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LITHUANIAN LEGAL SYSTEM UNDER THE INFLUENCE OF EUROPEAN UNION LAW

Collection of scientific articles on the influence of European Union law
on the Lithuanian constitutional, administrative and environment protection,
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THE 16TH CENTURY LITHUANIAN STATUTES IN THE CONTEXT OF THE EUROPEAN LEGAL TRADITION

Introduction

The first thought that comes to mind when reflecting on the Grand Duchy of Lithuania in the context of the European legal traditions is that, according to some Polish historians, the Commonwealth of the Two Nations, established at the end of the sixteenth century (1569) and consisting of the Kingdom of Poland and the Grand Duchy of Lithuania, may be perceived as the first form of the European Union. However, this article does not focus on the Commonwealth of the Two Nations, but rather on the final “codification” of the legal system of the Grand Duchy of Lithuania, completed in the early years of the existence of this Commonwealth (1588), and which avoided clear reference to the changed international status of the Grand Duchy of Lithuania (i. e. confederation with the Kingdom of Poland).

It should first be noted that the Statutes of the Grand Duchy of Lithuania (the Lithuanian Statutes¹), as the legal heritage of the sixteenth century and the source of contemporary constitutionality (including the constitutions of the First Republic of Lithuania of the inter-war period) were mentioned in the preamble of the Constitution of the Republic of Lithuania of 1992, whereby making them of not only historical, but also of constitutional relevance. Moreover, since the Lithuanian Statutes represented the first codification project at this level in the Renaissance, they gained not only a national or regional, but also continental (European) dimension. In this respect, some constitutional provisions of the Lithuanian Statutes not only enable us to link the constitutions and constitutional law of eighteenth century France and the Commonwealth of the Two Nations, but also lead us to believe that the origin of European constitutionalism traces back at least two hundred years further in history (not to mention, for example, the 1215

¹ The First Statute of 1529 did not have an official title. The title of the Second Statute of 1566 and the Third Statute of 1588 was “The Statute of the Grand Duchy of Lithuania” (ruth. Статут великого князства литовского). Starting from 19th century in Polish and Lithuanian scientific literature the Statutes are usually referred to “the Lithuanian Statutes” (pol. Statuty Litweskie, lith. Lietuvos Statutai), the term I will use in this article.

English *Magna Carta Libertatum*). This article does not by any means maintain that the constitutional features were absent in other legal acts of the Grand Duchy of Lithuania in the Middle Ages or the Renaissance (e.g., the Grand Dukes' privileges or Seimas' laws-constitutions), or other legislation, however the Lithuanian Statute appears to be of exceptional significance in terms of the scope and content of its constitutional principles and even its provisions. Moreover, the Statutes codified not only legal provisions at the constitutional level, but also those related to local self-government, taxes, forests, and to criminal, civil, family, inheritance, procedural and other fields of law.

This paper tends to link the origins of modern constitutionalism with the tradition of Roman law, perceiving them not only through the prism of the constitution as the highest legislation in the hierarchy, but also through other features of constitutionalism, such as human rights and the separation of powers (as defined in the *French Declaration of the Rights of Man and of the Citizen* of 1789), democracy and the sovereignty of the nation and parliamentarianism, namely regular elections of representative bodies and some signs of judicial independence. As rightly pointed out by Alfonsas Vaišvila, one of the basic features of constitutional law is not simply "to regulate the relationship between the government and the citizens, but rather to restrict governmental powers through the rights of the citizens, thus subjecting the organization of the state to the service of civil rights²". However, this article seeks to demonstrate a certain relationship between the sixteenth century Lithuanian Statutes and the traditions of modern constitutionalism not directly, but through the received tradition of Roman law.

1. The Lithuanian Statutes

Before going deeper into specific provisions of the Lithuanian Statutes, we should mention the legal pluralism that prevailed in the medieval European state. The co-existence of different legal systems in the Grand Duchy of Lithuania can be illustrated through the following dichotomous sections: ecclesiastic and secular law; state and local self-government (Magdeburg) law; royal and local case law; statutory and customary law; Roman law and national case law. Finally, the legal status of the Vilnius Academy (later, the University), established in 1579, also enjoyed a relatively broad jurisdiction and autonomy as regards students and lecturers. From the perspective of the current nationalized legal framework, this coexistence of different legal systems is not easy to understand, and it should therefore be noted that one of the most important objectives of the Lithuanian Statutes, as a codification project, was to organise as far as possible this diverse legal reality (obviously, without rejecting it completely), and this will be further developed later in this paper.

2 VAIŠVILA, A. Teisinės valstybės koncepcija Lietuvoje. – Litimo, 2000, p. 211.

In the first place, however, the reader should be introduced to the Lithuanian Statutes as such. Written in the chancery Ruthenian language (the official language of the chancery of the Grand Duchy of the 15th-17th centuries), the Lithuanian Statutes were a codified collection of laws in three editions: 1529, 1566 and 1588. It has since become a historic tradition to refer to them as: the First Lithuanian Statute (FLS), the Second Lithuanian Statute (SLS) and the Third Lithuanian Statute (TLS). These were not different legal acts, but modified versions of the original Statute (1529), having basically maintained its form and content. Whereas the FLS and SLS were only available in handwritten manuscripts, the last Statute or 1588 TLS was published the same year in Vilnius with funds from the Vice Grand Chancellor Lew Sapieha. Over 30 TLS copies of the 1588 TLS edition have survived to the present day and are currently kept in different state archives and libraries in Lithuania, Poland, Russia, Belarus, Czech Republic, etc. It is the TLS that should be held most valuable in terms of its legal terminology as well as for its long application (350 years) in certain territories of the former Grand Duchy of Lithuania (provinces of Vilnius, Minsk, Grodno, Kiev, Podolia and Volhynia) until 1840. In fact, the Podolia and Volhynia provinces of contemporary Ukraine officially used the SLS of 1566 under the Tsarist occupation, as at the time of the endorsement of the Third Lithuanian Statute, this territory, which was formerly part of the Grand Duchy of Lithuania, fell subject to the Polish Crown under the Resolutions of the Lublin Union of 1569; therefore the TLS of 1588 was not formally enacted in this territory. It should also be noted that in Mogilev and Vitebsk, provinces of contemporary Belarus, the TLS was renounced by order of the Tsar immediately after the failed 1831 rebellion, and not in 1840, as in other territories of the former Grand Duchy of Lithuania³. Therefore, this article will basically focus on the examination of the provisions of the Statute of 1588. The article will refer to the twentieth century republished critical scientific publication by J. Lappo, as well as the so-called "Minsk" publication of the Lithuanian Statute, together with the facsimile of the 1588 edition⁴.

For a better understanding of the TLS, it is worthwhile noting that it consists of 14 chapters and more than 300 articles. For the sake of convenience, the 14 titles of the chapters are presented here to give an understanding of the regulatory scope covered by the Statute: I. On the Person of the Sovereign; II. On the defence of the country; III. On the liberties of the nobility and the expansion of the Grand Duchy of Lithuania; IV. On Judges and Courts; V. On dowries and marriage; VI.

3 See e.g. JANULAITIS, A. (1932) Ignas Danilavičius. VDU. p. 176. Janulaitis argues that in Poltava and Chernihiv provinces of Ukraine some parts of the Statute (in this case – the second) were operational post-1840, not directly however, but through the Russian legal acts, which transposed certain civil law provisions of the Statute.

4 LAPPO, J. (1938) 1588 metų Lietuvos Statutas. T. 2. Tekstas. Kaunas; Also see Статут Великаго Княства Літоўскага 1588. Тэксты. Даведнік. Каментаріі. Мінск. 1989.

On guardianship; VII. On the transfer and sale of property; VIII. On testaments; IX. On land property courts, rights to the land, and boundaries of manors, and balks; X. On forests, hunting grounds, trees with beehives, lakes, and meadows; XI. On nobility-related injuries, brawls, and homicide; XII. On killings of commoners, and bondsmen who desert their master, and transfer of servants; XIII. Concerning robberies and penalties; XIV. On crimes committed by persons of various estates⁵.

Thus, the Statute was perceived as the “universal written law of the land” (*одним правом писанымъ; статутъ права посполитого земьского*)⁶. This definition of the Statute enables us to get a better understanding of exactly how the contemporaries understood this legal source and to identify its three features, which are as follows:

Statutory/written law – as opposed to the customary law and case-law;

Universal law – state law of universal application, as opposed to the particularist legal system (e.g. estate or city);

National (land) law – autonomous legal system of the Grand Duchy of Lithuania, as opposed to laws-constitutions of the Seimas (parliament), applicable across the Commonwealth of the Two Nations.

2. Ancient Roman law and European legal tradition

In the context of this article, it is very important to note that the FLS (1529) and SLS (1566) were translated from Ruthenian not only into Polish, but, above all, into Latin, which at the time enjoyed the status of the international diplomatic and legal language in Western Europe. The terminology used in the Latin Statute, for example – *iustitia*, *innocentia*, *delictus*, *iudicium*, *ius naturale*, *res iudicata*, *negligentia* and others, enable the Statute law to be perceived in the context of concepts and meanings of Roman law. To the author’s knowledge, it was Ignas Danilavičius, who, as early as the XIX century, pointed out for the first time the direct influence of Roman law (*ius Romanum*) on the Lithuanian Statutes, not only in the domain of private law (e.g. inheritance and succession law), but also in the sphere of public law (e.g. criminalisation of offences *against* the dignity of a royal sovereign)⁷. The Code of Justinian (529), which is the main source of Roman law, is a compilation of previous medieval law, organised in a systematic manner. Each book of the Code of Justinian contains legal provisions listed in chronological order, thus showing what was regulated by lawmakers in the course of time: Ecclesiastical law (book 1); Civil

law (books 2–8); Criminal law (book 9); State public law (books 10–12)⁸.

In this respect, the Code of Justinian sets out the chronological set of legal provisions and principles of the above four branches of law. The TLS is not a scientific-theoretical compilation of legal acts, but primarily a legal compendium intended for practical application in court. In any case, the structure of the Third Lithuanian Statute of 1588 is quite similar to that of the Code of Justinian, and may be classified as follows:

Public law: status of the monarch, rights of nobility, judiciary (chapters 1–4);

Private (civil) law: property disputes (chapters 5–10);

Criminal law (chapters 11–14).

The Statute and the Code of Justinian therefore share a similar structure, except that ecclesiastical law is left unregulated, recognizing the independence and autonomy of canon law.

As regards public law, it is generally known that, at least in theory, the classification of law into private (*ius privatum*) and public (*ius publicum*) is part of the Roman tradition, and reference is often made in this regard to the words of the famous Domitius Ulpianus on public law being related to state matters, such as civil service (magistrates), temples and worshipping⁹. Meanwhile, private law relates to the law of property, obligations, family, inheritance, etc. The doctrine of Domitius Ulpianus and Roman law in general was well known to the GDL nobility of the sixteenth century, and Pedro Ruiz de Moros, who is said to have co-authored the SSL (1566), in his work *Decisiones Petri Royzii Aurei Alcagnicen[sis], Regii Jureconsulti, de rebus in sacro auditorio Lituanico ex appellatione iudicatis*, containing statements, derived from the practice of the courts of the assessors of the sovereign of the Grand Duchy of Lithuania, makes frequent references to Domitius Ulpianus, as well as to the commentators Bartolo and Baldo¹⁰.

However, it should be noted that (in spite of the attention of the Romans to civil law and their lax attitude to public law) the Roman law distinction between public and private leads to the supposition that the state itself is not only a legislative entity, but also a subject of law, i.e. – it must obey (public) law *per se*.

This consideration brings us to the principle of the rule of law, reflected in the Statute being the supreme law of the land.

Roman law is a considerably complex legal system, covering not only the positive law (such as the Emperor’s edicts), but also judicial precedents and legal scholars’ *iusprudentia*. The positive Roman law may be classified not only into the well-known public law (*ius publicum*) and private law (*ius privatum*), but also into *ius civile* (Roman citizenship-related legal status), *ius peregrinorum* and *ius gentium*

5 Translation of these titles with minor corrections is taken from: PLATERIS A. Codification of the law in the Grand Duchy of Lithuania// Lituanus. Lithuanian quarterly journal of arts and sciences. Vol. 11, No 2. 1965.

6 See art. 1, chapter I of TLS. The Statute’s nature as a written legal source, was emphasized as early as in 1529, in the First Lithuanian Statute.

7 DANILOVICZ, I. Kodeks Napoleona w porównaniu z prawami polskimi i litewskimi, (1818). KRAUSHAR A. Gazeta Sądowa 1904, Nr. 36–53, Warszawa, 1905.

8 See ANDRIULIS, V. (2003) Lietuvos Statutų (1529, 1566, 1588 m.) šeimos teisė. TIC. P. 20.

9 See NEKROŠIUS I., NEKROŠIUS V., VELYVIS S. Romėnų teisė. Justitia, 1999, p. 14.

10 ROIZIJUS P. Lietuvos Sprendimai (1563). Ed. Andriulis, V., translated from Latin by Dalia Dilytė. Vilnius, 2007, p. LIX–LX.

(related with the emergence of modern international law), *ius commune* (common law) and *ius singulare* (singular law). Roman law also relates to such well-known principles of law as *aequitas* (equality of individuals), *humanitas* (humanism, respect for human dignity), *natura rerum* (common sense) and *ius naturale* (inherent right of individuals)¹¹. The ancient Roman law period came to an end, together with the Western Roman Empire, in the fifth century, but culminated in the sixth century with the Code of Justinian, drawn up in the Byzantine Empire rather than in Rome. However, it can be said that each phase of the periodisation of history (at least until the post-modern era) is somehow related to a greater or lesser degree of adoption of Roman law, which happened not so much through direct transposition of the *Corpus iuris civilis* into national legal frameworks, but rather by assimilating “Roman” thinking, which was disseminated through medieval universities.

However, even in modern times, i.e. the second half of the twentieth century, with the emerging post-World War II projects of European integration, extensive efforts were made towards establishing common European law as the successor of the previous medieval *ius commune europaeum*. The end of the twentieth century was particularly productive as regards comparative legal studies, scholarly journals on the subject in various languages; university faculties of law and history started offering individual *ius commune (europaeum)* courses alongside Roman law¹². At the end of the twentieth century, *ius commune research schools* were founded by the most famous universities in the Benelux countries. This breakthrough in studies of the Code of Justinian (later referred to as *Codex iuris civilis*), extensively studied at European universities from the twelfth century, was based on the idea that the Holy Roman Empire of the Middle Ages (with the Emperor in the lead) was a continuation of the ancient Roman Empire, therefore, its legal heritage, called *Roman law*, was still operating as the common legal system of Medieval Western Latin Europe, in other words – *ius commune*. Roman law or *ius commune* was perceived as a universal and eternal legal system of prudence, as opposed to the local particularistic legal system¹³. Later, this common legal heritage (*ius commune*) came to include the legal systems of the Catholic Church (*ius canonici*) and municipal (Magdeburg) law.

From the fourteenth century, canon and Magdeburg legal systems were also in force in the territory of the Grand Duchy of Lithuania, and the establishment of the Vilnius Academy (later – Vilnius University) in 1579 opened up the possibility for the study of Roman law and the *Codex iuris canonici* (though it was only in the

seventeenth century that the Faculty of Law was officially established). Furthermore, the legal autonomy of the academic community (faculty and students) vis-à-vis state courts may also be attributed to the system of *ius commune europaeum*. However, the revived interest in Roman law in the sixteenth century no longer treated Roman law as the existing legal framework, but purely as a historic school of law aiming to identify certain Roman legal principles while applying them in local legal systems and courts. In a sense, it could be maintained that Christian law (*права християнськіе*), mentioned in the Statutes, might also be referred to as *ius commune*, since it included the principles of Roman¹⁴, canon and Magdeburg laws, which had to be used by courts as they administered justice, referring to foreign case-law in the case of *lacunas* in the Statute¹⁵.

As regards the specific content of the concept of “Christian law” in the Statute, it may be said to be particularly related with the presumption of innocence, the dignity of the person, the consolidation of court proceedings, held on public and adversarial basis, and the refusal of such “pagan law” relics as severe punishment, torture, slavery, or collective responsibility, which had dominated in the customary law of the Grand Duchy of Lithuania even after the country’s Christianisation in 1387 and 1413¹⁶. On the other hand, the Statute’s reference to Christian law was a certain *legitimation* of the legal system of the Grand Duchy through its appeal to a higher – divine – law, following the thought of Thomas Aquinas that the temporal law (*lex humanum*) must conform to the higher eternal (*lex aeternum*) and divine law (*lex divinum*).

Thus, the Grand Duchy of Lithuania, like other European countries in the sixteenth century, did not use the term ‘Roman law’ or *ius commune (europaeus)* in its legal texts, replacing it with the term ‘Christian law’, which served as an alternative to the former concept, and in its strict sense meant canon law (including not only the law of the Catholic church, but also that of the Orthodox and Protestant faiths), and included not only the principles of canon law, but also of Roman law and Magdeburg law (*право майдебурьское*)¹⁷.

11 See NEKROŠIUS I., NEKROŠIUS V., VĖLYVIS S. Romėnų teisė. Justitia. 1999, p. 11–18.

12 For example, see BELLOMO M. The Common Legal Past of Europe: 1000–1800. Catholic University of America Press; *Ius commune: European and comparative law series*, book from the series published by the British Publishing House “Intersentia”; April 1995, scholarly journal *Ius commune* – Electronic journal of comparative law etc.

13 For comparison see JANULAITIS A. Imperijos rūmų teismas (Reichskammergericht, 1495–1806). VDU Teisių fakultetas. 1927, p. 60.

14 The relation between the concepts of Christian law and Roman law is also recognized, e.g. by Juliusz Bardach in his book *Statuty Litewskie a prawo rzymskie*. Warszawa, 1999, p. 84.

15 See art. 54 of chapter IV (about courts). The concept “Christian law” is sometimes used in the Statute in a narrower sense, i.e. that of the canon law (see. e.g. art. 20 and 22 of chapter V), however, in these cases the concept “spiritual law” (*право духовное*) is also used.

16 All these human rights were obviously applied for the nobility citizens. On pagan law reliques, see e.g. Kazimiero Teisynas (1468). Translated by A. Janulaitis ir J. Jurginis. // *Acta historica Lituanica/ Lietuvos TSR Mokslų Akademija. Istorijos Institutas*. Vilnius. Mintis 1967, p. 17–19. In fact, certain relics of collective responsibility were retained even in the text of TSL, e.g. art. 2, chapter XIV provides for the collective liability of a village, should it refuse to give up an offender (a thief).

17 It should be emphasized at this point that the Statute did not interfere directly either in canon law (or the spiritual law of non-Christian religions) or Magdeburg law, recognizing their legal autonomy, but nonetheless leaving no exemptions for citizens and clergy as regards certain

As regards the legal autonomy of cities in medieval Western Europe, it is noteworthy that the privilege of the monarch establishing Magdeburg law usually consisted of the following four modalities: 1) repealing written and customary law contradicting Magdeburg law; 2) the exemption of municipal inhabitants from the jurisdiction of state courts; 3) setting up local authorities (e.g. town councils), and 4) benefits of economic rights for municipal inhabitants¹⁸. Indeed, the TLS appeared to legitimise the autonomy of Magdeburg law, i.e. all references to Magdeburg law recognised the legal autonomy of the status of the municipal inhabitants (i.e. those of the cities with royal privileges) and the autonomous urban jurisdiction. Only in the case where trials involved disputes between an urban inhabitant and a nobleman (state citizen under the Statute), was the matter referred to the jurisdiction of the state court rather than the city court.

This article maintains that modern constitutionality is part of the European (or rather – Western) legal tradition, having evolved from the principle of the rule of law being of Roman origin. However, contrary to the traditional scholarly literature on constitutional law, it examines the adoption of Roman law and the rudiments of constitutional law not in the context of the Enlightenment, but in relation to the humanistic period of the Renaissance. As previously mentioned, according to R. Brague¹⁹, Western culture is known for its revival of classical antiquity in certain cycles, historically called the Middle Ages, the Renaissance, the Enlightenment, Modern Times and Postmodernism (which, incidentally, sometimes claims to have terminated relations with ancient culture). Law being part of culture, it is not surprising to see manifestations of ancient heritage revisited in this field as well as in art, music and architecture. In the Middle Ages, this was witnessed by the formation of the canon law and Magdeburg legal systems, the revival of Roman legal studies, and the establishment of universities: in the Renaissance – by the formation of hierarchical legal concepts; in the Enlightenment – by the adoption of the first constitutions, in Modern Times – by the systematisation and codification of the law, by the fight for democracy and human rights, and the implementation of the principle of separation of powers. The above-mentioned European integration processes in the Postmodern period, particularly in the twentieth century following the establishment of the European Union, can also be regarded as the ambition to restore and further develop the *ius commune europaeum* as a classical antiquity-derived contemporary paradigm for consolidating Western Europe.

taxes and military conscription (for clergy and urban citizens – owners of land holdings), and regulating legal civil and criminal court disputes of the nobility of the Grand Duchy with the clergy (priests and bishops) and urban citizens, particularly when these cases were outside the jurisdiction of canon law or Magdeburg law.

18 See e. g. MACHOVENKO J. Nelietuviškų žemių teisinė padėtis Lietuvos Didžiojoje Kunigaikštystėje (XIV–XVIII a.). VU leidykla, 1999, p. 174.

19 BRAGUE R. Europe, la voie romaine. Criterion, Paris, 1992.

This article will further address the Roman law tradition-related constitutional features and principles contained in the Lithuanian Statute: hierarchical legal system, democracy, *status libertatis* and *status civitatis*, and others.

3. Rule of law and hierarchical legal dimension of the Third Lithuanian Statute of 1588

The sixteenth century Lithuanian Statutes represent the paradigm of the Renaissance (humanism) era, which is recognised both in the pure movement of legal hierarchy, as well as in the efforts of the subsequent periods towards the systematisation and codification of law. Thus, the fact of the codification and systematisation of law can be seen as a European phenomenon, stemming from Roman law, i.e. from classical antique tradition. In this sense, the sixteenth century Lithuanian Statutes as a single legal compendium already had features of *ius commune europaeum*. This chapter will tend to present the Lithuanian Statutes as an example of a hierarchical legal framework containing the principle of the rule of law.

Although legal hierarchy is not explicit in the Lithuanian Statutes, it can already be seen indirectly in chapter 1 of all the editions, where it is claimed that the Statute shall apply to all citizens (nobility), and that this particular legal source shall serve as the principle document for the courts of the Grand Duchy of Lithuania as they administer justice. The primacy of the Statute (e.g. in relation to Magdeburg law) is reflected in the provisions of article 49 of chapter III of the TLS, governing the management of the property acquired by the nobility in Vilnius. The provisions may lead to the conclusion that the courts, having set competitive rates, shall give priority to the Statute. In this way, the sixteenth century the Lithuanian Statute not only appears to be an all-inclusive legal compendium of the law of the Grand Duchy of Lithuania, but also enjoys legal supremacy (primacy) over other sources of law (in particular Magdeburg law and the judicial case-law applied in the Grand Duchy of Lithuania until then). This interpretation of the Statute as having supremacy over other legal acts was noted a hundred years ago by Polish historian F. Piekosiński²⁰. Similarly, Augustinas Janulaitis, in the inter-war period in Lithuania, claimed that before the withdrawal of the Statute of 1840 in the occupied territory of the Grand Duchy of Lithuania, the courts applied other (i.e. Russian) legal acts, including Magdeburg law, indirectly, i.e. only through the rule of “closing a legal lacuna” as provided for in article 54 of chapter IV of the TLS²¹.

20 Taken from BARDACH J. III Lietuvos Statutas Lenkijoje. In “1588 m. Trečiasis Lietuvos Statutas” (the material from the National conference to mark the 400 anniversary of the Third Statute). Vilnius, 1989, p. 18.

21 JANULAITIS A. Ignas Danilavičius. VDU, Kaunas, 1932, p. 130.

The sovereignty of the Grand Duke of the Grand Duchy of Lithuania, as head of state (the monarch) is mentioned in the Statute specifically by paralleling an offence against the dignity of a reigning sovereign with an offence against the state (see e.g. chapter I of the TLS), and providing for the general understating that the monarch is the source of the overall legal system and the enforcement of justice. However, it should be emphasised here that the Lithuanian Statute indirectly reflected the concept of the competition between some features of the sovereignty of the nobility, nation and law (or the rule of law) on the one hand, and the sovereignty of the ruler on the other. The idea of the rule of law is perfectly reflected in the very first article of the Third Statute, which claims that all residents of the Grand Duchy of Lithuania "shall not be judged otherwise than by the law of the Statute".

The symbol of the principle of the rule of law was very clearly underlined by Lew Sapieha, editor and publisher of the last version of the Statute of the Grand Duchy of Lithuania, and vice-chancellor of the Grand Duchy of Lithuania in 1588; he applied the rule of law principle (*панование права*) not only to subjects (noble citizen) of the monarchy, but to the monarch himself, as head of state. In his address to the nobility of the Grand Duchy of Lithuania (on the occasion of the adoption of the TLS) Sapieha quotes Cicero (and paraphrases the Apostle Paul), arguing that in order to enjoy freedom (rights), we should become prisoners of the law itself. Thus, he concludes, "the Sovereign shall not exercise arbitrary ruling over us, but follow our own law" (created by GDL nobility); and in the case of his violating the Statute, he "would no longer be a Sovereign, but an offender or violator of law, therefore the Sovereign shall not impose on us any arbitrary powers, except those provided by law"²². The TLS obviously acquired a certain constitutional status by embodying the restriction of the monarch's authority in favour of the civil nobility of the people: both through the extension of the Seimas' functions, as well as the limitation of the judicial power of the monarch, and by establishing a Supreme Tribunal of the nobility, as the supreme judicial instance of appeal.

At this point, it can be seen that the learned nobility did not see the Statute of the Grand Duchy as ordinary legislation approved by the Sovereign, but as the embodiment of the idea of law *per se* in its highest form. Thus, symbolising the most advanced idea of law, the Statute claimed to have a legal status usually granted only to national constitutions in the Enlightenment. In this sense, the Statute, which embodies the phenomenon of infallible law as "pure common sense and the wisdom of humanity" and "the guaranty of public security and prosperity"²³, along with the Monarch's sovereignty and the concept of the competing or emerging

22 Address by vice-chancellor of GDL, Lew Sapieha, to the Estates on the occasion of the adoption of the Statute of GDL (1588). See LAPPO J. 1588 metų Lietuvos Statutas. T. 2. Tekstas. Kaunas, 1938.

23 An address by vice-chancellor of the GDL, Lew Sapieha, to Žygimantas III Vaza on the occasion of the adoption of the Statute. See LAPPO J. Op cit.

sovereignty of the nation (nobility) – has claims to become another sovereign force in the 16th century GDL. It is notable that the Grand Duke, head of the GDL, rarely resided in the Grand Duchy itself and, being also King of Poland, ruled it from the Polish capital Krakow. Therefore, the symbolic significance of the sovereignty of the Statute as the supreme law of the Grand Duchy of Lithuania was still higher than the idea of the sovereignty of law in the Kingdom of Poland.

This competing sovereignty of the *law* can be also found in the text of the Statute where the Supreme Tribunal of the Grand Duchy (*судъ головный трибунальскій*) is legitimised as the highest appellate judicial instance and its competences are listed²⁴. It should be noted at this point that during both the Middle Ages and the Renaissance it was typical to believe that the monarch was the supreme instance of justice. This was also true of the Grand Duchy of Lithuania, and although the Tribunal was the supreme (appellate) court, in practice, part of the Tribunal's rulings were nevertheless to be approved by the monarch²⁵. However, the Supreme Tribunal judges were no longer members of the Council of the Lords (the senators), but the elected representatives of the same noblemen. It is noteworthy that the TLS did not remove some judicial functions from the Seimas (parliament) either.

4. Some traits of democracy, national sovereignty and parliamentarism in the Statute

The fact that Western democracy traces its roots back to the ancient tradition of Greek city-states (particularly Athens) has already been discussed. It was later adapted in different ways in the ancient Roman Republic as well as in the republican governments of medieval Italian city states (such as Florence or Venice). This chapter will discuss the implementation of the ideas of national sovereignty and democracy in the legal system of the sixteenth century Grand Duchy of Lithuania.

The rudiments of *parliamentarism*, which are important feature of modern constitutionalism, may already be detected in the first provisions of the Statute of 1529. According to Konstantinas Jablonskis, the transformation of the Council

24 In fact, the Supreme Tribunal was established in Vilnius, as early as 1581, i.e. before the adoption of the Third Statute. The very idea of this establishment was to release the monarch from powers of the highest judicial instance. See e.g. JANULAITIS A. Vyriausiasis tribunolas XVI-XVII a. Lietuvos Universiteto Teisių fakulteto darbai, 1927.

25 LAPPO J. Iš Vyriausiojo Lietuvos Tribunolo istorijos XVI amž. VDU Teisių fakulteto leidinys, 1932, p. 10.

of Lords into the *Seimas* (сойм/ съемъ)²⁶, which later became a legislative body²⁷ with much broader representation of the nobility, was first recorded in the Statute of 1529. The Vilnius privilege of 1565 granted the nobility the right of electing, at county-level local assemblies (сойму), two representatives from each county (повет) to the Seimas (parliament), a provision which was later documented in the SLT of 1566 and the TLS of 1588. Therefore, from the year of the adoption of the Statute of 1566, the Seimas became *de facto* a regularly convening representative body of nobility citizenry, although the Monarch reserved the right to convene the Seimas²⁸. In this way, the features of national sovereignty and representative democracy (parliamentarism) can be seen, where the entire civil nation of the then state (masculine nobility) had the right to elect and be elected to the parliament of the Grand Duchy, i.e. the Seimas. Obviously, as regards elections to the Seimas, considerable power was retained at the assembly of GDL magnates, or the lords, (who were members of the Council of Lords, and later of the Senate, consisting the Seimas). "Democracy of the nobility" though it was, the roots of Lithuanian (like Polish) *parliamentarism* go back at least a century earlier in history than in the UK, notwithstanding the fact that it was as early as the second half of the seventeenth century that the two-chamber English parliament came to represent not only the aristocracy and other nobility, but also a significant part of the emerging third social class, thus covering a much broader segment of society.

Generally speaking, the following six features of parliamentarism can be identified in the Third Statute (apart from the rules regulating election of representatives to the Seimas, their residence during Seimas sessions, and venue for accountability at the assemblies): direct elections to the parliament, parliamentary control over legislation, fixing taxes, waging war, competence of nominations (appointments of state officials) and setting civic (nobility) rights and liberties. Notwithstanding these powers, it was in the hands of the Monarch to convene the Seimas and participate in its sessions, therefore, Stasys Vansevičius, commenting on the above-mentioned features of GDL parliamentarism recognises that it was only in rare

26 The term сойм or съемъ of Lithuanian (Baltic) origin, contained in the Statute, etymologically means "meeting" or "convention" and is often used in the Statute in collocation with the words "great" and "independent" (сойм великий вальный), meaning the convention of all noblemen of the country. In the 16th century Latin translation of the Statute it was translated as "conventio" and in Polish – as "Sejm". In modern Lithuanian language the term сойм or съемъ is transcribed by the term "Seimas", which I will use in this article, in order not to create confusion with Polish term of the "Sejm", primarily meaning Polish diet or parliament of Commonwealth of Two Nations. The scientific English translation by Karl von Loewe of сойм вальный is "general diet". See The Statute of Lithuania. Section I, article 25 in "Lietuvos Statutas. The Statute of Lithuania. Statuta Lituaniae. 1529". Vilnius, 2002, p. 75.

27 JABLONSKIS K. Lietuvos valstybės ir teisės istorija nuo XIV a. pabaigos iki XVII a. vidurio. Vilnius, 1971, p. 31.

28 KAZLAUSKIENE R. Viešoji teisė Lietuvos Statutuose ir jos išliekamoji vertė šiuolaikinei Lietuvos teisei šiemet. Doctoral thesis. MRU, 2009, p. 65.

cases that the Seimas of the GDL was able to exercise legislation autonomously, i.e. in the absence of the Monarch from the Duchy²⁹. Therefore, the TLS did not provide for the sharp separation of powers in the modern sense, because it was not only the Monarch, but also other executive branch representatives, who sat in the parliament, and in addition, among other responsibilities, the parliament had judicial functions. Nevertheless, these functions of the Seimas in the sixteenth century Grand Duchy are very similar to the English parliamentary functions in the seventeenth century, which included the Monarch and the House of Lords and which (through the House of Lords) exercised the function of the highest judicial instance.

As regards specific provisions of the TLS relating to the Seimas functions, it may be mentioned that new legislation in the field of nobility privileges could only take place with the approval of the Seimas. In the area of taxation, the TLS provided for the introduction of silver or other taxes imposed by the Ruler only with the consent of the Seimas.

The waging of war (article 2, chapter II of the TLS) and appointments to the highest state positions by the Ruler were subject to the endorsement of the Seimas. Interestingly enough, the Third Statute (art.8, chapter III) provided for a special meeting of the representatives of the Seimas of the Grand Duchy before convening a joint diet (with the Kingdom of Poland), but in practice, from the seventeenth century, these provisions were not applied.

5. Human rights or *status libertatis* and *status civitatis*, as a European legal tradition

I would like at the outset to single out human rights and the freedoms and integrity of the person (*status libertatis*) of a freeborn man, tracing their roots to Roman legal tradition. *Status libertatis*, as opposed to the legal status of a slave³⁰, usually involved a person's right to dignity, the presumption of innocence, the right not to be arbitrarily detained and convicted without public trial, following the principle *audiatur et altera pars*. In other words, *status libertatis* of Roman law is one of the modern sources of the concept of (inherent) human rights. Indeed, *status libertatis* and *status civitatis* are closely related, because, according to Roman law, only a Roman citizen was considered to be a legal person. The case was similar in the Grand Duchy of Lithuania. *Status libertatis* of a GDL citizen (nobleman) was clearly reflected in article 2 of the TLS, claiming that imprisonment or any other punishment is possible only after a public trial, following the confrontation of the

29 VANSEVIČIUS S. Lietuvos didžiosios kunigaikštystės valstybiniai-teisiniai institutai. Pagal 1529, 1566 ir 1588 m. Lietuvos Statutus. Vilnius, Mintis, 1981, p. 125.

30 NEKROŠIUS I., NEKROŠIUS V., VĖLYVIS S. Romėnų teisė. Justitia, 1999, p. 25.

parties at the trial, where the right to defence is provided. Article 5 of chapter III of the FLS (1529) contained the following provision: "land holdings or titles shall not be removed when charged in absentia", and similar provisions reoccurred in the SSL and TSL.

To *status libertatis* may be attributed the right of citizens to leave the country for studies or any other reason ("except when the country of destination is the land of our enemies"), given that a landlord leaving his estate will guarantee the performance of military service, as provided in article 8 of chapter III of the FLS³¹.

The right to buy and sell property, or bequeath it under their discretion (with certain exceptions) is also broadly attributable to the *status libertatis* of the citizens of the state. Moreover, as aptly noted by Polish historian Slawomir Godek, the Roman origin of the law of inheritance had been established as far back as 1529 in the First Statute, and later taken over with minor corrections by the Statutes of 1566 and 1588³². The Roman law of guardianship and inheritance was associated with a legal capacity, which meant that the right to become another person's guardian and inheritor of property was reserved only for adult male citizens, particularly those holding the status of *pater familias*; while minors, prisoners, non-citizens and the mentally disabled were barred from this right. The Third Statute (1588) contained similar wording (transposed from the previous Statutes), also providing for some real-life exceptions to this general rule.

Another Roman legal principle contained in the Statute, attributable to *status libertatis* of a person (in this case – a nobleman citizen), is the right of legal representation, specifically legal representation in court. Article 9 of chapter VI "The Judges" of the FLS of 1529 formulated this right only in defence of the party in the proceedings in the Duchy against "foreigners" (meaning those who came from the Crown), nevertheless, this article provided for the possibility of conducting a case regarding "estates, losses, violence" through a representative, i.e. the "procurator"³³. Although the right to representation in court existed in the Grand Duchy of Lithuania before the adoption of the Statute of 1529, still, following the adoption of the Statute, this right grew into an independent institution of "procuratorship", which was finally legitimised in the SLS Statute of 1566, whose chapter IV "Concerning judges and courts" introduced a new article 33, not only providing for the general right to have a representative in court, i.e. a procurator (be it also a foreigner), but also obliging courts to guarantee free "state-

31 As a modern alternative to this provision, one can consider article 32 of the 1992 Lithuanian Constitution, claiming that every citizen is free to leave Lithuania. In fact, EU citizens' freedom of movement is considered to be one of the four basic freedoms in the EU *acquis*.

32 GODEK, S. Elementy prawa rzymskiego w prawie spadkowym I Statutu Litewskiego. In „Pirmasis Lietuvos Statutas ir epocha” (straipsnių rinkinys). VU leidykla, 2005, p. 107-130.

33 For information about the procurator, as a party to the proceedings in Roman law, see: JONAITIS M., ŽALENIENE I. Kai kurie atstovavimo instituto reglamentavimo romėnų teisėje klausimai // Jurisprudencija, 2008, Nr. 7 (109), p. 18.

guaranteed representation" (Latin *Procurator ex officio*) to widows and orphans, and other defendants from the nobility who could not afford to hire a procurator. This law was accordingly transposed into articles 56 and 57 of chapter IV of the Third Statute (1588).

It should also be noted that the *status libertatis* of the nobility under the Statute was related not only to their rights, but also to their obligations to the state, particularly as regards military service, which had to be completed by any landholder. This approach where rights and obligations are seen as one may also be considered as having ancient roots.

6. Some features of the independence of the courts and the administration of justice

It should first be noted that the Third Statute (like the Second) further raised the status of the judiciary in the common legal framework of the Statute, by moving the chapter on the courts up from sixth to fourth place. Taking the first four chapters of the document, we may see some signs of separation of powers in the structure of the Statute, where chapter I deals with the supreme executive power of the monarch, chapter III with the legislative power of the nobility, and chapter IV with the judiciary.

The rule of law is also related with the principle of judiciary independence³⁴ enshrined in the Statute: impartiality³⁵ and the principles of good repute of the judiciary³⁶, which are often contained in many modern democratic constitutions. Article 1 of Chapter IV of the TLS, providing for the oath of the county judge, pays particular attention to the judge's impartiality and independence. The TLS included the Roman legal principle: *nemo debet esse iudex in propria causa*, i.e., the prohibition to be a judge in one's own case, and this is attributable to the principle of judicial independence. In this context, the principle of the proportionality of a judgment should also be mentioned; it was provided for as early as in article

34 In TLS, the independence of the judiciary principle meant primarily the incompatibility of the judge's office with administrative duties (e.g. elder or supervisor), and in case of this kind of "double mandate", the nobleman had to quit both (Art. 34, chapter I of TLS, art. 2, chapter IV). Nevertheless, this prohibition applied to the administrative positions within a specific county, because a nobleman acting as county court judge was not prohibited from holding administrative positions in the palace of the Grand Duke or other counties.

35 For example, in the FLS this principle is enshrined in the context of the Sovereign's court, as the highest judicial instance: "and we do not have to be in favor of one side, and we will have to give everyone and exercise equal justice" (Article 14, chapter I). Meanwhile SLS establishes the impartiality principle in the text of the oath of the county judge (Article 1, chapter IV). The TLS additionally establishes a prohibition for a judge to judge in his own case.

36 Article 4 of chapter IV of the TLS states that voivods and elders must appoint "honest and trusted people" to the positions of county judges.

1 of chapter I of the First Statute, suggesting that the accused “[...] should be judged and sentenced in accordance with the seriousness of the offenses”, and this principle was later taken over by the subsequent Statutes. This requirement is also related with principle of proportionality, which is regarded as the general principal of law or constitutional principle in modern legal systems.

The above-mentioned requirement for a public official to take an oath of office contained in the Statute could also be attributed to the rule of law that guarantees public accountability and responsible governance. In modern democracies, the oath is generally expected to be administered before commencing public office (judges included); a similar requirement for an oath was provided for in the FLS: “voivods, elders and our keepers have to elect in their county two representatives, honest and credible people, and put them to oath.” The SLS and TLS provided for oath-taking not only in the case of a county judge, but also for other court officials (see art. 8, chapter IV of the TLS).

Finally, the Statutes refer to the core function of the courts, i.e. the administration of justice (lot. *iustitiam administrare*), which is among the key features of modern constitutionalism. Indeed, it was not only judicial authorities *per se* that were associated with justice administration in the TLS. Since strict separation of the powers of the judiciary, legislative and executive branches was inexistent in the sixteenth century, the administration of justice was in the hands of the Monarch as well as the Seimas, the Council of the Lords and some of the administrative executive officers. However, the TLS provisions clearly tended to transfer the weight of the functions of justice administration from the executive and the legislative authorities to a specially created judiciary, with the Supreme Tribunal in the forefront. It is clear that the judicial system of the Grand Duchy in the sixteenth century cannot be judged either by the criteria of the modern democratic independence of the judiciary (particularly vis-à-vis the executive branch), by the criteria of professionalism, or by the development of the of judicial procedure; nonetheless, the very principle of the court as the main administrator of *justice*, contained in the Statutes, could well be part of the contemporary features of constitutionalism.

In the context of the court as the principal administrator of justice, the legitimisation of judicial precedent should be noted. All the more so, that the Constitutional Court of Lithuania has repeatedly stressed the importance of judicial precedent as a constitutional value³⁷. This provision of the Statute seems quite innovative, especially in the context of current Lithuanian legal consciousness.

37 Chapter VI of the FLS of 1529 reads: “In case some articles are not yet included in the Statute, the case should be judged following the old custom, and later, the Seimas should include it into the law, if necessary”. A similar provision is contained in article 25 of this chapter of the FLS: “In the event of *lacuna* in the law, our judges have to resolve the case in accordance with the old custom until we, the Sovereign and our lords include these cases into these laws”.

which is influenced by Soviet legal positivist thinking, and has difficulty recognising a court decision (precedent) as a legislative act.

In this chapter, it would be appropriate to emphasise the nature of the Supreme Tribunal of the Grand Duchy as the highest judicial authority for the administration of justice, standing at the forefront of the entire judicial system. Its establishment was linked with the adoption of the TLS in 1588. Its stature is also shown by the fact that the Regulations of the Supreme Tribunal were regarded as part of the TLS. According to the Regulations of the Supreme Tribunal, judges (often referred to as “deputies”) were elected from among the local nobility at local assemblies for a one-year term. Lawyers (procurators) were not eligible. The enforcement of the rulings of the Tribunal was entrusted to the castle or land enforcement officers. Tribunal sessions (of a month’s duration) were held twice a year in different venues: the Royal Palace in Vilnius and Minsk or Nowogrodek³⁸. Although judges were not paid (by the state) for their work, they had personal security ensured during court sessions. Under the Regulations, the Tribunal’s rulings were not subject to appeal either to the Monarch, or to the Seimas. Therefore, it can be maintained that the Supreme Tribunal of the Grand Duchy, with judges elected by the nobility, was a big step towards the entrenchment of the principle of the independence of the judiciary.

Conclusions

1. Rediscovered by Europe in the Middle Ages, Roman law, together with canon law and municipal Magdeburg law, and the autonomy of universities, can be regarded as the legal heritage of Europe, in the twentieth century named as *ius commune Europaeum*. Having taken shape at the end of the twentieth century, the European Union, with its legal framework, can also be seen as incarnation the idea of *ius commune Europaeum*.

2. The sixteenth century Lithuanian Statutes were a product of the Renaissance (humanistic) era, which reflected the principles of Roman law and the legal pluralism as autonomy of canon law and municipal Magdeburg law.

3. The Lithuanian Statutes contain not only the fixed principles of Roman private law (inheritance law, legal representation, etc.), but also some characteristics of the principles of modern constitutionalism, such as human rights and the separation of powers, democracy, national sovereignty, parliamentarism and judicial independence. These principles derive from the Statute perceived as a certain idea of the rule of law that prevailed among the nobility of the Grand Duchy in the mid-sixteenth century.

38 See RAUDELIŪNAS V. Tribunolo sudarymas ir jo kompetencija. In „Judgements of Lithuanian Supreme Tribunal 1583-1655. (Compiled by Vytautas Raudeliūnas ir Algirdas Baniulis), Vilnius, 1988, p. 13-21.

LITERATURE

Legal acts and other historical sources

1. LAPPO J. 1588 metų Lietuvos Statutas. T 2. Tekstas. Kaunas, 1938.
2. Статут Великаго Княства Літоўскага 1588. Тэксты, Даведнік. Каментаріі. Мінск. 1989.
3. ROZIJUS P. Lietuvos Sprendimai (1563). Compiler Andriulis, V., translated from Latin by Dalia Dilytė, 2007.
4. Kazimiero Teisynas (1468). Translated by Janulaitis, A. and Jurginis, J.// Acta historica Lituanica/ Lietuvos TSR Mokslų Akademija. Istorijos Institutas. Vilnius, Mintis, 1967.
5. Lietuvos Vyriausiojo Tribunolo sprendimai: 1583-1655. (parengė Vytautas Raudeliūnas ir Algirdas Baniulis), 1988.

Special literature

1. ANDRIULIS V. Lietuvos Statutų (1529, 1566, 1588 m.) šeimos teisė. TIC, 2003.
2. BRAGUE R. Europe, la voie romaine. Criterion, Paris, 1992.
3. BARDACH J. Statuty Litewskie a prawo rzymskie. Warszawa, 1999.
4. DANILOWIC I. Kodeks Napoleona w porównaniu z prawami polskimi i litewskimi, (1818). 1905.
5. KRAUSHAR A. Gazeta Sądowa 1904, Nr. 36-53, Warszawa.
6. JABLONSKAS K. Lietuvos valstybės ir teisės istorija nuo XIV a. pabaigos iki XVII a. vidurio. Vilnius, 1971.
7. JANULAITIS A. Imperijos rūmų teismas (Reichskammergericht, 1495-1806). VDU Teisių fakultetas, 1927.
8. JANULAITIS A. Ignas Danilavičius. VDU Teisių fakulteto leidinys, 1932.
9. JANULAITIS A. Vyriausiasis tribunolas XVI-XVIII a. Lietuvos Universiteto Teisių fakulteto darbai, 1927.
10. JONAITIS M., ŽALĖNIENĖ I. Kai kurie atstovavimo instituto reglamentavimo romėnų teisėje klausimai // Jurisprudencija, 2008, Nr. 7 (109).
11. KAZLAUSKIENĖ R. Viešoji teisė Lietuvos Statutuose ir jos išliekamoji vertė šiuolaikinei Lietuvos teisei sitamai. Daktaro disertacija, MRU, 2009.
12. LAPPO J. Iš Vyriausiojo Lietuvos Tribunolo istorijos. VDU Teisių fakultetas, 1932.
13. MACHOVENKO J. Nelietuviškų žemių teisinė padėtis Lietuvos Didžiojoje Kunigaikštystėje (XIV-XVIII a.). Monografija, VU leidykla, 1999.
14. NEKROŠIUS I., NEKROŠIUS V., VĖLYVIS S. Romėnų teisė. Justitia, 1999.
15. VAIŠVILA A. Teisinės valstybės koncepcija Lietuvoje. Litimo, 2000.
16. VALIKONYTĖ I., LAZUTKA S., GUDAVIČIUS E. Pirmasis Lietuvos Statutas (1529). Vaga, Vilnius, 2001.
17. VANSEVIČIUS S. Lietuvos didžiosios kunigaikštystės valstybiniai-teisiniai institutai. Pagal 1529, 1566 ir 1588 m. Lietuvos Statutus. Vilnius, Mintis, 1981.
18. 1588 m. Trečiasis Lietuvos Statutas (the material from National conference to mark the 400th anniversary of the Third Statute). Vilnius, 1989.
19. Pirmasis Lietuvos Statutas ir epocha (straipsnių rinkinys). VU leidykla, 2005.

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