Justice, politics and diplomacy: the Marquis of Arronches' criminal case (Vienna and Lisbon, 1696-1700)

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ABSTRACT:

The murder of Ferdinand Leopold von Hallweil in August 1696, in the Vienna Woods, drew a great deal of attention, because the suspected perpetrator was the Portuguese ambassador, Charles-Joseph of Ligne, second marquis of Arronches. Building on the existing literature and on unchartered sources, this article examines how the Portuguese royal court handled the case both on the political-diplomatic level and on the judicial front, looking into the conflicting interests and values that were weighed and the solutions designed to minimize reputation damages to the Portuguese crown and to the House of Sousa, as well. It argues that both formal and informal mechanisms of punishment were put in place to restore political and social order.
Keywords: theory and practice of diplomacy, criminal jurisdiction, household discipline, Leopold I, count Hallweil.

Justicia, política y diplomacia: el caso criminal del Marqués de Arronches (Viena y Lisboa, 1696-1700)

RESUMEN:

El asesinato de Fernando Leopoldo de Hallweil en agosto de 1696, en los bosques de Viena, tuvo un gran impacto en la opinión pública, al ser considerado el embajador portugués, Carlos José de Ligne, segundo marqués de Arronches, principal sospechoso del crimen. Gracias a la documentación de archivo, este artículo tiene por objeto analizar el modo en que el escándalo fue tratado en la corte portuguesa, tanto en el ámbito político y diplomático como en el judicial, y atendiendo a los intereses y valores contradictorios que entraron en juego en el conflicto para minimizar el daño ocasionado a la reputación de la Monarquía portuguesa y de la Casa de Sousa. Con este caso se demuestra la combinación de mecanismos formales e informales de castigo para restaurar el orden político y social perturbado con ocasión de este suceso.
Palabras claves: teoría y práctica de la diplomacia, jurisdicción criminal, disciplina de la casa, Leopoldo I, conde de Hallweil.

On 13 August 1696 Ferdinand Leopold von Hallweil, Chamberlain of the Emperor, was found lifeless in the Vienna Woods, his head pierced by a bullet. Rumours quickly spread across the city that the perpetrator of this atrocious act was Charles-Joseph of Ligne, the Portuguese ambassador to Emperor Leopold I, with whom the victim had last been seen. Reacting to this rumour, a Viennese mob harassed the ambassador and his servants, threatening to take justice into their own hands. Fearing for his life, Charles-Joseph took refuge in the Trinitarian monastery before secretly fleeing Vienna on 15 August, bound for Italy[1]. Detained two days later in Schottwien (south of Vienna), he was released the next day upon an express order of the emperor and resumed his flight to Venice.

Count von Hallweil's murder constitutes a singular criminal case, and one that stirred a great deal of attention in the late seventeenth century, reaching far beyond the Viennese and Lisbon courts. Given that its suspected perpetrator was a Portuguese ambassador, the case had the potential to have repercussions on several levels. First, at a time when the theoretical framework of international relations was still in a formative phase, it raised concerns about the extent of a diplomatic envoy's inviolability and specifically his exemption from criminal jurisdiction in the receiving state. Second, as war loomed large in Europe in anticipation of the dispute over the Spanish throne, it had the potential to jeopardize the recently resumed diplomatic relations between the Holy Roman Empire and Portugal, a repercussion that both states sought to avoid. But the singularity of this criminal case stems also from contradictory written accounts about it, with the result that the case remains unsolved to this day. The numerous variations existing in the narratives can be attributed not only to the unclear circumstances of the case, but also to the absence of a full judicial enquiry for reasons related to the theory and practice of diplomacy. Together, these conditions provided a fertile ground for multi-layered views, where the conflicting interests of the parties involved played out. Despite its high profile, this murder case seems, however, to have received no attention in scholarship on the theory and practice of diplomacy. With the exception of

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Portuguese scholars, who have examined the case within the context of diplomatic relations between Portugal and Austria, studies on diplomatic immunity in the early modern period make no reference to it[2]. However, a recent study, which touches upon the topic of the ambassador's inviolability, while focusing primarily on the written tradition pertaining to this case, has brought new information and insights to light, mainly from German-language sources[3].

Building on the existing literature and on unchartered sources, this article examines how the Portuguese royal court handled the case, both on the political-diplomatic level and on the judicial front, looking into the conflicting interests and values that were weighed and the solutions designed to minimize damage to the reputation of the Portuguese crown and the House of Sousa. We also examine how the ambassador's family dealt with the case and the efforts made to ensure the family's continuity. Given its singular features, this case study not only provides an opportunity to examine the practice of diplomatic immunity, but also contributes to a better understanding of how both formal and informal mechanisms of punishment were applied in order to restore political and social order in the early modern period[4]. Archival sources were extensively used to unravel the political and judicial handling of the case, with the bedrock of this article constituting, on the one hand, diplomatic correspondence held in Lisbon and Vienna and, on the other hand, the judicial proceedings of the Board of Conscience and Military Orders (*Mesa da Consciência e Ordens*). It should be noted that although the original court proceedings have been lost, a complete copy is extant in a codex currently held in the Ajuda Library (Lisbon)[5]. This copy also includes a translation into Portuguese of information gathered by the imperial authorities on Count von Hallweil's murder, which was conveyed to Lisbon in October

[2] Luís Ferrand de ALMEIDA, «Missões diplomáticas portuguesas em Viena de Áustria nos fins do século XVII», *Revista de História da Sociedade e da Cultura*, 1, 2001, pp. 13-24; Susana MÜNCH MIRANDA and Tiago C.P. DOS REIS MIRANDA, *A Rainha Arquiduquesa. Maria Ana de Áustria*, Lisbon, Círculo de Leitores, 2014, pp. 78-87; Linda FREY and Marsha FREY, *The History of Diplomatic Immunity*, Columbus (OH), Ohio State University Press, 1999.

[3] Manfred ZOLLINGER, «Konkurrierende Gerechtigkeitsvorstellungen. Der portugiesische Botschafter und das Spiel um die Öffentlichkeit. Ein Mordfall in Wien, 1696» in *Justiz und Gerechtigkeit. Historische Beiträge (16.-19. Jahrhundert)*, eds. Andrea Griesebner, Martin Scheutz and Herwig Weigl, Vienna, Institut für Geschichte, 2002, p. 285.

[4] On the notion of royal justice and the use of both formal and informal forms of punishment in early modern Portugal, see António Manuel HESPANHA, *La Gracia del Derecho. Economía de la cultura en la Edad Moderna*, Madrid, Centro de Estudios Constitucionales, 1993, pp. 203-273.

[5] Lisbon, Biblioteca da Ajuda (BA), 51-VI-34, ff. 21-72.

1696. As such, this article also sheds light on previously unknown enquiries conducted in Vienna at the time.

This article comprises four parts. The first one places the Portuguese embassy to Vienna in the context of the political relations between the Holy Roman Empire and Portugal and covers the events of August 1696. The second focuses on how the Lisbon court handled the case both on the political-diplomatic and the judicial front. The third part reflects on the informal mechanisms of punishment applied by King Pedro II of Portugal and the former ambassador's family, while the fourth and final part contains the conclusion.

I. THE PORTUGUESE EMBASSY TO VIENNA (1695-1696) AND COUNT VON HALLWEIL'S MURDER

After several decades of diplomatic relations being suspended owing to the events culminating in the imprisonment and death of Duarte of Braganza (1605-1649), the establishment of new family ties linking the Austrian Habsburgs to the Braganza dynasty in the 1680s favoured a gradual rapprochement between the two dynastic states[6]. It was in 1687 that Leopold I and King Pedro II of Portugal became brothers-in-law following the latter's marriage to Maria Sophia, Princess of the Palatinate-Neuburg and sister of the Empress Eleonore Magdalena[7]. King Pedro took the initiative to further this rapprochement by deciding in 1694 to send an extraordinary embassy to Vienna. In doing so, he may have been yielding to Queen Maria Sophia's pleas for a renewal of diplomatic relations with the Holy Roman Empire. The queen argued that the empress had promised that a Portuguese ambassador would receive the ceremonial honours and precedence commonly accorded to the Spanish ambassadors[8]. Still seeking to secure international recognition for the Braganza dynasty, the Portuguese king could not

[6] On this episode, set against the backdrop of the Portuguese War of Independence from the Spanish Habsburgs, and the role played by Emperor Ferdinand III, see Luís Ferrand de ALMEIDA, *op. cit.*, pp. 13-24.

[7] See Josef Johannes SCHMID, «Beau-Père de l'Europe: Les princesses dans la politique familiale et dynastique de Philippe-Guillaume de Neubourg», *XVII siècle*, 243:2, 2009, pp. 267-279.

[8] BA, 51-IX-8, f. 373. On the ceremonial honours accorded to the Spanish ambassadors in Vienna, see Leopold HAUER, «Diplomatisches Zeremoniell am Kaiserhof der Frühen Neuzeit: Perspektiven eines Forschungsthemas» in *Diplomatisches Zeremoniell in Europa und im Mittleren Osten in der Frühen Neuzeit*, eds. Ralph Kauz, Giorgio Rota and Jan Paul Niederkorn, Vienna, Verlag der Österreichischen Akademie der Wissenschaften, 2009, p. 49.

forego the symbolic distinction that this promise entailed. The devastation of the Palatinate by French troops during the Nine Years' War and a Portuguese offer to mediate the conflict between France and the emperor provided the pretext for the embassy, as can be concluded from the instructions given to the embassy[9]. Yet it seems that King's Pedro decision was influenced mainly by the anticipation of a European military dispute over the Spanish throne and its potentially disruptive effect in the Portuguese territory. As the aim, by then, was to break out of the French orbit, resuming diplomatic relations with the emperor was a logical decision, given that, for dynastic reasons, the Austrian Habsburgs were expected to contend for the Spanish throne[10].

Charles-Joseph of Ligne seemed an obvious choice to represent the Portuguese king at this extraordinary embassy, given the conditions of the receiving state and the special position the Austrian Habsburgs continued to hold in the hierarchy of European dynastic families. Born in the Spanish Low Countries in 1661 to Claude Lamoral (1618-1679), third Prince of Ligne, and Clara Maria von Nassau-Siegen, Charles-Joseph became a member of the Portuguese aristocracy by his marriage, in 1684, to Mariana Luísa de Sousa, granddaughter of the first Marquis of Arronches and successor of the House of Sousa[11]. His illustrious ancestors and the well-attested connections to the Spanish royal household certainly had a bearing in King Pedro's choice. In addition to being a Prince of the Holy Roman Empire and Grandee of Spain, Charles-Joseph's father had an impeccable *cursus honorum* in the service of the Spanish Habsburgs. This included a general captaincy of the Spanish cavalry in Flanders (1649-1669), embassy to Charles II of England (1660), vice-regal governorship of Sicily (1670-1674) and governorship of the Duchy of Milan (1674-1678). This family background allowed Charles-Joseph to benefit from an aristocratic education, which at the time was considered to provide the best skills and competences for a diplomat, including a cosmopolitan outlook and elegant manners[12]. From a young age, he had learnt to speak

[9] BA, 51-IX-8, ff. 373-377v., instructions given to Charles-Joseph of Ligne on 2 October 1694. As part of this Portuguese mediation, an ambassador was also sent to Paris in the same year.
[10] S. MÜNCH MIRANDA and T.C.P. DOS REIS MIRANDA, *op. cit.*, pp. 80-81.
[11] On the House of Sousa, see Nuno Gonçalo MONTEIRO, *O Crepúsculo dos Grandes: a casa e o património da aristocracia em Portugal, 1750-1832*, Lisbon, Imprensa Nacional-Casa da Moeda, 1998, pp. 345-347.
[12] Heidrun KUGELER, *"Le Parfait Ambassadeur": The Theory and Practice of Diplomacy in the Century following the Peace of Westphalia*, Oxford, University of Oxford, Unpublished PhD thesis, 2006. Following this perception, the Portuguese monarchy in the second half of the seventeenth century predominantly appointed noblemen to diplomatic posts: see Nuno Gonçalo MONTEIRO and Pedro

several languages -Italian, French, Spanish and Latin- proficiently, while he later also studied Philosophy and Mathematics at the famous College of Nobles in Parma[13]. Furthermore, he enjoyed privileged connections to the Lisbon court through the House of Sousa, his wife's family. These factors combined, therefore, to account for his diplomatic appointment.

By then, the House of Sousa had two representatives well placed in the royal government. Both Henrique Sousa Tavares, the first Marquis of Arronches and grandfather of Mariana Luísa de Sousa, and his brother, Luís de Sousa, Archbishop of Lisbon, were members of the Council of State and, as such, in a position to influence high politics. Yet their opinions on the matter diverged. While the former firmly opposed Charles-Joseph's appointment for reasons relating to the unresolved issue of the House's succession, the archbishop was clearly in favour of it[14]. And these opposite views were mirrored, albeit for different reasons, in a rift that divided the counsellors of state in the voting session. Indeed, the appointment of the second Marquis of Arronches was not unanimous and was only narrowly secured thanks to the votes of counsellors with an anti-French positioning and with the express support of the queen[15]. In October 1694, Charles-Joseph of Ligne received detailed diplomatic instructions, as well as letters addressed to the emperor and the empress[16].

On 16 November 1695, the second Marquis of Arronches arrived in Vienna, with a retinue of roughly eighty people, thirty-six horses and six carriages. Initially he remained incognito in the outskirts of the city, while accommodation befitting his status and the size of his household was being prepared. Such accommodation was found in a

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CARDIM, «La Diplomacia Portuguesa durante el Antiguo Régimen. Perfil sociológico y trayectorias», *Cuadernos de Historia Moderna*, 30, 2005, p. 37.

[13] On the College of Nobles in Parma, see Hilde de RIDDER-SYMOENS ed., *A History of the University in Europe*: *Universities in Early Modern Europe, 1500-1800*, Cambridge, Cambridge University Press, 2003, II, p. 319 and Paul F. GRENDLER, *The Universities of the Italian Renaissance*, Baltimore, The Johns Hopkins University Press, 2011, p. 126.

[14] At the time, the House of Sousa's succession rested on a daughter, born in June 1694. See António Caetano de SOUSA, *História Genealógica da Casa Real Portuguesa*, Coimbra, Atlântida, 1953, XII, p. 338.

[15] *Portugal, Lisboa e a Corte nos reinados de D. Pedro II e D. João V. Memórias Históricas de Tristão da Cunha de Ataíde, 1.º Conde de Povolide*, ed. António Vasconcelos de Saldanha and C. Radulet, Lisbon, Chaves Ferreira, 1990, p. 133. Queen Maria Sophia's involvement had an ulterior motive because of her plan to marry her elder son, the future João V, to one of the archduchesses. She had little success, however, in persuading her husband to include any marriage plans in Ligne's diplomatic instructions. See S. MÜNCH MIRANDA and T.C.P. DOS REIS MIRANDA, *op. cit.*, pp. 82-83.

[16] BA, 51-IX-8, ff. 373-377v, Vienna, Haus-, Hof- und Staatsarchiv (HHStA), Staatenabteilung (StAbt), Portugal, box 2, 2-5, f. 16.

spacious and sumptuous palace near Kärntertor, one of the gateways to the capital, where he went to live on 23 February 1696. Written records refer to the great opulence of the palace's twelve rooms, richly decorated with furniture and tapestries from the House of Arronches[17].

Once settled, and before his public entry, Charles-Joseph made efforts to obtain a private audience with the emperor. In granting this audience on 27 March 1696 the emperor fulfilled the promise to accord the Portuguese ambassador the same honours as the Spanish because «the Queen of Portugal was the sister of the empress»[18]. This was a clear sign that Vienna was willing to resume the diplomatic dialogue with Portugal. Charles-Joseph's public entry took place on 13 April 1696 and was marked by splendour and magnificence, leaving a strong impression on the Viennese[19]. This positive perception, however, was shattered four months later in the wake of Count von Hallweil's murder.

Causing uproar in Vienna, this high-profile case attracted much contemporary attention and reverberated long after the events of August 1696 took place. The case was unprecedented, with the annals of diplomatic history containing no prior records of an ambassador allegedly perpetrating a capital offence during his mission. The high social rank of both parties involved, as well as the setting of the events -the imperial Court of Vienna- and the unclear circumstances surrounding them were further reasons for numerous accounts of the events occurring between 10 and 18 August 1696 to be circulating. Such narratives were used, more or less explicitly, by the parties involved to voice their claims and interests or to underscore their role in the events. A close examination consequently unveils contradictory facts and information, while the historical tradition has introduced further creative variations. The information known to be factual does not allow us to reach a definitive conclusion on either the material or moral author of the offence, even if the tradition set forth in the Austrian sources insists on the ambassador's culpability[20]. As our aim is to understand how this case was perceived and handled by the Portuguese authorities, we have followed the information gathered by the imperial authorities and conveyed to the Portuguese royal court by

[17] *Lettres Historiques, contenant ce qui se passe de plus important en Europe*, The Hague, Chez Adrian Moetjens, X, p. 47.
[18] HHStA, Obersthofmeisteramt Ältere Zeremonialakten, box 18, no. 15, f. 33.
[19] A week later, Charles-Joseph gave the empress and the King of the Romans gifts of fine pieces of china from the Queen of Portugal. *Lettres Historiques, op. cit*., X, pp. 48-56.
[20] Manfred ZOLLINGER, *op. cit.*, pp. 285-310.

October 1696, given that the case prosecuted in Lisbon and its outcome rested upon this[21].

On 12 August, after two days without news from his first-born son, Johann Sebastian, Count von Hallweil, begged the emperor to press the Portuguese ambassador for an explanation. He knew that his son, Ferdinand Leopold von Hallweil, had left Vienna very early in the morning of 10 August in the company of Charles-Joseph of Ligne. They had been headed for the Vienna Woods, a favourite hunting destination among members of the imperial court, in an open carriage driven by the ambassador himself, who subsequently returned to Vienna without the count in the afternoon. According to an explanation given by the ambassador at a party that same evening, Ferdinand Leopold had encountered an acquaintance near Gablitz and had moved to the latter's carriage with the intention of travelling to Baden[22]. Clearly accusing the ambassador of wrongdoing, on the grounds of a large gambling debt that the former owed his son, Johann Sebastian's pleading set a chain of events in motion. The same day Leopold I requested three of his privy counsellors (Ferdinand von Dietrichstein, Ferdinand Buonaventura von Harrach and Franz Ulrich von Kinsky) to ask Charles-Joseph what had really happened on 10 August. The latter repeated his version of events, both orally and in writing[23]. On 13 August, the Privy Conference (*Geheime Konferenz*)[24] met to discuss the case, while the Supreme Court of the Government (*Regiment*) of Lower Austria[25] ordered a search in the Vienna Woods, where the body of Ferdinand Leopold was subsequently found sometime in the afternoon. As the suspected offender was an ambassador, the imperial court faced a dilemma, as echoed in the discussions that took place in the second Privy Conference the following day[26].

Two conflicting opinions were voiced regarding the central issue on whether the emperor should order a full enquiry into Count von Hallweil's killing. On the one hand, Franz Ulrich von Kinsky argued for a judicial investigation on the grounds that the

[21] BA, 51-VI-34, ff. 21-72. Translation-related problems in identifying names, institutions and officials have been partially resolved by resorting to the literature.
[22] Baden bei Wien is located in the vicinity of the Vienna Woods.
[23] See Manfred ZOLLINGER, *op. cit.*, p. 286; BA, 51-VI-34, f. 23v.
[24] On the Privy Conference, see Stefan SIENELL, *Die Geheime Konferenz unter Kaiser Leopold I. Personelle Strukturen und Methoden zur politischen Entscheidungsfindung am Wiener Hof*, Frankfurt, Peter Lang, 2001, pp. 214-219 and Michael HOCHEDLINGER, *Austria's Wars of Emergence, 1683-1797*, London, Routledge, 2013, pp. 43-44.
[25] «Tribunal do Regímen da Áustria Inferior» according to the translation. BA, 51-VI-34, f. 23 v.
[26] See Manfred ZOLLINGER, *op. cit.*, 286.

ambassador's immunity could not extend to a case in which a capital offence had been committed and that therefore fell under the emperor's jurisdiction. On the other hand, Ferdinand Buonaventura von Harrach contended that foreign diplomatic representatives were fully exempt from criminal jurisdiction, which meant that, in this instance, the King of Portugal would be the ambassador's only judge. These opinions embody two distinct doctrinal strands on the boundaries of diplomatic immunity, which jurists and theorists of diplomacy were still debating in the late seventeenth century. Kinsky's arguments reflected the more restrictive line of reasoning of those wanting to protect the state's exclusive sovereignty and jurisdiction, both in criminal and civil cases. Grounded in Roman law, this meant that it fell to the sovereign to enquire, prosecute and punish offenders, including, if appropriate, diplomatic representatives. Since the sixteenth century, however, most European dynastic states had routinely granted diplomatic agents exemption from criminal prosecution, based on principles of natural law and political expediency, and this was the position voiced by Count von Harrach[27]. The novelty of the situation in this case meant, however, that the historical and contemporary examples put forward by the latter did not present a clear-cut solution for the dilemma the counsellors faced. Indeed, there was no known record of an ambassador being suspected of committing a capital offence and, as such, no legal precedent to serve as a guide. The predicament the counsellors faced was mirrored in Harrach's side comment that he wished that Charles-Joseph of Ligne would secretly leave Vienna without being hindered[28]. It should come as no surprise, therefore, that the meeting of 14 August was inconclusive regarding the course of action. Although Kinsky's opinion may have garnered support among other counsellors, no-one was willing to advise the emperor to order a judicial enquiry without first consulting legal scholars[29]. Meanwhile, the imperial court's priority became to ensure the safety of the ambassador and his family.

Even before the discovery of Hallweil's body, feelings against Charles-Joseph of Ligne were already running high among Viennese aristocracy and the populace, thus

[27] Linda FREY and Marsha FREY, *op. cit.*, 1999, p. 149. Rosanne van ALEBEEK, «Immunity, Diplomatic» in *Max Planck Encyclopedia of Public International Law*, ed. Rüdiger Wolfrum, Heidelberg and Oxford, Max Planck Institute for Comparative Public Law and International Law and Oxford University Press, 2015 (online edition).
[28] See Manfred ZOLLINGER, *op. cit.*, p. 289.
[29] *Ibídem*, pp. 285-288.

prompting the emperor to order a guard to secure the ambassador's residence on 14 August[30]. In the text of the decree, Leopold I carefully stressed that he sought to provide protection and not to place the ambassador in custody; this would have represented a breach of his immunity, as the emperor hastened to clarify to all foreign ministers accredited to the Court of Vienna[31]. The ambassador was nevertheless advised to refrain from asking for an audience and from attending the imperial court chapel while the circumstances of Hallweil's killing remained unclear. This measure was designed to avoid open conflicts in view of the general uproar against him. The following day, however, the case took a definitive turn.

When Maximilian Adam von Waldstein, *Vice-Hofmarschall* (vice lord steward) of the imperial household, called on the Portuguese ambassador on 15 August to convey the contents of the emperor's decree, he discovered that the Marquis of Arronches had secretly left Vienna during the night, leaving the legation in the capable hands of its secretary, Alexandre da Costa Pinheiro. According to the information sent to Lisbon, Charles-Joseph of Ligne was subsequently apprehended in Lower Austria (Schottwien) on the night of 17 August by a magistrate acting on behalf of the *Regiment* and who was allegedly tracking down another person suspected of involvement in the killing[32]. The Marquis of Arronches' detainment, however, was short-lived, lasting only until the morning of 18 August, when a courier arrived with the express order for the magistrate to release him[33].

Written records in Austrian sources concur with this narrative on most points, with the exception of the parties -principal and agent- involved in detaining the Marquis of Arronches. Responsibility for this is routinely ascribed to the victim's family, who sent the captain of a night's watch (*Rumorhauptmann*) in pursuit of the ambassador. This notion owes much to a letter written by Johann Sebastian von Hallweil to a cousin

[30] For the original Latin version of the edict, see *Des Herrn Ferdinand Leopolds Grafen von Hallewiel etc. der Röm. Kays. Majest. Kammer-Herrns Ertödtung*, 1696; a Portuguese translation is included in BA, 51-VI-34, ff. 24-25.
[31] On this initiative of the emperor, referred to in a letter written on 15 August 1696 by the English minister at Vienna, Robert Sutton, Lord Lexington, see *The Lexington Papers or some account of the Courts of London and Vienna at the Conclusion of the Seventeenth Century*, ed. H. Manners Sutton, London, John Murray, 1851, p. 217.
[32] The suspect in question was an unidentified man, referred to in the sources as a «man in a blue cloak».
[33] Charles-Joseph of Ligne left Vienna disguised as a Trinitarian friar. When he was found in Schottwien, he was in the company of two other men, also dressed as Trinitarian friars. BA, 51-VI-34, ff. 26v-27.

on 22 August 1696 and that reached a wide audience after being printed as a pamphlet[34]. It seems clear in any case that, as the order for the ambassador's release indicates, the initiative cannot be attributed to the emperor. As Ferdinand Buonaventura von Harrach implied on the meeting on 14 August, this was an honourable way out of the predicament faced by the imperial government[35]. Not only could Leopold I claim to have fully respected the personal inviolability of the ambassador, as proposed by the *ius gentium*, but this solution also indirectly resolved the problem of deciding who had jurisdiction to hear the case. In addition to resolving this jurisdictional dilemma, Ligne's fleeing from Vienna also had an important benefit for Leopold I's political-dynastic agenda, which was driven by concerns regarding the Spanish Succession. Indeed, the extinction of the senior branch of the Habsburg dynasty had been looming large since the 1660s and, as the senior member of the Austrian branch of the dynasty, the emperor had claims to the Spanish throne and its extensive empire[36], as captured in the fact that he had groomed his second son, Archduke Charles, to succeed Charles II of Spain by giving him a Spanish education[37]. Owing to Portugal's geographical position, having this country as an ally in the likely event of an armed conflict for the Spanish throne was deemed instrumental for this claim, which is why Vienna was already planning in 1695-1696 to send a diplomatic representative to Lisbon. Hence, Ligne's secret escape from Vienna did not jeopardize the recently resumed diplomatic dialogue with the Portuguese royal court, although it certainly put the plan of sending an ambassador to

[34] This letter, together with the imperial edict of 14 August 1696, was printed under the title *Des Herrn Ferdinand Leopolds Grafen von Hallewiel etc. der Röm. Kays. Majest. Kammer-Herrns Ertödtung*, 1696. On this tradition, see Manfred ZOLLINGER, *op. cit.*, pp. 290-291.

[35] Count von Harrach may have played a significant role in crafting this solution. See Manfred ZOLLINGER, *op. cit.*, p. 305-306. According to Ligne's version of events, he exchanged correspondence with influential members of the imperial court before fleeing Vienna. *Apologia in favor dell'eccellentissimo signor prencipe siniscalco di Ligne, marchese d'Aronchez, ambasciator di Portogallo à Vienna*, s.l., s.a., p. 9.

[36] See Jean BÉRENGER, *Léopold I.^e 1640-1705. Fondateur de la puissance autrichienne*, Paris, Presses Universitaires de France, 2004, p. 408; and Friedrich EDELMAYER, «La Guerra de Sucesión española en el Sacro Imperio», in *La Guerra de Sucesión en España y la Batalla de Almansa: Europa en la encrucijada*, ed. Francisco García González, Madrid, Sílex, 2009, pp. 95-108.

[37] Frank HUSS, *Der Wiener Kaiserhof. Eine Kulturgeschichte von Leopold I bis Leopold II*, Gernsbach, Katz Verlag, 2008, pp. 59-60.

Lisbon on hold[38]. In October 1696, Leopold I formally put the hearing of the case and the administering of justice into the hands of the King of Portugal[39].

II. HANDLING THE CASE IN LISBON

A few days after Count von Hallweil's body was discovered, the shocking news reached the Court of Lisbon by way of an express courier sent by the emperor and that caused great consternation[40]. After King Pedro II's initial reaction in a letter to Leopold I, the next few weeks saw information being exchanged with Vienna through The Hague, and the mediation of Francisco de Sousa Pacheco, the Portuguese envoy extraordinary to the States-General[41]. As Sousa Pacheco regularly corresponded with Alexandre da Costa Pinheiro, the secretary of the Portuguese legation still in Vienna, and with the Secretary of State, Mendo de Fóios Pereira, it was through him that the Court of Lisbon heard of the initiatives taken by the Austrian authorities. In September 1696, an enquiry (*devassa*) was underway with the purpose of gathering evidence for King Pedro II. The searches included the investigation aimed at hearing three servants of the Portuguese ambassador; this process, however, was halted by Costa Pinheiro on the grounds that it constituted a violation of the legation's diplomatic immunity[42]. Moreover, the negotiations for the Peace of Rijswijk provided added opportunities for an indirect exchange of information between the two courts, with Dominic Andreas von Kaunitz, Minister Plenipotentiary of the Holy Roman Empire, and Francisco de Sousa Pacheco discussing the case on several occasions, as can be inferred from the latter's correspondence[43]. Given that Vienna lacked a permanent diplomatic representative in

[38] On Leopold's plan in 1695-1696 to send a diplomatic representative to Lisbon and how this culminated in February 1699 in the appointment of Charles Ernest, Count von Waldstein, see S. MÜNCH MIRANDA and T.C.P DOS REIS MIRANDA, *op. cit.*, p. 91.
[39] BA, 51-VI-34, ff. 21v-22v, letter of Leopold I to King Pedro II of Portugal.
[40] This is mentioned by the Portuguese diplomatic representative in The Hague in a letter sent to the Secretary of State, Mendo de Fóios Pereira: Lisbon, Arquivo Nacional da Torre do Tombo (ANTT), Ministério dos Negócios Estrangeiros (MNE), bk. 800, f. 47-47v. On the consternation felt in Lisbon, see *Portugal, Lisboa e a Corte*, p. 135.
[41] Although no copy of this first letter sent to Leopold I was found in the Portuguese archives, it is mentioned in other sources: *Portugal, Lisboa e a Corte*, p. 135. On Francisco de Sousa Pacheco, see Isabel CLUNY, «A Diplomacia Portuguesa e a Guerra de Sucessão de Espanha» in *O Tratado de Methuen (1703)*, Lisbon, Livros Horizonte, 2003, p. 64; on Kaunitz, see Jean BÉRENGER, *op. cit.*, p. 396.
[42] ANTT, MNE, bk. 800, ff. 51-52, letter to Mendo de Fóios Pereira, The Hague, 16 September 1696; BA, 51-VI-34, f. 28-28v.
[43] See Karl Otmar Freiherr von ARETIN, «Kaunitz, Dominik Andreas, Freiherr, seit 1682 Graf» in *Neue Deutsche Biographie*, Berlin, Dunker und Humblot, 1977, XI, p. 373.

Lisbon at the time, Kaunitz probably received instructions to obtain updates from Sousa Pacheco on how the case was being handled by the King of Portugal[44]. Meanwhile, after his release on 18 August, the Marquis of Arronches took refuge in Venice, from where he sought to clear his name, seemingly by writing to the Court of Lisbon, as well as to other European sovereigns and ambassadors, telling his version of the events[45].

For the Portuguese central government, the abrupt ending of Arronches' embassy was undoubtedly a setback to its aim of resuming a diplomatic dialogue with the Holy Roman Empire. With the death of Charles II of Spain expected at any moment, it was also becoming clear to most European states that France's claims to the Spanish throne and its vast empire were irreconcilable with those of the Holy Roman Empire[46]. War in Europe was, therefore, looming large and Portugal feared France's military strength. Not surprisingly, preparations for funding a defensive war got underway as early as 1697[47]. Because of the potential political implications of such a war, and since the reputation of the Portuguese crown was at stake, King Pedro II was outraged when he heard about the case, and made sure to convey his feelings of intense indignation about Charles-Joseph of Ligne to Vienna a few months later[48]. When the emperor's formal request for justice reached the Royal Court of Lisbon in late October 1696, the case was treated with the utmost seriousness and handled on three separate levels: political, judicial and diplomatic.

Preliminarily, some words must be said about the nature and number of the documents that had been received from Vienna by that point. First, there was a letter from the emperor to King Pedro II dated 8 October 1696, in which as well as asking for justice for the Hallweil family, Leopold openly accused the Marquis of Arronches of foul play[49]. The second item consisted of a copy of an undated letter written by Wenzel Felix von Hallweil, the victim's brother, to the emperor. He, too, unequivocally pointed

[44] ANTT, MNE, bk. 800, ff. 47-47v, 91v-92 and 114.
[45] *Apologia in favor dell'eccellentissimo signor prencipe siniscalco di Ligne,* pp. 10-11. This statement was also made by António Caetano de SOUSA, *op. cit.*, 1953, p. 337.
[46] This perception became obvious in the framework of the Peace of Rijswijk, signed in September 1697. See Linda FREY and Marsha FREY, *A Question of Empire: Leopold I and the War of the Spanish Succession, 1701-1705*, New York, Colombia University Press, 1983, pp. 9-23.
[47] See João Paulo SALVADO, «O estanco do tabaco em Portugal: contrato-geral e consórcios mercantis, 1702-1755» in *Política y Hacienda del Tabaco en los Imperios Ibéricos (siglos XVII-XIX)*, ed. Santiago de Luxán, Madrid, Centro de Estudios Políticos y Constitucionales, 2014, pp. 141-142.
[48] *Portugal, Lisboa e a Corte*, p. 135; ANTT, MNE, bk. 802, f. 39, letter from Francisco de Sousa Pacheco to Mendo de Fóios Pereira, Vienna, 3 May 1698.
[49] BA, 51-VI-34, ff. 21v-22v.

to the Portuguese ambassador as the culprit in the killing, while also requesting payment for the gambling debt owed by Ligne, as well as compensation for personal items belonging to the victim and that were found to be missing when the body was discovered[50]. A brief account of the main events occurring between 12 and 20 August was the third and final document, and this would later be at the core of the prosecution[51]. Dated 30 September 1696, and comprising fifteen articles, the account summarizes the results of enquiries carried out by the Supreme Court of the Government (*Regiment*) of Lower Austria and the Criminal Court of the City of Vienna (*Stadtgericht*), as well as other steps taken by the imperial authorities[52]. It should be stressed that, for easily understandable reasons, a copy of the actual judicial enquiries, upon which the account was based, was never sent to Lisbon. According to some contemporary legal scholars, carrying out a criminal enquiry already violated the immunity of ambassadors, which is why it can reasonably be assumed that the imperial court would have avoided any official admission that such enquiries had ever taken place[53]. Hence, the evidence gathered in Vienna was presented to the King of Portugal in the form of an account 'offered' by the victim's father as part of his efforts to obtain justice and payment of the gambling debt.

The emperor's formal request for justice immediately triggered a political debate in the Council of State. Although the minutes of the meetings of this institution, which played a central role in the Portuguese government, are not extant today, the general terms of the debate and the arguments put forward can be deduced from the memoirs of a well-informed aristocrat[54]. The debate centred on the offences alleged to have been committed by the former ambassador and on the judicial instance that should examine

[50] According to an attached list, the personal items in question comprised four buttons of gold, each with an embedded diamond; a diamond and ruby ring; another set of rings with eighteen small pink diamonds; a dress sword; a seal stamp and a small metal box, and a purse that the victim used to carry money and that was found empty. Although undated, the letter was undoubtedly written after Charles-Joseph's secret escape from Vienna on 15 August. BA, 51-VI-34, ff. 29-30v.

[51] BA, 51-VI-34, ff. 23-29, «Breve relação do facto sucedido na morte feita a Leopoldo Ferdinando, conde de Hallweil, com algumas circunstâncias».

[52] The Portuguese translation referred to these judicial instances as the «Tribunal do Regímen da Áustria Inferior» and «Correição da cidade de Viena» respectively.

[53] This point was made by Grotius. See Manfred ZOLLINGER, *op. cit.*, pp. 288 and 305.

[54] On the Council of State, see Nuno Gonçalo MONTEIRO, «Identificação da Política Setecentista. Notas sobre Portugal no início do período joanino», *Análise Social*, 35:157, 2001, pp. 961-987; and Maria Luísa Marques da GAMA, *O Conselho de Estado no Portugal Restaurado: teorização, orgânica e exercício do poder político na corte brigantina, 1640-1707*, Lisbon, Faculdade de Letras da Universidade de Lisboa, Unpublished Master's Thesis, 2011.

the evidence and decide whether there were grounds for an indictment. According to the Count of Povolide, two positions emerged during the debate, with a tension resonating between two distinct jurisdictions, as well as contrasting perceptions on the offences and corresponding penalties. On the one hand, some counsellors took the view that the case should be examined by the Board of Conscience and Military Orders (*Mesa da Consciência e Ordens*), which comprised an ecclesiastical court with exclusive criminal jurisdiction over the knights of the three military orders (Avis, Christ and Santiago)[55]. The former ambassador was, indeed, a knight and commander of Santiago, a status that assured him of ecclesiastical *privilegium fori*. Under Canon law, moreover, capital offences were not punishable with the death penalty, which is why this view embodies a more accommodating position for Ligne. Not surprisingly, this stance was backed by the two counsellors of state from the House of Sousa (Henrique Sousa Tavares, the first Marquis of Arronches, and his brother, Luís de Sousa, Archbishop of Lisbon), with the support of the Secretary of State, Mendo de Fóios Pereira.

Opposing this interpretation, other counsellors voiced the opinion that the case should be examined by the High Court of Appeal in Lisbon (*Casa da Suplicação*), a position grounded in the political and institutional implications of the case[56]. In their view, handing it over to an ecclesiastical court entailed risks since the latter's specific procedures and softer penal provisions could weaken the meting out of justice and thus had the potential to damage the Portuguese monarch's reputation vis-à-vis the emperor. Reasons of state were, therefore, put forward to support the notion that Ligne's *privilegium fori* could not be invoked and hence that the case should fall under civil jurisdiction. Within this line of reasoning, a more extreme view emerged, suggesting that the actions of the former ambassador had been harmful and were not compatible with his diplomatic status: he had put himself at risk of being punished by the emperor and thus of damaging the reputation of his sovereign, which is why prosecution for an offence against the king's majesty should not be dismissed. Regardless of their views, all the counsellors were aware of the legal and judicial ramifications of the issues at

[55] On the Board of Conscience and Military Orders, see António Manuel HESPANHA, *As Vésperas do Leviathan. Instituições e poder político. Portugal, século XVII*, Coimbra, Almedina, 1994, pp. 251-255.
[56] The High Court of Appeal in Lisbon also held jurisdiction of first instance in special cases. See António Manuel HESPANHA, *op. cit.*, 1994, pp. 228-236; José SUBTIL, «Os poderes do centro. Governo e administração» in *História de Portugal. O Antigo Regime*, ed. António Manuel Hespanha, Lisbon, Círculo de Leitores, 1993b, IV, pp. 169-171.

stake and understood the paramount importance of asking for legal advice. As a result, the final decision was postponed for a few months[57].

Responsibility for hearing the case was ultimately placed under the jurisdiction of the Board of Conscience and Military Orders by royal decree of 4 March 1697. The reasons for this decision, although not contained in the decree, were in line with the legal doctrine as far as the status of the person involved was concerned (*rationem personae*). First, the Marquis of Arronches' *privilegium fori* could not be derogated because of the jurisdictional autonomy enjoyed by ecclesiastical institutions, of which he, as a commander of a military order, was a member. Furthermore, under a rule enshrined in the codification of Portuguese law and provided they had sufficient income, members of military orders were exempt from temporal jurisdiction in criminal cases[58]. It should be noted, however, that, as grand master of the three military orders, the monarch held some degree of influence over the judicial instance that was to examine the case. Indeed, when King João III assumed perpetual control of the mastership of the three military orders in 1551, he entrusted its government and jurisdiction over its members to the Board of Conscience, which from then on became known as the Board of Conscience and Military Orders[59]. As well as being a large and complex institution responsible for overseeing all ecclesiastical affairs under the patronage of the king, the Board was an ecclesiastical court of first and second instance[60]. Within its organizational structure, judges handled cases of first instance (*juízos*), while appeals were heard by five senior judges, specializing in either canon or civil law and who sat on its governing body -also called Board (*Mesa*)- by appointment of the monarch[61]. As the grand master of the orders, the king served as the final instance

[57] *Portugal, Lisboa e a Corte*, p. 135. Although no documents pertaining to the legal advice are extant today, they were certainly asked for, as stated by the Count of Povolide.

[58] *Ordenações Filipinas*, book II, tit. 12, § 1-2. On the jurisdictional privileges of the Church, see also António Manuel HESPANHA, *op. cit.*, 1994, pp. 325-343; and idem, *Poder e Instituições no Antigo Regime*, Lisbon, Edições Cosmos, 1992, pp. 43-44.

[59] On the incorporation of the mastership of the three military orders in the Portuguese crown, see Fernanda OLIVAL, *As Ordens Militares e o Estado Moderno. Honra, mercê e venalidade em Portugal, 1641-1789*, Lisbon, Estar, 2001, pp. 38-53. First established in 1532, the Board of Conscience's task was to advise the monarch on matters regarding his «conscience». In time, it came to oversee all ecclesiastical affairs under patronage of the king. See José SUBTIL, «A administração central da coroa» in *História de Portugal. No alvorecer da modernidade, 1480-1620*, ed. Joaquim Romero Magalhães, Lisbon, Círculo de Leitores, 1993a, III, p. 87.

[60] On the complex organizational structure of this body, whose personnel amounted to about fifty people in the seventeenth century, see José SUBTIL, *op. cit.*, 1993b, pp. 168-169.

[61] «Regimento da Mesa da Consciência e Ordens», 23 August 1608 in *Collecção Chronologica da Legislação Portugueza, 1603-1612*, ed. José Justino de Andrade e Silva, Lisbon, 1854, I, pp. 231-244,

of appeal[62]. According to the text of the decree, the Board had to examine the documents sent from Vienna to decide whether there were grounds to prosecute the former ambassador for Count von Hallweil's murder[63].

Shortly after receiving the royal decree, the governing body of the *Mesa* dispatched the documents to the Judge of the Knights, who was to examine them closely[64]. On 16 March, this judge ruled that charges could not be brought against Charles-Joseph of Ligne on the grounds that the papers from Vienna did not comply with the legal formalities. Indeed, as previously noted, an account of the evidence, instead of the actual judicial enquiries, had been sent to Lisbon, with the aggravating circumstance that this account had been compiled by an interested party (in other words, the victim's father). Furthermore, given that only vague evidence could be drawn from the papers presented by Leopold I, the judge declared there to be no legal basis for prosecution[65]. Although grounded in law, this conclusion was not acceptable from a political point of view as it entailed the risk that the justice dispensed by the King of Portugal could be interpreted as dismissal of the case without proper examination. Although the extent of King Pedro's interference in the matter cannot be determined, the course of events over the following months suggests that the Board was requested to find an alternative solution, and specifically one that would buy time and also accord more with the political interests at stake.

Having examined the appeal, the five senior judges of the *Mesa* overturned the earlier ruling on 18 May 1697, holding there to be sufficient indicia pointing to the Marquis of Arronches' complicity in Hallweil's killing. Consequently, the proceedings were sent back to the first instance (*Juízo dos Cavaleiros*), from where they were remitted to the *promotor fiscal* (prosecutor) of the military orders for prosecution. On 20 May 1697, the Judge of the Knights issued an order to arrest the Marquis of Arronches. By that time, however, the latter was in Italy, and so the whole process was delayed by the legal formalities required to be met for a prosecution *in absentia*.

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maxime p. 231. For a list of the members of the board, see Maria do Carmo FARINHA and Anabela JARA, *Mesa da Consciência e Ordens*, Lisbon, ANTT, 1997, pp. XIX-XLVIII.

[62] See António Manuel HESPANHA, *op. cit.*, 1992, p. 44.

[63] BA, 51-VI-34, f. 21.

[64] This happened on March 10. BA, 51-VI-34, f. 21v.

[65] BA, 51-VI-34, ff. 30v-31v.

Meanwhile, diplomatic efforts were also undertaken to uphold the king's reputation in the international setting. These included King Pedro's decision in early March 1697 to send Francisco de Sousa Pacheco on a special diplomatic mission to Vienna to express both consternation about the Hallweil incident and gratitude for the protection granted to the Portuguese legation by the emperor[66]. As Pacheco, however, was also instructed to remain in The Hague until the conclusion of the Peace of Rijswijk, his journey to Vienna was postponed for several months. While still in The Hague, Pacheco was again called to deal with the case on a diplomatic level. Around August 1697, a diplomatic representative of the Holy Roman Empire asked him whether there was any truth in the news that the Marquis of Arronches had been acquitted and was again in the king's good grace. This question did not take Pacheco by surprise since he had been made aware of an apologia for the Marquis in a pamphlet commissioned by the latter's brother, the Marquis of Moÿ[67]. Undated and written by an anonymous author, the pamphlet circulated in Europe in French, Latin and Italian and, from its contents, clearly seems to have been part of the efforts designed to restore the honour of Charles-Joseph of Ligne[68]. Although undated, it must have been prepared and published sometime between the first ruling (14 March 1697) and the overturning of this ruling (18 May 1697)[69]. Sousa Pacheco must have reassured his interlocutor that the case was still under judicial examination in Lisbon. In February 1698, he finally left The Hague, bound for Vienna, where he arrived in early April. Once there, he fulfilled his diplomatic mission in audiences granted by the emperor, the empress and the King of

[66] HHStA, StAbt, Portugal, box 2, 2-5, ff. 23-24; S. MÜNCH MIRANDA and T.C.P DOS REIS MIRANDA, *op. cit.*, p. 86.

[67] ANTT, MNE, bk. 800, f. 101v. Procope Hyacinthe of Ligne, Marquis of Moÿ, was residing in Paris at the time. This coincides with the place of publication attributed by the French National Library, based on typographical material of the French version of the pamphlet. *Apologie de Mr. le Prince-sénéchal de Ligne, Marquis d'Aronchez, Ambassadeur de Portugal à Vienne: lettre d'un de ses amis*, [Paris], s.a.

[68] The Italian version is entitled *Apologia in favor dell'eccellentissimo signor prencipe siniscalco di Ligne, marchese d'Aronchez, ambasciator di Portogallo à Vienna.* A copy of the Latin version was published by António Caetano de Sousa, *Provas da Historia Genealogica da Casa Real Portugueza*, VI, Lisbon, Na Regia Officina Sylviana e da Academia Real, 1748, pp. 212-220.

[69] Doubts have been expressed about the date of the pamphlet. According to the French National Library, it was printed in 1696, which is clearly impossible, while the Portuguese National Library does not provide a specific date, stating only that it was printed in the 1700s. Further evidence dating the pamphlet to spring 1697 is the fact that D. Luís de Sousa, great-grand uncle of Charles-Joseph of Ligne, is referred to as Archbishop of Lisbon. Had the pamphlet been published later, he would undoubtedly have been referred to as Cardinal (Cardinal-Archbishop of Lisbon), to which dignity he was promoted in June 1697. See António Caetano de SOUSA, *op. cit.*, 1953, p. 324. Although not resolving these dating discrepancies, Manfred Zollinger was the first to point them out. See Manfred ZOLLINGER, *op. cit.*, p. 307.

the Romans. Although he also carried instructions to pay Arronches' gambling debt, he was informed upon enquiring into the matter that this had already been settled[70].

The prosecution *in absentia* of Charles-Joseph of Ligne came to a close on 4 July 1699. To circumvent the fact that the evidence submitted had been in a non-judicial account, the prosecutor argued that the indicia presented were notorious, constituting proof of the former ambassador's culpability. He thus accused Ligne of being both the moral author and material co-author of Hallweil's killing, as well as of having committed theft and treason (*laesa maiestatis*)[71]. Based on four testimonies collected in Vienna and conveyed in the account, the prosecutor took it as proven that the former ambassador had planned the killing with an unidentified man (referred in the sources as «the man in a blue cloak») because of a 51,000 Rhenish guilder gambling debt[72]. One of the testimonies placed both men in Gablitz on 9 and 10 August 1696, while the ambassador's material participation was assumed on the basis of a bloodstained shirt sent to the laundry by a servant of the legation on 14 August. For the crime of treason, the prosecutor relied on the undisputed fact that Ligne had abandoned his post (desertion), while the charge of theft hinged on Count von Hallweil's missing personal belongings. It should be noted that, with these latter charges, the prosecutor was already going beyond the boundaries set by the Royal Decree of 4 March 1697, which ordered the *Mesa* merely to examine Arronches' possible involvement in Hallweil's murder.

Following the conclusion of the prosecution, the Judge of the Knights ruled on 17 September 1699 that Charles-Joseph of Ligne was found guilty on all charges. With regard, however, to the charge of treason, which he nevertheless took as proven, the judge declined jurisdiction[73]. Arronches was thus convicted and sentenced to permanent exile in Portuguese India[74].

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[70] ANTT, MNE, bk. 802, ff. 39-43, letter to Mendo de Fóios Pereira, 3 May 1698; Idem, ff. 43-44, 17 May 1698. See also S. MÜNCH MIRANDA and T.C.P. DOS REIS MIRANDA, *op. cit.*, p. 86. It is reasonable to assume that the debt was paid by the family of Arronches' wife during 1697.

[71] BA, 51-VI-34, ff. 46-47.

[72] The testimonies were taken from Francisco Gruner, the innkeeper of Gablitz; an unidentified washerwoman who usually collected laundry from the embassy; Martin Febal, resident in Vienna; and Gerard Haas, tailor, also resident in Vienna, near St. Ulrich. BA, 51-VI-34, ff. 23v-28v.

[73] The hearing of cases of treason fell exclusively under civil jurisdiction. The penalty for desertion included death, confiscation of assets and the stripping of all honours. See *Ordenações Filipinas*, liv. 5, tit 6; Joaquim Caetano Pereira e SOUSA, *Classes dos crimes por ordem systematica, com as penas correspondentes*, Lisbon, Na Officina de J.F.M. de Campos, 1816, p. 65. See also António Manuel HESPANHA, *História de Portugal Moderno. Político e Institucional*, Lisbon, Universidade Aberta, 1995, pp. 266-268.

[74] BA, 51-VI-34, ff. 62-65v.

This sentencing was followed by an appeal lodged at the *Mesa* on 8 November 1699, in which the prosecutor requested that Arronches should also be stripped of his knighthood and commandery[75]. On 4 February 1700, however, the five senior judges of the *Mesa* changed the course of justice by overturning the verdict in first instance on the grounds that the submissions that had been presented as proof of culpability were not in fact notorious[76]. Not only, the senior judges stated, were the witnesses unreliable, but their testimonies had been presented in a non-judicial form and their evidence was not corroborated by other witnesses. As such, therefore, they fell under the legal principle of *testis unus, testis nullus.* Not being notorious, the facts presented were thus no more than circumstantial evidence. Furthermore, Arronches' flight from Vienna could not be taken as a presumption of guilt in view of the threat the Viennese mob posed to his life. The senior judges also dismissed the charge of treason, given that the king had not ordered them to examine the circumstances of Arronches' abandoning of his diplomatic post. Lastly, they rejected the charge of theft[77]. Three and a half years after the incident, therefore, the Marquis of Arronches was acquitted of all charges and, from a judicial point of view, the matter was considered closed. By then, as this verdict indicated, the Court of Lisbon no longer feared the international consequences of such a judicial decision.

The news of the acquittal, together with the reasons for it, circulated widely and fairly accurately in European gazettes between April and May 1700[78]. How the news was received in the imperial court is not known; in view, however, of the international juncture, it seems clear that the matter had by then already lost much of its relevance. In early February 1699, the death of Joseph Ferdinand of Bavaria, the designated heir to the Spanish throne, had cast the European balance of powers into disarray. In the turmoil of events, having Portugal as an ally became even more important for the Austrian Habsburgs' dynastic interests in the Spanish throne. Indeed, on 17 February 1699, Leopold I had appointed Charles Ernest, Count von Waldstein, as extraordinary

[75] BA, 51-VI-34, ff. 68-69.
[76] On the Roman-canon law of proof, see John GILISSEN, *Introdução Histórica ao Direito*, Lisbon, Fundação Calouste Gulbenkian, 1979, pp. 716-718.
[77] BA, 51-VI-34, ff. 69-72. See also António Caetano de SOUSA, *op. cit.*, 1953, p. 337.
[78] *Lettres Historiques*, April 1700, XVII, pp. 463-466; *Historische Remarques der neuesten Sachen in Europa*, Hamburg, 11 May 1700, p. 138.

ambassador to the Court of Lisbon, and his instructions, drafted in June that year, clearly point to the Arronches' affair being considered closed[79].

III. BETWEEN ROYAL AND HOUSEHOLD DISCIPLINE: CHARLES-JOSEPH OF LIGNE'S EXILE

Charles-Joseph of Ligne died in Padua on 20 January 1713. For reasons undoubtedly relating to the outcome of the judicial process he did not return to Portugal after his acquittal. It seems clear that, soon after the 1697 verdict was announced, Ligne set out to restore his honour in the eyes of the public, and in this he was backed by the Marquis of Moÿ (his brother), his wife and the Archbishop of Lisbon. The apologia published that year, in the form of a letter from a friend to an unnamed ambassador, clearly marked a stepping stone towards his rehabilitation. In addition to publicizing that the suspicions against him had been dismissed, the pamphlet proclaimed his innocence by presenting his version of the events of August 1696, while also insinuating that the culprit was a Polish nobleman who had held a grudge against Count von Hallweil because of a gambling debt. However, this attempt at rehabilitation was short-lived as the first ruling was overturned in May 1697.

While the judicial proceedings were pending, a rather strange confession by a Pole, named John Mustriki, in Messina in January 1697 presented an alternative account of events. Following a request by Ligne's wife, this confession was attached to the case records on 6 March 1699, given that it met the requirements of the law. In it, John Mustriki confessed to being one of the material authors of the crime, which had allegedly been ordered by an unnamed nobleman of Vienna and had resulted in the killing of four people: Count von Hallweil, his companion, a coachman and a servant[80]. However, the verdict of 17 September 1699 rejected this confession as evidence. The Judge of the Knights instead favoured the argument put forward by the prosecutor and deemed the account of Mustriki to be unlikely, given that the emperor's letter and the account sent from Vienna mentioned only the discovery of Hallweil's body.

[79] HHStA, StAbt, Portugal, box 2, 2-5, ff. 40-50, 27 June 1699. S. MÜNCH MIRANDA and T.C.P. DOS REIS MIRANDA, *op. cit.*, pp. 90-92.

[80] According to Mustriki's account, he and his companions buried three bodies, leaving Count von Hallweil only half-buried, supposedly because the many tree roots made digging hard. BA, 51-VI-34, ff. 53-62. A copy of this confession was published by António Caetano de SOUSA, *op. cit.*, 1748, pp. 220-229.

Whether Mustriki's confession was truthful or commissioned by Arronches cannot be ascertained. In any case, what mattered most for Charles-Joseph of Ligne was the image projected to the public. By February 1700, the grounds for his acquittal were based on «there [being] no proof» against him, which ultimately also meant that his innocence had not been proven. Furthermore, the authorities and public opinion in Vienna still regarded him as being guilty of murder. At this point, therefore, Ligne was left with no arguments for sustaining his innocence. Consequently no further attempt to restore his honour was made[81]. Within this line of reasoning, it seems plausible that his exile in Italy may have been voluntary. Perhaps more importantly, however, his choice to remain in Italy would seem to have been the logical outcome of his falling out of the king's favour.

Although European gazettes stated otherwise, the Portuguese sources do not confirm that Charles-Joseph of Ligne was recalled to the royal court after his acquittal in 1700. António Caetano de Sousa, who wrote an in-depth genealogical history in the 1730s, states merely that Ligne was granted permission to return to Portugal and retire to his household[82]. Indeed, it seems highly unlikely that King Pedro would ever have welcomed him at court since the whole incident had been a source of deep irritation and embarrassment. From the monarch's perspective, his reputation had been put at risk by Ligne's private behaviour, and such lack of judgement of a diplomatic representative was not acceptable. Hence, still outraged, King Pedro decided to bar Arronches from court, thus signalling that the latter had fallen out of favour.

Ligne's exile should lastly also be understood in the light of the typical household discipline of the aristocracy that bound the members of the House of Sousa[83]. For Henrique de Sousa, the old Marquis of Arronches and head of the House, it must have been clear that both his grandson-in-law's behaviour and King Pedro's disposition towards him had the potential to harm the family's hopes of advancement, for which royal favour was paramount. This was especially important in the early 1700s, when the continuity of the House of Sousa, which claimed to be the oldest of all the Grandees,

[81] His supporters were by then either too old (Luís de Sousa, his wife's great-uncle) or facing financial problems (Procope Hyacinthe of Ligne was facing insolvency) to continue to advocate his cause. For Luís de Sousa, who died in 5 January 1702, see António Caetano de SOUSA, *op. cit.*, 1953, p. 324.
[82] See António Caetano de SOUSA, *op. cit.*, 1953, p. 338.
[83] See Nuno Gonçalo MONTEIRO, *op. cit.*, 1998, pp. 51-199; Nuno Gonçalo MONTEIRO, *Elites e Poder. Entre o Antigo Regime e o Liberalismo*, Lisbon, Imprensa de Ciências Sociais, 2003, pp. 83-103.

was far from ensured. Indeed, the succession rested on Charles-Joseph's only surviving daughter, born in 1694, and her marriage prospects depended heavily on a regular presence at court. Guaranteeing a good match for his great-granddaughter, Luísa Antónia de Sousa, was certainly a major concern for Henrique de Sousa; as such, Ligne's exile was thus a convenient solution. It seems reasonable to assume, therefore, that the old Marquis of Arronches would have refrained from any attempt to bring Charles-Joseph back to Portugal. His strategy proved effective when, on 30 January 1715, Luísa Antónia married Prince Miguel, a legitimized son of King Pedro II. This alliance with the royal family elevated the House of Sousa to the ducal dignity (Lafões)[84].

IV. CONCLUSION

On the grounds of its singularity, this criminal case has been used here as a lens to observe how both formal and informal mechanisms of justice and punishment were applied to restore political and social order. From the outset, the legal problems raised by a capital offence allegedly committed by the Portuguese ambassador set the boundaries within which the case could be handled by its judge, King Pedro II, and, as such, also heavily constrained its final outcome. Following the emperor's request to dispense justice, Pedro II handed the case to the Board of Conscience and Military Orders for judgment, as was his duty, even though the lack of a full judicial enquiry into the events that occurred in Vienna, for reasons related to the *ius gentium*, was clearly a hurdle. The overturning of the first verdict by the *Mesa* in 1697 and the subsequent re-examining of the case by the Judge of the Knights therefore served political purposes. The main concern was to ensure that prosecution was ongoing, while efforts were also being made on the diplomatic front to appease the relationship with the Holy Roman Empire. Ultimately, the acquittal on 4 February 1700 acknowledged the formal flaw already identified in 1697.

In addition to taking political and judicial aspects into account, King Pedro's handling of the case also reflected reasons relating to the continuity of the House of Sousa. Although the Marquis of Arronches' flight from Vienna could have constituted a

[84] See António Caetano de SOUSA, *op. cit.*, 1953, p. 338, and Nuno Gonçalo MONTEIRO, *op. cit.*, 1998, p. 346.

crime of treason (desertion), the monarch clearly had no interest in prosecuting him for this offence, given that, if proven, it would mean confiscation of assets, stripping of rank and perpetual dishonour for the entire family, an outcome that was certainly not in the king's mind. That this protection implicitly extended to the House of Sousa, one of the oldest in the aristocracy, should be seen in the light of the notion that the king's justice was designed to restore and protect the natural order of society.

Although Arronches may have been formally acquitted of Hallweil's murder, the fact remains that, prior to the incident, his behaviour in Vienna had been incompatible both with his noble status and with his being a diplomatic representative of the King of Portugal. This could not be allowed to go unpunished. Consequently his recklessness was informally penalized by his not being granted access to the royal court; a punishment that was not, however, extended to his family. Dependent on the monarch for its continuity, the House of Sousa had little option but to comply with the king's decision. As for Charles-Joseph of Ligne, faced with the outcome of his trial *in absentia*, he must have acknowledged that remaining in Italy was the best solution for his family. Thus discipline in the aristocratic household prevailed.

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