**The Scientific Seminar on the Free Movement of Workers in the Context of the End of the Transitional Period**

On November 29, 2011, a scientific seminar on the Free movement of workers in the context of the end of the transitional period was held at the Charles University, Law Faculty. The seminar represented one of the outputs of the specific university project on the above mentioned topic. This project was carried out in cooperation of the European law and the Labor and Social Security law departments at the Charles University, Law Faculty. The principal coordinator of the project was **Associate Professor Richard Král**. The research was mainly accomplished by the doctoral students at the respective departments and their results were then presented on the above mentioned scientific seminar. The scientific seminar was under the joint auspices of **Professor Michal Tomášek**, head of the European law department and **Professor Miroslav Bělina**, head of the Labor and Social Security law department. The opening word was brought forward by Professor Bělina who accentuated the smooth cooperation between the two departments. The scientific seminar was moderated by Associate Professor Richard Král, from the European law department, and co-moderated by **Dr. Martin Štefko**, from the Labor and Social Security law department.

As of May 1, 2011 the last two member states of the European Union, Austria and Germany, have opened their job markets to the new member states joining the European Union in 2004 (including Czech Republic) and by this all the remaining transitional restrictions vanished. In this context, the first speaker at the scientific seminar, **Dr. Tereza Kunertová**, from the European law department, had analyzed the definition of the worker in the Union sense. In the second part of her speech, she moved her attention to the hotly debated phenomenon of the reverse discrimination in which she discussed two recent judgments of the Court of Justice of the European Union (C-34/09 Ruiz Zambrano, C-434/09 McCarthy). As the reverse discrimination and the problem of the so-called internal situation is fully perceived by academics and practitioners in the field of the European law, the speech of Dr. Kunertová initiated an interesting discussion among academics and representatives of the Ministry of foreign affairs who attended the scientific seminar. Dr. Kunertová's speech was followed by the second speaker **Mgr. Jan Šamánek** who dealt with the well-known judgments C-438/05 Viking and C-341/05 Laval of the Court of Justice of the European Union. In his report Mgr. Šamánek discussed the judgments and further analyzed their impact on the issue of social dumping in the EU. Upon his speech a question had been raised whether the Sweden at the end paid for its corporate model and also the impact of judgments on possible future collective strikes was argued between the speaker and the audience.

In the second phase of the scientific seminar the researchers representing the Labor and Social Security law department presented their reports. Firstly, **Mgr. Lucia Kvočáková** explained in full the case C-399/09 Landtová ruled by the Court of Justice of the European Union and its impact on the national legislation. Dr. Štefko pointed out that even though the case dealt with the Czech and Slovak national social security systems, the similar issues might be spotted with respect to some other EU countries as well. **Professor Petr Tröster** from the Labor and Social Security law department discussed with Mgr. Kvočáková her views on the future developments in the matter and the predictions in case the Czech Constitutional court adopts different approach than the Court of Justice of the European Union. The last speech was held by **Dr. Jakub Morávek** who focused his research on

comparison of the working time legislation in Czech Republic, Germany and Austria. He mainly devoted his report on the issues of maximum weekly working time and work emergencies in each of the chosen countries. In his speech he further discussed the issue of compatibility of working time legislation of the given countries with the respective EU directive 2003/88/EC.

At the end, Professor Tomášek summed up main results of the entire scientific seminar. In his final word he thanked to all participants of the seminar and especially to all participants of the specific university project who presented their research conclusions at the seminar. He also appraised the cooperation between the European law and the Labor and Social Security law departments hoping that such example shall commence more inter-department cooperation in the future.

Ideas and conclusions of the scientific seminar will be incorporated in a monograph to be published in a first quarter of the year 2012.

Tereza Kunertová

**Report on the 7th International Roman Law Conference *Roman Law and the Present* on the topic *"Juridical Terminology in Roman Law and Modern Procedural Law: Judicial Decision and Its Execution"* held in Prague, Czech Republic, 3 – 5 October 2011**

**Introduction**

Between 3 and 5 October 2011, the Law Faculty of Charles University in Prague, Czech Republic, hosted the 7th International Roman Law Conference "The Roman Law and the Present" on the topic "Juridical Terminology in Roman Law and Modern Procedural Law: Judicial Decision and Its Execution". The conference brought together a number of renown Roman law scholars and students from different parts of the world to present the developments, findings or new approaches in the frame of their research, to share experience and to strengthen cooperation between the Universities as well as cooperation on personal level.

The variety of presented contributions on the topic "Juridical Terminology in Roman Law and Modern Procedural Law: Judicial Decision and Its Execution" triggered enriching, inspiring and stimulating discussions. These served moreover as a starting point for the second part of the conference, which was subsequently held in Moscow. The conference was divided into four sessions that unfolded after the introductory word of the dean of the Charles University Law Faculty in Prague, **Professor Aleš Gerloch**, and both Czech and Russian organisers, **Professor Michal Skřejpek**, and **Professor Leonid L. Kofanov**. The following abstract will try to briefly summarize each contribution and outline the extent of its significance for further research and deeper understanding of Roman law.

The first contribution "*Considerazioni minime sulla manus iniectio*" by **Professor S. Corbino** represented an elaborate introduction to the topic of the conference. The author focused his intervention on one of the typically Roman legal institutions *manus iniectio*, i.e. one of the means to enforce someone's right.

Professor Corbino touched upon many aspects of this broad and very important topic. Firstly, he addressed the features of *manus iniectio* from the perspective of procedural legal action. However, it was pointed out that the institution of *manus iniectio* is closer to the term *gestio* than to legal action itself.

The principal question addressed concerned the conditions under which *manus iniectio* may be used and whether it may be used before, during or after the regular judicial procedure. With regard to the ways of application of the mentioned legal institution, the author portrayed a situation where *furtum* is manifested and the use of *iniectio* is therefore more direct and imminent. Under these conditions, already the performance of *furtum manifestum* may constitute grounds for the punishment of the offender.

The author commented on possible confrontation of *iniectio* and the institution of offence in case *iniectio* would not be justified or considered as justified. Moreover, the institution of *iniectio* is regarded as a symbolic action, which represents formal and symbolic conduct producing legal effects.

During his research, prof. Corbino did not rely only on legal sources but used also other literature such as the work of Livius. It enabled him to observe the functions of *iniectio* after the judicial process when it resembles the form of judicial decision that is being executed.

The next contribution was delivered by **Richard Gamauf** from the Institute of Roman Law and Antique History of Vienna University. His study entitled "D. 29,5,14: A Miscarriage of Justice turning into a Precedent?" analysed a very special criminal case involving a falsely accused slave.

The third intervention of the first day "*Terminologia giuridica del diritto processuale romano secondo le leggi municipiali epigrafiche"* was presented by **E. V. Liapustina** from Moscow. Although the contribution was focused on a purely romanistic topic, the sources and methods used significantly differ from those applied normally.

E. V. Liapustina tried to describe the legal order in the form and shape as it had been preserved until today with the help of epigraphic relics and sources connected not only to the Roman municipal legislation but also the area of procedural law.

The core of the contribution may be seen in the triad of terms *actio, petitio* and *persecutio*. In practice, these terms are fundamental and form the basis of Roman procedural law and procedural law in general. Still, it is possible to observe certain development in their features and their application. The author pointed out that legislation during the period of reign of Augustus brought significant changes of the whole legal order. The changes affected in particular the concept of *persecutio* and approached its meaning closer to the one of *sanctio*.

In the perspective of the triad, the author discussed the characteristics of Roman judicial procedure and inferred several rules concerning the necessity of active participation or active dealings of the magistrate during the procedure. In addition, the distinction between the area of private and public law was considered. Given the sources and literature used in the course of the research, it is necessary to note that the triad of the terms cannot be classified as integral part of either private or public area of law but rather as a vital part of both.

The author also dealt with the possibility to connect the key terms of her contribution with one rather special group of popular actions. The active authorization to take legal action of this kind belonged to all Roman citizens. Therefore, it may be deduced that the actions were specific in their structure as well as in the form of their realization before court.

The term of the triad that is considered the least stable and was subjected to the biggest changes is *persecutio*. Finally, the author focused on its terminological development and the development of its features with the help of several laws that determined it. After the contribution, a rich discussion followed. It was concluded that also actiones poenales and actiones reipersecutoriae could be included in further steps of this research.

**Maria Kostova** from the University of Sofia delivered a contribution dedicated to one of the most fundamental principles of legal procedure and law itself. In the intervention entitled "Ancora sul principio *ne bis in idem*", she addressed the originally Roman legal principle *ne bis in idem*, which has become one of the leading procedural principles not only in the area of civil law. She focused mainly on its origin and on its original meaning. It was noted that the principle naturally exceeds the area of private law and its application may be observed in criminal law as well.

Given the fact that the principle *ne bis in idem* is of Roman origin, the author had to portray it in connection with other basic principles and institutions such as *litis contestatio* or *res iudicata*. Both institutions were described as affecting the enforcement of the respective legal principle.

In the course of her research, M. Kostova did not assessed only legal sources or sources of historical and legal nature, she studied also literary sources such as the work of Plautus, Terentius or Cicero.

Regarding legal sources, she used mainly the Institutions of Gaius, the Digest and Codex Iustiniani where she discovered a very interesting connection between the principles *ne bis in idem* and *bona fides*. Furthermore, M. Ko-

stova quoted Philipp E. Huschke and Arnaldo Biscardi, two leading Roman law scholars. They shared their opinions about the origin of the presented principle, its strong relation to religion and its official or formal nature that implied ceremonial action. Repeating such a ceremony was not allowed. While P. E. Huschke sees the reason in the nature of the dealings of *collegium fetiale* and thus in the international relations, A. Biscardi argues that the basis for the interdiction is in the municipal Roman law itself.

Next, the arguments for the possible Greek origin of the principle *ne bis in idem* were stated. The author referred to Demosthenes who elaborates on the principle and to Hermodorus of Ephesus. The influence on Roman law of this personage had been confirmed by several Roman sources and authors. However, it was mentioned that also the friendship between Hermodorus and the philosopher Herakleitos had to be considered. It is Herakleitos who is regarded as the author of the famous saying "You could not step twice into the same river". With help of this philosophical concept in combination with the relation between *agere* and *muovere*, the author explained the possible Greek origin of the principle. After all, even Cicero claimed that many legal principles had their origin in philosophy. With regard to that, it was emphasized that the principle *ne bis in idem* is strongly connected to the subject and in a given ca se shows its effect through the subject concerned.

It was noted that the chosen approach to the study has enabled to see the transfer of philosophical idea into the sphere of law. The legal principles then became independent and began to form a basis for their own system.

The contribution was concluded by beautiful and stimulating biblical text of the prophet Amos: "But let justice roll on like a river, righteousness like a never-failing stream!"

**Andrey Shirvindt**, a colleague from the University of Moscow, dealt in his contribution *La forza giuridica della decisione giudiziaria illecita* with one of the most delicate issues of procedural law that stirs many discussions. His results and findings are very valuable since they surpass the area of Roman law as well as the area of private law. In fact, the matter of legal force or legal effect and flawed judicial decisions is one of the basic questions of modern administrative law.

The main objective of the whole contribution was to define and explain flawed judicial decisions, i.e. judicial decisions not fulfilling all necessary requirements and not corresponding to all prescribed conditions. Relating to that, the author mentioned the institution of void decision, which is a special kind of flawed judicial decision. Interestingly, according to the modern legal theory, such a decision cannot be considered as a real judicial decision. It was documented by several fragments of the Digest that this institution was known already in the period of ancient Rome. Therefore, we have to give up on the idea that the Roman legal system was flawless.

The author naturally addressed the classic means of redress – legal remedies whose origin can be traced to Roman times as well. According to the author, legal remedies can rest upon very different systems implying different forms and legal effects. The means of legal redress may be divided among those of appeal and those of cassation. The nature of the remedy is decided according to the fact whether the decision may be changed or annulled. The Roman law recognized both the appeal and the cassation (in the form of provocation) as was documented by relevant fragments of the Digest.

In addition, the author elaborated on the problematic of flawed and void decisions in the frame of German law. As a matter of fact, German law stood at the beginning of modern concept of void decisions and provides thus the greatest doctrinal basis for this institution. Moreover, the author touched upon the influence of Russian law, which was in this regard greatly inspired by German law.

The following intervention exceeded the timeframe of the existence of Roman state or Roman Empire. However, the existence of Roman law itself is not limited to the time or factual borders of Roman settlement. Therefore, **Elena Krinitsyna** from the General History Institute of Russian Academy of Science in Moscow was able to introduce her views on

"Church Jurisdiction and the Use of Roman Law – The Synod of Sevilla in 619 AD" and illustrate functions and role the Roman law played after it entered the medieval period.

The centre of interest was the Kingdom of Toledo (from 567 AD) representing one of the so-called roman-barbarian kingdoms that followed Roman traditions, customs, Roman philosophical and legal thinking and maintained thus the heritage of the antique period. The Goths did not attempt to destroy Roman traditions; they made use of it, let it inspire them and sought to preserve it. Without a doubt, the main pillars of the well-functioning kingdoms were the king and his powers on one hand and the church on the other. It was precisely the church that contributed to a great extent to the preservation of Roman traditions. The author concentrated on one of the main and most decisive elements in life and work of the church and the church synods that partially substituted the municipal councils and performed also some functions of juridical organs.

The author mentioned the development of church synods during the time of the Kingdom of Toledo. The synods, assemblies of all church official in the kingdom, dealt with all issues concerning the Visigoth church, religious or clerical disputes. Even the laypersons could address the synod with their questions. However, in this case the synod performed functions of a tribunal.

E. Krinitsyna focused on one single but very interesting synod held in Sevilla in 619 AD lead by the notable Isidore of Sevilla, the author of the church reform and church administration in Spain. The synod was convened for several reasons. It was tasked to delimit the frontiers of the dioceses and to decide questions concerning the church hierarchy, property and the questions of doctrine. All "questions" posed to the synod were in form of an action which is normally being used for disputes and for the Roman legal procedure in general. The ruling of the synod was legally binding.

The author further reviewed the use of Roman secular law and its extent in the decision-making process and the assessments of these synods.

The author also discussed the disputes concerning property of certain basilicas. Such disputes were regulated on the basis of analogic norms that were introduced already in Roman law and the imperial constitutions. The author also mentioned the term *lex mundialis* designating an ensemble of laws produced by Roman emperors or Visigoth kings. It was remarked that the institution of *postliminium* was frequently used in relation to the property of basilicas. *Postliminium* has its origins in Roman law, however it had been gradually modified in order to fit the needs of the new medieval social situation and the newly emerged form of state at the beginning of medieval period. The fact that the synod, and thus also Isidore of Sevilla, defined the institution of *postliminium* in this way proves that its original classical meaning was no longer known.

As a next example of application of Roman sources at the synod, the author talked about the disputes concerning borders of individual dioceses. In these cases, it was first decided to find the old frontiers. For these purposes, the lay and Roman law, edicts and legal actions emanating from them were applied.

In addition to that, more examples of Roman law institutions integrated into the system of early medieval period were mentioned. The institution of legal prescription in the period of 30 years is clearly of Roman origin and was taken over by Visigoths. Furthermore, the author used the exemplary position of the slave Eliseus to explain the progress and influence of Roman law. While the institution of slavery formed an integral part of Roman law, with regard to Christian law and medieval law it cannot be considered as an entirely typical element. The research focused mainly on the patronate relationship between a dismissed slave and his patron, including the possibility to call up the slave back to his service (*revocatio in servitutem*). At last the author presented the Roman legal institution of colonate that has become one of the fundamentals of the medieval society. She demonstrated her findings on a concrete example of a person bound to a church soil who had moved out of its range.

The author concluded her intervention by

a remark that the medieval Visigoth society (especially the educated classes and church officials) disposed of a deep knowledge of Roman law serving as a basis for decision-making processes as well as for secular and church legislation. It was noted that the development of church institutions over the Roman imperial period to the time of Visigoth kings was rather smooth and resulted into incorporation of these institutions into legal systems of the new, early medieval states.

**Professor Laurens Winkel** from Faculty of Law, Erasmus Center For Early Modern Studies in Rotterdam, presented the next contribution. He devoted his research to "The History of the Preliminary Ruling" and briefed the audience about his findings.

**Professor Osvaldo Sacchi** from Naples entitled his contribution *Modelli di verità in diritto processuale greco e romano. Una spettografia per l'attuale*. It concerned the concept of justice and verity (truth) in Roman and Greek procedural law which represents one of the most important and essential legal questions. Law and its rules usually come to light whenever there is a conflict. In order to resolve the dispute in the most just manner, it is necessary to reveal the real facts, their sequence and their relations. With regard to that, the term of justice is vital and could be considered the aim of all procedures dealing with conflicts or disputes. However, this term is not entirely monolithic and stable, as it may seem.

In the course of the research on this topic, the author used the legal sources as well as philosophical, rhetorical or theological literature. The institution of justice and verity is closer to the theory and philosophy of law than to its practical use emphasized so much by the Romans.

It was observed that the terms of justice and verity need to be considered and dealt with just as axiological terms. Considering this feature and with regard to legal practice, the term may be granted specific attributes according to the area of law applied. Furthermore, the term of equality of parties and legality in the procedural law was outlined. The equality and its axiological value as well as legality should help to achieve justice.

During a rich discussion about the topic, other aspects and approaches to the institution of justice or verity were expressed, namely the truth, truth in the process, authoritative truth or verity as a category of exact sciences where the term acquires a changed meaning.

**Alexey Rudakov** delivered the contribution "Seizure of Property as One of the Means of Judgments" according to post-classical Roman law. The institution of *pignoris capio* is regarded as a claim within the *legis actio* legal process. However, even after the formula process replaced *legis actio, pignoris capio* was actively used in both private and public law, as documented by the Code of Iustinian.

In the area of public law, seizure of pledge was commonly used against insolvent debtors to the state *fiscus*. The institution of *pignoris capio* was used as an enforcement measure towards the debtors of state in the period of Roman republic and Early Empire, e.g. when collecting taxes. In private law, the most frequent use of this institution was in the form of seizure of pledge to enforce a judgment – *pignus in causa iudicati captum*.

As most of the imperial regulations dealing with the institution of *pignoris capio* date back to the 3rd century AD, it may be inferred that the procedure *pignus in causa iudicati captum* was formed at the end of 2nd and beginning of 3rd century (the most detailed description is to be found in the 1st title of the 42nd book of the Digest ("Concerning *res iudicata* and the effect of decisions, and interlocutory decrees") and in the 22nd title of the 8th book of the Code of Iustinian ("If any property is seized to enforce a judgment"). It is deemed that *pignus in causa iudicati captum* was established by a rescript issued by the emperor Antoninus Pius who described the whole procedure and enforcement of its result.

Ulpianus describes the procedure further. According to him, the appointed judge or arbitrator was authorized to execute the rendered decision and to determine the method of execution including the timeframe. The deadline for the payment was set on individual basis and could have been extended or shortened under certain conditions. If the debtor deliberately delayed the payment, the judge could

use the seized property to enforce the judgment. If the seizure was ineffective and the debts remained unpaid, the pledge could have been sold and the money gained used to satisfy the creditor. The seized property had to be sold by the judge or the arbitrator but not by the creditor. In case the property could not have been sold, the ownership was simply assigned to the creditor. Also, if the creditor preferred to satisfy himself of the seized property directly, it was considered as a full satisfaction of his claim and as a new agreement. However, the imperial rescripts of Caracalla and Gordianus III prescribing the obligation to sell the seized property in public auction did not permit this. Both rescripts allowed applying of this measure when a purchaser for the property could not be found for a long time or in case the debtor unduly hindered selling of the levied property through some trickery. It is necessary to mention that the debtor was always admitted to redeem the pledge by offering an appropriate price.

After the seizure of property, the court officials were responsible of its safekeeping. If the property was returned to the owner with any defects, he could bring a claim according to lex Aquilia. In addition, the Digest, Theodosian Code and Justinian Code prohibited selling the seized pledge before the court decision was rendered. Based upon that, Ulpian considered that **"**Property which has been taken in execution and sold can be recovered, if this was done without a judgment having been previously rendered". Exceptionally, it could be done so in the absence of defendant and if the complainant was state-*fiscus*. Still, it was necessary to urge the defendant to come. Only in case of negligence of his duty to appear before the court, the judgment could be enforced by *pignoris causa*.

Majority of agreements concluded in ancient Rome was ensured by property of the parties involved and their guarantors. Thus, the court officials always knew whose property could be levied and how the whole procedure should be realized. Therefore, *pignoris capio* was considered a very efficient method to enforce judgments.

The next contribution entitled *La distinzione tra i termini „bonorum possessio" e „missio in possessionem" nel testo del Digesto* on the topic of *iura in re* and *possessio* in particular was presented by the Russian scholar **Anton Panov**. The focal point of his research was one of the fragments of the Digest (Dig. 2.1.1.), which deals with and differentiates the institutions of *bonorum possessio* and *missio in possessionem*. The author aimed at defining the differences of both terms and clarification of their interpretation.

First, the author approached the term *bonorum possessio*. Surprisingly, it can be found in the text of the Digest very often but it is almost always connected to the institutions of heritage and succession according to praetorian law. Thanks to his very diligent analysis, the author discovered two explicit definitions of the term *bonorum possessio,* again closely related to the area of succession. In addition, three other situations where the term is connected to the law of obligations and the changes in obliged or entitled persons may be found. Despite this exception, the connection between *bonorum possessio* and the praetorian succession is unambiguous. As a matter of fact, the ratio of the occurrence related to the succession and the occurrence related to other areas of law is 803 to 3.

Moreover, the author found in the Digest also the inversed form of the term mentioned above – *possessionis bonorum*. Although it may seem unlogical, strange and against its linguistic structure, there are differences between the two terms. While the inversed version can be found in the Digest 11 times, only 4 cases correspond with the meaning of the original version. Otherwise, it is closer to the term *missio in possessionem,* the second institution discussed within this contribution. This assertion was documented by linguistic argumentation. According to that, the term *bonorum possessio* is tied to the verbs *dare, petere, accipere* and *agnoscere* while the inversed variant is bound with *mittere, ire* and *venire*. Both versions are mentioned in Dig. 38.9.1. but their content and meaning is entirely different. The first form relates to the possession of inherited property by the successor, the second then to the possibility to possess the in-

herited property by the creditor instead of the successor.

The scope of *missio in possessionem* institution, or its verbalized form *mittere in possessionem*, is significantly broader. It is connected to the right of heritage but according to the author rather in the area of civil law. It was noted that the first term is normally used in connection with the already born descedants of the testator, while the term *missio in possessionem* relates to the unborn ones. It could be inferred, from the fragments collected by the author, that *missio in possessionem* is in fact a way to realize *bonorum possessio*. Also, it has to be mentioned that the term *missio/mittere in possessionem* is to be found in the Digest 251 times while the term *missio/mittere in bona* only 91 times.

We can assume that *missio in bonis* is normally used in relation to bigger amount of items while *missio in possessionem* is tied with one individual thing. Additionaly, the term *mittere in possessionem* may be used in connection with suffered damage when the thing that caused the damage can be awarded into *possessio*. According to Dig. 42.4.1., the terms may be further used in cases of *rei servandae causa, legatorum servandi causa* or *ventris nomine*. It was observed that they might be applied either in a typical or in a very specific way, for example in a procedure in front of a praetor with an underage person.

Finally, the author tried to answer the question of differences between the rights and authorizations belonging to *bonorum possessor* and to *missus in possessionem*. On the basis of several fragments from the Digest, the author documented that *bonorum possessor* acquires the possession and the ownership while *missus in possessionem* acquires only possession. Moreover, even the possession acquired seems to have some very special features that do not lead to legal prescription of the thing concerned. This difference can be seen also in the purpose of both terms. In line with the thinking of Roman lawyers, *missio in possessionem* gurantees that the owner or possessor of the thing concerned does not disturb the interests of a persons involved, *missio in possessionem* is thus regarded as temporary possession.

Professor Panov concluded his contributioin by stating that both institutions are very close and related, however they show some fundamental and functional differences.

The next contribution with the title *Il mistero della condictio* was delivered by **Professor Michal Skřejpek**, the head of the Institute of Roman Law and History of Law at the Law Faculty in Prague. He introduced one of the older institutions of Roman law that entered into the use in the time when the Roman Republic reached its peak. Today, *condictiones* are regarded as a quite mysterious institution. Surprisingly, the author documented that they were mysterious already at the time of ancient Rome. Therefore, he focused his effort mainly on revealing the origin of this institution and discovering its key features.

The term *condictio* first occurred in a private law document in 204 BC when *legis actio per condictionem* was introduced among other legal actions. However, *legis actio per condictionem* differed from the other actions greatly. The procedure started by this action was initiated *extra ius* at the presence of witnesses, not in front of a magistrate or praetor. The defendant was invited to fulfil the obligation that was object of the action. This represented a great advantage for the creditor – the debtor was automatically given an additional time of 30 days in order to fulfil his obligation. It meant that the creditor's right could have been satisfied without another legal procedure whose result would be uncertain. Moreover, *sacramentum* - the "fee" of legal action that was normally intended for the state, was in this case passed to the winner of the dispute. *Condictiones* could be also used for *certum – certum pecunium* or later *certum res*.

In the frame of the formula procedure, *condictiones* had gradually limited their use only to *certum*. In a certain sense, *certum* was replaced by *condictiones* aiming at *"repetere"* – returning the thing concerned, e.g. *condictio furtiva*.

The author also strived to answer the question about the origins of this institution. According to his assumptions, the origin may be

seen in old italic war customs that required a justified reason for the conduct of war. One of the Roman *fetiales* was sent to the enemy nation and invited them to compensate all the damage suffered and extradite all captives or return all taken objects within the period of 30 days. If the enemy nation did not fulfil this request, a just reason to declare a war was constituted.

As mentioned above, *condictiones* usually aim at *repetere*, i. e. returning. In this regard, the author mentioned also *crimen repetundarum*, a special kind of *condictiones*. The main objective of this crime was to take back from the provincial administrator everything he extorted from the inhabitants of provinces. This phenomenon may be described as circulation of institutions - one institution is moving to other areas of law and then back to the area of its origin.

One of the most startling questions is the time of occurrence of *condictiones* in private law. In fact, it emerged quite late – during 3rd century AD. This period represents a very important time in the life of Roman society – the transformation of municipal or civic italic state into an empire based on a new reformed and modified legal order. It is now when *condictiones* entered into private law and, according to the author, enabled the modernisation of Roman law in general and the old *legis actio* procedure in particular. Thus, it can be noted that *condictiones,* as one of the oldest Roman legal institutions, contributed to the renovation of Roman law. Following the introduction of *condictiones*, a loan – *mutuum* emerged. *Condictiones* had to be pronounced on certain amount of money, otherwise the borrowed sum could not be subjected to an action.

Finally, the author touched upon the fact that both laws that introduced *condictiones* were not laws *stricto sensu* but decisions of the plebeian assembly, i.e. plebiscita. It is deemed remarkable because it tells us that the initiative to introduce this legal institution came from plebeian officials and not from the high magistrates.

In summary, *condictiones* played a very interesting and important role in the modernisation of Roman law. Moreover, they enlarged the strict contract system of new institutions that did not request formal *mancipatio* or *in iurecessio* to conclude the contract but a mere handing over.

The contribution by **Maciej Jońca** entitled "Legal Latin in the Polish Courts – between Noble Ideology and Bitter Practice" addressed the current situation of the use of Latin language in modern Polish law. Latin has always been considered a language of law. As for its qualities, it is necessary to highlight its ability to be concise, short, unequivocal and clear. It used to be the legal language of Poland for centuries, however its use has somewhat faded away.

To understand this, one has to go back in time. In fact, an immediate reception of Roman law into Polish law has never taken place as it happened in many other European legal systems. Latin was imported artificially through European culture penetrating on Polish soil. Subsequently, it became a language of royalty, early Polish codifications (such as Casimir the Great's "Statutes") and universities. Surprisingly, Latin has spread also among lower social classes.

Although all court records were written in Latin, the spoken language in front of the Polish courts remained Polish. Only in 1543 it was allowed to draw court records in Polish but this practice did not stay long. Unfortunately, the level of Latin as used by the court, judges or lawyers was not satisfactory and did not reach the expected quality standards. In fact, the Latin used was jokingly called "wild Latin".

In 1792, Polish was proclaimed the sole official language. Three years later, Poland politically ceased to exist and its former territories were incorporated into Austria, Russia and Prussia. Paradoxically, Latin and its position was not diminished under the new political circumstances but gained more importance. It was used as a common language enabling access to many important documents such as the translation of the Civil Code of Austro-Hungarian Empire (ABGB). Beside in the state regulations, the Latin language was also maintained by the church. Religious ceremonies, parish books or canonical trial

were always in Latin helping to resist the pressure to use the national language of Russians or Prussians.

In 1918, Poland gained back its independence and the official language had clearly become Polish. Latin was used only sporadically in courts, at universities, law faculties in particular, and upper secondary schools.

During the Second World War, also the Polish educational system has suffered from great oppression. Polish teachers and lecturers were forced to teach secretly while risking their own lives. However, they still managed to include Latin.

The communist regime that followed constituted another threat to the efforts of Polish clergy and scholars to use Latin and make it a living language. The hostile communist politics towards Latin and Roman law soon gave its first effects. The level of general education in Poland significantly decreased and Latin and Roman law, originally considered to be the basis for solid legal education, had become areas of particular or even peculiar interests.

After 1989, the state's attitude towards Roman law and consequently towards Latin has changed radically and several actions to restore their reputation were undertaken. The most significant gesture is the column decoration of the new building of the Polish Supreme Court, officially opened in 1999, ornamented with 86 Latin legal maxims having their origins in Roman law.

Polish lawyers have a great respect and recognition for Roman law and Latin. For example, we may find Latin legal proverbs coming from Roman law in current legal literature, court decisions or other legal documents. On the other hand, most of the legal practitioners have no knowledge of Latin grammatical structures and are therefore unable to use it properly. It was noted that students of law are not motivated or demanded to learn Latin and judges and lawyers use it rarely, mostly in order to impress rather than for pure legal purposes.

The Polish legal terminology owes a lot to Latin. Nevertheless, it remains an unfinished halfway work. Presently, the majority of special legal terms, including the civil law and civil procedure, sounds unfamiliar to an average Pole. Therefore, it had been discussed whether the Polish legal language should be cleared of Latin and simplified. However, the marginalization of Latin that followed resulted in further chaos in the world of legal terminology.

Recently, the interest in Latin has increased – one could observe some commotion in Vatican, Europe (when looking for a common Union language) or even in the field of culture. As for Poland, the true renaissance of Latin is not foreseeable. However, there is still hope that Latin will be one day reintroduced in the educational system and then into legal practice.

The following intervention concentrated on a very challenging topic concerning legal procedure that creates a very difficult environment for all present subjects, including the judge. A situation when a judge has to pronounce *"non liquet"* is not only unpleasant; it disturbs the idea of just procedure. The scholar **Ghenka Mozzhuhina** of Sofia dealt in her contribution entitled "La dichiarazione *non liquet* nel diritto processuale romano" with the above mentioned situation in the frame of Roman procedural law.

The author commenced her speech by naming the fundamental characteristics of Roman legal procedure and emphasizing that the Roman judge was considered to be *iudex privatus*, i.e. a private person responsible for solution of the dispute. Considering that rendering justice is one of the most important roles of the municipality or the state, the choice of judges and the process of their nomination were regulated by public law. The author dedicated a part of her research to a study of these rules. According to her, they originated in several legal sources – in laws, imperial constitutions or senate resolutions. For example, the right to nominate a private judge belonged to proconsuls and their successors, municipal prefects and magistrates with imperium in general. The rules prescribing the right to nominate judges were complemented by negative norms indicating who was not entitled to do so.

The main sources for this study were na-

turally legal documents. However, the author reached also for literary work to support her findings. For example, she used the Attic Nights of Aulus Gellius (Noctaes Atticae) to document the situation where it is not possible to determine the value of obligation that is object of the dispute. In these cases, the formula *"non liquet"* instead of the classical *"si non paret, absolve"* (in case of doubts, the debtor should be liberated of his obligation) was used to resolve the dispute. Naturally, the judge could not decide only upon his own personal consideration if there was no stable background for the decision.

Subsequently, the author focused on the procedure before rending a decision pronouncing the dispute as *non liquet*. The Roman legal procedure was an oral procedure and all necessary factors or actions leading to the decision had to be performed orally and on the day of the dispute. The procedure itself was fairly fast. On the other hand, it did not enable the parties to prepare their defence, the evidence or thoroughly investigate the situation in order to prevent the judge from pronouncing the dispute *non liquet*. Therefore, a longer period between the judicial proceedings was established. The parties had more time to prepare their reasoning and investigate sufficiently. Firstly, this was authorized by "giving another day" (*Alium diem dato*) as set in the law of Acilius and secondly, by the institution of *ampliatio*, as mentioned by Cicero and Seneca.

In case of tied votes when deciding in collegium of judges (e.g. if one of the three judges is absent), *non liquet* may be used as well. However, interrupting the procedure may solve this very complicated situation. The judges could then reconvene later and in prescribed number in order to ensure majority of votes.

To conclude, the author addressed the specificities of the *non liquet* institution in different periods and stages of Roman legal procedure. The possibility to pronounce that a dispute is *non liquet* can be observed only until the cognition procedure emerges. Also, there is no more *iudex privatus* in this kind of procedure, the judicial procedure is considered to be completely official. Other above mentioned features of the procedure that allowed for *non liquet* were equally modified in the cognition process. It was noted that the current Bulgarian legal situation does not make use of the *non liquet* solution. If necessary, the unclear dispute is solved with help of an expertise.

The next contribution dealt with a topic closely related to Roman law. The principles of Roman law in Middle Ages formed the object of the study *Sententia ex falsis testationibus lata nel diritto romano medievale processuale romano* presented by **A. V. Marey** from Russia. The author focused on the delicate issue of falsification of testaments, which is seen as one of the rudest interventions in the will of the testator.

It was emphasized that this issue does not fall only into the area of private law. It includes also the questions of criminal law since already in the time of Ancient Rome falsification was deemed illegal and punished strictly. In this regard, it can be noted that the person falsifying the last will should be sanctioned if the testament is used and presented. The institution of *restitutionis in integrum* could be regarded as a certain remedy in situations where the use of false testament resulted in further actions, e.g. transfer of property to an unauthorized person.

The author based his findings on Roman law sources and other medieval sources testifying the continuity of Roman law and its further development. He used especially the works of Bartolus, Guido de Suzario, or Antonio Perez who dealt with Roman law and its origins and strived to understand its features and modifications brought by the medieval time. These sources provide us with information about the sanctions for falsification and the restitution of testament annulment.

Furthermore, the author mentioned the development of this issue in following centuries, including the state of art in the French Code Civil.

The conference was concluded by a contribution *Varie implicazioni di actio praescriptis verbis* by **Professor Konstantin Tanev** from Sofia. He addressed a topic related to the development of procedural law, development of

all procedural remedies and the development of Roman law in general. *Actiones praescriptis verbis* primarily aim at protecting the interests as stipulated in concluded contracts, i.e. protecting relative rights. The core and object of these actions are therefore obligations. These actions also contributed greatly to the development and the formation of the current concept of obligation relations and types.

With the help of several fragments of the Digest and the Institutions of Gaius, the author tried to illustrate the relation between *actiones praescripti verbis* and various contracts, their interconnections and coherence. Naturally, a characteristic focused on the limits and general common features of the mentioned contracts followed. It was concluded that the contracts were protected in two basic ways. Firstly, they were protected through different legal actions. Secondly, by the possibility to raise objections or initiate exceptions. In addition, the institution of *nuda pacti,* which is very close to the institution of objection, was mentioned.

The author also touched upon the general institution of *conventiones* – agreements or conventions that cannot be compared to the term of obligation or contract. This institution is very closely connected to the causal theory of legal actions that forms an essential part of all legal actions relating to *actiones praescriptis verbis*. The *causa* of the contract concerned must be also the *causa* of the legal action, including *actiones praescriptis verbis*.

Finally, the concept of synallagmatic contracts as reciprocal contracts was discussed. This view is very inspirational and represents a very convenient way to describe the features of the contracts concerned and the aspects that help to categorize them as synallagmatic.

Teresa Kokaislová,
Jan Šejdl

**Editorial board of The Lawyer Quarterly deeply regrets to announce the decease of its founding member JUDr. PhDr. Zdeněk Masoupust, DrSc. who died on 15th March 2012 at the age of 74. Dr. Masopust was one of the top Czech legal scholars in theory of law. His professional and life experience substantially contributed to general concept of our review based on the tradition of the journal Právník where he served as an executive editor from 1982.**

***Requiescat in pace***