shown impressively uniform features in the ecclesiastical context, the differences are all the more instructive. The mention of Reims above already suggests that France was at the forefront of development. From the beginning of the 13th century, the *officialis* was mentioned in a number of French dioceses: starting with the earliest, Paris (1205), Arras (1210), Cambrai (1212), Poitiers (1246), Arles (1251), Cavaillon (1255), Marseille (1260), Orange (1269), and Toulon (1277); however, it is difficult to decide whether, in these cases, the *officialis* was already an office or only an *iudex delegatus*.[7]

The beginnings of formal episcopal judging can be traced to a similar time on the eastern outskirts of Germany. In Olmütz, the office of *officialis* is first mentioned in 1267. In Prague, we have data from 1265 indicating a lawsuit led by two judges who were not mentioned as sent judges in the diploma. A year later, the name of the institution appears: *officialis Pragensis*.

Similar developments have taken place in the northern countries of Europe, but in the south, the picture is radically different. In Italy, perhaps because of the dioceses' small size, the institution of *officialatus* has not developed at all. There, in addition to the bishops, the general deputies conducted the judging. The picture is exactly the same in medieval Hungary, where the French–German-style *officialatus* never developed, and the general deputies of bishops and archbishops (*vicarious generalis*) performed the function of judging.[8] The reasons for the discrepancy and the detailed circumstances are still to be explored, but it is probable that the Hungarian church's fidelity to traditional Rome played a key role in this developmental direction; hence, it is understandable to follow the Italian patterns and, in parallel, the need to consciously distance oneself from the vast western neighbor, Germany.

Different views have emerged on the formation of the institution of the *officialatus*. The most common perception is that bishops elevated deputies or officers over their rival archdeacons to stabilize their own authority. This perception was embraced, among other things, by the famous French medievalist Paul Fournier;[9] however, it can no longer be sustained in the light of recent research. It is a fact that archdeacons' power grew in the 11th and 12th centuries in such a way that the bishops in many dioceses simply lost direct control and administration. It was also common for litigants not to turn from the chair of the archdeacon to the episcopal chair, which was the ordinary forum for appeals, but rather to the metropolitan or directly to the pope (*appellatio per saltum*). However, even if ecclesiastical law – and the claimants themselves – accepted the chief defendants as *iudices ordinarii*, canon law and papal

7 Cf. Fournier, 1880, p. 309.

8 Thanks to the work of György Bónis, today, we not only know a lot about medieval Hungarian ecclesiastical jurisdiction, but the diligence of his life is also praised in the thematic source publication, similarity to which has not been achieved even by German medieval studies so far. See Bónis, 1997.

9 Cf. Fournier, 1880, p. 8.

legislation that had just begun to develop enormously drew a sharp line here, clearly emphasizing the bishop's judicial jurisdiction in his diocese. Thus, the *archidiaconus*, whose rights the pope also vigorously defended, seemingly never became a rival to the bishop.[10] It should also be noted that archdeacons, who became independent at the same time, came from among the deputies in most places. For that reason alone, the bishops had to look for new professional help.

The main driver of development was certainly the pursuit of the needs of a Rome-inspired professional judiciary. Papal intentions, which were strongly influenced by Roman law and rapidly strengthening, no longer made it possible to resolve increasingly complex legal disputes and cases merely *ex aequo et bono*. Educated lawyers were needed in the judiciary. Just as the *auditores* in the proceedings in Rome were bound by the order of the proceedings, the same was required of papal delegates.

2. Bavaria

The German roots of episcopal justice go back to the Frankish era. The bishops of the dioceses formed in the territory of the Frankish empire regularly visited their provinces (*visitatio*) according to the customs and regulations of the age because the chief shepherds, though small in number, had vast territories.[11]

The visits, which were usually held annually, had a dual purpose: On the one hand, the bishops controlled the activities of the lower priesthood (this was the purpose of the *visitatio* in the strict sense), and on the other hand, they also took action against worldly villains in the area by imposing church punishments. The bishop did not travel the diocese alone; he was accompanied by his most important helpers (archdeacons, *archipresbiter*, and many others), and from this nomadic judging, the institution of the *Sendgericht*, which was unique to German legal development, developed.

On the subject of ecclesiastical jurisprudence in medieval Bavaria, the interpretation of the adjective 'Bavarian' cannot be circumvented. The term is not accurate, especially not in today's context. Medieval Bavaria was not the same as it is now, neither politically nor ecclesiastically. In terms of ecclesiastical organization, bishoprics are organized in the Bavarian tribal areas within the archbishopric of Salzburg, and they remained there throughout the Middle Ages. The Diocese of Vienna was only established in 1469, and even then, it had jurisdiction solely over the city. Thus, although Salzburg grew increasingly distant from the ancient Bavarian political organizational

10 Pope Urban IV emphasized in the case of the *officialatus* to be set up in Poland that the new judicial office could not function otherwise than "*salvo iure archidiaconorum, qui in suis archidiaconatibus censuram ecclesiasticam exercere.*" Cf. Trusen, 1973, p. 471.

11 The inequalities in the late Roman Empire's settlement structure can be seen in action here. At the time of the vandal conquest, for example, there were about 500 bishops in North Africa and a similar number in Italy, while there are about 400 bishops in present-day France (excluding Alsace), and there were up to eight in the eastern part of the Frankish empire before the arrival of Anglo-Saxon missionaries. Cf. Werminghoff, 1913, p. 9; Kirn, 1926, p. 167.

systems from the beginning of the 14th century and became the archdiocese of fast-growing Austria,[12] it remained the seat of the province uniting the original Bavarian dioceses. As a result, the use of the adjective 'Bavarian' seems justified because, in the ecclesiastical approach, the archbishop of Salzburg was the metropolitan of this area throughout the period, which was fully consistent with the ecclesiastical court's system of judgments.

2.1. The dioceses

The ecclesiastical organization, which was formed in the southeastern part of the Frankish and later German–Roman empires, definitely united the German-speaking population and may also have united others. The territory and interrelationships between the dioceses formed on Bavarian land in the early Middle Ages[13] have changed considerably over the centuries and are by no means identifiable with present-day Bavaria's territorial and ecclesiastical status, although it is evident that most of the historical dioceses are still here. Two major exceptions should be mentioned. Throughout the Middle Ages, Würzburg did not belong to the Bavarian dioceses, and the diocese of Augsburg was only minimally associated with the duchy and never participated at its provincial assemblies (*Landtag*). Mention should be made of a church founded in 741 along the Danube at the center of Neuburg, with Prince Odilo's support; however, this church quickly disappeared from the map of Bavarian church history.[14]

2.1.1. Salzburg

We must first talk about the archdiocese of Salzburg, which was established at the seat of the church province. Around 746/747, the Bavarian Prince Odilo invited Virgil, the Irish missionary abbot, to be the bishop of Salzburg, although the priest from the Irish royal family, who bravely opposed the almighty Boniface several times, had not yet been ordained as a bishop. The new priest, blessed with great organizational talent and knowledge of the natural sciences, built the Salzburg Cathedral, which became a match for the Franks' sacred center (Saint Denis). Tassilo III, Duke of Bavaria, probably also supported the construction because he visualized the coronation church of a future Bavarian kingdom. At the consecration of the cathedral (774), the earthly remains of Saint Rupert, transported from Worms to Salzburg, were buried here as his final resting place. In addition to successful conversion work and authoritative construction, ecclesiastical art and culture were also revered at the center of Salzburg

12 "*Most of the territory of modern Austria was in the medieval ecclesiastical province of Salzburg.*" Cf. Hageneder et al., 1989, p. 33.

13 Below, I pay close attention to the history of the Bavarian dioceses because these formations played a major role in the judiciary. Monastic orders that are otherwise indispensable from the point of view of ecclesiastical history will be discussed only tangentially, since in the jurisdiction, they were largely included as litigants, with the exception of abbots acting as sent judges, who are mentioned extensively in the following chapters. Cf. Prinz, 1981, p. 462.

14 Cf. Prinz, 1981, p. 450.

3. The dioceses of Bavaria, Poland and Hungary (around 1500)

when Arngil's successor, Arn, a faithful believer in Charlemagne, occupied the episcopal seat (785).

The Bavarian ecclesiastical organization created by the papal *legatus* of Saint Boniface reached the fall of the Agilolfinger dynasty and the beginning of the Carolingian era without major shocks, thanks in no small part to the talented and very ambitious high priest of Salzburg. At the end of the 8th century, Charlemagne carried out significant church organizational reform: Embracing the wishes of the Bavarian high priesthood, he placed the Bavarian dioceses under unified control by elevating the highly prestigious and wealthy, though not the most prestigious, Diocese of Salzburg to the rank of archbishopric. With the revival of the Archdiocese of Salzburg (798), the first archbishop's center was established not only in Bavaria but in the

entire German-speaking area.[15] It is certainly not known why Salzburg was chosen.[16] However, the address contained in the diploma Pope Leo III issued to the rank of the archbishop of Salzburg reveals something: "*Leo episcopus servus servorum Dei reverentissimo et sanctissimo fratri Arnoni archiepiscopo ecclesie Iuvauensum, que et Petena nuncupatur, provinciae Baiovuariorum*."[17] Although the origin of the name '*ecclesia Petena*' is not entirely clear, it is likely that it was intended to be a reference to a late antiquity bishopric (perhaps Poetovio-Pettau, today Ptuj in Slovenia), which also serves as an explanation right next to the Salzburg election. With this reference to an upscale ecclesiastical origin, a reference to continuity, it was possible to somewhat offset Salzburg's disadvantage, especially with Regensburg, the then-capital of Bavaria.

Arn, from the West Bavarian nobility, was placed in the archbishopric, and the pope elevated him above the other bishops as a metropolitan, with the consent of the imperial ruler, Charlemagne.[18] At the same time as his appointment as archbishop (April 20, 798), Pope Leo III notified Charlemagne himself and the bishops of the Bavarian diocese of the transfer of the *pallium*.[19] Arn soon convened a provincial council (800) in Reisbach bei Dingolfing (Niederbayern) – not long after, probably even in the same year in Freising and Salzburg – in conjunction with the orders of similar imperial Frankish synods inspired by Charlemagne that ruled, inter alia, that no bishop or abbot could claim royal property or consecrate the king's church (*Eigenkirche*) unless the king gave permission. The above Bavarian councils, even without specific instructions from Rome or Aachen, adopted the notion that the church's aims should serve society's interests, but that the royal (soon imperial) throne was the center of power.[20]

15 Mainz and Trier lost their archbishop rank for a time, and the bishop of Cologne received the *pallium* a little later (800).

16 Obviously, several factors played an important role, such as Arn's personal court relations, Salzburg's material wealth, and his missionary responsibilities: "*Die Frage, warum gerade Salzburg zu dieser Würde erhoben wurde, ist bis heute nicht befriedigend beantwortet worden. Es konnte nicht auf ein höheres kanonisches Alter hinweisen, und an weltlicher Bedeutung stand es der Hauptstadt Regensburg oder sogar Freising bei weitem nach. Wenn man nicht annehmen will, dass die persönlichen Beziehungen Arns zum Franken herrscher eine Rolle spielten, so kann man nur vermuten, dass die Bedürfnisse der Mission im Osten, die insbesondere von Salzburg aus in Angriff genommen wurde, dabei den Ausschlag gaben*." Reindel, 1981, p. 233.

17 Cf. Dopsch, 1998a, p. 17.

18 Arn had long been a well-known, reliable, Frank-friendly nobleman, whom Pope Leo III had elevated to a metropolitan without any objection, but the strengthening of Frank–Bavarian relations did not end in his person. Significant Bavarian monasteries, such as Chiemsee and Staffelsee, fell into the hands of Frankish dioceses, and vice versa: Bavarian dignitaries gained prominent imperial positions, such as Leidrad (archbishop of Lyon) or 9th-century Bavarian bishops in Auxerre.

19 The main pastors to be addressed were Alim (Säben), Atto (Freising), Adalvin (Regensburg), Waltrich (Passau), and Sintpert (Neuburg).

20 According to Werminghoff, "*Staatliches und kirchliches Regiment schließen einander nicht aus, sondern ergänzen einander, weil beider Ziel dasselbe ist. Der Wohlfahrt des christlichen Volkes, der Festigkeit der katholischen Kirche hofften auch die bayrischen Bischöfe zu dienen, eines Sinnes mit ihrem König Karl, der das Volk durch die Kirche, die Kirche aber für sein Volk zu fördern gedachte*." Werminghoff, 1910, p. 55.

An important chapter in the eastward expansion of the Salzburg-based Bavarian Church is related to the decline of the Avars. After his victory over the Avars (743), the Bavarian Prince Odilo subjugated the Carantanian Slavs. As a result of the powerful mission, several new churches were founded, but the renewed pagan rebellions necessitated another campaign (772). Due to ongoing conversion, not only were the Christian faith and the church consolidated, but also the originally Slavic population.[21] The Salzburg Church's missionary activity ranged from 796 in the north to the Vienna Basin – Vienna's oldest church (Ruprechtskirche) is also reminiscent of the Salzburg mission. Another defeat of the Avars (798) gave further impetus to the expansion, so a bishop (*Chorbischof*) was sent to Pannonia. Here, however, jurisdictional disputes arose between the mission in Passau and Aquilea, forcing Charlemagne to take action. He ordered (811) Salzburg and Aquileia to share over Quarantine and to include Lower Pannonia, which had been effectively supervised since 796, while Passau received the two banks of the Danube to Moravia (Tulln and Vienna), including Upper Pannonia. Under Archbishop Liupram (836–859), the expansion in Salzburg was particularly successful, and the activities had an impact in the east, all the way to the Balaton Uplands.[22]

However, the mission in Salzburg conflicted with the Byzantine missionaries (Cyril and Methodius) who were successfully operating there in Pannonia and were already offering mass in Slavic at that time. When Pope Hadrian II exalted Methodius, the Slavic apostle, as archbishop of Pannonia, the metropolitan of Salzburg was forced to support this eastern mission. However, there was no question of friendship or real cooperation. Saint Methodius – regardless of her archbishopric – was sentenced to 3 years' imprisonment by the Regensburg Provincial Council (870), chaired by Archbishop Adalvin of Salzburg. A few decades later, with the appearance of the Hungarians, the Salzburg mission was permanently and completely pushed out of the Carpathian Basin, especially after the fall of Archbishop Theotmar of Salzburg and Bishop Zacharius Säben in the catastrophic defeat at Bratislava (907). Overall, the Eastern Compensation was quite successful: The Salzburg mission undoubtedly played a lion's share role in creating the Latin ecclesiastical culture of the eastern Alps.[23]

After the Archdiocese of Mainz, the Diocese of Salzburg was the largest in Germany. Moreover, Archbishop Gebhard unusually established his own bishopric (1072) at the center of Gurk.[24] The bishop of Gurk was able to regard Bishop Modestus, who was appointed to Karantania in the 8th century, as his forerunner, and thus, he

21 *"Daß aus dem slawischen Karantanien in den folgenden Jahrhunderten ein überwiegend deutschbesiedeltes Land Kärnten wurde, ist vor allem der Arbeit der Salzburger Missionare zu danken*." Dopsch, 1998b, pp. 30–31.

22 The excavations in Zalavár show that Liupram had already built a church dedicated to St. Hadrian with his own Salzburg masters before Pribina. Cf. Bogyay, 1993, p. 261, n. 89.

23 *"Daß bis heute Böhmen, Mähren und die Slowakei, Slowenien, Dalmatien und Kroatien zur römisch-katholischen Kirche und zum abendländischen Kulturkreis mit seiner lateinischen Schrift gehören, ist vor allem ein Verdienstjener Missionsarbeit, die vor mehr als elf Jahrhunderten von Salzburger und bayerischen Glaubensboten geleistet wurde*." Dopsch, 1998b, p. 32.

24 The seat is Klagenfurt from 1787.

interpreted himself not as an ordinary bishop but as a deputy to the archbishop of Salzburg. Archbishop Gebhard handed over the vast property of the Gurk convent to the new bishopric, thus averting the papal and imperial assistance normally involved in its establishment, as a result of which the consecration and ordination of the bishops of Gurk became the exclusive prerogative of the archbishop of Salzburg.[25] To prevent the bishops of Gurk from seeking independence, Archbishop Eberhard II (1200–1246) established three additional dioceses (*Eigenbistümer*): on the island of Herrenchiemsee in Bavaria, in Seckau in Styria, and in Lavant.[26] The four Eigenbistümer,[27] completely unique in the Catholic ecclesiastical organization, surprisingly survived until the 19th century. These special dioceses had extensive pastoral care, ecclesiastical administration, and judiciary but continued to experience serious conflicts with the provincial dioceses established by the dukes of Carinthia and Styria. An exception was the bishop of Chiemsee, based in Salzburg, who, as the archbishop's auxiliary bishop, was in possession of a relatively calm seat in the sanctuary (*stallum*).

In the midst of the conflict in the middle of the 12th century, Archbishop Eberhard (1147–1164), according to tradition, once again sided with the pope, although the high priest, who was already known for his holiness in his life, was also honored and called prince (*princeps*) by Emperor Frederick Barbarossa. It was due to his immense authority that the emperor did not march against him with an army. However, after the high priest's death, 'hell broke loose': The emperor struck the city with an imperial curse (1166), and imperial party followers set the city on fire in the following year. The unfortunate state ceased only after the Peace of Venice (1177) between the emperor and Pope Alexander III.

A characteristic feature of the organization of the diocese of Salzburg is that the rural ecclesiastical administration was in the hands of a single archdeacon – after 1139, the provost of the cathedral. As a result of the centralization that began under Archbishop Konrad I (1106–1147), the western half of the diocese was divided into four archbishopric districts: Salzburg, Baumburg, Gars, and Chiemsee, placing them under the control of the provosts there. At the same time, there appeared new orders of monks next to the Benedictine monasteries; particular mention should be made of the reformed Augustinians, who quickly established centers: Domstift (1122), St. Zeno/Reichenhall (1136), Gurk, Höglwörth, Herrenwörth/Chiemsee, Weyarn, Au, Gars, Baumburg, Berchtesgaden, Maria Saal, and Suben. The energetic archbishop even settled Cistercians next to Rein, Viktring, and Raitenhaslach.

25 Cf. Heinemeyer, 1974.

26 The seat of the diocese of Seckau was abolished in 1786 in Graz, in the Levant in 1859 when it was moved to Marburg, and in Chiemsee in 1808. Emperor Frederick III founded two more dioceses: Vienna (first known bishop: Leo von Spaur) and Wiener Neustadt (both in 1469), but their relationship to the Salzburg diocese was disputed throughout the Middle Ages: "*Wien became a see before the council of Trent and was exempt from metropolitical jurisdiction*." Hageneder et al., 1989, p. 33.

27 "*Tangl's Provinciale offers the following for this province: Salzburg (Passau, Regensburg, Freising), Gurk (Brixen), Seckau (Chiemsee), Lavant*." Hageneder et al., 1989, p. 33.

2.1.2. Regensburg

The diocese of Regensburg was ecclesiastically subordinated to Salzburg, but its authority was no less: It was and remains an important administrative seat in the Carolingian era and, through St. Emmeram, an outstanding center of spirituality. However, with the decline of power and territory from the 10th century, the diocese gradually weakened, and the separation of St. Emmeram (972) was particularly painful.[28]

The mission to Regensburg toward the east became especially significant to the Czech Republic after King Louis of Germany, accompanied by fourteen Czech tribal princes (845), was baptized. The signs of the mission operating in the Czech–Moravian empire and the memories of the cultural influence are obvious in Prague, but they are also probable in the bishopric of Nitra.[29] The formation of the diocese of Prague (973) and its accession to the metropolitan province of the archbishop of Mainz weakened the bishopric's influence in this area, but it remained significant as the borders of the diocese of Regensburg stayed within the framework of the emerging Czech state.[30] An important result of the Regensburg expansion was the establishment of many monasteries.

2.1.3. Freising

The most dynamic era for the bishopric of Freising dates back to the 9th century. His estates acquired at that time lay mostly in Bavaria, (later) Austria, and Tyrol, which he succeeded in enriching to a greater extent in the late 10th century. It has been the center for the Bavarian nobility of Frankish origin from the beginning. In addition to the bishopric's central monastery, the cathedral chapter was established in the 9th century. The sources mention the first canonists in 842, and the whole diocese was gradually brought under its influence. In addition to Freising, the bishopric also had other important monasteries: Scharnitz-Schlehdorf, Benediktbeuern, Tegernsee, Schäftlarn, Moosburg, and Rottenbuch. During Bishop Waldo's reign (883–906), the bishopric received Oberfohring from the German king, together with the Isar Bridge salt duties, to support the reconstruction of the cathedral, which had been destroyed in the fire.

28 The bishopric received only a significant estate donation from King Conrad I: the forest of Sulzbach. Other estates include Steinakirchen and Wieselberg, Pöchlarn, Mondsee, Aist and Naarn, as well as the Veiden area. The significance of St. Emmeram is demonstrated by the fact that his fidelity lord was King Louis of Germany himself. Bosl found that it was 'St. Denis Bayerns.' Of course, the ashes of the great patron saint St. Emmeram rested here. There is a surviving urbarium (1031) that provides an insight into the monastic estate: 1000 Mansen was located in about a hundred localities in Lower and Upper Bavaria, Upper Palatinate, and Austria. The largest contiguous estate was in Vogtareuth/Rosenheim (130 Hufen). Cf. Prinz, 1981, p. 446.

29 Hermann, 1961.

30 During the reign of Emperor Henry II, the Count of Günther von Schwarzburg († 1045) of Thuringia, who was buried in the Břevnov Monastery in Prague, carried out missionary and political mediation on this Bavarian-Czech border.

During the Investiture Controversy, the bishops of Freising, unlike those of Salzburg and the Passover, took the emperor's side. The most famous high priest in the diocese was Otto I (1138–1158), who took great care to oversee organizational reforms and the schooling of his priesthood. Furthermore, given his relation to the imperial house, he also carried out significant political and historical work.[31] Like other Bavarian churches, the Freisingians gained feudal rights during the 12th century, so that by the beginning of the 13th century, the central areas of the diocese (with the addition of some more important places like Ismaning, Isen, and Werdenfels) were given independent imperial status.

2.1.4. Passau

Although it had favorable conditions in terms of its location, the eastward expansion and mission of the bishopric of Passau was by no means as significant and successful as that of Salzburg. The diocese was oppressed by its status under Salzburg, and in the 10th century, Bishop Pilgrim even resorted to diploma forgery to improve the diocesan positions, albeit without lasting results. The chapter, which was formed at the seat of the bishopric, had its own estates and gained property independence by the beginning of the 9th century. The borders of the diocese already extended to Rába in the Carolingian period, and with the decline of the Hungarian expansion, at beginning of the 11th century, they stretched all the way to the line of the river Lajta.

Converters carried out significant missionary activity in Passau in the Moravian empire, but the independent Moravian Church established by Rome in 867 stunted the possibility of further expansion: The Bishop of Nitra, Wiching, was forced to leave his job, and against the will of the Bavarian bishops and with the support of Emperor Arnulf, he received the crosier from Passau in 899. Bishop Ermenrich's (866–874) large-scale mission, commissioned by Lajos Német with the aim of establishing a Western Franco-Bavarian-style church organization among the Danube Bulgarians, failed. Bishop Pilgrim, who failed in his resistance to Rome, also planned to make Passau the archbishop's seat of a diocese along the Danube, to which the Moravian and Hungarian dioceses would have been subordinated. In 999, his successor, Bishop Christian, received judicial and administrative jurisdiction over Passau under Emperor Otto III, with the exception of the abbey of Niedernburg, which Emperor Henry II soon (1010) elevated to the rank of imperial abbey. However, they did not settle for this: With the help of the powerful ruler Bishop Konrád I (1148–1164, one of Emperor Frederick Barbarossa's uncles) the abbey, together with all its estates, was returned to the bishopric – at the cost of a protracted strife, a matter which would only be concluded in the time of Bishop Wolfger (1193). The diocese along the Danube acquired other significant estates in the 12th century, such as St. Pölten, Herzogenburg, Krems, and Tulln, and claimed its own monasteries: Kremsmünster, Mattsee, St. Florian, Niedernburg, St. Nikola/

31 The bishop's scholarly writings during the Crusades in Hungary in 1147 occupy a prominent place among contemporary Hungarian-related historical sources. Cf. Szamota, 1891, pp. 16–18.

Passau, Göttweig, St. Georgen, St. Andrä, Seitenstetten, Erlakloster, Waldhausen, Altenburg, Geras, and Pernegg.

The diocese of Passau, which stretched in an east–west direction, was one of the largest dioceses of the German–Roman empire. Until the separation of the Austrian parts (1783/85), in addition to the present-day area, he could still claim the terrains of the dioceses of Linz, Pölten, and Vienna.[32]

2.1.5. Säben–Brixen

Although the bishopric's territorial location would not have justified this (it was centered in Säben until about 990 and then in Brixen), after the establishment of the archdiocese of Salzburg, it did its best to move away from the Bavarian duchy. According to sources, the pastors of the diocese were not invited to the ducal court council, and the 10th–12th century local sources also show that it is a province independent of Bavaria.

Neither the bishopric of Brixen nor that of Trient counted Säben-Brixento among the Bavarian tribal territories. The bishop of Trient, who belonged to Bavaria until 976 and then to Carinthia until 1027, regarded himself (1113) as *dux, marchio et comes*. Emperor Conrad II donated the county in the area of Eisack and Oberinntal (1027) to the bishopric, and Emperor Henry IV gave another (1091) beside Pustertal. Emperor Barbarossa elevated the bishopric of Brixen to imperial rank (1179), but from the 13th century, its powers passed to the counts of Tyrol and Graz. The most prominent bishops, such as Poppo (later Pope Damasus II), Altwin († 1097), and Hugo, stood on the emperor's side in the Investiture Controversy. Under the high priests who spoke in the following times – Reginbert († 1140) and Hartmann († 1164) – significant reform unfolded.[33]

2.1.6. Eichstätt

An alleged distant relative of Saint Boniface (the founder of the dioceses of Bavaria), Willibald, also of Anglo-Saxon descent (according to legend, he was an English prince), founded the bishopric of Eichstätt. Boniface ordained Willibald as a priest in 740 and as bishop the following year. He would have originally been the pastor of Erfurt, but this was not established for a long time, so he returned to 'Eihstat.' For a time, his rank was not bishop of Eichstätti, but rather bishop of the Eichstätti monastery (in

32 Rising to the rank of an independent city–bishopric from 1469, Vienna gained access to the Vienna Woods after the acquisition of the archdiocese (1722). Cf. Zinnhobler, 1969, p. 152.

33 The work of Bishop Hartmann, who was born in Passau and studied at the St. Nikola/Passau school, was particularly outstanding. In his early career, Archbishop Konrad I first appointed him as the deacon of the cathedral of Salzburg, and in this capacity, he began to implement monastic reform, during which he organized the monastic life of the cathedral chapter and then reorganized the Herrenchiemsee monastery in Salzburg into an Augustinian abbey. The archbishop of Salzburg first appointed him the founding provost of Klosterneuburg (he held this position between 1133 and 1140) and then made him bishop of Brixen. His name is associated with the creation of the Augustinian abbey in Neustift in Brixen.

this capacity, he attended the Frankish Imperial Synod in 742). The exact date and circumstances of the founding of the bishopric are still uncertain.

When Charles Martell died in 741, Bavarian Prince Odilo saw that the time had come to weaken the Frankish influence. He was wrong: In 743, he was severely defeated by the Frankish armies led by Karlmann and Pippin III, and after his failure, Nordgau also became Frankish. At the victors' urging, Boniface founded the diocese of Eichstätt around 743/745. The diocese was organized in semi-Bavarian (Regensburg), semi-Franconian (Augsburg, Würzburg) territories and belonged to the metropolitan province of the archbishop of Mainz from the end of the 8th century, but its representatives always attended Bavarian provincial councils from 916 to 932, and their presence can be traced back to the 13th century. The bishopric had sufficient possessions so that its sovereignty would not be jeopardized. The political purposefulness of the founding (the Franks intended it as a 'buffer zone' against the Bavarians) is justified by the fact that the general papal expectation that the episcopal seat should also be a cultural center was not met here.

The institution of *Vogtei* served to protect medieval German churches. The Church was in dire need of the support of the great secular lords of this office, at first. The *brachium saeculare* the *Vogt* provided was indispensable in the execution of the ecclesiastical court's judgments, but from the Gregorian age, it became more burdensome to the increasingly self-conscious church, a competing factor of power from which it sought to free itself. The first mention of a *Vogt* from Eichstätt, Count Hartwig, is from 1068. The Concordat of Worms (1122), which concluded the Investiture Controversy, confirmed the bishops' jurisdiction and further recorded that the chapter would choose the bishop, who the king would then endow with the necessary feudal rights, followed by a solemn consecration. The growing episcopal power increasingly conflicted with the interests of the *Vogt*, against whom imperial privileges could also be exercised.

2.1.7. Bamberg

The bishopric of Bamberg has a special history of origin. While the dioceses discussed so far were usually established during Boniface's time, this bishopric was founded in 1007 as an imperial bishopric, that is, with great splendor and amidst solemn appearances, by a similarly sacred brother of King Saint Stephen of Hungary, Emperor Henry II. The final impetus came from the action of one of the members of the Babenberger dynasty, Heinrich von Schweinfurt, against the emperor. Despite all his possessions and offices, he failed, and the emperor was determined to establish a strong diocese on the border of the empire Slavic peoples inhabited in the southeast (*terra Slavorum*).

The new bishopric harmed the interests of two other old dioceses in particular: Würzburg had to give up the possibility of eastward expansion (compensated by the surrender of the Meiningen region), and Eichstätt became poorer with respect to the area between Pegnitz and Erlangen-Schwabach. Establishing and securing the tenure of the diocese of Bamberg took decades of effort. A close relationship with the German

king throughout its founding explains why the bishopric of Bamberg did not enjoy the privilege of *immunitas*. Another disadvantage was the military obligation imposed on the diocese (*Heerfahrtspflicht*). During the Investiture Controversy, Bamberg – unlike Salzburg and Passau – proved to be the emperor's reliable ally.

The clergy of the court chancellery studied at the school of the Bamberg Cathedral from the 12th century, but in a more general sense, it also grew into an intellectual center. Imperial and court rallies were held several times in Bamberg (the most prominent were in 1035, 1080, 1122, and 1135). Bishop Eberhard (1007–1040) was not only the chancellor of the German part of the empire, he also belonged to Italy from 1013, and from his time, the bishopric of Bamberg exerted a great influence on the filling of the Italian episcopal chairs within the empire. Under Emperor Henry III, Bishop Suitger of Bamberg came to the papal throne under the name of Clement II. Another outstanding figure was the missionary to the Pomeranians, Bishop Otto I of the Swabian noble family (1102–1139), who became loyal to the emperor in the struggle between the papacy and the empire (giving up his initial neutrality). The generous donations he received from the emperor were largely used to renovate monasteries and abbeys and establish new ones.[34]

2.2. The organization of justice in Salzburg

I present the organization of the diocesan judiciary using the example of the provincial center of Salzburg. In the ecclesiastical jurisdiction system, the archbishop's chair was considered a forum of appeals by the bishoprics subordinate to him in a given diocese but a forum of first instance in his own diocese (not considering the possibility that the lawsuit could have started before the *archidiaconus*). The early jurisprudence of the bishopric of Salzburg, which rose to the rank of archbishop in 798, covered not only ecclesiastical but also many secular matters as a result of the strong Frankish influence. According to Charlemagne's empire-building concept, the ecclesiastical offices also performed state tasks. The most characteristic institution of mixed judging was the *missi dominici*, in which the bishop/archbishop of Salzburg, Arn, often judged in person, together with other clerical and lay judges.[35]

Following Frankish patterns, Archbishop Arn naturalized the judging of the synods. At the diocesan synods, which also served the purposes of ecclesiastical administration, it was the duty of the *archipresbyter* to guard the rule of law and inform

34 The reformed or newly founded monasteries were also home to new orders of monks: Cistercians, Augustinians, Premontreys, and monks from Hirsau. The ecclesiastical significance of the monastery (*monasterium Hirsaugiense*), founded in 1059, reached its heyday during the time of Father William (1069–1091), referred to as the Cluny of Germany.

35 The lawsuits before the *missi dominici* covered a very wide range of cases (church disputes, property disputes, inheritance cases, criminal lawsuits, etc.); their characteristic was *inquisitio*, in which testimony was given an important role. Several cases have been settled. Except in cases of urgency, they usually met four times, during which time they discussed continuously. After Charlemagne's death, this court began to decline strongly, and since Louis the Pious, there has been little record of it in the Salzburg diocese. Cf. Krause, 1890, p. 193; Eckhardt, 1978, pp. 1025–1026.

the archbishop. All clerics of high prestige in the diocese, and even some lay people, attended the synod.[36] Such a system of episcopal councils lasted until the 13th century, although the archbishop, and even more so, the diocesan *officialatus* assumed the lion's share of responsibilities in the field of justice. The archbishop's chair retained the right to judge heresy and the most serious of the clerics' transgressions.

With the spread of canon law, it did not take long for a professional court to appear in Salzburg. Moreover, there was some impatience in this area because unknown individuals who achieved the desired goal as soon as possible were not deterred from forging diplomas. According to the first such document (1139), the cathedral chapter is entitled to deal with all appeals to the archbishop of Salzburg; the forgery referred to the alleged order of Archbishop Konrád I (1106–1147), which essentially delegated full jurisdiction of the appellate court to this body. In fact, the superior of the chapter, the dean of the cathedral, has been increasingly involved in the administration of justice since the beginning of the 14th century. The diplomas refer to him as *iudex a reverendissimo archiepiscopo Salczburgensi deputatus*. Data on the use of his own court seal is available beginning in 1292. The formation of the independent *officialatus* of the diocese and archbishop dates back to the first decades of the 13th century. The judges are referred to as: *officialis curie et vicarius in spiritualibus generalis ecclesie Salczburgensis*.

The heyday of archbishopric jurisdiction in Salzburg fell to the late Middle Ages, but signs of decline also began to show at that time. The most frequently mentioned complaint, secular use of church punishments, has taken on enormous proportions. *Excommunicatio* appeared in almost every court file in some context, leading to the complete devaluation of this sanction. This was, of course, a fairly common phenomenon in Europe, but it is a fact that Salzburg was no exception. It was common to impose fines and exclusion, together or in an alternative perspective.

Although the decline in the judiciary's authority has been striking, no serious reform efforts have been made. A notable document containing criticism aimed at improving the situation in the early 16th century was the analysis put forth by Jakob Haushaimer, Salzburg official and deputy general (1519), which saw the main cause of the troubles as a lack of separation between the ecclesiastical judiciary and ecclesiastical administration; in addition, they were in a significantly more favorable financial situation. He also urged the reconvening of diocesan councils because they had not been held within 'human memory.'[37]

The organization of an ordinary and permanent diocesan (here, archbishop's) court in Salzburg was motivated by reasons similar to those of the German bishops: a huge expansion in the office of the archbishop, the need for legal expertise, and changes in office and procedural law.[38] The name for the first member of the diocesan

36 The 11th century Ordo synodalia of St. Peter's Archabbey has remained. In this, clerics and laymen were already sharply separated for each of the cases to be heard. Cf. Paarhammer, 1998, pp. 188–189.
37 Paarhammer, 1998, pp. 196–197.
38 Paarhammer, 1977, pp. 5–9.

court, *officialis*, appeared in Salzburg quite early, in the late 12th century, and was applied to secular officials. However, the oldest mention where it means a church judge is from the early 14th century: Ulrich, the dean of the cathedral of Salzburg, was one of the witnesses at the epistle of Petrus Duranti's papal *nuncius* (1314), and he refers to himself as *officialis et vicarius in spiritualibus*.

The term *consistorium* was also commonly used to denote the archbishop's court in Salzburg, thus serving as a synonym for *officialatus*.[39] Use of the term, originally in a broader sense, in relation to the ecclesiastical court, has been strengthened since Pope Innocent III, who personally chaired the judgments of the solemn papal *consistorium*, held three times per week, and rendered judgments.

The *consistorium* was initially a one-person institution that received help from the *officialis* and consisted of a clerk in charge of written tasks. However, the apparatus slowly developed: The task increased in inverse proportion as the papal and episcopal sent judges' activity decreased. However, due to the scarcity of resources, an approximate picture of the consistory's structure and operation can only be given from 1450.[40]

The trial venue may have initially been the residence of the dean of the cathedral (*Domkloster*), although sources were silent on this in the early days. If the archbishop himself judged, the seat was, of course, the high priestly residence (*camera*). Johannes Brennberger sat in his chair as *officialis in domo habitacionis*. Even in court summonses, this was usually only '*in iudicio*' or simply '*in loco nostro solito*.' Since there was certainly no court building dedicated to this purpose, it is probable based on the simple references in the diplomas that the seat of the jurisdiction could, as a rule, have been the official (residence) of the dean of the cathedral. This is also indicated by the fact that when the *commissarius* acted instead of the *officialis*, specific reference was made to the house where the dean of the cathedral resided: *in domo decanatus ecclesie metropolitice*. There is evidence from about 1470 that *Domkustorei* may have been the site of the *consistorium*. At the time of Ludwig von Ebm *officialis*, the court was meeting in the countryside (Chiemseehof). As a general rule, the place of jurisdiction has always been the acting judge's place of residence (that of the archbishop, *officialis*, or *commissarius*) – that is, the residence and office were not separated.

The order of the court sitting in the 14th century cannot be determined with certainty, but the sources from the 15th century are more eloquent. According to these, the ecclesiastical court usually judged three days per week: Monday, Wednesday, and Friday. Negotiations took place in the 15th and 16th centuries as *hora vesperorum et causarum consueta*, which had not been established before: The two most common

39 The German historical literature also expresses a view that in northern Germany, the term '*consistorium*' was used to refer to the church's judicial body, while in the south, it was understood to mean the center of church administration. Cf. Hinschius, 1959, p. 244; Plöchl, 1955, p. 325; Szentirmai, 1962, p. 164.

40 The oldest protocol left to us, for example, is from 1505, and the court order has not survived at all. Cf. Paarhammer, 1977, p. 21.

appellations were *hora tertiarum, hora nona vel quasi,* or *hora completorii diei eiusdem.* In subpoenas, *hora prima post meridiem* can sometimes be read.

The jurisdiction had an annual rhythm. The judicial year began on the first working day after the Epiphany (January 7), or, if it was a holiday, on the 8th. There was a week's break during the carnival, the week before the first Sunday of the carnival. Jurisdiction was also ceased during Holy Week and Easter week, as was also the case during Pentecost. The great summer vacation (*feriemessum*) began in the second week of July and lasted until St. Bartholomew's Day (Aug. 24). There was no jurisdiction on St. Rupert's Day either (Sept. 24). The Christmas holiday began on December 20 and ended with Epiphany Eve. In addition to all this, Sundays and other holidays also marked a judicial break, such as the various feasts of the Savior and Our Lady, the apostles and evangelists, and certain saints.

In what follows, I will list the most important officials of the ecclesiastical court in Salzburg.

2.2.1. Officialis

The Salzburg *officialis* was special in the German ecclesiastical jurisdiction in two respects. With few exceptions, the dean of the cathedral has always been appointed to this office and has usually held the position of general deputy.[41] The personal union of the diocesan judge and the dean of the cathedral was also exemplified in Bamberg, but the *vicarius generalis in spiritualibus* was always a different person there, and in addition to the dean, there was also an express *officialis*. The personal coincidence of the *officialis* and the general deputy in Salzburg unequivocally suggests that the development of the judiciary's organizational system here was greatly influenced by the Italian model and, more generally, the southern European model.[42]

It was no accident that the dean of Salzburg was appointed to this important office; he was already the most employed papal and archbishop's (or commissioned by the chapter) delegate in the days before the organization of the *officialatus*, so it is unsurprising that he also became the first permanent judge to replace the contingent one. The dean judged as an independent judge as early as the end of the 13th century, but the initial diplomas still lacked an explicit indication of judicial quality and only featured independent seal usage (*sigillum causarum Salczburgensis ecclesie*).

41 Accordingly, it conferred governmental and judicial power over the entire province under Archbishop Pilgrim II to the canon Gregor Schenk: "[...] *ut ecclesie nostre gubernacio ac regimen gregis nobis crediti non negligatur, sed fiat cum diligenda studiosa. Ne igitur propter absenciam nostram et alia radon edicte ecclesie nostre quod multiplicia et ardua negocia nobis incumbenda eadem nostra ecclesia et grex nobis commissus in spiritualibus lesionem aliquam vel dispendium paciantur* [...] *facimus, constituimus et ordinamus nostrum officialem et vicarium in spiritualibus generalem dantes tibi tenore presencium plenam et liberam potestatem in civitate diocesi et provincia nostra Salczburgensi* [etc.]" Paarhammer, 1977, p. 7. For the persons who were also deacons of cathedrals and general deputies in one person, see Hageneder, 1967, pp. 265–268.

42 The essence of the southern European organizational model was precisely that the general deputy performed the duties of the diocesan judiciary, and interconnection became the rule, for example, in Poland (besides Hungary). Cf. Erdő, 1993, p. 142.

The somewhat later name *decanus et iudex* was already unambiguous and was later replaced by the appellation *vicarius et officialis*.[43] Future archbishops explicitly confirmed the hegemony of the deans of Salzburg in the election capitulations at the end of the era by promising to continue the nomination procedure. At the same time, a noticeable increase in the chapter's influence is observable. The identities of the *officialis* and the deputy were so converged that when the archbishop's seat became vacant, both offices ceased to exist; the new archbishop then either confirmed the previous one or appointed a new one.

The archbishop has always determined the extent of rights and obligations. The *officialis* acted on behalf of the archbishop, though (apart from some specific assignments) not as *potestas delegata*, but rather as *potestas ordinaria vicaria.* In legal terms, he was the impersonator of the archbishop, as evidenced by the fact that the *officialis*' judgment could not be challenged before the archbishop; in other words, the *officialis* and the archbishop formed one and the same forum (*unum et idem auditorium*). The Salzburg specialty was that the *officialatus* and the *vicariatus* coincided according to the rule, so that (in modern parlance) the branches of power were intertwined, with governmental and judicial power resting completely in one hand. This situation was undoubtedly extremely effective, but by the end of the era, it had become the subject of criticism.

2.2.2. Commissarius

Being a very busy person due to the parallel office of the *officialis,* he often had to look for a deputy. This deputy of the diocese's ordinary judge was the *commissarius,* several of whom were sometimes active at the same time. Two forms have emerged in the Salzburg practice: the *commissarius generalis* and the *commissarius surrogatus*. The functions behind the two designations are often not sharply separable, just as it is unclear from the sources whether the appointment of the *commissarius* was the right of the archbishop or the *officialis*.

The persons referred to as *commissarius generalis* functioned in the 15th century and can be considered the general deputies of the *officialis* in the *consistorium*. The first documented mention of this office dates from 1428, and it was Johann Elser who authenticated a transcript of the diploma on the orders of the *officialis*. The next person, the canonist Johann Hesse of Regensburg, referred to himself as *commissarius vicariatus et officialatus curie Salczburgensis,* so he also held the office of deputy. In the 70s in the 15th century, five *commissarius generalis* were active. It is probable that when the diplomas remaining from the aforementioned period are silent on the existence of any *officialis,* the full-time commissaries were appointed by the archbishop; in this case, they exercised the same power as the *officialis,* with the difference that the judicial power they held was merely delegated in nature.

43 The full title was *vicarius in spiritualibus generalis ecclesie et officialis curie Salczburgensis.* Diplomas usually also included the academic degree of the person in question, for example, *in decretis licentiatus or decretorum doctor.* Cf. Paarhammer, 1977, p. 28; Wagner and Klein, 1952, p. 30.

It was also possible for the *officialis* to appoint, on an occasional or fixed-term basis, one or more deputies to preside over the court on his behalf (*in vicem et locum suum*); these are called *commissarius surrogatus*. The court files show that these officials appeared from the second half of the 15th century; thus, they differed significantly from the former category in that their procedural rights were definitely ad hoc.

The *commissarius* had to be a person proficient in canon law and court practice, so he was most often one of the *assessores*. The *surrogatio* was always recorded in the clerk's minutes, so there was always a record of whether the trial was conducted by someone other than the *officialis* (e.g., '[...] *assessor presedit*').

2.2.3. Jurisprudents (assessores)

Although the Salzburg *officiales* mostly attended university, they were scientifically well-trained lawyers, but in more complex cases, they could not do without the support of their scientific colleagues. According to a fairly general practice in Germany, such an adviser was also called an *assessor* because he sat with the judge during the proceedings and assisted him with the dispensation of his advice.[44] However, they cannot be considered real fellow judges because there is no question of their inclusion on a panel of judges; these legal advisers could not participate in the judgment themselves, and they did not have their own judicial jurisdiction. However, if the *officialis* left the meeting, he was usually replaced by the assessor present, and if a judgment was given in such a situation, it was always taken as a *commissarius surrogatus*, never as an *assessor*.

The presence of Salzburg jurisprudents in the work of the *consistorium* can be proved from the middle of the 15th century; their role was, in accordance with general practice, limited only to consulting. The high professional standard associated with the jurisdiction of the ecclesiastical court in Salzburg is evidenced by the fact that only persons with an academic degree could apply for the office of *assessor*.

2.2.4. Prosecutors (procuratores)

Inexperienced and even generally illiterate clients could not act without legal representation, especially in more complex cases. *Procuratores* were available for this purpose. They were not only experienced in Latin but also well versed in canon law. Seekers could choose from prosecutors working alongside the *consistorium* (*causarum consistorii procuratores generales*). The mandate was contained in the *instrumentum constitutionis procuratoris* (abbreviated: *procuratorium*) prepared by the ecclesiastical court's notary, and it had to be presented before the *officialis*. The only and most important feature of the power of representation was that it was all-encompassing; it was so general that the prosecutor in charge of the administration could even take the necessary oaths in his own name and on behalf of his client, and his mandate

44 The correlation between the phrasing *consistorium* and *assessor* is striking, but the coincidence was not exceptional in other dioceses either. Cf. Straub, 1957, p. 199; Paarhammer, 1977, p. 44.

was not only for the main part of the proceedings but was sometimes decided on his own appeal.

Another function of the *procuratores* was to act as official witnesses when needed. Such need often arose because, in the course of the work of the *consistorium*, a whole host of diplomas were drawn up, the authenticity of which required witnesses: This function in Salzburg was mostly performed by 'on hand' prosecutors. The prevalence and popular application of such testimony is evidenced by the fact that, from the 15th century onward, at the end of the diplomas, right next to the date, there was a formulaic prosecutor's clause, as a sign of the authentication that had taken place.[45]

While in other bishoprics[46] even lawyers (*advocati*) performed in the ecclesiastical court, there is no trace of this in Salzburg. The scarcity and contingency of resources can explain many things, but in this case, it may be different. This surprising actuality may be explained by the fact that, without exception, the university prosecutors in Salzburg, who had completed a university degree, satisfactorily provided all forms of legal aid, so there was no need to include lawyers entrusted with specific tasks.[47]

2.2.5. Notaries

According to the provision of the Synod of Lateran IV, which is also included in the papal decree law, all official sacramental acts must be recorded in writing by a suitable person. This work was carried out by notaries, but only those (*notarius publicus*) in possession of papal and/or imperial authority. Depending on the nature of the authorization, such a person could be imperial (*publicus imperiali auctoritate notarius*), papal (*publicus apostolica auctoritate notarius*), or both (*publicus imperiali et apostolica auctoritatibus notarius*). There may have been a lot of abuse of the notary's office because it was stated at the Salzburg Provincial Council in 1490 – reaffirming an earlier decision that was also taken at a provincial council in Salzburg (1386)[48] – that only such a person could be considered a notary and could engage in judicial and public service in this capacity, with confirmation from the archbishop or his deputy.[49]

The first notaries appeared in Salzburg from the 14th century. Interestingly, the first notary is mentioned in a diploma from the same year (1314) when the *officialis* also appears. This, of course, could not be the work of chance, since the canonical procedure would not have lacked literacy.[50] Notaries initially performed their judicial

45 For example, "*Presentibus ibidem magistris Johanne Kirchmair, Georgio Gaisler et Johanne de Hersfeldin, decretorum licentiatis, causarum consistorii curie Salczburgensis procuratoribus, testibus.*" Paarhammer, 1977, p. 51.

46 Straub, 1957, p. 196.

47 There are only a few indications that the person in charge of the procedure was given a collective name: Master Leonhard Angerer, as *annwald und procurator,* received the authorization of attorney/lawyer. Cf. Paarhammer, 1977, p. 51.

48 See Dalham, 1788, p. 165.

49 On the status of notaries and abuses, see Bader, 1967, pp. 6–7.

50 For more details about the relationship between the *officialatus* and notaries, see Luschek, 1940, p. 133.

and credential activities without any particular division of duties, but by the 15th century, the functions had already crystallized. The *consistorium* employed its own notary, who was first mentioned in the diplomas as the *consistorii curie Salczburgensis notarius iuratus* and from the second half of the 15th century was referred to more broadly as the *publicus imperiali auctoritate notarius causarumque consistorii curie Salczburgensis scriba juratus*. Notaries were usually clerics, not only from the diocese of Salzburg, but also from Passau and Regensburg, for example.

The notaries of the ecclesiastical court were primarily responsible for keeping court records and court books. The former had to be marked with the date to indicate each of the cases (*causas*) heard by the court, as well as deadlines, *surrogationes*, prosecutorial orders, etc., while the latter recorded the exact course of the court proceedings. Relying on these two types of records, the notaries then issued the necessary court documents (e.g., court orders and judgments). It was not an infrequent occurrence for notaries to participate actively in litigation, such as by taking witnesses and oaths on behalf of an *officialis*.

As a Salzburg specialty, it was the notary's task to preserve and manage the seal of the *officialatus*. In most other German dioceses, a special office was established for this purpose, that of the sealer (*Siegler*), but here, there was no need for this duality. Therefore, in addition to his own seal, the notary used the ecclesiastical court's ordinary seal. From the very first mention of the *officialatus* (1292), there has been a *sigillum causarum*; however, whether this was the court's official seal is in question. It is certain that such a seal existed from the 15th century under the name *sigillum maius officialatus curie Salczeburgensis*; it features a picture of Saint Rupert at the center, and it is oval in shape and imprinted in red wax. There was also a small seal used on documents issued by the notary (on the official order) to record certain procedural acts (orders, letters of command, exhortations, exclusions, etc.). On this seal, the following can be read: *secretum officialatus curie Salczeburgensis*. It was printed as a stamp on the back of the diploma and covered with a piece of paper. This seal was round in shape, with the image of a bishop in the middle, at whose feet appeared these words: *Sanctus Virgilius*.

The use of seals was an indispensable accessory during diploma exhibition because it informed the clerk that he was not merely a chancellor's clerk but a true *notarius publicus*. Each Salzburg notary had his own artistically engraved seal. The notaries always undertook sealing personally, and once used, the seal could not be replaced by another (i.e., with a different design) – the seal was inseparable from the signature and was permanent, and the combination of the two proved the diploma's authenticity.[51] Finally, it should be noted that as the number of notaries in the ecclesiastical court in Salzburg was much higher than the number of their colleagues in the other dioceses, they also employed purely clerical staff (*substituti*), several of whom rose to the rank of ordinary notary.

51 "*Signo et nomine meis solitis et consuetis consignavi*." Luschek, 1940, p. 72.

2.2.6. Judicial auxiliaries

The delivery of various court notices and orders in Salzburg was the responsibility of the *cursores* and *nuncii*,[52] who were ordinary court employees. They had to take an oath of office, so they are often mentioned in diplomas as *cursores iurati*. They were also considered officials, so they often witnessed legal acts.

In Salzburg, they did not belong to the regular staff of the *officialatus*. External persons (always clergy: provosts, parishioners) performed an important task; being pastors in the area concerned, they possessed the knowledge and authority to aid the ecclesiastical court of Salzburg. They were used mainly during witness hearings and the service of judicial orders and pronouncements (and explanations) of judgments.

3. Bohemia

After Charlemagne had broken the Avar domination (~799) and extended his influence into Bohemian–Moravian territory, the Mojmir dynasty founded the Great Moravian Empire (830–906). During Frankish rule, 14 Bohemian nobles (*duces*) had already been baptized at Regensburg (845),[53] but Christianity only began to spread more strongly after the Bohemian princes were baptized.[54] Thus, Borivoy (870–894) was baptized by St Methodius (873) with his wife Ludmilla at the Moravian court, but he achieved little in the way of conversion. St Wenceslas (925–935), however, had already become a true apostle to his people. At the end of the century, Boleslav II (Pious) had many churches built and founded the bishopric of Prague (~973), whose first archbishop was the Saxon Ditmar (973–982). St Adalbert succeeded him, but his missionary achievements were only moderate.

Over time, the Czecho-Moravian territories successfully gained independence from the disintegrating Frankish Empire. The power of the prince of the Great Moravian state increased considerably and the early feudal structure of society was formed. The Moravian Empire was succeeded by the Czech principality, which continued to feudalize. In the mid-10th century, the Prince of Prague, Boleslav I, eliminated the remaining forces of the clan-tribal aristocracy and established a solid central power based on the Catholic Church. His son, Boleslav II, warded off German influence against the Czech Church for the time being, and a strong and united Czech state was born.

However, the continued intervention of the German-Roman emperors did not cease. The way they did this was to bind the Czech princes to them by granting them privileges, such as the title of king for life, which was passed down through the family, in 1086 and then in 1158.[55] As a sign of the established fief dependency, the Czech

52 Paarhammer, 1977, p. 61.
53 Cf. Graus, 1999, pp. 335–344.
54 Cf. Diós and Viczián, 1993, pp. 399–404.
55 Pope Innocent III (1204) and Emperor Frederick II (1212) both recognized the title as hereditary.

king was obliged to contribute 300 mounted soldiers (or 300 pounds of silver) to the Emperor's campaigns in Italy. The crowning glory of the imperial feudal structure was the inclusion of the Czech king in the ranks of the German elective princes – as the only king – which was recorded in the German Golden Bull (1356).[56]

3.1. The development of the Church's organization and its relationship with the secular power

In the 10th century, the independent Czech ecclesiastical organization was established – the territory had been under the jurisdiction of the diocese of Regensburg. The sovereign diocese of Prague remained in the ecclesiastical structure of the German imperial church in so far as it became a suffragan diocese of the archdiocese of Mainz.[57] A number of monasteries were founded, the oldest of which is the Convent of St George for women in Prague Castle.[58] In addition to Prague, another bishopric was founded in the Middle Ages in the narrower Bohemia, with the center of Leitomischl (1344), in connection with the elevation of Prague to the rank of archbishop. In addition, in Moravia, the existence of a bishopric is recorded from the 10th century onwards, which was then established with the see of Olomouc (1063).

The bishopric gradually became financially and politically independent of the monarch. The first stage in this process occurred under Bishop Daniel, who divided the diocese into ten archbishopric districts and gave it ecclesiastical prerogatives. The grateful archdeacons enthusiastically supported the bishop's efforts for independence. The Archdeacon of Prague was usually the president of the episcopal chaplaincy. The recognition of the right of the cathedral chaplaincy to elect bishops by Otto I at the end of the 12th century, while retaining the investiture, was a significant milestone in the process. The tension over the investiture under Bishop Andrew was settled by the Concordat of 1222. Thereafter, the church structure developed vigorously. The parish network was fully developed, with the bishop appointing parish priests on the recommendation of the parish curates (*patronus*). Siegfried von Eppstein, Archbishop of Mainz, made a notable visitation to the diocese of Prague (1244). By the end of the 13th century, the diocese had 2 084 parishes, which were divided into 57 deaneries, modelled on the German church system.

Conflicts over the filling of ecclesiastical posts were also present in the Czech Kingdom. Bishop Andreas of Prague appealed to Pope Honorius III (1217), who imposed an ecclesiastical interdict (*interdictum*) and excommunicated those who infringed the Church's freedoms. Peace was restored only years later (1221). The king came to an agreement with the legate Crescenti, renouncing the investiture and agreeing to the election of a bishop by the chapter, who would promise only obedience to the king. He conferred a number of privileges on the clergy, including the right of ecclesiastical jurisdiction (*iurisdictio*). The removal of the bishopric of Prague from the jurisdiction

56 Cf. Lück, 2023, pp. 109–138.
57 Cf. Wihoda, 2022, pp. 243–247.
58 Cf. Naegle, 1915/1918.

of the Archbishop of Mainz by a bull of Pope Clement VI (1344), and the elevation of the bishopric to the status of an independent archdiocese was an important step towards the autonomy of the Czech Church. The German-Roman Emperor Charles IV (as King Charles I of Bohemia, 1346–1378) founded the University of Prague (1348), which he divided into the Czech, Bavarian, Polish, and Saxon nations, and made the Archbishop its Chancellor. Under his son, Wenceslas IV (1378–1419), the situation in the country deteriorated considerably. The intransigent king had St John of Nepomuk executed; he was twice imprisoned and deprived of his imperial dignity by the electors (1409). The crusades against the Hussite Wars (1420–1434), which soon broke out and dragged on for a long time, produced little result, and the movement's splitting into factions essentially hastened its decline.

The general European privileges of the clergy, as known in canon law, also applied in the Czech lands. The Church had steadily increased its land holdings over the centuries, and according to John Husz, the Church owned a quarter to a third of the income from the land. However, the clerical order was not uniform: the standard of living of the upper and lower clergy in Bohemia also differed dramatically between the upper and lower classes, who lived a luxurious lifestyle. In addition, German influence was also present; we find many Germans among the holders of the higher benefices, especially under the Luxembourgs. The influence of the Bohemian-German high priesthood was also felt when John Huss was summoned to the Universal Council of Constance to expound his doctrines and was sent to the stake there (1415)[59] despite a letter of marque from Emperor Sigismund.

The prominent ruler of the Czechs, George of Podjebrád (1458–1471), also failed to restore peace with the papacy. Cardinal Carvajal and Aeneas Silvius (the envoy of Emperor Frederick III, later Pope Pius II) visited Prague in person, but failed to bring the Hussites to conversion. At his coronation, he promised to help restore relations between the Czech and Roman churches, but again sided with the Hussites. Pope Pius II had already tried to excommunicate him, but he was only deprived of his kingship under his successor Paul II (1467).

3.2. Organization of ecclesiastical jurisdiction

The opposition and competition between the Czech Church and the secular power, largely in the area of jurisdiction, was a source of constant tension, which was brought to an end by the Concordat of 1221. In this document, the King promised to recognize the privilege of the ecclesiastical judiciary (*privilegium fori*)[60] and to respect the scope of ecclesiastical judicature as established by customary law, thus placing the activity of the sacred judiciary and the validity of canon law in the country on a new footing. The situation in Moravia adapted to this situation quickly and during the 13th century,

59 Cf. Bónis and Sarlós, 1957, pp. 189–200.

60 In the Middle Ages, several papal decrees spoke of this privilege, cf. Becker, 1978, pp. 877–878. A related norm, complementing this principle, was that the cleric was not bound by the judgment of an unauthorized lay judge, cf. Koch, 1949, pp. 60–63, 92; Kejř, 1995, pp. 99–115.

the scope of ecclesiastical jurisdiction became so stable that, from the beginning of the 14th century, the Church considered it sufficient to lay down the guarantees of the jurisdiction of the tribunals in the interests of the laity in statutes. The source of law issued by the first Archbishop of Prague, Arnest of Pardubice (1349) is of particular importance, in which he clearly delimited the jurisdiction of secular forums and ecclesiastical courts (Article 25).

The structure of the judiciary of the Holy See was very similar to that of the German (mainly Mainz) ecclesiastical organization, which was obviously used as a model.[61] In the dioceses of Prague and Olomouc, the exercise of ecclesiastical jurisdiction was in the hands of the bishops from the beginning, but here too there was a practice of bishops preferring to use the assistance of delegated judges (*iudices delegati*). These clerics were persons skilled in the law and typically part of the bishop's entourage, as their formulaic mention: *iudex a domino episcopo constitutus* or even *officialis,* indicates. The latter designation is particularly revealing of the close links with the German ecclesiastical organization: the ecclesiastical jurisdiction of the Czech and Moravian territories can also be characteristically classified as belonging to the northern European model, since the diocesan judge is also called *officialis* here. In the late 1360s, Bishop Bruno of Olomouc had already appointed a real official to this office. This was probably the first case of this office in the Czech lands, which can only be attested without interruption in Bohemia from the end of the 13th century, and in Moravia from 1318. Thereafter, essentially from the 14th century onwards, there was a continuous diocesan court with an official function, headed by a judge (*officialis*) with his own jurisdiction – and, as a sign of this, his own seal.

Although there were already several bishops and delegated judges with university law degrees in the 13th century, the Bohemian and Moravian Holy See could not have done without the expertise of assessors, who represented the true professionalism of canon law at the highest level. The title *magister* was the most common indication of this status, but even if they had an academic degree (*doctor decretorum/legum, doctor iuris utriusque*), this title was never missing from their names. In one of his statutes (1349), Archbishop Arnest of Prague expressly provided for the obligation to employ such jurists: he allowed them to give judgments in matrimonial and usury cases only if they had the appropriate training in canon law or had competent assessors at their disposal. In Prague, there was a sufficient number of lawyers with legal knowledge and qualifications to choose from. There were also a good number of advocates (*advocati*) and procurators (*procuratores*) in the bishop's court, all of whom were qualified in canon law.

Thanks to the strong Romanization process, the various principles and legal institutions of Roman law were increasingly applied, and the forums of the Holy See gained rapidly growing popularity in the 14th century, also in disputes between lay people. These were mainly disputes between private individuals in legal transactions, where the new legal culture, its progressiveness and its benefits were quickly familiarized to

61 Cf. Erdő, 2001, p. 110.

those seeking justice. This mechanism of influence leads further: Roman canonical law also had a decisive influence on Czech secular legal institutions. The qualified lawyers who personified the new legal culture were an indispensable factor in this process.

However, if we focus on the importance of this process for the spread of a legal culture of Roman origin, we cannot ignore the relationship with the human factor, which, thanks to its training, first gave full expression to this legal culture in ecclesiastical jurisdictions. They were the professionally trained, university-educated lawyers who found their activity most quickly and most frequently in the Church, but who gradually also became active in the field of secular law, thus becoming the most important disseminators of Roman law in the Czech lands.

3.3. Roman law in the judicature of ecclesiastical courts

The extent and intensity of the influence of ecclesiastical jurisprudence and the penetration of various elements of Roman law into the domestic legal conceptions over time also depended on the way in which the practice of ecclesiastical courts was able to enforce the contemporary rules of Roman-canonical procedure.[62]

It is worth noting that, in the period of the emergence of ecclesiastical jurisprudence in the Czech Kingdom, canon law was still in a relatively early stage of development. This circumstance explains, to a large extent, why the spread of the new results of canon law in this geographical area was only after a considerable delay. The increase in the number of clerics trained in notarial schools in the 13th century played a particularly significant role in this process.[63]

An analysis of the most important documents of the ecclesiastical courts of the 13th century reveals that the procedure followed by these courts in this period was in accordance with Roman-canon law from the beginning. The surviving source material does not suggest that this practice lagged behind common European, or more precisely German, canon law practice. On the contrary, the data on the activities of the ecclesiastical courts from the middle of the century onwards present a picture of a practice that characterizes the profile of the well-known canon law procedure. Since the development of ecclesiastical jurisdiction had made considerable progress under the bishops John III of Prague and Bruno of Olomouc, it is reasonable to assume that the Church's judicial activity had already become a mature model capable of influencing the penetration of certain elements of Roman-canonical procedure and its doctrine into contemporary domestic law.[64]

Compared to the formal institutions of the procedure, data on the details of the Roman substantive law applied are much less conclusive. In the specific cases in which Roman legal rules were applied in court documents, only a few recurrent legal concepts and institutional designations appear, mainly relating to the preconditions

62 Cf. Ott, 1913, pp. 1–107.
63 More: Boháček, 1967, pp. 278–301.
64 Cf. Markov, 1966, pp. 144–201.

and extent of the obligation of restitution in property litigation. Additionally, the other important legal institutions are only mentioned in insignificant, random, and unconnected details. This situation can largely be explained by the fact that the jurisprudence of the ecclesiastical courts in the 13th century was linked both to the ongoing transition of economic relations to a monetary economy and to the still incomplete adaptation of this practice to the higher level of common ecclesiastical law. Surprisingly, the pace of change in the next century is still rather slow, even though this was a period when the monetary economy was in full development and ecclesiastical jurisdiction was in the hands of lawyers with modern training.

These documents, which were a source of law, were of paramount importance for the legal and especially the property status of ecclesiastical institutions (chapters, monasteries, parishes, etc.) and were therefore carefully preserved. They are documents relating to disputes concerning the churches, charitable or endowment property, tithes, patronage rights, and so on, which, in their use of Roman legal terms, rules and principles, do not represent any substantial innovation compared with what was already known from earlier developments. All of them typically refer to the restitution of the object of the dispute, the terms *possessio, detentio, violenta occupatio,* etc., being in general use. They distinguish between *possessorium* and *petitorium*, take account of the different types of limitation of actions, where titulus and bona fides are emphasized, and measure the obligation to restitute according to the Romanist principles in both actions and judgments. The same picture can be observed in arbitration proceedings, where the parties already generally stipulate a pecuniary sanction in the relevant settlement agreements and well-drafted clauses of various types (including waiver clauses) appear.

However, the practice of the ecclesiastical courts in the 14th century was by no means limited to these types of cases. The surviving court books of the Consistory of Prague from the second half of the 14th century record this practice in such surprising quantity and variety that it is assumed that the heyday may have begun earlier. However, it is strange and regrettable that there is almost no documentary record of matrimonial disputes, a subject which for centuries was the exclusive preserve of the ecclesiastical courts, until the second half of the 14th century.[65]

4. Poland

Regarding the beginnings of the history of the Polish church, it can be stated that until the beginning of the 13th century, it operated while strongly subordinated to state power. Although the Investiture of the Profane of the apostolic ecclesiastical court was relatively quickly abolished and the canonical bishop election implemented, the church only attained religion privileges (*privilegium fori*) later on. Therefore, in the

65 To take an example from Germany, in Augsburg in 1349, 111 out of 320 court cases registered dealt with such lawsuits. Cf. Frensdorff, 1871, p. 7.

beginning, there were only a few opportunities for the development of ecclesiastical judgment. The first traces of the Polish clergy's economic and judicial immunity appeared in the 12th century. From the end of this century, the archdeacons were already at work. The immunity of ecclesiastical judgment was enforced in the time of Henryk Kierticz (1199–1219), the archbishop of Gniezno, during different synods – mostly in 1215 in Wolborz.[66]

In Poland, the first mention of *officialis* can be read in the statutes of legacy Pope Urban IV issued in the provincial synod held in Breslau (1248). According to the 10th canon (which was unmistakably conceived in the spirit of Pope Innocent IV's constitution *Romana Ecclesia*), each bishop was obliged to appoint a person to be in charge of the tasks *virum utique literatum, providum et discretum officialis*; in addition, apart from the bishop's disappearing cases, he judged and occasionally imposed the necessary penalties.[67] He had the right to use the seal independently. The designation of the appellate forums also followed the intentions of the papal bull. However, this provision was not very successful because later (1267), another papal legate, Cardinal Guido, again called on the archbishop of Gniezno at the synod, again in Breslau, to arrange the fulfilment of the *officialatus* in the diocese. There has been a verifiable ecclesiastical court in Krakow since 1285,[68] and after 1267, the work of professional ecclesiastical judges gradually commenced in the other dioceses.

In Poland, there is a close correlation between the establishment of the diocesan courts and the acquisition of the judgment privilege. Following the renowned year 1267, the *officialis* rather rapidly became a permanent officer at the head of the ecclesiastical court. In the competition between bishops and archdeacons, the introduction of *officialatus* did not play a role (this was typically the case in the German dioceses). Perhaps, part of this was the fact that the papal legates, James and Guido, who worked forcefully to establish the ecclesiastical courts in Poland, were also French, so the French patterns were conveyed. One proof of this may be the similarity of the jurisdictions, the order in which files were kept, the use of seals, the establishment of an order of appeal, and perhaps even the practice of winning an ecclesiastical court office for only one year, requiring the annual renewal of the oath.[69]

4.1. The judicial organization

In Poland – following perhaps German, and in this case non-French, models – there was initially only one *officialis* for each bishop (*iuxta ecclesiam cathedralem*). Within the diocese, lower-level court forums developed during the 15th and 16th centuries, essentially at the level of the archdeacon districts, and in these districts, the *officialis* was most often the archdeacon himself. The naming of judges has been uncertain for

66 For medieval ecclesiastical jurisdictions in Poland and Hungary, see Erdő, 1993; id., 1994; id., 1995; id., 2016.
67 Cf. Erdő, 1993, p. 136.
68 The oldest known diploma issued by the Polish official dates from 1286. Cf. Vetulani, 1934, p. 306.
69 Vetulani, 1934, pp. 293–295.

centuries; only since the early 16th century have they been called *officiales foranei*.[70] The judges of the archdeacon districts were most often simply referred to as *officiales*, which was added to the name of the place where they had their seat (this was the most common). The chief official next to the bishop was called the *officialis generalis* in the diplomas.[71] However, political rank sometimes justified the holding of this title in the case of district and rural authorities as well. For example, the Pomeranian judge called himself: "*in spiritualibus et temporalibus vicarius, officialis per terram Pomeraniae generalis*."[72] Similarly, the Warsaw *officialis* has reportedly used the following address since 1452: "*archidiaconus Varschoviensis vicariusque* [...] *in spiritualibus et officialis in ducatibus Mazoviaegeneralis*."[73]

It is probable that the term *officialis generalis* may have originated in connection with the use of the title *vicarius generalis* because this title was mainly used by those *officiales* who also held the position of general deputy. It can be stated that from the second half of the 15th century, the *officialis* working alongside the bishop was also a deputy general (*vicarius in spiritualibus*).[74] This personal union is evident elsewhere, such as in the case of a diocesan judge attached to the archbishop of Salzburg.[75]

The seat of the judge next to the bishop (*officialis generalis*) and the bishop's court (*idem auditorium*) were the same, and the same episcopal jurisdiction extended to the rural *officiales*, as evidenced by the fact that no appeal could have been made to the bishop's judge from there.

In addition to judges, there were also ecclesiastical fiscal lawyers (*instigatores*)[76] at the Polish ecclesiastical courts, who were most often referred to as *procuratores* in German practice. They primarily represented the church itself in lawsuits, but they could also undertake to represent individuals in church lawsuits.

The judge's officials and the organization of courts were experts in canon law. In addition to the various references to judges in the diplomas, the title *magister* or *doctor decretorum* is often used, which also refers to the continuation of university studies. The ecclesiastical courts in both the episcopal office and the centers of the archdeacon districts applied the principles of Roman canon law with sufficient expertise.

4.2. Competence and jurisdiction

The jurisdiction of the ecclesiastical courts in Poland was first articulated in the legate synods (1267, 1279) where the main issue was the recognition of the *privilegium fori*. Under these provisions, clerics could not be summoned to secular courts in either

70 Vetulani, 1934, p. 321, n. 200.
71 Vetulani, 1938, p. 481.
72 Fijalek, 1899, pp. 170–172.
73 Ulanowski, 1926.
74 Pawluk, 1985, p. 165; Nowacki, 1964, p. 202.
75 Trusen, 1973, pp. 475, 482. Ulrich is among the witnesses in the epistle of Petrus Duranti's papal *nuncius* (1314) at the Salzburg Cathedral, and he refers to himself as *officialis et vicarius in spiritualibus*. Cf. Balogh, 2020, pp. 69–70.
76 Wójcik, 1959, p. 359; Vetulani, 1938, p. 484.

private or criminal cases. This privilege was later extended to counterclaims. It is important to note that in Poland, due to the nobility's massive resistance, ecclesiastical courts could not judge estate lawsuits. Casimir the Great (14th century) expressly reserved the right to adjudicate matters affecting the interests of the king and the state, and even established the jurisdiction of secular forums in tithes.

There were serious conflicts between the nobility and the clergy over matters of jurisdiction, especially over land, wills, tithes, and other services. At such times, the kings also intervened directly in the ecclesiastical courts' ongoing trials.[77] In the opinion of the royal court, in cases of non-ecclesiastical competence, regular injunctions (*litterae inhibitoriae*) were issued and even interrupted ongoing proceedings. Following the royal transmission order (*mandatum transmissionale*), such lawsuits were brought to the court – as in Hungary – where they continued and ended.

Rural *officiales* usually received general authority from their bishops to adjudicate all matrimonial matters. This is an important circumstance because, as was typical in Europe, most cases here were related to marriage. They could also act in matters concerning rights in rem, but here, their jurisdiction was limited by the threshold value (*ratione valoris*).[78]

Enforcement of ecclesiastical court judgments in Poland has also been difficult from the outset. The church constantly demanded the use of the secular arm (*brachium saeculare*), and from 1433, the Polish kings pledged assistance. Royal interventions only ceased at the end of the Middle Ages, in 1565, when the secular execution of ecclesiastical judgments ceased.

5. Hungary

The beginnings of ecclesiastical judging in Hungary date back to the time of Saint Stephen I, the founder of the state and of the foundations of the Hungarian ecclesiastical organization. The kingdom was divided into two dioceses, with the headquarters of Esztergom and Kalocsa, but Esztergom was the first in rank, headed by the primate archbishop, who was the country's first ensign (only he could validly crown the new king). Canon lawsuits could even be appealed from the archbishopric of Kalocsa. The seats of the dioceses assigned to the archbishops of Esztergom were in these cities: Eger, Győr, Nitra, Pécs, and Veszprém; the archbishop of Kalocsa was in charge of the following dioceses: Argeş, Csanád, Gyulafehérvár, Sremska Mitrovica, Várad, and Zagreb. Today – in addition to Hungary – these cities and their former territories can be found in several foreign countries (Austria, Croatia, Romania, Serbia, Slovakia, Slovenia, and Ukraine).[79]

77 Wójcik, 1967, pp. 95–99, 104.
78 Sources most often indicated the upper level of litigation in 12 marks. Cf. Vetulani, 1934, p. 484.
79 Cf. Erdő, 1989, pp. 123–158.

The provisions of the first royal decrees and the diplomatic sources all show close co-operation between the royal power and the church in Hungary. The ruler guaranteed observance of the Christian Church's commandments (Mass, confession, fasting, tithing, etc.), and in return, he enjoyed keen support from the clergy.[80] In Hungary, members of the church receive their mandates from the legislature, but they exercise them according to the *canonum institutiones* (or *mandata*). Saint Stephen I's first law (13th caput) sheds light on the relationship between the secular (royal) and ecclesiastical judiciary. Proceedings against violators of ecclesiastical orders appear before the episcopal office. In cases of ineffectiveness, the offender is brought before the royal court *per disciplinas canonum*. The procedure is similar for witches (*striga*), where the sinner is first accountable to the parish priest, but the converted person is eventually handed over to the secular judges. The early state of Hungary's canon law evokes the relations of the time before Gratian and bears many similarities to contemporary Anglo-Saxon laws, the content of which was strongly connected with the penance books that were widespread in Europe at that time.[81]

Early memories of the church's *privilegium fori* can be found in the laws of our first king, Saint Stephen I. Regarding content, the decisions of the Council of Mainz (847, can. 6–7)[82] are repeated, according to which secular judges follow only the ecclesiastical *ad iustitias faciendas iuxta praecepta legis divine* (I, 2). In the second half of the 11th century, the laws of Saint Ladislaus punished violators of private property with draconian vigor, including clerical perpetrators. The ecclesiastical perpetrator of a theft (hen, goose, fruit) committed to a lower value should be punished by his superior, but the perpetrator of a more serious act must be degraded and then passed on to secular judges. Thus, the king's judiciary was also manifested toward churchmen, but the church's internal judging was given priority in the procedure (especially in minor matters). The synod of Szabolcs (1092), chaired by the king, also dealt with issues of celibacy. According to the decisions, the priests could remain in their first and 'legal' marriages, but they had to dismiss their second or further wives, as well as any widow or divorced woman. If such *bigami* stubbornly clung to their wives, they had to be excluded from the Church, *secundum instituta canonum.* Furthermore, if a priest living in such a forbidden marriage continues to work, he must be convicted *iudicio voluntario episcopi,* and if a bishop or an archbishop endures a sinful priest judged in accordance with the above in holy service, then the king judges over them, with his bishop counselors. Thus, the king's supreme jurisdiction prevailed strongly in Hungary in the 11th century. By the 12th century, we know very little about the practice of ecclesiastical jurisdiction in Hungary. The first diploma from an ecclesiastical authority (1134) is a court letter from Archbishop Félix pertaining to a church estate dispute in Esztergom. The trial was probably oral, given the low level of written

80 György Bónis gives a systematic summary of the ecclesiastical jurisdiction in prehistoric Hungary, see Bónis, 1963. Péter Erdő's comparative studies stand out from the recent literature: Erdő, 1993; id. 2016.
81 Cf. Oakley, 1923, p. 142; Frantzen, 1983, pp. 23–56.
82 Cf. Schiller, 1910, pp. 389–391.

culture, and it may have been common for high-ranking churches' arbitrary court judgments to close disputes.[83]

The Gregorian age also saw the widespread strengthening of ecclesiastical justice in Hungary. In matters between ecclesiastical and lay people, a secular judge can no longer, in principle, summon a cleric: "*Nullus praesumat secularis iudex sigillum clerico dare*."[84] Moreover, in the case of simpler homicides, abductions, and adultery, bishops' and archbishops' jurisdiction prevailed. Centuries before his age, King Coloman forbade taking action against witches on irrational charges (e.g., night flight) in his famous law: "*De strigisvero, que non sunt, nulla quaestio fiat*."[85] The Hungarian kings sided with the papacy in the Investiture Controversy, which did not, of course, prevent the unhindered enforcement of the papal laws (*decretales*) issued in 1180 in the direction of the Hungarian archbishops. The strong papal influence in Hungary was further enhanced by the fact that papal power culminated with Pope Innocent III and Honorius III, as weak and even light-hearted kings ascended the throne in Hungary.[86]

It is characteristic of canon law's domestic validity that King Bela IV (1235–1270) expressed his wish in the same diploma in which he complains about the papal legate Jacob's excessive use of excommunication: "*ut nos et regnum nostrum iure communi et sanctorum partum institutionibus regamur*."[87] During the reign of his grandson, Ladislaus IV (1272–1290), there was an open breaking of bread between Rome and Hungary. As the young king based his power on the Cumans who had settled in the country shortly before but still lived according to pagan customs (and caused severe damage to the people of the country and the church), a papal legate was again ordered to restore the Church's rights. Bishop Philip of Fermo held a synod in Buda (1279), the provisions of which were not fulfilled in many respects. In response, the legate sentenced the king to ecclesiastical punishment and subjugated the country. The accepted validity of canon law thus prevailed in full force, so the same Hungarian king was forced to accept it on the issue of Bosnian heretics – as "*omnia statuta, constitutiones, leges et iura atque decreta* [...] *per sedem apostolica medita*."[88]

5.1. Development of the judiciary

The ecclesiastical judiciary and its organizational development also gained great momentum in Hungary in the 13th century. The first half of the century reveals the picture of rudimentary practice (and the times before the Fourth Council of the Lateran). The *Regestrum Varadinense*,[89] a surviving source of European significance

83 See, e.g., the trial of Archbishop Seraphin of Esztergom with fellow bishops (1103). Cf. Knauz and Dedek, 1874–1924, vol. I, p. 71.
84 Decreta Colomanni I. 14.
85 Decreta Colomanni I. 57.
86 Cf. Bónis, 1963, p. 188.
87 Cf. Theiner, vol. I, p. 170.
88 Cf. Theiner, vol. I, p. 348.
89 Cf. Karácsony and Borovszky, 1903.

from this age, has preserved the memory of the judiciary's supremacy in Hungary. Thus, they brought under their jurisdiction a number of criminal cases, such as *veneficium, maleficium*, *furtum*, *latrocinium*, *occasio*, and *raptus* (*mulieris*), as well as the clergy's private law cases.

Legate Jacob was expected to renew ecclesiastical jurisdiction in Hungary. After 1279, the Hungarian ecclesiastical courts were strengthened internally, and their organization was transformed in accordance with the rules of the *curia*. From the end of the 13th century, the episcopal and archbishopric chairs' appeal role was abundant: Litigants often approached the archdeacons here. The disputes' substantive legal basis, according to the doctrine established by numerous sources, was already, obviously, canon law norms, especially the papal decrees.

The archbishops, bishops, some provosts, and abbots, in the possession of the *immunitas*, gained the right to judge their subjects. The organization of these high priest courts was modeled on that of the royal *curia*, and although such provincial fragmentation (as in Germany) never developed in Hungary, the high priest (of the bishops) of the Hungarian Church ruled over the population of the archbishop of Esztergom (1262) as *palatinus suus vel iudex curiae sue aut terrestris comes*.[90]

At the beginning of the 14th century, the activities of the papal legate Gentilis laid the foundation for the organizational development of the Hungarian ecclesiastical judiciary. The most excellent – foreign – specialists of canon law were active in lawsuits between 1308 and 1311 in Hungary.[91] Diocesan courts were typically headed by bishops, who most often sought the help of jurists who were truly knowledgeable in canon law. Arduous tasks requiring legal expertise were very often delegated to other officials (*viceiudex et cancellarius*, *vicesgerens, yconomus*).

In Hungary, in the 14th century, it became common for the office of the diocesan judge to be filled by the vicar of the bishop, the *vicarius*, and this remained firm throughout the Middle Ages. In our case, the *officialis* nominated the property director of the secular estates, and only papal letters made formal application to the ecclesiastical court judge. It can be stated that Hungary thus clearly joined the model of medieval ecclesiastical judiciary in Southern Europe, i.e., the vicar judiciary. This system resulted in the appointment of a cleric who was always proficient in canon law as the bishop's general deputy. In Esztergom, in the 14th century, a canon was most often appointed, and an archbishop was usually appointed in addition to the episcopal chairs. In the 15th century, this judge was referred to as *vicarius in spiritualibus* and sometimes even *vicarius in spiritualibus et causarum auditor generalis*.[92]

It is exceptional that the bishop of Transylvania had a geographically 'outsourced' deputy judge (*vicarius de extra Mezes*), an officer who became permanent, and this function was usually performed by the parish priest of Satu Mare or Tasnád. It is

90 Cf. Knauz and Dedek, 1874–1924, vol. I, p. 473.
91 In the judgment seat: Philippus de Sardinia, Vannes de Aretio *auditores*, Boninsegna de Perusio, all of whom were *doctores decretorum*. Papal notaries arrived in Hungary as well: Angelus de S. Victoria, Philippus de Cingulo, and Vagnolus de Mevania. See Bónis, 1963, p. 202.
92 Cf. Erdő, 1993, pp. 139–140.

important to note that, in contrast to the development of Western Europe, there has never been rivalry between the archbishop's and bishop's judgments in Hungary.

The court (*consistorium*) has always acted in a council (*cum fratribus nostris de capitulo*), most often with the parishioners of the area. At the same time, it is known that since the affairs of the Hungarian ecclesiastical courts included the adjudication of a number of secular cases, in addition to the clerics, jurists familiar with secular customary law were also involved in the deliberations.[93] The mixed court chair had a long tradition in Hungary; in the second half of the 14th century in particular, lawsuits in which the ecclesiastical courts, seemingly aside from canon law, applied purely the substantive and procedural rules of domestic law were frequent.[94] In Hungary, therefore, we can state that there was a strong mix of canon and domestic law, which was an important factor in the spread of Roman canonical norms.

The number one official of the ecclesiastical court in Hungary is therefore the deputy general of the bishop, whose office (*officium vicariatus*) also had an authentic seal. The deputy chair's increasing autonomy and importance required persons skilled in canon law. From the end of the 14th century, they sit almost without exception at the country's ecclesiastical center, Esztergom, as *doctores decretorum*. Among them are several lawyers from Italy: Leonardus de Pensauro, Antonius de Ponto, marketer Matheus de Vicedominis for a quarter of a century during King Sigismund's reign, Simon di Treviso (archbishop of Antivari), Ludovicus Borsi (bishop of Aquileia), and many others. There may have been a great deal of national outrage against scholars who came from abroad and applied only canon law because Law XXXII of 1495 banned them and all foreigners from the sacraments and declared their judgments null and void. We have no data on the enforcement of these legal provisions, but it is certain that the validity of canon law has not been shaken in Hungary; however, at the same time, they have pointed out strong adherence to domestic law.

5.2. Jurisdiction

The Hungarian ecclesiastical courts' rules of competence and jurisdiction were largely in line with European practice, but there are peculiarities. In the 14th century, the ecclesiastical courts' jurisdiction and the rules of jurisdiction had not yet been established, and a kind of dynamic co-operation could be established between the royal court and the episcopal courts. In the first half of the 14th century, the royal court judges referred not only the affairs of widows, dowry, and daughter quarters, but also cases of clerical domination (*actus maioris potentiae*) to the episcopal chairs' jurisdiction. The opposite was true as well: In particular, cases of women's special rights to be decided on the basis of domestic law were sent to the royal court with preference, and in such cases, the *mandatum transmissionale* was regularly obeyed.

93 In 1383, the deputy of Spiš judged nobles, citizens, and serfs.

94 By the judgment of the Eger deputy (1389), one of the litigants was convicted of blood premiums (*in emenda homagii*) for denying kinship (*proditio fraternis*).

From the middle of the 14th century onward, the clientele with regard to whom the ecclesiastical courts acted in Hungary developed. These included judgments on heresy, matrimonial matters, special women's rights (*paraphernum, quarta puellaris, ius viduale, dos*), abuse of church and women, sexual offenses against virgins and women, adultery (*civiliter*), and wills. Property disputes were particularly problematic because the nobility's property rights also included the king's right, *ius regium*, so secular law generally prohibited the ecclesiastical court's jurisdiction in such matters, but with regard to women's special rights, the performance of many legal acts was accepted as lawful under Hungarian law.

From the beginning of the 15th century, we find provisions at the legal level on the jurisdiction of ecclesiastical courts. Jurisdiction disputes, which often occur between secular and ecclesiastical courts, were always decided by the royal court. This meant that although the church had an autonomous system of justice and was even part of a vast transboundary structure connected with Rome, within the country's borders, royal courts always settled sharp jurisdiction conflicts, thus effectively encircling the sacraments in the national court.

Several laws[95] listed the scope of matters within the competence of the ecclesiastical court; these were sometimes supplemented by the clause '*que profane non essent*.' The jurisdiction of the ecclesiastical court was developed in the 15th century: sacramental matters, the purity of the Christian faith (heresy), wills, matrimonial matters in the broadest sense (thus, in addition to bond trials, women's special rights were included), tithes, usury, matters of widows and orphans, perjury (*periurium*), and all other matters where the church's penitentiary power prevails.

The famous Hungarian legal book, *Tripartitum*, written at the beginning of the 16th century – whose actual legal authority exceeded its laws – does not cover the definition of the competence of ecclesiastical courts; it only sets out the position of national law on the most important issue.[96] This, in turn, applied to aristocratic land disputes, where it enshrines the ancient legal principle that such cases cannot be judged by ecclesiastical courts (III. 25.), meaning that their diplomas issued in such cases have no legal effect.

95 Laws: IX of 1458; L of 1458; III of 1462; XVII of 1464; XLVI of 1492.
96 Trip. I. 78. § 6: "[…] *quia non est mei institute aliquid de ecclesiastico foro disserere* […]"

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