

THE CONCEPT OF INFAMY (INFAMIA) IN ROMAN LAW:  
AN ENGINE FOR SUSTAINABLE DEVELOPMENT AND PUBLIC  
SECURITY – THE ROMAN EXAMPLE

Allars Apsītis<sup>1</sup>, Osvalds Joksts<sup>2</sup>

<sup>1,2</sup>Rīga Stradiņš University, 16 Dzirciema Street, Riga, LV-1007, Latvia

E-mails: <sup>1</sup>[allars@inbox.lv](mailto:allars@inbox.lv); <sup>2</sup>[osvalds.joksts@inbox.lv](mailto:osvalds.joksts@inbox.lv)

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**Abstract.** The long-term existence of the civilization of Ancient Rome within the framework of one national formation should be acknowledged as a unique example of national sustainability. Such sustainability was also ensured by the successful economic growth, the elements of social policy implemented by state authority etc. However, the particular emphasis should be placed on the role of very effective Roman legal system – it is the legal institutes developed within the framework of this system should be acknowledged as one of the most essential factors ensuring the sustainable development of Ancient Rome and public security. Roman “infamy” (*infamia* – Latin) is an example of such very important legal institute. Infamy (*infamia* – Latin) was applied in the situations when a Roman not only broke the law thus facing the criminal or civil liability, but also came into the collision with the society’s ethical views on what is good and what is particularly undesirable thus taking a risk to lose the reputation and to have specific restrictions regarding rights. According to the information found in the primary sources of Roman law, the shield of infamy (*infamia* – Latin) protected a wide range of issues significant for the society (the state military defence, morality, family values, the interests of national economic circulation, an individual’s life, health, economic interests, the right for the just trial and just settlement of individual and property disputes) thus serving as a driving force for the sustainable development of the state and society of Ancient Rome and public security.

**Keywords:** Roman law, infamy, Ancient Rome, public security, sustainable development.

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## 1. Introduction

The millennium of Roman civilization (753 B.C. – 476 A.D.) – a thousand-year existence of unitary cultural environment within the framework of a periodically transforming and continuously developing national formation should be certainly viewed as an example of rather unique national sustainability. It should be assumed that several equally important factors formed the foundation for the above mentioned sustainability.

In this case we can speak about, for example, the

successful economical growth that, in its turn, ensured the general rise of society’s living standards and the improvement of quality. Besides, it is necessary to point out – it was not only the improvement of life quality for the establishment, but also for tens of millions of countrymen and townsmen. The Roman monuments of material and immaterial culture, the archaeological evidence preserved until nowadays is a doubtless proof that the inhabitants of Rome had a longer life, ate better food, lived in more comfortable homes and used more complicated and qualitative household objects in comparison to their primitive

ancestors and later heirs who lived in the Early Middle Ages. The historians of economics assume that within the period of time from ~ 800 BC till 200 AD the average consumption of a peasant residing in the region of the Mediterranean Sea had increased by at least 25%, perhaps even by 50%. It is relatively insignificant, if we evaluate according to modern standard, but, no doubt, it was a significant support for people experiencing that. As well as, it is pointed out that there was an increase of the total number of population – around 800 BC in the region of the Mediterranean Sea there lived, probably, around twenty millions of people. A thousand years later – forty millions (Scheidel *et al.* 2007). It is possible to find also even more optimistic assumptions, according to which, the number of the population of Roman Empire, at the peak of its development, could be from sixty up to even a hundred million. The number of the population of the City of Rome – around a million (Scheidel 2006). The economy of Rome was mostly based on the agricultural production; however, in the course of time, the proportion of people involved in the non-agricultural production and provision of services increased and, respectively, there increased also the volume of non-agricultural production. Thus, the proportion of population involved in the agricultural production became steady at the level of 75% (Temin 2001). There increased the average labour productivity per capita, there increased the amount of taxes collected and the amount of land rent collected (Hopkins 1980). There increased the volume of trade, also the amount of long-range trade and the domestic export of produced products between the different provinces of Roman State (Duncan–Jones 1990) Namely, Ancient Rome, particularly at the peak of its development in 100 – 300 A.D. could be viewed as a rather well-functioning economy.

As an important factor, ensuring the sustainability of Roman State, should be pointed out also the social policy or at least the sources of such policy implemented by governmental bodies. Thus, for example, it is well-known that the state ensured free of charge food subsidies for the inhabitants of the City of Rome (later – also for the inhabitants of Constantinople) (*annona* – Latin) (Rickman 1980) and organized public tenders for the supply and delivery of agricultural products necessary for the above mentioned subsidies (Sirks 1991).

However, the authors' point of view is that it is necessary to point out the role of advanced, rather compli-

cated and at the same time very optimal and rational Roman legal system for ensuring the sustainable development of Ancient Rome and its public security. It is generally known that economic activities, generation, accumulation and management of material wealth bring about the necessity for a legal mechanism, for the rules approved and enforced by state that ensure an opportunity for the subjects performing economic activities to generate, accumulate and manage such wealth, as well as guarantee the protection of above mentioned wealth against any illegal encroach. The development of national economy, economic activities bring about the necessity for legal institutes regulating such activities, in its turn, the existence of effective legal institutes facilitates the development of national economy. Thus, the Roman law, well-known to us, could thank the successful development of Ancient Rome and its economy for its perfect and optimal nature, but the Roman legal institutes could be acknowledged as one of the most significant factors that ensured the possibility of the above mentioned development.

Roman “infamy” (*infamia* – Latin) is an example of such very important legal institute. Besides, here we can address the legal institute with a deep moral and ethical content. Namely, any legislative norm somehow reflects and tries to protect moral and ethical values adopted by the society – to protect and, no doubt, also to impose that the particular society views as being good. In its turn, Roman “infamy” (*infamia*– Latin), in fact, is a peculiar mechanism, envisaging special and profound responsibility for the violation of ethical standards adopted by the Roman society, thus, serving as a very effective driving force for the sustainable development and public security. It is generally known that the sustainable existence of society is impossible without norms of ethics. The society, whether it is a primitive community of tribes or the most complicated civilization of informatics age, shall be destined to face chaos and destruction, if it has no behavioural norms accepted by the majority of individuals forming the particular society. The norms, based on the views about good that should be supported and protected and the views about bad that should not be accepted and shall be eliminated.

The State of Ancient Rome could establish rather complicated and very successful legal basis for the functioning of a large and – for that time – advanced empire. Besides, legal principles, developed by the Romans,

particularly in the sphere of private or civil rights, have proved to be so successful that they still form the basis of Western and now already the private law of all globalized world. In some places this influence is more direct – in continental Europe and in the former colonies of European countries where there exists so-called Continental/Romano-Germanic law or Civil/Civilian law; in some places the influence is more indirect – in England and Wales, USA and in most of former British colonies where there is Common law. It is generally known that modern Latvia belongs to Continental law, and in our Civil Law, passed in 1937; it is possible to observe direct influence of Roman private law. The authors even find that a person, who is not familiar with and educated on the basic principles of Roman private law, would have difficulties to understand and perceive the Civil Law of Latvia.

Thus the authors believe that their duty is to facilitate the detailed study of the primary sources of Roman law, including the problem of the influence of Roman legal principles on the development of modern, legal institutes, particularly those included into the legislation of the Republic of Latvia. The authors have also always studied the problems related to public security and sustainable development of society. In this case, Ancient Rome with its history of more than thousand years, also can serve as the source of valuable and, probably, useful information. Taking into consideration the above mentioned reasons, the authors performed research the results of which have been presented in this article.

The aim of research – to study information found in the primary sources of Roman law in relation to the legal regulation of infamy (*infamia* – Latin), analyzing the influence of this regulation on ensuring public security and sustainable development.

Within the research there have been studied and analyzed the primary sources of Roman law (*Digesta, Iustiniani Institutiones*, as well as *Gai Institutiones*) using the inductive, deductive and comparative methods.

In relation to the primary sources of law used for the research purposes, there should be added the following. It is generally known that nowadays the main available source of law, providing relatively detailed view on the legal institutes of ancient Romans, is so-called Justinian's codification, also referred to as *Corpus Iuris Civilis* ("Body of Civil Law"). The codification was performed within the period of time from 528 A.D. till 534 A.D. It is related to the political

activities of Justinian I (*Flavius Petrus Sabbatius Justinianus Augustus*, 483 A.D. – 565 A.D.), Eastern Roman Emperor or Byzantine Emperor. The military commanders of Emperor Justinian manage to restore the former power of Roman Empire by reconquering western regions of ancient empire ruled by different small barbarian states. In its turn, the codification of rights is used for the cementation of restored super power and strengthening of the authority of state power – it is generally known that a unitary and particularly regulated legal system is a very powerful factor that facilitates the homogenization of state. Besides, at that time, it was difficult to apply the norms of Roman law, which were found in many and different sources, and the consolidation into a unified codification facilitated their application. The work on codification was supervised by Tribonian (around 500 A.D. – 547 A.D.), jurist and the head of Justinian's personal secretariat (Jolowicz and Nicholas 1972).

Justinian's codification consists of four parts:

**I. *Codex Justinianus*** – the Code of Justinian comprises the laws (constitutions) passed by emperors, starting from Emperor Hadrian (*Publius Aelius Trajanus Hadrianus Augustus*, 76 A.D. – 138 A.D.) until Justinian himself. It consists of 12 books (*liber*) that are divided into chapters with titles – the titles and into fragments that, in their turn, might consist of paragraphs. An example of quotation: C. 4.37.1 or C 4.38.12.1 (Kalniņš 1977).

**II. *Digesta seu Pandectae*** – the Digest (*Digesta*) a compendium of so-called classical period (~1 – 250 A.D., the first 250 years of the current era) jurists' works – „a compilation or an aggregation”. It consists of 50 books that have been further divided into chapters with headings – the titles and into fragments with paragraphs. Before the 1<sup>st</sup> paragraph there might be an introductory text - *principium* (beginning), abbreviated as *pr.* An example of quotation: D.17.2.3 *pr.* or D.17.2.3.3 (Watson 1985).

**III. *Institutiones sive elementa*** – The Institutes of Justinian (*Iustiniani Institutiones*). They have been envisaged as an elementary textbook on the legal institutes that at the same time have also the force of law. They consist of 4 books that have been divided into chapters – the titles that have been further divided into paragraphs, before the 1<sup>st</sup> paragraph there might be an introductory text - *principium* (beginning), abbreviated as *pr.* An example of quotation:

I.3.25 pr. or I.3.25.3 (Thomas 1975).

**IV. Novellae** – Novels, laws passed by Justinian already after the ratification of the *Code* and the *Digest* – *novellae leges* (the new laws). In each novel there is an introduction (*praefatio*), the text of the law has been divided into chapters (*caput*) with or without paragraphs and epilogues (*epilogos*). An example of quotation: N.89.cap.12.6 (Kalniņš 1977).

Within the framework of this research there have been mostly viewed *The Institutes of Justinian (Iustini-ani Institutiones)* (Krueger; Mommsen 1928) and the *Digest (Digesta)* (Krueger; Mommsen 1928). Besides, there have been also used separate fragments from so-called *Institutes of Gaius (Gai Institutiones)* (Seckel and Kuebler 1938). The work of Roman jurist Gaius (has worked from around 130 A.D. – 180 A.D.) *Institutes (Institutiones)* had been written around 161 A.D. and was developed as a textbook on Roman legal institutes. It is the most well-known work on rights that have reached us from so-called classical period (~1 – 250 A.D., the first 250 years of the current era). It consists of 4 books – commentaries that have been divided into paragraphs. An example of quotation: *Gaius, inst.* 3. 148

## 2. The Results of Research

According to ancient Romans' views, an individual's unethical deed, at least its separate manifestations, were subject not only to gods' anger and society's condemnation. For the purpose of public security and ensuring of sustainable development, the one who violated the norms of ethics had to face particular sanctions that mostly meant different restrictions of person's capacity. Namely, in the sources of law we can find norms that regulate situations directly related to the violation of the norms of ethics adopted by the society of that time. The situations, when a Roman not only broke the law, but also came into collision with the society's ethical views what is good and what is particularly undesirable. In such situations there were special sanctions applied – infamy (*infamia* – Latin). Besides, it should be emphasized that these sanctions were applied when a person violated the principles of ethics – in many of the viewed situations the person shall be punished in conformity with criminal law or face civil liability (in most of the cases); however, in addition to the sanction for criminal or civil offence, the person receives also “the stamp” of infamy (*infamia* – Latin).

Thus, unethical, condemnable deed is not only the reason for serving one's sentence or facing the duty to pay compensation, but also a cause for losing one's reputation and facing specific restrictions regarding rights.

According to the Romans' point of view, the cases of such disrepute were:

Dismissal from the military service because of the undignified actions; the dismissal is performed on the basis either Emperor's decree or a decree issued by another person who is authorized to dismiss.

Performance of dramatics or declamation in front of the audience.

The practice of a pander – souteneur.

Conviction for the wrongful accusation of somebody.

Conviction for the betrayal of client's interests to be represented.

Conviction for theft, robbery or for the facilitation of such actions.

Conviction for an unlawful action - outrage (*iniuria* – Latin) that has caused a property loss to another person or for the facilitation of such actions.

Conviction for the actions against the principles of good faith or for the facilitation of such actions.

Conviction for an intentional malicious action (*dolo malo* - Latin) or for the facilitation of such actions.

Conviction for a fraudulent action – intentional deceit of other persons or for the facilitation of such actions.

Verdict of responsible regarding claims from the society's contract, custody contract, assignment contract (mandate) and deposit contract.

If the father untimely marries off his daughter-widow over whom he has power, and marries her off after her ex-husband's death before the end of prescribed period of mourning.

Groom's marriage to such widow before there has been received the permission from the person who has the power of the groom.

Giving permission to the groom over whom his father has power for the untimely marriage with such widow.

Simultaneous engagement or marriage to two women/

men, conceding of such action – if the guilty person is under the father's power of responsible person (D 3.2.1).

As we can see, the protecting influence of the institute of infamy (*infamia* - Latin) covered the range of issues important for all society and for the sustainable existence of state.

The spine of Roman State was its army; it was the highly effective and disciplined army that ensured the development of Roman super power and later – also its dominance over all Western Antiquity. Thus, quite logically, violation of military discipline and norms of military ethics was considered to be a particular threat to public security and therefore – as an action that holds the guilty person up to infamy.

Dismissal from the army meant infamy (*infamia* – Latin) for any soldier, starting from the legionary of the lowest rank up to the commanders of the highest rank (D 3.2.2 pr.). Of course, the particular emphasis was placed on the officers' responsibility (D 3.2.2.1).

There was also emphasized that not all cases of retirement from the military service were related to disgrace and subsequent infamy (*infamia* – Latin). The soldier could retire with honour and Emperor's consent, if he had successfully served the period of time envisaged for the military service. It was permitted to retire before the end of such period of time – if the Emperor permitted the soldier to retire. There was a possibility to be retired due to poor health.

If the soldier was dismissed with disgrace, it was necessary to indicate the reason of dismissal and the soldier's offence. Similarly to the dismissal due to undignified action, withdrawal of rank meant immediate infamy.

Separately there was viewed the case, when a person had joined the army in order to avoid the fulfilment of civil servant's responsibilities. The fulfilment of responsibilities related to such positions, mainly at the level of local governments, particularly at the decline of Roman Empire, could be related to great individual and material responsibility, even to a risk – thus there existed motivation to chose military service. If such soldier was retired in order he would fulfil his civil duties, the retired person's reputation did not suffer and such person was no subject to infamy (*infamia* – Latin) (D 3.2.2.2).

If the soldier, in conformity with the specific *Lex*

*Julia de Adulteriis*<sup>1</sup>, was convicted for a wanton action, it meant dismissal with disgrace and infamy (D 3.2.2.3).

Like a sanction for infamy due to the dismissal from the military service, the former soldiers were prohibited to reside in the City of Rome and places where Roman Emperors resided (D 3.2.2.4). Taking into consideration that those were the places, where the main political and economic activities of Roman society took place, the above mentioned meant rather effective outlawry from public and economic circulation.

The Romans considered physical exhibition of oneself, as well as sexually dissipated lifestyle and facilitation of sexual dissipation as factors that degrade society and expose to danger the sustainable existence of society.

As it was mentioned above, all persons, who performed for remuneration, as well as those, who competed for a reward, were considered to be hold up to infamy.

Coming on the stage in front of the audience was considered to be an act that held the person up to infamy and, thus, it was no praiseworthy deed. By stage was meant any public or private place, or just a street, where somebody appeared or moved with an intention to show oneself, or it might be any place, where the persons gathered together to watch any public performance (D 3.2.2.5).

If the person concluded a contract by which he undertook to take part in the public performance, but later he changed his mind, such person was released from the possible infamy, because the violation, however, had not been so severe, in order the intention to act in such way shall be punished (D 3.2.3).

There were also several exceptions from the general principle. The athletes – sportsmen were protected against the infamy. They were not considered to be actors, because their aim was only exhibition of their strength. Similarly, for the sake of general usefulness, musicians, wrestlers, drivers of carts at the horse races, persons who took care of race horses, and others who fulfilled different responsibilities to ensure the sports games were not considered to be held up to infamy (D 3.2.4. pr.). The above mentioned was mainly related to the religious significance of sports games – as

<sup>1</sup> See D 48.5.

we know, the sports games were usually held within the framework of the events of religious cult as a specific festivity in honour of different gods etc.

Besides, the supervisors of public performances, who fulfilled their duties for the state and society, and not exhibited themselves, were also protected against the infamy (D 3.2.4.1).

In relation to panders – souteneurs it was indicated that they are of two kinds: there are those who benefit from the employment of slaves and those who make money by using free persons. “The employers” of both categories were considered to be contemptible. Besides, it was not important, whether this “trade” was their principal occupation or the way of gaining additional profit – in addition to keeping a pub or an inn – with the purpose to attract additional clients and gain additional profit. The same was related to the owners of public baths who used to employ in such a way slaves whose basic responsibility was to take care of clients’ clothes. (D 3.2.4. 2) If, instead of a free person, a pander was a slave, who employed other slaves in such a way, he was held up to infamy in the case, if he regained<sup>2</sup> his freedom (D 3.2.4. 3).

In relation to prostitutes there was a condition that a woman, who was forced to work as a prostitute for money, while she was a slave, shall be protected against the infamy (D 3.2.24).

Public security, social stability and sustainable development of society cannot be achieved, if the state power cannot ensure the sufficient protection of inhabitants’ lives, health and material values they possess or control in any other lawful way against any threat and illegal encroachment. Thus, in conformity with the Roman legal and ethical principles, the following persons were considered to be held up to infamy:

convicted thieves<sup>3</sup>, robbers<sup>4</sup>, wrongdoers (*iniuria* – Latin)<sup>5</sup> and the persons who have acted against the principles of good faith (*bona fides* – Latin), as well as all convicted facilitators and supporters of above mentioned actions (D 3.2.4.5), because the person who supports the offence shall be considered as a person who has committed the offence (D 3.2.5). By support the Romans meant also the refusal to bring an action against the offender, thus succumbing to persuasion, bribery or pressure (D 3.2.6.3). All convicted deceivers were held up to infamy; besides, it was not important, whether they were the subjects of criminal prosecution or they had lost at the court proceedings (D 3.2.13.8).

For each offence there were particular sanctions envisaged, but “the reward” for the ethical aspects of offence was “the stamp” of infamy. In some cases the person could be protected against the infamy by an attestation (oath) with the confirmation that the person has done nothing wrong, because the attestation (oath) itself, to a certain extent, can serve as a proof of innocence (D.3.2.6.4). Such position characterizes

<sup>3</sup> A theft (*furtum* - Latin) was considered to be the misappropriation and/or devastation of another person’s property without the owner’s consent. It might be overt, obvious – the person has been caught in the act together with the stolen property, or covert – the guilty person has already managed to leave the place he has committed the crime. In conformity with the principles of Roman law, initially the theft was no criminal offence, but a private delict – namely, for committing the theft the guilty person was not the subject of public persecution performed by state authority, but the victim had the right to bring a charge against the guilty person by applying to court and claiming for compensation – for the overt theft – the fourfold amount, for the covert theft – the double amount. The victim could also claim the stolen property from any person through court, besides it was not important, whether the property was found at the person who committed theft or at any other illegitimate possessor. More on theft you can see in I 4.1.

<sup>4</sup> A robbery (*rapina* – Latin) meant the dispossession - misappropriation of another person’s property by force. (“A shameless theft”). Initially robbery was a private delict (see the explanation on the theft), the amount of compensation – the triple value of property, irrespective of the fact, whether the guilty person had been caught in the act or he had not been caught in the act. Besides, like in the case of theft, the victim had the right to retrieve also the stolen property. More on robbery you can see in I. 4.2.

<sup>5</sup> *Iniuria* was the performance of different types of humiliating wrongdoing – fisting or bludgeoning, scourging of somebody, miscalling in public, divestiture of property stating without any reason that the victim is a guilty person’s debtor, writing of insulting poetry or composing of insulting music and multiplying of such works, the facilitation of above mentioned actions, harassing to married women or minor persons, and other similar actions. In the case of *iniuria* the person could be punished as having committed a criminal offence, as well as in the case of a private delict. The amount of compensation had to be determined individually, taking into consideration the situation. More on *Iniuria* you can see in I 4.4.

<sup>2</sup> On freeing slaves (*manumissio* – Latin) you can see in I 1.5.-7.

the Romans' moral and ethical views, which, as an original legal tradition, has survived until nowadays – sworn advocates, certified auditors etc.

The principle of good faith (*bona fides* – Latin), developed by Roman jurists, shall be considered as a legal, as well as moral and ethical category, which has been recognized as one of the basic elements of modern legal ethics. According to the Roman jurists' views, the action and activities of a person (a contracting party, a possessor of a thing etc.) shall not comprise any elements of fraud and injustice. Besides, irrespective of the fact, whether fraud has manifested as an active deed or a passive withdrawal from the actions (Smith 1875).

It was important to prove the person's conviction that there are no elements of fraud or malice in this person's action. For example, a possessor of a thing was considered to be a possessor in good faith, if he could prove that he was really confident that he and only he had the right to be the possessor of the thing and he really did not know that he had purchased a stolen property (I 2.6. pr., I 2.6.1-2). But the thief shall be considered to be a malicious possessor, because he certainly knows that he possesses the property he had stolen (I 2.6.3).

Another fundamental principle of modern legal ethics, which has been influenced by Roman law, is the condition that nobody shall be considered as guilty, prior to conviction by court and before the respective verdict has come into force. The same principle functions in the case of infamy. The person was not held up to infamy prior to the verdict of guilty in the case due to which the person would deserve to be held up to infamy - whether it was a theft, a robbery or any other offence. Besides, if the verdict was appealed – there was an appeal submitted, there had to be waited until the final verdict came into force. If the appeal was rejected, the announcement of the first verdict of guilty was considered as a moment, when the convicted person was held up to the infamy (D 3.2.6.1).

The advanced economic circulation cannot exist without the use of services provided by authorized representatives. The societies, oriented towards the sustainability, could be also characterized by certain level of social maturity, which means also existence of mechanisms that ensure defending of vulnerable society members' individual and economic interests. Thus, in conformity with the principles of Roman

law, infamy was not attributed to those who faced a just loss at the court proceedings while representing other persons' interests – a representative/an official (*procurator* – Latin) and a defender (*defensor* – Latin)<sup>6</sup>, as well as a guardian (*tutor* – Latin)<sup>7</sup> and a trustee (*curator* – Latin)<sup>8</sup>, if this person performed his responsibilities dutifully, he was protected against the risk of infamy (D 3.2.6.2).

But, if somebody lost at the court proceedings that resulted from his duties as being a fiduciary (assignee/mandatary) in conformity with the assignment contract (*mandatum* – Latin)<sup>9</sup>, this person was held up to infamy (D 3.2.6.5). Taking into consideration the fact that the fiduciary's responsibilities were to be inherited, the fiduciary's heir also could face the infamy (D 3.2.6.6).

The infamy could not be applied in relation to a former slave, who, before he was freed from slavery and appointed as a heir by his master, was unsuccessfully defended by his master at the court proceedings regarding the losses caused by the slave, because, although the slave was found responsible for the offence, at the moment of his conviction the slave still

<sup>6</sup> On representatives and defenders you can see in D 3.4.

<sup>7</sup> Guardianship (*tutela* – Latin) was established over the minor men who had no father – father's power (*patria potestas* – Latin) (up to 14 years of age) and unmarried women. The interests of such persons were represented by guardian (*tutor* – Latin), who acted instead of them and on behalf of them on the basis so-called authoritative collaboration (*auctoritatis interpositio* – Latin) that, in fact, meant the guardian's control over the ward's personal life ("moral behaviour") and property. Usually guardian's responsibilities were performed by a close relative of the ward - an adult man; however, these responsibilities could be also delegated to a non-relative – as a public duty to be performed obligatory. More on guardianship you can see in I 1.13.-15., I 1.17.-22.

<sup>8</sup> Trusteeship (*cura* – Latin) was established over the minor persons (14 – 25 years of age), some categories of mentally ill persons, embezzlers and handicapped persons. Their interests were defended by trustee (*curator* – Latin) with whom there had to be coordinated business regarding property of the person over whom there was the trusteeship established. The validity of business done without the trustee's consent could be litigated. More on trusteeship you can see in I. 1.23.

<sup>9</sup> By assignment contract (*mandatum* – Latin) one party – the person who assigns the task (assignor/mandator), assigned, and the other party – the fiduciary (assignee/mandatary), undertook to perform the task in the interests of the person who assigned the task. For example, to lend money to a third party or to perform the duties of a doctor, a surveyor or a defender of rights. The mandate was a contract without compensation that did not envisage any remuneration for the fiduciary's efforts. However, the fiduciary could claim to a payment for costs and the person who assigned the task had the right to grant the fiduciary "honorary rewards" in the form of a fee (*honorarium* – Latin). More on mandate you can see in I 3.26., as well as in D 17.1.

was possessed by his master and he himself was not the subject of rights (D 3.2.14).

Very important for ensuring the sustainability of Roman society was a very special social status of a Roman family (*familia* – Latin) and, as a result, the high developmental degree of the institutes of Roman family rights – the family performed there not only the function of the basic unit for the society's reproduction, but also the function of economic management. Besides, the Roman ethical and religious views envisaged a very respectful attitude towards the dead, ancestors, traditions, heritage of the past that served as a significant element for cementing the society. At the same time, the legal regulation was relatively realistic and meeting the society's everyday needs. Thus, for example, in relation to the case, when the father was held up to infamy due to untimely marrying off his daughter without observing the envisaged period of mourning for the death of his former son-in-law, there was particularly indicated that the period of mourning shall begin from the actual moment of son-in-law's death. Thus, if the information about the son-in-law's death was received already after the end of the period of mourning, the mourning could be started, held and ended on the same day (D 3.2.8). Rather pragmatic approach! Particularly, when the ethical aspects of the case are being evaluated. Besides, the period of mourning could be ignored at all, if there was received the Emperor's permission for marriage (D 3.2.10 pr.).

It was also possible to enter into a new marriage immediately, if the woman had a child (D 3.2.11.2).

The husbands had no the duty to mourn for their dead wives (D 3.2.9 pr.).

It was not necessary to mourn for the dead betrothed (D 3.2.9.1).

The person was allowed to become engaged during the period of mourning (D 3.2.10.1).

Mourning for the dead child or parent was no obstacle for entering into marriage (D 3.2.11 pr.). In conformity with the general principle, the person had to mourn for the death of parents and children of both sexes, as well as for the death of other relatives as much as they each deserved; if somebody refused to mourn, this person was not held up to infamy (D 3.2.23). In the case, when the dead husband turned out not to be worthy of mourning, the widow had no the responsibility of mourning, although she was not

allowed to enter into a new marriage before the end of the envisaged period of mourning (D 3.2.11.1). However, a son had a duty of mourning for his dead father even if he had been deprived of legacy. The same was related to the mourning for a dead mother even if her property was not inherited by her son (D 3.2.27 pr.).

It was obligatory to mourn for the killed at the battle-field even if their bodies were not found (D 3.2.27.1).

The Romans had no custom of mourning for their enemies, the convicted for the treason and persons who had committed suicide "not because they were tired of their life, but due to their guilty conscience" (*non taedio vitae, sed mala conscientia* – Latin)<sup>10</sup>; however, if a man entered into marriage with the widow of such a husband, his deed meant infamy for him (D 3.2.11.3).

However, the new husband was protected against the infamy, if he could prove that, when he entered into marriage, he knew nothing about such facts, because "lack of knowledge regarding the law shall not be forgiven, but lack of knowledge regarding facts might be forgiven" (*ignorantia enim excusatur non iuris, sed facti* - Latin). A husband was also protected against the infamy, if he entered into marriage not on his own initiative, but obeying the order of the person who had the power over him, or if he had received the permission from such person<sup>11</sup> - then the infamy was held up to the person who gave the order or permission. (D 3.2.11.4) Besides, if a son had entered into marriage according to his father's order and wanted to retain the marriage also after he had got free of his father's power, the son was not held up to the infamy

<sup>10</sup> There is a contradiction between the pre-Christian views in relation to the person's rights to take such decisions and the conditions of Christian ethics that leaves up to Supreme Power to decide regarding life and death, thus not admitting possible any justification for committing suicide.

<sup>11</sup> According to the Roman legal views, the persons were divided into two categories – "the persons in their own rights" (*personae sui iuris* – Latin) and "the persons with other's rights" (*personae alieni iuris* – Latin) or persons over whom somebody else had the power. The above mentioned was mainly related to the order in the Romans' patriarchal family (*familia* – Latin), where the head of the family - father (*paterfamilias* – Latin), was *sui iuris* (Latin), but the other family members, as *alieni iuris* (Latin), were under the father's specific paternal power (*patria potestas* – Latin). The capacity of those over whom the father had power was restricted in relation to do business regarding property, to marry and establish the family – it could be done with the father's consent and mediation - representation. In conformity with the general principle, the father had almost absolute power over the other family members. (See Gaius, inst 1.48. and further, I. 1.8.-9.).



(D 3.2.12). The father also could avoid infamy, if he could prove that he had given no prior order, but just confirmed marriage that has already taken place and that he had no knowledge about the facts compromising his son's wife at that moment (D 3.2.13 pr.).

A person (for example, a father) could be held up to the infamy, if he simultaneously had two engagements with two brides or two grooms on behalf of a man or a woman over whom this person had the power. If this was done on behalf of the persons over whom the organizer of engagement had no power, the organizer of engagement was not held up to infamy (D 3.2.13.1.). Then the groom or bride was held up to infamy. There was particularly emphasized that the word "simultaneous" meant the situation, when two engagements existed at the same period of time, but not the fact that two engagements were organized at the same moment (D 3.2.13.2).

If a woman was engaged to one man, but, without the corresponding cancelling of engagement<sup>12</sup>, she entered into marriage with another man, she had to be punished (D 3.2.13.3).

Similarly, if a man entered into marriage or engaged with a woman with whom he had no rights to enter into marriage (for example, a freedman – former slave or an actor engaged with a senator's daughter (D 23.2.42.1)) or marriage turned out to be illegitimate (for example, a woman was already married to another man (I 1.10.7)), he had to be held up to infamy (D 3.2.13.4).

In conformity with the Roman hereditary principles, for the expected, but not yet born child ("who is going to be born" – *nasciturus* – Latin), shall be reserved the rights for his part of legacy left by his father.<sup>13</sup> Thus, some cases of infamy were related to the malicious use of this principle – a woman who was appointed as a possessor of her dead husband's legacy on behalf of yet unborn child, because she, with the malicious intent, had pretended as being pregnant, was held up to infamy (D 3.2.15). The same was re-

<sup>12</sup> Engagement (*sponsalia* – Latin) was the proposal of future marriage and mutual promise. It could be concluded with the parties being present, as a well as through the mediator. The periods of time were determined according to the necessity, and they could last even for several years. In conformity with the general principle, engagement was not considered to be the marriage contract; it was the subject of unilateral revocation and could not serve as the justification for the claim brought to court on the obligatory marriage. More on engagement you can see in D 23.1.

<sup>13</sup> See D 25.4-6

lated to the situation, when the actual father of the child was not the dead husband, but another man (D 3.2.16). Particular emphasis was placed on misinformation of a praetor – the representative of state authority (D 3.2.17).

If a woman had convinced herself and was in the firm belief that she was pregnant, and that her specific confidence could be proved – the woman was "in good faith" (on the principle of good faith you can see above), it was considered that she had acted without any malicious intent and shall not be held up to infamy (D 3.2.18).

Besides, it was particularly emphasized that it was possible to hold up to infamy only a woman in relation to which there has been a judicial decision taken. There has been a decision taken that she has been appointed as a possessor of legacy by fraudulent and malicious actions. The same was related to the woman's father who, on the basis of his power that he had as a father, had given a permission for the malicious appointment of his daughter as a possessor of the dead husband's legacy on behalf of as if there would be expected, but yet unborn child (D 3.2.19).

As regards to the issue of taking any judicial decision and conviction in any case, where there was possible to hold the person up to infamy, a general principle was effective – the infamy could be applied only in the case, where the decision was taken by a judge who was appointed by state authority. If the decision was taken by judge chosen by parties involved in the dispute – an arbitrator, the case, in any situation, could not serve as a basis for infamy (D 3.2.13.5).

The Romans' right for the just trial and receiving of the assistance of court was recognized as a very important factor for ensuring the sustainable existence of society and state. For example, the litigants, who lost in the proceedings as a result of a counter claim brought against them, were not the subject of infamy (D 3.2.6.7). Namely, if a person – the claimant had brought an action – a direct claim (*actio directa* – Latin) – against the defendant for the offence that envisaged also holding the guilty person up to infamy (for example, a claim for the theft), and the defendant, in his turn, had brought a counter claim (*actio contraria* – Latin) against the claimant, finally, when he won at the proceedings, the claimant was not hold up to infamy.

Because the counter claim is based only on the

convenience, instead of being based on the disagreement regarding the observation of the principles of good faith, and the result, anyway, depends only on the opinion of court (D 3.2.6.7).

The litigant also had an opportunity to avoid infamy, if, instead of being based on the violation of claimant's rights, the claim of infamy brought against him resulted from the mutual agreement – a contract of parties, and the parties achieved the settlement (D 3.2.7). Namely, the person was sued for the not fulfilment of mutual contract, but nor for the violation of claimant's rights (for example, for theft, robbery or doing a mischief), and the claimant and the defendant agreed on some kind of compromise.

Because in such cases, unlike the court proceedings on the violation of rights, the compromise was no infamy (D 3.2.7).

Infamy was not applied in relation to the witnesses whose justified testimonies were not taken into account by judge, when making a decision on the case. Besides, it was not important, whether the verdict was found to be just or unjust and respectively revocable (D 3.2.21).

The application of a corporal punishment, although being sufficiently humiliating, did not mean infamy; the person was hold up to infamy only, if it was envisaged for the particular offence. This principle was applied in relation to any type of punishment (D 3.2.22).

The person could not be hold up to infamy, when the guilty person was sentenced to more severe punishment than provided by the law. There was a point of view that by undertaking more severe punishment the guilty person saves his face to a certain extent – for example, by undertaking to pay greater sum of penalty or compensation (D 3.2.13.7).

If any person, by the verdict, was found to be a defamer – a person who performs unfounded accusation in relation to another person, the guilty person was the subject to infamy. It is interesting that it was not only the fate of those, who performed unfounded accusations, but also those, who during the court proceedings deliberately betrayed the interests of people them represented, and they betrayed these interests in favour of the opponents of those whom they represented. They derogated from their clients' interests without any reason and thus, in fact, they started to work in favour of the opposing party (D

3.2.4.4). Such action was considered to be particularly unethical. In their turn, persons convicted as being instigators for the unfounded accusation of others were considered as having exposed themselves to disgrace; however, they were not the subjects to infamy (D 3.2.20).

## Conclusions

Having evaluated the conception of Roman infamy (*infamia* – Latin) on the whole, we can see rather complicated and detailed normative regulation that comprises relatively wide range of issues important for the sustainable development of society and public security. Starting from ensuring the state military defence, the protection of citizens' morality and, thus, also the protection of society's reproductive abilities, ensuring of the successful functioning of a family institute and finally – the protection of an individual's life, health and economic interests, the facilitation of economic circulation and protection of vulnerable society members' individual and economic interests. Thus, also ensuring the population's right for the just trial and efficient state ensured mechanism for the settlement of individual and property disputes. Of course, when viewed according to modern situation, some Roman legal and ethical views could seem to us archaic, others, perhaps, not topical at all, some of them – contradictory or even unacceptable at all. However, it is impossible to deny the fact that Roman State, classical Roman civilization ruled all the region of the Mediterranean Sea and most of the modern Western Europe more than 1000 years. Within this period of time there was achieved the unprecedented economic development and there were created significant cultural values. Many of the Roman created values have proved to be sufficiently optimal to serve as a foundation for the achievement of material and spiritual culture of later periods. The institutes of private law created by the Romans nowadays form the basis for the global legal standards. The system of religious views adopted and consolidated by the Romans has become one of the world's greatest religions. After all, the Roman State (the Republic, and then – the Empire) existed more than 1000 years! Even for 2000 years, if we take into account also Greek Byzantium period. The colonial empires of later periods known to us – the colonial empires of Spain, Russia, France, even the most efficient among them, the British Empire - around 300 – 500 years!

Of course, around 1500 years that lie between nowadays and the Ancient Rome is a long period of time, and the society's views on the practice in force, including also the views on "good" and "bad", have the tendency to change and develop; however, on the whole, we can only draw a conclusion: the system of legal and ethical views created and maintained by the Romans, obviously, has been very effective, and one of its established institutes "infamy" (*infamia* – Latin) has rather successfully served as a driving force for the sustainable development of Ancient Rome and its society, as well as for public security.

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- Allars APSĪTIS.** *B.oec., M.iur.*, Rīga Stradiņš University. Doctoral degree programme Law.
- Doctoral student. Research interests: Roman Law, Property Law, Contract Law, Regulation and Business Law, Economic history, The issues of security and sustainability.
- Osvalds JOKSTS.** *Prof., Dr. hab.iur.*, Rīga Stradiņš University. Doctoral degree programme Law. Head of Programme. Research interests: Property Law, Contract Law, Regulation and Business Law, Roman Law, The issues of security and sustainability.