

REVISTA INTERNACIONAL DE DERECHO ROMANO

Renata Kamińska, *Ochrona dróg i rzek publicznych w prawie rzymskim w okresie republiki i pryncypatu* (Wydawnictwo Uniwersytetu Kardynała Stefana Wyszyńskiego, Warszawa 2010) Pp. 172.

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Recently, Cardinal Stefan Wyszyński's University Press initiated a new publishing series called *Arcana Iurisprudentiae*. The first book published under this series was Anna Tarwacka's book called *Romans and Pirates*¹. At the end of 2010 the second volume, *Ochrona dróg i rzek publicznych w prawie rzymskim w okresie republiki i pryncypatu* (*Protection of Public Roads and Rivers in Roman Law during Republic and Principate*), written by Dr Renata Kamińska, was published.

The book consists of three large chapters titled: (1) Classification of public roads and rivers, (2) Public roads

¹ Tarwacka A., *Romans and Pirates. Legal Perspective*, Warszawa 2009.

protection and (3) Public rivers protection. The book seems to be an interesting attempt to analyse private and public law regulations concerning Roman roads and rivers within the context of public interest (*utilitas publica*). According to the author herself, the purpose of the book was to show the balance between the right to use public roads and rivers and a duty of their protection.

In the first chapter, the author analysed the term 'public places' (*locus publicus*). She emphasised the fact that Roman jurists did not create a homogenous definition of that term. Like on many other occasions, Romans understood that term subconsciously. 'Public places' belonged to *extra nostrum patrimonium* category of things and so they were excluded from any proprietary relations. Additionally, they were divided into *res publica in publico usu* and *res publica in pecunia populi*. Further, the author mentioned Marcialis' way of classification of things. She also pointed out the changes in understanding the term *res publicae*, which occurred during the reigns of Severans and later in Justinian's epoch. In the final part of the chapter one, the author explained the term 'public road' and she described 'public rivers'. She compared both juridical and non-juridical sources. Upon them, she clearly stated that the public roads were opposite to private roads and village ways. Public roads were built on public grounds by magistrates who had *ius publicandi*. Absence of

using public roads (*non usus*) did not cause the extinction of their privileged position. Simultaneously, an ownership of public roads could not be acquired by prescription. Finally, different types of Roman public roads i.e. consular (praetorian) roads, municipal streets and village ways (*viae vicinales*) were described. This part of the Kamińska's book is less juridical than the others. The author explained the architectonical features of different types of roads. On the pages that follow, the author described rivers. She explained different terms used by Roman lawyers to describe rivers and their banks. Then she presented the term 'public river' according to two different juridical opinions – one of Paulus and another of Gaius. At the end of the first chapter, the author compared the meanings of the terms 'public river' and 'private river'.

In the second chapter, R. Kamińska analysed the methods of public roads' protection. The chapter was divided into two major parts – the first one concerning the protection of municipal streets and the second concerning the protection of consular roads. Describing the municipal streets' protection, the author presented an extensive study on censors' and aediles' duties. In case of the aediles she based her deliberations on the text of *Tabula Heracleensis*. Later, the author presented the characteristics of two other magistrates: *quattuorviri viis urbem purgandis* and *duoviri viis extra urbem purgandis*. In the latter part of the second

chapter, the author described different methods of consular roads' protection. It could be realised in one of the following manner: (1) interdictal protection, (2) *cura viarum* and (3) by private individuals. The author broadly described three interdicts. At first she analysed *interdictum ne quid in loco publico fiat*. According to its provision it was impossible to do or insert anything in the public place, if that could cause damage. As a second one, she described *interdictum ne quid in via publica itinereve publico facere immittere*. Its aim was to prevent any damage already committed or plausible to be committed on a public road. The last of three described interdicts was *interdictum de via publica et itinere publico reficiendo*. The praetor prohibited any disturbing activity towards those, who were repairing public road, unless those repairs could cause damage.

The protection of roads in Rome was ensured also by the *curatores viarum* – an office established in the late republic, probably during the Sulla's dictatorship. Its development, however, was increased in the early principate. According to R. Kamińska most duties which belonged to *curatores* were inherited by them from republican magistrates – censors, aediles, *quattuorviri viis urbem purgandis* and *duoviri viis extra urbem purgandis*. *Curtores* were obliged to repair roads, build new ones and were eligible to decide in traffic cases.

Some duties to protect public roads were performed also by private individuals. Those duties were understood by Romans as one of *munera publica*. According to the provisions of the XII tablets ordinary people were already duty bound to protect roads. Later, similar provisions were included to *Tabula Heracleensis*. Everyone, who lived in a building constructed near the public road was obliged to look after it. It is worth mentioning that according to author the Roman sources inform us about anyone who lives in a building, and not about a building's owner.

The third chapter deals with the protection of public rivers. Like in the previous chapter, the author described large number of different methods of rivers' protection. At first she presented the office of *curatores aquarum*. Then, she analysed three interdicts. First of them was *interdictum ne quid in flumine publico ripave eius fiat, quo peius navigetur*. Its main feature was to prevent any unnecessary activity on the river and on its banks, which would make sailing impossible. The next interdict was *ne quid in flumine publico fiat, quo aliter aqua fluat, atque uti priore aestate fluxit*. In case of this interdict, a praetor did not allow activities which could cause a change in the way river flowed in comparison with the previous summer. The last fluvial interdict was *de ripa munienda*. If someone undertook actions upon which using the river itself and its banks was more convenient (and did not cause any damage), no one

could use force to interrupt those actions. But, the undertaker had to indemnify (using *cautio* or *satisdatio*) any eventual damage.

Another form of rivers' protection was designed by the praetor, who initiated *edictum de fluminibus retardis*. According to the author, the only known source in which this edict is mentioned are *Noctes Atticae* by Aulus Gellius. The main feature of the edict was the protection of the safety of navigation. It was attributed mainly to the Tiber River.

The last form of rivers' protection was granting a special licence (*concessio*). It was an obligation of a private person to undertake a certain activity, enforced by administrative authorities. In the opinion of R. Kamińska, *concessio* was a permission granted to a private individual for an exclusive use of public property. In connection with rivers *concessionones* were granted in two cases: (1) to draw water by a private individual and (2) to allow fishing. The first of those two examples is largely analysed by the author of the book, because of the many ambiguities in Romanistic literature on this subject.

The entire book is written in a clear and accessible language. The author explored large number of juridical (literary and epigraphic) and non-juridical sources. All of them are ordered in a premeditated way. The author

also investigated vast literature on the subject – mainly Italian one. In many places she refers to the opinions of major scholars and she is ready to challenge them. This is certainly a very good and impressive side of the book.

What maybe, however, disputable is the author's constant ascertainment that the main aim of her book is to present different methods in which private and public law protected roads and rivers. The protection undertaken by republican and principate magistrates is definitely administrative. The protection performed by private individuals was also based on public regulations. It was an obligation imposed on private people by the state. The same situation occurred in case of *concessionones*.

Interdicts cannot be treated as private protection either. They are usually described in a Roman law textbooks as a private procedure remedy. Praetors, however, were performing their administrative functions while they were issuing interdicts. They could eventually lead to a judicial stage of the Roman litigation, but their primary function was to avoid such consequence. This is why interdicial protection cannot be fully understand as private one too.

The only purely private regulation seems to be *edictum de fluminibus retardis*, which occur when parties enter into a contract of lease. The object of the

contract was to clear a bed of river from boughs. It is not enough, then, to talk regularly about both private and public regulations concerning the protection of roads and rivers. The *edictum* was rather an exception from a general rule of public protection.

From a technical point of view, the book contains some editorial misprints like letters omissions or citing of an article which is not included in the general bibliography at the end of the book. This, however, cannot be treated as a serious problem. What can be treated in that way, however, is lack of short non-Polish summary at the end the book. It is a good and old custom that books about Roman law that are written in less known languages have e.g. English, German or Italian summaries included in them. Lack of such a summary in case of R. Kamińska's book is a mistake. It is a pity because the book is written in an excellent way. It shows how profound and in-depth studies were undertaken over the subject by the author. The lack of a summary prevents, however, broader access to the book. The author formulates many opinions which are directly connected with the opinions of Italian scholars. The possibility to compare those opinions on an international level would be a really interesting approach to further studies on the subject.

In spite of that, the entire book is definitely worth reading. It shows how the Romans fought for the public

protection and what an important place river and roads played in their world as main tracks of communication, transportation and commerce.