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Acts of the Tribunal of the Grand Duchy of Lithuania (in the Second Half of the 18th Century)

Akta Trybunału Głównego Wielkiego Księstwa Litewskiego (w drugiej połowie XVIII wieku)

Акты трыбуналу Вялікага княства Літоўскага другой паловы XVIII стагоддзя

Abstract

This paper will examine acts of the Tribunal of the Grand Duchy of Lithuania issued throughout the second half of the 18th century. Although there is considerable literature on the Chancellery of the Lithuanian Tribunal, the Court documents have not been adequately investigated. A growing body of research has studied the work of the nobility and court chancelleries which operated on the territory of the Crown of the Kingdom of Poland, as well as the legal documents they issued. This calls for analogical study in respect of the Grand Duchy of Lithuania. This paper seeks to address the functioning of the Tribunal of the Grand Duchy of Lithuania, as well as to specify the types of acts it issued and to describe the records contained therein. The study was conducted by determining and analysing the contents of the Tribunal archives. The findings were also compared with existing literature regarding the acts of the Crown Tribunal. The results of the study offer evidence of the variety of documents used in the Lithuanian Tribunal in the second half of the 18th century. It is only the decrees, testimonies, and entries into court records of legal acts that were prepared as fair copies, usually stored together in a single archive. The courts used sub-series of draft acts and sentences separately and had auxiliary registries of court cases, whereas daily proceedings were recorded in a special book called the current protocol (protokół potoczny). An implication of these findings is the possibility that assigning the tribunal judges with running the court chancellery did not affect the work of the chancellery thanks to a clear division of labour among the regents. The documents issued by the Court Chancellery in the period examined were influenced by the long traditions and the judicial reforms introduced in 1764 and subsequent years.

Keywords: Grand Duchy of Lithuania, Lithuanian Tribunal, chancellery, acts, types of acts

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Abstrakt

Przedmiotem artykułu są akta Trybunału Głównego Wielkiego Księstwa Litewskiego w II poł. XVIII w. Kancelarii Trybunału Litewskiego poświęcono kilka prac naukowych, jednak akta tego sądu nie zostały dotąd należycie rozpoznane. Obserwowana obecnie intensyfikacja badań dotyczących funkcjonowania i wytworów kancelarii sądów szlacheckich na terenie Korony skłania do podjęcia analogicznego tematu odnośnie do ziem Wielkiego Księstwa Litewskiego. Celem niniejszego artykułu było omówienie pracy kancelarii Trybunału Głównego Wielkiego Księstwa Litewskiego, przedstawienie używanych w tym sądzie serii akt oraz scharakteryzowanie znajdujących się w nich wpisów. Badanie przeprowadzono przez ustalenie oraz przeanalizowanie zawartości ksiąg Trybunału Litewskiego, a także porównanie otrzymanych wyników z pracami poświęconymi dokumentacji Trybunału Koronnego. Skonstatowano, że w Trybunale Litewskim w II poł. XVIII w. w formie czystopisów występowały jedynie zeznania zapisów, oblaty oraz dekrety (przeważnie umieszczane już w jednej księdze), oddzielnie funkcjonowały podserie brudnopisów akt i wyroków, pomocniczą rolę spełniały rejestry spraw, a codzienne czynności sądu odnotowywano w specjalnej księdze, zwanej protokołem potocznym. Skonstatowano ponadto, że przekazanie sędziom trybunalskim uprawnień do kierowania pracą kancelarii nie wpłynęło negatywnie na jej sprawność, gdyż w praktyce ukształtował się dosyć klarowny podział obowiązków między regentami. Na wytwory kancelaryjne tego sądu w II poł. XVIII w. miała wpływ tradycja, a także reformy przeprowadzone w roku 1764 oraz w latach następnych.

Słowa kluczowe: Wielkie Księstwo Litewskie, Trybunał Główny, kancelaria, akta, serie akt

Анатацыя

У артыкуле даследуюцца акты трубыналу Вялікага княства Літоўскага другой паловы XVIII стагоддзя. Канцэлярыі Літоўскага Трыбуналу ўжо было прысвечана некалькі навуковых прац, аднак актам дадзенага суда дагэтуль у даследаваннях удзялялася недастаткова ўвагі. На сучасным этапе назіраецца інтэнсіфікацыя даследаванняў, прысвечаных функцыянаванню і вядзенню дакументацыі канцэлярыямі шляхецкіх судоў на тэрыторыі Каралеўства Польскага, што сведычць пра неабходнасць напісання працы на аналагічную тэму ў дачыненні да земляў ВКЛ. Мэтай дадзенага артыкула з'яўляецца апісанне дзейнасці канцэлярыі трыбуналу Вялікага княства Літоўскага, спецыфікацыя серый актаў, што выкарыстоўваліся ў гэтым судзе, і характарыстыка запісаў, якія ў іх знаходзяцца. Даследаванне праводзілася шляхам выяўлення і аналізу зместу кніг Літоўскага Трыбуналу, а таксама параўнання атрыманых вынікаў з працамі, прысвечанымі Кароннаму Трыбуналу. На падставе аналізу можна канстатаваць, што ў Літоўскім Трыбунале ў другой палове XVIII стагоддзя ў форме "чыставіка" выступаюць толькі паказанні, запісы юрыдычных актаў у судовых кнігах і дэкрэты (змешчаныя пераважна ў адной кнізе), асобна функцыянавалі падсерыі чарнавікоў актаў і прыгавораў, дапаможную ролю выконвалі спісы спраў, штодзённая дзейнасць трыбуналу фіксавалася ў спецыяльнай кнізе, якая называлася бягучым пратаколам. Намі зроблена выснова, што перадача ў дадзены перыяд паўнамоцтваў кіравання працай канцэлярыі трыбунальскім суддзям не аказала негатыўнага ўплыву на яе функцыянальнасць, паколькі ў практыцы

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сфарміраваўся досыць выразны падзел абавязкаў паміж рэгентамі. На тагачасныя канцэлярскія дакументы гэтага суда паўплывалі як шматвяковыя традыцыі, так і рэформы, праведзеныя ў 1764 г. і пазней.

Ключавыя словы: Вялікае княства Літоўскае, трыбунал, канцэлярыя, акты, серыя актаў

Introduction

In 2015, the Institute of History of the Polish Academy of Sciences published a valuable work entitled 'Old Polish Diplomacy' in a series of publications devoted to auxiliary historical sciences. However, the research addressed the official documents produced by the institutions of the Grand Duchy of Lithuania (hereinafter referred to as GDL) only briefly. In fact, only the archive of the so-called Lithuanian Metrica was characterized. This results undoubtedly from the state of research (see the important summary compiled by J. Łosowski in 2011), although there are already several papers on this issue. These include e.g. the study of Edvardas Gudavičius (2006), in which the author examines the development of the promulgation formula of acts prepared by various GDL chancelleries, or the work of Agnius Urbanavičius (2001) on the acts of the Vilnius city court (called Magdeburgian court). Irena Valikonytė (2010, 2012) studied court documentation within the Lithuanian Metrica, whereas Darius Vilimas (2011, 2014) deliberated on the notarial function of the land courts of GDL, trying to distinguish between series of acts prepared in their chancelleries. The purpose of this paper is to address the acts issued by the Tribunal of the Grand Duchy of Lithuania, which was based on the Crown Tribunal but operated in a slightly different legal tradition. This is also reflected in the documentation it produced. Several papers have already been devoted to the Chancellery of the Court of Lithuania (Wierzchowiecka, 2001; Stankevič, 2018b, pp. 179–194), but the acts of this court have not been properly examined yet. It would be premature to characterise the court files on the whole since the archive created by the Lithuanian Court comprises over 2,000 volumes. The paper focuses only on the last period of the court operation, i.e. during the reign of Stanisław II Augustus, and briefly discusses the work of the Tribunal Chancellery, specifying the series of acts used in that period and characterizing the entries found therein.

Chancellery organisation

Three years after the Crown Tribunal was founded in Poland, i.e. in 1581, the nobility of the Grand Duchy of Lithuania saw an analogous institution established. From 1588, the supreme court held two terms a year. One of them was called Lithuanian and was held in Vilnius, whereas the other, Ruthenian, alternated between Nowogródek for one year and Minsk for the other (DTG WKsL, 1582–1696, p. 26). In 1775, the Ruthenian term was transferred to Grodno and initiated the term of office of the Tribunal by

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the act of the Sejm (Stankevič, 2018a). The statute of the Lithuanian Tribunal stipulated that the office service for the court would be provided by land recorders (notarius terrestris) of the particular voivodship where the term of office was to be held. The recorder was obliged to 'arrive three days before the court starts the proceedings and record all matters of the parties in the register', 'record matters in the land books' and 'sign them personally' (from the statute published in Janulaitis, 1927, pp. 139, 141). The role of the tribunal recorder developed in two different directions in the Crown and GDL, probably due to different legal traditions. It was possible that other factors such as insufficient offices were also of importance. In 1597, after the death of the Lublin land recorder, the judges of the Crown Tribunal ordered that his function be exercised by the other two land court clerks. In 1608, a similar situation occurred in Lithuania after the death of the land recorder from Vilnius, Malcher Pietkiewicz. The Tribunal filled his position with a judge and a *podsędek* (subiudex) of the Vilnius court (DTG WKsL, 1582–1696, p. 38). Before long, the constitution of 1616 allowed for entrusting the office of tribunal recorder to one of the tribunal judges if such need be. This possibility was used the following year when deputy Samuel Drucki Horski was the recorder during the Ruthenian term in Minsk (Ibid., pp. 38–40).

Until the end of the 18th century, the recorders of the Crown were the recorders of the voivodships where the court was operating at the time. In the mid-18th century, an attempt was made to increase the number of land chancelleries involved in servicing the Tribunal. It was only during the Great Sejm that the Tribunal elected special decree recorders (Bednaruk, 2008, pp. 184–185). Meanwhile, the office of the land recorder in the GDL was frequently vacant and one of the Tribunal deputies would assume the tasks of the Tribunal recorder (DTG WKsL, 1582–1696, pp. 37–38)[1]. Finally, the Sejm of 1764 decided that the office of Tribunal recorder would henceforth be held by one of the judges, and namely in the order of poviats, starting from the Vilnius poviat (Wierzchowiecka, 2001, pp. 283, 285). The deputy was thus to adjudicate and also manage the office's work. This was not surprising as the Tribunal recorder was the head of the chancellery only officially as early as the mid-seventeenth century. The Constitution of 1647 established that the recorder of the Lithuanian Tribunal, unlike the recorders of the Crown Tribunal, did not compose decrees himself, but rather had assistants do it for him (subnotarius, later regents). Their role increased with time, which was, however, not reflected in their legal status. From 1647, they were to take the oath, but it only obliged them not to disclose the court proceedings, and from 1667 to collect fees fairly (Volumina Legum, 1859, pp. 54, 467–468). The pledge did not change until 1792, when the Lithuanian Tribunal developed a new oath form for regents after it was

[1] It is worth noting that two people were removed from the office of the Vilnius land recorder as a result of political conflicts. They were Michał Alojzy Sawicki in 1731 and Andrzej Abramowicz in 1756. Throughout the first half of the 18th century, it was also common that there were no land recorders in Novgorod and Minsk (DTG WKsL. 1697–1794, pp. 13–14). The fights between magnate cliques for the appointment of the Tribunal recorder in the 1740s have been described by Andrej Macuk (2008).

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overlooked in the act of the Great Sejm on regulating the work of the reformed tribunal court (Stankevič, 2018b, p. 184, note 140). Yet it was still different from the recorder's oath. Only the constitution of the Grodno Sejm of 1793 stipulated that a recorder and a regent take an identical oath (Volumina Legum, 1952, p. 284).

It is difficult to say whether the model where the recorder was the head of the chancellery merely formally had a significant impact on the quality of its work. In the second half of the 18th century, the chancellery of the Lithuanian Tribunal was quite efficient, to the point of specialisation to some degree. At that time, the Tribunal recorder would usually employ a total of six regents, three of whom were involved in the preparation of sentences, and one was responsible for keeping the record book, current protocol and registers. The Third Statute allowed the recorder to employ any number of assistants, but in the 18th century their number was limited by law. The Constitution of 1764 allowed for up to three sworn regents (Volumina Legum, 1860c, p. 178), yet recorders used a loophole whereby only the so-called decree regents were actually sworn regents. Sentences were usually prepared by more experienced clerks who often held similar positions in lower courts (listed in Stankevič, 2018b, pp. 432–437). At the same time, less qualified employees were recruited from among assignees or legal apprentices to work with acts, registers and reports. However, this did not automatically lead to dependence. Each regent was responsible for a specific scope of activity and actively defended his right to the benefits.

When the Lithuanian Tribunal heard the case of a Tatar Jan Kryczyński and pronounced the sentence regarding his debts, it turned out that some of the defendants in this case had been crossed out from the list. The official ordered to sue the (unidentified) person who did it was not the recorder, but a regent, and not even a sworn one (LVIA, SA, 160, pp. 309–318, judgment of 11 June 1779). It is also worth quoting the 'declaration of sworn regents' of September 30, 1783:

> gdy według powszechnego w kancelaryjach trybunalskich doświadczenia ani aktami, ani regestrami, ani też prot(ok)ulem potocznym nie zawiedują przez całą kadencyją regenci przysięgli, lecz one pod rządem i istotnym zawiadywaniem samych *eo nomine* potoczny, regestrowy i aktowy zwanych regentów zostawać zwykły, i aktualnie na teraźniejszej kadencyi zostawały, a tylko tranzakta przyznań, aktykacyjów[2] i innych ekspedycyjów na wiarę lekty[3] do podpisania przysięgłym regentom podawane były, przy tym regestra z decyzyjami, zawsze pod dozorem regestrowego znajdujące się, dawały sposobność wypisywania *copiatim* decyzyjów, a jak są wieści, że nawet ekscerpta[4] z regestrów z decyzyjami wydawane bez wiedzy regentów przysięgłych okazują się (Ibid., 704, p. 59)[5].

[2] Lat. *acticatio* – 'the act of entering proceedings into the books' (Sondel, 1997, p. 16).

[3] Lat. *lecta* – 'the act of comparing a copy of a court act against the original document' (Sondel, 1997, p. 563).

[4] Lat. excerptio – 'extract, excerpt' (Sondel, 1997, p. 347).

[5] 'it is a common practice in tribunal chancelleries that neither acts, nor registers, nor the current protocol are managed by sworn regents throughout the entire term, but by *eo nomine* act regents,

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However, the purpose of the declaration was merely to safeguard the authors against complaints of non-compliance of extracts and any liabilities resulting there from:

> żeby *sub reptive* z regestrów wypisywane czyli wydane przez regestrowego ekscerpta, tudzież wydarzyć się mogące w lektach pomyłki do tych, który zawiadującemi byli, stosowały się (Ibid.)[6].

The structure of the Crown Tribunal's chancellery seems thus to be more clearly hierarchical, also due to the land court recorder actively participating in its operations (for the work of the Crown Tribunal's chancellery see: Zarzycki, 1993, pp. 59–70; Bednaruk, 2008, pp. 183–191; Myśliwiec, 2008; Łosowski, 2015, pp. 293–294).

Characteristics of act series

One of the most important functions of the Lithuanian Tribunal as an office was to keep files in which perpetual transaction declarations were recorded, as well as to perform the *oblata*[7] of official and private documentation. These files were called *act books*. Article 1, Chapter 7 of the Third Statute entitled 'On the recording of inheritance from the father's and mother's side as well as acquired by any other means' allows for arbitrary distribution of real property in a clearly defined manner, i.e. by making a record which was then to be testified 'obviously to us or to our land office where the property is located or to the competent court' (all Statute quotations come from the edition indicated in the bibliography). At the same time, the Statute provides for a case where 'the poviat in which the property is located or the competent court is far away, then it would be allowed to make the record in the books at the nearest court office.' In such case, it was necessary to transfer the entry to the relevant land registers, yet this condition did not apply to the Tribunal. 'What has been testified to us, the hospodar, or the main court, is to be valid without the need of transferring it to other poviat books.'[8]

register regents and current regents respectively. At present, during this term, it is only the transfer of admissions, *acticatio* and other official letters that are confirmed by means of *lecta* and signed by sworn regents. Since it was the register regents who supervised the decision registers, they had the opportunity to issue *copiatim* decisions. It is also rumoured that even excerpts from decision registers were issued unbeknownst to sworn regents'.

6 '[we plea] that the persons who were in charge at the time be held accountable for any *sub reptive* excerpts from the registers written out or issued by the register regents, or potential *lecta* errors'.

7 Lat. *oblata* – 'literal copy of a document presented by a party in the acts of the municipal chancellery' (Sondel, 1997, p. 673), entering a document in a respected office book (Jurek, Skupieński, 2015, p. 46).

8 One of the passages of the Tribunal statute of 1581, entitled 'Provisions and protests' ['o zapisiech i protestacyjach'] reads: 'provisions, statements and testimonies of ushers are to be valid regardless of whether they have been made before this court, before us, the Hospodar, or the land court' (Janulaitis, 1927, p. 145).

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Until the end of the eighteenth century, it was still necessary to observe the division of specific voivodships and poviats into either the Lithuanian or the Ruthenian term[9]. It was also required to appear in court in person and confirm the transaction concluded in order to eliminate the risk of situations where the content of a contract was unknown to the person who testified, as well as to allow the court to assess the legal capacity of the issuer. However, the notion of court did not necessarily denote the building itself[10]. There were cases when the court, represented by two to four delegated deputies, came to the testifier. This happened most often if the issuer of the document was gravely ill, but sometimes also due to the high status of that person[11].

Several orders lost their value over time. People began to testify in cases of perpetual transactions not only in municipal courts, without transferring the records to the land courts (which could not convene for decades in the first half of the eighteenth century in many parts of the GDL), but also in municipal institutions called Magdeburgian courts. They were often very convenient due to their location and lower price of services. This practice was forbidden by the 1764 constitution 'for better security of the actors'. It stipulated that the testimony of transactions be concluded between the nobility 'in foro et coram officio competenti, that is: in tribunals, land courts, towns' (Volumina Legum, 1860c, pp. 179–180). Undoubtedly, one of the main reasons for that step was money and the desire to defend the interests of nobility chancelleries, although the problem of record security was true. Many cases of fraud were revealed in which municipal courts were used[12]. The effects of this law were already visible during

[9] This was reiterated in the 1726 constitution, which confirmed that 'the citizens of all voivodships, lands and poviats of the Grand Duchy of Lithuania both in the Lithuanian and Ruthenian term may submit *acticatio* and be granted bequests, safe conduct passes and all other documents and have them entered into books' (Volumina Legum, 1860b, p. 235).

[10] On June 16, 1769, a nobleman named Antoni Łodziata announced in the Tribunal that a Minsk guard named Kazimierz Szabłowiński was willing to testify three documents in which he renounced his two sons and relinquished his property in Gierduciszki (in the Minsk Voivodeship) as well as all other properties, which should be passed to his wife Rozalia nee Tuhanowska. Szabłowiński's sons, Michał and Marcin, requested the Tribunal to perform an 'examen' of their father and 'refuse to accept the donation'. During the enquiry, Szabłowiński could not explain why he would want to 'present such documents' and was recognized 'mentally and physically ill'by the court. The Szabłowiński brothers later sued their stepmother and her accomplice for an attempt to steal their father's property. Mr Lodziata, arrested by the judgment of the Tribunal, spent almost two years in prison waiting for the trial. He was vouched for and released in May 1771. (LVIA, SA, 669, p. 9; Stankevič, 2018b, p. 262).

[11] The Voivode of Trakai, Jadwiga Ogińska nee Załuska, testified the records of her endowing the hospital of Infant Jesus in Vilnius with funds on December 15, 1786 and December 19, 1791.She testified before tribunal judges, but in both cases she did not come to court in person, but the court delegated its representatives to her. (LVIA, SA, 599, p. 10; 614, p. 4).

[12] For instance, in 1755 Antoni Ratowt was persuaded by Jakub Swaradzki to sign and testify in the Magdeburgian court in Kėdainiai, Samogitia, in the case of a document submitted allegedly by Jan Swaradzki, in which the latter renounced his right to the property left by his father (on 7 September 1782, the Lithuanian Tribunal sentenced him to six weeks in the lower tower in

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the Court's first term of office in 1765, when it received records of transactions carried out by the nobility and testified before the Magdeburgian courts in Ushachy, Varniai, Orsha, Mstsislaw, Vladislavovas, Polotsk, Vilnius, Zhirovichi and Biržai (LVIA, SA, 136, pp. 49, 75, 77, 95, 181, 215, 351, 381, 461). Yet the problem was still relevant for the noble court chancelleries. The oldest known *protocols of the acts* of the Lithuanian Tribunal, recording the documents which were testified before the court and submitted for oblata, date back to 1714[13]. This form of control was in fact used until the last year of operation of this court. In several cases it was possible to confirm that a document was prepared in two identical copies, one of which served as a draft for chancellery employees including data on the preparation of extracts[14]. These double copies are units with reference numbers 532, 533, 534, 536, 542. At first, the entries were rather concise, but they became more and more extensive with time. In this respect, the constitution of 1764 introduced an important change. It envisaged namely that the recorder or sworn regent 'by entering a transaction in the book, they are to observe the laws and the crown customs by requiring the signature of the testifiers' (Volumina Legum, 1860c, p. 180). Since then, entries registered in such protocols were indeed signed by the persons testifying perpetual transactions. This additionally safeguarded the record security. It is not known whether separate files were kept from the very beginning of the Lithuanian Court, but in the second half of the 17th century there was already a distinction between *act books* and *decree books*. In the second half of the 18th century, however, new trends were identified. Following the reforms of 1764, land courts began to operate in a more efficient way. There was therefore no need to go to the Tribunal, so the number of cases referred to that court decreased[15]. Perpetual transaction files were bound in a single book together with the case sentences. In the

Panevėžys) (LVIA, SA, 166, pp. 421–438). In 1759, Teodor Nosewicz, a nobleman from the Minsk voivodship, was ordered by his master named Kiersnowski to surrender his property in Pakluoniai, Samogitia, to said Kiersnowski in the Magdeburgian court in Šeduva under the name Stefan Mostowt (Teodor Nosewiczand the mayor of Šeduva, Jakub Abramowicz, were questioned in the town chancellery in Kaunas on 10 March 1761, Ibid., 13731, p. 10–11).

[13] The oldest book spans over four consecutive years. The first headline – 'register of bequests' – appears only in 1717 (LVIA, SA, 526, p. 39). The headlines used in subsequent years are as follows: 'register of grants and acticatio' in 1721 (Ibid., 528, p. 1); 'register of bequests granted and subject to acticatio' in 1723 (Ibid., 529, p. 1); 'protocol of bequests granted and subject to acticatio' in 1724 (Ibid., 529, p. 19); 'protocol of perpetual matters i.e. testimonies, *acticatio*, transfers of rights and bequests' in 1726 (Ibid., 532, p. 2); 'register of bequests granted and subject to *acticatio*, safe conduct passes and other documents' in 1727 (Ibid., 531, p. 48). In 1750s, the word *protocol* is widespread. During the reign of Stanisław II Augustus, the dominant term is 'record protocol of grants and *acticatio*', the term 'act protocol' is rarely used.

[14] Lat. *extractum* – 'official copy from a document or court files' (Sondel, 1997, p. 365), certified excerpt from official books (Jurek, Skupieński, 2015, p. 46).

[15] A part of testimonies were still made at the Tribunal clearly for the sake of prestige. For instance, the Marshal of the Tribunal, Robert Brzostowski, together with his wife Anna Platerówna, testified a donation (in the amount of 1 thousand red złotys) to the Mosar parish church in the Vilejka poviat (LVIA, SA, 614, k. 12).

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Ruthenian term, it was as early as 1766 (except for 1770 and 1772), and then (from 1767) in the Lithuanian term as well (except for 1776 and 1779)[16]. During the Grodno Sejm in 1793, this practice was even legally authorised. Courts were ordered to bind the 'perpetual and decree registers together, while current registers separately' (Volumina Legum, 1952, p. 281).

The majority of documents in the act books were not testimonies of perpetual transactions, but oblatas of official and private documents. These included documents prepared by various institutions such as the Sejm, regional councils, land courts, town courts, subchamberlain courts, the Treasury and Military Commission, the Permanent Council or even the Crown Tribunal. Most of these, just like private documents (letters or lawyer speeches) were primarily related to the cases considered by the Tribunal and used by the parties as evidence. At this point we will focus only on documents related to the activities of the Lithuanian Court. The chancellery of this court consistently complied with the order of the 1764 constitution, listing (in a document referred to as *vocanda*) all the cases referred to the Tribunal for *acticatio* in the middle of each term of office and after its termination. This was to ensure that cases be heard in the order they were filed. In the 18th century, a delegation from the court (usually consisting of two deputies) would be sent to the king with a standard instruction (entered into the files), imitating the custom of regional councils: the judges were to inform the king of their respect, promise to exercise their functions diligently, praise the merits of the marshal, his deputies and other deputies, and plead them to keep them in mind when nominating offices and awards (see examples of such instructions of July 3, 1771, June 21, 1774, June 14, 1784, or July 15, 1785, LVIA, SA, 148, pp. 63–65; 150, 133–134; 170, pp. 61–62; 172, pp. 88–89). From the mid-1780s, the Lithuanian Tribunal, like the other Commonwealth courts, was to send reports to the Permanent Council accounting its activities during each term of office (Zbiór rezolucyi, pp. 8–12, 284–287). Because the reports were prepared after the end of the term, they were almost never included in the Tribunal files. The only report we know regarded the operations in 1783–1784 in the Lithuanian term, entered in the act book (LVIA, SA, 169, p. 456), and another report concerning the Lithuanian term of office in 1776–1777, preserved in the Tribunal archives as a loose file (Ibid., 8, 2, 48, pp. 1–2).

In the second half of the 18th century, the Lithuanian Tribunal acted several times as an institution confirming the state of affairs. It was frequently necessary to produce documents not provided for by the existing laws. Understandably, it was the Tribunal, considered a supreme institution in the Grand Duchy of Lithuania, that was asked for assistance in such a situation. On March 10, 1777, it issued a 'testimony'

[16] Entries to such books were made in chronological order, with customary white space between perpetual agreements and sentences. The division was not made in only several cases found in the documents, more often in the Ruthenian term, when the court sessions were held in Minsk (in 1766, 1768, 1770, 1774), Grodno (1775 and 1776) and during both terms in Vilnius in 1774 (Stankevič, 2018b, pp. 423–424, 431, Annexes 1 and 2).

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'for the requisition of goods from beyond the Austrian cordon', in which it confirmed that 'Ludwik Pociej, the Grand Guardian of the GDL, has deceased without leaving a successor *de lumbis*, making his only brother, Leonard Pociej, the Grand Guardian of the GDL *in post*, the successor of all goods, means and properties of his late brother. Let it be known to the whole Duchy of Lithuania' (LVIA, SA, 155, pp. 285–285). On March 12, 1790, the Tribunal issued a testimony 'at the request of' Józef Wiszczyński, a tribunal judge, that he 'has his own perpetual assets in Kosarzyce and Porzecze in the Nowogródek voivodship which are currently his property' (Ibid., 181, p. 383). In this case, however, the Lithuanian law provided for a different way of confirming the possession of real property, i.e. by means of an *intromission* – an official entry to the books (Stankevič, 2018b, p. 262).

The main function of the Lithuanian Tribunal as a court was to examine the cases brought before it. Article 53, Chapter IV of the Third Statute provided that no one was 'to appear in court and force himself until someone from the register is called to the case' in order to ensure order in court. The registers were the books in which a record was entered based on the claim a party received, commonly referred to as the *actoratus*[17]. Following the example of the Crown Tribunal, the statute of the Lithuanian Tribunal of 1581 provided for only one type of register, and that is a voivodship register created according to the area of jurisdiction (Janulaitis, 1927, p. 139). It assumed that the affairs of the nobility of a particular province or poviat required a specific time (counted in weeks) of trial. Soon, however, new registers were created, probably at the initiative of the marshals, who wished to ensure that certain cases could be judged out of turn. In 1648, there were four registers, and as many as ten at the beginning of the eighteenth century (see more on this topic: Stankevič, 2018c). Most of them were analogous to those at the Crown Tribunal. At the Lithuanian Tribunal, however, there were never separate registers for cases of violent expulsion from property or buying out real property (expulsionum et exemptionum), for crimes against the Catholic religion (arianismi), for unpaid fines imposed by the court (poenalium), cases with equality of votes (paritatis votorum) and several others (cf. Bednaruk, 2008, pp. 142–156; Łosowski, 2015, pp. 295–296). The Constitution of 1764 ordered the use of five registers only: appeal, officii (cases concerning lower court officials), incarceratorum (concerning detained persons), opposition (concerning objections against attempts of executing tribunal judgments) and tact register (Michalski, 2000, p. 73). The latter was to include exclusively cases of infringing upon the dignity or decorum of the courtroom, safety of judges and visitors to the Court, whereas its cases could be examined out of turn, even while another case was being scrutinised. The order of registers In the Lithuanian Tribunal also changed significantly: the rules stipulated that as many entries should be recalled from a particular register 'until a single case, obvious in principali negotio, is resolved', and then the court should proceed to another register in their established order (Volumina Legum, 1860c, p. 176). Soon new registers were included in this sys-

[17] Lat. *actoratus* – 'lawsuit' (Sondel, 1997, p. 20).

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tem. The Sejm of 1766 restored the obligation register (for unpaid loans, also in the first instance court, Volumina Legum, 1860c, p. 236). In 1784, it was ordained that cases for determining the court jurisdiction (determinationis fori) be entered to the remission register, whereas the cases referred back to the Tribunal were henceforth to be entered in a special register called extraordinary tact register by the decision of the Sejm of 1776 (it concerned cases which the Sejm 1773–1775 referred to special committees for decision) (Volumina Legum, 1899, pp. 21–22). The Great Sejm in 1789 allowed the Court to use the ninth register called the 'extra term of office'. It was to include appeals against municipal court sentences in *recentis criminis*[18] cases examined at a special meeting, i.e. not during the term of office designated by law (Volumina Legum, 1899, p. 75). The specificity of the GDL noble courts was the creation of registers of cases in several identical copies. There were always two copies in the Tribunal: during the court sessions, the marshal used one and the recorder the other.

Court records not only informed the court of cases referred and determined their order, but also were used to store information regarding the course of the hearing. A substantial number of judgments were passed *in absentia*, i.e. because one of the parties failed to appear before the court. The Tribunal Statute of 1698 ordered attorneys to inform the court about the 'profit of the case, that is, what the actor wants to win against his defendant by failing to appear in court', whereas the marshal and the recorder were to 'record these faults in the court registers' (Porządek sądzenia spraw, 1698). With time, the registers also included interlocutory sentences adjudicating the accessories (procedural charges, requests of the parties to postpone the date of the hearing, referring the case to another court or conducting an inquiry. Recording only one entry per register page since 1765 was definitely helpful), and sometimes even the most critical claims. In most cases, however, the content of the sentence was recorded in the *sentencjonarz*, i.e. the sentence log, called the *decree protocol* at the Lithuanian Court[19]. It should be noted that some of the judgments issued by the Lithuanian Court recorded in a register or decree protocol were never transcribed into fair copy books for unknown reasons (perhaps due to the lack of interest of the parties). Moreover, a significant part of entries into decree books (*inducts*) are incomplete and only appear in the form of 'cases', a widespread practice in the GDL courts as early as in the 16th century (Valikonytė, 2010, p. 115). They only contained the sentence and they began with the phrase 'in the case of the actoratus and plaintiffs listed below', clearly lacking an introductory part which would indicate the parties' claims, as required by Lithuanian law. This type of entries were often called decrees until the mid-eighteenth

[18] Denoting 'questions of fact, that is public nuisance, involvement in conspiracy leading to riots, endangerment, *cuiusvis generis* homicide, robbery, arson and physical violence inflicted in private houses and on public roads' (Volumina Legum, 1899, pp. 96–97).

[19] The oldest term of this type dates back to 1740s (LVIA, SA, 626, p. 1), but most books did not use such headlines at all. Other variations include 'protocol of self-evident court cases', 1732 (Ibid., 780, p. 1), 'decree protocol of self-evident cases', 1737 (Ibid., 782, p. 1) or 'protocol of self-evident decrees' of 1772 (Ibid., 829, p. 1).

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century (Lat. decretalis – 'containing the disposition', Sondel, 1997, p. 253). Later courts did not make such distinction and all entries were called decrees.

In the Tribunal Ordinance of 1581 we find a warrant which proclaimed: 'under decree, two or three judges are to sign' (Janulaitis, 1927, p. 116). This did not apply to documents issued to the parties, since this act was regulated by other sections of that ordinance. It was probably about the signatures placed in the judgement book. The Law Enforcement Act of 1697, in turn, ordered 'a decree to pluralitate votorum and conclude with the marshal's hand, as well as 3 deputies in the land protocol, the province in which this Tribunal will be judged and signed' (Volumina Legum, 1860a, p. 418). In the second half of the 18th century, however, we meet with a slightly different practice. Namely, during the first two terms, which took place after the last interregnum in Vilnius and Minsk, the judgments included in the decree were signed by the marshal, one of the deputies (signing as a censor) and the tribunal recorder (LVIA, SA, 817 and 818). Meanwhile, in the following years, one marshal (or deputy marshal) signed them without exception. Another practice was the authorization of judgments recorded in decree books (inducts). During the Lithuanian term in 1765, 1766 and 1768 they were not signed at all, in 1767 and 1769–1774 only the marshal signed the judgments, and in the following years also the tribunal recorder. Similar trends occurred during the Ruthenian term. Extracts of decrees from 1766 and 1768 were not signed, in 1767, 1769–1772 they were only signed by the marshal, and in 1774 and subsequent years (except for the term of office from 1777, when only the Tribunal recorder, who was Brest Judge Adam Antoni Ancuta) – Marshal and recorder. This constitution was also sanctioned by the 1792 constitution – henceforth, the copies of the judgments placed in the Court's books were to be signed by the presidency, the deputy (the function of the marshal was then abolished) and the recorder (Volumina Legum, 1899, p. 389).

The Lithuanian Tribunal, unlike the Crown Tribunal, never developed books of plenipotence which would contain procedural powers of attorney granted by the parties. Instead, such documents were entered in the act books. In both of these courts, however, there were analogous *books of accounts* which included manifests or testimonies of ushers confirming that procedural acts have been performed, but also safe conduct passes and other documents in Lithuania. These were called *current act books* in the Lithuanian Tribunal and were used at least from the mid-seventeenth century, but began to disappear at the beginning of the reign of Stanisław II Augustus. Separate books were kept only until 1765 and 1766. In the following years, such documents were already entered in the act books, although still distinguished from other documents for some time. This was aimed at improving the functioning of lower courts and decreasing the number of such documents, especially manifestations for which such names were used as trial (*procesu*) or retrial (*reprocesu*), manifest (*manifestu*) or remanifest (*remanifestu*), complaint (*zażalenia*), claim (*żałoby*), protest (*protestacji*), or statement (*oświdczenia*) (more on their place and significance in the process: Mikołajczyk, 1991, pp. 17–18). The 18th century saw the rise in the practice of writing short versions of protest texts rather than full ones, in the form of a 'trial'. The essence of

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the dispute was only mentioned briefly, referring the reader to the lawsuit for the full text (see example of such a protest: LVIA, SA, 662, p. 7). The reason for this was the court itself, which repeatedly required the 'attorneys to bring manifests and remanifests only *cum expressione* to whom and from whom *absque demonstratione meriti actionis* and to bring cards to be recorded in the protocol by the chancellery'(LVIA, SA, 633, p. 5). This happened often in 1750s and 1760s, with the earliest example probably from 1741. The manifestations formulated in this manner were entered into the *current protocol registers*. This changed slightly after the Sejm of 1784 ordered that manifests must 'contain the entire crux of the matter and, *per extensum*, be entered into the current protocol along with the signature of the actor or claimant' (Volumina Legum, 1899, pp. 19–20). This order was generally observed in the following years.

The *current protocol,* called *procedural protocol* in the Lithuanian Tribunal, appeared in the 1740s.[20] From the very beginning, it was used to record the aforementioned 'trials' and all major activities related to the court operations, such as the swearing-in of marshals, recorders, regents, attorneys, as well as requests of the parties and their plenipotents and various regulations regarding the town security. It also included the order of cases to be examined and the behaviour of attorneys and parties. The so-called tribunal ordinances from 1648, 1698, 1699, 1708, 1710, 1713, 1718, 1719, 1723, 1724, 1726 are known to historiography (DTG WKsL, 1582–1696, p. 22; DTG WKsL, 1697–1794, p. 15). They governed various aspects of the functioning of the court, the order of cases, the attorneys appearing in court, and even interrogation. However, they were disallowed by the Sejm of 1726 (except for the Ordinance of 1698, given legal force by the Sejm of 1699, Volumina Legum, 1860b, p. 40). Yet it was still necessary to regulate the problematic aspects of the court's functioning on an ongoing basis. This is why specific recommendations addressed to instigators, chancelleries, parties and attorneys were included in the current protocol. These entries were rather short and pertained to specific situations which the court found disturbing. They often pointed out applicable legal norms and threatened to apply the penalties provided for therein. In several cases, the Court even developed separate documents of this kind, modelled on former ordinances. It was probably the idea of the marshals trying to immortalize their honourable position this way. On May 3, 1781, a court chaired by Adam Czartoryski, the General of Podolian Lands, announced 'Warnings for the Tribunal to the information of the public,' admonishing attorneys and parties that he would not tolerate any 'law-defying customs' (printed in Umiastowski, 1782). In 1785, the Lithuanian Tribunal chaired by Adam Michał Chmara, the Minsk voivode, published three documents. On May 31, during the Ruthenian term, it adopted the 'Notice to the

[20] The oldest book of this type dates back to 1736 and was named '*Protocollon* of current affairs' (LVIA, SA, 628, k. 1). Subsequent names were slightly different: 'Procedural protocol *alias* current protocol' of 1745 (Ibid., 637, p. 1), 'Current protocol of processes and miscellanous motions' of 1767 (Ibid., 664, p. 1) or 'Current protocol of ordinary Tribunal cases, i.e. manifests, motions and other' of 1776 (Ibid., 685, p. 1).

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High Tribunal' containing seven points, all on the preservation of 'public security' in Grodno (Stankevič, 2018a). During the Lithuanian term, on November 26 of the same year, two more documents were announced: 'Warning to the public', which called for compliance with the laws adopted by the Sejm in 1784 and 'Resolutions of the Permanent Council as an example for the Tribunal operation' (published in Stankevič, 2018b , pp. 455–461).

The Constitution of the Coronation Sejm of 1764, entitled 'Abrogated motion' stated: 'the current practice of Tribunals and other lawless *subsellia* is that the parties which submit trials or supplications without an actor or unwilling to wait the appointment of one are given guarantee letters, registers and various rulings'(Volumina Legum, 1860c, pp. 177–178). With the exception of the infringement of court decorum and dignity, such actions were henceforth punishable by a penalty of two weeks on the upper tower, 'both for the party requesting itand attorneys.'[21] Execution of this provision was, however, virtually impossible, as it required everybody to enter the register and 'wait for the actor *ex ordine*'. The Lithuanian Tribunal, although originally intended as an appeal court, in practice performed almost all activities intended for lower courts. It was therefore the court which people asked to obtain a sanction enabling them to catch or imprison a criminal, to enter their record in the tact register or to select the usher for the forensic examination[22]. The Tribunal did not comply with the 1764 constitution because it was often necessary to adopt immediate decisions in many cases: imprisoning a person, feeding them, transporting them to another place or releasing them, taking an oath ordered by the court, etc. Such requests were called motions or supplications. It was a widespread practice in the eighteenth century to ask the Lithuanian Tribunal for 'appointing a guardian' for widows and minors after the death of their husband or father, although such requests were supposed to be the jurisdiction of land courts. Apart from the few cases when the Tribunal refused to appoint a guardian on the basis of the Constitution[23], such requests were almost always gran-

[21] The Constitution of 1793 approved of 'motions' filed to the Lithuanian Tribunal in the following cases: 'regarding harm inflicted on persons and criminal activities within the courtroom and in the court surroundings', 'regarding debts, prisoners, urgent cases requiring prompt resolution, military aid in self-evident cases as well as decrees issued in absence', 'regarding the appointment of officials or other persons to committees, court investigations and any files for a promulgated decree' (Volumina Legum, 1952, p. 282).

[22] Current reports only included records of such requests being submitted along with annotations stating the decision adopted. As those texts did not constitute evidence, most of them were destroyed. See a text entered to act record: a request for placing the lawsuit if a tribunal judge, Stanisław Żółtowski in the tact register, made by a tribunal agent and a debt collector from Brest, Feliks Lachowicz, on 29 July 1769 (LVIA, SA, 144, p. 220–221).

[23] It should be noted that even a Tribunal with the same set of judges could be inconsistent in its decisions. On July 3, 1767, Magdalena Roppowa, a widow a of Wiłkomierz tribune requested the court to appoint a guardian for her, the Tribunal declared it only considered motions filed in the cases of 'actions against the court (*laesionis*)'. Five days later, however, a Koziełłowa was appointed a guardian, and so did a Helena Poczobutowa on 25 August. Yet on October 3, after the

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ted. In the second half of the 18th century, the Constitution of 1793 explicitly forbade this practice, ordering people to seek help in such matters in the land courts, whereas the Tribunal could only handle appeals against decisions in those cases (Volumina Legum, 1952, p. 282). It should be noted that the form of recording this activity changed as well, with the relevant decisions entered more often in the act books in the years 1765–1770, and later almost exclusively only into the current protocol.

The last series of registers known to us is related to the constitution of the Grand Sejm. It provided for the *communication protocol* to be used in the Lithuanian Tribunal, where the fact that the attorney submitted the speech he prepared to deliver in the case would be recorded (Volumina Legum, 1899, p. 420). Such a book was indeed created. In the last month of the Tribunal's operation in 1792 (from May 7 – June 1) 23 speeches were reported to the court, identified as *product*, *voice*, *memory*, *case* (LVIA, SA, 883, p. 1–2).

In conclusion, the Lithuanian Tribunal in the second half of the 18th century used fair copies of entries, oblatas and decrees, usually included in a single book. The remaining documents were used separately in the form of subseries of act and sentence drafts. The so-called act protocols were used to note down that specific documents were submitted. Case registers (*vocandas*) played a supporting role in the court operation, while its daily activities were recorded in a special book called the current protocol.

Translated into English by Marek Robak-Sobolewski

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LVIA – Lithuanian State Historical Archives in Vilnius. SA – The Office of the Chief Archivist of Lithuania, SA group, reference codes 136, 144, 148, 150, 155, 166, 169, 170, 172, 181, 526, 528, 529, 531–534, 536, 542, 599, 614, 626, 628, 633, 637, 662, 664, 669, 685, 780, 782, 817, 818, 829, 883, 13731. Group 8, Section 2, Reference code 48.

Porządek sądzenia spraw w Trybunale Wielkiego Księstwa Litewskiego, z konstytucyi sejmowych, z Koekwacyi praw Wielkiego Księstwa Litewskiego z Koroną Polską, i z Statutu Wielkiego Księstwa Litewskiego, zebrany i opisany roku 1698, miesiąca aprila, 16 dnia. (1698). old print, Vilnius.

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death of Vilnius judge Michał Szumski, a similar request was denied. The reason for that was that it was prohibited to bring cases to the Tribunal which do not regard *sub securitate iuditium* (LVIA, SA, 664, pp. 11v, 12v, 23, 31).

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