JURIDICAL CONSIDERATIONS ON A TESTAMENT DISCOVERED AT SUCIDAVA

Ilie ŞANDRU, Piteşti

Rome imposed the same law principles in its provinces, both in senatorial and imperial, but taking into consideration the traditional laws and customs in those territories that were included in a province and belonged initially to cities, as in the case of Greek or Oriental ones. Here, they continued to preserve those law values which did not contravene the principles of private Roman law.

The Roman law bibliography is very vast. But the connection and checking up on the information from the ancient Roman jurists (sometimes contradictory) with those of inscriptions and the juridical interpretations of these sources is not generally done[1]. A jurist comes across historical and epigraphic difficulties (the history of Roman provinces, prosopography, chronology, Roman law evolution, social and political environment). A historian, in his turn, has to overpass vast research with specific juridical terms, difficult to get at, because of the modern usage and meanings that jurists are striving to find.

Concerning the Roman Dacia, information about the application of law is scarce: wax-tables (contracts, deposits, subscriptions, money reversions), and *defensor* or *heredes* are also mentioned on inscriptions[2].

There is a very interesting fragment of an inscription discovered at Sucidava[3]. Being partially preserved, we may consider some features about the quality of the testator or his right to make a

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1 Th. Mommsen, *Manuel des antiquités romaines,* vol. I, Paris 1899, 35; F. de Visscher, *Etudes de droit romaine*, Paris, 1931, 24.

2 *IDR*, I, with the bibliography of Roman law, in Dacia, 165 - 190.

3 *IDR*, II, 187 (*CIL*, III, 14493).

testament. The comparative analysis with juridical sources of other provinces might clarify the matter of provincial ownership[4].

Institutions by Gaius[5] are still the best sources of researching Roman law; there are enough specifications about acquired and transferred property (ownership), testament, rights and legal obligation of heirs and conditions of inheritance, etc.

I come back to that will. We have not known yet about any municipal (urban) status of this settlement. There was a *territorium* belonging to *ager publicus.* Colonists and veterans of that territory were land-holders in *possessio* or having the right of *usus-fructus*[6].
A lot of *villae rusticae* and *pagi* depended on that urban settlement[7]. There was a very important economic life due to the place of Sucidava on the Danube - Olt - Isker route. There were functioning customs, brick, ceramics or metallurgy work-shops[8]. It was a place where a lot of goods had come across the Danube. They were limestone of Vratza, *terra sigillata*, etc. and a very fertile agricultural supply territory; that is a prosperous and important center for the Roman Empire in the sixth and seventh centuries. The buildings and town planning, together with that *territorium* prove to us the existence of social categories involved in commercial activities and also an elite of the society (*ordo, curiales,* etc.)[9]. That bourgeoisie knew in detail the economic and juridical mechanisms of a market economy, specific to the second and third centuries in the Roman world.

The testament discovered at Sucidava has been used just to attest juridical or economic[10] relations in Dacia. That is why, a juridical analysis is more than necessary.

The validity, as a part, comes out on the one hand from the juridical style adopted by the person who wrote it, maybe the testator

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4 This text belongs to a doctor degree-thesis.

5 Gaius, *Institutiones* (Romanian version by Aurel N. Popescu), Bucharest 1982 (excellent introduction and a pertinent critic of the sources and bibliography).

6 O. Toropu, C. Tătulea, *Sucidava,* Buc. 1987, 154; *IDR*, II, 190.

7 Gh. Popilian, *Arhivele Olteniei*, 6 (1989), 54 - 63.

8 R. Ardevan, *Viaţa municipală în Dacia Romană,* Cluj-Napoca, 1994, 74.

9 Gr. Tocilescu, *Fouilles,* 187 - 215; D. Tudor, *Oltenia romană,* IV, 408.

10 M. Macrea, *VDR,* 158 ("vinum").

himself or a *jurist-questor.* Certain phrases are to be noticed., The formula *damnas (esto),* meaning "being condemned to", is an indeclinable one, an archaic and syncopate form of *damnatus,* the perfect participle of *damno, -are, avi, atum* and can also be found in the oldest law texts since preclassical ages so it is established[11]. Identically, it is the case of the formula *volo (iubeo), "*I will and command". The texts offer the impression of having been written by a jurist or an important figure (the owner, or the holder ?) who knows the Roman law and Latin in juridical *formulae* well. The change of the topic, in a juridical or rhetorical emphasis, reinforces our opinion that there is a testament which can be a solid base (but just one for Roman Dacia) for some juridical approach on the ownership of land in this Danubian province. The classic Roman law and the proceedings do not impose the use of *formulae* but their presence underlines or certifies the stylistic quality of the legal dispositions.

The stipulations of the testament are more important than it has been said. Many scholars have treated it as just being a usufruct under legal conditions imposed by the obligations of the annual performances of the ceremonies at the tomb (*sacra*)[12]. Others classified the inscription dealing with the law of tombs[13], a matter that belongs to the Roman religion, and the limitation of sacred place in a *dominium* which demandes to be respected, morally and religiously, the dispositions that become *locus religiosus*.

The anonymous testator is a *caput* (he has the juridical capacity to make a testament): he uses the right of *ius commercii* (the right to get a juridical contract as conforming to the civil Roman law[14]) which is specific to the Roman citizens relationships. *Ius Commercii* as *ius civile* says, allows *mancipatio*[15] - that is to acquire a form of property. This right may offer the citizen the possibility to get an estate being "susceptible" (Gaius and his editors did not explain this term) to *dominium ex iure Quiritium*.

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11 Another testament (108 AD): P. F. Girard, *Textes de droit romain,* Paris, 1937, 807.

12 *VDR*, 297.

13 F. de Visscher, *Le droit des tombeaux romains,* Milano, 1963, 83.

14 Gaius, I, 89.

15 Ulpian, 50, 15, 1, 8.

The testator, claiming his tomb *(locus religiosus)* points out his quality as holder or concessionaire which allowed him to make his will that establishes the will of the former holder in juridical terms - there is a *de cuius* (who transmits the inheritance) and becomes, by this act, an owner without usufruct use.

It is also interesting that the testator *(testamenti factio* - the capacity of making a testament) specifies stipulations - *formulae* of the *ius Quiritium* - *volo damnas,* or even conditions which could attack to law a clause of a will because of "my direct or indirect heirs", knowing that the direct ones have a priority over the inheritance. The testator specifies clearly that he gets the right to control his heirs under the same conditions to make the rituals at the tombs. This kind of a testament and its stipulations suggests a procedure of *ius Quiritium* because in the case of an attack on inheritance it must be applied *ius civile.* This contraction between the two forms of ownership *(dominium* and *possessio-concessio)* has generated a lot of discussions about the ancient law schools. It resulted in another law source, less known, derived from concrete cases and proceedings which, I consider, was the cause of avoiding the clear specification of the sense of provincial ownership and the use of "susceptible" for full property[16].

The holder of those two *iugera* of vineyard was an owner or concessionaire of a land. Ownership was a real right upon tangible or intangible property[17], and in the first category, the inheritance, usufruct or legal obligations belonging to it.

This specification of Gaius is very important; the testator could be the owner or concessionaire, having the real right to set up the usufruct and impose conditions by his testament stipulations provision of a contract.

The heir was under two provisions (obligations): first due to the testament, being successor (real condition) and the second because of the sacred land he inherits, irrespective of his quality (direct conditioned or indirect - usufructuary), because of the presence of the tomb - epitaph that he had to respect.

The breaking of the testament stipulations canceled the heir's rights and accused him of lack of piety, (Fustel de Coulanges).

To hold a land in *possessio* or *concessio* and the imposing of *usus-*

[16] Gaius, II, 27.

[17] Idem, II, II.

fructus by a testament do not require the holder (owner) or the testator to exercise these real rights on the base of *ius civile* or to be an owner of *dominium ex i. Q*. - having the social status as citizen.

We notice that the inscription of Sucidava dates from the IInd century - the juridical style, the category of testament - epitaph, the well-engraved letters and also the social and juridical conclusions make me specify these.

In Dacia, together with land relationships, there is information about perfect patrimonial relations buying or selling on credit, on loan at interest colleges affairs. All these prove legal actions as *mancipatio*, stipulations *fideiussor* surety (a third person in patrimonial affairs). These contractual clauses are between legal and natural persons who rent, becoming *conductores* in the contracts *(locatio operarum)* with juridical terms which explain the nature of *patrimonium Caesaris*.

The capacity to make a testament, to divide, to rent are rights of *ius civile* and this does not affect the owner, the holder has the right to transfer his estate, if he has got the quality of holder or concessionaire. From the texts is the clear conclusion that the anonymous testator could be a citizen or Italian who uses *(ius utendi)* on his own will by *ius abutendi* (testament, devise, *fideicomissum*)[18].

The usufruct from this testament shouldn't be interpreted as a burdening of the owner estate, but it only offers guarantees to the usufructuary according to the ancient Roman principle "to have or not to have"[19]. The right of *usufructus*, in contrast with the property, was temporary, but for life. This right does not suppose any obligation for the real owner, because both are titulars of real rights. The testament does not precise a condition of validity - the making of sacrifices obliging the usufructuary to accept without affecting this quality after the acceptance. The penalties mentioned are legal, being imposed by the real holder (the possession's suited to *usus-fructus*). The testament dispositions are correct and legal and conform to the private Roman law; we may find here a definition of *usus-fructus* - the crop of a vineyard and use of a house *(habitatio)* and even the possibility of a foundation (C.C. Petolescu)[20] whose income comes from the financial

[18] Jakotă, *Drept roman*, Iaşi, 1993.

[19] A.D. Hargreaves, *An Introduction to the Principles of Land Law,* London, 1963, 43.

[20] The delict of usufructus belongs to civil responsabilities.

penalties as a budget for the new usufructuary or heir in the same will of making *sacra*.

F. de Visscher mentioned the inscription, the testament, in the context of approaching the form of *usus-fructus* and the usage of it. He considers that it is very difficult to establish from the law sources the clear way to accord this right and the reports that are to be establish between the different parts. The absence of exact specifications leads to different interpretations and opinions. ("Tout dépendait de l'interprétation").

It must noticed that the *usus-fructus* of this testament is correctly written. In favour of this statement I get to some arguments: a *locus religiosus* may impose some obligations on the heirs; the use of profane annexes for respecting the testament stipulations conform to the Constitutions from Traianus to Philippus Arabs[21]; the testator, by mentioning separately the usufruct of a house and a vineyard could get two persons (juridical speaking), possibility that does not contravene the law as Ulpianus says[22]. At the death of replacement of heirs by breaking the testament the circle is closed and only a fideicomis can replace them[23], anyhow to sell is forbidden[24].

On this short analysis of this fragmentary testament we notice that in Dacia there is the juridical environment to apply and respect the private Roman law[25]. The testament is correctly made; there are no matters on which someone could attack it. But there is the problem concerning the person - the testator and what the status of his land was. The stipulations of his testament prove a real possession as a

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21 F. de Visscher, *op. cit.,* 54, 59.

22 Ulpian 1, 17.

23 D. 33, 2.

24 D. 8232; 8233.

25 In a recent paper published by professor Ion Piso (University of Cluj-Napoca, *L'aristocratie municipale de Dacie et la grande propriété foncière*, in Latifundum o latifundo, Héritage de Rome - une création médiévale ou moderne, Publications du Centre Pierre Paris, Paris, 1995, 438, the author proposes a division of Dacian *ager publicus* with the ratio of 10-1-1 corresponding to the civile, military and fiscal territories taking into consideration the similarity between the military aspect of the both Roman provinces - Germania Inferior and Dacia (cf. Ch.B. Ruger, *Germania Inferior,* Graz-Cologne, 1968). I consider that the testator held a propriety in the civil territory of Sucidava.

dominium, but not necessarily, because the provincial land can be suited to juridical relations as inheritance, testament obligations, *usus-fructus* as being real rights conform to Gaius, "susceptible", of property. The testator makes stipulations as having an estate of *dominium ex. i. Q.* in a part of Roman Dacia where there was no *ius Italicum*, at least during the second century[26], if that may validate the provincial land with the Italian one.

[26] For *ius Italicum* as a juridic approach, it may be seen Fr. de Martino, *Storia della constituzione romana,* Napoli, 1965; J. Bleicken, *Chiron* 4, 1974, 371, 384 - 390, and for Dacia: N. Gostar, in *AIIA Iaşi*, 6, (1969), 127 - 139.

The Testament of Sucidava

Inscriptiones Daciae Romanae (Inscripțiile Daciei Romane)
II, (C.C. Petolescu), Bucharest, 1977, no. 187

[volo iubeo ..... curatoribus sepulchri mei fructum]
[v]in[e]arum iug(erum) // (duorum) ..... [et usum eius aedifi-]
[ci] quod iunctum sepu[lchro meo est concedere sub suprascripta]
condicione quicumq[ue hereditatem adierit ex heredibus meis]

vel ex is per gradus v[el qui substitutus erit, si quis eorum]
interciderit. Volo iubeo [heredes meos curatorem sepulchri mei]
in locum eiu{i}s, qui ob[i]e[r]i[t aut officium suum deseruerit,]
substituere eadem co[ndicione qua curatores supra instituti sint],
qui similiter officium g[erat et .....]

sit et quicumque ea [condicione curator institutus aliquid neglexeri]
pertinens ad voluntat[em meam dimittatur eique alius sufficatur ut]
sit, qui ex iussu meo in [sepulchro meo quotannis sacra faciat]
ita u[t s(upra) s(criptum) e(st).]
Ut eae vineae et aedifi[cium curatoribus reservata sint, ius heredibus]
meis aps[it] dand[i ea aut alienandi. Si quis voluerit vendere ea]

aut alienare q[uod adversus voluntatem testamenti mei]
fecerit, venditio et [alienatio irrita sit et (denariorum).....
m(ilia) dare damnas esto. Pecunia]
ea reliquo[ru]m caus[a hereditati adcrescat.....]
ita ut post [mortem meam curatores quotannis sacra faciant]
ex fructu s[upra scriptarum vinearum].