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III. PRZEKŁADY

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The subject matter of arbitral tribunals in the resolutions of the Permanent Council (1776–1788)*

I. Despite the significant role of arbitral tribunals in settling disputes among the nobles in the First Polish Republic,[1] relatively little has been written about them in the historical and legal literature.[2] Consequently, it is pertinent to pay more

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[1] This fact is confirmed by the writings of diarists. Marcin Matuszewicz is one such example. He mentions an arbitral tribunal concerning his mother who was accused of being an accessory to the death of Łastowski, a nobleman (M. Matuszewicz, *Diariusz życia mego* [A diary of my life], vol. I, compiled by B. Królikowski, Z. Zielińska, Warsaw 1986, pp. 189–192). Another instance of such writing can be found in Adam Moszczeński's diary. He described the course of a compromise in a dispute between Kajetan Olizar, a royal pantler, and his sister's husband, named Borkowski, concerning the payment of a dowry (A. Moszczeński, *Pamiętnik do historii polskiej* [A diary accompanying the history of Poland], Warsaw 1905, pp. 37–41).

[2] In the period prior to the partitioning of Poland, the topic of arbitral tribunals was written about, among others, by: S. Domino, *Sądownictwo polubowne na Rusi w późniejszym średniowieczu* [The arbitral tribunals in Ruthenia in the late Middle Ages], Warsaw 1938; A. Rosner, *Tradycja staropolskiego sądownictwa polubownego – Próba zarysowania problemu* [The tradition of old Polish arbitral tribunals – an attempt to outline the issue] [in:] M. Płatek, M. Fajst (eds.), *Sprawiedliwość naprawcza. Idea. Teoria. Praktyka* [Restorative justice. The idea. The theory. The practice], Warsaw 2005, pp. 37–58; A. Moniuszko, A. Rosner, *Historia polubownego rozwiązywania sporów na ziemiach polskich. Zarys problematyki* [The history of arbitral resolution of disputes on Polish territories. An outline of the subject matter] [in:] E. Gmurzyńska, R. Morek (eds.), *Mediacje. Teoria i praktyka* [Mediations. The theory and the practice], Warsaw 2014, pp. 53–67.

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attention to the fundamental issues concerning the way they functioned, especially in the 18th century, which was when the so-called compromises grew in popularity.

However, the genesis of arbitral tribunals should be searched for in a much more distant past as it was connected with the presence of arbitral proceedings, the so-called conciliation, already in the Middle Ages.[3] It was formed as a response to self-help which led to mutual attrition by the noble houses.[4] A significant influence on the development of arbitral tribunals was exerted by the deepening crisis of the nobles' courts of the first instance, especially in the first half of the 18th century.[5] It pertained mainly to circuit courts, which were characterized by tardiness and irregularity in the way they functioned as in some provinces they were vacant for several or even several dozen years.[6] Another significant reason behind the growth of arbitral tribunals was also a large backlog of unheard cases by the Tribunals.[7]

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[3] The information provided by Teodor Ostrowski raises doubts here. He stated that compromise courts "dawniej w Litwie tylko znany, dopiero po roku 1776 w Koronie na rozpoznanie spraw nawet ziemskich przyjęty i *pro inappellabili* poczytany" [were only known in Lithuania earlier, and they were accepted to even hear land cases in the Crown after 1776 as well as *pro inappellabili*] (T. Ostrowski, *Prawo cywilne albo szczególne narodu polskiego* [Civil law or governing law of the Polish nation], vol. II, Warsaw 1784, p. 82). A. B. Zakrzewski has paid attention to this recently. He emphasized that these courts had existed in the Crown for a long time as well (A.B. Zakrzewski, *Wielkie Księstwo Litewskie (XVI–XVIII w.). Prawo – ustrój – społeczeństwo* [The Grand Duchy of Lithuania (16th–18th century). The law – the system of government – the society], Warsaw 2013, p. 188). Furthermore, according to the writings of J. Kitowicz, compromises were already a common phenomenon in the Augustus III period (J. Kitowicz, *Opis obyczajów za panowania Augusta III* [A description of customs during the reign of Augustus III], Cracow 1951, pp. 182–183), which stands in unequivocal contradiction to the thesis postulated by Ostrowski. In *Zbiór Praw Sądowych* [A Collection of Court Laws] by Andrzej Zamoyski (Warsaw 1778), its authors clearly emphasized that arbitral tribunals were "z dawna w narodzie używany" [employed for a long time by the nation] (part III, article XI § 1). The entire article IX in Part III was devoted to arbitral tribunals (*O sprawach* [Concerning cases]) which pertains to the organization of the judiciary and court procedure. More on the project of the code can be found in: E. Borkowska-Bagieńska, *'Zbiór praw sądowych' Andrzeja Zamoyskiego* ['A Collection of Court Laws' by Andrzej Zamoyski], Poznań 1986.

[4] J. Rafacz, *Dawny proces polski* [Old Polish procedure], Warszawa 1925, p. 3. Let us add that settling disputes in the course of a compromise could have taken place in the form of arbitral proceedings or mediation. See more in: A. Moniuszko, A. Rosner, *Historia polubownego rozwiązywania sporów...* [The history of arbitral resolution of disputes...], p. 54.

[5] S. Płaza, *Historia prawa w Polsce na tle porównawczym* [The history of the law in Poland against a comparative background], part I, Cracow 2002, p. 557.

[6] J. Rafacz, *Dawny proces...* [Old Polish...], p. 29.

[7] W. Uruszczak, *Historia państwa i prawa polskiego* [The history of the Polish state and law], vol. I, Warsaw 2010, p. 263. The aforementioned backlog was a result of an excessive overload of the Tribunal with cases of lesser importance, which led to serious discussions among the nobility concerning limiting its competences already in the 17th century, W. Bednaruk, *Trybunał Koronny. Szlachecki Sąd Najwyższy w latach 1578–1794* [The Crown Tribunal. The Supreme Nobles' Court between 1578 and 1794], Lublin 2008, p. 96. You can also read more on the crisis of the justice system and about the propositions concerning its reform in the second half of the 18th century in:

High costs of court trials were also of definite significance as both parties wanted to avoid them.[8] Moreover, according to O. Balzer and J. Michalski, it was also a factual advantage for one of the parties because it was connected with financial means.[9] As a result, the poor members of the nobility were often the victims of the more affluent party in the form of the aristocracy.[10] Furthermore, instances of bribery were not so widespread in case of arbitral tribunals but corruption was rampant in case of circuit courts and Tribunals.[11] Finally, A. Moniuszko and A. Rosner emphasized the role of a tradition, which was deeply rooted in the political culture of the nobility, of solving conflicts in an arbitral manner. According to this tradition, refusing to submit to the proceedings in the form of a compromise was perceived extremely negatively.[12] All of the circumstances above were conducive to a tendency of transferring disputes to arbitral tribunals to be settled which may not have guaranteed a prompt conclusion of the proceedings but they at least guaranteed that the proceedings were commenced relatively swiftly.

A description of compromise courts can be found, among others, in the words of Wincenty Skrzetuski who thus defined them: "Kompromis jest sąd polubowny, że obie strony spór prawny z sobą wiodące, odstępując dobrowolnie od zwyczajnych krajowych jurysdykcyi, same sobie sędziów umawiają i rozsądzenie sprawy jakiej im zupełnie poddają" [A compromise is an arbitral tribunal in which two parties who are in the midst of a legal dispute voluntarily waive common state jurisdictions, agree on adjudicators by themselves and completely entrust the adjudication

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J. Michalski, *Reforma sądownictwa na sejmie konwokacyjnym 1764 roku* [The reform of the judiciary at the convocation sejm of 1764] [in:] idem, *Studia historyczne z XVIII i XIX wieku* [Historical studies from the 18th and the 19th century], vol. I: *Polityka i społeczeństwo* [Politics and society], Warsaw 2007, pp. 27–43.

[8] J. Bardach, *Historia państwa i prawa Polski* [The history of the Polish State and Law], vol. I, Warsaw 1964, p. 554.

[9] O. Balzer, *Geneza Trybunału Koronnego. Studium z dziejów sądownictwa polskiego XVI wieku* [The genesis of the Crown Tribunal. A study from the history of the Polish judiciary in the 16th century], Warsaw 1886, p. 76; J. Michalski, *Studia nad reformą sądownictwa i prawa sądowego w XVIII w*. [The studies of the reform of the judiciary and of the jurisprudence in the 18th century], Wrocław–Warsaw 1958, p. 46.

[10] T. Korzon, *Wewnętrzne dzieje Polski za Stanisława Augusta* [The internal history of Poland during the Stanislaus II Augustus period], vol. IV, Cracow–Warsaw 1897, p. 9.

[11] Despite this, instances of bribery also occurred in arbitral tribunals. According to reports by the aforementioned Moszczeński, one Gintwont – the superarbiter of the compromise in the dispute between Olizar and Borkowski – received bribes from both parties which amounted to four and six thousand zloty respectively (however, according to the diarist, after taking the second amount from Borkowski, the first bribe was "honestly" sent back to Olizar), A. Moszczeński, *Pamiętnik...* [A diary...], p. 40.

[12] A. Moniuszko, A. Rosner, *Historia polubownego rozwiązywania sporów...* [The history of arbitral resolution of disputes...], p. 67.

of the case to them].[13] Consequently, the essence of compromises was based on the procedural principle of dispositiviness,[14] which allowed the parties to independently determine the rules of the proceedings. A special agreement which was made by the parties had to include: an obligation to transmit the case to an arbitral tribunal, mark the subject of the dispute, the composition of the tribunal, the manner of resolving the dispute (conciliation or a sentence) as well as determining the sanctions in case of a failure to perform the sentence.[15]

According to the generally accepted principle, each of the parties taking part in the dispute designated an equal number of arbiters, who were most frequently recruited from among one's closest friends, to represent them.[16] There were most frequently two of them chosen by each party.[17] Subsequently, the arbiters themselves chose a chairman from among themselves, the so-called superarbiter, who was also sometimes called an oberman.[18] If there was no one with knowledge of the law among the adjudicators, then they could choose a jurist to take part in the proceedings. The said jurist's task was to draw up a formally proper decree as well as to give advice concerning the law in force, however, they did not have the right to vote.[19]

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[13] W. Skrzetuski, *Prawo polityczne narodu polskiego* [The political law of the Polish nation], vol. II, Warsaw 1787, p. 461.

[14] S. Płaza, *Historia prawa...* [The history of the law...], part I, p. 557.

[15] A. Rosner, *Tradycja...* [The tradition...], p. 40. Such an agreement was most frequently made orally (in the presence of witnesses) but a written form was also practised, S. Domino, *Sądownictwo...* [The arbitral...], p. 43. In case of the latter, one can speak of the so-called compromise provision.

[16] While choosing an arbiter, the social position of a candidate and their authority among the local community was the most important factor behind their selection. For this reason, a magnate was very often chosen, a patron of noble clients (Prince Michał Czartoryski, the Grand Chancellor of Lithuania, can serve here as an example. He performed the function of the superarbiter in one of the disputes and it was described by M. Matuszewicz, *Diariusz...* [A diary...], p. 374) or a representative of the mid-level nobility who held one of local offices. Their knowledge of the law was not a major factor in this case, A. Rosner, *Tradycja...* [The tradition...], p. 47. It is worth emphasizing that the role of arbiters was not only fulfilled by men but also, even though it was in exceptional circumstances, by women, which was mentioned by S. Domino, *Sądownictwo...* [The arbitral...], p. 69, who provided examples from Ruthenia.

[17] Such a rule was accepted in *Zbiór Praw Zamoyskiego* [The collection of Zamoyski's Laws], art. XI § 1. Nonetheless, the number of arbiters could take different shapes: from two to eight or even more judges, S. Domino, *Sądownictwo...* [The arbitral...], p. 62.

[18] J. Bardach, *Historia...* [The history...], vol. I, p. 554. While delegating one's own arbiters did not constitute any major difficulties, designating a person for the position of the superarbiter could be a controversial issue as both parties had to agree to the candidate. An example of a lack of agreement while choosing a superarbiter is described in the case mentioned above, A. Moszczeński, *Pamiętnik...* [A diary...], p. 38.

[19] J. Kitowicz, *Opis obyczajów...* [A description of customs...], p. 183. Sporadically, at different stages of arbitral proceedings, court criers also appeared in the role of intermediaries or witnesses.

While indicating the jurisdiction of arbitral tribunals, Teodor Ostrowski wrote: "Wchodzi ten sąd we wszystkie sprawy, które po przyjacielsku między obywatelami kończyć się mogą" [This tribunal deals with all cases which cannot be concluded by the citizens in a friendly manner].[20] However, there was no shortage of exceptions. Settling border cases between possessors of royal lands was to remain outside the scope of powers of compromise courts, while – as the quoted author adds – "w sprawach graniczno-ziemskich rzadka praktyka, aby je sąd ten poznawał i kończył" [it is a rare practice for this court to preside and adjudicate border-land cases].[21] Tadeusz Czacki presents this issue slightly differently. Even though he also states that "wszystko co jest w mocy i prawnej woli człowieka, wolno poddać kompromisowi" [everything which is within the powers and legal will of man can be subjected to a compromise], however, he excludes from arbitral tribunals' jurisdiction the following: cases pertaining to third parties (pending without their consent or to their detriment), criminal, as he explains in his own words, "kara za zbrodnie należy do władzy rządowej, a nie do partykularnej" [punishment for crimes belongs to government authorities and not to particularistic ones] as well as cases of abuse of office "bo to rozeznanie należy do władzy publicznej" [because their examination belongs to public authorities].[22] According to the constitution passed for the Grand Duchy of Lithuania in 1726, the following were left out of the jurisdiction of arbitral tribunals: (besides criminal) cases pertaining to public treasury and royal lands, public prosecution cases and cases of minors[23] represented by their guardians, which should be explained with the protection of wards against actions made by guardians to their detriment.[24] Finally, it should be added that the Zamoyski Code assumes that "sądzone mogą być w tym sądzie polubownym wszelkie sprawy prywatne obywatelów własności dotykające jako to: o sukcesje, działy, posagi, długi i o pretensje" [that all private matters of citizens which pertain to their property can be adjudicated in this arbitral tribunal, such as cases concerning successions, divisions of the estate, dowries, debts and claims] with the exception of criminal cases, third parties as well as "inne cywilne, okoliczności publiczne w sobie zawierające" [other civil cases which include public circumstances].[25]

However, in this case, there are only available examples from the Medieval period, Z. Rymaszewski, *Czynności woźnego sądowego* [The activities of a court crier], Warsaw 2010, pp. 369–371.

[20] T. Ostrowski, *Prawo cywilne...* [Civil law...], vol. II, pp. 82–83.

[21] Ibidem.

[22] T. Czacki, *O litewskich i polskich prawach* [Lithuanian and Polish laws], vol. II, Kazimierz Turowski edition, Cracow 1861, p. 97.

[23] J. Rafacz, *Dawny proces...* [Old Polish...], p. 5.

[24] A.B. Zakrzewski, *Wielkie Księstwo Litewskie...* [The Grand Duchy of Lithuania...], p. 187.

[25] Part III, art. XI, § 5.

II. The Permanent Council created in 1775[26] was granted the competence to interpret the law one year later.[27] Despite the critical position of the opposition concerning this issue, which was wary of the growth of the position of this new governmental institution and its entering into the domain which was hitherto reserved for the legislature and the judiciary,[28] the Council acted on this power without interruption until 1788.[29] For the period of twelve years, it issued nearly 600 resolutions, which settled doubts stemming from the ambiguous provisions of law.[30] Questions concerning their interpretation, in the form of memoranda, court reports or official notes, were sent to the General Chancellery of the Council. From there, they were sent on to the Department of Justice according to their type. The projects of the resolutions prepared there were subsequently presented at the general sessions of the Council where they were approved and sent to the interested parties. According to the assumptions of the legislator, the resolutions were binding in character not only in cases presented for conciliators to settle but also in all analogous situations which could take place in the future.[31] The subject matter dealt with in the resolutions was varied. The questions mainly concerned the organization and functioning of the judiciary but also jurisprudence, mainly procedural and private law as well as criminal law to a lesser degree.[32] A decision was made in 1780 to publish the resolutions devoted to the interpretation of law in order to disseminate the judicial decisions of the Council. During the course of the following eight years, five volumes were printed which encompassed the

[26] See more: W. Konopczyński, *Geneza i ustanowienie Rady Nieustającej* [The origins and the creation of the Permanent Council], Cracow 1917; A. Czaja, *Między tronem, buławą a dworem petersburskim. Z dziejów Rady Nieustającej 1786–1789* [Amongst the throne, the mace, and the Saint Petersburg court. The history of the Permanent Council between 1786 and 1789], Warsaw 1988.

[27] The extension of the powers of the Council was introduced by means of the constitution *Objaśnienie ustanowienia Rady Nieustającej przy Boku Naszym* [An explanation of the creation of the Permanent Council at Our Side], *VL* VIII, *fol.* 849–850.

[28] R. Łaszewski, *Sejm Polski w latach 1764–1793* [The Polish Sejm between 1764 and 1793], Poznań 1973, p. 16.

[29] The Permanent Council was dissolved in January of 1789 (*Uchylenie Rady Nieustającej* [The dissolution of the Permanent Council], *VL* IX, p. 64). Despite its reactivation in 1793, it was not vested with the power to interpret acts anymore, *VL* X, *fol*. 63.

[30] See more: M. Głuszak, *Rezolucje interpretacyjne Rady Nieustającej* [The interpretational resolutions of the Permanent Council], "Czasopismo Prawno-Historyczne" [Journal of Legal and Historical Sciences] 2013, issue 2, pp. 73–101.

[31] The issue of binding other bodies by the decisions of the Council in analogous cases was not expressed in the act, strictly speaking. This problem caused many controversies and was widely discussed among political elites, W. Skrzetuski, *Prawo polityczne...* [The political law...], vol. II, pp. 469–470.

[32] M. Głuszak, *Rezolucje...* [The interpretational...], pp. 81–82.

decisions pertaining to its explanations from between 1776 and 1786.[33] Moreover, the resolutions published between 1786 and 1788, preserved until recently only in the form of the original manuscripts of the minutes of the administrative acts,[34] were published by Wydawnictwo Uniwersytetu Łódzkiego (the University of Łódź Publishing) in 2014.[35]

III. The motions for an interpretation of the law which were analyzed by the Council frequently contained the subject matter of arbitral tribunals. Despite the fact that the formula of a compromise gave the parties a practically unlimited freedom in forming the wording of its contents by themselves, which was tantamount to full control over the course of the held proceedings, the functioning of arbitral tribunals was a source of numerous controversies, which was expressed by the twenty five resolutions which were devoted to this issue.

A review of the decisions made by the Permanent Council in this area ought to begin from the issue which is a source of certain doubts, namely the problem of the time boundaries of how long the act concerning compromises was binding.[36] It should be explained at this point that until the 18th century the functioning of arbitral tribunals in the Crown of the Kingdom of Poland was based on customary law.[37]

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[33] Piotr Dufour's "Drukarnia Korpusu Kadetów" [The Cadet Corps Printing House] in Warsaw undertook the publishing duties of the resolutions. The full title of each volume is: *Zbiór rezolucyi Rady Nieustającej potrzebnych do wiadomości jurysdykcyi sądowych i obywatelów obojga narodów* [A collection of the resolutions of the Permanent Council necessary for the information of court jurisdiction and the citizens of both nations]. The following volumes appeared in 1780, 1784, 1785, 1786, and 1788.

[34] Due to the abolishment of the Council in 1789, the publication of the resolutions which had been passed in the course of its last term was abandoned. The minutes of the administrative acts from between 1786 and 1788 can be found in the collections of AGAD [The Central Archives of Historical Records] in the so-called *Metryka Litewska* [Lithuanian Certificate], VII, 59, 61, 64, 65.

[35] *Zbiór rezolucji interpretacyjnych Rady Nieustającej z lat 1786–1788* [A collection of the resolutions of the Permanent Council from between 1786 and 1788], compiled by M. Głuszak, Łódź 2014.

[36] More on the subject matter of the law being binding over time: H. Grajewski, *Granice czasowe mocy obowiązującej norm dawnego prawa polskiego* [Time boundaries of the effectiveness of the norms of Old Polish law], Łódź 1970.

[37] On the other hand, the issue of arbitral tribunals was regulated by Statute III which was binding in Lithuania. Article 85, chapter IV was devoted to them and, in case of a refusal to comply with an arbitral tribunal's ruling by one of the parties taking part in the dispute, it allowed the party in opposition to circuit courts to file a summons to court for the next date. Circuit courts were supposed to "przy mocy zachować i odprawę według tego sądu czynić" [keep it in force and carry out the court's decision] after cognizance of the compromise and confirming its concurrence with the law. Similarly, in case of divergent decrees of arbitral tribunals, the Statute made it possible to pass the case to a zemstvo by any of the parties in order to decide which of the arbiters of the compromise issued a ruling in accordance with the law in force. This was tantamount to deciding which "sąd przy mocy zostawić" [judgement should be left in force]. It is also worth mentioning that the possibility

A parliamentary constitution "Obwarowanie sądów polubownych *alias* kompromisarskich" [Enshrinement of arbitral tribunals, alias compromise courts][38] for the province of the Grand Duchy of Lithuania was passed in 1726, which guaranteed inviolability of compromises. It was extended to the Crown of the Kingdom of Poland in 1776[39] by the virtue of the act "Deklaracja o komisjach i remissach z przeszłego sejmu wypadłych" [A declaration on the committees and returns removed from the past parliament].[40] The issue of the power binding the constitution appeared at the time. The circuit court in Czersk asked the Council about the admissibility of applying the act on compromises in relation to these agreements in arbitral courts which had been made before 1776. The conciliators upheld the principle of non-retroactivity of the law and stated: "że gdy prawo Wielkiego Księstwa Litewskiego o kompromisach napisane, na Koronę rozciągnione, inskrypcyi kompromisarskiej nie uprzedziło, lecz następnie wypadło, ściągać się zatym do poprzedzających inskrypcyi nie może" [that the law of the Grand Duchy of Lithuania concerning compromises was written and extended to the Crown of the Kingdom of Poland, and it did not precede promissory inscriptions, as such it could not be applied to the compromises which had already been in force].[41] Unfortunately, the contents of the resolution do not provide information pertaining to the circumstances in which the question above was submitted to the Council. Furthermore, we also do not know who and for what reason was directly interested in resolving this matter. From the

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of conciliation was provided for by article 25, chapter IV of the Statute, *Statut Wielkiego Księstwa Litewskiego* [...] *teraz zaś za Najjaśniejszego Króla Stanisława Augusta* [...] *przedrukowany* [The Statute of the Grand Duchy of Lithuania [...] now reprinted [...] during the reign of His Majesty, the King Stanislaus II Augustus], Vilnius 1786. One fact deserves particular attention, namely the fact that despite the III Statute of Lithuania was revoked in western governorates of the Russian Empire in 1840, its provisions concerning arbitral tribunals were still applied in the following years. This can be explained by the nobility's attachment to the indigenous legal solutions, S. Godek, *III Statut Litewski w dobie porozbiorowej* [Lithuanian Statute III in the post-partitioning period], Warsaw 2012, pp. 191–192.

[38] *VL* VI, *fol.* 490–491. As the legislator explained, the need to pass the aforementioned constitution arose in connection with the practice of breaking compromises by the parties involved in it and the frequently noted cases of a lack of unanimous agreement among the arbiters who constituted a given arbitral tribunal. As a consequence, instead of facilitating and speeding up of settling of disputes in the course of arbitral proceedings, they were extended in time. To counteract this state of affairs, the constitution ordered the parties to obey the compromise provisions, inter alia, by bringing the case to a close in those arbitral tribunals in which they had started. A prohibition against appealing the adjudication of the arbitral tribunals to any *majoris et minoris subsellij* was also stipulated, while in case of divergent decrees the competences of the arbiters to settle a dispute were given to the Tribunal of the Grand Duchy of Lithuania.

[39] Perhaps T. Ostrowski formulated his erroneous thesis concerning the appearance of arbitral tribunals in the Crown of the Kingdom of Poland only in 1776 on this basis. See footnote 3.

[40] *VL* VIII, *fol*. 879.

[41] Resolution number 347 from the 3rd of October 1777, *Zbiór rezolucyi Rady Nieustającej* [A collection of the resolutions of the Permanent Council], Warsaw 1785, p. 93.

explanations provided by the conciliators it only follows that in case of doubts or disputes concerning agreements made at arbitral tribunals before 1776, one could not have called on the parliamentary constitution in force. Simultaneously and equally importantly, there was no mention of a lack of validity of such provisions, which in case of their infringement by any of the parties could still constitute a basis for bringing the case to a circuit court for a breach of contract.

Furthermore, the memoranda sent to the Council several times brought up the issue concerning the participants of the proceedings, both the parties taking part in the dispute as well as adjudicators. An example of this is the memorandum sent to the Council by Michał Bułharyn, a Vawkavysk land clerk. The issue which he raised was connected with doubts pertaining to the group of entities entitled to make agreements before arbitral tribunals – men of the cloth. The starting point was, according to Bułharyn, determining whether "dobra funduszowe, *a corpore* bądź królewskich, bądź szlacheckich, bądź miejskich majątków wyjęte, tracą początkową swoją naturę i dziedzictwem jakoby kościelnym stają się" [funds, *a corpore* or royal properties, or nobles' property, or municipal property, they lose their initial nature and they become church's heritage]. Consequently, indicating the rights of the representatives of the clergy, who have use of church property for life, are forbidden to act "ze szkodą *in proprietate*, czyli to *haereditatis Ecclesiae*" [to the detriment *in proprietate*, namely to *haereditatis Ecclesiae*"]. Therefore, he asked, in the first place, whether "osoba duchowna, dobra kościelne dzierżąca, może ugody zawierać?" [clergymen who hold church property are allowed to make agreements?]; secondly, whether "do kompromisów [może] pisać się sama, czyli pod powagą starszeństwa, a w przypadku, iżby interwencja onego koniecznie potrzebną była: jaka i jak zupełną ta być powinna?" [they (can) make compromises by themselves, under the authority of seniority, and, in case their intervention is necessary, what it should be and to what extent?]. The Council adjudicated that properties given to the church should be treated as "za wyjęte spod dawnej natury i za własność kościelną [mają być] poczytane dotąd, pokąd Rzeczpospolita na sejmach, co jasnego lub szczególnego, z najwyższej mocy swej nie postanowi" [exempt from the old nature and (should be) seen as church property until the Commonwealth makes a clear and distinct decision during sejms sessions]. Simultaneously, it finished its train of thought with the statement that "sprawiedliwość równoważna, nie dozwala bynajmniej tego, aby dobrodziejstwo w kompromisach, służyć nie miało osobom duchownym, podobnie jako i świeckim, przeto nie inaczej, jak w asystencyi delegowanego *ab ocio*, *qua plenipotenta*, dobranych *a loci ordinario* kompromisarzów i z zachowaniem wszelkich formalności, z prawa duchownego nakazanych, *in objecto alienationis bonorum*, może beneficiatus ksiądz, na polubowny sąd opisywać się" [equal justice does not allow the benefits of compromises to exclude from them the men of the cloth as it should serve them in the same way as it does the laity; as such, with the

assistance of delegated *ab ocio*, *qua plenipotenta*, selected *a loci ordinario* conciliators and, with the observance of all formalities ordered by canon law, *in objecto alienationis bonorum*, a beneficiatus priest can turn to an arbitral tribunal].[42] As a consequence, the Council confirmed that, despite the special character of church property, the clergy may take advantage of arbitral tribunals according to the same principles enjoyed by the representatives of the other members of the laity.[43]

As it was already mentioned, the issue of arbiters was also a source of controversy and doubts, especially the rules concerning appointing them. It can be attested to, inter alia, by the memorandum sent by Franciszek Kuszel, the Podlachia steward. Kuszel called on the Constitution of 1726 "Trybunał Główny Koronny" [The Main Crown Tribunal], which forbade the arbiters of the Tribunal to "wchodzenia w kompromisy *stante functione sub nullitate judicati*" [enter into compromises *stante functione sub nullitate judicati*].[44] He interpreted this provision as to be applicable to superarbiters only and for this reason asked whether deputies chosen to be an arbiter before taking their post in the Tribunal, after the commencement of arbitral proceedings and after completing, inter alia, the interrogation of one of the parties and some of the witnesses, can together with the superarbiter conclude the work of the arbitral tribunal and fulfil the duties of a deputy at the same time. The Permanent Council rejected this interpretation by stressing that "deputatowi w każdym czasie funkcyi swojej, aż do jej zakończenia, innymi sądami, oprócz trybunalskich, zatrudniać się nie dozwala" [deputies at all times of performing their duties until the end of their term cannot work for any other courts aside from the tribunal ones]. Furthermore, the Council emphasized that in case they undertake any activity in a compromise court "akty takowe (choćby przez strony przyjęte były) niszczy, tak też i sądów polubownych, *stante eadem Tribunalitia functione*, deputatom kontynuować nie daje mocy" [such acts (even if they were accepted by the parties) are destroyed, and it is also the case with arbitral tribunals, *stante eadem Tribunalitia functione*, they do not give the deputies authority to continue].[45] The resolution of the Council definitely settled the issue of the participation of the members of the Tribunal in the activities of compromise courts. This solution was supposed to prevent a common occurrence, namely deputies not attending the sessions of the Tribunal.[46] Thusly, it was supposed to ensure greater efficiency

[42] Resolution number 341 from the 30th of May 1786, *Zbiór rezolucyi...* [A collection of the resolutions...], 1788, p. 138.

[43] There are also known cases of nuns taking advantage of compromises, A. Rosner, *Tradycja...* [The tradition...], p. 43.

[44] *VL* VI, *fol.* 423.

[45] Resolution number 400 from the 9th of July 1784, *Zbiór rezolucyi...* [A collection of the resolutions...], 1786, p. 34.

[46] See more: W. Bednaruk, *Trybunał Koronny...* [The Crown Tribunal...], p. 274.

of its activity. And even though the reasons behind the absence of arbiters can be explained by a lack of discipline or even by an aversion of the nobility towards the difficult and demanding work of deputies, the unequivocal confirmation of the statutory prohibition of the participation in compromises by the Council was supposed to induce deputies to concentrate in large measure on their duties in the Tribunal.

A different kind of a case was described in a memorandum by Gabriel Karwosiecki,[47] a Płock chamberlain, who performed the function of a superarbiter. The doubts which he drew attention to were connected with the interpretation of the principle set in the compromise provisions which allowed one arbitral tribunal to issue a verdict after a resignation by one of the parties or in the absence of one of the parties. However, this principle did not provide for a course of action in the case Karwosiecki raised in which "strona odstępując od sądu razem i od siebie mającego wolność stawić się do sądu arbitra, odciąga i nie stawi" [a party withdraws from an arbitral tribunal and also withdraws their arbiter from the tribunal]. This begs the following question: "czy może superarbiter sam z drugim arbitrem sąd rozpoczynać i kończyć, albo nie?" [can a superarbiter by oneself together with a second arbiter begin and end an adjudication or not?]. The Permanent Council explained that the deciding factor in this area were the contents of the compromise reached by the parties. In case the composition of the tribunal contained a superarbiter as well as arbiters mentioned by their first and last name, the verdict could only be issued by the tribunal in its full composition. This can be construed as a safety measure for the parties to prevent a tribunal from making a ruling without the participation of either party's arbiter in case they were absent at the proceedings. However, in case only a superarbiter was appointed, when "dodanie arbitrów stronom jest zostawione, bez specyfikacyi osób, lecz kogo się im zdarzy uprosić i do sądu zasadzić, na ów czas umknienie arbitra i niestawienie się jego do sądu, nie inaczej, jako za odstąpienie samej strony ma być rozumiane, zostawując superarbitrowi poczynania według reguły zapisanej na kompromis" [adding arbiters is left to the parties, without specifying any persons but making it whoever they manage to ask and place in a tribunal, and if in such a case the arbiter is gone and does not appear in court, then it is to be understood only as the parties waiving their case and the proceedings are to be left to the superarbiter according to the principles of compromises].[48] According to the Council, if one of the parties did not indicate in the agreement a specific person to perform the function of the arbiter, and when the said arbiter did not appear at the compromise court, then the superarbiter could continue arbitral proceedings. Simultaneously, it was emphasized that the situation

[47] See more: K. Zienkowska, *Karwosiecki Gabriel Antoni*, PSB, vol. XII, Cracow 1966–1967, p. 158.

[48] Resolution number 375 from the 18th of June 1784, *Zbiór rezolucyi...* [A collection of the resolutions...], 1786, p. 34.

delineated above had the same results as a party withdrawing from a compromise, which was not admissible. What was the *ratio legis* of such a resolution? It seems that the accepted interpretation was supposed to be conducive to a more efficient functioning of arbitral tribunals and preventing situations in which the work of the tribunals could be paralyzed or delayed due to withdrawing from a compromise or an absence of the parties or their arbiters at the proceedings.

Those who turned to the Permanent Council also indicated certain doubts concerning the competences of arbitral tribunals, including what type of cases could be brought forward for them to settle. Such objections were presented in his memorandum by the aforementioned Franciszek Kuszel. Taking into consideration the contents of the constitution, "Deklaracja o komisjach i remissach" [A declaration on the committees and returns] from 1776 which extended to the Crown of the Kingdom of Poland the law which had been passed for the Grand Duchy of Lithuania in 1726, he suggested that this act "zdaje się tylko pozwalać zapisywania kompromisu w sprawach tych, które były komisjami sejmu 1775 roku objęte" [seems to allow for compromises only to be made in those cases which were included in the sejm's committee from 1775]. As he wanted to solve this issue, Kuszel asked: "czyli więc toż prawo, daje moc zapisywania kompromisów we wszelkich sprawach ziemskich? I jakie mają być sprawy, rozumiane za ziemskie?" [does this law give the authority to make compromise in all land cases? And which cases are to be understood as land ones?]. The Council rejected the interpretation presented by Kuszel by explaining that the constitution of 1726 "we wszelkich sprawach zapisywania sądu polubownego dozwala. Prawo zaś 1776 mówiąc o kompromisie, sprawy ziemskie wymienia, przeto podług obmowy tych praw obydwóch, wszelkie sprawy ziemskie pod rozsądzenie kompromisów podpadać mogą" [allows all cases to be made for arbitral tribunals. The law of 1776 which speaks of the compromise mentions all land cases, and accordingly, according to the provisions of these two laws, all land cases can be settled by a compromise].[49] The issue of the powers of arbitral tribunals was raised by Franciszek Strzałkowski, a Radom circuit bailiff. The query concerned a procedural issue and pertained to convening a *kondescensja*, which was an assembly at the disputed ground, by a compromise court. Strzałkowski asked: "gdy w zapisie kompromisarskim nie ma nadanej wyraźnie sądowi polubownemu mocy wyznaczania kondescensyi sądów ziemskich lub grodzkich urzędów, czy może tenże sąd polubowny albo od siebie wyznaczyć kondescensję, albo stronie zalecić wprowadzenie urzędnika do egzekucyi jego dekretu? I czyli akt urzędnika sprowadzonego w tym przypadku, może być rozumiany za legalny, mający tęż samą powagę, co sąd kompromisarski?" [if there is no compromise provision which

[49] Resolution number 400 from the 9th of July 1784, *Zbiór rezolucyi...* [A collection of the resolutions...], 1786, p. 34.

clearly grants arbitral tribunals the power to designate a *kondescensja* of circuit courts or county offices, can the said arbitral tribunal designate a *kondescensja* by itself or can it order a party to introduce an official to execute its decree? And can an act of an official brought in in this case be treated as legal and have the same validity as that of a compromise court?].

The Council replied that the decisive principle in this area was stipulated for in the compromise provision. However, it firmly stated at the same time that: "Żeby zaś sąd kompromisarski mógł arbitralnie urzędy ziemskie lub grodzkie na kondescensje powagą wyroku swego zsyłać, żadnym prawem o kompromisach pisanym nie jest do tego umocowanym" [Concerning compromise courts arbitrarily summoning circuit or county offices for a *kondescensja* with the power of their sentence, they have no such authority according to the written laws concerning compromises]. According to the conciliators, circuit or county offices had the right to determine a *kondescensja* only in cases when "z obopólnej stron umowy zapisem kompromisarskim pozwolonej tej mocy udział mają sobie wyraźnie dany" [they are explicitly granted this authority by both parties to the compromise agreement]. The Council's answer to the question concerning the execution of judgements of arbitral tribunals was the following statement: "dekreta kompromisarskie jako są dekretami ostatecznymi, tak do egzekucyi przez sąd każdy doprowadzone być powinny" [compromise decrees are final decrees and as such they should be executed to the end by every court].[50]

Complicated and multifaceted disputes between the conflicted parties led to practices which relied on also including those cases for the ruling of arbitral tribunals which had not been explicitly specified in the compromise provision. This matter was also dealt with by Władysław Ciołkowski, a Stężyca district court judge, in his memorandum. He asked how one should proceed if an arbitral tribunal "sprawę pod zapis niepoddaną, owszem wcale wyjętą, przez decyzję swą zajął?" [by its own decision, took charge of a case which was not in its purview, indeed, one which was completely excluded from it?]. He added: "czyli ukrzywdzonemu w takim przypadku naprzeciwko dekretowi polubownemu, czynić się godzi, i gdzie?" [can the party injured in such a case by an arbitral decree appeal against it and, if so, where?]. The issue of the powers of compromise courts was raised here as well as of the proceedings the parties can undertake in connection with the ruling made in such a case. The authors of the resolution replied to Ciołkowski thusly: "w kategoryi nieprzyzwoicie i nienależnie w sąd polubowny wciągnionej i rozsądzonej strony czynić mogą *in foro* gatunkowi sprawy competenti" [in the category of cases which are put in arbitral tribunal's jurisdiction in an indecent and

[50] Resolution number 257 from the 29th of April 1788, *Zbiór rezolucji...* [A collection of the resolutions...], 2014, p. 270.

undue manner, the parties can make the case *competenti in foro*].[51] Consequently, conciliators decided that the parties to the compromise had the right to take their case to the court which had jurisdiction if the case had been judged by an arbitral tribunal which had exceeded its competences and jurisdiction. However, the Council did not make a statement concerning whether a compromise ruling issued in the area not included in the agreement remained in force or was it subject to an annulment procedure.

A different type of problem was raised in the resolution which was a reply to an official letter by the Kalisz zemstvo. It pertained to entering into official files a contract which concerned the creation of an arbitral tribunal. It can be gleaned from court information that the compromise provision made between the Trembiński family members were not testified to before public records, while the tribunal itself did not convene on the appointed date. As a result, one of the parties to the dispute demanded the realization of the provision and convening a compromise in accordance with the contents of the agreement. The other party applied for a declaration of invalidity by pointing out that there occurred a failure to comply with the law. In response to the doubts raised by Kalisz judges, the Permanent Council drew attention to a fragment of the 1726 constitution which stated that "*in futurum* wszelkie sprawy na kompromis przez strony *sponte* zapisem in quoqunque subsellio przyznanym ordynowane *etc*." [*in futurum* all compromise cases by parties *sponte* provision *in quoqunque subsellio* admitted ordained *etc*.], and by drawing special attention to the phrase "*in quoqunque subsellio*", it confirmed the precept of registering compromise provisions in any office, which was a necessary condition to make the said provision legally binding.[52] The Council devoted one resolution to deferments, in this case a postponement of the commencement of the sessions of an arbitral tribunal, which was issued upon the motion of the aforementioned district court judge Władysław Ciołkowski. He asked, possibly due to an attempt to postpone the date of court was supposed to commence work upon the motion of one of the parties to the compromise, "czyli prorogacja sądu kompromisarskiego jednostronna, opisem kompromisu całemu nawet sądowi niedozwolona jest tak prawną, aby drugą stronę na tę prorogację niedozwalającą, do sądzenia się obowiązywać mogła lub nie?" [whether a one-sided deferment of a compromise court, which is against the provisions according to which the court was to function, is effective and should the other party agree to this deferment or not?]. The Council explained that the basis for action in such a case was the agreement between the parties, while the tribunal "podług inskrypcyi *quo ad literam* zachować się ma"

[51] Resolution number 149 from the 19th of August 1785, *Zbiór rezolucyi...* [A collection of the resolutions...], 1788, p. 68.

[52] Resolution number 261 from the 6th of May 1788, *Zbiór rezolucji...* [A collection of the resolutions...], 2014, p. 274.

[ought to act according to the *quo ad literam* inscriptions], which should be explained as the duty to commence the sessions of the tribunal on the date specified in the compromise provisions and that responsibility rested with the parties and with the arbiters. Simultaneously, however, it was stated that "gdy czas *praefixe* do rozsądzenia jest wyznaczony, po upłynieniu onego bezczynnym, powaga sądu ustawać powinna" [when the *praefixe* time for judgement is set, and after this date passes without any action, then a court's power should cease].[53] This gives one to understand that if the parties to the compromise did not take part in the arbitral proceedings at the appointed time then it meant that the tribunal lost the competences it had been granted.

The memoranda which were presented to the Council also raised the issue of transferring cases from arbitral tribunals to state courts.

The judges from the Żytomierz zemstvo asked about this possibility. In the case described by them, the parties involved in the dispute in the circuit court which issued the decree which ordered the defendant to disown the charges brought against him and the parties reached a settlement in terms of passing all the cases opened between them over to a compromise court. When the compromise failed after several years of extended arbitral proceedings, then the plaintiff decided to once again give the case to the circuit court. At the same time, they demanded that the defendant satisfy the terms of the decree which had been previously issued in this zemstvo. The latter refused by invoking in the circuit court the resolutions of the parliamentary constitutions as well as by presenting the agreement which appointed the arbitral tribunal in the case under consideration. The court in Żytomierz then turned to the Permanent Council with the following question: "Czyli tedy po upadłym terminie kompromisu, sprawy pod tenże kompromis poddane, wrócić się mają do tych jurysdykcyi gdzie zaczęte były? Czyli za podniesieniem od superarbitra kompromisu w tym sądzie gdzie terminowane i kończone *finaliter* być powinny?" [Should the matters under consideration for a compromise return to the jurisdiction where they began after the date of the compromise passed? Or, if a superarbiter of the compromise is appointed, should they continue and be finalized where they have started?] By invoking the contents of the 1726 act, the Council announced "iż gdzieby po upadłym terminie nie był ostrzeżony upad kompromisu, tam strony za podniesieniem drugiego terminu, nie gdzie indziej, tylko w sądzie kompromisarskim rozpierać się powinny" [that, after the date passed and the compromise was not achieved, and the parties wished to settle on another, then they should continue their dispute nowhere else than in the compromise court only].[54]

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[53] Resolution number 149 from the 19th of August 1785, *Zbiór rezolucji...* [A collection of the resolutions...], 1788, p. 68.

[54] Resolution number 192 from the 2nd of September 1783, *Zbiór rezolucyi...* [A collection of the resolutions...], 1786, p. 32.

Therefore, if one wished to strictly adhere to the letter of the law which had been laid out in the aforementioned constitution, which ordered that all disputes should be brought to an end in the same compromise court in which they had started, the Council negated the possibility of sending a given case back to a circuit court for judgement.

In a similar case, where Jan Kanty Karwosiecki[55] performed the function of an arbiter in an arbitral tribunal, he asked whether in case of a collaborative decision made by the arbiters and the superarbiter regarding sending back *ubi de jure* the disputed case, after it was examined, the arbitral tribunal had the duty, on demand of either of the parties, to "podnieść termin kompromisu i sprawę finalnie według zapisu kompromisyjnego rozsądzić?" [raise the date of a compromise and finally arbitrate the case according to the compromise provision?]. The Council, by referring to the decisions of the universal[56] devoted to arbitral tribunals from 1786,[57] mentioned "iż na fundamencie kompromisarskiego obustronnego zapisu, superarbiter i arbitrowie sprowadzeni, jurysdykcję sądów swoich ufundować, accesoria *in forma judiciorum* ułatwić, indukt wysłuchać, a na koniec po odeszłych replikach ostatnią decyzję ferować i sentencję deklarować powinni" [that on the foundation of the mutual compromise provision, a superarbiter and arbiters brought in, carry out the jurisdiction of their own courts, facilitate accesoria *in forma judiciorum*, hear the introduction, and finally they should pronounce the final decision and declare the sentence after hearing out the rebuttals].[58] It thus confirmed, in a manner which left no doubts, the duty of arbitral tribunals to complete arbitral proceedings by issuing a final adjudication.

However, this resolution soon became the topic of a memorandum written by Romual Walewski,[59] one of the members of the Council. He suggested that such a solution had its drawbacks (Walewski indicated the danger of collision in jurisdictions) and asked: in a situation when an arbitral tribunal "zamiast finalnego dekretu ferowania, sprawę całą *ad quem de jure* odesłał, [...] strony *conformiter* wydały termina do sądu sprawie przyzwoitego, superarbiter może być następnie zmuszony przeciwko własnej sentencyi, na nowo zasiadać i sądzić, bez nowego

[55] Karwosiecki Jan Kanty (Lubicz coat of arms) – Chęciny Master of the Hunt (1784–1794), border bailiff (1785), *Urzędnicy województwa sandomierskiego XV–XVIII wieku. Spisy* [The officials of the Sandomierz Province from the 15th to the 18th century. The lists], ed. A. Gąsiorowski, compiled K. Chłapowski, A. Falniowska-Gradowska, Kórnik 1993, p. 184.

[56] Universals were provisions which were normative in character. They were issued as royal acts with the support of the Permanent Council, S. Kutrzeba, *Historia źródeł dawnego prawa polskiego* [The history of the sources of old Polish law], vol. I, Lviv 1925, p. 203.

[57] Universal number 305, *Zbiór rezolucyi...* [A collection of the resolutions...], 1788, p. 164.

[58] Resolution number 119 from the 1st of June 1787, *Zbiór rezolucyi...* [A collection of the resolutions...], 2014, p. 137.

[59] See more in: A. Czaja, *Między tronem...* [Among the throne...], p. 92.

na to polubownego od stron jego na superarbitra zapisania?" [instead of issuing a final adjudication, sent the whole case *ad quem de jure*, [...] the *conformiter* parties gave a date to the court with jurisdiction, a superarbiter may be subsequently forced to be in session and arbitrate again against its own sentence without a new superarbiter designated by the parties?]. What is more – the conciliators asked further – whether "strona może przymuszać drugą stronę do powtórzenia takowego zapisu, który w takowym razie jużby przestał być polubownym?" [one of the parties could force the other party to repeat such a case which in such a situation would stop being an arbitral one?] The Permanent Council reminded, by invoking both the sejm constitutions of 1726 and 1776 as well as the contents of their previous resolution in the answer once again, that cases which had begun in one arbitral tribunal should be finished in it.

It added "że superarbiter z obowiązku przyjętego, na siebie dobrowolnie urzędu, sądzenia kompromisu, nie mógł był i nie powinien, od tego sądu supersesyi czynić, ale onże finalnie kończyć" [that a superarbiter could not and should not supersede the duty of arbitrating the compromise which they have accepted willingly but they had to bring it to a final end]. The danger stemming from sending the parties to a different tribunal which could undermine the trust in the institution of compromises was emphasized and it could expose to "niepewność tej spokojności, którą prawa zabezpieczyły, a którą sobie strony wzajemnie w dobrej wierze i ufności superarbitra i z nim wybranych arbitrów do sądu zasadzając, na zawsze zamierzyły" [uncertainty this calmness which has been secured by law and which the parties mutually intended in good faith and trust in the superarbiter and the arbiters chosen for a tribunal]. That is why the Council finished by emphasizing "przeto jako superarbiter wszystkie strony od sądu swego odsyłając *ubi de jure* oddalił, tak gdy od tychże stron wszystkich w zapis kompromisarski wchodzących rekwirowany będzie, winien jest sąd swój podnieść i tymże stronom finalną wymierzyć sprawiedliwość" [that as a superarbiter referred all parties to their judgement *ubi de jure* dismissed so it will be required of all the parties entering the compromise provision, and ought to raise their judgement and pronounce a final sentence to deliver justice to those parties].[60]

Relatively a lot of attention was devoted to the issue of the sentences themselves of the arbitral tribunals in the memoranda which were sent in.

To begin with, let us examine the resolutions of the Council which were devoted to the broadly understood subject matter of the influence of the decrees of the compromise courts on third parties who did not appear as parties to the compromise proceedings. This issue was the subject of the memorandum sent to the Council by

[60] Resolution number 180 from the 23rd of November 1787, *Zbiór rezolucyi...* [A collection of the resolutions...], 2014, p. 185.

judge Władysław Ciołkowski from the town of Stężewo. He asked whether "osoby do jedności interesu należące, a do sądu polubownego niepiszące się, na przykład siostry i inni sukcesorowie, ulegać mają decyzyi sądu polubownego?" [persons who are party to the affair but who do not participate in the arbitral tribunal, for instance sisters or other inheritors, should they be subject to the decisions of an arbitral tribunal?]. The issue indicated by Ciołkowski was probably prevalent. One can assume that it was a common occurrence to encounter cases in which more people were involved amongst at least one of the parties or, alternatively, cases in which the result of the dispute could also have had legal repercussions in relation to those people who did not make a compromise agreement. Consequently, the Council's reply was of significant importance for all people interested in a case but who did not necessarily take part in the arbitral proceedings. According to the conciliators' explanations and according to the general rule, "kompromisa nie mogą inne osoby w inskrypcję niewchodzące pod sąd swój do przyjęcia decyzyi pociągać" [compromises cannot include people who are not included in its contents and so cannot be bound by a tribunal's decisions]. Concomitantly, the Council emphasized that "gdyby jednak przypadkiem podciągnięte [inne osoby], wyrok ten za legalny przyjęły i onemu we wszystkim zadosyć uczyniły, takowy dekret, ważnym i niewzruszonym być powinien" [if (other persons) were accidentally included, however, and accepted this sentence as legal and satisfied it in all ways, then such a decree should be valid and ironclad].[61] And so, this resolution secured parties who did not take part in an arbitral tribunal in case of an unfavourable decision. At the same time, it stated that in case everyone was satisfied with the sentence and it was accepted by all interested parties, then it became binding, which created the possibility for the dispute to be resolved and final.

Conciliators maintained their position in this matter in one of the following resolutions. It came about as a result of a request for clarification which had been sent in to the Permanent Council by General Jan Aleksander Kraszewski.[62] He asked in his memorandum for an explanation to the following question: "czy nowy dziedzic, kupiwszy wieś, może być przymuszonym od sądu, trzymać i kończyć kompromis, przez dawniejszego dziedzica zapisany i zaczęty, ale kilkokrotnymi limitami, przez więcej dwuletni przeciąg zwlekany i nieskończony?" [can a new squire, after purchasing a village, be forced by court to hold and complete a compromise which was started by the previous squire but which was extended several

[61] Resolution number 149 from the 19th of August 1785, *Zbiór rezolucyi...* [A collection of the resolutions...], 1788, p. 68.

[62] Kraszewski Jan Aleksander – Major General of the Crown armies (1775–1787), *Oficerowie Rzeczypospolitej Obojga Narodów 1777–1794. Spisy* [The officers of the Polish-Lithuanian Commonwealth 1777–1794. The lists], vol. I, part 1, M. Machynia, C. Srzednicki, *Wojsko Koronne. Sztaby i kawaleria* [The Crown army. The staff and the cavalry], Cracow 2002, p. 129.

times for 2 years and it was not yet finished?]. In the latter part, Kraszewski asked about the possibility of entering into "ordynaryjną" [ordinary] path which should be translated into official "prawa drogę" [path of the law] by the purchaser of a property. Moreover, the case described here probably was not something rare which further influenced the need to issue a resolution in this area. And so, the Council stated in its reply "iż inskrypcje sądu kompromisarskiego wiążą te osoby, które się nań *sponte* zapisały: zaczym, jeżeli nowy dziedzic wsi w memoriale wzmiankowany, w tranzakcyi rezygnacyjnej przez porządniczego tejże wsi dziedzica, nie ma ostrzeżonego ukończenia, rozpoczętego *in ante* kompromisu, inskrypcja na tenże kompromis poprzednicza, wiązać go nie może" [that the inscriptions of compromise courts bind these parties which have signed up for it s*ponte*: and so, if the new country squire mentioned in the memorandum, in the resignation transaction by the former squire of the said village, there is no warning of completing the *in ante* began compromise, the previous inscription for this compromise cannot be binding for them].[63] Consequently, the contents of the agreement pertaining to the sale of the property as well as the possible insertion in it the duty to continue the arbitral tribunal by the legal successor were of decisive significance in this case and others similar to it. A lack of such a stipulation did not free one of this duty.

The discussed problem returned to the Council's plenary session in the following year when a demand to abrogate the arbitral tribunal's decision by the Krzemieniec zemstvo was made to the conciliators by Stanisław Batkowski, one of the heirs of the Batkowo and Leduchowo properties. His brothers in the course of a compromise which they had made, without his participation, split the property between themselves. The Council called upon the 1784 constitution entitled "Illegalność procesu" [The illegality of litigation] in the resolution by reminding that litigation was against the law when "którymi strona, sądem polubownym (w zapis onego niewchodząca) zajęta była" [parties are included in the work of the tribunal (without being included in the provision)]. That is why, as it was explained later, "sąd, do którego kognicyi takowa sprawa wytoczy się, jeżeli strona okaże, że w zapis kompromisarski nie wchodziła, podług wyżej rzeczonego prawa, sprawiedliwość jej wymierzy" [a tribunal, to the cognition of which such a case is made, if the party turns out not to be included in the compromise provision, according to the law mentioned above, will deliver justice to them].[64] The Permanent Council, by basing their position on the act in force, granted the motion made by Batkowski. It should be added that this resolution completely fit into its hitherto pronounced judicial decisions in this area.

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[63] Resolution number 191 from the 25th of October 1785, *Zbiór rezolucyi...* [A collection of the resolutions...], 1788, p. 69.

[64] Resolution number 261 from the 3rd of January 1786, *Zbiór rezolucyi...* [A collection of the resolutions...], 1788, p. 70.

Another resolution can attest to the common character of the issue at hand. A case brought forward by the Military Department of the Council pertained to a border dispute between Franciszek Czacki, a great crown guard,[65] and Michał Urbanowski, a royal chamberlain. They both decided to refer their dispute to be resolved by an arbitral tribunal. However, as it stems from the contents of the resolution the compromise provision "żadnej o sukcesorach wzmianki, iżby ci w przypadku śmierci strony piszącej się do tego sądu [polubownego] ciągnieni być mogli" [there was no mention that inheritors could be accountable in case of the death of one of the parties to the (arbitral) tribunal's proceedings]. After the proceedings had started and the compromise court had issued several accessory decrees, Franciszek Czacki died and left a widow with underage children. Chamberlain Urbanowski refused to continue the arbitral tribunal by concluding "iż kompromis niebywszy za życia strony jednej nań piszącej się uskutecznionym, upadł" [that the compromise failed as it was not completed during the lifetime of one of the parties to it]. Additionally, he raised the argument "że sąd nie mógłby w nieletniości dziedzica sprawy granicznej sądzić, a to według praw koronnych i Statutu W.X.L. województwu wołyńskiemu służącego" [that the tribunal could not arbitrate in a border case in which the heir was underage according to the crown laws and the Statute of the Grand Duchy of Lithuania which serve the Wołyń province]. Michal Urbanowski also died soon thereafter. When the compromise court decreed that the case was to be transferred to the proper court of the steward in order to make roads in the forest and make mounds on the disputed ground, the court undertook proper steps in this area. Then the guardians of the underage heir of Urbanowski blocked border officials' actions. They claimed "iż kompromis za życia nań [stron] piszących się, wyroku sprawę rozsądzającego niemający wiązać sukcesorów nie powinien, iż sprawa graniczna między małoletnimi dóbr dziedzicami sądzoną być nie może" [that the compromise sought (by the parties) and its sentence deciding the case should not bind the heirs as a border case between the underage heirs of properties cannot be adjudicated]. The Czacki family made a motion to the Permanent Council in reply. They requested the help of the military in order to carry out the sentence of the compromise court. The conciliators invoked the resolution mentioned previously in the 1726 constitution and stated "iż kompromisa *inter personas paciscentes sponte ex consensu ambarum partium* zapisane, koniec i egzekucję swoją brać powinny, *ex quo* żadne *subsellium* by najwyższe w rozeznawanie spraw sądom polubownym oddanych wchodzić, a tym bardziej unikczemniać kompromisu nie mają mocy" [that compromises made *inter personas paciscentes*

[65] Czacki Franciszek (Świnka coat of arms) – great crown guard (1766–1787), *Urzędnicy centralni i nadworni Polski XIV–XVIII wieku. Spisy* [The central and court officials in Poland between the 14th and the 18th century. The lists], ed. A. Gąsiorowski, compiled K. Chłapowski, S. Ciara, Ł. Kądziela, T. Nowakowski, E. Opaliński, G. Rutkowska, T. Zielińska, Kórnik 1992, p. 162.

sponte ex consensu ambarum partium should have their end and execution, *ex quo* no *subsellium* should enter into the discernment of cases given to arbitral tribunals and, what is more, they do not have the authority to invalidate a compromise]. Concomitantly, taking into consideration the statutes of Casimir III the Great as well as the Statute of Lithuania which protected the underage against unfavourable disposition of their property by their guardians, and especially forbidding "utracać" [wasting] it or "graniczyć" [reducing] it, the Council refused to grant military help against underage Urbanowski. The resolution ended with the following words: "Za dojściem zaś do lat ciż sukcesorowie będą wiedzieli, jak w mocy aktorstwa i w sile praw tak o kompromisach, jako i o bezpieczeństwie *minorennium* stanowionych wzwyż wycytowanych, będą mogli w czasie dysponować się względem kompromisu między ojcami nastałego, a niespodzianą ichże śmiercią nieskończonego" [When coming of age these inheritors will know, how in the power of lawsuit and the laws constituting the strength concerning compromises as well as pertaining to the safety of *minorennium* stated above, and will be able to make dispositions in relation to the compromise made between the fathers and not finished due to their untimely death].[66] Thus the case was to be suspended. However, the Council left to the underage legal heirs of the parties who made the agreement for the arbitral tribunal the possibility of choice of the legal recourse, after they came of age, which was to end the border dispute which had started when their fathers had been alive.

In relation to the sentences, the so-called writing out of the sentence could have been an issue – it was a situation in which the different opinions of the arbiters in a given case made it impossible to issue a unanimous decree to settle the dispute under consideration.

Such a case was described in a report sent in by the Żytomierz circuit court. As it follows from the contents of the resolution, after the sentence was issued[67] by an arbitral tribunal, one of the parties to the compromise, on the basis of the favourable sentence made by the superarbiter and the arbiters appointed by it, was determined to continue the proceedings. However, the other party, which did not support the decree, invoked the Statute of Lithuania[68] and turned to the circuit court and made a motion for the decree to be abrogated. The party who wanted to maintain the compromise did not recognize the forum of the aforementioned zemstvo, however. The party's explanation was that according to the powers of the

[66] Resolution number 199 from the 21st of December 1787, *Zbiór rezolucyi...* [A collection of the resolutions...], 2014, p. 211.

[67] The resolution does not mention whether the sentence was final or it was an accessory one.

[68] It refers to the already mentioned article 85 of chapter IV of the 1588 Statute according to which: "A gdzieby się sąd polubowny pokazał różny, o takowy sąd gdy się obie stronie przed urząd ziemski przypozwą" [And when an arbitral tribunal turned out to disagree, then both parties will serve a third party notice regarding such judgement].

constitution passed for the Grand Duchy of Lithuania in 1726, which was extended to the Crown in 1776, such sentences were supposed to be examined by the Tribunal. Because of the objections of the circuit court, the Permanent Council emphasized that "późniejsze prawa są pierwszych związaniem" [later laws bind earlier ones] and decided that, due to the collision of the two aforementioned acts, the 1726 act took precedence over the Statute of Lithuania. It also tried to assuage the doubts of the judges from Żytomierz in the following words: "gdzieby w rozróżnienie sędziów kompromisarskich *palpabilis pluralitas* nie znajdowała się, poznanie takowego rozróżnienia i decyzję, nie ziemstwom, ale Trybunałom poleca" [when different opinions of compromise judges *palpabilis pluralitas* were not found, such familiarization with these different opinions and the decision is recommended to the Tribunals and not to zemstvos].[69]

The resolutions devoted to compromise courts also included the problem of appealing arbitral sentences. Władysław Ciołkowski from Stężyca mentioned above, taking the 1726 constitution which introduced a general prohibition on appealing the sentences of arbitral tribunals (*in semota appellatione*) into consideration, turned to the Council with a question concerning the admissibility of appeals in cases when in the description of the compromise the condition of *inappellabilitatis* was not expressed *expressis verbis*. The Council explained in its reply that "konstytucja z 1726 r. [...] przepisując w kompromisach aryngę mającą się wyrażać «*semota appellatione*» nie znosi tym samym ważności dekretów, które *pro inappellabilibus* są tymże prawem przyznane" [the constitution of 1726 [...] prescribing an introduction in the compromises which is to be expressed «*semota appellatione*» does not invalidate the validity of the decrees which are granted by this law *pro inappellabilibus*].[70] How should these words be construed? In accordance with the position of the conciliators, a lack of the condition of non-admissibility of appeals in the compromise agreement did not mean that the possibility of appealing an arbitral tribunal's sentence existed. It was deemed that the decrees made by compromise courts remained "ważne" [valid] and so they could not have been revoked by any other judicial body. We do not know the broader circumstances connected with the query being sent to the Permanent Council. So it remains as a supposition only that the Ciołkowski memorandum could have been a result of an attempt to pursue the possibility of overturning the sentence which was undertaken by one of the parties as it was dissatisfied with the decision made by the arbitral tribunal.

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[69] Resolution number 254 from the 15th of July 1777, *Zbiór rezolucyi...* [A collection of the resolutions...], 1785, p. 92.

[70] Resolution number 149 from the 19th of August 1785, *Zbiór rezolucyi...* [A collection of the resolutions...], 1788, p. 68.

The resolution to the memorandum by Ignacy Cieszkowski,[71] a Czernichów warrant officer, was of material significance due to the legal validity of the sentences issued by arbitral tribunals. He enquired in his memorandum about the admissibility of overturning a compromise decree if an arbitral tribunal provision was created before the universal of 1786 was issued by the Permanent Council and it did not conform to the formal requirements provided for by this universal. Among others, no time or place were indicated to make the compromise; moreover, the first and last names of the arbiters appointed by the parties were not mentioned. The Permanent Council ruled that the words of the mentioned universal constitute a sufficient response to Cieszkowski's query. Those words were: "Przeświadczeni jesteśmy, że na wzór powagi i mocy praw samych na dal tylko przepisujących, za prawidła na przypadki następne będą mieli i brali niniejszy uniwersał Nasz obywatele prowincyi koronnych, zostając przy opisach dawnych w obiekcie kompromisowych aktów, przed niniejszym ogłoszeniem poczętych" [We are certain that according to the model of the dignity and power of the laws themselves which provide for the future that the following universal's rules will be employed by the citizens of Our Crown provinces while remaining true to the provisions described in the compromise acts created before the present announcement].[72] Thus, the principle of non-retroactivity of law was clearly emphasized. In the described case it meant that in relation to the compromise provisions made before the date the aforementioned universal was issued, the parties were bound only by the contents of the agreement which had been made and which appointed an arbitral tribunal.

The Warsaw Sejm passed the 1768 constitution of "Złączenie Trybunału Koronnego" [The Combining of the Crown Tribunal] which had a momentous significance for the organization of the judiciary and the principles of court proceedings. Furthermore, the issue of how to proceed in the so-called *noviter reperta documentorum* cases was regulated beside the numerous new regulations which were introduced then. The adopted solution allowed for cases in which final and binding sentences, even tribunal ones, were pronounced to be send back to a zemstvo and adjudicated there provided that pertinent (*rem evincentia*) documents were newly discovered which had been previously unknown to the parties and the court.[73] The Permanent Council devoted several resolutions to this matter including two connected with arbitral tribunals.

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[71] Cieszkowski Ignacy Piotr (Dołęga coat of arms) – a Czernichów warrant officer (1784–1787), *Urzędnicy województw kijowskiego i czernihowskiego XV–XVIII wieku. Spisy* [The officials of the Kiev and Czernichów provinces between the15th and the 18th century. The lists], ed. A. Gąsiorowski, compiled E. Janas, W. Kłaczewski, Kórnik 2002, p. 151.

[72] Resolution number 85 from the 30th of March 1787, *Zbiór rezolucyi...* [A collection of the resolutions...], 2014, p. 110.

[73] *VL* VII, *fol.* 706.

The entity which proposed the first motion, the Łuck circuit court, asked its question while taking into consideration the acts of 1726 and 1776, which prohibited overturning compromise decrees as well as the aforementioned constitution of 1768. The query enquired whether exercising the law concerning the recently discovered documents could be analogically employed in relation to the sentences of arbitral tribunals. The Permanent Council rejected such a possibility by explaining that the premise of the 1776 constitution had been "dekreta polubowne wypadłe i wypaść mające żadnej wątpliwości i naruszeniu nie podlegały, które ani *ex vi noviter repertorum documentorum* kwestionowane być nie powinny" [not to subject to any doubts arbitral decrees which have been issued and which will be issued and violations which should not be disputed *ex vi noviter repertorum documentorum*]. Furthermore, the Council explained that the law of 1768 "o dekretach trybunalskich mówiące i sprawy *ex noviter repertis documentis* intentować pozwalające, do wzruszenia dekretów polubownych naciągane być nie może" [, concerning tribunal decrees and which allowed the initiation of *ex noviter repertis documentis* cases, cannot be extended to overturning arbitral decrees].[74] Several years later, an identical question was sent in to the Council by Brzozowski, a Bracław deputy judge. In their response, the conciliators upheld their position wholly by invoking the contents of the first resolution.[75] It was an extremely significant result. On the one hand, it gave a guarantee that sentences would not be overturned and it strengthened the position of compromise courts. However, on the other hand, it closed down the possibility of renewing proceedings even in cases where new evidence appeared which could have had key significance for a given case.

The unequivocal position of the Permanent Council in the resolution (number 1 from 1782) presented above was not sufficient to do away with all the doubts connected with this issue. Because Jan Pawsza,[76] an Owrucz chamberlain, asked the conciliators the following question in 1783: "w jakiej jurysdykcyi sprawy o uchylnie kompromisów mieścić się i rozsądzać mają?" [who should have jurisdiction as well as host and judge over overturning compromise cases?]. The Council had no other choice than to quote the contents of the 1726 constitution once again and remind others of the Council's own resolution in this matter. "Przeto i *forum* – jak stwierdzono na koniec – dla przesądzania takowych dekretów *allatenus dari* nie

[74] Resolution number 1 from the 15th of November 1782, *Zbiór rezolucyi...* [A collection of the resolutions...], 1786, p. 30.

[75] Resolution number 104 from the 11th of May 1787, *Zbiór rezolucyi...* [A collection of the resolutions...], 2014, p. 127.

[76] Pawsza, Jan (Leliwa coat of arms) – an Owrucz chamberlain (1765–1786), *Urzędnicy województw kijowskiego i czernihowskiego XV–XVIII wieku...* [The officials of the Kiev and Czernichów provinces between the 15th and the 18th century...], p. 307.

może" [And so the *forum* – as it was stated at the end – cannot decide *allatenus dari* such decrees.].[77]

Finally, let us recall the resolution devoted to the issue of correcting mistakes of compromise courts which had been made "nie z decyzyi sądu, ale ze złego u sądu tłumaczenia" [not due to a court's decision but because of bad explanations given to the courts]. This matter was brought forward by Adam Bukar,[78] a circuit court judge from Żytomierz, who was the author of a memorandum concerning this issue. A doubt in this area appeared when one of the parties turned to a circuit court with a demand to send the case back to the superarbiter in order to correct the mistakes mentioned above after the arbitral proceedings had finished. The circuit court had in mind the previously mentioned universal of 1786 which stated that "w takim tylko razie moc superarbitrowi przyznający, gdyby kompromis rozpoczęty, a niedokończony na przyszłym z limity terminie upadł" [powers are only granted to superarbiters if a compromise which had already started was not finished in due time and thus failed]. And so it was presented with a dilemma – should the case be given to the superarbiter or should it reject the plaintiff's demand as the compromise was finished. The Permanent Council did not have any doubts in this matter and it stated that "dekreta kompromisarskie finalnie zapadłe tej są mocy i wagi, że w rozpoznanie onych nawet Trybunały, a dopieroż ziemstwa, wdawać się nie mogą" [compromise decrees are final and those decisions cannot be interfered with by the Tribunals, not to mention by zemstvos].[79]

IV. A number of queries included in the memoranda pertaining to arbitral tribunals, to which the Permanent Council was obliged to issue resolutions for, testified to the fact that regulations in this area were insufficient. The legal status in force, which was based on the Lithuanian constitution of 1726, which was later extended to the Crown provinces in 1776, required clarification. Accordingly, a universal was issued by the Permanent Council on the 7th of April 1786. It regulated in detail the rules according to which compromise courts were to function in the Crown. Its authors indicated the foundations of their decision and wrote thus: "jak daleko praktyki smutne obywatelów prowincyi koronnych od celu zamierzonego odsunęły, tysiączne skargi do Nas Króla i Rady zaniesione dowodzą" [how far the sad practices removed the citizens of the crown provinces from the intended target

[77] Resolution number 188 from the 29th of August 1783, *Zbiór rezolucyi...* [A collection of the resolutions...], 1786, p. 31.

[78] Bukar Adam – a Żytomierz circuit court (1775–1792), *Urzędnicy województw kijowskiego i czernihowskiego XV–XVIII wieku...* [The officials of the Kiev and Czernichów provinces between the 15th and the 18th century...], p. 134.

[79] Resolution number 188 from the 30th of November 1787, *Zbiór rezolucyi...* [A collection of the resolutions...], 2014, p. 196.

is attested to by the thousands of complaints brought forward to Us, the King, and to the Council].[80] Attention was paid to the most frequently occurring problems "gdy strony niekontente z wyroku, dla jednego przedłużenia pieni, *via gravaminis* udają się do Trybunału i burzą dekreta polubowne lub gdy pod fałszywym pretekstem albo dwie zmówne z sobą strony na szkodę i rzecz trzeciej zapisują kompromis, albo pod pozorem trzeciej niby wdanej, a najczęściej zmowną transakcję wprowadzonej osoby, dobrowolnie nastałe i zeznane *actus bonae voluntatis* niszczą" [in which parties discontented with the sentence extend the dispute, go *via gravaminis* to the Tribunal and bring down arbitral decrees or in which two parties in cahoots make a compromise under a false pretext to the detriment of a third party, or under the pretense of a supposedly introduced third party, who is most frequently introduced in collusion, destroy *actus bonae voluntatis* willingly given and testified].[81] Moreover, the issue of abuses by arbiters was also indicated. They were accused of "zapomniawszy na to, że dla przybliżenia pokoju za przyjaciół obranemi zostali, przestępują reguły mocy sobie danej, której uchybienie najmniejsze, *pro nullis* czyni sentencje, sądzą nieprzyzwoicie i bezprawnie" [forgetting that they had been chosen to facilitate peace as friends and they overstep the boundaries of the powers given to them and such irregularities, even the most insignificant, make sentences *pro nullis*, they arbitrate indecently and unlawfully].[82] Finally, the blame for this state of affairs was also put on "sądy same krajowe i jurysdykcyje najwyższe [które] pomimo wyraźnych ustaw i wcześniej ustanowionego rygoru *nullitatis judicatorum* ważą się wchodzić w rozpoznanie dekretów polubownych, reformując one, albo kasując, albo egzekucje onych wstrzymując" [state courts themselves and the highest jurisdictions (which) despite clear acts and the previously determined *nullitatis judicatorum* rigor dare to interfere with the examination of arbitral decrees by reforming them, or through cassation, or by stopping their execution].[83] These circumstances induced the Permanent Council to remind and confirm the seven most important "prawideł" [rules] concerning the organization and the activity of arbitral tribunals. It was determined that in accordance with the principles in force:

1. The basis of functioning of arbitral tribunals was supposed to be the so-called compromise provision as a *bonae voluntatis* act, without any restrictions regarding sex or connected with belonging to the priesthood or to the laity for persons joining it.

2. The jurisdiction of arbitral tribunals did not include criminal cases, national treasury cases, royal property cases, cases instigated as a result of a delation by

[80] Official document number 305 from the 7th of April 1786, *Zbiór rezolucyi...* [A collection of the resolutions...], 1788, p. 165.

[81] Ibidem.

[82] Ibidem.

[83] Ibidem.

royal instigators as well as juvenile cases, which could not be initiated by guardians as it was prohibited according to the law in force.

3. Each party to a dispute should precisely indicate their claim, appoint an equal number of arbiters by first and last name as well as a superarbiter, who are to be authorized to adjudicate a case, state the time when and the place where the court should convene.

4. The condition of the compromise provision's validity is entering it into official files.

5. The arbiters and the superarbiter brought in by the parties should carry out the proceedings and they are obliged to issue a sentence afterwards and enter it into public records.

6. All cases transferred to arbitral tribunals should be arbitrated there. At the same time, there is an absolute prohibition concerning the examination, modification or cassation of compromise courts' sentences by state courts except for cases in which arbiters' opinions differ.

7. If an arbitral tribunal did not take place for any reason, and its repeal was not stipulated in the compromise agreement, the case should be transferred to the circuit court with the local jurisdiction or the one which was stipulated in the compromise provision, which will send it back to the arbitral tribunal in accordance with the Statute of Lithuania.

The Council also issued a reminder to persons "prawa depcących i zakrętnej pieni manowcami idących [...] iż ponieważ prawa kraju wyroki sądów polubownych z powagą trybunalskich ultymarnych porównały, a w przypadku sprzeciwieństwa onym podług reguły prawa, ziemstwa czyli grody [...] równie jak i Trybunały dekreta *executionis* obligowane są wydawać, takowe wydane, aktem supersesyi, manifestem i listem urzędnika zaskarżone, do tym rychlejszego dodawania pomocy wojskowej pociągać nas zawsze będą" [who trample on the law and who walk astray from the proper path [...] that because the laws of the country equalled the sentences of arbitral tribunals with the dignity of ultimate tribunals, and in case of objections to them according to the rule of law, zemstvos or towns in other words [...] are obliged to issue *executionis* decrees just like Tribunals, and those issued as such can be appealed by an act of superseding, a manifesto, or by a letter from an official, they will always request prompt military help from us].[84]

Lastly, in accordance with the Council's decision, copies of the universal were to be sent to towns and parishes and their contents were to be put on the doors of chancelleries in order to promulgate them.

[84] Ibidem.

V. The functioning of arbitral tribunals in the Polish-Lithuanian Commonwealth fits well into the broadly understood culture of the nobles' society. The role which was played by compromises cannot be overestimated and the numerous sources attest to their popularity. However, together with the growth of the number of provisions for arbitral tribunals, doubts and questions also appeared concerning cases which were previously unknown to the custom and which were not regulated or were imprecisely regulated by codified law. Participants of arbitral proceedings tried to look for their own solutions then which frequently led to the creation of more disputes among the parties or arbiters. The chances of gradually eliminating all problems connected with it could be traced back to entrusting a new task to the Permanent Council, which, as a central body, acquired exclusivity in the area of interpreting law. Courts, officials, and private individuals all took advantage of the possibility of sending queries concerning unclear legal norms to the Council including questions in the field of the functioning of arbitral tribunals. The Council resolutions presented above show what kind of problems had to be coped with most frequently in this area as well as how the conciliators replied to the enquiries which finally made it possible to realistically evaluate the profound part played by the Permanent Council in the process of shaping the law at the end of the 18th century.