

2021-22 / LESSON 18 / 2021-11-26

Later Middle Ages -- ~1000-~1492 ce/10

1244

Curia di Petizion instituted to judge in litigation on matters not disciplined by law and thus falling outside the attributions of the other Courts as stated in their capitulars.

The Curia deliberates its sentences *per justitiam, laudum et arbitrium* = any sentence (*arbitrium*) which receives the majority of the votes (*laudum*) is the just solution (*justitiam*) for the case; the judges are suppletive legislators for new situations.

The capitular of Curia di Petizion is added to *Statutum Novum*; the use of *arbitrium* is going to be extended to other magistrates as a general guideline in order to find equity in dubious cases. There is no violation of constitutional custom: the judges are magistrates holding full *iurisdictio* in their field of action on behalf of the State, in legislative matters as well as judicial and executive.

http://www.arielcaliban.org/PX_curie.pdf

1249

Institution of Savi all'Eresia for secular repression of the crime of heresy, in order to limit the powers of the Church in this matter.

1289

Since 1234, the ecclesiastical courts condemn those found guilty of canonical crimes during inquisitorial trials, but do not directly shed blood; instead, they request the secular powers to execute the sentences for them; secular powers are thus called to execute sentences given without their participation in any form

The Comune imposes the Savi all'Eresia as obligatory members of the ecclesiastical courts in trials for heresy, so that no condemnation is possible without the approval of the secular powers and the State is not limited to be a passive executor (secular arm) of ecclesiastical decisions against the citizens, as in the rest of Christianity.

From the personal reference ms. notes, unpublished, compiled in the XVIII century by Giovanni Guidozzi, a secretary and informal counselor for Venetian judges:

XII. E quando occorresse, che da Giudici ecclesiastici senza l'assistenza [dei Savi all'Eresia] fosse formato alcun Processo, [i Giudici secolari veneziani] l'avranno per nullo, e non lo eseguiranno ovvero permetteranno che sia

eseguita cosa alcuna in conseguenza di quello, ma bene concederanno, che si possa formare nuovo Processo con l'assistenza.

Così deliberò il Senato li 18 Gennaio 1591 [m.v. = 1592] e fece dire al Nunzio Apostolico il dì 8 Giugno 1592, e li 6 Luglio 1599 [rectius: 1592], e 1592 9 Agosto, e finalmente sotto li 18 Febbraio 1594 [m.v. = 1595].

E se in un Processo bene incominciato [cioè con la partecipazione dei Savi all'Eresia] foss'atto alcuno particolare senz'assistenza, [i Savi] procureranno che sia cassato (...)

XII. And should any Process instituted by ecclesiastical Judges without the participation [of the Savi all'Eresia], [the secular Judges] will hold it as null and void, and will not execute it nor allow any act to be executed by that title, but they will allow that a new Process be instituted with participation.

Thus the Senate deliberated on January 18, 1591 [m.v. = 1592] and notified to the Apostolical Envoy on June 8, 1592, and on July 6, 1599 [rectius: 1592], and 1592 August 9, and finally on February 18, 1594 [m.v. = 1595].

And if in a Process correctly instituted [that is, with participation of the Savi all'Eresia] should any individual act be performed without participation, they [the Savi] will take care that it be declared null and void (...)

XII

*E quando occorrere, che da Giudici Ecclesiastici senza l'assistenza
sia forse formato alcun processo, l'avranno per nullo, e non
lo eseguiranno ovvero permetteranno che sia eseguita cosa al-
cuna in conseguenza di quello, ma bene concederanno, che si
possa formar nuovo processo con l'Assistenza*

*Così deliberò il Senato sotto li 18. Genn^o 1592. e fece dire al Nun-
zio Apostolico il dì 8. Giugno 1592, e li 6. Lug^o 1599, e 1592
9 Agosto, e finalmente sotto li 18. Febb^o 1594*

*E se in un Processo bene incominciato, foss'atto alcuno par-
ticulare senz'assistenza, procureranno, che sia cassato, ovvero
almeno circondato, e ridotto il processo ne' termini, ch'era
innanzi quell'Atto.*



~1250

Europeization, nationalisation and pragmatization of the legal culture of the Universities.

Magna Glossa by Accursius to *Corpus iuris civilis* (Justinian's compilation in a medieval transcription with appendixes); *Glossa ordinaria* by Bartholomaeus Brixianus to *Decretum Gratiani* (a private compilation of rules of canon law from different sources up to about 1140).

Alfonso el Sabio king of Castile translates and legitimates into Fuero Juzgo the *Liber iudiciorum*, a compilation of Visigothic customs based on Roman Theodosian law, and legitimates the national judicial customs in Fuero Real.

In Venice, glosses are appended to the text of the Statutum Novum. One series makes comparisons with the legal doctrine of the universities, the other to actual application by the Courts.

http://www.arielcaliban.org/PX_glosse.pdf

1253

Ranieri Zeno is elected as doge; the *placitum* does not approve the election anymore, but an anticipated oath is given by a gastaldo as a representative of the people.

Interpreting the order of the sources of law stated in *Statutum Novum* in consideration of the different weight of statutory in comparison with ordinary legislation, the rules of law are now applied judicially in this order: 1) statutes, including *promissio maleficiorum*, *promissio ducis*, capitulars of the magistrates, 2) legislation by Councils and magistrates, 3) customs supported by evidence and reason, 4) *arbitrium*.