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VIOLATIO SEPULCHRI – BETWEEN THE LEGAL CONCEPT AND ROMAN FUNERARY PRACTICE IN THE BALKANS

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Rezumat. Așa cum se obișnuia în antichitatea romană, fiecare aspect al vieții și al morții avea tendința de a fi trecut prin filtrul dreptului roman. În această situație se află și practicile funerare, însumând tot ceea ce privea înmormântarea în sine, proprietatea funerară dar și cui îi revenea dreptul de a ridica monumentul funerar. Cu toate acestea, în antichitate și nu numai, exista un real pericol ca memoria celui defunct să fie uitată, în ciuda eforturilor făcute de acesta sau familia acestuia să împiedice o astfel de situație să apară, eforturi concretizate prin ridicarea unor monumente funerare ale căror valuare estetică varia în funcție de posibilitățile materiale ale celor vii, cu scopul de a le menține vie memoria proprietarilor după moarte. Dualitatea caracteristică mormintelor romane, conceptualizată în jurul sacralității sepulcrului, pe de-o parte, și a statutului comercial al monumentului funerar, pe de alta, au îngreunat demersurile defuncților și ale familiilor acestora în protejarea acestor proprietăți în fața furtului sau vandalizărilor. Prezentul studiu își propune să reflecte acest fenomen, și anume măsurile luate de proprietarii loturilor funerare cu scopul de a împiedica fie acțiunea distructivă a potențialilor hoți, fie înmormântările secundare nedorite. Totodată, este un studiu centrat pe dreptul roman, ale cărui aspecte vin în susținerea acestor acțiunilor de acest tip, cu precădere reliefate în formulele epigrafice menite să protejeze monumentul funerar de intervenții dăunătoare. Un rezultat direct al prezentei analize (una selectivă în ceea ce privește materialul epigrafic exemplificat în stadiul actual) ar fi să clarifice o serie de aspecte privitoare la practica funerară, ce, până în prezent, nu au constituit punctul central al cercetării relevante, necesitând astfel un atent studiu analitic.

Cuvinte cheie: Monumente funerare, drept roman, epigrafie, profanarea mormintelor, amenzi funerare.

As was customary in the ancient Roman world, every aspect of life and death had a tendency to be regulated through Roman law, in both its forms, unrecorded or written. This phenomenon is most evident in those moments that mark the human existence. Such was the case of one of life's most important thresholds, death, and all the rites and rituals that follow the departure of somebody's loved one from this world.

Ever since their early history, Romans drew regulations concerning the act of burial in itself, one of the earliest records being made in the Laws of the Twelve Tables. These stipulate not only numerous and precise limitations of wealth and excessive

luxury display during funerals, but also the places allowed for burials and cremations: outside the city walls (Table X, law III) or at least sixty feet away from a neighbour's house (Table X, law XVI), hygiene[1] and fire risk[2] being the most likely reasons for implementing such laws.

Nevertheless, an ever escalating complexity which was a direct result of the evolution throughout time of numerous funerary rites and rituals would generate in its turn a multitude of problems that required a prompt solution from the proper authorities. And in their aid comes the law, conceptualized to protect the individual by limiting at the same time the abuse. In completion of the unwritten and written law come the numerous literary treaties concerning Roman law, laid down by the great jurists of the time, meant to clarify these problematic situations.

Such a contribution is *De legibus*, a literary work of great importance in both ancient and modern study of Roman law, in which the orator Marcus Tullius Cicero, by referring to funerary practice in general, states that the rights and sacrifices of the Manes, deities of the Underworld, meaning all that is related to the burial and funeral ceremony, are associated with both pontifical and civil law[3]. He also adds that you cannot be a good pontiff if you are not familiar with the civil law[4].

The duality that comes from combining two very different aspects of the Roman law (religious and civil law) is reflected also in defining the burial place in itself. Thus, the tomb, says Ulpianus, is composed of two very different concepts, the *sepulchrum*, the place where the human remains, buried or cremated, are interred[5] and the

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[1] Scott, 1932, X, p. 75, n. 2.

[2] Cicero, *De Legibus*, II, 58. For an English translation of the ancient text see Yonge, 1953, p. 455 or Keyes, 1928, p. 443, 445.

[3] Cic., *Leg.*, II, 45-46: *Atticus: Habeo ista. Nunc de sacris perpetuis et de Manium iure restat. Marcus: O miram memoriam Pomponi tuam! At mihi ista exciderant. Atticus: Ita credo. Sed tamen hoc magis eas res et memini et specto, quod et ad pontificium ius et ad civile pertinent.* / "*Atticus: You have given me a clear idea of these subjects; now the perpetual rites and the privileges of the gods of the lower world await your treatment. Marcus: What a remarkable memory is yours, Pomponius! I had forgotten these subjects. Atticus: No doubt; but my chief reason for remembering them and looking forward to your discussion of them was the fact that they are concerned both with the rules of the pontiffs and with the civil law.*" (Keyes, 1928, p. 427, 429).

[4] Cic. *Leg.*, II, 47: *Velut in hoc ipso genere, quam magnum illud Scaevolae faciunt, pontifices ambo et eidem iuris peritissimi! 'Sae<pe>' inquit Publi filius 'ex patre audivi, pontificem bonum neminem esse, nisi qui ius civile cognosset'.* / "*To take an example from this very branch of the law, how extensive do the Scaevolae (both of them pontiffs and also most learned in the law) make that very subject of which we have just been speaking! Scaevola, the son of Publius, says: «How often have I heard my father say that no one could be a good pontiff without a knowledge of the civil law!»*" (Keyes, 1928, p. 429).

[5] *Digestae*, XI, 7, 2, 5: *Sepulchrum est, ubi corpus ossave hominis condita sunt.* For an English translation of the ancient texts of Justinian's *Digests* see either Scott, 1932, retrieved at http://droitromain.upmf-grenoble.fr/Anglica/D11_Scott.htm#VII (accessed at 16.10.2016) or Watson, 1985, vol. I.11.7.2.5, the latter provinding a more accurate translation from the legal point of view: "*A tomb is a place where a man's body or bones have been interred*".

monumentum, which implies anything raised on the ground with the sole purpose of keeping the memory of the deceased[6].

Moreover, the tomb becomes a *sepulchrum* only after the remains are buried and the proper religious rites are performed[7], as a result the burial lot becomes *res religiosae*, consecrated ground, outside *ius comercii*. Even so, Celsus, through the words of Ulpianus, mentions that not the whole lot becomes religious, but only the portion where the body is buried[8]. In consequence, the sale of this lot was permitted, with the condition that the previous owner will be granted further access to the tombs enclosed in that plot of land, a right guaranteed by law and confirmed by the recorded words of Pomponius[9].

On the other hand, the *monumentum*, generally speaking, had the sole purpose of protecting and keeping the memory of the deceased alive for eternity. Florentius noted that if human remains are buried near a funerary monument, we are dealing with a *sepulchrum*, otherwise the tomb is void of remains, an empty sepulchre, thus the monument becomes a memorial, or what the Greeks called a *kenotaphion*[10]. Ulpianus further develops this topic by stating that if there is only the monument and no tomb, it can be sold by any party; and if we are dealing with a cenotaph, the sale must be stated in the will, so it too can be sold. The two emperors, Marcus Aurelius and Lucius Verus[11], through a rescript, state that this kind of structure is not religious[12]. In other words, a

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[6] *Dig.*, XI, 7, 2, 6: *Monumentum est, quod memoriae servandae gratia existat.* / "*A monument is something which exists to preserve a memory*" (Watson 1985, vol. I.11.7.2.6).

[7] Cic., *Leg.*, II, 57.

[8] *Dig.*, XI, 7, 2, 5: *Celsus autem ait: non totus qui sepulturae destinatus est, locus religiosus fit, sed quatenus corpus humatum est.* / "*A tomb is a place where a man's body or bones have been interred*" (Watson 1985, vol. I.11.7.2.5).

[9] *Dig.*, XLVII, 12, 5: *Utimur eo iure, ut dominis fundorum, in quibus sepulchra fecerint, etiam post venditos fundos adeundorum sepulchrorum sit ius. legibus namque praediorum vendundorum cavetur, ut ad sepulchra, quae in fundis sunt, item eius aditus ambitus funeri faciendi sit.* / "*It is our practice to hold that the owners of land, in which they have set apart places of sepulture, have the right of access to the sepulchres, even after they have sold the land. For it is provided by the laws relating to the sale of real property that a right of way is reserved to sepulchres situated thereon, as well as the right to approach and surround them for the purpose of conducting funeral ceremonies.*" (Scott, 1932, retrieved at http://droitromain.upmf-grenoble.fr/Anglica/D47_Scott.htm#XII (accessed at 16.10.2016).

[10] *Dig.*, XI, 7, 42: *Monumentum generaliter res est memoriae causa in posterum prodita: in qua si corpus vel reliquiae inferantur, fiet sepulchrum, si vero nihil eorum inferatur, erit monumentum memoriae causa factum, quod graeci kenotafion appellant.* / "*In general, a monument is something left as a memorial for posterity; if a corpse or remains are placed in it, it becomes a tomb; otherwise, it is a memorial monument, which the Greeks call a cenotaph.*" (Watson, 1985, vol. I.11.7.42).

[11] The "Divine Brothers" mentioned in the ancient text, cf. Thomas, 2004, p. 48.

[12] *Dig.*, XI, 7, 6, 1: *Si adhuc monumentum purum est, poterit quis hoc et vendere et donare. si cenotaphium fit, posse hoc venire dicendum est: nec enim esse hoc religiosum divi fratres rescripserunt.* / "*If a tomb is still ordinary ground, it can be sold or given away. If a cenotaph*

tomb, or more exactly, a funerary lot could be sold either in part or as a whole, only if its funerary function would be kept in perpetuity[13], as it is suggested by epigraphic evidence and supported by archaeological investigations[14].

Thus the tomb earns the quality of being inalienable in the eyes of the law, due to its funerary function which falls under the jurisdiction of the religious law (*res religiosae*) and couldn't be subjected to commercial actions. Nonetheless, as legal texts have already showed, there are certain limits that need to be clearly defined, because what was meant to be protected against illegal purchase was also meant to be protected against human violence. The inviolability of sacred places needed a proper and exact defining of the space to be occupied by the dead. In this topic, Marcus Tullius Cicero again comes with an explanation, stating that the limits of inviolability are in the soil in itself, which can neither be moved nor destroyed by any violence[15].

So to say, the tomb reflected the limits of prohibition for the living and at the same time defined what was outside those restrictions and open to them as *locus purus*[16], which could be subjected to commercial law. Concerning the matter of what is considered a religious place as opposed to a *locus purus*, Ulpianus offers a concise but clear distinction between the two, by stating that a *locus purus* is an "ordinary place", devoid of religious servitude, which is not either sanctified, sacred nor religious[17]. These limits were known to any party involved because they were clearly established by receiving a perceptible form, markings that pointed to the existence of a tomb, namely the funerary monument built upon it[18].

As was stated before, the law was created to protect against abuse both individuals and their properties. Funerary monuments, obviously, fall under this category, since ancient times, measures to protect them from destruction or potential damage were taken, interdictions of violation being recorded as early as the laws of Solon. As Cicero related, Solon prohibited any form of damage being made to the tomb, while

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is built, one should rule that it can be sold; for a rescript of the deified brothers says that a cenotaph is not religious." (Watson 1985, vol. I.11.7.6.1).

[13] Thomas, 2004, p. 42.

[14] See de Visscher, 1963, p. 65 and p. 100; Kaser, 1978, p. 60.

[15] Cic., *Philippicae*, IX, 14: *Maiores quidem nostri statua multis decreverunt, sepulchra paucis. Sed statuae intereunt tempestate, vi, vetustate, sepulchrorum autem sanctitas in ipso solo est, quod nulla vi moveri neque deleri potest, atque, ut cetera extinguuntur, sic sepulchra sanctiora fiunt vetustate*. / "*Our ancestors, indeed, decreed statues to many men; public sepulchers to few. But statues perish by weather, by violence, by lapse of time; but the sanctity of the sepulchers is in the soil itself, which can neither be moved nor destroyed by any violence; and while other things are extinguished, so sepulchers become holier by age*" (Yonge, 1856, p. 153).

[16] Thomas, 2004, p. 41; de Visscher, 1963, p. 333.

[17] *Dig.*, XI, 7, 2, 4: *Purus autem locus dicitur, qui neque sacer neque sanctus est neque religiosus, sed ab omnibus huiusmodi nominibus vacare videtur*. / "*An «ordinary» place means one which is not sacred nor holy nor religious, but appears to be free from all such designations*" (Watson, 1985, vol. I.11.7.2.4). On the terms *purus/religiosa* versus *profane*/*sacred* see the discussion in Thomas 2004, p. 46, 69.

[18] Thomas, 2004, p. 41.

forbidding the interment of another body in the sepulchre, rendering these actions under the penal law[19].

In fact, the law protects the tomb by assuring the act of funerary rite and rituals, the interment of the deceased's remains, which renders the tomb as part of *res religiosa.* Moreover, the law also protects against exhumation and, as a consequence, the loosing of its quality as a *locus religiosa,* exhumations being prohibited not necessarily because of the danger of "polluting" the living or the possible offence made to the dead, but mainly because of the risk of losing the sacred status of the tomb and the protection of the law that came with it[20].

It is important to mention the fact that if destruction or damage of the tomb was prohibited by law, nevertheless it permitted its restoration or repair if the physical remains would not be disturbed, according to two great jurists of the time, Ulpianus[21] and Marcianus[22]. As the ancient texts show, the decision to permit to carry on repairs on funerary monuments and tombs belonged to pontiffs, the only ones that had the authority and the competence to deal with all things religious. This, subsequently, included funerary aspects, pontiffs being also familiar with both religious and civil law, as the words of Cicero, stated at the beginning of the present study, have already proven.

Furthermore, in time, the interdict of *violatio sepulchri* will extend to include damage associated with both the tombs and the physical remains that are meant to be protected by them. In his *Opinions*, the ancient jurist Julius Paulus, in the section referring to tombs and mourning, defines and explains in conformity with the laws that were effective at the time what was considered to be *violatio sepulchri*: the profanation

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[19] Cic., *Leg.*, II, 64: *De sepulcris autem nihil est apud Solonem amplius quam 'ne quis ea deleat neve alienum inferat', poenaque est, 'si quis bustum' — nam id puto appellari τίμβος — 'aut monimentum' inquit 'aut columnam violarit deiecerit fregerit'.* / "*But Solon has no other rules about graves except one to the effect that no one is to destroy them or place the body of a stranger in them. And a penalty is fixed in case anyone violates, throws down, or breaks a burial mound (for that, I think, is what he means by* τύμβος*), or monument, or column.*" (Keyes, 1928, p. 451, 453).

[20] Thomas, 2004, p. 61; Rebillard, 2009, p. 62.

[21] *Dig.*, XI, 8, 5: *Si in eo monumento, quod imperfectum esse dicitur, reliquiae hominis conditae sunt, nihil impedit quominus id perficiatur. (1). Sed si religiosus locus iam factus sit, pontifices explorare debent, quatenus salva religione desiderio reficiendi operis medendum sit.* / "*Where human remains are deposited in a tomb which is said to be unfinished, this does not offer any hindrance to its completion. (1) Where, however, the place has already been made religious, the pontiffs should determine to what extent the desire of repairing the structure may be indulged without violating the privileges of religion.*" (Scott, 1932, retrieved at http://droitromain.upmf-grenoble.fr/Anglica/D11_Scott.htm#VIII -accessed 16.10.2016).

[22] *Dig.*, XLVII, 12, 7: *Sepulchri deteriorem condicionem fieri prohibitum est: sed corruptum et lapsum monumentum corporibus non contactis licet reficere.* / "*It is forbidden to make the condition of a sepulchre worse, but it is lawful to repair a monument which has become decayed, and ruined, but without touching the bodies contained therein.*" (Scott, 1932, retrieved at http://droitromain.upmf-grenoble.fr/Anglica/D47_Scott.htm#XII -accessed 16.10.2016).

of a sepulchre, removing any object from its interior[23], breaking and opening the tomb with the purpose of interring a foreign corpse in it[24] and the violations of the remains already interred, by stripping and exposing them to the rays of the sun[25]. Moreover, damages made on a funerary monument by erasing the inscription, overturning statuary elements or removing constructive parts are also considered to be violations of the sepulchre[26], thus we are witnessing an extent of the scope of this legal aspect, by bringing under the protection of pontifical law, which applies to sepulchres, an object that is, in some instances, under the protection of civil law, namely the monument.

The convergence of the two mentioned spheres of Roman law, the civil and the religious, is also reflected by the terms that are being used by the jurists of the time in defining the contraventions of the laws that protect the tombs, in comparison with the penalties issued. Thus, Julius Paulus defines *violatio sepulchri*, more exactly the profanation of the corpse, as a *piaculum*[27], an offence of religious nature, that requires an expiation. Nevertheless, what the compilers of the Digest have kept as being effective in Justinian's Code, was the term of *crimen*, which we encounter in the words of Macer[28] as referring to *violatio sepulchri* being a public offence (*vi publica*), which

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[23] Paulus, I, 21, 5: *Qui sepulchrum violaverint aut de sepulchro aliquid sustulerint, pro personarum qualitate aut in metallum dantur aut in insulam deportantur*. / "*Anyone who violates a tomb, or removes anything from it, shall either be sentenced to the mines, or deported to an island, according to his rank*" (Scott, 1932, retrieved at http://droitromain.upmf-grenoble.fr/Anglica/Paul1_Scott.htm#21 -accessed 16.10.2016).

[24] Paul., I, 21, 6: *Qui sepulchrum alienum effregerit vel aperuerit eoque mortuum suum alienumve intulerit, sepulchrum violasse videtur*. / "*Anyone who breaks or opens a sepulchre belonging to another, and places therein the body of a member of his own family, or that of a stranger, is considered to have violated the sepulchre*" (Scott, 1932, retrieved at http://droitromain.upmf-grenoble.fr/Anglica/Paul1_Scott.htm#21 -accessed 16.10.2016).

[25] Paul., I, 21, 4: *Qui corpus perpetuae sepulturae traditum vel ad tempus alicui loco commendatum nudaverit et solis radiis ostenderit, piaculum committit: atque ideo, si honestior sit, in insulam, si humilior in metallum dari solet*. / "*Anyone who strips a body permanently buried, or which has been deposited temporarily in some place, and exposes it to the rays of the sun, commits a crime, and therefore, if he is of superior station he is usually sentenced to deportation to an island, and if he is of inferior rank, he is condemned to the mines*" (Scott, 1932, retrieved at http://droitromain.upmf-grenoble.fr/Anglica/Paul1_Scott.htm#21 -accessed 16.10.2016).

[26] Paul., I, 21, 8: *Qui monumento inscriptos titulos eraserit vel statuam everterit vel quid ex eodem traxerit, lapidem columnamve sustulerit, sepulchrum violasse videtur*. / "*Anyone who erases an inscription on a monument, or overturns a statue, or takes anything away which belongs to it, or removes a stone or a column therefrom, is considered to have violated the sepulchre*" (Scott, 1932, http://droitromain.upmf-grenoble.fr/Anglica/Paul1_Scott.htm#21 -accessed 16.10.2016).

[27] See note 25.

[28] *Dig.*, XLVII, 12, 8: *Sepulchri violati crimen potest dici ad legem iuliam de vi publica pertinere ex illa parte, qua de eo cavetur, qui fecerit quid, quo minus aliquis funeretur sepeliaturve: quia et qui sepulchrum violat, facit, quo quis minus sepultus sit*. "*The crime of violating a sepulchre may be considered as coming within the terms of the Julian Law relating to public violence, and that part in which it is provided that he shall be punished who prevents anyone from*

falls under the scope of *lex Julia* regarding public violence and, as a result, outside religious law.

The penalties destined for those guilty of *violatio sepulchri* are clearly defined in the early already mentioned work of Julius Paulus, penalties granted in accordance with the social status of the accused, such as exile of an island for those of high rank (*honestiores*), while the lower rank (*humiliores*) was destined to forced labour in mines[29]. On the other hand, Ulpianus, referring to a rescript belonging to emperor Severus, adds the capital punishment for those guilty of tomb violation while armed (brigands), as opposed to those who plunder unarmed (simple theft), in the latter case the maximum penalty being work in the mines[30].

Nevertheless, these sentences of penal nature are not the only course of action against *violatio sepulchri*. Macer clearly states that a pecuniary action against those guilty of tomb profanation is allowed[31], as a direct result of the large scope of the civil law that converges into pontifical matters.

Concerning this subject, a theory claimed by Theodor Mommsen[32], which related the fact that the law permitted the tomb owners to set the amount of the fine that should be paid by the perpetrators, their wills being the legal basis for this right, is no longer supported today by relevant arguments[33]. On the contrary, the right to set the fines belongs to state authorities, the rightful beneficiaries of these sums of money. In support of this claim comes Ulpianus' account on the matter, an edict of the praetor, the only magistrate that had any right to regulate burials[34]. Thus, he defines as *violatio sepulchri* an act of malevolence, the guilty being charged with paying a just sum of money in favour of those who made the claim, and in case such an action is not pursued by the party involved, the praetor sets the fine at one hundred *aureii*, two hundred for those charged with residence inside the tomb or the construction of

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celebrating funeral ceremonies, or burying a corpse; because he who violates a sepulchre commits an act preventing interment" (Scott, 1932, retrieved at http://droitromain.upmf-grenoble.fr/Anglica/D47_Scott.htm#XII -accessed 16.10.2016).

[29] See note 25.

[30] *Dig.*, XLVII, 12, 3, 7: *Adversus eos, qui cadavera spoliant, praesides severius intervenire, maxime si manu armata adgrediantur, ut, si armati more latronum id egerint, etiam capite plectantur, ut divus severus rescripsit, si sine armis, usque ad poenam metalli procedunt.* / "*Governors are accustomed to proceed more severely against those who despoil dead bodies, especially if they go armed; for if they commit the offence armed like robbers, they are punished capitally, as the Divine Severus provided in a Rescript; but if they commit it unarmed, any penalty can be inflicted up to sentence to the mines*" (Scott, 1932, retrieved at http://droitromain.upmf-grenoble.fr/Anglica/D47_Scott.htm#XII -accessed 16.10.2016).

[31] *Dig.*, XLVII, 12, 9: *De sepulchro violato actio quoque pecuniaria datur.* / "*A pecuniary action is also granted for violating a sepulchre*" (Scott, 1932, retrieved at http://droitromain.upmf-grenoble.fr/Anglica/D47_Scott.htm#XII -accessed 16.10.2016).

[32] Mommsen, 1907, p. 130-138.

[33] Rebillard, 2009, p. 72.

[34] Rebillard, 2009, p. 58.

edifices on top of them[35].

Moreover, it specifies that those who have the jurisdiction to permit an action against those guilty of *violatio sepulchri* are obligated to estimate the monetary value in accordance to the damage made, but also with the advantage gain by the perpetrator, the resulted destruction or the audacity of the guilty party[36]. As a result, the assessment of the damage that had to be compensated by those made guilty of tomb violation becomes a private matter, which cannot be applied in the same way everywhere in the Empire, the local authorities in accordance with tomb owners are the ones who set the fines owed depending on local particularities[37].

Nonetheless, regulations that were in effect in Justinian's Code didn't always experience a linear functionality, and socio-political realities of different temporal stages are reflected in the laws that were obsolete at the time when Justinian's Civil Law was created. Such a situation is recorded in the *Codex Theodosianus*, in the section referring to *violatio sepulchri*. In a constitution issued on June 25th, 340 by Constantius II[38] tomb violation is defined as a demolition of these edifices or removing by means of theft construction material from them, a reality more and more present at the time through-

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[35] *Dig.*, XLVII, 12, 3: *Praetor ait: " cuius dolo malo sepulchrum violatum esse dicetur, in eum in factum iudicium dabo, ut ei, ad quem pertineat, quanti ob eam rem aequum videbitur, condemnetur. si nemo erit, ad quem pertineat, sive agere nolet: quicumque agere volet, ei centum aureorum actionem dabo. si plures agere volent, cuius iustissima causa esse videbitur, ei agendi potestatem faciam. si quis in sepulchro dolo malo habitaverit aedificiumve aliud, quamque sepulchri causa factum sit, habuerit: in eum, si quis eo nomine agere volet, ducentorum aureorum iudicium dabo".* / "*The Praetor says: «If a sepulchre is said to have been violated by anyone maliciously, I will grant an action in factum against him, in order that he may be condemned for an amount which may appear to be just, in favor of the party interested. If there is no one who is interested, or if there is and he declines to bring suit, and anyone else is willing to do so, I will grant him an action for a hundred aurei. If several persons should desire to institute proceedings, I will grant power to do so to him whose cause appears to be the most just. Where anyone, with malicious intent, inhabits a sepulchre, or constructs any other edifice than that which is intended for a tomb, I will grant an action for two hundred aurei to anyone who is willing to bring it in his own name.»*" (Scott, 1932, retrieved at http://droitromain.upmf-grenoble.fr/Anglica/D47_Scott.htm#XII -accessed 16.10.2016).

[36] *Dig.*, XLVII, 12, 3, 8: *Qui de sepulchri violati actione iudicant, aestimabunt, quatenus intersit, scilicet ex iniuria quae facta est, item ex lucro eius qui violavit, vel ex damno quod contigit, vel ex temeritate eius qui fecit: numquam tamen minoris debent condemnare, quam solent extraneo agente.* / "*Those who have jurisdiction of the action for violating a sepulchre must estimate the amount of the interest in proportion to the injury which has been inflicted, as well as in proportion to the advantage obtained by the person guilty of the violation; or to the damage which resulted; or to the audacity of him who committed the offence. Still, judgment should be rendered for a smaller sum where the parties interested are the accusers than where a stranger brought the suit*" (Scott, 1932, retrieved at http://droitromain.upmf-grenoble.fr/Anglica/D47_Scott.htm#XII -accessed 16.10.2016).

[37] See also Rebillard, 2009, p. 72-73; de Visscher, 1963, p. 112-123; Kaser 1978, p. 82-89.

[38] *Codex Theodosianus*, IX, 17, 1. For a more recent English translation of the ancient text, see Pharr, 1952, p. 239-240.

out the whole Empire. Some of the penalties recorded for this crime are the same ones mentioned by Julius Paulus in his more ancient work, such as exile or forced labour in the mines, depending on the social status of the guilty party.

Nine years later, emperor Constantius issued another constitution addressed to the praetorian prefect, this time diminishing the severity of the penalties for *violatio sepulchri,* requesting a fine of a pound of gold for each destroyed funerary monument, the ones who should be punished are both the ones that sell as well as the ones that purchase these monuments[39]. A very important fact is retained by this statute, namely that the pontiffs are still the ones that can grant permission for repairs to be undertaken on the elements belonging to tombs, a reality still effectual many centuries after its implementation, in an altogether different religious context.

To the end of his reign, Constantius, together with his Caesar Julian, issued a constitution which reverted penalties for tomb violation to the old, more ancient punishments[40], only do issue another later law, adding to these penalties a fine of ten pounds of gold payable by the guilty parties charged with tomb profanation[41].

On the other hand, under the emperor Julian which history will dub him the Apostate, through his edict from Antiochia[42] there was an attempt to revert to the old Roman values, by defining in detail what was considered to be a *violatio sepulchri*, while making reference to the old laws (*maiores*). Nevertheless, the regulations that would be taken by his followers in this matter would find themselves more and more under the influence of the Christian doctrine and philosophy, forever separating from the ancient pagan past.

An aspect never recorded in the first three centuries of our era makes its presence felt more and more especially after the Edict of Mediolanum, granting not only the freedom of every individual to choose any cult he wanted, but also offering Christians the possibility to place themselves under the protection of the Christian religious authorities as opposed to the civil ones. Starting with the last third of the fourth century AD, the examples where the Christian Church appears among the institutions beneficiaries of funerary fines paid by those guilty of tomb violation increase in number[43], a phenomena that is linked with an ever growing authority of the Christian ecclesiastical institution and, as a direct result, of its capacity to ensure the protection of the tomb, protection that belonged to the pagan temples and sanctuaries in the past[44].

Such an example is the marble sarcophagus belonging to Valerius Felix and his wife Viventia, from Salona[45], dating from the first half of the fourth century AD, stating that in case of opening the tomb after the burial, a pouch of one thousand most probably denarii (the epitaph is fragmented) should be given to the Church: "*---]*

[39] C.Th., IX, 17, 2.
[40] C.Th., IX, 17, 3
[41] C.Th., IX, 17, 4
[42] C.Th., IX, 17, 5.
[43] See also Caillet, 1988, p. 33-45.
[44] Rebillard, 2009, p. 72-73.
[45] *CIL*, III, 9597.

Viventiae / [coniugi suae dil]ectissimae / et sibi Val[er]ius Felix / depositus VII Idus Nov(embres) qui vixit an/nos LXV quod si quis eam arc(am) post / obit(um) / eius aperire voluer(it) inf(erre) d(e)b(ebit) ec/clesiae de(?)(nariorum) fol(les) mille in qua sunt / [filiae Grae?]cina et Proculina" (**Fig. 1**).

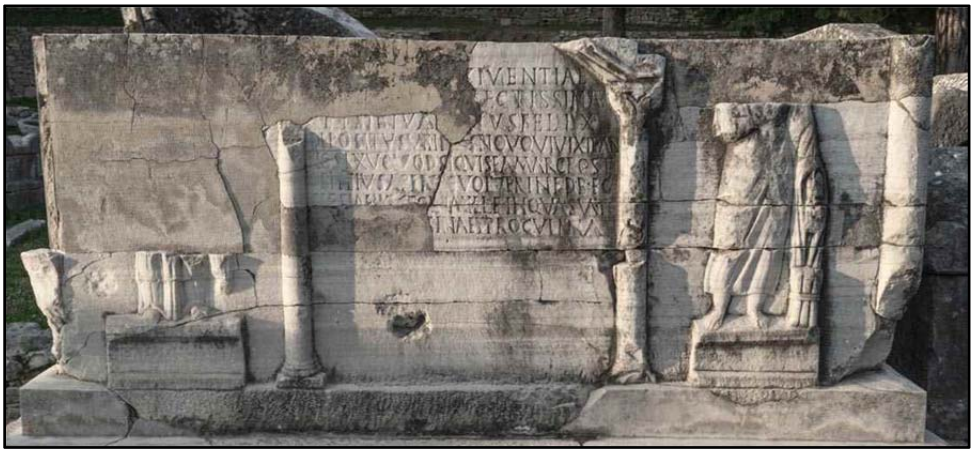

Fig. 1: Salona, sarcophagus belonging to Valerius Felix and his wife Viventia, 4th century AD. Photo by O. Harl[46].

The measures against *violatio sepulchri* regulated by Roman law were directly reflected on funerary monuments through specific formulistic mechanisms recorded in their epitaphs. At a certain point in time related to this topic as an effort included in the more general epigraphic research endeavours, there were identified more than 3500 such examples out of more than half a million epigraphs recorded throughout the Roman world. This means less than 1% of the total, more than two thirds of them being concentrated in Asia Minor[47], which mostly employed the ancient Greek language.

Moreover, there are two known ways to ensure the protection of funerary monuments and edifices against tomb violation, by resorting to two very different entities in the texts of the epitaphs carved on these monuments. Namely, they invoke divine protection through curses or turning to the protection of local or state authorities, ensured by setting fines to be paid by guilty perpetrators. A recent study concerning the Balkans on this matter[48] recorded an overwhelming incidence of the latter category as opposed to the presence of curses on analysed Roman funerary monuments.

Such a situation arises in ancient Thessaloniki, where a substantially large majority of inscriptions bearing epigraphic formulas of protection against tomb violation involve pecuniary measures. Many of them are carved on sarcophagi, a category of great importance in the ancient Thessalonian necropolises, occupying the most sought after lots along the main roads outside the city walls, mostly in open air, very few of

[46] lupa 24387.
[47] Rebillard, 2009, p. 71-72; see also Creaghan, 1951, vol. 1 and 2.
[48] Sassu, Radulova, 2014, p. 64-72.

them enclosed in *heroa*, most of them of great dimensions, destined to serve a family for generations[49]. Their inscriptions record the efforts of Thessalonian to protect their funerary property against grave-robbers, starting with the end of the second and continuing well through the third and fourth centuries AD, by including interdictions of burials of strangers in the grave, forced opening and looting of the sarcophagus[50]. Furthermore, out of 145 Thessalonian sarcophagi, an impressive 50 inscriptions carry pecuniary measures against *violatio sepulchri* (approximately 34%), ranging from 2000 to 5.000.000 denarii[51].

In terms of who were the main beneficiaries of these fines carved in stone (the Greek term mainly employed was *πρόστιμον*), a very large number of Thessalonian tomb owners (about 80% out of the total of relevant epigraphs) chose the state authorities to collect the pecuniary punishments, stating that the sums were destined for the imperial treasury (either sacred treasury - *ἱερώτατον ταμετον*, or just simple treasury – *ταμετον,* while in very few examples we encounter the Latin term *fiscus*)[52]. A possible reason for this massive preference was the fact that the provincial governor and the procurator had their residence in the city and were more than capable and had the proper authority to protect the tombs. The remaining few examples mention the city treasury (three cases), the deceased's heirs (two cases) and the local synagogue in one case[53].

Fig. 2: Thessaloniki, sarcophagus belonging to centurion Falvius Paktolos, 3rd century AD. Personal photograph.

These inscriptions are mainly in ancient Greek, most of them recording pecuniary actions against tomb violation, with very few exceptions. One of them is the sar-

[49] These "family sarcophagi" were sealed with metal clamps and opened each time there was a new burial, cf. Stefanidou-Tiveriou, 2012, p. 136.
[50] Stefanidou-Tiveriou, 2012, p. 134.
[51] Nigdelis, 2012, p. 146.
[52] Nigdelis, 2012, p. 148.
[53] Adam-Veleni, Terzopoulou, 2012, p. 277, no. 50.

cophagus of the centurion Flavius Paktolos, also known as Akakios[54] (**Fig. 2**), raised by his sons in the first quarter of the third century AD, prohibiting the burial of another inside it, without mentioning a pecuniary action against the perpetrator. Another exception is one of the very few cases of Latin epitaphs in Thessaloniki, carved on the fragmentary sarcophagus of a *librarius* belonging to *legio II Herculia*, recording a fine of 20… (ellipse in the ancient text) of denarii in case of illegal tomb opening[55] (**Fig. 3**).

Fig. 3: Thessaloniki, sarcophagus belonging to a *librarius legionis II Herculia.* Photo by P. Pilhofer[56].

As stated above, the amount set to be paid by tomb violators greatly varied, reflecting the economic state of the Roman Empire at a certain moment in time but also the pecuniary value of the funerary monument. The fine requested by the tomb owners was interpreted by some as a status statement, the higher the sum, the higher the status.

One of the smallest fines recorded in Thessaloniki is encountered on a fune-rary altar, belonging to Paramona and her husband[57], dating from the third century AD, amounting to no more than 2500 denarii (**Fig. 4**), while the sum of 50.000 denarii was set as fine in case of forced opening the sarcophagus of Aurelia Demetra[58], dating from the second half of the third century AD (**Fig. 5**). On the other hand, an interesting example of reflecting the ever growing inflation throughout the Roman world especially after the third century crisis is the sarcophagus of a Thessalonika hippodrome champion, raised by his wife Aurelia Porphyris[59], who asks for the fine in case of *violatio sepulchri* to be calculated rather in gold than in denarii to be paid to the imperial treasury (**Fig. 6**).

[54] Adam-Veleni, Terzopoulou, 2012, p. 268, no. 39.
[55] *CIL*, III, 14203.
[56] http://www.philippoi.de, nr. 732/L725 (accessed at 16.10.2016).
[57] Adam-Veleni, Terzopoulou, 2012, p. 284, no. 61.
[58] Adam-Veleni, Terzopoulou, 2012, p. 285, no. 62.
[59] Adam-Veleni, Terzopoulou, 2012, p. 286, no. 64.

Fig. 4: Thessaloniki: funerary altar belonging to Paramona and her husband, 3rd century AD. Personal photograph.

Fig. 5: Thessaloniki: sarcophagus of Aurelia Demetra, 3rd century AD. Personal photograph.

Fig. 6: Thessaloniki: sarcophagus of a hippodrome champion, 3rd century AD. Personal photograph.

If in ancient Thessalonika a large majority of the inscriptions that contained epigraphic formulas for tomb violation named the imperial treasury to be the one that collected the fines, in the ancient *poleis* on the left bank of the Black Sea, we encounter yet another particularity, namely to cumulate the punishments, in general of pecuniary value, for those guilty of *violatio sepulchri*.

Such an example is found at Tomis, where we read on a fragmentary funerary monument dated in the second century AD that if someone would open the tomb, he will be charged to pay a fine of 5000 denarii to the imperial as well as the local Tomitan treasury (**Fig. 7**): "*---] / [---]I(?)I(?)HEI(?)[---] / [q]uod si q[uis aperuerit dabit] / [fisc]o dominico [item? civitati? Tomi?]/[tan?]orum |(denariorum) quinq[ue milia ----*"[60].

Fig. 7: Tomis, funerary monument, 2nd century AD. Photo *IScM*, II.

Also from Tomis comes a funerary monument nowadays lost, dating from second or third centuries AD, from which survived the Greek epitaph bearing the following threat: in case there would be a secondary illegal burial in the tomb, the perpetrator would have to pay a fine of 15.000 denarii to the imperial and 5000 to the city's treasuries, in addition to the legal punishment for tomb violation: "*Ἄττιος Ὀνήσιμος εὐποσιάρχης τὸ μνη- / μεῖον κατεσκεύασεν ἐκ τῶν ἰδίων ἑαυ- / τῷ καὶ τοῖς ἰδίοις ἐὰν δέ τις ἕτερος τολμήσῃ / τινὰ θεῖναι ἐν αὐτῷ δώσει προστείμου ἰς τὸ ταμεῖ- / ον μυρία πεντακισχίλια καὶ τῇ πόλει πεντακισχίλια*"[61].

As we could see from the previous examples, it is not uncommon in these Greek cities on the coast of Pontus Euxinus to have double, even triple punishments in order to ensure that their tombs would be safe from looting. The efforts of tomb owners go that far as to reward those who denounce to the proper authorities the ongoing sepulchres violations. Such an example is found at Callatis, on a fragmented marble funerary *stela*, dating from the mid second century AD, which mentions a fine

[60] *IScM*, II, 217.
[61] *IScM*, II, 298.

that should be paid to the imperial *fiscus*, in addition to the legal one, offering at the same time a sum of money to the denouncer (**Fig. 8**): *"[— — — — — — — — — — — — — — — —] / [δώσει προσ]τείμου τῷ φί[σκῳ δ(ηνάρια)] / [— — — καὶ] τῷ μηνύσα[ντι δ(ηνάρια)] / [— — — — χαῖ]ρε π[α]ροδ[εῖτα]"*[62].

Fig. 8: Callatis, funerary *stela*, 2nd century AD. Photo *IScM*, III.

Created as an additional measure of encouragement to denounce tomb violation, compensations for *delatores* are also not uncommon in ancient Philippi, where we encounter such epigraphic formulas on three funerary monuments: a sarcophagus[63], a funerary *stela* dating from the third century AD[64] and an unidentifiable fragmentary funerary monument, from the second-third centuries AD[65]. All these examples express the ever growing threat of tomb profanation and, at the same time the substantial effort of the owners to ensure that their memorials and remains will be protected in perpetuity.

In conclusion, by analysing both funerary epigraphs and Roman legal regulations that have been made over time, one can observe that there was a permanent risk of abuse in one way or the other concerning funerary property. Numerous laws, regulations or legal treaties were created with the sole purpose to protect the tombs, both the physical remains and the monuments, from profanation. The multitude of complex situations that have risen from very different regional particularities contributed to the permanent evolution of the Roman legal system, by the ever growing necessity to issue constitutions, rescripts or new laws. All these efforts were focused

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[62] *IScM*, III, 176.

[63] *CIL*, III, 684: "*---] Secundilla sivi(!) et Ulpia Matrona [---] / v(iva) f(aciendum) c(uravit) in eam arcam alium qui posue[rit] / [dabi]t r(ei) p(ublicae) P(hilippensium) |(denariorum) mil(le) et delatori |(denariorum) CC n(ummum) [---*".

[64] *AÉ*, 1938, 56: "*D(is) M(anibus) // M(arcus) Aurelius Lucius / vet(e)ranus ex le/gionis(!) secunda Pa[r]/thica ann(orum) LV <u><h>(ic)</u> s(itus) e(st) Aur(elia) / Calliste co(n)iux et Aurel(ia) / Lucilla filia patri dulcis/simo bene moerenti(!) memoria(e) ca(u)/sa ara(m) posuerunt si cuis(!) eam / aram trastolerit(!) aut mobe/rit(!) dabit rei public(a)e Philip(pensium) / |(denarios) mil(l)e ex ea pecunia dela/tori |(denarios) CCL*".

[65] *AÉ*, 2001, 1785: "*Fructuosi <u>d<i>spe(n)/satores</u> vicario / Venusto Maria/nus suo collib(erto) vi/vus fecit quisquis au/tem distribuerit / litteras aut exci/serit dabet in fisco / |(denarios) II(milia) et delato(ri) |(denarios) |(mille)*".

on protecting the memory of the departed, maintained by the funerary monuments, which were always at risk of being sold, damaged or destroyed, stone never ceasing to be a priceless commodity. Nevertheless, all these efforts become justifiable when dealing with the ancient Romans' perception on death, which considered life's most daunting threat to be forgotten after your demise by your fellow piers.

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