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NAS RK is pleased to announce that Bulletin of NAS RK scientific journal has been accepted for indexing in the Emerging Sources Citation Index, a new edition of Web of Science. Content in this index is under consideration by Clarivate Analytics to be accepted in the Science Citation Index Expanded, the Social Sciences Citation Index, and the Arts & Humanities Citation Index. The quality and depth of content Web of Science offers to researchers, authors, publishers, and institutions sets it apart from other research databases. The inclusion of Bulletin of NAS RK in the Emerging Sources Citation Index demonstrates our dedication to providing the most relevant and influential multidiscipline content to our community.

Қазақстан Республикасы Ұлттық ғылым академиясы «ҚР ҰҒА Хабаршысы» ғылыми журналының Web of Science-тің жаңаланған нұсқасы Emerging Sources Citation Index-те индекстелуге қабылданғанын хабарлайды. Бұл индекстелу барысында Clarivate Analytics компаниясы журналды одан әрі the Science Citation Index Expanded, the Social Sciences Citation Index және the Arts & Humanities Citation Index-ке қабылдау мәселесін қарастыруда. Web of Science зерттеушілер, авторлар, баспашылар мен мекемелерге контент тереңдігі мен сапасын ұсынады. ҚР ҰҒА Хабаршысының Emerging Sources Citation Index-ке енуі біздің қоғамдастық үшін ең өзекті және беделді мультидисциплинарлы контентке адалдығымызды білдіреді.

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Syktyvkar State University named after Pitirima Sorokina, Syktyvkar, Russia

E-mail: olga.plockaya@mail.ru**COMMON LAW IN MEDIEVAL HUNGARIAN SOURCES**

Abstract: This work examines the issues of consolidation of customary law in medieval Hungarian sources. The relevance of the study of customary law as the most important part of the socio-normative culture and the traditional legal regulator, normatively fixing ethnic identity, expressed not only in the national-cultural worldview, but also in the written medieval Hungarian sources that operated for many centuries, starting from the origins of the creation of the Hungarian state until the beginning of the XVI century, no doubt.

The aim of the work is to study customary law, its institutions in the sources of law of medieval Hungary. The novelty of the research lies in the fact that it analyzes the empirical historical and legal material, which makes it possible to identify the institutions of customary law in the medieval Magyar sources of law.

In a comprehensive study of customary legal aspects, in Hungarian sources of law, it is important to be guided not only by the formational approach, which makes it possible to understand the changes that took place in the medieval period, during the emergence and development of feudal relations in the Western European state, but also by the civilizational approach, revealing the historical, political, socio-cultural components of the feudal Christian state. The methodological basis of this research is formed by a system of cognitive methods developed by various modern sciences. Thanks to the application of the systemic method, the customary law of the Hungarian people is important to consider as an element of the legal space of Hungary as a Central European state.

The study shows that the Hungarians had a law as their initial act. Many Hungarian customs and customary legal institutions found their fixation precisely in written sources of law.

Key words: customary law, sources of law, custom, Hungary, Tripartitum, Golden bull, decree.

Introduction. Modern scientists are trying to solve the problem of the relationship between the conservative past and the creative modern, historically established traditions and newly emerging innovations, combining the identity of society and its acquisition of features that contribute to finding a balance in the context of globalization.

The relevance of the study of customary law as the most important part of the socio-normative culture and the traditional legal regulator, normatively fixing ethnic identity, expressed not only in the national-cultural worldview, but also in the written medieval Hungarian sources that operated for many centuries, starting from the origins of the creation of the Hungarian state until the beginning of the XVI century, no doubt.

In this regard, the most important aspect is the study of the customary medieval law of the Hungarians, which includes not only "legal customs" [1, p. 96; 2, p. 128; 3, p. 32; 4, p. 108], but also a large number of traditional, characteristic of the medieval Ugri legal culture, distinctive norms, principles, institutions of customary law [5, p. 100], reflecting the system of formed national values.

In modern science, the issues of medieval Hungarian sources of law are fragmentarily

considered in the framework of various studies devoted to the medieval historical and political development of the Hungarian state. Let's note the names of L.M. Bragina, L.O. Golovko, T.P. Gusarova, R.B. Derbock, O.B. Keller, Yu.M. Saprykina, A.N. Chistozvonova, V. P. Shusharin [6; 7; 8; 9; 10; 11; 12; 13] and others.

The historical and historical-legal works of A.G. Glebov, R. Darest, A. Yu. Zolotarev, T. M. Islamov, E. N. Kirillova, L. Kontler, N. A. Krashennnikova, A. I. Pushkasha [15; 16; 17; 18; 19; 24], who studied, among other things, some social norms, including the customs used in medieval European countries.

A review of scientific literature has shown that representatives of various scientific fields are engaged in the study of the historical and theoretical aspects. However, in these works, as a rule, there is no analysis of customary law, its institutions, regarding the existing historical and legal development of the Hungarian people. Despite a significant number of scientific works, the study of customary medieval law in Hungary is at the beginning of its journey.

The undertaken research to a certain extent will fill the gap in legal science, where the questions of the customary legal development of medieval Hungary remained insignificantly developed. Meanwhile,

it is important to note that the study of Hungarian medieval customary law is one of the most important aspects of understanding both Western European civilization and the Finno-Ugric world, in view of the fact that Hungary is not only a state located in Central Europe, but also is part of the family of the Finno-Ugric group of peoples.

Methods. In a comprehensive study of customary legal aspects, in Hungarian sources of law, it is important to be guided not only by the formational approach, which makes it possible to understand the changes that took place in the medieval period, during the emergence and development of feudal relations in the Western European state, but also by the civilizational approach, revealing the historical, political, socio-cultural components of the feudal Christian state. The methodological basis of this research is formed by a system of cognitive methods developed by various modern sciences. Thanks to the application of the systemic method, the customary law of the Hungarian people is important to consider as an element of the legal space of Hungary as a Central European state. The use of the historical and legal method will reveal the influence of emerging trends in the historical development of the Hungarian medieval state on the content of customary legal relations. Methods of synthesis, logical analysis, were also used in the implementation of this study.

When choosing the empirical base of the study, the chronological principle was taken as a basis, reflecting the historical logic of the origin and development of customary law, customary legal institutions, enshrined in the studied sources of law, legal materials and documents.

Discussion and results. This work presents a study of legal materials that reflected the state and legal development of medieval Hungary as a Western European state that inherited the Romano-Germanic legal tradition, whose deep historical roots go back to the ancient world. However, the influence of the late antique Roman legal tradition was not the only factor that contributed to the formation of legal as well as political institutions in Hungary. Another factor is the powerful impact of customary law, based on a natural-legal concept, under the influence of which Hungarian legal thought and sources of law gradually evolved and changed.

For the sake of fairness, it is important to note that the Hungarians "the initial act was a law, a deliberate product of the will of the people, which, no doubt, took in the elements of the past, but transformed them and thus created a new order of things" [6, p. 225-226]. Therefore, many Hungarian customs found their fixation precisely in written sources of law.

In the earliest sources of Hungarian royal legislation, which appeared during the reign of the first King Stephen I Saint (late 10th - early 11th centuries), as well as during the reign of Laszlo I Saint (11th century), in addition to various types of emerging social relations, there were the legal

customs that existed among the Hungarians were recorded as unwritten rules "which operated ... without being approved by the city or royal authorities" [19, p. 92]. Thus, in the "Instructions" of the Hungarian King Istvan I the Holy One to the son of Imre ", the legislator emphasizes the need to receive foreigners and newcomers who bring with them not only different languages, customs, knowledge that contribute to the rise and enrichment of the royal court:" Guests and newcomers are so useful that among the royal dignities they are given the sixth place ... 2. For guests come from different parts of the earth and bring with them different languages, customs, knowledge, military equipment. All this adorns and exalts the royal court, and at the same time catches fear in the arrogant foreigners. 3. For a weak and fragile kingdom with one language and the same morals "[20, p. 94]. The text of this source emphasizes such a royal dignity as the need to "imitate ancestors." In this case, we are talking about the preservation and implementation of ancient unwritten tribal customs "1. Know that the best adornment of a king is that he follows the previous kings and imitates worthy fathers. For if someone rejects the establishment of his predecessors and does not stop thinking about God's laws, he will perish ... In any case, adhere to my customs (and they have become royal) without a shadow of a doubt "[20, p. 95].

An ancient Hungarian tribal custom was punishment using the forces of nature. Istvan I the Saint mentions such a punishment. "3. If someone maliciously offends the ministers of the holy church, then according to the Holy Scripture he deserves to have a millstone tied around his neck and thrown into the depths of the sea "[20, p. 92].

Similar customary legal norms were also contained in the acts issued by Laszlo I Saints. The second book of laws of King Laszlo I abounds in them. So, in chapter three, the legislator describes the applied procedure, equipped with the Latin formula - *judicium* (that is, God's judgment, which consisted in using the test with a red-hot iron): "If the village recognizes someone as a thief, then this must be proved by a test (*judicium*)" ... "[21, p. 96]. Moreover, the document indicates not only a personified subject of law in the person of a "thief", but also a collective subject who is responsible in the person of "the entire village" or "part of the villagers." "1. If it turns out that he is clean, then the whole village must pay the priest 1 penny ... If the accusation is brought forward by one part of the villagers, while the other defends the thief ... "[21, p. 96]. This fact testifies to the incomplete separation of the individual from the collective, which means restriction of the rights of an individual who has not yet been a full-fledged subject of law.

In chapter one of the third book of laws of King Laszlo I, the custom of testing with a red-hot iron is also mentioned: "Let the named line up in ten people,

and let one of these ten be tested with iron. If this person passes the test, then the remaining nine should be considered cleared [of the charge]” [21, p. 97-98]. A similar custom among the Hungarians is mentioned in later sources. So, the Varad register (XIII century), was "the only medieval document where the practice of using hordes in mass quantities is recorded (it was an *ordalia* with a hot iron)." [15, p. 169]

In other forms of law, such as: Golden bull of King Endre (András) II (1222), *Tripartitum* (*Triceuch*) by Istvan Verbötsi (XVI century), we are talking about the consolidation of territorial customary legal norms, which reflected the process of land and personal relationships vassals with lords.

The golden bull of Endre II in its content resembled a charter “of privileges and can be counted among the royal legislative institutions. It contained legal guarantees and privileges for royal servants (various categories of soldiers who served the king and received land for their service)” [22]. Therefore, it is called the Hungarian noble constitution.

It also recorded the customs concerning the process of distributing the inheritance: “if the servient dies without leaving a son behind him, then let his daughter own the fourth part of his estate. The rest he can dispose of at his discretion. If he dies without making a will, then the estate will be received by the next of kin ...” [23, p. 525] (Art. 4); customs that protected the property rights of widows: “the wives of those who have died or sentenced to death, or who died in a judicial duel, or for any other reason cannot be deprived of their dowry” (Art. 12) [23, p. 525]; as well as customs that limited the rights of guests who came “with good intentions” (Art. 11) [23, p. 525]

In the *Triceuch* of Istvan Verbötsi, as in the collection (code) of the customary law of feudal Hungary [7, p. 12], drawn up in 1514, for the first time in the history of the Hungarian state, the norms of customary law were systematized and unified.

Based on the knowledge of Roman law, the famous lawyer developed the theoretical and legal aspects of customary law, general theoretical foundations and types of sources of law, the most important concepts that were later used in jurisprudence, and also compiled a private collection of legal norms. “Medieval thinkers often acted both as philosophers of law and as philosophizing legal practitioners. Almost every current legal code was a private person with his own vision of legal problems ...” [24, p. 7]. Therefore, it is not surprising that in the Hungarian royal legislation, for example, in the *Tripartitum* *Verbieta* of the 16th century, not only the legal norms and customs in force at that time were included, but also comments, explanations of the author of the text about the concept of law, its difference from legal custom, about social differentiation of society, the emergence of power relations, legal forms that consolidate the developing feudal relations, etc.

In his work, proceeding from the Roman legal tradition, Istvan Verbötsi divides all existing laws

into two types: divine, arising from nature itself, as well as those permitted by God and human, based on moral norms and customs. “That is why they differ from each other, because one people wants one thing, another - another.” (Prologue Ch. 7) [25, p. 797] Using commented examples, the famous jurist reveals the customary legal nature of many legal institutions. “For it is God allowed to walk through a strange field, since the earth and its fruits are God's; but this is not a right, for it is prohibited by an institution or custom.” (Prologue Ch. 7) [25, p. 797] He also explains why there are laws created by man: “... so that fear of them suppresses human insolence ... so that in the criminals themselves the fear of punishment would tame the audacity and desire to commit crimes” (Prologue Ch. 7) [25, p. 797]

By custom, the author of the *Trinity Book* understands “a right of moral origin, which is taken as a law when there is none.” (Prologue Ch. 10) [25, p. 797] Moreover, the custom is introduced to those “who by the power of public authority can create the law” (Prologue Ch. 10) [25, p. 797]. In addition, features are indicated that distinguish custom from other sources of law. We are talking about: rationality “... a custom is considered reasonable that does not contradict natural law, the law of peoples or positive law” (Prologue Ch. 10) [25, p. 798]; the presence of “general custom”; prevalence; application of the custom for a long time, moreover, “... civil law for the emergence of custom is enough for one decade, ... canon law, then it would have to wait forty years. However, if a custom arose apart from the law [that is, in its absence], then even from the point of view of canon law, a period of ten years seems to be sufficient” (Prologue Ch. 10) [25, p. 798]; repeated repetition of the action of the custom “because [repetition is necessary] because the consent of the people is revealed on the basis of a practice that usually cannot be deduced from a single incident”; “Tacit consent of the people” (Prologue Ch. 10) [25, p. 798].

Istvan Verbötsi identified three differences between law and custom. “Law differs from custom in three respects. First, as tacit and openly expressed. Secondly, as recorded and unrecorded; ... Thirdly, as a reason and a consequence ... a custom in the proper sense cannot be immediately introduced by the people, but only after the lapse of time” (Prologue Ch. 11) [25, p. 799]. In addition, the famous lawyer explained that custom explains the law, and also “has a canceling power, because it limits the law if it contradicts it ... it has a substitute power, since it replaces the law where it is absent” (Prologue Ch. 11) [25, p. 799].

In his work, Verbötsi extends uniform laws and customs to a part of the privileged Hungarian population (his code is often called the code of “legal norms that were in force at that time in the kingdom” [17, p. 51]). We are talking about the practical equating the status of prelates, heads of churches, barons and other magnates, whom he calls noble and noble people (Part I. Ch. 2) [25, p. 799].

The usually legal patriarchal relations in Hungarian families are also reflected in this source. In part of the first chapter of the seventh, the dominant power of the head of the family is consolidated through hereditary relations: "... those whose mother only belongs to the nobility, and the father does not belong, we do not consider as true nobles ... on the contrary, sons born of noble fathers and mothers-non-noble women, are considered real and true nobles"[25, p. 801].

The famous lawyer, in part two of chapter three, also noted the special protection of customary legal institutions and ancient freedoms that existed among the Hungarian people, limiting the legislative power of the king, who could not "make laws, especially in cases involving divine and natural law, as well as to the detriment of the ancient freedoms of the entire Hungarian people"[25, p. 802].

In other laws and decrees, the legislator also relied on customary legal principles, customs and norms of customary law. So, for example, we are talking

about the implementation of the principle of justice when managing people in power (§ 2) [26]; on the application of old Hungarian laws, decrees, ancient customs (§ 3) [27; 28]; on the use of the customs of the country in case of litigation (§ 3) [29], etc.

Conclusion. Thus, the analysis of medieval Hungarian sources of law showed that ancient legal customs were often reflected in written law. Usually legal relations were largely regulated by the early medieval legislative acts of the Hungarian kings. If at the dawn of the creation of the Hungarian state at the end of the 10th century, legal customs existed in the form of unwritten rules and gradually found their reflection in the earliest sources of Hungarian royal legislation that appeared under the first Magyar kings starting with St. Stephen I, then from the 13th century, territorial customs reflecting the process of land and personal relationships between vassals and lords. At the beginning of the 16th century, in the famous collection of feudal customary law, the Tripartitum of Istvan Verbötsi, the customs were codified.

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ОРТАҒАСЫРЛЫҚ ВЕНҒР ДЕРЕККӨЗДЕРІНДЕГІ ӘДЕТКІ ЗАҢ

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ОБЫЧНОЕ ПРАВО В СРЕДНЕВЕКОВЫХ ВЕНГЕРСКИХ ИСТОЧНИКАХ

Аннотация: В настоящей работе рассматриваются вопросы закрепления норм обычного права в средневековых венгерских источниках.

Актуальность исследования обычного права как важнейшей части социо-нормативной культуры и традиционного правового регулятора, нормативно закрепляющего этническую идентичность, выраженного не только в национально-культурном мировоззрении, но и в письменных средневековых венгерских источниках, действовавших на протяжении многих веков, начиная от истоков создания венгерского государства до начала XVI века, не вызывает сомнений.

Целью работы является исследование обычного права, его институтов в источниках права средневековой Венгрии.

Новизна исследования состоит в том, что анализируется эмпирический историко-правовой материал, позволяющий выявить институты обычного права в средневековых мадьярских источниках права.

При выборе эмпирической базы исследования за основу был взят хронологический принцип, отражающий историческую логику зарождения и развития обычного права, обычно-правовых институтов, закрепленных в исследуемых источниках права, правовых материалах и документах.

Методологическую основу данного исследования образует система методов познания, выработанных различными современными науками. Благодаря применению системного метода обычное право венгерского народа важно рассматривать в виде элемента правового пространства Венгрии, как центрально европейского государства. Использование историко-правового метода позволит выявить влияние возникавших тенденций в историческом развитии венгерского средневекового государства на содержание обычно-правовых отношений. Методы синтеза, логического анализа также применялись при осуществлении настоящего исследования.

В настоящей работе представлено исследование правовых материалов, отразивших государственно-

правовое развитие средневековой Венгрии, как западноевропейского государства, унаследовавшего романо-германскую правовую традицию, глубинные исторические корни которой уходят в античный мир. Однако влияние позднеантичной римской правовой традиции являлось не единственным фактором, способствовавшим формированию в Венгрии правовых, а также политических институтов. Другим фактором необходимо назвать мощное воздействие обычного права, основанного на естественно-правовой концепции, под влиянием которого постепенно эволюционировала и изменялась венгерская правовая мысль и источники права. В исследовании показано, что у венгров первоначальным актом являлся закон. Многие венгерские обычаи и обычно-правовые институты нашли свое закрепление именно в писаных источниках права.

Ключевые слова: обычное право, источники права, обычай, Венгрия, Трипартитум, Золотая булла, декрет.

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REFERENCES

- [1] David R., Vries H. (1958) *An Introduction to Civil law Systems: The French Legal System*. N. Y.: Oceana Publications. 152 p. <https://doi.org/10.1017/s0008197300007388> (in Eng.).
- [2] Kelsen H. (2007) *General Theory of Law and State*. L.: Transaction Publishers. 544 p. <https://doi.org/10.4324/9780203790960> (in Eng.).
- [3] Mehrem A., Gordley J. (1977) *The Civil Law System*. New York: Brown and Co. 555 p. <https://doi.org/10.1017/s0008197300007388> (in Eng.).
- [4] Ayupova Z. K., Kussainov D. U. (2019) Winston Nagan. Legal system of scandinavian countries // *Bulletin of national academy of sciences of the republic of Kazakhstan*. 4 (380): 102 – 109. <https://doi.org/10.32014/2019.2518-1467.97> (in Eng.).
- [5] Ayupova Z. K., Kussainov D. U. (2019) Winston Nagan. About modernization tendencies in the legal system of the republic of Uzbekistan // *Bulletin of the National Academy of Sciences of the Republic of Kazakhstan*. 2 (378): 100 – 107. <https://doi.org/10.32014/2019.2518-1467.46> (in Eng.).
- [6] Bragina L. M., Saprykin Y. M., Chistozvonov A. N. (1991) *History of the Middle Ages*. M.: Higher shk. 400 p. (in Rus.).
- [7] Shusharin V. P. (1994) *Peasant War of 1514 in Hungary*. M: Type. RAS. 255 p. (in Rus.).
- [8] Golovko LO (2011) Legal regulation of property relations in the common law of Ukraine, Slovakia and the Czech Republic and the first acts of its codification (comparative analysis) // *Scientific Bulletin of NULES of Ukraine. Series: Right*. 165-2: 10-15. (in Ukr.).
- [9] Gusarova T.P. (2013) Difficulties of Dialogue: Central Authority and Estates at Hungarian State Assemblies during the Era of Turkish Wars in the 16th - 17th Centuries // *Middle Ages*. 74: 30-65. (in Rus.).
- [10] Gusarova T. P. (2007) Noble "We" in the career of Istvan Verbetsi: (on the question of the political consciousness of the Hungarian nobility at the turn of the 15th – 16th centuries) // *Man of the 15th century: Facets of identity*. 135-158. (in Rus.).
- [11] Gusarova T.P. (2018) Reformation and political demands of the Hungarian nobility in the first half of the 1520s. // *Proslogion: Problems of Social History and Culture of the Middle Ages and Early Modern Times*. 4: 123-141. (in Rus.).
- [12] Derbock R. B. (2017) The main stages of the development of Hungarian law in the Middle Ages and modern times // *Theoretical and practical aspects of the development of modern civil science. Sat. scientific papers*. Edited by I.V. Petrov, K.V. Belgisova, E.L. Simatova. Krasnodar: 10-16. (in Rus.).
- [13] Keller O.B. (2011) German law in Hungary during the Middle Ages // *Studia Historica Europae Orientalis. Studies in the history of Eastern Europe*. 4: 47-65. (in Rus.).
- [14] *Anthology of world legal thought*. (1999) Vol. 2. Europe. V-XVII centuries. / Resp. ed. N.A. Krashennikova. M.: Thought. 829 p. (in Rus.).
- [15] Glebov A.G., Zolotarev A. Yu. (2008) Ordals in England and Western Europe of the early Middle Ages: problems of source study and historiography // *Law in the medieval world. Sat. articles*. Under. ed. I. I. Varyash, G. A. Popova. Moscow: IVI RAN. 278 p. (in Rus.).
- [16] Darest R. (1894) *Studies in the history of law*. St. Petersburg: Printing House and Lithography V.A. Tikhanova. 378 p. (in Rus.).
- [17] Islamov T.M., Pushkash A.I., Shusharin V.P. (1991) *A Brief History of Hungary*. M.: Science. 608 p. (in Rus.).
- [18] László Kontler *The history of hungary: millennium in central Europe* (1999) // https://psv4.userapi.com/c848032/u35528094/docs/d12/d2e023cf8a3c/Kontler_Laslo_Istoria_Vengrii_Tsysacheletie_v_tsentre_

Evropy_2002.fb2?extra=F7zBfU_sLeA1eMVoqud21e84QZmDx78LccnkllL8wkDgMtyLGuFQTuzDde_7pvEv18tXY8_ByEC5rxVvk2REB2sNC96mL49rFGLHpEzdcRET0Q3yO3s_vU4Hf_9UpZ0JwZQ-AaLmDXNuszTxlUNPlwB&dl=1(accessed January 04, 2020) (in Hun.).

[19] Kirillova E.H. (2008) Custom: before, after and instead of regulations // Law in the medieval world. Sat. articles. Under. ed. I. I. Varyash, G. A. Popova. Moscow: IVI RAN. 278 p. (in Rus.).

[20] "Instructions" of the Hungarian King Istvan I Saint to his son Imre (1999) // Anthology of world legal thought. Vol. 2. Europe. V-XVII centuries. / Resp. ed. N.A. Krasheninnikova. M.: Thought. 829 p. (in Rus.).

[21] The second book of laws of King Laszlo I (1999) // Anthology of world legal thought. Vol. 2. Europe. V-XVII centuries. / Resp. ed. N.A. Krasheninnikova. M.: Thought. 829 p. (in Rus.).

[22] Morozova L.A. Hungary "Golden Bull" of King Endre (András) II (1999) // <https://libr.me/politicheskikh-pravovyih-istoriya/vengriya-zolotaya-bulla-korolya-endre-andrasha-32120.html>(accessed January 04, 2020) (in Rus.).

[23] Gold bull of King Endre (András) II (1999) // Anthology of world legal thought. Vol. 2. Europe. V-XVII centuries. / Resp. ed. N.A. Krasheninnikova. M.: Thought. 829 p. (in Rus.).

[24] Krasheninnikova N.A. Preface (1999) // Anthology of world legal thought. Vol. 2. Europe. V-XVII centuries. / Resp. ed. N.A. Krasheninnikova. M.: Thought. 829 p. (in Rus.).

[25] Tripartitum of Istvan Verbotsi (1999) // Anthology of world legal thought. Vol. 2. Europe. V-XVII centuries. / Resp. ed. N.A. Krasheninnikova. M.: Thought. 829 p. (in Rus.).

[26] Ulászló. Third Decree 1498 // Corpus Juris Hungarici. Hungarian Law Library (1000-1526) <https://www.mek.oszk.hu/01300/01396/html/02.htm#30>(accessed January 04, 2020) (in Hun.).

[27] Ulászló. First Decree 1492 // Corpus Juris Hungarici. Hungarian Law Library (1000-1526) <https://www.mek.oszk.hu/01300/01396/html/02.htm#30> (accessed January 04, 2020) (in Hun.).

[28] Mátyás. Fifth Decree 1481 // Corpus Juris Hungarici. Hungarian Law Library (1000-1526) <https://www.mek.oszk.hu/01300/01396/html/02.htm#30> (accessed January 04, 2020) (in Hun.).

[29] Ulászlónak. Second Decree 1495 // Corpus Juris Hungarici. Hungarian Law Library (1000-1526) <https://www.mek.oszk.hu/01300/01396/html/02.htm#30> (accessed January 04, 2020) (in Hun.).

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