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Taras Pashuk

Europejski Trybunał Praw Człowieka
ORCID: 0000-0003-0037-9594

IMPACT OF ROMAN LAW ON THE EUROPEAN CONVENTION ON HUMAN RIGHTS

Introduction

The legal regime established by the European Convention on Human Rights ("the Convention") covers numerous domestic legal systems which have their own peculiarities and specifics. Thus, this international legal regime has to deal with numerous internal constitutional orders securing human rights in their own manner. The purpose of the Convention was, however, to equally ensure human rights standards all across Europe. As Article 1 of the Convention proclaims, "[t]he High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention". Therefore, the primary challenge for the effective operation of the Convention was to understand each other in the multicultural legal environment in order to pursue the goals conceived by the drafters of the Convention. The first task on this way was to find a common ground in understanding legal phenomena existing in numerous and divergent domestic legal systems. Without this, the contemporary system of human rights protection could not successfully operate on the European level.

The key to establishing such clear language and referential system would be to revert to the common legal background underpinning domestic legal systems of the European countries. Certainly, the legacy of Roman law and its axiological and methodological role in the current understanding of human rights in Europe should not be underestimated. Usefulness of Roman law from the historical point of view is apparent since Roman law itself had to evolve within the framework of the Roman Empire's reality. Looking for the universal methods of dealing with legal phenomena in a multicultural environment was nothing unusual for Roman law. The multicultural and cosmopolitic challenges which

are likewise the features of the modern European legal context were present in Roman law[1].

In the present article certain aspects of relationship between Roman law and the modern human rights law that evolved in Europe within the Convention system will be the focus of attention. The impact of Roman law on the contemporary legal thinking and reasoning in this area is analysed with regard to the Convention proceedings themselves. An argument is made that certain important rules of the Convention procedure have been affected by Roman-law principles. Then analysis is made with regard to the substance of human rights standards under the Convention. In the examination of these issues reference is made to the case-law of the European Court of Human Rights (the Court), which, under Article 19 of the Convention, has been set up to ensure the observance of the commitments undertaken by the High Contracting Parties. It is in the practical application of the Convention that the real effect of the Roman-law concepts and doctrines becomes visible and can be appreciated.

1. Integration of Roman-law concepts in the international procedure before the Court

What role have the Roman-law concepts played in the development of the Convention procedures for the consideration of applications submitted to the Court? The Convention prescribes that the application should comply with a set of admissibility criteria (Article 35). Among those criteria there is a requirement for the applicant to show that he or she has sustained significant disadvantage caused by the alleged violation of the Convention rights. Here it goes about Article 35 § 3 (b) of the Convention which provides that the application should be declared inadmissible if "the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal". This is a relatively new formula introduced by Protocol No. 14 (that came into effect in 2010) which, in essence, resembles the old principle *de minimis non curat praetor.* It is argued that this Latin maxim appeared in the Middle Ages, however, it has been noted that the standard was applied in substance by Romans[2]. Indeed, the Court expressly referred to this ancient principle when ap-

[1] В. Вовк, Римське право і сучасне європейське право, в: Українсько-грецький міжнародний науковий юридичний журнал "Порівняльно-правові дослідження" 2009, № 2, с. 16, 19.

[2] W.H. Van Boom, *De Minimis Curat Praetor – Redress for Dispersed Trifle Losses*, "4 Journal of Comparative Law" 2009, no. 2, p. 171.

plying the criterion of significant disadvantage. The Court stated that the criterion at issue was "inspired by the general principle *de minimis non curat praetor*" and that it is based on the same idea that a violation of a right, however real from a purely legal point of view, should attain a minimum level of severity to warrant consideration by an international court[3].

The admissibility criteria under the Convention system include the concept of abuse of right of application (Article 35 § 3 (a) of the Convention). According to the case-law of the Court, an application lodged with the Court may be rejected as an abuse of the right of individual application if, among other reasons, it was knowingly based on untrue facts. Submission of incomplete and thus misleading information may also amount to an abuse of the right of application, especially if the information concerns the very core of the case and no sufficient explanation has been provided for the failure to disclose that information. The same applies if important new developments have occurred during the proceedings before the Court and where, despite being expressly required to do so, the applicant has failed to disclose that information to the Court, thereby preventing it from ruling on the case in full knowledge of the facts. However, the applicant's intention to mislead the Court must always be established with sufficient degree of certainty[4].

Today, the concept of abuse of rights has influenced international law in the areas where it is widely considered to be a part of international law, whether as a general principle of law or as part of customary international law[5]. In the meantime, the idea of abuse of right can be traced back to Roman property law. It is true that rights were regarded as absolute by nature: *Nullus videtur dolo facere qui suo iure utitur* (D 50.17.55) ("No one who acts within his right is regarded as committing a wrongful act"). However, the exercise of certain specific proprietary rights was actionable if it brought no benefit to the owner, and if it was known that a neighbour would suffer harm[6]. These primary reservations as to the scope of legitimate exercise of the proprietary right further evolved into the concept of abuse of right, including abuse of procedural rights.

When dealing with the evidentiary basis for the allegations, the Court generally follows a Roman-law principle *affirmanti incumbit probatio* (he who alleges something must prove the allegation). In exceptional cases, however, where it finds that the applicant is not in position to substantiate his case, the Court deviates from this general approach. For example, the Court has provided the following explanation with regard to specific cases concerning protection of the right to life (Article 2

[3] ECHR, *Giuran v. Romania*, no. 24360/04, § 18, ECHR 2011 (extracts).

[4] ECHR, *Gross v. Switzerland* [GC], no. 67810/10, § 28, ECHR 2014.

[5] M. Byers, *Abuse of Rights: An Old Principle, A New Age*, "47 McGill McGill Law Journal" 2002, February, p. 389.

[6] E. Reid, *Abuse of Rights in Scots Law*, "Edinburgh Law Review" 1998, no. 2(2), p. 157.

of the Convention) and prohibition of ill-treatment (Article 3 of the Convention): "According to the Court's case-law under Articles 2 and 3 of the Convention, where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons under their control in custody, strong presumptions of fact will arise in respect of injuries, damage and death occurring during that detention. The burden of proof in such a case may be regarded as resting on the authorities to provide a satisfactory and convincing explanation"[7].

While examining the substance of the allegations, the Court may be faced with the problem of conflicting provisions of the Convention. In this regard the Court often reverts to the *lex specialis derogat legi generali* doctrine for resolving conflicts in legal rules. The roots of this doctrine go back to Roman law. Notably, in Corpus Juris Civilis the following statements can be found: "The sanction of the statutes, which in most recent times imposes a fixed penalty on those who fail to comply with the provisions of a statute, is not seen as applying to those special cases to which a penalty is specifically attached by the statute itself. There is no doubt that in all other [aspects] of the law the particular derogates from the general…" (D 48.19.41); "In the whole of law, species takes precedence over genus, and anything that relates to species is regarded as the most important" (D 50.17.80).

This method of resolving conflicts in legal rules has been widely accepted. It is applied by the Court, for example, in order to determine the relationship between the provisions of Article 6 of the Convention ensuring the right to a fair trial and Article 13 providing for the right to an effective remedy. The Court has ruled on many occasions that in the circumstances when the complaint falls under Article 6 of the Convention it imposes stricter guarantees and takes predominance over the more general requirements under Article 13 of the Convention[8].

Next, to explain the binding nature of the Court's judgments, the principal distinction is made in terms of their *inter parte* and *erga omnes* effect. These terms are well known in Roman law which acknowledged the principle *res iudicata ius facit inter partes* (a judgment makes law between the parties). On the other hand, under Roman law there was a possibility of action *erga omnes,* that is an action brought by any citizen to protect the public interest (*actio popularis*). That original meaning of the general effect in respect of all has been taken to describe the general effect of the Court's legal findings. Thus, reference to *inter parte* and *erga omnes* can be found in the contemporary discussions concerning the nature and the binding effect of the Court's judgments: do those judgments have the general effect or are they strictly limited to the "law between the parties"? Despite the literal interpretation of Article 46 providing that "[t]he High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are

[7] ECHR, *Blokhin v. Russia* [GC], no. 47152/06, § 140, 23 March 2016.
[8] ECHR, *Baka v. Hungary* [GC], no. 20261/12, §181, 23 June 2016.

parties", the Court is developing its case law in a consistent manner to ensure that the judgments have actual *erga omnes* effect. In one of its rulings the Court has specified that "its judgments in fact serve not only to decide those cases brought before the Court but, more generally, to elucidate, safeguard and develop the rules instituted by the Convention, thereby contributing to the observance by the States of the engagements undertaken by them as Contracting Parties"[9].

In that regard it is relevant to mention that after a violation of the Convention is found a question arises how to implement those findings in the domestic legal procedure. Execution of the Court's judgment should ensure effectiveness of the system under the Convention, which is not a straightforward task, since the judgment of the Court, an international authority, cannot automatically set aside the binding decisions of the domestic authorities or a particular piece of domestic legislation, causing violation of human rights. The issue of appropriate enforcement of the Court's judgments was therefore settled according to the principle *restitutio in integrum* (restoration to an earlier state of affairs), another Roman-law concept which denoted a method for revisiting a magistrate's decision. *Restitutio in integrum* was a special praetorian remedy, often invoked to relieve a litigant from the legal effects of a transaction deemed to be unfair in that specific instance. This might occur, for example, when litigant's action expires because a magistrate's negligence allows this to happen[10]. Currently, in the system under the Convention, the Committee of Ministers of the Council of Europe has adopted a recommendation specifying that the obligation of the Contracting Parties to abide by the final judgment of the Court may entail taking of specific and general measures, "which ensure that the injured party is put, as far as possible, in the same situation as he or she enjoyed prior to the violation of the Convention *(restitutio in integrum)*". The Committee of Ministers has further stated that "in exceptional circumstances the re-examination of a case or a reopening of proceedings has proved the most efficient, if not the only, means of achieving *restitutio in integrum*" and invited the Contracting States to "ensure that there exist at national level adequate possibilities to achieve, as far as possible, *restitutio in integrum*"[11].

Accordingly, the Roman-law concepts, principles and doctrines are deeply integrated into the international legal procedure provided by the Convention. They influenced the development, understanding and use of the admissibility proceedings, the rules of evidence in the proceedings before the Court, and, eventually, the execution of the Court's rulings.

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[9] ECHR, *Karner v. Austria*, no. 40016/98, § 26, ECHR 2003IX.

[10] E. Metzger, *An Outline of Roman Civil Procedure*, "Roman Legal Tradition" 2013, no. 9, p. 11.

[11] Committee of Ministers of the Council of Europe, Recommendation No. R (2000) 2 on the re-examination or reopening of certain cases at domestic level following judgements of the European Court of Human Rights, 19 January 2000.

2. Roman-law principles as European standards of human rights

2.1. Certain provisions of the Convention have a direct relationship with the principles that existed in Roman law. Basic fair trial principles which are well-known today take their origin from the Roman procedure. For instance, the ideas of personal appearance before the judge and orality as well as the principle of publicity of the litigation were originally accepted in the Roman procedure[12]. Modern standards of fair trial under the Convention are essentially premised on those procedural values. Notably, Article 6 § 1 of the Convention provides, among other things, that "[i]n the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing". The Court in its case-law emphasises the importance of personal appearance before the court and direct examination of evidence by the domestic court: "[t]he Court has previously stated that it is of capital importance that a defendant should appear, both because of his right to a hearing and because of the need to verify the accuracy of his statements and compare them with those of the victim – whose interests need to be protected – and of the witnesses"[13]. With regard to the public hearing requirement, the Court has stated that "[t]he public character of proceedings protects litigants against the administration of justice in secret with no public scrutiny; it is also one of the means whereby confidence in the courts can be maintained. By rendering the administration of justice visible, publicity contributes to the achievement of the aim of Article 6 § 1, a fair hearing, the guarantee of which is one of the foundations of a democratic society"[14].

Let's take the example of presumption of innocence. Once again, if we go back to Roman principles in the area of law of evidence, we will find the foundations of presumption of innocence there. Digest of Justinian (D.22.3.2) provides, as a general rule: *Ei incumbit probatio qui dicit, non qui negat* ("Proof lies on him who asserts, not on him who denies"). Moreover, another aspect of this presumption is the principle encapsulated in the Latin phrase *in dubio pro reo*, which also goes back to Digest of Justinian (D.50.17.125): *Favorabiliores rei potius quam actores habentur* ("Defendants rather than prosecutors are regarded with greater favor"). Presumption of innocence has become nowadays a fundamental feature of the criminal trial and it has been reflected in the system of fair trial guarantees under the Convention. Notably, Article 6 § 2 of the Convention provides that "[e]veryone charged with a criminal offence shall be presumed innocent until proved guilty according to law". In the Court's case-law the meaning of this prin-

[12] E. Metzger, *Roman Judges, Case Law, and Principles of Procedure*, "Law and History Review" 2004, no. 22(2), p. 243–275.

[13] ECHR, *Medenica v. Switzerland*, no. 20491/92, § 54, ECHR 2001VI.

[14] ECHR, *Osinger v. Austria*, no. 54645/00, §44, 24 March 2005.

ciple has been given dynamic interpretation which, however, is based on the fundamental Roman-law idea concerning the distribution of burden of proof in trial. Viewed as a procedural guarantee in the context of a criminal trial itself, presumption of innocence has been further interpreted by the Court to include requirements in respect of, *inter alia*, legal presumptions of fact and law; the privilege against self-incrimination; pre-trial publicity; and even premature expressions of a defendant's guilt by the trial court or by other public officials[15].

2.2. The system under the Convention has entirely absorbed the principles of legality in criminal law *nullum crimen, nulla poena sine lege*. Those principles currently include several components, notably, no person shall be punished except on the basis of a statute which fixes a penalty for criminal behavior, there should be no crime without previous penal law, and the law itself should be certain and strictly construed. Even thought the doctrine has been carefully elaborated in eighteenth century, it has been argued that the doctrine in fact originates from Roman law, notably from Sulla who insisted that for certain crimes both offence and penalty should be clearly described in the statute under which the accusation was brought[16]. This doctrine has been enshrined in Article 7 of the Convention which provides the following in its first paragraph: "No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed".

The Court interprets these provisions in line with the doctrine based on the Roman-law approaches. In the case of *Del Rio Prada v. Spane*, it has specified that Article 7 of the Convention is not confined to prohibiting retrospective application of the criminal law to an accused person's disadvantage. It also embodies, more generally, the principle that only the law can define a crime and prescribe a penalty *(nullum crimen, nulla poena sine lege)*. While it prohibits, in particular, extending the scope of existing offences to acts which previously were not criminal offences, it also lays down the principle that the criminal law must not be extensively construed to an accused person's detriment, for instance by analogy. It follows that offences and the relevant penalties must be clearly defined by law. This requirement is satisfied where the individual can know from the wording of the relevant provision if need be with the assistance of the courts' interpretation of it and after taking appropriate legal advice, what acts and omissions will make him criminally liable and what penalty he is faced with on that account. The Court must therefore verify that at the time when an accused person performed the act which led to his being prosecuted and convicted a legal provision which made that

[15] ECHR, *Allen v. the United Kingdom* [GC], no. 25424/09, §93, ECHR 2013.

[16] J. Hall, *Nulla Poena Sine Lege*, "The Yale Law Journal" 1937, vol. 47, no. 2, p. 166.

act punishable was in effect and that the punishment imposed did not exceed the limits fixed by that provision[17].

2.3. The Convention has assimilated the doctrine of *habeas corpus* which concerns the procedure for reviewing the lawfulness of detention by a court. The principle *habeas corpus ad subjiciendum* ("you may have the person to be subjected to examination") has been largely embodied in English common law, however, it is considered that it may originate from Roman law[18]. This principle has been given a special place in the Convention as it has been expressly incorporated in a separate paragraph 4 of Article 5 of the Convention proclaiming the right to liberty and security. This paragraph provides as follows: "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful". Today, if we look at the case-law of the Court, this principle takes a prominent place in the current system of guarantees of individual's physical liberty and is widely applied by the Court.

2.4. Article 4 of Protocol No. 7 to the Convention which is titled "Right not to be tried or punished twice" provides in particular, that "[n]o one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State". This provision incorporates the concept *ne bis is idem* which means that double jeopardy should be prohibited. The expression *ne bis in idem* is Latin, however, the question remains what is the exact relationship of this doctrine with Roman law. It has been argued that the contemporary doctrine of *ne bis in idem* derives from the Roman-law maxim *bis de eadem re ne sit actio* (there cannot be an action on the same thing twice) or the principle *bis de eadem re agere non licet* (it is not appropriate to bring an action twice on the same case). It has been emphasised that in Roman private law initiation of proceedings (*litis contestatio*) had several, far-reaching legal consequences. Firstly, the parties were bound by the outcome, and secondly, the litis contestatio "consumed" the claim, whereby it became *res in iudicium deducta*, not susceptible to a second *actio* or *iudicium*[19]. Furthermore, in exploring the history of double jeopardy, D.S. Rudstain refers to the following statements made by Roman jurists: "[a]fter a public acquittal a defendant can again be prosecuted by his informer within thirty days, but after that time this cannot be done" (Paulus); "[t]he governor must not allow a man to be charged with

[17] ECHR, *Del Río Prada v. Spain* [GC], no. 42750/09, §§ 78-80, ECHR 2013.

[18] N.D. McFeeley, *The Historical Development of Habeas Corpus*, "30 Southwestern Law Journal" 1976, vol. 30(3), p. 585.

[19] W.B. van Bockel, *The Ne Bis in Idem Principle in EU Law: A Conceptual and Jurisprudential Analysis*, Leiden 2009, p. 33.

the same offences of which he has already been acquitted" (D 48.2.7.2) and that "a person cannot be charged on account of the same crime under several statutes" (D 48.2.14)[20]. It is apparent that Roman law provided foundations for this important principle expressly acknowledged in the Convention.

Accordingly, this survey shows that that Convention system of human rights standards is clearly linked to Roman law and certain contemporary provisions of the Convention enshrine the principles that emerged in Roman law.

3. Roman-law concepts as tools for understanding common domestic legal phenomena in Europe

Quote often the Court refers in its decisions and judgments to Latin legal terms in order to associate specific domestic legal phenomena with Roman-law concepts. Such references, on the one hand, facilitate comprehension of legal reasoning provided by the Court and, on the other hand, demonstrate common legal culture in the domestic legal orders. The Court thus regularly refers to such concepts as *ex officio* measure when the measure was taken by virtue of one's position or status. Similarly, it employs the term *prima facie* case to denote the level of corroboration of the claim by evidence. Both concepts stem from Roman law. It has been stated, in particular, that the concept of *prima facie* has been widely used by Roman scholars in philosophy and law (example: *"Quum prima facie quidem alienam, re vera suam obligationem suscipit"* (D 16.1.13) which means "when at first appearance the thing indeed belongs to another individual, a person is truly persuaded of the correctness of his suspicion that an obligation has arisen")[21].

The same concerns a civil-law concept of *bona fide.* Corpus Iuris Civilis describes *bona fides* as a general principle *bonam fidem in contractibus considerari aequum est* (C.4.10.4) (it is fair to consider good faith of contracts). *Bona fide* acquisition is commonly referred to by the Court with regard to various legal systems to describe cases where a person acquires property from an unauthorised seller in good faith. Reference to this Roman-law concept immediately facilitates further legal analysis in a particular domestic legal system. The Court has done so, for example, in the cases of *Gladysheva v. Russia*[22] and *Dzirnis v. Latvia*[23].

Take another example of the criminal-law concept *in flagrante delicto*. According to the opinion of Papinian, a celebrated Roman jurist, a husband had the

[20] D.S. Rudstein, *A Brief History of the Fifth Amendment Guarantee Against Double Jeopardy*, "14 William & Mary Bill of Rights Journal" 2005, vol. 14(1), p. 199.

[21] G.N. Herlitz, *The Meaning of the Term "Prima Facie"*, "55 Louisiana Law Review" 1994, vol. 55(2), p. 392.

[22] ECHR, *Gladysheva v. Russia*, no. 7097/10, §72, 6 December 2011.

[23] ECHR, *Dzirnis v. Latvia*, no. 25082/05, § 76, 26 January 2017.

"right" to kill a male adulterer, provided the adulterer was of low social status and the husband acted immediately upon discovering the offender *in flagrante delicto* in the husband's house, which, however, was not meant to be a "right" but rather a justification[24]. The Court has been using the concept *flagrante delicto* quite often in order to refer to the arrest in the circumstances when a criminal has been caught in the act of committing an offence. This was done in the case of *Kart v. Turkey*, in the context of comparative-law overview as regards application of parliamentary immunity to *flagrante delicto* arrest[25], or in the case of *Hermi v. Italy*, where the Court succinctly noted in paragraph 85 that the applicant had been arrested *in flagrante delicto*[26].

Therefore, at this conceptual and terminological level, it is apparent that Roman law plays an important methodological role in dealing with various domestic systems covered by the Convention.

Conclusion

This brief overview shows that, despite its remoteness in time, Roman-law concepts, doctrines and principles retain their effect for the contemporary legal thought in the European human rights context. The Roman-law ideas have been used to establish and justify relevant procedural rules in the treatment of applications submitted to the Court. They have influenced the scope of burden of proof for the applicants (*affirmanti incumbit probatio*), the applicant's obligation to show significant disadvantage *(de minimis non curat praetor),* and the prohibition of abuse of the right of application. These ideas have been equally employed to ensure effective execution of the Court's judgments (notably, the principle *restitutio in integrum*). The impact of Roman law becomes further apparent when it comes to the substance of human rights standards established by the Convention. In particular, basic fair trial principles (like personal appearance, orality and publicity of the trial) take their origin from the Roman law procedure, as do presumption of innocence, the principles of legality in criminal law (*nullum crimen, nulla poena sine lege*), *habeas corpus* procedure and the principle *ne bis in idem*. And lastly, Latin terms of Roman-law origin (*prima facie, ex officio, bona fide* etc.) are likewise widely employed by the Court in order to facilitate understanding and treatment of legal phenomena coming to the Court's attention from pluralistic domestic legal environments.

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[24] E.R. Milhizer, *Justification and Excuse: What They Were, What They Are, and What They Ought to Be*, "78 Saint John's Law Review" 2004, p. 765–766.

[25] ECHR, *Kart v. Turkey* [GC], no. 8917/05, § 49, ECHR 2009 (extracts).

[26] ECHR, *Hermi v. Italy* [GC], no. 18114/02, § 85, ECHR 2006XII.

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Summary

The article is dedicated to the analysis of the impact of Roman law on the modern system of human rights protection, established by the European Convention on Human Rights. The impact of Roman law on the contemporary legal thinking and reasoning in this area is analysed with regard to the proceedings stipulated by the Convention. An argument is made that certain important rules of the Convention procedure have been affected by Roman-law principles. Then analysis is made with regard to the substance of human rights standards under the Convention. In examining these issues,

reference is made to the case-law of the European Court of Human Rights. It is in the practical application of the Convention that the real effect of the Roman-law concepts and doctrines becomes visible and can be appreciated.

Keywords: Roman law, legal principles, European Convention on Human Rights, European Court of Human Rights

WPŁYW PRAWA RZYMSKIEGO NA EUROPEJSKĄ KONWENCJĘ PRAW CZŁOWIEKA

Streszczenie

Artykuł jest poświęcony analizie wpływu prawa rzymskiego na współczesny system ochrony praw człowieka, stanowiony przez Europejską Konwencję Praw Człowieka. Wpływ prawa rzymskiego na teraźniejsze myślenie prawne i argumentację prawniczą w tym obszarze jest zbadany przez pryzmat postępowania ustalonego według Konwencji. Uzasadniono, że powstanie niektórych ważnych reguł postępowania konwencyjnego zostało zapoczątkowane przez zasady prawa rzymskiego. Badanie zostało prowadzone na kanwie treści standardów praw człowieka, zawartych w Konwencji. Ważne miejsce w studium zajmuje analiza spraw rozstrzygniętych przez Europejski Trybunał Praw Człowieka. Faktyczny wpływ pojęć i koncepcji prawa rzymskiego staje się najbardziej widoczny i może być udowodniony właśnie poprzez badanie praktyki stosowania Konwencji.

Słowa kluczowe: prawo rzymskie, zasady prawne, Europejska Konwencja Praw Człowieka, Europejski Trybunał Praw Człowieka