The codification of law in Europe during the 16th century – conceptions, results, effects

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I want to try to establish a connection between the important Lithuanian legislation in the sixteenth century and the processes of codification in Europe I wish to proceed in three steps. First, I want to describe the beginnings of the codification of law in the sixteenth century. It includes some observations about terms, about the different conceptions and about the new conditions that shaped the many complex processes of codification.

Second, I want to shortly present some results, meaning the codified law, and hint at some effects. The third step is an attempt to characterize and classify the Lithuanian Statute within the European codification processes, having recourse to the criteria, conditions and effects that have been presented in the first and second step.

I. BEGINNINGS OF THE CODIFICATION OF LAW IN THE SIXTEENTH CENTURY

1. THE TERM "CODIFICATION"

The term "codification" has been defined several times.[1] The definition known among jurists is the one by Jeremy Bentham (1748–1832)[2]. This important British scholar regarded it as a "complete body of law." On the one hand, the term stands for the complete collection and organized shaping of law in a certain area (codification); on the other, it denotes the media product of the process – in modern times, the organized, systematically structured, self-consistent, preferably

[1] European Legal History. Sources and Institutions. 2nd ed. / Eds. F. Robinson, T. D. Fergus, W. M. Gordon. London–Dublin–Edinburgh, 1994 (hereinafter – European Legal History. Sources and Institutions), p. 246–248; *Kroppenberg I.* Kodifikation // Handwörterbuch zur deutschen Rechtsgeschichte. 2nd ed. Bd. 2 / Eds. A. Cordes, H.-P. Haferkamp, H. Lück et al. Berlin (hereinafter – HRG), 2012, S. 1918–1930.

[2] Cf. European Legal History. Sources and Institutions, p. 247; *Luik S.* Jeremy Bentham // Deutsche und Europäische Juristen aus neun Jahrhunderten. Eine biographische Einführung in die Geschichte der Rechtswissenschaft. 5th ed. / Eds. G. Kleinheyer, J. Schröder. Heidelberg, 2008 (hereinafter – Deutsche und Europäische Juristen aus neun Jahrhunderten), S. 48–53.

complete law book. But this term is only partly usable for observations about the textualization of law in the premodern period, from antiquity until the end of early modern times. Codification, in Bentham's sense, has only been reached in Europe, in the course of the implementation of fundamental paradigms and enlightenment. What was before that?

At all times, it was about the record of law, meaning the textualization of previously unwritten, customary law. The term "codex," which has been recorded since Roman antiquity, may stand for this complete, epoch-spanning view of the perpetual codification of law.[3]

Upon the structural observation over a long lapse of time, the dichotomy between the "written" and "unwritten" law is not the only important aspect.[4] The dualism is superimposed by further dichotomies, such as "scholarly" and "unscholarly,"[5] the dichotomy of the law ("statute" law and "non-statute" law[6]), "secular" and "ecclesiastical" law,[7] "imperial" law[8] and "common" law, "municipal" law and "territorial" law[9] etc. Eventually, the omnipotence of the *ius commune*, in the sense of a *ius universale*[10] in relation to the *ius particulare*,[11] can be found anywhere.

Denominations for the "written" law or parts of it are naturally not consistent. But in many countries, one can find a dependence on the terms of the legal acts in the Roman Empire, especially these of the imperial legislation: *edicta, mandata*,[12] *decreta, rescripta, constitutiones*,[13] *declarationes, statuta* etc.[14] In German, you can also find *Landrecht, Ordnung, Ausschreiben* and the like.

With the purpose of letting it appear universal, how was the textualization of law conducted?

3 *Haase M., Voß W. E.* Codex // Der Neue Pauly. Enzyklopädie der Antike. Altertum. Vol. 3 / Eds. H. Cancik, H. Schneider. Stuttgart–Weimar, 1997, S. 50–55.

4 Cf. *Kannowski B.* Aufzeichnung des Rechts // HRG. Bd. 1. 2008, S. 347–355; *Krause H., Köbler G.* Gewohnheitsrecht // HRG. Bd. 2, S. 364–375.

5 Cf. *Avenarius M.* Gelehrtes Recht // HRG. Bd. 2, S. 31–37.

6 Cf. *Ebel W.* Geschichte der Gesetzgebung in Deutschland // Göttinger Rechtswissenschaftliche Studien 24. 2nd ed. Göttingen, 1958; *Mertens B.* Gesetzgebung // HRG. Bd. 2, S. 302–315.

7 Cf. European Legal History. Sources and Institutions, p. 72–89; *Becker H.-J.* Kanonisches Recht // HRG. Bd. 2, S. 1569–1576; *Landau P.* Kirchenrecht, katholisches // HRG. Bd. 2, S. 1821–1826.

8 Cf. *Luig K.* Gemeines Recht // HRG. Bd. 2, S. 60–77; *Lepsius S.* Buchdruck // HRG. Bd. 1, S. 700–702.

9 Cf. *Laufs A., Schroeder K.-P.* Landrecht // HRG. Bd. 3. 2016, S. 552–559.

10 Cf. European Legal History. Sources and Institutions, pp. 106–123.

11 Cf. *Schennach M.* Partikularrecht // HRG. Bd. 4/Fasc. 26. 2017, S. 408–410.

12 Cf. *Lingelbach G.* Mandat // HRG. Bd. 3, S. 1227–1229.

2. CONCEPTIONS

Several conceptions can be observed. Mandatory and textualized law could emerge through the authorization of an already existing customary law. Nevertheless, scribality is no feature of law until today, but it is a remarkable feature of codification. Instead of explicit authorization/sanctioning, there could also be the tacit acquiescence of older law by the sovereign – be it with or without any authoritative intrusion into the existing normative system. This authoritative act of law could happen regulatory, selectively or on a supplementary basis by a legal act. Eventually, an old law could be partly or completely replaced by modern legislation (modern codification). Science has worked out several types of legislation (we shall equal this with "codification"). This typology goes back to the German legal historians Armin Wolf[15] and Gerhard Immel,[16] as they have intensely concerned themselves with those questions in the 1970s at the Max Planck Institute for European Legal History in Frankfurt/Main under the directorship of Helmut Coing (1912–2000).[17] Their results are still valid today, even though refinements and advancements have completed their work by now.

According to the way of realization of generally binding legal codifications, in the most general sense, you can find the following:

1. An agreement of the sovereign and the states.[18] E.g., *Constitutio Criminalis Carolina*,[19] 1532 (a result made by the Emperor and Reichstag/Imperial Estates);
2. A council, approval and approbation by the estates.[20] E.g., the *Constitucions de Cort* in Catalonia (given by the King, approved by the Cortes/estates);[21]

13 Cf. *Lück H*. Konstitution, Constitutio // HRG. Bd. 3, S. 143–144.

14 Cf. *Waldstein W., Rainer J. M*. Römische Rechtsgeschichte. Ein Studienbuch. 11th ed. München, 2014, S. 210–214, 266–267.

15 *Wolf A*. Gesetzgebung/Die Gesetzgebung der entstehenden Territorialstaaten // Handbuch der Quellen und Literatur der neueren europäischen Privatrechtsgeschichte. Vol. 1: Mittelalter (1100–1500). Die gelehrten Rechte und die Gesetzgebung. 2/I / Ed. H. Coing. München, 1973, S. 517–800.

16 *Immel G*. Typologie der Gesetzgebung des Privatrechts und Prozessrechts // Handbuch der Quellen und Literatur der neueren europäischen Privatrechtsgeschichte, Vol. 2/II: Neuere Zeit (1500–1800). Das Zeitalter des Gemeinen Rechts. Gesetzgebung und Rechtsprechung. 2/II / Ed. H. Coing. München, 1976 (hereinafter – *Immel G*. Typologie der Gesetzgebung des Privatrechts und Prozessrechts), S. 3–96.

17 Cf. *Mohnhaupt H*. Coing, Helmut (1912–2000) // HRG. Bd. 1, S. 870–871.

18 *Immel G*. Typologie der Gesetzgebung des Privatrechts und Prozessrechts, S. 10–13.

19 European Legal History. Cf. *Lieberwirth R*. Constitutio Criminalis Carolina // HRG. Bd. 1, S. 885–890; Sources and Institutions, p. 195.

20 *Immel G.* Typologie der Gesetzgebung des Privatrechts und Prozessrechts, S. 14–18.

21 Ibidem, S. 17.

3. Resolution by the estates and approbation by the sovereign.[22] E.g., *Tiroler Landordnung*, 1532;
4. An order by the sovereign upon petition of the estates.[23] E.g., *French Ordonnances de réformation*;
5. An order by the sovereign.[24] The bill does not come from the estates but from the sovereign alone. E.g., *Novi ordini e decreti intorno alle cause civili, livro III*, 1561, in Savoyen;
6. A resolution by the estates.[25] This case is typical for the Netherlands, where the provincial estates (*Ètats provinciaux*) had the legislative power. E.g., *Nieuwe Landrecht von de Ommelande* (Dutch title), 1602.

By analyzing the many legal acts in Europe, insights about the often and steadily recurring reasons for the making and sanctioning of law could be gained. Initially, there are very general explanations: the glory of God, the avoidance of harm and war, to give anybody law and justice, the growth of wealth.[26] E.g., *Oberhofgerichtsordnung* (German title), Leipzig 1549 (Statute for the Duke's Court[27]) – it was made to exert even and impartial justice and guarantee rights to anybody.

Furthermore, there are certain specific explanations as well:

1. The establishment of law.[28] E.g., the *Solmser Landrecht* from 1571.[29] Definite jurisdiction may happen in accordance with the current law and with the conventional customs;
2. The improvement of law.[30] E.g., the *Bavarian Territorial Law*, 1518: the old land law was often misinterpreted, and that is why no better explanations can be found in the new version;
3. The standardization of law.[31] E.g., the *Württemberg Territorial Law* of 1555 states in its prologue that in cities and towns, no lawful statues and customs had existed, which have to be standardized in favor of the law;
4. Inculcation.[32] E.g., the "Reichspolizeiordnung" (Imperial order of police)

22 Ibidem, S. 18.
23 Ibidem, S. 18–19.
24 Ibidem, S. 19–24.
25 Ibidem, S. 24–25.
26 Ibidem, S. 26–28.
27 European Legal History. Sources and Institutions, p. 112.
28 *Immel G*. Typologie der Gesetzgebung des Privatrechts und Prozessrechts, S. 28–37.
29 Ibidem, S. 33.
30 Ibidem, S. 37–42.
31 Ibidem, S. 42–47.
32 Ibidem, S. 47–48.

from 1548: former regulations were forgotten and neglected; for that reason, new regulations were firmly mandated once again and remembered.

Since any codification, at least partly, is based on the former law, in the sixteenth century and often in the case of customary law, the relation between new codifications and former laws was a central one.

Upon examining the laws of the sixteenth century accordingly, the following types can be detected:

1. The confirmation of an existing law.[33] E.g., the *Droit Coutumier* in several versions since the *Ordonnance of Montils-lès-Tours*, 1454.[34] With this ordinance, the French king Karl VII (1422–1461) mandated the textualization of the customary law. With that, a central supervisory authority was created, and the process of standardizing the law was started. In any case, the kingly ordered records of the *coutumes* were a groundbreaking process that had effects over all of Europe;
2. The discarding of unreasonable and irrational regulations.[35] Once again, the records of the French *Coutumes* can be mentioned;
3. The placement of a new law next to an old law.[36] This means that new regulations/laws exist alongside the older ones without replacing them; for example, the newly drafted reformation of the territorial law and of the law of courts for the Steiermark/Austria in 1574;
4. The placement of a new law instead of an old law.[37]

A famous example is the Freiburg (Breisgau) municipal law reformation from 1520[38] with the so-called *Abrogationsklausel* ("abrogation clause"), which states that any older laws that oppose today's municipal law are void;

5. The legitimisation of a new law.[39] A new law often refers to former laws and former origins. This recurrence is used by the legislators to legitimize their law, meaning the new law. In the *Bavarian Judicial Procedures Code* from 1520, it is stated that the order is based on imperial and common rights as well as on customs and conventions of the principality of Bavaria.

33 Ibidem, S. 48–51.

34 European Legal History. Sources and Institutions, p. 115, 206.

35 *Immel G*. Typologie der Gesetzgebung des Privatrechts und Prozessrechts, S. 51–53.

36 Ibidem, S. 53–57.

37 Ibidem, S. 57–60.

38 Cf. *Nassall W*. Das Freiburger Stadtrecht von 1520 – Durchsetzung und Bewährung – Dargestellt anhand der Rechtsprechung des Freiburger Stadtgerichts im 16. Jahrhundert zu den ersten beiden Tractaten. Berlin, 1989.

39 *Immel G*. Typologie der Gesetzgebung des Privatrechts und Prozessrechts, S. 60.

So far, we have seen a small overview of the ways of legal enactments, their explanations and functions in relation to the old laws.

In France, the idea probably came up to first have all of the traditional customary laws codified, meaning to have it textualized and enforced by royal sanction. Moreover, the French jurisprudent François Hotman (1524–1590)[40] demanded the codification of the complete French laws (customary and statute ones). Something similar was postulated by Anton Faber (1557–1624)[41] in Savoyen. Attempts to turn traditional customary law into a written body of laws also posed problems for the jurists. For the Württemberg customary law in 1533, it is recorded that jurists were unable to turn the contradictory, bad and confusing matter of the customary law into a reasonably modern codification.[42]

However, unauthorized customary laws were often treated as the law, meaning statute law, one made by a king or prince. The Saxon Mirror,[43] well known in Poland and Lithuania[44] represents a good example.

You could also count the structure of the legislative acts as a concept – these obviously trace back to the structure of medieval charters (*Invocatio*, *Intitulatio*, *Arenga*, *Publicatio/Notificatio*, *Narratio*, *Petitio*, *Dispositio*, *Sanctio*, *Corroboratio*, *Signum*, *Recognitio*, *Datum*).[45]

3. INNOVATIONS IN THE SIXTEENTH CENTURY

Codification, in the sense of the textualization of law, has been present at all times. We may observe several "waves": the Justinianic codification[46] the so-called

40 European Legal History. Sources and Institutions, p. 174.

41 Ibidem, p. 219; Deutsche und Europäische Juristen aus neun Jahrhunderten, S. 496; *Schlosser H*. Neuere Europäische Rechtsgeschichte. Privat- und Strafrecht vom Mittelalter bis zur Moderne. 3rd ed. München, 2017 (hereinafter – *Schlosser H*. Neuere Europäische Rechtsgeschichte), S. 117.

42 *Wieacker F*. Privatrechtsgeschichte der Neuzeit unter besonderer Berücksichtigung der deutschen Entwicklung. 2nd ed. Göttingen, 1967, S. 195.

43 English edition: The Saxon Mirror. A *Sachsenspiegel* of the Fourteenth Century / Translated by M. Dobozy. Philadelphia, 1999.

44 *Lück H*. Magdeburgo miesto teisės ištakos ir sklaida Europoje: struktūros, mechanizmai, matmenys // Lietuvos istorijos studijos. T. 36 / Translated by J. Karpavičienė. 2015 (hereinafter – *Lück H*. Magdeburgo miesto teisės ištakos ir sklaida Europoje), pp. 9–26; *Lück H*. Aspects of the transfer of the Saxon-Magdeburg Law to Central and Eastern Europe // Legal History. Journal of the Max Planck Institute for European Legal History. Vol. 22, 2014 (hereinafter – *Lück H*. Aspects of the transfer of the Saxon-Magdeburg Law to Central and Eastern Europe), p. 84.

45 Cf. *Immel G*. Typologie der Gesetzgebung des Privatrechts und Prozessrechts, 8 f.

46 Cf. European Legal History. Sources and Institutions, pp. 2–3; *Manthe U*. Corpus Iuris Civilis // HRG. Bd. 1, S. 901–907.

Germanic popular law or Germanic codes (*leges barbarorum* [47] of the fifth-ninth centuries), the ecclesiastical law/*Decretum Gratiani*[48] (twelfth century), the law books[49] (thirteenth to fifteenth centuries), the legislation in the sixteenth century – our main topic – the codifications of the period of the natural law and the Enlightenment[50] (eighteenth century) and the civil codifications,[51] meaning the modern law books in the nineteenth and early twentieth centuries as results of the legislations by states. The question: which are the typical features of the codification wave in the sixteenth century? Moreover, it must be investigated if these features have led to a new quality of codification attempts and codification realities.

In anticipation of the answer – yes, one can find a qualitative increase, not only concerning the codification of law, but also when it comes to perceptions about the law, state, church, community and the individual in general.[52] The monumental processes, which were in the making in the late fifteenth century and fully developed during the sixteenth century, can only be shortly named here. These are the following:

1. Humanism;[53]
2. Printing (the sixteenth century can definitely be regarded as the first century of printing);[54]
3. The Reformation (connected to the liberation of the individual);[55]

47 Cf. European Legal History. Sources and Institutions, pp. 6–8, 10–13, 19; *Olberg-Haverkate G. von*: Leges barbarorum // HRG. Bd. 3, S. 690–692.

48 Cf. European Legal History. Sources and Institutions, pp. 72–80; *Thier A.* Corpus Iuris Canonici // HRG. Bd. 1, S. 894–901.

49 Cf. European Legal History. Sources and Institutions, pp. 38–40, 117–119, 132, 139; *Lück H.* Der Sachsenspiegel. Das berühmteste deutsche Rechtsbuch des Mittelalters. Darmstadt, 2017, S. 6–21.

50 Cf. European Legal History. Sources and Institutions, pp. 242–260; *Schlosser H.* Neuere Europäische Rechtsgeschichte, S. 203–253.

51 Cf. European Legal History. Sources and Institutions, pp. 261–292; *Schlosser H.* Neuere Europäische Rechtsgeschichte, S. 285–304.

52 Cf. European Legal History. Sources and Institutions, pp. 166–197.

53 Cf. ibidem, p. 166–177; *Muhlack U.* Humanismus // HRG. Bd. 2, S. 1161–1163.

54 Cf. *Lepsius S.* Buchdruck // HRG. Bd. 1, S. 701; *Fuchs Th.* Einleitung: Buch und Reformation // Buch und Reformation. Beiträge zur Buch- und Bibliotheksgeschichte Mitteldeutschlands im 16. Jahrhundert (= Schriften der Stiftung Luthergedenkstätten in Sachsen-Anhalt 16) / Eds. E. Bünz, Th. Fuchs, S. Rhein. Leipzig, 2014, S. 9–37.

55 Cf. European Legal History. Sources and Institutions, pp. 177–181; *Berman H. J.* Law and Revolution II: The Impact of the Protestant Reformations on the Western Legal Tradition. Cambridge–Massachusetts–London, 2003.

4. The rejection of canonical law by the reformers. It is associated with the urgent requirement of new regulations and fulfilled through the newly emerging Lutheran church constitutions as a source of modern legislation);[56]
5. The discovery of the New World;[57]
6. The blossoming of the sciences;[58]
7. Early capitalism.[59]

Concerning the Reformation, it has to be considered that Catholic countries and territories reacted to the new situation with legislation. This was added by a dense network of universities with law schools, the graduates of which professionally dealt with the traditional and new laws.

If one viewed the borders of Europe of that time, the conflict with the Ottomans would become striking, too, as it also turned out to define the political climate and, with that, the understanding of law in the sixteenth century.[60]

The turn of the sixteenth century, of course, does not represent a breach in legal history.[61] Many developments that had started in the Middle Ages were continued – but still a completely different framework of conditions emerged that influenced the qualitative emergence of law, differently to what was the case before. The end of this continuity was only introduced by the French Revolu-

[56] Cf. *Lück H*. Kirchenordnung // HRG. Bd. 2, S. 1805–1812; *Lück H*. Beiträge ausgewählter Wittenberger Juristen zur europäischen Rechtsentwicklung und zur Herausbildung eines evangelischen Eherechts während des 16. Jahrhunderts // Reformation und Recht. Ein Beitrag zur Kontroverse um die Kulturwirkungen der Reformation / Ed. Ch. Strohm. Tübingen, 2017, S. 73–109.

[57] Cf. for ex. *Duve Th*. Sonderrecht in der Frühen Neuzeit. Das frühneuzeitliche ius singulare, untersucht anhand der privilegia miserabilium personarum, senum und indorum in Alter und Neuer Welt. Frankfurt am Main, 2008; *Cardim P*. Political Status and Identity: Debating the Status of American Territories across the Sixteenth and Seventeenth Century Iberian World // Legal History. Journal of the Max Planck Institute for European Legal History. Vol. 24, 2016, pp. 101–116; in general, see: European Legal History. Sources and Institutions, p. 166.

[58] Cf. *Rüegg W*. Themen, Probleme, Erkenntnisse // Geschichte der Universität in Europa. Vol. II: Von der Reformation zur Französischen Revolution (1500–1800) / Ed. W. Rüegg. München, 1996, S. 21–52.

[59] Cf. for ex. in the field of trade: *Hofstraeten B. van*. Recording Customs in Early Modern Antwerp, a Commercial Metropolis // Legal History. Journal of the Max Planck Institute for European Legal History. Vol. 24. 2016, p. 288–301; concerning the field of mining, see: *Bingener A., Bartels Ch., Fessner M*. Die große Zeit des Silbers. Der Bergbau im deutschsprachigen Raum von der Mitte des 15. bis zum Ende des 16. Jahrhunderts // Geschichte des deutschen Bergbaus. Vol. I: Der alteuropäische Bergbau. Von den Anfängen bis zur Mitte des 18. Jahrhunderts / Eds. Ch. Bartels, R. Slotta. Münster, 2012, S. 317–452.

[60] Cf. *Lück H*. Osmanisches Reich // HRG. 4. / 25. Fasc., 2017, S. 218–224.

[61] *Immel G*. Typologie der Gesetzgebung des Privatrechts und Prozessrechts, S. 8.

tion.[62] Nobody could avoid Roman Law in the sixteenth century if the recorded law was to remain in continuance and attention.[63] The textualized customary laws clearly demonstrate this fact. They were adapted and put to paper with the help of the Roman legal terms and systems. Reference may be made here to the famous *Tripartitum* of 1514 by the great Hungarian jurist István Werböczy (1458–1541)[64]. Already in the late medieval France, one can observe the dense succession of royal legal acts (ordinances).[65] The legislative power of the sovereign, which arose from jurisdiction in accordance with medieval understanding, gained an unprecedented power in the sixteenth century.

The attribution of a person to a master, which was typical in the Middle Ages, now changed in favor of the birth right citizenship. Royal legal acts were binding for all of the territory in case of doubt.

The conquest of the New World and the question about the legal status of the native population in the sixteenth century led to debates about law and justice, especially in Spain, which offered many impulses for the further Spanish legal development (School of Salamanca).[66] Immense pressure concerning the improvement of law, especially with respect to the trial and the criminal law (torture, death penalty, mutilation penalties), could be observed in the late fifteenth century in the Holy Roman Empire.[67] This was also about to change in the sixteenth century, even though the evil of the times could not be eliminated completely.

Great Britain had developed differently because of certain circumstances, with regard to the codification of law that has not happened until today – apart from many single legal acts.[68] The system of the *common law*[69] existed as the second large legal system next to the codified system on the European mainland. This is still the case today.

62 Ibidem.

63 Cf. European Legal History. Sources and Institutions, pp. 184–197; *Schlosser H*. Neuere Europäische Rechtsgeschichte, S. 81–146; *Stein P. G*. Römisches Recht und Europa. Die Geschichte einer Rechtskultur. Aus dem Englischen von Klaus Luig. Frankfurt am Main, 1999.

64 Cf. *Bónis P*. The Tripartitum and the European *ius commune*, with special regard to the commentators. For the quincentenary of a Hungarian law-book, see // Zeitschrift für Neuere Rechtsgeschichte. Bd. 36. 2014, S. 197–210; *Rady M*. Customary Law in Hungary. Courts, Texts, and the Tripartitum. Oxford, 2015.

65 Cf. *Rothweiler E*. Ordonnances // HRG. 4/Fasc. 25, 2017, S. 197–203.

66 Cf. European Legal History. Sources and Institutions, pp. 210–211; *Schlosser H*. Neuere Europäische Rechtsgeschichte, S. 156–166.

67 Cf. *Rüping H., Jerouschek G*. Grundriss der Strafrechtsgeschichte. 6th ed. München, 2011, S. 41–43.

68 Cf. *Lerch K. D*. Englisches Recht // HRG. Bd. 1, S. 1332–1345.

69 Cf. European Legal History. Sources and Institutions, pp. 124–152.

II. RESULTS AND EFFECTS

1. RESULTS

Important results of the codification movement in Europe in the sixteenth century were the Peace of Augsburg,[70] 1555 and the *Electoral Saxon Constitutions*,[71] 1572.

The "Carolina" was also known in Poland and Ukraine as well as in the Grand Duchy of Lithuania.[72] The Bohemian academic Paul Christian of Koldin (1530–1589) created a coherent system of municipal law in Czech for the Bohemian cities, which was authorized by the Bohemian estates/the King in 1579.[73] In the Holy Roman Empire, a number of territorial law codes, municipal and territorial law reformations,[74] imperial police orders, imperial minting orders, an imperial notary order, Imperial High Court Orders,[75] orders of the Court Council of the Empire and many more were issued. In Lithuania, the Lithuanian Statutes with their three versions (1529, 1566, 1588) were created.

In the area of the church law, the resolutions of the *Tridentinum* of 1563 emerge.[76] Moreover, many drafts for the new municipal and territorial laws were made in the sixteenth century. These were not enacted, but they still belong to codification history. Moreover, some of them were still used in legal practice. One of them was the draft of the Livonian territorial law by David Hilchen (c. 1561–1610) from 1599.[77]

Since the Polish law was of high importance for the Lithuanian Statute, some facts be mentioned here (according to Lesław Pauli).[78] The customary law pre-

70 Cf. ibidem, p. 167; *Kästner K.-H.* Augsburger Religionsfriede // HRG. Bd. 1, S. 360–362.

71 Cf. *Buchda G., Lück H.* Kursächsische Konstitutionen // HRG. Bd. 3, S. 354–361.

72 *Lieberwirth R.* Das sächsisch-magdeburgische Recht als Quelle osteuropäischer Rechtsordnungen (= Sitzungsberichte der Sächsischen Akademie der Wissenschaften zu Leipzig. Philologisch-historische Klasse 127/1). Berlin, 1986, S. 23, 26.

73 New edition: Práva městská Království českého. Edice s komentářem. 2 Vol. / Eds. K. Malý, P. Slavičková, L. Soukup et al. Praha, 2013.

74 European Legal History. Sources and Institutions, pp. 195–196.

75 Ibidem, pp. 190–193.

76 Ibidem, p. 72.

77 Cf. *Hoffmann Th.* Der Landrechtsentwurf David Hilchens von 1599. Ein livländisches Rechtszeugnis polnischer Herrschaft (= Rechtshistorische Reihe 345). Frankfurt am Main et al., 2007.

78 *Pauli L.* Polen // Handbuch der Quellen und Literatur der neueren europäischen Privatrechtsgeschichte, Vol. 2/II: Neuere Zeit (1500–1800). Das Zeitalter des Gemeinen Rechts. Gesetzgebung und Rechtsprechung / Ed. Coing H. München, 1976 (hereinafter – *Pauli L.* Polen), S. 551–560.

sent in Poland has never been fully codified. Smaller sections of the law were regulated by legislation. Since 1507, all of the Sejm regulations were published in print. A famous work by Jan Łaski (1455–1531)[79] was published in Krakow in 1506 and contains a collection of older legal sources. Further sources from the sixteenth century must be mentioned here as well: the 1532 draft *Correctura iurium* by Mikołaj Taszycki (†1545), which was rejected by the Sejm in 1534; the 1553 private compendia by Jakub Przyłuski (†1554), the ones by Jan Herburt (1524–1578) from 1570, Stanisław Sarnicki (1532–1597) from 1594 etc.[80]

The laws of some areas of the Polish Kingdom were codified; these are the law of Masovia, covered by two statutes (1532, 1540) and the law of Royal Prussia, the so-called "Preußische Korrektur" (Ius *terrestre nobilitatis Prussia correctum*, 1598). Remarkable is the try to codify a unified municipal law for all of Poland's cities. But the respecting draft from around 1524 (*Sigismundina iura constitutionesque Sigismundinae*) was not approved. Efforts to codify the Kulm Law, which was the predominant municipal law in the cities of the Kingdom of Prussia were not successful either. However, especially in Poland, very valuable versions of the Magdeburg municipal law and the Saxon Mirror, which were written by excellent, very intelligent lawyers, were available: Jan Łaski, Mikołaj Jaskier (†1539), Pawel Szczerbicz (1552–1609), Bartołomiej Groicki (c. 1534–1605) etc.[81]

Many codification efforts in Europe in the sixteenth century were dominated by academically educated jurists. But experienced practitioners have also achieved essential things, among those Johann of Schwarzenberg (1463–1528),[82] who is regarded as the editor of the *Constitutio Criminalis Carolina* from 1532. According to recent studies, more academically trained jurists have worked on this famous imperial code of criminal procedure than was assumed until now.[83]

As is also known, the fundamental print versions of the *Corpus Iuris Civilis* (1583) and the *Corpus Iuris Canonici* (1582) fall into the sixteenth century.[84] The first mentioned edition is the immortal work of the French jurist Dionysius Godofredus (1549–1622).[85] Generally, there was an abundance of the humanistic

79 Cf. *Gulczyński A*. Laski, Jan (1455–1531) // in: HRG. Bd. 3, S. 646–647.

80 *Pauli L*. Polen, S. 552.

81 *Lück H*. Magdeburgo miesto teisės ištakos ir sklaida Europoje; *Lück H*. Aspects of the transfer of the Saxon-Magdeburg Law to Central and Eastern Europe, p. 84.

82 Cf. *Pahlmann B*. Johann von Schwarzenberg // Deutsche und Europäische Juristen aus neun Jahrhunderten, S. 379–382.

83 *Schlosser H*. Neuere Europäische Rechtsgeschichte, S. 92–93.

84 Ibidem, S. 30–31, 115.

85 Cf. *Nitschke H*. Dionysius Gothofredus // Deutsche und Europäische Juristen aus neun Jahrhunderten, S. 166–169.

versions of Roman and other legal texts, such as those of the Digests,[86] which was connected to the blossoming of the humanistic jurisprudence in France.[87] Next to the massive spread of legal texts, printing also allows the identification of the legislators and the addressees with the body of laws; think of title stings, dedications of the authors and publishers to the prince as legislator, the use of crests and similar.

Editing legal texts always evokes a creative examination of the law, since – until today – the always existing divergence between the fixed legal norm and the constantly developing reality has to be overcome with intellectual work in accordance with legal, academic methods. Authorized or codified legal texts have been and will always be the basis for the development of jurisprudence.

2. EFFECTS

The codifications lead to a certain stability of norms, one which we would today refer to as "legal security." The ones who knew how to read could inform about the legal situation, based on the written law. Drawing on the written form was unambiguous and less hard to prove than the reference to customary law. On the basis of the legal texts (codifications), it became obvious that certain linguistic skills were needed for codification (legislative intelligence/competence).

The discrepancy between the newly codified laws and the traditional customary laws have also lead to discontent among the addressees of the norms and to violence, which can be clearly seen in the Peasants' Wars.[88] The main demand of the subversive peasants was the knowingly continued recognition of the "good old law" in relation to the new legislation in form of professional law.

One must not expect too much of the new legislation in the sixteenth century from today's point of view. It was generally binding, but many places were lacking the consciousness and the respecting institutions to enforce the law efficiently in every single case. Nevertheless, such institutions existed, and they were even typical for the sixteenth century. We talk about the highest courts in the territories in Germany and in other European countries. For the Holy Roman Empire – the Imperial Chamber Court and the Court Council of the Empire. In the territories, manorial courts or appellate courts may be regarded as the permanently existing courts that could be reached if necessary (a fact different if compared to the Middle Ages).

86 *Schlosser H*. Neuere Europäische Rechtsgeschichte, S. 112.

87 Ibidem, S. 111–121.

88 Cf. *Blickle P*. Bauernkrieg // HRG. Bd. 1, S. 471–475.

One of the effects was, and it was mainly facilitated by printing, the emergence or the perfection of a legal language, of both of a Latin-based as well as a vernacular legal terminology. Groundbreaking was the order of the French King Francis I (1515–1547), given in 1539, that all legal acts, as well as the collections of the customary laws, be written in the mother language (*Ordinance of Villers-Cotterêts* of 1539).[89]

III. THE LITHUANIAN STATUTE – AN ATTEMPT TO CLASSIFY

If we take a closer look at the three versions of the Lithuanian Statute, we will come across many of the worked-out features of codifications in the sixteenth century in Europe. All of the three versions of the Lithuanian Statute are based on traditional customary law. In the course of Christianization, the old-fashioned customary law was influenced by the Christian West European legal perceptions as well. This was added by legislative single acts (privileges) by Lithuanian rulers. Furthermore, there was a municipal law tradition based on the Saxon-Magdeburg Law since the Middle Ages. It was added with special rules for the members of different religions. During the heyday of the Lithuanian state in the fifteenth and sixteenth centuries, intensive efforts to standardize the law and to create a certain legal security were started. The Codex of the Grand Duke Casimir (1440–1492) of 1468 are counted among the first efforts to codify the current customary law, which happened relatively early compared to the rest of Europe.[90] In the course of the codification movement, the famous first Lithuanian Statute was published in 1529.[91] It contains the current customary law. That is why it can be regarded as a complication instead of a substantially new legal enactment.

89 European Legal History. Sources and Institutions, p. 206.

90 The following assessments of the three versions of the Lithuanian Statute are based on: Pirmasis Lietuvos Statutas. The First Statute of Lithuania / Eds. E. Gudavičius, I. Valikonytė. Vilnius, 2014 (hereinafter – Pirmasis Lietuvos Statutas. The First Statute of Lithuania); Pirmasis Lietuvos Statutas. Tekstai senąja baltarusių, lotynų ir senąja lenkų kalbomis / Eds. S. Lazutka, I. Valikonytė, E. Gudavičius. Vilnius, 1991; Statut Litewski drugiej redakcyi (1566) (= Archivum komisyi prawniczej Akademii Umiejętności, t. 7) / Ed. F. Piekosiński. Kraków, 1900 (hereinafter – Statut Litewski drugiej redakcyi); Statut Wielkiego Księstwa Litewskiego. Wilno, 1819 (hereinafter – Statut Wielkiego Księstwa Litewskiego); *Willoweit D*. Das Litauische Statut von 1529 vor dem Hintergrund der Gesetzgebung und Jurisprudenz seiner Epoche // Pirmasis Lietuvos Statutas ir epocha. Straipsnių rinkinys / Eds. I. Valikonytė, L. Steponavičienė. Vilnius, 2005 (hereinafter – *Willoweit D*. Das Litauische Statut von 1529 vor dem Hintergrund der Gesetzgebung und Jurisprudenz seiner Epoche), p. 63–80.

91 New edition: Pirmasis Lietuvos Statutas. The First Statute of Lithuania; issues and discussion // Pirmasis Lietuvos Statutas ir epocha. Straipsnių rinkinys / Eds. I. Valikonytė, L. Steponavičienė. Vilnius, 2005.

With *Seimas*' acceptance in Vilnius and the authorization of King Sigismund I (1506–1548), the law was enacted.[92]

Also, the second Lithuanian Statute from 1566[93] has been adopted by the Lithuanian Sejm some years prior to the creation of the real union with Poland. It was approved by King Sigismund II (1545–1569).

The third Lithuanian Statute of 1588[94] has already been a product of legislation of the Polish-Lithuanian Commonwealth. It was confirmed by the Sejm in Warsaw and approved by King Sigismund III (1587–1632).

The Lithuanian Statute (with the three versions) was very long, which points to an extensive legislation with more than 200 articles divided into thirteen chapters. Its contents include almost all of the law sectors. These were especially the constitutional, administrative, judiciary, civil, criminal and municipal laws. The procedural law was only represented insufficiently in the beginning. Also, ecclesiastical legal matters were not present, because they were governed by the respective ecclesiastical legal norms outside of the statute. The two more recent versions of the Lithuanian Statute did not represent any newly codified laws, but they were aimed at the improvement and development of the law. This way, contradictions were solved, and several important procedural law matters were added.

Such goals had already been mentioned in the general part. From the first to the third version, one can observe the decreased references to the old Lithuanian customary law with a simultaneous increase of elements from different legal orders, especially from the Polish one. Features from German law, e.g., from the Magdeburg Law or the Saxon Mirror have found their way into the statute as well. Very possibly, the editors were acquainted with the Saxon Mirror and actively drew on some of its formulations. Also, the influence of the Roman and canonical law increased, as can be clearly seen in the third version.

Before, we have heard something about the meaning of legal language and the printing of codifications. Concerning these aspects, the Lithuanian Statute in particular offers interesting facts, because it does not want to fit into the abovementioned facts (vernacular language, identification etc.). As we all know, the Lithuanian Statute was written in the Ruthenian language – the official charter, administrative and judiciary language in the Grand Duchy of Lithuania. Ver-

92 To the place of the first Lithuanian Statute in history of legislation and jurisprudence see *Willoweit D*. Das Litauische Statut von 1529 vor dem Hintergrund der Gesetzgebung und Jurisprudenz seiner Epoche.

93 Edition: Statut Litewski drugiej redakcyi.

94 Edition: Statut Wielkiego Księstwa Litewskiego.

sions in Latin and Polish do exist as well. On the other hand, there was no version in Lithuanian. The language might have been too young to meet the requirements of such venerable texts. In spite of that, the Lithuanians could preserve a considerable piece of sovereignty within the Polish-Lithuanian union. In some parts of Lithuania, it was still valid after the Russian occupation. Therefore, the law could serve as means of identification for the Lithuanian people and the Lithuanian law despite the lack of vernacular versions.

Also, the increase of university foundations in Europe during the sixteenth century was visible in Lithuania. In 1579, the University of Vilnius was founded. Along with the academic training of the Roman Law, the basis for the scientific treatment of law, as well as of the native law, was created. Trained in the highly developed conceptual and methodical framework of the European *ius commune*, the graduates of the law school applied Lithuanian Law in practice. The parallel to the developments in Central and Western Europe are obvious. If one would pick up on the term "statute" from the title, the Lithuanian Statute could be regarded as an authoritative legal enactment together with the estates (Sejm).

In German literature, the Lithuanian Statute has been compared to the territorial law codes. This comparison only partly lives up to the evaluation of the Lithuanian Statute. The law codes are broad in scope when it comes to the regulated legal matters – in that case, the comparison might be appropriate. But many law codes only treat a narrow scope, inasmuch that they do not even come close to the legal spheres regulated in the Lithuanian Statute. Also, this does not change because of the Bavarian Country Regulation, a special codification for Bavaria from 1516, that codified the so-called "Bavarian purity requirement" (later "German purity requirement," the *Deutsches Reinheitsgebot*) concerning beer for the first time.[95]

If you take the completeness of the law with all of its parts as standard, the Lithuanian Statute is rather comparable to the famous Prussian Land Law (Prussian Code) from 1794.[96] As we know, it is 200 years younger than the Lithuanian Statute and could therefore have been built upon the ideas of the Enlightenment and natural law.

I think that this result is fairly satisfactory. The Lithuanian Statute is not just a single codification from the sixteenth century. With its density of regulations and

[95] Cf. *Hermann H.-G*. Das Reinheitsgebot von 1516. Vorläufer, Konflikte, Bedeutung und Auswirkungen // Bier in Bayern. Katalog zur Bayerischen Landesausstellung 2016 Kloster Aldersbach, 29. April bis 30. Oktober 2016 (= Veröffentlichungen zur Bayerischen Geschichte und Kultur 65) / Eds. R. Riepertinger, E. Brockhoff, C. Drexl et al. Augsburg, 2016, S. 24–35.

[96] Cf. European Legal History. Sources and Institutions, pp. 250–253; *Eckert J*. Allgemeines Landrecht (Preußen) // HRG. Bd. 1, S. 155–162.

its context of origin in a state that was characterized by several ethnicities and religions, it shows interesting specifics. The division of clerical and lay matters of regulation could be counted as another feature as well. The speciality of the Ruthenian language has already been pointed out. Lithuania's peculiarities in its overall history are very likeable for the Germans. The research of legal history in Western Europe would have every reason to promote this impressive legal development in its research programs and textbooks accordingly.

TEISĖS KODIFIKAVIMAS EUROPOJE XVI AMŽIUJE – KONCEPCIJOS, REZULTATAI, PASEKMĖS

Heiner Lück

Santrauka

Straipsnyje aptariama teisės kodifikavimo XVI a. Europoje „banga" ir reikšmingiausi jos momentai. Pirmojoje dalyje, skirtoje teisės kodifikavimo ištakoms, autorius atskleidžia pagrindines teisės kodifikavimo koncepcijas, suverenų ir kilmingųjų santykį šiame procese, argumentus, kuriais būdavo grindžiamas poreikis kodifikuoti teisę, taip pat išryškina XVI a. pasireiškusias teisės kodifikavimo naujoves. Nors ši kodifikavimo „banga" buvo tik viena iš daugelio, vis dėlto XVI a. galime matyti ryškių kokybinių šio proceso pokyčių. Veikiant humanizmui, paplitus spaudai, vykstant Reformacijai ir kitiems reikšmingiems procesams, keitėsi ne tik teisės, bet ir valstybės, Bažnyčios, bendruomenės ir individo samprata. Antrojoje straipsnio dalyje autorius siekia įvertinti teisės kodifikavimo sąjūdžio (angl. *codification movement*) rezultatus ir pasekmes. Reikšmingiausi šio sąjūdžio rezultatai buvo teisynai, tarp kurių buvo ir jau spausdintos *Corpus iuris civilis*, *Corpus iuris canonici* versijos. Svarbiausiomis XVI a. kodifikavimo „bangos" pasekmėmis, autoriaus nuomone, reikia laikyti padidėjusį teisinį saugumą (angl. *legal security*), teisės normų stabilizavimąsi, teisės kalbos ir terminijos tiek lotynų, tiek gimtosiomis kalbomis tobulėjimą (arba atsiradimą). Trečiojoje straipsnio dalyje siekiama įvertinti Lietuvos Statutą bendrame XVI a. Europos teisės kodifikavimo sąjūdžio kontekse. Aptaręs Lietuvos Statuto šaltinius, kitų teisinių sistemų įtaką ir turinį, autorius prieina prie išvados, kad Lietuvos Statutas iš kitų to paties laikotarpio teisynų išsiskiria savo apimtimi ir užbaigtumu, todėl gali būti lyginamas jau su kur kas vėlesniu Prūsų žemės teisynu (1794).

Santrauką parengė Martynas Jakulis