

RECEPTION OF THE RUSSIAN STATUTE OF CIVIL PROCEDURE OF 1864 IN LITHUANIA DURING 1918–40

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The authors of this article examine historical reasons underlying the enactment of the Statute on Civil Procedure of Russia of 1864 in Lithuania after the declaration of independence in 1918. The Statute of 1864 became effective in 1883, when Lithuania was still part of Russian Empire. In 1918 Lithuania declared independence, but due to the fundamentally changed economic and social living conditions of the society it was impossible to restore the validity of the Third Lithuanian Statute of 1588, which was valid until 1840. It was therefore a logical step to receive the legal acts which were valid until August 1, 1914, including the Statute of 1864. The receipt of the Statute of 1864 is also justified by the fact that the Statute was a modern legal act and borrowed many progressive ideas from the civil procedure law of Western countries, especially from France. The authors, based on historical sources, also examine the problems of the interpretation and applications of the Statute of 1864 by the Lithuanian courts during 1918–40. Such problems were related to the new organization of the court system in Lithuania, lack of qualified lawyers, translation of the Statute from Russian language to Lithuanian language, lack of Lithuanian doctrine of law in the area of civil procedure, disagreement regarding the possibility of the application of the former case law of Russian courts, especially Russian Senate, etc. Nevertheless, the Statute has been successfully applied until the 1940 and it was one of the reason that the Lithuanian Code of Civil Procedure was not adopted until 1940. The Statute of 1864 was again rediscovered after 1990, when the restoration of Lithuanian independence was made, and important changes in the Code of Civil Procedure of 1964 were introduced. The Statute of 1864 was also analyzed during the preparation of the new Code of Civil Procedure of Lithuania of 2002.

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1. Introduction

The legal community of Russia commemorates this year the anniversary of 150 years of the Statute on Civil Procedure of Russia [hereinafter Statute of 1864]. Adoption of that legal act was an important event not only for Russia, but also for Europe overall. The drafters of the Statute of 1864, the most of whom were well educated in foreign languages, had analyzed the experience of various foreign countries, primarily of France – in codification and reformation of civil procedural law experience.¹ That is why, from the point of comparative law, the Statute of 1864 and the history of its drafting is the excellent example of the interchange of legal ideas and legal cooperation. This example is especially eloquent and inspirational nowadays, when relationships between Russia and Western countries are not at their strongest. On the other hand, the Statute of 1864 is an excellent example, confirming that the qualitative legal act can be enforced successfully in other states even after its abolishment for one reason or another in its original state. Such a situation occurred in Lithuania, where the Statute with several amendments, was in force during the period of 1918–40. The Statute of 1864, which regulated civil procedure in Lithuania during 1918–40, was remembered again and analyzed after 1990 by the working group for preparation of the Draft of the Code of Civil Procedure of 2002. In this article the authors disclose historical reasons of Statute of 1864⁵ reception in Lithuania and the peculiarities of its interpretation and application in the Lithuanian court practice in the period of 1918–40. They also discuss the influence of the Statute of 1864 on modern civil procedure.

2. Before the Statute of 1864

Lithuania lost its independence in 1795 in the result of the third division of the Republic of two Nations (*Žečpospolita*) between Russia, Prussia, and Austria. The territory of the Grand Duchy of Lithuania was divided between two states. The largest part was attached to Russia (as its Western provinces), and the part of the territory on the left shore was attached to Prussia. However, the relevant changes in the legal system of Lithuania valid before 1795 were not implemented as fast. According to the order of Catherine II the former organization of court system, as well as civil law

¹ For example, one member of the working group for the preparation of the Statute of 1864, S.I. Zarudny, spoke in four foreign languages and was a famous expert of foreign laws (see Судебная реформа. Т. 1 [Sudebnaya reforma. T. 1 [Judicial Reform]] 303–05 (Nikolai Davydov & Nikolai Polyansky, eds.) (Ob'edinenie 1915).

and civil procedure in Lithuania, remained unchanged until 1840.² Thus, in the area of civil law and civil procedure the Third Lithuanian Statute of 1588 was valid until 1840. The fact of the different legal systems of civil law and civil procedure in the Western provinces of Russia was recognized by Russian authorities, and this was one of the reasons that led to the separate systemization of law sources valid in the territory of the former Lithuania. The famous Russian lawyer M. Speransky, who was in charge of systemization of Russian laws, in 1830 invited the former professor of Vilnius University Ignas Danilevičius (1787–1843), who was the expert of the Third Lithuanian Statute, to join the working group for the preparation of the separate code for the Western provinces of Russia.³ The draft of such separate code (consisting of 2070 articles) was prepared in 1837 and was entitled as *Svod mestnykh zakonov Zapadnykh gubernii*⁴. However, due to the Lithuanian-Polish rebellion of 1830–31 the Russian Tsar by his order of June 25, 1840 annulled the validity of the former Lithuanian laws, and from August 21, 1840 Russian laws entered into force in all territory of Lithuania (except Klaipėda region in which German laws were in force): validity of the Third Lithuanian Statute ceased. At the same time it is important to outline that Russian authorities recognized political, economical, cultural and social peculiarities of the Western provinces. This recognition served as one of the reasons why the Statute of 1864 was fully effective in the main part of Lithuania (Vilnius and Kaunas regions) only in 1883.

3. The Reasons for Reception of Pre-Independence Legislation after February 16, 1918

Lithuania declared independence on February 16, 1918. The idea of restoring the independent Lithuanian state was based on the continuity of Grand Duchy of Lithuania as democratic and modern European state. However, new authorities

² Vytautas Andriulis, *Teisės vystymo Lietuvoje XIX a. klausimu*, 11 Teisė 34 (1972).

³ Augustinas Janulaitis, Ignas Danilevičius Lietuvos bei jos teisės istorikas 159 (Spindulys 1932).

⁴ See *Пергамент М.Я., Нольде А.Э. Свод местных законов Западных губерний. Проект* [Pergament M.Ya., Nol'de A.E. *Svod mestnykh zakonov Zapadnykh gubernii. Proekt*] (Mikhail Ya. Pergament & Alexander E. Nol'de, Digest of Local Laws for the Western Governorates. Draft)] (R. Golike i A. Vil'borg 1910); see also *Нольде А.Э. Очерки по истории кодификации местных гражданских законов при графе Сперанском. Выпуск I. Попытка кодификации литовско-польского права* [Nol'de A.E. *Ocherki po istorii kodifikatsii mestnykh grazhdanskykh zakonov pri grafe Speranskom. Vypusk I. Popytka kodifikatsii litovsko-pol'skogo prava*] (Alexander E. Nol'de, History of Codification of Local Civil Laws: Outline. Issue I. Attempting to Codify the Lithuanian-Polish Law under Count Speransky)] (Senatskaya Tipografiya 1906); *Выпуск II. Кодификация местного права Прибалтийских губерний* [*Vypusk II. Kodifikatsiya mestnogo prava Pribaltiiskikh gubernii*] [Issue II. Codification of Local Laws for the Baltic Governorates)] (Senatskaya Tipografiya 1914); *Нольде А.Э., Пергамент М.Я. Обзорение исторических сведений о составлении свода местных законов Западных губерний* [Nol'de A.E., Pergament M.Ya. *Obozrenie istoricheskikh svedenii o sostavlenii svoda mestnykh zakonov Zapadnykh gubernii*] [Review of Historical Data on Compilation of the Digest of Local Laws for the Western Governorates)] (R. Golike i A. Vil'borg 1910).

saw that the economical, political and social conditions of society's life in 1918 were essentially different from those in 16th–18th centuries. So, it was understood that it was impossible to restore the validity of the former Lithuanian Statutes, as they represented the sources of laws of the society, based on feudalism and caste. Coherently, one of the first legal acts adopted by the Council of State was the Law on the Main Principles of the Provisional Constitution of November 2, 1918 – the legal basis for the reception of pre-war legislation. Article 24 of this Constitutional Law provided that, in all areas in which Lithuanian legislation was still absent, the legal acts which were in force until August 1, 1914 (*i.e.* before the First World War) were enforced, unless they were contrary to this Constitutional Law.⁵ Thus, this rule served as the legal basis for continuity of validity of the Statute of 1864 in the area of civil procedure as well. The same legal rule was established in Art. 28 of the Provisional Constitution of 1919 and later, in Art. 3 of the Constitution of 1920, Art. 106 of the Constitution of 1922, Art. 107 of the Constitution of 1928 and Art. 156 of the Constitution of 1938. In summary, the constitutional laws established three principles for the adoption of foreign laws in Lithuania after February 16, 1918:

- 1) only the legal acts which were valid in the territory of Lithuania until August 1, 1914, were adopted;
- 2) the foreign legal acts were valid unless they contradicted the Constitution of Lithuania;
- 3) the adopted foreign legal acts were valid so long until they were changed, *i.e.* until their validity was abolished by new national legal acts.

So, due to partition of the territory of the Grand Duchy of Lithuania in 18th century the first principle created a unique situation: several different legal systems were valid in Lithuania during 1918–40. For example, four separate legal systems were valid in civil law area: the First Part of Tome X of the Russian Laws Digest was in force in the largest part of Lithuania; the Digest of Local Civil Laws for the Baltic Governorates (*Pabaltijo gubernijų vietinių įstatymų sąvadas*), prepared by famous German lawyer F.G. von Bunge was in force in Palanga and Zarasai districts; the Code of Napoleon was in effect in Užnemune; and the German Civil Code was in effect in Klaipėda region.⁶ Adherence to legal doctrine also remained in the area of civil procedure – the Statute of 1864 was valid in the largest territory of Lithuania, except the Klaipėda region.

As it is provided above, by the second principle of the foreign laws, the adopted foreign laws were valid unless they contradicted the Constitution and other national laws. This principle was especially important, as all Constitutions of Lithuania of the

⁵ Vytautas Andriulis et al., *Lietuvos teisės istorija* 312 (Justitia 2002).

⁶ Valentinas Mikelėnas, *The Common Core Project and the Lithuanian Private Law System*, in *Opening Up European Law: The Common Core Project towards Eastern and South Eastern Europe 196–98* (Mauro Bussani & Ugo Mattei, eds.) (Stämpfli, Sellier, Carolina Academic Press 2007).

period of 1918–40 declared the equality of all citizens before the law irrespectively of their nationality, race, religion, sex and social position and abolished all privileges based on the social position (abolishment of caste). Nevertheless, some adopted laws, including the former Russian laws, provided caste privileges, *i.e.* privileges for some categories of citizens depending on their social position. Such received legal rules on privileges, of course, were contrary to the national Constitution. However, constitutional legislation did not provide the institution responsible for solving the problems of compatibility of the received laws with the Constitution and other national laws. Consequently, the questions of compatibility of the applied legal rule with the Constitution were decided by a judge or other competent official in each case individually. The first Minister of Justice P. Leonas in 1919 issued a special order, according to which each judge, investigator, prosecutor, bailiff or public notary was responsible for decision of questions on the validity of the received legal rules from the approach of the Lithuanian Constitution. The said questions had be decided keeping in mind the democratic order established by the Constitution.⁷ However, some years later, P. Leonas, working as a professor of Kaunas University, wrote, that the practice of allowing each judge or another official to decide individually on compatibility of the received legal rules with the Constitution was a wrong decision. In 1924 P. Leonas concluded that the best choice was to oblige the legislator himself to establish explicitly which legal rules contradict the Constitution and consequently are not valid.⁸ The problem of coherence of the received legal rules was evident, as there was no constitutional court or any alternative mechanism of constitutional control in Lithuania during 1918–40. Moreover, this problem was exacerbated by the fact that, in the majority of civil cases, courts and lawyers were faced with the problem of the validity of the applicable received legal rule, while deciding whether or not this rule contradicts the Constitution. Such situation raised legal uncertainty and society's disappointment. Only in 1933 the new Law on Courts System provided the new function of the Highest Tribunal (Supreme Court) of Lithuania. According to Arts. 90–95 of the Law on Courts System the General Session of the Highest Tribunal has the right, under the request of the Minister of Justice or the panel of the Highest Tribunal, to interpret laws in the event of disagreement between the courts regarding the application of such laws, as well as in the event of uncertainty regarding the validity of such laws. The interpretations of the General Session of the Highest Tribunal were officially published and were obligatory for all courts, *i.e.* they had a power of precedent.⁹

The third principle of reception, as it was said previously, meant that the newly adopted Lithuanian national laws have priority against the received foreign laws.

⁷ *Apygardų teismams, taikos teisėjams, teismo tardytojams, valstybės gynėjams ir notarams*, 1919(5) *Laikinosios Vyriausybės Žinios*.

⁸ Petras Leonas, *Teisės enciklopedijos paskaitos* 143 (Lietuvos universiteto Teisių fakulteto leidinys 1924).

⁹ Martynas Kavolis, *Mūsų įstatymdavystė ir teisdarystė*, in *Lietuva: 1918–38* 328 (Spaudos Fondas 1938).

This principle was explicated already in 1919: the Ministry of Justice issued an order explaining its substance and specifics of application. According to this order the adoption in a certain area of new national rules had the effect of abolishing the received legal acts. In the sphere of civil procedure national rules, specific rules were being introduced widely and expeditiously: during 1918–40 more than 20 new amendments were made in the Statute of 1864. Such amendments were concerned with the new courts system, the abolition of privileges, the changed-extended competence of bailiffs and lawyers, new functions of courts in mortgage proceedings, etc.

The legislator's decision to receive legal acts, which were in force in the territory of Lithuania until August 1, 1914, attained the positive evaluation by the Lithuanian legal doctrine both during 1918–40, as well as after 1990. After 1918 Professor V. Mačys in his first textbook on civil procedure in the Lithuanian language wrote that receipt of the Statute of 1864 on civil procedure was a reasonable step, because the Statute of 1864 introduced principles and institutions of modern civil procedure recognized in Western Europe. V. Mačys stressed that the Russian legislator borrowed many progressive institutions from other European codes of civil procedure, especially from the French code of civil procedure. According to V. Mačys the Statute of 1864 was legal act based on the Western legal traditions, thus its receipt by Lithuania was in line with the aim to create the democratic and modern European state.¹⁰

The same evaluation of the receipt of pre-independence legislation in 1918 remains unchanged today. For example, professor M. Maksimaitis in 1997, when analyzing the reasons of receipt of foreign laws in Lithuania after February 16, 1918, explained several of them. First of all, the changed economical, social and political conditions of life made impossible the restoration of validity of the Third Lithuanian Statute of 1588. Secondly, preparation of new national laws within a short period of time also was impossible due to the lack of qualified lawyers, difficult economical condition of the state, and a stressed international situation. Thirdly, economical relationships, based on the principle of private ownership and market economy, remained unchanged after the declaration of independence.¹¹

4. The Problems of the Application and Interpretation of the Statute of 1864 in Lithuania during 1918–40

Although the receipt of the Statute of 1864 in Lithuania in 1918 was a necessary and logical step of the new Lithuanian government, the practical implementation of the received legal norms, *i.e.* the application of the Statute of 1864, raised several problems. The first difficulty related to the lack of qualified lawyers. The

¹⁰ Vladas Mačys, *Civilinio proceso paskaitos 29* (Teisių fakulteto leidinys 1924).

¹¹ Mindaugas Maksimaitis, *Nacionalinės ir perimtos teisės koegzistencijos principai tarpukario Lietuvoje, in Lietuvos teisės tradicijos 139–40* (Justitia 1997).

only university in Lithuania – Vilnius University, established in 1579 – was closed by the Russian Tsar in 1830. So, since 1830 there was not any legal school in Lithuania. Only a few Lithuanians had graduated from law schools in Moscow or St. Petersburg universities, among them the first and the last President of Lithuania A. Smetona, the first Minister of Justice P. Leonas, *etc.* Furthermore to due to the First World War many lawyers from Lithuania emigrated. The problems related to the organization of the court system, appointment of judges, their qualification and education, *etc.* was widely and precisely analyzed in a special book, issued in 1928 in commemoration of the 10th anniversary of the Lithuanian court system.¹² Regardless of such complicated situation in development of legal personnel, the first persons charged with creation of a new court system in Lithuania in 1918 were highly educated, knew several foreign languages and were acknowledged experts not only of the Russian but also of the foreign law. One of them was the first Minister of Justice, Professor P. Leonas. He graduated from the law school of Moscow University, worked as an investigator, a justice of the peace, an assistant to a judge, and a district judge in Turkmenistan. In 1917 he returned to Lithuania and in 1918 was appointed a Minister of Justice. Later he became a professor of the Faculty of Law of Kaunas University and was a famous advocate.¹³ In 1918 professor A. Janulaitis was appointed to the position of president of Vilnius district court, Professor V. Mačys as president of Kaunas district court, and Professors A. Kriščiukaitis and M. Riomeris as members of the Highest Tribunal.

But not only the Lithuanians stand at the creation of the new legal order. After the revolution in Russia in 1917 many Russian lawyers emigrated to the West. Lithuania was one of the countries in which several famous Russian lawyers established their new residences. One of the most famous was S. Bieliackin (1874–1944), who became a professor of Kaunas University. Russian lawyers who immigrated into Lithuania were of great importance and their legal experience ensured clear advantages: their skills in legal theory and practice, thus knowledge of the Russian court practice in application of the Statute of 1864, especially jurisprudence of the highest judicial body in the former Russia – Russian Senate, was one of the main instruments guaranteeing changes for the better in application of the received law. Moreover, the immigrant Russian lawyers learned the Lithuanian language readily and helped to translate Russian legislation, including the Statute of 1864, into the Lithuanian language. There Professor S. Bieliackin helped the Lithuanian lawyer J. Viskanta with the first translation of the Statute into the Lithuanian language in 1931.¹⁴ Thus, creation of the new legal system in Lithuania was based on a strong scientific ground.

The second practical problem related with application of the Statute – the ability to communicate in the Lithuanian language. The Provisional Constitution provided the

¹² Lietuvos teismas 1918–28 (Antanas Kriščiukaitis, ed.) (Teisingumo Ministerija 1930).

¹³ Juozas Leonavičius, Petras Leonas – Lietuvos sąžinė (Technologija 2002).

¹⁴ Civilinio proceso įstatymas (Jurgis Viskanta, trans., Vladas Mačys & Simonas Bieliackinas, eds.) ('Literatūros' Knygynas 1931).

Lithuanian language as only one official language in Lithuania. However, all received Russian laws, including the Statute, were only in the Russian language. The majority, but not all of the judges, advocates and bailiffs knew the Russian language. The opposite was true for the litigants, most of whom did not know it. As a legal representation in civil cases was not obligatory, this raised many linguistic problems in court procedure and thus often resulted in questions of correct application of procedural guarantees. This point was elucidated by the Highest Tribunal not in one case. The Ministry of Justice for various reasons failed to organize the official translation of the Statute of 1864 from Russian language to Lithuanian language. Under the private initiative of some lawyers only two non-official translations of the Statute of 1864 were issued during 1918–40 – the first in 1931, and the second in 1938.¹⁵

The third problem was related to another source of civil procedural law – doctrine of law and case law. The first textbook on civil procedure in Lithuanian language was prepared in 1924. Until this the main doctrinal sources were the textbooks written by Russian authors until 1914. A controversial question concerned the former Russian case law, for example, the legal status of the case law of the Russian Senate. Some Lithuanian authors proposed that the case law of Russian Senate when interpreting the Statute of 1864 is also a source of law and should be applied by the Lithuanian courts. Other authors disagreed with such proposals. In 1925 the Highest Tribunal of Lithuania by his judgment determined that the case law of the Russian Senate is not obligatory for the Lithuanian courts and that Lithuanian courts should interpret the Statute of 1864 independently and autonomously from the case law of the Russian Senate. This judgment of the Highest Tribunal was of great importance because many provisions of the Statute of 1864 were interpreted by the Lithuanian doctrine of law and Lithuanian case law in a different way. For example, Art. 815 of the Statute of 1864 was interpreted by the Highest Tribunal in such a way that the judgments of the Highest Tribunal had obligatory force for the lower courts, *i.e.* doctrine of precedent was introduced in Lithuania.¹⁶ The Lithuanian doctrine of law and Lithuanian case law made several other improvements during the application and interpretation of the Statute of 1864, *e.g.*, interpretation of the nature of appeal (absolute or limited appeal and the right of the parties to present a new evidence in appeal court), allocation of *onus probandi* between the parties, *etc.* A very important event for the interpretation and application of the Statute of 1864 was the adoption of the Constitution of Lithuania in 1938, Art. 129 of which established the principle of judicial independence.

The last but not least important result of the receipt of the Statute of 1864 was preparation of the new generation of Lithuanian lawyers at the University of Kaunas. Many prominent Lithuanian lawyers who graduated Kaunas University

¹⁵ Civilinės teisės įstatymas (Česlovas Butkys, ed.) (Gutmano Knygynas 1938).

¹⁶ Dalia Mikulėnienė, *The Highest Judicial Institution of Lithuania: History and Current Reforms*, in *The History of the Supreme Courts of Europe and the Development of Human Rights* 266 (Pál Solt, ed.) (Alföldi Vyomda Zrt. 1999); K. Šalkauskis, *Teismų precedentai*, 1938(41) *Teisė* 17–19.

were educated on the basis of European legal traditions of civil procedure, and the Statute of 1864 was one of the sources of such traditions. For example, a well known proceduralist of the Soviet period, Professor J. Žeruolis (1907–86), graduated Kaunas University in 1934 and knew the Statute not only in theory, but had experience with its practical application during his work in court.

5. Conclusions

The Statute of 1864 was successfully applied in Lithuania for twenty two years. The quality of this legal act and its innovative adaptation to local conditions by the doctrine of law and case law was one of the reasons that the new Code of Civil Procedure of Lithuania was not prepared until 1940. Many lawyers raised the question of the preparation of Lithuania's own Code of Civil Procedure. But the Ministry of Justice and Council of State in 1938 decided to codify substantial law at the beginning – to prepare the Lithuanian Civil Code and only after the adoption of the Civil Code to start preparation of the Code of Civil Procedure. Unfortunately, this idea was not realized due to the events of 1940 and World War II. Only after 1990 was the Statute of 1864 rediscovered once again and used as one of the sources for the preparation of the key amendments of the Code of Civil Procedure of 1964 in 1994 (introduction of the appeal system, court order, etc.). The Statute of 1864 was also analyzed by the working group during the preparation of the new Code of Civil Procedure of Lithuania of 2002. So the authors of the Statute of 1864 can be proud that their work is remembered and alive even one hundred fifty years after its adoption.

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