LAW IN UKRAINIAN LANDS WHILE PART OF POLAND, LITHUANIA, AND RZECZ POSPOLITA (END OF XIV — FIRST HALF OF XVII CENTURY)

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Ukrainian lands seized by Lithuania and Poland, even under these complex conditions, all the same preserved and defended a high level of their legal culture. They not only successfully stabilized Ukrainian legal forms and institutes, but actively influenced the legal and cultural life of the Grand Duchy of Lithuania and the Kingdom of Poland.

The unique political development of Ukrainian lands within several neighboring States led to the formation in Ukraine of a rather variegated system of legal sources.

The law of Kievan Rus was the initial base. The Russkaia Pravda played a special role among the sources of law in Ukraine, exerting a significant impact on the development of the legal systems of the Grand Duchy of Lithuania and the Kingdom of Poland, within which the majority of Ukrainian lands were situated.

Ultimately, the legal system was formed on Ukrainian lands on the basis of a synthesis of local customary law and normative acts in the form of sudebniki, charters, sejm decrees, privileges, and other acts of the Kingdom of Poland and the Grand Duchy of Lithuania. The role of customary law in regulating social relations was rather significant. For a lengthy period they operated together with norms of written law.[1] It is especially noteworthy that this was in the Kingdom of Poland, where customary law was extensively applied even in the szlachta Rzecz Pospolita.

The most important source of Polish customary law known from the mid-thirteenth century was the «Book of Polish Customary Law».[2]

Written law also was formed together with the functioning of Polish customary law. The initial forms were royal statutes and privileges. Later they were clothed in the form of royal statutes, privileges, and decrees and Sejm constitutions. Legal acts

[1] *Правовий* звичай як джерело українського права (IX–XIX ст.) [Legal Custom as a Source of Ukrainian Law (IX–XIX Centuries)] (Kyiv, 2006), pp. 184–185.
[2] *I. Y. Boiko,* Органи влади і право в Галичині у складі Польського Королівства (1349–1569 pp.) [Agencies of Power and Law in Galicia During the Kingdom of Poland (1349–1569)] (Lviv, 2009), p. 353.

issued by local authorities and legal acts of the church also were sources of written law.[1]

A proper legal system was created in the Grand Duchy of Lithuania. The alliance with Poland furthered the gradual approximation of Lithuanian and Polish law, especially with regard to the status of the szlachta. However, the uniqueness of Lithuanian law was preserved. Therefore, after the 1569 Lublin Union, a «State order was introduced, but not the judicial law of the crown lands» on Ukrainian lands which became part of the Grand Duchy of Lithuania (Volhynia, Podillia, and Kyiv).[2]

The conditions for the codification of legislation in Lithuania were more favorable than in Poland. The result was the emergence in the Grand Duchy of Lithuania in the fifteenth century of a Sudebnik, and in the sixteenth century, of three Lithuanian Statutes. The 1468 Sudebnik (Statute of Casimir) became the first code of criminal and criminal procedure law of the Grand Duchy of Lithuania. Local customs were the basis thereof, together with judicial and administrative practice. It contained mixed old Ukrainian and new Polish-Lithuanian legal concepts. Much was taken from the Russkaia Pravda.[3]

The First Lithuanian Statute (later called the «Old»), exclusively a secular code adopted at the Walny Sejm in 1529, consolidated the foundations of a social and State order formed at the time in Lithuania and Ukrainian lands which were part of the Duchy. The 1529 Lithuanian Statute consisted of thirteen sections and 264 articles. The Statute proclaimed that «all our subjects, regardless of their class or origin, should be adjudged identically by this written law», that is, on the basis of norms set out in the Statute.[4]

The uniqueness of the 1529 Statute lay in its organically combined layers of certain provisions of the Russkaia Pravda, norms of customary law (Ukrainian, Belorussian, and Lithuanian),[5] a number of points from Polish and German sudebniks, including the Sachsen Spiegel, which significantly influenced the forming of the legal systems of Central and Eastern Europe.[6]

A commission of ten persons was created to prepare the draft Second Lithuanian Statute in 1551 (five Catholics and five Orthodox), the membership of which included «marshall advisors, land officials, cornets, and other persons of the szlachta, and foreign doctors of law» who drew up the Statute. The Statute was confirmed by the Sejm in 1554 and entered into force only in 1566.

The standard of codification technique of the 1566 Statute exceeded the First Lithuanian Statute. It consolidated the socio-economic and political changes which had occurred in the Grand Duchy of Lithuania from 1530 to 1565: determined the status of the Grand Prince («sovereign»), defended the privileges of the great feudal lords, and fixed the rights and freedoms of the szlachta. The 1566 Statute began with a promise «from the highest estate to the lowest to adjudge by those uniform rights written from us (the sovereign)».[7]

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[1] *I. Y. Boiko*, Органи влади і право в Галичині у складі Польського Королівства (1349–1569 рр.) [Agencies of Power and Law in Galicia During the Kingdom of Poland (1349–1569)] (Lviv, 2009), p. 356.
[2] *J. Bardach*, История государства и права Польши [History of State and Law of Poland] (Moscow, 1980), p. 177.
[3] *N. Polonska-Vasylenko*, Історія України [History of Ukraine] (Kyiv, 1995), I, p. 409.
[4] *Статут* Великого князівства Литовського [Statute of the Grand Duchy of Lithuania] (Odessa, 2002), I, P. 462.
[5] *Правовий* звичай як джерело українського права (IX–XIX ст.) [Legal Custom as a Source of Ukrainian Law (IX–XIX Centuries)] (Kyiv, 2006), p. 195.
[6] *N. Iakovenko*, «У XVI столітті ми жили в правовій державі» [In the Sixteenth Century We Lived in a Rule-of-Law State], Старожитності [Ancient Life], no. 1 (1991), p. 10.
[7] *Статут* Великого князівства Литовського [Statute of the Grand Duchy of Lithuania] (Odessa, 2003), II, p. 560.

The 1566 Statute was divided into fourteen sections and 367 articles. Just as the First Lithuanian Statute, it included norms relating to various branches of law. When after the Lublin Union of 1569 the Kyiv, Volhynia, and Bratslav voevodstva were joined to the Polish Crown, the Second Lithuanian Statute continued to operate on these territories, although without the second section («Concerning Land Defense»). Insofar as this version emerged as a consequence of the demands of the Volhynia szlachta which favored unification with Poland, the Second Lithuanian Statute is called the «Volhynia Statute».[1]

Work on the codification of law continued after the signature of the Lublin Union. The Lithuanian Vice-Chancellor, Lev Sapeha (1557–1633), successfully completed this work on behalf of Stefan Batory, the King of Poland. Thus, there emerged the Third Lithuanian Statute, finally confirmed by order of Sigismund III in 1588. «We, Sovereign», this Act declared, «this Statute on the law of the Grand Duchy of Lithuania, corrected by our privilege, confirm and grant to all estates of the Grand Duchy of Lithuania for application for all time, according to which both we, the Sovereign, and all other estates and inhabitants of the Grand Duchy of Lithuania, should act».[2]

The 1588 Statute determined the rights and privileges of the szlachta, regulated in detail the procedure for court proceedings, and formalized the enserfment of the basic portion of the rural population. The operation of the Third, or as it came to be known, the New Lithuanian Statute, one of the most important monuments of law of feudal Europe, extended not only to Ukrainian lands, but also to the Crown lands. It consisted of fourteen sections and 488 articles.

Typically, the 1566 Statute continued to operate after the adoption in the Grand Duchy of Lithuania of the 1588 Statute in the Kyiv, Volhynia, and Bratslav voevodstva, which acceded to the Polish crown.[3]

Publication of the Lithuanian Statutes restricted the sphere of the application of norms of customary law. However, those norms, as before, continued to operate together with written law. The First Lithuanian Statute, for example, expressly authorized judges in the absence of a «written» norm to decide a case «on the basis of old custom». The possibility to act «according to old custom», «by means of old custom», was also determined in the later Statutes. The Grand Duke, the Third Lithuanian Statute provided, was obliged to comply with all ancient customs, «all privileges of the old land and the new freedoms given us preserve and to not violate the good old customs».[4]

Magdeburg Law extended significantly to Ukrainian lands, under which individual cities of Ukraine were endowed with the right of self-government and the right «to judge and confer among themselves». It was known in the form of collections of German law in a Polish translation. The collection most authoritative among them was entitled «Articles of Magdeburg Law» (1556), issued by Groicki. On the basis

[1] *M. Chubatyi*, «Огляд історії українського права» [Survey of the History of Ukrainian Law], in Історія держави та державного права [History of State and State Law] (Munich-Kyiv, 1994), p. 100.
[2] *Статут* Вялікага княства Літоускага 1588 [Statute of the Grand Duchy of Lithuania 1588] (Minsk, 1989), p. 340.
[3] *«Проблеми* дослідження Другого Литовського статуту» [Problems of Researching the Second Lithuanian Statute], in Другий міжнародний конгрес україністів [Second International Congress of Ukrainists] (Lviv, 1994), p. 62.
[4] Article 15, Section 3, ibid.

of this collection, he prepared and published five more books devoted to various sections of city law. They were regarded as an official interpretation of Magdeburg Law.[1]

In 1518 an analogous right was granted to Kyiv so that they «conducted their affairs according to those privileges written down and as determined by Magdeburg Law».[2] Magdeburg Law had a precisely expressed class character displayed in granting privileges to individual social strata of the ruling class (szlachta, merchants, leaders of craftsmen) and, on the contrary, in eliminating the lower strata of citizens from participation in the management of city affairs. Despite the formal autonomy of Ukrainian cities where the Magdeburg Law operated, they were not actually autonomous and independent.

Canon, or church, law should be relegated to the sources of law on Ukrainian lands. The Book of the Pilot (Kormchaia kniga) contained legal sources of the Orthodox Church — the Nomocanon and church statutes of Princes Volodymyr and Yaroslav. The best-known Catholic codification of canon law that operated in the Grand Duchy of Lithuania was the «Digest of Canon Law» (1532). The privileges of the Kings of Poland, Sigismund I (1511) and Stefan Batory (1588), were sources of canon law to some extent.

The Hetman military articles issued in the Grand Duchy of Lithuania and the Rzecz Pospolita were a specific source of law. They actually were the first collections of military judicial and military criminal law.

Cossack law had great importance on Ukrainian lands — the aggregate of legal customs which operated within the Cossack Host. The importance of this source is emphasized by the fact that immediately after the accession of Ukraine to Russia the Tsarist instrument of 25 March 1654 granted to the Zaporozhian Host the right to be judges «by their own elders according to their ancient rights», that is, on the basis of law.[3] The basis of customary law was formed from the fifteenth to the first half of the seventeenth centuries. Cossack law first acquired special popularity among the Ukrainian peasantry who fled from their masters and authorities in the area of the Middle and Lower Dnieper Basin. Norms of law formed in the Zaporozhian Host consolidated the military –administrative organization of the Cossacks, certain rules for military actions, the organization of judicial agencies, the procedure for land use and the conclusion of individual contracts, and types of crimes and punishments. The existence among the Cossacks of their own special law was recognized by the Polish Government.[4] Despite the severe and sometimes merciless norms of Cossack law, there was «great honor» in it.[5] The Cossacks upheld their customary law, apprehensive that written law might limit Cossack freedoms.

The concept of ownership arose rather early in Polish and in Lithuanian law. The Kingdom of Poland began to use the term «dedina», that is, possession of things received by inheritance «from grandfathers», from the outset. Thereafter it encompassed the concept of «ownership».[6] A special term also existed in the Grand Duchy

[1] *M. Kobyletskyi,* Магдебурзьке право в Україні (XIV — перша половина XIX ст.) [Magdeburg Law in Ukraine (XIV–First Half of XIX Century] (Lviv, 2008), pp. 99–105.
[2] *Хрестоматія* з історії Української РСР [Anthology on the History of the Ukrainian SSR] (Kyiv, 1959), I, p. 143.
[3] *M. Hrushevsky,* Хто такі українці і чого вони хочуть [Who Are Ukrainians What Do They Want], (Kyiv, 1991), p. 94.
[4] *I. M. Panonko,* «Звичаєве право запорізьких козаків» [Customary Law of the Zaporozhian Cossacks], Вісник Львівского університету. Серія юридична [Herald of Lviv University. Series: Law] (Lviv, 1999), vol. 34, p. 51.
[5] *D. I. Iavorintskyi,* Історія запорізьких козаків [History of the Zaporozhian Cossacks] (Kyiv, 1990), I, p. 149.
[6] *J. Bardach*, История государства и права Польши [History of State and Law of Poland] (Moscow, 1980), p. 180.

of Lithuania in the 1529 Statute, «ownership», although sometimes the concept «patrimony» was encountered.

Objects of ownership were various: an estate with dependent peasants, pasture lands, forests, meadows, lakes, rivers, agricultural products, handicrafts, buildings, and so on. All things were divided into moveable and immoveable property. According to Polish law, to the last appertained all that was connected with the land. According to the law of the Grand Duchy of Lithuania, estates, lands, buildings, forests, and so on were enumerated among immoveable property, and «other chattels and belongings» were moveable property.

The primary role was allocated to the legal regulation of feudal land ownership. The legal regime of land possessions was various. Royal, grand princely, magnate, szlachta, and church lands were differentiated. In addition, depending upon the means of acquisition, estates were divided into several categories: «ownership» or «possession», that is, kinship possession obtained by inheritance; service, or received for use for a determined period; for example, «for life», «by will of the sovereign»; obtained as a result of purchase-sale for life («purchased»).

The right to dispose of these categories of estates differed. Whereas the possessor of a purchased land possession disposed of it freely, certain limitations existed with regard to possessions received by other means.

Szlachta land ownership of all types — kinship, service, or purchased — was considered to be inviolate. However, this rule knew exceptions. Subjects of the Grand Duke who fled «to enemy land» were regarded as criminals against the State, and therefore their possessions passed to the Sovereign. The children of the criminal lost the right to immoveable property. Maidens who married without the consent of the father and mother or who married foreigners lost their right to possess parental lands. In these instances the property passed to «their close ones».

The right to possess land was based on «grants» of the sovereign, which were confirmed by an instrument or by the lapse of time. Each land possession must correspond to what was written in the instrument of the sovereign. The Government of the Grand Duchy of Lithuania strictly watched over this. For example, during the agrarian reform of Sigismund Augustus, the rights to possess land were verified. If the landholder did not have proper documents for the right to possess it, it was written off to the master. But during the period from the commencement of the agrarian reform until the adoption of the First Lithuanian Statute, land possessors emerged whose right to possess land was based only upon the passage of time. Therefore, the 1529 Statute guaranteed to the szlachta inviolability of those possessions finally recognized for a period of ten years. Upon the expiry of ten years, any suits with respect to this property were deemed to be invalid, and the property remained with that person who possessed it throughout the said period.

Szlachta privileges of 1413 and 1447 authorized the possessors of immoveable property to dispose of it at their discretion. The 1529 Lithuanian Statute preserved for land possessors the right of free disposition of their lands; however, kinship and service property was limited. The possessor had the right to sell, barter, alienate, or give only a third of such property. This right was affirmed in the Second Lithuanian Statute.

Limitation of the right of disposition of land ownership was contrary to szlachta rights and privileges. Naturally the szlachta strove to abolish the limitation. According to the decision of the Sejm of 1566, each land possessor received the right

to dispose of his paternal, land, material, service, and purchased property without any restrictions. Finally,, all limitations on the disposition of szlachta land ownership were abolished by the Third Lithuanian Statute, in accordance with which «the szlachta people ... might freely now and in the future dispose of their estates, ownership, maternal and also service from us, the Sovereign, or by custom and means acquired in perpetuity, according to need, desire, and own discretion».[1]

The so-called pledged land possession was encountered at the outset of the fifteenth century. This meant that the lands were transferred to a creditor as security for a debt. In other words, the land was transformed into a possessory pledge which in time became the ownership of the creditor, who had the possibility not only to exploit the pledged land, but also to transfer the right thereto to other persons. If after thirty years the land was not redeemed from the pledge, it entered the ownership of the creditor.[2]

The 1529 Lithuanian Statute obliged every land possessor to serve military duty according to a zemskii decision. Each szlachta had to appear for war personally and, in addition, dispatch for war a respective number of armed persons, depending on the size of his possession. The same requirement was contained in the 1588 Lithuanian Statute. Military service was required from kinship, maternal, service, purchased, and otherwise acquired estates.

The law established that each land possessor must personally serve in military service. However, the possibility was provided for failure to serve in connection with illness. Szlachta who refused to serve in military service lost the right to possess land. The Third Lithuanian Statute provided: «And who of those subjects of our szlachta and knights of any and all ranks: possessors of land estates have not served in war, or when they arrived at the established time did not register, or although they registered ... or left without our permission or of the Hetman, shall lose all their estate, which shall pass to the State and to us, the Sovereign».[3]

Questions connected with inheritance received rather full and detailed legal regulation. As a result, inheritance law was singled out into an autonomous legal institute.

In Polish and Lithuanian law, inheritance was distinguished by operation of law, by will, and on the basis of custom. The law consolidated the general provision that the children became the heirs of the property of their parents. To be sure, in Poland the right of women to inherit was at first confined only to moveable property. Immoveable property, especially land, passed only to sons. Each of them received an equal part, but, beginning from the sixteenth century, szlachta estates, if there were no sons, were inherited by daughters.

The Lithuanian Statues recognized as heirs by operation of law children, brothers, sisters, parents, and other blood relatives. Inheritance of paternal and material property was distinguished. For example, the Third Lithuanian Statute of 1588 provided that the «an inheritance, immoveable property, valuables, and moveable property shall pass only to sons and relatives who took up arms».[4] Thus, paternal property,

[1] *Статут* Вялікага княства Літоускага 1588 [Statute of the Grand Duchy of Lithuania 1588] (Minsk, 1989), Section 93, Article 41.
[2] *J. Bardach*, История государства и права Польши [History of State and Law of Poland] (Moscow, 1980), p. 142.
[3] *Статут* Вялікага княства Літоускага 1588 [Statute of the Grand Duchy of Lithuania 1588] (Minsk, 1989), Section 2, Article 1.
[4] Ibid., Section 5, Article 14.

including purchased, passed in ownership only to sons, and to daughters — primarily only a quarter of all paternal and purchased property.[1]

As regards maternal property, both immoveable in the form of estates and moveable, including money, gold, silver, clothing and embellishments, horses, carts, carpets, and so on, this was all distributed equally between the children, both sons and daughters.

The Law determined the possibility of disposing of property with the assistance of a will. The freedom of testament extended to moveable property and purchased immoveables not part of kinship ownership — patrimony or maternal property. Each had the right «to write down his things, moveable property and estates personally acquired by him; however, not paternal or maternal estates, by his good will which he wishes for clergy and for secular persons».[2] A minor, monks, and sons who had not separated from parents, dependent people, and others did not have the right to bequeath property.

In the absence of sons, daughters, and other descendants and relatives, kinship property and acquired estates passed to relatives on the male line. Maternal property passed to those heirs who were closest to her.

If there were no heirs by operation or law or by will, the property was deemed to be escheat and passed to the State treasury, the Grand Duke. This norm was introduced for the first time in the Grand Duchy of Lithuania by the Second Lithuanian Statute, where it was said that «whosoever dies without descendants and heirs and has not written down to someone the right to his innate, service, and acquired property; by custom the inheritance shall and will pass to us, the Great Sovereign, Duke of Lithuania». An analogous provision was contained in the 1588 Lithuanian Statute.

However, many issues connected with inheritance relations were regulated by norms of customary law. As the First Lithuanian Statute provided, cases concerning inheritance must be considered primarily on the basis of the norms of the Russkaia Pravda and customary law.[3]

In a feudal society the relations of obligation were not widely encountered. Nonetheless, Polish law and Lithuanian law were aware of various types of contracts. The contract of barter and the contract of gift were most often used in an in kind economy. With the development of exchange and monetary relations the contract of purchase-sale was used, especially for moveable property, and then for immovable. The Statute of the Grand Duchy of Lithuania authorized «all estates of the szlachta to freely dispose of estates, at their discretion to alienate, sell, give, or barter them, to register them to the church, to transfer them for debts and to pledge».[4]

The Law determined the form and procedure for the conclusion of contracts, established periods of limitation (five or ten years), and determined the conditions for the termination of obligations. However, many questions continued to be resolved on the basis of customary law.

All agreements the parties should conclude, as a rule, in the presence of witnesses and by performing certain symbolic actions and rites. It was directed that the con-

[1] *Статут* Вялікага княства Літоускага 1588 [Statute of the Grand Duchy of Lithuania 1588] (Minsk, 1989), Section 3, Article 17.
[2] Ibid., Section 8, Article 2.
[3] *A. P. Tkach,* Історія кодифікації дореволюційного права України [History of the Codification of Prerevolutionary Law of Ukraine] (Kyiv, 1968), pp. 26-27.
[4] *Статут* Вялікага княства Літоускага 1588 [Statute of the Grand Duchy of Lithuania 1588] (Minsk, 1989), Section 3, Article 41.

tracting parties shook hands, often provided refreshments. This was done in order to affirm and consolidate the contract.

A guarantee of performance of an obligation was provided, and this was secured by various means. In some instances the contract was sealed by an oath. Pledge was used. Land received on conditions of service might be pledged, as well as offices. If someone pledged moveable property for a certain period, at the end of the period he did not have the possibility to purchase it, but he who received the property on pledge might use it for life.[1]

Suretyship was widely encountered in the fourteenth and fifteenth centuries. One should have in view that the responsibility of the surety was auxiliary, that is, ensued if the debtor was insolvent.

In some instances the law required compliance with the written form of the contract. This form was obligatory; for example, for a contract of loan for a total amount exceeding «ten pennies of money». When a contract for a large amount was not formalized in writing, the debtor, under the 1588 Lithuanian Statute, had the right to pay the creditor «only ten pennies of money when he swears that the debt is recovered».[2]

The law provided for stricter requirements for agreements relating to land. In the event of the sale or gift of paternal, maternal, service, purchased, or estates acquired by other means, he who sold or gave them should draw up an entry, seal it with his own seal, and, having placed his signature, then invite three or four witnesses of szlachta origin with their seals.[3] Then an entry is made in the castle court. During the session of the castle court, this entry is carried over «from the castle books to the land books». This entry was required if the possessor pledged the estate, people, or land or borrowed a sum of money for a determined period.

Polish and Lithuanian legislation whose norms operated on Ukrainian lands devoted significant attention to determining the constituent elements of crimes and types of punishments. The Statute of Casimir the Great of the mid-fourteenth century devoted almost two-thirds of its articles to crimes. They occupied a significant place in the 1468 Sudebnik, and in all three Lithuanian Statutes.

Criminal-law norms had an openly class character. Life, property, honor, and personal dignity of representatives of the ruling estates, especially the szlachta, were defended by more severe sanctions. Significantly lesser punishments were provided for certain crimes committed by the szlachta than for ordinary people. Sometimes the szlachta were exempted entirely from punishment. In accordance with the First Lithuanian Statute, prison was the punishment for insulting a member of the szlachta, and a fine for insulting a person who was not a member of the szlachta. For a homicide committed by several szlachta, one was subject to punishment; the others paid a «by the head».

The concept of a crime changed in this period. At first a crime was understood as a physical, material, moral «injustice» caused to an individual person or community. Later it was regarded as «harm», «evil act». Then it came to be called an «appearance», that is, a violation of legal norms established by the State. Free and feudally-dependent persons where regarded as the subjects of a crime who, under the

[1] *Статут* Вялікага княства Літоускага 1588 [Statute of the Grand Duchy of Lithuania 1588] (Minsk, 1989), Section 7, Article 27.
[2] Ibid., Section 7, Article 26.
[3] Ibid., Section 7, Article 1.

Second Lithuanian Statute, had reached fourteen years of age, and under the Third Lithuanian Statute, sixteen years of age.

Beginning from the fourteenth century, legislation and judicial practice sought to distinguish intentional guilt from negligent. The Statute of Casimir the Great singled out intentional arson, the person deliberately guilty of which manifested the «sin of cruelty».[1] The Statutes of the Grand Duchy of Lithuania differentiated rather precisely between intent and negligence, attempt and the completed constituent elements of a crime, and regulated in detail complicity in the commission of a crime. Such institutes as necessary defense and extreme necessity were known to it.

Legislation provided for a rather extensive list of crimes that were subdivided into several types depending upon the object of the crime. Insult or criminal infringement of the life and health of the head of State — the Grand Duke or king — was considered to be the gravest crime. Crimes of a State character comprised a special group: flight to the lands of the enemy, divulgence of a State secret, surrendering the castle, uprising. Blasphemy, witchcraft, and apostasy were considered to be crimes against religion.

Homicide, causing of bodily injuries, and insult were relegated to the category of crimes against the person. Homicide was the gravest of these, being divided into categories depending on the object of the crime and the means of committing it: homicide of a lord, parents, husband, infanticide, homicide during an attack on an estate, homicide during quarrels. Crimes against ownership were considered to be theft, arson, damaging or destruction of another's property, and so on. Robbery was a special group among them — open attack with a view to taking possession of property; assault with intent to rob — intentional attack on another's house, household, estate. If someone was killed during such an attack, all participants, irrespective of their role, were punished by the death penalty. Coercion to marry, bigamy, marriage with close relatives, pandering, rape, and others were relegated to crimes against the family and morality.

Several terms were used in the Statutes of the Grand Duchy of Lithuania to designate punishments: «punishment», «death», and so on. The purposes of punishment were various: isolation of the criminal, compensation to the victim of the harm caused at the expense of the criminal, causing harm to the criminal. The main purpose, however, was to frighten, as the growing cruelty and torments of punishment testify (especially the death penalty), as well as the publicness of the execution thereof. As indicated in the instrument of the Grand Duke of Lithuania of 1522, frightening is essential in written law in order to prevent crimes, restrain arbitrary people from criminal behavior, and preserve the entire State in a good condition.

The death penalty was the gravest punishment, being provided for crimes against the State, homicide, assault with intent to rob, raids, and so on. Legislation distinguished between the simple death penalty (decapitation, hanging) and qualified, that is, especially excruciating (burning, quartering, impalement, burial alive in the earth, and so on). Corporal punishments were painful (whipping, beating with rods or birches) and quartering (severance of hand, ear, nose). They were applied primarily to unprivileged estates. Deprivation of freedom also was practiced as a punishment (incarceration in a tower) or placement in a stockade.

[1] *Bardach*, История государства и права Польши [History of State and Law of Poland] (Moscow, 1980), pp. 149–150.

A special type of punishment applied only to representatives of the szlachta was the «public dishonor» because this was connected with the public announcement of the judgment. «Dishonor» led to the civil death of the convicted person. This person ceased to exist in law as a person: he lost szlachta association, the rights to property, was forced to hide abroad, and in the event of his arrest was subject to being killed.[1] Only the protective list of the Grand Duke, the so-called «gleit», could provide relief from the consequences of «dishonor».[2] Dishonor was replaced with a less severe punishment from the sixteenth century — disgrace. A disgraced szlachta also was to leave the territory of the State. However, this was a loss of civil rights, but not of honor.

A rather complex system of supplementary punishments existed in Polish and Lithuanian law, «including the confiscation of property, per capita fine, compensation of damage, and the «imposition».

The per capita fine was a monetary fine «for the head of a murdered person» which was paid, in addition to the basic punishment, to the family or relatives of the victim. «Per capita» was considered to be a supplementary punishment. Under the Third Lithuanian Statute, «if a person of ordinary rank killed another person of the same ordinary rank, not a member of the szlachta, then ... the party convicted of the death shall be punished. A per capita from his moveable property must be paid according to the estate of the victim to whom this right appertains». The amount of «per capita» depended upon the estate of the victim. For a szlachta person, according to the Third Lithuanian Statute, «in addition to the punishment described in the present Statute, one must pay 100 pennies of money, and for a voit or burmeister — 60 pennies of money; for a craftsman or burgher of such cities, according to Magdeburg Law — 30 pennies of money, for a taxed person — 24 pennies of money», and so on.

A monetary fine assigned for causing a wound, beatings, insignificant theft committed for the first time, was the so-called «imposition». It might be a basic or supplementary measure of punishment and came down to monetary compensation to the victim. The Lithuanian Statutes regulated in detail instances of assigning «impositions» and the amounts thereof.

A typical distinctive feature of the system of punishments was the indefiniteness thereof. Often the legislator defined the type of punishment, but not the amount thereof. This made it possible for judges to ascertain the amounts of punishment arbitrarily, by proceeding from their personal and class interests.

The system of crimes and punishments of the Zaporozhian Host was outside the framework of Polish and Lithuanian legislation, having been formed by ancient customs, «oral law and sound reason».

The homicide of an associate by a Cossack was considered to be among the gravest crimes, as well as inflicting beatings, theft, disrespect for the leadership, violence in the Zaporozhe or Christian settlements (taking a horse, livestock, or property away from a comrade), desertion, rustling (theft of horses, livestock, and other property from peaceful inhabitants), bringing women to the Host (except mothers, sisters, and daughters), and drunkenness during a military campaign.

Punishment among the Zaporozhian Cossacks depended upon the nature and gravity of the crime committed. Chaining the guilty to a cannon on the square (for

[1] *V. S. Kulchytskyi*, Історія держави і права України [History of State and Law of Ukraine] (Lviv, 1996), p. 72.
[2] *Енциклопедія* українознавства [Encyclopedia of Ukrainian Knowledge] (Lviv, 1993), I, p. 243.

disrespect to the leadership) was practiced, as were flogging with a lash under the gallows, maiming, and spoliation of property.

The death penalty was the most severe punishment among the Cossacks, having primarily a qualified character: burial alive in the earth, impalement, hanging on an iron hook, beating with rods in stocks. The severity of punishments among the Zaporozhian Cossacks, in Iavornytskyi's view, was explained by three reasons: first, so that people of high morality came to the Host; second, the Host lived without women and knew no mitigating influence; third, the Cossacks waged combat almost constantly and therefore the maintenance of order required especially severe measures.[1]

The law of procedure did not distinguish sharply between civil and criminal cases. The accusatory-adversarial process was retained for a long time in Ukrainian lands, the basic features of which were consolidated in medieval Russian law. Various colorful rituals were a distinctive feature, «rather rich in the sphere of the law of procedure, which requires the most active actions as a procedural act or institute virtually do not exist which would act as a rite-symbol».[2]

Court proceedings commenced upon the application of an interested party — the victim or relatives thereof. The entire process bore the nature of a suit. The plaintiff should autonomously collect all evidence, submit this to the court, and support the accusation. At any stage of the procedure he had the right to withdraw the suit or accusation and conclude an amicable agreement. However, with regard to the gravest crimes (for example, against the State, or against the church), an investigation and trial were obligatory irrespective of the application of the party. Here denunciations were practiced, tortures applied, secrecy of the proceedings complied with, that is, features of the inquisitorial process were manifest.

On the whole, the extent of procedural powers of the parties were rather significant, but depended upon which court considered the case and the class and estate affiliation of the parties. Professional advokats who were attached to the courts might be representatives of the parties. In some cases their participation was obligatory. The advokat was paid for services.[3] Virtually no judicial case proceeded without an advokat because the main role therein was played by the «dialogue of the parties», as the procedure of oral adversariality of the parties was called then. The presence of an advokat for a person who did not understand the nuances of law was extremely essential. For example, each year hundreds of jurists passed through the Lutsk court during the 1630–40s.

The system of evidence used in the courts was exceedingly important. According to the theory of formal evidence, they were divided into perfected and unperfected («full» and «incomplete»). The quantity and quality of evidence was established for each category of cases. The Lithuanian statutes contained a list of major evidence: witness testimony, material evidence, oath, and so on. Tortures were used in certain instances in order to obtain the acknowledgement of a suspect.

The szlachta were in a privileged position. The oath of szlachta was deemed to be an «argument», that is, incontestable evidence. If there were no witnesses to the

[1] *Iavorintskyi*, Історія запорізьких козаків [History of the Zaporozhian Cossacks] (Kyiv, 1990), I, p. 150.
[2] *A. I. Iakovlev*, «Українське право» [Ukrainian Law], in D. Antonovych (ed.), Українська культура: лекції [Ukrainian Culture: Lectures] (Kyiv, 1999), p. 231.
[3] *N. Iakovenko*, «Бояри-шляхта із Заушшя» [Boyars-Szlachta from Zaushshya], Старожитності [Ancientries], no. 9 (1991), p. 13.

crime of szlachta or he was not detained at the site of the crime, he might purge himself by oath.[1]

Witness testimony was the most widely used evidence. The Statutes defined the group of persons who might be witnesses. Witnesses of the clergy and officials had the highest degree of reliability. Written evidence had the highest priority in property disputes because the law required certain contracts to be concluded only in written form. The oath and vow were considered to be indirect evidence.

Preliminary investigation was practiced, undertaken by personnel of the State apparatus — the starosts, their deputies, and castle judges. They travelled to the site of the crime, interrogated witnesses and suspects, wrote down their testimony, and passed this to the court. Eye-witnesses were present were present at the preliminary investigation («two szlachta may be trusted»).[2]

Strakhov M. Law in Ukrainian Lands While Part of Poland, Lithuania, and Rzecz Pospolita (End of XIV — First Half of XVII Century)

Abstract. The article is devoted to the legal system, which was formed in Ukrainian lands on the basis of a synthesis of local law, customs and regulations in the form of law codes, statutes, regulations of Seym, privileges and other acts of the Kingdom of Poland and the Grand Duchy of Lithuania.

Key words: sources of law, Russkaia Pravda, Lithuanian Statute.

Страхов М. М . Право в українських землях під час їх перебування у складі Польщі, Литви та Речі Посполитої (кінець XIV — перша половина XVII ст.)

Анотація. Стаття присвячена правовій системі, яка сформувалась на українських землях на основі синтезу місцевого права, звичаїв і нормативних актів у вигляді судебників, статутів, сеймових постанов, привілеїв та інших актів Польського королівства і Великого князівства Литовського.

Ключові слова: джерела права, Руська Правда, Литовський статут.

Страхов Н. Н. Право в украинских землях во время их пребывания в составе Польши, Литвы и Речи Посполитой (конец XIV — первая половина XVII в.)

Аннотация. Статья посвящена правовой системе, которая сформировалась на украинских землях на основе синтеза местного права, обычаев и нормативных актов в виде судебников, уставов, сеймовых постановлений, привилегий и других актов Польского королевства и Великого княжества Литовского.

Ключевые слова: источники права, Русская Правда, Литовский статут.

[1] *Chubatyi*, «Огляд історій українського права» [Survey of the History of Ukrainian Law], Старожитності [Ancientries], no. 4 (1991), p. 140.

[2] Статут Вялікага княства Літоускага 1588 [Statute of the Grand Duchy of Lithuania 1588] (Minsk, 1989), Section 2, Article 63.