

THE SOCIO-CULTURAL BACKGROUND OF LEGAL CONFLICTS

A STUDY OF TWO RURAL COMMUNITIES IN POLAND

Maria Magoska

1. Introduction

This article is part of a larger study devoted to a comparative analysis of different types of conflicts and to the various ways of solving them in two rural communities in Poland.¹ The majority of these conflicts concerns problems of everyday life. According to Polish state law, they are subject to 'civil law'. My fieldwork was executed in two villages located in two adjacent districts in the mountains of Southern Poland, far from urban and industrial centers.² The first village is called Frydman (in the region of Spisz), where *extra-judicial* ways of conflict settlement are characteristic. The second village is Stare Bystre (region of Podhale), where a *judicial* way of solving conflicts is dominant. The following analysis attempts to answer the question of what factors determine a differential use of litigation institutions in settings that are superficially similar: inhabitants of Stare Bystre seem to prefer formal procedures via state courts, whereas the inhabitants of Frydman prefer more informal procedures for settling their disputes.

By conflict I refer to serial interactions between two parties in which the demands, claims or actions of one meet active resistance by the other party. The overt and direct aspects of the parties' interaction are stressed by Abel

1 My study was carried out within the framework of a larger international research project, called 'Law and Dispute Treatment', conducted by the Institute of Sociology of Law for Europe. For a report on this research, conducted in 13 countries, see Ferrari (1982).

2 The nearest town, Nowy Targ, has a population of 28,000. Frydman has 1,471 inhabitants and Stare Bystre has 1,692 inhabitants.

(1974:227). Conflict, like any interaction, is also related to the context in which it occurs. Depending on context - a factory, a family or a relationship between a shop-assistant and a customer - conflicts follow different courses. As to conflict, it is possible to differentiate between three basic influences in social contexts:³ a) the degree of independence of the members of the social group, b) the hierarchical differentiation of power within the group; and c) relational distance between the two parties.

In the litigation literature (Falke and Gessner 1982:299, see also Koch 1974, Introduction) various *types* of procedures of conflict settlement are also distinguished. These procedures are to be projected on a scale according to their relative formalization. (State) adjudication usually concerns relatively strongly formalized procedures and can be placed on the one end of the scale. This procedure, in which a third party (a judge) can impose a decision, often coincides with a relatively small influence by the disputing parties and a relatively greater influence of rules on the outcome of the conflict. Negotiation is at the opposite end of the scale as the most informal procedure. Negotiation implies that parties reach an agreement by bargaining amongst themselves. Here the influence of formal rules is of less importance. In between these extremes an intermediate procedure can be placed, namely mediation or conciliation. In my study I have used the hypothesis that the type of procedure preferred in the two villages would depend on the degree of social integration existing there. I assume that a relatively well-integrated community will prefer less formal procedures and that, conversely, a less integrated community will opt for a relatively formal type of procedure.⁴

In my work, I employed the standard anthropological methods, primarily formal and informal interviews, participant observation and document analysis. I also used some statistical data. The empirical research was carried out mainly in two locations, viz. 1) in court, where I interviewed judges, lawyers and a notary and where I did some participant observation, 2) in the villages, where I observed the everyday lives of both communities and particularly of the families who offered me lodgings. During my research in the village, however, I was mostly occupied with interviewing (by questionnaire) inhabitants of both communities. The total number of the interviews amounted to 140. I spent about three months in each community. I also took part in some weddings and other ceremonies. In addition, interviews with village teachers, with parish priests and with clerks of the local authorities provided me with essential data.

3 Falke and Gessner (1982:299). See also Nader (1969)

4 For a full statement of such a hypothesis, see Koch and Sodergren 1978.

2. Some historical and ecological facts about Frydman and Stare Bystre

Frydman is an old village with a history going back to the 14th century. In those days, it belonged to the region of North Spisz. The 14th century was a time of strong, peaceful Polish-Hungarian relations. In 1769, Austria took over the territory of Spisz; until 1918, the whole region of Spisz belonged to the Austrian-Hungarian monarchy. For the greater part of that period, Frydman was governed by the district authorities of Stara Wies, at present a district in Czechoslovakia, which was the seat of the court and of the notary. In Frydman as in the other Spisz villages, there existed patrimonial courts, which meant that the administration of justice was an *internal* village affair: it was executed by the owner of a certain village. In the years following the Second World War, antagonism developed between the Polish and Slovak populations living in Spisz. For example, the two primary schools taught in Polish and in Slovak, respectively. In 1958 an agreement was negotiated between Poland and Czechoslovakia, definitively regulating all the frontier issues. This agreement was of great importance for the relations between Polish and Slovak people. (In the same year the Slovak school was closed due to a lack of pupils.) All in all, the village of Frydman was subjected to intense and various cultural influences: Polish, Slovak and Hungarian.

The other village, Stare Bystre, was founded in the region of Podhale in 1562. Until the middle of the 18th century this land formed part of the royal estates; property held by the church and by individuals was minimal in the area. The general conditions of life of the people in Podhale were better than those of people living in the privately owned villages. They were entitled to various privileges and the most important of them was the right to submit complaints to the king's court. From archive studies we know that the peasants very often used this particular privilege which did not exist for the majority of Polish peasants. In 1769, Podhale, like Spisz, was occupied by Austria. During the Partition,⁵ the peasants of Podhale fought for their rights. The turning point for the people living in this Austrian sector of partitioned Poland was the year 1848, when the 'Enfranchisement Act' was passed.⁶ It was the beginning of a wave of migrations of inhabitants of Podhale to Slovakia, Hungary, and above all to the

5 At the end of the 18th century, the Polish territory was occupied by and divided between Austria, Russia and Prussia. After this division, Poland, *as a state*, was non-existent between 1771 and 1918.

6 The Polish peasants became owners of the land they had cultivated in feudal systems earlier.

United States, most intensively in the years 1880-1910. Podhale is a region with a relatively long period of independence. From long ago, Podhale villages have external contacts and possess agro-economic systems with a relatively strong orientation toward external markets. The local situation in the period preceding the Partition favoured greater personal freedom, notwithstanding a short period of *corvée*⁷ after the Partition.

For a better understanding of local conflicts and their resolutions, an ecological analysis of both villages seems to be crucial. Specifically the spatial structure of the villages and the distribution of land cause particular types of conflicts. Frydman is situated in a valley, and its lands, which are all held in individual property, are on a flat area which is good both for growing plants and gathering crops (i.a. wheat, rye and potatoes). The buildings are close to each other: one yard is shared by two, three or even more farmers. Such a building site is their joint property. This situation favours a greater collective social control, but also induces a certain organisation of labour. The farmers who share their yards very often work together or borrow agricultural machines from each other. They coordinate efforts for getting in the crops, because the small yards cannot accommodate more than one harvest at a time. Spatial arrangements are completely different in Stare Bystre. The distance between the houses, especially those built in the mountains, is large. One farm here - on average 4 ha. (9,9 acres) - consists of 5 to 7 plots (here all land belongs to individual owners; the main products are rye, oats and potatoes). In Frydman, however, one farm consists of 10 to 20 plots with an average area of 6 ha. (14,8 acres). This situation results from historical and ecological conditions. In Podhale and in Spisz, customary law required that each child inherit a part of the land; the result was many small farms. In Stare Bystre, however, inheritance law, in combination with the mountainous configuration of the land, caused the formation of an intricate patchwork-structure of the land.

3. Factors for integration

I decided to use two criteria for measuring integration in the communities of my research: 1) the degree of mutual cooperation, 2) social activities, particularly those carried out in community associations. In addition to kinship, neighbourhoodship is one of the constitutive elements of a social structure, characteristic for rural communities in many regions of Poland. It is not to be understood in terms of spatial but rather of social proximity.

⁷ *Corvée*: in feudal times unpaid work which had to be done by the peasants.

What does mutual help look like in these communities? The larger part of the inhabitants of Frydman works in the fields together with their neighbours. This cooperation is called *spólanie* in the local dialect. One of the respondents told me the following: "we work together with four neighbour families during the time of the potato harvest. Two of these families own horses, a third one has potato-lifters and the fourth one with a tractor provides the transport. We begin our work on the most remote fields". Incidental forms of cooperation are not always based on equal participation of all parties ('we do not pay, it does not count that there are 6 of us and 3 of them'). In the long run, however, this cooperation system is perfectly well-balanced and based on the principle of equality: that is, a more or less similar degree of wealth of the partners. A second basis of cooperation in Frydman is helping each other in building houses. Given the density of population and the lack of plots, building mostly means little more than adding an extra story to an existing house. In the community of Stare Bystre it is common practice to hire hands for labour. One of the respondents reported: "One pays and there are no ambiguous situations or troubles with recompense". Another form of cooperation occurs between farmers who own agricultural machines and those who do not. This form of cooperation is based on the principle of dependence, an unequal economic position of the parties, and is connected with a differentiated social structure. Indeed, the community of Stare Bystre is divided in two groups: those who get or got help from the United States, called here 'the Americans', and the rest of the community.⁸

A second criterion for integration that needs to be discussed here concerns social activities. As a practical matter, my data are limited to the community of Frydman on this point, since the only institutionalized social activity in Stare Bystre is a folk music group. For the inhabitants of Frydman the most common institution is *Urbar*, a kind of forest community of which more than 95% of the farmers are members. This institution is remnant of an era with Hungarian law.⁹ At that time shares in the forest community were closely related to the size of the farm: the bigger a farm, the higher a share in the *Urbar*. At present the area of the urbarial forest is 217 ha (536,2 acres) and the shares of the members range from a fraction of one acre to 10 acres. *Urbar* is not strictly an economic

8 Establishing the exact income of this community is impossible as many of the jobs done by the inhabitants are unregistered, although they are profit-yielding. What is more, in the community of Stare Bystre there exists a pattern of conspicuous consumption which makes observation a poor guide as to a family's relative income.

9 *Urbars* were created in the middle of the 19th century by a regulation of servitudes.

institution. It also represents a social council that undertakes a variety of tasks that are important for the village. For instance, it finances various activities, like the building of a nursery school and the renovation of the old church, repairing roads in the village. Once a year there is a meeting of all the members of *Urbar*. During this meeting (attended by men only) wood is divided among the farmers. *Urbar*-members have developed an efficient system for a balanced distribution of wood products. If somebody gets wood of poor quality in a certain year, he will receive a better product one year later. Working in the *Urbar* also forms a source of non-financial profits, of prestige and power.

We may say that the high level of social activity and of mutual help in Frydman have brought about a greater capacity for community life. This is different in Stare Bystre, where a complicated social structure, a poorly developed system of mutual aid and a more contractual pattern of interaction have induced a spirit of individualism and a tendency toward atomisation within the community. This contributes to a characteristic attitude among the inhabitants of Stare Bystre who seem to regard their community from the view point of outsiders. Their feeling of togetherness is rather weak, and they think of the community not in terms of 'we', but of 'I' versus 'they'.

4. Procedures for conflict settlement in Frydman and in Stare Bystre

a. Conflict avoidance

In both villages, there appears to be a pattern of conflict avoidance¹⁰ for certain categories of cases, mainly minor damage cases. Avoidance is based on the principle of reciprocity, most clearly in Frydman, whose inhabitants tend to share common yards. The principle of reciprocity is best illustrated by the statement of one informant: "Today I am the one who loses, tomorrow it may be my neighbour". Such minor cases occur rather often. In the immediate surroundings of Frydman and Stare Bystre there are meadows but no corn fields; the destruction of a part of a meadow is much less serious than that of a corn field. In Stare Bystre, I also observed situations in which persons deeply involved in open conflict in one case avoid a conflict in another case. One of my respondents, who was a party in four different cases, stated that he had sued his neighbour to get access to a field, but added that if his neighbour's sheep destroyed a part of his meadow, he would not take action.

10 Felstiner (1975); see also Danzig and Lowy (1975).

b. Negotiation

The easiest way to settle minor conflicts is by bargaining or negotiating. In Frydman, where there are many damage cases, there are three main forms of compensation. In their main order of frequency, they are: 1) repairing damage; 2) working on the neighbour's field to compensate the damage; 3) monetary compensation. The latter form of compensation is locally perceived as the least attractive. Further, certain factors facilitate effective negotiation, for example, religious holidays such as Christmas, Easter or special religious occasions (e.g. the Pope's visits to Poland). In both communities there exists an increased sense of togetherness on these occasions. Since the conflicts discussed here occur between people closely related to each other - relatives and neighbours - any conflict would loosen these bonds. Making these 'heyday agreements' is, however, just a kind of ritual since they do not really influence the further course of the conflict. They also indicate a more general ritualistic approach towards religion. All the respondents in both communities declared themselves to be Catholics. However, the parish priests of both communities described the religiosity of their parishioners as superficial and only emerging during events like Christmas, Easter, etc. Thus such agreements constitute a very temporary kind of truce, which is only valid during these religious feasts.

c. Conciliation

In both communities, as in many other towns and villages of Poland, Conciliatory Commissions are available to local disputants. These Commissions have been functioning in Poland since 1965. They examine cases submitted by the parties themselves and also by other institutions, such as state courts, mainly performing conciliatory functions. The Conciliatory Commission in Stare Bystre examines 8-9 cases a year. These cases concern minor problems caused by damage in meadows, destruction of common roads or (lack of) access to fields. Often it is necessary for the members of the Conciliatory Commission to personally inspect the contested ground. The Commission's chairman appoints two persons who are not connected to the parties as conciliators. Accordingly, the Commission membership may change with each case. The majority of cases is settled by an agreement. Generally, however, the Commission is of little importance in Stare Bystre. During my stay there I met many inhabitants who did not even know about its existence.

A similar Commission in Frydman examines 15-20 cases a year, the range of which is much wider than in Stare Bystre and includes conflicts connected with a particular home construction, land boundaries and family problems. Of particular interest is the fact that in cases of damage the Frydman Commission usually proposes compensation in kind, e.g., replacement of sheafs of hay. It also

happens that a plaintiff refuses compensation when it is designated in kind. More complex and important conflicts in Frydman are examined by a Conciliatory Commission residing in Lapsze, which handles conflicts from the whole region of Spisz. An analysis of files and protocols of the Lapsze Commission shows a wide range of cases. The Commission examines about 50 cases a year. It is popular among the inhabitants of Spisz because they are convinced that conflicts should be solved internally, within one's own community and region, outside of the state court. This approach may be illustrated with statements in the files like "we would like our case to be settled by an agreement, that is why we would not like to appeal to the court: their decisions are not always received well within the village community". The chairman of the Lapsze Commission is an elderly man, well-known in his region.

The Commission's sessions take place on holidays or rainy days, when no work in the field is to be done. About 3/4 of its cases are between relatives or neighbours. They include damage cases, mainly damage of fences, hedges between neighbouring farms, etc. The problems are often caused by inexact measurement, made arbitrarily, without geodesist. Some cases concern an alleged ill-treatment of parents by their children, particularly by those children who are accused of not having fulfilled a contract of life rent.¹¹ Such cases have a multi-dimensional character, involving moral and material values. What do the parents expect from the Conciliatory Commission? They primarily want to rebuke their children publicly; to these parents the very possibility to express their troubles and sorrows constitutes a value in itself, a kind of catharsis. Other problems occur in the field of contract law and concern the proper interpretation of contracts as to loans, tenancy and other ones. In about 75% of the cases examined by the Commission, the parties reach an agreement. The parties' negotiation is supported by the Commission's chairman, who is an excellent mediator.

A last group of problems is referred to other institutions, namely the state court, or (occasionally) the geodesy's office, if the Commission thinks it is not able or competent to solve them. We may conclude that the Conciliatory Commission is an important institution for informal justice¹² in the region of Spisz. It is an unofficial and internal institution, established during many years of isolation of this region from the rest of the country.

11 In such a contract, a child promises his parents lifelong board and lodgings, in return for the transfer of real property.

12 The research conducted in the USA and in West-European countries indicate little interest of citizens of these countries in informal justice institutions. Cook, Roehl, Sheppard (1980:144). See also Rozenblatt (1981).

d. Adjudication

Before I discuss the role of the court in Nowy Targ as to conflict settlement, I would like to describe the role of the lawyers there. According to my interviews with the lawyers in Nowy Targ, the inhabitants of Stare Bystre often seek their advice. Every Thursday, many villagers go to the market in town and 'take the opportunity' to visit the lawyers' office. All consultations are free of charge. Complaints mainly deal with property and inheritance. Complainants are often youngsters. When plaintiffs are already involved in some on-going conflict, they find the prospect of a court hearing especially attractive. A lawyer's advice is often reviewed by another lawyer, who offers a second opinion. Agreements at a lawyer's office are very rare since the parties do not expect any mediation there: this would be interpreted as favourable to their opponents.

In Stare Bystre, court cases mainly concern inheritance and access to fields. The more complicated and sometimes fierce conflicts deal with access, and easily result in physical fights. They tend to be protracted and may involve many people, since the parties consist of field owners and other common road users. In addition, various family members may join in and take part in the conflict during its treatment by the state court. A similarly complicated course characterizes cases on inheritance. The origin of both kinds of cases might be the same, if they are dealing with an unequal value of the various fields: these fields not only vary as to fertility, but also as to accessibility (see figure 1). Thus it is unavoidable that any division of land results in plots which are - although equal in quantity - unequal in quality. Agreement in these cases is rare, but if parties arrive at an agreement in court, there is a custom of shaking or clapping hands, the latter especially among the older inhabitants.¹³ In Frydman, many cases simply involve a quasi-notarial function.¹⁴ The court confirms the agreement of the parties, e.g., the division of an inheritance, the exchange of plots in order to unify fields, etc.

What is the image of the state court in the opinion of the members of both communities? Generally, people say that access to justice is not equal for everybody. Barriers to access are considered to be connected with money, personal relationships and the participation of lawyers and witnesses during the process. The inhabitants of Stare Bystre are convinced that the whole process is a game; therefore, one should 'invest' in the case by hiring one or two lawyers and some witnesses; this augments the chance to win. People expect state judges not only to grant their claims, but also to express some admonishing statement,

13 About the symbolic elements of an agreement, see Roehl (1983:146).

14 See Blankenburg (1980:41).

like: "People are greedy, they want to get more than they are entitled to". The trial is perceived as a kind of punishment, addressed to the opposite party. It is interesting that these opinions are held not only by the parties involved, but also by those inhabitants of Stare Bystre who have never been to court. This indicates that there exists a strong stereotype of justice, a stereotype which does not change with personal experience. The reason why most participants are ultimately dissatisfied with the sentences of the court is the conspicuous difference between the range of the real conflict and the conflict as it is settled in court. The definition of conflict as seen by the parties is much wider than the legal definition of the contest by judges. The participants feel they have no forum in which to present their arguments, and so view the court as "a scene of distorted communication",¹⁵ where parties merely disturb the routine of procedure, and where it is only the professional participants (judge, lawyers) that count.

My cultural analysis of conflicts in Stare Bystre and Frydman indicates the diversity of those conflicts and their routes to settlement. Different historical and ecological conditions prevailing in these villages have shaped their approaches towards the law: an active, demanding approach of the inhabitants of Stare Bystre means that going to court has become a habit. The situation is different in Frydman, where the long-lasting isolation from the rest of the country contributed to the development of mutual help institutions and a strong self-government. For the inhabitants of this village, the Conciliatory Commission of Spisz is a preferred alternative institution to the state court.

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