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EXPLORING THE HISTORICAL ROOTS OF HUMAN TRAFFICKING, OR THE STATUS OF SLAVES IN ANCIENT ROME

DÁNIEL SZÚCS¹

ABSZTRAKT ■ Jelen tanulmány a római rabszolgaság intézményének történelmi mélységeibe hatol annak érdekében, hogy feltárja az emberkereskedelem bűncselekményének gyökereit. Az egyes aspektusok boncolgatásával a szerző arra törekszik, hogy fényt derítsen a kizsákmányolás tartós örökségére, s egyben lehetőséget biztosítson annak megvitatására is, hogy az ókori tradíció miként vált évezredek alatt az emberkereskedelem alapvető emberi értékekkel össze nem egyeztethető bűncselekményévé, amely napjainkban is sújtja a világot. Kulcsfontosságú kiindulópontként tekinthetünk arra, hogy a rabszolgaság szerves részét képezte az említett ókori társadalomfelfogásnak. Az egyben társadalmi, kulturális, és gazdasági dimenzió feltárásával a tanulmány arra a szisztematikus dehumanizálásra kíván rávilágítani, amelyet az ókorban szenvedtek el a rabszolgák. Az értekezés a római rabszolgaság kulcsfontosságú aspektusait veszi górcső alá, melyek közül példaként említhető az egyes személyállapotot érintő kérdések, a rabszolgaság keletkezési és megszűnési módozatainak széles spektruma, az olykor embertelen életkörülmények, valamint az állam és a társadalom szerepe az intézmény állandósításában. Amennyiben párhuzamot kívánunk vonni a rabszolgákkal való bánásmód és az emberkereskedelem mai áldozatainak helyzete között, megállapíthatjuk, hogy a múlt meglehetősen nagy árnyékot vetít a jelenkorra. A történelmi vizsgálat célja, hogy felhívja a figyelmet az emberkereskedelem tartós jellegére, s folyamatos éberségre, cselekvésre szólítson fel az emberi jogok megsértése elleni örökös küzdelem jegyében.

ABSTRACT ■ This paper delves into the historical depths of the institution of Roman slavery in order to explore the roots of the crime of human trafficking. By dissecting each aspect, the author seeks to shed light on the enduring legacy of exploitation, while also providing an opportunity to discuss how the ancient tradition has evolved over millennia into the crime of trafficking, incompatible with fundamental human values, that continues to plague the world today. A key starting point is that slavery was an integral part of this ancient social concept. By exploring the socio-cultural, economic and social dimensions, this study aims to highlight the systematic dehumanisation that slaves suffered in antiquity. The thesis focuses

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on key aspects of Roman slavery, such as issues of personal status, the wide spectrum of ways in which enslaved status arose and ended, the sometimes inhumane living conditions, and the role of the state and society in perpetuating the institution. Drawing parallels between the treatment of slaves and the situation of victims of trafficking today, the past casts a rather large shadow over the present. The aim of the historical inquiry is to draw attention to the persistence of human trafficking and to call for continued vigilance and action in the perpetual struggle against human rights violations.

KEYWORDS: exploitation, inhuman treatment, forced labour, trafficking in human beings, slavery

1. PREFACE

Today, we take a legal constellation for granted whereby the whole legal system is permeated by the *acquis* of equality before the law. However, looking at the different periods of history, this is far from being a permanent phenomenon, and it has been a rather bumpy – and in many cases ruthless, with no regard for dozens of human lives – road to this advanced concept. In the words of ÁGNES CZINE,² “*trafficking in human beings in the 21st century is the cruellest violation of human rights from the perspective of the victims.*”³ This segment of crime is the third largest and fastest growing industry in the world, keeping millions of people in ‘slave conditions’.⁴ The existence of slavery is as old as our history. The phenomenon of human trafficking is often referred to as modern-day slavery.⁵ SZANDRA WINDT points out that “*traffickers treat their victims as ‘slaves’ for both sexual and labour (sometimes other) purposes, taking advantage of their vulnerable position*”.⁶ However,

² ÁGNES CZINE: *Az emberkereskedelem, mint a szervezett bűnözés egyik megjelenési formája*. Pécs, s.n., 2011. 13. <https://pea.lib.pte.hu/handle/pea/15593>.

³ On the conceptual aspects of victim, see: ANDREA DOMOKOS – RENÁTA GARAI: A bűnözés és a büntető igazságszolgáltatás áldozatai. *Glossa Iuridica*, 2019/3-4. szám, 9–22.; ANDREA DOMOKOS: Az új Büntetőeljárás Kódex sértettekkel kapcsolatos egyes rendelkezéseiről. *Glossa Iuridica*, 2018/3-4. szám, 137–148.; ANDREA DOMOKOS: *Büntető anyagi jog – általános rész*. Budapest, Patrocinium Kiadó, 2019. 37.

⁴ CZINE 2011, 13.

⁵ See: MIKLÓS HOLLÁN: Az emberkereskedelem büntetni rendelése a nemzetközi instrumentumok tükrében. *Állam- és Jogtudomány*, 2007/2. szám, 273–287.; MIKLÓS HOLLÁN: Az emberkereskedelem tényállásának jogharmonizációja az európai unióban. *Büntetőjogi Kodifikáció*, 2008/2. szám, 22–26.; SZANDRA WINDT: Gondolatok az emberkereskedelemlről. *Miskolci Jogi Szemle*, 2019/2. szám, 459–469.; LENKE FEHÉR: Az emberkereskedelem komplex problémája. *Állam- és Jogtudomány*, 2012/4. szám, 397–420.

⁶ WINDT 2019, 460.

Windt also draws attention to a conceptual distinction based on the fact that the term slavery is often used as a synonym for human trafficking. Though, according to her, the former is a rather broader concept compared to the latter.⁷ In this context, LENKE FEHÉR argues that human trafficking today is to some extent comparable to the slave trade of the past,⁸ precisely because the essence of both activities is the treatment and exploitation of human beings as quasi-objects, commodities.⁹ In my view, Szandra Windt's statement did not place the two concepts in an alternative context, but merely highlighted the logical direction from less to more, and that these two concepts are not completely equivalent. Lenke Fehér complements this line of thought when she establishes the similarity between the two concepts on the basis of the essence of activity. Trafficking in human beings, having regard to its criminal character, necessarily presupposes illegality. In contrast, slavery, some aspects of which correspond to the conceptual elements of contemporary human trafficking, was not criminalised in any historical period, as we will see later in this paper. In view of this, the above two theses – one might say hand in hand – do not contradict each other, rather they reinforce each other. According to KÁROLY KUBISCH, the complete abolition of slavery is still not a reality, since despite the prohibition of the Christian creed, traces of the 'frenzies' of the Dionysian and Bacchanalian can be found in our culture.¹⁰ If these assertions are to be accepted as true, then in order to credibly examine aspects of 21st century human trafficking¹¹ in the future, it is first necessary to recall the past and historical significance of slavery, which has its roots in ancient Rome. This study attempts to provide an overview of the situation of Roman slavery along certain social and legal lines. The author seeks to answer the question of how we might view the above-mentioned period of history, which is gloomy in this respect, in the light of contemporary legislation, which focuses on human rights and protects them through criminal law.

We can agree on the fact that slavery was an integral part of both Roman culture¹² and law, and therefore we can see the imperial legacy as a slave-owning society, while of course laying the foundations of a continental legal system that established millennia of tradition and maintained intellectual community

⁷ Ibid. 460.

⁸ Conf. FERENC BAJUSZ: *Az ókori rabszolgák helyzete és sorsuk alakulása a kereszténység hatása alatt*. Budapest, Budapesti Református Akadémia Kiadó, 1969. 13.

⁹ FEHÉR 2012, 397.

¹⁰ KÁROLY KUBISCH: *Az emberkereskedelem büntetőjogi megítélésének morális és szabályozási változásai*. Budapest, s.n., 2021. 25. <https://doi.org/10.24395/KRE.2022.005>.

¹¹ ÁGNES CZINE – ANDREA DOMOKOS: *Büntetőjog – Különös rész I*. Budapest, Patrocinium Kiadó, 2017. 93–104.

¹² Conf. ISTVÁN HAHN: *Az ókori vallások és a rabszolgaság. Világosság*, 1965/6. szám, 423–441.

in the modern age. However, there is also a view that it is not justified to speak of slave-owning societies, given that a large part of ancient societies basically assumed that work was provided by free people from poorer social classes.¹³ The demographics of Rome's slaves are, in the vast majority of cases, not available in the form of precise figures, given the sources that survive. However, in the light of census data from the time of emperor Augustus, three basic demographic views have emerged, in which the number of slaves is estimated based on the total population,¹⁴ bearing in mind the inevitable feature that these counts naturally differ, sometimes significantly. For instance, the population of Italy¹⁵ is estimated at between 5.5 and 14 million at the dawn of the imperial era, with 2 to 4 million slaves.¹⁶ Estimates for Roman Italy assume the presence of slaves in fairly high numbers. The main feature of the aforementioned imperial censuses is that they only list Roman citizens within the total population, which means that we have no direct information on slaves.¹⁷ SCHEIDEL, a prominent scholar of Roman demography, argues in his treatise that the number of slaves in Italy was at most 1.5 million, which makes their social proportion lower than others have estimated.¹⁸ In the urban census lists derived from central Roman Egypt, nearly 15% of the registered people were not free, despite the fact that one in five households had at least one slave.¹⁹ VERBOVEN states²⁰ that three quarters of the slaves who were finally buried in Roman and Ostian burial grounds were free men, which the TAKÁCS–GACSAL pair consider to be an exaggerated proportion.²¹

¹³ PÉTER HAHNER: *100 történelmi tévhit*. Budapest, Animus Kiadó, 2010. 21.

¹⁴ These are the so-called high count, low count and middle count.

¹⁵ Conf. ALESSANDRO LAUNARO: *Peasants and Slaves. The Rural Population of Roman Italy*. Cambridge, University Press, 2011. 14–24.; GÉZA ALFÖLDY: *Római társadalomtörténet*. Budapest, Osiris, 1996. 70.

¹⁶ For other estimates, see: WALTER SCHEIDEL: Human Mobility in Roman Italy II. The Slave Population. *The Journal of Roman Studies*, 95/2005, 64–79.

¹⁷ The figures are further complicated by the distribution of the population in terms of the so-called *status civitatis*, according to which among the freemen not only the *cives Romani* (Roman citizens), but also the *Latini* and the so-called Peregrinians were present in the territory of Rome. However, the latter did not have legal capacity under imperial law, although they were free.

¹⁸ SCHEIDEL 2005, 64.; conf. MORRIS SILVER: Contractual Slavery in the Roman Economy. *Ancient History Bulletin*, 25/2011, 73–132.

¹⁹ SCHEIDEL 2005, 66.

²⁰ KOENRAAD VERBOVEN: The Freedman Economy of Roman Italy. In: SINCLAIR BELL – TERESA RAMSBY (ed.): *Free at Last! The impact of freed slaves on the Roman Empire*. London, Bloomsbury Publishing, 2011. 90.

²¹ LEVENTE TAKÁCS – DÓRA GACSAL: A római rabszolgaság. *Korall*, 2016/63. szám, 54–68.

2. INTRODUCTION TO THE PERSONALITY RIGHTS

In classical Roman law,²² people (homines) were divided into free men (liberi) and slaves²³ (servi) based on the status libertatis.²⁴ From a dogmatic point of view, only the free were explicitly considered as persons, distinguishing between those who were born free (ingenui) and those who were liberated later (libertini). Consequently, it appears contra legem that slaves could not be considered persons, and were in fact considered by law to be things.²⁵ The precise elaboration of advanced ancient law is faithfully reflected in the fact that, although the servant was regarded as equivalent to a domestic animal according to certain classifications of things, it was not regarded as a thing in the ordinary sense, so that the servi's humanity was to some extent recognised in legal terms.²⁶ In view of this, the power of ownership over the slave was not called the right of property (domicinium), but rather so-called slaveholder ownership (dominica potestas).²⁷ The servi, however, was not a legal entity, rather a legal subject²⁸ in Roman law, whereby the master not only kept him under his power, but also forced him to work (forced labour), sold him, traded him, and sometimes even killed him.²⁹

3. MUST BE BORN TO BE A SLAVE?

In the following, I will take the forms of slavery's origin and termination under the lens of the imaginary magnifying glass what I use as a tool of my research. In response to this proposition, it is clear from the outset that not everyone was born to be a slave in antiquity, many of them became slaves over time, depending on other circumstances.³⁰ The first and most obvious way for slavery to come about was when at the end of fighting conflicts, losers who survived the battle

²² Paul. Dig. 4,5,11.

²³ Ulp. Dig. 50,17,22.

²⁴ Gai. Inst. 1,9. „*Et quidem summa divisio de iure personarum haec est, quod omnes homines aut liberti sunt aut servi.*”

²⁵ Ulp. 19,1. „*Servi res sunt.*”

²⁶ ANDRÁS FÖLDI – GÁBOR HAMZA: *A római jog története és intézményei*. Budapest, Nemzeti Tankönyvkiadó, 1996. 212.

²⁷ Ibid. 203, 205, 212.; RÓBERT BRÓSZ – ELEMÉR PÓLAY: *Római jog*. Budapest, Nemzeti Tankönyvkiadó, 1974. 132, 138.

²⁸ I note marginally that here we can already feel the fundamental violation of humanitarian law and the duality of interpretation of the concept of person-thing, given that man cannot be identical with the physical thing by definition.

²⁹ By definition, property right can be understood as free disposition of property.

³⁰ Inst. 1,3,4. „*Servi autem aut nascuntur aut fiunt.*”

were taken captive.³¹ The process was triggered by the communes' recognition that they could increase the human resources needed for their work primarily not only by their own strength, but consequently also by the non-fallen fighters from the enemy camp. Therefore, it was considered more economical and socially valuable to spare their lives and employ them than to deprive them of the eternal light. In view of this, the historical roots of the origins of slavery are essentially to be found in the war captivity. Along this line, BRÓSZ and PÓLAY point out that a citizen of a state which was hostile to Rome was considered an enemy who could be freely captured. It may therefore be possible to enslave a foreigner not only when he was a prisoner of war, but also when he was taken into captivity in Rome in 'peacetime', not as a combatant.³² Furthermore, we can also argue that the state used the slaves who were ordered to forced labour³³ to fulfil certain state purposes on the basis of the *ius gentium*, while others ended up in private ownership. Those in the former category had an advantage over backyard slaves in that they could live in a marriage-like relationship with a free woman and could decide about half of their *peculium* in a will.³⁴ People who came into the world as the children of a woman in slavery,³⁵ became slaves from birth. I find it necessary to mention here the principle of *favor libertatis*.³⁶ The essence of this principle was that if the mother was liberated for even a moment during her pregnancy, her child born alive was considered free, regardless of the fact that the mother might be enslaved again.³⁷ The third form of the origin of slavery was the enslavement of free man by punishment. The highest degree of change of status³⁸ (*capitis deminutio maxima*)³⁹ was imposed on anyone who, on the one hand, had exempted themselves from the census (*incensus*) and, on the other hand, had escaped from military service or deserted while on duty. This latter

³¹ TAKÁCS – GACSAL 2016, 4. Conf. FERENC RÉTHEY: *A római rabszolgaság*. Kecskemét, Szél Nándor Nyomda, 1913. 20-21. During the Second Punic War, when the city of Tarentum fell, the Romans enslaved nearly 30,000 people.

³² BRÓSZ – PÓLAY 1974, 138.

³³ *Servi publici*.

³⁴ BRÓSZ – PÓLAY 1974, 139.

³⁵ *Partus ancillae*.

³⁶ Its importance is underlined by Paul. Dig. 50,17,106. „*Libertas inaestimabilis res est.*” (Transl.: Freedom is a priceless asset.); Gai. Dig. 50,17,122. „*Libertas omnibus rebus favorabilior est.*” (Transl.: Freedom comes before everything else.).

³⁷ Paul. Sent. rec. libri V. 2,24,1-3.; Marc. Dig. 1,5,5,3.

³⁸ Paul. Dig. 4,5,11.

³⁹ The *capitis deminutio maxima* is the most complete (negative) change (reduction) in the status of a person, which affects freedom, property and thus legal capacity in its entirety, with the person concerned being deprived of all these and reduced to a state of servitude.

was sold as a slave, deprived of all his property, so-called *trans Tiberim*.⁴⁰ If the debtor citizen could not pay the creditor because he had become insolvent, his creditor could make him his own slave by *manus iniectio*. But Roman law also recognised other forms of enslavement. A free man could also sell himself into slavery at his own free will.⁴¹ According to Pratorian law, a person who had previously been a slave but had been liberated, could be enslaved again - by being recalled by his former slaveholder - if he had behaved ungratefully after his manumission. A free woman who, in violation of another's property rights, had sexual intercourse with his slave, and the slave did not stop despite the lord's protests,⁴² was also forced into servitude under the⁴³ *Senatus Consultum Claudianum*.⁴⁴

4. THE WAY OUT OF SLAVERY

Let us take a look at the diversity of the termination of slavery also. A way out of slavery was essentially the legal institution of manumission. Within the conceptual category of civil law, we can distinguish three categories of cases.⁴⁵ Firstly, we can talk about the *manumissio vindicta*, which was a pro form trial before the praetor.⁴⁶ A person could become a free man secondly if he was listed in the register of Roman citizens (*census*), and also if his lord (slaveholder) declared him free by testamentary will (*manumissio testamento*).⁴⁷ In addition to these rules, praetorian law has also developed additional cases, such as release in

⁴⁰ I.e. "beyond the Tiber", means abroad. This form of debt slavery was abolished by law in 326 BC. Conf.: EGON MARÓTI: *Rabszolgák az ókori Rómában*. Budapest, Gondolat Könyvkiadó, 1969. 54.

⁴¹ Ulp. Dig. 21,1,17,12.; Ulp. Dig. 28,3,6,5.

⁴² Paul. Sent. rec. reg. 2,21a.

⁴³ 54 AC.

⁴⁴ FÖLDI – HAMZA 1996, 213-214.; BRÓSZ – PÓLAY 1974, 137.

⁴⁵ The three categories of civil rights were supplemented in the late imperial period by the manumission in the church (*manumissio in ecclesia*).

⁴⁶ This suit for liberty was feigned because one of his confidants brought a suit before the praetor against the person who wished to be freed. In doing so, he held out his wand (*vindicta*) to the slave and made a declaration of rights declaring that the slave was free. The master then released the servant (*manu mitti*) from his hands, at the same time the praetor declared him free.

⁴⁷ The *Lex Fufia Canina* limited emancipation by will to the number of slaves in Augustus' time.

front of friends,⁴⁸ by issuing a letter of liberty,⁴⁹ or by sitting at the lord's table.⁵⁰ However, the liberation was far from unlimited.⁵¹ For mention's sake, the *lex Aelia Sentia* prescribed that a lord under the age of 20 could not liberate a slave and a slave under the age of 30 could not be liberated.⁵² The legal institution of amnesty was also known by the Romans in the sense that a slave could be freed not only by his lord as a natural person, but also by the state in certain cases. For instance, if a slave had demonstrated a self-sacrificial behaviour or performed a service of overriding public interest,⁵³ the state could declare the slave to be free, regardless of the slaveholder.⁵⁴

In addition to what has just been described, there was also a violent form of liberation, namely the slave revolt, in which the subordinate gained *de facto* independence but remained *de iure* a slave. Under a rule dating from the imperial era, slavery could end if the subject had lived free in good faith for 20 years.⁵⁵ However, in the case of slave revolts, this rule is far from being applicable, because even if the 20 years have elapsed, good faith is conceptually excluded due to the intentional, violent, unlawful conduct, so that manumission is not possible. The number of slaves grew massively in ancient Rome in the classical era.⁵⁶ As a result, the *servi*, who in the Patriarchal period had a similar status to a child of the household, had already become distant from his lord by the Classical period, so for this reason a significant social differentiation can be observed. The vast majority of slaves were forced to work in miserable, inhumane conditions. The picture is nuanced by the different standards of living that different rulers have provided for slave labourers throughout history.⁵⁷ The image of their social 'degradation' in the classical period is reinforced by the *senatus consultum Silanianum*,⁵⁸ according to which, if the slave owner was a victim of homicide, the other (innocent) slaves

⁴⁸ *Manumissio inter amicos*.

⁴⁹ *Manumissio per epistulatum*.

⁵⁰ *Manumissio per mensam*.

⁵¹ *Gai. Inst.* 1,18-19.

⁵² BRÓSZ – PÓLAY 1974, 139–140.

⁵³ For example, he caught a criminal.

⁵⁴ In imperial times, it was considered common practice to free slaves who, after being sold, were found to have violated the collateral agreement of the contract. The most common example of this was when a slave was sold with the stipulation that he could not be forced into prostitution, but when this happened, the state gave the enslaved person his freedom: mult-kor.hu/milyen-volt-rabszolganak-lenni-az-okori-romaban-20150303?pldx=4.

⁵⁵ BRÓSZ – PÓLAY 1974, 140.

⁵⁶ FÖLDI – HAMZA 1996, 213. Conf. BRÓSZ – PÓLAY 1974, 138.

⁵⁷ RÉTHEY 1913, 22.

⁵⁸ 10 AC.

under his authority⁵⁹ were also sentenced to death if they did not try to defend their lord by risking their own lives. The ‘flowering’ of slavery can be considered to be the period that began with the large-scale destruction of the free bourgeoisie after the Second Punic War, and which is essentially connected to the emergence of latifundia and the commodity-producing slave industry.⁶⁰ Since the servi was not paid for the work he did, it was cheap, and also because it was under the authority of the lord, i.e. legally depended on him, it was a safe way⁶¹ of cultivating the land. Along these lines, it is not strange to say that one of the most important means of agricultural production in antiquity was the slave.⁶²

In the words of EGON MARÓTI:⁶³ “*Slaves did an incomparably higher percentage of productive – or essential maintenance, service, etc. – work than free people.*”⁶⁴ Consequently, slaves were present in almost all areas of contemporary life, which basically involved human effort. In addition to their legal status, the standard of living was the point of significant difference compared to the worldview of the free. The definition of the place of work by the lord also had a major distorting effect on the slaves’ existential condition. In this context, we can basically distinguish between two main groups of subordinates.⁶⁵ Those who worked in urban houses formed the familia urbana, which included all those who performed personal service around the lord (slave owner) and his relatives.⁶⁶ Those working on rural estates made up the other group, the familia rustica. Considering that the work⁶⁷ done by the latter was considerably more demanding and the living conditions in the countryside were of a rather lower standard, it could be said that sending someone from the city to work in the countryside was tantamount to a punishment. This is well illustrated by the fact that slaves were considered as ‘speaking tools’, and therefore as appurtenances to the landed estate.⁶⁸ In addition to physical hardship, the subordinates were, with a few refreshing exceptions,

⁵⁹ Those who live under the same roof (sub eodem tecto) or those accompanying him.

⁶⁰ RÉTHEY 1913, 20–21.

⁶¹ Because of the dependent legal status, the slave did not resist his lord.

⁶² ÉVA JAKAB: *Humanizmus és jogtudomány. Brissonius szerződési formulái I.* Szeged, Pólay Elemér Alapítvány, 2013. 183.

⁶³ MARÓTI 1969, 17.

⁶⁴ LEONHARD SCHUMACHER: Slaves in Roman Society. In: MICHAEL PEACHIN (ed.): *The Oxford Handbook of Social Relations in the Roman World*. Oxford, Oxford University Press, 2011. 594.

⁶⁵ RÉTHEY 1913, 36.

⁶⁶ For example, dresser, chef, courtier, room servant.

⁶⁷ For example, shepherds, gardeners, arable planters, manure bearers. See: Cato, De agr. 2,3–4.

⁶⁸ Paul. Sent. rec. reg., 3,6,34–37.

⁶⁹ tortured, starved, unjustly punished, harassed and even killed at the whim of their lords.⁷⁰

The ruthless treatment and sub-standard living conditions opened the way for a violent escape from slavery, sometimes historic slave rebellions,⁷¹ which were the culmination of the 'golden age'. With the spread of Christianity, a milder period followed, at least reforms were made, with laws banning some or all the practices before. Noteworthy in this context is the Lex Petronia,⁷² which forbade owners to throw their slaves in front of wild animals in the arena without the prior permission of the praetor. The Edictum Claudianum liberated the old slave who had been starved by his master. Emperor Hadrian decreed that lords could not kill their slaves with their own hands (see earlier) until the praetor had given his prior permission. Pius Antonius had already given the almost completely disenfranchised the right to complain to the praetor about their owner's cruelty. It also empowered the praetor to order the owner to sell his servant to the highest bidder in case of cruelty. In time, it was possible for the servi to collect peculium. So, what he earned, or what he received as a gift or tip, the servi could already take or even keep for himself, which he could ultimately use to redeem his freedom.⁷³

5. HUMAN TRAFFICKING OR THE SLAVE TRADE IN ANTIQUITY

Towards the end of the study, it is also worth mentioning slave trade. Basically, the marketplace was the central location in almost all ancient cities, serving both social and commercial functions.⁷⁴ The city of Delos became a dominant maritime trading centre in the 2nd century BC,⁷⁵ partly due to the declaration of the island as a free harbour in 168 BC, and partly due to the decline of Rhodes. The latter was of great importance because, with the decline, its control over maritime trade was also lost. The direct consequence of this was an increase in pirate activity at

⁶⁹ At the same time, Musico, a slave of the emperor Tiberius, performed a rather high-ranking task, for example, he was responsible for controlling the revenues of Gaul, and was allowed to travel accompanied by his slaves. See: CIL. 6,5197.

⁷⁰ Gai. Inst. 1,13-15. When it refers to punishments and torture in the context of liberation by the Aelius-Sentius law.

⁷¹ The three major slave uprisings are the First and Second Sicilian Uprisings and the Spartacus Slave Rebellion.

⁷² 79 AC.

⁷³ EDWARD WESTBY: The Roman Slave. *The Law Coach* 3, 5/1922, 76-78.

⁷⁴ See: WILLIAM V. HARRIS: Towards a Study of the Roman Slave Trade. *Memoirs of the American Academy in Rome*, 36/1980, 117-140.

⁷⁵ See also, EGON MARÓTI: A délosi rabszolgapiac és a kalózkodás. *Antik Tanulmányok IX.*, 1962/1. szám, 1-12.

sea, which played a major role in the growth of slave trade along the sea routes. Strabon argues that the pirates mainly transported their prisoners to Delos or Side in Pamphilia for sale, because these ports were the pirates' famous trading posts.⁷⁶ Slave trading could take place in several places in Rome according to the instructions of the market inspectors. ÉVA JAKAB examined in detail certain aspects of trade in ancient Rome.⁷⁷ According to her thesis, the Campus Martius served as the central market. Additionally, the Castor temple was rumoured to be a place where slaves of poor quality were sold. Female servants were traditionally offered for sale near the Temple of Vesta and on the Via Sacra. Rather expensive luxury slaves were available for purchase at the Saepta shop.⁷⁸ According to Plutarch, there was a special market for the physically handicapped,⁷⁹ and there was probably also a trading unit near the island of Aesculapius, where sick and aged slaves⁸⁰ were sold.⁸¹ So we can see that slave trade was an integral part of everyday life in Rome.

This is borne out by the fact that, in addition to the large number of legal transactions, the contractual practices for this purpose were also quite elaborate. The commercial customs and formulas of the period were specifically researched by Jakab, following Brissonius.⁸² As a starting point, we can consider that the warranty for hidden defects permeated legal transactions even in ancient times, according to which the seller guaranteed the defect-free physical condition of the slave.⁸³ In the course of trade, slave owners promised certain qualities about slaves, their condition, which we call *dicta et promissa*.⁸⁴ The prevailing principle was that the seller guaranteed that the slave being sold was not a thief, had not escaped,

⁷⁶ Strab. Geo. 14,3,2. 14,5,2.

⁷⁷ ÉVA JAKAB: Kereskedési szokások a régi Rómában. *Acta Universitatis Szegediensis: acta iuridica et politica Szeged* XLIV., 1993/7. szám, 9–31.; ÉVA JAKAB: Stipulationes aediliciae (A kellékhibákért való helytállás kialakulása és szabályai a római jogban). *Acta Universitatis Szegediensis: acta iuridica et politica Szeged* XLIV., 1993/7. szám, 85–114.; ÉVA JAKAB: Rabszolgavételek Rómában. In: KÁROLY TÓTH (ed.): *Emlékkönyv Dr. Cséka Ervin születésének 70. és oktatói munkájának 25. évfordulójára*. Szeged, *Acta Juridica et Politica*, 1992. 247–259.

⁷⁸ JAKAB 1993a, 16.

⁷⁹ Plut. De cur. 10.

⁸⁰ WAYNE EDWARD BOESE: *A Study of the Slave Trade and the Sources of Slaves in the Roman Republic and the Early Roman Empire*. Washington, University of Washington, 1973. 148.

⁸¹ JAKAB 1993a, 8–9; 16–17.

⁸² See: JAKAB 2013.

⁸³ It meant nothing more than that the seller was liable for the slave's bodily defects largely in the form of stipulation.

⁸⁴ However, we must distinguish between mere "praise" statements for which the seller was no longer responsible (e.g. accurate, reliable).

and had no debt arising from delictum.⁸⁵ In addition to hidden (physical) defects,⁸⁶ they also demanded responsibility⁸⁷ for spiritual (psychological) defects.⁸⁸ In the context of the dogmatic analysis of the related liability structure, we can also talk about the fact that the implied warranty does not cover bodily defects arising after the object of sale, but they should be interpreted practically in relation to the past, modelled on the *noxia solutus*. According to Jakab's theses, the law of Aedilis Curilis treated this range of guarantees in an objective sense, in the light of which the seller assumed responsibility, based on the example above, for the fact that the slave had never attempted to escape or steal until the time of sale, so the emphasis of principle was not on standing up for character or quasi-spiritual defects.⁸⁹ The opposite view is taken by GAMAUF, who argues that weakness of character (e.g. tendency to escape) in itself amounts to a psychological defect and also gives rise to redhibition.⁹⁰ Thus, in the context of the contemporary warranty for hidden defects, the slave trader's (seller's) express statements and promises concerning the qualities, condition or lack thereof of the slave being sold were called *dicta et promissa*. The fact that a thief had stolen from his lord was not part of the obligation to provide information required by the Edict of Aediles and therefore did not have to be disclosed.⁹¹ However, if the seller made an express statement (undertaking) that the slave who was the subject of the transaction was not a thief, he was clearly liable for it. This gives us a picture of the Roman practice according to which the Edict forced the seller to provide certain information. In addition, the buyer could of course inquire about additional features and characteristics from the seller, bearing in mind the fact that defects visible to the naked eye were at the buyer's risk.⁹² It was common practice, for example, for the buyer to also question the slave about his name, homeland, place of birth, his age, and even his past.⁹³ In this context, Gaius also took the position

⁸⁵ ÉVA JAKAB: *Praedicere und cavere beim Marktkauf. Sachmängel im griechischen und römischen Recht*. München, C. H. Beck Verlag, 1997. 125.

⁸⁶ E.g. lame, including both permanent and transient (e.g. fever) diseases.

⁸⁷ On the slave's flaws, see: Ulp. Dig. 21,1,1.; 21,1,4,6.

⁸⁸ So-called *animi vitia*.

⁸⁹ JAKAB 2013, 185.

⁹⁰ RICHARD GAMAUF: *Ad statum licet confugere*. Frankfurt am Main, Peter Lang GmbH Internationaler Verlag der Wissenschaften, 1999. 110.

⁹¹ Marc. Dig. 21,1,52. „*Si furtum domino servus fecerit, non est necesse hoc in venditione servi praedicere nec ex hac causa redhibitio est: sed si dixerit hunc furem non esse, ex illa parte tenebitur, quod dixit promissive.*”

⁹² Our current civil law rule is also based on the practical concept that the buyer has the duty to inspect the slave (goods), to inspect them carefully and to detect visible defects. See: Dig. 21,1,1,6. Ulp.; Dig. 21,1,14,9-10. Ulp.

⁹³ JAKAB 1992, 255.

that the seller must stand up for his binding statements.⁹⁴ So, if the seller claimed that the slave had a certain characteristic, but the promised characteristic did not correspond to reality, the buyer had the possibility to withdraw from the transaction or to seek a reduction of the purchase price through a lawsuit. In that regard, Jakab shares HAYMANN's view⁹⁵ that liability for dicta et promissa must be regarded as complementary to the Aedilis reporting obligation.⁹⁶

But the responsibility was by no means unlimited. In addition to this, it is also relevant to clarify what pieces of information the seller did not have to provide, bearing in mind that we can also mention statements that fall under the category of laudatio. Following Florentius, the seller was not liable for statements that were merely praise.⁹⁷ In view of this, if the seller made general declarations without any specific content, for example, claiming during the bargaining that the slave was honest, beautiful, obedient, he was not obliged to be liable for these declarations, because they fell into the category of nuda laudatio. Ulpianus also took the view that there is no possibility of a suit on the basis of mere praise.⁹⁸ However, this situation does not apply in cases where the seller claims a specific characteristic that allows the slave to be sold at a higher value. In this case, as stated above, he had to stand his ground.⁹⁹

6. SUMMARY

It was established in the sense of the above that the social structure and perception of ancient Rome was fully thematized by the slave question.

Slaves have been regarded as commodities throughout history, so to speak, and as a result they have been traded with noble simplicity. One of the main characteristics of slavery is its coercive character, also discussed above, which is achieved institutionally through violence, hence fear of violence, sometimes torture and systematic oppression through psychological terror in addition to

⁹⁴ Gai. Dig. 21,1,18 pr. „Si quid venditor de mancipio adfirmaverit idque non ita esse emptor queratur, aut redhibitorio aut aestimatorio (id est quanto minoris) iudicio agere potest.”

⁹⁵ FRANZ HAYMANN: *Die Haftung des Verkäufers für die Beschaffenheit der Kaufsache I. Studien zum klassischen römischen Recht*. Berlin, s.n., 1912. 31.

⁹⁶ JAKAB 2013, 185–186.

⁹⁷ Flor. Dig. 18,1,43 pr. „Ea quae commendandi causa in venditionibus dicuntur, si palam appareant, venditorem non obligant, veluti si dicat servum speciosum, domum bene aedificatam: at si dixerit hominem litteratum vel artificem, praestare debet nam hoc ipso pluris vendit.”

⁹⁸ Ulp. Dig. 21,1,19,3. „Ea autem sola dicta sive promissa admittenda sunt, quaecumque sic dicuntur, ut praestentur, non ut iacentur.”

⁹⁹ JAKAB 2013, 187.

physical violence. In addition, of course, we must mention the motive, which is often obvious, that a significant proportion of acts take place under the auspices of economic exploitation. In view of these dogmatic aspects, it is not for nothing that human trafficking is referred to as modern-day slavery. The state of servitude tramples on rights which, through the development of law, have been called fundamental human freedoms. In this context, special mention should be made of the right to life and human dignity; prohibiting torture and inhuman or degrading treatment; the prohibition of servitude and the right to personal liberty and security.

If we wish to draw parallels between the treatment of slaves and the situation of victims of human trafficking today, we can conclude that the past casts quite a shadow over the present. There are many forms of trafficking in human beings that take place in our everyday immediate environment. All of these are based on the abuse of the inherent vulnerability of victims and, as I have already mentioned, are fundamentally based on the exploitation of human beings.¹⁰⁰

According to the current Hungarian legislation – considering EU and international legal sources¹⁰¹ – the crime of trafficking in human beings is a complex legal issue, and the legislator punishes it together with forced labour. In line with Article 5 of the Charter of Fundamental Rights of the European Union, Article III of the Fundamental Law of Hungary¹⁰² also contains an absolute prohibition. The Hungarian Criminal Code (Btk.)¹⁰³ Section 192, paragraphs 1 and 2,¹⁰⁴ the conduct of the offence can be almost entirely compared to the (part

¹⁰⁰ Report on the implementation of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, point G).

¹⁰¹ International Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1950 (New York); Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children of 2000; Joint Action of 24 February 1997 adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning action to combat trafficking in human beings and sexual exploitation of children; Council Framework Decision of 19 July 2002 on combating trafficking in human beings.

¹⁰² In line with this, see also: The Fundamental Law of Hungary Article II., III., IV., XII., XV.

¹⁰³ Act C of 2012.

¹⁰⁴ Section 192 (1) Any person who:

- a) sells, purchases, exchanges, or transfers or receives another person as consideration; or
 - b) transports, harbors, shelters or recruits another person for the purposes referred to in Paragraph a), including transfer of control over such person; is guilty of a felony punishable by imprisonment not exceeding three years.
- (2) Any person who - for the purpose of exploitation - sells, purchases, exchanges, supplies, receives, recruits, transports, harbors or shelters another person, including transfer of control over such person, is punishable by imprisonment between one to five years.
- (3) The penalty shall be imprisonment between two to eight years if trafficking in human beings is committed:

of) the acts of the ancient Roman slave trade. In view of this aspect, it is not for nothing that human trafficking is referred to as modern-day slavery.

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- a) against a person held in captivity;
 - b) by force or by threat of force;
 - c) by deception;
 - d) by tormenting the aggrieved party;
 - e) against a person who is in the care, custody or supervision of or receives medical treatment from, the perpetrator, or if abuse is made of a recognized position of trust, authority or influence over the victim;
 - f) for the unlawful use of the human body;
 - g) by a public official, acting in an official capacity;
 - h) in criminal association with accomplices; or
 - i) on a commercial scale.
- (4) The penalty shall be imprisonment between five to ten years, if:
- a) the criminal offense provided for in Subsection (2) is committed against a person under the age of eighteen years;
 - b) the criminal offense provided for in Subsection (2) is committed against a person held in captivity, and either of the aggravating circumstances under Paragraphs b)-i) of Subsection (3) apply; or
 - c) the criminal offense provided for in Subsection (2) results in particularly great damage or danger to life.
- (5) The penalty shall be imprisonment between five to fifteen years if:
- a) the criminal offense provided for in Subsection (2) is committed against a person under the age of fourteen years;
 - b) the criminal offense provided for in Subsection (2) is committed against a person under the age of eighteen years, and either of the aggravating circumstances under Subsection (3) apply;
 - c) the criminal offense provided for in Subsection (2) is committed against a person under the age of eighteen years, and results in particularly great damage or danger to life; or d) the criminal offense provided for in Subsection (2) is committed against a person under the age of eighteen years for the purpose of child pornography.
- (6) The penalty shall be imprisonment between five to twenty years or life imprisonment if:
- a) the criminal offense provided for in Subsection (2) is committed against a person under the age of fourteen years, and either of the aggravating circumstances under Subsection (3) apply;
 - b) the criminal offense provided for in Subsection (2) is committed against a person under the age of fourteen years, and results in particularly great damage or danger to life; or
 - c) the criminal offense provided for in Subsection (2) is committed against a person under the age of fourteen years for the purpose of child pornography.
- (7) Any person who engages in preparations for trafficking in human beings is guilty of misdemeanor punishable by imprisonment not exceeding two years.
- (8) In the application of this Section, 'exploitation' shall mean the abuse of power or of a position of vulnerability for the purpose of taking advantage of the victim forced into or kept in such situation.

The significant difference is, contrary to the legal view of today, that this is a criminalised phenomenon, this form of trafficking was legal in ancient Rome. However, it is worth mentioning again that slaves were considered things and not humans. Based on this conceptual difference, no crime was committed linguistically, but we feel the significant moral malpractice inherent in it.

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