

## The right of re-measurement of settlements in the Middle Ages in the light of the legal practice of Bohemia and Silesia in the 13<sup>th</sup> and 14<sup>th</sup> centuries\*

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### Abstract

During the High Middle Ages, hereditary land tenure prevailed throughout Central Eastern Europe, often in a formalised manner based upon the *ius emphyteuticum*, whereby peasants were guaranteed a stable amount of land rents to be paid to landlords. There was, however, a legal institution that enabled the landlords to practically re-negotiate original settlement contracts without openly violating them, in order to increase their income: the law of re-measurement of settlements (*ius mensurationis*). On examples from Silesia and Bohemia we have demonstrated that the landlords used this means plentifully, either directly through its actual implementation, or indirectly by renouncing their claims for payment. We have also hypothesized on the rationale and origin of the *ius mensurationis*, analyzed who could raise claims based upon it, and commented on the formulas related to this legal institution, which may be found there in Silesian and Bohemian charters.

Key-words: Measurement – Law – Middle Ages – Location – Rent

### Introduction

Stable land parcelling and measurement was one of the key elements of the transformation of European economy, landscape and society in the Middle Ages. This change was especially profound in the areas without vivid Roman traditions, where it was a part of a broader process of transition from “Barbarian collectivism” towards communities founded upon settlement contracts.<sup>1</sup> The contractual basis of economic and settlement forms being

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<sup>1</sup> See Peter Erlen, *Europäischer Landesausbau und mittelalterliche deutsche Ostsiedlung. Ein struktureller Vergleich zwischen Südwestfrankreich, den Niederlanden und dem Ordensland Preußen*, Marburg a.d. Lahn 1992, 288–289; Robert Bartlett, *The Making of Europe: Conquest, Colonization and Cultural Change 950–1350*, London 1994, 117–132; Eike Gringmuth-Dallmer, *Die hochmittelalterliche Ostsiedlung in vergleichender Sicht in:*

established in the 12<sup>th</sup>–14<sup>th</sup> centuries found its expression in specific legal acts which could accompany the processes of founding new settlements or the rearrangement of existing ones (locations). They were broadly discussed by scholars as specific vehicles of modernization.<sup>2</sup> What has not yet been sufficiently explored are further problems and perspectives which were brought about by this new order, and how the social actors were coping with them.

Among the means which were used to deal with the results of the creation of a stable settlement landscape in East-Central Europe was an institution of re-measurement of already parcelled regular settlements (*ius mensurationis*). It has been unevenly illuminated both in the sources and in scholarly papers. Concerning the northern areas of East-Central Europe (Mecklenburg, Brandenburg and Western Pomerania), the *ius mensurationis* was not only reflected in numerous charters but also discussed by scholars, and the discussion summarized by Ulrich Brümmer.<sup>3</sup> This institution was also noticed by researchers dealing with the southern part of East-Central Europe,<sup>4</sup> but never studied in detail for that area, perhaps because of the source basis, which is certainly not as rich as in the north. Nevertheless, also in the southern part of East-Central Europe there are several charters which allow an insight into the legal practices concerning the right of re-measurement of already parcelled settlements, especially if a larger picture is taken into account, exceeding the limits of one region. Therefore, in the following paper we would like to characterize the *ius mensurationis* as it was practiced in two lands that were in the avant-garde of the transformation of the settlement landscape and its legal framework in East-Central Europe: Silesia and Bohemia, basing mainly upon charters concerning the organization or rearrangement of settlements<sup>5</sup>. Both villages and towns will be included, as in both lands analyzed the *ius mensurationis* concerned not only villages but also land endowments of chartered towns.

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Siedlungsforschung 24 (2006), 99–121; Nora Berend, Przemysław Urbańczyk, Przemysław Wiszewski, Central Europe in the High Middle Ages. Bohemia, Hungary and Poland c. 900–c. 1300, Cambridge 2013, 408–409.

<sup>2</sup> Josef Joachim Menzel, Die schlesischen Lokationsurkunden des 13. Jahrhunderts. Studien zum Urkundenwesen, zur Siedlungs-, Rechts- und Wirtschaftsgeschichte einer ostdeutschen Landschaft im Mittelalter, Würzburg 1977; Adrienne Körmeny, Melioratio terrae: Vergleichende untersuchungen über die Siedlungsbewegung im östlichen Mitteleuropa im 13.–14. Jahrhundert, Poznań 1995, 82–198, 213–233; Jan Klapště, The Czech lands in medieval transformation, Leiden 2012, 246–271.

<sup>3</sup> Ulrich Brümmer, Das Vermessungsrecht (jus mensurationis), in: Jahrbücher des Vereins für Mecklenburgische Geschichte und Altertumskunde, 57 (1892), 322–349.

<sup>4</sup> Antonín Haas, O tak zvaném přeměřování lánů na újmu poddaných, in: Český lid 37 (1950), no. 7/8, 168–170; J.J. Menzel, Die schlesischen Lokationsurkunden, 201.

<sup>5</sup> For Silesia, the charters of the 13<sup>th</sup>-cent. were elaborated by J.J. Menzel, Die schlesischen Lokationsurkunden; for Bohemia these were listed and commented by: František Vacek, Emfyteuse v Čechách ve XIII. a XIV. století, in: Agrární archiv 6 (1919), 67–78, 130–144, 174–188; Časopis pro dějiny venkova 7 (1920), 1–61, 112–155; Časopis pro dějiny venkova 8 (1921), 17–42, 65–91, 113–137, 177–202; Časopis pro dějiny venkova 9 (1922), 1–24; A. Haas, O tak zvaném přeměřování; František Graus, Dějiny venkovského lidu v Čechách v době předhusitské, t. 2: Od poloviny 13. stol. do roku 1419, Praha 1957, 114–158.

## **The roots of the *ius mensurationis*: original measurement processes and their consequences**

The right to measure an already parcelled settlement again apparently collided with the perpetual character of the original measurements, which were generally conducted to produce stable pieces of arable land that were to pay fixed amounts of money and grain. There are, however, no cases known from East-Central Europe of general denial of that right, like if all the parties involved, including the potentially injured ones, agreed that the *ius mensurationis* was not a blatant violation of original location contracts. Although there are no explicit indications how it was justified, the legal basis of the *ius mensurationis* may be easily identified: it was the right of the landowners to the income from the immunized land. These were indeed the landlords who inherited or were granted immunity upon some pieces of land, which was a prerequisite of a German-Law location.<sup>6</sup> As a landlord concluded a contract with a location entrepreneur, it meant that he granted him (and subsequently, the settlers he summoned) some liberties on the basis of the immunity inherited or obtained by himself. Nevertheless, if the scope of liberty actually possessed by the mayor and the settlers of a certain town or village differed from the one originally granted to them, the landlord could justly claim the difference as a part of his income that never was renounced by himself. And there were at least two reasons why no one could deny that the new measurements could be justified.

The first reason were the practical shortcomings and deficiencies of the original settlement measurements. Even though the landlords sometimes claimed to have known the approximate<sup>7</sup> or exact<sup>8</sup> acreage to be parcelled in advance, what they could really know were rather some estimations. After all, before the introduction of regular measurement in the 13<sup>th</sup> century the amount of arable land was only calculated through the workload needed for its cultivation (ploughshares) and not by its acreage.<sup>9</sup> Ultimately, the regular measurements of the 13<sup>th</sup> and 14<sup>th</sup> centuries could not be exact, as well, for at least three reasons. Firstly, many of the settlements were first circumequitated and only then parcelled into fiefs, which must have left

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<sup>6</sup> For Bohemia e.g. Josef Žemlička, *Počátky Čech královských 1198-1253: proměna státu a společnosti*, Praha 2002, 204–210, 218–219, 223–224. For Silesia, see J.J. Menzel, *Die schlesischen Lokationsurkunden*, 229.

<sup>7</sup> See e.g. *Schlesisches Urkundenbuch*, ed. by Heinrich Appelt, Winfried Irgang, Josef Joachim Menzel, Köln 1963–1998 (further: SUB), vol. 3, nos. 178, 521; SUB, vol. 6, no. 2. See also Herbert Schlenger, *Formen ländlicher Siedlungen in Schlesien: Beiträge zur Morphologie der schlesischen Kulturlandschaft*, Breslau 1930, 131.

<sup>8</sup> SUB, vol. 3, no. 280; SUB, vol. 5, nos. 85, 349.

<sup>9</sup> See e.g. Witold Kula, *Miary i ludzie*, Warszawa 1970, 51–76; Paul Stichling, *Die kulturgeschichtliche Bedeutung der Feldmaße*, in: *Zeitschrift für Vermessungswesen* 76 (1951), 161–205. For Bohemia: A. Sedláček, *Paměti a doklady o staročeských mírách a váhách*, Praha 1923, 56–58.

irregular “leftover” plots (with the advancement of colonization there evolved a new procedure: first measure, and only then circumequitate,<sup>10</sup> but in the thickening network of delimited villages it was increasingly difficult to implement).<sup>11</sup> Secondly, the objective of the parcelling was to create comparable economic rather than topographic units, so that precision of measurement was not of primary importance.<sup>12</sup> Thirdly, topography of settlements both in lowland and mountainous areas made perfect mensuration with the available instruments impossible (especially when the area being parcelled was still forested).<sup>13</sup>

There was also a deep contradiction of interests inherent to the procedure of location. As the *mansi* or *lanei* of settlers were to constitute the basis of their annual fixed payments, it was always better for the settlers to have more land for themselves, while the landlords tended to have as many fiefs in a village as possible, especially in face of the declining value of the monetary payments. At the same time, the measurement of towns and villages was carried out by location entrepreneurs<sup>14</sup> (in Silesia also ducal measurers originated in that milieu<sup>15</sup>), or even the settlers themselves,<sup>16</sup> who were by no means blind or passive instruments of the investors. In fact, the locators had their own agenda, and were ready to achieve their goals using the *fait accompli* method.<sup>17</sup> As the persons recruiting the settlers, the locators were also certainly willing to cooperate with the peasant communities being created by them, especially at the expense of the landowners and not their own.

None of the reasons listed above were directly mentioned in the sources, but the reasoning presented in some charters is in line with them. The erroneous original measurement was mentioned as a cause of a new mensuration in the charter of Wenceslaus II issued in 1302, concerning the villages of the queens’s estate Budyně nad Ohří (Budin an der Eger).<sup>18</sup> A version of this argument especially widespread in Bohemia was the claim that the new mensuration of

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<sup>10</sup> SUB, vol. 3, no. 521.

<sup>11</sup> Walther Kuhn, Flämische und fränkische Hufe als Leitformen der Mittelalterlichen Ostsiedlung, in: W. Kuhn, Vergleichende Untersuchungen zur mittelalterlichen Ostsiedlung, Köln 1973, 23–25.

<sup>12</sup> See the comments of Menzel, Die schlesischen Lokationsurkunden, 200.

<sup>13</sup> See e.g. SUB, vol. 3, no. 284.

<sup>14</sup> For Silesia see SUB, vol. 3, no. 280; cf. Schlenger, Formen, 130–131; for Bohemia: Graus, Dějiny, 87–90.

<sup>15</sup> See e.g. SUB, vol. 3, no. 280; SUB, vol. 4, no. 278.

<sup>16</sup> If the wording of a certain Bohemian charter be believed: Regesta Diplomatica nec non epistolaria Bohemiae et Moraviae, ed. Karel Jaromír Erben et al., Praha 1855–2014 (further: RBM), vol. 3, no. 756. See also Graus, Dějiny, 86.

<sup>17</sup> Which may be illustrated by a Silesian case from 1320, showing that a self-aware locator could occupy more fiefs than had been intended for him, and treat them as rent-free: Regesten zur Schlesischen Geschichte, Bd. 4–8, Codex Diplomaticus Silesiae, Bd. 16, 18, 22, 29, 30, Bd. 4–6 ed. C. Grünhagen, K. Wutke, Bd. 7 ed. K. Wutke, E. Randt, H. Bellée, Bd. 8 ed. K. Wutke, E. Randt, Breslau 1892–1903, 1923, 1925 (further: SR), no. 4042.

<sup>18</sup> Codex Iuris Municipalis regni Bohemiae, ed. J. Čelakovský, G. Friedrich, A. Haas, Prague 1886–1961 (further: CIM), part 4/1, no. 17. Paradoxically, the guidelines in the charter for another estate of the Bohemian queens (Lysá nad Labem) from 1292 specified that villages should be measured according to the location entrepreneurs’s custom (RBM, vol. 2, no. 1534).

land was to be conducted by professionals acknowledged in the Kingdom with the use of proper measurement units. This idea was explicitly brought up in relation to re-measurement of arable lands in the charter of King John of Luxembourg for the royal town Žatec (Saaz), issued in 1321,<sup>19</sup> and more implicitly in the privilege of the Vyšehrad chapter for the village Hostín from the year 1337.<sup>20</sup> There is also source evidence from both Silesia and Bohemia that the argument of underestimation of land by the tenants was used. Especially significant in this respect are the charters of Abbot William of the St. Vincent Abbey in Wrocław for the village Górzec (1278) and of Hynek Berka of Dubá for his town Hostomice (1343). They both leave no doubt that according to the landlords the acreages of the village and town that were addressees of the privileges, were underestimated by their inhabitants.<sup>21</sup> Similar formulations may be found in the charter of king John of Luxembourg for the town Žatec from 1321, which explicitly demanded that justice be done to the monarch by the townsmen.<sup>22</sup>

No matter how it would be rationalized, the original measurements were surely the Achilles's heel of the location processes. That is why ordering a new mensuration could be the best way to practically influence the contents of the original settlement contracts without formally violating them. As far as may be concluded from the source basis available, such actions were conceived as legitimate, at least there are no cases of formal protestations against new measurements or alternative mensurations commissioned by opposing parties. The strength of this *ex silentio* argument is weakened by the fact that the parties interested in new measurements were also the ones who had some rights to the rents and other incomes from the fiefs, and stood at the very top of the society. On the other hand, the parties injured in case of new measurements were not only relatively vulnerable peasant communities but also self-aware and rich town communes, who knew many ways to protect themselves. Despite that, in all known cases the way chosen by townsmen or peasants was not to litigate but rather negotiate,<sup>23</sup> which suggests that the *ius mensurationis* was generally accepted by all the parties involved. The possibility to negotiate seriously with the landlords was based on the fact that the peasants or townsmen could refuse to accept newly measured or founded lands. We know this right indirectly due to the charters that included the obligation to accept newly measured or found

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<sup>19</sup> CIM, vol. 2, no. 115.

<sup>20</sup> RBM, vol. 4, no. 428.

<sup>21</sup> SUB, vol. 4, no. 340; CIM, part 4/1, no. 53.

<sup>22</sup> CIM, vol. 2, no. 115.

<sup>23</sup> Complex negotiations that ended in a compromise are particularly indicated by the charter given to the inhabitants of the town of Hostomice in 1343 (CIM, part 4/1, no. 53). See also Haas, O tak zvaném přeměřování, 169.

hides<sup>24</sup> or mentioned the possibility of not accepting a new measurement by the peasants<sup>25</sup>. But, who was actually entitled to raise claims to a new measurement?

### **Ius mensurationis: whose was it?**

Thanks to the study of Brümmer, we know that at least in the northern areas of East-Central Europe the right to re-measure a town or village rested not only with the *dominus fundi* – landlord (*Grundherr*). Similar claims could be raised also by other subjects, whose income (tax, tithe) was dependent on the measurement and distributions of plots of arable land: the territorial rulers (*Landesherren*) and bishops<sup>26</sup>.

The problem of possible rights of Kings of Bohemia and Dukes of Silesia is apparently not easy to solve, especially for Silesia, where many charters concerning the *ius mensurationis* were issued by the rulers. Nevertheless, there is no single premise in the sources that any claims of the monarchs to re-measurement of settlements were based upon their *imperium* and not *dominium*. Even if the towns or villages for which the kings of Bohemia issued their charters concerning re-measurements were at the moment possessed by someone else, they were always pertinencies of the royal demesne.<sup>27</sup> In general, if a re-measurement was commissioned,<sup>28</sup> reserved for the future or given up,<sup>29</sup> it was always the *dominus fundi* that undertook the legal action.

It was also the landlord who had the claim to take advantage from the areas which were left after measurement, so called “leftovers” (Latin *excrescenciae* or *remanenciae*, German *Überschar*, *Übermass* or *Zumässe*, Polish *napłaty*, *przymiarki*, *domiarki*, *zbytki*, *ostatki*). The Silesian and Bohemian landlords disposed of those additional plots and their benefits, either before,<sup>30</sup> or after they arose.<sup>31</sup> There are indeed a few examples of village mayors (*sculteti*)

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<sup>24</sup> Formulář biskupa Tobiáše z Bechyně (1279–1296), ed. Jan Bedřich Novák, Praha 1890, Historický archiv 22 (further: FbTB), no. 156; RBM, vol. 4, no. 1840.

<sup>25</sup> SUB, vol. 4, no. 340.

<sup>26</sup> Brümmer, *Das Vermessungsrecht*, 334, sqq.

<sup>27</sup> Cf. RBM, vol. 4, no. 1189 (1342). For queens' possessions: CIM, part 4/1, no. 17 (1302); CIM, vol. 2, no. 113; RBM, vol. 4, nos. 2134–2135.

<sup>28</sup> SUB, vol. 4, no. 340; SUB, vol. 5, no. 278; CIM, part 4/1, no. 17; Gustav Adolf Tzschoppe, Gustav Adolf Stenzel, *Urkundensammlung zur Geschichte des Ursprungs der Städte und der Einführung und Verbreitung deutscher Kolonisten und Rechte in Schlesien und der Oberlausitz*, Hamburg 1832, no. 110; CIM, vol. 2, nos. 113, 115; RBM, vol. 4, no. 428; CIM, part 4/1, no. 453.

<sup>29</sup> Respective documentation: see below, under reservations and renunciations of *ius mensurationis*.

<sup>30</sup> SUB, vol. 3, nos. 190, 440; SUB, vol. 4, no. 452; SUB, vol. 5, no. 36, 278; RBM, vol. 4, no. 849.

<sup>31</sup> SUB, vol. 4, no. 340; SUB, vol. 5, nos. 6, 57; August Kastner, *Diplomata Nissensia antiquiora*, in: *Jahresbericht des Königlichen Katholischen Gymnasiums zu Neisse 1851/1852*, Neisse 1853, no. 29; Tzschoppe, Stenzel, *Urkundensammlung*, no. 110; CIM, part 4/1, no. 53; *Codex Diplomaticus Silesiae*, vol. 1: *Urkunden des Klosters*

possessing the “leftovers” (*Überschare*) or income from it, but in no single case it might be proven that they had any right of their own there, not deriving from some agreement with the landlord or an usurpation. If any right was reserved to the mayors in the “leftover” plots, it was only the sixth part of them, which derived from the general custom of the locators obtaining the sixth of all the arable land in a settlement organized by them<sup>32</sup>. On the contrary, there are several examples in Silesian and Bohemian charters of buyout or lease,<sup>33</sup> donation<sup>34</sup> or usurpation<sup>35</sup> of the “leftovers” by the mayors alone or together with the communities. There are also cases of consent of the landlords over dispositions concerning the incomes from such plots made by the village mayors.<sup>36</sup> The unmeasured land (which was often uncultivable) was usually not paid out as rent, and it was often left to the peasants as communal pasture.<sup>37</sup> In most cases, pastureland also used to be excluded from the remeasurement.<sup>38</sup>

Significantly, there is no case known from Silesia or Bohemia of the *ius mensurationis* being used against the landlords by either provincial or ecclesiastical powers, not to mention the peasantry. It seems to support the thesis raised above that the right to re-measurement was generally derived from the right of the landlord to the benefits of the immunized pieces of land. One must also bear in mind that the most widespread pattern of location was a contract between the landlords and the location entrepreneurs<sup>39</sup>. Therefore, any claims concerning deficient peasant fiefs were to be actually addressed to the mayors, not the village owners, and the mayors who found themselves lacking some land were actually to sue themselves as the ones responsible for the original measurement. It seems, therefore, that the town and village communities were practically incapable of using the *ius mensurationis* against the dominium. There are also no traces of other secular or ecclesiastical powers ordering or claiming re-measurement of settlements. The only partial exception in this matter was the claim of the Wrocław bishopric to the tithe from the “leftover” plots, which resulted from a synodal statute

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Czarnowanz, ed. Wilhelm Wattenbach, Breslau 1857 (further: CDS 1), no. 69; Decem registra censuum bohemia compilata aetate bellum husiticum praecedente ed. Josef Emler, Praha 1881, pp. 240-242. In some cases, new settlements were created from the *excrescentiae*: SUB, vol. 5, no. 57; SUB, vol. 6, no. 64.

<sup>32</sup> See below, under reservations.

<sup>33</sup> SUB, vol. 3, no. 119; SUB, vol. 4, no. 340; Tzschoppe, Stenzel, Urkundensammlung, no. 110; RBM, vol. 4, no. 428; SR, no. 2548; CIM, part 4/1, no. 53; SR, no. 4208.

<sup>34</sup> SUB, vol. 4, no. 452; Decem registra, pp. 240–242; CDS 1, no. 69.

<sup>35</sup> SR, no. 4042.

<sup>36</sup> SR, no. 2548.

<sup>37</sup> RBM, vol. 3, no. 697; RBM, vol. 4, no. 237; RBM, part 6/2, no. 542; CIM, part 4/2, no. 60; Decem registra, pp. 234–235, 240–242.

<sup>38</sup> See e.g. SUB, vol. 6, no. 145; RBM, vol. 3, nos. 615, 1874; RBM, vol. 4, nos. 428, 2135. Nevertheless, if it appeared profitable for the landlords, not only pastures, but even village buildings could be included in peasant fiefs (see below, the case of Górzec).

<sup>39</sup> Menzel, Die schlesischen, 141–142, 214; Graus, Dějiny, 87–93.

of the Gniezno archbishopric issued in 1285.<sup>40</sup> It concerned, however, only the results of measurements being conducted by the entitled parties (the landlords), and not new mensurations at the demand of the bishops.

### **Reservations concerning the *ius mensurationis***

It appears that the Silesian and Bohemian landlords felt rather confident about their right to commission new mensuration of villages owned by them, at least judging by the low number of charters where such a right was reserved by the issuers. Among the published documents from Bohemia and Silesia only two, both issued by the bishops of Wrocław (Breslau), contain such stipulations: one in favor of the landlord, and one: of the village mayor.

The former is the charter of bishop John for Ulrich, locator of the village \**Kielczowo* (later *Zwei Hof*, at present *Zagródki* by Wrocław/Breslau), issued in 1295.<sup>41</sup> Apparently, respective clause of the privilege does not differ much from other provisions of location charters indicating what should be done with the area remaining after the measurement of a certain number of fiefs.<sup>42</sup> It must be stressed, however, that in case of \**Kielczowo* the privilege stated explicitly that it was issued not only after circumequitation but also *mensuracione facta* – which must have in fact taken place, as the acreage of the village in the quoted privilege and the ducal charter preceding it<sup>43</sup> slightly differ. Despite that, a possibility of new measurement was reserved by the landlord for the future.

Not only landlords could be protected by reservations concerning the *ius mensurationis*. In his charter for Peter, the mayor of Heidau (*Hajduki Nyskie*) from 1263, bishop Thomas of Wrocław (Breslau) assured that the sixth of land eventually acquired through a new measurement would be reserved for the recipient of the privilege.<sup>44</sup> It appears that the mayor did not fail to foresee not only the possible risks but also potential advantages of re-measurement of his village. We must be also aware that in the episcopal chancery in Wrocław the very idea to reserve for the mayor in a written form a portion of all the settlement area – that is, not only the land parcelled into fiefs, but also the “leftovers” – was much older. Such a provision may be found already in a privilege of Bishop Thomas I from 1256.<sup>45</sup>

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<sup>40</sup> *Kodeks Dyplomatyczny Wielkopolski*, t. 1, Poznań 1877, no. 551.

<sup>41</sup> SUB, vol. 6, no. 190 (1295).

<sup>42</sup> Cf. i.a. SUB, vol. 5, no. 36 (parcelling of the “leftover” in the same manner); SUB, vol. 2, no. 352; RBM, vol. 4, no. 849 (devolution of the “leftover” to the landlord).

<sup>43</sup> SUB, vol. 6, no. 224.

<sup>44</sup> SUB, vol. 3, no. 440.

<sup>45</sup> SUB, vol. 3, no. 190.

## Renuntiations of the *ius mensurationis*

The most numerous clauses mentioning the right of re-measurement contain resignations from it. It is no wonder, as the *ius mensurationis* was obviously perceived as a threat by the mayors and the peasantry, and as an opportunity by the landlords. After all, re-measurement was able to produce new income sources (additional plots) without openly violating the location contracts. It must have been tempting in face of the declining real value of the fixed rents, owed by the peasants from their fiefs.<sup>46</sup>

In the light of the published sources, this possibility was noticed earlier in Silesia (in the 13<sup>th</sup> century) but it was in Bohemia (in the 14<sup>th</sup> century) that the *ius mensurationis* developed into a specific fiscal tool. It was even sometimes openly qualified as such, being listed among possible burdens (e.g., new undue charges), in close relation with the *arra vel anleyt*, that is introduction (purchase) price for a fief.<sup>47</sup> Significantly, in Bohemia not only documents mention new mensurations in such a context; also contemporary satires included lamentations over the remeasurement of hides and additional land rent<sup>48</sup>. Maybe that is why there are many more documents including a waiver of the right to a new mensuration known from Bohemia<sup>49</sup> than from Silesia: for the former there are maybe a dozen such charters, and for the latter: only two. It is difficult to count precisely the Bohemian examples because sometimes the clauses that might be interpreted as renouncing the *ius mensurationis* are very brief (e.g., mentioning the fiefs “as they are and there should be”).<sup>50</sup> Nevertheless, there are 14 published charters from Bohemia that contain explicit formulas of renunciation of the *ius mensurationis*. Among those, there are two privileges concerning only the question of re-measurement of arable land areas of particular towns,<sup>51</sup> and 12 location privileges/contracts.<sup>52</sup>

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<sup>46</sup> Graus, *Dějiny*, 135, 182–183; Haas, *O tak zvaném přeměřování*.

<sup>47</sup> Graus, *Dějiny*, 132–133; *Libri erectionum Archidioecesis Pragensis saeculo XIV. et XV. Liber I. (1358–1376)*, ed. Karel Borový, Praeae 1875, no. 111; RBM, vol. 3, no. 539, RBM, vol. 4, nos. 650, 888, 924, 926, 1189.

<sup>48</sup> Graus, *Dějiny*, 182.

<sup>49</sup> Tomáš Klír, *Lokační aktivity pražských měšťanů*, in: *Krajina středověké Prahy*, eds. Jan Klápště, Tomáš Klír, Ivo Štefan, Praha, forthcoming.

<sup>50</sup> E.g. RBM, vol. 3, no. 1625; RBM, vol. 4, no. 2186; CIM, part 4/1, no. 60.

<sup>51</sup> CIM, vol. 2, no. 113; CIM, part 4/1, no. 53.

<sup>52</sup> RBM, vol. 3, no. 756; RBM, vol. 4, no. 2135; *Archiv český*, vol. 28, ed. Josef Teige, Praha 1912, p. 3–4; *Listy kláštera Zbraslavského*, ed. Ferdinand Tadra, Praha 1904, *Historický archiv* 23, no. 161; František Palacký, *Ueber Formelbücher zunächst in Bezug auf böhmische Geschichte, nebst Beilagen: ein Quellenbeitrag zur Geschichte Böhmens und der Nachbarländer im XIII, XIV und XV Jahrhundert*, vol. 1, Prag 1842, no. 168, p. 366; *Urkundenbuch der Stadt Saaz bis zum Jahre 1526*, ed. Ludwig Schlesinger, Prag 1892, nos. 160, 196; CIM, part 4/1, nos. 60, 96, 173, 281; CIM, part 4/2, no. 554. Cf. Haas, *O tak zvaném přeměřování*.

In most charters containing a waiver from the new mensuration the respective clause is rather brief and comprises of declaration that the corresponding villages should not be measured again any more. In her charters from 1319–1320 queen Elisabeth of Bohemia resigned from the future mensuration not only in her name but also of her successors. Another group of privileges from the 2<sup>nd</sup> half of the 14<sup>th</sup> century, which made use of the same formulary, added also that the plots should remain within their limits. Two of those included also a reservation that allowed the plots to be re-measured despite the general waiver, but only in case of some dissent among the peasants.<sup>53</sup> Possibly the formulations of the above-mentioned charters of Queen Elisabeth should be interpreted in a similar vein, as she resigned only from measurements detrimental to the townsmen/peasants of respective localities, and did not forbid any new mensurations at all. Among the Silesian charters containing the renunciations of the *ius mensurationis* there were also brief and more elaborate formulations. The former may be found in a forged document for the mayor of the town Nysa (Neisse); the respective plots were there described just as *nullatenus mensurandi*<sup>54</sup>. More sophisticated was the renunciation formula in a charter of the St. Vincent Abbot in Wrocław (Breslau) for the village Górzec (Gurtsch) from 1278. The issuer declared there that neither he or his successors would let the village be measured again, nor must the peasants consent to such a future re-measurement<sup>55</sup>.

### **Other clauses concerning the *ius mensurationis***

There are two more clauses known from Silesian and Bohemian charters that concern the *ius mensurationis* but are qualifiable neither as its reservations nor renunciations. One of them comes from the charter of Abbess Euphrosine of the Trzebnica (Trebnitz) Cistercian Monastery from 1368. The abbess assured there the villagers from Domaniów (Thomaskirch) that the measurements undertaken by the provisor of the monastery would not harm them, and the calculation of rent would be based not on the outcome of the mensuration but on the “fiscal” acreage registered before the measurement.<sup>56</sup> Through this privilege no general waiver of the *ius mensurationis* was granted but it was suspended for the particular mensuration. How clever it was for the peasants to obtain a written confirmation of such a privilege may be illustrated by an example of another village of the same ecclesiastic institute, Domanowice (Domnowitz). In

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<sup>53</sup> Palacký, Ueber Formelbücher, no. 168, p. 366; Urkundenbuch der Stadt Saaz, no. 196.

<sup>54</sup> SUB, vol. 1, no. 363.

<sup>55</sup> SUB, vol. 4, no. 340.

<sup>56</sup> SUB, vol. 5, no. 278.

1587 they were sued by the monastery at the ducal court over two extensions of their plots for which they did not pay a single penny, and found guilty even though they were referring to some redemption contract from the past, which was, however, apparently not confirmed by any written act.<sup>57</sup>

One more act concerning the *ius mensurationis* that is neither its reservation nor renunciation was issued in 1342 by Margrave Charles of Luxembourg (future Emperor Charles IV). Its addressees were the inhabitants of a royal town Vladislavice and the villages surrounding it, that were pledged to Ulric (Oldřich) of Kostelec. In his privilege, Margrave Charles allowed them to buy themselves off with their own money from the possession of Ulric and promised not to oppress them with undue burdens, i.a. new buyout prices (*arra vel anleyt*) for the arable land found through new measurements. Moreover, the Margrave guaranteed the citizens and peasants that he would obtain a privilege from his father, King John, that would ratify the acts and obligations described in his charter<sup>58</sup>.

### **Re-measurements: real or virtual, original, or new?**

It seems to be more than a coincidence that in every case of re-measurement we know, there were new *mansi* found, as if the units of measure were constantly shrinking or the areas being measured constantly expanding. If a closer look be taken at the privileges mentioning the new measurements, one might ask, whether the mensurations mentioned there really took place or it was only a theatrum for the sake of the landlords squeezing some money out of their subjects.

Indeed, at least the document of Hynek Berka of Dubá for the town Hostomice does not leave any doubt that it was not a really conducted mensuration that made the townsmen consent to pay for “new fiefs” and a privilege of the land not being measured any more, but only a threat of such an action.<sup>59</sup> In general, however, the charters provide the readers with visions of measurement actions being really carried out. They are also not lacking some significant details that would support the view of measurement undertakings being conducted, as the mentions of land surveyors working in the field,<sup>60</sup> and descriptions of the units being used during those

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<sup>57</sup> Codex Diplomaticus Silesiae, vol. 4: Urkunden Schlesischer Dörfer, zur Geschichte der ländlichen Verhältnisse und der Flureintheilung insbesondere, ed. August Meitzen, Breslau 1863, documents of Domanowitz, no. XV, pp. 279–281.

<sup>58</sup> RBM, vol. 4, no. 1189.

<sup>59</sup> CIM, part 4/1, no. 53.

<sup>60</sup> CIM, vol. 2, no. 115.

actions.<sup>61</sup> On the other hand, it cannot be denied that at least some of the alleged measurement actions could peak in a certain domain in relatively short period of time; at least this was the case in the Royal demesne of Bohemia in 1320–1321. There is no doubt that these were rather the needs of the Royal treasury than any worries about proper measurement units that concerned the king and his men in this case and we should not take it for granted that all the measurements mentioned in the sources were really carried out in the field. What is pretty sure is that the practically or virtually re-measured settlements were not measured once more, so that the once obtained privileges were later observed.

Apart from the question whether the re-measurements were really carried out there is also another issue: whether the re-measurements mentioned in the sources were really new mensurations. This problem may be illustrated by the case of the Silesian village Górzec (Gurtsch), that obtained its location privilege in 1252,<sup>62</sup> but in 1278 it was still to be measured on behalf of the landlord, St. Vincent Abbey.<sup>63</sup> A closer look at the surviving cadastral plan of that village from the 19<sup>th</sup> century allows to recognize the communal pastures which may be identified with the “leftover” areas mentioned in the privilege from 1278; the acreages of all the village area those plots excluded also corresponds to the 28 mansi mentioned there<sup>64</sup>. What is interesting, is that the common pastures are “leftovers” of topographic origin: small triangular plots that were left after the division of the arable land into huge quadrangular fields. It seems, therefore, that either the mensuration mentioned under 1278 was fictive and what was hidden under that name was actually only the buyout of the existing “leftover” plots, or it was actually the first measurement of the village that took place in the 1270s and not 1250s. In fact, the latter seems more probable as in the charter from 1278 there was no mention of the original mensuration, but only that the village community claimed to have possessed a certain number of fiefs. Some formulations of other Silesian charters seem to support such an interpretation: the measurement appears there not as a separate action but rather as a closing mark of location processes extended in time.<sup>65</sup>

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<sup>61</sup> CIM, vol. 2, nos. 114, 115.

<sup>62</sup> SUB, vol. 3, no. 37

<sup>63</sup> SUB, vol. 4, no. 340.

<sup>64</sup> The measurement was undertaken by dr. Maria Legut-Pintal with the aid of the QGIS software on the geo-referenced copy of the cadastral plan of the village, preserved in the State Archive in Wrocław, sign. 82/192/0/4.9/35.

<sup>65</sup> See Kastner, *Diplomata Nissensia*, no. 29 (the location was commissioned 7 years before: SUB, vol. 6, no. 442); Tschoppe, Stenzel, *Urkundensammlung*, no. 110.

## Conclusions

In the above remarks, we have tried to find out the nature and functions of the right to re-measure existing settlements in Silesia and Bohemia in the 13<sup>th</sup> and 14<sup>th</sup> centuries. According to our analysis of the sources, the claim to re-mensuration rested in those lands exclusively by the landlords and should be interpreted as a consequence of them having the claim to the benefits from their immunized land. The context of usage of the *ius mensurationis* was also purely economic: the objective of new measurements was to maximize the profit of the landowners without violating the settlement contracts. If the fields were already measured and the hides established and burdened with appropriate land rents, the landlords tried to increase the original amount, which was possible by measuring them while manipulating the units of measure or rules governing it. Thus, the coming of measurers in the village rarely did the peasants any good.<sup>66</sup> Especially in Bohemia the *ius mensurationis* seems to have evolved into a sort of fiscal tool which could be used by the landowners against their subject tenants. That is why the townsmen and peasants were often ready to pay for the privilege of not having their arable land measured any more, or even to buy out the alleged “leftovers” even without actual mensuration in the field.

The fiscal context of the right of re-measurement is also obvious in the case of Silesia, although there are certainly less documents reflecting it, and they are generally earlier. Such a difference may be an effect of slightly different course of the high medieval transformation of landscape and society between Silesia and Bohemia. In the former, the creation of the network of stable settlements was running more or less parallelly to the changes in the legal framework, while in the latter topographic regulation of settlements often preceded formal locations.<sup>67</sup> That might be the reason why the measurements in Silesia were often mentioned in the context of the closing phase of location and/or regulation processes, while in Bohemia they were registered later, along with the “legal locations” of villages (their setting upon *ius emphyteuticum*, *ius Theutonicum*, *purkrecht* etc.). In fact, the waivers of the *ius mensurationis* generally come from the charters marking the “legal locations”. Thus, they represent a developed stage of respective document formulary, which was used by parties well acquainted

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<sup>66</sup> Kula, *Miary i ludzie*, 72–75.

<sup>67</sup> Jan Klápště, *The Czech lands in medieval transformation*, Leiden 2012, *East Central and Eastern Europe in the Middle Ages 450–1450*, vol. 17, 242–271; Jan Klápště, Zdeněk Smetánka, Zvonimír Dragoun, *Příspěvek ke studiu zemědělského zázemí středověké Prahy*, *Archeologické rozhledy* 35, 1983, 387–426.

not only with the primary but also secondary challenges which could result from the “legal location”.

The measurement actions mentioned in Silesian and Bohemian sources of the 13<sup>th</sup> and 14<sup>th</sup> centuries do not concern particular plots as, e.g., some of the measurements undertaken in that period in England,<sup>68</sup> but the relation between the lordship and the town or village communities. This circumstance not only underlines the particular status of those communities as legal subjects but also shows the real scope of their autonomy, which was even sometimes fixed in particular clauses of charters, explicitly allowing the peasants to undertake re-measurements in case of dissent among themselves.

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<sup>68</sup> Andrew Jones, Land Measurement in England, 1150–1350, in: *The Agricultural History Review* 27, no. 1, 1979, 18.