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PROTECTION OF THE POOR DURING DIOCLETIAN' S REIGN¹

Diocletian paid a great attention to legislative activities. He passed over a thousand regulations, among which a special place belongs to a rescript from 285 which has raised vivacious discussions among scientific workers. Whether this rescript was just an attempt to restrict the freedom of contracting and to establish the laesio-enormis institute, or it was just one of series of measures to protect impoverished layers and to fight against large landlords and supremacy of large estates over the central government, remains to be seen. Reading the title C.4.44 we can see that out of 18 emperors' constitutions, 14 were Diocletian's and at least 7 of them were published as rescripts at the request of peasants and land owners who turned to the emperor for help since they had to sell their land below its real price. If we take into consideration the entire Diocletian's reign, as well as a great number of measures he introduced with the aim to strengthen his empire and hinder negative trends and tendencies, we can freely say that he devoted much of his time to the struggle against arrogant large landlords and protection of the poor.

Key words: *Diocletian, freedom of contracting, laesio enormis, protection of the poor, rescript*

Diocletian paid a great attention to legislative activities. He passed over a thousand laws and regulations, among which a special place belongs to Edict on prices (*Edictum de pretiis rerum venalium*) and a rescript from 258. which has raised vivacious discussions among scientists. Whether this rescript was just an attempt to restrict the freedom of contracting and to establish the *laesio enormis* institute, or it was just one of a series of measures to protect impoverished layers and to fight against large landlords and supremacy of large estates over the central government remains to be seen.

¹ Scientific (scholarly) papers: 58 *Session de la Société Internationale "Fernand De Visscher" pour l'Histoire des Droits de l'Antiquité*, Sao Paulo-Rio de Janeiro, 2004.

This Diocletian's law, perhaps unnoticed in a multitude of his laws, lay the foundation for an important institute *laesio-enormis* (remedy over the half of the price) which was especially in great use in the middle ages and which has led to large disputes. Most of the romanists support the thesis that *laesio enormis* was introduced by Justinian.² However, avoiding this problem of interpolarization, I would like to express my view that *laesio-enormis* is the measure introduced by Diocletian.

The term *laesio-enormis* does not appear in Roman sources, but comes from the period of glossators. It refers to, so called, remedy over the half price (*ultra dimidium iusti pretii*) and both terminologically and contextually is related to the issue of *pretium iustum* from the Justinian Codex (C.4,44,2 and 8). It states that the seller of an estate may request the termination of the contract if he sold the estate for less than half of its genuine value and the buyer refused to pay the difference in the price up to the actual value of the bought estate.

The Romanists who support the opinion that *laesio enormis* is not the institute of Diocletian's law, state the view that classic Roman law left to the parties to freely determine the price of the estate which was going to be sold/bought. Even the *Digestas* contained some of the rules that proclaimed and endorsed this principle.³ However, besides these regulations in domain of private law, there were additional ones in the field of public law which introduced the measures against high prices, especially those of wheat, meat and other important articles which substantiated the basic needs of the citizens.

The *iustum pretium* idea appeared very early, during the Augustus' reign. It was affected by the entire development in Roman society. As early as then, the Roman Empire passed the laws, especially in the field of public law, aimed at protecting the interests of the lowest classes in order to, at least, alleviate, the bitter class struggle. The emperors who reigned between the 1st and 3rd century brought the codes forbidding the increase of the prices of certain goods (especially of the essential article, wheat). In a series of attempts, the most significant one, although also fruitless, was the Justinian's attempt to prevent raising of the price of wheat in Antiochia.⁴ The famous Diocletian's Edict on prices from 301 (*De pretiis rerum venalium*) served the same purpose, to

² Bounfante, *Instituzioni*, 10 izd., 490; Perezzi, *Instituzioni* II, 2 izd., 276; Arango Ruiz, *Instituzioni*, 13 izd., 339; Joes-Kunkel-Wenger, *Roemisches Recht*, 3 izd., 230; R. Monier, *Manuel de droit Romain*, II, 169; Zuleta, *The Roman Law of Sale*, Oxford, 1945, 19-20.

³ D.4,4,16,4; D. 19,2,22,3

⁴ Aunuuianus Marcellinus, XXII, 14, 1

protect the poor and soldiers. In this way the greatest persecutor of Christians (and the last one) tried to limit, under the threat of death penalty, the price of a number of basic goods and services in order to facilitate the difficult position and hardship of the poorest classes. Since none of already introduced measures gave any visible result, Diocletian made another attempt in the form of an edict on maximum prices. His intention was to prevent the disastrous consequences of enormously high inflation which had mostly affected the common people and soldiers who were the pillar of his empire. In the introductory part of the edict, Diocletian stated the reasons for its passage: the unscrupulous citizens had not realized the importance of the lesson of long years of silence.⁵ However, his intention was to prevent the affairs of those unscrupulous tradesmen who: were so heartless, without human feelings to recognize that the practice of outrageously high prices had been spreading in everyday trading so that this greed and passion for profit were not even quenched by bringing greater supplies on the market in years of good yield.⁶ By taking the advantage of existing situation: very few people became very rich so that there are even individuals whose wealth could substantiate the entire nations, and they are still running after trifles. The concern for the mankind forces us to mark the limit of the greed of such people.⁷ In order to depict the amount of greed he uses the term: *cupido furiosis*. It is obvious that high prices, market speculations and craving for quick and large earning were so big and widespread that it was absolutely essential to undertake measures to prevent and halt such wrongdoing. "This greed which has been plundering the world is difficult to describe and understand since it is furious craving for wealth which does not respect human beings and has been infinitely increasing not only year after year, but also a month after month, a day after day and an hour after hour".⁸ These justifications based on equity called for action. After some delay, Diocletian eventually intervened. Namely, such outrageous behavior forced the lawmaker and legislator to act by passing this Edict.

Although Diocletian's original aim was the protection of soldiers from unreasonably high prices, we cannot neglect the view that by protecting soldiers, he also protected the poorest classes who were also needed by the Empire.

⁵ Praef. 6.

⁶ Praef. 7-8.

⁷ Praef. 13-15.

⁸ Praef. 4.

Regardless the fact that this edict was brought after the rescript which had introduced *laesio enormis* institute, it can serve as an illustration, even as an argument supporting Diocletian's intentions to, in order to protect the interests of the poor and soldiers, abandon the standard principles of classic law. Nevertheless, some other public codes from post - classic period constituted a tendency to restrict the freedom of setting prices of essential goods, especially wheat. Since these articles came in short supplies because of very high inflation rate, it was very difficult for common people to obtain them in the market and all these measures were aimed at the regulation of such situation.

The reason for the introduction and justification of *laesio enormis* principle, as well as the adoption of the view that it is related to Diocletian's reign should be sought in social and political circumstances of this period. It is, before all, the period of acute crisis of small landowners and strengthening of large landowners (*potentiores*) who tended to swallow and turn them into colonies. Peasants, exposed to numerous pressures, were forced by existential problems to sell their land very cheaply. Reading the title C.4.44 (*De rescindenda venditioni*), we can see that out of 18 emperors' constitutions, 14 were Diocletian's and at least 7 of them were published as rescripts at the request of peasants and landowners who turned to the emperor for help since they had to sell their land below its real price. So we can conclude that the emperors intended to protect peasants preventing turning of their land into colonies. Probably they also wanted to introduce the legal means for these common people, small landowners, to remand the damage they suffered by selling the land below its actual price. The necessity for this kind of protection was imposed by social and political circumstances of this period, especially a big economic crisis in the beginning of 2nd century which Diocletian tried to halt, or at least to bring under control. This crisis reached its highest point at the time when these Diocletian's rescripts were passed. Only very dangerous situations, such as this crisis, could force the emperors, and Diocletian among them, to abandon traditional legal concept of freedom of entering agreements, which had ruled for centuries, and to pass new rules which allowed the agreements to be terminated in some cases when there was a gap between the selling price and the real value of goods. These cases involved only the situation with estates, and were always in favor of sellers. The contract could never be terminated by a buyer if the value of the estate was over the half of the price at which it was sold. Concretely, the application of this rule led to the protection of peasants who, forced by misery and poverty, sold their land cheaply for

colonies. In order to apply this rule, none of the criteria on misleading were demanded (which was the case later on in the 17th century law), that is the only criterion for applying this rule was pure objectivity.

This rule, allowing the termination of the contract when the price was below the half of the actual value of an estate, had developed and built on over the course of many centuries. When concretely applied, it protected small landowners who, forced by poverty and terrorized by large landlords, were driven into selling their land in the period when the Empire was nearing the end. It was a means aimed against feudalized landlords, and thus, one of the consequences of the crisis of a society based on the slaves' labor.

Maybe the best way of considering and interpreting the *laesio-enormis* institute is to view it as one of the series of economic and political measures undertaken by Diocletian. All his measures were aimed at strengthening and preserving of his Empire. In order to succeed in this, he had to protect impoverished classes from rich and powerful landowners whose economic and political power had grown to such an extent that it represented a threat to Empire. Although some of these Diocletian's measures, such as the tax system *capitation iugatio*, contributed to binding peasants to land, and in this way indirectly supported large landownership, at the same time, another process, quite opposite, was taking place in Roman Empire. It was the struggle of the Empire against strong landowners. Some constitutions include numerous repetitions of certain prohibitions or orders, followed by established punishments because the landowners (*potentiores*) had resisted and ignored them.⁹ Among the earliest passed measures against the powerful landlords was the one introduced by Claudius II (268-270). In their constitution from 293, related to the prohibition of patronship in civil suits, Diocletian and Maximilian rely, as they say, on the constitution of their predecessor the emperor Claudius II.¹⁰

It seems that patronship often appeared as a consequence of disputes over the land. It was customary that a weaker part}' in these disputes over the land and owned money turned for help to a more influential and richer family. In majority of cases they have to turn for help to *potentiores* whom, this weaker side very often gave up these claims in return for their assistance. The emperors decided to intervene and stop this concentration of property, and power, on the side of *potentiores*. Diocletian and

⁹ C.I, II, 13. 1; II, 14, 1 i dr.

¹⁰ C.I, II, 13. 1

Maximillian' s constitution provides a punishment (the loss in civil suit) for every person who turns to a landowner for help in solving disputes.¹¹ Since Honoris passed the constitution in 422 which regulated the same matter, it can be concluded that the previous one had not yield positive results and that the resistance of powerful *potentiores* had been extremely strong.¹² The Empire, on the other side, tried to preserve its integrity and accordingly, passed a number of regulations aimed at restricting power of *potentiores*. One of these regulations included the prohibition to keep private armed groups¹³ and private prisons.¹⁴ Another regulation forbade an individual in the status of a colonist on the magnate's land to testify in court.¹⁵

Although some of Diocletian's measures in a way favored the feudalization of society, it is obvious that Diocletian himself initiated the struggle against large landowners and feudalization in order to protect the stability of the system.

The *lesio enormis* institute was started by Diocletian. This measure fitted perfectly his general policy which was, in nature, intervention-based and directly implied in the regulation of prices, even by administrative means, and the protection of peasants and soldiers from large landowners. The period of crisis with all its consequences, including the one which made a great number of people sell their land very cheaply, must have forced this emperor to leave his original legal concept which had been in use for centuries and to adjust and interpret it to suit new situation allowing a person to terminate a contract when there is a discrepancy between a selling price and the genuine value of an estate. Although Diocletian had fought to preserve old empire with old values, life made him to accommodate to these new circumstances abandoning the old rules and adopting the new institutes, such was the instance with *laesio enormis*.

Despite these big adjustments, Diocletian was more willing to preserve the old than to change the existing order. This consideration is supported by the insight into his religious policy (prosecution of Christians, defending of old Roman politeism, etc). Even his Edict on prices was merely an attempt to maintain old relations, especially in the field of trade and economy. Some of the laws from this period which strengthened the power of large landlords, were in fact the product of social and political

¹¹ C.I, II, 13. 1

¹² C. I, II, 13.2

¹³ C. Th., IX, 14, 2; IX, 14,3.

¹⁴ C.Th., IX, 11, 1; C.I. DC, 5, 1.

¹⁵C. IV. 20. 5.

circumstances, constellation of power, binding the colonists to the land, giving the authorization to the magnates to collect taxes, etc. This clearly conservative view was reflected in numerous measures undertaken by Diocletian, and especially in the introduction of some institutes aimed at the protection of free peasants and prevention of their turning into colonists.

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ZAŠTITA SIROMAŠNIH ZA VREME VLADE DIOKLECIJANA

Summary

Zakonodavna aktivnost Dioklecijana bila je velika. Doneo je preko hiljadu zakonskih propisa, a među njima značajno mesto pripada jednom reskriptu iz 285. godine, koji je izazvao veoma žive rasprave među naučnicima. Da li se ovim reskriptom pokušala ograničiti sloboda ugovaranja i stvoriti institut laesio -enormis, ili je to još jedna u nizu mera zaštite siromašnih slojeva i borbe protiv veleposednika i predominacije veleposeda nad centralnom vlasti, ili nešto sasvim drugo? Čitajući titul C.4.44 vidimo da od tamošnjih 18 carskih konstitucija nalazimo 14 od Dioklecijana, a među ovima najmanje 7 koje su izdane kao reskripti na molbe seljaka i zemljoposjednika koji su tražili od cara pomoć, jer su morali prodati svoju zemlju ispod cene. Sagledavajući kompletnu vladavinu Dioklecijana, kao i mnoštvo njegovih mera koje su sve imale isti cilj: snaženje carstva i zaustavljanje negativnih tendencija, možemo reci da je značajno mesto zauzimala borba protiv bahatih veleposednika i zaštita siromašnih slojeva.

Ključne reči: *Dioklecijan, sloboda ugovaranja, laesio enormis, zaštita siromašnih, reskript*