ACTA PILATI, BETWEEN LAW, MORALS, AND RELIGION

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Abstract: Starting with the very origin of man's nature as a base for human rights, we suggest one of the controversial actions of ancient times, as a debate and analysis subject, respectively, Pilat of Pont's action of „washing his hands" as a gesture of detaching himself judging-wise, and, eventually, sentencing the one whom he believed had wronged the Roman state.

In this piece of writing, we will analyze, with reference to morals and religion, Pilat's role as an official of the Roman state from a judiciary point of view. This role had to do with investing the governor with judging a case and the overall procedure he was to follow in the case of certain important procedures, to send information to the emperor who, at that time, was Tiberius Caesar Augustus.

We believe that focusing on this subject may spark interest through the method of analysis that we took up. We do not intend to make an analysis of the rules imposed by the canonic right and we won't extend the analysis to all roles that Pilat had as an official either. We will limit ourselves to the judiciary aspects of Pilat of Pont's activity in the context of Jesus's trial. Knowing them better, we can find their utility and practical applicability in humans' lives in society, but we can also understand the chosen subject better towards research for the writing here.

Regarding the research methodology, we chose the interdisciplinary analysis, focused on empirical research, so that we can then reach conclusions that help us understand the survival of these notions over the centuries, to the present day.

Keywords: *conduct norm, roman law, morals, religion, the judiciary procedure.*

Introduction

Starting with the very origin of man's nature as a base for human rights[1], we suggest one of the controversial actions of ancient times, as a debate and analysis subject, respectively, Pilat of Pont's action of "washing his hands" as a gesture of detaching himself judging-wise, and, eventually, sentencing the one whom he believed had wronged the Roman state. In this piece of writing, we will analyze, with reference to morals and religion, Pilat's role as an official of the Roman state from a judiciary point of view. This role had to do with investing the governor with judging a case and the overall procedure he was to follow in the case of certain important procedures, to send information to the emperor who, at that time, was Tiberius Caesar Augustus. We believe that focusing on this subject may spark interest through the method of analysis that we took up. We do not intend to make an analysis of the rules imposed by the canonic right and we won't extend the analysis to all roles that Pilat had as an official either. We will limit ourselves to the judiciary aspects of Pilat of Pont's activity in the context of Jesus's trial. Knowing them better, we can find their utility and practical applicability in humans' lives in society, but we can also understand the chosen subject better towards research for the writing here.

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1. The norm of conduct in antiquity. Romanian law

The actions of individuals or their conduct have always been subject to rules, whether we are talking about conduct imposed in antiquity, by the individual himself or by the crowd, family, or community of which he was a part. With the evolution of society, each of the stages of its development

1 Ioan-Gheorghe Rotaru, *Om-Demnitate-Libertate*, Cluj-Napoca, Editura Risoprint, 2019, pp. 201-215; Idem, "Religious liberty – a natural human right", in *Jurnalul Libertății de Conștiință,* Ganoune Diop, Mihnea Costoiu, Liviu-Bogdan Ciucă, Nelu Burcea (coord.), France, 2015, Editions IARSIC, Les Arsc, pp. 595-608; Idem, "Plea for Human Dignity," *Scientia Moralitas. Human Dignity - A Contemporary Perspectives,* The Scientia Moralitas Research Institute, Beltsville, MD, United States of America, 2016, Volume 1, pp. 29-43.

has brought new rules, written or unwritten, created by people and imposed on them with the support of religion, morality, or the coercive force of the community. The notion of "social value" has acquired new valences.[2]

Along with the above-mentioned rules of conduct, the legal norm has appeared, which includes some of the rules of conduct already mentioned, and sometimes joins them, in order to maintain a certain balance in society. This balance relates at least to the historical, political, economic, social and / or cultural context of societies.

In the legal field, the notion of legal norm is directly related to the notion of legal relationship, in the sense that the norm regulates the conduct of persons in the relations they have with each other or with various public or private institutions.[3]

The Romanian legal system is known as one of the most complex legal systems of all time. Roman law has demonstrated its viability by the adoption of rules, institutions, and legal procedures by the major legal systems. One of the sources of Romanian law was the law.

According to the Romans, there was an indisputable difference between law and contract, between lex and jus / ius. Roman law designated the will of the legislator by the term lex, which is not to be confused with the will of the parties at the conclusion of a civil legal act (unilateral or bilateral).

In the latter case, the will of the parties was censored by law / lex and by the social status of the contracting parties who were allowed or not to conclude certain legal acts (natural law / ius naturale, gens (tribes) law / ius gentium or civil law / ius civile).

As for the contract, it was based on the rights and obligations recognized or assumed by the parties to a convention, respectively. The particularity of the contracts was given by the epoch in which they were conclud-

2 Mariana Mitra, „The notion of social value in criminal law", in *Annals of „Ovidius" University of Constanta*, Law and Administrative Sciences Series, 2003, pp. 143-148.

3 Mariana Mitra, *The right to life and its legal-criminal protection*, volume of the Scientific Communications Session with the topic "Academic research at the beginning of the 21st century", Constanța, Spiru Haret University, May 10, 2008, 15th edition, Constanța, Europolis Publishing House, 2008, pp. 218-240.
Mariana (Mitra) Radu, „The right to religion and its juridical-criminal protection in Romania", in *Revista de Teologie Sfântul Apostol Andrei*, nr. 1/2009, Ovidius University Press Publishing, pp. 319-335.

ed, by the persons who concluded these bilateral (synallagmatic) legal acts, as well as by the object of each of these contracts.

Regarding the notion of norm or rule that regulates the conduct of the parties, a clarification can be made, namely, that the norm can take different forms both in Roman antiquity and today. We refer here to the notions of jus / lex, mora (customs) and fas (religious norm), as well as to the connections between them.

In this context, we find that the Romans overcame, before other ancient peoples, the uncertainty between the two types of norms, delimiting also terminologically the right by the religion. The relationship between the legal norm and the sacred (or religious) norm could presuppose the coexistence of the two types of norms, so that they are not excluded, but determine an additional effect of the legal norm.

An example, in the sense of the above, is the trial procedure that used magic-religious formulas or the trial with jurors (people who swore invoking deities), in order to establish whose side the truth is in the dispute that had to be resolved by the magistrate or judge, as the case may be - this example can be found in later epochs, but in other forms; to this day, when certain participants in the process (witnesses, experts, translators) have to take an oath before giving a statements or receiving their specialized opinion. And we refer here to the situations in which these categories of participants in the process belong to religious minorities or cohabiting nationalities.[4]

2. The trial in the time of Pilate of Pontus

2.1. The trial in ancient Rome

According to historical sources and specialized works that analyze the trial procedure in Roman law, it can be said that in ancient times, laws were non-existent, and justice was not required, but taken, the law of force put an end to any litigation. People who saw their own interests harmed had the right to use force to take revenge. In this initial phase there was no notion of „trial" in the true sense of the word. Conflicts were resolved on the basis of moral norms, norms of conduct inspired by religious motives.

4 Flavia Ghencea, Mihnea Drumea, „Implementing regulation regarding minority rights in Romania. Special overview on the legal frame of Romanian law and constitution", in *Journal of Economic Development Environment and People*, nr 2/2020, pp. 71-79.

Over time, new forms of dispute resolution emerge, such as „retaliation" or „private arbitration".

With the evolution of the Roman society, after the formation and consolidation of the Romanian slave state, mandatory rules began to appear for all members. The rules were imposed by the coercive force of the state (a phrase also taken over by the current Romanian law).

The trial in ancient Rome was based on the specific rules of civil procedure[5]. In the first part of the old Roman law, this procedure knew two characters: one religious and another formalist. The law of the XII Tables was influenced by the religious character, according to which the utterance of certain formulas could determine certain events.

The legal effect of this procedure was generated only by speaking in front of the persons, which required the presence of the litigants before the authorities. The evolution of the judicial procedure was extremely complex, with direct implications on the institutions of material law. At the same time, we notice that Roman law has known three types of processes: the public process, the private process, and the administrative process.

The first Roman procedural system is known as the „*legis actionese* procedure". According to the procedure of the *legisactiones*, the persons could capitalize their rights by using one of the five procedures established by law, respectively: *sacramentum, iudicis postulatio, condictio, manus iniectio, pignoris capio*.[6] Three of the five proceedings were *legisactiones* of the court (*sacramentum, iudicis postulatio, condictio*), which will be used only if the aim was to recognize a right in court.

The first essential aspect of the trial procedure in Ancient Rome was simplicity, along with the rigid, formalistic and sacred character, features that dominated the trial procedure for a long time. Over time, with the evolution of Romanian society, the old procedure of judging (*legislactiones*) no longer corresponded to the socio-economic needs of Romanian society becoming a brake on economic life by restricting commercial transactions in development. The change took place slowly, appearing a new trial

5 Marilena Marin, Mădălina Botină,„Ad validitatem and ad probationem forms in notice of real-estate sale", in *Proceedings of the 3nd International Conference on Law and Social Order,* (vol. II, Addleton Academic Publishers, New York), Constantza, April 25-26, 2013, Contemporary Readings, in *Law and Social Justice*, pp. 140-146.

6 Teodor Sâmbrian, *Roman Law. Principles, institutions, and famous texts*, Bucharest, "Șansa" SRL Publishing House and Press, 1994, pp. 27-28.

procedure was characterized by rigid forms corresponding to the era, respectively, the „form procedure".[7]

The two court proceedings continued to apply simultaneously, without one of them excluding the other, and they usually knew two phases: before the magistrate (in iure) and before the judge (in iudicio).

In the postclassic period, from the point of view of the periodization of Roman law, and from the point of view of the periodization of the history of ancient Rome, we are talking about the second part of the Empire, respectively, the Dominion, the third trial procedure called „extraordinary procedure" or the procedure out of the ordinary order (extra ordinem), which applied until that moment on the territory of the Roman state.

According to the new procedure, the trials were no longer judged in two stages, ie in law (*in ius*) and in fact (*in iudicio*), but were debated entirely in front of a single imperial official who was subordinated in one form or another to the central leadership. Until the sec. III AD, the extraordinary procedure was applied simultaneously with the formal one. At the end of the century, with the establishment of the absolutist imperial regime, the extraordinary procedure was the only procedure applicable on the territory of the Roman state.[8]

2.2. Judicial attributions of the governor of the Roman province during the Dominion

The rules according to which the trial took place in antiquity were different in relation to several factors, including: the law of the state that criminalized the act, the quality of the person tried, the competence of the authority that ascertains the act, judges the person and applies the sanction.

As we have shown before, the period of the Dominion, as a form of organization of the Roman state, corresponded to the extraordinary procedure, as a trial procedure. In this procedure, the emperor or the imperial official appointed / empowered by the emperor was the one who judged the process from the beginning until the pronouncement of a final sentence.

The Roman state was organized on the basis on a hierarchy both at the administrative level and at the judicial level. At the top of this hierarchy was the emperor, who also had the quality of supreme judge, who was as-

7 *Ibidem*, p. 38.

8 Andreea Rîpeanu, *Roman Law*, Bucharest, Cermaprint Publishing House, 2017, p. 136.

sisted by an auditing council (auditorium), with the role of supreme court. In the next echelon of this hierarchy were the praetorian prefects (*praefecti pretorio*)[9], who had the quality of supreme commanders of the four great regions (*praefecturae*) into which the Roman state had been divided in the Justinian age: The Orient, Illyria, Gallia, and Italia.[10]

In turn, the regions were divided into dioceses[11], headed by representatives of the prefects, known as deputies. The hierarchy continues with the governors or heads of provinces (*rectores* or *praesides provinciae*), the provinces being subdivisions of dioceses.

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All these officials exercised both administrative and judicial duties. In Rome, the place of the urban praetor is taken by the mayor of the city (praefectus urbi), who becomes the judge of the capital. The situation was similar in the provinces of the Empire, regarding the governor of the province, who acquired administrative and judicial attributions.

The topic of our research relates to the formal procedure, and the territory on which this procedure was applied was the prefecture of Orient, the diocese of Orientis, the province of Judea.

3.„Hand washing" and „disinvestment in court"

The phrase "Acta Pilati" refers to the activity that Pilate of Pontus could carry out by virtue of his status as an imperial civil servant (prefect/gover-

9 Public office different from the one we encounter nowadays - Anca Jeanina Niță,„The Prefect as Public Dignity versus The Prefect as Senior Civil Servant - a sinuous dispute", in the *Magazine „Legal Universe"*, no. 3/2021.

10 There were four prefectures (so-called Tetrarchy), which had subordinate dioceses, as follows:

- Italia, with the dioceses: Italiciana, Illyricum, Africae;
- Gallia, with the dioceses: Hispaniae, Septem provinciae, Galliarum, Britanniae;
- Illyria, with the dioceses: Macedoniae, Daciae;
- The Orient, with the dioceses: Thraciae, Pontica, Asiana, Orientis, Aegypti.

11 The diocese was a Roman region renamed after the reorganization of the Roman Empire by the emperor Diocletian in 290 AD. The dioceses were intermediate levels of government made up of several provinces and were, in turn, subordinate to the Praetorian prefectures.

nor). In his attributions, as I mentioned before, included the judgment of those who harmed the Roman state and harmed the Empire.

About Pilate of Pontus and his actions, in his capacity as prefect and governor of Judea, we find most of the information in the written historical sources of those times, including the historians Philo of Alexandria and Titus Flavius Iosephus. The information that has come to us from these historians refers, for the most part, to the trial of Jesus, on which occasion we will investigate the legal component of this process and by referring to the information provided by historical sources and limiting ourselves to our topic for our study.

In the context explained above, we will analyze the judgment of a trial in relation to the applicable norms, the classification of the committed deed and the quality of the person tried. This analysis will have two components, respectively, that of the Synedrion trial and that of the trial conducted according to the rules of Roman law.

Following the decision of the Jewish court, called the Synedrion, he considered that the statement of Jesus, who was known as the son of the blacksmith Joseph and his wife, Mary, is a false and dangerous statement for the Jewish people. Based on this reason, the sources of the time claim that the Synedrion expressed two opinions, namely: „we have a law and according to our law He must die, that he has proclaimed himself son of God", but also that „we do not we are allowed to kill anyone" (the Synedrion can impose the correctional sanctions).[12] Based on these statements, the Jews considered that the governor of the province had the power to judge and sentence Jesus to death, in the sense in which they addressed to governor.

During the period in which we are discussing, the Roman trial was conducted according to the extraordinary procedure, which consisted of four parts, namely: the accusation, the interrogation, the confession of the accused - if it existed, and the sentence. The magistrate, who was Pilate himself, had to follow exactly this procedure, listening to both the prosecution and the accused, to administer evidence to clarify the legal problem with which he was invested and to be able to establish the correct classification of the deed. It was only after all these steps that the sanction could be applied.

12 Mircea Duțu, *The Trial of Jesus*, Bucharest, Neverland Publishing House, 2017, pp. 72,78.

The trial was usually conducted in Latin, meaning that the prosecution appeared before the magistrate together with a rhetorician, who also had the quality of translator. The trial was recorded, and the record was limited to mentioning the judgment in a title (more precisely, what we now call „the operative part of the judgment" or „enforceable title"), which contained: the name of the punished, the guilt, the reason and manner of the death sentence.

Pilate, after hearing the deed for which the two bishops, Anna, and Caiaphas, brought Jesus before him, established that he was not guilty of any deed that would fall within his jurisdiction, which is why they he said to the bishops: „you take Him and judge Him according to your law". Pilate of Pontus' refusal to judge Jesus gave him a chance to survive. Only later, at the insistence of the Jewish bishops, did Pilate describe the deed of Jesus (who had declared himself king of the Jews) as a political act that could fall within his jurisdiction.

After hearing Jesus, Pilate finds that his deed is within the competence of the tetrarch of Galilee, Herod Antipas, and sends the accused to be tried by Herod Antipas. Pilate's gesture is still found nowadays, in the Romanian procedure of trial, under the name of „decline of competence". This gesture was interpreted differently by jurists, theologians, and historians, one of the opinions being that a Roman magistrate would not yield the judgment of a barbarian king as he would show weakness and distrust of himself. Moreover, according to the rules of Roman law, the accused should have been tried at the place where he was caught committing the act imputed to him.

At the same time, the trial procedure allowed the trial of the accused by the authorities at his place of birth. In this sense, because Jesus was born in Galilee, he could attract the power of his judgment by Herod Antipas (tetrarch and of Galilee). With all of the above, Jesus was not tried by Herod, and the case returned to Pilate to be settled.

Some sources of the time claim that Pontius Pilate tried to avoid condemning Jesus on the grounds that he was not convinced of his guilt. However, fearing that he would lose the public office he held, he chose to use the Easter privilege of releasing a convict at the choice of the people. There are historical sources claiming that the choice that an oppressed people could have made could not be in line with the real will of that people[13].

13 *Ibidem*, p. 84.

Regardless of the circumstances, we note that Jesus was not the chosen one of the people, in the sense that he came to be judged by Pilate.

Compared to the opinion expressed by the people, who showed solidarity with a robber, Barabbas, Pilate uses the gesture of washing his hands which had the significance of transferring the guilt of judging an innocent person to the Jewish people and their bishops. Through this gesture, Pilate dissociates himself from the crowd that demands the condemnation of Jesus to death.

The Pilate of Pontus's act of washing his hands, can also be seen in the sense of conveying the care of Jesus' judgment to the Jews and can be assimilated to the procedure of desisting or investing the judge today[14], without any of the procedures being appreciated in a pejorative sense. We also notice here that the notions, rules or norms, institutions, principles, and concepts specific to different fields[15], including those related to law, morality, and religion, have crossed the epochs, acquiring particularities according to the needs of society in each of these epochs.

Another aspect that is worth mentioning, without being analyzed in depth, is related to the suspicion of historians, jurists and theologians that Pilate's decision was not recorded according to the rules of Roman law. There are opinions according to which the type of trial to which Jesus was subjected is still debated, respectively, whether it was a Roman or a Jewish judgment[16]. Given that these issues would pave the way for other research topics, we will postpone the study of this topic in another scientific approach.

Analyzing each of the two procedures applicable in different eras, we must observe the particularities that they had, respectively:

Pontius Pilate did not want to rule on the conviction of a person who had not violated any rule of conduct or legal norm from the point

14 According to the provisions of art. 429 Cod proc. civ., after the pronouncement of the decision, the court (Romanian n.n.) disinvests itself and no judge can return to his opinion.

15 Mădălina Botină, *Informal settlements - legislative changes made in the Romanian legislation, through law, No. 151/2019, related to the European legislation and the provisions of the conventions that protect the fundamental human rights*, Supplement of Law Review - Year 2019, pp. 200-206.

16 Mircea Duțu, *Pilat din Pont, the judge of Jesus*, Bucharest, Neverland Publishing House, 2018, pp. 135-138.

of view of Roman law, initially declining the burden of judgment to the Jewish leaders who claimed that there was a violation of the rules which it involves the judgment and sanctioning of Jesus.

The judge of today, when he finds that the case is not (anymore) within his competence (since he has ruled on the issue brought before the court), will issue a decision by which he disinvest himself. This disinvestment may involve dismissing the case in favor of another court or annulling the request for summons, in the regularization stage, for non-compliance with certain conditions imposed by law in order to proceed to the trial stage of the case.

Conclusions

Knowing from the beginning of choosing the topic that it can be the subject of an extensive paper, I proceeded to study it precisely for the legal issues (and not only) that I identified. The violation of legal norms and human rights has always been an interesting, attractive topic of debate even in the conditions of differences in relation to the social category that included those who came before the judge.

We cannot dare to believe that we have touched on all the aspects that this subject can imply, nor that we have covered the whole issue of how to invest a judicial authority, regardless of the era. However, we are pleased to start a research that we want to discuss with specialists in law, religion and other fields, who consider that they are interested in this topic and that they want to express their opinion on this topic.

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