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WRITTEN RECORDS AT PLACES OF AUTHENTICATION IN THE ÁRPÁD ERA

Significance of places of authentication

Places of authentication (*loca credibilia*) were a special institution in the Hungarian legal development, unique at a European level too, which obtained significant prestige and social acceptance through the connection of law and written records. Their existence eclipsed the institution of public notaries which was more widespread in Western Europe. Their activities were complex and wide, and covered civil law, criminal law and public administration law as we perceive them today. The degree of their integration into the Hungarian legal system is shown by the fact that they were indispensable – albeit to varying extents at times – in the functioning of Hungary until practically the 19th century¹. The study of their charters is crucial for medieval church history, legal history, cultural history, institutional history, the history of estates and families, and a number of other sub-disciplines of historical science. This is justified not only by the content of the charters they issued, but also by their number: around a third of the surviving charters from medieval Hungary were issued by places of authentication. Their importance is only enhanced by their micro-historical value, as they provide glimpses into everyday lives, despite their official nature.

1 Pursuant to Section 214 of Act 35 of 1874, places of authentication could only issue copies of the charters they held, but could no longer issue new documents.

Formation of places of authentication

The legal order of the early Árpád era was dominated by the oral tradition. This was particularly true for litigation procedures, where the individual acts of the trials were not carried out in writing, but orally. The defendant was summoned to appear before the law by orally sending out a bailiff (*pristaldus*). The competent judge sent the defendant his own summoning stamp (“billog”) with his bailiff, who identified himself by presenting it, then gave the summons orally, while presenting the summoning stamp. The bailiff also participated in the trial as an official witness and an executor (e.g. registration of ownership).² The most important means of proof in legal proceedings were also oral: parties could take an oral oath to support their claim, the evidential value of which could be reinforced by involving “oath-helpers”. In criminal trials, witness testimonies played an important role and were also given orally during the procedure. Private law transactions (for instance sales, will arrangements, exchanges) were also executed orally, so in these cases the participation of the witnesses was of special importance: they had to prove the legal act that had taken place, and its content, in subsequent legal disputes. Naturally, the uncertainty caused by relying on human memory grew in proportion to the time that had elapsed. Recalling the borders and boundary markers of an estate accurately in a land ownership dispute several years or even decades later was very difficult. It is no coincidence that after the spread of written records, the permanence of writing was very often used as a justification for the issuance of charters, in contrast to the transience of human memory.

Before the spread of written records, trial by ordeal was a widespread form of evidence in legal actions. In doing so, an attempt was made to uncover the truth in cases of uncertain outcome, based on existing information and a faith in the infallibility of the divine power. In Hungary, the most widely used form of trial by ordeal was trial by red-hot iron. A total of about 20 cathedrals and

2 Solymosi 2002, pp. 523–524

larger provostries were entitled to carry out such procedures under the law of King Kálmán the Learned (1095-1116). The most well-known proceedings took place in front of the chapter of Várad. In these trials, the party trying to prove their claims had to carry a heated piece of metal in their bare hands a certain distance. The hands of the person sentenced to the trial were bandaged for several days before and after the trial, and, to prevent fraud by herbal treatment for instance, the bandage was closed by the seal of the church providing the site for the procedure. If the wound started to heal within three days, the person credibly proved his or her case. The chapter of Várad kept records of the trials, which constitute significant Hungarian linguistic relics, and the collection of these is the *Váradi Regestrum*.³

Already in the first half of the 12th century, the major ecclesiastical centres most certainly possessed all the means which later enabled them to play a direct role in the administration of justice: an authentic seal with probative value and the knowledge required for the written administration of affairs. The development of their activities as places of authentication was therefore only dependent on the emergence of demand for such.

The appearance of place of authentication activities was thanks to the development of the judicial system in the 12th century and the spread of written records, which was also partly linked to this. It was a characteristic element of this process when King Stephen II (1116-1131) discharged the palatine from his courtly – mainly economic – duties, and vested him with independent judicial jurisdiction. Within a century, the judicial seat of the palatine gained national jurisdiction.⁴ Part of the process was that by the early 13th century the court duties, including judicial duties, were taken over from the palatine by the chief ispán (*curialis comes*) for whom judicial duties dominated, as reflected by the new name of the office: the judge royal (*iudex curiae regiae*) represented the king's personal presence in the judicial procedures of the court with a

3 For the text, see Solymosi and Szovák 2009. For the elaboration of the place names in it, see: K. Fábíán Ilona 1997

4 Petrovics 1994, p. 473; Solymosi 2002, pp. 521–522

jurisdiction extending to the whole country.⁵ An institutionalised judicial organisation was established through the vice palatine, the deputy noble judge and the protonotaries functioning beside the chief justices. In addition to the above, more important judicial powers were exercised by officials with territorial jurisdiction (bans, the Voivode of Transylvania) and the treasurers primarily conducting economic affairs and also managing the supreme judicial seat of privileged settlements (towns).

The spread of written records was partly a spontaneous process that went hand in hand with the development of the economy, both in size and complexity, but was also accelerated by conscious decisions of the ruler. Perhaps the best known of these was the reform of the chancellery by King Béla III (1172–1196), who – around 1181 – ordered that all matters brought before him should be in writing. In so doing he made the royal chancellery one of the most significant scriptoriums in the country, also functioning for some time as a place of authentication, and in many respects a model of charter-issuing practices. King Béla IV (1235–1270) linked administration to written applications for the nobles, which is described by Rogerius (around 1205–1266) in his work preserving the memory of the Mongol invasion as the fourth reason for the animosity among the king and the Hungarians (i.e. the nobility).⁶

5 For more on the Árpád-era history of the judge royals, see: Bertényi 1976, pp. 51–59

6 “They also complained very often that the king, contrary to the customary law of the land, and oppressing their will at his own pleasure, had decreed that the nobles, however distinguished their rank, should not bring their cases before his court, nor tell him their affairs by word of mouth, but should petition the chancellors, and wait for the conclusion of their cases. For this reason, many stayed so long at the court on the most insignificant of matters that they were forced to sell their horses and other belongings to cover the expenses and often had to leave without having their affairs settled. Because, as it was commonly said, the chancellors oppressed or elevated some people, as they pleased, since the king could only be talked to after discussing the matter with them first. So people generally and openly declared that *they* were the kings, and they had no other king.” Katona 1981, p. 115

Places of authentication – launch of activities

The places of authentication began their activities in cathedrals and major collegiate chapters (bodies of canons living together under common rules) in the last third of the 12th century. Their related written records could have been preceded by the preparation of memoranda on their own litigations and other matters for themselves. Later, the literacy of the members of chapters were used by private individuals as well, either voluntarily based on the trust placed in these bodies, or out of necessity dictated by the growing reliance on the written form in administration and procedural law. As the need to record various legal transactions in writing increased, the more prestigious monastic communities (convents) also became involved in the activities of places of authentication from the early 13th century.⁷ Some of these were royal convents, others were privately founded Benedictine, Premonstratensian or Johannite convents. The spatial boundaries of their functioning, though varying through time, developed spontaneously, mainly through their clientele, and were limited to a specific small or large region. The chapter in Buda and Székesfehérvár and the Johannite convent in Székesfehérvár had national competence.

Clients' need for charters expanded and became general, leading to a slow but significant change above all in the functioning of the *scriptoriums* ("places for writing") of the chapters and convents. One obvious component of this was the gradual increase in the volume of written material, which, given the complex and highly organised process of issuing charters, also involved a number of other activities (such as obtaining and preparing the necessary materials, drafting the charter texts). We can only deduce the intensity of charter issuance at places of authentication from the surviving charters. The centuries of the Árpád era can by no means be considered the age of mass charter issuing. During this period, the

7 For more on the charter issuances of Benedictine convents as places of authorisation, see: Solymosi 1996

practice of issuing charters at places of authentication was only in its infancy and undergoing an upswing. The collections of charters of the larger chapters (Győr, Veszprém, Nyitra, Fehérvár, Buda, Zágreb, Pécs), which survived from the Árpád era in various forms, contain 100 to 200 documents each, while that of the most significant convents (Ség, Somogy, Jászó, Zala, Fehérvár, Pécsvárad) have a few dozen charters only. The Esztergom chapter stands out among the chapters with 350 surviving charters, and among the convents the Hospitaller Convent of Esztergom which has 100 surviving charters. It must be emphasised, though, that the number of surviving charters can at most give an indication of size, and it is difficult to draw conclusions about the individual institutions because of the haphazard nature of the survival of charters. The convent in Lelesz is a good example where the number of surviving Árpád-era charters is less than twenty, but it has more than 14,000 documents from the period of the kings of mixed dynasties.

With the activity of places of authentication, the certification of issued documents and the recording of charter-issuing activity (by retaining copies for instance) appeared as new elements in comparison to records for private purposes. In the case of convents, a particularly important change was that functioning as a place of authentication made a significant dent in the spiritual and physical isolation of the monastic communities because of the inevitability of contact with secular people.

The 13th century saw the emergence of a new area of activity for places of authentication which would also grow significantly in volume in later years: participation in procedures on behalf of official bodies and the issuance of charters thereon. Based on general public trust, to regulate and make more reliable the work of the bailiffs (which was based on the oral tradition and therefore prone to abuse), in the renewal of the Golden Bull in 1231 King András II (1205–1235) ordered that “since many people in the country suffer harm because of false bailiffs, their summons or testimonies shall only be valid with the verification of the county bishop or chapter [...], and in minor cases the verification of neighbouring convents and monasteries shall be valid.”⁸ From

8 Lederer 1964, p. 77

then on, places of authentication became the supreme certifiers of various legal proceedings, and the presence of their commissioner was required to ensure legality and prevent abuse. The legal act itself (for instance, summoning, perambulation, registration of ownership) remained the duty of bailiffs – later the king's, palatine's etc. man – but their actions were only considered legal if a commissioner of a place of authorisation confirmed it as a witness.⁹ The confirmation was contained in a charter issued by the place of authorisation.

Stages of the activity of places of authentication

The places of authentication carried out their authentication duties essentially for two large client groups, and on that basis two main forms of their activity developed. One group constituted private clients who asked these authorities to handle their various legal matters (sale and purchases, mortgages, exchanges, arrangements of wills, commissioning of legal counsel), and thereby gained written, certified evidence, a charter on the completed legal action declared by them. Certainly, the clients most frequently made their declarations (*fassio*) in the church. The parties involved could appear before a place of authentication not only in person, but also through their authorised representatives, legal counsels (*procuratores*). For these representatives, separate commissioning letters were drawn up which could be valid for a single case, for a set period, or with general validity.

Another group using places of authentication included official bodies involved in legal life¹⁰, who – in relation to actual phases of any legal procedure – commissioned places of authentication by separate mandate letters

9 For the analysis of the external activity of the place of authorisation carried out by the chapter of Pécs, see: Koszta 1998, pp. 105–116.

10 In practice, places of authentication could be called to perform a legal action by any official participant of legal life (king, palatine, judge royal, castle district, ban, etc.).

(*mandatum*) to carry out certain legal actions (perambulation, registration of ownership, inquisition, transcription of charters, etc.), after which the places of authentication prepared written reports (*relatio*). There may have been cases where the places of authentication carried out external procedures at the request of private individuals, but these cases always had a well-defined reason. In most cases, the illness or bedridden condition of the person making the avowal – usually a will – was the reason for calling a witness from a place of authentication. Another reason for calling a person from a place of authentication was if women wanted to make an avowal, because they were often afraid to set out on the journey to a place of authentication due to the dangers of travelling.

The selection of witnesses from places of authentication was most probably determined by various elements collectively. Since external authentication work involved having to spend days away from the community of the chapter or convent, and what is more in a secular environment, which caused serious problems for keeping discipline and liturgical obligations, especially for monks, they most probably tried to send more mature, reliable people to carry out authentication activities outside the place of authentication. Maturity was not only important for the person to resist the temptations of secular life more easily, but also because during the procedures, and the preparation of the documents, stable compositional and writing skills were in great need, and the commissioners had to be deeply familiar with the details of the legal procedure. Since the chapters and convents carried out authentication activities, mainly charter-issuing for a fee, their involvement in the work of a place of authentication, especially for poorer communities, had financial motivations as well.¹¹ In practice, of course, the quantity of work would have principally determined the scope of commissioners sent out from the places of

11 Considering the conditions of travel and public safety in the Middle Ages, external authentication work was extremely tiring and not safe at all, so clergymen who were not necessarily in need of such income – because they had a profitable prebendaryship for instance – tried to pull themselves out of such commissions. In the chapters, such tasks were typically performed by canons, who were called “serving canons” by József Köblös. Köblös 1994, pp. 79–80

authentication. If the number of external procedures was too great for a place of authentication to confine the work to one of their members, the chapters or convents in question could also commission the priests of the parishes under their jurisdiction to carry out such duties.¹²

The operation of the places of authentication covered the entire territory of the country. As in the case of external proceedings, to prevent possible abuses more places of authentication were commissioned with the same procedure, so the scope of the work of places of authentication, in effect, overlapped with each other. The main principle in selecting a place of authentication was that it should be situated in the county of the particular legal case. However, this principle was often overruled if a place of authentication in the neighbouring county was closer.

Charter-issuing at places of authentication

The drafting and issuance of the charter finalised the authentication process, both in internal and external cases. In the case of avowals and/or procedures accomplished outside the place of authentication, a memorandum was prepared. The draft charters and, eventually, the charters themselves were produced on the basis of these memoranda. When drafting the charters, certain existing formulae were used, collected in separate books, formularies, or taken from documents issued earlier. Several “charter formulae” survived that were written only to provide model texts for the different types of legal cases. The completed charter was read through and if necessary corrected by the person in charge, usually the *lector* or his deputy, the *sublector*¹³.

12 When appointing parish priests, it was not necessary for the given parish church to be under the jurisdiction of the place of authentication. In the practice of the chapter of Pécs, for instance, the main criterion was that the parish church should be located near the estate involved in the case. Koszta 1998, p. 109

13 From the fifteenth century, the fact that the checking was carried out was indicated

The last but perhaps most substantial phase of the charter-issuing process was the authentication itself. The early method was to prepare a chirography (*chirographum*) when the content of the charter was written down twice, one below the other, separated by the first letters of the alphabet, and afterwards the document was cut into two through these separating letters. One part of the charter was given to the entity receiving the charter, while the other copy (*par*) remained at the place of authentication. The most important authenticating instrument was the seal kept by the *custos* or his deputy, the *subcustos*. The seal was most frequently affixed to the charters as a pendant or impressed thereon. Places of authentication used one-sided seals. In some places two different seals were used simultaneously, the major one (*sigillum maius*) used for issuing privilege letters and the smaller one (*sigillum memoriale*) used on any other charters. The seal usually portrayed the patron saint and/or emblem of the given chapter or convent. In addition to the seal of the given place of authentication, on several cases the seal of the head of the community, its abbot or provost, was also placed on the charter.

The applicant had to pay for the issuance and the sealing of the charter.¹⁴ The fee, primarily, depended on the character and type of the charter itself, that is, how richly it was decorated and how elaborately it was composed. From the fee paid for issuing the charter, the lector and the notary (*notarius*) usually got a separate sum. The places of authentication preserved the texts of the charters issued in the form of copies or by copying them into registers, so later they were able to produce transcripts about the original documents. In the beginning, these copies, together with the treasures of the church, were usually stored in the sacristy. Later, due to the growing number of documents and their more frequent use, they were placed in separate rooms (e. g. in the scriptorium).

increasingly frequently on the back of the charters as well. The language of the charters was Latin until the mid-19th century. Apart from sporadic vulgar expressions, however, from the 16th century onwards, certain parts (e. g. attestations) were put into the charters in Hungarian. However, from the 17th century onwards, the entire *context* of the charters drafted by the parties could be in Hungarian. Section 6 of Article VI of 1840 instituted the compulsory usage of Hungarian in issuing charters, even though the places of authentication were barely functioning by that time.

14 For the issuance fee of charters, see Kumorovitz 1929.

Form and content of charters

Charters were regulated not only in their appearance, their text was also subject to a number of constraints. Some of these formulaic parts, which became permanent and changed little, are still used on official documents today. The text of the charters usually comprised three main parts. The most important and indispensable element of the introductory part (*protocollum*) was the self-designation (*intitulatio*) of the issuer of the charter. For place of authentication bodies, this usually comprised the first person plural pronoun “We...” (“Nos...”), the designation and the name of the institution (chapter/convent). Sometimes, in addition to the community of the place of authentication, its head was also named. It was also mandatory to name the receiver of the charter (*inscriptio, adresse*). Furthermore, the introductory part often contained some sort of greeting (*salutatio*) addressed to the reader of the charter. For instance, “...salute the Lord”.

The most extensive part of the charter text explaining the essential message was the *contextus*, which, if they wished to elevate the solemnity of the charter, contained general wisdoms, ethical messages, religious lessons or a formulaic preamble stating the reason for the issuance of the charter (*arenga*). However, in the general practice of places of authentication, this is either completely missing, or only appears in some simpler wording. This is followed by the promulgation (*promulgatio*) addressing everyone, leading into the reasoning for the provision set out in the charter or the narration of the case so far, or for proceedings at a place of authentication, the given case or commissioning (*narratio*). The most important content element of the charters was the provisioning part (*dispositio*) recording the legal content of the fact(s). This part of the charters issued by the places of authentication records the occurrence of a private transaction (such as a sale and purchase, exchange) and its various conditions, and, in the case of an official commissioning, the account and the outcome of the procedure or its ineffectiveness. Charters often set out punishments (*santio*) to ensure compliance with the provision set out in their text, and respect for the legal

fact(s).¹⁵ The *contextus* was concluded with a textual description of how the charter was validated.

The concluding parts of the charter (*eschatocollum*) contained the date of issue, the list of the witnesses or the officials of the place of authentication at the time of the issue, and possibly an optional prayer (*apprecatio*).

It is important to bear in mind that the form and the content of each charter was primarily determined by the purpose for which it was issued. In addition to the more ornate and richly worded privileges affixed with a pendant seal and issued to clients by a place of authentication, they also issued a large number of open or closed charters confirmed by an impressed seal containing only the most important elements of the formula, whose significance was only temporary as their text was transcribed, word by word or only contextually, to subsequent charters issued in the course of the case.

In the history of the places of authentication, the Árpád era was the period they were established and their operational framework evolved. It was during this period that ecclesiastical bodies found their role in the administration of justice through their written records and authenticating seals. Their popularity was demonstrated by their steadily growing numbers, and after the larger church institutions, more and more smaller convents started to perform authentication duties. However, these sometimes fell under the influence of a landlord or advowee, therefore King Lajos I (1342–1382) reviewed the scope of ecclesiastical institutions functioning as places of authentication in his Act of 1351, and deprived unreliable bodies of their right to use a seal. From then on, however, places of authentication constituted solid pillars of the Hungarian legal system until the 19th century.

15 For more on the sanctioning clauses in the charters of the Pécsvárad convent as a place of authentication, see Kőfalvi 2000.

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Saint Stephen relic holder with relic, Domkapitel, Aachen