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Instruction and education of Baltic peasantry to the legal peace and Rule of Law through the judiciary (second half of the 19th century)

Baltijas zemniecības pamācīšana un izglītošana tiesiskajam mieram un tiesiskai valstij ar tiesu varas starpniecību (XIX gadsimta otrā puse)

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Introduction

The good colleague Janis Lazdiņš and myself are roughly the same age, and our doctoral dissertations were completed in the same year, 2000. He wrote about the private laws of the peasantry in the Baltic provinces[1] in the 19th century,[2] while I explored the scientific concept of Friedrich Georg von Bunge, the founder of Baltic(-German) jurisprudence[3]. Our research period was the same, as was the region under study, yet we were still dealing with two radically different worlds. The Latvian and Estonian peasantry studied by Lazdiņš had only been emancipated from centuries of serfdom

1 The plural is important because each province had its own private law(-book) for peasants, which was regulated by the peasant ordinances of the respective province.

2 *Lazdiņš, J.* Baltijas zemnieku privāttiesības (XIX gs.) [Private law of Baltic peasants (19th century)]. Rīga, 2000.

3 *Luts, M.* Juhuslik ja isamaaline: F. G. von Bunge provintsiaalõigusteadus [Occasional and patriotic: the provincial law science by F. G. von Bunge]. Tartu, 2000.

at the beginning of the 19th century. However, the peasant ordinances of Estonia from 1816,[4] of Courland from 1817,[5] and of Livonia from 1819[6] did not emancipate peasants overnight, unlike, for example, the Prussian Emancipation Edict of 1807.[7] The gradual emancipation of peasants from being a personal property of their landlords, followed by the assignment of family names, continued in Estonia until 1835, whereas the process proceeded more rapidly in Courland and Livonia. A name and personal liberty did not necessarily mean immediate freedom of movement, not to speak about private autonomy and self-determination, for example, through the choice of profession, occupation or branch of labour. The major difference compared to the emancipation of the peasantry, for example, as a result of the French Revolution, where this also meant the establishment of a modern society of equally free individuals, was that the general social and political constitution remained estate-based. This was the case not only in the Baltic provinces, but in the Russian Empire in general, and remained so until the fall of the empire in 1917. Peasants simply formed a new estate of free people,[8] but it was still a lower estate compared to the nobility or townspeople. Public and other positions outside of direct farming were reserved for members of the higher estates, whose laws were studied and systematized by the aforementioned Bunge.

Nevertheless, these same Latvian and Estonian peasants, together with their educated descendants, were able to establish modern nation states already about a hundred years later. At least in the first stage, before the authoritarian turns of the mid-1930s,

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4 Uchrezhdenie dlja Jestljandskih" krest'jan" [Ordinance for Peasants of Estonia], 23.5.1816 (for details of publication see References).

5 Uchrezhdenie o Kurljandskih" krest'janax" [Ordinance over Peasants of Courland], 25.8.1817 (for details of publication see References).

6 Uchrezhdenie o Kurljandskih" krest'janax" [Decree over Peasants of Livonia], 26.3.1819 (for details of publication see References).

7 Cf.: "On St Martin's Day Eighteen Hundred and Ten (1810) all serfdom ends throughout our states. After St Martin's Day 1810, there will be only free people […] (Mit dem Martini-Tage Eintausend Achthundert und Zehn (1810.) hört alle Guts-Unterthänigkeit in Unsern sämmtlichen Staaten auf. Nach dem Martini-Tage 1810 giebt es nur freie Leute […]." Edikt den erleichterten Besitz und den freien Gebrauch des Grundeigentums so wie die persönlichen Verhältnisse der Land-bewohner betreffend, 09.10.1807. Gesetzsammlung für die königlich preußischen Staaten,1808–1810, pp. 170–173; here Art. 12.

8 *Luts-Sootak, M., Siimets-Gross, H.* Baltic Peasants after Emancipation – Free and Equal People or a New Social Estate in the Estate-based Society? Legal Science: Functions, Significance and Future in Legal Systems II: Collection of Research Papers in Conjunction with the 7th International Scientific Conference of the Faculty of Law of the University of Latvia (16–18 October 2019, Riga). Riga, 2019, pp. 158–167. Many thanks to our colleagues in Riga, including Jānis Lazdiņš, for organizing this interesting conference and publishing its results.

these were modern democracies. Democracy needs legal awareness and the rule of law to survive. The reforms of the first quarter of the 19th century gave peasants personal freedom.[9] Subsequent reforms in the middle of the century led to the emergence of small-scale land ownership in the Baltic provinces as a guarantee of individual freedom, and now decisively distinguished this region from the peasant society based on collective community land ownership in the east.[10] The understanding of the administration of justice necessary for the functioning of a modern, law-based society and state was already being taught and practiced by peasant self-government bodies in the 19th century. Like many others, Lazdiņš has referred to the administrative and judicial bodies established in the 19th century as a "school of statehood",[11] where Latvians and Estonians were able to acquire political wisdom and experience even before the establishment of their own states. Moreover, the judicial institutions established for peasants in the 19th century provided an opportunity to learn how an independently administered judicial system and modern rational administration of justice works in order to achieve and maintain the legal peace and rule of law. Furthermore, the tasks and expectations assigned to peasant courts allow them to be regarded as an important educational undertaking aimed at fostering responsible citizens who learned to recognize both their subjective rights and their obligations to uphold the general legal order.[12]

The empirical material comes from the courts of the Governorate of Estonia. However, the results are likely transferable to Latvian peasant courts, or at least offer an opportunity to assess whether similar or different trends can be identified in their practice. Before presenting the processes and events in the courts, I would like to emphasize the crucial importance of the 1866 Land Community Ordinance in the modernization of peasant institutions.

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9 Jānis Lazdiņš has also written in more detail about the personal liberation of Baltic peasants and its ideological basis in Enlightenment philosophy; see: *Lazdiņš, J.* Dzimtbūšanas atcelšana, pagasta sabiedrības organizācija un nacionāli valstiskas domāšanas pirmsākumi [The abolition of serfdom, the organisation of parish society and the beginnings of nation-state thinking]. In: Latvieši un Latvija. II sējums. Valstiskums Latvijā un Latvijas valsts – izcīnītā un zaudētā, *Jundzis, T.*, *Zemītis, G.* (eds.). Riga, 2014, pp. 281 sqq.

10 Ibid., pp. 291 sqq.

11 Ibid., pp. 299 sqq.; "valstiskuma skola" (school of statehood) p. 306.

12 *Luts-Sootak, M.* Die Gerichtsstube als Bildungsanstalt. Die Gerichtsbarkeit über die bäuerlichen Rechtssachen in Est- und Livland im 19. Jahrhundert. In: Baltische Bildungsgeschichte(n), *Pasewalck, S., Eidukevičienė, R., Johanning-Radžienė, A., Klöker, M.* (Hg.). Oldenbourg, 2022, pp. 199–214.

1. Land Community Ordinance from 1866

One of the first legal acts to establish a common and uniform set of rules for all Baltic provinces[13] was the Land Community Ordinance (Landgemeindeordnung), which was approved by Emperor Alexander II on 19 February 1866.[14] Estonian, Latvian, and Baltic German historiography has emphasized how this law brought about the emancipation of the peasant communities[15] and the clear separation of the manor and the rural community[16]. Lazdiņš has also written about the abolition of manorial patronage over the becoming economically increasingly self-aware peasant community.[17] Scholarly literature has devoted considerably less attention to the fact that the institutions created by the 1866 land community reform largely corresponded to the characteristics of modern local government. As such, the rural communities of peasants in our region were the first in which the principle of separation of powers came into effect. The separation of powers in the urban administration was only introduced in 1877, when the Russian General Urban Decree (1870) was extended to the Baltic Governorates.[18] The division of judicial and police powers only reached the provincial level with the police reform of 1888 and the judicial reform of 1889,[19] when both were separated from the so-called self-government of the knighthoods, or, in effect, from the general provincial administration.

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13 Prior to this, the 1832 statute had already harmonized the organization of the Evangelical Church, but this applied to the Evangelical Lutheran Church throughout the empire. Similarly, the 1845 Penal Code applied equally in all three Baltic provinces, but it was still a law of the entire empire.

14 Polozhenie o volostnom" obshhestvennom" upravlenii v" gubernijah" Ostzejskih"/ Pribaltijskih", 19.02.1866 (for details of publication see References).

15 Cf. the contemporary definition: *von Tiedeböhl, A.* Die neue Landgemeindeordnung. Baltische Monatsschrift, Bd. 13, 1866, p. 208: "Emancipation der Landgemeinden".

16 See, for example, *von Pistohlkors, G.* Ritterschaftliche Reformpolitik zwischen Russifizierung und Revolution. Göttingen/Frankfurt am Main/Zürich, 1978, p. 96.

17 *Lazdiņš, J.* Dzimtbūšanas atcelšana, pagasta sabiedrības organizācija un nacionāli valstiskas domāšanas pirmsākumi [The abolition of serfdom, the organisation of parish society and the beginnings of nation-state thinking]. In: Latvieši un Latvija. II sējums. Valstiskums Latvijā un Latvijas valsts – izcīnītā un zaudētā, *Jundzis, T.*, *Zemītis, G.* (eds.). Riga, 2014, p. 303.

18 Pravila o primenenii Vyshochajshhte utverzhdennago 16 Ijunja 1870 goda Gorodovago Polozhenija k gorodam" Pribal'tiiskih" gubernii [Rules about the implementation of the Decree of Towns, confirmed by the Emperor 16 Juny 1870, to the towns of the Baltic Governorates], 26.03.1877 (for details of publication see References).

19 Both older and more recent literature has focused more on the judicial reform. See, for instance, *Lazdiņš, J.* Die Justizreform vom Jahr 1889 und ihre Bedeutung für die Baltischen Provinzen Russlands und (später) Lettland. In: Justiz und Justizverfassung/ Judiciary and Judicial System. Siebter Rechtshistorikertag im Ostseeraum, 3.–5. Mai 2012

Therefore, after 1866, the (peasant)[20] land communities were the first in this region to correspond to modern local government in terms of their structural characteristics, primarily in the sense of the separation of powers. The municipality council was the legislative body, while the municipality government, together with the mayor, was the executive or administrative authority, whereas the municipal courts established during earlier reforms were still largely administrative and police authorities, they now exercised only judicial power. Police duties, which according to the understanding at the time extended far beyond maintaining order on street and also included general public order, were performed by the municipal officer and his assistants. For the first time, the municipal police was separated from the manor police and now subordinated only to the municipal government.

Possibly, the changes that took place in the judicial system as a result of the 1866 municipality reform have been somewhat overlooked by researchers of Baltic history, partly because the Land Community Ordinance itself did not establish any specific rules regarding the composition of municipal courts or the procedural rules to be followed there. In Livonia and Courland, the municipal courts had to operate as before, except that their jurisdiction was limited to judicial matters (Land Community Ordinance of 1866, § 25). In Estonia, however, the municipal courts had to be reestablished, as they had been abolished during the previous reform. Therefore, the most accurate rules on the new court system can be found in the legal acts of the Estonia Governorate. In accordance with the provisions of the remark by § 25 of the Land Community Ordinance,

Schleswig-Holstein/the 7th Conference in Legal History in the Baltic Sea Area, 3–5 May 2012, Schleswig-Holstein, *Schäfer, F. L., Schubert, W.* (Hg.). Frankfurt am Main et al., 2013, pp. 91–106. It is also important to note more recent studies in Estonian legal history: *Anepaio, T.* Die Justizreform in der zweiten Hälfte des 19. Jahrhunderts in den Ostseeprovinzen – Russifizierung oder Modernisierung? Acta Baltica, Bd. 35, 1997, pp. 257–272; *Anepaio, T.* Dialogue or Conflict? The Legal Reform of 1889 and Baltic Private Law Code. Juridica International: Law Review University of Tartu, vol. 5, 2000, lk. 168–175; *Anepaio, T.* Die Justizreform von 1889 in den Ostseeprovinzen und das Baltische Privatrecht: die gegenseitige Beeinflussung. In: Geschichte und Perspektiven des Rechts im Ostseeraum, *Eckert, J., Modéer, K.–Å.* (Hg.). Frankfurt am Main et al., 2002, pp. 59–78; *Anepaio, T.* Justice Laws of 1889 – a Step in Estonia's Constitutional Development. Juridica International: Law Review University of Tartu, vol. 10, 2005, pp. 150–160.

20 The roll of rural communities also included craftsmen working in the countryside, who were mostly Germans. The higher classes referred to these lower-class Germans as "little Germans" (Kleindeutsche), which was in a sense even more derogatory than the term "non-Germans" (Undeutsche) used for Estonians and Latvians. However, people who were originally citizens of towns could also be included in the land community roll if they purchased a farm plot in the countryside.

these were developed by the Peasant Affairs Committee and approved by the Governor-General of the Baltic Provinces.[21]

Participation in local government, both through active and passive voting rights, familiarised peasant community members with democratic structures and shaped their understanding of politics. However, a state is not purely a political entity. Especially in its European form, it is also, or even essentially, a legal entity. The legal emancipation of the peasant population should therefore also be part of the school stage to statehood, in the sense that peasants were no longer punished and patronised by their landlords, but were to exercise their rights as equal legal partners and, if necessary, enforce them in court. The extent to which this was in fact a matter of education and instruction can be seen from an insight into the system and functioning of the courts for peasant affairs. My results are based on a research method that can best be described as a "test drilling". As part of a project on the history of the modernisation of property law in Estonia, I examined the relevant files of the Estonian courts prior to the major judicial reform of 1889.[22] However, I would consider the findings obtained in this way about the mentality and approach of the two to three courts at each level in the hierarchy of courts for peasant affairs to be reliable as a source, at least in the area of real estate disputes. The practice of the three lowest levels[23] – municipal or community courts (Gemeindegerichte), parish courts (Kirchspielsgerichte) and district courts (Kreisgerichte) – is examined in more detail here because in these courts the peasants themselves also participated on the members of the court.

2. Procedures and practices of municipal courts

The 1866 Land Community Ordinance had imposed administrative tasks on the municipal administration, while municipal courts were to continue to function as judicial, guardianship, registry and enforcement bodies.[24] The jurisdiction of the municipal courts

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21 Pravila o sostave i predmetah" vedomstva volostnyh" sudov" v" Jestljandskoj gubernii i porjadke deloproizvdstva v" onyh" [Rules about the composition and subjects of volost/municipal courts in the Governorate of Estonia and about the procedure in them], 19.10.1866 (for details of publication see References).

22 Funded by the Estonian Science Foundation, research grant ETF6647.

23 For more on the sad fate of peasants' lawsuits in the empire's highest court, see *Luts-Sootak, M.* Die Erfolglosigkeit der estländischen Bauern vor der Höchstgerichtsbarkeit des Russischen Reiches (1865–1889). In: Gerichtskultur im Ostseeraum. Vierter Rechtshistorikertag im Ostseeraum, 18.–20. Mai 2006 in Greifswald, *Knothe, H.–G., Liebmann, M.* (Hg.). Frankfurt am Main et al., 2007, pp. 175–187.

24 For the evolution and nature of rural community courts in the Baltic provinces, see *Anepaio, T.* Die zahlreichen Gesichter des Gemeindegerichts. Die Entwicklung der

thus remained very broad, and it is no wonder that the materials of the municipal courts have aroused keen interest among the so-called common historians – court acts can be described as an almost inexhaustible source for research into the history of mentalities, everyday life, economics, etc. The written records of the municipal courts of Estonia and the Estonian part of Livonia[25] constitute a remarkable collection: the fonds of a total of 382 municipal courts rarely contain only a few files; often the number is around two thousand, and in some cases even exceeds four or five thousand.[26] The material therefore comprises not a few hundred files, but several thousand. Most of these files are very thin, but there are also several thick acts.

Both the chairman and two or more assessors (depending on the population of the community, one assessor per 250 "male souls") of the municipal court were to be elected by the community members for three years "from their midst". Municipal courts were lay courts and remained so. While the oral nature of proceedings in such courts is readily understandable, the requirement to maintain written records is less obvious. If none of the court members could write, the community had to employ a clerk. However, this was rarely necessary. The extensive network of village schools had already existed for decades and had contributed significantly to the spread of literacy among the peasant population. In addition, the rural population of Estonia and Livonia had been influenced by Lutheran Protestantism since the time of Swedish rule (from 1561/1626 until 1710), and religious literature in the vernacular had been published regularly for a long time. At least from the second half of the 1850s onwards, e.g. Estonian-language newspaper literature appeared continuously. It is therefore no wonder that the written records of the rural parish courts constitute a considerable amount and give the impression that they can be classified even as modern judicial material.

Meanwhile, the jurisdiction of the municipal courts in the Baltic provinces should not be understood in the sense of modern jurisdiction, where the court decides disputes authoritatively according to a general and previously established abstract rule. The amended Livonian Peasant Ordinance[27] of 1860 stipulated in § 766 that disputes

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estnischen Bauerngerichte im 19.–20. Jahrhundert. In: Gerichtskultur im Ostseeraum. Vierter Rechtshistorikertag im Ostseeraum, 18.–20. Mai 2006 in Greifswald, *Knothe, H.–G., Liebmann, M.* (Hg.). Frankfurt am Main et al., 2007, pp. 103–121.

25 Only these are kept in the Estonian National Archives in Tartu; the files from the Latvian part of Livonia are in the Latvian State Archives in Riga.

26 However, this number includes not only the actual court files, but also the office files.

27 Land Community Ordinance of 1866 also extended validity of its procedural rules to the province of Estonia.

between peasants should be settled through arbitration and mediation, where legal peace was to be established through reconciliation and redress:

> "*The municipal court hears all cases that arise by way of an inquiry process as quickly as possible, without, however, neglecting the essential points that are most important for the decision [...]. Above all, it endeavours to reconcile the parties seeking justice, removing all coercion and intrusive persuasion; but if these efforts prove unsuccessful, it proceeds without haste, without preconceived opinions and without partiality, hearing the plaintiff and defendant with equal attention and patience, examining the witnesses in the most thorough manner, and rendering its judgement after considering the reasons for and against to the best of its knowledge and belief.*"[28]

The municipal court was therefore not required to judge according to the law and with reference to legal provisions. This is somewhat surprising, as "codes" for peasants (Bauerngesetzbücher), formulated in as simple, plain and popular language as possible, did exist and contained both private and procedural law sections.[29]

As I collected and examined the court materials as part of a project on real estate law, the following findings relate to this area of law and social reality. The municipal court materials are not particularly informative in this regard. All purchase and lease agreements between landlords and peasants concerning land had to be drawn up in writing and were sent directly to the higher courts for confirmation and registration. The municipal court had nothing to do with these agreements, because disputes between peasants and landlords also fell within the jurisdiction of the higher courts. The municipal courts only had to settle disputes over contracts that had been concluded between peasants and contractual changes of ownership of land among the peasantry were quite rare. The few sale contracts between the peasants were concluded in writing and entered in the register at the municipal court. Most of the disputes arose because the written contracts only contained the formal minimum, but a whole host of verbal agreements were made in addition. These were not set out in writing, even though they

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28 Liflandskoe krest'janskoe pozemel'noe ulozhenie [Livonia's Peasant Ordinance], 13.11.1860 (for details of publication see References); official German translation: Livländische Bauer-Verordnung, am 13. November 1860 Allerhöchst bestätigt. In Uebereinstimmung mit dem Ukase des dirigirenden Senats vom 10. Januar 1861, Nr. 1569, emanirten Original-Texte, nach zuvoriger Approbation der deutschen Uebersetzung Seitens Sr. Durchlaucht des Herrn General-Gouverneurs von Liv-, Est- und Kurland, von der Livländischen Gouvernements-Regierung publicirt. Riga, 1861.

29 For more information on the legal nature of these parts of the peasant ordinances, see: *Luts-Sootak, M.* Die baltischen Privatrechte in den Händen der russischen Reichsjustiz. In: Rechtsprechung in Osteuropa, *Pokrovac, Z.* (Hg.). Frankfurt am Main, 2012, pp. 269 sqq.

were essential to the contract and were subsequently disputed. In such cases, the court records show the municipal court as an institution that actively made compromise proposals and sought solutions to reconcile the parties. However, no predetermined rules were followed. Rather, it was justice in individual cases that was called here judiciary. Particularly striking are cases of so-called poor performance, where both parties failed to fulfil their contractual obligations properly. Although the resulting damages would in principle have been measurable and calculable by both parties, it was not made. Instead, the decisions were that both parties had not honestly kept their promises and should therefore now retire without any compensation. Such rulings by the municipal courts were probably intended to promote trust and integrity in legal transactions; formal legality or calculability was apparently not so important. The municipal court offered the parties compromises, educating them to be conscientious and thoughtful contractual partners, etc. Legal peace can certainly be considered a major goal, but it was achieved through so-called Solomonic conclusions, not through judging according to statutory norms. What the peasants certainly learned in the process, however, was that putting agreements in writing would later serve as effective tool of evidence.

The judgements of the municipal courts could be appealed if the value of the matter in dispute exceeded five silver roubles. The next instance – the parish court – was responsible for such appeals.

3. Procedures and practices of the parish courts

There were a total of 48 parish courts in the territory of present-day Estonia. The files of the Livonia's parish courts are more extensive (up to 9,058 units, mostly over 4,000) than those of the courts of Estonia (up to 660 units, mostly between 100 and 200). However, the figures do not indicate a higher level of judicial activity in Livonia – the differences are due to the different court systems that existed before the introduction of the Land Community Ordinance of 1866.

The parish court consisted of a noble parish judge as chairperson ("preferably elected from among the enrolled [...] nobility"; Livonia's Peasant Ordinance § 651) and three peasant assessors in Livonia; in Estonia two assessors. Each parish court had to employ a notary to manage the registry and accounting matters and to keep the minutes. In addition to their extensive police and administrative duties, including supervisory functions over the peasant communities, the parish courts also served primarily as institutions of reconciliation for all disputes between peasant or groups of peasants and landlord, between landlord and peasant community, between peasant community member and community, and between community and municipal court. In addition, there were appeals against the decisions of the municipal courts and, as another important activity, the control and confirmation of lease and purchase agreements over the farmland. In cases involving peasant or peasant community against landlord, the parish court could

only mediate. If the parties were unable to reach an agreement, the parish court had to examine the matter and refer it to the district court, but could not decide on it itself.

Civil proceedings before the parish court are described in detail in Livonia's Peasant Ordinance §§ 777 sqq., beginning with the start of the court proceedings: "The plaintiff presents his case orally to the parish court on a court day, presents all the facts and evidence on which he bases his claim, and clearly states what his request is". Until the changes brought about by the judicial reform of 1889, members of the peasantry were required to represent themselves in court. Landlords, on the other hand, were free to choose whether to appear in court in person, send a representative, or submit their statement of claim or response to the claim in writing.

Parish court's first task was to examine all aspects of whether the action fell within its jurisdiction and whether the plaintiff met all the necessary criteria. If the court did not have jurisdiction over the action brought, it could not simply dismiss the claim. It was its duty to advise the plaintiff and refer them to the correct authority. Similarly, it should instruct the "incomplete" plaintiff (e.g. a wife without a husband as her legal representative, persons under guardianship without a guardian, etc.) on what still needed to be done in order to bring a valid claim before the court. All these legally imposed duties to provide information clearly show that the parish court functioned primarily as an institution for legal instruction or even education. The idea of popular education is clearly evident here: a court acting formally and strictly in accordance with the regulations would simply have had to dismiss the lawsuits.

In addition, the parish court was primarily concerned with reconciliation and settlement as it was required by law. According to Livonia's Peasant Ordinance § 781, the court should only proceed to investigate the matter if "the court had tried in vain to reconcile the disputing parties". Estonia's Peasant Ordinance refers only to mediation and settlement in case of the parish courts. The files of the parish courts in civil disputes are therefore rather slim. They were either forwarded to the district court for a decision or a note in the register indicates that the case was settled through mediation or compromise. At the same time, Livonia's Peasant Ordinance granted the parish court extensive inquisitorial authorisation for the investigation, but modified it to such an extent that it was not necessary to record all procedural actions in writing. In contrast to the municipal court, where the assessment of evidence was completely free and neither the witnesses nor the parties involved were sworn in, the rules of procedure of the parish courts contain elements of formal evidence assessment (Livonia's Peasant Ordinance §§ 782 sqq.). The existing written records of the parish courts do not actually provide much information about compliance with the prescribed procedure. It can be assumed that the individual procedural actions were simply not recorded. In most cases, only the "finding" (Erkenntnis), i.e. the ruling of the court is recorded in the minutes. Although, according to the law, these had to be recorded by the notary "with a brief statement of the reasons" (Livonia's Peasant Ordinance § 784), the reasons are only

stated in very few civil law cases. In contrast, the police law judgements, i.e. also from the same court, are usually quite detailed in their reasoning.

The disputes in which the parish court had full decision-making power were those appealed by peasants. This type of cases shows a trend that can also be seen in the practices of the district courts as next level courts for peasant affairs. The right of appeal was generally exercised by individuals who were, in some way, out of the ordinary – those who were actually strangers to the community where the events took place. These were, for example, peasants from outside who had purchased land and were required to register in the local peasant roll. In Estonia, in particular, it was often farmers from the southern provinces of Livonia and Courland, where the soil was better and the money economy had developed more rapidly. In addition, Estonia was the least densely populated of the three provinces – there was a lot of land and few people. As a result, several farmers from the southern Baltic provinces purchased either a farm plot directly from the landlords or from the peasant owners in Estonia. These newcomers then took legal actions against the decisions of the local municipal courts before the parish court. They were joined by townspeople who registered themselves as members of a peasant community in order to be allowed to purchase a farm plot. These individuals were also prepared to take the legal dispute, if necessary, through the several court instances. It was only in very exceptional cases that a common man, i.e. a local peasant, appealed against the decision of his local municipal court to the parish court. I did not find any such appeal in disputes over real estate. This confirms the well-known fact that modernity, with all its manifestations, including the willingness to go through several instances of court proceedings, if necessary, only began to prevail with greater mobility in society. It should also be noted in this context that land trading, i.e. making a profit by buying and later selling rural land, insofar as it occurred at all, was also carried out by such newcomers.

There is one more point to mention that seems important in case of the parish courts. While the municipal court was able to decide entirely at their own discretion and according to their best conscience, the parish court in Livonia – and since 1866 also in Estonia – was at least indirectly required to judge according to the law. Livonia's Peasant Ordinance § 782 stipulated that, before conducting an extensive investigation of the circumstances of the case, the parish court should examine whether a decision could be made immediately in accordance with the statutory provisions:

> "*If the decision in the case concerns only the application of the statutory provisions, the court shall proceed to decide in accordance with the exact wording of the statute.*"

However, the records of the parish courts in civil disputes show hardly any references to the relevant provisions of the law. When a parish court convicted a person of a police offence, it always stated the provision of the statute to which it referred. By

contrast, this almost never occurred in civil cases. References to the statute only occur when legal formalities were involved, such as the fee for certifying contracts (peasants were exempt from the fees, town citizens were not) or the issuance of appeal certificates. Substantive issues, on the other hand, were resolved without reference to any statute or without explicit mention of the relevant provisions. In this respect, the need for the private law section of the peasant ordinances is also not apparent from the practice of the second instance of courts in peasant affairs.

It should be noted at this point that the case law of the parish courts of Estonia and Livonia, insofar as it concerned disputes at all, initially once again shows reconciliation, mediation and settlement between the parties, but not decision-making formally based on the letter of the law. Additionally, the courts had an extensive duty and responsibility to provide information and guidance to the disputing parties.

The decision of the parish court could be appealed to the district court if the value of the matter in dispute exceeded 10 silver roubles.

4. Procedures and practices of district courts

There were seven district courts in within the modern territory of Estonia: four in Livonia and three in Estonia. The number of files held by the Estonia's district courts is fairly consistent at two thousand or more, whereas in Livonia the numbers vary greatly: there are 945 files from the Saaremaa/Ösel district court, but 20,433 from the Tartu/Dorpat district court.

The district courts were composed of a presiding judge, two noble assessors and two peasant assessors. The presiding judge and the noble assessors had to belong to the matriculated nobility. The peasant assessors were elected from among the members of the municipal courts (Estonia) or among the members of the parish courts (Livonia). The term of office was three years. In addition, the district court had a secretary, who was "preferably to be elected from among the members of the [...] knighthood who had devoted themselves to the study of law at the local university [in Dorpat]" (Livonia's Peasant Ordinance § 725).[30] However, members of other estates were not excluded from

30 The extent to which the secretary positions at the district courts were actually filled by persons with legal education has yet to be investigated. A study about the members of an Estonian vassalls court (Manngericht; the first instance for disputes among the nobility) has shown that the court members themselves – the presiding judge and two assessors – had no legal education until well into the 1870s. The court secretaries, on the other hand, had legal education from at least the 1820s onwards and were usually very well qualified. See: *Luts, M.* Juristenausbildung im Richteramt (baltische Ostseeprovinzen im 19. Jh.). In: Juristische Fakultäten und Juristenausbildung im Ostseeraum. Zweiter Rechtshistorikertag im Ostseeraum, Lund 12–17. 3. 2002, *Eckert, J., Modéer, K. Å.* (Hg.). Stockholm, 2004, pp. 297 sqq.

this position. The secretary's term of office was six years, but he could be re-elected to office, the same as the members of the court.

Livonia's Peasant Ordinance § 731 has determined the jurisdiction of the district court in civil matters, as follows: "The district court, as a civil judicial authority, does not intervene in civil matters on its own initiative, but only proceeds either on appeal by the peasants among themselves or by the manor administration against the peasants, or in matters of the peasant communities, their individual members and officials against the landlord, it determines and conducts local investigations if necessary, or instructs the local parish court to carry them out [...]". The court records confirm that the district court did only take action in response to claims and complaints. It is noteworthy that all claims were accepted, even if they did not fall within the jurisdiction of the district court. In such cases, the district court itself referred the claim to the municipal or parish court and instructed the plaintiff on the correct procedure for initiating legal proceedings. No one was rejected on the formally correct grounds that the lawsuit did not fall within the jurisdiction of that court.

As the proceedings before the district court were conducted orally and only the results or interim results were recorded in the minutes, the files on the individual cases vary considerably. In most cases, the files resemble a collection of various documents drawn up by the parish courts or landlords. Only the judgements were drawn up according to a uniform pattern at the district court. Anyway, the problem for scientific research lies in the fact that formal judgements were very rare. Of approximately 20 cases between the 1860s and the end of the 1880s, only one ended with a judgement. Normally the district courts continued the reconciliation and mediation process already known from the lower courts.

However, the mediation patterns varied. In the case of border disputes – which make up the majority of cases concerning real estate law – the district court sent a surveyor to the location in question, where he was to work out a settlement in cooperation with the disputing parties. He then remapped the location, and that was the end of the matter. The costs of the surveyor were borne by the knighthood. If there were no border disputes, the district court mostly made its own compromise proposals for mediation and then sent the matter back to the parish or municipal court. It is striking that the district courts performed their mediation role with much greater commitment than the actual mediation authorities, the parish courts, which often conducted proceedings in a more formal manner than the district courts.

In cases where the district court had issued a judicial decision, the observations already made in the case law of the parish courts were consistent. Firstly, most cases involved primarily legal disputes: whether fees were payable or not, compliance with limitation periods and other deadlines, the competent court, and so on. In such cases, district court rulings also referred to the relevant provisions of the legislation. However, disputes over content were also generally subject to renewed attempts at reconciliation

in the district courts. Insofar as they were decided by the court, these were again cases brought by new arrivals or by entire peasant communities or groups of peasants.

However, the district courts' practice reveals something that is lacking in the lower courts: consistency in their own decision-making practice. If the municipal court was openly concerned with justice in individual cases, and the parish court was supposed to function more as a (legal) educational institution than as a judicial institution, then the aforementioned continuity and adherence to established patterns of solution testify to the fact that the district courts really saw themselves as judicial institutions. This was probably thanks to the in law educated court clerks.

On the other hand, consistency in their own decision-making practice is the only feature of the case law of Estonia's district courts that bears any resemblance to modern understanding of jurisdiction according to the provisions of law. However, the bulk of the case law material also shows that, even at the district court level, there was a committed effort to mediate, reconcile, settle disputes and enlighten the people about the law. It is therefore no coincidence that the Livonia's Peasant Ordinance, specifically in the section dealing with the jurisdiction and procedure of the district courts, ordered the publication of the official gazette in the vernacular languages (Estonian and Latvian) "*in order to inform the Livonian peasants in a convenient and cost-free manner of everything they might need to know in their economic and legal affairs*" (§ 746). It was no coincidence that the compilation of this people's – or, more precisely, peasants' – 'gazette', intended for monthly publication and reading aloud in church on Sundays, was assigned to the district courts.

The fact that legal enlightenment at district court level was not confined solely to the peasantry is illustrated not so much by the laws as by the court records: landlords were also instructed by the district courts about their rights and obligations and, if necessary, informed about the compensation that should be paid to a farmer in accordance with § 882 of the Estonia's Peasant Ordinance if he had been brought before the court without good reason. In addition, the district court could convict a party for "frivolous complaints brought for the sake of litigation" and punish the complainant with a fine of up to 10 roubles. Clearly, this measure was primarily intended to punish peasant complainants, as the fine could be converted into imprisonment, forced labour or corporal punishment. However, court records show that district courts often imposed the penalty of a fine on the landlords. The peasants were usually lectured and admonished, sometimes even threatened, but not necessarily punished.

CONCLUSION

On the one hand, extensive teaching and education at the provincial level could prove to be a trap for peasant plaintiffs in the higher court of the empire, which were bound

by strict rules of procedure and forced to reject claims where the plaintiff "complains in very vague terms that Baron Stackelberg has wronged him in all sorts of ways, but that he is not claiming damages from the defendant or appealing against the decision of the lower court".[31]

On the other hand, it is clear that if local courts had responded to all violations of formal procedural rules by simply dismissing the claim, Estonian and Latvian peasants would not have been able to learn the whole complex pattern of behaviour that a modern member of society and citizen of a modern state must follow: the resolution of conflicts through legal and judicial proceedings, the practice of evidence both on the part of the disputing parties and on the part of the bench, the keeping of written records, the awareness of the superiority of written evidence, etc. The existence of modern institutions was only a prerequisite. Through their sustained educational and enlightening activities, courts dealing with peasant matters facilitated both the proper use and organisation of these institutions and a broader understanding of the rules governing modern society.

KOPSAVILKUMS

Literatūrā plaši tiek apgalvots, ka XIX gadsimtā izveidotā vietējo pašvaldību iekārta palīdzēja Baltijas zemniekiem sagatavoties politiskajai dzīvei daudz augstākā līmenī, pat veidojot pilsoņiem nepieciešamās prasmes jau vēlākajās Latvijas un Igaunijas demokrātiskajās republikās. Daudz mazāk uzmanības pievērsts tam, kā tā laika zemnieki ieguva gan zināšanas par savām tiesībām un to aizstāvēšanu tiesā, gan šo zināšanu piemērošanas pieredzi. Baltijas zemnieku tiesas darbojās ne tik daudz kā modernas un formālas tiesu institūcijas, bet gan kā patiesas izglītības un apgaismības iestādes, kurās zemniekiem tika mācīts rīkoties kā neatkarīgiem, atbildīgiem un tiesībpratīgiem sabiedrības locekļiem.

31 Source – the Ukas of Ruling Senat in the case peasant Juhan Mättk vs. Baron von Stacklenberg (18.5.1884). See more: *Luts-Sootak, M.* Die Erfolglosigkeit der estländischen Bauern vor der Höchstgerichtsbarkeit des Russischen Reiches (1865–1889). In: Gerichtskultur im Ostseeraum. Vierter Rechtshistorikertag im Ostseeraum, 18.–20. Mai 2006 in Greifswald, *Knothe, H.–G., Liebmann, M.* (Hg.). Frankfurt am Main et al., 2007, pp. 85 sqq.