

## ENFORCEMENT CIVIL PROCEDURE IN ANCIENT ROME

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### ABSTRACT

The enforcement civil proceedings in ancient Rome have experienced many transformations during evolution. Thus, in the first stage of the evolution of the enforcement of Roman law, the system of personal execution was established - the execution was directed to the debtor's personality, and in the second system of property execution - the execution was directed to the property of the debtor. The execution systems that introduce Roman procedural law are not unknown to the modern enforcement civil process in which property execution is the rule, and its personal execution is an exception. Hence, it can be rightly concluded that modern enforcement civil proceedings arose as a reflection of the Roman execution procedure by transforming its institutes according to the needs of her time.

**Keywords:** enforcement civil proceedings, Roman law, system of personal execution, system of property execution, German-Romanian Procedure Circle.

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## **INTRODUCTION**

The occurrence and evolution of enforcement civil proceedings in Roman law can be investigated through the history of Rome of Titus Livius, the Institutions of Gaius, the Justinian Corpus Iuris Civilis and Imperial Constitutions.

The purpose of the Roman enforcement civil proceedings was to realize the legal requirements through the customs, laws or activity of the pretors when the voluntary enforcement of the court declared or recognized rights of creditors by the debtors. Observed from this point of view, the evolution of enforcement civil proceedings in Roman law can be analyzed in two stages: the first (archaic) aimed at capturing the debtor's will to the creditor and directly exercise its right into a court decision and second (modern) that gave the jurisdiction of the state-owned judicial authority directly with legally allowed types of force to make the creditor effective and realistic aspiration-right.

In the first stage of the evolution of the enforcement of civil proceedings in Roman law, the system of personal execution was established - the execution was directed to the debtor's personality, and in the second system of property execution - the execution was directed to the property of the debtor. The property execution system is also a reality of the modern civil enforcement, follower of the Roman extraterrestrial and Justinian procedure.

### **1. Archaic stage in the evolution of Roman enforcement civil proceedings**

According to the history of Rome of Titus Livius, the primitive stage in the evolution of the Roman enforcement civil proceedings marked the epoch that preceded the adoption of the law of XII plates, a III law of the XII plates and the Roman formula.

The basic feature of the enforcement of the civil procedure in this period was the system of personal execution, strict formality, private predominantly non-state character and contribution.

According to the *Urbe Condita* of Titus Livius the beginnings of Roman enforcement civil proceedings should be sought in the period preceding the adoption of the Law on XII plates.

According to Titus Livius, the oldest relics of Roman enforcement civil proceedings were the *Modus Agendi* -based process based on the old customs of *Mores Maiorum* according to which the debtor's personality was trapped in the debtor's personality to discretely apply a medium that was considered an adequate. Had the creditor received a debt or other adequate satisfaction when he had an *Ius* in the *Nexum* and demanded the right to the consul (Mousourakis, 2007, p. 19-20).

It is an absolute *emerium* of the consul based on the old *Nexum Agreement* to impose a right (*ius dicere*) through a certain form of demanding patriots to the plebeians who have longed for them.

Each process *Modus Agendi* was initiated with *Editio Nominus* and uttering precisely certain words of the creditor before the consul referring to the debt. After this, the debtor orally stated the debt, and the consul imposed the right.

As a follower of the customs *Mores Maiorum*, the Roman enforcement civil proceedings were first legalized in 450 before n. is in the Table III of the Law of XII plates. This happened because the Law of XII plates as a top creation of *Decemviri Legibus Scribundis* for the first time for the executive civil proceedings were introduced. This is the position in which the creditor was as abased ong legal protection in the executive civil proceedings has passed from an ordinary word before the consul in a special legal position due to what was declared in a previously made court decision (*Judicatus*) or based on the debtor's recognition (*Confesus Aeri*), and the execution began to be treated as a continuation of the trial.

Given the fact that the Roman legal system has been built as a lawsuit system in conditions of unity of *Ius* and *Actio*, ie indivisibility of the content and form of civil enforcement procedure in Roman law has long been identified with execution legislations - lawsuits.

It is for this reason that when it comes to the oldest legally regulated enforcement procedure in Roman law, it is referring to the execution of *Manus Injectio*.

Manus Injunctio (Legis Actio Per Manus Iniectionem) was a means of enforcing and collecting legal powers by taking measures against the debtor's personality for the purpose of achieving a particular purpose.

Using this legislation - a lawsuit, the creditor (the plaintiff) personally arrested the debtor (the defendant) in front of the Magistrate (prey) put his hand on him and uttering solemn words (Gaius, Ins 4, 21).

At Manus Injunctio the defendant had no right to answer anything or object. This was because Manus Injunctio was pure brutal strict formal legislation that allowed the plaintiff to bring the defendant to a house prison where he was held for 60 days and was obliged to carry out the forum in this period and publicly to announce the amount of his debt.

The purpose of this public publication of the debt and the amount of debt is to notify the relatives or friends of the defendant to intervene in favor of the defendant.

This was because the defendant could be saved from Manus Injunctio in a way that a third person - Vindex would take protection by paying his cash debt. In the event of failure of the purpose of Manus Injunctio - debt payment, the plaintiff had the right to kill or sell as a slave via Tibar (Благоевић, 1946, p.34).

Due to the cruelty of personal execution, that was the only form of execution until the classic Roman times, the need for reform was imposed as a necessity.

That is why in the late period of the Roman formal civil procedure as the second phase of the Ordo Iudicium Privatorum Manus Injunctio was abolished and replaced by the informal lawsuit Actio Iudicati used to carry any court decision after the expiration of the 30 -day period for the payment of the debtor who began to run from the day of the court decision (Hanisch Espíndola, 1983, p.16).

The personal execution required by Actio Iudicati was no longer used to execute the debtor's personality but to execute the debtor's work capability, so that the debtor's personality only served as a means.

In this way, the debtor ceased to be treated as an object of the right and began to protect his personality in a way that was forbidden to kill or sell.

On the other hand, to facilitate the legal position of the debtor, the personal execution began to be replaced by the real execution and with the help of Cessio Bonorum and Missio in Bona institutions (Horvat, 1953, 199).

The execution system directed towards the debtor's personality (personal execution) was held in the Roman legal ether until 326 AD when the adoption of Poetelia Papiria was formally abolished for private-legal matters and retained in the offenses.

## **2. Modern stage in the evolution of Roman enforcement civil proceedings**

The modern stage in the evolution of the Roman enforcement civil proceedings is marked by the late Roman formula, the Roman extradition and Justinian procedure.

The main feature of the modern stage in the evolution of Roman enforcement civil procedure was to extrude the personal execution system and gradually replace this system with the system of real execution - executing the debtor's property. This happened spontaneously through the case law in parallel with the increase in the state's authority in the legalization.

According to Gaius, the enforcement procedure on the debtor's property (real execution) was originally created by Pretor Rutilo Rufo in 118 BC (Gaius, Inst. 4.35). Although it is undeniable that real execution is not unknown to the civil Roman legislative procedure - the Pignoris Capio legislation, yet due to the very limited range of application of this lawsuit in process novels. Missio in Bona in the period of Roman formal civil proceedings.

Anteced at the Missio in Bona institution is believed to have been the procedure by which the state liquidated the goods belonged to people who were sentenced to death. The case law opened the need to overcome the system of personal execution and in situations where the debtor was hiding from the creditor or the debtor was absent and did not defend himself in the trials.

Missio in Bona was an establishment whose basis was a previously court decision for which the Magician granted the creditor to execute. Based on this permission of the Magistrate the creditor was authorized to

take all the goods - the debtor's property so that he, but also all other creditors, be charged.

The confiscation of the property from the debtor (general branch) was carried out by the creditor himself with his own physical force. The confiscation of the debtor's property was of an conservative character because the creditor over the items did not acquire ownership. The creditor was obliged to publish the confiscation of the forum after seizing the debtors' property to inform other creditors in this way so that they and they were involved in enforcement. Caring for the confiscated property was the first creditor to decide for *Missio in Bona*.

After reporting the creditors, everyone was collecting and choosing a *Magister Bonorum* that was supposed to kick the debtor's property. The upgrading was done with the help of auction. After the public sale of the items, the liquidation phase was performed in which the funds were distributed among the creditors.

The *Cessio Bonorum* institution also appeared as an antipode of the *Missio in Bona* facility. With the help of this institution, the debtor could give all his property to the creditor to avoid *infamia*. This was the second form besides *Missio in Bona* that bypassed the personal execution of the Roman civil formal procedure.

Given the fact that the Roman civil executive in the period of the form of civil proceedings was carried out on the debtor's entire property it often had negative consequences on the debtor. That is why at the beginning of the Roman Empire, a new system of real execution was introduced - *Bonorum Distractio*. This execution was initiated by *Missio in Possessionem* issued by the prey and was aimed at revoking and selling the debtor's precisely (Nuredin, 2022) certain items.

It is believed that this institute was the base on which Roman law would build the system of singular execution.

The late Roman Empire introduced the extraordinary civil proceedings that squeezed the form.

Extraordinary civil proceedings meant the end of *Ordo Iudicium privatorum*, abolishing the two -part Roman procedure and introduced an individual judge as a state clerk in the trials. This was a consequence of modifying the enforcement of the enforcement procedure, ie changes in the sale regime of the debtor's property and things.

So after a court decision was made and after all the remedies were exhausted, it became definitive and every creditor could seek execution with the Actio Iudicati lawsuit. This is because the executive extraordinary proceedings were inspired by the executive force of the judicial decision per se. In a situation if the debtor paid the execution stopped. In a situation if the debtor was even sued undoubtedly he recognized the plaintiff's debt (creditor) could act with Actio Pro Iudicato. If the debtor opposed Actio Iudicati, a new dispute (litigation) was caused by Duplum.

Actio Iudicati was a processing way that included any creditor's request to the judge enforcement depending on the nature of the decision. The purpose of this executive lawsuit was to realize the right in a specific way by a judge, not the creditor as in the previous process enforcement regime. Creditors were excluded from the enforcement procedure for increasing the degree of debtor protection in execution procedures.

In the extrordinant procedure, the execution of the debtor's property as a rule of execution object. As a rule, because even in the period of the extraordinary procedure, some forms of the Personal Execution system of Zenon have survived in a situation where the debtor has no property.

However, unlike the enforcement regime in the form of civil proceedings, the debtor's prison no longer carried out the creditor in a private prison (Nuredin, 2023), but the debtor was closed in a state - controlled public prison.

As for the real execution, the Roman civic extraterrestrial procedure followed the vision of the Roman civil formal procedure, ie it was double: general and special.

Special execution was imposed as a rule in order for the enforcement to be held qualitatively and quantitative on the creditor's request. The execution showed specificities depending on whether the procedure was initiated by only one creditor to the debtor or more creditors to the debtor.

The execution form used to execute a precisely specified item when there was only one creditor was called the Pignus praetorium.

When the enforcement had a cash amount due to the existence of a judicial condemnation decision, the Sequestratio Institute, which was introduced by Theodosius's constitution in 422, was used. is aimed at

selling only precisely certain items from the debtor's property, not the entire property as a mass at once, even to reach the monetary value of the creditor's claim.

When more creditors demanded enforcement to the same debtor, the competitive execution system was used with the help of Curator Bonorum.

The system of real execution through the Roman extraterrestrial and Roman-Canonian procedure will be incorporated in the 19th century as a basic principle of execution and in modern civil executive law.

## **Conclusion**

The Roman civil enforcement procedure is the ideal based on which modern civil enforcement proceedings are being built. The Roman enforcement procedure will constantly be transformed as a segment of civil proceedings. This is noticeable both in the period of the legislation and in the period of the form and in the period of the extraordinary civil proceedings.

The transformation of the civil enforcement procedure can most obviously be seen through the transformation of enforcement systems. Because of this, in the archaic stage of the development of Roman civil action, the system of personal execution will be the dominant system, so that in the modern stage of the development of the executive civil procedure the dominant become the system of real execution. The situation will be significantly complicated by old German law when the system of personal execution becomes the dominant. However, with the new life of Roman law, thanks to the German Pandect School and the French School of Legal Procedure, Roman traditions will be reincarnated. That is why in modern civil enforcement law the system of real execution is the rule, and the personal execution system is a very changed exception to this rule. This will happen after the personal execution system is squeezed out at the end of the 19-th century due to the legal uncertainty it led in conditions of existence to the rule of law.



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