

**"FORMULA REGIMINIS" (1617) – THE FIRST WRITTEN
CONSTITUTION IN THE TERRITORY OF LATVIA: THE FORMATION
OF CONSTITUTIONAL LAW IN THE DUCHY OF COURLAND AND
SEMIGALLIA (1561 – 1795)**

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Abstract

The Treaty of Subjection (1561) concluded by the Polish - Lithuanian ruler Sigismund II Augustus and the Master of the Livonian Order Gotthard Kettler stipulated the establishment of a new Polish- Lithuanian vassal state – the Duchy of Courland and Semigallia. The Livonian Order was liquidated, but Gotthard Kettler received from Sigismund II the title of Duke of Courland and the status of a royal vassal. A special role in the formation of the legal system of the Duchy of Courland played the written sources of constitutional law, which regulated the relations between the duke and the nobility of Duchy, as well as between the Polish - Lithuanian Commonwealth and the Duchy of Courland. Of particular importance among other sources of constitutional law was the "*Formula regiminis*" (1617), the first written constitution in the territory of Latvia. With its entry into force, the Duchy of Courland became a constitutional monarchy. The author, based on the analysis of the "*Formula regiminis*", other sources of constitutional law, and relevant studies comes to the conclusion that these sources already contained the germs of modern constitutional law principles such as the supreme power of the constitution, the separation of powers, parliamentarism, principle of checks and balances, principle of constitutional control, and limited recognition of human rights and freedoms. The author also concludes that human rights and freedoms in the Duchy of Courland were enjoyed only by the privileged estates of society, while most of the population, especially the peasants in manors of landlords who had the status of serfs, had denied them.

Keywords: *Treaty of Subjection, Vassal State, Formula Regiminis, Hard Constitution, Constitutional Monarchy, Principles of Constitutional Law*

Introduction

This article is devoted to the establishment of the Duchy of Courland and Semigallia in the result of the events of the Livonian War in 1561 - 1562, which led to the collapse of the most influential component of the Livonian Confederation - the Livonian Order. That the establishment of the Duchy of Courland and Semigallia played a significant role in the subsequent history of Latvia is evidenced by the recognition expressed by the Latvian historian Valda Kļava, that 1561 - 1562 marks the transition from the Middle Ages to the Early Modern period in the territory of Latvia, but the newly founded Duchy of Courland and Semigallia is perceived as “the only formation that fully represented the early modern state in the territory of Latvia” (Kļava, 2008, p.45). Historian Mārīte Jakovļeva also shares similar insights, noting that “during its existence, the Duchy of Courland represented the beginnings of modern statehood in the territory of Latvia” (Jakovļeva, 2019, p. 17).

To analyse the constitutional formation and development of the Duchy of Courland, the author has used historical chronicles, publications of historical documents, as well as studies by historians and legal historians. A significant part of these studies was published in Latvia, and their authors were German and Baltic German historians in the 18th - 20th centuries, and also in the 21st century they continue the research the history of the Duchy of Courland, publishing a special compilation of its legal sources (Oberländer & Keller, (Eds.), 2008). From early 20th century, Latvian historians and legal historians also started to study the history of the Duchy of Courland. Some Latvian historians have studied the history of the Duchy of Courland in exile during the occupation of Latvia by the Soviet Union (1940 - 1990), publishing their works in both Latvian and English. Certain aspects of the formation of the Duchy of Courland have also been examined by Lithuanian, Polish, Swedish, Russian and Belarusian authors.

1. History of the founding of the Duchy of Courland and Semigallia

The cause of the establishment of the Duchy of Courland and Semigallia was the Livonian War, which was started by the Russian Tsar Ivan IV the Terrible, who invaded the territory of Livonia in January of 1558. The pretext for starting the war (*casus belli*) was the hesitation of the Bishopric of Dorpat (now Tartu) to pay tribute to Russia in accordance with the terms of the 1474 peace treaty between Livonia and Russia (Podberyozkin, 2019). Since the city of Dorpat, was founded by the Grand Prince of Kiev Yaroslav the Wise as Yur'ev in the 11th century (Tvauri, 2012), the Tsar of Russia considered Dorpat as its ancient territory.

That the unpaid tribute was only a pretext for Russia to start an aggressive war is evidenced by the fact mentioned in the chronicle of Balthasar Russow that after the demanded sum was collected, Tsar refused to accept it, and the Livonian envoys had to bring the money back (Rüssow, 1578).

The war launched by Ivan IV ultimately proved unsuccessful for Russia, although it lasted 25 years - a longest war in Russian history. The war also proved devastating for the Livonian Order, whose armed forces suffered several defeats from Russian troops, the most decisive of which was the Battle of Ermes on 2nd August 1560 (Dunsdorfs & Spekke, 1964). Seeing Livonia's military powerlessness, the Master of the Livonian Order, Gotthard Kettler (since 1559) realising that Livonia would not be able to defend itself in the war with Russia without foreign help and support. Gotthard Kettler appealed to the Holy Roman Empire - the nominal lord of Livonia. Several decisions were taken by the Landtags of the Holy Roman Empire on these appeals in 1559 and 1560, but they were ineffective because the money for help to Livonia was not collected (Veber & Filyushkin, 2018).

Kettler also took decisive steps, asking the ruler of Lithuania and Poland, Sigismund II Augustus, to take power over Livonia to prevent it from falling into the hands of despotic Russian state. Based on medieval feudal principles, his action was legal. If the Holy Roman Emperor as overlord could not protect his Livonian vassals, they had the right to choose another lord (Zelenkovs, 2000).

In the summer of 1559, Kettler visited Vilnius and signed there with Sigismund II Augustus first Treaty of Vilnius on 31st August 1559, placing the Livonian Order's territory under the protectorate of Lithuania. The Lithuanians pledged to defend Livonia from attacks by the Muscovite enemy and to recapture the lands seized by him in the northeast of the country. In exchange, they received the southeastern part of Livonia, including the castles of Bauska, Rossiten, Ludsen, Dünaburg, and Selburg as collateral. (Dogiel (Ed.), 1759).

A significant date in the history of the disintegration of Livonia was 5th April of 1560, when Gotthard Kettler met with the commanders in Riga and decided to liquidate the Order, i.e. to carry out an act of secularization of Livonia. The Master was allowed to marry and turn the territory of the Order into a hereditary duchy. As compensation, Kettler decided to grant the commanders of the Order the territories they ruled as an inheritance. It was also decided that if the Master's marriage did not provide the hoped-for material support to save Livonia, it would submit to the Polish - Lithuanian ruler (Dunsdorfs & Spekke, 1964).

Gotthard Kettler had expectations of becoming the Duke of Livonia after the secularization of the Livonian Order (Berķis, 1954), like as it happened with Albrecht Hohenzollern who in 1525 signed a Treaty of Cracow (Dogiel (Ed.), 1764) with king of Poland Sigismund I the Old. But this goal of Gotthard Kettler was not destined to come true, as Sigismund Augustus did not want to establish a unified Livonian vassal state throughout the territory controlled by the Grand Duchy of Lithuania.

Besides that, Livonia could no longer be restored as a single political entity, as its individual territories had come under control of various neighbouring states. Sigismund Augustus could make decisions only regarding the part of Livonian territory in its mainly Latvian-populated area which was under Lithuanian control. He had special interest in annexation of eastern part of Livonia including the Daugava

waterway and the city of Riga under the direct rule of the Grand Duchy of Lithuania because it was an important trade route from Lithuania to the Baltic Sea (Stancelis, 2000). In turn, Sigismund Augustus offered Gotthard Kettler the southwestern part of Livonia between the Daugava River and the Lithuanian state border - territories of Courland and Semigallia as a vassal state under suzerainty of the Grand Duchy of Lithuania.

These terms of the treaty proposed by Sigismund Augustus were unexpected for the Livonian delegation that arrived in Vilnius on 27th November 1561. It was met by the secretary of Prince Radziwill with a twenty-four-hour ultimatum to sign an unconditional submission or immediately leave empty-handed. On 28th November 1561, Gotthard Kettler, Archbishop Wilhelm, Prince Christopher of Mecklenburg, representatives of the Livonian Order vassals and some cities swore allegiance to the Polish king in writing, signing a document known as the Treaty of Submission (*Pacta subiunctionis*) (Dogiel, (Ed.), 1759) agreeing to the demands of Sigismund Augustus (Bilmanis, 1951).

The causes and results of the submission of the last Master of the Livonian Order to the Grand Duchy of Lithuania was described by the chronicler Balthasar Russow, indicating that after the defeats of the Livonian Order suffered from the Russian troops, Gotthard Kettler had no other option to ensure protection against the enemy than to submit to the Polish crown. "Thereupon", continued Russow, "the Mastership of the Teutonic Order in Livonia ceased and came to an end, and two hereditary and secular principalities were established, one in Courland, which was granted to the Duke there, the other in Latvia and in the Archbishopric of Riga, which the King retained for himself, and which is today called the Principality Ultradunensis" (Rüssow, 1578, pp. 82 – 83).

28th November 1561 is considered the *de iure* founding day of the Duchy of Courland and Semigallia. The ratification of the *Pacta subiunctionis* took place on 5th March 1562 when in Riga Castle, Gotthard Kettler in solemn ceremony remitted to the envoy of the King of Poland, Prince Radziwill, his Grand Master's insignia of power, receiving in exchange the rank of Duke of Courland and Semigallia. After this he signed his Reversal to his enfeoffment. Other commanders of the Livonian Order also solemnly renounced their positions, and the Livonian Order was secularized. After that, Gotthard Kettler swore allegiance to Sigismund II Augustus, becoming a vassal of the Polish - Lithuanian king, while the former brothers of the Order swore allegiance to the new duke as his subjects. On 5th of March 1562, the *de facto* establishment of the Duchy of Courland and Semigallia took place (Jakovļeva, 2018).

2. *Pacta subiunctionis* or *Provisio ducalis*?

3.

In fact, they were titles of the same treaty, which entered into force in 1562. Different names for it based on the different interests of its implementers. In the Grand Duchy of Lithuania and later in the Polish - Lithuanian Commonwealth this treaty was called *Pacta subiunctionis*, but in the Duchy of Courland and Semigallia the title

Provisio ducalis, i.e. in translation - Duke's Provision, was mainly used, focusing on that parts of the treaty that determined the future relations of the Polish - Lithuanian ruler with the Duke of Courland. It can be noted that the *Pacta subiunctionis* simultaneously determined the legal framework, both in the province of Livonia north of the Daugava River, which came under the direct rule of the Grand Duchy of Lithuania, but since 1569, when the Polish-Lithuanian Commonwealth was established by the Union of Lublin (Litwin (Ed.), 2019) the province of Livonia became a condominium of Poland and Lithuania (Dogiel (Ed.), 1759). It should be noted that the *Pacta subiunctionis* (*Provisio ducalis*) remained in force in the Duchy of Courland until 1795, i.e. its annexation by the Russian Empire.

The original of *Pacta subiunctionis* which is now in the archive of the Herder Institute in Marburg, Germany, has survived till nowadays. It was written in Latin, with the handwritten signature of King Sigismund Augustus. The historian of Herder institute Peter Wörster (2013) has published a study "Die *Pacta subiunctionis* als Gründungsurkunde des Herzogtums Courland" ("The *Pacta subiunctionis* as the founding document of the Duchy of Courland") analysing original document.

Pacta subiunctionis was first published by David Chytraeus (1530 – 1600), in his work "*Chronicon Saxoniae*" (Chytraeus, 1593). It was also published in different collections of documents in 18th and 19th centuries. On 2006 it was translated from Latin to Latvian by Dr. philol. Ilze Rūmniece (2006) for publication in collection of historical legal sources of Latvia of period from 1561 to 1795 (Blūzma (Ed.), 2006).

Pacta subiunctionis consists of a preamble and 28 articles, which were not numbered. It was drawn up on behalf of the Sigismund II Augustus, expressing his will for the future political arrangement of Livonia, while Gotthard Kettler in this treaty only expresses his will to join the Grand Duchy of Lithuania and confirms with an oath, on behalf of himself and his subjects, his loyalty to the Polish-Lithuanian ruler as his vassal.

The preamble of the treaty describes the circumstances of the conclusion of the Treaty of Submission, indicating that the military superiority of the Muscovite state in the Livonian War makes it impossible for Livonia to fight the enemy on its own and that the further course of the war threatens the Riga diocese and the Livonian Order with falling into "infinitely heavy slavery". The fact that Livonia did not receive military assistance from the Holy Roman Emperor to defend itself against the attack of the Muscovite ruler is emphasized. The preamble further notes that the Polish – Lithuanian ruler Sigismund II Augustus is involved in the defence of Livonia at the request of the Livonian Order Master Gotthard Kettler. The preamble also states that the Russian army can only be repelled by the joint involvement of Polish and Lithuanian troops in hostilities, which is why a demand was made by Gotthard Kettler for the adding of the territory of Livonia not only to Lithuania, but also to Poland.

What were the basic terms of the *Pacta subiunctionis*? First, the Polish-Lithuanian ruler promised to regulate Livonia's relations with the Emperor of the Holy Roman Empire, so that Livonian statesmen or their subjects would not be subjected

to any repression for breaking the vassal oath of allegiance and would not suffer any harm or losses as a result.

The treaty recognised freedom of religion in accordance with the Lutheran (Augsburg) confession adopted in Livonia and the autonomy of the Lutheran church. The former rights and privileges also were recognised for Livonian subjects. Livonia was left with the former legal system and court proceedings “according to ancient laws, customs and virtues”. The local government posts were to remain in the hands of Livonian subjects, and in the future they were to be granted only to Germans. However, the agreement included a clause that gave the ruler the right to transfer the fortresses to the administrators of other nationalities, namely Poles and Lithuanians, during the war. The implementation of this clause created a situation where, after the end of the Livonian War, the most important administrative posts were in the hands of Polish and Lithuanian nobles.

The Treaty further regulated the future legal relations between the Sigismund Augustus and Gotthard Kettler. It notes that with the consent of the Polish - Lithuanian ruler, Gotthard Kettler changed his rank to become a secular person, therefore Sigismund II Augustus granted his vassal the title of Duke and a fief on part of the former Livonia – the regions of Courland and Semigallia with the right to inherit this fief to male descendants. The Polish - Lithuanian ruler also promised to redeem the castles and lands of Courland and Semigallia pledged by Gotthard Kettler to cover the war expenses, returning them to the duke. Sigismund II Augustus promised Gotthard Kettler to promote the annexation of the former Courland Bishopric (Piltene region) to the Duchy of Courland and Semigallia. The treaty also provided for the transfer of the Dünamünde (now Daugavgrīva) fortress on the left bank of the Daugava to Duke Gotthard for the duration of his life, but already on 17th of March, 1562, i.e. 12 days after the Treaty of Submission came into force, Sigismund Augustus bought back the Dünamünde fortress from Gotthard Kettler for 15 thousand talers (Dogiel (Ed.), 1759), in order to achieve the submission of Riga to the power of the Polish-Lithuanian ruler.

Treaty granted Gotthard Kettler the right to mint money, which was to be equal to Lithuanian money, providing for its circulation both in the Duchy of Courland and in Lithuania. This right ensured the financial independence of the Duke of Courland, but, in turn, the power of Gotthard Kettler was limited by the provision regarding the right of pre-emption of the Polish - Lithuanian ruler to the duke's properties to be sold, exchanged or pledged. The Treaty also particularly emphasized the duke jurisdictional rights over his subjects.

Sigismund Augustus also granted Duke Gotthard the title and prerogatives of the governor of the Livonian province which was directly subordinate to him. However, after five years, Gotthard had to leave this position, because in 1566 Sigismund II Augustus appointed Grand Marshal Jan Chodkiewicz as the governor of Livonian province.

The treaty particularly emphasized the transfer of Riga to the hands of the Polish - Lithuanian ruler, indicating that Gotthard Kettler would release the city of Riga from the fief oath in favour of the Sigismund II Augustus.

The treaty also resolved border issues between the newly acquired Lithuanian possessions in Livonia and the Duchy of Courland, determining their common border along the middle of the Daugava.

3. *Privilegium Sigismundi Augusti* (1561) and *Privilegium Gotthardinum* (1570)

The aim of both these documents was to guarantee and expand the rights of the nobility. The first of them was drawn up on behalf of the Livonian Order knighthood submitted as a petition to the Sigismund II Augustus for approval on 28th November 1561 in Vilnius. When negotiations about joining of Livonian province to the Grand Duchy of Lithuania started, the Livonian Order knighthood sought to obtain from Sigismund Augustus a special confirmation of their privileges, freedoms, and rights. How it was later declared by Palatine of Vilnius Nikolaus Radziwill "Black" "because of the unceremonious and rapid departure of His Majesty to his kingdom, the diploma could not be signed by His Royal Majesty's hand" (Bienemann, 1876, p.513). Radziwill continued that "we have undertaken the task of having it both subscribed and reduced to a public and authentic form. We are going to bring this diploma with us to Riga and there we will return it to the entire Livonian nobility or at least to its ambassadors, whole and free." (Bienemann, 1876, p.513). But when Radziwill arrived in Riga with a diploma of privileges for knighthood of Riga Archbishopric on 4th March 1562 it turned out that it was another document that announced privileges for knighthood in a much narrower scope (18 articles) than that was prepared in the draft of the Livonian Order's knighthood (27 articles) (Ziegenhorn, 1772; Dogiel (Ed.), 1759). As it was noted by Latvian historian Arveds Švābe, Radziwill's secretary stated that Radziwill had brought several documents signed and sealed by the king, for example, *Pacta subiectionis* for Master Gotthard Kettler, but the *Privilegium Sigismundi Augusti* was not mentioned among them. (Švābe, 1939).

History of this document remains unclear. Baltic German authors traditionally considered the Privilege of Sigismund Augustus as Magna Carta of the Livonian provincial constitution (Bienemann, 1876), as the cornerstone of the privileges of the Livonian province nobility (Schirren (Ed.), 1865). The Russian Tsar Peter I, after conquest of Swedish Livonia in 1710, confirmed this privilege but with the proviso that earlier rights are recognised "insofar as they correspond to the present Government and time" ("Zhalovannaya gramota dvoryanstvu", 1710, p.576). The existence of the Privilege of Sigismund Augustus as a legal act was questioned by Latvian historians J. Krodznieks and A. Švābe, believing that the privileges of the Livonian province nobility recognised by the Russian Empire had no legal basis. Their

opinion was based on the fact that neither the original of the privilege, nor an officially approved copy has been found, the privilege was not ratified by Sejm, and the Polish kings - the successors of Sigismund Augustus - refused to approve this privilege (Krodznieks, 1914; Švābe, 1939). Critics have drawn attention to the fact that the text of the main part of the privilege was drawn up in the form of a petition, which supposedly indicates that it was a draft of the nobility of the Livonian Order, which, however, was not approved by Sigismund Augustus. It should be noted that Peter I confirmed privilege of Sigismund Augustus basing on the text of privilege submitted to him by the Baltic German knights in the book "Chronicon Saxoniae ab a. 1500 ad a. 1593" (Chytraeus (Ed.), 1593).

Privilegium Sigismundi Augusti was nevertheless granted legal force in the Duchy of Courland. Its nobility requested an assurance from Duke regarding the privilege of Sigismund Augustus and received such assurance from him on 17th March 1562 (Ziegenhorn, 1772). Privilege of Duke Gotthard of Courland (1570) also contains a reference to Privilege of Sigismund Augustus in its preamble, and Gotthard's privilege is quite similar in structure with that (Ziegenhorn, 1772). It is possible that the fact that Sigismund Augustus' privilege lacked official confirmation was the starting point for Gotthard Kettler to draft his charter of privileges for the nobility of the Duchy of Courland.

Privilegium Sigismundi Augusti, which consisted of a preamble, 27 articles and a concluding part, contains norms of quite different significance. Some of them declare the recognition of the former rights and freedoms of the Livonian knighthood, others determine a new order and current measures in connection with the damage caused by the Livonian War, and some others (8 articles) determine new rights for the knighthood (Dunsdorfs & Spekke, 1964). The principle of rule of law which was fixed in Article 18 of the privilege was particularly significant, which emphasizes the principle that "the government must submit to the laws." From this is derived the presumption of innocence, expressed in the words: "That no man of government, no judicial authority, whether higher or lower, or anyone else shall deprive a nobleman - vassal or anyone else of his property, or drive him from it or rob him, before he has been questioned and found guilty." (Dogiel (Ed.), 1759, p.247).

To strengthen his and his successors' power on the ducal throne, Duke Gotthard Kettler decided to satisfy the wishes of the Courland nobility and reduce opposition within their ranks against him by a local charter of privileges, using the 1561 Privilege of Sigismund Augustus as the basis for his act (Zeids, 1992).

Privilegium Gotthardinum, issued on 25th June 1570 (Ziegenhorn, 1772), and confirmed in 1581 by the Polish king Stephen Báthory (Ziegenhorn, 1772), became an important source of constitutional law in the Duchy of Courland, which contained guarantees of nobility rights. It consisted of a preamble, 12 articles, and a conclusion. The privilege was issued not only in the name of Gotthard, but also in the name of his descendants. It specifically states that "our beloved, faithful, honourable nobility, however, we want to protect and retain them, both collectively and individually, now and at all times, to the best of our ability, in all and each of the aforementioned

privileges, liberties, and rights..." (Article 12). This act could not be revoked or amended, and its force limited the power of the ruler. Gotthard's Privilege, therefore, was the so-called "hard constitution". The most important constitutional provision in the Gotthard's Privilege is the protection of the individual from the arbitrariness of administrative power, which is formulated in Article 4 of the privilege: "We will not only equally, justly and manfully protect and respect, but we will also never physically harm any [person] or his property without legal opinion and victory (...)" To promote the protection of individual rights Gotthard also promised to compile and publish a book of the statutes of law of Courland. This promise remained unfulfilled.

The Gotthard's Privilege also promised to reform the judicial system so that "everyone could, through proper legal proceedings, have their legally valid case heard more quickly." In addition, Gotthard stipulated that even if a subject had a dispute with the state authorities, he "could exercise and recover his rights without undue delay after a dispute or disagreement with Us or with the authorities that come after Us," "(...) thus no one should complain about denied rights or complain to a higher authority." Comparing to Article 18 of the privilege of Sigismund Augustus, the guarantees given to the person in the Gotthard's Privilege are expanded, since this act speaks not only about the inviolability of property, but also of the person. In addition, the subject is guaranteed the right to complain to the court about the unlawful actions of administrative authorities. The Polish king is mentioned as a guarantor of the observance of the constitutional rights of subjects, who was supposed to assume the function of constitutional supervision.

The Gotthard's Privilege also declared freedom of the religion for Lutherans, preventing the Catholic Counter-Reformation (Article 1). Article 6 declared the expansion of the rights of vassals, stipulating that any holder of a fief who has no natural heirs may dispose of it at his will, move it, pledge it, alienate it, sell it, lend it, and bequeath it by will, but if this does not happen during [his] lifetime and if he dies without a will, then the closest male and female branches of the family are entitled to inherit. The nobles were also exempted from customs and excise duties in accordance with the privileges granted to nobles in Poland, and they were granted the right to run taverns, trade, etc. without any encumbrances or obstacles from the duke and his heirs, so that the nobles "could use their [property] in the best way (...)" (Article 12). Duke also promised not to impose any new burdens on the nobles in the future. The new important right granted to the Courland nobles by *Privilegium Gotthardinum* in Article 11 was permission to try the crimes of their peasants in manor criminal court with the right to impose the peasants both the ordinary death penalty by hanging by the neck and the qualified death penalty by tearing the body of the condemned person on the torture wheel. This right was previously asked for knighthood of Livonian Order in *Privilegium Sigismundi Augusti* (Article 26) (Dogiel (Ed.), 1759), but without an effect.

The Gotthard's Privilege significantly expanded the rights of the Duchy's nobility in the field of property and economic rights, established the complete power

of the nobles over their peasants, while at the same time drastically narrowing the scope of obligations towards the duke (Article 10 of the Gotthard's Privilege mentions only the cavalry service, the obligation to provide a cavalryman for every 20 ploughs of land).

4. *Formula regiminis* (1617) – Constitution of the Duchy of Courland and Semigallia

In 1587, the first Duke of the Duchy of Courland, Gotthard Kettler, died, leaving a will in which it was stipulated that his descendants in the position of duke would be both his two sons - the eldest Frederick and the youngest William. This decision of Gotthard Kettler apparently stemmed from the fact that his eldest son Frederick had no children, but the *Pacta subiectionis* stipulated that the ducal power should be inherited through the male line only. Therefore, Gotthard Kettler included in his will a condition that the Duchy would be ruled by both brothers, since the youngest, William, had a son, Jacob, who could continue the Kettler dynasty. Older brother Frederick would rule in Semigallia, and the youngest - William - in Courland.

Unfortunately, William developed hostile relations with the leaders of the opposition of the nobility - the brothers Magnus and Gotthard Nolde. Disputes arose between them regarding the ceremony of the oath of allegiance to the fief lord, due to the receipt of the Kaletas manor in possession, where brothers Nolde refused to kneel before William, but William was not ready to grant them this manor without a corresponding ceremony (Ziegenhorn, 1772). Nolde complained to the Polish king Sigismund III, who demanded that William return the manor to the brothers, but William refused to do so. Relations escalated, but the Polish ruler supported the Courland nobility, which sided with the brothers Nolde. When the Duchy nobles met at Landtag in August 1615 in Mitau (now Jelgava), William decided on a radical step - to arrest his adversaries - brothers Nolde. However, they resisted the soldiers in a moment of arrest. Historian E. Dunsdorfs described this event as follows: "One night in August 1615, soldiers broke into the Nolde brothers' apartment, chased them out in their underwear onto the market square and killed them. As a result, the Landtag broke up, but the noble opposition accused Duke William of instigating the murder. Sigismund III in 1616 appointed a special commission headed by Bishop of Wenden Otto Schenking to investigate this complaint and the situation in the Duchy in general." (Dunsdorfs, 1962, pp. 54 – 55).

Schenking's commission found Duke William guilty of the murder of the Nolde brothers and decided that he had lost his fiefs and handed over the government of Courland to Duke Frederick (Rummel, 1848). This resolution was adopted by the Polish Sejm (Dogiel (Ed.), 1759). William also was accused of violating feudal law, because he did not have the right to divide with his brother Frederick the fief inherited from Gotthard Kettler into two parts - the separate fiefs of Courland and Semigallia and creating a separate administration in each part. The Polish king in this document also raised accusations against William, that he had mortgaged several real estates -

castles, manors, but had not informed the lord of the fief about it, as stipulated in the *Pacta subiectionis*.

In accordance with the promise given to the representatives of the nobility of Duchy - a new commission for Duchy of Courland was appointed by Sigismund III to implement the resolutions of the Sejm and the royal decrees, as well as to draft the text of constitution of Duchy of Courland (Rummel, 1848). Another legislative act prepared by commission was a code of laws of Duchy that was asked by nobility. On 6th February of 1617, this commission headed by Bishop of Kulm Jan Kuczborski started its work in the town hall of Mitau (now Jelgava), to ensure close political cooperation between the Duke Frederick and the nobility, which would not lead to a new crisis. At the end of the work of commission Duke Frederick sworn before the commissioners the oath of purgation imposed upon him concerning the murder of the Nolde brothers (Rummel, 1848). As he was not involved in this murder, Frederick restored his fief rights on Semigallia and obtained them also for Courland. So, a unified fief of the Duchy of Courland and Semigallia was restored, as it had been established by the *Pacta subiectionis*.

A new source of constitutional law for the Duchy of Courland - *Formula regiminis et iudiciorum in Ducatu Curlandiae et Semigalliae* (Formula of Government and Courts in the Duchy of Courland and Semigallia) (Rummel, 1848) was promulgated on 18th March 1617 (Dogiel (Ed.), 1759). Polish historian B. Dybaś considers that *Formula regiminis* "was indeed the most important document for shaping the political system of Courland throughout its entire history" (Dybaś, 2025, p.76). This constitutional act was in Latin, consisted of 52 articles and corresponded to modern ideas about the constitution to a much greater extent in its content than the previously discussed documents. The principle of the supremacy of law was also established in relation to the "Formula of Government", as was the case with the Gotthard's Privilege. From then on, upon taking office, the duke had to take an oath that he would rule in accordance with the "Formula of Government", which limited the duke's power. Therefore, it can also be considered a hard constitution, because the duke himself could not amend it. Article 27 of the "Formula of Government" emphasized that it along with the fundamental laws of submission and investiture "preserves eternal authority". It is widely recognised that "Formula of Government" was one of the oldest constitutions in Europe.

The Formula of Government, however, had neither a preamble nor a concluding part. The preamble usually indicates the reasons for issuing the constitution, as well as its legislator. From the content of several articles of the Formula of Government, it becomes clear that its legislator was the King of Poland Sigismund III, based on whose prescription (Rummel (Ed.), 1848) the constitutional legislative power was exercised by a royal commission.

When familiarizing yourself with the content of the "Formula of Government", it can be established that the structure of power in the Duchy of Courland differs significantly from the principles of the modern constitutional state,

but we can also find similar features. The duke and his Supreme Council mainly exercise the highest executive and judicial power. In the legislative sphere, the duke had the right of initiative, but without the approval of the Landtag of Courland, a bill could not enter into force. So, there we clearly see the elements of the separation of powers in the constitution of the Duchy of Courland. The legislative power of the duke was limited not only from below (the Landtag), but also from above, because the duke, being a vassal of the Polish king, was responsible to his lord, but the Polish king significantly limited the power of the Duke of Courland in the legislative sphere, because important legislative acts had to be approved by the Polish king. To a lesser extent, this was seen also in the sphere of executive power, where the Polish king retained supervisory functions over the legality of the exercise of the duke's power. In the sphere of judicial power, appeals on cases adjudicated by the supreme court of the Duchy of Courland would be sent to the king's special court of review in Warsaw (Articles 10 and 16 of the Formula of Government), except for cases of public crimes, robbery, arson, rape and some other serious crimes, in which appeals were not allowed (Article 17).

Formula regiminis significantly changed the procedure for forming the government of the Duchy of Courland. Until its entry into force, the dukes of Courland were guided by the constitutional principles of the Prussian vassal state in the organization of power. During the reign of Duke Gotthard in the second half of the 16th century, the civil servants of the state administration apparatus were not yet separated from his court, i.e. the duke's own servants. The duke could form the government at his own discretion, freely determining both the number of its members, the personnel, and the distribution of competences, but since the "*Formula regiminis*" came into force, the government model acquired very specific forms.

The Duke's Supreme Council which was the government of the Duchy of Courland now consisted of six members – four Supreme Councillors which as candidates were nominated by the Landtag and who previously must be the highest administrators of the counties - the chief captains. Only two Legal Advisors for Supreme Council could be chosen from the citizens, if there were no doctors of law among the nobles (Article 1).

Landtag as representative institution of the estate of nobility actively participated in the formation of the government and the rest of the state apparatus, and in this respect the constitutional system of the Duchy of Courland resembles modern constitutional systems, while the conditions that sharply limited the circle of possible candidates for the highest positions are in clear contrast to the principles of forming a modern state apparatus. It should be added that Supreme Councillors were appointed at their position for life. At that time there was no political vote of no confidence, because Supreme Councillors were responsible to the duke, not the Landtag. Article 28 stipulated that the Supreme Councillors had the right to warn Duke about infringements of the freedoms, privileges and rights of the subjects of the Duchy. They were not to be subjected to persecution for these warnings.

The Landtag of the Duchy of Courland, which from the 17th century was exclusively composed of knighthood, was convened once every two years. In addition, the duke could convene an extraordinary Landtag, but if the duke refused to do so, but the necessity demanded it, the Landtag could also be convened by the King of Poland. Only elected deputies worked in the Landtag, but the voters of deputies were the nobles of the respective electoral district. The Landtag could not make any decision that would contradict to the fundamental treaties of submission of 1561, Act of Investiture of 1579 (Ziegenhorn, 1772) and the "Formula of Government" (Article 27). Thus, the legislative activities of the Landtag were limited by constitutional laws, which were recognised as having higher force than other acts. The "Formula of Government" determined that the work of the Landtag was organized by the Marshal elected at the session, who must be given the right to freely express himself to each member of the Landtag. The deputies enjoyed guarantees of freedom of speech in the Landtag sessions and freedom of voting on draft decisions (Article 31). They were bound by the instructions given by the voters, who in turn had the right to recall deputies which did not follow their instructions. The Landtag was responsible for approving government bills by issuing edicts or patents; in addition, the Landtag drafted petitions to the government, which outlined the desired government decisions. While considering the duke's draft acts (*deliberatio*), the deputies simultaneously discussed the wishes of the nobility (*desiderata*). After the debate, a coordinated decision was made - the recess of the Landtag, which was adopted by an absolute majority of the votes of the deputies. If the Landtag rejected the government's drafts, they could not gain the force of law, but the Landtag's petitions did not gain the force of law without the duke's approval either. In this way, the principle of limiting and balancing powers was implemented in the Duchy of Courland. The Landtag also had the right to nominate several candidates for vacant government service positions, from which one candidate then was appointed by the duke.

The codifiers of the "Formula of Government" were particularly preoccupied with the issues of the efficiency of judicial activity. For example, Article 13 contains an anti-corruption norm, which stipulates that judges will not demand payment "above the salary awarded to them or the gifts received by some". The penalty for corruption was the return of the bribe and compensation for the loss caused by the unlawful judgment. From a modern perspective, this punishment can be considered as mild. Article 23, in turn, was directed against delaying the execution of court judgments, while Article 25 stipulated a penalty of 50 Hungarian ducats for negligent execution of judgments. Article 26 established liability for resisting the execution of a judgment. These norms allow us to conclude that the judicial system in the Duchy of Courland was the weak link in the system of power.

Regarding the rights of subjects, the "Formula of Government" stated that "no nobleman or burgher may be deprived of his property without lawful investigation and trial" (Article 12). In essence, this article repeated the provisions of Article 18 of

the Privilege of Sigismund Augustus, but here the townspeople also were specifically mentioned.

In the event of a dispute between the duke and the nobles, legal proceedings were to be initiated immediately, ensuring the presence of the Polish king (apparently through an authorised representative) at the hearing of the case (Article 19).

Article 44 expanded the scope of freedom of religion, stipulating that Catholics also enjoyed freedom of religion as Lutherans in the territory of the Duchy of Courland. Catholics were granted equal rights with Lutherans to hold public office, if they proved suitable for it. It should be noted here that Sigismund III, in his instructions to Kuczborski's commission, stated that "since many professing the Catholic religion complain that they cannot have the free exercise of their religion, and are excluded from any offices and duties, our Commissioners will diligently work to ensure that the Roman Catholic religion and those who profess it or wish to profess it are provided with freedom" (Rummel, 1848, pp. LIX – LX). Article 45 of the "Formula of Government" required the protection of believers by state stipulating that "a state official has the duty to protect everyone from any violence, injustice and strife in the name of free religious belief".

In addition, the "Formula of Government" equated with local nobles those Polish and Lithuanian nobles who "own considerable property in the Duchy of Courland and Semigallia" (Article 3). By doing so, these Polish and Lithuanian nobles acquired the rights of indigenism, i.e. the right to hold public offices that earlier were reserved only for local nobles.

Other rights and freedoms were not specifically mentioned in the "Formula of Government", only Article 48 states that the duke, upon taking office, will swear an oath to the King of Poland that he will "preserve in safety and inviolability the freedoms, privileges, rights and inviolability of all private persons."

With the entry into force of the "Formula of Government", the Duchy of Courland became a constitutional monarchy. All legislative acts issued in the Duchy of Courland in the period from 1562 to 1617, except for the Gotthard's Privilege, lost their force. Both these sources were unchangeable and irrevocable, so they had a higher force in relation to other laws issued in the Duchy of Courland, and their observance was also ensured by the supremacy of the Polish king over the Duchy of Courland. Sometimes the "Formula of Government" has been assessed negatively in the studies of historians, noting that in result of its adoption, an oligarchy of chivalry was established in the Duchy of Courland, and the rights of the duke were sharply limited (Dunsdorfs, 1962). However, approaching the "Formula of Government" from the point of view of legal analysis, it must be admitted that this act provided the Duchy of Courland with a stable constitutional basis, which was not available in the states of the absolute monarchies of that time. In essence, the Constitution of Courland corresponded to the latest ideas of jurisprudence of that time, that the ruler should rule in communication with the ranks of his subjects, observing the laws of God and nature (Lazdiņš, 2006).

To weaken the power of the duke, in the second half of the 18th century, the Duchy's nobility tried to obtain changes in the "Formula of Government" from the Polish king and the Sejm. The draft amendment to the "Formula of Government" was drawn up by the Duchy's nobility in 1789 and submitted to the Polish Sejm in 1791 (Lazdiņš, 2006). The reason for this was Duke Peter Biron's conflict with the nobility, who opposed the nobles' efforts to earn income from the duke's estates rented during the duke's absence. In the draft, the knighthood of the Duchy of Courland intended to drastically reduce the duke's power, stipulating that the duke's acts would be recognised as valid only if they were countersigned by two Supreme Councillors. This countersignature would be also applied to economic matters that would affect the management of the estates belonging to the duke himself. The project was also intended to deprive the duke of judicial power by creating Court and Appeal Court of Justice separate from government, consisting of judges elected by the Landtag. Finally, the draft amendment to the "Formula of Government" proposed to exclude from the composition of the government board Legal Advisors who, mostly being foreigners, often were oriented towards the duke, motivating this proposal with assumption that in the future the court would be separated from the government and thus the need for doctors of law in the government would disappear.

However, the Polish king Stanisław II August did not support the constitutional amendment efforts of the knighthood of the Duchy of Courland, issuing articles approved by the Polish Sejm on 31st May 1792, which confirmed the validity of previously issued acts, including the "Formula of Government". (*Volumina Legum*, 1889).

Some conclusions

The foundation of the Duchy of Courland and Semigallia was a result of the collapse of the Livonian Confederation, which was caused by the Livonian War initiated by the Russian Tsardom in 1558.

Although Master of the Livonian Order Gotthard Kettler had hoped to acquire the entire Livonian territory controlled by the Grand Duchy of Lithuania as a fief in result of the secularization of the Order, the Lithuanian and Polish ruler Sigismund II Augustus by the rules of *Pacta subiectionis* divided this territory into two parts, where Gotthard Kettler was given the fief of the territory southwest of the Daugava River in the regions of Courland and Semigallia, while keeping the territory north of the Daugava in the possession of the Grand Duchy of Lithuania. Due to the military weakness of the Order, Gotthard Kettler was forced to accept this territorial regulation imposed by Sigismund Augustus.

In summary, however, the *Pacta subiectionis* met the interests of both contracting parties. Sigismund August obtained from Gotthard Kettler the rights to the part of Livonian territory, which had significant strategic importance, with new trade routes and ports. In turn, Gotthard Kettler obtained protection against a

dangerous and powerful enemy, while maintaining administrative, legal, civil service autonomy and freedom of religion in Duchy of Courland.

It is necessary to recognise the unclear status of the *Privilegium Sigismundi Augusti*. Several historians have put forward the version that since the entry into force of the *Pacta subiectionis*, a unified knighthood corporation of the Livonian Order ceased to exist and, consequently, this privilege no longer had an addressee (Švābe, 1939; Zeids, 1992). But in this case, the draft version of Sigismund Augustus' privilege edited should be preserved in the archives, but it was not found there. Therefore, there is a reason to assume that Sigismund Augustus did not want to approve these proposals of the knighthood of the Livonian Order. This privilege was not applied by Sigismund Augustus in the province of Livonia, and subsequent Polish and Swedish kings refused to recognise it.

Contrary, Duke Gotthard Kettler of Courland and Semigallia, at the request of the Courland nobility to recognise *Privilegium Sigismundi Augusti* recognised it on 17th March 1562 but later issued his own "*Privilegium Gotthardinum*" (1570), which in many ways included significant demands from privilege of Sigismund Augustus.

Of particular importance in the development of the constitutional system of the Duchy of Courland was the adoption of the "*Formula regiminis*" (Formula of Government) in 1617. This act was a solution to the internal political crisis achieved as a result of the cooperation of the commission sent by the Polish King Sigismund III Vasa, Duke Frederick and the ducal nobility. The "*Formula regiminis*" included important modern constitutional principles such as the division of powers between the legislative and executive branches, the principle of limiting and balancing these powers, the principle of electing deputies to the Landtag, the regularity of convening the Landtag, also providing for the possibility of convening an extraordinary Landtag if such an urgent need arose. There was recognised the freedom of speech of deputies at the Landtag sessions and free voting on proposed draft decisions. The deputies were bound by the instructions of their constituents, who could recall those deputies who ignored these instructions. The Landtag was forbidden to pass acts that contradicted to fundamental laws of Duchy. New dukes, when assuming their duties, had to take an oath that he would preserve the freedoms, privileges, rights and inviolability of all private individuals in safety. The ducal advisors were obliged to warn the duke to maintain the freedoms, privileges and rights of each and every subject of the duchy intact.

It should be noted that the "*Formula Regiminis*" did not provide for the separation of judicial power from executive power. Consequently, the "*Formula regiminis*" remained in force in its unchanged form until the liquidation of the Duchy of Courland in 1795. It is necessary to consider that in the Duchy of Courland only representatives of the highest classes could be involved in the work of state administration, i.e. noble knighthood. Neither townspeople nor clergy, let alone rural freemen, were allowed to participate in the Landtag, although sometimes Duke Frederick proposed allowing townspeople to participate in the work of the Landtag. The vast majority of peasants in the Duchy of Courland were serfs, who were denied

such basic rights as personal freedom. It should be remembered, however, that history demonstrates many examples where the principle of a legal state coexisted with the legal lawlessness of a significant part of the population, for example, slavery in the USA till the middle of 19th century (Blūzma, 2002).

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