
ROLE AND IMPORTANCE INTELLIGENTSIA ADMINISTRATION OF JUSTICE IN ANCIENT ROME

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Abstract: *The contribution of intelligentsia to formation and development of ancient Roman justice is shined. The great attention is given to the extralegal criteria causing specificity of justice during the specified historical period. The empirical material of article is presented by citations from the historical, philosophical and legal monuments confirming theoretical arguments of the author.*

Keywords: *intelligentsia, justice, extralegal criteria, right application, justice*

Investigation of the role and importance of the intelligentsia in the development of social and cultural institutions of the society over the years included in the perspective of different disciplines. Awareness of the nature and the social and historical values of justice are impossible without a systematic study of the periods of its development and the impact of potential intellectuals on its development.

Specified historical period chosen by the author is not accidental. It was a model of justice ancient Rome served as the basis of formation of existing judicial enforcement systems throughout the world. Distinguished by its nature and content of modern analogues, in the framework of Roman justice, thanks to the efforts of prominent intellectuals, have been formulated and proved: definitions, regulations, legal and logical structure, is still recognized by researchers all over the world as the top of the legal technology and human thought to law enforcement.

However, before proceeding to the study of the stated theme, you need to decide on the meaning of the term “intelligentsia”. Taking into account the diversity and specificity of this social phenomenon, as well as the variety of points of view about the nature and importance of intellectuals in modern domestic journalistic and scientific literature, the most reasonable, in my opinion, is the approach proposed by V. Vozilov and Y. Nazarov.

Linking the development of the intelligentsia and the corresponding development of society as a whole, the authors note that the appearance of the first intellectuals were directly dependent on the processes occurring in the early stages of human development: “separation of mental from physical labor and the emergence of social inequality”.¹ The authors point out that “if the first intellectuals (priests, military leaders, and heads of economic activity) appear in the early stages of primitive society, the intelligentsia in general as a social group formed under conditions of civilization, that is, the state of organized life.

In considering the nature of intellectual activity, it should be emphasized that the intellectual - a person indirectly or directly managing social processes on the basis of individual rationality in order to organize joint work of the people. Intelligentsia - is a social

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¹ VOZILOV, V., NAZAROV, Y. *Philosophy intelligentsia: Mind as a revolutionary force of history*. Ivanovo 2002, p. 356.

group made up of people who purposefully use your mind for setting the theoretical problems and targeting people in the solution of social problems”.²

Thus, this definition indicates the key role of the intelligentsia in the decision of such a socially significant problem as the administration of justice.

Drawing a parallel between ancient Rome and modern perceptions of the nature and significance of justice, it should be noted that at the first glance, they become apparent significant (conceptual) differences.

Taking into account not significant theoretical debate on ratios of the elements of the notion in the scientific literature refers to justice - the activities of special state bodies (courts) to hear and determine civil, criminal, and administrative or arbitration proceedings carried out in a special procedural order in strict compliance with the existing legislation.

This definition emphasizes the special importance of legal criteria, strict adherence to the courts of substantive and procedural norms of positive law. Review and resolution of the case in accordance with the established rules specifically, derogation from which is not possible under any circumstances.

A different approach to the content and spirit of the values of justice adhered to the ancient Roman society.

First of all, it should be noted that the trial for Roman citizens, regardless of the case, was highly undesirable.

In particular, the British scientist, J. Kelley, concluded that regardless of the nature and outcome of the litigation, the participants were always in the humiliating position and had to put up with a certain “loss of face”. In view of the Romans, as people are particularly sensitive to anything that could damage their reputation, sought to avoid litigation; their aversion to litigation was significantly stronger than in modern society.³

Said argument is well-founded, but it is not entirely clear why, despite the willful non-Romans to join the litigation, judicial eloquence and legal science in this period reached unprecedented perfection.

The authors believe that this discrepancy is explained quite simply. Said stereotype (loss of face in the process of the trial) was most likely characteristic of direct citizens’ eternal city „(Quirites (patricians) - the population of the city of Rome only), whereas the momentum to improve the judicial enforcement, the formation of the basic legal and logical structures occurred from Peregrine (plebeians) trying through its intellectuals (peregrin praetor, tribune of the people) to protect their rights as between themselves and the patricians.

The study of representations of ancient Roman society about the nature and meaning of justice, particular attention is drawn to the study of foreign scientists note extralegal priority criterion as a determinant of Roman justice. So, J. Kelly, M. Gleeson, E. Meyer, P. Guernsey, J.-M. David explicitly or implicitly, that “the Roman court was increasingly match reputations than investigation of the facts”.⁴

Emphasizing the agonistic character of the Roman Court, J.-M. David likens duel legal fight between the prosecutor and the defendant in *iudicia publica* (Justice for Public

² Ibid., p. 356.

³ KALLY, J. *Roman Litigation*. Oxford 1966, pp. 96–97.

⁴ GARNSEY, P. *Social Status and Legal Privilege in the Roman Empire*. Oxford 1970, p. 207.

Affairs). The outcome of this match was determined prestige (*auctoritas*) of the participants, not only the accuser and the accused, but also those who took the side of protection: *patrones* (immediate judicial defenders), *advocati* (intended or invited supporters and friends), and *laudatores* («eulogisers in person) or in *absentia* representing in court testimony in favor of the accused. Secure a conviction influential senator meant to simultaneously achieve its recognition in the civil community.⁵ Should be especially noted that these categories of defenders could include: professional lawyers, philosophers, orators, Roman knights, senators, consuls and even emperors, that the unusually extended the usual circle of intellectuals somehow related to the legal sphere.

Interesting observations and conclusions about the effects of the reputation and prestige of the Roman court can be found in the monograph of M. Pichina dedicated deputies of the emperor as supreme judge. Characterizing, extralegal factors impeding the normal stable of justice, he points out that the Romans commitment to “good morals” and „personal *dignitas*» could be in conflict with the provisions of the laws. Dominance in Roman society aristocratic value system did not recognize the equality before the law. *Haves*, considered the owners of “good manners”, claimed the right to influence the proceedings, but only to some extent. Border separating permissible in courts social pressure against unacceptable, could identify only the emperor, thereby increasing the number of appeals to the supreme court. Thus, the positive law was only one of many factors that influence on the court. The outcome of the trial was often unpredictable.⁶

Important data on the significance of the Roman *auctoritas* for justice to be found in the Roman writer and historian Suetonius Gaius Tranquillo in the biography of the Emperor Augustus. Telling of citizenship (*civilitas*) illustrious Caesar Svetovny cites the story of the trial of his close friend Noniem Asprenatom. According to the biographer, „his friends he wanted to see a strong and influential in public affairs, but with the same rights and are responsible to the same judicial laws as other citizens. (3) When a close friend was charged Nonius Asprenat Cassius north of poisoning, he said in the Senate, he should do: he was afraid that, by all accounts, if it intervenes, it will take away from the authority of the laws of the defendant, and if does not intervene, then leave and condemn the condemnation other. And with the approval of all, he spent a few hours on the witness benches, but remained silent and did not say even normal in court accused of praise.⁷

Despite the fact that Suetonius does not tell you what ended the trial of the poisoner hundred thirty people, there is little doubt in the successful outcome of the litigation.

Thus, in essence, approaches, and with a view of the ancient Roman justice and behavior of the Roman intelligentsia has one thing in common: an expose on public display, assessment and management of claims to prestige and social status.

According to E. Mayer, the main thing that was at stake in the ancient Roman trial was not material gain, and the reputation and social status of the parties, with the victory over the representative of a privileged class (senator, horseman) to strengthen the authority of

⁵ DAVIDE, J. M. *Le patronat judiciaire au dernier siècle de la République romaine*. Rome 1992, p. 656.

⁶ PEACHIN, M. *Judex vice Caesaris deputy emperors and the administration of justice during the principate*. Stuttgart 1996, pp. 65–89.

⁷ GASPAROV, M. *The Twelve Caesars. Translated from the Latin / Guy Suetonius Tranquillo*. Moscow 1993, pp. 55–56.

the winner as part of the corporation and as nonstrange positive influence on the making of decisions on subsequent litigation.⁸

For this reason, the efforts of the intelligentsia of ancient Rome were entirely focused on the gathering of evidence related to the moral character and reputation of the parties, which often have no direct relation to the circumstances of the case, could render powerless all the main evidence in the case and to predetermine the outcome of the process.

Thus, it turns out that in the process of Roman justice review and assess not act (act, omission), and all his previous judicial duel life.

Confirmation of this can be found in the speeches of the greatest representative of the Roman intelligentsia Marcus Tullius Cicero.

In his treatise “On the Orator”, assessing litigation to which the judicial orator, Cicero says that in such cases is the subject of litigation. “So, first of all, he must, whatever the case, he did not undertake to carefully and thoroughly understand them ... But here on the forum documents, certificates, contracts, agreements, obligations, kinship, property, decrees of magistrates, lawyers to enter into the whole life finally, those whose case is made out - and all it has to be dismantled ...”.⁹ The success of the speech Cicero says: “So, in order to succeed, it is very important to provide a good view of thinking, behavior, and life is the leading business and their clients, as well as to present and in a bad light of their opponents in order to attract as many judges favor, as a speaker, and the defendant. Favor deserves the dignity of man, his exploits and spotless life; All these qualities are easier to exalt, if any, than to invent, if they do not ... Even if this will be discussed only in the introduction or in the conclusion of the speech, but with feeling and a sense, it is often the story is stronger than most of the litigation analysis”.¹⁰

As part of the consideration of the application threads cannot dwell on the contribution to the development of law enforcement activities directly involved in the Roman justice: pretoria (judges) and lawyers.

Enormous influence of these intellectuals on the formation and development of the Roman law-making and enforcement activities is recognized by the entire scientific community.

They not only “worked” right in the justice process, but also create relevant, flexible legal and logical structure allowing adapting the outdated legal arsenal to the constantly changing and evolving public attitudes.

Roman Praetor (lat. praetor, from pra-ire - go ahead, to chair), as the representative of the government, endowed with a significant set of powers, ranging from 242 g to n.e.¹¹ becomes, in fact, the direction vector of the law-making and law enforcement activity.

Outstanding, Russian lawyer and jurist G. Shershenevich considering this question, writes: „since the publication of XII Tables legislative activity in Rome almost completely stopped. During the long history of the Roman people, this monument continues to be

⁸ MEYER, E. *The justice of the Roman governor and the performance of prestige*. Berlin 2006, p. 167.

⁹ GASPAROV, M. *Aesthetics: Tracts, Speeches, Letters. Translated from the Latin / Marcus Tullius Cicero*. Moscow 1994, p. 249.

¹⁰ *Ibid.*, p. 268.

¹¹ Starting the election of two Pretoria - urban praetor (Praetor urbanus), was in charge of litigation between Roman citizens and peregrine Praetor, to conduct business between Roman citizens and aliens or between strangers.

the foundation of Roman law. Meanwhile, in reality, a positive right of the Roman people for centuries managed to completely transform. This is done with the help of the Magistrate's edict.

The Constitution of Rome represented a feature that officials were not almost entirely constrained in their activities by legal norms. Praetor or aedile themselves declared in his edict, what rules they suggest guided in those cases which are not defined by law. Replaced by his predecessor, the magistrate could not stay at the same rates, if they were successful, but could not, at the direction of the experience and, in any case, in its sole discretion, to modify them, to supplement or completely cancel the ... Thus, in Rome law has developed not through legislation and quite peculiar, Magistrate practice that has been able to create a whole system of law (*jus honorarium*), which became against the laws of the XII Tables (*jus civile*) with all long formed around them practice (interpretation) »¹².

Examples of such law-making practices in the administration of justice can serve as a Roman: the introduction in 76 BC Praetor Lucullus special penalty action - *action vi bonorum raptorum* to eliminate legal gap caused by the lack of a fixed liability for robbery; introduction in 66 BC Praetor Giliusom Akuiusom infamies action - *action doli* for committing a criminal act *dolus* (fraud).¹³

Noting an invaluable contribution to the magistrates to the development of Roman justice, we should pay attention to the achievements in this area of the Roman lawyers.

According to G. Shershenevich “nowhere lawyers did not use so honorably, as in Rome. They sought advice for everyone, even the family business. Whether it was necessary to consider the effects of the proposed transaction, if you were to discuss the terms of the upcoming process of ... - all in a hurry to a lawyer”.¹⁴

Great respect and deep knowledge in the field of law, legal assistants do not only individuals, but also magistrates. If the first part was more important, the second is more significant for the purposes of justice. Wanting to bring his edict, according to developing social relations, to protect the interests of the newly emerging, Praetor could not ask for interpretation (conclusion) to the lawyer, if only he was not an outstanding lawyer.

G. Shershenevich notes that “the judge could not bow to the authoritative opinion of a respected lawyer and if it was presented to him one of the litigants. He did not dare to neglect moral authority, as all his responsibility is also based on moral principles, on which its activities on the part of public opinion ...”.¹⁵

Essential activities of lawyers for the purposes of justice lay in the fact that their invitation was not only due to the necessity to specify the law governing the controversial public relations; but also, and then to determine which rules should be applied in a particular case, based on the demands of the time.

To do this, the Roman jurists developed unique grammatical and logical methods of interpretation of legal texts (Paul Labeo, Quintus Mucius (Scaevola), legal and logical structure - fiction presumption analogy (Ulpian, Julian), extensive use of principles common to the right (*ius*) and Justice (*iustitia*).

¹² SHERSHENEVICH, G. *History of Philosophy of Law*. Moscow 1906, pp. 80–81.

¹³ MEDVEDEV, V. Development of criminal law, and the court process in ancient Rome during the Republic. *International criminal law and international justice*. 2013, No. 4, pp. 25–26.

¹⁴ SHERSHENEVICH, G. *History of Philosophy of Law*. Moscow 1906, p. 81.

¹⁵ *Ibid.*, p. 82.

The basic principles of Roman justice, in terms of legal principles were: justice (*iustitia*, *aequitas*), public benefit (*utilitas*), good faith (*bona fides*).

V. Savelyev notes in particular that "... Ulpian stresses that" justice is the knowledge of divine and human affairs, the science of the just and unjust (Dig. 1.1.1.10, 2). Agrees with him and another great lawyer Paul: "Justice (*aequitas*) in general should always be taken into consideration, but especially in the law" (Dig. 50.17.90).¹⁶

Invaluable contribution made by the representatives of the intelligentsia in the formation and development of Roman justice strikes.

Developing mainly on the basis of extra-legal criteria (prestige, social status, power), it is, nevertheless, contained in itself and a clear understanding of justice, and taking into account the rapidly developing social relations and respect for the opinions of experts.

A feat of human thought, the experience of the Roman intelligentsia will remain forever in the history and the minds of people.

¹⁶ SAVELYEV, V. Legal technique Roman law of the classical period. *Journal of Russian law*. 2008, No. 12, p. 56.