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MARZENA DYJAKOWSKA

"… CUM STATUTI TANTA SIT AUCTORITAS, UT EIUS PRAECEPTIONE OMNIA NOBIS CONSERVENTUR"

SOME REMARKS ON WIOLETTA PAWLIKOWSKA-BUTTERWICK AND LIUDAS JOVAIŠA'S *VILNIAUS IR ŽEMAIČIŲ KATEDRŲ KAPITULŲ STATUTAI*[*]

For a researcher who explores the history and organisation of cathedral chapters their statutes are a particularly valuable source. The right to issue statutes (*ius statuendi* or *condendi statuta*) reflects their power of self-government. In his first Polish monograph on chapters, published in 1912 and still used by historians, Stanisław Zachorowski underscored that "although the chapters, as ecclesiastical corporations, cannot act against the principles of universal law (*contra ius commune*), they may, however, outside their scope and within the limits of (*praeter ius commune*) establish norms and issue regulations, both concerning the exercise of rights proper only to canons, as well as those governing the matters and internal order of chapters."[1] Statutes issued by bishops, probably in agreement with the chapters, as well as by the chapters themselves at general or particular sessions, are an important source of insight into the organization and functioning of chapters, especially at the economic and financial level.

We should, then, welcome the publication of a 2015 edition of statutes of the two most important chapters of the Grand Duchy of Lithuania, namely those of Vilnius and Samogitia (Lit. Žemaitija). As emphasized by the authors, this edition marks two anniversaries: the 500th anniversary of the Vilnius

MARZENA DYJAKOWSKA, PhD, Hab, is an associate professor of the John Paul II Catholic University of Lublin (KUL), the head of Department of History of State and Law, Institute of Law, Faculty of Law, Canon Law and Administration of KUL; address Al. Racławickie 14, 20–950 Lublin, Poland; e-mail: marzena.dyjakowska@kul.pl; https://orcid.org/0000-0001-5040-6058.

[*] Vilnius: Lietuvių katalikų mokslo akademija, 2015, page count 416, ISBN 978-9986-592-82-2.

[1] S. ZACHOROWSKI, *Rozwój i ustrój kapituł polskich w wiekach średnich* (Kraków 1912), reprint edition (Kraków: Towarzystwo Naukowe "Societas Vistulana", 2005), 179.

Chapter statutes (1515) and the 600th anniversary of the baptism of Samogitia (1414–1417). The Vilnius Cathedral Chapter was established by virtue of a bull issued by Pope Urban VI on March 12, 1388 establishing the Diocese of Vilnius. In the same year, Bishop Dobrogost implemented the papal bull to establish a capitular college at the newly erected cathedral, consisting originally of two prelatures and ten canonries.[2] Documents connected with the foundation of the Diocese of Vilnius did not specify its metropolitan affiliation, which seems to indicate its direct subordination to the Holy See. That this diocese belonged to the metropolitan archdiocese of Gniezno was first mentioned in the bull issued on February 15, 1415 by Antipope John XXIII, and the question of metropolitan affiliation was expressly formulated by the Council of Basel in 1435.[3]

The second diocese in the Lithuanian land was the Varniai Bishopric, founded in Samogitia, after the victory at Grünfelde (Grunwald). It was restored to Lithuania by the Peace of Thorn (Toruń) in 1411. Immediately after regaining this land, King Władysław Jagiełło and Duke Vytautas took efforts at Christianization in 1413. The Council of Constance, at which diplomatic action against the Teutonic Knights was taken, appointed Archbishop of Lviv Jan Rzeszowski and Bishop Piotr of Vilnius as legates in charge of Christianization of Samogitia, granting them powers to establish a diocese. By a decree issued by both legates on October 24, 1417, a diocese and a cathedral chapter in Medininkai (Varniai) was erected.[4] A reading of Pope

[2] T. KASABUŁA, "Prałatury i kanonie de gremio Kapituły Katedralnej Wileńskiej w okresie przedrozbiorowym," *Rocznik Teologii Katolickiej* 15, no. 1 (2016): 128; IDEM, *Ignacy Massalski biskup wileński* (Lublin: Redakcja Wydawnictw KUL, 1998), 268.

[3] T. KRAHEL, "Początki organizacji kościelnej na Litwie," in T. KRAHEL, *Diecezja wileńska. Studia i szkice*, ed. T. Kasabuła and A. Szot (Białystok: Wydawnictwo św. Jerzego, 2014), 61–62. Another view was expressed by Eugeniusz Wiśniowski, who argued that the Diocese of Vilnius was part of the Gniezno metropolis from the very beginning [J. OCHMAŃSKI, *Biskupstwo wileńskie w średniowieczu. Ustrój i uposażenie* (Poznań 1972), a review published in *Rocznik Lubelski* 17 (1974): 286–87].

[4] T. KRAHEL, "Początki organizacji kościelnej," 62–63. The newly established Diocese of Samogitia bordered on the Diocese of Vilnius, but its borders were not precisely defined. At any rate, the borderland areas were overgrown with forest and only later the development of settlements on the sides of both dioceses brought their parishes together. The fact that in the 16th century these borders were still not established gave rise to border disputes over time. Moreover, the fact that the Diocese of Vilnius was territorially almost ten times larger than that of Samogitia suggests that the bishops of Samogitia may have been interested in enlarging their territory at the expense of the neighbouring diocese. The border disputes concerned the areas in the poviat of Upytė/Upita (parishes of Naumiestis/Nowe Miasto and Panevežys/Poniewież), parishes in the southern part of the diocese of Samogitia (Alvitas/Olwita, Vilkaviškis/Wiłkowyszki, Pojewonie, Lankeliškiai/Łankieliszki and Gražiškiai/Grażyszki) and the town of Kėdainiai/Kiejdany

Martin V's bull *Mirabilis Deus in donis* of 11 September 1422 shows that the Diocese of Samogitia was initially directly subordinated to the Archbishop of Gniezno.[5] The Medininkai Chapter initially consisted of six canons.

This editorial work on the text of the statutes was preceded by a comprehensive study (in English and Lithuanian) written by Wioletta Pawlikowska-Butterwick and concerning their creation, authorship, content and practical application. The author also prepared a Polish summary of the content of the study. The other co-author, Liudas Iovaiša, prepared a critical edition of the text of statutes in Latin and translated Pawlikowska-Butterwick's study into Lithuanian.

Although the statutes were officially granted by the bishops of Vilnius, Wojciech Radziwiłł, and of Samogitia, Jan Domanowski, they were drafted by specific people. With regard to the statutes of the Vilnius Chapter, Pawlikowska-Butterwick puts forward a hypothesis that they were the result of the collective effort of the Vilnius Chapter (the names of the most likely editors are given). The authorship and editing of the statutes of the Samogitian chapter were entrusted—as can be seen from the introductory letter written by Bishop Domanowski—to Piotr Rojzjusz (Pedro Ruiz de Moros), who was better known as a lecturer of Roman law at the Jagiellonian University (Kraków), and then a judge in the assessor royal courts—the Crown and Lithuanian courts. The latter scope of his activity is connected with the work entitled *Decisiones de rebus in sacro auditorio Lituanico ex appellatione iudicatis* (the first edition was published in Krakow in 1563). At the same time, however, at the turn of 1567, he was conferred the archpresbytery of St. John's Church in Vilnius; in October 1567 he became a canon in Vilnius, and in August 1569 he became the custodian of the Vilnius Cathedral.[6] Also, given his highly probable involvement in the work on the second Lithuanian Statute of 1566, we can fully endorse

(T. KRAHEL, "Spory graniczne między diecezją żmudzką i wileńską w XVI–XVIII wieku," in T. KRAHEL, *Diecezja wileńska*, 136ff.

[5] T. KRAHEL, "Początki organizacji kościelnej," 39. The author points out that the plans of Grand Duke Vytautas to establish a Lithuanian metropolis failed. When the Christianization of Lithuania and Samogitia began, the dioceses established there were subjected directly to the Holy See, and after some time they were incorporated into the Gniezno Province. The organization of Lithuanian dioceses was also modelled on the organization of the Church in Poland (ibid., 68).

[6] T. FIJAŁKOWSKI, "Piotr Rojzjusz—polski romanista XVI wieku. Zarys problematyki," in *Z dziejów polskiej kultury umysłowej w XVI i XVIII wieku* (Wrocław: Zakład Narodowy imienia Ossolińskich, 1976), 11. The author points out that Ruiz de Moros remained deacon during his whole lifetime.

Pawlikowska-Butterwick's opinion that this lawyer was one of the most outstanding and worthy Renaissance figure of the Grand Duchy of Lithuania.

The study preceding the text of the statutes devotes some attention to their source basis. Pawlikowska-Butterwick addressed the scholarly claim that the statutes of the Vilnius Chapter drew upon those of the Kraków Chapter.[7] The similarity between the statutes of individual chapters, however, seems to stem not so much from the modelling of the statutes of a particular chapter on the statutes of another as from the use of the same sources. In general, the source for statutes should be, first of all, universal law, within the limits of which—as mentioned before—chapters establish norms. Secondly, grants and privileges for chapters are to be regarded as such sources. For example, Statute 42 of the Vilnius Chapter makes reference to the Grand Duke Vytautas' privilege of 1430, in which the issuer, by granting the chapter some real estate, was to recommend that income from this property should be used for the daily maintenance of the Chapter members. The statute in question specified that only a resident clergyman had the right to this maintenance, amending the provision of the decree of 10 March 1511 according to which this entitlement was reserved to every clergyman. In this way the legislator sought to oblige or rather persuade the Chapter members to reside at the cathedral. The privilege granted by Vytautas also gave rise to Statute 64, which obliges the canons to celebrate Mass for the soul of Vytautas four times a year (Pawlikowska-Butterwick thinks it is puzzling that, unlike the privilege, the statute does not mention the Masses for the souls Vytautas' wives, Anna and Julianna). Another group of sources is synodal and, indirectly, conciliar legislation. For example, the statutes of the synod of the Gniezno Province, which was held in 1296–1298 under the leadership of Archbishop Jakub Świnka, regulate the institution known as *annus gratiae*. Pursuant to them, during the first year after the death of a benefice holder the revenue from the benefice was to be used to cover his debts, donations to the servants, relatives, and for works of piety. According to the regulations of subsequent synods, the income had to be divided between the heirs and the successor of the beneficiary. The deliberations held on December 22, 1510 by the members of the Vilnius Chapter on the institution in question established the starting date for *annus gratiae*, and the relationship between the share of the deceased clergyman's income to be distributed and the month of his death. The subject of *annus gratiae* was also addressed at

[7] See, for example J. OCHMAŃSKI, *Biskupstwo wileńskie w średniowieczu. Ustrój i uposażenie* (Poznań: Wydawnictwo UAM, 1972), 49.

the session held on December 13, 1513, when it was clarified that the above provisions are binding not only for the members of the Chapter, but also for all the clergy who hold benefices in the Diocese of Vilnius. The regulations concerning *annus gratiae* are the substance of Statute 21. The statutes are rooted also in customary law, the files of the chapter (registry) often made reference to an ancient custom (*antiqua consuetudo*). Finally, the content of the statutes was influenced also by agreements between bishops and the chapter, such as the agreement of September 22, 1486 between the Vilnius Chapter and Bishop Andrzej Goskowicz, which determined the wording of one of the Chapter's statutes. Statute 20, entitled *De intestatis*, governed the issue of movable assets left by intestate members of the Chapter: some representatives appointed by the Bishop and the Chapter were compile an inventory of the property left by the deceased for sale and the proceeds of the sale should be used to repay his debts. The books of the deceased should be donated to the cathedral library, and if the library was already in possession of such books, it was possible to sell them to support pious causes. The analysis of sources led the two authors of the edition to the conclusion that the statutes of the Vilnius Chapter neither compiled nor took over the older synodal regulations and statutes of the Kraków Chapter. The comparison of the content of the statutes of both chapters showed, as argued by the authors, no direct correlation; rather, their relative resemblance stems from the same source base. Moreover, the uncertainty about the dates when the statutes of the two chapters were drawn up makes it impossible to determine which of them are earlier, therefore it becomes difficult to trace their interaction. However, the authors state that certain resolutions of the Kraków Chapter inspired the solutions adopted by the Vilnius Chapter.

The cathedral chapter, as the most important diocesan institution besides the bishop, had two important roles to perform: it shared the administration of the diocese with the bishop and it was the host of the cathedral.[8] These functions were reflected in the substance of both statutes, which, as we have already pointed out, devote a great deal of attention, in particular, to the economic and financial aspects. As regards the content of the statutes, the authors determined that these can be divided into three categories. Most of the regulations apply to property matters, the second group deals with organization, while the regulations of the third group, which is the least numerous, provide for God's service in the cathedral. The authors are of the

[8] G. BŁASZCZYK, *Diecezja żmudzka od XV do początku XVII wieku. Ustrój* (Poznań: Wydawnictwo Naukowe Uniwersytetu im. Adama Mickiewicza, 1993), 95.

opinion, however, that this division is not precise as some statutes concern both liturgical and financial issues, while others concern financial and organizational matters. For instance, Statute 46 of the Vilnius Chapter, entitled *Oblationes Missarum votivarum aequaliter omnibus distribuantur*, provides that the offerings for votive Masses are to be divided equally among all the Chapter members present in the church; thus, an organizational issue is linked to a question related to liturgy. It is noted in the study that the whole codification demonstrates the dominant role played by financial issues in the life of the sixteenth-century clergy of the Grand Duchy of Lithuania: practically everything had its price and value in money. Some of the penalties mentioned in the statutes were financial, for example, Statute 48 of the Vilnius Chapter entitled *De poena non venientium ad generale capitulum aut eo non concluso recedentium* provided for a financial penalty for the Chapter members who, for no justifiable reason, would not attend a solemn session held on the day dedicated to the patron saint of the Diocese, St Stanislaus, or who would arrive late or leave the session early. The penalty could not only impose the payment of a certain amount, but it also could revoke certain rights, which would also affect the offender financially (e.g. Statute 45 of that chapter provided for the cancellation of the daily distribution for the lack of personal participation in the indicated Masses).

The statutes not only constitute a collection of regulations preventing negligence in the performance of God's service and participation in the work of the Chapter, but also various crimes against morals, all judged under a disciplinary procedure. Although the statutes do not refer directly to the morality of clergy, and the majority of the accusations made against them in relation to offences against morals are described in the capitular archives (*metrica*), the statutes also enable certain inferences to be made about behaviours which were to be prevented. For example, Statute 51 of Vilnius Chapter, entitled *De infamantibus et vota in capitulo interrumpentibus*, concerns quarrels, interruptions, and offensive speech and actions that may occur during the Chapter's proceedings. For those who use offensive words there is a penalty of 30 groszy (*media sexagena*) for the first offence and 60 groszy for each subsequent misdemeanour. It was decided that those guilty of fist fighting (*manuum violenta invectio*), even without bloodshed, would be punished according to the provisions of provincial statutes, and those who interfered with voting would pay a penalty of two groszy. Finally, those who leave the Chapter meeting before it closes unable to control their emotions (*ira vel quavis alia petulantia*) are to be deprived of their livelihood and

other income on that day. The equivalent of this provision is Statute 9 found in the second book of the statutes of the Samogitian Chapter, which provides the same penalties for the offences mentioned previously (except for an early departure during the Chapter meeting). Examples of offences dealt with by the statutes shed some light on the morality of the clergy of that time. For this reason, the statutes of both chapters can be a valuable source of information for those researching the customs of the Renaissance period.

According to the authors, their edition of the statutes of the Vilnius Chapter is based on a manuscript from the turn of 17th century, currently preserved in the Wroblewski Library of the Lithuanian Academy of Sciences in Vilnius, which is more complete than a slightly earlier copy of the statutes found in the Scientific Library of the Polish Academy of Learning and the Polish Academy of Sciences in Krakow. The manuscript contains the statutes promulgated by Bishop Wojciech Radziwiłł, several oath formulas and two statutes passed by the Chapter itself in 1570 and 1584. This manuscript contains a full version of the statutes, and its origin is dated by the authors of the introduction to the beginning of the seventeenth century. Despite the existence of a somewhat earlier (dating back to the 16th century) copy of the statutes, found in the Scientific Library of the Polish Academy of Learning and the Polish Academy of Sciences in Kraków, the basis for the publication was the Vilnius manuscript. The authors justify their choice by the "official" character of the Vilnius copy (as its appearance suggests) and its richer contents in comparison with the Kraków manuscript, which does not contain the oath formulas or the statutes adopted in 1570 and later. The Authors also mention other copies that were included in the critical apparatus and copies of the document of statute approval issued Papal Legate Zaccarria Ferri, published as an appendix.

The edition of the statutes of the Samogitian Chapter, on the other hand, was based on a manuscript from the end of the 18th century, which is part of the fonds concerning the Chapter in possession of Martynas Mažvydas National Library of Lithuania in Vilnius. The discovery of this manuscript by Liudas Jovaiša in 2015 changed the Authors' plans to base it on two editions of the statutes published in Kaunas in the interwar period. The manuscript includes a letter from Bishop Jan Domanowski, *Constitutiones* of 1561, *Novellae Constitutiones* of 1562, an approval issued by Nuncio Bernard Bongiovanni of 1563, as well as the text of the oath of a capitular notary public. The Authors noted that the title page was preceded by the opening and closing decrees of the session of the General Chapter, added by a person

other than the author of the manuscript. The Authors did not state unambiguously whether this manuscript could be the basis for the interwar editions.

The text of the statutes produced by both chapters shows—as it was clearly stated in the preface—that the Authors resolved to modernise the spelling, since their goal was to treat the statutes as primarily a source of law and not a monument to the Latin language used in the Grand Duchy of Lithuania in the early modern times. Such a modernisation is also justifiable due to the need to harmonise accounts based on copies and editions originating in different periods. Finally, it was necessary to correct purely technical errors, or "typos" in today's jargon, which did not affect the overall meaning of the text. The carefully designed critical apparatus takes into account gaps, corrections and marginal notes placed in the copies of individual manuscripts. All cases of possible different ways of deciphering the text were noted as well as the probability of a different source material existing.

A valuable addition to the edited texts are colour photographs depicting individual manuscripts of the statutes of both Chapters and their printed editions. Our attention is riveted by the richly decorated initials used in the manuscript of the statutes of the Vilnius Chapter.

This publication should be well received as it can be a useful point of departure for further research. The Authors rightly claim that the capitular statutes, as normative acts, prescribe ways of conduct and therefore cannot be treated as a record of the reality. Nonetheless, the content of the statutes confronted by the Authors with another source material—the archives of the chapters (*metrica*) and other sources indicates the existence of certain problems which the Church of the time had to to cope with. The analysis of the statutes may therefore be a valuable contribution to further research in the history of the Church in the Grand Duchy of Lithuania.

BIBLIOGRAPHY

BŁASZCZYK, Grzegorz. *Diecezja żmudzka od XV do początku XVII wieku. Ustrój*. Poznań: Wydawnictwo Naukowe Uniwersytetu im. Adama Mickiewicza, 1993.

FIJAŁKOWSKI, Tadeusz. "Piotr Rojzjusz—polski romanista XVI wieku. Zarys problematyki." In *Z dziejów polskiej kultury umysłowej w XVI i XVIII wieku*, 7–76. Wrocław: Zakład Narodowy imienia Ossolińskich, 1976.

KASABUŁA, Tadeusz. *Ignacy Massalski biskup wileński*. Lublin: Redakcja Wydawnictw KUL, 1998.

KASABUŁA, Tadeusz. "Prałatury i kanonie de gremio Kapituły Katedralnej Wileńskiej w okresie przedrozbiorowym." *Rocznik Teologii Katolickiej* 15, no. 1 (2016): 127–47.

KRAHEL, Tadeusz. "Początki organizacji kościelnej na Litwie." In *Diecezja wileńska. Studia i szkice*, by Tadeusz Krahel, edited by Tadeusz Kasabuła and Adam Szot, 57–68. Białystok: Wydawnictwo św. Jerzego, 2014.

KRAHEL, Tadeusz. "Spory graniczne między diecezją żmudzką i wileńską w XVI–XVIII wieku." In *Diecezja wileńska. Studia i szkice*, by Tadeusz Krahel, edited by Tadeusz Kasabuła and Adam Szot, 135–42. Białystok: Wydawnictwo św. Jerzego, 2014.

OCHMAŃSKI, Jerzy. *Biskupstwo wileńskie w średniowieczu. Ustrój i uposażenie*. Poznań: Wydawnictwo UAM, 1972.

WIŚNIOWSKI, Eugeniusz, and Jerzy OCHMAŃSKI. Review of *Biskupstwo wileńskie w średniowieczu. Ustrój i uposażenie*, by Jerzy Ochmański (Seria Historyczna 55. Poznań: Wydawnictwo UAM, 1972). *Rocznik Lubelski* 17 (1974): 285–89.

ZACHOROWSKI, Stanisław. *Rozwój i ustrój kapituł polskich w wiekach średnich*. Kraków 1912. Reprint edition. Kraków: Towarzystwo Naukowe "Societas Vistulana," 2005.

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Summary

The aim of this article is to present the edition of the statutes of the chapters of Vilnius and Samogitia authored by Wioletta Pawlikowska-Butterwick and Liudas Jovaiša. The presentation is preceded by a description of the history of both dioceses and remarks on the role of statutes as the source of the particular law of both chapters. Some space was devoted to the authors of the statutes and related issues. The editorial basis and the critical apparatus were discussed. Finally, attention was drawn to the illustrations accompanying the edition.

Key words: diocesan statutes; Diocese of Samogitia; Žemaitija; Diocese of Vilnius; cathedral chapter.

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