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OFFENCE AGAINST PROPERTY IN ROMAN LAW

Abstract

Having in mind the obvious fact of the unjustified marginalization of Roman ius publicum and its institutions, this paper is dedicated to a small segment of this field, specifically referring to certain institutes of Roman criminal law.

Beside certain basic issues regarding the differentiation of ius publicum and ius privatum as an introduction to the topic, this paper concerns the essential issues in the area of Roman criminal law. However, its focus is on the separate review of separate offences that can be categorized in the group of offences against property.

As in all cases of studying the institutes of Roman law, the final objective of the author is to argue and indicate on the strong relationship between the old Roman and positive legal solutions in almost all areas of law.

Key words: ius publicum, Roman criminal law, offence, offences against property.

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Introduction

The concept of Roman law, in the context of its study on the higher education institutions worldwide, infallibly refers to the study of the Roman ius privatum, i.e. the area of private law. Nevertheless, it is completely unjustifiable to perform marginalization of the equally significant ius publicum or the area of public law.

Speaking about "equally significant", we refer to two situations. Firstly, the Roman law sources, especially the primary ones, offer exactly the same array of data (as legal norms) that refer to ius publicum. Secondly, according to its influence and as a concept, as well as institutes in separate sectors of ius publicum, the Roman public law has significant contribution, especially as a basis, a matrix on which legal branches and separate institutes developed later, depending on the social and economic conditions.

However, besides the fact that the Roman private law is in the focus of most Romanists, there are authors providing strong and constant analysis of separate branches of the Roman public law, especially the Roman criminal law, a small part of which will be dealt with in this short paper.

In this sense, we must mention the grandiose Theodor Mommsen[2] and his Romisches Strafrecht or "Roman Criminal Law", dating 1899.

This short review of the offences against property will be one more attempt to shed light on some forgotten institutes of Roman law, using the available resources.

1. Some Introductory Issues concerning the Offences in Roman Law

1.1 *Ius publicum vis a vis Ius privatum*

Considering the fact that in order to speak about criminal law in general the best introduction is to position of this legal branch within the frames of the entire legal system, we will begin our paper explaining the Roman concept of the notion of these two vast legal areas.

Namely, the legal branches such as civil, i.e. family law, statutory law, property, succession law, law of the obligations, trade law and intellectual property law[3] belong to the private law or ius privatum[4]

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[2]Theodor Mommsen (1817-1903) is a synonym for an extremely important contribution to the study of Roman law. The abovementioned work was published in Leipzig in 1899. In it, the author follows the development of the Roman criminal law in details. The work includes analysis of the criminal material law (concept, characteristics and types of offences) as well as the criminal process law (development and characteristics of the criminal court procedure) with reference to the reasons due to which it needs to be studied.
Namely, under the guidance of Mommsen, the first collection of Latin inscriptions *Corpus Inscriptionum Latinarum (CIL)* was made and it contains over 200 000 inscriptions. It is divided in seventeen parts, printed in seventy volumes and thirteen additional volumes.
Mommsen won the Nobel Prize in 1902.

[3] In terms of the topic of interest, we will not go into detail in this legal area.

[4] In the Roman law textbooks, usually there are Ius quod ad personas pertinet, Ius quod ad res pertinet and Ius quod ad actions pertinet, relying to the Gaius' trichotomous division.

in modern sense of words. Administrative law, constitutional law, public international law, financial law, judicial law, criminal, law, misdemeanor law, penal law and environmental law are the branches that form part of the public law. The theory also speaks about so-called boundary legal branches, where the labor, process and canon law belong.[5] However, this "final product" has its own history and path of development, which indicates that these boundaries were topic of open discussion since the very beginning. These involved both questioning if it is possible to talk about such a division and the opinions on the most valid categorization, having in mind relevant criteria.

After all, one thing is certain - the distinction *Ius privatum/Ius publicim* is indisputably a result of the genial Roman legal mind.

Fontes iuris of the Roman law speaks in favor of this. According to them, a certain difference between the norms referring to *utilitas publica* and the norms referring to *singulorum utilitas* can be seen since the very beginning. Namely, the first case concerns norms regulating a matter referring to the manner of functioning of the state (government, administration, territorial organisation), relations with neighbours, taxes, population, census etc. - briefly, issues which are of public interest. This is contrary to the norms referring to issues of the private sphere or issues related to regulating the position of the individual in the society and family (norms of the statutory, family and civil law).

Although the legal research gives the credit to Domitius Ulpianus[6] for the birth of this distinction of the legal areas, a bit earlier, Aemilius Papinianus, another remarkable Roman jurist, expressed his idea that Ius publicum privatorum pactis mutari non potest.[7]

In addition to this, above mentioned Ulpianus considers that Publicum ius est quod ad starum rei publicae Romanae spectat[8], i.e. Privatorum conventio iuri publico non derogate.[9]

In Roman law, this concept continued to be applied in the Codex Theodosianus,[10] where one may observe that for the first time a systematic exposure of the norms of the area of public law was conducted.

However, the real accreditation of the difference between the norms regulating the private and the norms referring to the public sphere can clearly be recognised in the impressive codification work of Iustinianus Primus,[11] Corpus Iuris Civilis, whose influence on the world legal thought in every area is unnecessary to mention.

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[5]See: Димитар Бајалциев, *Вовед во правото - Право,* книга втора;Куманово: Македонска ризница, 1999, p. 331 for more details.

[6]Ulpianus is a prominent Roman jurist of the classical period. He was from Phoenicia and an extremely prolific author. Just as an example, it is known that one third of Justinian's Digestae are his quotes.

[7]Public law cannot be modified by agreements. See: Мирјана Поленак - Аќимовска, Владо Бучковски, *Избор на текстови од римското право,* Скопје: Правен факултет, 2000, 12.

[8]Public law is the law referring to the status of the Roman state. D.1, 1,1,2.

[9]Public law cannot be modified by agreements between individuals. M. Polenak – Akjimovska, Vlado Buchkovski, op. cit.

[10]Codex Theodosianus is the most significant pre-Justinian collection.

[11]Iustinianus Primus (483-565) is the last Roman emperor, but also the first Byzantine tsar, according to many. Although his name is a real puzzle and a

1.2 *Path of Development of the Roman Criminal Law*

The analysis of the institutes of the Roman law in general must firstly satisfy the need of periodisation. On one hand, that is, of course, a result of the long existence of the historic scene of the state and law,[12] which is our point of interest. On the other hand, it is due to the change in the social and economic constellations[13] that indispensably influence the changes in the legal system, including the development and clear differentiation of the legal institutes.

With regard to the periodisation of Roman criminal material law, we must mention that it is indispensably related to the criminal process law (criminal procedure). [14]

Therefore, according to the periodisation of Mommsen, which is among the oldest, this development has three separate stages, the first among which is the law of the punishing pater familias,[15] the second is private penal law and the third is public penal law.

Simplified, this classification is reduced to two stages - a period of absence of courts and a period of special courts.

According to professor Puhan, it is as follows: sacral criminal procedure during the creation of the Roman state; cognitive procedure and provocation during the early Republic (magistrate correction);

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challenging research topic, his characteristic feature is his codification coverage, seen through the jurist's eyes. It is a matter of the first Justinian's codification (legislation), composed of Novus Codex Iustiniianus, Digesta, Institutiones and Novellae, whose not so long process of creation (due to which its value was often critized?!) was under the guidance of the best jurist of that time Tribonian, under the Emperor's protectorship. It obtained the name Corpus Iuris Civilis at the end of XVI century.

[12]It is a matter of a period of thirteen centuries, starting from the foundation of the city of Rome in VIII century B.C. to the fall of the Empire in VI A.D.

[13]Namely, when the Romans emerged in history, they were at the point of conversion from the higher degree of barbarism to civilization; from war democracy, which was still in full force, to the emerging state. To the extent to which the economic differences turned into class differences and antagonistic contradictions were developed that inevitably led to the creation of a duress apparatus in favour of the ruling class, the legal system created by them is really impressive.

Therefore, the Roman law is especially convenient, as it passed through and survived all social formations that occurred throughout the history: from the society emerging from the stage of the earliest communities, it developed in the conditions of slave society, which had developed commodity and money exchange. Later, it was cultivated in conditions of emergence and development of feudal relations, passed through the Byzantine feudal relations and played a significant role in the building of the capitalist society. See: Dragomir Stojčević, *Rimsko Privatno pravo* (Beograd:Savremena administracija 1979).

[14] For clarity, we will leave the periodisation of the Roman state and law, which primarily refers to the social and economic order. However, the fact that it still has a crucial influence on the development of legal institutions in general should not be overlooked.

[15]On magistrate jurisprudence, magistrate comicial procedure and procedure before jury court, see: Гордана Бужаровска, Гоце Наумовски, 'Кривичната постапка во римското право', *Зборник на трудови во чест на проф.д-р Стефан Георгиевски,* Скопје: Правен факултет „Јустинијан Први" 2010, 624.

Quaestiones extraordinarie and quaestiones perpetuae; consul and senate criminal courts and principate legislation and emperor's criminal courts.[16]

However, it seems that the most appropriate view for the studies of Roman criminal procedure, which takes into consideration the following stages: popular jurisdiction (iudicia populi); constant criminal courts (questiones perpetuae), and penal court systems during the kingdom (cognitio extra ordinem) is widely accepted.[17]

1.3 *The Difference Between Delicta Privata and Delicta Publica*

In the Roman law sources, we cannot find a clear criterion according to which the private offences differ from the public ones. Terminologically speaking, the term **delictum**[18] refers to unpermitted actions due to which the perpetrators could be prosecuted.[19]

However, the formal difference between **delicta privata** and **delicta publica** is that the performance of a private offence is accompanied with private lawsuit that could be submitted only by the aggrieved person in litigation (civil)[20] procedure. It results in a judgment imposing fine that the offender is obliged to pay to the aggrieved person,[21] whereas the perpetrator of public offence is exposed to danger to be sued by any citizen,[22] where the sentence is directed toward the offender. Hence, the differentiation of private-public offence appears.

However, it must be mentioned that there are examples of offences that can simultaneously be private and public in the Roman law. It is assumed to be a result of the fact that the aggrieved person sometimes accepted poena publica instead of poena privata, due to offender's inability to pay the fine.

In a nutshell, delicta privata obeyed the rules of the law of obligations as unpermitted human actions, persecuted by actiones poenales in civil court procedure, which obliged the offender to perform economic sanction, whereas delicta publica or crimina meant repression by authorities in special penal procedure iudicia publica.

Here, we must emphasize the criterion of higher degree of social danger as a manner to determine the seriousness of the act. Therefore,

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[16]See: Ivo Puhan *Krivićni postupak u rimskom pravu,* separat iz knjige Građanski postupak u rimskom pravu, Beograd: Naucna knjiga, 1955.

[17]Gordana Buzharovska, Goce Naumovski, op.cit., 625.

[18] From licere (to be allowed). Besides the term offence, Romans also used the term "malfeasance" (maleficium).

[19]See: Žika Bujuklič, *Forum Romanum rimska država, pravo, religija i mitovi,* drugo izmenjeno i dopunjeno izdanje, Beograd: Pravni fakultet Univerziteta u Beogradu, Javno preduzeče „Službeni glasnik", 2006, 230.

[20]The Romanists are unanimous about the statement that the Roman law relating to public offenses and criminal proceedings is incomparably less developed then the civil one. Hence, the view that the influence of the Roman legal solutions in this area on the modern penal system is far smaller. Some of the authors usually locate reasons for this in the social order.

[21]It means that this judgment leads to obligatory relation. Namely, the sources of the obligations, according to Gaius, can be classified in three large groups: contracts, offences (delicta) and different legal reasons according to some special law (variae causarum figurae).

[22]Actio populis, which is not recognised by our law.

the usage of certain procedure and type of punishment that is a feature of the modern criminal law is not typical even for the classic Roman law.[23]

1.4 *Criterion of Classification of Offences in Roman Law*

The dilemma on the most appropriate classification of public offences as part of the criminal material law is in direct relation with the aforementioned comment that the Roman criminal law does not offer an answer to the question what is the criterion of differentiation between **delicta publica** and **delicta privata.**[24]

Namely, the fluid border between public and private offences is a sufficient reason that the classification according to the criterion what has been breached with the performance of the specific offence is considered as the most practical and the clearest. That can be seen from the examples of private offences in the Roman law, which were later treated as public offences.[25]

In that sense, relying on the global division of the public offences in Roman law, we can talk about the following three large groups: offences against property (theft and similar offences); offences against personality, family and morality (sexual offences, offences against personality and offences against morality) and offences against the state (offences against the state and public order).

In this short review, we will examine the concept and analyze the special characteristics of the group of offences against property in the Roman law.

2. Offences against Property

2.1 *Concept and Types of Offences against Property*

The offences against property are illegal actions directed toward causing damage of the aggrieved person's property. The result of most of them is acquisition of property by the offender[26], whereas in some of them, the offence causes only material damage, without benefit for the offender.

The following explication will refer to the following offences against property, familiar in the Roman law: furtum, rapina, stellionatus, abigeatus, plagium and damnum iniuria datum.

[23]Therefore, although the term criminal is in direct relation with the modern term criminal law, they could not be identified as the same, as iudicia publica does not have the same meaning as modern criminal procedure. See: Žika Bujuklič, op.cit 231.

[24]Briefly, as an aggravating circumstance upon the classification, we mention once again the unconventional court procedure, which refers to different types of offences.

[25]We found such classification of private offences in: Ivo Puhan, Mirjana Polenak – Akjimovska, *Римско Право, Скопје.* See also: Goce Namumovski, op.cit, 315, as well as the works of most above mentioned Romanists. The difference is only in the number of groups that the author forms according to his own view, but the criterion is the same.

[26]Lucrandi causa.

2.2 *Furtum (theft)*

In Roman law, **furtum**[27] or theft generally meant every illegal seizure of someone else's material goods for the purposes of property acquisition in favor of the offender. However, the definition of theft also covered every intentional exploitation[28] of some of the owner's authorisations[29] without the knowledge and consent of the property owner, for the purposes of property acquisition in favour of the offender.

There is no dispute about the question what can be subject to theft. It is a matter of movable items (res mobiles)[30] whose owner was already known.[31]

However, it seems that upon the determination of the term of theft, according to Roman jurisprudence, the element of thief's intention that the item is stolen plays a key role. Namely, clearly formed animus furandi[32], i.e. the intention to acquire property with the confiscation of the item, lucrandi causa, are the main features determining the furtum.

The analysis of theft as offence would be incomplete if we do not pay adequate attention to the manner of the protection of rights of the aggrieved person.[33]

It is about two lawsuits. By applying the first one, condictio furtiva, the return of the stolen item was planned. Firstly, the owner of the item had active right to conduct the dispute, but in certain cases, this opportunity was given to other persons who held the item as possessor bonae fidei[34] (for example: ususfructarius[35]), whereas passive right was reserved for the thief, as well as his successor.[36]

The second lawsuit actio furti provided for multiple compensation as punishment, which depended on the type of theft. Due to the provided multiplied amount, this lawsuit belongs to the group of

[27]The term comes from fur, which means theft.
[28]Contrectatio.
[29]Ius utendi, ius fruendi, ius abutendi.
[30]Free persons can also be subject of theft (for example wife or son). See: Adolf Berger, *Encyclopedic Dictionary of Roman Law*, Philadelphia: The Americaan Philosophical Society, reprinted 1991, 480.
[31]It could not be spoken about theft if the item belonged to nobody or was qualified as res nullius in any manner.
[32]It was considered that a theft did not occur if the defendant did not know or could not know that the item was not his/hers, or thought that he/her was taking it with the consent of the owner.
[33]Contrary to the modern law, the Roman law should be considered as "a system of lawsuits or actions", which is a result of the cause approach and finding solution from case to case. Therefore, lawsuits were individual and typical and court protection could be requested only when there was no special lawsuit for the protection of the breached right. Namely, according to the Roman law, ''Sine actio nulla obligatio''. See: Žika Bujuklič, op.cit. 94-95.
[34]In terms of the active right, this is valid for both lawsuits.
[35]Personal service ususfructus or usufruct is the most comprehensive service according to its own contents, which covers ius utendi, ius fruendi, as well as the right to realise additional benefit by having the fruits of the usufruct at his/her disposal.
[36]See: Adolf Berger, op. cit. 480; Goce Naumovski, op.cit. 323.

actiones poenalis (penal lawsuits). [37] In terms of the active right, the same rules as for condictio furtiva apply, whereas only the thief could be accused (contrary to the previous case).

When we discussed actio furti, we mentioned that furtum could appear in several forms. In Roman law, the types of thefts were different, depending of the period we discuss. In any case, on the basis of special criteria, we can talk about furtum manifestum,[38] furtum nec manifestum,[39] furtum conceptum,[40] furtum oblatum,[41] furtum lance et licio,[42] furtum prohibitum[43] and furtum non exibitum[44] (the Justinian's legislation categorized all previously mentioned types into two groups: furtum manifestum and furtum nec manifestum). According to the manner in which the theft was performed, there are furtum balnearium[45] and furtum domesticum.[46] According to the place where the theft was performed, as well as special types of theft futum usus[47] and furtum possessionis,[48] which relate to the emergence of real contracts as well as rights and obligations of the persons signing the contract.

2.3 *Rapina (Banditry)*

Banditry as special type of offence that appears later in the Roman law. There are no disagreements about the fact that the massive outbreak of violent armed groups due to the civil wars following the

[37]Besides them, Roman law also calls for so-called repercussion lawsuits, which provide for simple compensation of damages (in simplum) and mixed lawsuits that provide for compensation of damages and poena private.

[38]Public theft, which means theft that was noticed at the time of its performance. However, it must be mentioned that public theft also meant catching the thief with the stolen item at the day of the theft. The punishment was quadruple compensation of the value of the stolen item.

[39]Secret theft (theft in the real sense of the word), when the thief was not caught as in the case of public theft. The punishment was in duplum, double amount of the item's value.

[40]Discovered theft, when the stolen item was found at the thief in the presence of a witness. The punishment was triplicate amount of the item's value. Justinian's legislation puts this type of theft under the secret theft.

[41]Planted theft, when the stolen item was found at someone who was not the thief. In terms of the punishment and the qualification, the same as the previous type applies.

[42]Theft that was discovered by formal search of the theft's house, with apron and plate in the hands, whereupon the stolen item was found in the theft's house. It is interesting that the Law on the Twelve Tables provides this type of investigation for furtum manifestum.

[43]Theft by which the thief forbade that search is performed in his house. The punishment was quadruple amount.

[44]Theft when the thief did not deposit the stolen item, which was later found at him.

[45]Theft of items (most common clothes) in public baths.

[46]Domestic theft, performed by a family member.

[47]Theft of the use value, which most often occurs when a third party, authorised by contract, holds someone else's item (e.g. borrowed), but uses the item in much broader range or for different uses than the agreed.

[48]Theft of possession, also known as furtum rei suae, when the owner of the item illegally confiscated it from a person who is entitled to hold it, as a result of some kind of agreement (e.g. the item that a creditor holds as collateral was taken by the debtor).

death of Sulla actually imposed the need of differentiation between the ordinary furtum and rapina, which is actually theft, but performed by using force.

As with the ordinary theft, subjects of this action could be res mobiles. The legal protection reserved for the aggrieved person (only the aggrieved person had active right to manage a dispute) was the penal lawsuit actio vi bonorum raptorum, which provided for punishment of quadruple amount of the value of the stolen item, but also proclaiming the convicted persons for infamous (dishonest). However, the uniqueness of this lawsuit consists in the possibility to obtain quadruple amount of the amount of the item was limited by a deadline in which the aggrieved person should have submitted it, that is within one year after the performance of the banditry.

However, the deadline was not preclusive. The aggrieved person that did not use his/her right before the given deadline could succeed again with the same lawsuit, but the punishment was the same as the amount of the stolen item.[49]

2.4. *Abigeatus*

According to its features, **abigeatus** is almost the same as Roman furtum. The difference is in the specification of the items that could be subject of this offence.

Contrary to the regular theft, abigeatus is about illegal confiscation of cattle from herd, barn or any other place where the kettle was placed. The number of stolen animals determines if it is a case of furtum or abigeatus, regarding the fact that in the two cases it is a matter of action of illegal confiscation of movable items, according to the sources of the Roman law.[50] Thus, the theft of horse, ox, ten sheep or five pigs was considered as abigeatus. During the abigeatus, the perpetrators were armed.

Beside this, the fact that in this case it is a matter of delictum publicum differentiates this action from the theft, due to which the punishment for abigeus was much more severe.

2.5. *Stellionatus*

Stellionatus is one of the offences in Roman law for which it is very difficult to give precise definition, since there is no such example in the sources of the Roman law. The definition of the term of this offence always comes down to enumeration of certain cases that could be considered as stellionatus.[51]

For these reasons, often the definition of stellionatus comes down to the fact that it is an offence which cannot be considered to fall

[49]See: Ivo Puhan, Mirjana Polenak – Akjimovska op.cit; Goce Naumovski op.cit 325; Adolf Berger, op.cit. 667.

[50]D.47.14 ; D. 47.14. 3.

[51]It must be mentioned that the sources talk about concrete cases that are included into stellionatus. It does not mean that they are given numerus clauses, i.e. their number and types are not given in advance. Replacement of items by deception, false oath that the pledged item is in ownership by the pledger etc. are given as examples.

under some other offence (si alium crimen non sit), whereupon the offensive action involves some kind of fraud.[52]

In addition, in case of this offence, the lack of precise definition allows the enumeration of certain illegal actions such as malice, stealth (caliditas), false representation (imposture), false oath (perjury) etc., which often occur in the trade relations between the subjects.

According to the manner of sanctioning this illegal action, it is a matter of delicta privata, but the decision on whether there will be criminal procedure for the performed stellionatus belonged to the praefecrus urbi, the magistrate who was authorised for this type of cases.

If there was an estimation that it is stellionatus as crimen, the amount of the imposed punishment depended on the social status of the perpetrator.[53]

2.6. *Damnum iniuria datum*

The fact that the offender does not realise property gain differentiates **damnum iniuria datum** from all previous offences.

The genesis of this offence shows that it is a separation of part of the contents of the old Roman offence iniuria[54] into a new one, damnum iniuria datum, with the meaning of damage of material goods, whereupon the offender did not realise some kind of property gain. Often, in literature this manner is also called cause or compensation of "aquillan damage".

In order that the performance of this illegal action is considered damnum iniuria datum, the requirement that the damage is made on other physical items and the offence consists of positive action, performance (delicta in commissione) must have been met.[55]

In terms of the manner of protection, the aggrieved person was able to use actio legis aquiliae, civil lawsuit for compensation of damages, which originally provided compensation for caused damage in the amount of the highest value of the item during the last year or month. The judgment had double value when the offender groundlessly denied the performance of the offence.

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[52]Adolf Berger, op. cit. 715; Goce Naumovski, 'Основните институти на римското кривично право', *Зборник на Правниот факултет „Јустинијан Први"-Скопје во чест на Ѓорѓи Марјановиќ* (Скопје: Правен факултет, 2011) 326.

[53]Ibid.

[54]Namely, according to Lex Aquillia de damno dated 287 B.C. where the principle of compensation of damages was, in general way, introduced for the first time, thus avoiding the cause solving of the cases for compensation of damages. This is considered as significant benefit from the Roman law, the offence from the strict Roman law, iniuria is divided into damnum iniuria datum as damage of someone else's material goods and offence iniuria meaning damage of someone else's immaterial (personal) goods.

[55]Determining in this way the contours of the offence, it seems that the former legislator specified the contours of the modern notion of criminal act with much sense of reality. See: Никола Тупанчески, 'Казненоправните институти на римското право-составен дел од современото казнено право', *Зборник на трудови од меѓународен симпозиум„Современото прао, правната наука и Јустинијановото законодавство,* том II, Скопје: Правен факултет „Јустинијан Први, 2004) 518.

In terms of the offender's degree of guilt, at the beginning the principle of objective liability was sufficient condition for this lawsuit to be successful. Later, offender's degree of quilt (culpa) was taken into consideration, whereupon even the smallest negligence was enough (levissima culpa).

Besides this, at the beginning only the directly caused damage and compensation in the amount of the item's value (damnum emergens) was taken into consideration, whereas later indirectly caused damage (via actio utilis) was also acknowledged, as well as calculation of all the damage which should be compensated (omne damnum= damnum emergens+lucrum cessans).[56]

In terms of the active right for this kind of dispute, in any case it belonged to the aggrieved person (owner of the damaged item), but Praetorian law also gives this opportunity to the bonae fidei, ususfructarius, as well as the pledge creditor at pignus.[57]

2.7 *Plagium*

The offence **plagium** or **crimen legis Fabiae** is sanctioned by Lex Fabia (adopted probably around the second or first century B.C.). The above mentioned law actually refers to kidnapping, limitation of freedom of free person or persuading a slave to leave the master.[58]

In one sense, this offence is closer to "the illegal deprivation of liberty" and in this sense, the offence covered illegal action of sale of free person as a slave or giving this person as dowry. Constitutive element of this offence was dolus malus of the seller, but also the buyer of the free person, who acted as if the person was a slave, although they were familiar with the opposite.

The person who assisted this action (accomplice) could also be considered as responsible.[59]

The sanctions provided for plagium were strict. Diocletian even provided for a death sentence for such offence.

It is interesting that the offender plagiaries, as a concept, is found in the epigrams of Marcus Valerius Martialis, as "the one who falsely represents himself as an author of certain book", which is today's meaning of the term plagiarist.[60]

Conclusion

This brief paper is only a drop in the ocean of the universal ideas of Roman law, which pose a challenge for deeper analysis with their relevance in the contemporary legal science. It seems that it is difficult to seek appropriate words to reflect most authentically the great contribution of the "jurist's laboratory" for the legal science in general.

In this regard, holding our attention specifically to the area of Roman criminal law, we especially emphasize the fact that a superficial analysis shows an explicit "slowdown" in comparison to the area of the civil law, conditioned primarily by the social relations.

[56]Žika Bujuklič, op. cit, 100.
[57]Ibid.
[58]Adolf Berger, op.cit 552.
[59]Ibid.
[60]Goce Naumovski. op.cit. 326.

Nevertheless, although we cannot discuss about a reflected concept, as in the case of civil law, we cannot either close our eyes before the fact that the criminal law, left as a legacy of the grandiose Rome, has its own contribution in the ideological conception, as well as the development of the institutes of the modern criminal law.

We end the generalized conclusion of this short review emphasizing the need for deeper analysis of the Roman criminal law, which will offer a wide range of criminal and legal institutes and which will have their future development in the modern criminal systems.

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