PROBATION WITHIN THE PROCESS IN THE MINING COURT ACCORDING TO IUS REGALE MONTANORUM

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The Mining act

The Mining act of bohemian king Václav II. – Ius Regale Montanorum was created by italian professor of law Gozzio of Ortvieto somewhen between years 1300 and 1305. The reason for this issue was the fast development of silver mining in Kutná Hora and it's region. The Privilege of Jihlava – the only one law at the time containing any rules for mining had not enough legal instruments to regulate all relations typical for mining.

Ius Regale Montanorum is after the fashion of the Institutiones of Byzantine emperor Justinian divided into four books. First three of them regulate the material law, concretely the first book is devoted to position of different persons being party to the mining control, i.a. the judge, the members of the jury, etc.; second and third book bring rules for opening new mines, renting fields to new miners, and contents some also „labour law", e.g. minimal earnings for workers.

Finally the fourth book regulates the same way as Justiniani Institutiones the process in the mining court. The court in case of the regular proceedings consists of the judge and jurymen. In the case of irregular proceedings arbitrates the judge himself.

The probation

The regulation of proving is the subject of chapters XI. to XVII. It is mostly received from the Roman law sources, especially Institutiones. Probation itself is fixed part of the proceeding, all evidences are given in the court in the presence of both parties. There are only two exemptions of this rule – the *secret testation* recommended in greater causes to prevent the fear of witnesses and the proof by the *testation writing* acquired before the start of trial.

The burden of proof belongs in principle to the accuser. Although the Mining act allows to the defendant prove some facts, that can negate accuser's statements. It's also forbidden to make proofs, that have no relationship to the trial and make it longer.

Concretely regulates Ius Regale Montanorum four groups of proofs – the witnesses, the documents, the legal presumption and the adjuration.

The witnesses

First and most important proof is the testimony of witnesses. Contrary of the other law sources from the same time, witnesses in the mining court speak only about things, they have seen or heard, but they do no more swear about their conviction of verity of party's statements.

Chapter XII. of the fourth book nominates whole groups of witnesses, who cannot give testimony. In this part of the Mining act is very easy to demonstrate the influence of Roman law source over the text of Ius Regale Montanorum. If you see the list of exempted trial witnesses in the Mining act and the list of exempted testamentary witnesses in the Institutiones, it's almost the same list.

There are exempted servants, women, children, madmen, people with bad reputation, poor, suspicious people and people of other than catholic religion. According to the Roman preimage, the Mining act prohibits within the testimony of servants also the testimony of slaves.

Also the absolute prohibition of testimony given by women brings some questions. For example the wife of a mining control representative, however she could not give testimony, could accept the report on discovery of new lode and probably also witness it in the court.

By children regulates Mining act the age of getting adult. The age is fourteen years for boys and twelve years for girls. This regulation respects Institutiones too. Now we can ask, why it is necessary to know the age of getting adult by girls, when adult women so as the girl are not able to witness. Also for the children of a mining control representative obtains the same exemption as for his wife.

For the other witness groups there are not many special rules, only the position of poor on as a witness is regulated not unambiguously. In the beginning of XII. chapter are all poor people absolutely interdicted from giving testimony. But, according to §10 shell be excepted only suspicious poor people and the testimony given by honest poor shell be believed. Even to

these poor, who cannot for their social situation come to the court, shall be sent reliable people to get their testimony.

The documents

Second group of proofs known by the Mining act comprise the documents. Ius Regale Montanorum differentiates two main types of documents – municipal protocol and privilege. Municipal protocol is writing wrote up to certify any fact, subscribed by two approvers and sealed. Privilegium is a writing confirming to any person or any place definite amount of privileges.

The legal presumptions

To make the trial faster in some certain cases, constructs Mining act two legal presumption. First of them agrees to a worker, who worked for any time for somebody, did not get his salary and accuses his employer. The second presumption agrees to poor one, who accuses rich defendant. In such cases is enough for deciding to ascertain the presence of conditions allowing using any of these presumptions. Presence of these conditions ca be proved by adjuration of the accusing party.

The adjury

If there are no proofs (no witnesses, no documents, no conditions for using presumtion), the party can certify its statements by swearing. The adjuration is the most powerful proof and the party can choose between swearing and fulfilling requierements of the other party. Rejecting the adjuration results failure in the trial. There is no punishment for perjury, because adjuration is sacred act and only God is allowed to punish false oath.

In the fourth book of the Mining act we can find quite modern rules to lead the trial. Most of these rules come from Roman law sources and are combined with the typical medieval law elements.

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