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Summary proceedings in Roman law using maintenance obligation as an example

Postępowanie sumaryczne w prawie rzymskim na przykładzie obowiązku alimentacyjnego

Abstract

Maintenance obligations and corresponding maintenance claims are closely linked to the person of the obligor and the creditor. Not only is the maintenance creditor protected against the risk of being deprived of his or her means of subsistence following the introduction of his or her maintenance claim, but he or she also enjoys considerable facilities for claiming and enforcing the maintenance awarded. This was already the case in Roman law, where the assertion of a maintenance claim was subject to significant simplification, under the so-called *summatim cognoscere*. Proceedings for the establishment and realisation of the maintenance obligation took place without actio and iudicium, before a state judge (consul) who, after causa cognitio, issued a judgment and enforced it. Furthermore, a dispute over the fulfilment of a maintenance claim could also end with the conclusion of a settlement (transactio), ending the dispute without a judgment.

Keywords: alimony obligation, Roman law, *summatim cognoscere.*

Streszczenie

Obowiązki alimentacyjne i odpowiadające im roszczenia alimentacyjne związane są ściśle z osobą zobowiązanego i uprawnionego. Uprawniony do alimentacji jest nie tylko chroniony przed ryzykiem pozbawienia go środków utrzymania w następstwie wprowadzenia jego wierzytelności alimentacyjnych do obrotu, ale także korzysta z istotnych ułatwień w dochodzeniu i egzekwowaniu zasądzonych z tego tytułu świadczeń. Tak było już w prawie rzymskim, gdzie dochodzenie roszczenia alimentacyjnego podlegało istotnym uproszczeniom, w ramach tzw. *summatim cognoscere.* Postępowanie w sprawach o ustalenie i realizację obowiązku alimentacyjnego odbywało się bez *actio* i *iudicium,* przed sędzią państwowym (konsulem), który po *causa cognitio* wydawał wyrok i go egzekwował. Poza tym spór o realizację roszczenia alimentacyjnego mógł się zakończyć także poprzez zawarcie ugody *(transactio),* kończącej spór bez wyroku.

Słowa kluczowe: obowiązek alimentacyjny, prawo rzymskie, *summatim cognoscere.*

1. Introduction

In Polish civil procedure, simplified proceedings are governed by the provisions of Section VI of the Code of Civil Procedure and have the character of separate proceedings. Simplified proceedings are an obligatory proceeding in a situation where the filed suit meets the prerequisites specified in Article 505^1 of the Code of Civil Procedure. The court is then obliged to hear the case under the provisions of Article 505^1–505^{14} of the Code of Civil Procedure. In 2019, a thorough remodel of the provisions devoted to simplified proceedings was carried out, when the catalogue of cases recognised therein was expanded (Article 505^1 and Article 505^3 of the Code of Civil Procedure)[1]. The Polish legislator recognised the advantages of such proceedings, indicating, among other things, in the justification of the bill of 4.07.2019, that court practice confirms the positive impact of the provisions on simplified proceedings on the efficiency of the proceedings[2].

On the other hand, in Roman law, there was no uniform summation procedure, there were only certain and various simplifications, as a rule, in a small number of categories of cases[3]. The term *summatim cognoscere*[4] was basically used only when only probability was sufficient to investigate a case. A simplified course of action was possible, according to the surviving source material, only in certain civil cases in *cognitio extra ordinem.*

The simplified procedure could be used when circumstances required it to expedite the resolution of the case. The requirement for the use of certain procedural steps was then waived, and in certain cases the judgment in such summary proceedings was also not appealable[5].

[1] In summary proceedings, there is no obligation to file pleadings (statement of claim, statement of defence, opposition to a payment order, and objections to a payment order) on official forms, as well as to hold a preliminary hearing (Article 505^2 of the Code of Civil Procedure). Evidentiary restrictions on the admissibility of expert evidence have been removed (Articles 505^6 § 2 and 505^7 § 1 and 2 of the Code of Civil Procedure), and a new institution previously unknown to civil procedure, the so-called expert witness, has been introduced into these proceedings (Article 505^7 § 3 of the Code of Civil Procedure). The rules for filing a motion for a statement of reasons for the judgment of the court of first instance were modified, and the rules for the preparation of a statement of reasons for the judgment by that court were partially changed (Article 505^8 of the Code of Civil Procedure). Legislative changes also affected the regulation of appeal proceedings, mainly with regard to the means of evidence that may be used in such proceedings (Article 505^{11} of the Code of Civil Procedure), as well as the grounds for revoking the appealed judgment (Article 505^{12} § 11 of the Code of Civil Procedure).

[2] Paragraph VI.35 of the Explanatory Memorandum of the Draught Law on Amendments to the Law – Code of Civil Procedure and Certain Other Laws, 8th Parliament, Parliamentary Print No. 3137, p. 109.

[3] This is according to, among others, W. Litewski, *Rzymski proces cywilny,* Krakow 1988, p. 102.

[4] Cf. J. Sondel, *Słownik łacińsko-polski dla prawników i historyków*, Kraków 1997, p. 918.

[5] *Prawo rzymskie. Słownik encyklopedyczny*, ed. by W. Wołodkiewicz, Warsaw 1968, p. 146; W. Litewski, *Słownik encyklopedyczny prawa rzymskiego,* Krakow 1998, p. 253.

This paper will signal the instruments aimed at facilitating and accelerating the implementation of the alimony obligation to privilege the entitled person in legal proceedings in Roman law. The temporal location of the article's subject matter in the law of ancient Rome is justified, because the solutions adopted there with regard to the alimony obligation and its implementation through the courts are used not only by the Polish legislation, but also by other modern European codifications, inspired by the tradition of Roman law. This is because one cannot forget the comparative importance of the study of Roman law, against the background of the further development of private law[6].

2. Maintenance obligation in Roman law

In ancient Rome, the terms "alimony"[7] and "maintenance obligation" have a slightly different meaning than in modern law. In fact, in Roman law, alimony obligation meant the necessity of the *pater familias* (family superior) to provide the necessary means of subsistence (food, clothing, and housing) to those subject to his authority. The alimony obligation, so understood, was not connected as it is today, for example, with the divorce of spouses or an extramarital child, but with the exercise of the attributes of paternal authority *(patria potestas)*[8]. Originally, it

[6] As the authors of a Polish textbook on Roman law aptly note: "The contemporary significance of the Romanist tradition is understood variously. The ahistorical concept, represented primarily by the Italian comparator Rodolfo Sacco and the German civilist Christian von Bara, envisages the construction of European law solely on the basis of the existing national laws as they are. Other civilists reach back to Roman law only as part of the structural argument from historical analogy, allowing for a uniform *ius commune* in its new form, since there was a pan-European Roman and canonical *utrumque ius* in the past. Still others, finally, recognise the binding force of certain contents of the Romanist legal tradition", see W. Dajczak, T. Giaro, F. Longchamps de Bérier, *Prawo rzymskie. U podstaw prawa prywatnego,* Warszawa 2014, p. 119.

[7] In Roman law, the term used to describe alimony was the Latin word *alimentum* (derived from the verb *alo, alere* – to nourish, to provide nourishment) meaning food, nourishment, but also subsistence including not only food, but also clothing and housing, means of subsistence, see J. Sondel, *Słownik łacińsko-polski..., op. cit.,* p. 48. However, it was not the only term used to represent the obligation of alimony – see more extensively F. Wycisk, *Z zagadnień alimentacji w rzymskim prawie klasycznym,* "Roczniki Teologiczno-Kanoniczne" 1970, 17, p. 57 et seq.

Paternal authority in Rome was a device proper only to citizens *(ius proprium civium Romanorum),* and in principle its content was unlimited. However, the application of the attributes vested in the family superior was controlled by the norms of sacred law and custom, as well as public opinion and the supervision of censors. In addition, there was, from the time of the republic, interference by public authority in the sphere of the father's powers, so that during the imperial period it was weakened on both legal and factual grounds. Since the decline of the republic, the father's duties toward his children, known as *officium* or *pietas,* which arose both from.

[8] Praetorian law and imperial legislation have been mentioned more and more frequently alongside the powers classified as *patria potestas.* Precisely one of the duties that appear in this period is

was a natural duty related to the nourishment and upbringing of the child, offspring by parents, especially the father of the family, and as a legal obligation, it appeared only in the imperial period. It was then that it ceased to be limited only to alimony for children from marriage, but also for children not subject to paternal authority, emancipated children, and those from concubinage. Classical law did not introduce a maintenance obligation between them and the natural father. Such an obligation existed only between the children and their mother, and from the second century AD onwards also rested with her ascendants, such as the maternal grandfather. It was, of course, a reciprocal alimony obligation[9].

Children of cohabitation were not granted the right to claim alimony from their natural father until Justinian[10]. He carried out a deep and thorough reform of the alimony law[11]. Among other things, the distinction between *legitima* (legally recognised) and *illegitima* (*illegitimate*) families was removed. In a legally recognised marriage, the alimony obligation between the child and the mother was sanctioned. Except that in the case of descendants in the female line

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the duty of alimony asserted in proceedings *extra ordinem (*J. Zabłocki, *Kompetencje pater familias i zgromadzeń ludowych w sprawach rodziny w świetle „Noctes Atticae" Aulusa Gelliusa*, Warsaw 1990, p. 30 and n.; idem, *Rodzina rzymska w świetle "Noctes Atticae" Aulusa Gelliusa* [w:] *Rodzina w społeczeństwach antycznych i wczesnym chrześcijaństwie. Literatura, prawo, epigrafika, sztuka*, red. J. Jundziłł, Bydgoszcz 1995, p. 45 *ff*; idem, *The Imane of a Roman Family in "Noctes Atticae" by Aulus Gellius*, Pomoerium 1996, Vol. 2, p. 47 *ff*; F. Longchamps de Bérier, *Niektóre przykłady nadużycia prawa w rzymskim prawie prywatnym: władza ojcowska,* „Czasopismo Prawno-Historyczne" 2001, 53, p. 159 et seq; idem, *Niektóre przykłady nadużycia prawa w rzymskim prawie prywatnym – władza ojcowska* [w:] *Przez tysiąclecia: państwo – prawo – jednostka,* ed. A. Lityński, M. Mikołajczyk, Vol. 2, Katowice 2001, p. 11 and n.; A. Nowak, *Pojecie władzy ojcowskiej w rzymskim prawie klasycznym*, „Studia Prawonustrojowe" 2002, 1, p. 35 and n.

[9] Obligations arising from paternal authority in Roman law, including the duty of *alimony*, were the subject of an unpublished doctoral dissertation by F. Wycisk, *Pojęcie alimentów w rzymskim prawie klasycznym,* Warszawa 1968 and several scholarly articles. F. Wycisk, *Obowiązek alimentacyjny i wychowawczy w prawie rzymskim okresu królewskiego*, „Roczniki Teologiczno-Kanoniczne" 1963, 10, p. 217 and n.; idem, *Rodzicielski obowiązek wychowania potomstwa w prawie rzymskim okresu republikańskiego,* „Roczniki Teologiczno-Kanoniczne" 1965, 12, 1965, p. 131 and n. and more recently R. Swirgoń-Skok, *Kilka uwag na temat alimentacji w prawie rzymskim, w: Prawo alimentacyjne. Zagadnienia systemowe i proceduralne (I)*, ed. by J.M. Łukasiewicz, I. Ramus, Toruń 2015, p. 29–43, R. Świrgoń-Skok, A. Arkuszewska, *Wybrane zagadnienia dotyczące ułatwiania i przyspieszania realizacji obowiązku alimentacyjnego w prawie rzymskim oraz we współczesnym prawie polskim,* Studia Prawnicze. Dissertations and Materials 2017, No. 2, p. 45–64.

[10] The text in which this reform materialised is the passage by Ulpian (D.25,3,5), which was interpolated by the Jutinian compilers. See more extensively J. Gołębiowska, *Przysporzenia majątkowe w stosunkach konkubenckich w ustawodawstwie Justyniana* [w:] *Wokół problematyki małżeństwa w prawie rzymskim. Henrico Insadowski (1888–1946) in memoriam,* ed. by A. Dębiński, M. Wójcik, Lublin 2007, p. 107 et al.

[11] According to W. Litewski (*Słownik encyklopedyczny*, p. 21), alimony obligations between siblings were introduced as early as the Principate, while Justinian recognised maintenance claims between spouses in certain cases.

(e.g., children of daughters), the alimony obligation rested primarily with their natural father, while the children's mother and her maternal relatives would be obligated, only in the event of the death of the father or his privation[12].

The most important change made by Justinian, however, was the introduction in Novellas[13], of a reciprocal maintenance obligation between children of concubinage and their natural father, even in the situation of having offspring from a legally recognised union. However, a prerequisite was to remain in a monogamous co-habiting relationship. In addition, a maintenance obligation was introduced between nonmarital children and married children, especially in the situation where they inherit property from their father. Moreover, in the situation of the death of the natural father, the absence of offspring born in a valid Roman marriage and the death of the concubine, the spouse of the natural father could be obliged to pay alimony to his natural children born in concubinage. In contrast, there was no reciprocal alimony obligation between siblings and affinities, and in Nov. 89, it was stipulated that children from criminal or incestuous unions should not receive alimony from their father.

In ancient Rome, the alimony obligation that existed between relatives, especially the father and children, was not the only such obligation known to Roman law. Probably from the second century AD onwards, Roman private law distinguished a reciprocal maintenance obligation between patron and liberator[14]. Another example of alimony-type benefits distinguished in Roman law was the rule existing from the 2nd-3rd century AD for the maintenance of poor youth by the Roman state, through public alimony foundations created[15].

3. Implementation of the maintenance obligation in Roman law

In Roman law, alimony payments could be claimed only in the absence of one's own means of support. As a rule, the alimony obligation between the *pater familias* and natural children arose when the child reached the age of three. Relevant

[12] D.25,3,5,2.

[13] Nov. 18,15 of 536; Nov. 89,13 of 539.

[14] Cf. M. Zabłocka, *Polityka dynastii julijsko-klaudyjskiej wobec wyzwoleń i wyzwoleńców*, Prawo Kanoniczne 1984, Vol. 27, No. 1–2, p. 223–239 and A. Łoś, *Wyzwoleńcy w Pompejach. Studium stosunków ekonomicznych w kampańskim mieście,* Wrocław 1991, p. 39 and n.; idem, *Życie prywatne wyzwoleńców w Pompejach,* „Acta Universitatis Wroclavianis" 1992, Vol. 1263, p. 77 and n.

[15] Cf. Correspondences of Pliny the Younger, Epistulam 7,18. See M. Wojcik*, Pojęcie i typy fundacji w prawie rzymskim*, Rocznik Nauk Prawnych 2000, Vol. 10, z.. 1, p. 17 and n; idem, *Fundacje dobroczynne w rzymskim prawie poklasycznym,* Lublin 2003, p. 20 and n.; W. Dajczak, T. Giaro, F. Longchamps de Bérier, *Prawo rzymskie..., op.cit.*, p. 198.

to the emergence of the child support obligation is not only the establishing judgment, but also the child's reaching the age of three (*maiori trimo petenti).* Because, according to Roman customs and views, until this period, the feeding of children was handled by the mother or *nutrices.* Child maintenance issues during this period only indirectly affected the father, since he bore *onera matrimonia,* at least as long as the marital community lasted. The alimony obligation arose only after the child reached the age of three and went on permanent food. In turn, an earlier establishment of the alimony obligation could only take place if the child's marital origin was in danger of being denied[16].

The amount of alimony depended on the wealth of the person obligated to pay alimony.

D.25,3,5,7 *(Ulpianus libro secundo de offisio consulis*): *Sed si filius possit se exhibere, aestimare iudices debent, ne non debeant ei alimenta decernere. denique idem Pius ita rescripsit: "aditi a te competentes iudices ali te a patre tuo iubebunt pro modo facultatium eius".*

According to the rescript of Antonius Pius, the emergence of the alimony obligation and the amount of alimony payment depend, on the one hand, on whether the son is able to support himself, and on the other hand, on the financial capacity of his father.

In the absence of an agreement on the amount of maintenance due, legal action should have been taken.

D.25,3,5,10 *(Ulpianus libro secundo de officio consulis): Si quis ex his alere detrectet, pro modo facultatium alimenta constituentur: quod si non praestentur, pignoribus captis et distractis cogetur sententiae satisfacere.*

In classical law, the request for the determination of alimony was addressed to the consul, while in Justinian law these issues were dealt with by a judge in cognisance proceedings, and in the provinces by provincial governors. Alimony payments determined in judicial proceedings were subject, in the event of failure to meet them, to property enforcement by seizure and sale of the debtor's belongings.

The judge in the cognisance proceeding, in determining the amount of alimony, should provide the recipient not only with the basic means of subsistence, but also oblige the father, according to his financial capacity, to also bear other costs related to the maintenance, upbringing, and education of the child:

[16] See A. Wiliński, *Maior trimo. Granica wieku trzech lat w prawie rzymskim*, „Czasopismo Prawno-Historyczne" 1955, Vol. 7, notebook 1, p. 43–48; R. Świrgoń-Skok, *Kategorie wieku w prawie rzymskim,* „Zeszyty Naukowe Uniwersytetu Rzeszowskiego, Seria Prawnicza. Prawo" 2013, 12, p. 145 et seq; W. Kosior, *Kategorie wieku w prawie rzymskim okresu królewskiego*, „Zeszyty Naukowe Uniwersytetu Rzeszowskiego, Seria Prawnicza. Prawo" 2015, 17, p. 9–27; more recently, W.J. Kosior, *Kategorie i granice wieku oraz ich znaczenie w rzymskim prawie prywatnym*, Rzeszów 2022.

D.25,3,5,12 *(Ulpianus libro secundo de officio consulis): Non tantum alimenta, verum etiam cetera quoque onera liberorum patrem ab iudice cogi praebere rescriptis continetur*.

However, it has not always been possible for those entitled to exercise their prerogatives through the courts.

D.25,3,5,11*(Ulpianus libro secundo de officio consulis): Idem iudex aestimare debet, num habeat aliquid parens vel an pater quod merito filios suos nolit alere.*

Indeed, judges when determining the emergence of a child support obligation should take into account all the circumstances of the case, such as issues of obedience and respect on the part of the child. After all, according to imperial rescripts, due to the child's unworthy behaviour, the father could be relieved of his maintenance obligation.

Similar regulations were also included in the Justinian Code:

C.8,46 (47),9: (*Imperatores Diocletianus, Maximianus)*: *Nec filium negare cuiquam esse liberum senatus consulta de partu agnoscendo ac denuntiata poena, item praeiudicium edicto perpetuo propositum et remedium alimentorum apud praesidem maiori trimo petenti monstratum iure manifesto declarant.*

In a rescript of Emperors Diocletian and Maximian dated 294 placed by the compilers in the Justinian Code, addressed to a woman living in one of the eastern provinces of the empire, one can find information about the legal remedies available to her in the situation of her husband's denial of paternity and evasion of alimony. She may *bring* an action against her husband or his *patri familias* for recognition of the child as her own, and consequently to provide alimony for the child. The legitimacy to bring the aforementioned action was vested in the woman during pregnancy and during and after marriage. The determination of the child's legal status made in this way has constitutive significance and can be the basis for a demand for the determination of alimony[17] .

4. Procedural facilities for the enforcement of maintenance obligations in Roman law

In Roman law, there was no uniform summation procedure[18], there were only certain and various simplifications, as a rule, in a few categories of cases. The term *summatim cognoscere*[19] was generally used only when only probability was

[17] D.25,3,1-3; Pauli. Sent.2,24,4-5; C.5,25,3; C.5,25,4; C.8,51,2. Similarly, later Byzantine law.

[18] This is according to, among others, W. Litewski, *Rzymski proces cywilny*, Krakow 1988, p. 102.

[19] M. Coretti, *Del summatim cognoscere al proceso de plano: la sumariedad en el derecho romano y en la edad media*, Vergentis. Revista de Investigación de la Cátedra Internacional

sufficient to investigate a case. This was the case, among others, with alimony[20] and *fee* disputes[21] , fideicomis and related issues of liberation and emancipation[22], sometimes disputes over *potestas*[23], as well as the administration of guardianship, prohibition of burial of the body, *inspicio et custodia ventris*[24], as well as complaints by children, slaves and liberators against fathers, owners, and patrons (and vice versa)[25] and complaints against *publicani, pollicitationes*[26].

Although these individual cases did not form a special type of summary proceeding, nor were they subject to extrajudicial protection on the basis of *interdictum, praetoriae stipulationes, missiones in possessionem* or *in integrum restitutio, based* on the *imperium of the clerk,* the clerk had the power to settle certain disputed questions, in a proceeding similar to a civil trial, under *extraordinaria cognitio* (in the strict sense of the word)[27]. Such *cognitio extra ordinem* began to appear as early as Augustus, initially for claims that were not actionable in an ordinary trial. The assertion of such claims was possible on the basis of imperial constitutions. In this way, claims of maintenance obligations existing between relatives in Roman law could be asserted.

> D.25,3,5pr *(Ulpianus libro secundo de offisio consulis*): *Si quis a liberis, ali desideret vel si liberi, ut a parente exhibeantur, iudex de ea re cognoscet.*

Proceedings for the establishment and enforcement of the maintenance obligation were held before a state judge, who, after *causa cognitio*[28], issued a judgment

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Conjunta Inocencio III, Vol. 1, p. 45–58; H.K. Briegleb, *Summatim cognoscere quid et quale fuerit apud Romanos: disputatio quam pro loco in Senatu Academico rite obtinendo,* Erlangae 1843; D. Simon, *Summatim cognoscere Zwölf Exegesen*, Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Romanistische Abteilung Vol. 83, Issue 1; A. Pérez Ragone, *La 'summatim cognoscere' y los procesos sumarios en la doctrina germana del derecho común: hipótesis de sus horígenes entre el proceso romano y el Medievo*, Estudios jurídicos en homenaje al profesor Alejandro Guzmán Brito, Vol. 3, 2014, p. 509–526.

[20] D.25,3,5.

[21] D.17,1,3 and 7.

[22] I.2,23; G.2,278, Ulp. 25,12; D.35,1,92; D.48,10,7; D.40,1,5pr; D.38,2,41; 37,12,5.

[23] D.8,47,1; D.6,1,1 and 2.

[24] D.27,2,1pr; Fr.Vat.156,136.

[25] G.1,59; D.1,15,1,1 and 8 and 10.

[26] D.40,32,2; D.50,12,8.

[27] See W. Miklaszewski, *Wykład postępowania cywilnego rzymskiego w zarysie historycznym*, Warsaw 1885, p. 308.

[28] *Causa cognitio* meant, in formal proceedings, a practioner's *cognisance* of a case, on which depended, for example, the granting of some legal remedy (e.g., *bonorum possessio*) or the issuance of a decision in noncontentious proceedings, especially in cases of custody or just alimony. The magistrate, especially the prosecutor, had a great deal of discretion here, see W. Litewski, *Słownik encyklopedyczny..., op.cit.,* p. 43.

and enforced it. *Causa cognitio* in this case consisted of a determination of the facts, by the judge based on oral evidence and corresponding to the forms of questioning of the disputing parties as assigned by law. On the contrary, *actio* and *iudicium* were not necessary.

Initially, in Roman law, there was no general jurisdiction for *cognitio extra ordinem,* but only for particular types of cases. The judge could be not only the competent *magistratus* but also the consul or praetors. Thus, the judge in alimony proceedings could be, at the latest from Antoninus Pius onwards, the consul, whose jurisdiction, in addition to alimony cases, included disputes from fideicomis (from Augustus onwards), guardianship cases (from Claudius onwards), trials for *libertas* and *ingenuitas,* or a judge appointed by him in his stead[29].

Alimony proceedings began with a *denuntiatio,* that is, an informal summons to the defendant by the plaintiff to appear before the court. This private act was accompanied by an official sanction in the form of a court order to appear[30]. Such proceedings could be conducted with arbitrary deadlines[31]. Further, the proceedings proceeded according to the rules inherent *in* an *extra ordinem trial,* without the effects that *litis contestatio* carried in an ordinary trial. When issuing a judgment, the judge could award either for the execution of a claim *in kind or* for a specific sum of money. Enforcement was done by ordinary means of coercion, by a government official.

The validity of a judgment rendered in *cognitio extra ordinem with* regard to proceedings for a claim for alimony had the same character as with ordinary *sententia judicis:*

> PS.5.5a.1 *Res iudicatae videntur ab his, qui imperium potestatemque havet vel qui ex auctoritate eorum inter partes dantur, itemque a magistratibus municipalibus usque ad summam, qua ius dicere possunt, itemque ab his, qui ab imperatore extra ordinem petuntur.*

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[29] D.1,18,9 (Callistratus): *Generaliter quotiens princeps ad praesides provinciarum remittit negotia per rescriptiones, veluti "eum qui provinciae praeest adire poteris" vel cum hac adiectione "is aestimabit, quid sit partium suarum", non imponitur necessitas proconsuli vel legato suscipiendae cognitionis, quamvis non sit adiectum "is aestimabit quid sit partium suarum": sed is aestimare debet, utrum ipse cognoscat an iudicem dare debeat.*

[30] *Denuntiatio ex autoritate* was one of the three types of summons (along with *litterae* and *edictum)* types of summons *(evocatio) of* a defendant before the court in cognisance proceedings. Its origins according to W. Litewski (*Rzymski proces..., op.cit.,* p. 84) is to be traced back to the summons *to* appear, issued in the era of the formulaic trial, by *magistrarus cum imperio* on pain of the application of measures belonging to the *co-rcitio* and the judicial practise of the Roman provinces. The 4th century saw the emergence of the semiofficial *litis denuntiatio*.

[31] D.5,1,36pr. (Callistratus): *Interdum ex iustis causis et ex certis personis sustinendae sunt cognitiones: veluti si instrumenta litis apud eos esse dicantur qui rei publicae causa aberunt: idque divi fratres in hec verba rescripserunt. humanum est propter fortuitos casus dilationem accipi, veluti quod pater litigator filium vel filiam vel uxor virum vel filius parentem amiserit, et in similibus causis cognitionem ad aliquem modum sustineri.*

Ex compromisso autem iudex sumptus rem iudicatam non facit: sed si poena inter eos promissum sit, poena re in iudicium deducta ex stipulatu peti potest.

Such a verdict could not be amended or overturned by the judge who issued it. Instead, it formed the basis for enforcement proceedings.

Furthermore, a dispute over the implementation of a maintenance claim could also end with a settlement *(transactio)*[32], ending the dispute without a judgment:

D.2,15,8pr. *(Ulpianus libro quinto de omnibus tribunalibus): Cum hi, quibus alimenta relicta erant, facile transigerent contenti modico praesenti....*

Such a settlement is also valid after the verdict in the case, as well as after the filing of an appeal or when there was an opportunity to file one:

D.2,15,7pr. *(Ulpianus libro septuagensimo ad edictum): Et post rem iudicatam transactio valet, si vel appellatio intercesserit vel appellare potueris.*

It was also irrelevant whether livelihoods would be provided monthly, annually, or indefinitely over several years.

D.2,15,8,3 *(Ulpianus libro quinto de omnibus tribunalibus): Sive igitur in menses singulos sive in dies sive in annos fuerint relicta, oratio locum habet. sed and si non fuerint perpetuo relicta, sed usque ad annos certos, idem est.*

A settlement could have been reached not only by making an Aquilian stypula, but also by informal agreement:

D.2,15,2 *(Ulpianus libro septuagensimo ad edictum): Transactum accipere quis potest non solum, si aquiliana stipulatio fuerit subiecta, sed, and si pactum conventum fuerit factum.*

With the provincial governor's approval being required for such a settlement to be effective, if the livelihoods are claimed in court as a result of their being left under a will or codicil (even if not confirmed in a will), or were granted in a donation on death or in a fideicomis, then the approval of the praetor (governor of the province) was required for such a settlement to be effective.

D.2,15,8pr. *(Ulpianus libro quinto de omnibus tribunalibus): Cum hi, quibus alimenta relicta erant, facile transigerent contenti modico praesenti: divus marcus oratione in senatu recitata effecit, ne aliter alimentorum transactio rata esset, quam si auctore praetore facta. solet igitur praetor intervenire et inter consentientes arbitrari, an transactio vel quae admitti debeat*[33].

[32] The term *transactio* (settlement) should not be equated with the contemporary institution of judicial settlement.

[33] D.2,15,8,1 *(Ulpianus): Eiusdem praetoris notio ob transactionem erit, sive habitatio sive vestiarium sive de praediis alimentum legabitur.*

The praetor, in approving the alimony settlement, examines its reasons, content and parties:

D.2,15,8,8 *(Ulpianus libro quinto de omnibus tribunalibus): Vult igitur oratio apud praetorem de istis quaeri: in primis de causa transactionis, dein de modo, tertio de persona transigentium*[34].

In addition, neither the praetor nor the governor of the province may allow the parties to enter into a settlement agreement on maintenance issues without his approval:

D.2,15,8,17*(Ulpianus libro quinto de omnibus tribunalibus): Si praetor aditus citra causae cognitionem transigi permiserit, transactio nullius erit momenti.*

In addition, praetors, as well as provincial governors, cannot delegate their powers in this regard to a deputy:

D.2,15,8,18*(Ulpianus libro quinto de omnibus tribunalibus): Sed nec mandare ex hac causa iurisdictionem vel praeses provinciae vel praetor poterit...*

In contrast, the above restrictions were not in the situation of a settlement agreement regarding alimony not resulting from a *mortis causa* action*:*

D.2,15,8,2 *(Ulpianus libro septuagensimo ad edictum): ...plane de alimentis, quae non mortis causa donata sunt, licebit, et sine praetore auctore transigi.*

On the other hand, with regard to livelihoods that were not transferred upon death, a settlement could be made even without the approval of the praetor.

5. Summary

In light of the considerations presented, it can be concluded that the lack of a clear unification of the concept of a claim for alimony in Roman law allows for a broad treatment of this institution. Undoubtedly, the special nature of the alimony claim distinguishes these claims due to the importance of satisfying the needs of those entitled to receive them. The task of procedural norms is to facilitate and simplify the claim for alimony and its enforcement.

This was already the case in Roman law, where, although summary proceedings were not singled out as an independent type of proceeding, certain types of case categories were subject to significant simplification. This included the assertion

[34] Ulpian describes a detailed procedure for determining the content of a settlement in alimony cases in D.2,15,8,9–11.

of a claim for alimony, when only probability was sufficient to investigate the case. Proceedings for the establishment and realisation of the alimony obligation were held without *actio* and *iudicium*, before a state judge who, after *causa cognitio,* issued a judgment and enforced it. In addition, there is a dispute over the realisation of a maintenance claim could also end through a settlement *(transactio),* ending the dispute without a judgment.

On the other hand, it is not possible (at least based on the analysis of sources relating to the implementation of the maintenance obligation) to unequivocally state that there was or was not a separate uniform summary proceeding in Roman law. An unequivocal thesis that there was (or was not) a uniform summary proceeding in Roman law would require an in-depth analysis of the source material in all casuistic cases in which the surviving source material provides for some simplification or acceleration of civil procedure.

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