

THE ISSUES OF HOSTAGESHIP IN LATE MEDIEVAL BOHEMIA AND POLAND

By

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Abstract

This thesis tries to analyse and compare the institution of hostageship in the customary law of late medieval Bohemia and Poland that has been long omitted by modern research. Hostageship became an important institution in its time which shaped the life of kings, aristocracy, and clergy as well as townsmen for several centuries and thus it is a pity that so little is known about its development in Central Europe. This thesis tries to change this situation and shed more light on this forgotten institution.

For the Bohemian part, the research is conducted on the Epistolary of the House of Rožmberk based on the best-preserved noble archive in Bohemia for the fifteenth century. As for the Polish part, mostly municipal law books, such as “The judicial books of Łęczyca” from 1385—1419, are examined. They contain many records of disputes about hostageship and their potential settlements.

The objective of this study is twofold: first, I aim to clearly explain and compare the individual terms that appear in the Bohemian and Polish documents concerning hostages, and second, based on case studies, I will analyse how the institution of hostageship worked in practice, with an emphasis on the issues of aristocratic honour in the two late medieval settings.

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Introduction

This work was originally supposed to deal with a comparison of Czech hostageship and hostageship in neighbouring countries, particularly a comparison of Czech and German conditions. This possibility was mainly due to the fact that hostageship spread to the Czech lands from Germany through Magdeburg and Nuremberg city law.

However, I decided to compare Czech hostage practice with the Polish kingdom. A crucial fact led to this decision—I have been learning Polish for the second year in a row, and in addition, both languages, Czech and Polish, are quite similar. Although there is not much literature on hostageship in medieval Bohemia and Poland, finding relevant studies and sources seemed easier than in the German context.

In my research so far, I have been mainly focusing on the regional or “national” customs of hostageship in Bohemia of the fifteenth century.¹ In this thesis, I would like to deepen my knowledge of hostageship and to compare the two institutions in Bohemia and Poland. For the Bohemian part, I will draw mainly from the Rožmberk (Rosenberg) epistolary as the archives of this House of Rožmberk are the best preserved of all the Bohemian lordly families in the fifteenth century. As for the Polish part, I will focus on municipal law books and if possible, noble chronicles and epistolaries like the Rožmberk one. My objective is twofold: first, I aim to clearly explain and compare the individual terms that appear in the Bohemian and Polish documents concerning hostages, and second, based on case studies, I will analyse how the institute of hostageship worked in practice, with an emphasis on the issues of aristocratic honour in the two late medieval settings.²

¹ Matěj Čermák. *Společně a nerozdílně: Problematika rukojmích v českém pozdním středověku*. [Joined inseparably: The hostages in the Czech Middle Ages]. (Prague: Charles University, 2020). MA thesis.

² The translations from the Old Czech, Old Polish, and Latin sources to English are mine. In the thesis several names for the Bohemian kingdom that consisted of two major parts, Bohemia and Moravia, are used. When speaking of both of them, the adjective “Czech” or the name “Kingdom of Bohemia” are employed.

Although personal suretyship came to the Czech lands from high medieval France via the context of German canon and urban legal systems, it became an important institution which enabled hostageship to shape the life of kings, aristocracy, and clergy as well as townsmen for almost four centuries. It was the latter social segment along with nobility that played a major role in refining the rules of hostageship.³

The status of both the Bohemian and Polish hostages (*fideiussor* or *obses* in Latin, *rukojmí* in Czech, and *rękojmia* in Polish) was essentially different from the types of hostages known in contemporary culture or in the medieval Western Europe, that is, prisoners of war or captives (*captivus* in Latin, *zajatec* in Czech, *jeniec* in Polish). The hostage or pledge in late medieval Bohemia and Poland—the subject of this thesis—was an independent third party with his own system of rights and penalties established in a treaty sealed by all the parties involved, and as such could not be a subject to e.g., diplomatic exchange. Before becoming a hostage, the person, typically a male noble or a burgher, is believed to have had a choice to decide for himself if he wished to ensure safe conduct by swearing by his faith and honour. As will be shown in the following, this active role of the hostage in a treaty was one of the fundamental differences between a captive and a hostage.

³ Vladimír Procháška. Ancien droit slave. In : *Les sûretés personnelles: Deuxième partie. Moyen âge et temps moderne*, (Bruxelles : Librairie Encyclopedique, 1971).

Previous research on hostageship

Before presenting the monographs and works studying a similar topic as this thesis, it is necessary to shortly comment on those that discuss the issue in an identical terminological framework, but understand it from a different angle, while sometimes completely omitting the specifics of the hostageship in Central Europe.

Research on Hostageship in medieval West

Among more recent works, it is necessary to mention the extensive monograph *Hostages in the Middle Ages* by Adam J. Kosto (2012), in which the author discusses the development of hostageship in the English and French kingdoms.⁴ He focuses mainly on the early and High Middle Ages, while he turns to later centuries in only a few sections. In Kosto's work, the problem of the term hostage is not shown in its entirety, because the author focuses almost only on the Western European areas while he completely omits the other parts of Europe. Moreover, he understands the character of the hostage only as a kind of a more legally defined captive. Therefore, research on the Central European type of hostageship is needed. It is true that in the cases studied by the author, the hostages were not taken by force. That distinguishes them from mere prisoners, but their liability means self-sacrifice anyway — when the guaranteed obligation was violated, it was commonly assumed that the hostages would end up on the gallows. Kosto thus hardly tries to view the institute of personal liability from a point of view other than from a fundamentally military one. This understanding of the problem is supported by the last chapter, which is devoted to hostages in the context of modern terrorism.

The author has studied a large number of sources to understand the concept and role of war hostage in the Western European area. His work is consulted here for its possible

⁴ Adam J. Kosto *Hostages in the Middle Ages*, (Oxford: Oxford University Press, 2012).

comparison with the Czech and Polish environment. Kosto also comes with a number of definitions and parameters to describe the different hostages throughout history. However, he does not give much space to the hostage as a guarantor, whose liability was not fatal. Contrary to Kosto, this thesis tries to focus on the guarantor and his duties and penalties that were required by the Czech and Polish hostageship.

The authors of the collective monograph *Medieval Hostageship c.700 — c.1500: Hostage, Captive, Prisoner of War, Guarantee, Peacemaker* (2017) followed a similar, albeit not as thorough, path as Kosto focusing on hostageship in terms of hostage/captive.⁵ The studies collected in this monograph are interesting in their thematic scope, from the problem of church hostageship to the image of hostages in medieval French literature. It also tracks the role of women and persons of royal origin as hostages, and eventually the question of the use of hostages in war. Undoubtedly, this elaboration of the topic is better structured than the mentioned Kosto, but its weakness is the too large scope and lack of synthesizing view. The individual authors in the book describe on various occasions how the system of hostageship functioned in e.g., Dorset, England in the eighth century, and then in the Kingdom of Sicily in the second half of the thirteenth century. Thus, it is not a comprehensive work on the development of hostageship or the observation of a certain common line intersecting all historical findings, but rather individual studies centred around the system of hostageship.

The last of the principal works to mention here is a monograph by Jean Dunbabin: *Captivity and Imprisonment in Medieval Europe, 1000—1300*, which systematically deals with the practice of pledges and captivity in the Europe of the High Middle Ages and offers us a view of hostages and prisoners.⁶ This book is essential precisely in how it describes the conditions of detention of prisoners and debtors. Although it again relates mainly to the

⁵ Matthew Bennett, and Katherine Weikert, eds. *Medieval Hostageship C. 700-c. 1500: Hostage, Captive, Prisoner of War, Guarantee, Peacemaker*. (Abington-on-Thames: Taylor & Francis, 2016).

⁶ Jean Dunbabin. *Captivity and Imprisonment in Medieval Europe, 1000-1300*. (New York: Springer, 2002).

Western European area, in some places it also mentions prison practice in Central Europe. Although this allows some comparison of the topics, overall, the work is more general and does not offer a focused analysis of specific topics. However, this generalization is probably a necessary characteristic of works that perceive the European system of hostageship as a whole and do not consider local differences.

There are two studies published in different centuries that focus on the term of the hostageship as it appears here in this thesis. For some terminology, general information on hostageship, and especially the insight on the French medieval area, one can consult the famous study by Charles Le Fort *L'Otage conventionnel d'après des documents du Moyen Age* (1874).⁷ Although it is quite old, and thus has to be perceived with caution, it still provides readers with some valuable sources and relevant information, such as the first documented use of real, contractual, not ambiguous hostages who were not subjects of a diplomatic exchange.

A similar, but more elaborated approach is followed by Werner Ogris in his *Die persönlichen Sicherheiten im Spätmittelalter* (1965).⁸ This work has been highly regarded for its complex definitions of the process of hostageship, and the relationship between debtor, creditor, and hostage. Although Ogris' study focuses on the German area, similar hostageship characteristics can be found throughout the Bohemian and Polish areas as their custom laws originate from the Magdeburg law.

Czech research

So far, there has not been any monograph published in the field of Czech research, the main topic of which would be the institution of hostageship in the Czech Middle Ages.

⁷ Charles Le Fort. *L'otage conventionnel d'après des documents du Moyen Age* [The conventional hostage in the medieval documents]. In : *Revue de législation ancienne & moderne française et étrangère*. (Paris : Editions Dalloz, 1874.), 408—433.

⁸ Werner Ogris. 2I. *Die persönlichen Sicherheiten im Spätmittelalter* [The personal guarantee in the Late Middle Ages]. In : *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Germanistische Abteilung*, vol. 82/1, (Wien, 1965), 140—189.

Nevertheless, there are some relatively detailed longer studies. To begin with, there is a dated, but still somewhat relevant study by Antonín Mezník *O rukojmích a kterak k nim dle starodávneho práva moravského hleděno býti mohlo* (1868), which has been surpassed by later works but still retains undeniable value for its source base.⁹ On the other hand, the caution in working with it is that, as its name suggests, it relates to the Moravian legal circle. Although the Moravian circle was very similar to the Czech one and probably based on it, it should be used here with caution, as the Czech side largely lacks records, and thus it is not possible to describe much of how the two circles differed.

Among the fundamental works, it is necessary to mention in the first place the studies of the Czech legal historian František Čáda, namely *K osobní exekuci podle českého práva zemského* (1920) and especially *Ležení podle českého práva zemského: k osobní exekuci II.* (1922).¹⁰ Čáda did a great deal of work, going through and analysing a number of sources, which he compared to some limited extent with the Polish and German environment. However, a problematic feature of his analysis again remains the insufficient distinction between the Czech and Moravian provincial legal districts. Čáda apparently considered them almost identical, so in cases where he lacked an explanation in one legal system, he borrowed it from another. Although in some cases this cannot be avoided and one also has to consider the Moravian legal framework, this is a problem that needs to be treated with caution. Another shortcoming of Čáda's work, which is given by the objective conditions when he wrote his study, is the absence of documents from the epistolary of Oldřich of Rožmberk from the first half of the fifteenth century, which brings new knowledge to the hostageship issue and is

⁹ Antonín Mezník. *O rukojmích a kterak k nim dle starodávneho práva moravského hleděno býti mohlo* [On hostages and how they could be viewed according to ancient Moravian law]. In: *Právník*, vol. V2., 1868, 501—583.

¹⁰ František Čáda. *K osobní exekuci podle českého práva zemského* [On personal execution under Czech land law], Vol. 1, (Prague: Bursík a Kohout, 1920); František Čáda. *Ležení podle českého práva zemského: k osobní exekuci 2.* [Obstagium under Czech land law: (To the personal execution 2)], Vol. 2, (Prague: Bursík a Kohout, 1922).

considered – as a previously unexploited source of information – in the present study. Although Čáda was able to rely in part on some Rožmberk letters published by František Palacký and Antonín Rezek in the Czech Archive editions, he did not directly cite them in the study either.¹¹ However, this shortcoming must be excused by the fact that the documentary correspondence of Oldřich II of Rožmberk did not receive its edition until several years after Čáda published his study.

Just a year after him, Rudolf Rauscher also published his view on hostage in his work *K rukojemství v českém právu zemském* (1923), which was published in the same series, namely *Works from the Seminar of Czech Law at Charles University*.¹² Although the study comments on hostageship as such, Rauscher's work is much shorter and, in comparison with Čáda, brings essentially nothing new.

Among the newer studies it is worth mentioning only *Komentář k moravským zemským zřízením z let 1516—1604* (2017) by legal historians Jana Janišová and Dalibor Janiš, who mainly focuses on Moravian provincial laws in the sixteenth century.¹³ Although they discuss a later historical period, the parts about hostageship are still relevant as custom law in both the Bohemian kingdom and Moravian margraviate usually replicated the older practice, or greatly originated from it. The limitation of Janišová and Janiš's approach is, nevertheless, that they choose a too narrow legal interpretation while not considering the social-economic relations between the nobility.

¹¹ For example: *Archiv český, čili, Staré písemné památky české i moravské: z archivů domácích i cizích* [The Czech archive, or, The ancient Czech and Moravian manuscripts: from both local and foreign archives]. Vol. 5, František Palacký, ed. (Prague: Fridrich Tempský, 1862).

¹² Rudolf Rauscher. *K rukojemství v českém právu zemském* [To hostageship in the Czech land law]. (Prague: Bursík a Kohout, 1923).

¹³ Jana Janišová, and Dalibor Janiš. *Komentář k moravským zemským zřízením z let 1516—1604* [A commentary to the Moravian land laws from 1516—1604]. (Prague: Leges, 2017).

Polish research

From the Polish production, legal historian Przemysław Dąbkowski's three elaborated monographs and studies from the beginning of the twentieth century stand out. The first and most complete is *Rękojemstwo w prawie polskim średniowiecznym*, which focuses on hostageship in the Polish kingdom mainly in the late Middle Ages, but also in Early Modern history.¹⁴ It is a worthy work with numerous examples in the sources, a must-read for those who want to explore the problem. It is, however, problematic on two levels. First, the scope of the studied customary law covers the whole of Poland without considering potential differences between the regions. Second, perhaps as a nod to the historical boundaries of Poland frontiers, Dąbkowski used the sources of Red Ruthenia, a region culturally much different from Poland itself. For these reasons, an often-confusing mix of customs was written. The study was supplemented by two others as Dąbkowski's research continued. The first, and more important one, is *Załoga w prawie polskim średniowiecznym*,¹⁵ which discusses the issue of *obstagium* in Poland, a term that will be explained later in this thesis. The second *O utwierdzeniu umów pod grozą lajania w prawie polskim średniowiecznym* tries to describe the penalties to one's honour should he not satisfy the creditor.¹⁶ Nevertheless, the study fails to do so because the author was not able to present any direct example of a penalty, and thus mostly stuck to assumptions. All three studies are more or less noteworthy even though they are outdated, especially when it comes to the international comparison of hostageship. Their main benefit lies in their introduction to the topic along with many references, and in their presentation of the ancient editions of the provincial or municipal law books.

¹⁴ Przemysław Dąbkowski. *Rękojemstwo w prawie polskim średniowiecznym* [The hostageship in the Polish medieval law]. In: *Archiwum naukowe*. Vol. 3. No. 1. (Lviv: Nakł. Towarzystwa dla Popierania Nauki Polskiej, 1904).

¹⁵ Przemysław Dąbkowski. *Załoga w prawie polskim średniowiecznym* [The obstagium in the Polish medieval law]. In: *Archiwum naukowe*. Vol. 2. (Lviv: Towarzystwa dla Popierania Nauki Polskiej, 1905).

¹⁶ Przemysław Dąbkowski. *O utwierdzeniu umów pod grozą lajania w prawie polskim średniowiecznym* [About the contract confirmation under the threat of the defamatory summoning in the Polish medieval law]. In: *Archiwum naukowe*. Vol. 1. No. 1. (Lviv: Nakł. Towarzystwa dla Popierania Nauki Polskiej, 1905), 1—76.

This short overview should give the reader the information about the most important works on hostageship in the Czech Republic, Poland, and Western Europe.

On the primary sources

Sources that concern hostageship in the Kingdom of Bohemia have been both problematic and relatively easy to access. The kingdom was divided into two major secular legal areas, Bohemia and Moravia, that were both influenced from different parts of the German lands, that is by Magdeburg and Nuremberg. In as much as they concern the institution of hostageship itself, the differences between the Bohemian and the Moravian law are very subtle. Still, this needs to be kept in mind when doing research. Unfortunately, a comparative perspective is blurred further by the fact that the Czech land customary law records were burned, with a few exceptions, during the great fire of the Lesser Town of Prague in 1541.¹⁷ Therefore, any official Bohemian legal records until the year of the fire no longer exist, presenting a serious obstacle for comparative research. However, the Moravian margraviate kept its customary law records in a separate place, and they survived until the present. Thus, some kind of control with the knowledge of very subtle differences can be employed when working with the Bohemian and Moravian sources.

There is one core Bohemian material source that can be profitably used for the comparison with the Polish side: a well-preserved epistolary archive of the House of Rožmberk, containing the correspondence of one of its most powerful members — Oldřich II of Rožmberk. A researcher in this field is particularly lucky because this archive was edited and published in four volumes in the mid-twentieth century by Blažena Rynešová and to some extent by Robert Pelikán.¹⁸ The epistolary contains numerous letters and contracts in which either Oldřich II himself, or his servants and allies, took part. Due to the turbulent times of the

¹⁷ Petra Večeřová. „O nešťastné příhodě” Václava Hájka z Libočan [About the unfortunate incident” by Wenceslas Hájek of Libočany]. In: *Knihy a dějiny* [Books and history]. Vol. 3, no. 1 (Prague: Knihovna Akademie věd ČR, 1996), 35.

¹⁸ *Listář a listinář Oldřicha z Rožmberka* [The Epistolary of Oldřich of Rožmberk (1418-1462)]. Blažena Rynešová, Josef Pelikán eds., (Prague: Nákladem Ministerstva školství a národní osvěty, 1929—1954).

fifteenth century, the epistolary is also valuable as a record for diplomatic exchanges between Oldřich, a representative of the Catholic side, and his foes from the Utraquist party. Mentions of hostages can be found in many of these letters and contracts: they guaranteed either some sort of bond between Rožmberk and his creditor(s), or a transfer of captives from one of the warring parties to another.¹⁹ The Rožmberk archive is considered unique for the studied period because it is the only preserved and highly coherent fact source for Bohemia and Moravia.

As for the Polish sources, the situation is less obvious. To my knowledge, there has not been any similar example of a noble epistolary from the fourteenth or fifteenth century containing material needed for this research. Cases of hostageship can, however, be found in the municipal customary law books. Among those, *Księgi sądowe łęczyckie*, that is “The judicial books of Łęczyca” from 1385—1419, have been the most fecund.²⁰ They contain many records of disputes about hostageship and their potential settlements. From the preserved municipal law books, these can have another potential advantage, as Łęczyca is geographically close to the Czech historical borders and Silesia, which was a buffer region under influence of the Bohemian kings²¹ Łęczyca is one of the oldest towns in Poland. It was the capital of first the duchy, from the early fourteenth century the Voivodeship of Łęczyca²² The city was important for several *sejmy*, the “gatherings” or general assemblies, that took place there since 1180.²³

It is, nevertheless, necessary to admit that these Polish cases are almost without exception about people who I have not been able to identify, partly because of a lack of

¹⁹ Some records can be found in *Rožmberské dluhopisy z let 1457—1481* [The Rožmberk bonds from 1457—1481], Josef Pelikán ed., (Prague: Nakladatelství Československé akademie věd, 1953).

²⁰ *Teki A. Pawińskiego: Księgi sądowe łęczyckie od r. 1385—1419 1419* [A. Pawiński's files: Court books from Łęczyca 1385—1419], vol. 1, (Warszawa: Gebethner i Wolff, 1897).

²¹ Przemysław Dąbkowski. *Załoga w prawie polskim średniowiecznym* [The obstagium in the Polish medieval law], 16.

²² For more about Łęczyca see: Zygmunt Gloger. *Geografia historyczna ziem dawnej Polski*. (Krakow: Spółka wydawnicza polska, 1900), 102—108.

²³ Marcei Kosman, et al. *Dějiny Polska* („The history of Poland”). (Prague: Charles University, 2011), 47.

prosopographical analysis that has been much of much value to me for the Czech portion of the research.²⁴

Apart from *Księgi sądowe łączyskie* some other Polish municipal law books have been studied — such as the judicial books of Kalis published as *Wybór zapisek sądowych kaliskich z lat 1409—1416*, but unfortunately, they have not proven very useful concerning hostageship.²⁵

²⁴ Petr Elbel et al., *Zikmundova strana v husitských Čechách* [The Sigismund's party in the Hussite Bohemia], n.p., 2019.

²⁵ Bolesław Ulanowski. *Wybór zapisek sądowych kaliskich z lat 1409—1416* [The selection of the judicial records of Kalis]. in: *Scriptores rerum polonicarum: Pisarze dziejów polskich*. Vol. 9. (Kraków: nakładem Akadem2 Umiejętności, 1886).

Historical background

The Kingdom of Bohemia

After the successful reign of emperor Charles IV, his oldest son Wenceslaus IV assumed power in the Czech lands as well as in the Empire as the king of the Romans in 1378. His rule was to be set in very difficult times: the new king was young and inexperienced while his father and the powerful elites who helped to shape Europe according to the Luxembourg policy passed away. Wenceslaus kept his retinue of mostly lower nobility — the “king’s darlings” — economically dependent on him. He gave them important offices in the kingdom, including the care of the royal mints, and not to the high nobility who did not accept this change of influence²⁶ According to Jaroslav Pánek, the new advisors of Wenceslaus IV were not closely linked with European diplomacy, which meant the king lacked information about international development.²⁷ Unlike his father Charles, he did not travel through the Empire, and he buffered himself from the imperial affairs. His apathy was considered so great that Wenceslaus was eventually deposed from the imperial throne in 1400, and the electors chose Rupert of the Palatinate instead.²⁸

During the reign of Wenceslaus there was a gradual fall in income, partly because of the lost imperial revenues such as taxes, gifts, and payments, but partly because of the growing criminality, and taxes and profits from precious metals being mishandled, which affected the whole society.²⁹ This added to the distrust of the high nobility and clergy who blamed the king’s retinue. Conflicts between nobility, burghers, and king twice resulted in the latter’s

²⁶ Robert Novotný. *Ráj milců? Nižší šlechta na dvoře Václava IV.* [The heaven of darlings? Lesser nobility at the court of Wenceslaus IV]. In: *Dvory a rezidence ve středověku. 2, Skladba a kultura dvorské společnosti* [Courts and residences in the Middle Ages. 2, Composition and culture of court society]. (Prague: Historický ústav, 2008), 220.

²⁷ Jaroslav Pánek. *A History of the Czech Lands*. (Prague: Karolinum, 2009), 144.

²⁸ Petr Čornej. *Velké dějiny země Koruny české: 1402—1437* [The great history of the Lands of the Bohemian Crown 1402—1437]. Vol. 5, (Prague: Paseka, 2000), 31.

²⁹ Jaroslav Pánek. *A History of the Czech Lands*, 144.

captivity in 1394 and 1402, secretly supported by the king's brother and eventual heir Sigismund.³⁰

Due to the general fall of income, many commoners lost their jobs, which led to economic migration to the towns. The impoverished society was more willing to listen to the chiliastic visions of the preachers who also blamed the omnipresent and wealthy Church that owned around 30—40 % of usable land.³¹ There were, on the other hand, some voices who attempted to right these wrongs and repair the Schism. Before the Council of Pisa in 1409, Wenceslaus IV tried to take the lead in international affairs once again. He decided to support Urban VI, one of the claimants of the Papal See in exchange for the promise to receive the title of the Roman king once again. Furthermore, the king established relations with the reform side of the Bohemian clergy led by Jan Hus who promised to help Wenceslaus secure a favourable stance in order to support his papal candidate by having the university of Prague vote for Urban VI.³² As a consequence of this, a dispute over the votes broke out at the university which the king resolved in favour of the Czech reform side by the Decree of Kutná Hora. By doing so, he changed the votes of the university “nations” and weakened the foreigners.³³ However, this resulted in the exodus of around 800 foreign professors and students. All this came to naught: even though the Council of Pisa elected a new pope, it did not resolve the question of the papal schism, and Wenceslaus's claim on the Roman crown was left without the support of the Church. When his cousin Jošt of Moravia, and after his death, Sigismund of Luxembourg, Wenceslaus's younger brother, were elected King of the Romans, Wenceslaus IV lost interest in nearly everything, including the support of the reform wing of the clergy. When he gave his authorization to the Church for the sale of indulgences in 1412, the reform side reacted with

³⁰ Petr Čornej. *Velké dějiny zemí Koruny české: 1402—1437* [The great history of the Lands of the Bohemian Crown 1402—1437]. Vol. 5, 52.

³¹ Jaroslav Pánek. *A History of the Czech Lands*, 147.

³² Petr Čornej. *Velké dějiny zemí Koruny české: 1402—1437* [The great history of the Lands of the Bohemian Crown 1402—1437]. Vol. 5, 126.

³³ Apart from the Czech “nation” there were also representatives of the Bavarian, Polish, and Saxon nations.

major protests and its preaching about the wrongs of the Church intensified.³⁴ The king's officials, however, suppressed the protests and Jan Hus was eventually forced to leave the capital. For some time, he resided at the castles of the reforming nobility who swore to protect the "common good" of the land and religious freedom.³⁵

Although the Church did not solve its schism at the Pisan Council, it tried to reform once again at the Council of Constance in 1414 under the protection of Sigismund of Luxembourg, who also wanted to solve the question of the Czech heresy. For this reason, he invited Jan Hus and promised him a guarantee of safe conduct.³⁶ The promised public hearing soon turned into the trial of a heretic and Hus quickly found himself imprisoned. He was asked to recant his teachings, but he refused to do so. Jan Hus was then sentenced to death on the stake on July 6 in 1415, soon followed by his radical colleague and friend Jerom of Prague.

The fires of their stakes ignited the Hussite—as it was called after Hus—revolution. In response to Hus' death, 452 Bohemian and Moravian nobles attached their seals to an epistle ("Stížný list") to Sigismund in which they expressed their protests against the execution.³⁷ The Hussite camp, originally under the leadership of Čeněk of Vartemberk—among other things the protector of the Rožmberk property, as will be discussed later in the thesis—chose the communion chalice as its symbol. They followed the teachings of Jan Hus and another preacher, Jakoubek of Stříbro, for varying reasons. Their teaching was mainly, but not only, about communion in both kinds (*sub utraque specie*). Later on, the Hussites specified their program in the "Four Articles of Prague" in 1420.³⁸ In the meantime, the reform movement was gaining ground and kept spreading over the country from 1412.³⁹ Its main bases were both

³⁴ Jaroslav Pánek. *A History of the Czech Lands*, 139.

³⁵ Jaroslav Pánek. *A History of the Czech Lands*, 152.

³⁶ Petr Čornej. *Velké dějiny zemí Koruny české: 1402—1437* [The great history of the Lands of the Bohemian Crown 1402—1437]. Vol. 5, 158.

³⁷ Petr Čornej. *Velké dějiny zemí Koruny české: 1402—1437* [The great history of the Lands of the Bohemian Crown 1402—1437]. Vol. 5, 182.

³⁸ František Šmahel. *Husitské Čechy: struktury, procesy, ideje* [The Hussite Bohemia: structures, processes, ideas]. (Prague: Nakladatelství Lidové noviny, 2001), 12.

³⁹ Jaroslav Pánek. *A History of the Czech Lands*, 153.

towns of Prague, Hradec Králové, Žatec, and later Tábor, the main Hussite stronghold. As a counterbalance to the Hussite camp, the Catholic league formed up. From 1420 on, it was unofficially led by Oldřich of Rožmberk. Oldřich was the most powerful lord after the Roman king Sigismund, who spend much time calling for support outside of the country. The Catholic side had several main bases: the imperial town of Cheb (Eger), Strakonice, Vratislav (Wrocław), and the Rožmberk dominion. Pilsen, another strategic town, switched sides several times. What followed were five crusades called by the pope and Sigismund of Luxembourg from 1420 to 1431. They were, however, all unsuccessful. Some of them were dissolved even before a major battle could occur, and the rest were defeated by the joint Hussite armies led by Jan Žižka of Trocnov, and later by his successor Prokop Holý.⁴⁰ Apart from the major war campaigns to defeat the crusades, which were considered foreign invasions, and for which the Hussites always united, there were hundreds of minor conflicts where it was not often clear who represented what party. Raiding, especially of church property, became a fact of life on both sides, the central authority such as appellate courts ceased to assemble, and local bonds dissolved.

The Hussite wars officially ended by an agreement of the moderate Hussite camp with Sigismund of Luxembourg in 1436. He was finally recognized as the king of Bohemia by the Czech estates who could keep their war gains as the *status quo post bellum*.⁴¹ Although the radical Hussites refused the peace terms and fought until death, the moderate ones could content themselves with the so-called “Compacts of Basel” in 1437 by which the Church acknowledged the *sub utraque specie* communion. Sigismund, however, could not content

⁴⁰ For more information on the crusades see For example: František Šmahel. *Husitská revoluce: Kronika válečných let* [Hussite revolution: Cronicle of the war years], vol. 3, ed. 2., (Prague: Karolinum, 1996); Vladimír Bystrický. *O vyhnání křižáků z Čech roku 1427: Husitské vítězství u Stříbra a Tachova* [About the expulsion of the crusaders out of Bohemia in 1427: Hussite victory at Stříbro and at Tachov]. (Pilsen: Západočeské nakladatelství, 1982); František Šmahel. *Jan Žižka z Trocnova: Život revolučního válečníka. Studie s dokumentárními přílohami* [Jan Žižka of Trocnov: Life of the revolutionary warrior. A study with a documentary appendix]. (Prague: Melantrich, 1969).

⁴¹ Jaroslav Pánek. *A History of the Czech Lands*, 162.

himself for long as he died at the end of 1437. At the Land Diet (Zemský sněm) of December that year, a religiously mixed party centered around Menhart of Hradec and Oldřich of Rožmberk elected Albrecht II of Habsburg, Sigismund's son-in-law as the new king. The election was, nevertheless, rejected by the Utraquist nobility of Eastern Bohemia under Hynek Ptáček of Pirkštejn, who decided to support their own candidate: Polish prince Casimir, a brother of the King Władysław.⁴² A war broke out and although the prince's candidacy was lost, Hynek Ptáček's side held out until the sudden death of Albrecht of Habsburg in 1439, which thus launched a period of interregnum until the election of a new king. A territorial organisation of peace called *landfrýd* followed, which entrusted the government to regional captains. The most powerful were the ones with Oldřich of Rožmberk at its head on the Catholic side and Hynek Ptáček on the Utraquist side.⁴³ Things changed after the death of the latter when George of Poděbrady became the head of the Utraquist camp, now unofficially called the League of Poděbrady.⁴⁴ In 1448, he took Prague by an unexpected attack and captured Menhart of Hradec because of the threat that the Catholic league would gain the upper hand. George's plan worked and the Catholic party under Oldřich of Rožmberk was paralysed for a while, and even though it managed to form up the League of Strakonice, it was not able to defeat George of Poděbrady.⁴⁵ On the contrary, George gained the office of land administrator at the Bohemian Diet of April 1452 with the support of the Roman emperor Frederick III, and thus was able to proclaim the rebels outlaws and wreckers of the territorial peace, which was, in essence a secular alternative to excommunication. This, along with his military operations, forced the rebelling party into obedience. In 1453, the Czech Estates agreed

⁴² He was the future Polish king Casimir IV.

⁴³ There were, however, several other *landfrýd* organizations. See For example: Petr Čornej, Milena Bartlová. *Velké dějiny zemí Koruny české: 1437—1526* [The great history of the Lands of the Bohemian Crown 1437—1526]. Vol. 6, (Prague: Paseka, 2007), 79—82.

⁴⁴ Petr Čornej, Milena Bartlová. *Velké dějiny zemí Koruny české: 1437—1526* [The great history of the Lands of the Bohemian Crown 1437—1526]. Vol. 6, 96.

⁴⁵ Jaroslav Pánek. *A History of the Czech Lands*, 164.

on accepting Albrecht's young son Ladislaus Posthumous (Pohrobek) as the king. George of Poděbrady escorted him from Vienna and even though the interregnum ended, he kept the regency until the young king would come of age.

This is only a short overview of the most important political events of the kingdom of Bohemia. Its purpose has not been to cover everything, but to introduce the reader to some historical background of the studied period in relation to some of the sources used in the present thesis. Further supplementary information on the situation in the kingdom will be given in the next subchapter about the House of Rožmberk.

The House of Rožmberk and its client system

Now, let us focus on hostageship in the Czech lands, which can be shown through the examples of the small nobility, who connected its destiny with the South Bohemian aristocratic Rožmberk family. There are several reasons for studying this particular House, above all its rich preserved archive. This present thesis is based primarily on the correspondence of Oldřich II and later also his sons Jindřich and Jan with their noble clientele and allies, but also with their enemies, especially during the Hussite wars. Some letters and treaties come also from the period of power rivalry between the noble union of Poděbrady and Strakonice. Edited contracts and letters can be found mainly in the epistolary of Oldřich II of Rožmberk between 1416 and 1462. Another important source regarding contracts for us are the *Libri obligationum*, that is books of bonds, from 1457—1481, which were issued by Josef Pelikán.⁴⁶ As their name suggests, they mainly contain debt subscriptions, but also include documents on ordinary sales and other contracts and documents written not only by Oldřich II, his sons Jindřich and Jan, but to a lesser extent also by his grandson Vok of Rožmberk and others.

⁴⁶ *Rožmberské dluhopisy z let 1457—1481* [Rožmberk bonds from the years 1457—1481], Josef Pelikán ed., (Prague: Nakladatelství Československé akademie věd, 1953).

The Rožmberk debts, which had been growing since the reign of Oldřich's father, Jindřich III of Rožmberk, reached a critical level just at the end of his reign and especially after the death of his son Oldřich II. Ironically enough, it is thanks to them that it is possible to easily trace the clientelist and service ties and, at the same time, analyse and interpret the institution of hostageship in Rožmberk practice.⁴⁷ In addition, both the Epistolary and the books of bonds follow the Rožmberks in the fifteenth century relatively systematically, and in some places even make it possible to continuously verify the individual cases of liability that are recorded in both published editions.

Another reason for studying the Rožmberk hostages is the active and expansionist policy of Oldřich II of Rožmberk, in which he was assisted by the Rožmberk retainers and clients. They played an active role as messengers and envoys, spies, burgraves, marshals, and hetmans of Rožmberk troops. They are also often found among the Rožmberk creditors, and especially as witnesses and hostages who guaranteed the obligations of the Lords of the Five-Petalled Rose, a Rožmberk emblem.

Oldřich of Rožmberk (1403—1462) was born of the marriage between Jindřich III of the powerful Bohemian House of Rožmberk and Eliška of Kravaře, a wealthy Moravian House. After the death of his father, three guardians provided for young Oldřich —Jindřich's cousin Čeněk of Vartenberk, Jan of Hradec (probably due to the blood and factual proximity of both families), and the brother of Oldřich's mother Jindřich of Kravaře and of Plumlov. Oldřich assumed the rule in 1417, and in the first years he followed the policy of his uncle, friend, and advisor Čeněk of Vartenberk, who was the closest of the three administrators of the Rožmberk estate to Oldřich and who, together with Oldřich's mother, also influenced Oldřich to embrace

⁴⁷ Robert Šimůnek and Roman Lavička, *Páni z Rožmberka 1250—1520: jižní Čechy ve středověku: kulturněhistorický obraz šlechtického dominia ve středověkých Čechách*. [The lords of Rožmberk 1250—1520: South Bohemia in the Middle Ages: the cultural-historical image of a noble dominion in medieval Bohemia], (České Budějovice: Veduta, 2011), 22—25.

the Utraquist faith during his youth.⁴⁸ Thanks to Vartenberk's help and connections as the highest burgrave, Oldřich soon got into "high politics", for which he was predestined due to his lordship. Once he familiarized himself with everything, Oldřich began to focus directly on the most powerful person in the Bohemian kingdom, the emperor Sigismund of Luxembourg, while never losing sight of his own goals. This is one of the reasons he became independent of Čeněk's advice relatively quickly, as evidenced by Oldřich's return to the bosom of the Catholic Church in 1420. Rather than being personally convinced by the true faith, his choice was rather pragmatic, perhaps due to a growing sense of threat from the Hussite town Tábor, adjacent to Oldřich's estates and Příběnice Castle. It was this border area that first witnessed the war clashes when the young Rožmberk tried to besiege Tábor at the emperor's command. It was also this area that was later conquered by the Hussites themselves, together with another Rožmberk castle Příběničky, which was located nearby.

The emperor himself was well aware of Rožmberk's growing importance, and soon realized that a strong Catholic ally was very useful to him in turbulent Bohemia. Oldřich was valuable to Sigismund not only for his power but also because he was the *de facto* head of the South Bohemian members of the Catholic party. Unlike the Pilsen *landfrýd*, which had been institutionally enshrined since the time of king Wenceslaus IV, the South Bohemian Catholic power was not so homogeneous. This much looser feudal structure, which was based on a more informal environment of neighbourhood and client ties, mostly followed the policy of the House of Rožmberk. It did not depend on one particular member of this aristocratic family, precisely because, as a local political system, it had been purposefully built for decades by this very house. The interconnectedness of relations and the readiness of the lower noble clientele to serve the Rožmberk court in exchange for stable income and provisions in case of need

⁴⁸ Anna Kubíková. *Oldřich II. z Rožmberka* [Oldřich of Rožmberk] (České Budějovice: Vedita, 2004), 25.

resulted in a structure of retainers who often passed from serving the father to serving his sons.⁴⁹

Oldřich was duly aware of his importance, as he was able to masterfully use not only the emperor's affection, but also the weaknesses of his own opponents, as well as the fact that the provincial court in the Bohemian kingdom was not in session at that time. Thanks to this favourable constellation of circumstances, Oldřich succeeded in gradually expanding and consolidating the Rožmberk estate. He acquired, for example, the Pořešín estate, the royal Zvíkov Castle, and Lomnice nad Lužnicí, a town he reclaimed from the Hussites after the Battle of Lipany. Thanks to Sigismund's affection, Oldřich also took hold of the pledged estates of the wealthy Zlatá Koruna Monastery, which then remained in Rožmberk's hands until the beginning of the seventeenth century.⁵⁰ During the turbulent period of the Hussite wars, Rožmberk's temporary administration also included the royal town Vodňany, which he had previously occupied as an Utraquist, or the town of Prachatice, which was later conquered by the Hussites.

In these and other cases, Oldřich of Rožmberk cared only about the benefit of his family. For this, he often received very sharp contemporary criticism. For example, he was maliciously described by Vavřinec of Březová, who likened the instability of Oldřich's insincere mind to the limping that Oldřich allegedly suffered from. Another of Oldřich's contemporaries, Aleš of Šternberk and Holice, voiced his disbelief in a letter to Oldřich from 1439, in which he offered a portrait of the Rožmberk lord:

And I understand that you neither care about your own good nor the good of this country, for you have not come. But I only fear that you care only about your will and the destruction of this land, as men have spoken of you many times; and you do not take care of anything but the fulfilment of your own intentions. Dear sir, let go of your will, for it seems to me that you cannot make

⁴⁹ For example: No. 3. in *Rožmberské dluhopisy z let 1457—1481* [The Rožmberk bonds from 1457—1481], 3.

⁵⁰ Anna Kubíková. *Oldřich II. z Rožmberka* [Oldřich of Rožmberk], 55.

it, even if it is on your mind. If you do not let go of it, I am afraid that the destruction of this kingdom will come from you.⁵¹

The image of Oldřich II did not get better even in the modern age. As Czech historian Rudolf Urbánek aptly pointed out, Rožmberk's main interest was very clear: "His own benefit was his only credo, to which he remained fully and always faithful."⁵² The most conciliatory approach to Oldřich of Rožmberk has perhaps been offered by Robert Šimůnek, according to whom one would find many similar examples among Oldřich's contemporaries, so one can understand the lord of Rožmberk as a man made by his period.⁵³

However, Oldřich's hunger for money and his greed are a little more understandable if one looks at them through the eyes of a landowner. Revenues from manorial towns, cities and villages were not staggering and expenditures of their masters often exceeded them many times over. In addition, the turbulent times changed some of the work duties of the towns and villages, which in some places even disappeared completely. Interest records from the second half of the fifteenth century show that the total yield of the Rožmberk estates reached 2,200 Bohemian groschen a year, and during the Hussite wars this amount was even lower.⁵⁴ Although in-kind levies and other revenues were added to these yields, from Rožmberk bonds and other contracts in the Epistolary I can easily imagine that Oldřich of Rožmberk struggled with extreme indebtedness throughout his life. It is evident when one looks at the average total of the Rožmberk expenses that usually fluctuated between 3,000—3,500 groschen

⁵¹ „I rozumiemť já, že ty ani svého dobrého tbáš, ani země této, poněvadžs nepřijel; než toliko bojím sě, že ty hledíš své vôle a zkažení země této, jakož o tobě lidé mnohokrát mluvie, a jiného nehledíš, než aby dovedl své vôle. Milý pane, pust' od té své vôle, neb mi sě zdá, že jie nedovedeš, ačť jest na mysli. Pakli od nie nepustíš, bojímť sě, žeť tebu tohoto crálovstvie zkažení pójde.” No. 61 in *Listář a listinář Oldřicha z Rožmberka* [The Epistolary of Oldřich of Rožmberk (1418-1462)]. Vol. 2, 47.

⁵² Rudolf Urbánek. *České dějiny: Věk poděbradský* [Czech history: The Age of Poděbrady], Vol. 3 (Prague: Jan Laichter, 1915), 186.

⁵³ *Páni z Rožmberka 1250—1520*, 23.

⁵⁴ Alois Míka. *Osud slavného domu: rozkvět a pád rožmberského dominia* [The fate of an illustrious house: the rise and fall of the Rožmberk dominion], (České Budějovice: Veduta, 1970), 39—40.

a year.⁵⁵ It is true Oldřich took over the debts after his father Jindřich, but his own conquests, defence of the dominion and engagement in Sigismund's services, damage caused by the enemy and other administrative expenses, of course, cost him considerable funds. He was able to get some financial aid from foreign Catholic allies, such as the city of Nuremberg or even the Council of Basel, but these amounts varied widely and could not be relied on.⁵⁶ Oldřich received additional financial support, and especially debt repayments, irregularly from Sigismund of Luxembourg. In 1422, for example, the emperor owed Rožmberk up to 11,500 threescores of groschen.⁵⁷ When the emperor did not have enough money, he gave Rožmberk a pledge. Oldřich II was thus given the estates of the Cistercian monastery in Zlatá Koruna in 1420, but two years later he had to return them again, when criticism of this step was passed on to the emperor at the Nuremberg Assembly, and he had to formally revoke the pledge from Oldřich.⁵⁸ In general, however, the Lord of Rožmberk could not rely too much on financial support from foreign donors and debtors, and therefore he dealt with the repayment of his debts mainly by borrowing money from his clients and servants, as well as from allies and others. Another common option was to pledge property — in 1420, for example, Oldřich decided to pledge the original family residence, the Lower and Upper Castle in Rožmberk, to his brother-in-law Reinprecht of Wallsee for 4,000 threescores of groschen.⁵⁹ The last option was to sell all kinds of salaries or property, at first mainly to his allies, and as time passed to basically anyone.⁶⁰

⁵⁵ Robert Šimůnek. *Správní systém šlechtického dominia v pozdně středověkých Čechách: rožmberská doména 1418—1472* [The administrative system of the aristocratic dominion in late medieval Bohemia: the Rožmberk domain], (Prague: Historický ústav AV ČR, 2005), 386

⁵⁶ Petr Elbel et al., *Zikmundova strana v husitských Čechách* [The party of Sigismund in the Hussite Bohemia], n.p., 78.

⁵⁷ *Zikmundova strana v husitských Čechách* [The party of Sigismund in the Hussite Bohemia], 77.

⁵⁸ *Zikmundova strana v husitských Čechách* [The party of Sigismund in the Hussite Bohemia], 605.

⁵⁹ No. 38 in *Listář a listinář Oldřicha z Rožmberka (1418—1462)* [The Epistolary of Oldřich of Rožmberk (1418-1462)]. Vol. 1, 33.

⁶⁰ No. 135 in *Listář a listinář Oldřicha z Rožmberka (1418—1462)* [The Epistolary of Oldřich of Rožmberk (1418-1462)]. Vol. 1, 89.

Although it was not always necessary, in almost all of these contracts I find persons who, with their testimony, guaranteed the timely or complete fulfilment of the obligations which Oldřich of Rožmberk and his sons assumed. These hostages very often came from the ranks of the lower nobility. They mostly owned allod estates and strongholds in the Rožmberk states and saw, if not directly the means of social rise, then a certain *modus vivendi* with a powerful neighbour in service and social relations with the lords of Rožmberk. It was the absence of a feudal system in the Rožmberk dominion and the fact that the lower nobility could freely dispose of their estates that may have established mostly harmonious relations with the South Bohemian hegemon, with the *client* on one side and the *patron* on the other. These relations were not only long term, but they also often lasted for generations, and the squires and knights served both the father of the House of Rožmberk and his sons.⁶¹

The second of these terms, *patron*, does not appear in contemporary terminology, but it is useful here as applied to a person who in some way protects certain persons in exchange for some services. The patronage as practised by Oldřich of Rožmberk and his sons demanded certain services from clients from the ranks of yeomen, squires, or knights, such as delivery of messages or testimony and guarantees for obligations for which the patron provided long-term legal and real protection not only to them but also to members of their families. Oldřich remembered his faithful even in the giving of authorities and other favours.⁶² At the same time, the concept of

⁶¹ See no. 630 in: *Listář a listinář Oldřicha z Rožmberka (1418-1462)* [The Epistolary of Oldřich of Rožmberk (1418-1462)], Vol. 4, 434—435.

⁶² See for example: No. 211 in: *Rožmberské dluhopisy z let 1457—1481* [The Rožmberk bonds from 1457—1481], 84.

clientele was not limited only to members of nobility, but also to burghers, such as the Rožmberk servant and burgrave Pavel Dětrichovec.⁶³

The explanation of the relationship between the patron and the clients can then, in my opinion, be taken in two ways. It could mean the formalized relations where I count among the clients only those persons who were, in this specific milieu, servants of the Rožmberks at a given time or held an office within the dominion.⁶⁴ From this it could be concluded that the lower nobility often changed their status vis-à-vis the Rožmberks and moved freely from the status of ordinary neighbours to the status of clients. Another theory—by Robert Novotný—assumes that among the clients were included those who did not have any authorization from the Rožmberks at the moment, but in the past proved to be reliable servants. He supports his assumption with the courtesies that are found in the epistolary correspondence between Oldřich of Rožmberk, or his sons, and the lower nobles.⁶⁵ Šimůnek, on the other hand, strictly rejects that polite expressions and phrases could play such a role.⁶⁶ Following his theory, Novotný divides the Rožmberk clients into two categories: while direct, employed servants greet Oldřich in some form of the phrase “my gracious lord” (“můj milostivý pán”), those nobles who at the time had looser ties to him used the phrase “the lord who is kind to me” (“pán, který je na mě laskavý”).⁶⁷ The latter indicates informal and service relationships.

⁶³ Robert Šimůnek. *Správní systém šlechtického dominia v pozdně středověkých Čechách: rožmberská doména 1418–1472* [The administrative system of the aristocratic dominion in late medieval Bohemia: the Rožmberk domain], (Prague: Historický ústav AV ČR, 2005), 402.

⁶⁴ *Správní systém šlechtického dominia* [The administrative system of the aristocratic dominion in late medieval Bohemia: the Rožmberk domain], 403.

⁶⁵ Robert Novotný. „Die Rožmberker und der südböhmische Niederadel. Zur Rolle der Herrschaftsburgen in den Beziehungen zwischen den Patronen und ihrer Klientel”, in: *Adel, Burg und Herrschaft an der „Grenze”. Österreich und Böhmen*, hg. von Klaus Birngruber — Christina Schmid (= Studien zur Kulturgeschichte von Oberösterreich 34), (Linz: Oberösterreichisches Landesmuseum, 2012), 151.

⁶⁶ Robert Šimůnek. *Správní systém šlechtického dominia* [The administrative system of the aristocratic dominion in late medieval Bohemia: the Rožmberk domain], str. 403.

⁶⁷ No. 371 in *Listář a listinář Oldřicha z Rožmberka (1418–1462)* [The Epistolary of Oldřich of Rožmberk (1418–1462)]. Vol. 4, 264.

Whenever the lords of Rožmberk wrote to their servants and clients, they addressed the servants as “the commanded” (“přikázání”), that is those in service. When they addressed the clients, they spoke of them as the “neighbouring yeomen” (“okolní zemané”).⁶⁸

The truth probably lies somewhere between the two approaches. Šimůnek’s approach seems strict when based on the records and does not allow other interpretations. Novotný’s approach is sometimes more speculative. However, it seems more appropriate as it gives a certain weight to the typified salutations, which often appear in the Rožmberk correspondence.

The Kingdom of Poland

My presentation of the history of Poland will be rather brief as I cannot cover every nuance of its complex development. I will describe, essentially, the general history in this subchapter, following approximately the time period of my Polish primary sources — the municipal law books of Łęczyca and Kalisz.

In 1333, the Polish king Władysław Łokietek left the kingdom to his son Casimir III smaller than he had gained it thirteen years ago. The country was devastated after incessant fights with the Teutonic Order that occupied even Kuyavia, the ancestral duchy of the Piast dynasty, and in need of stability, as it was threatened from many sides.⁶⁹ The relations with the kingdom of Bohemia, which were tense due to the old claim of the Czech kings on the Polish throne, started to ease up when the future Czech king Charles IV betrothed his sister to the Polish king. Although she died before the actual marriage, Casimir agreed to marry the

⁶⁸ The last term can be found in the declaration of war from 1452 to emperor Friedrich, and thus supports the Novotný’s theory. See No. 488 in *Listář a listinář Oldřicha z Rožmberka (1418-1462)* [The Epistolary of Oldřich of Rožmberk (1418-1462)]. Vol. 4, 349.

⁶⁹ Jerzy Lukowski, and Hubert Zawadzki. *A concise history of Poland*. (Cambridge: Cambridge University Press, 2019), 26.

daughter of a Bohemian ally, the landgrave of Hesse. This probably helped to secure the Treaty of Trenčín in 1335 by which Casimir resigned his claims on the Silesian principalities and the Czech king waived his claim to the title of Polish king in return.⁷⁰

Casimir also renewed an ongoing truce with the Teutonic Knights, which resulted in the Treaty of Kalisz in 1343. Casimir's Poland regained the Kuyavia and Dobrzyń regions but had to give up claims on the city and port of Gdańsk and the duchy of Pomerania.⁷¹ In 1340, he launched an invasion into Halych and Volhynia that was possibly instigated by the fear that the Tatars, occasionally raiding the eastern parts of Poland, would eventually impose their direct rule over it.⁷² Apart from creating a buffer zone to protect the Polish kingdom, Casimir also wanted to secure the fertile lands of Halych as a compensation to the lands lost to the Teutonic Order. The gains with the centre of Lwów would not have been possible without the support of Louis of Hungary who was, in return, promised to receive them after the death of Casimir.⁷³

During his life, Casimir III did not manage to produce a male heir with his four wives. Therefore, in 1368, he designated his grandson Każko of Słupsk in Pomerania, to whom he bequeathed his patrimony of Łęczyca, Sieradz, and Kuyavia, to be the future king.⁷⁴ However, Casimir's last will was eventually ruled as invalid by the court in Sandomierz, which voted for Louis of Hungary instead.⁷⁵ The new king resided most of the time in Hungary and ruled in Poland largely through his mother Elisabeth, Casimir's sister. His reign meant the beginning of the process of domination of the high nobility in Poland and the formation of their knight clientele. This process was spurred mainly by Louis' attempt to negotiate a succession for his

⁷⁰ Jiří Friedl, Tomasz Jurek, Miloš Řezník, Martin Wihoda. *Dějiny Polska* [History of Poland]. (Prague: Nakladatelství Lidové noviny, 2017), 110—111.

⁷¹ Norman Davies. *God's Playground: A History of Poland: The Origins to 1795*. (Oxford: Oxford University Press, 2005), 78.

⁷² Jerzy Lukowski, and Hubert Zawadzki. *A concise history of Poland*, 30.

⁷³ Norman Davies. *God's Playground: A History of Poland: The Origins to 1795*, 90.

⁷⁴ Marceli Kosman, et al. *Dějiny Polska* [The history of Poland]. (Prague: Charles University, 2011), 61.

⁷⁵ Jerzy Lukowski, and Hubert Zawadzki. *A concise history of Poland*, 35.

daughters. In order to secure this, he needed the approval of the Polish nobility to whom Louis in 1374 granted the Privileges of Košice, large tax privileges known as *poradlne*.⁷⁶ His plan to have his daughter Mary married to Sigismund of Luxembourg was, however, met with fierce opposition from the Polish nobles, who feared a unification of the two mighty Houses. The royal side offered Jadwiga, the younger daughter as a substitute. Although the Małopolska and Wielkopolska lords, two powerful side of the Polish nobility, agreed, and she was crowned “king” in 1384, two years after her father’s death, she was eventually betrothed to the Lithuanian pagan ruler Jagiełło (Jogaila). After the Treaty of Krėva in 1385, struck by the regency council of the queen-mother and Małopolska lords, Jagiełło indeed married Jadwiga and was crowned king of Poland.⁷⁷ In exchange, he annexed the huge Lithuanian principality to Poland and received Latin baptism along with his brothers. The whole of Lithuania was to follow. According to Jerzy Lukowski, Jagiełło’s approval to marry the heiress of the Polish kingdom was a desperate gamble to avoid two threats: the inevitable subjection to the Teutonic Order which was pushing hard on Lithuania, and the danger of its growing Eastern neighbour—the Muscovy state.⁷⁸ This state union meant a relief for the Polish lords of Małopolska as well. They hoped for neutralization of the danger of the powers that threatened the fertile territories of Halych and Volodimir. First and foremost, the danger came from the unpredictable Lithuania itself, for Jagiełło had sacked the town of Sandomierz in 1376.⁷⁹ Second, the threat came from the Tatars, who occasionally raided the lands in this direction. Finally, there were the Ottomans, who kept expanding slowly around the Black Sea.

The Teutonic Order proved to be the union’s archenemy. Even though it abided by the truce with Poland of 1343, the order did not recognize its union with Lithuania which suffered

⁷⁶ Jerzy Lukowski, and Hubert Zawadzki. *A concise history of Poland*, 36.

⁷⁷ Jiří Friedl, Tomasz Jurek, Miloš Řezník, Martin Wihoda. *Dějiny Polska* [History of Poland], 144.

⁷⁸ Jerzy Lukowski, and Hubert Zawadzki. *A concise history of Poland*, 38.

⁷⁹ Robert I. Frost. *The Oxford History of Poland-Lithuania: Volume I: The Making of the Polish-Lithuanian Union, 1385—1569*. (Oxford: Oxford University Press, 2018), 17.

from its repeated raids.⁸⁰ When an uprising against the order broke out in Samogitia, the Polish kept it no secret that they would support Lithuania in a war for which both sides had prepared for a long time. After a provocation by a Polish embassy, Ulrich of Jungingen, the grand master of the Teutonic Order, declared war on Poland. Despite the order's rapid advance in the first phase of the war, and a short-lived truce mediated by Wenceslaus IV, the war resulted in the decisive battle of Grunwald in 1410.⁸¹ The Teutonic army was crushed by the united Polish-Lithuanian forces and the grand master was killed. Although the massive fortress Malbork (Marienburg), which was the capital of the Teutonic Order, managed to resist the Polish army, and a peace was eventually struck, the order never regained its former power.⁸²

The victory at Grunwald strengthened the Polish-Lithuanian union and it also raised its international prestige. The union was internally a very stable state entity, which was an accomplishment of both the Lithuanian dynasty and the noble society of Poland. In 1413, Jagiełło signed a treaty of Horodło in which the Lithuania's future leader, who was to be elected in accordance with the Polish king and nobility, was granted the title of supreme duke. However, the most important deal was struck regarding the succession to the Polish throne. Should Jagiełło, who was already sixty years old, die without a male heir, the Polish-Lithuanian noble society was supposed to choose the new king.⁸³ Although the crisis was warded off with the succession of Władysław III, a solution had to be sought again in 1440 when the young king died in the battle of Varna while fighting the Ottomans in an attempt to save Constantinople.⁸⁴

⁸⁰ Marcelli Kosman, et al. *Dějiny Polska* [History of Poland], 73.

⁸¹ Jiří Friedl, Tomasz Jurek, Miloš Řezník, Martin Wihoda. *Dějiny Polska* [History of Poland], 151.

⁸² Robert I. Frost. *The Oxford History of Poland-Lithuania: Volume I: The Making of the Polish-Lithuanian Union, 1385—1569*, 106.

⁸³ Marcelli Kosman, et al. *Dějiny Polska* [History of Poland], 72.

⁸⁴ Norman Davies. *God's Playground: A History of Poland: The Origins to 1795*, 110.

In this general outline of Polish history my intention was not to give the reader an exhaustive overview of all the events, but rather to offer some historical background I considered important for the studied period at the turn of the fourteenth and fifteenth century.

The institution of hostageship

It can be quite difficult and laborious to trace the origins of the hostage institution. The principal reason for this complexity is that the late antique and medieval examples which talk about an exchange of prisoners are also often considered from a hostage point of view by modern researchers. However, it is necessary to take into consideration that there was often a thin, permeable line between hostageship and captivity, with one phenomenon blurring another and vice versa. The ambivalence of the two terms is often uneasy to work with. The primitive origins of personal liability can be traced back to the Slavic tribes, in particular to the rule of the first Přemyslids in Bohemia and Piasts in Poland. In case of defeat in an armed conflict, the defeated party usually gave some of its more important members "into captivity" as a pledge. These prisoners — as here it is possible to substitute this term for hostage — then guaranteed the correct fulfilment of the agreed conditions. If the defeated party did not manage (or did not want to) meet its obligations in time, the released hostages were then forfeited to the victors who could deal with them as they pleased.⁸⁵

A similar system applied for debt guarantees. If the debtor did not raise funds to repay the debt, his pledge — the hostage in the sense of guarantee — bore the full accountability and was forfeited to the creditor.⁸⁶ He had the right to enserf the hostages and then use them to work on his estates or sell them into slavery. The debtor — or the obligated party — could also guarantee the contract by his own person. This option, nevertheless, did not provide sufficient guarantees to the creditor, especially if the debtor was poor and his position was not likely to improve. Therefore, the creditor was entitled to refuse the debtor's own liability and to claim

⁸⁵ Theodor Saturník. *Život starých Slovanů. O právu soukromém u Slovanů v dobách starších* [Life of the old Slavs. About the private law at the Slavs of the ancient times]. (Prague: Česká akademie věd a umění, 1934), 132.

⁸⁶ Dąbkowski, *Rękojemstwo w prawie polskim średniowiecznym* [The hostageship in the Polish medieval law], 12.

another person as guarantor. Although it is not possible to date it precisely, this is when the institution of hostageship slowly began to be established.⁸⁷

The emergence of hostageship can also be explained from the need of a written contract. If the performance of the contract corresponds only to an empty promise, there is no binding contract. The promising person is not obliged to keep his word and the accepting one cannot enforce the promise well enough. Over time, in view of the increasingly complex circular relations of trade and monetary system, a need arose to conclude written contracts in which a certain period of time elapsed between the promise and the performance. However, it turned out that two aspects needed to be remedied, factual and legal.⁸⁸ The creditor could not believe the debtor's promise, and at the same time the debtor could not fully trust the creditor to release him from the obligation if the conditions were met. Therefore, the parties subsequently agreed on some security. It could be money or property, but also a person — a hostage, who was not only the subject of exchange, but also a kind of connecting link between the debtor and the creditor. He secured the agreement, assumed the obligations and rights of both parties, and ultimately it might also be in his interest to complete the contract.

The hostage

At first, a hostage was supposed to be a man of lordly or at least knightly origin. With the increasing need of contract security, even people of peasant origin started to be employed. In any case, this person had to be of legal age and legally competent. Nevertheless, children, and in some cases new-borns, have commonly become hostages throughout Europe.⁸⁹ However, Czech, and Polish customary law differed fundamentally in this respect and did not

⁸⁷ For more theories about the origins of hostageship in Slavic countries see: Przemysław Dąbkowski. *Rękojemstwo w prawie polskim średniowiecznym* [The hostageship in the Polish medieval law], 44.

⁸⁸ Przemysław Dąbkowski. *Rękojemstwo w prawie polskim średniowiecznym* [The hostageship in the Polish medieval law], 19.

⁸⁹ Adam J. Kosto. *Hostages in the Middle Ages*, 33.

in principle recognize child hostages. In the event of a minor being held hostage, the entire contract was threatened with invalidation.⁹⁰ A female person could usually become a hostage too.⁹¹ This practice was probably widespread, especially in western medieval Europe, but the evidence exists of voices emerging against it over time, trying to ban it. Most probably both the church and the land authorities fought against the practise of female hostageship.⁹² There could be various reasons, as late medieval society suspected women of a number of iniquities, such as the desire for property and money or dissoluteness. Behind these substitutive problems was, at least in the Bohemian and Polish kingdoms, probably the *obstagium* of the hostages — that is a sort of contractual internment of hostages. This issue will be elaborated upon later in the sub-chapter “The obstagium and the obsides”. The institution of *obstagium* was quite problematic due to the potential excesses of the participants, and its conditions had to be adjusted by various decrees. This is probably why the use of female-hostages was so sporadic.⁹³

Another group whose participation as hostage was regulated were persons of priestly ordination.⁹⁴ This may sound a little strange, given the decree of Pope Alexander III, who de facto recognized hostages as part of canon law.⁹⁵ Dąbkowski argues that canonical hostages were rather ill-regarded by their authorities because they could endanger the property of the Church.⁹⁶ In the sources I have studied, however, I rarely came across the hostageship of monks and priests. An exception in the monitored Czech sources remains the report from 1437 on the

⁹⁰ Rudolf Rauscher, *K rukojemství v českém právu zemském* [To hostageship in the Czech land law], 22.

⁹¹ For example: no. 2034 in: *Archiv český, čili, Staré písemné památky české i moravské: sebrané z archivů domácích i cizích* [The Czech archive, or, The ancient Czech and Moravian manuscripts: from both local and foreign archives]. Vol. 19, 19.

⁹² Adam J. Kosto. *Hostages in the Middle Ages*, 85—92.

⁹³ For one of the rare exceptions see, for example, no. 858 in: *Teki A. Pawińskiego: Księgi sądowe łęczyckie od r. 1385—1419* [A. Pawiński's files: Court books from Łęczyca 1385—1419], vol. 1, 80.

⁹⁴ Jaromír J. Haněl. *O vlivu práva německého v Čechách a na Moravě* [About the influence of the German law in Bohemia and Moravia]. (Prague: Jednota právnická, 1874), 87.

⁹⁵ *Decretales D. Gregorii papae IX. Suae integritati una cum glossis restituae*. (Rome: Aedibus Populi Romani, 1584), 570, cited in František Čáda, *Ležení podle českého práva zemského: K osobní exekuci 2* [Obstagium under Czech land law: To the personal execution 2], 6.

⁹⁶ Przemysław Dąbkowski. *Rukojemstwo w prawie polskim średniowiecznym* [The hostageship in the Polish medieval law], 157.

hostageship of Bishop Leonard of Passau, which, however, probably followed German law.⁹⁷ The remaining segment of society that could not become hostages were the Jews.⁹⁸ However, they were allowed to be on the other side of the hostageship, that is, to become creditors or debtors with all their rights.⁹⁹

The hostage was to be irreproachable and at the same time able and willing to dispose of relatively large assets in order to be “bene possidentes” and “certus” so the hostageship was “sufficiens”.¹⁰⁰ In case of need, the hostage would use his income during the hostageship and eventually lose it under certain conditions. The creditor preferred the hostage to be an inhabitant of the local area because of the specific law that applied in the region. Nevertheless, there might have existed a declaration for foreigners to accept the authority of the creditor’s law area, respectively of the local court of law.¹⁰¹ During the hostageship, any disputes and summons, known as “půhony” in Old Czech, against the hostages were to be postponed or the hostages were to enjoy certain advantages.¹⁰²

The number of hostages participating in the contracts varied greatly. The minimum was usually two or three persons – this is, for example, the number of people commonly used in most of the contracts in Łęczyca.¹⁰³ However, cases with just one hostage can be found as well. In these special contracts it is fathers serving as hostages for their sons or husbands serving as hostages for their wives. Strangely enough, one-person hostageships are found only in

⁹⁷ No. 320 in: *Listář a listinář Oldřicha z Rožmberka (1418-1462)* [The Epistolary of Oldřich of Rožmberk (1418-1462)]. Vol. 1, 214.

⁹⁸ František Čáda, *Ležení podle českého práva zemského: K osobní exekuci 2* [Obstagium under Czech land law: To the personal execution 2], 37.

⁹⁹ No. 142 in: *Libri citationum et sententiarum, seu, Knihy půhonné a nálezové 2* [Books of summons and findings 2]. Vincenc Brandl, ed., (Brno: Sumptibus Deputationis March. Moraviae, 1873), 32.

¹⁰⁰ Przemysław Dąbkowski. *Rękojemstwo w prawie polskim średniowiecznym* [The hostageship in the Polish medieval law], 153.

¹⁰¹ Przemysław Dąbkowski. *Rękojemstwo w prawie polskim średniowiecznym* [The hostageship in the Polish medieval law], 154—155.

¹⁰² Valentin Urfus, *L’évolution des sûretés personnelles dans l’ancien droit tchèque* in: *Les sûretés personnelles: Deuxième partie. Moyen âge et temps moderne*, (Bruxelles : Librairie Encyclopedique, 1971), 818.

¹⁰³ For example: No. 1236 in: *Teki A. Pawińskiego: Księgi sądowe łęczyckie od r. 1385—1419 1419* [A. Pawiński’s files: Court books from Łęczyca 1385—1419], vol. 1, 116.

municipal law books of Łęczyca and not at all in the kingdom of Bohemia.¹⁰⁴ This could be partly explained by the higher importance of treaties in the Rožmberk epistolary that required more people to guarantee them. The number of hostages for financial sums also varied, usually from three to eight. It is difficult to assess this, but it seems that the greater the amount of guaranteed money was, the greater was the number of hostages in the contract.¹⁰⁵

For the sake of completeness, it should also be noted that the hostage as a third party to the treaty was not a tradable means of diplomatic exchange in the Czech and Polish late medieval environment. It is another important characteristic that distinguished a hostage from a mere prisoner. Unlike a prisoner, a hostage was supposed to have the right to decide whether or not to ensure that particular contract with his honour and faith, property and, possibly, his own freedom. If he lost this option and was exchanged for another person, he would become a prisoner.

¹⁰⁴ For example: No. 2554 in: *Teki A. Pawińskiego: Księgi sądowe łęczyckie od r. 1385—1419 1419* [A. Pawiński's files: Court books from Łęczyca 1385—1419], vol. 1, 239.

¹⁰⁵ For example: The sale of Rožmberk fortress Helfenburk along with a revenue of 400 threescores of groschen per year from its estates to Jan of Lobkovice in 1458 was guaranteed by fourteen hostages. See: No. 100 in: *Rožmberské dluhopisy z let 1457—1481* [The Rožmberk bonds from 1457—1481], 41—42.

Hostageship in late medieval Bohemia and Poland: mechanisms and agents

The debtor

One of the central terms in the domain of the late medieval Bohemian hostageship is *jistec* or debtor. This concept is both important and difficult because it is endowed with several meanings in Old Czech, some of which may be ambivalent. The term *jistec* appears not only in virtually all property rights treaties, but also in the peace treaties of fifteenth-century Bohemia. Most significantly, the term denotes the owner of property, service, or things; a person who has a certain and undoubted right to dispose of something or someone in the case of captured servants. The person referred to as *jistec* usually promises to finish a sale by entering it in the land registers (“desky zemské”), or to fulfil an offer to the buyer. In simple terms, *jistec* is the real owner who stands at the beginning of a contract between several people and “gives it birth.” The primary meaning is aptly illustrated by a contract of Oldřich of Rožmberk, who in this case performed the role of *jistec* as owner:

I, Oldřich of Rožmberk declare by this deed to all the people who will read or hear it that I have sold with good consideration, and by this charter I am selling eight threescores of the good silver groschen coined in Prague of the annual revenue in the village of [...] utterly as it was in my holding [...]. If, however we [there is a switch to “us, Oldřich”] do not repurchase the revenue back in the settled time, then I, the aforementioned Oldřich of Rožmberk who is the *jistec*, and us the hostages [...], promise with Oldřich and for Oldřich [to make a record of the transaction into the *land registers*, and to make it permanent if Oldřich of Rožmberk would want to buy it back.]. For all this, for the sake of firmness, security, and confirmation, all of us, the *jistec* and our hostages, have attached our seals with our good cognizance.¹⁰⁶

¹⁰⁶ “Já Oldřich z Rosenberka vyznávám tiemto listem všem, ktož jej čísti neb čtúce slyšeti budú, že jsem z dobrým rozmyslem a potazem prodal a tiemto listem prodávám osm kop platu ročního grošuv dobrých stříbrných rázu pražského ve vsi [...] tak úplně, jakož jsem sám držal [...]. Paklibychme v tom času toho platu zasě neodkúpili, tehda já Oldřich svrchupsaný, *jistec* [slibuji se svými rukojmími zapsat novému majiteli vsi onen plat a zboží v zemské desky, pokud bych ho do tří let nevykoupil]. Tomu všemu na pevnost, jistost i potvrzení my všickni *jistec* i rukojmie své jsme pečeti naším dobrým vědomiem k tomuto listu přivěsili.” No. 135, in *Listář a listinář Oldřicha z Rožmberka (1418-1462)* [The Epistolary of Oldřich of Rožmberk (1418-1462)], vol. 1, 89.

In the example above, Oldřich was selling one of his villages so he could get money to finance his costly military and political campaigns. In the contract, he clearly performs as the owner of the village whose revenue he was selling. For the safe conduct of the contract, but also to increase the trust of the buyer, he employed hostages from the ranks of his knightly clients. Although there is no information about the aftermath of the purchase, the *jistec*-owner was ideally also present at the moment when the fulfilled contract was destroyed in the presence of the witnesses.

The other, more usual interpretation of the term *jistec* is “debtor”. In this sense, *jistec* is paradoxically opposed to *jistec* as owner (as in the first meaning above), often producing ambiguous texts. The meaning of debtor prevails in the texts discussed here: it is often explicitly mentioned as debtor—*jistec* as opposed to owner—*jistec*, who remains in the background but still appears in contracts in the form of the name of the property owner. This is clear from the agreement between Oldřich of Rožmberk and the united townships of Písek, Tábor, and Vodňany, concluded in the year 1444, which responds retroactively to the peace proclaimed by Emperor Sigismund in the Kingdom of Bohemia in 1436. The treaty was settled between an alliance of the South-Bohemian mostly Hussite townships on one side, and the Catholic House of Rožmberk represented by its leader Oldřich on the other. It focused mostly on the safety in the region, freedom of worship, the exchange of prisoners of war, but also on the people indebted directly or indirectly because of the war:

If, however the debtor, be it the *jistec* or the hostage, were so poor that he could not perform his financial obligation, he or they should give some warranty to their creditors. If they do so, they should not be hindered by their obligation anymore.¹⁰⁷

As Czech linguist Martina Jamborová points out, the term *jistec* in the sense of “debtor” (or directly in the literal connection of the “debtor *jistec*”) usually occurs as part of a contract or in

¹⁰⁷ “Pakli by dlužník, buďto *jistec* neb rukojmie, tak chud byl, nemaje čím plniti, má neb mají žádajícím pravá záruce dány býti vedle práva; když to učinie, tehdá žádný člověk hindrován o to nemá býti.” No. 405, in *Listář a listinář Oldřicha z Rožmberka (1418-1462)* [The Epistolary of Oldřich of Rožmberk (1418-1462)], vol. 2, 353.

correspondence, where the context is material or personal.¹⁰⁸ The occurrence of the word *jistec* is therefore entirely dependent on some type of liability.

“Owner” and “debtor” are, thus, the two most common meanings of the term *jistec*. Other interpretations that can be encountered marginally are *jistec* as “creditor”, i.e., the person lending some service or money, and *jistec* as “co-hostage” in treaties. Unless stated otherwise, in what follows the term *jistec* will be used in reference to a person who is obliged to someone as a debtor.

As for the Polish area, I have come across only one meaning of *iściec* — that of a debtor. However, in most of the sources, the search for an *iściec* would be in vain — the debtor is identified in the contracts by context only, and not by a specific term.¹⁰⁹

The obstagium and the obsides

One of the fundamental instruments in the Bohemian, and to a lesser extent Polish hostageship customary law was the so-called *ležení*, or *obstagium* in Latin and *załoga* in Polish. The term itself—in Old Czech *leženie*—derives from the word denoting the action of “laying somewhere, staying at somebody’s place”.¹¹⁰ The person to do so was called *ležák* in Czech while the term in Polish is the same as *załoga*.¹¹¹ The Latin term for such a person—*obses*, pl. *obsides*—semantically highlights those who sit in the foreground. It is possible to assume that they could enjoy some sort of prominence but were also exposed to everyone’s sight—and

¹⁰⁸ Martina Jamborová. Staročeské lexémy původ, jistec a žalobník — příspěvek k synonymům staročeských právních termínů [Old Bohemian lexemes summons, jistec and plaintiff — a contribution to the synonyms of Old Czech legal terms]. In: *Rara Avis 10*, eds. Dana Palečsková, Zdenka Kumorová, Peter Gregorík. (Trnava: Filozofická fakulta Univerzity sv. Cyrila a Metoda v Trnave, 2013), 76—82.

¹⁰⁹ For example: no. 4765 in: *Teki A. Pawińskiego: Księgi sądowe łączyckie od r. 1385—1419 1419* [A. Pawiński’s files: Court books from Łęczyca 1385—1419], vol. 1, 475.

¹¹⁰ *Elektronický slovník staré češtiny* [Electronic dictionary of Old Czech]. Prague, 2006—, online: <https://vokabular.ujc.cas.cz> [data version 1.1.18, accessed 13. 7. 2021], entry *leženie*.

¹¹¹ *Conceptual Dictionary of Old Polish*, online: Słownik pojęciowy języka staropolskiego - Hasło (pan.pl) [accessed 18.7.2021], entry *załoga*.

therefore could not leave their position. In this thesis, the Latin terms will be used by default while the vernacular ones will be employed only if there was no equivalent in Latin.

The *obstagium*, which was allowed only to both lesser and higher nobility, represented a kind of second level of duty that a debtor, or a hostage—as will be explained later—usually committed himself to the original treaty.¹¹² The first step was, of course, for him to pay the arranged amount of money or fulfil some sort of other obligation by the contract, such as arriving at a certain place at the agreed time. However, it was common that neither the debtor nor his hostages were able to pay on time, so the debtor could expect to receive a letter from the creditor that demanded him to report to the stipulated *obstagium*. Its purpose was to increase pressure on the debtor to fulfil what he promised in the original treaty. By staying in the *obstagium*, the hostages paid for their expenses. Although they had to pay from their own savings, the amount of money spent in the internment was then added to the total sum demanded from the debtor. It was therefore in his interest—as will be shown below—to satisfy the creditor as soon as possible.

The relationships and duties pertaining to *obstagium* can be illustrated using the example of an agreement from 1426 between Oldřich of Rožmberk and Pavel, a burgher from Nové Hradky, on the sale of an annual revenue of a threescore of groschen in a village called Meziříčí:

[If we hostages do not meet our obligations under the contract], then two of us hostages and custodians of the aforementioned—who would be reminded first by Pavel or his heirs—hereby swear and are bound that each of us with a servant and two horses will come to the town of Krumlov and enter a fair public House that will be shown to us by Pavel or his heirs. There we shall perform the fair and customary *obstagium* from which we shall not escape under any law until we pay for all what we are bound for in the contract.¹¹³

¹¹² Przemysław Dąbkowski. *Załoga w prawie polskim średniowiecznym* [The *obstagium* in the Polish medieval law], 31.

¹¹³ “Pakli bychom [my rukojmí nedostáli svým závazkům vyplývajícím ze smlouvy] toho neučinili, tehda dva z nás rukojmí a zprávcí předepsaných, kteráž najprve dříve řečeným Pavlem neb jeho dědici upomenuti budem, každý s jedním pacholkem a se dvěma koňoma dlužni sme a slibujem vniknutí a vjeti do města Crumlova do

As this example makes clear, the *obstagium* was a contractually agreed public place that was sufficiently frequented or known in the region, a place where an *obses*—as the debtor or a hostage who entered the *obstagium*—was exposed to the public scrutiny. Although they are not usually mentioned in the treaties specifically, these places were often found in an inn or a burgher's House where the hostages could fulfil the given duty. The debtor was forced to drive to this place, and it was there that he proved himself by the treaty, usually no later than one month after receiving the written summons and began a forced stay in internment as an *obses*. The length of the *obstagium* was set to at least two weeks, but in general the rule was that for an *obses* to leave the place, it was first necessary to fulfil the settled obligations.

However, there was a way for the debtor to avoid the mandatory and costly internment: he could call his hostage(s) to enter the *obstagium* in his stead as is literally stated in the contract below:

But we Oldřich of Rožmberk, when we are to be reminded for the customary *obstagium*, can engage another decent person of a knightly estate to come there instead of us, and we can do so without any injustice.¹¹⁴

Then it was up to the *obsides* to fulfil the obligation—that is, in the Bohemian customs, to pay the debt or fulfil the commitment—but even in this case the treaties allowed for the noble hostages to avoid this internment (as the debtor had done). Each noble hostage who was of the lordly or knightly estate could call for themselves a substitute in the person of a squire “of a worthy knightly class” (*dobrého řádu rytieřského*) who then assumed the obligation to undergo the *obstagium* instead of them.¹¹⁵ The hostages who did so retained their personal

poctivé hospody nám předřečeným Pavlem neb jeho dědici ukázané ku plnění ležení hodného a obyčejného, odtud na nižádné právo vyniknutí nemajíc, dokudž bychom za předepsané zpravenie a za všechny škody, kteréž by pro to naše nezpravenie a nevysvobozenie mohly vyniknutí, dosti neučinili.” No. 46, in *Listář a listinář Oldřicha z Rožmberka (1418-1462)* [The Epistolary of Oldřich of Rožmberk (1418-1462)], vol. 1, 34.

¹¹⁴ “Ale my Oldřich z Rožmberka ku předepsanému ležení napomenuti jsúce, můžem jinú osobu rytieřskou hodnú miesto sebe v to ležení zjednati a postaviti bez všelikaké odpornosti.” No. 46, in: *Listář a listinář Oldřicha z Rožmberka* [The Epistolary of Oldřich of Rožmberk (1418-1462)], vol. 1, 34.

¹¹⁵ No. 2 in: *Listář a listinář Oldřicha z Rožmberka (1418-1462)* [The Epistolary of Oldřich of Rožmberk (1418-1462)], vol. 1, 3.

freedom as well as their honour. They fulfilled their duties and thus neither the creditor—that is the person to whom the hostages were bound by obligation—nor the debtor could blame them for the opposite. Although this is not expanded on in the treaties further, from the 1440s onwards, the institution of the substitutes attests to an emergence of the new structure consisting of the hostages and the *obsides*, that is people who may or may not have become hostages. They only assumed the duty of entering and staying at the *obstagium*, but otherwise they did not guarantee the treaty itself, and neither were they likely to be held accountable for the obligations imposed by the treaty to the creditor. Instead, their deeds at the *obstagium* were the full responsibility of the hostage whom they substituted. This is demonstrated, among other things, by the fact that the relevant treaties that have come down to me contain no seals that these substituting *obsides* would attach as a token of their consent. It might be possible this custom was common only in the Bohemian kingdom because I have not found it in any of the Polish sources.

The debtor's messenger, who brought the summons to a hostage in an *obstagium*, was probably not to require the hostage to enter the *obstagium* immediately or even accompany him there. The arrival probably did not take place immediately upon receiving the summons, but only after a certain time necessary for the hostage to organize his business. There were cases of weeks' or months' delay, but it was apparently possible to arrive at the *obstagium* even a year later.¹¹⁶

The places eligible for *obstagium* could be many and it is not quite clear what was the decisive factor for their choice. As for the hostages of the Rožmberk domain, most of the *obstacia* took place in České Budějovice. By choosing a major royal city, a neutral power in local contracts, the Rožmberks probably demonstrated a good will for transparency to the other

¹¹⁶ *Kniha Tovačovská, aneb, Pana Ctibora z Cimburka a z Tovačova Paměť obyčejů, řádů, zvyklostí starodávnych a řízení práva zemského v Markrabství Moravském* [The Tovačovská book, or a composition of customs, codes, and old traditions and laws of the Moravian margraviate by lord Ctibor Tovačovský of Cimburk and Tovačov, the land hetman of the Moravian margraviate], ed. Vincenc Brandl (Brno: V. Brandl, 1868), 96.

members of contracts. This cannot be said for the second most common town for *obstagium*, Český Krumlov, as it was the capital of the Rožmberk domain. The same applies for the towns of Jindřichův Hradec and Třeboň, another two of important Rožmberk bases, that are mentioned several times in the treaties. They are followed by other more or less important towns, but those were used as *obstagia* only once or twice.¹¹⁷ One can also find several clauses where hostages are bound to come to an *obstagium* in a different town or place up to three, four, or five miles distant from one of the towns already discussed. Some cases even suggest an *obstagium* taking place in the towns of the warring parties, that is each party had to enter the *obstagium* in a hostile town.¹¹⁸

In this connection, it is necessary to refuse the theory of a Czech historian František Čáda who says a practice similar to a Polish customary law applied in the case of distance, that is the *obstagium* took place in the same town where the creditor resided.¹¹⁹ This could be true for the kingdom of Poland because the only three cases of Polish *obstagium* cases I have been able to find seem to prove Čáda's theory, although only one of them specifies from where the creditor came from.¹²⁰ However, it does not apply for the Czech lands, or at least not entirely, as can be shown on numerous cases in the Rožmberk epistolary. There the *obstagium* often takes place in a royal town such as České Budějovice.¹²¹

What were the reasons behind the decision to avoid *obstagium* in Bohemia? Leaving aside more or less unpredictable events such as enemy incursions and the dangers of travel, financial reasons were definitely in the forefront. The internment of the *obsides* in a designated

¹¹⁷ In the reference period České Budějovice appeared in the *Rožmberk Epistolary* as a place for *obstagium* at least twenty times. Český Krumlov appeared at least fourteen times while Jindřichův Hradec and Třeboň only nine times.

¹¹⁸ No. 453 in: *Listář a listinář Oldřicha z Rožmberka (1418-1462)* [The Epistolary of Oldřich of Rožmberk (1418-1462)], vol. 3, 317.

¹¹⁹ František Čáda, *Ležení podle českého práva zemského: k osobní exekuci 2* [Obstagium under Czech land law: To the personal execution 2], 47.

¹²⁰ For example: No. 4165, *Teki A. Pawińskiego: Księgi sądowe łączyckie od r. 1385—1419* [A. Pawiński's files: Court books from Łęczycza 1385—1419]. Vol. 1, 400.

¹²¹ For example: Nos. 135 and 139, in *Listář a listinář Oldřicha z Rožmberka (1418-1462)* [The Epistolary of Oldřich of Rožmberk (1418-1462)], vol. 1, 89—91, respectively 94.

House lasted for at least two weeks, during which the hostages had to have their meals at their own expense and to while away the time. The circumstances of the *obsides* probably varied from one place to another: treaties of Moravian origin, for example, suggest that the local hostages had to endure harsher conditions than those in Bohemia. If, for any reason, the maturity date of the obligation was being delayed by the debtor or the hostages, another pair of hostages soon joined them and in the extreme case up to six pairs of hostages could be present on the spot with a total duration of twelve “Sundays”. From the surviving materials we can conclude that the newcomers did not swap places with the hostages that were already in the *obstagium*, but simply joined them:

If, however, it would happen that the two of us *obsides* have been lying in the *obstagium* for fourteen days [...] and the aforementioned things would not have been given to our creditors in the full extent, then immediately another two of us hostages — when we get the summons from the creditors—shall, and promise to, enter the *obstagium*. [...] And we [all hostages] hereby swear that we shall continue doing so up until the last two hostages [have left the *obstagium*].¹²²

This procedure was common in Moravian law, as evidenced by the aforementioned *Kniha Tovačovská*, but there are similar cases in the Rožmberk treaties falling under the Bohemian law, though less frequently.¹²³ This practice seems to be also common for some parts of Poland though no phrase like the one above appears in the studied sources.¹²⁴

From the *obstagium* procedures described so far, it appears that the first pair of hostages bore the burden of the expenses as they stayed in the *obstagium* for the longest period. This is

¹²² “Pak-li by se náma prvníma dvěma ležákoma v tom *ležení* událo čtrnácte dní ležeti, čtúc od prvního dne napomenutí, a ty věci svrchupsané ještě naším věřitelóm dokonány nebyly, jakož svrchupsáno stojí, úplně a docela, tehdy ihned druhá dva rukojmě, kteráž napomenuta budem od našich věřiteluov svrchupsaných, máme a slibujeme vjeti a vléci, anebo místo sebe každý z nás poslati v též *ležení* do téhož města k témuž hospodáři tím vším obyčejem a právem, jako první dva ležáky a tak slibujem učiniti až do posledních dvou rukojmí.” *Kniha Tovačovská* [The Tovačovská book], 101.

¹²³ Nos. 120 and 148, in *Listář a listinář Oldřicha z Rožmberka (1418-1462)* [The Epistolary of Oldřich of Rožmberk (1418-1462)], vol. 4, 98, 124, respectively.

¹²⁴ Przemysław Dąbkowski. *Załoga w prawie polskim średniowiecznym* [The *obstagium* in the Polish medieval law], 23.

vaguely confirmed by František Čáda, but with no further specification.¹²⁵ The available sources do not make it clear how the sequence of *obsides* was determined, whether hierarchically, property-wise, or only in relation to the debtor or the creditor. The only indication available to us is the order in which the names of the hostages had been written in the contract, or the order of their seals.

The cost of the *obstagium* was all the greater because the lordly and knightly *obsides* were obliged, as mentioned above, to come to the place with at least one servant and two horses that had to be fed and taken care of. The number of persons required could also increase. The more hostages taking part at the *obstagium* meant necessarily bigger expenses to the debtor so, the greater number of hostages, the sooner the debt could be repaid.¹²⁶ It is, nevertheless, necessary to say that the servants were not included among the guarantors, as those could only be the original hostages mentioned in the contract or those officially added to the contract later in the event of unexpected circumstances, such as the death of a hostage. At the same time, the hostages had the right to send a substitute to the *obstagium*, but he must have been no less than a knightly squire.¹²⁷

The amount of expenses at the *obstagium* is an issue most of the sources stay silent about. There is one exception, however, namely the provision of the Moravian land hetman lord Ctibor Tovačovský in the *Kniha Tovačovská* which probably arose in response to the growing disputes between the owners of buildings intended for *obstagium* and the *obsides*. This provision was to serve as a determining rule for individual items in the *obsides*' expenditure. It did not contain anything new, but rather codified what had been already "said

¹²⁵ František Čáda, *Ležení podle českého práva zemského: k osobní exekuci 2* [Obstagium under Czech land law: To the personal execution 2], 36.

¹²⁶ Przemysław Dąbkowski. *Załoga w prawie polskim średniowiecznym* [The obstagium in the Polish medieval law], 27.

¹²⁷ *Listář a listinář Oldřicha z Rožmberka (1418-1462)* [The Epistolary of Oldřich of Rožmberk (1418-1462)], vol. 2, 122.

by the old lords”.¹²⁸ For a horse and person, per day and night, the regulation introduced eight coins; in the case of twelve persons and the same number of horses it was four groschen. Probably due to the growing number of fake *obsides* who were not hostages and did not pay their expenses, Ctibor Tovačovský advised the incoming *obsides* to produce a treaty or an accompanying letter of the hostage who employed them as his substitutes. However, disputes between *obsides* and innkeepers, and between the nobility and their servants, still occurred. This issue of social coexistence had to be dealt with not only by the state assemblies, but also by the regional rulers for almost the entire existence of the institute of *obstagium*.¹²⁹ They tried to find a solution in adjusting the price of items for which *obsides* were obliged to pay, as well as in stipulating exactly what innkeepers should offer at a fixed price so that no one would be slighted. Besides Ctibor Tovačovský, the margrave Jošt of Moravia was another authority who tried to set the prices in the *obstagium*. He ordered *obsides* to pay the innkeeper for their expenses quarterly each year. His rules also specified the use of baths and recommended to treat the barbers and inn servants benignly and kindly.¹³⁰

Despite these measures, the institute of *obstagium* retained its negative connotations, as it was difficult to control who was an *obses* and who was not.¹³¹ In addition, *obstagium* was associated with the revelry of young nobles, which is probably reflected in the Czech saying “young *obsides*, old beggars” (“Mladí ležáci, staří žebráci”).¹³² It was due to these growing

¹²⁸ *Kniha Tovačovská, aneb, Pana Ctibora z Cimburka a z Tovačova Paměť obyčejů, řádů, zvyklostí starodávňích a řízení práva zemského v Markrabství Moravském* [The Tovačovská book], Vincenc Brandl ed., 97.

¹²⁹ No. 169, in *Archiv český, čili, Staré písemné památky české i moravské: z archivův domácích i cizích* [The Czech archive, or, The ancient Czech and Moravian manuscripts: from both local and foreign archives]. Vol. 2, 388.

¹³⁰ No. 380, in *Libri citationum et sententiarum, seu, Knihy půhonné a nálezové nálezové* [Books of summons and findings], vol. 4.1, no. 2, ed. Vincenc Brandl (Brno: Sumptibus Deputationis March. Moraviae, 1881), 327.

¹³¹ Jana Janišová, and Dalibor Janiš. *Komentář k moravským zemským zřízením z let 1516-1604* [A commentary to the Moravian land laws from 1516—1604], 564.

¹³² Emmanuel Michálek. „Mladí ležáci – staří žebráci”. in: *Naše řeč*, Vol. 47, no. 3, (Prague, 1964), 189–191.

problems and the inefficiency of this liability method that the institution of *obstagium* was abolished in the kingdom of Bohemia at the end of the sixteenth century.¹³³

This chapter looked into the issues of the terms related to hostageship in the Kingdom of Bohemia and described how this institute worked in practice. The chapter took into account the slight but important differences between the Bohemian and Moravian law, and stressed the importance of the *obsides*, an important but mostly unknown group in the Bohemian hostage institute. While there are mentions of its existence in Poland, it seems to be entirely missing in the studied municipal law books. A further investigation of the omitted *obsides* category could prove fruitful when compared to other European legal areas.

The dismissal of hostages and property conveyance

In the previous chapter I have shown how the debtors and hostages literally spent their income and savings on food, drinks, and fodder for their horses in the place designated for them as *obstagium*. To force the debtor's party by increasing pressure of material conditions was essential for the creditor to have the contract eventually fulfilled. Once the hostage, who was spending his days in the *obstagium* internment, managed to gather sufficient resources to buy himself out according to the original treaty (or after having performed the contract), he was allowed to leave and was liberated from all his obligations. This process, known as *vyvazení* in the Czech sources and sometimes called *wipuszczenie* in the Polish ones,¹³⁴ was necessary to end the *obstagium*.¹³⁵ In most of the Polish cases, however, a Latin verb *delibero* was used:

¹³³ *Encyklopedie českých právních dějin* [Encyclopaedia of Czech legal history], vol. 10, R—Říš, ed. Karel Schelle, Jaromír Tauchen, 1st ed. (Pilsen: Vydavatelství a nakladatelství Aleš Čeněk, 2017), 677.

¹³⁴ See for example: No. 1165 in: *Teki A. Pawińskiego: Księgi sądowe łączyckie od r. 1385—1419* [A. Pawiński's files: Court books from Łęczycza 1385—1419], vol. 2, 134.

¹³⁵ *Elektronický slovník staré češtiny* [Electronic dictionary of Old Czech]. Prague, 2006—, online: <https://vokabular.ujc.cas.cz> (data version 1.1.18, accessed 13. 7. 2021), entry *vyvaditi*.

Broslaus of Szathowa has come to our presence and shows us eight threescores of groschen that he has owed to the heir of Sodkonius, heir of Sokolniki. He wants to liberate his hostage Mszikonis of Domanewo from the obligation.¹³⁶

Nevertheless, when the hostage was not liberated by the debtor, he was rightful to “vést škody” or “mít škody”, that is, he was allowed to keep record of his extra expenses in the *obstagium* after having paid the due amount of money to the creditor. The existence of these terms is confirmed in the studied Polish sources as well, the corresponding formula being: „szkode mać.”¹³⁷

In practice, this often meant taking loans with interest because the time spent in an *obstagium* could be very long. Although I have not been able to find an exact time duration, an example from Moravia in 1580 states that an *obstagium* lasted for 512 days.¹³⁸ In the meantime, the debtor could be sued by the hostage for these extra expenses. While the *obstagium* lasted, his sovereign and allies could be involved to help liberate him, and eventually even the provincial authorities could become involved:

And the people of you, my lord, have not been liberated yet. They have incurred great expenses at the obstagium, and these are getting greater by every new day. Therefore, my grace and noble lord, let Majnoš [i.e. a burgrave who was probably the debtor here] be commanded to liberate yours and the lord Drha's people. And may these people [hostages] be paid for all the expenses they have already paid and are paying still.¹³⁹

There are not, however, any known records of how this liberation from an *obstagium* happened. While some historians believe an established procedure must have existed, the

¹³⁶ „Broslaus de Szatbova veniens ad presenciam nostri, ostendit pecuniam octo marcas gross., quam debuit dare Sodkoni heredi de Sokolniki, volens deliberare suum fideiussorem, scilicet Mszikonem de Domanewo.” No. 4026 in: Teki A. Pawińskiego: *Księgi sądowe łeczyckie od r. 1385—1419 1419* [A. Pawiński's files: Court books from Łeczyca 1385—1419], vol. 1, 378.

¹³⁷ No. 784 in: Teki A. Pawińskiego: *Księgi sądowe łeczyckie od r. 1385—1419 1419* [A. Pawiński's files: Court books from Łeczyca 1385—1419], vol. 2, 89.

¹³⁸ Jana Janišová, and Dalibor Janiš. *Komentář k moravským zemským zřízením z let 1516-1604* [A commentary to the Moravian land laws from 1516—1604], 356.

¹³⁹ „A lidé páně vyvazeni nejsú a k velikým škodám přišli a ještě vždy berú. Protož, urozený pane, rač TMt [Tvoje Milost] přikázati Majnoši, ať páně lidi a páně Drhovy vyvadí člověk jeho z navrácením, co jsú již vydali a škod vzeli a berú.” No. 226, in *Listář a listinář Oldřicha z Rožmberka (1418-1462)* [The Epistolary of Oldřich of Rožmberk (1418-1462)], vol. 2, 211—212.

existence of a verbal or written conduct is only assumed.¹⁴⁰ There seems to be no luck on the Polish side either, where the hostage is believed to have been given some sort of liberation document.¹⁴¹ Otherwise, there are only phrases like “vipuscil] de eadem fidejussoria dnm XY” or “[...] exfideiussit seu per fideiussionem recepit”.¹⁴²

Another possible way one might be liberated from an *obstagium* was the intervention of a court or some force majeure. If the hostage died during the internment, it meant eternal relief only for him, but not for his heirs. While it is not clear if this custom existed in the Bohemian kingdom, the dead hostage’s obligation was at least in the Moravian margraviate passed on to heirs in the same way as it was under the municipal law of Brno from the middle of the fourteenth century onwards.¹⁴³ A similar practice is known for the city of Łęczyca where some contracts specifically stated the hereditary nature of one’s hostageship.¹⁴⁴

Sometimes it happened that the hostage who passed away did not have an heir. The other hostages were then required to find someone new as a substitute:

And if at that time one of us hostages would not be kept by God from death, may Lord God not let it happen, then the rest of us hostages who would stay alive swear to find another living hostage in place of the dead one. And this new hostage shall be as good and wealthy. And we shall find him in a month after being reminded by the aforementioned creditors. And we shall have this contract renewed in the same way once the new hostage is found...¹⁴⁵

Even after being liberated from the *obstagium*, the affair was still not over for the hostage. What followed was the phase of compensation of the “proležené”, that is all the

¹⁴⁰ Rudolf Rauscher. *K rukojemství v českém právu zemském* [To hostageship in the Czech land law], 24.

¹⁴¹ Przemysław Dąbkowski. *Rękojemstwo w prawie polskim średniowiecznym* [The hostageship in the Polish medieval law], 20.

¹⁴² No. 673 in: *Teki A. Pawińskiego: Księgi sądowe łęczyckie od r. 1385—1419 1419* [A. Pawiński’s files: Court books from Łęczyca 1385—1419], vol. 2, 77; and Przemysław Dąbkowski. *Rękojemstwo w prawie polskim średniowiecznym* [The hostageship in the Polish medieval law], 20.

¹⁴³ Miroslav Boháček. *Římské právní prvky v právní knize brněnského písaře Jana*. [The Roman legal elements in the law book of Jan, the scribe of Brno] (Prague: Bursík a Kohout, 1924), 15—16.

¹⁴⁴ No. 3604 in: *Teki A. Pawińskiego: Księgi sądowe łęczyckie od r. 1385—1419 1419* [A. Pawiński’s files: Court books from Łęczyca 1385—1419], vol. 1, 331.

¹⁴⁵ „A jestli že by v tom času z nás rukojmí, kterého pán Buoh smrtí neuchoval, jehož pane Bože nedaj, tehdy my živí a zuostali rukojmě slibujem jiného živého rukojmí místo toho umrlého, tak dobrého a mohovitého v jednom měsíci, po napomenutí našich věřiteluov svrchupsaných pořád počítající, k sobě v rukojemství přistaviti a list tento v táž slova obnoviti...” in: Vincenc Brandl, ed. *Kniha Tovačovská* [The Tovačovská Book], 101.

expenses incurred at the *obstagium* and on the journey the hostage had to make to get there. The person obliged to pay for these expenses was the debtor, who found himself in an unenviable situation be it in Bohemia, Moravia, or Poland.¹⁴⁶ The costs were added to the total debt, which as a claim only actually passed from the original creditor to the hostage who had just been liberated from *obstagium*. It often happened that the debtor was brought to court due to his unwillingness or inability to pay the claim and to pay the *obstagium* expenses.

As presented above, the knowledge of the pressure on the debtor's person through hostageship — albeit gradual and secondary — in order to fulfil his obligations, had to convince him that paying without the use of guarantors was in his interest. If the hostages were to claim the expenses, it would eventually make them numerous and conscious allies of the creditor. Perhaps they could be even called some sort of “secondary creditors” because they had to try, albeit with a certain delay in relation to the original contract between the creditor and the debtor, to have their *obstagium* expenses reimbursed by the debtor.¹⁴⁷ It is therefore possible to call the entire practice of hostageship a means of dissuasion. While this is not known in Bohemia or Moravia, there are numerous examples from Poland from around the year 1400 where the debtor was contractually obliged to install the hostage in his land should he was not able to reimburse or liberate the hostage:

[...] If aforementioned Przeczlaus does not liberate his hostages from now until the Feast of the Nativity of Saint John, and if he neglects to stand up for them himself, then the hostages will gain full right to half of Przeczlaus' inheritance in Lesznicza, and they will be forever exempt from the 60 threescores owed by the debtor [i.e. probably another debt for which the hostages had sworn elsewhere], as provided.¹⁴⁸

¹⁴⁶ Przemysław Dąbkowski. *Rękojemstwo w prawie polskim średniowiecznym* [The hostageship in the Polish medieval law], 133.

¹⁴⁷ Przemysław Dąbkowski. *Rękojemstwo w prawie polskim średniowiecznym* [The hostageship in the Polish medieval law], 249.

¹⁴⁸ “[...] si dictus Przeczslaus prefatos suos fideiussores non exbrigaverit infra hinc usque ad festum s. Johannis Nativitatis et si se pro ipsis statuere neglexerit, extunc memorati fideiussores posse plenum habebunt in media hereditate Lesznicza Przeczslai antedicti sessionem capere et perpetuo alienari ab eadem solutis LX marcis pro ipso, ut prefertur.” No. 5842 in: *Teki A. Pawińskiego: Księgi sądowe łęczyckie od r. 1385—1419* [A. Pawiński's files: Court books from Łęczyca 1385—1419], vol. 1, 562—563.

The example quoted above seems to be quite harsh towards the debtor. From the records of the Łęczyca region it appears that some kind of takeover of one's property was very common. This seizure of one's land was probably temporary until the debtor paid the sum owed to the hostage.¹⁴⁹

The penalties for not keeping one's word

My analysis so far could give the impression that the creditor was only to be found at the beginning and end of the contract between him and the debtor. But the opposite is true — the creditor had to make sure that his debt was paid off, the sale or lease was properly recorded in the land records, or the agreed act was actually performed. Thus, in his own interest, the creditor had to make sure regularly that each person involved was fulfilling his obligations.

As already mentioned in the sub-chapter “The obstagium and the obsides”, the debtor or the hostages were summoned by the creditor to enter the *obstagium*, for which, in various cases, they had up to a month to comply. Participants were usually reminded either by a letter known as *monitio*, discussed in the next sub-chapter, or by messenger.¹⁵⁰ After this time, a reprimand was supposed to follow.¹⁵¹ If, even after the expiration of another fourteen days, the debtor or the hostages did not reach the designated place and did not enter it, the creditor was given the possibility of the gradual use of specific methods to convince them. However, these methods could be used only when the regular procedure, that is suing through a court of law, was not possible due to extraordinary events.¹⁵²

¹⁴⁹ Przemysław Dąbkowski. *Rękojemstwo w prawie polskim średniowiecznym* [The hostageship in the Polish medieval law], 23.

¹⁵⁰ Prokopa Písaře novoměstského Česká „Ars dictandi” [The Czech „Ars dictandi” of Prokop, the scribe of the New Town of Prague] in: *Rozpravy České akademie císaře Františka Josefa pro vědy, slovesnost a umění*, vol. 8, no. 2. František Mareš, ed. (Prague: Česká akademie císaře Františka Josefa pro vědy, slovesnost a umění, 1900), 18.

¹⁵¹ *Kniha Tovačovská* [The Tovačovská Book], Vincenc Brandl, ed., 96.

¹⁵² František Čáda, *Ležení podle českého práva zemského: k osobní exekuci 2* [Obstagium under Czech land law: To the personal execution 2], 54.

Defamation letters

The first method was the action of defamation — *láni* in Old Czech, *lajanie* in Old Polish (and *monitio* in the Polish Latin sources). It was a convenient and probably quite effective way to persuade the hostage or debtor to start behaving properly by damaging their honour. It seems that these defamation letters were more common in Moravia than in Bohemia, albeit even there I have found several explicit or implicit examples of them such as the following:

If anyone reprimanded us or defamed us for not performing, we are not to deny it, but to confirm that he is right, and we are wrong against him. If anyone of us defied this contract by word or deed, may it not make this contract worse, but may it be against his honour and faith.¹⁵³

I have not been able to find any true defamation letters in the studied Polish sources, and it looks like not even Dąbkowski, the author of the only Polish study of defamation, was able to find a single one.¹⁵⁴ Unfortunately, only mentions of the *difamacione litere* have survived until today.¹⁵⁵ There is, nevertheless, one rare example of the already mentioned *monitio* written by king Jagiełło in 1411:

[the debtor Henricus of Plawno refused to pay the debt] ...you know, however, that you are bound and obliged to Our Highness to these by your signature, as the content of the document, the text of which you know well, testifies. Therefore, we ask, demand, and encourage you on the basis of the above and on the basis of the promises corroborated by your signature, to go into *obstagium* into our city Cracow and to not leave it until we are wholly compensated for the aforementioned non-compliance with the payment deadline and the damages resulting from it. Otherwise, we will have to employ further measures and invoke other clauses of the document, affecting you or anyone involved in this matter.¹⁵⁶

¹⁵³ “Přimlúval-li by se kto také nám neb lál pro neplnění, tomu odpierati nemáme, než všady znáti, že jest on práv a my proti němu křiví. Protivil-li by se kto z nás v čem tomuto listu řečmi neb skutkem, to nebud’ tomuto listu ku pohoršení, ale proti jeho cti a věře.” No. 595 in: *Listář a listinář Oldřicha z (1418-1462)* [The Epistolary of Oldřich of Rožmberk (1418-1462)]. Vol. 4, 410.

¹⁵⁴ Przemysław Dąbkowski. O utwierdzeniu umów pod grozą łajania w prawie polskim średniowiecznym [About the contract confirmation under the threat of the defamatory summoning in the Polish medieval law], 41.

¹⁵⁵ No. 5428 in: *Teki A. Pawińskiego: Księgi sądowe łączyckie od r. 1385—1419* [A. Pawiński’s files: Court books from Łęczyca 1385—1419], vol. 1, 519—520.

¹⁵⁶ “Noscis autem, quantum celsitudini nostrae ad ea promissis vestrarum inscriptionum estis obligati et astricti, prout vestrarum protestatur continentia litterarum, quarum series a vestra memoria non recessit. Ideo

A very subtle and moderate approach given in this *monitio* by the king suggests documents of this kind were perhaps rather reprimands warning the non-performing hostage of what could happen should he not comply.¹⁵⁷ For its features common with the defamation letters, it is thus possible to count the *monitio* in the defamation letters category as well.

As for the *láni*, the dissatisfied creditor did not have to be so subtle. He simply nailed the so-called defamation sheet (*libellus* or *litterae infames*) at a square or on a pillory.¹⁵⁸ In the public letter he acquainted the reader with the background of his dispute with the offender in question, and he listed all the hardships that had happened to him. Should there be more hostages, the creditor could choose one or all of them. He could also use his right to defile the honour of the person in question, by including in his letter permitted vulgarities, such as “zvyjebaný” (fucking) or “nestydatý” (shameless). He could also call him a liar, but only specifically in the sense of people who do not keep their word and commitment.¹⁵⁹

If the defaming person overshot with his curses and “scolded unusually”, that is, in an uncommon, legally unauthorized form such as making up new vulgarities, it could backfire on him. Not only could he be brought to justice by the original perpetrator himself, who was insulted by the defamation letter, but he could even be held accountable to the provincial authorities, which issued decrees against the extraordinary scolding:

sinceritatem vestram ex promisso monemus, requirimus et hortamur, quatenus, iuxta promissa inscriptionum vestrarum nobis facta, civitatem nostram Cracoviensem in obstagium introire debeatis et subire abinde non egressuri, quousque nobis pro praedicto neglecto solutionis termino et damnis inde secutis integraliter satisfiat, alioquin in vos et quemlibet alium, quem praesens negotium tangere videbitur ad ampliores monitionis modos et ad ea, quae in litteris inscriptionum continentur procedamus.” No. 44 in: *Codex epistolaris saeculi decimi quinti 1384—1492: ex antiquis libris formularum, corpore Naruszeviciano, autographis archivistiche plurimis collectus*. August Sokołowski, Josephi Szujski, eds. Vol.1. (Kraków : Akademia Umiejętności, 1876), 37—38.

¹⁵⁷ I would like to express my gratitude to Sebastian Krasnovský for his invaluable help with the translation of this Latin text.

¹⁵⁸ Przemysław Dąbkowski. O utwierdzeniu umów pod grozą łajania w prawie polskim średniowiecznym [About the contract confirmation under the threat of the defamatory summoning in the Polish medieval law], 10.

¹⁵⁹ *Kniha Tovačovská* [The Tovačovská Book], Vincenc Brandl, ed., 96.

And so, nobody would be defamed for not paying off money by any irregular or invented defamation. Only the ordinary “scolding for money” is permitted. And should anyone perform otherwise, he shall endure prison.¹⁶⁰

So says a finding of the royal chamber court of law of the Kingdom of Bohemia from 1480. The last sentence — in the original *trpěti kázeň* — is a little unclear as it could also mean “to endure reprimanding.”¹⁶¹ However, as is later expanded in the finding, the king decided that the defaming party had to apologize to the non-compliant wrongdoer by a specific phrase:

For what have I scolded and defamed you out of the regular and orderly custom, differently from the right way, which is the defamation for money, then I have lied out of my gorge.¹⁶²

Even with the, presumably, many arguments that resulted in the royal finding, the usual and factually accurate defamation remained a legal way to defend against people who did not fulfill their obligations. The fact that the creditor was entitled to this procedure is also evidenced by the clear formulation of the hostage obligation in the model debt letters from the New Town scribe Prokop, called *Na peníze* (“About money”) from around 1452:

And if we did not do any of all this that has been written, then our often-mentioned creditors would have the full right and power, guaranteed by this letter, to defame and reprimand us as much as they would like according to this sheet. And we shall make no excuses but acknowledge their right towards us and us doing them wrong.¹⁶³

When the non-compliant hostage began to cooperate with the creditor — be it on the basis of a defamation letter or for other reasons — and to fulfil his obligation, the defamation

¹⁶⁰ „Item aby nižádný pro neplnění peněz nehaněl neřádným ani vymyšleným haněním, než jako na peníze slušie, a ktožby jináč učinil, aby proto kázeň trpěl...” in: *Archiv český, čili, Staré písemné památky české i moravské: z archivův domácích i cizích* [The Czech archive, or, The ancient Czech and Moravian manuscripts: from both local and foreign archives]. Vol. 5, 399.

¹⁶¹ *Elektronický slovník staré češtiny* [Electronic dictionary of Old Czech]. Prague, 2006—, online: <https://vokabular.ujc.cas.cz> (data version 1.1.18, accessed 14. 7. 2021), entry kázeň.

¹⁶² „Což sem lál a haněl tě z úmysla mimo řád a obyčej jináč pro peníze slušie, toť sem na tě v hrdlo lhal.” in: *Archiv český, čili, Staré písemné památky české i moravské: z archivův domácích i cizích* [The Czech archive, or, The ancient Czech and Moravian manuscripts: from both local and foreign archives]. Vol. 5, 399.

¹⁶³ „A jestliže bychom toho všeho aneb něčehož z toho, což svrchupsáno stojí, neučinili, tehdy naši věřící častopsaní tiemto listem plná moc i právo mieti budú, nám láti a přimlúvati, jakož by se jim líbilo vedle tohoto listu, a my nemáme odmlúvati než všudy znáti, že sú oni právi a my proti nim křivi.” in: *Prokopa Písaře novoměstského Česká „Ars dictandi”*, 18.

sheet was removed from the pillory and his reputation pardoned by forgetting the injustices he had done.¹⁶⁴

Defamatory summoning

However, a defamation sheet was not always enough to rectify the situation. If there was an interregnum or the country's institutions were threatened by a state of war and the provincial courts did not take place, the creditor of the wayward hostage could force him to perform his duties with another legal instrument called defamatory summoning, *vyvolání* in Old Czech, though it had no special name in Old Polish because it was considered a part of the public defamation. Once the written part was published, the spoken part usually followed.¹⁶⁵ The summoning was relatively draconian in its consequences. According to the correct procedure for enforcing the performance of the contract, the summoning followed after the defamation sheet by the failure of which it was conditioned. At the same time, some of its elements were similar to the defamation letter because to a certain extent the summoning might have originated from it.

In practice, this meant that the creditor came to the court of one of the nobles and asked the local lord for permission to read a letter. It is not known how the court was chosen, but presumably its lord was either the creditor's or hostage's neighbour, or a nobleman with some influence. The choice could have also depended on mutual relations. The only condition was that it had to be the court of a married nobleman, as only such could be considered legally competent for the ritual of summoning.¹⁶⁶ Another obscurity is the nature of the letter itself. A Moravian source *Kniha Tovačovská* says the reading of a letter initiated the summoning, so it

¹⁶⁴ Vincenc Brandl, *Dobývání peněz dlužníků na rukojmích skrze ležení, lání a vyvolání* [Recovery of the money owed on hostages through obstagium, defamation letters and defamatory summoning]. In: *Právník*. Vol. 19, (Prague, 1870), 517.

¹⁶⁵ Przemysław Dąbkowski. *O utwierdzeniu umów pod grozą łajania w prawie polskiem średniowiecznem* [About the contract confirmation under the threat of the defamatory summoning in the Polish medieval law], 34.

¹⁶⁶ Vincenc Brandl, *Dobývání peněz dlužníků na rukojmích skrze ležení, lání a vyvolání* [Recovery of the money owed on hostages through obstagium, defamation letters and defamatory summoning], 519.

is possible this letter could be the already mentioned defamation sheet.¹⁶⁷ Another possibility was the original contract, listing all participants with their obligations and other details. Although there is no record of this, the latter seems more adequate since the creditor would only repeat himself with what was to follow should he read the defamation sheet first. To produce a proof with a debt obligation could be therefore compared to a written confirmation a hostage received once he was liberated out of his obligation.

The presentation of the letter was to take place at a time when the owner of the court was about to gather with his family and servants to eat together. This was probably to guarantee the creditor that as many people as possible would become acquainted with the contents of his letter. To further ensure good conduct, *Kniha Tovačovská* explicitly emphasizes that the summoner should not participate in feasting and drinking.¹⁶⁸

When the sheet was read, the creditor could finally proceed with the summons themselves. It was necessary to follow the prescribed procedure. First, the creditor mentioned the name of the person to be invoked, briefly outlined the subject matter of the dispute, and enumerated all the steps he had taken so far to enforce his rights. Special emphasis was placed on the dishonesty of the hostages and on the sealed debt deed, or on the seal itself. This was because all the participants of the contract — the debtor, the hostages, and the creditor, along with the witnesses — usually attached their seals to the debt note as a sign of their consent and promise, thus committing themselves to the contract:

[...] and I [the creditor] am summoning him [the hostage] without his seal, which is the jewel of his parents, as a low person. So that you, lord, first of all, and then all your retinue and other good people would eschew him and would not trust him. Otherwise, he would betray you with his promises and his seal, as he betrayed me. Do not heed his seal because he no longer has the right to use

¹⁶⁷ *Kniha Tovačovská* [The Tovačovská book], Vincenc Brandl, ed., 98.

¹⁶⁸ *Kniha Tovačovská* [The Tovačovská book], Vincenc Brandl, ed., 98.

it. And I hereby declare that I have it in my possession as invalid and forgotten by him.¹⁶⁹

As we can see from the quote from *Kniha Tovačovská*, the non-performing hostage could slowly but surely be deprived of his reputation and good family name in the region when breaking his oath and ignoring reprimands to fulfil his duties. Although the hostage continued to have his own seal physically, the documents and contracts sealed by it began to lose, if not authenticity, then at least credibility in proportion to how quickly the creditor was able to do the summoning at the courts. Presumably, the rumours of the hostage's defamation spread in the region and his honour worsened over time.

The summoning ritual was to be repeated at each court of a member of the lordly class every day at lunch for the whole four Sundays in the same prescribed form.¹⁷⁰ In his book of advice, Ctibor Tovačovský also remembered the situation where a local nobleman would have to leave his residence due to some matter. At that time, the summoner should have been allowed to continue summoning even during the lord's absence. This was probably to accommodate the creditor, who had been already suffering a loss. Only after 28 days was the creditor finally able to obtain the so-called *svědomí*, from the local lord, i.e., a confirmation of the proper summoning of the hostage along with a bill of his expenses during the summoning process.¹⁷¹ With this corroboration, the creditor could continue his journey and go to summon the non-performing hostage at a court of a second and then a third lord. Only after the expiration of this very long period, namely eighty-four days, with an emphasis on the number of twelve Sundays, was the creditor qualified to appear before the land governor, margrave, or king. After studying all his confirmations, these authorities had the power to introduce the creditor to the hostage's

¹⁶⁹ „Protož vyvolávám jej bez pečeti a klenotu rodičuov jeho jako nešlechtného člověka, aby jste vy, ty pane napřed, i všeca tvá družina i jiní dobří lidé se jeho vystříhali a jemu nic nevěřili, aby vás sliby svými a pečeti svú, nezradil jako mne. Na jeho pečeť nic netbajte, neb k ní nepřísluší ani k ní práva má, než já ji mám v své moci, jako zavedlú a zapomenutú od něho.“ in: *Kniha Tovačovská* [The Tovačovská book], Vincenc Brandl, ed., 98.

¹⁷⁰ *Kniha Tovačovská* [The Tovačovská book], Vincenc Brandl, ed., 99.

¹⁷¹ František Čáda, *Ležení podle českého práva zemského: k osobní exekuci 2* [Obstagium under Czech land law: To the personal execution 2], 54.

estates and declare his possession as hereditary. This new state was then to be recorded in the land registers, that is the Czech source of customary law, on the occasion of their reopening once a land assembly took place. In Poland, explicit examples of this specific custom are not, unfortunately, documented even though Dąbkowski assumes its existence.¹⁷²

The defamation ritual was most probably used very rarely and served rather as a final warning for those hostages who were not willing to perform their duties. The length of this process seems to be in favour of the not performing perpetrators who had much time to make amends before being banished from their property. The scarcity of the defamation rituals in the sources speaks for the unpopularity of this method and the preference of the creditors to sue the hostages at a court of law, which was less time and energy consuming than the defamation process.

¹⁷² Przemysław Dąbkowski. *O utwierdzeniu umów pod grozą łajania w prawie polskim średniowiecznym* [About the contract confirmation under the threat of the defamatory summoning in the Polish medieval law], 34.

Conclusion

In this present thesis, I have tried to explain and compare the individual terms of hostageship that appear in the Bohemian and Polish late medieval contracts and documents. Based on case studies, I have analysed how the institute of hostageship worked in practice. Enchanted by the accessibility and richness of the Rožmberk archive as well as the other Bohemian historical editions, I thought the Polish sources and studies would be as rich and easily accessible. Therefore, I had to limit the Polish part of the research on the relevant municipal law books that I have been able to acquire and read. Although I have tried to balance the Bohemian and Polish parts, the former is necessarily richer. It is so for two reasons. Firstly, it is because of a lesser quantity of the hostageship records in the Polish municipal law books, and my limited knowledge of the Polish language. Secondly, some attributes known and used in Bohemia simply did not exist (or did not survive) in Poland. I still have mentioned the Bohemian ones in order to keep the work consistent and to point out similarities.

I have described the origins of the of the hostageship in Bohemia and Poland and explained the difference between a captive and a hostage. The main distinction was the free will of a hostage required to undertake an obligation and face its duties and consequences. Practically, however, the hostageship emerged because of the need of written contracts when a verbal agreement was no longer sufficient — typically in times of war and distrust between the parties. Therefore, a person that could serve as sort of a mediator between a creditor and a debtor and guarantee the obligations to each party was much needed.

I have explained the requirements for a person to become a hostage. Typically, it had to be a male of a noble origin but later on with the increasing need of guarantors lowborn people could become hostages as well. Although there are cases of children being employed as hostages in the Western Europe, the practise in the Bohemian and Polish kingdoms differed

fundamentally. There, children were excluded from hostageship because of immaturity. Jews, women, and clerics were if not excluded, then regulated for various reasons. Apart of these regulations, a hostage needed to be honourable and wealthy enough to be able to undergo all possibilities of hostageship. Polish rules required him to be of a local domicile in order to obey the land laws, and a similar custom was required in Bohemia as well. A contract was guaranteed minimally by two hostages but usually there were more of them. A one-person hostageship was customary only in Łęczyca while in the Bohemian kingdom it did not exist at all. It seems, however, the greater the amount of the guaranteed money was, the greater number of hostages was employed.

I have also explained the institution of *obstagium* which was a second level duty of a debtor or hostage to which he was summoned when he did not pay the money owed or fulfilled a promise. The *obstagium* was a contractually agreed public place sufficiently frequented in the region, usually a pub. When a debtor or a hostage did not pay, they had to enter this place and spend up to two weeks interned there. During the time the hostages—*obses*—had to pay for their expenses that were later added to the main debt. The longer they stayed, the greater amount they eventually had to pay in the end. Therefore, it can be said the meaning of an *obstagium* was to increase a pressure on the debtor and his hostages to pay the debt as soon as possible. When conducting a research on this topic, I have realized there was a difference between the Bohemian and Moravian *obstagium*. While in Bohemia the hostages had to enter all at once, in Moravia they had to enter the internment a couple a week and their number cumulated. This custom was especially harsh to the first couple of hostages because they had to endure the longest period spent in the *obstagium*. Apart of this, a Czech specific emerged as well, a category of sub-hostages that assumed the *obstagium* duty should the original debtor and hostages did not want to enter. However, the sub-hostages only entered an *obstagium* while the original ones still participated at the rest of an obligation.

Although there are only implicit examples of a Polish *obstagium*, a Polish specific is connected with the dismissal of a hostage. Under normal circumstances, when a hostage paid a debt or fulfilled a promise, he was supposed to receive a confirmation from debtor. If he did not, in Bohemia he could only keep record of his extra expenses in *obstagium* and sue the debtor at the court. However, in Poland when a debtor was unable to compensate his hostage, he had to vacate his property to which the hostage was installed by the local authority. This pratique was very common while in the Bohemian kingdom it seems to be unknown.

Finally, I have described the penalties for not keeping one's word in the hostageship process. When this happened, a defamation could take place. It was an option when a hostage did not perform and did not obey even after being reprimanded. The defaming person could publish specific defamation letters that included permitted curses and vulgarities. If he scolded in an uncommon way, the original perpetrator could sue him for damaging his honour. That could, eventually, result in an apology from the wrongly defaming creditor. In case the defamation letter was not enough, a creditor could also employ the defamatory summoning. He had to visit three courts of the local nobles and spend a month in each while defaming the perpetrator every time the lord would eat with his retinue. In the end of the month the creditor would get a confirmation from the lord and once he had them all, he was qualified to ask the land authorities to allow him to assume the perpetrator's property and have it registered as hereditary. The defamation was the most common in Moravia while implicit mentions are found in Bohemia and Poland as well. In the latter another pratique called *monitio*, a sort of moderate threat of using the defamation should the hostage not perform, was used.

This thesis is thus not an exhaustive work of the whole comparative research of the Bohemian and Polish hostageship. However, it may serve as a launching pad for a more complex, ideally joint Czech and Polish research that will take into account more source materials with their regional differences.

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