

**Wojciech J. Kosior**

University of Rzeszow

ORCID: 0000-0002-4710-4523

**THE IMPORTANCE OF AGE  
IN THE ROMAN CRIMINAL PROCESS****Introduction**

In every legal system, whether we are talking about ancient law or current law, there were and are regulations that made certain specific effects dependent on the age of a person. Such norms are known in all modern legal systems of the world and, what is more, they now function in every branch of law. It is an accepted practice to use numerical age limits in the content of such regulations, which subsequently determined a specific age category. Therefore, it should not come as a surprise that in Roman law, too, there were institutions whose application and, above all, their effects depended on the attainment of a numerically specified age by the subject of the law. The most commonly presented limits in the literature are: 7 years, then 12 years for women and 14 for men, and later 25 years. These boundaries were determined by the following age categories: children (*infantes*) 0–7 years, immature (*im-pubes*) 7–14 (or 12 years in the case of women), mature under 25 (*puberes minores XXV annis*) and mature over 25 (*puberes maiores XXV annis*)<sup>1</sup>. The above boundaries and categories were closely related to personal law, and more specifically to the scope of legal capacity, although, of course, a number of other powers exercised under other branches of law were also connected with this capacity.

The purpose of this article is to present the results of the research conducted on the juridical sources of Roman law, which revealed texts relating to the problem of age on the grounds of the Roman criminal process.

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<sup>1</sup> On the meaning of age in Roman private law see: W.J. Kosior, *Kategorie i granice wieku oraz ich znaczenie w rzymskim prawie prywatnym*, Rzeszów 2022, pp. 410.

## The importance of the age of the witness

The research conducted led to the discovery of several source texts that emphasized the importance of age in the criminal procedure. Among the established sources, age played the greatest role in the procedural activities related to the examination of witnesses (*testimonia*), which, as pointed out by W. Litewski<sup>2</sup>, were in the Roman criminal trial, the most important evidence<sup>3</sup>.

The text with which it is appropriate to begin an argument about the importance of the age of a witness in a Roman criminal trial is the following opinion by Callistratus:

**D. 22, 5, 3, 5, Callistratus libro quarto de cognitionibus;** *Lege Iulia de vi cavetur, ne hac lege in reum testimonium dicere liceret, qui se ab eo parente eius liberaverit, quive impuberes erunt (...).*

The jurist, in the passage quoted above, indicated that immature persons could not be examined as witnesses in trials conducted under the Law of Public Violence (*lex Iulia de vi publica*). The evidentiary prohibition mentioned by Callistratus, which included immature witnesses, is also found in an account by Ulpianus placed in *Collatio legum Mosaicarum et Romanarum*:

**Coll. 9, 2, 2;** *Capite octogesimo octavo in haec verba his hominibus: 'hac lege in reum testimonium dicere ne liceto, qui se ab eo parente eius libertove cuius eorum libertive libertave liberaverit, quive inpubes erit, (...) Nec volens quis eorum hac lege in reum testimonium dicit.*

The passage presented shows that the provisions of *lex Iulia de vi* stipulated that the immature could not testify against defendants in a pending trial.

In light of the texts presented above, a naturally posed question is whether the prohibition of interrogation of the immature applied only to proceedings conducted under the Julian law on the use of force, or whether it was of a general nature. As reported by A. Chmiel<sup>4</sup> there are divided opinions in the literature on whether the provisions contained in this law applied only in cases of crimes tried

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<sup>2</sup> W. Litewski, *Rzymski proces karny*, Kraków 2003, p. 94.

<sup>3</sup> On the role of witness evidence in the Roman criminal trial, see, in particular, an unpublished doctoral dissertation: A. Chmiel, *Zeznania świadków i ich wartość dowodowa w rzymskim procesie karnym*, Lublin 2013, pp. 322 and the literature cited therein. On witnesses in the Roman trial, see also: W. Rozwadowski, *Ocena zeznań świadków w procesie rzymskim epoki republikańskiej*, „Czasopismo Prawno-Historyczne” 1961, No. 13/1, pp. 9–31; W. Rozwadowski, *Ocena zeznań świadków w procesie rzymskim epoki Pryncypatu*, „Czasopismo Prawno-Historyczne” 1964, No. 16/1, pp. 143–183; *idem*, *Wartość dowodowa świadków w rzymskim procesie poklasycznym*, „Czasopismo Prawno-Historyczne” 1969, No. 21/1, pp. 1–29.

<sup>4</sup> A. Chmiel, *Zeznania świadków...*, p. 102.

under it, and therefore only as to *crimina de vis*<sup>5</sup>, or whether they were of a general nature<sup>6</sup>. Analyzing the problem presented, T. Mommsen<sup>7</sup>, followed by L. Fanniza<sup>8</sup> considered that during the republican period, and therefore before the introduction of *lex Iulia de vi*<sup>9</sup>, immature persons were not deprived of the right to testify. This restriction was supposed to have been initiated precisely by the law in question, and in cases conducted under it, the examination of immature persons as witnesses was prohibited, while in other cases it was adopted not to call immature persons as witnesses against their will<sup>10</sup>. Thus, it can be assumed, following W. Rozwadowski<sup>11</sup>, that in general the persons incapable of testifying, and in all epochs of Roman law, included children (*infantes*), who, by virtue of their age, had not yet attained such a degree of mental development as to be able to perform the functions associated with the role of a witness, such as perceiving, remembering and reporting on perceived phenomena, or were unaware of the importance of the oath taken by the witness. *Impuberes*, on the other hand, should not have been allowed to testify for lack of due consideration.

In the source texts, one can also find the opinion of the jurist Venuleius (a.k.a. Venonius), who wrote about limiting the questioning of witnesses under the age of 20:

**D. 22, 5, 20, Venonius libro secundo de iudiciis publicis;** *In testimonium accusator citare non debet eum, qui iudicio publico reus erit aut qui minor viginti annis erit.*

The quoted passage says that the accuser in public trials should not have called as witnesses those persons who had once been accused themselves, as well as persons under 20 years of age. Analyzing the above text in juxtaposition with the previously cited passages of the opinions of Callistratus and Ulpianus (D. 22, 5, 3, 5, Coll. 9, 2, 2), which referred to the prohibition of questioning immature witnesses,

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<sup>5</sup> After A. Chmiel: J.H.A. Escher, *De testium ratione quae Romae Ciceronis aetate obtinuit*, „Gesammelte Schriften. Juristische Schriften” 1907, Vol. III, p. 26; A.W. Zumpt, *Der Criminalprozess der Römischen Republik*, Leipzig 1871, p. 265; U. Vincenti, *Duo genera sunt testium. Contributo allo studii della prova testimoniale nel processo romano*, Padova 1989, p. 57.

<sup>6</sup> After A. Chmiel: G. Geib, *Geschichte des römischen Criminalprozesses bis zum Tode Iustinians*, Leipzig 1842, p. 56; G. Falchi, *Diritto penale romano*, Vol. 3, Padova 1937, p. 56; U. Zilletti, *Note sulla restitutio in integrum damnatorum*, „Studi Grosso” 1968, Vol. II, p. 43.

<sup>7</sup> T. Mommsen, *Römisches Strafrecht*, Leipzig 1899, p. 410.

<sup>8</sup> L. Fanizza, *Giuristi, crimini, leggi nell'età degli Antonini*, Napoli 1982, p. 38.

<sup>9</sup> It is not certain whether *lex Iulia de vi publica et privata* was introduced under Julius Caesar or perhaps as early as Octavian Augustus, cf. K. Amiełańczyk, *Z historii ustawodawstwa rzymskiego w sprawach karnych. Próba periodyzacji*, „Acta Universitatis Wratislaviensis” No. 3063: CCCV Volume dedicated to the memory of Prof. Edward Szymoszek, ed. A. Konieczny, 2008, p. 19.

<sup>10</sup> See also: W. Rozwadowski, *Ocena zeznań...*, p. 163.

<sup>11</sup> *Ibidem*, pp. 151–152.

T. Mommsen<sup>12</sup> concluded that there is an irresolvable contradiction between them. W. Rozwadowski<sup>13</sup> disagreed with such an opinion, presenting his interpretation, which should be considered correct. The researcher assumed that there is only an apparent contradiction between the analyzed passages, since it is unlikely that Venuleius was unaware of the Julian law *de vi*, which was referred to by Callistratus and Ulpianus in their opinions. In turn, it is clear from this law that only *impuberes* were not allowed to act as prosecution witnesses. Thus, when analyzing the statement of Venuleius, the emphasis must be placed on the words: *non debet*. Thus, according to this jurist, the accuser should have avoided calling as witnesses mature persons (*puberes*) and before the age of 20, but this does not mean that he was not allowed to do so. According to the jurist, a full-fledged witness was only a person who had reached the age of 20. The above thesis is also supported by the fact that Venuleius' recommendation, expressed in the text, as to the prosecutor's failure to call as a witness a person under 20 years of age occurs alongside a similar recommendation as to those accused in a public criminal trial. In the case of the latter, there was no doubt that, as persons not yet convicted, they were not excluded by any law from testifying. Thus, also with regard to these persons, Venuleius' formulation *citare non debet* is merely a recommendation, not a categorical prohibition.

With reference to the above passages, it must also be added that if the *iudex* had to choose between the testimony of an immature person on the one hand and that of an already mature person on the other, he undoubtedly based his findings on the testimony of the latter. The failure to give too much weight to the testimony of the immature (*impuberes*) can also be inferred from the fact that such persons could not, against their will, testify as incriminating witnesses in a public trial, and in a trial against defendants under the *lex Iulia de vi*, their ability to act as prosecution witnesses was taken away entirely. For where an individual's highest goods, such as life and liberty, were being decided, there it was not decided to base the final decision on unreliable evidence, which the testimony of the immature probably had to be. What's more, as mentioned above, Venuleius even advised accusers to avoid exercising their right to call as witnesses persons who were already mature, but before they reached the age of 20. He proceeded from the assumption that even at that age, witnesses did not always properly fulfill the duty that the law attached to their role<sup>14</sup>.

As an aside, it is still worth noting that as far as the Roman civil trial was concerned, there was no obstacle to a party calling as a witness a person even below the age required for maturity (*pubertas*). Sources in which age restrictions were marked prohibited either *denuntiare* or *citare testimonium*, and these phrases tended to be used in criminal trials<sup>15</sup>.

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<sup>12</sup> T. Mommsen, *Römisches Strafrecht*, p. 410.

<sup>13</sup> W. Rozwadowski, *Ocena zeznań...*, pp. 152–153.

<sup>14</sup> *Ibidem*, p. 163.

<sup>15</sup> *Ibidem*, p. 153.

The age of the person to testify was not only related to a possible evidentiary prohibition, but also sometimes determined the order of the procedural steps involved in the interrogation, as Paulus pointed out:

**D. 48, 18, 18, pr., Paulus libro quinto sententiarum;** *Unius facinoris plurimi rei ita audiendi sunt, ut ab eo primum incipiatur, qui timidior est vel tenerae aetatis videtur.*

The jurist advised that the most frightened witnesses and those who appear to be of tender age, i.e. up to 25 years old, should be questioned first. On the grounds of the text in question, this was also confirmed by R. Freudenberger<sup>16</sup>, who in demonstrating this circumstance referred to the previously discussed passage D. 4, 4, 37, 1, where the issue related to *miseratio aetatis*, i.e. the judiciary's right to take into account the young age of persons under 25 years old, was raised in the assessment of punishment, and to the text of D. 48, 5, 16 (15), 6, which referred to the prohibition of prosecution of persons under that age.

In the Roman criminal trial, age also played an important role whenever torture was involved<sup>17</sup>. *Quaestio per tormenta* did not constitute a separate piece of evidence, but served only as a means of obtaining the confession of the accused or the credible testimony of witnesses<sup>18</sup>. Torture in the Roman criminal process, as a means of obtaining evidence of the defendant's guilt, was a matter of course and commonplace. However, it must be firmly stated that this obviousness and universality was, in principle, mainly associated with the trial position of slaves. As for free people, Roman law was not entirely consistent in this case. In the republic there was a general prohibition on torturing free people, in the early imperial period the prohibition was still in force, but the use of torture against free defendants can be recorded as not infrequent arbitrariness, it was only during the reign of the dynasty of Severus that torture of free people was allowed as a legal measure, even if they testified as witnesses<sup>19</sup>. Specific categories of people were not subjected to torture, and one of the exemptions in this case was precisely age.

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<sup>16</sup> R. Freudenberger, *Das Verhalten der römischen Behörden gegen die Christen im 2. Jahrhundert: dargestellt am Brief des Plinius an Trajan und den Reskripten Trajans und Hadrians*, München 1969, pp. 56–57 (footnote 11).

<sup>17</sup> On the use of torture in Roman law, cf. B. Sitek, „*Quaestionem*“ *intelligere debemus tormenta et corporis dolorem ad eruendam veritatem* [in:] *Crimina et mores: Criminal law and customs in ancient Rome*, ed. M. Kuryłowicz, Lublin 2001, pp. 161–168; J.-P. Levy, *La torture dans le droit romain de la preuve* [in:] *Collatio iuris romani. Études dédiées A Hans Ankum à l'occasion de son 65<sup>e</sup> anniversaire* 1/1995, pp. 241–255; P.A. Brunt, *Evidence given under Torture in the Principate*, „*Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Romanistische Abteilung*” 1980, No. 1/97, pp. 256–265.

<sup>18</sup> See more extensively A. Chmiel, *Zeznania świadków...*, pp. 175–180 and literature cited therein.

<sup>19</sup> K. Amielańczyk, *Rzymskie prawo karne w reskryptach cesarza Hadriana*, Lublin 2006, pp. 164–165.

Torture of immature persons was generally prohibited:

**D. 29, 5, 1, 33, Ulpianus libro 50 ad edictum;** *Impuberi autem utrum in supplicio tantum parcimus an vero etiam in quaestione? Et magis est, ut de impubere nec quaestio habeatur: et alias solet hoc in usu observari, ut impuberes non torqueantur: terreri tantum solent et habena et ferula vel caedi.*

The above text is an excerpt from the opinion of Ulpianus expressed on the grounds of the *s.c.* resolution already mentioned. *Silanianum*. As we read, the jurist gave an answer to the question whether immature slaves only could not be sentenced to death, or whether they should have been spared interrogation with torture<sup>20</sup>. Ulpianus answered that torture should not be used against the immature, and invoked the general rule that prohibited such practices<sup>21</sup>.

During the reign of Emperor Antoninus Pius, interrogation with torture of witnesses under the age of 14 was expressly forbidden. This information was provided by Aurelius Arcadius Charisius:

**D. 48, 18, 10, Aurelius Arcadius Charisius magister libellorum libro singulari de testibus;** *pr. De minore quattuordecim annis quaestio habenda non est, ut et divus Pius Caecilio Iuventiano rescripsit. I Sed omnes omnino in maiestatis crimine, quod ad personas principum attinet, si ad testimonium provocentur, cum res exigit, torquentur.*

As we read in the excerpt above, Emperor Antoninus Pius by a rescript issued between 138 and 150 AD<sup>22</sup>, which was addressed to Caecilius Iuventianus, forbade the use of torture on witnesses less than 14 years old, that is, those who had not yet reached the age of maturity. However, the following section mentions a deviation from the imperial recommendation. Namely, in the case of crimes in the category of *maiestatis crimine*, all witnesses without exception were to be subjected to torture, since the case involved a matter of state importance, thus the emperor himself<sup>23</sup>.

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<sup>20</sup> The issue of torture of immature witnesses questioned in cases of crimes under the *Lex Iulia de adulteriis coërcendis* was addressed indirectly by K. Stolarski, Cf. K. Stolarski, *Prawno karne regulacje dotyczące niewolników w 'Lex Iulia de adulteriis coërcendis' of 18 BC [in:] Culpa et poena. Z dziejów prawa karnego*, eds. M. Mięka, P. Suski, Kraków 2009, pp. 15–27.

<sup>21</sup> Cf. F.W. Wasserschleben, *De quaestionum per tormenta apud Romanos historia commentatio*, Berlin 1834, pp. 46–47. See also: K. Amielańczyk, *Rzymskie prawo...*, pp. 164 et seq.; *idem*, *Głos cesarza Hadriana w sprawie s.c. Silianum*, „Zeszyty Prawnicze” 2006, No. 6.1, pp. 11 et seq.

<sup>22</sup> R.L. Dize, jr., *The beneficiarii procuratoris of Celeia and the development of the statio network*, „Zeitschrift für Papyrologie und Epigraphik” 1996, No. 113, p. 290 (footnote 27).

<sup>23</sup> Cf. M.G. Zoz, P. Ferretti, *Le costituzioni imperiali nella giurisprudenza*, Vol. II: *Regole generali in tema di successioni*, Trieste 2013, p. 99; D. Dalla, *Senatus consultum Silianum*, Mailand 1994, pp. 98–100; W. Hüttl, *Antoninus Pius: Bd. Römische Reichsbeamte und Offiziere unter Antoninus Pius. Antoninus Pius in den Inschriften seiner Zeit*, Prag 1936, p. 133.

Callistratus also wrote about the ban on torture imposed by Emperor Antoninus Pius:

**D. 48, 18, 15, 1, Callistratus libro quinto de cognitionibus; De minore quoque quattuordecim annis in caput alterius quaestionem habendam non esse divus Pius Maecilio rescripsit, maxime cum nullis extrinsecus argumentis accusatio impleatur. Nec tamen consequens esse, ut etiam sine tormentis eisdem credatur: nam aetas, inquit, quae adversus asperitatem quaestionis eos interim tueri videtur, suspetiores quoque eosdem facit ad mentiendi facilitatem.**

The jurist referred to an imperial rescript, this time addressed to a certain Maecilius, which indicated that torture should not be used in the interrogation of persons under the age of 14 in cases facing the death penalty, and especially when the accusation was not based on a solid evidentiary basis. The reason for protecting such witnesses was the belief that before they became mature, they should be spared cruelty. In this rescript, however, the emperor made it clear that the prohibition of torture did not automatically mean that their testimony should be given credence, since he recognized that persons of that age, i.e., up to the age of 14, i.e., immature, possessed a propensity to lie<sup>24</sup>.

The quoted rescripts (D. 48, 18, 10 and D. 48, 18, 15, 1) having two different addressees but issued by the same emperor may indicate that the intention of Antoninus Pius was to introduce a uniform practice in the empire that would prohibit the torture of immature witnesses<sup>25</sup>. The prohibition of torturing such witnesses was also in force in late imperial law, as indirectly confirmed by the constitution of Emperors Theodosius and Valentinian in 449<sup>26</sup>.

As an aside to the above, it should also be noted that the combined interpretation of Ulpianus' opinion in D. 29, 5, 1, 33, which referred to the prohibition of torturing the immature, and the two imperial rescripts of D. 48, 18, 10 and D. 48, 18, 15, 1, where the prohibition of torture on the immature was linked to a limit of 14 years, confirms the hypothesis that the dispute over how to determine male

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<sup>24</sup> Cf. J. Ermann, *Die Folterung Freier im römischen Strafprozeß der Kaiserzeit bis Antoninus Pius*, „Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Romanistische Abteilung” 2000, No. 117, pp. 429 et seq.

<sup>25</sup> Emperor Antoninus Pius showed some humanitarian tendencies in his law-making activities, cf. F. Longchamps de Bérier, *Dwie konstytucje Antonina Piusa zakazujące srożenia się nad niewolnikami* [in:] *Crimina et mores: Prawo karne i obyczaje w starożytnym Rzymie*, ed. M. Kuryłowicz, Lublin 2001, pp. 88–89.

<sup>26</sup> C. 5, 17, 8, 6, Imperatores Theodosius, Valentinianus; *Servis scilicet seu ancillis puberibus, si crimen adulterii vel maiestatis ingeritur, tam viri quam mulieris ad examinandam causam repudii, quo veritas aut facilius eruatur aut liquidius detegatur, si tamen alia documenta defecerint, quaestionibus subdendis. Super plagis etiam, prout dictum est, illatis ab alterutro commovendis easdem probationes (quoniam non facile quae domi geruntur per alienos poterunt confiteri) volumus observari.*

formal maturity, that is, whether by taking into account the number of years or on the basis of tests of physical characteristics, was carried out in theory by the Sabine and Proculian, since in legal practice the option to link this category to a certain number of years prevailed<sup>27</sup>. Indeed, in the case at hand, it was explicitly recognized that immature persons were those up to the age of 14. Obviously, the age limit used should be combined with men, since for women it was 12 years. Significantly, the age limit of 14 was used twice in the rescripts of Emperor Antoninus Pius, whose reign fell during the classical law era and almost four hundred years before Emperor Justinian in 529 formally assigned the number 14 to male maturity. It should also be mentioned that the classical nature of the texts with imperial rescripts, namely D. 48, 18, 10 and D. 48, 18, 15, 1 has not been questioned so far, hence it should be assumed that they contain the legal views of the time, which were not modified later<sup>28</sup>.

### The importance of the age of the accuser

On the ground of the criminal process, the importance of age was also actualized in the selection of the accuser, as pointed out by Ulpianus:

**D. 48, 2, 16, Ulpianus libro secundo de officio consulis;** *Si plures existant, qui eum in publicis iudiciis accusare volunt, iudex eligere debet eum qui accuset, causa scilicet cognita aestimatis accusatorum personis vel de dignitate, vel ex eo quod interest, vel aetate vel moribus vel alia iusta de causa.*

The above text contains the general opinion expressed by the jurist when commenting on the rules related to the filing of charges and the entry of this action in a special register. Ulpianus pointed out that there could be several of the same accusers in the same case. Then the judge should choose one of them, taking into account criteria such as status, factual interest understood as involvement in the case, the age of the accuser, the way he conducted himself or other just cause<sup>29</sup>. The jurist's opinion shows that the phenomenon when several people wanted to act on the side of the accusation at the same time was not an uncommon one, since Ulpianus himself decided to express his view of how

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<sup>27</sup> Cf. W.J. Kosior, *Nowa hipoteza do sporu o pubertas w prawie rzymskim – dyskusja z utrwalonym poglądem na temat granicy wieku 14 lat*, „Acta Iuridica Resoviensia (Zeszyty Naukowe Uniwersytetu Rzeszowskiego, Seria Prawnicza)” 2021, No. 4(35), pp. 155–173.

<sup>28</sup> Based on Index Interpolationum Quae in Iustiniani Digestis Inesse Dicuntur.

<sup>29</sup> Cf. J.P. Gil, *La Acusación Popular*, Valladolid 1997, p. 24; P. Garnsey, *Adultery Trials and the Survival of the Quaestiones in the Severan Age*, „The Journal of Roman Studies” 1967, No. 1–2/57, pp. 56 et seq. (footnote 11); R. de Castro-Camero, *El crimen maiestatis a la luz del Senatus consultum de Cn. Pisone patre*, Sevilla 2000, p. 158.



things should be done at that time. When treating about the collision of accusers, the Roman accusatory process comes to mind, in which the accuser could be any Roman citizen if he was entitled to the so-called *ius accusandi* (*ius accusationis*). Therefore, it was possible for several people to file the same criminal complaint at the same time. In that case, it was up to the judge's discretionary power to choose the accuser who then formally brought such a complaint. In making such a decision, the judge should take into account, among other things, the age of the complainant.

As for the minimum age for accusation, it was not defined anywhere in the sources, except for one exception for accusation from the *Iulia de adulteriis coërcendis* law. In general, the accuser could be a person who already had full legal capacity, and therefore was mature and enjoyed full civil rights. Thus, the prosecution of immature persons was excluded. In addition, the aforementioned *ius accusandi* had to be combined with a general right to appear before offices and courts referred to as *ius postulandi*. This right came in classical law upon reaching the age of 17, while in Justinian law it came with the beginning of the age of 18. Thus, it seems that these limits were the general minimum age limits from which the right to act as an accuser was derived.

The only exception, when a minimum age for prosecution was explicitly introduced, was set forth in the *Iulia de adulteriis coërcendis* law, intended by design to combat adultery:

**D. 48, 5, 16 (15), 6, Ulpianus libro secundo de adulteriis; Lex Iulia de adulteriis specialiter quosdam adulterii accusare prohibet, ut minorem annis viginti quinque: nec enim visus est idoneus accusator, qui nondum robustae aetatis est. (...).**

As Ulpianus informs us, the law in question prohibited mature persons under the age of 25 from making accusations. It went on to explain that people who had not yet reached the age known as robust (*robustae aetatis*) could not be considered credible accusers. These two sentences presented in succession are separated by era. Indeed, it is assumed that the first is the original classical thought of Ulpianus, while the second was added by the Justinian compilers. This position was unanimously presented by S. Solazzi and G. Beseler<sup>30</sup>. In classical law, the reason for excluding mature persons under the age of 25 from prosecution in adultery cases was the risk that they could invoke their young age during the trial and, if they lost the case, demand restoration, which would then upset the balance of the litigants. For the same reason, they were excluded from acting as an attorney or defense counsel in a trial. In contrast, under Justinian law, *restitutio in integrum* lost its importance as an extraordinary means of protection and was

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<sup>30</sup> Index Interpolationum Quae in Iustiniani Digestis Inesse Dicuntur, Tomus III Ad Libros Digestorum XXXVI – L Pertinens, eds. E. Levy, E. Rabel, Weimar 1935, p. 531.

treated more like a remedy. Hence, the classic rule that mature persons under the age of 25 could not accuse of adultery was upheld, but the compilers added the explanation that the reason for the exclusion was that such persons could not be considered reliable accusers because of their young age. The prohibition on accusations by those under 25 was also repeated in the collection of Mosaic and Roman laws<sup>31</sup>.

O.F. Robinson<sup>32</sup> also concluded that the prohibition of prosecutions for the crime of *adulterium* by persons under the age of 25 applied only to their own marriages, and was related to the fact that accusers of this age could not possibly be held liable for false accusation (*calumnia*), since they were protected from this by their age and the general view of its weakness. In examining the above-mentioned text, L. Fanizza<sup>33</sup> found that although it could be inferred from its content that the age limit indicated applied only to lawsuits brought under the *lex Iulia de adulteriis coërcendis*, in her opinion the limit was general and applied to all cases. With this view, it could be assumed that *the ius accusandi* was acquired only at the age of 25, and not in parallel with the *ius postulandi*, i.e. not at the age of 17 or 18.

In the Justinian sources devoted to criminal trial, one can also find an example of a reference to the 25-year limit however, no longer related to the age for prosecution:

**C. 5, 59, 4, Imperator Justinianus;** *Clarum posteritati facientes sancimus omnimodo debere et agentibus et pulsatis in criminalibus causis minoribus viginti quinque annis adesse curatores vel tutores, in quibus casibus et pupillos leges accusari concedunt, cum cautius et melius est cum suasionem perfectissima et responsa facere minores et litem inferre, ne ex sua imperitia vel iuvenali calore aliquid vel dicant vel taceant, quod, si fuisset prolatum vel non expressum, prodesse eis poterat et a deteriore calculo eos eripere.*

With the imperial constitution of 531, Justinian decreed that guardians or curators were required to accompany wards who were under the age of 25 in criminal trials in which those wards acted as either defendants or accusers. The reason for such an order was to take care of the wards' affairs, that is, to ensure that they could make the right procedural decision after conferring with their guardian or superintendent so that they would avoid saying something inappropriate or if they kept silent about an important circumstance for themselves, which could have negative consequences for them.

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<sup>31</sup> Coll. 4, 4, 2; *Sed tum post duos menses intra quattuor menses utiles expertus, licet talis sit, qui alias accusare non possit, ut libertinus aut minor viginti quinque annorum aut infamis, tamen ad accusationem admittitur, ut et Papinianus libro XV scripsit.*

<sup>32</sup> O.F. Robinson, *The Criminal law of Ancient Rome*, Baltimore 1995, p. 65.

<sup>33</sup> L. Fanizza, *L'amministrazione della giustizia nel principato: aspetti, problemi*, Roma 1999, p. 77.

## Conclusion

Research conducted on Roman law sources showed that three categories of age were important in the criminal process: 14 years, 20 years and 25 years.

The 14-year age limit was relevant for witnesses. During the republican period, persons under this age could be questioned in this capacity, while with the beginning of the principate, as a result of the *Iulia de vi* law, the questioning of the immature as witnesses was generally discouraged. In the case of crimes conducted under this law, the questioning of persons under the age of 14 was prohibited, while in other trials such persons were not to be questioned against their will. Classical and post-classical law sources note the general prohibition in criminal trials of interrogation by torture of persons who were under 14 years of age.

Only one classical text revealed a demand that people under the age of 20 not be questioned as witnesses. The revealed passage did not specify an evidentiary prohibition, but only advice directed to accusers not to base their claims on witnesses under that age.

Under both Classical and Justinian law, a person under the age of 25 could not be an accuser in cases involving crimes governed by the *Iulia de adulteriis coërcendis* law whenever his own marriage was involved. Although the view was also expressed that this limit generally determined the power to accuse.

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## Summary

In Roman law there were institutions whose application and, above all, their effects depended on the attainment of a numerically specified age by the subject of the law. Age limits presented in Roman law literature are usually associated with civil law – personal law, and more specifically to

the scope of legal capacity, although, of course, a number of other powers exercised under other branches of law were also connected with this capacity. The purpose of this article is to present the results of the research conducted on the juridical sources of Roman law, which revealed texts relating to the problem of age on the grounds of the Roman criminal process. Research conducted on Roman law sources showed that three categories of age were important in the criminal process: 14 years, 20 years and 25 years.

*Keywords:* Roman law, age, criminal process, witness

## **ZNACZENIE WIEKU CZŁOWIEKA W RZYMSKIM PROCESIE KARNYM**

### **Streszczenie**

W prawie rzymskim istniały instytucje, których zastosowanie, a przede wszystkim skutki uzależnione były od osiągnięcia przez podmiot prawa określonego liczbowo wieku. Przedstawiane w literaturze prawa rzymskiego granice wieku kojarzone są zazwyczaj z prawem cywilnym – osobowym, a ściślej z zakresem zdolności do czynności prawnych, choć oczywiście z tą zdolnością wiązał się także szereg innych uprawnień realizowanych w ramach innych gałęzi prawa. Celem niniejszego artykułu jest przedstawienie wyników badań przeprowadzonych na źródłach prawa rzymskiego, które ujawniły teksty odnoszące się do problematyki wieku na gruncie rzymskiego procesu karnego. Badania przeprowadzone na źródłach prawa rzymskiego wykazały, że w procesie karnym istotne były trzy kategorie wieku: 14 lat, 20 lat i 25 lat.

*Słowa kluczowe:* prawo rzymskie, wiek, proces karny, świadek