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JURISPRUDENCE IN ANCIENT ROME

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Abstract: *Jurisprudence would form an important formal source of law, as, in the classical age, it would become a valuable instrument and a true measure of the "jus civilae" system, which later became what the Romans had intended in the first place, namely an immutable, permanent and unchanged system of law both in regard to content and form. This is the time when the most famed legal advisers lived, veritable "wise men" of the legal system created during the 12 centuries of existence of the Roman state which was left in the conscience of universal civilization by the science of law, a universal value which influenced all subsequent systems of law.*

Key words: *jurisprudence, legal regulation, edict, constitution, jus publicae repedendendi.*

1. Jurisprudence

Among the formal sources of law, jurisprudence synthetically expresses the science of law – iuris prudentia – a term which nowadays represents the ensemble of solutions pronounced by the courts of law.

Lato sensu, legal advisers were those specialists of law who would interpret legal regulations and would transform them in such a manner, by their daily activity, as the general public would understand legal provisions.

Thus, an official interpretation of legal regulations would be achieved by applying it to the specific cases which would occur in practice.

The opinions phrased by specialty doctrine have shown that, from the point of view of Roman law, jurisprudence represents the prudents - legal advisers (Murzea, 2003, p.50), an interpretation by which law was applied, thus giving value to the legal texts which were in force.

At the end of the third century BC, the so-called – jurisperiti or juris prudentes - appear, who, as they were "the wise men of the citadel" (Sâmbrian, 2009, p.40) would provide advice regarding the manner in which legal acts must be drafted based on legal regulations, they would also lecture the citizens regarding the manner in which legal regulations must be interpreted and enforced.

It was justly stated that Roman legal advisers were mere connoisseurs (Sâmbrian, 2009, p.40) or scholars of law during the time between the second and the third century

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BC, but in fact, they were much more, as Gaius states, they were true creators of law (A.Schiavone , 1989).

In correspondence with the ages of Roman law, doctrine made a historical time table of secular jurisprudence in the old age and the pre-classical age, corresponding to royalty in the first centuries of the republic, classical jurisprudence corresponding to principality and post classical jurisprudence which corresponds to the age of dominate when we witness a decline of law.

Regardless of the historical age we consider, Roman legal advisers, by their activity, paid less attention to the factors which configure law, as they aim to extract the general principles of the positive legal system by a synthesizing elaborate approach.

Thus, as professor Cătuneană brilliantly states, legal adviser "applied a strong logic to specific or imaginary (Cătuneanu, 1924, p.63) cases", thus those principles of law formed true axioms of law.

These scholars of law would provide strong legal coating to the diverse cases which would occur in practice, from the simplest ones to the more complicated ones, by applying "a rule of law to its final consequences" (Cătuneanu, 1924, p.63).

In the old age, this activity of interpreting the legal regulations and giving them legal value in the process of applying law was achieved through the pontiffs (priests n.n) - those wise men invested by the gods with the gift of knowledge and interpretation of legal regulations, as well as the calendars of celebratory days in which justice was to be administered, as all these were a divine gift of the gods who entrusted the Romans with this gift through their sacrificers.

During this time, priests were the only ones able to know the legal provisions which would be enforced and the celebratory days in which justice was to be performed.

They also knew the way in which similar cases were previously solved, as well as the means of interpretation which were used to this purpose. As a consequence, the litigating parties needed to address "the pontifical college to be informed of the forms which needed to be met in order to resolve the most diverse legal issues" (Sâmbrian, 2009, p.40).

Within this procedural background, the head of the family would address "the citadel's wise men" in order to find solutions, in order to draft a will, to sell a certain *res mancipi*, or in order to conclude a contract of free use.

The current state of things, in which priests were the absolute masters in "the mysteries of law" a fact which would ensure their domination and influence within society lasted until their jurisprudence was secularized, along with the disclosure of the formulas, actions and the Table of Fasts in the year 301 BC by Gnaeus Flavius, a freed slave of Appius Claudius Caecus (Murzea, 2003, p.50).

All these formulas based on which justice was administered were systematized in the work called Jus civilae Flavianum.

Starting from this time, the practice by which legal advisers would provide public legal advice became more frequent.

This, in the opinion of some theoreticians of Roman law, led to the creation of a series of important legal institutions such as - emancipation, adoption in iure cesio, testament

per aes et libram, etc. (Sâmbrian, 2009, p.40).

The concept according to which any man of culture needed to have basic knowledge of law became widely spread.

The mission of the man of law was to be brilliantly defined by the great orator Cicero who stated that the legal adviser must not only know the law and the custom, but he must also have a contribution with regard to:

- *agere* – namely to state and respect the solemn forms which needed to be performed before the magistrate;
- *cavere* – namely to respect the translation form of legal acts;
- *respondere* – namely legal advice provided to the parties and the answer to their requests;
- *scribere* – namely the drafting in writing of the acts which were concluded or drafting legal books.

In regard to this last demand, we must mention, as an example, the fact that the most important legal adviser of that time Mucius Scaevola drafted 18 books grouped in a systematic treaty called – Jus civilae.

Information regarding the legal literature of this historical age was passed on in an indirect manner in the Justinian Digests which belonged to the illustrious Pomponium, a true creator of law during the time of the Republic, according to his contemporaries.

Pomponium mentions a series of legal advisers, about 20 of them according to some legal sources, among whom some were creators of legal schools or eminent professors.

Among them, Sextus Aelius Paetus Catus a legal adviser in the year 198 was one of the most important personalities, author of the famed work Tripertitio, a comment of the Law of the XII Tables, a work considered by subsequent legal advisers as ”cunabula ius” (a cradle of law) (Digeste 1.2.2.3.8). From his work “Jus Aelianum” was created, a synthesis of legal regulations and principles.

Furthermore, Pomponius mentions Manilius, Marcus Iunius Brutus and Publicos Mucius Scaevola who, in his opinion, are the founding fathers of civil law – fondatores iuris civilae (Murzea, 2003, p.54).

Specialty doctrine considers Quintus Micius Scaevola son of Publius, a legal adviser and political figure, a systematic author of law.

This legal adviser would be assassinated in the year of 82 by the followers of Marius, during the civil wars in Rome.

In his main work – Jus civilae - grouped in 18 books, Scaevola extracts, from the cases of those times, adagios and principles of law which would be classified by the theoreticians of law according to the method of legal logic.

A work which represented true progress was the one suggestively called by Scaevola – Definitiones – a work which refers „praesumtia miciana” showing “that all purchases made by the wife during marriage are the property of the husband, except for the case in which the wife proves that she acquired the goods personally and in an honest manner” (Murzea, 2003, p.54).

Given his ability and his introspective spirit, Scaevola would be one the mentors of Cicero (Pacitus, 1958, p.39).

One of the great private law creators would be Aquillus Gallus, disciple of Quintus Mucius Scaevola, the one who, in the year 66, as praetor, introduced „actio de dolo" an action by which the sale contract concluded by the use of deceiving means used by one of the parties to determine the other party to conclude the act was annulled.

He also created a new rule by which the postum grandchildren of the testator, although unknown people, can be included in the will – postumi aquilani. He was the creator of a new legal institution ,,acceptilatio,, (Pacitus, 1958, p.39) whereby debts which resulted from different acts could be paid by one single act.

An eminent professor and commentator of the Law of the 12 Tables was Servius Sulpicius Rufus, who according to his contemporaries was famous by the eloquence of his lectures referencing civil law principles.

From the same category of illustrious legal advisers, we must mention Alfensus Varus, author of the law manual "Digesta" which comprised 40 books (Sâmbrian, 2009, p.42).

The classical age would represent the golden age of civil law, an age in which about 70 remarkable legal advisers lived, who became famous and were grouped within two renowned law schools which flourished during the reign of the emperor Tiberius.

These schools were founded by Marcus Antutius Labeo, of republican orientation and Caius Ateius Capito, an opportunist according to Tacitus.

The first one created the Proculian school named after one of its leading legal advisers - Proculius - while the second one created the Sabin or Cassius' school.

If the jurisprudence of the remote past had an empirical character based mainly on the cases it solved, in the classical age jurisprudence acquired a scientific character.

The element which differentiates the two schools is the legal technique. The Proculian school is much more innovative and is mainly based on legal concepts and categories as opposed to social experience, whereas the Sabin school rarely and accidentally uses technical procedures, which are ignored.

Doctrine mentions that in the Proculian school, legal technique is a means to achieve the designated purpose, whereas for the Sabin school - technique was the means to keep the position acquired by the vestiture of the empire (Murzea, 2003, p.53).

The historical period beginning with the reign of emperor Aurelius and lasting until the third century AD would represent a time of great creativity for civil law, which led to a laborious activity of the prudents who would become famous not only by exceptional works but also by their specific „respondere" or „cavere" activities.

Thus, classical legal advisers did not limit themselves to solving certain cases, but they also combined and reevaluated previous solutions by introducing, by means of jurisprudence, new forms of expression of law, thus achieving a renewal of „jus civilae" and creating new rules of law (Molcuț, Oancea, 1993, p.48).

Responsa prudentium formed a formal source of law, thus the most renowned legal advisers were consulted by the citizens in various areas of activity which were connected to the legal circuit.

The excellence of these "wise men of Roman civil law" was so exquisite as numerous similar cases were sought, thus creating a universal rule of law which would apply to all these cases and similar ones.

This was the means by which a rule of law would be acknowledged as such only if it provided solutions for all imaginable cases.

Given the fact that the role of the prudents would become more important in the public life, it will cause a conflict with the imperial image and politics, as the emperor would occupy the central role, thus determining Augustus to limit the activity to only a few legal advisers which were subordinated to him (Murzea, 2003, p.53).

The legal advisers of the classical age were the measure of the science of Roman law, as by their activity they made private law an ideal instrument to regulate legal provisions within a market based economy, a fact which caused the system „jus civilae" to reach its purpose, namely that of being eternal in content and form, a fact which was certified nowadays by the great influence of the Roman regulations on modern laws.

In the classical age, exceptional legal advisers became famous - Caius Cassius Longinius disciple of Sabinus, a remarkable legal adviser, as the Sabin school was also known as the school of Cassius.

Reference was made to the illustrious legal adviser Salvius Iulianus whose name is connected to the systematization of the praetor's edict as a result of the order of emperor Hadrianus.

Gaius, the one who would draft a valuable treaty of law called "Institutiones" in which the case method was replaced with the systemic one, according to which the subject matter is structured into three parties - people, goods and actions. Also, as a result of his systemic vision, civil law became common with the Praetorian law.

Pomponius is the one who left us a history of Roman law which came to us through Justinian's "Digests"; he would be considered the most illustrious legal adviser of the classical age – primus omnius - Aemilius Papinianus, who lived at the end of the second century AD.

During the reign of Septimius, Severus is the "praefectus praetoria", a function which requires excellent moral qualities which would cause his end, as he was unable to motivate the murder of Geta committed by Carcalla in the year 212, a deed which he qualified as reprehensible.

He would draft a manual of legal practice called "Qustiones" formed of 37 books, a comprise or legal consultations called „Responsa" consisting of 19 books and a compendium of law called "Definitiones" formed of 2 books.

G.Iulius Paulus whose vast work comprises 86 works among which ,,Libri ad Edictum", ,,Libri ad Sabinium", ,,Questiones" and ,,Responsa" are the most famous ones which would be used by Justinian in the "Digests", N. Domitius Ulpianus author of 81 books systematized in ,,Ad Edictum,, and ,,Ad Sabinum,, which contained 51 books; a work which would be partly used by Justinian's commissars in the drafting of the "Digests" (Sâmbrian, 2009, p.42).

I. Herennius Modestinus, a student and disciple of Ulpian, thought to be the last coryphaeus of the classical legal thinking, the author of the famed "law of quotations" as well as of a certain matrimonial monograph or the statute of limitation of punishments with editions in Latin and Greek.

In conclusion, the works of the legal advisers of the classical age are classified in:

– Institutiones – elementary works addressed to students and the general audience;
– Sententiae (opiniones) – existentially works which contained legal practice;
– Questiones (dispulationes) – using the case practice in theoretical constructions with a formative role;
– Epistulae – letters with legal motivation;
– Notae – appreciations and critical references to the classic works;
– ,,Ad edictum,, comments - opinions regarding the edicts of the main judiciary magistrates (praetors, edili curuli or governors of provinces);
– Digests – genuine legal encyclopedias which contain both civil and Praetorian legal regulations, formed of multiple books, included into the content of a papyrus (Murzea, 2003, p.53).

2. Instead of a Conclusion

After the classical age, the flourishing age of the civil law was followed by the post classical age which brings along the Domination regime leading to the demise of the Roman society and the system of law with direct resonance over jurisprudence which came to an end and has become a formal source of law.

During this time, the work of legal advisers had a profoundly dogmatic character and it was limited to copying texts of the classical age and changing them in order to solve cases which occurred in the legal circuit.

The work of legal advisers of the post classical age would be limited to creating compilations with the role of systematizing the works of the classics by drafting treaties which contained the texts of famed authors of the principate.

The decline of law and jurisprudence led to the practice of quoting, before the judges, of classical texts meant to influence the solution that would be pronounced; the quotations were inexact and presented with omissions or were even forged. In this context, the Emperor Valentin the third, in the year 426 Ad, drafted the "Law of quotations", (Bruhl, 1957, p.10) a law which confirms the authority of the works of famed legal advisers of the classical age such as Papinian, Paul Ulpian, Gaius, Modestin.

Thus, neither the parties nor the lawyers could invoke other legal advisers in motivating their demands. It was mentioned that the opinion of other legal advisers could be invoked before the court provided their works had been quoted by one of the five advisers and the manuscripts were compared (colatis codicum).

In case there was divergence between the five, the majority would decide and in case of equality the opinion of Paprinian would win; in the absence of his opinion, the judge was free to agree to any of the opinions which were expressed.

The law contained in the Constitution of Valentin the third would remain in force for a century until it was abolished by the emperor Justinian (Gaudemont, 1963, p.747).

Along with Justinian's law, the scholars ceased to use the theoretical considerations referring to Roman law, as from that time onwards both the state and the law would be under the Byzantium (Greek) influence.

A moment which preceded the process of the Greek influence over the Roman society and subsequently the extinction of the Roman state would represent what specialty doctrine called the pre-Justinian codifying procedure.

The procedure represented an ample process of systematization of the vast legal material, namely ancient and classical age literature and the process of codifying the numerous imperial constitutions which used new methods and techniques, constructions and legal institutions which were the true factors which configured the law specific to those times and were reflected in the legal regulations of that age.

This impressive legal material was meant to be valorized and aimed to preserve the work of the Romans, as well as to pass along the extremely valuable legal arsenal which the Roman legal advisers left for posterity.

This caused the rebirth of the collections of legal texts generically called "leges" as well as the appearance of elaborate works which belonged to illustrious Roman legal advisers called "Jus".

Nowadays, the researchers of the history of Roman law would define three types of collections - collection of "leges", collection of „ius" and mixed collections formed of ,,leges,, and ,,ius,, (Murzea, 2003, p.55).

From the first collection, we identify codes such as Codex Gregorianus drafted at the end of the third century by the legal adviser Gregorius, who would systematize the imperial constitutions given between the years 196 and 291 (Lancon, 2003, p.72).

Codex Hermogenianus which represents a private synthesis, drafted by Hermogenian who synthesizes imperial constitutions until the year 320 and Codex Theodasianus, an official collection as opposed to the first two, achieved at the order of the emperor Theodosius the second who ruled the Eastern Roman empire.

The work was elaborated by a commission of legal advisers led by Antiochius and published in the year 438 in Constantinople (Sâmbrian, 2009, p.46).

It would be later passed on to the emperor Valentin the third (425 - 459) who adopted it as a unified code for the entire Roman society on January 1st, 439.

Thus, the premise of the legislative unification between the two Roman civilizations was created and the passing from "the Roman civilization to the Christian civilization" was achieved (Sâmbrian, 2009, p.46).

The work consists of 16 books with the tendency of adapting the new laws to the new social realities.

From the category of ius, certain works of illustrious Roman legal advisers were valorized in the activity of interpreting law and even in the activity of creating law, as the law of quotations passed during the reign of Valentin and Theodosius would certify the work of Roman legal advisers Papinian and Ulpian – Fragmento Vaticana Collatio Mosaicorum et Romanorum and the Siro-Roman book.

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