Diritto @ Storia si avvale di molteplici modalità e strumenti della comunicazione multimediale (ipertesti, video, audio etc.); tali strumenti possono essere proposti ed usati dagli autori per i loro contributi e per le loro segnalazioni. Continuando la "politica editoriale" di Open Access to Knowledge in the Sciences and Humanities, tutti i file pubblicati on-line in Diritto @ Storia, siano essi ipertesti in formato html, o video o audio, saranno accessibili gratuitamente in edizione integrale, senza alcuna restrizione, né registrazione preventiva.

Quaderno edito con il contributo di:

Dipartimento di Giurisprudenza
TRADIZIONE ROMANA

Per la pubblicazione degli articoli della sezione “Tradizione Romana” si è applicato, in maniera rigorosa, il procedimento di peer review. Ogni articolo è stato valutato positivamente da due referees, che hanno operato con il sistema del double-blind.

Magistratus

BRONISŁAW SITK – University of Social Sciences and Humanities Warsaw-Poland

Est... proprium munus magistratus... servare leges.... Responsibility of magistratus due to iniuria


ANNA TARWACKA - Wydział Prawa i Administracji UKSW Warszawa

Come vendicarsi dei censori? Scontri politici e responsabilità penale dei guardiani della morale


Tabulae testamentarie

FRANCESCA SCOTTI – Università Cattolica del Sacro Cuore di Milano

La pluralità di tabulae testamentarie: fonti letterarie e casistica giurisprudenziale

Abstract: In the classical age Romans were very concerned with preparing wills, which explains why a number of sources show the use among Roman testators of keeping their wills constantly updated by preparing new ones or adding codicils to those that had already been performed. The purpose of this essay is to gather literary sources on this topic and jurisprudential problematic texts concerning the exhibitio and opening of the tablets, the grant of bonorum possesso secundum tabulas, the interpretation and the revocation of the will.
Illuminismo & Diritto romano

SILVIA SCHIAVO – Università di Ferrara

Cesare Beccaria, la tortura e i “romani legislatori”

Abstract: In Cesare Beccaria’s On Crimes and Punishments the chapter on torture, one of the most famous of the book, contains a significant recall of Roman law. The author refers to ancient experience to strengthen his arguments against torture. The article explores the use of Roman law done by Beccaria, especially with regard to the controversial relationship between torture and veritas. In particular, through the reading of some sources (including texts of D. 48.18 De quaestionibus), it is intended to demonstrate how this relationship appears overly simplified in Beccaria’s point of view.

GIORGIA MARAGNO – Università di Ferrara

Voltaire, un rescrìtto di Antonino Caracalla in tema di suicidio e il divieto canonistico di sepoltura

Abstract: This article offers a detailed reading of the nineteenth paragraph (Du suicide) of Voltaire’s Commentaire sur le livre des délits et des peines, with specific emphasis on its references to Roman Law and Canon Law. Voltaire’s quote from an imperial rescript concerning the goods of a man who committed suicide (C. 9.50.1), as well as his mention of the canonistic interdiction of Christian burial, when critically examined, show their nature of ‘half-truths’. The urgent need to decriminalize suicide seems to overpower the historical and philological accuracy of his remarks.

Aspetti giuridici del tardoantico

CRISTIANA M.A. RINOLFI – Università di Sassari

Normativa primaria e normativa secondaria in materia di zygostatai


PIETRO PAOLO ONIDA – Università di Sassari

Il matrimonio dei militari in età postclassica
BRONISŁAW SITEK  
SWPS - University of Social Sciences and Humanities in Warsaw (Poland)

Est... proprium munus magistratus... servare leges...[1]. Responsibility of magistratus due to iniuria


1. – Introduction

Quite schematic and stereotypical presentation of the history of ancient Rome, fomented with the admixture of sensationalism, has its origin in ancient literature and modern media, especially in cinema. However, these are largely false information geared to attract the viewer or reader. Meanwhile, the concept of the Roman state and its institutions, for over fourteen centuries of its existence, undergone far-reaching transformations, which were closely linked to political, social and economic changes. Basically, there are two models of organization of the state. The first state model has evolved during the Republican, and a nation - populus was his designate. The second state model was developed in the principate and the dominate times with the central figure of the emperor and as a consequence of it, with the highly centralized bureaucratic apparatus. In this second model the emperor was designate of the state[2].

Depending on the organizational model of the state, the ideal of official has been shaped. Therefore, it was different during the Republic period and the different during the principate and dominate period. Also, in both political models, the responsibility of officials for actions contrary to law looked differently. This responsibility could have criminal or civil character. In this study, consideration will be limited to the second one (civil responsibility), which essentially materialized in actions falling within the scope under the concept iniuria.

Today in Poland, the official may incur civil, criminal or disciplinary liability. In addition, persons holding the highest positions in the country, such as the President of the Republic, the Prime Minister, members of the Council of Ministers, deputies and senators, in accordance with article 198,
paragraph 1 and 2, bear criminal liability before the State Tribunal during exercising of their office, and at its dissolution[3].

2. – Two models of the Roman Empire - similar functioning of the magistrate

Regardless of the model of the Roman State, the magistrature should have been guided by similar ethical principles, especially, however, it was required to comply with the law. Cicero, in one of his works, which he wrote in 44 BC., De officiis, outlined the ideals of behaviour which should be characterized by magistratus in the republican period. Arpinata writing this work, was an elderly man, being 62 years old. Thus, he had a lot of experience, which won holding numerous state offices, including such as the office of Treasurer (76 BC), Aedile (69 BC), Praetor (67 BC) and Consul (63 BC). In 51 BC, he was nominated as the governor of the province of Cilicia. In addition, he gained the experience practicing as an orator or defender in lawsuits and writing philosophical works.

A number of preserved speeches of Cicero refers to politicians, and has its source in the system of values typical of Stoic philosophy, which Arpinata was a representative[4].

In the first part of the work De officiis Cicero presented the issues related to the dignity of Republican magistrate, having its origin in the fact of exercising the public offices. Magistratus performing public tasks should be extremely sensitive to the system of values universally accepted and grounded in tradition and law. In particular, magistratus should identify himself with the state.

Cic. de off. 1.124: Est igitur proprium munus magistratus intelligere se gerere personam civitatis debereque eius dignitatem et decus sustinere, servare leges, iura discribere, ea fidei suae commissa meminisse.

This passage contains two groups of problems that require explanation. The first is related to specifying the general nature of the relationships that exist between the Roman magistrature and the state understood as an abstract creation, based on political institutions built on the basis of certain philosophical ideas, appropriate for a given period. For Arpinata, the state in the period of the republic is a gathering of all citizens, for which the law is a bonding element[5]. Hence, the appropriate, or legal and constitutionally justified were only those actions of magistratus which were aimed at the realization of the common good.

According to Cicero, the duty (munus) of each magistratus was acting (gerere) on behalf of the state, which represents - in personam civitatis. This term was later applied to Catholic doctrine, where the priest as an "officer" of the Church, acts in personam Christi. Coming back to the text of Cicero, the Roman magistrature should not perform public duties for personal benefit or for the benefit of their own political group.

In the second group of problems written in the analysed text, there are the examples of indications which should guide the actions done by the officials. According to Cicero, magistratus should perform their tasks with
seriousness and dignity. The dictionary concept of *dignitas* means: deference due to office, human value, honesty or honour[6]. According to Cicero, *dignitas* is a feature that should characterize the men (*De off.* 130), especially those taking sits in offices. The external expression of this was; the neat clothes, mastery over words and actions, the compliance with the prohibition of acting in the theatre or participating in wrestling. The dignity of the Roman magistrate, therefore, should be also seen outside.

Another principle that should guide the Roman magistrature was to uphold the law - *servare leges*. The verb *servo*, *servare* means to keep, to maintain, to protect or eventually to preserve. It is therefore considered that Cicero wanted to express the idea that *magistratus* should have to take care of this, that the law was respected not only by the citizens, but they were bound by the law.

Finally, Cicero stated that *magistratus* were entitled to the determination of the law of others – *iura describere*. In this case, it should be considered, rather, that Arpinata referred to the subjective law designated by law and decisions of public officials. In all of their activities *magistratus* should be guided by honesty[7].

Clarifying socially expected behaviours of Roman magistrate was also continued during the principate and dominate period. In both forms of the political systems, the finished up with the republican form of organization of the state apparatus, including the election of *magistratus* to the certain offices. In the new system, the officials were appointed by the emperor or by his senior officials. The scope of their competence was determined in issued on this occasion constitutions (*mandata*)[8].

The preserved sources of law showed that *magistratus* of the principate and dominate period should be guided by certain principles, including the rule that they should not accept the gifts. This prohibition was mainly directed to the provincial governors[9], who also should not be too close with local people or commoners in Rome. While performing the duties of judge, the governors should control their emotions, and so they could not explode with anger, or the should not be moved to tears as a result of requests or the stories of the victims. A judge’s and consequently *magistratus* face could not reveal his thoughts or intentions. The opposite behaviour was regarded as a sign of disrespect for the dignity of held office [10].

Violating or failure to comply with the law by *magistratus* in the classical or postclassical period could give rise to civil or even criminal liability, under *iniuria*. It is difficult to traced the beginnings of responsibility of *magistratus* in the postclassical institutions *defensor civitatis*. The primary task of the citizens’ defender was to protect them from the abuse of officials who bear responsibility rather criminal than civil[11].

The rules of procedure, by which the government officials in ancient Rome were guided, is not too distant from the contemporary legal regulations or from the social expectations. Although, the change, taking place today, in the concept of the state or in the concept of equality of all people, regardless of gender should be considered and included. The rules of officials’ behaviour today are written in the codes of good ethics for public administration. This, in turn, has its embedding in the human right to good administration. The official should act not only in accordance with the
substantive and procedural law, but also should consider the interests of an applicant. Hence, it is said today about the service or even partner functions of the administration. In modern doctrine, we emphasize not only the dignity of the office, and official, but also the dignity of the person. The officials should be ethically motivated. However, the source of the principles of ethical conduct and accountability of public officials is the law, starting from the constitution of the country, the international law, or the acts relating to individual professional groups. Currently, the most widely accepted is the Anglo-Saxon doctrine describe as the good governance.

The violation of ethical principles by officials may give rise to disciplinary sanction even to the expulsion from civil service. In case of violation of the law in Poland, the official can answer on the basis of the Civil Code (article 415 and the following of the Civil Code.), the Labour Code (article 114), professional acts (Police Act - articles 132-147) or criminal regulation. In addition, officials are liable to property on the basis of the Act of 20th January 2011 on the financial liability of public officials for serious violation of the law[12].

3. – Legal basis obliging megastructure to obey the law

The legal basis for compliance with the law by the magistrature of Rome was the awareness of subordination to the law, which was widely believed at the end of the republic. Cicero wrote that *Legum ministri magistratus, legum interpretès iudices, legum denique idcirco omnes servi sumus ut liberi esse possimus*[13]. In addition, Livius stated that: *Liberi iam hinc populi Romani res pace belloque gestas, annuos magistratus, imperiaque legum potentiora quam hominum peragam*[14]. Both cited texts quite clearly show the officer’s obligation to observe the law. The law is seen as being independent from politics or economy. It has a value in itself and it is autonomous.

The commitment to comply with the law by the Roman magistrature primarily due to the submission of an oath by central and municipal *magistratus*. There were two types of oath. The first is *iusiurandum in leges*. It was summited by elects after their election, and just before taking an office. Such an oath was submitted also by the municipal officials. Without the oath, one could not hold the office for more than five days - *magistratum autem plus quinque dies, nisi qui iurasset in leges, non licebat gerere*[15].

According to G.I. Luzzatto, the obligation to take an oath by *magistratus* showed up in *lex agraria* of 111 BC[16], and then in *lex Servilia Glauciae* (101/100 BC). This was due to the increasing number of processes *de repetundis* against the fraud done by provincial governors and the need to shift the burden of decision-making power of the Senate to the Roman magistrature[17]. Earlier, the obligation of taking the oath rested on senators. Normatively, this obligation appeared in the later regulations of the classical period, especially in the municipal laws[18].

Taking the oath by senators and some of the *magistratus* was also practiced when exercised the authority, namely, the oath had to be taken after the adoption of a specific act - *iusiurandum in legum*, requiring them to obey the Acts adopted at the meeting of Plebeian Council, or the oath had
to be taken at the end of exercised authority, confirming the that in their actions they were guided by the law - *aeque foedum certamen inquinandi famam alterius cum suae famae damno factum est exitu censurae. Cum in leges iurasset C. Claudius et in aerarium escendisset, inter nomina eorum quos aerarios relinquebat dedit collegae nomen*\[19\].

4. – *Iniuria as a form of action of Roman magistrate contra legem*

*Iniuria* was one of the torts of the civil law, next to *furtum, rapina, damnum iniuria datum*, which born civil liability on the basis of *actio iniuriarum*\[20\]. The Act of XII tables VIII. 3 and 4, iniuria concept materialized by unlawful injury of the free man or a slave\[21\]. Over time, other activities were classified as this term, therefore, the term *iniuria* was quite capacious in content.

In *Pauli Sententiae* 5.4.1 this term was defined as:

*Iniuriam patimur aut in corpus aut extra corpus: in corpus verberibus et illatione stupri, extra corpus conviciis et famosis libellis, quod ex adfectu uniuscuiusque patientis et facientis aestimatur.*

Further clarifying of the meaning of the term *iniuria* may be found in the text written by Ulpian.

D. 47.10.1 pr. (Ulp. 67 *ad ed. *): Iniuria ex eo dicta est, quod non iure fiat: omne enim, quod non iure fit, iniuria fieri dicitur. Hoc generaliter. Specialiter autem iniuria dicitur contumelia. Interdum iniuriae appellatione damnum culpa datum significatur, ut in lege Aquilia dicere solemus: interdum iniquitatem iniuriam dicimus, nam cum quis inique vel iniuste sententiam dixit, iniuriam ex eo dictam, quod iure et iustitia caret, quasi non iuriam, contumeliam autem a contemnendo.

At the beginning of the Ulpian’s text, there is the definition of *iniuria* using rhetorical figure called chiasmus. *Definiendum* in this definition is the word *iniuria*, and as *definiens* there is *non iure*. According to this definition, the term *iniuria* includes all events, which are characterized by their illegality. In accordance with the principle of mentioned rhetorical figure, in the second part of the first sentence, we have to deal with the inversion. The result of which is that *definiendum* is an expression *non iure*, and as *definiens* was used the expression *iniuria*. In both cases, the linker is *quod*. This kind of definition is called by Ulpian as *generaliter*, that is, as a general definition aimed to characterize the whole defined phenomenon without going into specification. Both definitions show that *iniuria* and *ius* are the opposite terms and their designates are opposed too.

In the next part of the passage written by Ulpian, there is a partial definition (specialiter), aimed to establish the semantic relation between the term *iniuria* and terms similar in content. Each example is entered by adverb *interdum* (sometimes). The first term coinciding, but not identical with the concept *iniuria*, is *contumelia*. It comes from the verb *contemero* – *are* and it means to stain, to profane or to dishonour. According to T.
Mommsen, the term *contumelia* determined the action defaming another person. If there was no basis for filing another complaint against such action, the victim may just go with *actio iniuriarum*.[22] Next, Ulpian indicates that the term *iniuria* was used in the case of *damnum culpa datum*. According to R. Zimmermann[23], the term *damnum culpa datum* was the synonymous of the term *damnum iniuria datum*. In this case, Ulpian states that the responsibility of the perpetrator (*damnum*) based on the *lex Aquilia* could take place only if the action was caused by the perpetrator.

Next, the term *iniuria* coincides with the word *iniquitas* - wickedness. This took place at a time when the unjust judgment or decision was issued by *magistratus*. Each *magistratus*, who issued decisions in any form as the judgment or decision of an administrative nature, contrary to law, done the act which was classified as *iniuria*. The activities of *magistratus* which were against the law or against the principles of justice could not be considered as legal. The expression contained in the final part of this piece is the basis for civil liability of *magistratus* based on *actio iniuriarum*.

5. – Responsibility of *magistratus* for *iniuria*

The responsibility officials (*magistratus*) in ancient Rome was repeatedly the subject of disputes of *prudentes* or decisions in the imperial constitutions. In the case of liability of officials based on *iniuria*, the passage written by Ulpian is a primary source.

D. 47.10.32 (Ulp. libro 42 ad ed.): Nec magistratibus licet aliquid iniuriose facere. Si quid igitur per iniuriam fecerit magistratus vel quasi privatus vel fiducia magistratus, iniuriarum potest conveniri. Sed utrum posito magistratu an vero et quamdiu est in magistratu? Sed verius est, si is magistratus est, qui sine fraude in ius vocari non potest, exspectandum esse, quoad magistratu abeat. Quod et si ex minoribus magistratibus erit, id est qui sine imperio aut potestate sunt magistratus, et in ipso magistratu posse eos conveniri.

The key statement in this passage is the first sentence, in which Ulpian said that officials could not take illegal actions, which were classified as *iniuria*. The impersonal verb *licet* meaning permission for doing something was used here. However, with the addition of particles *non*, *iniuria* meant the prohibition of doing something. In this case, it can be said that *iniuria* meant behaviour of *magistratus* committing the unlawful acts, which violate the law and failing to fulfil the dignity of held office[24].

In the next sentence of this passage, there are listed possible circumstances of committing such an act. *Magistratus* could commit an act classified as *iniuria* while performing official duties, as a private individual, or commit violations of the law using the public’s trust of society[25]. In the second and third case, it was probably about an act to draw his own material or immaterial advantage by an official while performing a public task or because of their function. In this respect, the official could in fact accept financial benefits in the form of services, loans, entertainment or tasks not being in accordance with the dignity of his office, for example -

http://www.dirittoestoria.it/14/tradizione/Sitek-Responsibility-magistratus-iniuria.htm
acting as the supervisor of property belonging to the latifundium owner[26]. In these cases, the victim of proceedings done by Roman magistrate could occur actio iniuriarum against the guilty of magistratus[27].

The second issue considerate in the above text written by Ulpian is to determine the point at which it would be possible to bring an actio iniuriarum against an official due to the tort responsibility. For this purpose, this lawyer raised the question of whether it would be possible to bring an action during the performance of office or after emptying the office. The answer to this question cannot be conclusive, because Roman magistratus of the classical and postclassical period enjoyed process immunity.

D. 2.4.2 (Ulp. 5 ad ed.): In ius vocari non oportet neque consulem neque praefectum neque praetorem neque proconsulem neque ceteros magistratus, qui imperium habent, qui et coercere aliquem possunt et iubere in carcerem duci [...].

In turn, in this passage, Ulpian clearly pointed out that it was not possible to sue magistratus cum imperio during exercising by him the public functions[28]. This immunity, however, covered only civil actions, hence there was the impossibility to bring actio iniuriarum. However, in criminal matters, one could accuse the Roman magistrature also during their mandate, especially in the case of embezzlement of public money, or in the case of treason[29].

However, the question remains whether the process immunity in civil matters covered all officials, including those who did not have imperium such as the municipal officials. This question is justified in the context of the previously discussed Ulpian’s passage (D. 47.10.32). This lawyer, in the last sentence, wrote that judicial exemption covered only magistratus who had the power cum imperio aut potestate. Such powers, according to him, had only senior officials, not those who were deprived of these rights. Did Ulpian refer here to the republican division of magistratus on minores and maiores?

Taking into the consideration that this fragment comes from the late-classical period, it is difficult to equate the concept of the division of officials during the Republic period with that division to which Ulpian referred several centuries later. Rather, one should accept as justified the O. Licandro’s claim, who believed that Ulpian does not refer to republican institutional order but to the one that existed at the end of the third century[30]. The category magistratus minores counted among those officials who were in the hierarchy below the Quaestors[31], most often they were municipal officials. This group of officials was deprived of governmental authority known as imperium or potestas[32]. Confirmation of just such reasoning is in another Ulpian’s passage.

D. 9.2.29.7 (Ulp. 18 ad ed.): Magistratus municipales, si damnum iniuria dederint, posse Aquilia teneri. Nam et cum pecudes aliquis pignori cepisset et fame eas necavisset, dum non patitur te eis cibaria adferre, in factum actio danda est. Item si dum putat se ex lege capere pignus, non ex lege ceperit et res tritas corruptasque reddat, dicitur legem Aquiliam locum habere: quod dicendum est et si ex lege pignus cepit. Si quid tamen magistratus adversus resistentem
violentius fecerit, non tenebitur Aquilia: nam et cum pignori servum cepisset et ille se suspenderit, nulla datur actio.

This text refers to a possible liability of municipal officials on the basis of the *lex Aquilia* for the unlawful infliction of damage and in the time of exercising the office by them. Ulpian mentions several cases of illegal behaviour that may have taken place during the enforcement proceedings (*pignoris capio*)[33] led by decurions.

An official of lower rank could not bring charges of *iniuria* against the senior official[34].

In the light of the provisions of Polish law, the act of taking any benefit from the fact of the public administration function is treated as a clerical venality and it is punished on the basis of article 228 of the Criminal Code. Such an act is punishable by imprisonment up to 8 years[35]. Also in the codes of ethics for the government and administration, there are numerous prohibitions on reaping the benefits by officials in connection with the function, such as money, service, loans, travel, entertainment, dignity, or promises. In article 228 of the Polish Criminal Code, there is regulation about the instruction.

6. – Exemplification of the responsibility of the Roman magistrate arising from *iniuria*

Discussing the issue of civil liability of *magistratus* arising from *iniuria*, in order to illustrate this case, it will be useful to present two examples. The first one comes from the passage of Seneca the Elder from the work *Controversiae*.


Seneca described the story of a young man who disguised himself as a woman and then walked through the streets of Rome. A group of young boys kidnapped him. E. Gunderson said that the motive for their action was the purpose of sexual character[36]. Such an assumption is not confirmed in the reading of the text itself. Regardless of the motive of their actions and of what happened after the abduction, the victim during the Plebeian Council (*contio*) on the basis of *lex Iulia de vi publica* accused the captors of using violence against him - *crimen vis*. Chairman of the Plebeian Council (*contio*) did not allow, however, for bringing this indictment in front of the Plebeian Council, because men degrading their honour by pretending being the women were taking away the right to public speaking (*Impudicus contione prohibeat*). Then, the young man accused the officer of unlawful activity (*iniuria*)[37]. Today, it could be said about the violation of the human rights to court. Coming back to the history, this young man accused *magistratus* of violating the law - *rerum facit magistratum iniuriarum*. According to the victim, the official has exceeded his powers and therefore he should be held liable under *actio iniuriarum*[38].
The second example concerns the governor of the province, who had flogged a slave belonging to the citizen of the city.

D. 47.10.15.39 (Ulp. 77 ad. ed.): Unde quaerit Labeo, si magistratus municipalis servum meum loris ruperit, an possim cum eo experiri, quasi adversus bonos mores verberaverit. Et ait iudicem debere inquirere, quid facientem servum meum verberaverit: nam si honorem ornamentaque petulanter adtemptantem ceciderit, absolvendum eum.

In the above text, Ulpian refers to a situation in which a municipal magistratus (Duumvir, Aedilis or Quaestor) ordered to flog a slave belonging to the citizen of the city. Decisions, however, requires the issue of the extent to which a municipal official could order to whip a slave. The official municipal was taking the responsibility if flogging would exceed the limits established customs, but appropriate in a certain city - quasi adversus bonos mores.

D. 2.1.12 (Ulp. 18 ad ed.): Magistratibus municipalibus supplicium a servo sumere non licet, modica autem castigatio eis non est deneganda.

The municipal officials could not administrate the death penalty against the slaves. They were allowed to mete out the punishment of flogging. The issue could remain a measure of the penalty. In the event of a dispute raised by the owner of slave, the judge must take into account the customarily accepted limit of punishment - castigatio. Such punishment could be meted out to slaves when they for example disturb the public peace or committed a public indecency. However, if castigatio was to restore public order, the judge should have dismissed the complaint of the slave’s owner against the municipal officer. It should be known however, that solutions appropriate in municipia were modelled on those which existed in Rome or in the common law.

7. – Conclusion

The structure of the administrative apparatus and its powers depend largely on the type of political system. However, independent of its, the number of components are reproducible. One of them is the responsibility of officials for the performed actions. Already, in the time of ancient Rome, we could distinguish between criminal and civil liability. Such situation was present in the republic period, as well as in principate and dominate period. Today, the disciplinary responsibility is the most widely used.

The source of liability was non-compliance with the law. Regardless of the type of unlawful activities, such activities were determined as iniuria and the proceedings shall be instituted by bringing actio iniuriarum. It was not possible to bring such an action (in ius vocatio) against magistratus cum imperium. However, a lawsuit could be brought against the municipal officials, even during the exercising their public function.
Liability of *magistratus*, because of the tort involving the breaking of law, was extremely important, because *actio iniuriarum* was an instrument in the hands of the ordinary people whose interests were somehow exposed to the action of public authority. This kind of responsibility of officials was in Roman law fairly well developed, which indicates a high level of organization of the Roman administration already in the republic period.

Without the Roman achievements, it would be difficult to imagine contemporary responsibility of public administration officials. Although it has been shaped differently, however, its foundations still remain the same, especially the responsibility for acts contrary to the law. Without that, it would be difficult today to speak about the rule of law, fundamental constitutional principle enshrined, inter alia in article 2 of the Polish Constitution.

**Abstract**

Independent of the structure of the administrative apparatus some elements are repeatable. One of them is the responsibility of officials for the illegal actions. In ancient Rome, the basis for civil liability of *magistratus* was an offense of the unlawfulness the action, belonging to one of the cases - *iniuria*. The limitation was the ban on bringing *actio iniuriarum* during exercising the public function by *magistratus*. This kind of responsibility of officials was in Roman law fairly well developed, which indicates a high level of organization of the Roman administration, already in the republic period. Without the Roman achievements, it would be difficult to imagine contemporary public administration officials’ responsibility.

**Keywords:** *Iniuria, actio iniuriarum, civil responsibility of public administration officials, Roman law, magistratus.*

[Per la pubblicazione degli articoli della sezione “Tradizione Romana” si è applicato, in maniera rigorosa, il procedimento di peer review. Ogni articolo è stato valutato positivamente da due referees, che hanno operato con il sistema del double-blind]


[2] In the romanistic doctrine, we can meet with numerous studies of the concept of the state and the political system of ancient Rome. Depending on the approach to the problem, there were the historical, political systems, economic or social elaborations.


[5] The expression of such concept of State was given by Cicero in the text *De rep.* 1.38: *Est igitur, inquit Africanus, res publica res populi, populus autem non omnis hominum coetus quoquo modo congregatus, sed coetus multitudinis iuris consensu et utilitatis communione sociatus.* More about the concept of the state in the republic period see: H.

[6] As an example, it can be given a higher social positon of men then women. D. 1.9.1 pr. (Ulp. 62 ad ed.): *Putem praeferri, quia maior dignitas est in sexu virili.*


[9] D. 1.18.18 (Modest. 5 regularum): *Plebi scito continetur, ut ne quis praesisidum munus donum caperet nisi esculentum potulentumve, quod intra dies proximos prodigatur.*


[16] BRUNS, *Fontes I*, Nr. 11 = FIRA I Nr 8 ll. 41 ff.


[18] The content of the oath submitted by the consuls preserved in municipal Act *lex Iritana*. Cap. 26: *Iiviiri qui in eo municipio iuri dicundo prae*s*unt, item aediles qui in eo / municipio sunt, item quaestores qui in eo municipio sunt, eorum quis/que in diebus quinque proximis post hanc legem datam; quiue IIviri / aediles quaestores((q))ue postea ex h(ac) l(ege) creati erunt, eorum quisque in / diebus quinque proximis, ex quo IIviri aedilis quaestor esse coepe/rit, priusquam decuriones conscripti ve habeantur, iurato in con/tione per Iovem et divom Aug(ustum) et divom Claudium et divom Vespasi/anum Aug(ustum) et divom Titum Aug(ustum) et genium imp(eratoris) Caesaris Domitiani Aug(usti) deosque / Penates se, quodcumque ex h(ac) l(ege) exque re communem municipi municipi Flavii Iritani censeat, recte esse facturum, ne/que adversus h(anc) l(ege) remv comuni municipum municipi eius

http://www.dirittoestoria.it/14/tradizione/Sitek-Responsibility-magistratus-iniuria.htm
municipi faciurum scientem d(olo) m(alo), quo[s]que prohibere possit prohibiturum, neque / aiter consilium initurus neque aiter da<tu>rum neque sententiam / dicturum, quam ut ex h (ac) l(ege) ex re communim municipeius municipeius / censeat fore. Qu*si*ita non iuraverit, is HS (sestertium) X (mila) municipeius municipeius dare damnas esto, eiius<que> pecuniae dege ea pecunia municipeius / eiius municipeius qui volet, *c*uique per h(anc) l (egem) licebit, action pe<ti>rio persecutio / esto. Text lex Irnitana is given after: B. SITEK, Lex Coloniae Genetivae Iuliae seu Ursonensis i Lex Irnitana. Ustawy municypalne antycznego Rzymu. Tekst, tłumaczenie i komentarz, Poznań 2008, 193. The content of the oath was the commitment of the municipal magistrate, similarly also of the Roman magistrate to duly fulfil the provisions of the Act. The provisions of the Municipal Act also obligated to comply with the current law. Based on lex Irnitana cap. 20 Aediles and Quaestors could not act in contradiction with the laws, plebiscites, the resolutions of the Senate, edicts, decrees, constitutions of the divine Augustus, Tiberius Julius Caesar Augustus, Tiberius Claudius Caesar Augustus, Emperor Galba Caesar Augustus, Emperor Vespasian Caesar Augustus, the Emperor Titus Caesar Vespasian Augustus and emperor Domitian Caesar Augustus, the high priest, the homeland father. Also see in: Lex tab. Bantinae 1.19, lex Malacitana cap. 59, and in Plin. Paneg. 64.

[19] Liv. 29.37.11.


[24] Analogous resolution of is in It is also worth to see: Coll. 2.5.1. See: A. DĘBIŃSKI, Zbiór prawa Mośdziewowego i rzymskiego. Tekst łaciński-polski, Lublin 2011, 57.


[31] Svet. Iul. 41. Senatum supplevit, patricios adlegit, praetorium aedilium quaestorum, minorum etiam magistratum numerum ampliavit ... . This statement is not entirely true, because in this range of governmental authority were equipped among others tresviri agris dandis adsignandis iudicandis and tresviri coloniae deducendae. See: O. LICANDRO, op. cit., 85.
[32] There is the discussion in the literature on the topic of importance of *imperium* and *potestas*: D. 47.10.23. See: P. KOŁODKO, *op. cit.*, 122.

[33] The passage mentioned 5 cases of abuse of law in relation to *pignoris capio*. *Magistratus* was responsible for the whole thing taken away and its condition regardless of whether the execution was carried out *ex lege* or on a different basis. See: A. WACKE, *Der Selbstmord im römischen Recht und in der Rechtsentwicklung*, ZSS 97 (1980), 75 and following; W. LITEWSKI, *Pignus causa iudicati captum*, SDHI 40 (1974), 237 note 135; A. TORRENT, *La “iuridictio”*, 123.

[34] C. 1.40.5: *Sed ubi publica tractatur utilitas, etsi minor iudex veritatem investigaverit, nulla maiori inrogatur iniuria.*


[38] MANFREDINI, *Qui commutant feminis vestem*, RIDA 32 (1985), 266.