

The Legal Status of Female Guardians in 1530s Lithuania

by

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Introduction: Women and Guardianship

As may be seen from the legal sources of the time, the institution of guardianship of children was fully formed in the Grand Duchy of Lithuania by the beginning of the 16th century.¹ Both the *First Lithuanian Statute* of 1529² and the court cases of the *Books of Court Records* of the *Lithuanian Metrica* – that is, the collection of documents of the chancery of the Grand Duchy of Lithuania – provide various examples of guardianship, covering such questions as the choice and change of guardians, and their rights and obligations.

The office of guardianship was clearly needed in the society of sixteenth-century Lithuania. The comparatively short average life expectancy meant that quite a great number of children lost one or both of their parents before reaching majority, and thus had to receive some sort of protection. While discussing the role of guardians, it is important to remember that guardianship, which at first glance would seem to be more a matter of personal interrelations and issues of care, was in reality much more connected to issues of property.³ Being a guardian was, indeed, a responsibility, but it was a rewarding one, since a guardian could profit financially from it.⁴ However, the rights and responsibilities were not equal for every kind of guardians. One type of guardians – namely, widows – had a special position and

¹ The most extensive overview of the guardianship system in the Grand Duchy of Lithuania, which encompasses materials from the 15th to the 18th centuries and relies on both normative sources and legal practice, is J. Loho-Sobolewski, *Prawo opiekuńcze w dawnej Litwie* (The Right of Guardianship in Ancient Lithuania), Lwów, Drukarnia uniwersytetu Jagiell., 1937. The guardianship system according to the Lithuanian Statutes is presented in L. Veržbavičius, 'Globa pagal Lietuvos Statutus' (Guardianship according to the Lithuanian Statutes), *Teisė*, 39, 1937, 298-312, V. I. Picheta [В. И. Пичета], 'К истории опекунского права в Литовском Статуте 1529 г.' (On the History of Guardianship Law in the *Lithuanian Statute* of 1529), in *Белоруссия и Литва* (Belorussia and Lithuania), Moscow, Издательство академии наук СССР, 1961, 456-471, and Vytautas Andriulis, *Lietuvos Statutų (1529, 1566, 1588 m.) šeimos teisė* (Family Law of the Lithuanian Statutes [1529, 1566, 1588]), Vilnius, Teisinės informacijos centras, 2003, 176-191

² The *First Lithuanian Statute* of 1529 was the first codified law collection of the Grand Duchy of Lithuania. The edition of the *Statute* used in this article is Stanislovas Lazutka et al., eds., *Pirmasis Lietuvos Statutas, II, pirmadalis: Tekstai senąja baltarusių, lotynų ir senąja lenkų kalbomis* (The *First Lithuanian Statute*, vol. 2, part 1: Texts in Old Belorussian, Latin and Old Polish), Vilnius, Mintis, 1991. The English translation of the relevant paragraphs of the *First Lithuanian Statute* is taken from Edvardas Gudavičius, ed., and Karl von Loewe, tr., *Lietuvos Statutas – The Statute of Lithuania – Statuta Lituaniae, 1529*, Vilnius, Artlora, 2002

³ Andriulis, *Lietuvos Statutų (1529, 1566, 1588 m.) šeimos teisė* (note 1), 176. Picheta, 'К истории опекунского права' (note 1), 456

⁴ According to FLS V/[8]7, '... for their labor the guardians may turn to their own profit that which is received from the fields, from the mills, and judgements' (А за свою працу, што-кольве прыйдзецца с пашен, з млынов и присудов, то маюць себе опекацельнікі на свои пожиткі оборочати).

exceptional rights and duties. Other women had the opportunity to become guardians as well, but their rights did not differ from those of men.

The widow-guardians appear in many court cases, and even merit a separate paragraph in the *First Lithuanian Statute*, FLS IV/6. This paragraph reveals the mechanism of the choice and change of guardians, and thus allows us to see under what circumstances a widow could become a guardian. The subject of female guardians other than widows will also be addressed further on, comparing their chances of becoming a guardian with those of men. Three pre-statutory court cases from the *Lithuanian Metrica* will be used as examples of treatment of female guardians in legal practice.⁵

Female Guardians in the *First Lithuanian Statute*

Choice of Guardians

According to the *First Lithuanian Statute*, guardians could be chosen in the following ways: by the father's testament, by natural right, and through appointment by the state. A fourth way, not recorded in the *Statute*, was the choice of a guardian by a ward himself.⁶ According to the *First Lithuanian Statute*, testamentary guardianship had primacy above all others. The *Statute* runs as follows:

We also decree: if some husband, passing from this world entrusts his children and estates by testament to some friend of his, even to an outsider, although guardianship is not rightfully his by law of kinship, then [the appointed guardian] must take into guardianship the estate and children, and [the widow of the deceased] may remain with only the dower... (FLS IV/6).⁷

This sentence suggests that the wish of the father of the children, expressed by testament, was the most important one. The father was entitled to decide who would take the best care of his property and children after his death. His right to assign guardians was not limited in any manner. For the benefit – as he saw it – of the receivers of the inheritance he could choose as guardians persons other than natural guardians.

⁵ Case 88, from 18 January 1524, and case 286, from 2 June 1528, henceforth quoted as LM 4/88 and LM 4/286, are taken from Alfredas Bumblauskas, Edvardas Gudavičius, Mečislovas Jučas, Stanislovas Lazutka, Irena Valikonytė, eds., *Lietuvos Metrika (1522-1530): 4-oji Teismų bylų knyga* (The *Lithuanian Metrica*, 1522-1530: The Fourth Book of Court Records), Vilnius, Vilniaus universiteto leidykla, 1997, and case 109, from 23 April 1529, henceforth quoted as LM 6/109, is taken from Alfredas Bumblauskas, Edvardas Gudavičius, Mečislovas Jučas, Stanislovas Lazutka, Irena Valikonytė, eds., *Lietuvos Metrika (1528-1547): 6-oji Teismų bylų knyga* (The *Lithuanian Metrica*, 1528-1547: The Sixth Book of Court Records), Vilnius, Vilniaus universiteto leidykla, 1995. The translation of the relevant passages is mine.

⁶ Irena Valikonytė, Stanislovas Lazutka, Edvardas Gudavičius, eds., *Pirmasis Lietuvos Statutas, 1529* (The *First Lithuanian Statute*, 1529), Vilnius, Vaga, 2001, 297

⁷ 'Тѣж уставуем: естли бы который муж, сходячи с того света або через тастамент, полецал дети свои и имения кому-кольвек приятелю своему, хотя бы обчому, хотя бы на кого опека слушным правом прироожным не прислушала, тогда оный маеть в опеце мети имение и дети его, а жона маеть только на вене своем седети...' (FLS IV/6).

But what happened when the father did not leave any testament? The *Statute* stated that if the father did not express his will before he died, then a natural guardian was to be chosen. Natural guardianship was based on the ties of kinship. The *First Lithuanian Statute* did not define the precise order of the guardians, but it stated that the first choice should be the widow, the mother of the children:

If someone dies, entrusting his children to no one, then the wife may raise the children and remain on the whole estate in widow's proprietorship until the majority of the children (FLS IV/6).⁸

Testamentary guardianship, which is given priority in the *First Lithuanian Statute*, was not always the most important mode. It slowly took over the primacy from natural guardianship: several privileges from the 15th century confirmed the widow's right to manage the estates of her deceased husband,⁹ but in court practice there was an increasing number of cases where testamentary guardianship was given priority,¹⁰ and finally it was confirmed as a legal norm by the *First Lithuanian Statute*. The abolition of the absolute primacy of the widows in guardianship matters in the *First Lithuanian Statute* was one step towards even greater restriction of their rights.

Still, when the *First Lithuanian Statute* came into effect, the widows, even though they lost the right to become guardians if their husbands indicated another choice in their testaments, preserved their first place among natural guardians. However, if the widow failed to fulfil her obligations, other natural guardians stepped in, 'the children's uncles on their father's side, or if there are none, then other relatives...' (FLS IV/6).¹¹ Thus the widows were by no means unchallengeable in their position as guardians.

Change of the Widow-Guardians

The *First Lithuanian Statute* did not just provide the rules of choosing a widow-guardian. FLS IV/6 also presented the circumstances under which the widow would lose her right to guardianship. These were linked to her perceived status as merely an intermediary in the passing of the property of the husband to his children. As such, a widow did not profit from the bequeathed estate in the ways in which other guardians did, and after the children reached majority, she gave all the property to the latter. She was entitled to manage the

⁸ 'Пак ли бы который отмер, детей своих не полецывши никому, тогда жона маеть дети ховати и на всем имении седети на вдовьем столцы до лет детиных' (FLS IV/6).

⁹ Picheta, 'К истории опекунского права' (note 1), 460, Irena Valikonytė, 'Kai kurių I Lietuvos Statuto straipsnių atspindinčių moterų padėti, šaltiniai' (Sources for Some of the Articles of the *First Lithuanian Statute*, Concerning the Status of Women), *Jaunujų istorikų darbai*, 1, 1976, 31

¹⁰ Picheta, 'К истории опекунского права' (note 1), 460-461

¹¹ '... стрыеве, а не будеть ли их, ино близкие...' (FLS IV/6).

property, but only in an interim capacity, and even then she would lose it if she did not manage it properly. The two main situations addressed in the *First Lithuanian Statute*, which interest us here, are the rights of remarried widows, and the mechanism of replacing a widow in the case of her failure as a guardian.

As was mentioned in the section on the choice of guardians, in the *First Lithuanian Statute* the widow, the mother of the children, is considered a natural guardian, apparently the first one in a line of other relatives, taking precedence over even the male relatives from the father's side. That is, if there was no testamentary guardian, then the wife was entitled to stay with her children on the estate and raise them until their majority.

However, the circumstances of a widow changed in the case of remarriage. The *First Lithuanian Statute* clearly states that 'if a woman, having children in her guardianship, marries, then the relatives may take the children and the estate into guardianship' (FLS IV/6).¹² In the case of remarriage, a woman stopped being a part of her previous husband's family. A remarried woman was evidently seen as a danger to her children and her former husband's family, who could use her previous husband's property in (or, rather, for the purposes of) her new family, and possibly neglect the financial interests of her children from the first marriage.¹³ Thus the relatives from her former husband's side had to intervene in order to defend the interests of the children.

Remarriage was not the only condition under which the widow was supposed to lose her right of guardianship. FLS IV/6 describes the failure to manage the estate properly as another condition under which a widow would not be able to continue being a guardian:

If some woman, remaining in widow's proprietorship with children, regardless of whether she was assigned a dower [by her husband], does not wish to marry, and, while a widow squanders the estate and property, drives people away, incurs *serebshchizna*¹⁴ and fines, and ruins the estate, then the children's uncles on their father's side, or if there are none, then other relatives may, on an established date, take her before us, the sovereign, or before the lords of the council, and must prove these losses. And if [they] prove this, then we, the sovereign, or the lords, for her crime may take away from her the children and property and give [them] over in guardianship to the uncles on the father's side, or to [other] relatives (FLS IV/6).¹⁵

¹² 'А естли бы жона маючи дети в опеце своей, а пошла замуж, тогда ближние мають опекати ся детми и именемъ' (FLS IV/6).

¹³ Picheta, 'К истории опекунского права' (note 1), 457

¹⁴ *Serebshchizna* is a money-tax levied most frequently in time of war for military purposes.

¹⁵ 'А естли бы которая жона, седечи на вдовьем столцы з детми своими, хотя бы венована або не венована, а замуж не хотела пойти, а, седячи вдовою, именья и скарбы утратила, люди розогнала, сребшчизны и вины на себе брала а тые бы именья пустошила, тогда мають стрыеве, а не будет ли их, ино близкие позвати ее на роки зложные перед нас господара, або перед панов рад и таковыи мають утраты на нее доводити. И естли того доведуть, тогда мы, господар, маем або панове дети и именья в нее з рук выняти и подати в опеку стрыем або близким для ее выступу' (FLS IV/6).

According to this paragraph, such a widow, who was not able to manage the property of her husband and preserve it intact for her children, was supposed to be prevented from letting it go to waste. Again, as in the case of remarriage, it was a duty of the relatives to take the responsibility of overseeing the widow's activities.

The mechanism of taking over the guardianship from an incompetent widow is provided here. The brother of the deceased husband had priority above anyone else as regards the prospect of becoming the guardian of the property of his nephews and nieces. In the case of absence of any uncles from the father's side, 'other' relatives were supposed to take over the guardianship duties. There were probably quite a few attempts to deprive the widows of their guardianship rights and take over the management of the property of the children; thus the damage, according to the *Statute*, had to be proven to the grand duke or the lords of the council.

Thus, although widows were the first on the list of the natural guardians, they could keep that right only if they did not remarry and managed the property properly, not giving the relatives of their deceased husband any reasons to take over the guardianship.

Female Guardians in the *Lithuanian Metrica*

The fight of the widows to acquire or preserve their right of guardianship may be observed in the following two cases, LM 4/286 from 1528, that is, a year before the appearance of the *First Lithuanian Statute*, and LM 6/109 from 1529, also a couple of months before the *First Lithuanian Statute* came into effect. The first case is in accordance with the norms of the *Statute*, and the second is not.

The *First Lithuanian Statute* came into effect on 29 September 1529 (although the first version of the *Statute* was prepared as early as 1522¹⁶). The main source for the norms of the *First Lithuanian Statute* was first of all the court practice, which embraced customary laws of various peoples of the Grand Duchy of Lithuania, as well as various privileges issued by the grand dukes and special decrees of the Council of Lords.¹⁷ Because of the fact that the *Statute* heavily relied on the norms of customary law, there are not too many discrepancies between the court practice of the 1530s and the norms of the *Statute*. However, on the one hand, not all customary laws entered the *Statute*, and on the other hand, the *Statute* introduced certain innovations, which went against the norms of customary law. Thus, a comparison of the court cases with the relevant paragraphs of the *Statute* may provide some proof of change, or lack

¹⁶ Valikonytė et al., *Pirmasis Lietuvos Statutas* (note 6), 47

¹⁷ Valikonytė et al., *Pirmasis Lietuvos Statutas* (note 6), 40

of change, regarding the status of female guardians with the introduction of the *First Lithuanian Statute*.

In LM 4/286 a widow makes a complaint against her brother-in-law for taking away from her power the children and the estates of her late first husband, after she got married for the second time. She also complains that this brother-in-law is frittering the estates away, causing great harm to the children. However, the brother-in-law defends himself by saying that, according to customary law, he, as their closest relative, is entitled to keep the estates and the children of his brother under his guardianship. The court (apparently, already for a second time) decides that the children and their estates should remain under the guardianship of their uncle. The widow protests against such a decision, and demands the right to take care if not of the children's property, then at least of the children themselves. The court then satisfies her wish, and allows her to raise her children on the estate that she had received as a dowry from her late husband. However, the property remains in the hands of the uncle.

In LM 6/109, an uncle tries to obtain the guardianship of his nephews (his brother's sons) and their property. He accuses his sister-in-law, who is now married to another man, of frittering the property away and not taking proper care of the children. His sister-in-law defends herself, explaining that she is taking good care of her children, even to such an extent that when her daughter got married, the dowry for her was provided from her present husband's property, and not from that of her late husband. Her oldest son is asked whether he wants to be under the guardianship of his uncle, to which he replies that he does not, since his uncle has already lost his estate, and now wants to lose theirs also. The court reaches a decision to leave the mother as the guardian.

Comparison of the *First Lithuanian Statute* and the Court Cases

How far do the two cases described above correspond to the norms of the *First Lithuanian Statute*? Do they correspond closely, only tangentially, or not at all? First of all, there is the question of the order of natural guardians and remarriage: according to the *Statute*, a widow is the first choice of natural guardian, if she does not remarry. Otherwise, uncles from the father's side count as the closest relatives.

In case LM 4/286 the court recognises the claim of her brother-in-law – that is, the children's uncle on their father's side – to be the closest relative as a valid argument: 'we ordered Ivan Bogushevich to take into his guardianship the children of Bogdan Lvovich and

their estates, because of his being the closest [relative].¹⁸ This is so probably because of the fact that the widow has remarried, and thus has lost her primacy as the closest relative, although it is not stated as a reason explicitly in the case. Case LM 4/286 is in agreement with the norms of the *Statute*: although a remarried widow makes an effort to regain the guardianship of her children and their property, she does not fully succeed. Case LM 6/109 completely ignores the *Statute*, and permits a remarried widow to take care of her children and their property. Here the natural primacy is debated: an uncle, as in case LM 4/286, tries to obtain the guardianship of his nephews and their property, by claiming that he is a closer relative to his nephew than is the mother of the child: 'I am [a] closer [relative] to my nephews and their estate to take care of them.'¹⁹ According to the *Statute*, he would have been correct, because the defendant is remarried. The remarried mother, however, uses the same rationale as the basis of her own argument: 'I am keeping your nephews, my children, along with their estate, because I am [a] closer [relative].'²⁰ The court seems to close its eyes to the fact that the mother has remarried, and supports her side.

It must be said that in both cases, although the fact of remarriage is known, it is not used in either of the cases as a proper argument. The judges do not even seem to doubt the right of the woman to continue the guardianship of her children. Does that mean that it was an innovation of the *First Lithuanian Statute* to deprive remarried widows of their guardianship rights? Certainly not: various privileges of the fifteenth century state that in the case of remarriage a widow loses her right to her husband's property,²¹ and thus at least the right of guardianship over her children's property, if not over their body. In the scholarship such a situation is explained by the possible differences in the status of a female guardian: apparently, if a widow was considered simply as a natural guardian, then she lost her right to guardianship when she remarried; on the other hand, if a widow also held the status of a testamentary guardian, she could retain the guardianship even after remarriage.²² Unfortunately, this theory does not explain our case LM 6/109: here no testament is mentioned at all, and a widow supports her right to be a guardian precisely by pointing out that she is the closest natural guardian. At this stage of research I cannot offer any other explanation than the possibility that in this case the judges might have taken into

¹⁸ '...казали были Ивану Богушевичу дети Богдана Лвовича и имения их в опеце своей мети, подле близкости его...' (LM 4/286).

¹⁹ '...а я близний братаничы своими и именьемъ опекаати ся, нижли она' (LM 6/109).

²⁰ 'Я братаничы твои, а дети свои, их именье держу, бо я ближняя' (LM 6/109).

²¹ Valikonytė, 'Kai kurių I Lietuvos Statuto straipsnių, atspindinčių moterų padėtį, šaltiniai' (note 9), 31

²² Picheta, 'К истории опекунского права' (note 1), 461

consideration the poor reputation of the uncle.²³ But the question still remains why other relatives or the state did not try to take over the guardianship from a remarried widow.

The second situation in which a widow, according to the *First Lithuanian Statute*, was supposed to lose her property is incompetent management of the property. The pre-statutory court cases show that the accusation of frittering the property away was a common one. In case LM 6/109 the main accusation of the plaintiff is actually not the fact that a guardianship is kept by a remarried widow. The widow is accused, rather, of wasting and squandering the property. From a short case it is difficult to say why the plaintiff did not succeed in his complaint: whether he could not provide enough evidence of the damage to the property or, as I have suggested above, whether it was his own poor reputation that stopped the case from being decided in his favour. Another factor here, one that was likely to influence the court decision, was the claim of the widow that she and her new husband were not reducing the future inheritance of her sons even when arranging the marriage of their sister – she was given a dowry from the property of her stepfather.

In this case we see an instance not recorded in the *First Lithuanian Statute*, that of a ward choosing the guardian himself: a seventeen-year old boy, asked in whose guardianship he would like to be, replies: ‘I do not want to be with my uncle Stanislav, since he has lost his estate and now wants to lose ours.’²⁴ Although the boy is still under age,²⁵ the court probably evaluates the fact that soon he will be able to take over his father’s property, and thus, since the uncle does not seem to be a suitable guardian, the boy – along with his property – stays with the mother until he is of age.

In case 4/298, the main accusation is also the incompetent management of the estates. Here a widow herself accuses the current guardian of frittering the property away, again, unsuccessfully: the defendant is exculpated from the accusations because it turns out that he was paying off his dead brother’s debts rather than dissipating his property *per se*. Judging from these two, and from some other similar cases, the accusation of squandering the property brought against guardians was a common one; thus it is not surprising that the normative stipulations against incompetent management have entered the *Statute*.

²³ Only the *Second Lithuanian Statute* defines the requirements for a guardian in greater detail: ‘And every guardian, even the blood [relative], also may be well-established’ (И каждый опекунь хотяжь бы и кровный также добре оселый маеть быти) (SLS VI/3). T. I. Dounar, U. M. Satolin, J. A. Jucho [T. I. Доўнар, У. М. Сатолін, Я. А. Юхо], eds., *Статут Вялікага Княства Літоўскага 1566 года* (The *Statute* of the Grand Duchy of Lithuania of the Year 1566), Minsk, Тэсей, 2003

²⁴ ‘Я у дядка своего Станислава быти не хочеть [so in the manuscript; should be ‘не хочу’], бо он свое именье утратиль, а ещо хочеть нашо утратити’ (LM 6/109).

²⁵ According to the FLS I/18, the boys reached majority at the age of 18.

Case LM 4/286 contains one more detail that requires some comment: a remarried widow, although not allowed to remain a guardian of the property of her children, is allowed to take care of their person. At this point this was only a customary law practice, which was established as a statutory norm only in the *Third Lithuanian Statute* of 1588 (TLS V/11).²⁶

Other Women as Guardians

The right of females in general to guardianship was by no means an innovation of the *First Lithuanian Statute*. Female guardians other than widows are mentioned in the pre-statutory court cases from the *Lithuanian Metrica*. In the *Statute*, women were not singled out as a separate type of guardians, but they certainly were not forbidden from assuming the guardianship, as is seen from the FLS V/[9]8²⁷ as well as from the court cases. The fact that the *Statute* does not name female guardians as a separate category goes some way towards indicating that they were treated in the same way as male guardians, rather than suggesting their absence.

Here it might be pertinent to briefly address one rather interesting case, where a woman (other than the mother) is not simply assigned guardianship, but fights for it. In case LM 4/88, a certain *pani* Dorota fights to become the guardian of her niece and nephew. In this case, once again, we come back to the issues of the order of priority of natural guardians and the incompetent management of the property. Dorota claims that the guardianship should not be in the hands of a relative of the fourth degree, and be dissipated by him, when the children have her, their natural aunt, to look after them. Either with the help of her convincing pleading, or due to the letter of an influential supporter, as will be noted later, she wins the case and obtains the right to assume the guardianship.

As was mentioned above, the *First Lithuanian Statute* does not give a precise ranking in terms of the priority of natural guardians. A detailed ranking is provided only by the *Third Lithuanian Statute*, in TLS VI/3, where it is stated that relatives from the father's side have

²⁶ O. Litskevitch [O. Лицкевич], ed., *Статут Великого княжества Литовского 1588 года* (The *Statute* of the Grand Duchy of Lithuania of the Year 1588), Minsk, 2002-2003, at http://starbel.narod.ru/statut1588_5.htm

²⁷ All paragraphs of the *First Lithuanian Statute* refer simply to 'guardians'; only in one place, in FLS V/[9]8, are women (other than widows) mentioned too: 'If someone holds in guardianship someone else's estate or holds [it] in mortgage, and is directed by the court [to reimburse] some damage, or [to pay] a debt to neighbors, or fines for the sovereign or for something else, then every such person, be he man or woman, if [he] does not have immovable property, then the fulfillment of the court decision must be applied to movable property, and if there is not sufficient property, then [he] must be punished by his own person' (Коли бы хто чужое именье в опеце або в заставе держал, а были бы якие кривды суседские або долги, такеж и о вины господарские або о какие иные права поконан, таковой кождый, будеть мыж або невеста, естли б не был на своей властности оселый, в таковых своих речах осужоных на рукомом именьи его, а в недостатку, на парсуне его маеть быти каран).

priority against the relatives from the mother's side, and men have priority against women.²⁸ It is possible that this order of priority existed as customary norms already at the beginning of the 16th century, and thus the blood aunt in LM 4/88 was not technically entitled to become a guardian while male guardians were present. However, the judgements of the court were often based not exclusively on legal norms, but also on common sense. We should not forget that the squandering of the children's property was seen as a great offence, and incompetent guardians could not be permitted to keep their right to guardianship. Furthermore, the aunt of the children promised not only to take good care of the children, but also to leave them her property. Finally, it should be noted that the woman was supported by the *voevoda*²⁹ of Trakai, which must have added great weight to her pleading. Thus it is not surprising that the court acknowledged her as the closest relative and empowered her to take over the guardianship of the children and their property.

Conclusion

The rights and obligations of female guardians in the Grand Duchy of Lithuania during the first half of the 16th century seem to have been no different from those of male guardians: they were obliged to take good care of the property of the children and not dissipate it. The main divergence between female and male guardians occurred in the different rules applying to their choice as guardians. At least theoretically, for women it depended on their marital status: according to the *First Lithuanian Statute*, women could not retain the guardianship in the case of remarriage. But, as some pre-statutory court records show, this was not always the case. As for the place of women in the order of priority of natural guardians, widows took precedence over anyone else in the absence of a testamentary guardian. Widows also had a special right to become guardians of the persons of their children, even when not of their property. Other women, since the *First Lithuanian Statute* did not define the precise order of natural guardians, seem to have been able to become guardians even in the presence of male candidates for the position.

To conclude, according to the *Statute*, the archetypical female guardian was a widow who stayed in her widow's proprietorship until the children came of age, but as the pre-statutory court records show, the legal practice before the appearance of the *Statute*, although in agreement with most of its norms, permitted quite a great flexibility in the choice and change of guardians.

²⁸ Litskevitch, *Cmamym* (note 26), at http://starbel.narod.ru/statut1588_6.htm

²⁹ Chief deputy of the grand duke, whose authority covers an area called a *voevodstvo*.

Zusammenfassung

Der rechtliche Status von Vormundinnen im Litauen der dreißiger Jahre des 16. Jahrhunderts

Wie aus den rechtlichen Quellen der Zeit– der *Ersten litauischen Rechtsvorschrift* von 1529 und den Gerichtsverfahren in den *Gerichtsprotokollen der litauischen Metrica* (d.h. die Urkundensammlung von dem Kanzleigericht des Großherzogtums Litauen) zu ersehen ist, war die Einrichtung der Vormundschaft über Kinder schon am Anfang des 16. Jahrhunderts im Großherzogtum Litauen völlig ausgeformt. Die Rechte und Verpflichtungen von Vormundinnen scheinen keineswegs verschieden von denen der Vormunde gewesen zu sein: sie waren dazu verpflichtet, sich des Eigentums von den Kindern gut anzunehmen und es nicht zu verschwenden. Der Hauptunterschied zwischen Vormundinnen und Vormunden kam in den verschiedenen Regeln im Zusammenhang mit ihrer Wahl und ihrem Wechsel als Vormund zum Vorschein.

Zufolge der *Ersten litauischen Rechtsvorschrift*, konnten Vormunde in der folgenden Weise gewählt werden. Durch das Testament des Vaters, durch das Naturrecht und durch Vereinbarung mit dem Staat. Eine vierte Möglichkeit, die in der Rechtsvorschrift nicht protokolliert war, die Wahl eines Vormunds durch den Mündel selbst. Frauen konnten zu allen diesen Vormundstypen bestellt werden.

Die beste Stellung war die der Witwen: Zufolge der Rechtsvorschrift, hatte eine Witwe - als erste in der Linie der natürlichen Mündel- in Ermangelung eines testamentarischen Mündels Vorrang vor jemandem sonst, obwohl diese Ordnung des Vorranges oft in den Prozessen debattiert wurde (wie in den *Gerichtsprotokollen der litauischen Metrica* protokolliert ist). Witwen hatten auch ein Sonderrecht, zur Vormundin von den Personen ihrer Kinder bestellt zu werden, obwohl sie nicht Vormundin von dem Eigentum der Kinder waren. Andere Frauen aber, da die *Rechtsvorschrift* die genaue Ordnung der natürlichen Vormunde nicht definierte, scheinen im Stande gewesen zu sein, zur Vormundin bestellt zu werden, und zwar sogar bei Vorhandensein männlicher Bewerber um den Posten.

Wenigstens theoretisch hingen die Rechte der Frauen, zur Vormundin bestellt zu werden und es zu bleiben, von ihrem ehelichen Status ab. Der *Rechtsvorschrift* zufolge konnte Witwen ihre vormundschaftliche Stellung im Falle von Wiederverheiratung nicht aufrechterhalten. Aber, wie einige prärechtsvorschriftliche Gerichtsprotokolle erweisen, war dies nicht immer der Fall- sehr oft wurde die Wiederverheiratung einer Frau nicht in Erwägung gezogen.

In der Zusammenfassung war zufolge der *Rechtsvorschrift* die archetypische Vormundin eine Witwe, die in ihrem Witweneigentum blieb, bis die Kinder volljährig wurden; aber wie die prärechtsvorschriftlichen Gerichtsprotokolle erweisen, gestattete die rechtliche Praxis vor der Erscheinung der *Rechtsvorschrift* eine ziemlich große Flexibilität mit Bezug auf Wahl und Wechsel von Vormunden, obwohl sie mit den meisten ihrer Normen übereinstimmte.

Übersetzung Tom Rundqvist