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Provisions for Widowhood in the Legal Sources of Sixteenth-Century Lithuania

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I. Introduction

Of all women of the medieval and early modern times, widows are one of the most visible groups, due to their – sometimes greater and sometimes smaller – freedom from the custody of men and family, and their different legal status. Their position differs from that of unmarried girls and married women in several respects: they are usually more empowered and at the same time less protected than other women.

The depictions of widows and widowhood in medieval and early modern Europe range from, on the one hand, descriptions of widowhood as a state of independence, prosperity and authority to, on the other hand, accounts of poor widows struggling for survival or widows being exploited in their defenceless state or deprived of any authority in the administration of their property. There is no contradiction between these two – from first sight cardinally different – views: widows' role in the society and in the family varied from one country to another, from one period to another, from one stratum to another, from one environment to another.

Many questions can be raised about widowhood. Only after separate aspects of widowhood and widows' role in society and in the family are explored in sufficient detail in a certain country and a certain epoch, for a certain stratum and a certain environment, a more general all-embracing and objective picture can be drawn. This dissertation aims at being one of the stepping stones towards this goal of developing a general all-embracing picture of widowhood by looking at widowhood from one specific aspect: widows and family property as reflected in legal sources.

The Framework of the Research

The Subject

This dissertation investigates *the status of mid-sixteenth century Lithuanian noble widows and their relations to family property as reflected in the normative law and the legal practice*. An investigation of the legal status of women upon their husband's death is one of the ways of analysing the position of widows.[1] Such a subject contributes to the research on widows and widowhood in Lithuanian history. The question of widows in Lithuania has been addressed by several researchers from several perspectives; however, there is still space for research. When defining the focus of my research, the combination of the following aspects was taken into consideration: the existing research, the sources available, the time frame, the social stratum, and the environment to be researched.

Previous Research

Research on the legal status of widows in historical perspective has been one of the main new issues taken up in the last couple of decades in various Western European countries.[2] As for Eastern Europe, however, most of the results in this field are inaccessible to international scholarship because of language barriers. For example, although important research has been carried out on the status of women, including widows, in Lithuania, it remains largely unknown outside the country.[3]

In Lithuania, widows are seldom treated as a separate subject in most investigations, but rather appear as part of broader research on women or the family. The main contributors in this field are Irena Valikonytė (sometimes in collaboration with Stanislovas Lazutka), Jolanta Karpavičienė and Vytautas Andriulis. Jolanta Karpavičienė concentrates her research on urban women, using both normative sources and the records of the legal practice from the

[1] The research does not embrace widowers, since they are essentially invisible in both the normative law and legal practice.

[2] For a good bibliography on the research on widows and widowhood in Europe, see Sandra Cavallo and Lyndan Warner, ed., *Widowhood in Medieval and Early Modern Europe* (New York: Longman, 1999). Another bibliography, also useful, is that of Ida Blom, "The History of Widowhood: A Bibliographic Overview," *Journal of Family History* 16, No. 2 (1991): 191–210.

[3] Thus, one of the indirect aims of this dissertation is a brief presentation of the works of Lithuanian scholars, which can be found in Chapter II.

first part of the sixteenth century. Vytautas Andriulis deals with family law recorded in the laws of the landowning nobility – mainly the three *Lithuanian Statutes* of the sixteenth century. Irena Valikonytė investigates the position of women in the same normative legal sources as Vytautas Andriulis and, in addition, in the records of legal practice. Most frequently she treats the normative sources and the records of legal practice as complementary to each other rather than in a comparative manner; her aim is to create an all-embracing picture of the situation of women in sixteenth-century Lithuania rather than to analyse the status of widows.

The two main Lithuanian authors who influenced my work are Irena Valikonytė and Vytautas Andriulis.[4] As regards the reliability and the usefulness of the current Lithuanian research on widows, the works of Irena Valikonytė (sometimes in collaboration with Stanislovas Lazutka) are of the most value. Her results are both most valuable and reliable, as the methods used in her work – the comparison and detailed analysis of both the normative law and the legal practice with special attention to their interaction – are up-to-date and offer deep insights. Embracing quite a brief period of time – mainly the first part of the sixteenth century, with the *First Lithuanian Statute* as the central point – her research, while concentrating on the position of women, touches upon most of the aspects of the status of widows under various circumstances. Publications by Irena Valikonytė are of most use for my dissertation both as a good summary on and an introduction to the position of women, including widows, in the first half of the sixteenth century and an example of combined use of the sources of normative law and legal practice. The publications of Vytautas Andriulis are of less use for my work, as they are more of a descriptive character, with some conclusions not based on specific facts and only covering the normative law.

My dissertation in some way follows in the footsteps of the work of Irena Valikonytė: it covers the same area, the same stratum, the same environment and a similar time frame. However, it concentrates on the noble widows rather than women in general. Also, it raises some different questions than the ones present in Irena Valikonytė's works. This will be addressed in detail further in the aims of the dissertation.

[4] Results of foreign scholarship which serve as a background and a source of inspiration for my dissertation are addressed in Chapter II.

Sources and the Time Frame

Widows' theoretical status in the normative law and their real status in the legal practice may be best observed directly from the legal sources. Thus, my dissertation employs a group of legal sources from sixteenth-century Lithuania. For sixteenth-century Lithuania, legal sources form one of the largest groups of surviving historical documents: three legal codes and numerous judicial books exist, as well as ducal privileges to the state and to the provinces, and decrees of the Council of Lords. Such rich legal sources allow a fruitful comparative analysis.[5] However, in order to perform a comprehensive analysis of the status of widows in the extant normative laws and legal practice, and to attempt to trace changes in the status of the widows over time, the sources used – both the normative legal sources and the records of the legal practice – have to be restricted in some way.

Two collections of normative law – the *Lithuanian Statutes* – serve as the main time frame for this dissertation, covering the period from 1529 to 1566.[6] The *First Lithuanian Statute* of 1529 (FLS) was chosen as the starting point of the time frame for the investigation because it was the first codified law collection of the Grand Duchy of Lithuania, presenting most of the aspects of contemporary legal norms in an already almost fully developed form. The *First Lithuanian Statute* was heavily based on the privileges of the ruler (which were, in their turn, to some degree based on customary law) and influenced by court practice (that is, the customary law). The *Second Lithuanian Statute* of 1566 (SLS) was selected as the closing point of the time frame as a certain stage in the development of the normative law: it is based on the *First Lithuanian Statute*, but it introduces several emendations and augmentations. The analysis of the two legal codes, separated by almost forty years, allows a comparison of the norms related to the status of widows. The privileges of the ruler and the decrees of the Council of Lords (both those preceding the *First Lithuanian*

[5] This is one of the aims of the dissertation – see more in this chapter, section 2.

[6] For all references to both *Statutes*, see the Ruthenian text and the translation into English in the Appendix.

Statute and those issued after it) are also addressed as an inseparable part of the development of the normative law.[7]

As for the choice of the records of the legal practice, I employ them for the purpose of comparison with the normative law, using selected records which serve as examples or exceptions for the points which appear in the normative law. Records of the law cases in sixteenth-century Lithuania have been collected and preserved by the chancery of the Grand Duchy of Lithuania in a collection of documents known as the *Lithuanian Metrica*.[8] Out of all books of the *Lithuanian Metrica* covering the period from 1529 to 1566, I have selected some books from the *Books of Court Records* pertaining to the court of the grand duke and the Council of Lords.[9] From these sources, I have included in the research not only court cases, but also testaments and the mutual donations of property by spouses to each other; they reflect the

[7] The *Third Lithuanian Statute* of 1588 is an invaluable resource of information and it could contribute to the picture of the further development of the laws regarding widows; the period between the *Second* and the *Third Lithuanian Statute* could be a topic for separate research.

[8] A more comprehensive introduction to the *Lithuanian Metrica*, its history and formation, is presented in Chapter III. When referring to the specific books and court cases I will use the abbreviation LM.

[9] There are 17 books of this type for this period, 12 still unpublished. During my research, I searched for examples in all of them, but in the final version I mainly use the court cases which were recorded in the first years after the appearance of the *First Lithuanian Statute* (in order to see whether the *Statute* was followed), and court cases which were recorded in the last decade before the appearance of the *Second Lithuanian Statute* (I use more of these latter examples, as these court records are less analysed in Lithuanian scholarship). Some other sources, although also highly interesting, had to be left out due to the constraints of the time available for the research. Two groups of documents have been left out: first, the court records from the Vilnius castle court, for the years 1542–1566 (it is deemed as not being a part of the original *Lithuanian Metrica*–see Irena Valikonytė and Stanislovas Lazutka, "Įvadas" (Introduction), in *Lietuvos Metrika (1542): 11-oji Teismų bylų knyga* (The *Lithuanian Metrica*, 1542: The Eleventh Book of Court Records), ed. Irena Valikonytė and Saulė Viskantaitė (Vilnius: Vilniaus universiteto leidykla, 2001), ix), and second, the *Books of Inscriptions*. Most of these books are of a mixed character and useful information may be found in all of them. Materials from many of these books, especially from the time before the *First Lithuanian Statute* and then a couple of decades after the *First Lithuanian Statute*, have been analysed by Irena Valikonytė and Jolanta Karpavičienė.

status of widows in conflictive situations and contribute to the knowledge about property transactions between husband and wife.[10]

The choice of the sources defines the stratum and the environment to be researched. This research will best reflect the position of widows of one stratum and one environment: these sources contain mainly information on the landowning rural nobility.[11] Unfortunately, the *Lithuanian Metrica* does not contain data on peasant widows, as by the sixteenth century the matters of the peasants were already normally resolved at the local courts of the landlords, who had the right to judge their peasants.

Information on Widows in the Legal Sources

In normative legislation, there appear to be two basic types of laws defining the position of widows: 1) the freedom to choose a new remarriage partner and 2) the property status. The first question, that of widows' freedom (or lack of it) in choosing a partner for remarriage, at first glance does not seem to be directly connected to the property relations between the widows and their families. However, it should not be ignored, since the property status of widows depended on their marital status; thus, the ability of the relatives to regulate the remarriage of widows also gave them an opportunity to control the property that was in their hands.

As regards the second category, there appear to be three major factors which determined the property status of widows: 1) the financial stipulations connected to the marriage (legal provisions or private contractual provisions), 2) the marital status (remarriage or no remarriage) and 3) the parental

[10] Since this dissertation deals with widows in relation to the family property, the cases which deal with widows in relation to society have been omitted (for example, widows and their late husbands' debts, widows and their neighbours, widows in criminal cases). As the preliminary research has shown, the court cases and other types of documents regarding widows are few and many of those are of a very different character from each other, thus any statistical analysis would not provide reliable results.

[11] As is noted in the introduction to the publication of the LM 225, the cases were recorded in the court books only if the fee was paid (Stanislovas Lazutka, Irena Valikonytė and Jolanta Karpavičienė, "Įvadas" (Introduction), in *Lietuvos Metrika (1528–1547): 6-oji Teismų bylų knyga* (The *Lithuanian Metrica*, 1528–1547: The Sixth Book of Court Records), ed. Alfredas Bumblauskas, Edvardas Gudavičius, M. Jučas, Stanislovas Lazutka, and Irena Valikonytė, xiii [Vilnius: Vilniaus universiteto leidykla, 1995]), which decreases the likelihood of encountering cases concerning poor people.

status (childless widows, widows with minor children, and widows with adult children).

The financial stipulations were the crucial factor in the property status of widows. Analysing these financial stipulations, a difference should be made between the *legal provisions* for a widow and the *contractual provisions*. Legal provisions here mean basic rights, guaranteed for all widows, enshrined in law and applicable without any special arrangements or agreements. Contractual provisions mean the dower contracts/testaments/mutual property donations which may modify the legal provisions for widows to a certain degree on an individual basis. Different legal provisions and different contractual provisions were available for those widows who stayed unmarried and for those who remarried, as well as for those who had children and those who were childless – that is, the widows' position depended on their marital and parental status. Thus, widows' position under these different circumstances will be explored here, too. Theoretically, there are six possible combinations of these factors (although, as will be shown, not all of them appear in the normative laws and the legal practice):

Non-remarried widows with minor children
Non-remarried widows with adult children
Non-remarried childless widows
Remarried widows with minor children
Remarried widows with adult children
Remarried childless widows

The Aims of the Research

After defining the subject of the dissertation, delimiting its scope and presenting the types of the available materials, it is time to turn to the aims of this dissertation. As mentioned above, the subject of this dissertation is widows and family property in normative law and the legal practice. This dissertation aims at establishing the legal status of widows in the law and legal practice concerning family matters in the time period between the two *Lithuanian Statutes*, those of 1529 and 1566. One of the main characteristics of the period in question is the rapid development of the laws and the legal system. It is the time when different legal models coexisted and were used in the legal system. The coexisting legal models present in the period under discussion, as mentioned above, are: the legal provisions for widows – default support for the widows guaranteed by the law (rather fully defined by the normative law) and the contractual provision for widows – dower contracts and testaments (to a certain degree defined by the normative law).

Thus, the main point of focus of the dissertation falls on the definition of these different legal models and the analysis of their coexistence and development. Looking at widowhood from the perspective of the different legal models used in defining the status of widows, and especially comparing these models, raises the following questions: What was the point of the existence of two legal models at the same time? Did the contractual provisions appear because the legal provisions were not enough to ensure the status of widows or could these legal provisions not be enforced properly? Maybe, on the contrary, the contractual provisions came into being as a means of limiting the access of widows to their husbands' property?

The main aims of the dissertation will be achieved by the following means: grouping the norms present in the normative legislation according to the legal models they follow; comparing the two legal codes, the *First Lithuanian Statute* and the *Second Lithuanian Statute*, and other normative legislation, in order to establish the differences present within each model in the normative law and see the trends of their development; comparing the normative law with examples of the legal practice in order to establish and clarify the relations of the normative law and legal practice and to see how the existing theoretical legal models functioned in real practice.

A summarising overview of the existing legal models will allow drawing some conclusions about the status of widows in relation to family property in sixteenth century Lithuania, establishing the differences between the different legal models and discovering which of them was prevailing/gaining priority in the first part of the sixteenth century in Lithuania.

Since this dissertation utilizes legal sources, it is mainly the problematic side of widowhood that will be seen. Seeing widows in extraordinary conditions, when their position and rights are challenged or their duties are reinforced, allows seeing what kinds of problems widows had to handle. Discussing the particular legal issues listed above will also enable me to clarify more general issues such as: What was the position of Lithuanian widows in the sixteenth century, around the turn of the medieval times to the early modern period? Was widowhood a comfortable state of freedom, which was enjoyed and maybe even desired, or was it a state feared by all women, which guaranteed them only trouble and financial insecurity rather than peace and prosperity? Was the position of widows clearly defined by the law, or did it fluctuate depending on the circumstances? Did the law provide the necessary norms establishing the rights and duties of widows and was society able to reinforce these rights? Were the concepts related to the position of widows clearly defined?

In order to place the Lithuanian widows into a wider European perspective, parallels and the possible influences on the position of Lithuanian widows will also be addressed by this dissertation to some degree. Realising the problem of the relations of normative law with legal practice, and keeping in mind that there were many variations in the legal practice of various countries, I have no ambition to define the actual situation of widows in any of these other countries. This situation could not only vary considerably from case to case in legal practice, but could also change with each law passed, so that what looked like two different legal models in two countries in one decade could develop into two almost identical systems in another. The aim here is rather to demonstrate the existing variety of different models for providing for widows and to show how Lithuania fits into the more general European picture.

Lithuania in the Sixteenth Century: A Summary on Society, Law, Family, and Inheritance

Society

Having presented the existing research, the sources, the time frame, and the aims of this dissertation, I will give a brief overview of the general situation in Lithuania during the first half of the sixteenth century. In the first part of the sixteenth century, Lithuania, which formed as a state only in the mid-thirteenth century and adopted Christianity in 1387, was a state on the border of the East and West. The Grand Duchy of Lithuania of the first part of the sixteenth century consisted of the ethnic Lithuanian lands and western Orthodox Russian Lands (part of the territories of current Belorussia and Ukraine) and was in a personal union with Poland after 1387 (when Jogaila, the Grand Duke of Lithuania, married a Polish princess and became king of Poland). Lithuania was still essentially an independent country with its own ruler, a Diet, army, and coinage, but it was influenced by the surrounding cultures (with the Polish influence constantly increasing) and its culture reflected the interaction of various nations on various levels. To give just some examples of the coexistence of various influences, Latin was used as the official language at the most prestigious levels, but for less official matters, everyday proceedings (such as, e.g., court proceedings), Ruthenian (the predecessor of the current Belorussian and Ukrainian languages) was used.[12] Borrowings from Polish law determined the formation of social relations within the Lithuanian state, but the nobility at that point was still becoming "Ruthenianised" rather than Polonised.[13] The sixteenth century was the age of legal codification and of several legal reforms, which makes this period especially interesting for research based on legal sources.

[12] Lithuanian language at this time was used only in the non-official everyday communication. The very first Lithuanian books only appeared around this time; the *Catechismusa Prašły Szadei* (The Simple Words of the Catechism) by Martynas Mažvydas was published in 1547.

[13] The Polonisation of the Lithuanian nobility occurred later, mainly from the seventeenth century.

Picture 1: Grand Duchy of Lithuania 1568.[14]

In the time period on which I am going to concentrate – the time between two legal codes, the *Lithuanian Statutes*, that is, – between 1529 and 1566, the country was ruled by only two rulers. From 1506 to 1544 Lithuania was ruled by Sigismund the Old and from 1544 to 1572 by his son, Sigismund August.[15] This period was quite peaceful for ethnic Lithuania, but not for its Orthodox frontiers, thus even in the ethnic Lithuanian lands the effect of continuous wars was felt. The hope for help from Poland in the wars with Muscovite Russia was one of the factors why Lithuania entered into complete union with Poland in 1569.[16]

[14] At http://www.zum.de/whkmla/histatlas/eceurope/haxlithuania.html, after Wladyslaw Czaplinski and Tadeusz Ladogorski, *The Historical Atlas of Poland* (Warsaw: Panstwowe Przedsiebiorstwo Wyd. Kartograficzynch, 1986), 23.

[15] Actually, Sigismund August was assigned as the Grand Duke of Lithuania in 1529, at the age of 9, but his father gave him the power of rule only in 1544.

[16] The Union of Lublin was the act of union of the Lithuanian and the Polish states which introduced a single ruler, a single diet, a house of representatives and a senate, common foreign policies, law, and currency.

As regards social stratification, Lithuania, like Poland,[17] was a "land of nobles", the lesser nobility forming a significant proportion of society compared to Western European countries. The higher nobility, the so-called *pany*,[18] and some nobles who retained the title of dukes,[19] were the ruling stratum of the Grand Duchy. Although the *First Lithuanian Statute* claimed that the laws enshrined in it were applicable to everyone, in reality it was these aforementioned strata that were the subjects of the code (and which are the object of my research). Lithuanian nobility as a social group was very varied and several subdivisions existed. The three main categories of nobles were the dukes, the *pany*, and the boyars. The rights and duties of the dukes and the *pany* were unified as early as the fifteenth century, but the terminological difference persisted, as the dukes kept their titles, even though not the rights. The unification of the substrata of the *pany* and the common boyars took somewhat longer; *pany* from the end of the fifteenth century participated in the management of the country to a greater degree than boyars and had legislative powers.[20] In the first part of the sixteenth century, the term boyar often meant the "common" nobles, contrasted to the *pany* and the dukes (the higher nobility), but also was used as an umbrella term for all nobles. There was a difference between the boyars of the grand duke and the boyars of the *pany*, depending on whom they got their property from.[21] In my sources, the difference between the higher nobility and the lower nobility is mainly seen from the different titles used as well as from the sums of money mentioned in the court records related to widows. The percentage of nobility in Lithuania is described differently in different sources. On average, it seems to have been around seven percent.[22]

[17] And, to a lesser degree, Hungary.

[18] App. the lords. Singular: *pan*.

[19] Originally, the provinces of the Grand Duchy of Lithuania were ruled by dukes, but later this became a hereditary title rather than a real function.

[20] Jevgenij Machovenko, "Lietuvos Didžiosios Kunigaikštystės visuomenės luominės struktūros susidarymo teisiniai pagrindai" (The Legal Basis for the Formation of the Stratified Society in the Grand Duchy of Lithuania), *Teisė* 39 (2001): 53 – 67.

[21] Rimvydas Petrauskas, "Luomai" (Strata), in *Lietuvos Didžiosios Kunigaikštijos kultūra: tyrinėjimai ir vaizdai* (Culture of the Grand Duchy of Lithuania: Research and Images), ed. Vytautas Ališauskas, Liudas Jovaiša, Mindaugas Paknys, Rimvydas Petrauskas, and Eligijus Raila (Vilnius: Aidai, 2001), 320 – 328.

[22] *Lietuvos Statutas – The Statute of Lithuania – Statuta Lituaniae, 1529*, ed. and tr. Karl von Loewe and Edvardas Gudavičius (Vilnius: Artlora, 2002), 54.

However, out of this number, only a small proportion, the higher nobility, was truly rich. The lower nobility was closer to the peasantry than to the dukes and *pany*. While the dukes and the *pany* actively participated in the life of the state (forming the Council of Lords, which had the right to pass laws), the lower nobility were essentially landowners who concentrated on farming (as in the sixteenth century trade, especially grain export, was growing). Lower nobles had to perform military duties in the case of war,[23] and also had an opportunity to send their representatives to the General Diet, where, however, originally they were more often listeners than active participants,[24] and their influence slowly grew only in the later sixteenth century.

The other social strata in Lithuania were the clergy and the peasantry. Towns were few and the urban population was not numerous.[25] In the first part of the sixteenth century, the process of the legal subjection of the peasantry was approaching completion. Already in the fifteenth century, by the privilege of 1447, the nobility was granted the rights of being the sole administrators and judges of their peasants. With the regulations of 1547, which ordered ignoring the patrimonial rights of the peasants, and with the regulations of 1557, which abolished the allodic[26] rights of the peasantry and turned them into serfs, the process was essentially complete.[27]

[23] Zigmantas Kiaupa, Jūratė Kiaupienė and Albinas Kuncevičius, *The History of Lithuania before 1795* (Vilnius: Lithuanian Institute of History, 2000), 172.

[24] Machovenko, "Lietuvos Didžiosios Kunigaikštystės visuomenės luominės…", 58.

[25] Only in the second half of the sixteenth century did the urban population become clearly distinct from the lesser nobility and the peasantry: on the one hand, some noblemen were residents of the towns, engaging in various trades, on the other, many town-dwellers had some land and were engaged in agriculture besides being involved in trade and crafts.

[26] Allodium was independently held real estate, not subject to any rent, service, or acknowledgment to a superior.

[27] This was not the case in Samogitia, where the nobility was less rich and much weaker, and the free peasants were rich to the degree that they could compete with the nobility (Kiaupa, Kiaupienė and Kuncevičius, *The History of Lithuania*, 174–175).

Law

The Grand Duchy of Lithuania of the fifteenth and the sixteenth centuries was uneven in political, economic, ethnic and religious aspects alike.[28] Part of it was ethnic Lithuanian lands, converted from paganism to Catholicism at the end of the fourteenth century, and the rest was Orthodox Slavic lands (Ruthenia),[29] most of which had previously belonged to the territory of the Kievan Rus'. Both Ruthenian and Polish cultures had an impact on Lithuania in many spheres, not excepting the legal culture; Lithuania, in its turn, had an impact on these cultures. The customs valid in various parts of the territory of the Grand Duchy of Lithuania were different, and sometimes even contradictory. The two main areas of legal heritage in the Grand Duchy of Lithuania were: 1) eastern Slavic customary law, the core of which had developed during the times of the Kievan Rus' (ninth-twelfth century), and which prevailed in the Slavic lands, and 2) Lithuanian customary law, which prevailed in ethnic Lithuania.[30] Also, Polish law was used in the province of Podlachia at least from the first half of the fifteenth century.[31]

The situation regarding canon law was just as complex as customary law in the Grand Duchy of Lithuania. From the fourteenth to the sixteenth century two branches of canon law were valid here. In the ethnic land of Lithuania, Catholic canon law prevailed, while in the Slavic lands of the Grand Duchy, Orthodox canon law predominated.[32] Canon law regulated family relations, inheritance, and guardianship and influenced the civil law of the Grand Duchy

[28] In the fifteenth and early sixteenth centuries the territory of the Grand Duchy of Lithuania consisted of lands (земли), which from the beginning of the sixteenth century were usually called provinces (воеводства). Each province was an administrative, judicial and military unit. (Jevgenij Machovenko, *Nelietuviškų žemių teisinė padėtis Lietuvos Didžiojoje Kunigaikštystėje* (*XIV–XVIII* a.) [Vilnius: Vilniaus universiteto leidykla, 1999], 23.)

[29] The current nations of Ukrainians and Belarusians.

[30] Jevgenij Machovenko, *Lietuvos Didžiosios Kunigaikštystės teisės šaltiniai: mokomoji priemonė* (Legal Sources of the Great Duchy of Lithuania: A Primer) (Vilnius: Justitia, 2000), 10–11.

[31] I. Jakubovskii [И. Якубовский], "Земские привилегии Великого Княжества Литовского" (Province Privileges of the Grand Duchy of Lithuania), Журнал министерства народного просвещения 347 (June 1903): 245–303 (part 2), 252; Machovenko, *Lietuvos Didžiosios Kunigaikštystės teisės šaltiniai*, 65.

[32] Machovenko, *Lietuvos Didžiosios Kunigaikštystės teisės šaltiniai*, 35.

of Lithuania. Via the canon law, elements of Roman law reached Lithuanian civil law, especially in the spheres of ownership, contracts, and inheritance.

As regards the laws valid in towns, before the reception of the Magdeburg law the lives of town-dwellers were regulated by urban customary law, the privileges of the grand duke, and the statutes of the town's self-government. From the end of the fourteenth century, the towns were granted the so-called Magdeburg law. The essence of each "Magdeburg" privilege was as follows: 1) the abolition of written and the customary legal norms contradicting Magdeburg law (which is to be understood not as the abolition of the local law, but as the abolition of the laws contradicting the principles of the town self-government and violating the rights and privileges of the town-dwellers); 2) exemption of town-dwellers from the power and court of the lords, the boyars, and the state officials; 3) the establishment of self-government; 4) grants of economic privileges. The privileges did not enumerate the specific norms of Magdeburg law; it is likely that the "real" Magdeburg law was not very well-known in Lithuanian towns, at least in the fifteenth century. The town-dwellers did not need all of its norms; they borrowed only the provisions useful for them, and formed a synthesis of Magdeburg law and the local written and customary law. Magdeburg law was used if it did not contradict the local law. The town-dwellers mainly used the administrative and the procedural norms, but even these norms were adjusted to specific local circumstances. Besides the state towns, there were many private towns that belonged to both laymen and the clergy. They could be founded and given "Magdeburg law" only with the permission of the grand duke, but then the owner of the town had the freedom to decide which norms of Magdeburg law were valid in his town and could change them.[33]

Family and Inheritance

Briefly summarising the inheritance system present in Lithuania in the sixteenth century in order to place widows into a more general context, the following may be said. Inheritance was regulated by the legal provisions enshrined in the normative legislation and could be modified to some degree by testaments. There was no primogeniture in Lithuania in the sixteenth century. According to the legal provisions, after the death of the parents, the hereditary

[33] Machovenko, *Lietuvos Didžiosios Kunigaikštystės teisės šaltiniai*, 35–43.

property had to be divided among the children – both sons and daughters – of the deceased (FLS III/9).[34] The parents were not obliged to give any property to the children during their lifetimes unless they themselves decided to do so. In their last testaments they could divide their property between the children as they saw fit (FLS V/20). The parents could disinherit their children for certain misdeeds, but this had to be properly recorded in court. The reasons for which a father could disinherit his son of his entire patrimony were disrespect or humiliation of the father. If a child was disinherited, two thirds of the property still had to stay in the family and one third could be disposed of freely (FLS IV/13), as testamentary inheritance laws allowed only one third of one's hereditary property to be treated freely (purchased property and movables could be disposed of freely). A mother insulted by her son or daughter could also disinherit them of the property that she had (FLS IV/13). If a testament was drawn up, the parents had the freedom of distributing the property that they had among the children as they wished, but in the absence of a testament the default rules were different for inheriting paternal and maternal property. If there were several siblings in the family, they could either live on independent property or stay on property undivided from the family. If they had already been assigned their portions and one of the brothers died, then whatever he had from the father was distributed only among his brothers. Whatever he had from the mother was equally distributed among both brothers and sisters (FLS IV/2). If there were sons from several marriages, by the legal provisions all of them were to receive equal shares of the father's property (FLS IV/14).

In general, the family structure was becoming more agnatic, but the primogeniture was practised mainly among the higher nobility and women did not lose the right to immovable property from their fathers. As to the marriage patterns, I cannot say much from my sources, but in general equal marriages were encouraged, from the point of view of both the economic standing and

[34] For all references to both *Statutes*, see the Ruthenian text and the translation into English in the Appendix.

ages of the spouses.[35] As Jolita Sarcevičienė notes, with no detailed studies it is difficult to say at what age women married, but she estimates the women's age at first marriage at 14–16 years. Relying on the Polish sources, Jolita Sarcevičienė says that the average marriage did not last long due to the death of one of the spouses; according to some scholars the duration was some 8–10 years, according to others, 10–15 years.[36] Remarriages were common, maybe somewhat less so among the highest nobility. Officially, the head of the family was the husband, but in reality power-relations within the family depended on the personalities of both spouses.[37]

Women could hope for both inheritance and a dowry from their parents, although in practice the dowry coincided with the inheritance. Upon marriage, a parent could assign the daughter any amount as a dowry, in movables and/or immovables. However, if the parents died before all the daughters were married, all the daughters had to receive dowries equal to that of the first daughter. If the dowries were not given to the daughters in the parents' lifetime, then after their deaths the dowries were taken from one quarter of the property, regardless of the number of girls in the family, and the remaining three quarters were to be shared by the sons (FLS/7). Dowry was essentially the most secure means for women to obtain property, as all women had a right to it. A dower was not mandatory, thus women did not necessarily receive any property from their husbands. All that the law guaranteed was temporary usufruct rights to some of the husband's property; the rest depended essentially on mutual agreements and wishes of the husband.

Since this study relies on court records, it should be noted at this point that widows and women in general could access the court on equal grounds with men. True, in many instances they were represented by men – e.g. their son-in-law or by some other relative or friend – but in many other cases they

[35] Jolita Sarcevičienė, "Moterys" (Women), in *Lietuvos Didžiosios Kunigaikštijos kultūra: tyrinėjimai ir vaizdai* (Culture of the Grand Duchy of Lithuania: Research and Images), ed. Vytautas Ališauskas, Liudas Jovaiša, Mindaugas Paknys, Rimvydas Petrauskas, and Eligijus Raila (Vilnius: Aidai, 2001), 397–412. As Sarcevičienė notes, since the research on family history in the Grand Duchy of Lithuania is not sufficient, it is difficult to say how often and in which strata marriages seeking to advance social and financial status were common.

[36] Jolita Sarcevičienė here refers to the research of Maria Bogucka, *Białogłowa w dawnej Polsce* (A "Whitehead" in Ancient Poland) (Warsaw: Trio, 1998).

[37] Sarcevičienė, "Moterys," 402–403.

went to court themselves.[38] In some circumstances – for instance, if a woman was letting her husband dispose of her dower – her presence in court was even required in order to make sure that she had not been forced into an agreement which she did not really wish (SLS V/16).

The position of noble women, including widows, in the Grand Duchy of Lithuania, at least in the eyes of the contemporary writers and politicians, was seen as being even "too good". From a modern position, this is not quite so; although noble women could inherit immovable property and were expected in some circumstances to perform some of the same duties as men (e.g. to prepare resources from their property for military purposes), and could to some restricted degree or indirectly participate in public life, their position was not the same as that of men in many respects.[39] As was mentioned above, they could not inherit paternal property on equal grounds with their bothers, and could not marry freely without the agreement of their parents/relatives or hold immovable property if married to a foreigner,[40] as will be discussed below.

[38] Just a few examples: LM 227/398; LM 229/273; LM 254/34v–35v.

[39] Irena Valikonytė, "Ar Lietuvos Didžiojoje Kunigaikštystėje XVI a. moteris buvo pilietė" (Was a Woman Considered to be a Citizen in the Grand Duchy of Lithuania in the Sixteenth Century?), *Lietuvos istorijos studijos* 2 (1994): 64–69.

[40] Valikonytė, "Ar Lietuvos Didžiojoje Kunigaikštystėje …," 65, 70.