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THE RIGHT OF THE HUNT IN MEDIEVAL POLAND

As a result of the scarcity of sources providing information on the tenth-thirteenth-century situation, the beginnings of the exercise of the right of the hunt in the Piast state together with its social, political and economic conditions remain in the sphere of hypotheses, which in Polish historiography, are mostly based on the retrogression method. Thus, all conclusions following from the examination of relevant thirteenth-fourteenth-century documents refer to the assumed statistical character of the phenomenon in question, as well as the social, economic and organizational stability of contemporary hunting practice. In the light of our present knowledge about the wide range of transformations taking place in the period of the regional division of Poland and the following reunification of the country, conclusions of this type appear unreliable. A more historically realistic and vivid picture can only be obtained by drawing information from the rich sources and literature connected with the right of the chase exercised in neighbouring countries.¹ Needless to say, the cultural and civilization delays connected with the emergence and consolidation of the Piast state must also be taken into consideration.

The material collected reveals that the 'undisputable right of the hunt' hypothesis formed by T. Mańkowski² in 1900 can be questioned using a number of mentions found in our native records. The topic of the right of the chase has not been attracting much attention in Polish historiography. Consequently, the verification of the above hypothesis seems necessary because in several works dealing with the right of the chase at least as a marginal issue the unqualified repetition of Mańkowski's assumption has turned it into a self-evident truth.³ Despite the publication of my major

monograph⁴ in 1991 offering a different interpretation of the right of the chase, the stereotype opinion formed by T. is still alive and kicking in Polish medieval studies. According to this author, the 'unqualified right of the hunt' fully complied with the idea of ducal sovereignty. Mańkowski says that the duke incorporates the right into his *Droit de Regale* and claims the strictly exclusive right of the hunt over the entire country with the exception of the right to chase small game. He goes on to assume that this practice could have been the hypothetical origin of the right of the hunt.⁵ Therefore even a brief criticism of the 'unqualified right of the hunt' is worth the effort. Introducing the division between 'large' and 'small' game, the author clearly refers to the pre-state period, when hunting large game (apparently requiring group effort) could be organized only by tribe elders. Their prerogatives, well grounded in tradition, were subsequently assumed by ducal sovereignty, claiming the exclusive right to chase over the entire country, appointing numerous officials and introducing more and more sophisticated forms of ceremony, such as '*cum magna tuba*'.⁶ However, this thesis can easily be refuted as, for example, a mention of young Boleslaw III the Wrymouth defeating an attacking bear, the most dangerous native predator, unaided and armed only with a javelin can be found in Gallus Anonymus' chronicle.⁷ Similarly, according to other records, two or three members of a family would successfully chase large game and win trophies in the woods, with whose refuges they were familiar. In his work, T. Mańkowski fails to ask two fundamental questions: Firstly, was it necessary to limit the subjects' right to hunt so drastically in the first Piasts' country, where game was recorded to be found in abundance? The recorded customary law exercised by the Germanic peoples, who

¹ For a detailed discussion of foreign records and literature see: A. Samsonowicz, *Łowiectwo w Polsce Piastów i Jagiellonów*, Wrocław 1991, pp. 13-15, 148-162 (further referred to as *Łowiectwo*).

² T. Mańkowski, *Prawo łowicze w Polsce w wiekach średnich*, „Przewodnik naukowy i literacki”, vol. XXXII, 1900.

³ T. Mańkowski's conception was adopted by P. Dąbkowski, *Prawo prywatne polskie*, vol. I, Lwów 1911, pp. 213 seqq.; J. Bardach, *Historia państwa i prawa Polski do pol. XV w.*, vol. I, Warszawa 1957, p. 147; J. Walachowicz, *Monopole książęce w skarbowości wczesnofeudalnej Pomorza Zachodniego*, PTPN Pr.

Kom. Hist., vol. 20, f. 2, pp. 149 seqq, and other authors of synthetic studies in the history of medieval Poland.

⁴ *Op. cit.* note 1.

⁵ T. Mańkowski, *op. cit.*, p. 520.

⁶ The custom of the ruler granting the exclusive right of the hunt together with a hunting trumpet horn – '*tuba in venatione et in exercitu*' is recorded in: K. d. Maz. Lub. no. 95, 1295; C. D. Sil Verein f. Gesch. und Alterthum Schlesiens, vol. I, no. 15; K. D. WP, vol. I, no. 744, 1296 and vol. VI, no. 210, 1365.

⁷ *Galli Anonymi Cronica et gesta ducum sive principum Polonorum*, ed. K. Maleczyński, MPH n. s., vol. II, Kraków 1952, p. 77.

lived in conditions similar to those of the Slavic peoples, included a regulation coming from Roman law specifying that all wild animals are regarded as *res nullius* and that every freeman belonging to the territorial community has the right to chase providing that he does not endanger the safety of his neighbours.⁸ Secondly, how many people would have been needed to execute the law and guarantee the exclusive right to hunt over the entire territory if the subjects were frequently unexpectedly forced to take prompt action to defend their cattle, crops and the lives of their family members against dangerous and aggressive animals? The state would have needed a huge army of guards constantly tracking instances of law throughout the country. In addition, poachers are never betrayed by their neighbours, which has always rendered the struggle futile.

During research into the process of the emergence, development and disappearance of the right of the chase conducted using both the West-European material and data regarding our southern and eastern neighbours, mentions of a form of Droit de Regale different from that suggested by T. Mańkowski were found in Polish records. At the turn of the nineteenth century, the above regulation was one of the major issues discussed in West-European historiography. The ruler's exclusive right to hunt was guaranteed by establishing, often extensive, hunting grounds with an abundance of game. In Merovingian records, such restricted areas started to be referred to as *forestes*⁹ while the commonly accessible areas of forest were called *silvae*. However, no clear connection between this practice and Droit de Regale belonging to the ruler could be inferred from the context. It is only in more numerous Carolingian documents that the function of such *forestes* becomes clear. A mention of this type is to be found in the written permission granted the monks of St Bertin by Charles the Great in 800. The monks are allowed to hunt only *in eorum proprias silvas*, which might have been given to them before. A condition included in the document stated that *salvas forestas nostras, quae ad opus nostrum constitutas habemus*.¹⁰ Also, the examination of other diplomas where mentions of *forestes* and special guards, called *forestarii*, appointed by the ruler in order to prevent intruders from entering the areas, are to be found leads to the conclusion that afforestation was first carried out in the areas belonging to the royal domain or portions of wasteland, which according to Carolingian records, were the king's property. The tool used by the ruler to form the legal basis for the exclusive right of the hunt introduced in his *forestes* was the feudal *bannum* – the right of the sovereign to issue bans and orders to be obeyed by his

subjects. Such *forestes*, excluded from public use, originally belonged only to the king. Gradually, the ruler began to present prominent selected church institutions with *iuris forestis*. Besides the term *foresta*, which referred exclusively to the ruler's hunting grounds, the word began to be used in a new legal sense independent of the ownership status of the land. The term started to denote an independent right of use of a portion of land. The beneficiary was granted exclusive permission to chase and hunt game in the area. Church and lay landowners could be granted permission to create *forestes* in their estates only by the ruler, who was also the only one to confirm the exclusive right of the hunt in his territory *ab antiqua*.¹¹ Occasionally, afforestation¹² required the consent of the local feudal lord as the creation of new *forestes* restricted his serfs' freedom of hunting in the area. Thus, the moment Otto I granted '*forestam... in qua prius erat communis civium venatio*' to the monastery in Fulda in 951, the local people lost their right to hunt in the forest, '*nullus venandum audeat ingredi nisi licencia eiusdem abbati*'.¹³ Gradually, the number of the most valued species had decreased, which brought about the need for a more precise specification of the range of hunting rights granted by the ruler so that the privileged did not have to worry about the scarcity of game. According to written sources, from the mid-tenth century onwards, Ottonian emperors and their Salian successors generously granted *iuris forestis*, bowing to the growing pressure on the part of the more and more powerful nobility and especially the Church. The practice became a tool of the realization of various political ends, most useful in periods of weak central rule.¹⁴ In the imperial office terminology, besides the word *forestes*, new analogous legal terms, '*districtum banni*' and '*regium banni*', were introduced.¹⁵

The above brief discussion of the Carolingian and post-Carolingian material should be enriched by, most probably even more instructive data, found in twelfth-century Bohemian documents, which confirmed the existence of '*viredaria seu forestaria ipsius silvae, quae lowche dicitur in vulgari... pro deductionibus venationum nostrorum tamoquam forestarii et viredi sive lovchi diligenter custodiant, foveant et conservant*'. The above extract comes from the document issued by King Wenceslas II in 1288, in which the ruler presents the local

¹¹ K. Lindner, *Geschichte des deutschen Weidwerks*, vol. 2, *Die Jagd im frühen Mittelalter*, Berlin 1940, p. 182.

¹² In the document of 889 produced by King Arnulf, which granted the bishopric of Eichstätt the right to possess *forestes*, there is a provision saying, '*cum consensu comitis Ernusti, qui eidem curti et comitatus ad presens dominari videtur...*', K. Lindner, *op. cit.*, p. 184.

¹³ MGH DD. O. I, no. 131.

¹⁴ On the consequences of the policy of making the emperors dependent on the nobility and relevant source quotations see: A. Samsonowicz, *Łowiectwo...*, p. 155.

¹⁵ See: above.

⁸ For more information on the customary law of the Germanic peoples see: A. Samsonowicz, *Łowiectwo...*, pp. 148 seqq, 352 seqq.

⁹ For a selection and discussion of the most important works on the subject see: A. Samsonowicz, *Łowiectwo...*, p. 354.

¹⁰ MGH D. Kar., no. 191.

Church with '*silvam quem adiacentem Tetin*'.¹⁶ The use of the gloss '*lovche*' suggests that a native term was used to refer to the areas where the exclusive right of the hunt was exercised, which seems to support the assumption that a corresponding legal category functioned in contemporary Poland. An extract from the Gniezno Bull of 1136 with a mention of a settlement given to the archbishopric: '*loviche cum decimis, cum villis et eorum incolis, cum venatione, cum castoribus*'¹⁷ seems to confirm the above supposition. The name of the settlement, interpreted as Lowicz, may be a sign of the existence of a ducal foresters centre in this region of Poland, like in Bohemia, called *lowcze*.¹⁸ It may only be noted that the expression '*cum venatione*', used in the majority of documents certifying the conferment of land, confirmed the exclusive right of hunting given to the beneficiary and not the abolition of the previously existing ban of hunting, which interpretation was advocated by T. Mańkowski and the followers of his 'exclusive Droit de Regale' hypothesis. Only the ruler himself and his servants, who were allowed to cross any property boundaries while chasing, were exempt from this legal regulation eliminating one's neighbours' hunting activity in the area. What is more, the text of the Gniezno Bull reveals that in order to gain the support of Church officials, Polish rulers would confer the right of hunting even in the case of extremely valuable resources, such as the exploitation of beaver lodges. Needless to say, the possession of this right, which could compare favourably only with the right to explore ores, was extremely important to the Church, whose officials were even ready to fake relevant documentation in order to increase their income.¹⁹

Both the Czech gloss *lowche* and the name *Lowiche* found in the Gniezno Bull are phonetically identical with the term denoting exclusive ducal game preserves in Kiev Rus. In the *Povest vremennykh let* (*The Tale of Bygone Years*), there is a mention of 946²⁰ saying that after her husband's death, Duchess Olga conquered the lands of the Drevlanye peoples and turned them into *stanovishtcha eje lovishitcha* (stands and hunting grounds). Thus, areas where the right of the hunt was exercised seem to have been restricted areas in Rus. The above-quoted source contains a mention dating back to 975²¹, according to which Lut, the son of Swenald, a boyar of Jaroslaw's, was killed for accidentally entering

Duke Oleg's chase. Lut, pursuing some game, died by the hand of the ruler.

Besides the terms *lowcze*, *lowiszcze* denoting areas with the right of the hunt which might have been marked off, enclosed or guarded and protected, the Polish word *gaj* was also used in the analogous sense, as the gloss of the Latin term *gagium*. The following extracts seem to confirm this supposition: '*preter silvam videlicet gagium nostrum, quam pro nobis reservamus*',²² and '*partem earundem nomine gay sive silve reservata in eisdem...*'.²³ The former mention comes from a diploma produced by Duke Boleslaw I of Opole in 1309 and the latter from a document of 1364 issued by Casimir the Great. However, the most evident extract reads: '*hec loca, in quibus sub banno region interdicte feris securitas est concessa, vocatur merice siue region interdicte seu gaija bannata*'.²⁴ In addition, the term *knieja*, also analogous to *forestes*, is to be found in Polish records. According to the dictionary by S. B. Linde published in 1855 the meaning of this word was identical to the meaning of the German word *Forstrevier*. This meaning of the term, denoting game preserves, is also to be found in the dictionaries edited by J. Karłowicz and others in 1900 and by F. Sławski in 1953.²⁵ The earliest known record where the word *knieja* appears dates back to 1309 and reads: '*ab ipso loco usque ad kneam directe per silvam usque ad locum qui dicitur kam*'²⁶ and a mention of 1497 says: '*in memora alias knyegye*'.²⁷ It seems that the expression '*v xanzey pusczy*', used to denote ducal hunting grounds in Masovia, may have been transformed into the new term *knyegnya*, which subsequently started to be pronounced as *knieja*. The meaning of this expression was identical to that of the word *forestes* and the fact that this term was not used in Polish written records until the fourteenth century appears to suggest that office scribes avoided using the Latin word and preferred native synonyms, such as *lowcze*, *lowisko*, *gaj*, *knieja*.

While establishing exclusive hunting grounds, Polish rules organized groups of guards who protected the areas, culled the animals, supplied the duke, his crew and clerks with meat, as well as provided animal skins and furs for the treasury. No mention of such services is to be found in documents dating from before the thirteenth and fourteenth centuries. However, their origins as well as the well-documented appearance of beaver guards may be associated with

¹⁶ *Regesta diplomatica nec non epistolarnia Bohemiae et Moraviae*, ed. C. J. Erben and others, Praha 1855-1892, vol. II, p. 625.

¹⁷ K. d. Wp., vol. I, no. 7.

¹⁸ I agree here with the thesis put forward by K. Buczek, *Książęca ludność służebna w Polsce wczesnofeudalnej*, Wrocław 1958, p. 45.

¹⁹ On faked documentation produced in the offices of various Church institutions see: A. Samsonowicz, *Łowiectwo...*, pp. 304-307.

²⁰ *Poviest vremennykh let*, ed. D. S. Likhachev, Moskva 1950, p. 113.

²¹ *Ibidem*, p. 88.

²² Cod. Dipl. Sil., ed. K. Maleczyński, Wrocław 1956, no. 23.

²³ K. D. Wp., vol. II, no. 1464.

²⁴ J. Łaski, *Commune incliti Poloniae Regni privilegium, constitutionum et indultum...* Cracoviae 1506, fol. 224 b.

²⁵ S. B. Linde, *Słownik języka polskiego*, vol. II, Volv 1855, p. 389; J. Karłowicz and others, *Słownik języka polskiego*, Warszawa 1900, vol. II, p. 379; F. Sławski, *Słownik etymologiczny języka polskiego*, Kraków 1953, vol. II, p. 286.

²⁶ C. d. Sil. Verein..., vol. I, no. 22.

²⁷ *Zapiski i rotły polskie XV-XVI w. z ksiąg sądowych ziem warszawskiej*, ed. W. Kuraszkiewicz, A. Wolff, Kraków 1950, no. 1780.

the emergence of the foundations of the country's economy. The first pieces of information about the organization of these services come from two thirteenth-century documents issued in Little Poland, which seem to confirm the existence of such a post, referred to as '*dominus castorum dictus wlgopan bobrowi*'.²⁸ The position of the master of the hunt dates back to a later period. Such officials would take part in more and more ceremonious royal hunting expeditions as well as the well-established chase held by wealthy Church officials, rivaling the duke in organizing *venationes clamorose*, characterized by increasing splendour in accordance with the European cannon. Traces of the numerous ducal services responsible for breeding and training hunting dogs (Polish psy) and birds, for example, hawks (Polish jastrzebie) and falcons (Polish sokoly), can be found in local names, such as Psary, Sokolniki, Jastrzebniki, which, like Strzelce²⁹ (English shooters), have survived until the present day most probably owing to the fact that such villages stood out against a generally rural background.³⁰

The activity of all these groups connected with the royal hunt was based on the obligation imposed on the local peasants to provide full board and lodging for the hunters, their horses, hounds, hunting birds as well as to ship and guard their trophies. The new, more and more numerous and complex duties, such as protecting falcons' nests or beaver lodges, became a heavy burden to villagers and took up a lot of time which could have been spent farming land. For this reason the landowners began to apply for immunity from such obligations. Powerful Church and lay landowners were becoming increasingly successful in their struggle for this type of privileges and immunities. The rulers, whose position had been weakened during the regional division, would yield to their demands, which in turn resulted in the gradual disintegration of the political system termed the ducal law system by historians on medieval times. One of the components of this system was servitude indispensable for the functioning of the right of the hunt. The disappearance of the foundations of this right was speeded up by the increasing colonization under German law, which resulted in the introduction of a new social group entitled to *venationes parvae*, a large body of locators – village heads and mayors.³¹

Also, the gradual transformation of the right to hunt granted together with portions of land to individual knights

for their achievements into a hereditary attribute or status symbol of knighthood, (characterized by the fundamental right to possess land in return for military service), turned the right of the hunt into an attribute of the knightly estate and an indispensable component of hereditary land law. This was the way rulers lost their ancient right of the chase on the land of others regardless of property boundaries. The new system was formalized and a new legal measure, called the 'announcement', issued probably during the reign of Casimir the Great. On the land for which a written 'announcement' was made only the landowner had the right to chase, give others permission to do so and decide how much game could be hunted.³²

The last trace of the existence of the right of the hunt in Poland was the ruler's exclusive right to chase aurochs and wisents in the sixteenth century. The two names were sometimes used synonymously in Polish. The last Jagiellonian monarch, Sigismund Augustus, was particularly concerned about these species' refuges in the royal woods. The ruler emphasized that the animals contributed '*ad famam Regni*'.³³ The extinction of these species resulted in the disappearance of the royal right of the chase.

In conclusion, it should be noted that the studies conducted reveal that the Piasts' Poland had very close links with European culture, custom, law as well as the social and economic system. Piast rulers managed to set patterns for others to follow and adopt methods of satisfying the numerous needs of the newly-formed state, successfully organize the work of various groups of their subjects and use the natural resources of the forests thus limiting the hunting activity of the commoners. They also gained political supporters by issuing documents guaranteeing the exclusive right of the hunt to church and lay landowners, which excluded the beneficiaries' neighbours from profiting from the hunt.

In addition, exercising the exclusive right of the hunt first over restricted areas belonging to the duke – *gaje* and *knijeje* – and subsequently to privileged church and lay landowners, to some extent, slowed the process of reducing the quantity of game in the country. It was, however, only the privileged ruling class who benefited from this phenomenon. It was only in the nineteenth century that our ancestors realized the need for the protection of the natural environment, the task which has yet to be fulfilled.

Translated by Zuzanna Poklewska-Parra

²⁸ K. d. Mp., vol. I, p. 113, a document of 1278 and vol. II, p. 136, a document of 1275.

²⁹ Local names derived from hunting dogs, falcons, hawks and shooting services.

³⁰ All these groups are discussed by A. Samsonowicz, *Łowiectwo...*, pp. 201-219.

³¹ The process of colonization under German law was connected with the specification in the location documents of the right of the hunt for the locators – village heads and mayors. The Church and lay landowners, who had a superior status over the locators, also decided about the scope of their hunting activity. See: A. Samsonowicz, *Łowiectwo...* pp. 302-315.

³² A. Samsonowicz, *Łowiectwo...*, pp. 181 seqq.

³³ *Ibidem*, pp. 51, 292.

Abbreviations

C. d. Sil. Verein... – Codex diplomaticus Silesiae, hrsg. Verein für Geschichte und Alterthum Schlesiens Bd. 1 – 1-36 Breslau 1857 seq.

Cod. dipl. Sil. Ed. K. Maleczyński – Codex diplomaticus nec non epistolaris Silesiae, vol. I-III, ed. K. Maleczyński and others, Wrocław 1956-1964.

K. d. Maz. Lub. – Kodeks dyplomatyczny Księstwa Mazowieckiego... (Diplomatic Codex of the Duchy of Masovia...) ed. T. Lubomirski, Warsaw 1863.

K. d. Mp. Kodeks dyplomatyczny Małopolski (Diplomatic Codex of Little Poland) ed. F. Piekosiński, vol. I-IV, Cracow 1876-1905 Monumenta Medii Aevi Historic res gestas Poloniae illustrantia, vol. III, IX, X, XVII.

K. d. Wp. – Kodeks dyplomatyczny Wielkopolski (Diplomatic Codex of Great Poland), vol. 1-4, ed. T. Zakrzewski, vol. V, F. Piekosiński, vol. VI, A. Gąsiorowski, H. Kowalewicz, vol. VII, A. Gąsiorowski, Warsaw 1877-1985.

MGH D. Kar. – Monumenta Germaniae Historic. Diplomata Karolorum, Hanovre 1906.

MGH. DD. – Monumenta Germaniae Historica. Diplomata Ottonis I, Berlin 1872 seqq.

MPH – Monumenta Poloniae Historica.

MPH n. s. – Monumenta Poloniae Historica, nova series.

PTPN Pr. Kom. Hist. – Poznańskie Towarzystwo Przyjaciół Nauk (The Poznan Society of Friends of Art and Science), Historical Commission Studies.

Streszczenie

Sprawa funkcjonowania w Polsce Piastów regale łowieckiego przedstawiona w 1900 r. przez T. Mańkowskiego jako forma zakazu łowów grubej zwierzyny, dotyczącego wszystkich poddanych w całym państwie, została dopiero poddana krytyce w monografii mego autorstwa z 1991 r. Zaniechanie badań nad źródłami obcymi prowadziło do powstania i utrwalenia się długo tezy „bezwzględnego regale”, milcząco zakładającej stabilność sytuacji społeczno-politycznej od X – XIV w. Sięgnięcie w moich badaniach do bogatych materiałów porównawczych dało inny wynik. W oparciu o feodalne „ius banni” – prawo ferowania

zakazów i nakazów – już od IX w. władcy europejscy wydzielali spod powszechnej dostępności tzw. „forestes” – łowiska strzeżone przez służby „forestarii”. Już za Karola W. taki ceniony wysoko przywilej uzyskiwali zwłaszcza możni kościelni wraz z nadaniami ziemi „cum venatione”, czyli prawem wyłączności łowów – „ius forestis”. Stawało się to sposobem zdobywania politycznych sojuszników, pełniąc rolę źródłotwórczą. Taką formę regale poświadczają też dokumenty polskie, w których przy poświadczeniach nadania ziemi „cum venatione” takie wyłączone rewiry obdarowanego nazywane są rodzimymi terminami: gajami, kniejami, łowiskami. Pozyskanie ich nie wyłączało jedynie łowów władcy. Zastrzeżone łowiska książęce strzegły służby, po których zadaniach pozostały nazwy ich osad: Sokolników, Bobrowników, Psarów, Strzelców. Ich działalność oparto o ciężące na wsiach obowiązki udzielania noclegów, żywności, transportu, strzeżenia żeremi i gniazd sokołich. O uciążliwości tych obowiązków świadczą liczne przekazy z doby walki o immunitety, zwalczające takie dolegliwe obciążenia. Ten proces obok innych, zwłaszcza stopniowego przekształcania się prawa łowów w przywilej stanowy, a także w stały składnik prawa gruntowego, przyczynił się do kruszenia podstaw organizacyjnych prawa regale łowieckiego. W XIV w. taką też rolę odegrało wprowadzenie dla właścicieli ziemskich tzw. „prawa zapowiedzi”, znoszącego uprawnienia łowów władcy i jego służb bez względu na granice włości. Podobnie zmniejszyła podstawę regale proces kolonizacji na prawie niemieckim, podkreślający zakres łowieckich uprawnień nowej grupy – sołtysów, wójtów. Ostateczny kres regale łowieckiego nastąpił wraz z wyginięciem najcenniejszych gatunków – turów i mylonych z nimi żubrów, które jako przyczyniające się „ad famam Regni” do końca należały do prawa łowów królewskich.

