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THREATS TO SUSTAINABLE DEVELOPMENT: ASSET GRABBING PHENOMENON AND THE LEGAL CONCEPT OF FORCE AND FEAR IN ROMAN LAW

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Abstract: Stability and functioning of entrepreneurial environment in accordance with the principles of lawfulness is regarded as an essential prerequisite for sustainable development of a country operating under the market economy conditions. Allowed use of illegal duress, including violence, against entrepreneurs directly and unequivocally poses a threat to sustainable existence of society and country. For instance, the so-called Reiderstvo or asset-grabbing is regarded as one of the numerous risks in entrepreneurship which makes investing into the Russian economy less attractive than it should objectively be. In the same way, violent and intimidating actions may seriously endanger stability and sustainability of entrepreneurial environment. The abovementioned is recognised by the laws of the Republic of Latvia which respectively criminalise a range of wrongful acts in which force and fear or violence and different types of threatening are mentioned as one of the essential elements of offence. The same way, the *Civil Law* of Latvia points to unacceptability of unlawful application of force in legal transactions. Therefore, the contemporary legal norm maker, enforcer and defender needs in-depth understanding of the essence of the concept of force and fear and logical interrelations thereof. Since the origins of the idea of the legal framework of force and fear, just like of many other contemporary legal thought phenomena, go back to Roman law, understanding of the legal concept of force and fear is impossible without a thorough study of primary sources of Roman law. This research was developed guided by the abovementioned reasons. Under this research, the legal essence of force (*vis* – Latin) and fear (*metus* – Latin) was identified, the signs characteristic of them and criteria qualifying them were analysed. The mechanism of sanctions provided for in relation to unlawful use of force and fear was studied. The methodology for identifying the person liable for force and fear, i.e. the defendant, was reviewed. Procedural mechanisms and conditions for settlement of disputes were studied.

Keywords: sustainable development, asset grabbing, corporate raiding, Roman law, Ancient Rome, vis, metus

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JEL Classifications: K19, K39, K42

1. Introduction

It is not a secret that sustainability and sustainable development of any society, state or state-like entity directly depends on the ability of this society, state or state-like entity to provide society members, citizens of the country and inhabitants with a level of well-being which would guarantee efficient functioning and reproduction of the mentioned society, state or state-like entity. Therefore, sustainability and sustainable development are closely connected with the choice of the macroeconomic model of management. It seems that up to now more or less regulated market economy was recognised as the most efficient model of management. Individual and corporate entrepreneurship is the basic element of the market economy system. That is why, stability and

functioning of entrepreneurial environment in accordance with the principles of lawfulness is regarded as an essential prerequisite for sustainable development.

The key ingredient of success factors for sustainable entrepreneurship is motivation of entrepreneur that could be increased by various political measures aiming to rise initiative of people to run existing or start new business ventures in more secure and sustainable way. (*Raudeliūnienė; Tvaronavičienė et.al. 2014*)

State power, inter alia, must be able to ensure that valuables owned by an entrepreneur or those under any lawful control are adequately protected against any threats and unlawful claims, as well as guarantee inviolability of an entrepreneur's life and health protecting him against any unlawful acts. This is especially true for different manifestations of unlawful duress – allowed use of illegal force, including violence, against creators of material goods directly and unequivocally poses a threat to sustainable existence of society, state or state-like entity.

As a bright example, the so-called 'black reiderstvo', i.e. the most violent form of usurpation of companies mostly known in Russia and other post-Soviet countries, can be mentioned. While examining media news archives, now and then it is possible to come across information about a violent takeover of the competitor's company organised by private security of some Russia's oligarch, when well-armed fighters of one party attempt to 'appoint' new administration of the company based on a rather doubtful court decision, and the opposite party organises defence measures by erecting barricades using buses and train carriages protected by fighters armed not worse than those of the attacking party (See Tavernise 2002). It is similar to a situation when the territory of a huge chemical plant is invaded by several dozens of men wearing camouflage uniforms and armed with automatic weapons who, as it is found out later on, are not terrorists but local OMON (Special Task Police Squad) fighters and investigators from Moscow immediately confiscating all financial documentation to initiate a criminal investigation on possible financial violations of the current owner as assigned by the 'concerned party' (see Bush 2008).

There was a case when employees of a company exposed to threats were simply not allowed to enter the premises owned by said company and the owner was forcefully thrown out, whereas the property was sold afterwards. Purely psychological intimidation of potential victims is also possible; there was a case when flowers and a coffin were delivered as a birthday present to the board member of a 'target company' not willing to cooperate – sounds rather convincing (Carbonell; Foux *et.al.* 2009).

As it is often the case, private actors get involved in rent-seeking relations with governments in countries where property rights are insufficiently protected and law enforcement practice is low (Borshchevska 2015) – the situation is complicated by the fact that corrupted officials are quite often involved in such schemes. Problems are caused not only by unqualified employees of the law enforcement authorities but also by widely spread corruption in the law enforcement and court system, as well as competition among different law enforcement agencies for the influence on financial flows, companies and property (Beitman 2013). Russian entrepreneurs suffer from attacks of raiders who tend to use executive powers granted to officials or else said officials act like raiders themselves (Wall 2013). Companies pay to officials for raids against competitors and for making said competitors subjects of criminal investigations (Bush 2008). A situation when taxes are groundlessly surcharged on a company, the owner is arrested and, during his imprisonment, the company is made bankrupt by using forged documents and afterwards sold to another company is a rather standard practice. And when the ex-owner is free from imprisonment his company has already been sold multiple times (Harding 2008).¹

Because of rampant corruption among officials and not too efficient property rights protection mechanisms,

¹ It is no secret – entrepreneurial entities, which are the driving force of all processes in each economy, are burdened not so much by tax rates as by ambiguity in establishing the legal base, complexity in tax accounting procedures, legislative contradictions, inconsistencies, and instability (Giriūnienė; Giriūnas 2015). A good tax system should bring sufficient revenues to the state treasury (Šimelytė; Antanavičienė 2013) it should not be an administrative burden and have to be sufficiently transparent. Its mission is to balance the tax burden in a homogeneous way. The optimal tax system puts emphasis on two aspects: justice and efficiency (Dobrovič; Korauš *et.al.* 2016).

“Reiderstvo”² or asset-grabbing has become a rather widespread phenomenon believed to be one of the many risks in modern Russia’s entrepreneurship; risks which make investing³ into the Russian economy less attractive than it should objectively be, this way jeopardising the country’s sustainable development (Hanson 2014).

Just like ‘black reiderstvo’, other violent and intimidating actions may also pose a serious threat to stability of entrepreneurial environment and sustainability of society, state or state-like entity. The abovementioned is also recognised by the laws of the Republic of Latvia that respectively criminalise a range of wrongful acts in which force and fear or violence and different types of threatening are mentioned as one of the essential elements of offence. For instance, the *Criminal Law* of Latvia defines such criminal offence as ‘Robbery’ as stealing of other person’s movable property ‘associated with violence or threatened violence’ (KL 176(1)); criminal offence ‘Extortion’ – as the demanding without legal basis therefor the surrender of property or rights to property, or the performing of any acts of a financial nature ‘therewith threatening violence ..., disclosure of defamatory information ..., or to destroy ... property or cause ... other substantial harm...’ (KL 183(1), see also KL 183(2)); also, in the definition of such criminal offence as ‘Extortion by an Organised Group’, inter alia, there is a reference to ‘...extortion as a member of an organised group, if extortion is committed using violence or threats...’ (KL 184(2)). ‘Threatening to Commit Murder and to Inflict Serious Bodily Injury’ are similarly criminalised (KL 132) along with a range of criminal offences among the essential elements of offence of which there are references to violence and different types of threatening (see, for instance, KL 143(2), KL 150(3), KL 153(1), KL 154(1), KL 154²(1), KL 159(1), KL 160(1),(2), KL 173(2), KL 174, KL 225, KL 252(3), KL 268(2), KL 270(1), KL 272¹(2), KL 279(3), KL 294(1), KL 317(2), etc). The *Civil Law* of Latvia also points to unacceptability of unlawful application of force or threats (duress) in legal transactions (see CL 1440, CL 1463, CL 1464, etc.).

With this regard, the contemporary law maker, enforcer and implementer undoubtedly needs in-depth understanding of the essence of the concept of force and fear and logical interrelations thereof.

The origins of the idea of the legal framework of force and fear, just like of many other contemporary legal thought phenomena, go back to Roman law. *As it is known, modern-day Latvia belongs to the so-called Continental/Romano-Germanic legal system, and our Civil Law of 1937 demonstrates a rather direct influence of the Roman private law – it can even be stated that someone who does not have knowledge and idea of the fundamental principles of the Roman private law may find the Civil Law of Latvia difficult to understand and complicated to comprehend* (Apsītis; Joksts 2013(JSSI)). The origin of many modern criminal law institutes is also related to the more or less manifested reception or acceptance by the modern law of the legal heritage left by the Romans (see, for instance, Apsītis; Joksts 2013 (AKJ)). Therefore, understanding of the legal concept of force and fear is impossible without a thorough study of the primary sources of Roman law. This research was developed based on the abovementioned reasons, as well as due to the authors’ wish to contribute to public

² Here it is necessary to point out that the meaning of the Russian term “Reiderstvo” should not be confused with the English concept “Corporate Raiding” within the English or American meaning of the word. In the Western world, Corporate Raiding usually occurs within the limits of the law, whereas Reiderstvo means company’s asset-grabbing by means of an illegal manipulation and with the help of perversion of the letter and spirit of the law. Very often, corrupted officials of the law enforcement institutions and court institutions are involved in said process (Hanson 2014). The abovementioned is also acknowledged by the Russian state media, i.e. internet portal RT, that points out that in the USA Corporate Raiding implies a situation when someone legally buys a significant number of a company’s shares in public circulation, usually against the will of the company’s current management, with the purpose to replace board officials or even liquidate the company. In turn, in Russia, there may be completely different situations when criminal groups literally takeover possession of a company’s office or even plant or can physically threaten management staff to force them to leave. In some other situation, bureaucrats may usurp property stating that it has been obtained illegally and therefore must be alienated. This way, legitimate entrepreneurs lose their companies in situations which actually resemble stealing (RT 2008). Depending on the methods used, Reiderstvo is usually called ‘black’, ‘grey’ or ‘white’. ‘Black Reiderstvo’ is associated with the use of crying and clearly criminal violence. ‘Grey Reiderstvo’ mainly means corrupt activities within the framework of the system of justice. ‘White Reiderstvo’ includes destructive actions within the limits of the law, i.e. organisation of strikes, unplanned inspections on the part of different supervising institutions, etc. (Carbonell; Foux *et.al.* 2009).

³ The major benefits of Foreign Direct Investment include: economic development, transferring technologies, creating new jobs, raising the productivity of the host country and others (Antanavičienė 2014). This is an opportunity for regions with lower level of economy to revive production, reduce unemployment and improve the standard of living of the citizens of the region in the longer term (Kucharčíková; Tokarčíková *et.al.* 2015.).

safety and sustainable development of society in finding solutions to significant problem issues.

The aim of research – to facilitate in-depth knowledge of contemporary legal norm makers, enforcers and implementers about the topics significant for stability of entrepreneurial environment and substantial economic development by studying information found in the primary sources of Roman law in relation to the legal regulation of force (*vis* – Latin) and fear (*metus* – Latin).

Within the framework of the research, the primary sources of Roman law were investigated and analysed by using the inductive, deductive and comparative methods. The respective fragments from *The Institutes of Justinian* (*Iustiniani Institutiones* – Latin) (Krueger; Mommsen 1928), *Digest* (*Digesta* – Latin) (Krueger; Mommsen 1928) and the *Code of Justinian* (*Codex Iustinianus* – Latin) (Krueger 1906) were reviewed.

2. The Results of Research

According to the ancient Romans' legal definition, 'force is an attack by some overpowering agency that we cannot withstand' (*Vis autem est maioris rei impetus, qui repelli nonpotest* – Latin) (D 4.2.2) (*quod vi metus ve causa* (Latin) – 'that is done by force or fear') (D 4.2.1).

It is necessary to point out here that in the sources of Roman law only two terms denoting unlawful coercion can be found, i.e. '*Vis*' (Latin) that may be translated as **force**, as well as violence, power, might, and '*Metus*' (Latin) that is translated as **fear**, as well as intimidation, angst, a feeling of danger. In accordance with the source reference, '*vis*' (Latin) was initially used to denote compulsion against someone's will (*necessitatem impositam contrariam voluntati* – Latin), whereas '*metus*' (Latin) – to demonstrate a troubled mind (spirit shivers) (*mentis trepidatio* – Latin) due to any current or future dangers. However, it was later decided that the word '*metus*' (Latin) could be used on its own admitting that anything that can be done by force may done through fear, too (D 4.2.1); therefore, it was believed that the word '*metus*' (Latin) (fear) successfully merged logical interrelations denoted by the word '*vis*' (Latin) (force). In any case, it is emphasised that the norms included in the sources are equally attributable both to force and fear (*et vim et metum* – Latin) (D 4.2.3 pr.).

Therefore, force implies the utmost abuse of the mind done against sound morals (*bonus mores* – Latin) except using authorities exercised by the Roman magistrates (elected officials) within the framework of their powers in accordance with the law and legal powers of their position (D 4.2.3.1).

Use of fear (*metum fecit* – Latin) included fraudulent or deliberate damage (*dolo teneri* – Latin) (D 4.2.14.13), and losses incurred by the victim were recognised as its essential sign. (D 4.2.12.2, D 4.2.14 pr.)

The threat experienced had to be serious and well-grounded enough. As to fear (*metum* – Latin), it was stated that fear could be talked of only in situations when the victim had experienced real fear of a serious evil (*maioris malitatis* – Latin) rather than any fear or worries of any nature (*quemlibet timorem* – Latin) (D 4.2.5). For instance, neither the fear of infamy⁴ (*timorem infamiae* – Latin) nor fear to be subject to any encumbrance or trouble (*alicuius vexationis timorem* – Latin) was recognised as a threatful situation (D 4.2.7 pr.). It is also emphasised that it is not fear (*metum* – Latin) or fright felt by a weak-minded man (*vani hominis* – Latin) that is meant here but rather the fear which may reasonably have an impact upon a man of the most resolute character (*homine constantissimo* – Latin) (D 4.2.6). Therefore, if an expressly shy, timid or faint-hearted person was groundlessly worried about something, neither the fact of force nor fear was identified (*neque vi neque metus causa factum est* – Latin) (D 4.2.7 pr.). It is separately emphasised that there is no difference whether a person fears for himself or for his children since due to their affections or love parents were prone to terror more with

⁴ Infamy (*infamia* – Latin) – a system of specific sanctions and other measures for the violation of ethical norms accepted in the Roman society, which mainly implied different restrictions on legal capacity. This way, an unethical, blameful act led not only to a punishment or payment of compensation, but also to a loss of reputation and specific limitations of the rights. To read more about **infamy** (*infamia* – Latin), please see: Apsītis, A.; Joksts, O. 2013. The Concept of Infamy (Infamia) in the Roman Law: An Engine for Sustainable Development and Public Security – the Roman example, *Journal of Security and Sustainability Issues* 3(1): 31–41. DOI: [http://dx.doi.org/10.9770/jssi.2013.3.1\(4\)](http://dx.doi.org/10.9770/jssi.2013.3.1(4)), 33–43 ISSN 2029–7017/ISSN 2029–7025 online

regard to their children than themselves (D 4.2.8.3).

For fear to be acknowledged as grounded, it had to be really manifested – only suspicions about possible use of fear were not enough – fright (*timor* – Latin) had to be initiated and caused by someone. (D 4.2.9 pr.).

Dread (*timorem* – Latin) of slavery and similar situations were recognised as a well-grounded reason of threats (D 4.2.4, D 4.2.8.1).

Legal sources mention threats of sexual assault (D 4.2.8.2), threats due to false arrest (D 4.2.22), threats of legal proceedings (D 4.2.23.1), as well as duress in case of illegal confinement of the victim (D 4.2.23.2).

Unauthorised out-of-court recovery of debts was regarded as an unequivocal case of duress – ‘When Marcianus said, ‘[I] employed *no force*’ (*Cum Marcianus diceret: vim nullam feci* – Latin). Caesar replied: ‘Do you think that force is employed only where people are wounded?’ (*Caesar dixit: Tu vim putas esse solum, si homines vulnerentur?* – Latin) Force is employed just as much in a case when someone who thinks that something is owing to him and demands it without instituting judicial proceedings’ (*Vis est et tunc, quotiens quis id, quod deberi sibi putat, non per iudicem reposcit.* – Latin) (D 4.2.13).

However, self-defence measures as such were not completely forbidden – it was allowed to repel force with force („*cum liceat ... vim vi repellere*” (Latin) – ‘when it is allowed to repel force with force’) (D 4.2.12.1).

Legal sources review rather different examples of employment of force and fear when the victim’s right to protection of his violated interests arises. For instance, when the right of possession⁵ is delivered to someone when coerced by force (*per vim ... possessionem tradidero* – Latin) (D 4.2.9 pr.), when a thing is handed over whilst compelled by fear (D 4.2.9.5) etc. (see D 4.2.7.1, D 4.2.8 pr., D 4.2.9.2, D 4.2.9.7, D 4.2.10, D 4.2.11, D 4.2.14.3, D 4.2.14.6, D 4.2.14.8, D 4.2.14.12, D 4.2.21.2, D 4.2.21.3, D 4.2.21.4, D 4.2.21.5, D 4.2.21.6, D 4.2.23.3)

For the victim to claim protection of his violated rights, the purpose of intimidation directed against him could be achieved in part, for instance, when a stipulation⁶ was made through fear but no money has been paid yet. In the same way, the sources mention an example when some campanians (*Campani* – Latin, inhabitants of Campania), by employing fear, extorted from a party a written promise to pay a certain amount of money; regardless of the fact that the money has not yet been paid, the victim can take actions necessary to protect his interests (D 4.2.9.3).

What is done through fear can never be ratified or confirmed (*ratum habebit* – Latin) on the part of a state official (D 4.2.21.1, D 4.2.1). The victim, i.e. someone who was compelled to act against his will, could restore his earlier status through restitution (D 4.2.3 pr.). Respectively, full restoration (*restitutio* – Latin) of the initial situation based on the authority of the court that, depending on a specific case (see D 4.2.7.1, D 4.2.8 pr., D 4.2.9.2, D 4.2.9.3, D 4.2.9.4, D 4.2.9.7, D 4.2.9.8, D 4.2.10, D 4.2.11, D 4.2.14.6, D 4.2.14.8, D 4.2.22, D 4.2.23.1, D 4.2.23.3), could be manifested, for instance, as a return of a thing when said thing was given to someone under duress together with an obligation to reimburse the victim for deceit (*dolo* – Latin) (D 4.2.9.7, D 4.2.9.5).

A peculiar situation developed in relation to a creditor who, to get a debt repaid, employed unauthorised force

⁵ **Possession** (*possessio* – Latin) – the institute of real right (rights in rem) developed by the Roman lawyers in relation to a person’s rights to control or own a corporeal thing. A person was the possessor of a thing if two conditions were met: I) the possessor had **factual possession** of a thing (*corpus* – Latin, *possidere corpore* – Latin) – the possessor had physical control over it, it ‘was in his hands’; II) the possessor had an unequivocal **intention** to preserve physical control over said thing (*animus possidendi* – Latin) – the possessor wanted to hold it under physical control **just like an owner** (*animus domini* – Latin). Possession (*possessio* – Latin) and **ownership** (*proprietas* – Latin, *dominium* – Latin) are two different institutes of law. Ownership implied fully registered legal title to a thing, whereas possession described a factual situation (*res facti* – Latin). More about possession: D 41.2 tit.; C 7.32 tit

⁶ **Stipulation** (*stipulatio* – Latin) or **verbal contract** – a verbal obligation (*verborum obligatione* – Latin) was a type of contract giving rise to an obligation by saying special oral formulas. For more, please see I 3.15 tit.; D 45.1 tit.

against his debtor (*vim adhibuit debitori* – Latin) – he, in such case, lost his creditor's rights (D 4.2.12.2, D 4.2.13). The right to restitution did not have the one who was exposed to duress (*vim* – Latin) within the limits of legal self-defence (D 4.2.12.1) Restoration (restitution) of the initial situation could not be given to someone who, being an expressly shy, timid or faint-hearted person, was groundlessly worried about something – ‘... since neither the fact of force nor fear was identified (...*quoniam neque vi neque metus causa factum est* – Latin)’ (D 4.2.7 pr.).

In terms of restitution, remuneration was due to the victim for what he could have obtained were he not prevented through fear (*metum* – Latin) – together with the thing itself fruits of a thing were also to be given – both offspring of slave women (*partus ancillarum* – Latin), the young of animals (*fetus pecorum* – Latin) and other fruits (*fructus* – Latin) and everything pertaining to them, not only the fruits that have already been obtained, but the prospective fruits, too (D 4.2.12 pr.).

If the defendant did not apply for voluntary restoration (restitution) of the initial situation and intervention of court was necessary, the victim was authorised to claim a fourfold repayment of the losses incurred by him, i.e. four times more than what would be voluntarily recovered (restituted) (D 4.2.14.1, D 4.2.14.3, D 4.2.9.7, D 4.2.9.6).

(After a year, the victim only had the right to claim repayment of the simple value (*simplum actionem* – Latin), not always, but only on cause being shown – the process was connected with investigation of the case (*sed causa cognita* – Latin) (D 4.2.14.1)).

Fourfold payment included the restitutable value itself; therefore, the restitutable amount to which a penalty of threefold the amount was added was actually supposed to be paid (D 4.2.14.10, D 4.2.14.9). To calculate the fourfold payment, the restitutable value itself was taken into consideration together with all fruits (*cum fructibus et omni causa* – Latin) (D 4.2.14.7) Determining the amount of payment, only the loss actually incurred by the victim was valued (D 4.2.21.2). It is specified that the fourfold payment should be regarded only as interest due to the litigant (*interest quadruplari solum* – Latin) (D 4.2.14.14).

The defendant was authorised to make voluntary restoration (restitution) of the initial situation up to the moment when the respective judgement was pronounced – if he failed to do that, he was absolutely reasonably (*iure meritoque* – Latin) sentenced to pay fourfold (D 4.2.14.4, D 4.2.14.15).

In accordance with the legal principles of the Romans, both one person and many people could be acknowledged as offenders – inspirers of fear (D 4.2.16 pr.) and even corporate bodies (...*vel curia vel collegium vel corpus...* – Latin) (D 4.2.9.1).

Therefore, if several people caused fear (*si plures metum adhibuerint* – Latin) but only one of them was summoned to court and voluntarily, before the judgement was pronounced, restituted a thing, the rest of them were also released from further liability (*omnes liberanti sunt* – Latin); likewise, if the accused, after the judgement was pronounced, made a fourfold restitution of a thing (*ex sententia quadruplum restituerit* – Latin), the action on the case of threat (*metus causa actionem* – Latin) was terminated in relation to others, too (D 4.2.14.15). Or else, the right to claim (*actio* – Latin) was also given against others for the amount from which everything that has already been recovered [from the accused] was subtracted (*quod minus ab illo exactum sit* – Latin) (D 4.2.15).

In much the same way like in cases when several persons inspired fear (*si plures metum admiserunt* – Latin), one had to act also in the situation when as a result of the inspired fear the lost ‘...thing was transferred to another person (*alium res pervenit* – Latin)’ – respectively, the person having actual control over the thing and the person who inspired fear were different subjects (‘...the other one inflicted fear (*alter metum adhibuit* – Latin)’ (D 4.2.16 pr.).

It was specified that action could be brought both against the person who inspired fear and the one having actual control over the thing, since fear (*metum* – Latin) inspired by one person cannot be the means of advantage of another person (D 4.2.14.5, D 4.2.18).

Claims in relation to the cases of force and fear were settled in judicial proceedings in accordance with the procedural norms accepted in the Roman proceedings: ‘...If you think you have claims [rights], the best way to check them is by pursuing the [respective] claim (*Optimum est, ut, si quas putas te habere petitiones, actionibus experiaris* – Latin)’ (D 4.2.13).

If the intimidated person wanted to oppose his wrongdoers, he could bring an action (*actio* – Latin) against them; in turn, if the wrongdoers sued the victim requesting him to fulfil the obligations undertaken whilst compelled by fear, the victim could defend himself with the help of exception⁷ (*exceptio* – Latin) (D 4.2.9.3, D 4.2.14.9, D 4.2.14.13). But if the wrongdoer attempted to respond with an exception to the victim’s claim, the victim could respond to the defendant’s exception (*adversus exceptionem replicatione* – Latin) (D 4.2.14.9) thus neutralising it. Therefore, there were two procedural instruments at the disposal of the victim, i.e. both an action and exception (*et actio, et exceptio* – Latin) (D 4.2.9.3). There could be an action *in rem* and an action *in personam* (D 4.2.9.4, D 4.2.9.6) The sources mention that some actions fell under the cognisance of arbitration⁸ (*actio cum arbitraria sit* – Latin) and judgement pronounced by an arbitrator (*sententiam ab arbitro datam* – Latin) (D 4.2.14.4), inter alia, an acquitting judgement (*arbitrium absolutionem* – Latin) (D 4.2.14.5).

As it has already been mentioned above, legal self-defence measures were allowed – ‘when it is allowed ... to repel force with force (*cum liceat (...) vim vi repellere* – Latin)’ (D 4.2.12.1).

As to the procedural terms, it was pointed out that in case of an offence committed by employing threats or a wrongful act (*per metum facta iniuria* – Latin) the right of action could be exercised within one year meaning a regular year. For the right of action to be permitted after one year has passed (*post annum actio* – Latin), there had to be a well-grounded reason (D 4.2.14.2) and the process was connected with investigation of the case (*sed causa cognita* – Latin) (D 4.2.14.1). The mentioned term of one year was also binding for the heir of the person who had suffered from force (*vis* – Latin) (D 4.2.14.2).

Conclusions

On the whole, it can be stated that the Romans’ concept of force and fear includes a rather detailed legal regulation effective for those times which, inter alia, undoubtedly made a considerable contribution to ensure sustainability of the Ancient Rome. The institutions of force or violence and fear or intimidation are quite accurately defined; the sources provide a wide range of criteria characterising and qualifying them. Also, the sources include rather exhaustive examples facilitating perception of the expressed thought and understanding of the essence of the institutions and conditions of application thereof.

Statutory regulation provides for efficient, motivating and economically substantiated sanctions in case of illegal use of force and fear, i.e. restitution or full restoration of the initial situation based on the authority of the court and the victim’s right to claim a fourfold repayment of the losses incurred by him, in the situation when the person liable for force and fear does not make voluntary restitution.

⁷ Here, the so-called *exceptio metus (de metu, quod metus causa)* (Latin), i.e. the defendant’s **exception** that he undertook an obligation under the consequence of fear (*metus* – Latin) is implied. **Exception** (*exceptio* – Latin) was a peculiar procedural instrument in the Roman legal proceedings. It was provided for the defence of the defendant in cases when an action (*actio* – Latin) brought by the plaintiff (*actor* – Latin) was allegedly fair and well-grounded (*iusta sit* – Latin), but in a specific situation unfair (*iniqua sit* – Latin) in relation to the defendant (I 4.13.pr.). For more, please see I 4.13 tit.; D 44.1 tit.; C 7.40 tit.; C 8.35 tit., see also Berger, A. 1953/1991. Encyclopaedic Dictionary of Roman Law. Philadelphia, The American Philosophical Society, 458

⁸ If the indictable case was complicated and to make a qualitative decision some specific professional or technical knowledge was needed, settlement of a dispute could be entrusted not to the judge (*iudex* – Latin), i.e. an average citizen of Rome from the list of potential judges (*album iudicum* – Latin), but to a subject-matter expert, i.e. **arbitrator** (*arbiter* – Latin). Taking into consideration the arbitrator’s qualification, he had a broader range of rights to interpret a case. For more, please see D 4.8 tit.; C 3.37 tit.; C 3.38. tit., as well as Roebuck, D.; de Loynes de Fumichon, B. 2004. Roman Arbitration. Holo Books.

A lot of attention is paid to identification of the person liable for force and fear, i.e. the defendant, admitting that it may be both one individual or several persons or even corporate bodies. The procedure for taking actions in cases when there were several defendants or the restitutable thing was not in the hands of the person who employed force/fear but in someone else's hands was also specified.

The sources contain the necessary technological conditions for resolution of disputes – claims in cases of force and fear were settled in judicial proceedings in accordance with the procedural norms accepted in the Roman proceedings within the legally provided procedural terms.

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