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## The Cold Water Ordeal (Swimming) in Witchcraft Accusations and Trials in the Polish-Lithuanian Commonwealth in the Sixteenth-Eighteenth Century

One of the medieval trials by ordeal, the cold water ordeal, regained popularity in the Early Modern Period and served as an important element in witchcraft trials. Floating on water was seen as a decisive proof of guilt and resulted in the accused being handed over to the torturer. This paper discusses the use of the water ordeal in Poland in the sixteenth–eighteenth century, primarily by municipal courts. Among the issues mentioned in the paper there is also the question of the stage of the trial in which the water ordeal was used and whether the accused were undressed before being subjected to the ordeal.

**Keywords:** witchcraft trials, cold water ordeal, Poland, Lithuania, Early Modern Period

### Introductory remarks

One of the sources of evidence in medieval criminal and civil proceedings were ordeals, judgements of God.<sup>1</sup> They were based on the conviction that God would not allow for an innocent person to be harmed. The decision to carry out trial by ordeal lay in the hands of the judge, the accused, or the defendant. The most popular types

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<sup>1</sup> For more information on ordeals in the Middle Ages, see, e.g., R. Barlett, *Trial by Fire and Water. The Medieval Judicial Ordeal* (New York, 1986).

of ordeal were ordeal by combat, by fire, and by water, hot or cold. In the former water ordeal, the accused was asked to retrieve an object from a receptacle filled with boiling water with their bare hand. Some of the variants of the ordeal required the accused to keep their hand submerged in the water for a certain period of time. Lack of burns on the hand unequivocally proved the innocence of the accused. The cold water ordeal, meanwhile, consisted in binding the accused and submerging them in water, usually a river, pond, or any other body of water. The accused sinking was a clear proof of innocence, as the Christian world commonly believed that water, hallowed by the baptism of Jesus in the Jordan, would not accept any criminal.

The trial by ordeal was first used in court proceedings in Mesopotamia – a mention of the procedure can be found in the Code of Hammurabi.<sup>2</sup> Even though it was not described in medieval legal codes, it nonetheless must have been used quite frequently in the Late Middle Ages since Emperor Louis I, called the Pious (778–840, Holy Roman Emperor 813–840) banned it in 829.<sup>3</sup> All ordeals were then criticised by cannon law jurists, who deemed them to be “tempting God”. On the initiative of Pope Innocent III, the Fourth Council of the Lateran in 1215 eventually prohibited the use of judgements of God in heresy trials, including the ordeal by water, both hot and cold.<sup>4</sup>

The prohibition led to the disappearance of the practice of trials by ordeal in the thirteenth century. Nonetheless, the cold water ordeal experienced its “renaissance” in the second half of the sixteenth century, when it once again started to be relatively often used in witch-hunts throughout Europe.<sup>5</sup> While the medieval ordeal by water was considered an immediate judgement of God pointing to one’s guilt or innocence, its function changed in Early Modern proceedings, where

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<sup>2</sup> Cf. P. Tóth, “River Ordeal – Trial by Water – Swimming of Witches. Procedures of Ordeal in Witch Trials,” in: *Witchcraft Mythologies and Persecutions*, ed. G. Klaniczay, É. Pócs, E. Csonka-Takács (Budapest and New York, 2008), pp. 130–131.

<sup>3</sup> Cf. G. Gersmann, “Skizze einer Geschichte der Wasserprobe,” in: *Wasser*, ed. B. Busch, L. Förster (Bonn, 2000), p. 158.

<sup>4</sup> W. Trusen, “Das Verbot des Gottesurteile und der Inquisitionsprozeß. Zum Wandel des Strafverfahrens unter dem Einfluß des gelehrten Rechts im Spätmittelalter,” in: *Sozialer Wandel im Mittelalter. Wahrnehmungsformen, Erklärungsmuster, Regelungsmechanismen*, ed. J. Miethke, K. Schreiner (Sigmaringen, 1994), p. 236.

<sup>5</sup> Cf. H. Pihlajamäki, “Swimming the Witch, Pricking for the Devil’s Mark. Ordeals in the Early Modern Witchcraft,” *Journal of Legal History* 21, no. 2 (2000), pp. 35–58.

it was no longer a full and definitive proof of guilt or innocence, but only a ground for subjecting (or not) the accused to torture.<sup>6</sup> It therefore ceased to be evidence and started to serve merely as guidance for the court.<sup>7</sup> The ordeal was to be carried out three times,<sup>8</sup> but in most cases it was done only once. At the same time, common “simpletons” believed the ordeal by water to be a convincing and trustworthy proof of guilt or innocence of the person accused of witchcraft.

### Cold water ordeal in the Polish-Lithuanian Commonwealth

The application of the cold water ordeal (*judicium aquae frigidae, proba aquae frigidae*) in the Polish territory throughout the Middle Ages is confirmed by the description of the procedure included in the oldest Polish collection of laws, created before 1320. Before the submersion of the accused, the water was to be blessed by prayer and sprinkled with holy water by a priest.<sup>9</sup> It was only then that

the accused is submerged [in water] with his hands tied under his shins and a pole placed between his knee pits and arms, so that he cannot use either arms or legs. A mark is to be placed on the person's forehead so that it is known whether he is sinking or floating. A rope is also to be tied around his abdomen so that he can be extracted once he starts to sink.<sup>10</sup>

If the accused did not sink, but floated on the water, “he is defeated in the case in which he was indicted”.<sup>11</sup>

The cold water ordeal was used in witchcraft trials in Lithuania as early as in the beginning of the sixteenth century, that is – seemingly – much earlier than in western Europe. This finds its confirmation

<sup>6</sup> S. Lorenz, *Aktenversendung und Hexenprozeß. Dargestellt am Beispiel der Juristenfakultäten Rostock und Greifswald (1570–82–1630)*, vol. 1 (Frankfurt am Main and Bern, 1982), p. 444.

<sup>7</sup> W.G. Soldan, H. Heppel, *Geschichte der Hexenprozesse*, vol. 1, ed. M. Bauer (München, 1911), p. 383.

<sup>8</sup> Ibidem, p. 381; P.A. Heuser, “Eine Auseinandersetzung über den Indizienwert der Kaltwasserprobe im Hexenprozeß. Studien zur Rick-Delrio-Kontroverse 1597–1599 und zur Zurückdrängung der Kaltwasserprobe aus kurkölnischen Hexenprozessen im 17. Jahrhundert,” *Rheinisch-westfälische Zeitschrift für Volkskunde* 45 (2000), p. 85.

<sup>9</sup> *Najstarszy zwód prawa polskiego*, ed. J. Matuszewski, J. Matuszewski (Łódź, 1995), pp. 96–98.

<sup>10</sup> Ibidem, p. 98.

<sup>11</sup> Ibidem.

in the song about the bison (1521/1522) written by Mikołaj Hussowski (1475/1485 – after 1533), who wrote about the mysterious perishing of the rich wildlife of Lithuanian forests, including its animals, fish, and fowl, adding:

Z podziwem patrzeliśmy na to w naszym kraju.  
 Czy wolę swą w tym wszystkim objawia sam Bóg,  
 Czy rośnie to i ginie dzięki czarnym sztukom,  
 Częstokroć to pytanie rozstrzyga nasz duch.  
 Lecz zioła na północy taką mają siłę,  
 W zaklęciach, w zamawianiach tak straszna jest moc,  
 Że powieść o Medei nie wyda się baśnią,  
 Lecz każdy ją za prawdę będzie zmuszon mieć,  
 Zważywszy wszelkie dziwy tych czasów dzisiejszych.  
 Jakkolwiek takich rzeczy zabrania nam ksiądz,  
 Jakkolwiek słać gotowi na stos płomienisty  
 Każdego – gdy przewina wypływa na wierzch –  
 Co nawet niezbyt chętnie w te sprawy się miesza,  
 A widząc to, od razu nie da o tym znać.  
 A wskaże li na kogo niepewny głos ludu,  
 Choć szczegóły niepewne tajny skrywa mrok,  
 Od razu go pochwyć i, ręce i nogi  
 Związawszy, rzucą nagle w wir spienionych fal.  
 Jeżeli zaczną tonąć, znak to, że niewinny,  
 Jeżeli zaś przeciwnie, wina pewną już.  
 Spętanych widzieliśmy, jak na wielkiej głębi  
 Zmagali się, w odmętach chcąc zanurzyć skroń.  
 Krzyk ludu tysięcznego towarzyszył temu  
 Zjawisku i mnie również straszny chwytął dziw:  
 Płynąca fala głowę wyrzucała grzeszną,  
 Jak gdyby niepodobna do siebie w ten czas.  
 Lecz ogień sprawiedliwy pochłania potwory  
 I tępi częstokrotnie ten ohydny grzech.  
 Wątpiący nieraz ujrzy w litewskiej krainie  
 To wszystko i me słowa sprawdzić będzie mógł.  
 Praktykom uprawianym przez złe białogłowy,  
 Li rzadko ustępliwy oddaje się mąż.<sup>12</sup>

One of the sources confirming that the cold water ordeal was frequently used in Lithuanian witchcraft trials in centuries to come is a text written in the nineteenth century by an anonymous author on the basis of seventeenth-century court documentation of the town

<sup>12</sup> M. Hussowski, *Pieśń o żubrze, jego postaci, dzikości i o polowaniu na niego* (Supraśl, 2007), pp. 64–65; cf. M. Pilaszek, *Procesy o czary w Polsce w wiekach XV–XVIII* (Kraków, 2008), p. 406.

of Kupiszki. The author claimed that in Lithuania in the seventeenth century, “superstitions and belief in the supernatural existed not only among common people; the nobility and the clergy were not free of them either”.<sup>13</sup> When describing court proceedings, he wrote that the person accused of witchcraft had the right to defend themselves, but judges usually did not believe these explanations and ordered to carry out ordeal by water, which consisted in swimming the accused. If the person sank, they were considered innocent, while floating on the surface “like a duck” was seen as incriminating.<sup>14</sup> After the ordeal – in case the court hoped to obtain detailed testimony or confirm the accuracy of initial testimony – the accused was subjected to torture. In Lithuania, therefore, the cold water ordeal was carried out during, and not before, the proceedings and was ordained by the court.

In Poland (Polish Crown) over the sixteenth–eighteenth century, similarly to other European countries, the cold water ordeal was used solely in accusations of witchcraft and was one of the most popular methods of identifying witches and warlocks in court.<sup>15</sup> Towards the end of the nineteenth century, Franciszek Olszewski, the author of an article on persecution against witches in Old Poland, claimed:

when it comes to the cold water ordeal, described as evidence of guilt or innocence of the accused by Milewski, Czacki, and others, I have found no mention thereof in archival sources despite numerous searches and therefore this draft, being based in archival material, will not include any passage on the cold water ordeal.<sup>16</sup>

Why could Olszewski not find any source information on the cold water ordeal despite its widespread use? Małgorzata Pilaszek explained it as follows:

unlike in Lithuania, court documentation in the Crown hardly ever mentions the cold water ordeal. It usually took place before the beginning of court proceedings in order to preliminarily investigate whether the person accused of witchcraft was in fact a witch. Such state of affairs most probably derives from different powers of Polish and Lithuanian courts. In Poland, where most cases were referred to municipal courts from nearby villages,

<sup>13</sup> *Raganų teismai Lietuvoje*, ed. K. Jablonskis, R. Jastas (Vilnius, 1987), p. 385.

<sup>14</sup> *Ibidem*.

<sup>15</sup> Pilaszek, *Procesy o czary*, p. 406.

<sup>16</sup> F. O[lszewski], “Prześladowania czarów w dawnej Polsce,” in: *Album uczącej się młodzieży polskiej poświęcony Józefowi Ignacemu Kraszewskiemu z powodu jubileuszu jego pięćdziesięcioletniej działalności literackiej* (Lwów, 1879), p. 492.

nobody bothered to describe cold water ordeals spontaneously organised by peasants and their lord. The practice was considered so commonplace that it was not mentioned in case files at all.<sup>17</sup>

Nowadays, we have access to many more mentions of the cold water ordeal in source materials, which allows us to re-examine the subject.

The exact date of the first instance of using the cold water ordeal in witchcraft trials in Early Modern Poland remains unknown, but some preserved sources mention that such an ordeal was carried out in Nieszawa ca. 1550. A woman accused of witchcraft was apprehended in the local Franciscan monastic church, dragged out of the temple and taken to the bank of the Vistula in order to determine whether she was guilty or innocent.<sup>18</sup> We have no knowledge of the outcome of the ordeal and the eventual fate of the accused. In July 1580, the vogt court in Kalisz tried two women, travelling thieves: Zofia from Łękno and Barbara from Radom. They first gave voluntary testimony and pleaded guilty of committing numerous thefts in several localities.<sup>19</sup> They were sentenced to death by drowning for theft and prostitution. The sentence was implemented on 18 July 1580; Zofia drowned,<sup>20</sup> while Barbara floated on the surface of the water. It was decided that she did not go underwater due to *incantationum magicarum* and thus was questioned once again.<sup>21</sup> She was questioned by two lay judges from Kalisz, who naturally asked her “za którym sposobem i przyczyną albo jeśliże za czarami wyszła z tej wody, która odpowiedziała, że się czartowi odleciła znowiona; czarcie nie daj mię jeszcze topić, iż jeszcze będę na tym świecie wojowała, i obiecał mi to, że nie utoniesz”.<sup>22</sup> Questioned once again, she said “ze tym sposobem wyszła z wody, że to ziele, które miała w waczku, ułupiła go przedtym trochę i miała w usciech u siebie, które zwią niedośpiał”.<sup>23</sup>

<sup>17</sup> M. Pilaszek, “Litewskie procesy czarownic w XVI–XVIII w.,” *Odrodzenie i Reformacja w Polsce* 46 (2002), p. 23.

<sup>18</sup> Cf. *Monumenta historica dioeceseos Wladislaviensis*, vol. 5 (Wladislaviae 1885), p. 5; T. Warmiński, “Die Hexenprozesse im ehemaligen Polen,” *Jahrbuch der Historischen Gesellschaft für den Netzedistrikt zu Bromberg* (1892), p. 35.

<sup>19</sup> B. Baranowski, *Najdawniejsze procesy o czary w Kaliszu* (Lublin and Łódź, 1951), pp. 14–17; cf. W. Guldon, “Radomska czarownica z drugiej połowy XVI wieku,” *Wiś Radomska* 5 (1997), pp. 169–171.

<sup>20</sup> Baranowski, *Najdawniejsze procesy*, p. 18.

<sup>21</sup> *Ibidem*.

<sup>22</sup> *Ibidem*, p. 23.

<sup>23</sup> *Ibidem*.

The event was most probably widely discussed in other localities of Greater Poland. It is uncertain whether it had any influence on solidifying the belief that magic can help a person float on the surface of water.

### Controversies surrounding the cold water ordeal as evidence in witchcraft trials

We do not know how popular the cold water ordeal was in trials taking place in Polish courts in the sixteenth century, since most known case files from witchcraft proceedings held at the time (as well as in the seventeenth and the eighteenth century) by municipal courts do not contain such information.<sup>24</sup> In any case, cold water ordeal had to be commonly used in Poland in the first decades of the seventeenth century seeing that the author of the work *Czarownica powołana*, published anonymously in Poznań in 1639, devoted a large portion of the book to answering the question: “Is it appropriate to swim witches for the purposes of ordeal by water or experiment?”<sup>25</sup> When answering the question, he argued:

Rzeczę kto, zwyczajnąc to rzecz, i bez wielkich zawodów próba. Odpowiadam: u nieuków prawnych i sędziów wiejskich, co drugi i pacierza niedobrze umie, a o Bożym przykazaniu ledwie słyżał, u tych pozwalam, że to

<sup>24</sup> E.g. S. Klarner, “Sprawy o czary w urzędach Bełżyckich w wiekach XVI–XVIII. Z aktów urzędów radzieckiego i wójtowskiego miasta Bełżyc,” *Wiśła* 16, no. 3 (1902), pp. 467–469. There is also no mention of cold water ordeal in the well-preserved case file from a trial held in Biecz (Lesser Poland) in 1655. It seems that it did not take place at all, cf. M. Mikołajczyk, “Jak obronić oskarżoną o czary. Mowy procesowe z 1655 roku w sprawie Gertrudy Zagrodzkiej,” in: *Z dziejów kultury prawnej. Studia ofiarowane Profesorowi Juliuszowi Bardachowi w dziewięćdziesięciolecie urodzin* (Warszawa, 2004), pp. 389–410. Another trial in which the court did not make a decision to carry out cold water ordeal in order to see whether the accused woman was a witch took place in Krowodrza (currently a district of Cracow) in 1698, cf. W. Uruszczak, “Proces o czary w podkrakowskiej wsi Krowodrza w 1698 roku,” *Studia Iuridica Toruniensia* 10 (2012), pp. 233–241.

<sup>25</sup> The 1639 edition is hardly accessible. Judging by the work by W. Wyporska (*Witchcraft in Early Modern Poland, 1500–1800* [Basingstoke, 2013], fig. 2), copies of the edition can be found in the British Library in London and in the Jagiellonian Library in Cracow. The book was later reprinted at least two times, in 1680 in Poznań and in 1714 in Gdańsk. The only differences between the two editions is the format and the title page. This paper uses quotes from the Gdańsk edition: *Czarownica powołana abo krotka nauka i prestroga z strony czarownic. Zebrana z rozmaitych doktorów, tak w prawie Bożym, jako i w świeckim biegłych z przydatkiem Instrukciej świeżo z Rzymu wydanej dla uchrony i poratowania summienia, osobliwie na takie sądy wysadzonych* (Gdańsk, 1714), pp. 51–57.

uchodzi, a zwłaszcza, gdy im to Panowie ich, jako bożkowie ziemscy, bez sumnienia, bojaźni Bożej nie pytam, rozkażą. A kto go o to pozwie? Abo skarże prócz Boga? [– –] Lecz tego u ludzi bogobojnych nie znajdziesz, ani [w] porządnym państwach jako we Włoszech, w Hiszpaniej, we Francjej nie obaczysz, chyba że w niektórych stronach niemieckich, gdzie herezja wzięła górę, a przy niej jako cioteczna rodzona bezecna magia abo czarno-księstwo rado się wiąże.<sup>26</sup>

As evidenced by this excerpt, the author was an orthodox Roman Catholic, making an attempt to put the blame of abuses in witchcraft trials on Protestants. Carrying on with his discussion of ordeal by water, he pointed out that it had been prohibited both by secular rulers, for example Charlemagne, and by several popes: Stephen V, Alexander II, Lucius, and Innocent III.<sup>27</sup> He emphasised that Pope Innocent III and the Ecumenical Council in 1215, “zakazawszy tej próby, srogo też zakazał i postanowił, aby się żaden kapłan takowej próby nie považał święcić wody lubo gorącej, lub zimnej, ani żelaza rozpalonego”.<sup>28</sup>

Using cold water ordeal as evidence in witchcraft trials was also criticised by Daniel Wisner in his work most probably targeted at the legal community and devoted, among others, to witches, entitled *Tractatus brevis de extramagis lamiis, veneficis* (Poznań, 1639).<sup>29</sup> The practice was also contested in a 1645 sentence issued by the Supreme Court of German Law with seat in the Cracow castle, in which the cold water ordeal was described as prohibited not only by canon but also by secular law, as well as evidence suggested by the devil:

Na pławienie tych białychgłów *in eo passu* patrzyć nie potrzeba, bo takowe pławienie jest *quaedam coniectura vel indagatio superstitiosa*, iże nie żadnemi prawami wynaleziona, ale raczej *diabolica suggestione ad indagandam in talibus veritatem iudicibus prudentibus* podana, którą *sacri canones et iura civilia* kondemnowały i onej serio, aby jej w żadnych sądach i urzędach nie zażywano, zakazały.<sup>30</sup>

<sup>26</sup> *Czarownica powołana*, p. 52; cf. J. Rosenblatt, *Czarownica powołana. Przyczynek do historii spraw przeciw czarownicom w Polsce* (Warszawa, 1883), p. 47.

<sup>27</sup> *Czarownica powołana*, pp. 52–54.

<sup>28</sup> *Ibidem*, p. 54.

<sup>29</sup> K. Koranyi, “Danielis Wisneri ‘Tractatus brevis de extramagis lamiis, veneficis’, a ‘Czarownica powołana’. (Szkic z dziejów polskiej literatury prawniczej),” in: *Pamiętnik trzydziestolecia pracy naukowej prof. dr. Przemysława Dąbkowskiego* (Lwów, 1927), p. 136.

<sup>30</sup> K. Bukowska-Gorgoni, “Procesy o czary i powołania przez czarownice w orzecznictwie Sądu Wyższego Prawa Niemieckiego na zamku krakowskim,” *Lud* 54 (1970), p. 165. In the eighteenth century there were also some judges, for example Jakub Czechowicz, who were aware that “such investigation through



It seems that doubts concerning the ordeal were also expressed by noble owners of the villages in which someone had been accused of witchcraft, which is evidenced by a certain story included in the work *Wódka z elixierem*, a condemnation of witch-hunts:<sup>31</sup>

Co powiem, nie zmyślona bajeczna nowina,  
Lecz prawda od polskiego wzięta ziemianina.  
U tego, gdy o czary babę spotwarzono,  
Nalegali, by kata na nią sprowadzono,  
Pan uczynił. Zwyczajnej trzymając się mody,  
Rozkazał obwinioną sprowadzić do wody.  
Stanęły za rozkazem wszystkie białogłowy,  
Z dziewczętami, co tylko zażyć mogły mowy.  
Rzucono obwinioną na staw i pływała.  
Rzucono drugą, trzecią, każda tak latała.  
I tak dalej, aż dzieci na wodę rzucone  
Pływają, jakby kaczki do wody zrodzone.  
Uważa pan uważny i myśli sam w sobie:  
Niepodobna, by wszystkie były w jednym grobie.  
Każe siebie samego związać tym postronkiem,  
Unosi się na wodzie, jakby był skowronkiem.  
Na koniec każe związać syneczka małego,  
Rzuca na staw, aż woda unosi i jego.  
Krzyknie ojciec: "O już też to niewinne dziecię!  
Darmo prawdy szukamy w omylnym zamęcie".  
Każe rzucić na wodę i samego kata,  
Aż on pływa po stawie jak sosnowa łąta.  
To widząc, każe przynieść postronki ze dwora,  
Które były kupione na jarmarku wczora.  
W tych znowu już skąpanych swym porządkiem pławi,  
Aż tu każdą osobę woda na dnie stawu.  
Dopiero jak rozsądny uznał, że zdradliwa  
Próba na czarownicy i woda kłamliwa.<sup>32</sup>

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cold water is not a proper and valid way of recognising witches," cf. Z. Zdrójkowski, "Praktyka kryminalna" Jakuba Czechowicza, jej źródła i system na tle rozwoju współczesnego prawa karnego Zachodniej Europy (Toruń, 1949), p. 57.

<sup>31</sup> The full title of the work is: *Wódka z elixierem proferitatis powtórnie na poczesne dane. Pierwszy raz w Bonkonsulacie od stworzonej Wody 5671. Drugi raz w Bonindulacie od zbawiennej zgody MDCCXXIX. Z przydaniem doświadczonego Alchmimeresu* (Gdańsk, 1729). For more on authorship attribution for the text cf. B. Baranowski, "Postępowy pisarz z czasów saskich – Serafin Gamalski," *Prace Polonistyczne* 8 (1950), pp. 65–78 (the researcher supposes that Serafin Gamalski, a Bernardine monk, could have been the author of the work).

<sup>32</sup> *Wódka z elixierem*, quoted in: B. Baranowski, *Procesy czarownic w Polsce w XVII i XVIII wieku* (Łódź, 1952), pp. 93–94.

Bohdan Baranowski contested the authenticity of the story, claiming that it could have been made up by the author of the book.<sup>33</sup> These doubts can be dispelled if we consider the fact that similar experiments, aimed at verifying the credibility of cold water ordeals, did take place in the territory of the Crown. It is possible that their use was influenced by the Crown Assessor's Court, which in 1673 published an ordinance setting out procedures to follow in case of accusations of sacrilege and witchcraft. The ordinance prohibited small-town magistrates to use capital punishment and advised them to refer the cases and the accused to magistrates in bigger towns, which had better knowledge of the Magdeburg Law. Each accused was to be granted a lawyer and legal action was to be taken not solely on the basis of simple accusation, but of evidence and documents confirming that the crime had been committed. The sentence was to be executed after no less than three days after its delivery in order to give the judges time to think it over.<sup>34</sup>

One of such experiments, admittedly one of the very few to have been carried out, took place in Lesser Poland, during a trial held in 1689 in the village of Gdów before the court brought to the village by its owner from the nearby town of Dobczyce. The accused were two women: Rejna (Regina) Krawcowa and Helena Gałczyzna, both of whom were subjected to the cold water ordeal prior to the court hearing along with several other women not suspected of engaging in witchcraft. The other women were most probably submerged in water to verify the reliability of the procedure of swimming. Witnesses heard by the Dobczyce Court later testified that the accused women floated on the surface like pieces of wood, while the others sank and went to the bottom.<sup>35</sup> The members of the court from Dobczyce heard the testimonies of the accused and, having reviewed evidence and testimonies of the prosecutors, found the women not guilty of witchcraft. When it came to the cold water ordeal, the court argued that it had no base in the Magdeburg Law and was prohibited by canon law, which was significant since witchcraft cases lay within the domain of

<sup>33</sup> Ibidem, p. 93.

<sup>34</sup> M. Woźniakowa, *Sąd asesorski koronny (1537–1795), jego organizacja, funkcjonowanie i rola w dziejach prawa chełmińskiego i magdeburskiego w Polsce* (Warszawa, 1990), pp. 323–324.

<sup>35</sup> M. Mikołajczyk, "O pławieniu czarownic w Gdowie w 1689 r. Kartka z dziejów miejskiego procesu karnego w Polsce," *Studia z Dziejów Państwa i Prawa Polskiego* 4 (1999), p. 125.

ecclesiastical courts (pursuant to the 1543 Sejm resolution).<sup>36</sup> Unfortunately, we do not have any information on the exact composition of the court, which is a pity, since, as Marian Mikołajczyk points out, the judges from Dobczyce displayed similar circumspection and consideration in other witchcraft trials.<sup>37</sup>

Another experiment of this kind took place in northern Greater Poland in 1692,<sup>38</sup> on 29 May, when five women accused of witchcraft were questioned in Młotków, a village belonging to the Łobżenica estate, by the court from Łobżenica presided over by the town's mayor, Paweł Fabian, in presence of noblemen Wojciech Kruszyński and Wojciech Drzewicki.<sup>39</sup> Wishing to be acquitted of the charges of witchcraft, all accused women asked to be subjected to the cold water ordeal. Regina was the first one to undergo the procedure. She was submerged in water three times, twice tied and once untied; she twice floated on the surface. Barbara, Katarzyna Derlina, and Katarzyna Błachowa were subjected to swimming next, each was submerged three times and floated on the water every time. Regina, who sank in the first attempt and floated twice, asked for another attempt to be carried out, arguing "że ja nie będę pływała, bom niewinna, teraz mnie kat pociągał stryczkiem".<sup>40</sup> Since the tortured women did not want to plead guilty of being witches and asked to be once again subjected to the cold water ordeal, the owner of Łobżenica, Castellan of Kalisz Jan Korzbok Łącki, decided that the accused would watch as "wezmą pacholcy chłopca i dziewczynę, których żeby się kat nie tykał, niechże związawszy im ręce i nogi, puszczą ich na wodę wolnosinko [wolniu-sieńko], jeżeli będą pływać, jeżeli nie będą pływać, wyrwać że ich zaraz z wody, żeby nie potonęli, i dać im wódki, żeby nie pomarзли".<sup>41</sup> The accused were to observe the swimming and then be subjected to it themselves.

<sup>36</sup> Ibidem, p. 126. The information was actually not completely true, as the 1543 Sejm resolution, giving ecclesiastical courts the power to hold witchcraft trials, remained in force for only a year. In later years, however, nobody remembered about it and the witchcraft trials were customarily left to religious courts.

<sup>37</sup> Ibidem, p. 127.

<sup>38</sup> J. Wijaczka, "Proces o czary we wsi Młotkowo w 1692 roku. Przyczynek do polowania na czarownice w Rzeczypospolitej w XVII wieku," *Odrodzenie i Reformacja w Polsce* 48 (2004), pp. 161–170.

<sup>39</sup> Bydgoszcz, State Archives (Archiwum Państwowe, hereafter: APB), Files of the town of Łobżenica (hereinafter: AmŁ), file ref. no. 11, fol. 570rec.

<sup>40</sup> Ibidem, fol. 571rec.

<sup>41</sup> Ibidem, fol. 578rec.

The experimental cold water ordeal on innocent children took place, *nomen omen*, on 1 June 1692. The first person to be submerged in water was Wawrzyniec Czyż, who was about 15 years old and was a son of a peasant from the village of Gromadno; after him followed 12-year-old Anna, daughter of Kaczynka, a villager from Gromadno. Both of them “floated on the surface”.<sup>42</sup> The experiment was carried out once again the very next day, on Sunday. This time different children were submerged in water: 12-year-old son of a man called Tomala, who served in the manor in Falmierowo, and Katarzyna, daughter of a cottager from the same village. The ordeal was executed by Domaracki, a servant, this time not near Młotków, but in a body of water behind the Falmierowo manor, “na Kopcach”. The children were submerged three times, each time tied, but not once did they sink.<sup>43</sup> It is uncertain how the judges rationalised the fact that the children had floated on the surface, but the proceedings continued, no longer held in the village but referred to the vogt court in Łobżenica. The judges eventually found four out of five accused women guilty of witchcraft and sentenced them to death by burning at the stake.<sup>44</sup>

There were only a few people who were aware that the cold water ordeal in witchcraft trials was not recognised by law as proof of guilt. One of them was Vogt of Żywiec Andrzej Komoniecki (1658–1729), who wrote down a description of one of the trials featuring the swimming. In 1698, two women from the village of Lipowo (near Żywiec) were accused of witchcraft and being able to “pożytki sąmiedzkie odbierać i psować”.<sup>45</sup> There was no evidence of their crime, so they were subjected to the cold water ordeal in a deep fragment of the Koszarawa river, “próbując, jeżeli na dół utną”. The women were brought to the river on a wagon, wearing only “grave clothes”, with numerous onlookers gathered around the site despite the fact, as Komoniecki underlines, the procedure was something “co to i wedle prawa dowodem nie było”.<sup>46</sup> Komoniecki did not provide any information on the outcome of the ordeal.

Doubts concerning the cold water ordeal among the elite of the legal world must have been significant since the Crown Assessor’s

<sup>42</sup> Ibidem, fol. 576rec.

<sup>43</sup> Ibidem.

<sup>44</sup> Ibidem, fol. 588ver.

<sup>45</sup> A. Komoniecki, *Chronografia albo Dziejopis żywiecki*, ed. S. Grodziski, I. Dwornicka (Żywiec, 1987), p. 267.

<sup>46</sup> Ibidem.

Court prohibited the court from the royal town of Łęczycza to use the procedure in 1702, with the court's members losing their positions for allowing for the ordeal to be carried out.<sup>47</sup> Józef Rafacz points out that the decision of the Assesor's Court was only applicable to Łęczycza, "but there is no doubt that a similar trend could be observed in other royal towns".<sup>48</sup> It was still the noble owner who had the final say in trials held in private towns. To give an example, in 1711 nobleman Fiodor Kownacki from Dubno, Volhynia, requested the local magistrate to swim ten female inhabitants of the town which he had accused of causing the drought. Thanks to the efforts of the women's husbands, no further legal action was taken against them.<sup>49</sup>

As I mentioned before, the Roman Catholic Church officially prohibited the use of the cold water ordeal in 1215. Nonetheless, everyday life proved the ban to be rather ineffective. Despite the fact that the Pope and the Ecumenical Council had prohibited the procedure and contested its veracity, it was still used in seventeenth-century Poland by laymen and clerics alike. Cistercians from the monastery in Oliwa subjected two women to the cold water ordeal in witchcraft trials held in 1664; the women were later decapitated and their bodies were burned at the stake.<sup>50</sup> In mid-seventeenth century, attempting to remedy such state of affairs, the Papacy decided to officially approve and popularise the ordinance on witchcraft proceedings, the so-called Roman Instruction (where the cold water ordeal was once again prohibited).<sup>51</sup> At least some Polish hierarchs must have read the Instruction relatively soon after its publication. One 11 April 1669, one such clergyman, Bishop of Włocławek (commonly referred to as Bishop of Kuyavia and Pomerania) Kazimierz Florian Czartoryski (1620–1674) published his own ordinance, based on and making

<sup>47</sup> J. Rafacz, "Sprawy karne w sądach miejskich w epoce nowożytnej," *Kwartalnik Historyczny* 47, no. 3 (1933), p. 568.

<sup>48</sup> *Ibidem*.

<sup>49</sup> R. Zguta, "The Ordeal by Water (Swimming of Witches) in the East Slavic World," *Slavic Review* 36, no. 2 (1977), p. 228.

<sup>50</sup> J. Alexy, *Die Geschichte des Dorfes Adl. Rauden, Kreis Marienwerder: geschrieben zum 550 jährigen Jubiläum des Ortes und die Geschichte der Kirchengemeinde Rauden: verfasst zum 150 jährigen Jubiläum der Kirche* (Schwetz a.W., 1909), p. 11.

<sup>51</sup> For more about the instruction see: R. Decker, "Hintergrund und Verbreitung des Drucks der Römischen Hexenprozess-Instruction (1657)," *Historisches Jahrbuch* 118 (1998), pp. 277–286; *idem*, "Gerichtsorganisation und Hexenprozeßrecht der römischen Inquisition. Neue Quellenfunde zu Theorie und Praxis," *w: Hexenprozesse und Gerichtspraxis*, ed. H. Eiden, R. Voltmer (Tier, 2002), pp. 455–473.

reference to the Pope's Instruction, which was directed at "wszystkiemu duchowieństwu, także i pospólstwu naszej diecezji kujawskiej i pomorskiej".<sup>52</sup>

Z częstego doświadczenia i ludzi mądrych i pobożnych świadectwa, i z pisma doktorów różnych, nawet z Informacji Rzymskiej, wydanej na formowanie procesów o czarownicach, Roku P[auńskiego] 1657, nauczyliśmy się, że wiele w takowych procesach przeciw czarownicom wydanych, wiele jest błędów, tak dalece, jako też mówi Instrukcja Rzymska, ledwo kiedy doświadczone, aby był słusznie formowany takowy proces, skąd pod pretekstem sprawiedliwości, częstokroć zawaśnienie prywatne i zemszczenie obrazy swoje i wielkie niewinnych obciążanie, najduje się. Wiele bowiem jest sędziów, którzy ładajakie udanie i okazanie przyjmują, jakoby tej albo owej choroby przyczyną były białęglowy oskarżone, i przypadki różne, abo szkody, na nie kładą! Za czym na męki niesłuszne i na śmierć procesy źle formują.<sup>53</sup>

Having described abuses in witchcraft trials, including those committed by secular judges, Bishop Kazimierz F. Czartoryski formulated a list of forbidden practices which was to be followed in his diocese; one of the practices was swimming of witches, with Czartoryski arguing that the procedure had been prohibited by the Church much earlier.

About a dozen years later, Bishop of Łuck Stanisław Witwicki (ca. 1630–1698) published the book *Obraz prawdziwego chrześcijanina* (1684), where he addressed the issue of witchcraft. He appealed to municipal judges who, according to him, were not well-versed in law and "krew ludzką bezpiecznie szynkują". Bishop Witwicki aimed to stop secular judges and magistrate courts from abusing their powers by calling upon them in the following manner:

Napominamy tu w Bogu owych sędziów po wsiach i miasteczkach, wójtów, ławników, którzy nie umiejac prawa, ani się go ucząc, krew ludzką bezpiecznie szynkują, ciężkie nauczonych sędziów i teologów sądy przedsiębiorą. [–] pławienie czarownic jest bardzo niepewny dowód czarów, bo związana niewiasta [ma] w sobie wiele powietrza, bardziej powinna pływać, niż iść do dna, bo nogi i ręce w tył związane, czynią z niej nadętą pęcherzynę.<sup>54</sup>

<sup>52</sup> *Instrukcja Rzymska, o sądach i procesach, jako mają być formowane i wydawane przeciw czarownicom i różnemi zabobonami bawiącym się, abo podejrzanym. W Rzymie naprzód roku pańskiego 1657, po tym w Polszcze w Klasztorze Oliwskim po łacinie wydana 1682. Znowu po polsku wytłumaczona i z dozwoleń urzędu duchownego do druku podana. Teraz powtórnie przedrukowana* (Poznań: J.K.M. Kolegium Societatis Jesu, 1739), fol. B<sub>4</sub> (part of the work n.p.).

<sup>53</sup> Ibidem, fol. A<sub>4</sub>–B<sub>4</sub>.

<sup>54</sup> S. Witwicki, *Obraz prawdziwego chrześcijanina w obowiązkach nie tylko powszechności, ale i w szczególności każdemu stanowi należących, niegdy przez J.W. JMci*

Bishop of Vilnius Michał Jan Zienkiewicz (1670–1762), meanwhile, convened a synod, held in Vilnius on 10–13 February 1744, which adopted a resolution banning the use of the cold water ordeal without obtaining permission of a bishop.<sup>55</sup> He recommended that the priests working in each diocese do not allow for secular courts to imprison women accused of witchcraft and swim them without previous investigation of the case by a cleric.<sup>56</sup> Despite the official ban, therefore, the synod did not prohibit carrying out of the cold water ordeal under all circumstances. Another person who attempted to stop the use of the procedure in witchcraft trials was Bishop of Kiev Jozef Andrzej Załuski (1702–1774), who published a work on the subject in 1766, presenting a historical overview of the cold water ordeal and the stance of the Catholic Church on its application. Załuski provided a detailed description of the use of the procedure on accused and suspects:

Najprzód obnażano do naga, nogę prawą z lewą, lewą z prawą ręką związane, z przyczyny, aby pływać nie mogła ta osoba, z której dociec prawdy chciano, i trzymając na powrozie, wrzucano z mostu lub ze statku w wodę. I gdy poszedł pod wodę jakoby tonał, jako naturalnie powinien związany człowiek, niemogący sobie siłą pomagać do pływania, takiego uznano za niewinnego, lecz gdy związany nie poszedł pod wodę, lecz pływał po wodzie, takiego winnym osądzano.<sup>57</sup>

Załuski attempted to find an explanation of how certain people do not sink when subjected to the ordeal, which was either coincidental or natural. The bishop made reference to the research of “physicists, that is naturalists”:

*X. Stanisława Witwickiego, biskupa łuckiego i brzeskiego, jasnemi Pisma Świętego, ustaw kościelnych i ojców świętych kolorami wyrażony, owieczkom chrystusowym, przede wszystkim łuckiej, a teraz krakowskiej djecezyi. Dla defektu egzemplarzów tak pożytecznych i zbawiennych z prasy drukarskiej pokazany roku jubileuszowego 1751* (Kraków, [1751]), pp. 194–195.

<sup>55</sup> J. Kurczewski, *Kościół zamkowy czyli Katedra wileńska w jej dziejowym, liturgicznym, architektonicznym i ekonomicznym rozwoju. Na podstawie aktów kapitulnych i dokumentów historycznych* (Wilno, 1908), p. 187.

<sup>56</sup> *Ibidem*, p. 208.

<sup>57</sup> J.A. Załuski, *Objaśnienie błędami zabobonów zarażonych oraz opisanie niegodziwości, która pochodzi sądzienia przez próbę pławienia w wodzie mniemanych czarownic, jako takowa proba jest omylna, różnemi dowodami... Stwierdzone dla pożytku każdego, osobliwie sędziów, spowiedników, aby sędziowie poznali niepewność takowej próby, a spowiednicy wierzących takim zabobonnym probom z błędów wyprawadzać mogli* (Berdyczów, 1766), p. 21; see also B. Marcińczak, “Krytyka pławienia czarownic w ‘Objaśnieniu błędami zabobonów zarażonych’ Józefa Andrzeja Załuskiego,” *Literatura Ludowa* 3 (2006), pp. 39–46.

powiadają, iż ludzie, częstokroć się trafia, piersi szersze mają jak do statury człowieka być powinni, a przeto mając piersi szersze, jak drudzy więcej powietrza w siebie wzięwszy, dłużej go zatrzymać mogą, co ich czyni lekszymi od wody, a przeto tonąc zaraz wrzuceni na wodę nie mogą.<sup>58</sup>

In the subsequent passages of his work, Załuski described the history of the cold water ordeal, writing that it had ceased to be used in the thirteenth century due to the ban imposed on it by the Council of the Lateran in 1215, but it “odnowiło się znowu w wieku szesnastym w różnych miejscach niemieckich i francuskich, którego już nie dla wypróbowania prawdy złodziejstwa lub innych wstępków zażywano jako przedtym, lecz tylko na dowodzenie czarowników, a najbardziej czarownic”.<sup>59</sup> The bishop pointed out that some people had noticed the wickedness and fallibility of swimming witches as early as the fourteenth century, giving as an example the 1563 work by Johann Weyer (1515–1588) entitled *De praestigiis daemonum*. The author of the book argued that “ciężkość ciała równie winnym jako i niewinnym z natury jest dana i czart częstokroć dla omamiania ludzi i do grzechu przyprowadzenia sprawuje”.<sup>60</sup> Załuski also claimed that allowing for such ordeals to be carried out was a sin, „albowiem są przyczyną, że o takich kobietach złą mają ludzie opinią, chociaż niewinne”.<sup>61</sup>

The Bishop of Kiev also addressed secular judges, telling them that they should demand for the prosecutors to present solid evidence. He also cautioned them not to use the outcome of the cold water ordeal as a premise to pronounce death sentences, as the ordeal “is not a trial or evidence of any sort”.<sup>62</sup>

Józef A. Załuski was aware that the procedure in question became widespread in times of natural disasters, for example drought (“bezbożnie niektórzy czynią gospodarze, którzy widząc suszę, aby deszcz był, pławią niewiasty lubo wodę na granicę nosić każą”).<sup>63</sup> There are many examples of such patterns of behaviour in the past. In 1675, “było powietrze na ludzi, ale bardziej na inwentarze wszelkie”.

<sup>58</sup> Załuski, op. cit., p. 25.

<sup>59</sup> Ibidem, p. 43.

<sup>60</sup> Ibidem, p. 44.

<sup>61</sup> Ibidem. For more about the life and activity of Weyer see, e.g., R. van Nahl, *Zauberglaube und Hexenwahn im Gebiet von Rhein und Maas. Spätmittelalterlicher Volks Glaube im Werk Johann Weyers (1515–1588)* (Bonn, 1983).

<sup>62</sup> Załuski, op. cit., p. 65.

<sup>63</sup> Ibidem, p. 67.



In consequence of the drought, nobleman Samuel Zeleski, the owner of Łagiewniki, lost 500 sheep as well as numerous heads of cattle and horses. The noble, “zrazu nie tak karze Boskiej, jako czarom przypisywać to począł” and he ordered to “wszystkie kobiety ze wsiów pławić, a która pływała, jako czarownicę do kłody sadzano, już tedy miał posyłać po kata, na tracenie owychże białychgłów, ale Jejmość [żona, Zuzanna Beldowska] sama z wrodzonej litości suplikowała Jegomości, aby się nie skwapiał na zgubę ludzi, może być, że niewinnych, ponieważ inwentarze nie tylko u nich, ale i po inszych miejscach odchoǳą”.<sup>64</sup> Zeleski accepted his wife’s argument and eventually abandoned his plan and freed the women.

In mid-eighteenth century, Father Benedykt Chmielowski published the book *Nowe Ateny*, where he informed his readers, primarily clerics and noblemen, that the cold water ordeal had been banned by provincial synods “bo częstokroć czart, choć na osoby najniewinniejsze wkłada kalumnię; *alias* nie dopuszcza im utonąć w wodzie, trzymając je na wierzchu wody, skąd karane bywają i miane za czarownice. Czasem też, czy winne, czy niewinne, swą chytrością topią czarci w stawach”.<sup>65</sup> Even though Chmielowski’s encyclopaedia was apparently immensely popular among the Polish nobility, the information on the ban on the cold water ordeal included in the work did not dissuade nobles from carrying out the procedure in case of witchcraft accusations. In consequence, cold water ordeals connected to natural disasters, primarily to drought, were still in use as late as the second half of the eighteenth century. This fact finds its confirmation in the story of the winter of 1788/1789, exceptionally severe in Poland, and of the spring of 1789, extremely dry<sup>66</sup> due to lack of rainfall lasting for weeks, which heralded poor crop yields and famine. Peasants from the villages of the Świętokrzyskie region, as well as “duchowieństwo,

<sup>64</sup> M. Kałowski, *Informacja o początkach i dalszym progressie cudownego miejsca łagiewnickiego przez Antoniego Św. Padeuskiego z nieba sobie obranego i naznaczonego, na pociechę ludzi rozlicznemi niemocami strapionych, którzy tu pomocy doznają, wiernie zebrana* (Kalisz, 1723), pp. 19–20; cf. B. Baranowski, *O hultajach, wiedźmach i wszetecznicach. Szkice z obyczajów XVII i XVIII w.* (Łódź, 1988), p. 119.

<sup>65</sup> B. Chmielowski, *Nowe Ateny albo Akademia wszelkiej sciencyi pełna, na różne tytuły jak na classes podzielona, mądrym dla memoryału, idiotom dla nauki, politykom dla praktyki, melancholikom dla rozrywki erygowana* (Kraków, 1969), pp. 135–136.

<sup>66</sup> J. Kitowicz, *Pamiętniki czyli Historia Polska*, ed. and introd. P. Matuszewska, comment. Z. Lewinówna (Warszawa, 1971), pp. 396.

mianowicie zakonne, mało co światlejsze od gminu, przypisywało czarom tę klęskę i niekiedy brało to nawet za tekst swoich kazań”,<sup>67</sup> which led to the drought being seen as the devil’s doing. Roch Chlebowski, an economist from Zagość, was so distraught by lack of rainfall that he teamed up with two Franciscan Riformati friars and started hunting for witches. He gathered all women living in Zagość and ordered for them to be subjected to the cold water ordeal on 19 May 1789.<sup>68</sup> The women who did not drown were pronounced witches and sentenced to lashing, which was to last until rain started falling. Unfortunately for the women, it was not until the next day that rain appeared in Zagość, which proved to further solidify the belief in magic among the members of the local community.<sup>69</sup>

### Cold water ordeal before legal proceedings

The Polish-Lithuanian Commonwealth in the Early Modern period did not have uniform regulations regarding the use of the cold water ordeal in witchcraft trials. As evidenced by the available historical sources, whether the ordeal would be carried out or not depended on the following factors: tradition of a given region, mentality of village and town owners, and beliefs of judges and members of the municipal council. It seems that in Poland swimming of witches most frequently took place before officially bringing the charges to the court and opening trial, and was carried out at the request of: 1) the prosecutor, 2) the accused (sometimes her relatives), who sought to prove her innocence and avoid trial, during which she would most probably be subjected to torture, 3) the owner of the village or town, wishing to find out whether the accused was in fact a witch (Bohdan Baranowski believed that in Poland, swimming women accused of witchcraft customarily lay within the power of local authorities, most frequently village owner or village self-government),<sup>70</sup> 4) the municipal council, which according to the distribution of duties was responsible for investigating a criminal case and referring it to the vogt court and the magistrate (such division of powers was characteristic for many,

<sup>67</sup> *Stanisława hr. Wodzickiego Wspomnienia z przeszłości od roku 1768 do roku 1840* (Kraków, 1873), p. 260.

<sup>68</sup> *Ibidem*, p. 261.

<sup>69</sup> J. Wijaczka, “Procesy o czary w regionie świętokrzyskim w XVII–XVIII wieku,” in: *Z przeszłości regionu świętokrzyskiego od XVI do XX wieku*, ed. J. Wijaczka (Kielce, 2003), pp. 64–65.

<sup>70</sup> Baranowski, *Procesy czarownic w Polsce*, p. 91.

albeit not all, towns in Lesser Poland,<sup>71</sup> but could also be observed in the territory of Royal Prussia<sup>72</sup>), 5) the court, if it so decided during trial. Let us take a closer look at each of these five cases.

1) Cold water ordeal carried out at the request of the prosecution. One of the instances in which the ordeal was requested by the prosecuting party was the case of Magdalena Ruskowa. She was brought before the court in Nowe nad Wisłą in June 1701, having been accused of witchcraft by, among others, Franciszek Reychoniarski, a burgher from Nowe, who had made a request to subject the woman to ordeal by water.<sup>73</sup> The municipal council asked the vogt to carry out the procedure and inform the body of its outcome. It also sent two of its members to the site as witnesses. The accused was submerged in water three times in view of quite a large audience,<sup>74</sup> and since she floated on the surface each time, it was decided that the ordeal provided grounds for her detainment and trial before court.<sup>75</sup>

2) As mentioned before, the belief that the cold water ordeal was an evidence of a person's guilt or innocence was widespread in almost the entire Europe. This is why many people accused of witchcraft wanted to prove they were innocent and appealed to courts or estate owners (before being brought before court by the owners) to be subjected to the ordeal. There were many examples of such appeals in the territory of the Polish-Lithuanian Commonwealth, among them the case of Maciej Piskula from Piesna, tried in 1690 in Łobżenica (Greater Poland), who asked "for water" because, as he stated before the court, "people say that the water will cleanse an innocent man".<sup>76</sup> Unfortunately, the water did not "cleanse" or clear him of suspicion. Many examples of people believing in the cleansing power of water

<sup>71</sup> M. Mikołajczyk, *Proces kryminalny w miastach Małopolski XVI–XVIII wieku* (Katowice, 2013), pp. 34–39.

<sup>72</sup> J. Wijaczka, "Polowanie na czarownice i czarowników w Nowem nad Wisłą i najbliższej okolicy miast w XVII i w pierwszej połowie XVIII wieku," *Czasy Nowożytne* 22 (2009), p. 143. At least 27 trials were carried out in the town in the seventeenth century and the first half of the eighteenth century; among the 38 accused there were 36 women and only 2 men.

<sup>73</sup> APB, Files of the town of Nowe nad Wisłą (hereinafter: AmN), file ref. no. 130, Council and magistrate minutes, seventeenth and eighteenth century, p. 266.

<sup>74</sup> Ibidem, p. 267.

<sup>75</sup> APB, AmN, file ref. no. 131, Court records from cases against witches resolved before the magistrate court in Nowe, 1689–1747, p. 58.

<sup>76</sup> J. Wijaczka, "Mężczyźni jako ofiary procesów o czary przed sądem łobżenickim w drugiej połowie XVII wieku," *Czasy Nowożytne* 17 (2004), p. 21.

can be found in case files of the court in Nowe nad Wisłą. Regina Jakubowa Krajniczka, a woman accused of witchcraft in the village of Smętkowo in May 1699, “voluntarily asked to be tried by water”. Her request was accepted and she was submerged in water three times, but each time “the water would not take her”. She was therefore handed over to the executioner.<sup>77</sup> Another example comes from 7 July 1701, when the municipal council of Nowe detained Ewa Łobysowa under the suspicion of witchcraft at the request of Wawrzyniec Jordański and his wife. This time, it was the husband of the accused who asked for her “to be submerged in water”.<sup>78</sup> The ordeal took place the following day. Łobysowa was submerged in water three times, but each time she floated on the surface.<sup>79</sup>

People accused of witchcraft requested the ordeal by water both before being detained and after they had already been imprisoned. In July 1689, Jan Kolberk, a burgher from Nowe, accused Elza Kucharczykowa, alias Zarębina, of being a witch. The woman was detained and, following a series of urgent pleas made by Eliza and her husband, who had been summoned before the municipal court,<sup>80</sup> subjected to swimming to test her innocence. The ordeal, carried out by the executioner, took place before a large audience, including two judges designated by the court, who later reported that “gdy ją [Elzę Kucharczykową] sprawca pierwszy raz na wodę związaną puścił, do dna poszła, lecz wkrótce wynurzywszy się, pływała”.<sup>81</sup> Submerged in water for the second time, she once again did not drown.

In July 1719, the court in Nowe tried Anna Szpornowska, accused of witchcraft by three local burghers.<sup>82</sup> She did not plead guilty of any wrongdoings and requested to be subjected to the cold water ordeal.

<sup>77</sup> APB, AmN, file ref. no. 131, Court records from cases against witches resolved before the magistrate court in Nowe, 1689–1747, pp. 43–44; cf. Wijaczka, “Polowanie na czarownice i czarowników,” p. 123.

<sup>78</sup> APB, AmN, file ref. no. 131, Court records from cases against witches before the magistrate court in Nowe, 1689–1747, p. 269.

<sup>79</sup> *Ibidem*, p. 272; cf. Wijaczka, “Polowanie na czarownice i czarowników,” pp. 123–124.

<sup>80</sup> APB, AmN, file ref. no. 131, Court records from cases against witches before the magistrate court in Nowe, 1689–1747, p. 5; cf. Wijaczka, “Polowanie na czarownice i czarowników,” p. 123.

<sup>81</sup> APB, AmN, file ref. no. 131, Court records from cases against witches before the magistrate court in Nowe, 1689–1747, p. 6; cf. Wijaczka, “Polowanie na czarownice i czarowników,” p. 123.

<sup>82</sup> APB, AmN, file ref. no. 131, Court records from cases against witches before the magistrate court in Nowe, 1689–1747, p. 114.

Two judges were dispatched to oversee the procedure. Thrown into the water by the executioner in front of a big crowd, the woman floated on the surface each time. Before the swimming, the water had been publicly hallowed by the dean of Nowe.<sup>83</sup>

A similar example comes from Greater Poland, from a trial held before the three-member municipal court in Łobzenica on 17 June 1686. The trial concerned accusations of practising malevolent magic made against two inhabitants of the village of Osowo. The women requested to be subjected to the cold water ordeal and the court acceded to their proposal. The accused women's efforts turned out to be futile as they "floated on the surface like ducks" in front of a crowd of onlookers.<sup>84</sup> In the afternoon of the very same day, 17 June 1686, another woman – Dorota Nabzdyszka – was brought before the court; she also requested to be subjected to the cold water ordeal. The court accepted her request and thus she was submerged in water in front of a large audience. As Dorota did not sink underwater, she was handed over to the executioner the following day.<sup>85</sup>

The case file from the witchcraft trial held in August and September 1731 against Barbara Kostrzyna from Polskie Brody (currently called Brody, it is a village by the Wierzyca river, near Gniew) contains the description of cold water ordeal carried out by the woman's husband,<sup>86</sup> which resulted in her floating on the surface. According to the testimony of one of the witnesses, Kostrzenina's husband, who had been expelled from several villages due to his wife's actions, one night submerged her in water with help from the woman's brother in order to see whether she was really a witch. Since she did not sink, both attempted to renounce her.<sup>87</sup> The husband fell sick and died three days later.<sup>88</sup>

It is possible that numerous pleas or requests for the cold water ordeal made by people accused of witchcraft did not necessarily result from their will to defend themselves from the accusations, but may have rather served as an attempt to prevent the opening of a trial, one

<sup>83</sup> *Ibidem*. At the time the post of the local parish priest and dean was held by Wawrzyniec Judasz Tadeusz Behme (parish priest 1704–1730); see K. Kościński, *Kościół i kaplice w Nowem* (Gdańsk, 1896), p. 69.

<sup>84</sup> APB, AmŁ, file ref. no. 11, fol. 458rec.

<sup>85</sup> *Ibidem*, fol. 460ver.

<sup>86</sup> Warmiński, op. cit., p. 70.

<sup>87</sup> *Monumenta historica dioeceseos Wladislaviensis*, vol. 5, p. 42.

<sup>88</sup> *Ibidem*.

of the elements of which was torture. Such a possibility was indicated by Rita Voltmer<sup>89</sup> and Wolfgang Schild.<sup>90</sup>

3) Cold water ordeals were often carried out at the request of the village or estate owner, especially when they considered themselves to be victims. As indicated by Tomasz Wiślicz's research on witchcraft trials held in Kleczew (Greater Poland) and its vicinity in the seventeenth century, "the largest group among the prosecutors and witnesses were noblemen, usually owners of nearby villages, deeply convinced of the guilt of the inhabitants of their estates".<sup>91</sup> One of the examples can be a trial taking place in 1655 in the village of Praszka, belonging to the Węzyk family. The women subjected to the cold water ordeal were two folk healers who provided herbs necessary to perform love magic. The women, apprehended by peasants at the order of the village owner, were swimmied and then put on trial.<sup>92</sup>

4) Bohdan Baranowski indicated that cold water ordeals were usually carried out before the official opening of the trial.<sup>93</sup> This conclusion finds its confirmation in case files from witchcraft trials held in Nowe nad Wisłą. Thanks to these sources, we know for example that in the case of Marianna Krystofka (1701), the municipal council decided to swim her before the proper beginning of legal proceedings. The council asked the vogt of Nowe to carry out the procedure and designated two judges to assist; they ordered the executioner to "submerge her time and again and again". The ordeal took place in front of a large crowd and the woman, "having been tied, emerged from the water and started to float". Having reached the conclusion that Krystofka was guilty of being a witch, the council handed her over to the court.<sup>94</sup> In another trial, held in July 1712, Jadwiga Michałkowa

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<sup>89</sup> R. Voltmer, "Monopole, Ausschüsse, Formalparteien, Vorbereitung, Finanzierung und Manipulation von Hexenprozessen durch private Klagekonsortien," in: *Hexenprozesse und Gerichtspraxis*, pp. 18–19.

<sup>90</sup> W. Schild, "Reinigungs- und Kampffolter. Anmerkungen zum frühneuzeitlichen Folterrecht," in: *Recht und Vorhalten in vormodernen Gesellschaften. Festschrift für Neithard Bulst*, ed. A. Bendlage, A. Prieuer, P. Schuster (Bielefeld, 2008), pp. 181–182.

<sup>91</sup> T. Wiślicz, "Społeczeństwo Kleczewa i okolic w walce z czartem (1624–1700)," *Kwartalnik Historyczny* 112, no. 2 (2004), p. 45.

<sup>92</sup> B. Baranowski, "Wielki proces o czary miłosne w Praszce w 1665 r.," *Łódzkie Studia Etnograficzne* 4 (1962), p. 11.

<sup>93</sup> Idem, *Procesy czarownic w Polsce*, p. 91.

<sup>94</sup> APB, AmN, file ref. no. 130, Council and magistrate minutes, seventeenth and eighteenth century, pp. 265–266.

was accused of witchcraft by Elżbieta Stachowa and in consequence was subjected to the cold water ordeal by the municipal council. She floated on the surface and thus was brought before the court.<sup>95</sup> Those are just a few out of a plethora of similar examples.

5) On a number of occasions, it was the court that decided to carry out the cold water ordeal after the opening of the trial. It was usually done in order to obtain evidence in a given case. Anna Troska, tried in Siernica (Greater Poland) in 1629, was subjected to the ordeal by an executioner at the order of the court in Kleczew. The executioner “threw” her on the water and even though she (as was noted by the observers) attempted to sink, she ended up floating on water “like a log”.<sup>96</sup>

At the request of Wawrzyniec Czapski, the judge (vogt) of Nowe sent deputy vogt Jakub Kucis, assessor Jerzy Niedzielski, and a sworn scribe to Smętkowo on 1 August 1701. They were to try Dorota Piotrowska, known as Kaszubka, on the accusation of witchcraft. At the time of their arrival, the woman was already imprisoned. The court approached her and “podług zwyczajui i prawa, dawszy jej dobrą admonicyją pytając jej, co za przyczyna, że cię zasadzono”. As Dorota did not know why she had been apprehended, the court decided to subject her to the cold water ordeal:

Jednak będąc przez wodę próbowana, którą sprawca podług zwyczajui należytego związawszy na wodzie spławił, i którą gdy na wodę puścił pierwszy raz, drugi i trzeci, i przy zgromadzeniu tak wiele ludzi, wierzchem pływała, którą po tym od wody w beczkę wsadziwszy, do więzienia zawieziono.<sup>97</sup>

The court admonished her to plead guilty, but she insisted that she was innocent, which is why the judges ordered the executioner to subject her to torture.

In 1753, the court in Gniezno heard a witchcraft case in which the accused were a married couple – Elżbieta and Jan Celech from the village of Ławki. The owner of the village, Paweł Żeromski, brought them before court, which then decided to hand them over to Piotr, executioner from Gniezno, to subject them to the cold water ordeal. The procedure was carried out in the presence of two judges and a large crowd. The wife and husband both floated on the surface on

<sup>95</sup> Ibidem, p. 89.

<sup>96</sup> J. Stępień, *Kleczewskie procesy o czary* (Poznań, 1998), p. 57.

<sup>97</sup> APB, AmN, file ref. no. 131, Court records from cases against witches before the magistrate court in Nowe, 1689–1747, p. 65.

the water and were thus pronounced guilty of practising magic and sent to torture.<sup>98</sup>

Nonetheless, the court did not always make a decision to initiate legal proceedings, even when the accused had floated on water during the ordeal. We have information on five women who either came out triumphant from the cold swimming or who did not face trial as the court in Rzeszów did not consider the ordeal to be fully reliable evidence.<sup>99</sup>

### Lack of court permission to carry out the cold water ordeal

The court did not always give permission to carry out the cold water ordeal, but we unfortunately do not have much knowledge concerning the grounds on which such decisions were made. Katarzyna Mrowczyzna, accused of witchcraft and practising malevolent magic, was brought before the rural court from the village of Staniszewo (former Pomeranian Voivodship, Mirachowo *Starostwo*) in 1695. During the first hearing, Mrowczyzna stated: “Ja niewinnam. Chcecie mię pławić i to możecie, czynicie ze mną, co chcecie”.<sup>100</sup> Nonetheless, the court did not make a decision to swim the accused and instead handed her straight over to the torturer.

The municipal court from Nowe nad Wisłą also did not use the cold water ordeal in the witchcraft trial held in 1747 against Barbara Draszkowa. The woman requested to be subjected to the ordeal, putting forward the following proposal to the court: “da mąż mój WPaństwu 100 zł, a niech idę na wodę”.<sup>101</sup> It is not certain why the court did not accept her request, even though it had earlier acceded to similar pleas from people accused of witchcraft. Another witchcraft trial in which the court of Nowe did not allow for the cold water ordeal to be carried out took place the same year, on 16 January, in the village of Morzeszczyn, where three local peasants accused four women, their neighbours, of witchcraft.<sup>102</sup> One of them, Katarzyna Owczarka, did not plead guilty during her first hearing, claiming that

<sup>98</sup> S. Karwowski, *Gniezno* (Poznań, 1892), pp. 126–127.

<sup>99</sup> Z. Dydek, “Czary w procesie inkwizycyjnym w Rzeszowie w XVIII wieku,” *Rocznik Województwa Rzeszowskiego* 5 (1964/1965 [1968]), p. 386. The author of the article did not provide exact dates of the trials. In order to determine them it is necessary to consult the source material.

<sup>100</sup> Z. Guldon, “Proces czarownicy we wsie Staniszewo w 1695 r.,” *Studia z Dziejów Kościoła Katolickiego* 1 (1961), p. 155.

<sup>101</sup> APB, AmN, file ef. no. 130, Council and magistrate minutes, seventeenth and eighteenth century, p. 133.

<sup>102</sup> *Ibidem*, p. 135.



she did not believe in the devil, but in one God. Having been taken to another hearing by “voluntary inquisition” after an hour, she once again denied the accusations and asked to be swimmied: “this water will cleanse me”. The court did not accept her request and sent her to torture the very same day.

#### The devil and the cold water ordeal

When subjected to cruel torture, the accused women usually confessed to whatever the judges wanted to hear. They were often questioned about their contacts with the devil and whether the devil promised to help “his” witch during cold water ordeals. It naturally turned out that some devils did promise to assist the women. Such was the testimony of Katarzyna Oleyniczanka (1690), who testified that after she had been arrested devil Hans “promised to sink her to the bottoms, so that she would not float”, but he did not keep his word, “because on that day, when she was taken to the ordeal, he left her. Janek, the second devil, left her as well”.<sup>103</sup> Marianna Kowalka (1709) claimed that the devil had sat on a nearby alder tree during her ordeal and promised her that she would drown when she was being submerged in water.<sup>104</sup> When Elza Kucharczykowa (1689) was led to her ordeal, the devil promised to give her a slab of iron, but he eventually betrayed her and ran away.<sup>105</sup>

Having sunk to the bottom in cold water ordeal, Anna Krucha, tried by the municipal court from Nowe nad Wisłą in 1698, testified that the “hellhound” had been with her all along and promised her that she would sink, while during torture he said: “I will suffer and suffer for you, so that you survive the torture”.<sup>106</sup> In another trial, held in Czerniewo (Royal Prussia) in 1727, one of the tried and tortured women also testified that the devil had promised to put iron behind her ear during the cold water ordeal so that she would sink, which would be a proof of her innocence.<sup>107</sup>

<sup>103</sup> Ibidem, p. 20–21.

<sup>104</sup> Ibidem, p. 82.

<sup>105</sup> APB, AmN, file ref. no. 131, Court records from cases against witches before the magistrate court in Nowe, 1689–1747, p. 8.

<sup>106</sup> Ibidem.

<sup>107</sup> Gdańsk, State Archives (Archiwum Państwowe), Krokowski Files, file ref. no. 999/no. 84e, p. 4; see also J. Wijaczka, “Samosąd w sprawie o czary w Czerniewie (dawny powiat tczewski),” *Rocznik Gdański* 69–70 (2009–2010), pp. 37–45.

Those accused who believed that the cold water ordeal would clear them of all charges were surprised to see the procedure go awry. They afterwards attempted to explain the outcome of the swimming to the prosecutors, the court, and probably also to themselves. One of the women, submerged in water during a trial held before the municipal court in Warta (Greater Poland), told the judges that when she was a child, her mother smeared her with goose fat to improve her health, which was why she floated on water like a goose.<sup>108</sup> Barbara Grzeszówka, tried in June 1665 by the vogt court in Chęciny (Lesser Poland),<sup>109</sup> meanwhile, had been subjected to cold water ordeal before the charges were officially brought to the court. It is not known who carried out the ordeal and where it took place, but it is certain that the woman did not sink and later tried to defend herself, saying: “Dłategom po wierzchu pływawa, bom wczora cały dzień nie jadła”.<sup>110</sup> Her husband, Mikołaj Skowronek, was swimmied as well; he, too, floated on the surface. He testified before the court: “Nie wiem, co za przyczyna, żem pływał po wierzchu, żadnych czarów nie umiem. Czyńcie waszmościowie co rozumiecie”.<sup>111</sup> Zofia Kaliścina, subjected to the cold water ordeal in Koźmin in 1648, explained to the court that she had floated on the water not because she was a witch, but because “na sobie miała grzech o dziecię, którem była u Bożej męki [kapliczki] zakopała”.<sup>112</sup>

### Fully dressed or naked?

According to Bohdan Baranowski, as mentioned before, cold water ordeals were carried out with the victim tied in the following manner: left arm tied with right leg and right arm tied with left leg; the person was then slowly brought down into the water on a rope.<sup>113</sup> A similar way of tying the accused could be observed in some German countries.<sup>114</sup> It seems, however, that there was some regional variation, since a description of the cold water ordeal, carried out in Royal

<sup>108</sup> Baranowski, *O hultajach, wiedzmach i wszetecznicach*, p. 118.

<sup>109</sup> Cracow, Jagiellonian Library (Biblioteka Jagiellońska), MS 5476, “Prothocollon actorum civilium officii consularis civitatis Chencinensis”, 1613–1680, fol. 41rec.

<sup>110</sup> Ibidem.

<sup>111</sup> Ibidem; cf. Wijaczka, “Procesy o czary w regionie świętokrzyskim,” p. 40. We have no information on the outcome of the case.

<sup>112</sup> K. Milewski, *Pamiętki historyczne krajowe* (Warszawa, 1848), p. 347.

<sup>113</sup> Baranowski, *Procesy czarownic w Polsce*, p. 92.

<sup>114</sup> *Zedlers Universal-Lexicon*, vol. 33 (Leipzig and Halle, 1747), col. 693.

Prussia in mid-eighteenth century, contains the following information on the manner of tying the victim: arms were crossed with legs and tied together behind the back, which means that the accused, stripped naked, was dunked in water facing down.<sup>115</sup> The person subjected to the ordeal had to have a rope tied around them so that they could be taken out of the water in case they started to sink. According to this information, the ordeal did not necessarily have to be carried out by the executioner and could be performed by other people, although it still was necessary to pay the executioner. According to the contract concluded with Hans from Tczew in 1660, the executioner was paid 3 florins for each swimming.<sup>116</sup>

In his work on witchcraft trials in Poland in the seventeenth and the eighteenth century, already cited in previous passages of this paper, Bogdan Baranowski wrote that women did not sink in water because “several layers of woollen skirts and aprons, puffy sleeves and bodices initially helped the alleged witch float on the surface”.<sup>117</sup> Baranowski claimed that he had not found any information on women being stripped naked before the ordeal in source materials.<sup>118</sup> The footnotes suggest that Baranowski arrived at his conclusion on the basis of the description of the swimming taking place in Doruchów in 1775,<sup>119</sup> even though Janusz Tazbir had already proven<sup>120</sup> that no such trial ever took place and that the testimony of an alleged witness of the events was most probably forged by Konstanty Majeranowski.<sup>121</sup> The Doruchów trial nonetheless continues to be discussed in historical works,<sup>122</sup>

<sup>115</sup> “Diselbe soll also angestellet werden, daß der Scharfrichter oder wer es sonst thut die Person, welche die Probe ausstehen soll, mit Händen und Füßen hinten auf die Rücken creuzweise bindet, und sie so ganz nackent unter das Wasser hinab stösset”; “Nöthige Untersuchung etlicher vermeinten Beweise und Proben der Hexerei,” in: *Preußische Sammlung allerei bisher ungedruckten Urkunden, Nachrichten und Abhandlungen*, vol. 1 (Danzig, 1747), p. 535.

<sup>116</sup> O. Korthals, *Chronik des Kreises Dirschau* (Bonn, 1969), p. 167.

<sup>117</sup> Baranowski, *Procesy czarownic w Polsce*, p. 92.

<sup>118</sup> *Ibidem*, p. 92, n. 6.

<sup>119</sup> *Ibidem*, pp. 92–93.

<sup>120</sup> J. Tazbir, “Z dziejów fałszerstw historycznych w Polsce w pierwszej połowie XIX wieku,” *Przegląd Historyczny* 57 (1966), p. 590; cf. S. Waltoś, *Owoce zatrutego drzewa. Procesy i wydarzenia, które wstrząsnęły prawem* (Kraków, 1978), p. 115.

<sup>121</sup> J. Tazbir, *Cudzym piórem... Falsyfikaty historyczno-literackie* (Poznań 2002), p. 103.

<sup>122</sup> See: Z. Osiński, “Zabobon, przesąd, diabeł, czarownice i wilkołaki w pamiętnikach polskich z XVI i XVII wieku,” *Annales Universitatis Mariae Curie-Skłodowska. Sectio F* 58 (2003), p. 71; S. Grodziski, *Z dziejów staropolskiej kultury prawnej* (Kraków, 2004), p. 196; Uruszczak, *op. cit.*, p. 236.

while Baranowski's work has often been used as a reference (his statements have, for example, been repeated in the re-editions of the synthesis of the history of the Polish state and law<sup>123</sup> and in other works concerning the history of law<sup>124</sup>).

A German lexicon dating back to mid-eighteenth century confirms the theory that women subjected to the cold water ordeal were stripped naked. The author of the work, Johann Zedler, wrote that men would be submerged in water completely naked, while women underwent the ordeal wearing only their slips (*Unterrock*).<sup>125</sup> A mention of women being dressed solely in "grave clothes" can be found in Vogt of Żywiec Andrzej Komoniecki's description of a trial held in 1698, when two women were tried and swam in the village of Lipowa (near Żywiec).<sup>126</sup> "Grave clothes" also appear in the paperwork of the Chełmno treasury, which includes information on witchcraft trials held in the town at the time. On 25 July 1638, the treasurer paid one *złoty* for "fabric for witch garments",<sup>127</sup> while on 10 December of the same year he bought 5 ells of fabric for 9 *groszs* an ell for "a slip for a witch".<sup>128</sup>

Nonetheless, there were also instances of swimming in the Polish-Lithuanian Commonwealth in which women were submerged in water naked, as evidenced, for instance, by the description of the ordeal used in Royal Prussia, dating back to mid-eighteenth century. According to the text, the accused were submerged in water naked, regardless of their sex.<sup>129</sup> This also finds its confirmation in the words of Bishop of Kiev Józef A. Załuski, who clearly stated: "The person was first stripped naked".<sup>130</sup> Bohdan Baranowski's stories of woolen skirts keeping women from sinking,<sup>131</sup> therefore, belong rather in fairy tales.

<sup>123</sup> J. Bardach, B. Leśnodorski, M. Pietrzak, *Historia państwa i prawa polskiego* (Warszawa, 1976), p. 288.

<sup>124</sup> See, e.g., K. Sójka-Zielińska, *Historia prawa* (Warszawa, 1993), p. 210; S. Płaza, *Historia prawa w Polsce na tle porównawczym* (Kraków, 1997), p. 473.

<sup>125</sup> *Zedlers Universal-Lexicon*, vol. 33, col. 693.

<sup>126</sup> Komoniecki, op. cit., p. 267.

<sup>127</sup> Toruń, State Archives (Archiwum Państwowe), Files of the town of Chełmno, file ref. no. 11, p. 69.

<sup>128</sup> *Ibidem*, p. 79.

<sup>129</sup> Cf. "und sie so ganz nackent unter das Wasser hinab stösset", "Nöthige Untersuchung," p. 535.

<sup>130</sup> Załuski, op. cit., p. 21.

<sup>131</sup> Baranowski, *O hultajach, wiedźmach i wszetecznicach*, p. 116.

### Site of the ordeal

Women and men suspected of being witches or warlocks were subjected to cold water ordeal in the nearest body of water, with source materials hardly ever mentioning any further details. In Kleczew, the procedure took place in the small lake called Stępa.<sup>132</sup> Women were tied in the shape of a “teardrop” and dropped into the water from a deck. Some of cold water ordeals also took place in the ponds of Rzeszów in the first decades of the eighteenth century. The work by Józef A. Załuski also indicates that there were attempts to submerge women in large barrels filled with water, which was possible, “since this way of tying a person makes them so tiny that they easily fit inside a barrel”.<sup>133</sup>

### Abuses during cold water ordeal

The procedure of the cold water ordeal was not, naturally, free of abuses, primarily on the part of the executioner or the people responsible for carrying it out. During one of the trials held before the joint vogt and mayor court in Łobżenica, several inhabitants of the village of Rataje accused of witchcraft asked to be swimmied. The ordeal took place on 5 June 1690. They all floated on the water because, as they would later explain, “mistrz [kat] powróz nie popuszczał i onych zatrzymywał, i dragiem podnosił w wodzie”, which was apparently a lie, “gdyż sobie mistrz z nimi postąpił jako zwyczajnie postąpią”.<sup>134</sup> Nonetheless, credence should be given to the accused.

A lot depended on the way in which the suspects were “dropped” into water. This finds its confirmation in the testimonies of women tried in Koźmin (Greater Poland) in May 1648. One of them, Anna Bogdajka from Koźmin, testified that “dlategom pływała, bo mię na bok wrzucono, a insze mężowie puszczały na nogi i nie chciały pływać”.<sup>135</sup> Anna Strzeżeduszy mentioned another “method” in her testimony, stating: “z tej przyczyny mnie wzięto, żem pływała, ale niejednakowo rzucano w wodę, jedne z ochroną, a drugie jako mogło być”. Making reference to the beliefs spread among the local community, she said that “kiedy która czarownica, chociaż ją pogrążają, tedy ona przecie pływa jako kaczka, ale jam tylko głowę z wody wyścibiła”.<sup>136</sup>

<sup>132</sup> Stępień, op. cit., p. 57.

<sup>133</sup> Załuski, op. cit., p. 22.

<sup>134</sup> APB, AmŁ, file ref. no. 11, fol. 533rec.

<sup>135</sup> Milewski, op. cit., p. 347.

<sup>136</sup> Ibidem.

As evidenced by the above examples, the people performing the ordeal helped some women and did not help others.

Bishop of Wrocław Antoni Sebastian Dembowski ordered for the nobles guilty of killing a woman in Grabów, Kashubia, to be brought before a secular court. The woman was accused of witchcraft and subjected to the cold water ordeal; when she started to sink, she was hit in the head with a paddle several times.<sup>137</sup>

### Concluding remarks

The research conducted so far unequivocally shows that the use of the cold water ordeal in witchcraft trials in the Early Modern period enjoyed varied popularity in each region of Poland (the Crown). While it was relatively often used in Greater Poland and Royal Prussia, the case files preserved to this day indicate that the situation in Lesser Poland may have been different. Marian Mikołajczyk, whose research focuses on criminal trials in the latter province, claims: “swimming of witches, and sometimes also warlocks, seems to have taken place rather sparsely, at least in Lesser Poland”.<sup>138</sup> At the same time, he cited only several examples known to us so far. This insignificant number of mentions in references and printed sources alike does not necessarily mean that the cold water ordeal was a sporadic method of investigation in Lesser Poland, where in the second half of the seventeenth century it was commonly believed that successful (or unsuccessful) swimming provided strong evidence of the guilt or innocence of the person accused of witchcraft. Such state of affairs is confirmed by a trial held in the region in 1674, in which the court from Słomniki sentenced Krystyna Gajowa Danieleczka to death for witchcraft and collecting dew despite lack of any evidence apart from the fact that during the cold water ordeal she not only did not drown, but she actually “came to the shore”. The court took this as a “great attestation of witchcraft”<sup>139</sup> and imposed death sentence on the accused.

Marian Mikołajczyk, already mentioned above, claimed around a dozen years ago:

<sup>137</sup> J. Koceniak, *Antoni Sebastian Dembowski, biskup wrocławski i pomorski. Sylwetka z czasów saskich* (Warszawa, 1953), p. 154.

<sup>138</sup> Mikołajczyk, *Proces kryminalny*, p. 414.

<sup>139</sup> W. Siarkowski, *Materiały do etnografii ludu polskiego z okolic Kielc*, ed. L. Michałska-Bracha, K. Bracha (Kielce, 2000), p. 85; cf. Mikołajczyk, *Proces kryminalny*, pp. 414–415, n. 155.

In order to see the cold water ordeal as a significant element of legal proceedings – as posited by textbooks – it would be necessary to determine whether the courts hearing witchcraft cases accepted cold water ordeals mandated by the estate owner or the village self-government *ex post* and whether the outcome of the ordeal had any influence on the proceedings and the final decision of the court.<sup>140</sup>

We can provide an affirmative answer to the author's doubts. Examples of trials held before municipal courts from Nowe nad Wisłą (Royal Prussia), Słomniki (Lesser Poland), and Łobzenica (Greater Poland) unequivocally indicate not only that courts recognised the legitimacy of cold water ordeals mandated by noble village owners, but also that the outcome of the ordeals influenced further legal proceedings (subjecting the accused to torture) and the sentence.

Nonetheless, a lot depended on the composition of the court, on the judge or the person having decisive influence on the final sentence, and, most importantly, on the noble owners of villages and towns. It needs to be concluded that the vast majority of Polish nobility and clergy in the Early Modern period believed in the existence of magic and witches, for example noblewoman Rusiecka, wife of the leaseholder of the village of Jadowniki. In 1698, when all dairy in her house went bad, she put the blame on one of the inhabitants of the village, a woman called Kantorczyna, and warned her that if the dairy continued to get spoilt, she would hand her over to the executioner.<sup>141</sup> Dairy stopped going bad, which only reinforced Rusiecka's conviction of Kantorczyna being a witch. The whole affair eventually culminated in swimming Kantorczyna along with about a dozen other women. The outcome of the ordeal was positive for all of them. Kantorczyna, "że pływała i wywodu żadnego nie dała z tego pływania, za to wynajdujemy winy grzywien pańskich 5, prawnych 3".<sup>142</sup> The rest of the women were fined as well.<sup>143</sup> On 21 June 1706, the municipal court from Szczekociny arrived to Rakoszyn at the request of Helena Kucharska, wife of the *podczaszy* [deputy cupbearer]

<sup>140</sup> Mikołajczyk, "O pławieniu czarownic w Gdowie," p. 127.

<sup>141</sup> T. Wiślicz, *Zarobić na duszne zbawienie. Religijność chłopów małopolskich od połowy XVI do końca XVIII wieku* (Warszawa, 2001), p. 177.

<sup>142</sup> "Księga sądowa wsi Jadownik (1600–1792)," in: *Księgi sądowe wiejskie*, vol. 2, ed. B. Ulanowski (Kraków, 1921), p. 102, no. 4930.

<sup>143</sup> *Ibidem*, nos. 4931–4939; T. Wiślicz, "Czary przed sądami wiejskimi w Polsce w XVI–XVIII w.," *Czasopismo Prawno-Historyczne* 49, no. 1–2 (1997), p. 51.

of Dobrzyń,<sup>144</sup> in order to hear the case of the women from the village who “się czarami bawięły”,<sup>145</sup> namely: Regina Pazdryakowa and her daughter Zofia, wife of the local miller. Before inviting the court to the village, the local people subjected them to ordeal by water “i na których jest suspicja przez pławienie ich”.<sup>146</sup>

Noble village owners also had decisive say during legal proceedings held in their estates by municipal courts. One of such trials took place in the village of Liszkowo (near Nowe), at the time leased by Piotr Bogucki. The case was heard by him and two judges from Łobżenica, Jerzy Baranowski and Michał Szoll. The trial opened on 11 July 1648 and was triggered by accusations made by three local villagers, Adam, Franciszek, and Jan Grochowski against Jadwiga Piszczkowa. They accused her of practising magic harmful towards their cattle. In the first series of torture Piszczowa did not plead guilty to any of the charges, claiming that she did not know how to practise magic. Subjected to torture for the second time, however, she alleged that Kasprowa and Pasturka were witches. Both women were brought before the court and confronted with Piszczkowa. The accused looked them straight in the eyes and said: “nie zapierajcie się, bo wy więcej złego robicie anizeli ja”. Upon hearing this, the women asked to be subjected to the cold water ordeal so that they could prove their innocence. The judges from Łobżenica were not eager to approve the request, but the final decision was made by the leaseholder of Liszków, Piotr Bogucki, who acceded to the women’s plea. Unfortunately for the accused, both of them floated on the surface of the water, both when tied and untied.<sup>147</sup>

Noblemen also had the power to stop the court (even after the accused had not been fortunate in the cold water ordeal) from continuing or starting legal proceedings. This is confirmed by the following example. The exact year of these events is uncertain, but Katharina Havemann, wife of Christian Bätke, inhabitant of the village of Marienfelde (Myślizoszcz, Grunau/Stare Gronowo parish) was subjected to the cold water ordeal sometime before 1734; she died and

<sup>144</sup> It was most probably the wife of *Podczaszy* of Dobrzyń Piotr Kucharski of the Korab coat of arms. It is believed he was granted the post on 8 May 1690, cf. *Urzednicy kujawscy i dobrzyńscy XVI–XVIII wieku. Spisy*, ed. K. Mikulski, W. Stanek with Z. Górski, R. Kabaciński (Kórnik, 1990), p. 184, no. 1539.

<sup>145</sup> Siarkowski, op. cit., p. 90.

<sup>146</sup> Ibidem.

<sup>147</sup> APB, AmŁ, file ref. no. 11, fol. 304ver.



was buried that exact year. The information on the swimming, which was requested by the woman herself after she had been accused of witchcraft, can be found in an account written in later years. Since the woman had floated on the surface, the court planned to sentence her to death at the stake, but the owner of the village did not allow to kill her, arguing that she would not have voluntarily requested the cold water ordeal had she really been a witch.<sup>148</sup>

Summing up, witchcraft trials taking place in Poland in the Early Modern period will hopefully be a subject of further research, the outcome of which will provide new source information allowing for more detailed description of the customs and procedures connected to the cold water ordeal.

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<sup>148</sup> H. Treichel, “Ein Beitrag zur Hexen-Geschichte Westpreußens,” *Zeitschrift des historischen Vereins für den Regierungsbezirk Marienwerder* 5 (1881), pp. 238–239.

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- Instrukcja Rzymska, o sędach i procesach, jako mają być formowane i wydawane przeciw czarownicom i różnemi zabobonami bawiącym się, abo podejrzanym. W Rzymie naprzód roku pańskiego 1657, po tym w Polszcze w Klasztorze Oliwskim po łacinie wydana 1682. Znowu po polsku wytłumaczona i z dozwoleń urzędu duchownego do druku podana. Teraz powtórnie przedrukowana* (Poznań: J.K.M. Kollegium Societatis Jesu, 1739)
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## Abstract

This paper focuses on recapitulating the current state of knowledge on the use of cold water ordeal in witchcraft trials in the territory of the Polish-Lithuanian Commonwealth in the Early Modern Period. The ordeal, despite being banned by the Catholic Church in 1215, was still in use, which is confirmed by the trials carried out in Lithuania at the turn of the sixteenth century. It can therefore be concluded that in the sixteenth century, the cold water ordeal in witchcraft trials started to be used in the territory of the Polish-Lithuanian Commonwealth much earlier than in Western European

countries. Nonetheless, there was no single policy defining at which stage of the trial the ordeal should be applied. In consequence, it was carried out either before the official start of the trial or during the proceedings. There were also many regional differences. While the cold water ordeal was used relatively often in Greater Poland and Royal Prussia, the case files known to today's researchers seem to prove that the situation was rather different in Lesser Poland. While the belief spread by Bohdan Baranowski pointed to women being subjected to the ordeal while fully clothed, information found in source materials and old prints unequivocally shows that the accused were stripped naked before the ordeal.

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