

KRZYSZTOF KWIATKOWSKI  
(Nicolaus Copernicus University in Toruń)

QUI BONA FIDE A NON DOMINO EMIT: JUSTINIAN'S DIGEST  
AS THE LEGAL REFERENCE POINT IN A CONFLICT BETWEEN THE  
URBAN MUNICIPALITY AND ITS RULER IN THE LATE MIDDLE AGES\*

**Key words:** Late Middle Ages, Prussia, the Teutonic Order, Elbląg (Elbing), towns, Roman law, conflicts

In the contemporary historiography of late medieval Prussia it is commonly held that urban municipalities were one of the most important elements of the power of the Teutonic Order in this country. Starting from the fourth

---

\* The article was written as part of the project "Mieszczanie pod bronią. Militarny wymiar funkcjonowania miasta zachodnioeuropejskiego w strefie bałtyckiej w późnym średniowieczu [Burghers under arms: The military dimension of the functioning of the West-European city in the Baltic zone in the Late Middle Ages]" financed by the Narodowe Centrum Nauki [National Centre for Science] carried out in the program SONATA 3 (no. 2011/03/D/HS3/03661).

In the text the classic formula of citing fragments of *Corpus iuris civilis* (CICiv) and *Corpus iuris canonici* (CICan) was used. The author used the following publications: *Corpus iuris civilis*, editio stereotypa, vol. I: *Institutiones*, recogn. Paulus KRUEGER, *Digesta*, recogn. Theodorus MOMMSEN, Berolini 1872; *Corpus iuris canonici*, DG IX, LS, C V = Pars II: *Decretalium collectiones. Decretales Gregorii P. IX., Liber sextus decretalium Bonifacii P. VIII., Clementis P. V. constitutiones, extravagantes tum viginti Ioannis P. XXII. tum communes*, Editio Lipsiensis secunda post Aemilii L. RICHTERI, instr. Aemilius FRIEDBERG, Lipsiae 1881 (reprint: Graz 1959). Moreover, archival entries and edition abbreviations were used in the sources: **APG** = Archiwum Państwowe w Gdańsku: entry no. 368 (Kolekcja dokumentów elbląskich); entry no. 369,1 (Akta Miasta Elbląga); **CDW** = *Codex diplomaticus Warmiensis oder Regesten und Urkunden zur Geschichte Ermlands*, Bd. I: *Urkunden der Jahre 1231-1340*, hrsg. v. Carl P. WOELKY, Johann M. SAAGE (Monumenta Historiae Warmiensis oder Quellensammlung zur Geschichte Ermlands, hrsg. v. dem historischen Vereine für Ermland, I. Abtheilung), Mainz 1860; **PU** = *Preußisches Urkundenbuch. Politische (allgemeine) Abteilung*, Bd. I: *Die Bildung des Ordensstaats*, Hälfte 1, hrsg. v. Rüdiger PHILIPPI, Carl P. WOELKY, Königsberg/Pr. 1882 (reprint: Aalen 1961); Hälfte 2, hrsg. v. August SERAPHIM, Königsberg/Pr. 1909 (reprint: Aalen 1961); **CDP** = *Codex Diplomaticus Prussicus. Urkunden-Sammlung zur ältern Geschichte Preussens aus dem Königl. Geheimen Archiv zu Königsberg nebst Regesten*, hrsg. v. Johannes VOIGT, Bd. II, Königsberg 1842; **LübUB** = *Codex diplomaticus Lubicensis. Lübeckisches Urkundenbuch*, hrsg. v. dem Vereine für Lübeckische Geschichte und Alterthumskunde, 1. Abth.: *Urkundenbuch der Stadt Lübeck*,

decade of the 13<sup>th</sup> century<sup>1</sup> – almost from the very beginning of the Order's presence at the lower Vistula – they were an essential factor in constructing Teutonic Order's power and in enabling the Order to exert its authority over the cities' and towns' inhabitants through specific civic acts. Throughout the 13<sup>th</sup> century in the territories under the Teutonic Order's rule, nineteen successful settlement actions were carried out; in the first half of the 14<sup>th</sup> century – twenty-five; in the second half of the 14<sup>th</sup> century – seventeen; and only in the first half of the 15<sup>th</sup> century, during an aggravating economic, political and ideological crisis, the pace of new urban settlements almost halted (only four new municipal founding charters, including two unsuccessful ones).<sup>2</sup>

---

hrsg. v. dem Vereine für Lübeckische Geschichte, Th. I, Lübeck 1843; Th. II, 1. Hälfte, bearb. v. Johann F. BÖHMER, Friedrich TECHEN, Lübeck 1858; **ESB** = *Das Elbinger Stadtbuch*, bearb. v. Hans W. HOPPE, Bd. 1: 1330–1360 (1393), Münster 1976; Bd. 2: 1361–1418, Münster 1986; **NKRSME** = *Nowa księga rachunkowa Starego Miasta Elbląga 1404–1414*, ed. Markian PELECH, vol. 1 (Fontes TNT, vol. 72), Warszawa–Poznań–Toruń 1987; vol. 2 (Fontes TNT, vol. 73), Warszawa–Poznań–Toruń 1989; **ElbP** = Guido KISCH, *Das Elbinger Privilegium von 1246 in deutscher Übersetzung*, *Elbinger Jahrbuch*, H. 10: 1931, pp. 24–30 (edition pp. 26–30) (= [in:] *Schriften des Kopernikuskreises Freiburg im Breisgau*, Bd. 9 (Forschungen und Quellen zur Rechts- und Sozialgeschichte des Deutschordenslandes, Bd. 3), Sigmaringen 1978, pp. 219–227 (edition pp. 223–227); further cit. only the reedited pages); **ALR** = *Das Alte Lübische Recht*, hrsg. v. Johann F. HACH, Lübeck 1839; **PR** = *Preußische Regesten bis zum Ausgange des dreizehnten Jahrhunderts*, hrsg. v. Max PERLBACH, *Altpreußische Monatsschrift*, Bd. 11: 1874, pp. 1–32, 97–128, 326–348, 385–432, 546–572, 609–624; Bd. 12: 1875, pp. 1–26, 97–144, 193–216, 319–344, 385–428, 577–645 (as a separate print: Königsberg i. Pr. 1876); **Dusburg** = *Petri de Dusburg Chronicon terre Prusie*, ed. Max TOEPPEN, [in:] *Scriptores rerum Prussicarum*, Bd. I, Leipzig 1861, pp. 3–219 (edition pp. 21–219).

<sup>1</sup> Marian DYGO, *Studia nad początkami władztwa zakonu niemieckiego w Prusach (1226–1259)*, Warszawa 1992, pp. 48–49, 159–188; Tomasz JASIŃSKI, *Die Rolle des Deutschen Ordens bei der Städtegründung in Preußen im 13. Jahrhundert*, [in:] *Stadt und Orden. Das Verhältnis des Deutschen Ordens zu den Städten in Livland, Preußen und im Deutschen Reich*, hrsg. v. Udo ARNOLD (Quellen und Studien zur Geschichte des Deutschen Ordens, Bd. 44; Veröffentlichungen der Internationalen Historischen Kommission zur Erforschung des Deutschen Ordens, Bd. 4), Marburg 1993, pp. 97–111 (with a controversial thesis concerning the dynamics of the foundations executed by the Order in the 13<sup>th</sup> century); Marian BISKUP, *Der Deutsche Orden und die Freiheiten der großen Städte in Preußen vom 13. bis zur Mitte des 15. Jahrhunderts*, [in:] *Stadt und Orden*, pp. 112–117; Roman CZAJA, *Urbanizacja kraju*, [in:] *Państwo zakonu krzyżackiego w Prusach. Władza i społeczeństwo*, ed. Marian BISKUP, Roman CZAJA, Warszawa 2008, pp. 177–178.

<sup>2</sup> About the formation of the network of cities and towns in the Prussian Land (not only those set up under the direct municipal rule of the Teutonic Order) comp. the publications by Roman Czaja: idem, *Miasta i ich posiadłości ziemskie w państwie zakonu krzyżackiego w Prusach*, [in:] *Państwo zakonu krzyżackiego w Prusach. Podziały administracyjne i kościelne w XIII–XVI wieku*, ed. Zenon H. NOWAK, Roman CZAJA, Toruń 2000, pp. 45–55 (reprint as: *Miasta i przestrzeń miejska w państwie zakonu krzyżackiego w Prusach*, [in:] *Zakon krzyżacki w Prusach i Inflantach. Podziały administracyjne i kościelne w XIII–XVI wieku*, ed. Roman CZAJA, Andrzej RADZIWIŃSKI (Dzieje Zakonu Niemieckiego, vol. 2), Toruń 2013, pp. 81–93; in English: *Towns and*

If for the Teutonic Order the founding of towns was a method to establish and expand its power, which throughout the 14<sup>th</sup> century acquired the character of territorial rule ([Landes] *Herrschaft*)<sup>3</sup>, then in the case of municipalities organized and functioning on the basis of the Latin model of a self-governing city largely copying the Germanic cultural centres<sup>4</sup>, many of its actions outside these centres, both in relation to the Order and the local authorities, were conditioned and shaped by striving in the first place to preserve and then expand their scope of independence held against the Order's authority.<sup>5</sup> The research done by Roman Czaja has revealed the social and economic dimension of this

---

*Urban Space in the State of the Teutonic Order in Prussia*, [in:] *The Teutonic Order in Prussia and Livonia. The Political and Ecclesiastical Structures 13<sup>th</sup>–16<sup>th</sup> C.*, ed. Roman CZAJA, Andrzej RADZIWIŃSKI, Toruń 2015, pp. 79–88); idem, *Urbanizacja kraju*, pp. 178–193; idem, *Die Formung der Städtelandschaft im Kulmerland im 13. und 14. Jahrhundert*, [in:] *Zentrum und Peripherie in der Germania Slavica. Beiträge zu Ehren von Winfried Schich*, hrsg. v. Doris BULACH, Matthias HARDT (Forschungen zur Geschichte und Kultur des östlichen Mitteleuropa, Bd. 34), Stuttgart 2008, pp. 247–263.

<sup>3</sup> Reinhard WENSKUS, *Das Ordensland Preußen als Territorialstaat des 14. Jahrhundert*, [in:] *Der deutsche Territorialstaat im 14. Jahrhundert*, Bd. 1, hrsg. v. Hans PATZE (Vorträge und Forschungen, Bd. XIII/I), Sigmaringen 1970, pp. 347–382 (= [in:] idem, *Ausgewählte Aufsätze zum frühen und preußischen Mittelalter. Festgabe zu seinem 70. Geburtstag*, hrsg. v. Hans PATZE, Sigmaringen 1986, pp. 317–352); compare also my recently made remarks: Krzysztof KWIAŃKOWSKI, *Wojska zakonu niemieckiego w Prusach 1230–1525 (korporacja, jej pruskie władztwo, zbrojni, kultura wojny i aktywność militarna)* (Dzieje Zakonu Niemieckiego, vol. 3), Toruń 2016, pp. 31–32, 60–61, 120.

<sup>4</sup> About the origin of the inhabitants of towns in the Prussian Land comp. Arthur SEMRAU, *Die Herkunft der Elbinger Bevölkerung von der Gründung der Stadt bis 1353*, Mitteilungen des Coppersnicus-Vereins für Wissenschaft und Kunst zu Thorn, H. 32: 1924, pp. 9–62; Theodor PENNERS, *Untersuchungen über die Herkunft der Stadtbewohner im Deutsch-Ordensland Preußen bis in die Zeit um 1400* (Deutschland und der Osten, Bd. 16), Leipzig 1942, pp. 60–96, 98–113, 119–122, 138–151; Erich KEYSER, *Die Herkunft der städtischen Bevölkerung des Preußenlandes im Mittelalter*, Zeitschrift für Ostforschung, Jg. 6: 1957, H. 4, pp. 539–557; Tomasz JASIŃSKI, *Imigracja westfalska do Prus w okresie późnego średniowiecza (XIII–XV wieku)*, [in:] *Niemcy – Polska w średniowieczu. Materiały z konferencji naukowej zorganizowanej przez Instytut Historii UAM w dniach 14–16 XI 1983 roku*, ed. Jerzy STRZELCZYK, Poznań 1986, pp. 105–118 (= idem, *Die westfälische Einwanderung in Preußen im Spätmittelalter*, [in:] *Zur Siedlungs- und Bevölkerungs- und Kirchengeschichte Preussens*, hrsg. v. Udo ARNOLD (Tagungsberichte der Historischen Kommission für ost- und westpreussische Landesforschung, Bd. 12), Lüneburg 1999, pp. 95–110).

<sup>5</sup> About the emancipation tendencies of towns from the supreme (feudal) ruler in the Reich comp. Eberhard ISENMANN, *Die deutsche Stadt im Spätmittelalter 1250–1500. Stadtgestalt, Recht, Stadtrecht, Kirche, Gesellschaft, Wirtschaft*, Stuttgart 1988, pp. 107–109; idem, *Die deutsche Stadt im Mittelalter 1150–1550. Stadtgestalt, Recht, Verfassung, Stadtrecht, Kirche, Gesellschaft, Wirtschaft*, Wien–Köln–Weimar 2012, pp. 281–287; Evamaria ENGEL, *Die deutsche Stadt des Mittelalters*, München 1993, pp. 44–47, 50–54; Frank G. HIRSCHMANN, *Die Stadt im Mittelalter* (Enzyklopädie deutscher Geschichte, Bd. 84), München 2009, pp. 20, 32–35 (in those works detailed monographs are cited).

unavoidable antagonism from the sociological standpoint, which, against its historical-cultural background, seems to be a diverse and dynamic phenomenon that only partly follows the older literature's general categorizations.<sup>6</sup>

One of the well-known, but not entirely examined elements of the relationship between the Teutonic Order and the urban municipalities in late medieval Prussia is the conflict between Elbing (present pol. Elbląg) and the Order in the last decade of the 13<sup>th</sup> century.<sup>7</sup> It took place under specific circumstances as both part and result of the gradual reshaping of town rule, which in historiography is referred to as the "council system". It includes the aspirations of the municipal authorities to obtain as much power as possible, which, in relation to the supreme ruler, was referred to as "freedoms". Contemporary historiography employs the term "autonomy".<sup>8</sup> Despite the fact that the town privilege granted to Elbing by (Grand) Master Gottfried von Hohenlohe on 10 April 1246 made references to Lübeck Law<sup>9</sup> and the aspirations of Elbing's inhabitants to acquire the rights and freedoms enjoyed by the burghers from Lübeck<sup>10</sup>, it guaranteed only some of these Lübeck "libertates" and was modelled mostly on the rights granted to the inhabitants of Thorn (present pol. Toruń) and Kulm (present pol. Chełmno) on 28 December 1232.<sup>11</sup> That is why it becomes understandable why throughout the second half of the 13<sup>th</sup> century,

<sup>6</sup> Roman CZAJA, *Miasta pruskie a zakon krzyżacki. Studia nad stosunkami między miastem a władzą terytorialną w późnym średniowieczu*, Toruń 1999, pp. 18–55, 58–64, 177–206; comp. also idem, *Der Deutsche Orden als Stadtherr im Reich, in Preußen und in Livland*, [in:] *Die Ritterorden als Träger der Herrschaft: Territorien, Grundbesitz und Kirche*, hrsg. v. Roman CZAJA, Jürgen SARNOWSKY (Ordines Militares. Colloquia Torunensia Historica, Bd. 14), Toruń 2007, pp. 129–130.

<sup>7</sup> R. CZAJA, *Miasta pruskie a zakon krzyżacki*, pp. 22–23; also remarks by Edwin Rozenkranz in: idem, *Prawo lubeckie w Elblągu od XIII do XVI wieku*, *Rocznik Gdański*, vol. 51: 1991, p. 17; and by Edward Carstenn in: idem, *Geschichte der Hansestadt Elbing*, Elbing 1937, pp. 60–61, 65.

<sup>8</sup> About this process comp. R. CZAJA, *Miasta pruskie a zakon krzyżacki*, pp. 22–23; about the medieval understanding of the city's "freedoms" and the modern category of "autonomy" comp. *ibid.*, pp. 14–18 (here broader literature of the subject matter).

<sup>9</sup> APG, entry no. 368/III, 1 (= edition: PU, Bd. I/1, no. 181, pp. 131–133, tu: p. 132 = CDW, Bd. I, no. 13, pp. 18–22, here: p. 21 = ElBP § 10, pp. 226; compare the edition with the Polish translation: Zenon H. NOWAK, Janusz TANDECKI, *Prawa i przywileje Starego i Nowego Miasta Elbląga w Średniowieczu* (Biblioteczka Elbląska, no. 11), Gdańsk 1998, Aneks źródłowy I, pp. 48–54, here: § 10, pp. 50, 52).

<sup>10</sup> Edward CARSTENN, *Elbings Kampf um das Lübisches Recht*, *Hansische Geschichtsblätter* (further cit. HGBll), Jg. 62: 1938, pp. 78–79; idem, *Geschichte der Hansestadt Elbing*, pp. 15–16; E. ROZENKRANZ, *Prawo lubeckie w Elblągu*, pp. 12–13. Janusz Tandecki underlines the role of the inhabitants of Lübeck during the negotiations of the foundation privilege (idem, *Średniowieczne księgi wielkich miast pruskich jako źródło historyczne i zabytki kultury mieszczańskiej (organizacja władz, zachowane archiwalia, działalność kancelarii)*, Warszawa–Toruń 1990, p. 58).

<sup>11</sup> E. CARSTENN, *Elbings Kampf um das Lübisches Recht*, pp. 78–80; idem, *Geschichte der Hansestadt Elbing*, pp. 15–17; M. DYGO, *op.cit.*, pp. 122–125; R. CZAJA, *Miasta pruskie a zakon*

the municipal community, or its local government, made steps to extend the rights of the municipality. The first symptom of such aspirations was a letter of Elbing's mayor (*Schultheiß*) / judge ("scultetus"), the council ("consilium") and burghers ("cives") sent to Lübeck's *Vogt* ("advocatus"), councilmen ("consules") and burghers ("burgenses") in about 1275,<sup>12</sup> which included a request to add twenty-one new articles<sup>13</sup> to the book of Lübeck Law received by the Elbing municipality from Lübeck according to the local tradition in 1240,<sup>14</sup> and to issue a review concerning five conflict causes between the council and the judge/mayor (*Schultheiß*) ("iudex") in judicial matters.<sup>15</sup> As a result, soon after 1275, but certainly before 1282, the new codex of Lübeck Law was brought to Elbing, written in Middle Low German.<sup>16</sup> The privilege of 2 February 1288, granted in

---

*krzyżacki*, pp. 19–20; comp. also the remarks of Marian Biskup in: idem, *Der Deutsche Orden und die Freiheiten der großen Städte*, p. 117.

<sup>12</sup> CDW, Bd. I, no. 119, pp. 211–214 (= LüUB, Abt. 1, Th. I, no. 165, pp. 151–153). Such a date of the letter was suggested and justified by Gustav KORLÉN, *Das mittelniederdeutsche Stadtrecht*, Bd. II: *Das mittelniederdeutsche Stadtrecht von Lübeck nach seinen ältesten Formen* (Lunder germanistische Forschungen, Bd. 23), Lund 1951, p. 12; also R. CZAJA, *Miasta pruskie a zakon krzyżacki*, p. 23; and Edwin ROZENKRANZ, *Prawo lubeckie w Elblągu*, p. 15. Janusz Tandecki in the first volume of the historical monograph of Elbląg (comp. idem, *Ustrój i administracja średniowiecznego Elbląga*, [in:] *Historia Elbląga*, vol. 1: (do 1466 r.), ed. Stanisław GIERSEWSKI, Andrzej GROTH, Gdańsk 1993, p. 132) recognized the earliest date established in the mid-19<sup>th</sup> century by publishers of the "Codex diplomaticus Warmienseis" – 1260, which, according to the Swedish scholar, should be rejected.

<sup>13</sup> CDW, Bd. I, no. 119, pp. 211–213 (= LüUB, Abt. 1, Th. I, no. 165, pp. 151–153); comp. Max TOEPPEN, *Elbinger Antiquitäten. Ein Beitrag zur Geschichte des städtischen Lebens im Mittelalter*, H. II, Danzig 1872, pp. 168, 170.

<sup>14</sup> Comp. the note by Ferdinand Neumann enclosed to the edition of the letter: CDW, Bd. I, no. 119, p. 211, fn. 1. However, in the letter sent from Elbing they say about the "book" („liber”), „in quo iura conscripta sunt, que nobis in nostre civitatis primo exordio tradidistis [emphasis – K.K.]". The book is identified in literature of the subject matter with the code including the Latin edition of the Lübeck law, which has not survived, comp. M. TOEPPEN, *Elbinger Antiquitäten*, H. II, pp. 168–169; Ferdinand FRENSDORFF, *Das Lübisches Recht nach seinen ältesten Formen*, Leipzig 1872, pp. 55–57; Arthur METHNER, *Die älteste deutsche Handschrift des Lübisches Rechts für Elbing*, *Elbinger Jahrbuch*, H. 14: 1937, pp. 61–62; E. CARSTENN, *Elbings Kampf um das Lübisches Recht*, pp. 76–77; idem, *Geschichte der Hansestadt Elbing*, p. 57.

<sup>15</sup> CDW, Bd. I, no. 119, p. 213.

<sup>16</sup> The code is preserved in the State Archive in Gdańsk (Archiwum Państwowe w Gdańsku), comp. APG, entry no. 369,1/1 („Das Original des Lübisches Rechts („Codex A"), ca 1260"). It was published by Arthur METHNER, *Die älteste deutsche Handschrift des Lübisches Rechts*, Text der Elbinger Handschrift, pp. 79–110. In the introduction it includes the text of the document recommending the *Vogt*, town councillors and burghers of Lübeck of 1240 (comp. A. METHNER, *Die älteste deutsche Handschrift des Lübisches Rechts*, Text der Elbinger Handschrift, pp. 79–80), while in its main part it is dated in 1260. Max Toeppen referred to it as "Code A" and this name has been used ever since, comp. idem, *Elbinger Antiquitäten*, H. II, p. 166, fn. 2 (pp. 166–167); also: F. FRENSDORFF, op.cit., pp. 51–52; Emil STEFFENHAGEN, *Deutsche Rechtsquellen in Preussen*

closer unknown circumstances by (Grand) Master Burchard von Schwaden, possibly as a form of compensation for the losses following the great fire in the city in January 1287 or 1288, gave the municipal council the right to carry out lower-level jurisdiction in the city's territory ("patrimonium"). The privilege was one of the first extensions of the rights of the autonomous local authorities elected by the town's elites.<sup>17</sup>

It is impossible to precisely determine the causes for the controversies between the town and the Teutonic Order, which occurred no later than in 1295. They may have been connected to the new privilege the town received from the Order on 2 February 1288. There might have appeared other conflict-generating factors, which shall be dealt with below. In the historiography, the oldest evidence of the conflict was a letter sent in 1296<sup>18</sup> by the *Vogt* ("vogit"), councilmen ("ratlüte") and the burghers community of Elbing ("burger algemeyne") to (Grand) Master Konrad von Feuchtwangen, which addressed five issues: 1) the length of the eastern part of the southern border of the city's territory ("patrimonium") that was granted to the municipality on 10 April 1246 (from the town's walls eastward through "the Warmian's gallows" down to

---

vom XIII. bis zum XVI. Jahrhundert, Leipzig 1875, pp. 232–233; Edward CARSTENN, *Die Elbinger Handschriften des Lübisches Rechts*, Zeitschrift des Westpreußischen Geschichtsvereins, H. 72: 1935, pp. 143–145; A. METHNER, *Die älteste deutsche Handschrift des Lübisches Rechts*, pp. 61–72. The latter dated "Codex A" before 1282, maybe about 1275 (comp. idem, *Die älteste deutsche Handschrift des Lübisches Rechts*, pp. 69–70), which data has been confirmed by the findings of Gustav Korlén (comp. fn. 12).

<sup>17</sup> CDW, Bd. I, no. 77b, pp. 132–133 (= CDP, Bd. II, no. 17, pp. 20–21); comp. Wilhelm von BRÜNNECK, *Zur Geschichte der Gerichtsverfassung Elbings (Alt- und Neustadt)*, Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Germanische Abteilung, Bd. 39: 1915, pp. 32–34; R. CZAJA, *Miasta pruskie a zakon krzyżacki*, p. 22; J. TANDECKI, *Ustrój i administracja średniowiecznego Elbląga*, p. 133; idem, *Średniowieczne księgi wielkich miast pruskich*, p. 60; E. CARSTENN, *Geschichte der Hansestadt Elbing*, pp. 60, 63. Rightfully enough, the last two researchers associate granting the privilege with the fire in the town, comp. E. CARSTENN, *Geschichte der Hansestadt Elbing*, p. 63; J. TANDECKI, *Ustrój i administracja średniowiecznego Elbląga*, p. 133.

<sup>18</sup> Comp. CDW, Bd. I, p. 170, fn. 4. The letter sent by the *Voigt*, town councillors and burghers of Elbing to the (Grand) Master (comp. CDW, Bd. I, no. 97, pp. 168–170) was dated in 1296 as it was rightly connected with the presence of the superior of the Teutonic Order Konrad von Feuchtwangen, who, according to sources, stayed in Prussia between 31 Jan and 14 May 1296, comp. Maciej DORNA, *Bracia zakonu krzyżackiego w Prusach w latach 1228–1309. Studium prozopograficzne*, Poznań 2004, s. 122, 261; idem, *Die Brüder des Deutschen Ordens in Preußen 1228–1309. Eine prosopographische Studie*, tłum. Martin FABER, Wien–Köln–Weimar 2012, pp. 130–131, 285; Ulrich NIESS, *Konrad von Feuchtwangen (Herbst 1291 – zwischen 2. und 5. VII. 1296)*, [in:] *Die Hochmeister des Deutschen Ordens 1190–2012*, hrsg. v. Udo ARNOLD (Quellen und Studien zur Geschichte des Deutschen Ordens, Bd. 40; Veröffentlichungen der Internationalen Historischen Kommission zur Erforschung des Deutschen Ordens, Bd. 6), Weimar 2014 (2<sup>th</sup> ed.), p. 43.

the village of Sierpin (“Serprien”, later German: Serpin, Zerewet)); 2) the width of the western part of the “patrimonium” along the left bank of the Elbing river; 3) the question of the town’s jurisdiction over (bloodless) crimes committed on its territory, which resulted from the privilege of 2 February 1288, and which in practice of the city government fell under the *Vogt* (“vogit”); 4) the right of the municipality to collect half of each fine adjudicated for offences perpetrated within the boundaries of the town or of its “patrimonium”; 5) the order issued by the Teutonic Order’s brethren to pay the taxes<sup>19</sup> in person in their castle.

There is, however, some source evidence for dating Elbing’s appeal to the (Grand) Master from the first months of 1296 to a period of two years later,<sup>20</sup> and to take as first testimony of the conflict between the Elbing municipality and its superior ruler, the message sent by legation from the municipal authorities to Lübeck, which between 5 January and 24 July 1296<sup>21</sup> obtained the legal opinions of Lübeck canonists in two contentious issues between the community and the Order.<sup>22</sup> These opinions were given by dean Johannes von Bo-

---

<sup>19</sup> The source edition of this letter, which in the mid-19<sup>th</sup> century was the 14<sup>th</sup> century copy in the preserved code titled *Privilegiorum tenores* including copies of selected privileges of the Old City of Elbing (comp. APG, entry no. 369/1,10), has been partly destroyed: one page including 2/3 of the content of the letter was cut out, and now the only available content is the beginning of the copy, comp. APG, entry no. 369/1,10, p. 12. As far as the doubts concerning the lecture of the fragment including the chronology relative to some events being part of the increasing controversies between the municipality and the local convent of the Teutonic Order, one may only rely on the remarks of Ferdinand Neumann published in the cited footnote by the publishers of the first volume of the “Codex diplomaticus Warmiensiensis”.

<sup>20</sup> The premise is a much broader range of controversial issues addressed in the letter of inhabitants of Elbing to the (Grand) Master in comparison to the legal document assessed in 1296 – there are five of them (including two concerning the boundary of the “patrimonium”) referring to three assessed in 1296, comp. fn. 27–30. In this situation the letter of inhabitants of Elbing should be dated during the next stay of the (Grand) Master in Prussia, in June 1298 – it was the successor of Konrad von Feuchtwangen, Gottfried von Hohenlohe, comp. M. DORNA, *Bracia zakonu krzyżackiego w Prusach*, pp. 165–166; idem, *Die Brüder des Deutschen Ordens in Preußen*, p. 178; Klaus MILITZER, *Gottfried von Hohenlohe (3. V. 1297 – Herbst 1303)*, [in:] *Die Hochmeister des Deutschen Ordens 1190–2012*, p. 47.

<sup>21</sup> It results from the chronology of the scholaster office of Lübeck by Helmbert, comp. PU, Bd. I/2, p. 418, fn. 1 there; PR, no. 1171, p. 316; no. 1172, p. 316; CDW, Bd. I, p. 202, fn. 1 on pp. 202–203. We should assume that the envoy went to Lübeck between November 1295 and June 1296 as the canons needed time to get acquainted with the controversial materials and to prepare their opinion; further speculations lead us to the hypothesis that the moment of issuing the opinion was closer to the described here *terminus post quem*.

<sup>22</sup> APG, entry no. 368/III, 5 (= edition: CDW, Bd. I, no. 116, pp. 199–202, here: p. 202); APG, entry no. 368/III, 7 (= edition: CDW, Bd. I, no. 117, pp. 203–208, here: p. 208).

cholt (“de Bocholte”),<sup>23</sup> scholastic Helembert von Serkem<sup>24</sup> and Gerhard von Hattorp (“de Hattorpe”)<sup>25</sup> and Heinrich von Hattorp (“de Hattorpe”).<sup>26</sup> The first issue was the problem of interpreting the town charter regarding the range of the borders of the “patrimonium”, both on the eastern and western sides of the Elbing river.<sup>27</sup> The second issue concerned the rights of the Elbing municipality to file appeals in Lübeck.<sup>28</sup> The document of the Lübeck canonists is not the only evidence for the legal conflict existing between the Elbing municipality and the Teutonic Order in the last decade of the 13<sup>th</sup> century. Another source is the next legal opinion, issued before 6 December 1299, addressing both cases mentioned above,<sup>29</sup> which Elbing’s burghers received from the Lübeck city

<sup>23</sup> Comp. Adolf FRIEDERICI, *Das Lübecker Domkapitel im Mittelalter 1160–1400. Verfassungsrechtliche und personenstandliche Untersuchungen* (Quellen und Forschungen zur Geschichte Schleswig-Holsteins, Bd. 91), Neumünster 1988, p. 173. Johannes von Bockholt was one of the four sons of Siegfried (Syverd) von Bockholt, the town councillor of Lübeck in the years 1256–1272 (comp. Emil F. FEHLING, *Lübeckische Ratslinie von den Anfängen der Stadt bis auf die Gegenwart* (Veröffentlichungen zur Geschichte der Freien und Hansestadt Lübeck, Bd. 7), H. 1, Lübeck 1925 (reprint: 1978), p. 5 (no. 194)), including the brother of two other canons of Lübeck: Heinrich and Markward, but admitted to the chapter after the death of the latter, before 27 October 1273. From about 1287 he was the parish priest of the Church of The Blessed Virgin Mary in Lübeck, and from 8 August 1293 he was the dean of the Lübeck chapter. In 1308 as the canon of Schleswig was elected Bishop of Schleswig.

<sup>24</sup> Comp. A. FRIEDERICI, *Das Lübecker Domkapitel*, pp. 291, 292. Helembert von Serkem came from the noble family from Sarchem of Lowe Saxony near Dannenberg; he was probably the nephew of the Bishop of Lübeck Burchard von Serkem (1276–1317) (comp. Georg W. DITTMER, *Der lübeckische Bischof Burchard von Serkem und seine Zeit vom Jahre 1276 bis zum Jahre 1317. Ein Beitrag zur lübeckischen Staats- und Kirchen-Geschichte*, Lübeck 1860). He appears in the sources for the first time as the canonist of Lübeck in 1285, with the Master’s degree; from 1291 he held the office of cantor, and from 1296 – a scholaster. He was involved in the conflict of the chapter against the City of Lübeck and stayed in Rome from the spring of 1300 to, at least, 1309, where he had been sent by Bishop Burchard to represent the interests of the bishop and the chapter in the papal court.

<sup>25</sup> Comp. A. FRIEDERICI, *Das Lübecker Domkapitel*, p. 234. Gerhard von Hattorp was a son of a burgher of Lübeck Johan von Hattorp. In the sources he appears as the canonist of Lübeck from 1294.

<sup>26</sup> Comp. A. FRIEDERICI, *Das Lübecker Domkapitel*, p. 234. Heinrich von Hattorp was a son of a burgher of Lübeck Herbord von Hattorp. As a member of the Lübeck chapter he appears in the sources for the first time in 1294. In the autumn of 1300 along with Helembert von Serkem he stayed in Ratzeburg as the plenipotentiary of the Bishop of Lübeck. He was also active in legal matters in the subsequent years.

<sup>27</sup> CDW, Bd. I, no. 116, pp. 199–202.

<sup>28</sup> Ibid., no. 117, pp. 203–208.

<sup>29</sup> APG, entry no. 368/III, 8 (= edition: CDW, Bd. I, no. 118, pp. 208–210). The canonists of Lübeck gave their opinions on the controversial matters in two separate documents, while the emperor’s notary presented his opinion in one document in the following order – first he addressed in detail the question of the right of appeal, then he briefly referred to the possessions of the city.



scribe, the imperial notary and the jurist Heinrich von Wittenborn.<sup>30</sup> In the light of the slightly later practice from 1300, it can be assumed that this ruling was issued simultaneously with the opinion of the Lübeck canonists, i.e. in 1296, and therefore that we are dealing not with consecutive, but rather with simultaneous legal opinions by the Lübeck canonists and city scribe.

It is difficult to clearly indicate the specific motives of the Elbing authorities in sending representatives to Lübeck and seeking opinions on legal issues with their territorial overlords following both canonical and imperial (Roman) civil law.<sup>31</sup> The guiding principle of Lübeck's canonists was the adopted rule of Roman law whereby the most favourable interpretation of the privilege counted,<sup>32</sup> which was also adopted in the 1230s to the *Decretals* of Gregory IX.<sup>33</sup> A certain diplomatic detail, however, leads to the opinion that this procedure was not only demonstrative, but instead was an integral part of Elbing's strategy in court proceedings in their dispute with the Teutonic Order. Namely, most probably both documents issued in 1296 by Lübeck's canonists were prepared and authenticated with seals in two copies, and a duplicate of the first document was preserved until the mid-nineteenth century.<sup>34</sup> Even if one sees this course of action as adhering to a wish to secure written legal opinions, reducing the risk of losing them during the journey from the Trave river to Elbing, it would still indirectly confirm the importance attached to them by the Elbing's burghers. However, it seems more likely that the duplicates of both documents were to be forwarded to the Order's side as a legal material in court or during arbitration proceedings. Whether any measures were actually taken in 1296

<sup>30</sup> CDW, Bd. I, no. 118, pp. 208–209. Heinrich von Wittenborn was a Master of Law, from 1270 he was remunerated by the authorities of Lübeck (around 1250–1254 the authorities wanted to employ a lawyer from Padua, comp. LüBUB, Abt. 1, Th. II/1, no. 25, pp. 19–20) lifelong legal counselor dealing with giving legal advice in the field of canon law, comp. Wilhelm EBEL, *Lübisches Recht*, Bd. 1, Lübeck 1971, pp. 250–251; Eberhard ISENMANN, *Zur Rezeption des römisch-kanonischen Rechts im spätmittelalterlichen Deutschland im Spiegel von Rechtsgutachten*, [in:] „Herbst des Mittelalters“? Fragen zur Bewertung des 14. und 15. Jahrhunderts, hrsg. v. Jan A. AERTSEN, Martin PICKAVÉ (Akten der 33. Kölner Mediaevistentagung, Miscellanea Mediaevalia. Veröffentlichungen des Thomas-Instituts der Universität zu Köln, Bd. 31), Berlin–New York 2004, p. 212. Klaus Wriedt (idem, *Das gelehrte Personal in der Verwaltung und Diplomatie der Hansestädte*, HGBll, Jg. 96: 1978, pp. 15–37), does not mention Heinrich von Wittenborn.

<sup>31</sup> Comp. the statement in the document of Heinrich von Wittenborn: CDW, Bd. I, no. 118, p. 210: „[...] in utroque iure canonico et civili [...]“.

<sup>32</sup> CIC, D 1.4.3: „Iavolenus libro 13 epistularum. Beneficium imperatoris, quod a divina scilicet eius indulgentia proficiscitur, quam plenissime interpretari debemus“.

<sup>33</sup> CICan., Decr., Lib. V, tit. XL, cap. XVI: „Beneficium principis latissime interpretari debet“.

<sup>34</sup> APG, entry no. 368/III, 5 (= edycja: CDW, Bd. I, no. 116, pp. 199–202; 2<sup>th</sup> copy: APG, entry no. 368/III, 6).

aimed at ending the city's conflict with the Teutonic Order, and whether the legal opinions of both the Lübeck canonists and Heinrich von Wittenborn were really used, is hard to say. Assuming that the Elbing legation in Lübeck obtained the documents at the beginning of 1296, they were then submitted a little later directly to (Grand) Master Konrad von Feuchtwangen, who stayed in Prussia from January to May 1296. Independently of this, it remains certain that Konrad von Feuchtwangen did not resolve the dispute fully, perhaps leaving the dignitaries of the Prussian branch of the Order to take further action in this matter. The above-mentioned letter from Elbing to the (Grand) Master, which in the light of the considerations presented here should be dated in the spring of 1298,<sup>35</sup> also did not contribute to the end of the conflict. There is evidence from two years later that the dispute still continued; namely, on 16 August 1300, the ruling of the Paris professors,<sup>36</sup> this time specialists in both law systems, Pierre de Belleperche (“*Petrus de Bellapertica*”)<sup>37</sup> and Hu-

<sup>35</sup> Comp. fn. 20.

<sup>36</sup> APG, entry no. 368/IV, 1 (= edition: CDW, Bd. I, no. 108, pp. 184–189); the second certified copy of the decision does not include matters concerning fishery, comp. APG, entry no. 368/IV, 2; comp. Erwin Volckmann, *Katalog des Elbinger Stadtarchives*, Elbing 1875, I 19, p. 7; I 20, p. 7.

<sup>37</sup> Alain TARDIF, *Recherches sur Pierre de Belleperche. Portrait d'un chancelier discret*, Tijdschrift voor Rechtsgeschiedenis / Revue d'Histoire du Droit / The Legal History Review (further cit. TRG), vol. 77: 2009, no. 3–4, pp. 385–421; idem, *Pierre de Belleperche, juriste et conseiller de Philippe le Bel*, Bulletin de la Société d'émulation du Bourbonnais, vol. 74, Moulins 2008, pp. 209–242; Kees BEZEMER, *Pierre de Belleperche: an early attempt to make public law a separate branch of legal science*, [in:] *Science politique et droit public dans les facultés de droit européennes (XIII<sup>e</sup>–XVIII<sup>e</sup> siècle)*, sous la dir. de Jacques KRYNEN, Michael STOLLEIS (Studien zur europäischen Rechtsgeschichte. Veröffentlichungen des Max-Planck-Instituts für Europäische Rechtsgeschichte Frankfurt am Main, Bd. 229), Frankfurt/Main 2008, pp. 41–47; idem, *Pierre de Belleperche. Portrait of a legal puritan* (Studien zur europäischen Rechtsgeschichte. Veröffentlichungen des Max-Planck-Instituts für Europäische Rechtsgeschichte Frankfurt am Main, Bd. 194), Frankfurt/Main 2005; J. Michael RAINER, *Das Römische Recht in Europa. Von Justinian zum BGB*, Wien 2012, pp. 99–105; Frank SOETERMEER, *Petrus de Bellapertica (Pierre de Belleperche)*, [in:] *Biographisch-Bibliographisches Kirchenlexikon*, Bd. 22, Nordhausen 2003, col. 1071–1078; Hermann LANGE, *Römisches Recht im Mittelalter*, Bd. I: *Die Glossatoren*, München 1997, p. 380; Bd. II: *Die Kommentatoren*, München 2007, pp. 546–567 (here all the literature); comp. also Jean FAVIER, *Philippe le Bel*, Paris 1978, s. 25, 35–41, 72–73, 280; Dominique POIREL, *Philippe le Bel*, Paris 1999 (2<sup>nd</sup> ed.), pp. 265–266; Franklin J. PEGUES, *The Lawyers of the last Capetians*, Princeton 1962, pp. 108–109; *La France pontificale (Gallia christiana), histoire chronologique et biographique des archevêques et évêques de tous les diocèses de France depuis l'établissement du christianisme jusqu'à nos jours, divisée en 17 provinces ecclésiastique*, vol. *Sens et Auxerre*, par Honoré FISQUET, Paris 1864–1873, pp. 330–331. Pierre de Belleperche in 1300 belonged to one of the most respectable and influential members of the French intellectual and courtly elite. He was born in the mid-13<sup>th</sup> century in Bourbon; he was a student of the legist Raoul d'Harcourt („*de Auricuria*”), in the years 1277/1280/1281–1296 he was a lecturer of Civil (Roman) Law in the University of Orléans with the degree of doctor of both laws. As a commentator, he was in-

gues Michel de Besançon (“de Bisuncio”),<sup>38</sup> which was notarially authenticated at Pierre’s house by two Paris notaries, Pierre Carredoc and Jean de Lamballe (“de Lambalia”)<sup>39</sup> a day later. The verdict contains the statements of the Parisian scholars on no less than six legal issues, and its authentication may indicate that it was intended for court proceedings, or, possibly, for conciliation proceedings.<sup>40</sup> It is difficult to explain why in the second copy of the document,

---

terested in the public legal order, mainly in administration of the city, the evidence of which are the commentaries he wrote (“repetitiones”). In 1296 he was appointed the member of the Royal Council by King Philip IV, which interrupted its regular university activity. He was referred to as the “father of experts”. From 1298 he was a member of the Paris Parliament – the body of the highest royal judges. He ran negotiations with the Roman Emperor and the King of England. In the court of Philip IV he held the office of the guard of the royal seal. He took part in the issue of ordinances in 1303 and the coronation of Pope Clement V in Lyon. In 1306 he received the bishopric of Auxerre, supported by the Pope, but not by the king. He was against the trial against the Templars; that’s why he resigned from the royal service in October 1307; he died in Paris on 17 January 1308. After he withdrew from the court, the leaders of the royal policy became the chamberlains Guillaume de Nogaret and Guillaume de Plaisians, and next Enguerran de Marigny, comp. Robert HOLTZMANN, *Wilhelm von Nogaret. Rat und grossiegelbewahrer Philipps des Schönen von Frankreich*, Freiburg 1898; Jean FAVIER, *Un Conseiller de Philippe le Bel: Enguerran de Marigny* (Mémoires et Documents publiés par la Société de l’École des Chartes, vol. 16), Paris 1963, pp. 90–103.

<sup>38</sup> Hélène MILLET, *Les Chanoines du chapitre cathédral de Laon 1272–1412*, (Publications de l’École française de Rome, vol. 56), Rome 1982, pp. 98, 241, 513; Robert GANE, *Le Chapitre de Notre-Dame de Paris au XIVe siècle. Étude sociale d’un groupe*, Saint-Étienne 1999, pp. 110, 147, 152, 182, 286. Younger as Pierre, born in 1270, Hugues Michel de Besançon at the end of the 13<sup>th</sup> century, like the former, belonged to the French elite of lawyers. From 1296 he owned the canony in Laon, from 1300 also the prebendary in Saint-Quentin and Dole, and in 1307 in Paris in the Cathedral of Notre Dame (in the years 1313–1326 he held the office of cantor). In the spring of 1310 along with other canons he issued the first sentence recognizing Marguerite Porete as heretic, comp. Lydia WEGENER, *Freiheitsdiskurs und Beginnenverfolgung um 1308 – der Fall der Marguerite Porete*, [in:] 1308. *Eine Topographie historischer Gleichzeitigkeit*, hrsg. v. Andreas SPEER, David WIRMER (Akten der 36. Kölner Mediaevistentagung, Miscellanea Mediaevalia. Veröffentlichungen des Thomas-Instituts der Universität zu Köln, Bd. 35), Berlin–New York 2010, pp. 209, fn. 45; William J. COURTENAY, *The Role of University Masters and Bachelors at Paris in the Templar Affair, 1307–1308*, [in:] *ibid.*, p. 180, fn. 21. According to the sources and the most recent findings, he was not involved in the case of Knights Templars in the years 1307–1312, comp. William J. COURTENAY, Karl UBL, *Einleitung*, [in:] *Gelehrte Gutachten und königliche Politik im Templerprozeß* (Monumenta Germaniae Historica, Studien und Texte, Bd. 51), Hannover 2010, pp. 45–47. At the end of his career he held the office of the Bishop of Paris as Hugues II de Besançon *Bibliothèque sacrée ou Dictionnaire universel historique, dogmatique, canonique, géographique et chronologique des sciences ecclésiastiques*, par Charles L. RICHARD, vol. 29, Paris 1824, p. 34.

<sup>39</sup> APG, entry no. 368/IV, 1 (= edition: CDW, Bd. I, no. 108, pp. 189–190); entry no. 368/IV, 2; comp. also PR, no. 1240, p. 334; no. 1241, p. 334.

<sup>40</sup> Compare the interpretation of Eberhard Isenmann (idem, *Zur Rezeption des römisch-kanonischen Rechts im spätmittelalterlichen Deutschland*, p. 216), who, discussing the phenomenon

which was authenticated by three seals like the first document, the opinions of the mentioned legal experts on one of the issues were omitted.<sup>41</sup>

In light of the content of the Paris adjudication of 1300, it should be noted that the controversy of 1295–1298 remained not only unresolved in the following months, but that the dispute between the Elbing's municipality and the Teutonic Order even intensified during that time. Although the rulings of the Lübeck canonists in two matters from 1296 have been preserved in two separate documents,<sup>42</sup> and one could assume that these did not have to concern the only controversies which the Elbing authorities referred to the canonists, the opinion of Heinrich von Wittenborn, contained in one attestation, points to the likelihood that the Lübeck canonists were consulted only on these two issues. After just over two years, the dispute between the city and its superior ruler worsened, as indicated by a letter to Gottfried von Hohenlohe from 1298. Then, between 1298 and 1299,<sup>43</sup> the conflict broadened to include further issues. A list of five contentious issues was presented in the letter to the (Grand) Master from the spring of 1298, with an additional sixth issue submitted to the canonists and to a notary of Lübeck in 1296, swelling to the eight points<sup>44</sup> discussed by the Paris professors in 1300. This indicates that in addition to the three initial ones (i.e. the double controversy over the course of the “patrimonium” borders and their lengths, as well as the issue of the right to appeal in Lübeck) raised in 1296, three new contentious issues had appeared. In this case, it was about: 1) the controversy over fishing rights granted to Elbing in 1246; 2) discord around the “bede” and customs, 3) and finally, a dispute over the scope of military obligations by the citizens of the city towards the Order.<sup>45</sup> Three other contentious issues were mentioned in the letter to the Order's (Grand) Master of 1298, namely: 1) the rights of the Elbing's municipality to judge (non-violent) crimes committed within the city “patrimonium”; 2) the municipality's rights to collect half of all fines awarded for crimes committed within the city “patrimonium”; 3) and, finally, the personal deliverance of the

---

of legal advice, mentions the case of Elbing as the oldest recognized case; the next case he mentions in the chronological order is the appeal of the authorities of Cologne in 1341 to the doctors of law at Montpellier University requesting to interpret the privilege of Pope Innocent IV of 1252, comp. *ibid.*, pp. 216–217.

<sup>41</sup> Comp. fn. 34.

<sup>42</sup> APG, entry no. 368/I, 5; entry no. 368/I, 7.

<sup>43</sup> *Terminus ante quem* of the end of 1299, which means that a few months must have passed between sending the enquiry from Elbing to Paris lawyers, presenting the case to them in Paris, analysing the controversies and the final verdict on 6 August 1300.

<sup>44</sup> Two out of the eight issues concerned the controversy connected with the shape of the south-western boundaries of the municipal “patrimonium”, while the next two cases concerned the rights of Elbing's inhabitants to fish; thus, there were only six subjects addressed here.

<sup>45</sup> CDW, Bd. I, no. 108, pp. 186, 187–189.

levy (*Rekognitionszins*) in the castle, were not assessed. This leads to the cautious conclusion that in 1298–1299<sup>46</sup> the conflict with the supreme authority was alleviated to an unknown extent in that three issues, as the terms of the compromise can be inferred only indirectly and only on two issues. Thus, the dispute between the Elbing's municipality and the Teutonic Order in the last decade of the 13<sup>th</sup> century followed its own dynamics with some conflict issues being resolved, while others only emerged over time.

In the margins of the main considerations it is worth pointing out the issue of the new codex of Lübeck law. Namely, it is difficult to determine to what extent the discussed dispute influenced the legation, sent to Lübeck by the Elbing authorities in 1295, which brought to the city a copy of the Lübeck law code in its 1294 version.<sup>47</sup> The new code contained all 159 (161) existing articles from the codex of about 1275, but also included 66 new articles,<sup>48</sup> which were then also compiled in a new Middle High German version drawn up in Elbing around 1300.<sup>49</sup> There are researchers who assess the circumstances of the establishment of such written registers of Lübeck's city custom law in the context of a subordination of these centres to the orders of the Teutonic Order;<sup>50</sup> however, in the case of Elbing, in the context outlined above of increased legalistic activities by the city authorities, this view is not at all clear-cut and the truth lies rather with those of the opposite opinion.<sup>51</sup> The problem of a possible connection between the drawing up of Lübeck's law new code in 1295 and the conflict with Elbing discussed here requires detailed analysis in the future.

---

<sup>46</sup> As for *terminus ad quem* comp. fn. 43.

<sup>47</sup> The text of the Lübeck codex (the so called "Codex Bardewic") of 1294 was edited by Johann F. Hacha, comp. ALR, pp. 229–376. The codex of Elbing of 1295 survived until now, comp. APG, entry no. 369,1/2 (Prawo lubeckie wraz z uzupełnieniami („Codex Bardewica”), 1295, 1375); comp. also M. TOEPPEN, *Elbinger Antiquitäten*, H. II, p. 174; E. STEFFENHAGEN, op.cit., p. 233; E. CARSTENN, *Die Elbinger Handschriften des Lübschen Rechts*, pp. 145–149; J. TANDECKI, *Średniowieczne księgi wielkich miast pruskich*, p. 60.

<sup>48</sup> Comp. the concordance prepared by Edward Carstenn in: idem, *Die Elbinger Handschriften des Lübschen Rechts*, pp. 177–183.

<sup>49</sup> APG, entry no. 369,1/3 (Prawo lubeckie („Codex B")); comp. M. TOEPPEN, *Elbinger Antiquitäten*, H. II, p. 167, fn. 1; E. STEFFENHAGEN, op.cit., p. 233; E. CARSTENN, *Die Elbinger Handschriften des Lübschen Rechts*, pp. 149–150; J. TANDECKI, *Średniowieczne księgi wielkich miast pruskich*, p. 60.

<sup>50</sup> This is what has been recently said in reference to Klaipėda in: Tadeusz DOMAGAŁA, *Wprowadzenie*, [in:] idem, *Decretum civitatis Danceke. Gdański kodeks prawa lubeckiego z 1263 roku*, Gdańsk 2005, p. 31.

<sup>51</sup> Edwin Rozenkranz (idem, *Prawo lubeckie w Elblągu*, p. 18), writing about "the concession of the Order"; and Janusz Tandecki (idem, *Ustrój i administracja średniowiecznego Elbląga*, pp. 133), indicating that the norms based on Lübeck law put the municipality Elbing in a "better light in relation to the Order in comparison with towns founded on Culm law, the legal norms of which were codified much later".

In the adjudication of 16 August 1300 issued by the Parish lawyers, in one of the eight (six) contentious issues, doubts (“dubium”) were presented concerning the execution of military duties of the municipality described in its location privilege of 10 April 1246. According to its tone and the provisions by the diploma issuer, i.e. the (Grand) Master of the Teutonic Order Heinrich von Hohenlohe, the townspeople (“cives”) “should have been ready” (“parati”) to defend (“defensio”) the city (“civitas”) and the homeland (“patria”), whenever this necessity (“necessitas”) appears.<sup>52</sup> The text of the adjudication shows that the Elbing burghers at the end of the 13<sup>th</sup> century doubted whether they still had the duty to maintain a constant military readiness to “protect the homeland” (“tuitio patrie”) and to maintain the necessary equipment for combat, namely war horses (“destrarii”), and other items necessary for the armed men (“alia municio armorum”), i.e. weapons.<sup>53</sup> It should be noted that the burghers did not undermine their duty of maintaining readiness to defend the city. The point in dispute with the Order regarding military duties concerned the spatial scope of their execution and the permanence of the burgher’s disposal over the necessary horses and other equipment. It is no coincidence that the war horses were listed first. To defend the city, these were not necessary, and so their breeding and keeping by the Elbing burghers resulted mainly, if not exclusively, from the necessity of fulfilling the duty of “defending the homeland”. The question must be asked: what was meant by the term “patria”? Listing the Latin text of the original location privilege with its thirteenth and fourteenth-century translations into the Middle-Low- and Middle-High-German language leaves no doubt that the term “fatherland” referred to the whole country ruled by the Teutonic Order. The Latin term “patria” in the translation of the privilege was given by means of the word „land” or „waterlant”.<sup>54</sup> Furthermore, why did the realization of the duty of the “defense of the country” by the Elbing burghers become so problematic for them that between 1298 and 1299 they began to question the sense understanding of its record in the city’s charter from 1246? The main reason for Elbing’s changing attitudes towards military

<sup>52</sup> PU, Bd. I/1, no. 181, p. 132 (= CDW, Bd. I, no. 13, p. 21 ~ ElbP § 11, p. 226): “Ad hec statuimus, ut, secundum quod incumbit necessitas, ad defensionem civitatis et patrie sint paratii”; comp. also the Polish translation: Z. H. NOWAK, J. TANDECKI, op.cit., Aneks źródłowy I, § 11, pp. 50, 52.

<sup>53</sup> CDW, Bd. I, no. 108, p. 187: “Item in dicto privilegio materialiter positum est: «Ad hoc statuimus, ut secundum quod incumbit necessitas, ad defensionem civitatis et patrie sint paratii». Ex quo resultat dubium, an cives pro tuitione patrie continue debeant esse parati ad pugnam tenendo destrarios et aliam municionem armorum [inverted commas and bold type – K.K.]”.

<sup>54</sup> ElbP § 11, p. 226: „Dar zu setze wir na dem daz not an leget zu bescirmen di stat und daz waterlant se sin bereite”; APG, entry no. 369/1, 10, p. 16: „Darczu so setze wir das nach deme alze notdorft entsetet czu weren die stat und das land sullen sien bereyt“.

obligations was not the semantics of the term “homeland”/“country”, but the substantial transformation of the designation of this term, which took place from the eighth until the tenth decade of the 13<sup>th</sup> century. The word “country” meant, among Christian visitors, crusaders, and settlers, the area of Prussia, which at the latest at the turn of the 13<sup>th</sup> and 14<sup>th</sup> centuries was understood as the territory extending between the lower course of the Vistula and the lower and middle course of the Neman.<sup>55</sup> During the struggle with indigenous peoples throughout the entire 13<sup>th</sup> century, the term also functioned in a second, geographically narrower sense: the part of Prussia which fell under Christian control, including the Teutonic Order. There is no doubt that in the case of the location privilege of 10 April 1246, the creators of the concept understood the Latin term “patria” to mean “the Prussian land under the rule of the Teutonic Order”, because only to defend this part of Prussia could the Order oblige the Elbing burghers. In contrast to Prussia understood as a geographical area stabilized in the 13<sup>th</sup> century, the spatial extent of the “Prussian Land” understood as an area under the control of the Teutonic Order was changing quite dynamically at that time. If in 1246 the Prussian Land embraced only certain areas of the Culmerland, Pomezania and Lanzania,<sup>56</sup> then half a century later this had snowballed to incorporate all the Baltic areas between the Vistula and the Neman, although it was not intensely controlled and closed in by territorial demarcations.<sup>57</sup> Undoubtedly, the events of the last two decades of the 13<sup>th</sup> century, namely the relative calm of Prussia after the suppression of the last two local revolts around 1289 and in 1295, as well as the transfer of military operations by the brethren of the Teutonic Order from the outer edges of Prussia to the transitional Prussian-Samogitian and Prussian-Lithuanian zones<sup>58</sup>, i.e. to the area above the lower and middle Neman<sup>59</sup>, from the point of view of the Elbing

---

<sup>55</sup> Comp. the comprehensive study: Erich MASCHKE, *Preußen. Das Werden eines deutschen Stammesnamens*, Ostdeutsche Wissenschaft. Jahrbuch des Ostdeutschen Kulturrates, Bd. 2: 1955, pp. 117–119 (= [in:] idem, *Domus hospitalis Theutonicorum. Europäische Verbindungslinien der Deutschordensgeschichte. Gesammelte Aufsätze aus den Jahren 1931–1963* (Quellen und Studien zur Geschichte des Deutschen Ordens, Bd. 10), Bonn–Godesberg 1970, pp. 159–160).

<sup>56</sup> Albert L. EWALD, *Die Eroberung Preussens durch die Deutschen*, Bd. II: *Die Erste Erhebung der Preußen und die Kämpfe mit Swantopolk*, Halle 1875, pp. 184–190, 206–209.

<sup>57</sup> Comp. fn. 3.

<sup>58</sup> Comp. my remarks: Krzysztof KWIATKOWSKI, *Zakon niemiecki jako „corporatio militaris”*, cz. I: *Korporacja i krąg przynależących do niej. Kulturowe i społeczne podstawy działalności militarnej zakonu w Prusach (do początku XV wieku)* (Dzieje Zakonu Niemieckiego, vol. 1), Toruń 2012, p. 434.

<sup>59</sup> About military actions of the Prussian branch of the Teutonic Order in both transitional zones comp. Dariusz PREKOB, *Wojna zakonu krzyżackiego w Litwę w latach 1283–1325*, Toruń 2004, pp. 19–31, 52–61, 64–84, 91–94 (here the sources, though not always appropriately analysed; references to various literature).

burghers, led to a fundamental change in the form by which the municipality fulfilled its military duties towards the Order. While in 1246, the assignment of an armed contingent to the Order's army to defend the "country" usually meant that the Elbing burghers who were under arms had to join in a military ventures lasting a few days, and taking place at relatively short distances from Elbing – not exceeding 150 km,<sup>60</sup> in 1299 the defense of the "homeland" could mean a dozen or even several dozen days outside their own city at distances two or three and even four times greater. Of course, the organisation of an armed contingent, properly prepared for such a venture, required significantly expanded activities, more money and equipment, as well as mental commitment and volitional strength, both from the city authorities and from the individual burghers under arms.<sup>61</sup> In short: in the eighties and nineties of the 13<sup>th</sup> century, participation in military actions ordered by the Teutonic Order became a much greater burden than in the previous decades for the Elbing people. If at the same time we take into account the fact that the frequency of military undertakings of the Order had not diminished at that time,<sup>62</sup> it is understandable that such a situation must have caused a negative reaction of the Elbing burghers and authorities, and led to attempts to limit these duties.

Regarding the interpretation of the excerpt of the founding charter regarding the duty of military service to the Order, the Parisian experts said that if there was such a necessity in the near future ("necessitas"), in case of an approaching of war ("diffidacio precedens") or enemy attack ("disposicio aggressionis"), then the burghers should have at their disposal ("caucio seu municio") horses ("equi") and weapons ("arma"), as long as the threat lasted. If, however, such a need did not arise, whether as a result of the nature of the threat, of its proper assessment or of its cessation, then the townspeople were not obliged to keep horses and weapons at the ready.<sup>63</sup> Their adjudication, as in other matters

<sup>60</sup> Comp. Dusburg III 48, p. 78; III 51, p. 79; III 66, pp. 87–88; III 67, p. 88; III 140, p. 119; III 148, pp. 122–123; III 170, pp. 129–130.

<sup>61</sup> Recently in the article concerning the Culm contingent of 1433 I indicated the major differences in the quantity of manpower and material resources involved in the preparation and allocation of military contingents by Prussian towns for short-distance military actions as against those military actions in which armed burghers had to travel long distances to take part in them, comp. Krzysztof KWIATKOWSKI, "Auf die reyse ken Danczke". *Chełmińska zapiska dotycząca kontyngentu wojskowego – przyczynek do zagadnień wojskowości miejskiej strefy bałtyckiej w późnym średniowieczu*, [in:] *Piśmiennosc pragmatyczna – edytorstwo źródeł historycznych – archiwistyka. Studia ofiarowane Profesorowi Januszowi Tandekiemu w sześćdziesiątą piątą rocznicę urodzin*, ed. Roman CZAJA, Krzysztof KOPÍŃSKI, Toruń 2015, pp. 524–528.

<sup>62</sup> Comp. fn. 58 and 59.

<sup>63</sup> CDW, Bd. I, no. 108, pp. 187–188: „In quo dubio nobis videtur, quod si necessitas imineat vel propter diffidacionem precedentem vel propter disposicionem aggressionis in proximo future evidentem, tunc predictae cives equorum et armorum, quamdiu durabunt premissa,



presented to them for review, the Paris legists justified with the letter of the Roman law (“quomodo in iure dicitur”), according to which it was the praetor/judge (“praetor”) to decide on the need to take specific actions during the existence of a common threat of suffering damage.<sup>64</sup> In their opinion, the record from the Elbing's founding charter should be understood in the light of Roman law in such a way that the decision to summon the townspeople and the organisation of the military venture were in the hands of the praetor/judge (“pretor”) of the city.

Pierre de Belleperche and Hugon de Besançon referred in this case to a set of proclamations from Ulpian Domitius<sup>65</sup> contained in the 53rd book of the work *Ad edictum* included in the fourth decade of the 6<sup>th</sup> century as fragments 13 (*Qui bona fide*) and 15 (*Si finita sit*) to title 2 (*De damno infecto et de suggrundis et proiectionibus*) in Emperor Justinian's 39<sup>th</sup> Book of *Digest* (*Pandects*).<sup>66</sup>

---

debet habere cautionem seu municionem. Si autem necessitas non appareat in presenti vel propter diffidationem, vel propter dispositionem aggressionis inimicorum in proximo future evidentem, vel propter aliam iustam et similem suspicionem vel premissis cessantibus, cives non tenentur equorum vel armorum municionem seu cautionem facere vel tenere [...]”.

<sup>64</sup> CDW, Bd. I, no. 108, p. 188: „[...] quemadmodum in iure dicitur, quod pretor obligavit dominos edium, ut pro necessitate dampni futuri, quod vicinis ex edibus suis posse inferri, teneantur municiones et cautiones facere et prestare, quod intelligendum est, ubi necessitas emergit vel i presenti vel concurrente, saltem quod dampnum occurrere debeat in proximo iusta et evidenti suspicione, quibus etiam cessantibus iubet municionem sive cautionem cessare, ne sequatur inconveniens, quod quis continuo et in perpetuum cogatur in dispendio municionis seu cautionis manere, ut probatur fragmenta «de damno infecto», locus «qui bona fide» et ulterius cum loco sequenti, que omnia, ut ibidem legitur arbitrio iudicis superioris, hoc est pretoris estimari debent seu etiam dependere [inverted commas – K.K.]”.

<sup>65</sup> Ulpianus Domitius (\* about 170, † 223 r. A.D.), one of the most outstanding lawyers of the imperial period; one-third of all the sentences included in *Digest* – in total fragments of the works of 38 Roman lawyers – were based on his texts written between 211 and 212 A.D.; comp. Erich MERTENS, *Inhalt und Herkunft der Opiniones Ulpianus*, Göttingen 1958, pp. 3–5; Tony HONORÉ, *Ulpian. Pioneer of human rights*, Oxford–New York 2002 (2<sup>th</sup> ed.), pp. 4–13; also synthetically Bogdan LESIŃSKI, Władysław ROZWADOWSKI, *Historia prawa*, Warszawa–Poznań 1981 (3<sup>rd</sup> ed.), p. 55.

<sup>66</sup> In reference to the taxonomy of *Digest* comp. Władysław BOJARSKI, Wojciech DAJCAK, Andrzej SOKALA, *Verba iuris. Reguly i kazusy prawa rzymskiego*, Toruń 2000, pp. 166–190; about the circumstances of the creation of *Digest* and methods applied in their creation Marek KURYLÓWICZ, *Prawa antyczne. Wykłady z historii najstarszych praw świata*, Lublin 2006, pp. 191–196. *Digest* was discovered in the 11<sup>th</sup> century in the Latin world and analysed thoroughly by Irnerius of Bologna, comp. Franz DORN, *Irnerius*, [in:] *Deutsche und europäische Juristen aus neun Jahrhunderten*, hrsg. v. Gerd KLEINHEYER, Jan SCHRÖDER, Heidelberg 1996 (4<sup>th</sup> ed.), pp. 211–215; H. LANGE, *Römisches Recht im Mittelalter*, Bd. I, pp. 154–162; Peter WEIMER, *Corpus iuris civilis*, [in:] *Lexikon des Mittelalter*, Bd. 3: (*Codex Wintoniensis bis Erziehungs- und Bildungswesen*), Stuttgart–Weimar 1999 (2<sup>th</sup> ed.), col. 270–277 (= [in:] idem, *Zur Renaissance der Rechtswissenschaft im Mittelalter* (Biblioteca eruditorum / Internationale Bibliothek der Wissenschaften, vol. 8), Goldbach 1997, pp. 117–127); J. M. RAINER, op.cit., pp. 77–79 (here more literature

The whole of passage (“lex”) 13 concerns the question whether the buyer of property from a person who was not its owner is obliged to promise only compensation for any damage that could be caused to third parties, or whether this person should guarantee safety from damage. Ulpian ruled (“principium” from passage 13) that although it is thought that the buyer should give a guarantee, it is reasonable for him to rather make a promise of compensation for possible damage, as he could do so only on his own behalf.<sup>67</sup> As a justification of this legal rule in paragraph 1 of passage 13, the creators of the *Digest* attached the Ulpian ruling regarding the acquisition of real estate, where such an interpretation of the owner’s responsibility for possible damage was provided, justified by the claim that the owner acts only on his own behalf and nobody else.<sup>68</sup> Paragraph 3 of passage 13 indicated that if someone requests a guarantee of protection against damage, he must first swear an oath that he will not do it for wicked purposes, and then he will be awarded the contract (“stipulatio”), and should not be asked if he has any interest in the property. In such a case, ultimately the praetor should determine to whom the guarantee of security from damage is to be given, and to whom not.<sup>69</sup>

It should be emphasized here that in the issued adjudication, the jurists invoked provisions that did not directly concern any military issues, following the court proceedings characteristic of the Roman law system based on case reports. They appealed to Ulpian’s sentence regarding the threat of damage in a dispute which from a formal point of view had nothing to do with the Roman lawyer’s ruling. By applying the norms of Roman law to Elbing burgher’s military obligations to the Teutonic Order, a completely different perspective of the dispute was obtained in terms of legal subjectivity. The motive for this was the similarity of the case for calling up the Elbing burgher to military service toward the Order for actions aimed at securing themselves against imminent damage, because – as the lawyers of Paris understood – the military activities of the burghers were a kind of prevention of possible damage. However, the range of legal subjects in the dispute over the scope of these activities was

---

concerning the reception of Roman law in the legal culture of the Latin cultural circle of the 11/12<sup>th</sup>–15<sup>th</sup> centuries).

<sup>67</sup> CICiv, D. 39,2,13, pr.: “Qui bona fide a non domino emit, videndum est, numquid re promittat, non etiam satisdet. quod quibusdam videtur: habet autem rationem, ut magis re promittat quam satisdet: suo enim nomine id facit”.

<sup>68</sup> CICiv, D. 39,2,13,1: “Sive corporis dominus sive is qui ius habet (ut puta servitutem) de damno infecto caveat, puto eum re promittere debere, non satisdare, quia suo nomine id facit, non alieno”.

<sup>69</sup> CICiv, D. 39,2,13,3: “Qui damni infecti cavere sibi postulat, prius de calumnia iurare debet: quisquis igitur iuraverit de calumnia, admittitur ad stipulationem, et non inquiretur, utrum intersit eius an non, vicinas aedes habeat an non habeat. Totum tamen hoc iurisdictioni praetoriae subiciendum, cui cavendum sit, cui non”.

changed. In the jurists' adjudication it was not the Teutonic Order that acted as a subject with the power to decide to take certain actions in the circumstances of a joint threat of suffering damage, but, according to a literal reading of Ulpi-an's sentences, it was the praetor/judge, which was a specific legal and semantic notion, because in the reality of Elbing at the end of the 13<sup>th</sup> century, the office of the judge/mayor (*Schultheiß*) exercised jurisdiction over the citizens of the city, in accordance with Lübeck law. This office was bought from the hands of the Teutonic Order by the city council, after 1288, and in the spring of 1298 at the latest, thus gaining almost full jurisdiction within the city walls, and thus over the citizens and the majority of other inhabitants of the city.<sup>70</sup>

In this context, it is obvious that the Paris adjudication exempted the Elbing burghers from the obligation to maintain continuous military emergency and to send their armed contingents for the military ventures that until now was carried out directly to the brethren of the Teutonic Order. In fact, according to the adjudication, only the city judge/mayor could summon his townsmen under arms if necessary, on the basis of instructions from Order's brethren.<sup>71</sup> Theoretically, according to the letter of the two legists, the mayor could decide not to call his townsmen to arms at all, when ordered to do so by the Order, for an expedition to the distant eastern edges of the Prussian Land – he was completely autonomous in this matter. The final decision, according to the Parisian lawyers, lay in his hands. Thus, the city council, choosing their praetor/judge/mayor, had real control over the procedures for summoning of burghers under arms and assigning of the armed men outside the city's "patrimonium". Among

---

<sup>70</sup> R. CZAJA, *Miasta pruskie a zakon krzyżacki*, p. 22, fn. 44; idem, *Urządnicy miejscy Elbląga do 1524 roku* (Spisy urzędników miejskich z obszaru dawnej Rzeczypospolitej, Śląska i Pomorza Zachodniego, vol. 2: Prusy Królewskie, no. 1, pt. 1), Elbląg 2010, p. 7; rightly points out that the evidence of such a chronology is the presence of the judge/mayor in the document of the privilege granted by the (Grand) Master to Elbing on 2 February 1288, and his absence in the judicial bodies of the municipality in the request sent by the town council and the *Vogt* to the (Grand) Master of 1288–1290. As the petition was dated in the spring of 1298 the chronology of the buyout of the office of the mayor should be limited to the period after 2 February 1288 and before June 1298. It may even be connected with the presence of (Grand) Master Konrad von Feuchtwangen in Prussia. Naturally, it did not mean the liquidation of the office. Now, councilmen or members of the general council elected the person to hold the office; comp. ESB, Bd. 1, no. 1884 (year 1360); M. TOEPPEN, *Elbinger Antiquitäten*, H. III, Danzig 1873, p. 272 (year 1403); NKRSME, vol. I, no. 200, 216, 222 (year 1405); vol. I, no. 343 (year 1406); vol. I, no. 415, 416, 468 (year 1407); vol. I, no. 643 (year 1408); vol. I, no. 742 (year 1409); vol. I, no. 992, 1002, 1009, 1055 (year 1410); also W. VON BRÜNNECK, *op.cit.*, pp. 32, 33, 38–39.

<sup>71</sup> It was even in accordance with the practice used at the same time in Magdeburg, where the mayor announced the summon of burghers under arms at the assembly of citizens ("burding"), comp. Rudolf SCHRANIL, *Stadtverfassung nach Magdeburger Recht. Magdeburg und Halle* (Untersuchungen zur Deutsche Staats- und Rechtsgeschichte, Bd. 125), Breslau 1915, pp. 141, 242–243.

the members of the Teutonic Order, such a practice had to arouse fundamental opposition, because the previous chain of command was now lost.

As already often outlined in the literature, the importance of the purchase of the office of mayor by the municipalities, and as a result the taking over of full control over the election of mayors<sup>72</sup> as one of the forms of extending urban independence, should also be treated in the context of the transfer of power to make decisions in the field of the military “mobilisation” of burghers. With the control over the mayoral office and its functioning, the city council obtained a facet of power originally hitherto belonging to the superior authority, concerning the military authority over the burghers. In a country located in a transitional region and permanently threatened by war, this prerogative was of extreme importance, especially for its superior ruler, in this case the Teutonic Order.

If we take into account the fact that the application of codified norms of Roman law from Justinian's *Digest* in the matter of the military obligations of the Elbing burghers, as well as in several other disputes, became an important determinant of the Parisian legists issuing an opinion favourable to the Elbing burghers, then it makes sense to ask the question about the reasons why the local government referred to adjudication based on a completely different authority from the legal order used in Prussia, and proclaimed at a considerable distance from Elbing.<sup>73</sup> There are reasons to assume that the Elbing authorities presupposed the possibility of a favourable law review of the Teutonic Order within Roman law because the potential of such an advantageous interpretation had already been demonstrated by the adjudication of the Lübeck canonists in 1296.<sup>74</sup> The 1296 consultation clearly indicates the willingness of the Elbing authorities to employ legal interpretations of the Order's regulations within the two systems of codified law, which at the end of the 13<sup>th</sup> century were Roman civil law and Church canon law. The reference of the Elbing council to distant Paris shows that the city authorities were keen to settle all controversies with the supreme authority in their own favour, without seeking a compromise. Of course, these concerned disputes – all eight of them (six controversies) – among which the issue of the burgher's military obligations were only a small part; however, if we take into account the elaborate manner of appealing to Roman law analysed above, the conclusion must be that the issue of military obligations played a significant role in the conflict with

---

<sup>72</sup> R. CZAJA, *Miasta pruskie*, pp. 15, 21–22, 35–38, 84–87 (here older literature).

<sup>73</sup> The distance between Lübeck and Elbing by air is 555 km, by road – 600 km; the distance between Elbing and Paris by air is 1300 km, while by road – 2100 km (at that time the journey included the sea voyage around Jutland) – which means three and a half times longer.

<sup>74</sup> Comp. fn. 32 and 33.

the Teutonic Order. The authorities of Elbing tried hard to find the legal basis to justify their negative attitude towards the new practice by the Order of appointing urban contingents for military operations on the outskirts of Prussia in the Prussian-Lithuanian and Prussian-Samogitian transitional zones, which they had been used to for one or two decades.

It also seems that the decision to refer to distant legists in Paris was fostered by the intention of obtaining the reputation of a well-known and respected authority in Roman law, since the adviser of the French king, Pierre de Belleperche was considered just that. The choice of this specialist could also result from the fact that since the 1280s at the French court and among the intellectual elites he had been considered to operate as a lawyer dealing with urban affairs. In his "repetitiones" he dealt with various legal and administrative issues concerning the functioning of the city governance in Orléans, which had also been the focus of other local legists.<sup>75</sup>

Finally, the question should also be asked how the Elbing authorities got in contact with the Paris professors. Perhaps the existence of this communication channel between two places that are far away from each other can be explained through the possible but unconfirmed participation of the Elbing burghers in the diplomacy of the Wendish cities at the French court of Philip IV in the early spring of 1295, during which in Paris, on 25 February, the cities of Lübeck, Riga, Hamburg, Wismar, Rostock, Stralsund, Greifswald, Elbing, Kampen and probably Visby regained their former customary access to the Flemish cities.<sup>76</sup> Then, on 6 March of that year, they won the royal promise to return as many ships seized by royal officials during military operations against English ships in Guyenne in 1293, as would be necessary to compensate for the goods claimed from the merchants during that time.<sup>77</sup> This participation would testify to Elbing's commercial activity at the end of the 13<sup>th</sup> century, which by that time had reached a considerable geographical expanse, although its activities in Flemish waterways were marginal.<sup>78</sup> An alternative hypothesis would be the

---

<sup>75</sup> Kees BEZEMER, *The law school of Orléans as school of public administration*, TRG, vol. 66: 1998, no. 1–2, pp. 247–277.

<sup>76</sup> LübUB, Abt. 1, Th. I, no. 617, pp. 558–559 (with the wrong date) (= PU, Bd. I/2, no. 630, pp. 401–402; with the right date).

<sup>77</sup> LübUB, Abt. 1, Th. I, no. 619, pp. 559–560 (with the wrong date) (= PU, Bd. I/2, no. 632, p. 403; with the right date).

<sup>78</sup> Roman CZAJA, *Udział wielkich miast pruskich w handlu hanzeatyckim do połowy XIV wieku*, *Zapiski Historyczne*, vol. 60: 1995, no. 2–3, pp. 35–36; idem, *Die Entwicklung des Handels der preußischen Hansestädte im 13. und 14. Jahrhundert*, [in:] *Die preußischen Hansestädte und ihre Stellung im Nord- und Ostseeraum des Mittelalters*, hrsg. v. Zenon H. NOWAK, Janusz TANDECKI, Toruń 1998, pp. 39–40; idem, *Strefa bałtycka w gospodarce europejskiej w XIII–XV wieku ze szczególnym uwzględnieniem Prus krzyżackich*, [in:] *Ziemia polskie wobec Zachodu. Studia nad rozwojem średniowiecznej Europy*, ed. Sławomir GAWŁAS, Warszawa 2006, p. 205; recently

adoption of the Lübeck mediation. The probability of such a course of action is illustrated by the diplomatic activity of Lübeck in West European regions, which was extremely intensive in the last decade of the 13<sup>th</sup> century, as Ahasver von Brandt<sup>79</sup> pointed out half a century ago. Taking into account another fact, that one of the initiators of this activity was Johann von Douai (von Doway), a long-time Lübeck councillor and plenipotentiary of his city for negotiations in Flanders and other countries, having good insight not only in merchant customs and privileges and coastal rights but also in church law<sup>80</sup>, then the help from Lübeck, and perhaps even from Johann himself, is even more likely. Regardless of what really lay behind this case, it seems that, along with the mercantile activities of the financially and socially well-to-do Elbing burghers, at the end of the 13<sup>th</sup> century ambitions of power were also present, in which the urban authorities displayed broad mental and cultural horizons.

(trans. by Agnieszka Chabros)

Received 30<sup>th</sup> September 2016

Received in revised form 21<sup>st</sup> July 2017

Accepted 30<sup>th</sup> July 2017

Dr Krzysztof Kwiatkowski  
 Institute of History and Archival Studies  
 Nicolaus Copernicus University in Toruń  
 e-mail: Krzysztof.Kwiatkowski@umk.pl

TNT

also Henryk SAMSONOWICZ, *Elbląg na szlakach handlowych Europy w XIII i w początkach XIV wieku*, Rocznik Elbląski, vol. 26: 2015, pp. 10–11. Roman Czaja mentions only the first document assuming that the royal privilege of 23 February 1295 and the information about Elbing included in it resulted from the diplomatic activities of Lübeck rather than from the intensive trade activity of Elbing's merchants in Flandria. He also quotes the evidence of the presence of the Elbing ship in the south-east coast of England in 1295, which must have traded also with Flandria. Not undermining the viewpoint about the minor activity of Elbing's inhabitants in the markets of Flandria and England at the end of the 13<sup>th</sup> century, it seems to me that the presence of Elbing in both documents cannot be disavowed as it could result from the participation of an envoy of Elbing in the negotiations with Philip IV. The circumstances discussed here concerning the acquisition of the legal opinion of lawyers from Paris by the authorities of Elbing along with economic premises create a broader and complementary context of contacts between Elbing and the French speaking regions in the last years of the 13<sup>th</sup> century.

<sup>79</sup> Ahasver VON BRANDT, „Schwerter aus Lübeck“. *Ein handelsgeschichtliches Rätsel aus der Frühzeit des hansischen Frankreichhandels*, HGBll, Jg. 83: 1965, pp. 10–11.

<sup>80</sup> K. WRIEDT, op.cit., pp. 15–17; Jürgen REETZ, *Bistum und Stadt Lübeck um 1300. Die Streitigkeiten und Prozesse unter Burkhard von Serkem, Bischof 1276–1317*, Lübeck 1955, p. 60.

QUI BONA FIDE A NON DOMINO EMIT: JUSTINIAN'S DIGEST  
AS THE LEGAL REFERENCE POINT IN THE CONFLICT BETWEEN THE URBAN  
MUNICIPALITY AND ITS RULER IN PRUSSIA IN THE LATE MIDDLE AGES

Summary

**Key words:** Late Middle Ages, Prussia, the Teutonic Order, Elbląg (Elbing), towns, Roman law, conflicts

The article addresses the conflict generated in the last decade of the 13<sup>th</sup> century between the Prussian branch of the Teutonic Order and the city of Elbląg. The analysis of the preserved sources allowed us to show the dynamics of the conflict, in which the authorities of Elbing appealed not only to Canon law, but also to the norms of Roman civil law included in the *Digest (Pandects)* of Justinian. It was an untypical conduct for then Prussian circumstances. On 16 August 1300 in Paris, the authorities of Elbing obtained a legal interpretation concerning several controversial matters issued by two well-known lawyers – the advisor to King Philip IV of France, Pierre de Belleperche and Hugo de Besancon. The ruling was based on the interpretation of the sentence by Ulpian Domitius (*Digest* 32,2,13). One of the problems addressed in the interpretation was the range of the military duties falling to Elbing's burghers regarding the Teutonic Order. The authorities of Elbing endeavoured to find a legal explanation to support their negative attitude towards the Teutonic Order's new practice of summoning new military contingents from the city of Elbing to take part in military activities undertaken by the Teutonic Order in the remote eastern edges of the Prussian Land. The legal opinion issued by both lawyers from Paris was favourable for the inhabitants of Elbląg, as it was stipulated that any decision about summoning was the jurisdiction of the *Schultheiß (scultetus)* elected by the city council. It is difficult to establish what the actual role of the opinion issued by the Paris lawyers was in the conflict between Elbing and the Teutonic Order, but the mere fact that Elbing's burghers' asked these lawyers in Paris for help indicates that the inhabitants of Elbing at the end of the 13<sup>th</sup> century were not only affluent merchants, but also people with an ambition to exercise power. Such ambitions were supported by the authorities of the city, characterised by wide intellectual and cultural horizons. The actions undertaken by the inhabitants of Elbing addressed in the article remain one of the very few examples of recourse to the ancient system of Roman law in a conflict concerning a particular local law (in this case the law from the city of Lübeck).

QUI BONA FIDE A NON DOMINO EMIT. DIE DIGESTEN JUSTINIANS  
ALS RECHTLICHER BEZUGSPUNKT IM STREIT ZWISCHEN EINER STADTGEMEINDE  
UND DER OBRIGKEIT IM SPÄTMITTELALTERLICHEN PREUSSEN

Zusammenfassung

**Schlüsselwörter:** Spätmittelalter, Preußen, Deutscher Orden, Elbing, Städte, römisches Recht, Konflikte

Der vorliegende Artikel handelt von einem Konflikt, der sich im letzten Jahrzehnt des 13. Jahrhunderts zwischen dem preußischen Zweig des Deutschen Ordens und der Stadt Elbing entwickelte. Durch eine Analyse der erhaltenen Quellen ist es möglich, die Dynamik dieses Streits aufzuzeigen, in dem die Stadtregierung von Elbing zu einem Mittelgriff, das für die preußischen Verhältnisse ungewöhnlich war. Sie berief sich nicht nur auf das kanonische Kirchenrecht, sondern auch auf die Normen des römischen Zivilrechts, das in den *Digesten (Pandekten)* von Justinian enthalten ist. Zu diesem Zweck verschaffte sie sich für mehrere Streitfragen ein Rechtsgutachten, das am 16. August 1300 von zwei bekannten Juristen erging, Pierre de Belleperche, einem Berater des französischen Königs Philipp IV. sowie Hugo von Besançon. Der Spruch stützte sich u. a. auf die Interpretation einer Sentenz von Domitius Ulpianus (*Digesten* 39,2,13). Eine der begutachteten Angelegenheiten war die Frage, inwieweit die Einwohner von Elbing ihre militärischen Pflichten gegenüber dem Deutschen Orden erfüllt hätten. Die Stadtregierung von Elbing war intensiv bemüht, rechtliche Gründe für ihre negative Haltung gegenüber einer neuen Praxis des Deutschen Ordens zu finden, nämlich der Einberufung von bewaffneten Kontingenten der Stadt Elbing zu militärischen Aktionen, die in weit entfernten östlichen Randgebieten des Preußenlandes unternommen wurden. Das Rechtsgutachten der Pariser Juristen war in dieser Hinsicht für die Elbinger günstig, indem es die Entscheidungsbefugnis bei der Einberufung von Einwohnern der Stadt in die Hand des Schultheißen legte, der damals schon von kommunalen Organen (dem Stadtrat) gewählt wurde. Es lässt sich nicht sagen, welche Rolle das Gutachten der Pariser Juristen im Streit zwischen Elbing und dem Deutschen Orden tatsächlich spielte, doch allein die Tatsache, dass die Elbinger Bürger sich nach dem entlegenen Paris wandten, zeigt, dass mit der kaufmännischen Tätigkeit der finanziell und sozial gut gestellten Einwohner der Stadt am Ende des 13. Jahrhunderts auch Machtambitionen einhergingen, bei deren Realisierung die Stadtregierung damals weite mentale und kulturelle Horizonte erkennen ließ. Das Vorgehen der Elbinger, wie es im Artikel analysiert ist, bleibt dabei eines der wenigen Beispiele, die für das 13. Jahrhundert in Europa bezeugt sind, dass man sich in einem Streit um örtliches Partikularrecht (in diesem Fall das Lübisches Stadtrecht) unmittelbar auf das antike System des römischen Rechts berief.



BIBLIOGRAPHY

- Böhmer, Johann F., Techen, Friedrich., prep. "Codex diplomaticus Lubicensis / Lübeckisches Urkundenbuch." edited by dem Vereine für Lübeckische Geschichte und Alterthumskunde, 1. Abth.: *Urkundenbuch der Stadt Lübeck*, edited by dem Vereine für Lübeckische Geschichte, Th. I, Lübeck: Aschenfeldt, 1843; Th. II, Erste Hälfte, Lübeck: Aschenfeldt, 1858.
- Friedberg, Aemilius., edit. "Corpus iuris canonici." Pars II: *Decretalium collectiones. Decretales Gregorii P. IX., Liber sextus decretalium Bonifacii P. VIII., Clementis P. V. constitutiones, extravagantes tum viginti Ioannis P. XXII. tum communes*. Editio Lipsiensis secunda post Aemilii L. Richter, Lipsiae: Edelmann, 1881 (repr.: Graz: Akademische Druck- und Verlagsanstalt, 1959).
- Hach, Johann F., edit. "Das Alte Lübische Recht." Lübeck: Rohder, 1839 (repr.: Aalen: Scientia, 1969).
- Hoppe, Hans W., edit. "Das Elbinger Stadtbuch." Vol. 1: *1330–1360 (1393)*, Münster: 1976; Vol. 2: *1361–1418*, Münster: Historischer Verein für Ermland, 1986.
- Kisch, Guido., edit. "Das Elbinger Privilegium von 1246 in deutscher Übersetzung." *Elbinger Jahrbuch* 10 (1931): 24–30, edition on pp. 26–30 (= In Idem. *Die Kulmer Handfeste*. (Schriften des Kopernikuskreis Freiburg im Breisgau 9; Forschungen und Quellen zur Rechts- und Sozialgeschichte des Deutschordenslandes 3), 219–227, edition on pp. 223–227. Sigmaringen: Jan Thorbecke, 1978).
- Methner, Arthur. "Die älteste deutsche Handschrift des Lübischen Rechts für Elbing." *Elbinger Jahrbuch* 14 (1937), Text der Elbinger Handschrift: 79–110.
- Mommsen, Theodorus., edit. "Corpus iuris civilis." editio stereotypa, vol. I: *Institutiones, Digesta*, Berolini: Weidmanns, 1872.
- Nowak, Zenon H., Tandecki, Janusz., edit. "Prawa i przywileje Starego i Nowego Miasta Elbląga w Średniowieczu." (Biblioteczka Elbląska 11). Gdańsk: Wydawnictwo „Marpress”, 1998.
- Pelech, Markian., edit. "Nowa Księga Rachunkowa Starego Miasta Elbląga 1404–1414." Vol. I (TNT Fontes 72), Warszawa, Poznań, Toruń 1987; Vol. II (TNT Fontes 73), Warszawa, Poznań, Toruń: Państwowe Wydawnictwo Naukowe, 1989.
- Perlbaach, Max., edit. "Preußische Regesten bis zum Ausgange des dreizehnten Jahrhunderts." *Altpreussische Monatschrift* 11 (1874): 1–32, 97–128, 326–348, 385–432, 546–572, 609–624; 12 (1875): 1–26, 97–144, 193–216, 319–344, 385–428, 577–645 (as book: Königsberg i. Pr.: Ferdinand Beyer vormals Theodor Theile's Buchhandlung, 1876).
- Philippi, Rüdiger., Woelky, Carl P., edit. "Preußisches Urkundenbuch. Politische (allgemeine) Abteilung." Vol. I: *Die Bildung des Ordensstaats*, Part 1, Königsberg/Pr.: Hartung'sche Verlagsdruckerei, 1882 (repr.: Aalen: Scientia, 1961);
- Seraphin, August., edit. "Preußisches Urkundenbuch. Politische (allgemeine) Abteilung." Vol. I: *Die Bildung des Ordensstaats*, Part 2, Königsberg/Pr.: Hartung'sche Verlagsdruckerei, 1909 (repr.: Aalen: Scientia, 1961).
- Toeppen, Max., edit. "Petri de Dusburg Chronicon terre Prusie." In *Scriptores rerum Prussicarum*. Vol. I, 3–219, edition on pp. 21–219. Leipzig: S. Hirzel, 1861.

- Voigt, Johannes., edit. "Codex Diplomaticus Prussicus. Urkunden-Sammlung zur ältern Geschichte Preusens aus dem Königl. Geheimen Archiv zu Königsberg nebst Regesten." Vol. II, Königsberg: Bornträger, 1842.
- Woelky, Carl P., Saage, Johann M., edit. "Codex diplomaticus Warmienseis oder Regesten und Urkunden zur Geschichte Ermlands." Vol. I: *Urkunden der Jahre 1231–1340*, edited by dem historischen Vereine für Ermland, I. Abtheilung, Monumenta Historiae Warmienseis oder Quellensammlung zur geschichte Ermlands, Mainz: Franz Kirchheim, 1860.
- Bezemer, Kees. *Pierre de Belleperche. Portrait of a legal puritan* (Studien zur europäischen Rechtsgeschichte, Veröffentlichungen des Max-Planck-Instituts für Europäische Rechtsgeschichte Frankfurt am Main 194). Frankfurt/Main: Klostermann, 2005.
- Bezemer, Kees. "Pierre de Belleperche: an ealy attempt to meke public law a separate branch of legal science." In *Science politique et droit public dans les facultés de droit européennes (XIII<sup>e</sup>–XVIII<sup>e</sup> siècle)* (Studien zur europäischen Rechtsgeschichte. Veröffentlichungen des Max-Planck-Instituts für Europäische Rechtsgeschichte Frankfurt/Main 229), edited by Jacques Krynen and Michael Stolleis, 41–47. Frankfurt/Main: Klostermann, 2008.
- Bezemer, Kees. "Tha law school of Orléans as school of public administration." *Tijdschrift voor Rechtsgeschiedenis / Revue d'Histoire du Droit / The Legal History Review* 66 (1998), 1–2: 247–277.
- Bibliothèque sacrée ou Dictionnaire universel historique, dogmatique, canonique, géographique et chronologique des sciences ecclésiastiques*, edited by Charles L. Richard, vol. XXIX, Paris: Boiste fils aîné, 1824.
- Biskup, Marian. "Der Deutsche Orden und die Freiheiten der großen Städte in Preußen vom 13. bis zur Mitte des 15. Jahrhunderts." In *Stadt und Orden. Das Verhältnis des Deutschen Ordens zu den Städten in Livland, Preußen und im Deutschen Reich* (Quellen und Studien zur Geschichte des Deutschen Ordens 44; Veröffentlichungen der Internationalen Historischen Kommission zur Erforschung des Deutschen Ordens 4), edited by Udo Arnold, 112–128. Marburg: Elwert, 1993.
- Bojarski, Władysław., Dajczak, Wojciech., Sokala, Andrzej. *Verba iuris. Reguły i kazuśy prawa rzymskiego*. Toruń: Towarzystwo Naukowe Organizacji i Kierownictwa „Dom Organizatora”, 2000.
- Brandt von, Ahasver. „Schwerter aus Lübeck“. Ein handelsgeschichtliches Rätsel aus der Frühzeit des hansischen Frankreichhandels." *Hansische Geschichtsblätter* 83 (1965): 1–11.
- Brünneck von, Wilhelm. "Zur Geschichte der Gerichtsverfassung Elbings (Alt- und Neustadt)." *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Germanische Abteilung* 39 (1915): 24–136.
- Carstenn, Edward. "Die Elbinger Handschriften des Lübischen Rechts." *Zeitschrift des Westpreußischen Geschichtsvereins* 72 (1935): 137–183.
- Carstenn, Edward. "Elbings Kampf um das Lübische Recht." *Hansische Geschichtsblätter* 62 (1938): 73–84.

- Carstenn, Edward. *Geschichte der Hansestadt Elbing*. Elbing: Leon Sauniers Buchhandlung, 1937.
- Courtenay, William J. "The Role of University Masters and Bachelors at Paris in the Templar Affair, 1307–1308." In *1308: eine Topographie historischer Gleichzeitigkeit* (Miscellanea mediaevalia 35), edited by Andreas Speer and David Wirmer, 171–181. Berlin: De Gruyter, 2010.
- Courtenay, William J., Ubl, Karl. "Einleitung." In *Idem. Gelehrte Gutachten und königliche Politik im Templerprozeß* (Monumenta Germaniae Historica, Studien und Texte 51), 1–70. Hannover: Hahn, 2010.
- Czaja, Roman. "Der Deutsche Orden als Stadtherr im Reich, in Preußen und in Livland." In *Die Ritterorden als Träger der Herrschaft: Territorien, Grundbesitz und Kirche* (Ordines Militares. Colloquia Torunensia Historica XIV), edited by Roman Czaja and Jürgen Sarnowsky, 127–139. Toruń: Wydawnictwo Uniwersytetu Mikołaja Kopernika, 2007.
- Czaja, Roman. "Die Entwicklung des Handels der preußischen Hansestädte im 13. und 14. Jahrhundert." In *Die preußischen Hansestädte und ihre Stellung im Nord- und Ostseeraum des Mittelalters*, edited by Zenon H. Nowak and Janusz Tandecki, 35–50. Toruń: Wydawnictwo Uniwersytetu Mikołaja Kopernika, 1998.
- Czaja, Roman. "Die Formung der Städtelandschaft im Kulmerland im 13. und 14. Jahrhundert." In *Zentrum und Peripherie in der Germania Slavica. Beiträge zu Ehren von Winfried Schich* (Forschungen zur Geschichte und Kultur des östlichen Mitteleuropa 34), edited by Doris Bulach and Matthias Hardt, 247–263. Stuttgart: Steiner, 2008.
- Czaja, Roman. "Miasta i ich posiadłości ziemskie w państwie zakonu krzyżackiego w Prusach." In *Państwo zakonu krzyżackiego w Prusach. Podziały administracyjne i kościelne w XIII–XVI wieku*, edited by Zenon H. Nowak and Roman Czaja, 45–65. Toruń: Wydawnictwo Uniwersytetu Mikołaja Kopernika, 2000.
- Czaja, Roman. "Miasta i przestrzeń miejska w państwie zakonu krzyżackiego w Prusach." In *Zakon krzyżacki w Prusach i Inflantach. Podziały administracyjne i kościelne w XIII–XVI wieku* (Dzieje Zakonu Niemieckiego II), edited by Roman Czaja and Andrzej Radziwiński, 81–106. Toruń: Wydawnictwo Uniwersytetu Mikołaja Kopernika, 2013 (eng. transl: "Towns and Urban Space in the State of the Teutonic Order in Prussia." In *The Teutonic Order in Prussia and Livonia. The Political and Ecclesiastical Structures 13<sup>th</sup>–16<sup>th</sup> C.*, edited by Roman Czaja and Andrzej Radziwiński, 79–107. Toruń: Wydawnictwo Uniwersytetu Mikołaja Kopernika, 2015).
- Czaja, Roman. *Miasta pruskie a zakon krzyżacki. Studia nad stosunkami między miastem a władzą terytorialną w późnym średniowieczu*. Toruń: Wydawnictwo Uniwersytetu Mikołaja Kopernika, 1999.
- Czaja, Roman. "Strefa bałtycka w gospodarce europejskiej w XIII–XV wieku ze szczególnym uwzględnieniem Prus krzyżackich." In *Ziemie polskie wobec Zachodu. Studia nad rozwojem średniowiecznej Europy*, edited by Sławomir Gawlas, 195–245. Warszawa: DiG, 2006.

- Czaja, Roman. "Udział wielkich miast pruskich w handlu hanzeatyckim do połowy XIV wieku." *Zapiski Historyczne*, 60 (1995), 2–3: 23–38.
- Czaja, Roman. "Urbanizacja kraju." In *Państwo zakonu krzyżackiego w Prusach. Władza i społeczeństwo*, edited by Marian Biskup and Roman Czaja, 177–199. Warszawa: PWN, 2008.
- Czaja, Roman. *Urzędnicy miejscy Elbląga do 1524 roku* (Spisy urzędników miejskich z obszaru dawnej Rzeczypospolitej, Śląska i Pomorza Zachodniego II: Prusy Królewskie 1,1). Elbląg: Elbląskie Towarzystwo Naukowe im. Jana Myliusa Societas Scientiarum Elbingensis, 2010.
- Dittmer, Georg W. *Der Lübeckische Bischof Burchard von Serkem und seine Zeit vom Jahre 1276 bis zum Jahre 1317. Ein Beitrag zur Lübeckischen Staats- und Kirchen-Geschichte*. Lübeck: Dittmer, 1860.
- Domagała, Tadeusz. "Wprowadzenie." In Idem. *Decretum civitatis Danceke. Gdański kodeks prawa lubeckiego z 1263 roku*. 11–62. Gdańsk: Muzeum Historyczne Miasta Gdańska, 2005.
- Dorn, Franz. "Irnerius." In *Deutsche und europäische Juristen aus neun Jahrhunderten*, edited by Gerd Kleinheyer and Jan Schröder, 211–215. Heidelberg: Müller, 1996.
- Dorna, Maciej. *Bracia zakonu krzyżackiego w Prusach w latach 1228–1309. Studium prozopograficzne*. Poznań: Wydawnictwo Poznańskie, 2004 (germ. transl.: *Die Brüder des Deutschen Ordens in Preußen 1228–1309. Eine prosopographische Studie*, translated by Martin Faber, Wien, Köln, Weimar: Böhlau, 2012).
- Dygo, Marian. *Studia nad początkami władztwa zakonu niemieckiego w Prusach (1226–1259)*. Warszawa: Uniwersytet Warszawski, 1992.
- Ebel, Wilhelm. *Lübisches Recht*. Vol. 1, Lübeck: Schmidt-Römhild, 1971.
- Engel, Evamaria. *Die deutsche Stadt des Mittelalters*. München: C. H. Beck, 1993.
- Ewald, Albert L. *Die Eroberung Preussens durch die Deutschen*. B. II: *Die Erste Erhebung der Preußen und die Kämpfe mit Swantopolk*. Halle: Verlag der Buchhandlung des Waisenhauses, 1875.
- Favier, Jean. *Philippe le Bel*, Paris: Fayard, 1978.
- Favier, Jean. "Un Conseiller de Philippe le Bel: Enguerran de Marigny." *Mémoires et Documents publiés par la Société de l'École des Chartes XVI* (1963): 90–103.
- Fehling, Emil F. *Lübeckische Ratslinie von den Anfängen der Stadt bis auf die Gegenwart* (Veröffentlichungen zur Geschichte der Freien und Hansestadt Lübeck 7,1). Lübeck: Schmidt-Römhild, 1925 (repr.: 1978).
- Frensdorff, Ferdinand. *Das Lübische Recht nach seinen ältesten Formen*. Leipzig: Hirzel, 1872.
- Friederici, Adolf. *Das Lübecker Domkapitel im Mittelalter 1160–1400. Verfassungsrechtliche und personenstandliche Untersuchungen* (Quellen und Forschungen zur Geschichte Schleswig-Holsteins 91). Neumünster: Wachholtz, 1988.
- Gane, Robert. *Le Chapitre de Notre-Dame de Paris au XIVe siècle. Étude sociale d'un groupe*. Saint-Étienne: Publications de l'Université de Saint-Étienne, 1999.
- Hirschmann, Frank G. *Die Stadt im Mittelalter* (Enzyklopädie deutscher Geschichte 84). München: R. Oldenbourg Verlag, 2009.

- Holtzmann, Robert. *Wilhelm von Nogaret. Rat und grossiegelbewahrer Philipps des Schönen von Frankreich*. Freiburg: Mohr, 1898.
- Honoré, Tony. *Ulpian. Pioneer of human rights*. Oxford, New York: Oxford University Press, 2002.
- Isenmann, Eberhard. *Die deutsche Stadt im Mittelalter 1150–1550. Stadtgestalt, Recht, Verfassung, Stadtrecht, Kirche, Gesellschaft, Wirtschaft*. Wien, Köln, Weimar: Böhlau, 2012.
- Isenmann, Eberhard. *Die deutsche Stadt im Spätmittelalter 1250–1500. Stadtgestalt, Recht, Stadtrecht, Kirche, Gesellschaft, Wirtschaft*. Stuttgart: Ulmer, 1988.
- Isenmann, Eberhard. "Zur Rezeption des römisch-kanonischen Rechts im spätmittelalterlichen Deutschland im Spiegel von Rechtsgutachten." In *„Herbst des Mittelalters“? Fragen zur Bewertung des 14. und 15. Jahrhunderts* (Akten der 33. Kölner Mediaevistentagung, Miscellanea Mediaevalia. Veröffentlichungen des Thomas-Instituts der Universität zu Köln 31), edited by Jan A. Aertsen and Martin Pickavé, 206–228. Berlin, New York: De Gruyter, 2004.
- Jasiński, Tomasz. "Die Rolle des Deutschen Ordens bei der Städtegründung in Preußen im 13. Jahrhundert." In *Stadt und Orden. Das Verhältnis des Deutschen Ordens zu den Städten in Livland, Preußen und im Deutschen Reich* (Quellen und Studien zur Geschichte des Deutschen Ordens 44; Veröffentlichungen der Internationalen Historischen Kommission zur Erforschung des Deutschen Ordens 4), edited by Udo Arnold, 94–111. Marburg: Elwert, 1993.
- Jasiński, Tomasz. "Imigracja westfalska do Prus w okresie późnego średniowiecza (XIII–XV wieku)." In *Niemcy – Polska w średniowieczu. Materiały z konferencji naukowej zorganizowanej przez Instytut Historii UAM w dniach 14–16 XI 1983 roku*, edited by Jerzy Strzelczyk, 105–118. Poznań: Wydawnictwo Uniwersytetu im. Adama Mickiewicza w Poznaniu, 1986 (= Idem. "Die westfälische Einwanderung in Preußen im Spätmittelalter." In *Zur Siedlungs- und Bevölkerungs- und Kirchengeschichte Preussens* (Tagungsberichte der Historischen Kommission für ost- und westpreussische Landesforschung 12), edited by Udo Arnold, 95–110. Lüneburg: Institut Nordostdeutsches Kulturwerk, 1999).
- Keyser, Erich. "Die Herkunft der städtischen Bevölkerung des Preußenlandes im Mittelalter." *Zeitschrift für Ostforschung* 6 (1957), 4: 539–557.
- Korlén, Gustav. *Das mittelniederdeutsche Stadtrecht*, Bd. II: *Das mittelniederdeutsche Stadtrecht von Lübeck nach seinen ältesten Formen* (Lunder germanistische Forschungen 23). Lund: Gleerup, 1951.
- Kuryłowicz, Marek. *Prawa antyczne. Wykłady z historii najstarszych praw świata*. Lublin: Wydawnictwo Uniwersytetu Marii Curie-Skłodowskiej, 2006.
- Kwiatkowski, Krzysztof. "Auf die reyse ken Danczke. Chełmińska zapiska dotycząca kontyngentu wojskowego – przyczynek do zagadnień wojskowości miejskiej strefy bałtyckiej w późnym średniowieczu." In *Piśmienność pragmatyczna – edytorstwo źródeł historycznych – archiwistyka. Studia ofiarowane Profesorowi Januszowi Tandeckiemu w sześćdziesiątą piątą rocznicę urodzin*, edited by Roman Czaja and Krzysztof Kopiński, 499–531. Toruń: Towarzystwo Naukowe w Toruniu, 2015.
- Kwiatkowski, Krzysztof. *Wojska zakonu niemieckiego w Prusach 1230–1525 (korporacja, jej pruskie władztwo, zbrojni, kultura wojny i aktywność militarna)* (Dzie-

- je Zakonu Niemieckiego 3). Toruń: Wydawnictwo Uniwersytetu Mikołaja Kopernika, 2016.
- Kwiatkowski, Krzysztof. *Zakon niemiecki jako „corporatio militaris”*. part. I: *Korporacja i krąg przynależących do niej. Kulturowe i społeczne podstawy działalności militarnej zakonu w Prusach (do początku XV wieku)* (Dzieje Zakonu Niemieckiego 1). Toruń: Wydawnictwo Uniwersytetu Mikołaja Kopernika, 2012.
- La France pontificale (Gallia christiana), histoire chronologique et biographique des archevêques et évêques de tous les diocèses de France depuis l'établissement du christianisme jusqu'à nos jours, divisée en 17 provinces ecclésiastique*. Vol. *Sens et Auxerre*, edited by Honoré Fisquet, Paris: E. Repos, 1864–1873.
- Lange, Hermann. *Römisches Recht im Mittelalter*. Vol. I: *Die Glossatoren*. München: C. H. Beck, 1997; Vol. II: *Die Kommentatoren*. München: C. H. Beck, 2007.
- Lesiński, Bogdan., Rozwadowski, Władysław. *Historia prawa*. Warszawa, Poznań: Państwowe Wydawnictwo Naukowe, <sup>3</sup>1981.
- Maschke, Erich. “Preußen. Das Werden eines deutschen Stammesnamens.” *Ostdeutsche Wissenschaft. Jahrbuch des Ostdeutschen Kulturrates* 2 (1955): 116–156 (= In Idem. *Domus hospitalis Theutonicorum. Europäische Verbindungslinien der Deutschordensgeschichte. Gesammelte Aufsätze aus den Jahren 1931–1963* (Quellen und Studien zur Geschichte des Deutschen Ordens 10), 158–187. Bonn, Godesberg: Wissenschaftliches Archiv, 1970).
- Mertens, Erich. *Inhalt und Herkunft der Opiniones Ulpianus*. Göttingen: self-publishing, 1958.
- Methner, Arthur. “Die älteste deutsche Handschrift des Lübischen Rechts für Elbing.” *Elbinger Jahrbuch* 14 (1937): 59–110.
- Militzer, Klaus. “Gottfried von Hohenlohe (3. V. 1297 – Herbst 1303).” In *Die Hochmeister des Deutschen Ordens 1190–2012* (Quellen und Studien zur Geschichte des Deutschen Ordens 40; Veröffentlichungen der Internationalen Historischen Kommission zur Erforschung des Deutschen Ordens 6), edited by Udo Arnold, 46–49. Weimar: VDG, <sup>2</sup>2014.
- Millet, Hélène. *Les Chanoines du chapitre cathédral de Laon 1272–1412* (Publications de l'École française de Rome 56). Rome: École Française de Rome, 1982.
- Niess, Ulrich. “Konrad von Feuchtwangen (Herbst 1291 – zwischen 2. und 5. VII. 1296).” In *Die Hochmeister des Deutschen Ordens 1190–2012* (Quellen und Studien zur Geschichte des Deutschen Ordens 40; Veröffentlichungen der Internationalen Historischen Kommission zur Erforschung des Deutschen Ordens 6), edited by Udo Arnold, 41–45. Weimar: VDG, <sup>2</sup>2014.
- Pegues, Franklin J. *The Lawyers of the last Capetians*. Princeton: Princeton University Press, 1962.
- Penners, Theodor. *Untersuchungen über die Herkunft der Stadtbewohner im Deutschordensland Preußen bis in die Zeit um 1400* (Deutschland und der Osten 16). Leipzig: S. Hirzel, 1942.
- Poirel, Dominique. *Philippe le Bel*. Paris: Perrin, <sup>2</sup>1999.
- Prekop, Dariusz. *Wojna zakonu krzyżackiego w Litwę w latach 1283–1325*. Toruń: Wydawnictwo Adam Marszałek, 2004.

- Rainer, J. Michael. *Das Römische Recht in Europa. Von Justinian zum BGB*. Wien: Manz, 2012.
- Reetz, Jürgen. *Bistum und Stadt Lübeck um 1300. Die Streitigkeiten und Prozesse unter Burkhard von Serkem, Bischof 1276–1317*. Lübeck: self-publishing, 1955.
- Rozenkranz, Edwin. "Prawo lubeckie w Elblągu od XIII do XVI wieku." *Rocznik Gdański* 51 (1991): 5–35.
- Samsonowicz, Henryk. "Elbląg na szlakach handlowych Europy w XIII i w początkach XIV wieku." *Rocznik Elbląski* 26 (2015): 9–14.
- Schranil, Rudolf. *Stadtverfassung nach Magdeburger Recht. Magdeburg und Halle* (Untersuchungen zur Deutsche Staats- und Rechtsgeschichte 125). Breslau: M. & H. Marcus, 1915.
- Semrau, Arthur. "Die Herkunft der Elbinger Bevölkerung von der Gründung der Stadt bis 1353." *Mitteilungen des Copernicus-Vereins für Wissenschaft und Kunst zu Thorn* 32 (1924): 9–62.
- Soetermeer Frank. "Petrus de Bellapertica (Pierre de Belleperche)." (headword) In *Biographisch-Bibliographisches Kirchenlexikon*. Vol. 22, 1071–1078. Nordhausen: T. Bautz-Verlag, 2003.
- Steffenhagen, Emil. *Deutsche Rechtsquellen in Preussen vom XIII. bis zum XVI. Jahrhundert*. Leipzig: Verlag von Duncker & Humblot, 1875.
- Tandecki, Janusz. *Średniowieczne księgi wielkich miast pruskich jako źródło historyczne i zabytki kultury mieszczańskiej (organizacja władz, zachowane archiwalia, działalność kancelarii)*. Warszawa, Toruń: Instytut Sztuki Polskiej Akademii Nauk, 1990.
- Tandecki, Janusz. "Ustrój i administracja średniowiecznego Elbląga." In *Historia Elbląga*. Vol. 1 (do 1466 r.), edited by Stanisław Gierszewski and Andrzej Groth, 131–146. Gdańsk: Wydawnictwo „Marpress” 1993.
- Tardif, Alain. "Pierre de Belleperche, juriste et conseiller de Philippe le Bel." *Bulletin de la Société d'émulation du Bourbonnais* 74 (2008): 209–242.
- Tardif, Alain. "Recherches sur Pierre de Belleperche. Portrait d'un chancelier discret." *Tijdschrift voor Rechtsgeschiedenis / Revue d'Histoire du Droit / The Legal History Review* 77 (2009), 3–4: 385–421.
- Toeppen, Max. *Elbinger Antiquitäten. Ein Beitrag zur Geschichte des städtischen Lebens im Mittelalter*. № II, Danzig: Verlag von Theodor Bertling, 1872; № III, Danzig: Verlag von Theodor Bertling, 1873.
- Volckmann, Erwin. *Katalog des Elbinger Stadtarchives*. Elbing: self-publishing, 1875.
- Wegener, Lydia. "Freiheitsdiskurs und Beginenverfolgung um 1308 – der Fall der Marguerite Porete." In *1308: eine Topographie historischer Gleichzeitigkeit* (Miscellanea mediaevalia 35), edited by Andreas Speer and David Wirmser, 199–236. Berlin: De Gruyter, 2010.
- Weimer, Peter. "Corpus iuris civilis." (headword) In *Lexikon des Mittelalter*. Vol. III (Codex Wintoniensis bis Erziehungs- und Bildungswesen), 270–277. Stuttgart, Weimar: dtv Verlagsgesellschaft, 21999 (= In Idem. *Zur Renaissance der Rechtswissenschaft im Mittelalter* (Biblioteca eruditorum / Internationale Bibliothek der Wissenschaften 8), 117–127. Goldbach: Keip, 1997).
- Wenskus, Reinhard. "Das Ordensland Preußen als Territorialstaat des 14. Jahrhunderts." In *Der deutsche Territorialstaat im 14. Jahrhundert*. Vol. I (Vorträge und

Krzysztof Kwiatkowski

Forschungen XIII/I), edited by Hans Patze, 347–382. Sigmaringen: Jan Thorbecke 1970 (=In Idem. *Ausgewählte Aufsätze zum frühen und preußischen Mittelalter. Festgabe zu seinem 70. Geburtstag*, edited by Hans Patze, 317–352. Sigmaringen: Jan Thorbecke, 1986).

Wriedt, Klaus. “Das gelehrte Personal in der Verwaltung und Diplomatie der Hansestädte.” *Hansische Geschichtsblätter* 96 (1978): 15–37.

