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THE ROMAN ROOTS OF THE CRIMES OF DEPRIVATION OF LIBERTY AND HUMAN TRAFFICKING AS CLASSIFIED IN THE POLISH 1997 CRIMINAL CODE

Abstract.

Freedom is one of the fundamental rights of the individual, protected by law in democratic countries. This lasting achievement has been marked by various fluctuations over the centuries.

The ancient Romans had a completely different view of freedom, which resulted from the polarisation of the inhabitants of the Roman Empire into free people (*liberii*) and slaves (*servi*). This dichotomy influenced a number of private and public law institutions, determining the status of individuals in the ancient social structure.

Like any community, the Romans were not immune to the temptations of pushing the boundaries of the law. Crime was a daily occurrence, so it was not much different from the current situation in democratic states governed by the rule of law. In this context, it is also worth looking at the *lex Fabia de plagiariis*, which was a response to the probably increasing phenomenon of kidnappings of both free people and slaves.

The purpose of this article is to show that the crimes of deprivation of liberty and human trafficking, as defined by the 1997 Polish Criminal Code, have deep roots in *Lex Fabia de plagiariis* enacted in the last century of the Roman Republic.

Keywords: Roman Law, lex Fabia de plagiariis, crimen plagii, Polish Criminal Code, Deprivation of Liberty, Human Trafficking.

1. Introduction

Throughout the existence of the ancient Roman civilization, slavery was the foundation of its functioning. As a result, freedom, so prized by modern democratic systems, evidently played a secondary role. However, this does not change the fact that the Romans, like any community, did not resist the temptation to choose the path of crime. On many occasions throughout the history of the Roman Empire, pathological phenomena occurred,

requiring a state response, the best form of which was criminal-law norms. This was also the case with the enactment of *Lex Fabia de plagiariis*, which defined *crimen plagii*, which underwent far-reaching evolution during the imperial period. This law cannot be regarded as a voice in the discussion of the protection of freedom, for its provisions applied not only to free persons, but also protected owners deprived of their authority over slaves, who were treated by Roman law as *res corporales*. Despite this important fact, one must give credit to the Romans that the freedom of individuals enjoying legal subjectivity, as well as the sphere of its protection, were not alien to them. Admittedly, freedom, although highly valued by the Romans, could not be systematically protected, as Roman law was not treated as a coherent legal system. However, this did not prevent freedom from being protected on many levels, including private law, as evidenced by the widespread institution of manumission (manumissio), which was so widely used that at the beginning of the Principate, laws had to be passed to limit this practice (lex Fufia Caninia of 2 BC and lex Aelia Sentia of 4 AD). It is also worth mentioning the institution of favor libertatis, which protected the freedom of children born to slaves. It is therefore clear that freedom was a fundamental value for the ancient Romans, and its protection under criminal law is therefore not surprising.

As in ancient Rome, so today, the protection of freedom is not a theoretical issue, but takes on a profound legal context. Today, freedom is considered to be one of the basic human rights, included in the catalog of first-generation rights. Numerous institutional guarantees for the protection of this right, not only in the state legal system, provide a deep sense of security for the individual and, as it were, determine the maturity of democracy in a country.

The purpose of this article is to show that the crimes of deprivation of liberty and human trafficking, as defined by the 1997 Polish Criminal Code, have deep roots in *Lex Fabia de plagiariis* enacted in the last century of the Roman Republic.

The research will focus on analyzing the original wording of *crimen plagii* as defined by the Republican legislature, as well as the contemporary provisions of the Criminal Code now in force.

2. *Crimen plagii* defined in *Lex Fabia de plagiariis*

The term that is relevant to the consideration of *Lex Fabia* is *plagium*. In its basic sense, it refers to "the reduction of a free person to a state of slavery or the unlawful exercise of the content of the right of owner-

ship over another person's slave" (Forcellini, 1805: 727; Brecht, 1950: 1998; Végh, 1972: 881; Végh, 2007: 315–316) as well as "the abduction of free persons or slaves" (Sondel, 2005: 753). It is also the root of the word *plagiator* (Walde & Hoffman, 1954: 311; Brecht, 1950: 1998–1999), a person committing *plagium*.

Reconstructing the content of *Lex Fabia de plagiariis* seemingly presents no major obstacles. The basis for the research are legal sources from the period of the Roman Empire, systematized in D. 48, 15 (*de lege Fabia de plagiariis*) and Coll. 14, 1 (*de plagiariis*)[1] and other passages[2]. This significantly affects the reconstruction of the original wording of the law, which is certainly not quoted verbatim in the indicated sources. Moreover, the source material is "tainted" by various interpretations made not only by jurists, but also by the law-making activities of the emperors. In addition, one should also keep in mind the interpolations[3].

There are many doubts surrounding the dating of this law[4], but it is most appropriate to assume that *Lex Fabia de plagiariis* was adopted in the first century BC and its origin is linked to events after the end of Rome's war against its allies, when the situation in the Roman Republic was far from calm and normal.

Lex Fabia de plagiariis consisted of two chapters (Molè, 1962; Molè, 1966; Lambertini, 1980; Robinson, 1996; Amielańczyk, 2006; Amielańczyk, 2012; Amielańczyk, 2013) referring to different spheres of the protection of subjects. Information about the contents of the first one can be discovered by examining the following excerpts:

> **D. 48, 15, 6, 2** (*Callistratus libro sexto de cognitionibus*): *Lege Fabia cavetur, ut liber, qui hominem ingenuum vel libertinum invitum celaverit invinctum habuerit emerit sciens dolo malo quive in earum qua re socius erit* [...].
>
> **Coll. 14, 3, 4** (*Ulpianus libro nono de officio proconsulis*): *Lege autem Fabia tenetur, qui civem Romanum eumve, qui in Italia liberatus sit, celaverit vinxerit vinctumve habuerit, vendiderit emerit, quive in eam rem socius fuerit: cui capite primo eiusdem legis poena iniungitur* [...].

The image of *crimen plagii*,[5] in light of the first section of the law, is very clear. The subjects who were protected were the freeborn (*homo ingenuus*), which means Roman citizens (*civis Romanus*) – and this precise information was provided by the *Collatio legum* – and the freedman (*libertinus*)[6]. The passage authored by Ulpian additionally specifies that freedmen in Italy (*qui in Italia liberatus sit*)[7] were subject to protection under this

law, presumably when a *plagium* was committed against them in that very territory (Molè, 1962). By using the phrase *qui in Italia liberatus sit* Ulpian wanted to show that it referred to freedmen who was informally manumitted and had not received Roman citizenship at the time of liberation (*manumissio*). The protection afforded by *Lex Fabia* gave them a makeshift guarantee that other entities would respect the very precarious legal status they had.

The first chapter of *Lex Fabia* poses difficulties in terms of establishing a catalog of entities committing *crimen plagii*. The two cited texts present the issue differently. Callistratus pointed out that *plagium* was committed by a free man (*ut liber, qui hominem...*), and Ulpian used a more general term for the responsible parties (*qui civem Romanum eumve...*)[8]. If one assumes that Callistratus' text is more reliable in terms of presenting the original wording of *Lex Fabia*, then it would have to be pointed out that Ulpian's general term (*qui*) would refer to a later perception of *crimen plagii* than would be apparent from the wording of *Lex Fabia* itself. Doubts are not dispelled by the following source excerpt[9]:

> **D. 40, 1, 12** (*Paulus libro quinquagesimo ad edictum*): *Lege Fabia prohibetur servus, qui plagium admisit, pro quo dominus poenam intulit, intra decem annos manumitti. In hoc tamen non testamenti facti tempus, sed mortis intuebimur.*

According to Paulus, *Lex Fabia* contained a norm prohibiting freeing in one's last will a slave who committed *plagium* for a period of 10 years, if his or her master was subject to punishment under this law. Even this cursory analysis of the source texts indicates that, using modern criminal-law terminology, it can be assumed that the *crimen plagii* defined in the law of the Roman Republic was a common crime committed by free men, slaves, freedmen, as well as *peregrini deditici* (Amielańczyk, 2012; Amielańczyk 2013).

A comprehensive analysis of the elements of *crimen plagii* also requires quoting the contents of the second chapter of *Lex Fabia*:

> **D. 48, 15, 6, 2** (*Callistratus libro sexto de cognitionibus*): [...] *quique servo alieno servaeve persuaserit, ut a domino dominave fugiat, vel eum eamve invito vel insciente domino dominave celaverit, invinctum habuerit emerit sciens dolo malo quive in ea re socius erit, eius poena teneatur.*

An analysis of both source excerpts leads to the conclusion that the second chapter of *Lex Fabia de plagiariis* provided protection rather for the owner of a slave, which throughout the period of the Roman Empire was

considered a thing (from the perspective of *ius civile*), who lost possession of the slave as a result of the actions taken by the perpetrator.

It seems that *crimen plagii* was very difficult to commit by a single person, since *Lex Fabia* criminalized complicity[10], and did so in both chapters (*quive in earum qua re socius erit; quive in eam rem socius fuerit*). Complicity in this crime amounted not only to the detention of the person on whom the *plagium* was committed, but most importantly to the placing of the person into the legal market (Lambertini, 1980). It was extremely difficult, if at all feasible, to carry out these activities alone. Hence, the use of an aide contributed significantly to the full achievement of the criminal's intended goal(s). After all, the perpetrators of *crimen plagii* were primarily concerned with financial gain (Lardone, 1932: 165; Kołodko, 2012; Scognamiglio, 2022), which involved obtaining money for selling any person against whom that crime was committed. Besides, acting in a group certainly gave a better chance of complete success of the venture. The intention of the legislature, seeking to criminalize the complicity in this crime as well, is therefore not surprising. Thus, the norms of *Lex Fabia* applied to all those potentially involved in the perpetration of *crimen plagii*.

The verbs used in the quoted passages, corresponding to the elements of *crimen plagii*, are not listed at random, and their arrangement reflects the concept of this crime. The first chapter of the act (in both Callistratus' and Ulpian's works) started with the verb *celo*, *-are*, which means "to store," "to hide" and "to hide someone" (Forcellini, 1805, Sondel, 2005: 142; Lardone, 1932: 165; Lambertini, 1980: 24; Scognamiglio, 2022), but it does not render the essence of *crimen plagii*. The phrase *invinctum habuere*, which follows the first verb (in Callistratus's work) and the verb *vincio*, *-ire* (in Ulpian's account) (which means "to bind", "to tie," and "to put in chains") are integral to the proper depiction of *crimen plagii* (Forcellini, 1871; Sondel, 2005: 993; Lardone, 1932: 165; Lambertini, 1980: 24; Diaz Bautista, 2005: 176; A. Nogrady, 2006: 304; Scognamiglio, 2022). It is difficult to imagine that an autonomous interpretation of these terms would lead to a demonstration of the nature of this crime. The mere storing (hiding) of a person against whom *plagium* has been committed does not prove the perpetration of *crimen*. Further actions in the form of tying (binding) serve to fully realize the intentions of the perpetrator, and thus reflect the nature of the act. It is worth pointing out that binding or tying the victim required the perpetrator to use of force without the consent (*invitus*) of the victim[11]. This important clarification of *crimen plagii* appears in the very first chapter, but only in Callistratus's work, as Ulpian omits this element (although he refers to it in the second chapter). Thus, the lack of the vic-

tim's consent was necessary for the perpetration of *crimen plagii* when a free person was involved (Callistratus: *qui hominem ingenuum vel libertinum invitum celaverit invinctum habuerit*). In the case of a slave, even the abducted person's acceptance of the perpetrator's actions would still indicate *crimen plagii*, for the *invitus* condition referred not to the slave, but to his or her *dominus* (Lamberini, 1980: 19–24; Kołodko, 2012; Scognamiglio, 2022).

Most objections are related to the last verb mentioned in the first chapter of *Lex Fabia* which refers to the sale of the person (*emo*, *-ere*) against whom *plagium* was committed. Callistratus's account differs from Ulpian's by the latter's use also of the verb *vendo*, *-ere*, which seems to indicate a consensual *emptio-venditio* contract. However, this is not the most important issue to be resolved. What is necessary is to determine at what point in the sale of a free person (or a slave, in the second chapter) *crimen plagii* is committed and when one can speak of *ex contractu* liability[12]. In addition, it must be shown whether the sale itself is related to *celare* / *vincire* (*invinctus habere*) (Lambertini, 1980: 25; Scognamiglio, 2022). Researchers have different opinion on this issue. One well-established view is that in the case of an *emptio-venditio* contract, liability for *crimen plagii* arose when the buyer acquired from the seller (*plagiarius*), in a conscious and direct manner, the object of the transaction, and the seller should be seen as the one who turns a free man into a slave or sells a slave *invito domino* (Ferrini, 1970: 425). Another view, opposed to the above concept, advocates the autonomy of *emptio-venditio* in relation to *plagium* in the case of free persons (Lambertini, 1980: 24–26). These views show that the problems outlined herein depend primarily on how the surviving sources are interpreted. Hence, it is not possible to achieve an single general position. However, based on the original wording of *Lex Fabia*, it appears that the last of Lambertini's quoted statements is the most appropriate. This is because it would be difficult to assume that *plagiarius* would only seek to hide and tie up a free man (or would do the same with a slave against the knowledge and will of the slave's owner). These actions alone would not bring tangible benefits to the perpetrator, and it does not appear that the primary motive for committing this crime was a desire to increase, in an obviously unlawful manner, the perpetrator's stock of slaves. The sale of the persons on whom the *crimen plagii* was committed was therefore a natural sequence directly associated with this act. Consequently, the reconstruction of the initial elements of *crimen plagii* should not be limited solely to viewing this act as the capturing (and consequently hiding and binding) of a person by the *plagiarius*, but also the subsequent sale of the person. Although it is difficult, on the basis of the surviving sources, to fully accept the validity of

this concept, it seems that on the basis of the considerations carried out, it cannot be denied either.

The second chapter of *Lex Fabia*, in addition to the above-mentioned element of the crime, i.e. capturing a slave against the will and knowledge of his or her owner(s), and then hiding and tying the slave[13], first mentions persuading a slave to escape (Callistratus: *quique servo alieno servaeve persuaserit, ut a domino dominave fugiat...*, Ulpian: *qui alieno servo persuaserit, ut dominum fugiat...*). It seems that the order of the elements listed in this chapter is rather haphazard. Certainly, *plagiarius* was interested in persuading the slave to escape (*servus fugitivus*), for it made it significantly easier for him or her to carry out the next steps in *crimen plagii*, i.e., hiding and binding the slave (Nogrady 2006: 306; Scognamiglio, 2022)[14]. However, both jurists pointed out the alternative in these elements (*vel*), which clearly proves that the sequence of the crime in the form of inducing the escape and, in a further stage, imprisoning and binding the slave was not obligatory[15]. It seems that the legislature, aware of the impact of the phenomenon of fugitive slaves (*servi fugitivi*) on the definition of *crimen plagii* provided in *Lex Fabia*, decided to also include this element in the construction of the crime.

Analysis of the surviving information on *Lex Fabia* makes it possible to show that *crimen plagii* was an intentional crime, having this construction in both the first and second chapters of the law. A direct indication of intentionality in the perpetrator's actions is the phrase *sciens dolo malo*[16], typical of the statutes of the Roman Republic, which appears in the cited[17] source accounts[18] (Berger, 1938: 281; Molè, 1966: 137–138; Lambertini: 22; Amielańczyk, 2006: Kołodko 2012: 235; Scognamiglio, 2022). The only problem that can be considered in the context of the perpetrator's intentional actions is the moment when the *plagiarius* became aware of this fact. Analyzing the elements of the crime contained in both the first and second chapter, one can come to the conclusion that any action taken by the perpetrator (hiding, binding or shackling) was intentional. It is difficult to imagine that the *plagiarius* could fulfill the elements of *crimen plagii* by acting unintentionally. Also, in the case of the placing the abducted person on the legal market (most often by selling him or her), it must be assumed that the perpetrator acted knowingly, which would thus give rise to his or her liability *ex lege Fabia*[19]. Taking into account the above comments, it should be emphasized that *crimen plagii* was certainly a crime that could only be committed intentionally.

The surviving source passages make it possible to demonstrate what criminal sanction was provided for by *Lex Fabia*:

P.S. 5, 30[B], **1**[20]: *Lege Fabia tenetur, qui civem Romanum ingenuum, libertinum servumve alienum celaverit vendiderit vinxerit comparaverit. Et olim quidem huius legis poena nummaria fuit* [...].

Coll. 14, 3, 4 (*Ulpianus libro nono de officio proconsulis*): [...] *Si servus quis sciente domino fecerit, dominus eius sestertiis quinquaginta milibus eodem capite punitur.*

Coll. 14, 3, 5 (*Ulpianus libro nono de officio proconsulis*): [...] *iubeturque populo sestertia quinquaginta milia dare.*

D. 48, 15, 7 (*Hermogenianus libro quinto iuris epitomarum*): *Poena pecuniaria statuta lege Fabia in usu esse desiit* [...].

All quoted source accounts agree on the sanction, which was a fine – *poena pecuniaria* (*poena nummaria*)[21] in the amount of 50,000 sesterces, which was provided for in two chapters[22] of *Lex Fabia* – both quoted texts from *Collatio legum* (Molè, 1962: 119; Molè, 1966: 135; Lamberini, 1980: 33–34; Robinson, 1996: 34; Nogrady 2006: 304; Amielańczyk, 2006, Amielańczyk 2012, Amielańczyk, 2013; Kołodko 2012: 245–247; Scognamiglio, 2022). It is puzzling that the legislator treated equally *crimen plagii* committed against a free person and those committed against a slave. It is difficult to clearly explain the intention behind such norm. Perhaps this should be explained by the origin of *Lex Fabia* – i.e., the period of unrest that followed the Roman Republic's war against its allies. Since free people were abducted at that time, and it was probably a very widespread phenomenon, criminalizing *plagium* committed against slaves (*servi*) is not unusual. Thus, the uniform criminal sanction fulfilled a preventive function, for regardless of who was the victim of this crime, the perpetrator still incurred a penalty – 50,000 sesterces.

3. The crime of deprivation of liberty (Article 189) in the Polish 1997 Criminal Code

The crime of deprivation of liberty was first[23] defined in Poland in the 1932 Criminal Code. In the period leading up to Poland's independence, in the different parts of the former territory of the Polish-Lithuanian Commonwealth, the criminal legislation of the three partitioning powers was in force. It is notable that the criminal laws of the partitioning powers acknowledged the existence of the factual condition of deprivation of liberty and contained very similar definitions of the essence of this crime

(Mozgawa, 2016: 354). The current Polish 1997 Criminal Code[24] draws on the tradition of the interwar period, as reflected in the similar treatment of the crime of deprivation of liberty (Mozgawa, 2016; Wala, 2025). The current wording of Article 189 of the Criminal Code is as follows:
§ 1. Whoever deprives a person of his or her liberty shall be punished by imprisonment for a period of 3 months to 5 years.
§ 2. If the deprivation of liberty lasted more than 7 days, the perpetrator shall be punished by imprisonment for a period of 1 to 10 years.
§ 2a. If the deprivation of liberty referred to in section 2 involves a person who is incapacitated due to his or her age or mental or physical condition, the perpetrator shall be punished by imprisonment for a period of 2 to 15 years.
§ 3. If the deprivation of liberty referred to in section 1–2a is combined with special torment, the perpetrator shall be punished by imprisonment for a period of 5 to 25 years.

In the doctrine of criminal law, there is a consensus that the value protected in this crime is human freedom in the physical (motor, locomotor) sense[25] – Mozgawa, 2016: 361–362; Hypś, 2024: 1299; Wala, 2025: 44. However, it should be emphasized that the protection granted by this provision refers to the intent relating to not only the actual, but also to the potential change in the location of a person (Mozgawa, 2016: 363; cf. Hypś 2024), and does not concern the intent relating to the reaching of a specific place (Mozgawa, 2020: 94; Wala 2025: 44). Consequently, it cannot be assumed that the elements of this provision will be fulfilled when an individual is denied access to a particular place where he or she would like to be. This is because in this case there is no question of protecting freedom in the sense of locomotion, since this person can use his or her freedom of movement (which is current in this case) to move to another location.

In defining the elements of a criminal act, the criminal law doctrine uses clear and established terminology, the abandonment of which should be regarded as a gross methodological error. Therefore, further analysis of the provisions of the current Criminal Code naturally takes this fact into account.

To present the object of this crime, it must be pointed out that the wording of the applicable criminal law does not specify *expressis verbis* how the perpetrator is to act in order to be charged with unlawful deprivation of liberty. This is by no means an oversight, but rather a deliberate drafting measure, characterizing a rational legislator who strives to create legal norms of an abstract and general nature. It should therefore be assumed that the perpetrator's behavior can take a number of forms of action (or omis-

sion), such as violence, unlawful threat, or deception, which ultimately lead to total deprivation of liberty (Mozgawa, 2016: 363–377; Hypś, 2024: 1300; Wala, 2025: 46–48). What is important here is that the perpetrator's conduct can be assessed as one that prevents the victim from moving or significantly restricting his or her movement against his or her will (cf. judgment of the Court of Appeals in Katowice of March 8, 2007, II AKa 33/07, *Krakowskie Zeszyty Sądowe* 2007, no. 11, item 38). How should the action (omission) of the perpetrator be qualified then, so that there is not the slightest doubt that the elements of this provision have been fulfilled? The answer to this question is provided by case law and literature on this subject, according to which deprivation of liberty takes place when there is an objective possibility of leaving a given place (e.g., a hidden exit), but the victim did not know about it, and the lack of such knowledge was justified by the circumstances of the incident (Wala, 2025: 47–48; cf. Hypś: 2024: 1300). This understanding of the essence of this crime precludes qualifying for penalization, for example, a situation where the perpetrator locked the victim in a room that the victim could have escaped from in other ways (e.g. through a window). The crime under Article 189 of the Criminal Code can be considered as committed only if the victim had to resort to special means (e.g., descending from a window on a rope, cutting the restraining ties, etc.) in order to leave that room (Hypś, 2024).

The crime specified in Article 189 of the Criminal Code is a substantive crime (crime with criminal consequences), which has a permanent character, i.e. its perpetration begins when the victim is deprived of liberty and continues until the victim regains it (Mozgawa, 2016: 374; Hypś, 2024: 1301; Wala, 2025: 53).

The wording of Article 189 of the Criminal Code (the use of the pronoun "who") confirms that the crime of deprivation of liberty is included in the catalog of common crimes, hence the perpetrator can be anyone capable of bearing criminal liability (Mozgawa, 2016: 377; Wala, 2025: 54). However, it should be borne in mind that it is not possible to attribute the objective side element in the form of an omission to every perpetrator. Given the substantive nature of the criminal act specified in Article 189 of the Criminal Code, only an entity with a specific duty to prevent the consequence (Article 2 of the Criminal Code) – in this case, the deprivation of another person of his or her liberty (Mozgawa, 2016: 378; Hypś, 2024: 1302; Wala 2025: 54) – can face criminal charges on this account.

One of the most important issues for determining whether an act should be treated as a crime, in addition to the social harmfulness of the act, is the demonstration of the degree of culpability of the perpetrator. After reading

Article 189 of the Criminal Code, one can have no doubt whatsoever that the crime of deprivation of liberty, regardless of whether it is the basic type or the aggravated type (sections 2, 2a, and 3), can be committed intentionality (with either form of intent: direct or conceivable) – Mozgawa, 2016: 378; Hypś 2024: 1303; Wala, 2025: 55[26].

The last issue to be raised is the aggravated forms of the crime of deprivation of liberty[27]. The legislature chose to include three aggravating elements[28]: the duration of deprivation of liberty (more than 7 days), the deprivation of liberty of a person who is incapacitated due to age or mental or physical condition, and the deprivation of liberty combined with special torment (Hypś 2024: 1301, Kozłowska-Kalisz 2025: 61). This measure should be viewed positively, as the holistic understanding of unlawful deprivation of liberty required a response from a rational legislature to the changing social conditions, as well as the more sophisticated actions of the perpetrators.

The crime of deprivation of liberty is punishable by a criminal sanction of isolation type, both in the basic and aggravated types of the crime. The only difference in the level of the penalty is related to the division of criminal acts into felonies and misdemeanors (Article 7 of the Criminal Code), which automatically translates into the level of the penalty. The aggravated type of crime of deprivation of liberty, described in section 3, being a felony, is subject to the harshest penalty, while the other types of crime were treated by the legislature somewhat more leniently.

It seems that the crime of deprivation of liberty, because of the protected value, is prosecuted *ex officio* regardless of the type of criminal act committed (cf. Hypś 2024: 1304). This measure the part of the legislature should be viewed positively, as it indicates a deep concern on the part of the state, expressed in its desire to protect the individual's freedom of movement.

4. The crime of human trafficking (Article 189a) in the Polish 1997 Criminal Code

The legislations of the partitioning Powers did not provide for combating human trafficking (or slavery) in the same way and treated the facts associated with this crime as completely separate, non-aggravated forms of deprivation of liberty (Mozgawa, 2016: 406). The reborn Poland did not break with the legislation of the partitioning states. In addition, the authors working on the Polish criminal code deeply felt the need to define the crime of human trafficking, which was also a manifestation of respect for the pro-

visions of international law (see: Mozgawa 2016: 407; cf. Mroczek, 2024: 75–76; cf. Sokołowska-Walewska 2012). This continuity was lacking during the work on the 1969 Criminal Code, where human trafficking was not decriminalized as a *sui generis* crime. The argumentation of the authors of the draft of that code was remarkably insightful: there is no place for this type of behavior in the socialist system, hence it is unnecessary to criminalize a non-existent phenomenon. However, respect of the communist government for international legal norms in this regard[29] involved the need to include human trafficking in the criminal law. Thus, a decision was made to introduce criminal liability for human trafficking in the provisions introducing the 1969 Criminal Code (cf. Mozgawa 2016: 408; Mroczek 2024: 77; cf. Sokołowska-Walewska, 2012). Such an editorial measure definitely lowered the gravity of this criminal act, and this in turn was in line with the socialist vision of society, to which such a phenomenon was alien. The current 1997 Criminal Code took a far more favorable approach to this issue. In the original version of the Criminal Code, human trafficking was criminalized in Article 253, which was a clear confirmation of adherence to the norms of international law. However, the proper form of the crime of human trafficking, which is still in force today, was adopted with the amendment of the Criminal Code in 2010[30], when the following wording of Article 189a was adopted:

§ 1. Whoever commits human trafficking shall be punished by imprisonment for a period of 3 to 20 years.

§ 2. Whoever makes preparations to commit the crime specified in § 1 shall be punished by imprisonment for 3 months to 5 years.

In order to avoid any differences in the interpretation of the phrase "human trafficking," the legislature decided to introduce[31] a relevant definition in Article 115 § 22 of the Criminal Code[32]. This is a correct solution that limits the temptation of a creative interpretation in favor of the perpetrator, which could be used by professional trial attorneys.

The wording of this provision does not pose any problems in the understanding of the crime of human trafficking. Without the slightest doubt, the value protected in the case of this crime is human freedom and dignity (Mozgawa, 2016: 412; Łyżwa, 2019: 135; Mroczek, 2024: 86; Hypś, 2024: 1305). This is by no means due to the 2010 amendment to the Criminal Code, since even the court rulings[33] issued on the basis of the repealed legislation recognized that human trafficking is a trade that is harmful to human dignity and aimed at the transfer of the ownership of a person as an object of law, combined with the destiny of an individual that is contrary to human agency and harmful to human beings.

The analysis of the objective side of this crime is greatly facilitated by the definition contained in Article 115 § 22 of the Criminal Code of the causative act of human trafficking[34]. The precise description used by the legislator in this provision of the behaviors that can be committed by the perpetrator fully reflects the image of this crime. It also seems that their arrangement is not random, but instead is thoroughly considered editorially and takes the form of a *numerus clausus* catalog (cf. Mozgawa 2016: 415). The "recruiting, transporting, delivering, transferring, storing or receiving a person" listed there indicates the perpetrator's possible methods of operation, with the understanding that the use of one of the methods listed fulfills the statutory element of the criminal act. Suffice it to mention that, in addition, in carrying out the criminal act, the perpetrator may use, among other things, violence or unlawful threats, deception or at least abuse of a dependence relationship, all of which strongly facilitate his or her criminal endeavor.

There is no dispute in the doctrine about the classification of this crime as one that does not require criminal consequences (formal one) – Mozgawa, 2016: 420; Łyżwa, 2019: 136; Hypś 2024: 1305). For its perpetration, the transaction does not have to be completed, and it is irrelevant whether the victims were used for the perpetrator's intended purpose. In the case of the causative act of recruitment, it must be assumed that it is accomplished at the time the perpetrator starts any of the activities specified in Article 115 § 22 of the Criminal Code[35]. Therefore, it is not surprising that the preparatory stage of this crime was criminalized (Łyżwa 2019: 139). The high social harmfulness of the crime of human trafficking rightly requires a response from the legislature already at the stage of preparation for further unlawful acts the perpetrator intends to commit.

The construction of the provision of Article 189a of the Criminal Code, in conjunction with Article 115 § 22 of the Criminal Code, clearly indicates that the crime of human trafficking is considered a common crime, committed intentionally through the action of the perpetrator, only with direct intent (more precisely, in the form of directed intent – *dolus directus coloratus*)[36] – Mozgawa, 2016: 421; Łyżwa: 2019: 135; Hypś 2024: 1307; Mroczek, 2024: 85. Representatives of the doctrine of criminal law rightly advocate abandoning the restriction of the subjective side solely to directed intent (*dolus directus coloratus*). This is because it is difficult to explain why a perpetrator who merely accepts that certain persons (e.g., transported or stored) will be exploited, for example, as prostitutes or beggars, will not be held liable (Mozgawa, 2016: 421; Łyżwa 2019: 135; Mroczek 2024: 85; see also: Radoniewicz 2011: 154; Sokołowska-Walewska 2012: 105–106). This

point of view is remarkably pertinent and one should hope that a rational legislator will share this doctrinal view when considering an amendment to the statutory elements of the crime of human trafficking.

There is not the slightest doubt that the crime deserves a strong response on the part of the state, which is to be manifested in the severity of the penalty. Indeed, this is the case, since the lower limit of imprisonment, equal to 3 years, causes this criminal act to be considered a felony (cf. Mozgawa, 2016: 423; Łyżwa 2019; 135; Hypś, 2024: 1307; Mroczek, 2024: 83). The preparation stage of this crime is subject to a less severe penalty, which is the typical practice of a rational legislature under all provisions of the Criminal Code. Another argument in favor of a strong response to human trafficking is the *ex officio* prosecution of the perpetrators of the crime.

5. Concluding remarks

The considerations presented herein seem to prove the existence of a connection between the *crimen plagii* known to the Romans, at least formally since the time of *Lex Fabia de plagiariis*, and the modern crimes of deprivation of liberty (Article 189 of the Criminal Code) and human trafficking (Article 189a of the Criminal Code). This connection primarily concerns the subject as well as the subjective side of the crime. Both the Romans and modern legislatures relied on the construction of a common crime, committed intentionally. Some differences can be seen for the objective side of the crime of deprivation of liberty committed by omission. This is not surprising, given the not very advanced degree of the legislative technique of the Romans, who treated most crimes as being committed by action. Further differences can be seen in the value protected by the norms of criminal law. For the Roman Republic's legislature, it was the freedom of the free-born Romans as well as the freedmen, while in the case of the second chapter of *Lex Fabia*, it was the protection of the right of ownership of the slave, treated as *res corporalis*. The current Criminal Code adopted the protection of freedom of movement (Article 189 of the Criminal Code) as well as freedom *sensu largo* and human dignity. However, this does not mean that one cannot see in the legislation of the ancient Romans the seeds of the behaviors developed by the present-day legislature. Suffice it to mention that tying, binding, or holding a person against whom *crimen plagii* has been committed, in order to finally sell that person, as the elements of the perpetrator's action, are also present in the modern concept of the crime of human trafficking (Article 189a of the Criminal Code in connection with Ar-

ticle 115 § 22 of the Criminal Code). At the same time, one must agree that the provisions of the second chapter of *Lex Fabia* had little to do with the protection of freedom, since the causative acts were performed on a slave, but the first chapter of that law, guarding the freedom of individuals, fits perfectly into the modern perspective on the protections granted by criminal law. Regardless of the two different scopes of protection in the two chapters of *Lex Fabia* one has to agree that the discussed behavior of the perpetrator (e.g., abducting, tying) for the full completion of the *crimen plagii* (especially when it involved the sale of a freeborn, a freedman, or, finally, a slave) required the cooperation of a wider group. Therefore, the Romans rightly deemed it necessary to criminalize accomplices as well. It is no surprise that the same path has been followed by modern legislatures.

The original form of the penalty for *crimen plagii*, i.e. a fine (50,000 sesterces), was modified during the period of the Roman Empire[37] and cannot be considered a mild form of repression against the offender. The gravity of the crimes of deprivation of liberty (Article 189 of the Criminal Code) and human trafficking (Article 189a of the Criminal Code) has forced modern legislatures to impose only an isolating sanction in the form of a penalty of imprisonment, which is an appropriate way of dealing with perpetrators who attack values protected by law.

The Romans have rightly been recognized in history for their achievements in private law. However, it seems that their contribution to the development of criminal law, although not as spectacular as in the case of *ius civile*, is also worth highlighting. The observations made in the present study are a clear confirmation of this proposition.

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NOTES

[1] The origins of *Collatio legum Mosaicarum et Romanarum* have recently been discussed by: (Dębiński, 2009); (Frakes, 2011); (Frakes, 2015).

[2] Other sources regarding *Lex Fabia* were collated and then analyzed by (Lambertini, 1980).

[3] A proponent of seeking interpolation in source texts on *Lex Fabia* was (Nideremeyer, 1930: 383–400). However, thorough research (Berger, 1938) has shown that the texts concerning *Lex Fabia* are authentic and devoid of the characteristics of *emblemata Triboniani*.

[4] For a detailed discussion of this issue, see: Amielańczyk, 2012: 32; Kołodko, 2012: 223–225; Scognamiglio, 2022.

[5] Researchers do not agree on the time in history when the precise definition of *crimen plagii* was formulated. (Niedermeyer, 1930) pointed out that *crimen plagii* was not defined until the time of Diocletian, and that the original republican text of *Lex Fabia* only stipulated *crimen ex lege Fabia*. This view has been aptly challenged by (Berger, 1938) and the argument he presented should be agreed with. It appears that Emperor Diocletian extended the elements of *crimen plagii* rather than defining them individually, for otherwise it would have been completely unnecessary to adopt *Lex Fabia*.

[6] In the case of committing crimen plagii against a free person, there were two procedural paths – *using interdictum de homine libero exhibendo* or the typically criminal *accusatio ex lege Fabia*. It should be emphasised that, according to Ulpian (D. 43, 29, 3pr.), the use of the interdict did not exclude that provided for by *lex Fabia de plagiariis* (Kołodko, 2012: 238–240; Scognamiglio, 2022).

[7] It should be borne in mind that the concept of *crimen plagia* has undergone a momentous evolution over several centuries. According to (Mommsen, Strafrecht: 780), the application of *Lex Fabia* in the provinces were limited only to *cives Romani*. On the other hand, (Niedermeyer, 1930) tried to show that *Lex Fabia* referred to crimes committed only in the territory of Rome against a free or freed person (as well as a slave – which was dealt with in the second chapter of the law). The proper place to commit *crimen plagii* was the province of Rome, where offenders were be judged as part of the *cognitio extra ordinem*. This view has been challenged by: (Berger, 1938; Berger 1940; Avonzo 1956; Lamberini, 1980). However, it should be pointed out that during the imperial period, the Romans had no doubts in this regard, as proven by the recent research in this area conducted by (Scognamiglio, 2024).

[8] Cf. Coll. 14, 2, 1 (*libro quinto Pauli sententiarum*): *Lege Fabia tenetur, qui civem Romanum ingenuum libertinumve servumve alienum celaverit vendiderit vinxerit comparaverit.*

[9] Lambertini (1980: 11, 14–15) concluded that Paulus' statement should be taken into account when reconstructing *Lex Fabia*. This view is correct and should be approved of.

[10] The term *socius* appearing in the cited sources (*Strafrecht*.... p. 780, fn. 8) referred not to accomplices, but to publicani (Mommsen, 1899: 780). The opposite observation was expressed by (Molè, 1962; Lambertini, 1980). Complicity in Roman law during the imperial period has been discussed in more detail by (Gioffredi, 1970; Jońca, 2021).

[11] Moreover, both jurists claim that the perpetrator must have either acted against the will of the slave's master/mistress (*invitus*) or against their knowledge – *insciente domino dominave* (Callistratus: *eum eamve invito vel insciente domino dominave celaverit, invinctum habuerit*, Ulpian: *eum eamve invito vel insciente domino dominave celaverit, invinctum habuerit*). It is therefore clear that both of these elements refer to slave owners, not to slaved themselves. Cf. Lamberini, 1980: 19; Scognamiglio, 2022.

[12] It is worth noting that a sale under an *emptio-venditio* contract of a thing to which the seller did not have legal title (most often the ownership right) raised a number of problems in terms of the fulfillment of mutual considerations, depending on the awareness of the parties to the legal act. This issue – from the point of view of contract law – has been presented more extensively by (Kacprzak, 2002). The *emptio-venditio* contract is of enduring interest to Romanists. An example is the large two-volume book edited by L. Garofalo, 2007.

[13] Callistratus: *eum eamve invito vel insciente domino dominave celaverit, invinctum habuerit...*, Ulpian: *eum eamve invito vel insciente domino dominave celaverit, invinctum habuerit.*

[14] The subject of *servi fugitivi* continues to raise great interest among Roman law scholars: Buckland, 1908; Pringsheim, 1951; Bonetti, 1964; Klingenberg, 2006; Arces, 2023.

[15] The *persuador* was punished regardless of whether he or she had appropriated the slave or failed to do so (Lambertini, 1980: 28; Scognamiglio, 2022). While agreeing with this view, one can add that the *persuadere* element in *Lex Fabia* was an intrinsic characteristic of the *crimen plagii.*

[16] CIL, IX, no. 416 – *Lex latina tabulae Bantinae* (133–100 BC) – Lintott, Mattingly & Crawford 1996. *Lex repetundarum* – Lintott, Mattingly & Crawford 1996: 45, l. 8: [quae fieri oportebit minus fiant quaeue e]x h(ace) l(ege) facere oportuerit oportebitue non fecerit sciens d(olo) m(alo) seiue aduorsus hance legem fecerit/ [sc(iens) d(olo) m(alo). The phrase*sciens dolo malo* also appeared in *Lex Acilia repetundarum* – l. 10, 26, 61.

[17] It is worth noting that Ulpian placed the *dolo malo* phrase only in the Coll. 14, 3, 5 passage of his work, which covered only the second chapter. However, his reflections on the first chapter of *Lex Fabia*, which are very similar in their structure to Callistratus' account, do not counter the issue of intentionality of the *crimen plagii* in the first chapter of the law as well. Consequently, there is no obstacle to concluding that the two jurists were of the same opinion regarding the culpability of the perpetrator.

[18] It is also necessary to note the following text indicating the intentionality of the perpetrator's actions – D. 48, 15, 3pr. (*Marcianus libro primo iudiciorum publicorum*): [...] *Et ita de bona fide possessore ipsa lex scripta est: nam adicitur "si sciens dolo malo hoc fecerit"* [...]. Researchers (Lamberini, 1980: 16; Scognamiglio, 2022) consider this text to be indispensable to the reconstruction of the context of *Lex Fabia.*

[19] Some doubts about liability may arise from a factual situation in which the buyer knows that the person being sold is free (or the slave belongs to another *invitus* owner), and the seller does not know this. This is because it is not clear from *Lex Fabia* whether liability under that law should be ruled out in such a case (Lambertini, 1980: 28). When considering such a hypothetical case, a basic point becomes apparent that must be emphasized: the seller did not have to be the same person as the *plagiarius.* This can be an argument pointing to the autonomy of the *emptio-venditio* contract as one of the signs of the *crimen plagii.*

[20] Coll. 14, 2, 2 (*Paulus libro quinto sententiatum*): [...] *Et olim quidem huius legis poena nummaria fuit* [...].

[21] P.S. 5, 6, 14: [...] *lege autem Fabia, ut etiam poena nummaria coerceatur.*

[22] The literature on the subject contains findings indicating that in the first chapter of the *Lex Fabia*, the death penalty was imposed instead of a financial penalty (Kantor 2013; Liebs 1982). The vast majority of researchers, like the author of this text, are of the opinion that a fine was in force in both chapters of the *lex Fabia* in its republican form.

[23] The historical development of the formation of the crime of deprivation of liberty in Poland was recently presented by Seroka K. (2025). Przestępstwo pozbawienia wolności na ziemiach polskich do pierwszych lat II Rzeczypospolitej, [in:] Bezprawne pozbawienie wolności, (ed.) Mozgawa M., Warszawa.

[24] Act of June 6, 1997 – Criminal Code (consolidated text: Journal of Laws of 2025, item 383).

[25] The same position is adopted in case law – see: Judgment of the Court of Appeals in Katowice of December 8, 2005, II AKa 68/05, LEX no. 286704; Judgment of the Court of Appeals in Warsaw, II AKa 107/13, Legalis; Judgment of the Supreme Court of December 5, 2018, V KK 508/17, LEX no. 2603574.

[26] This position is also well-established in case law – see: Judgment of the Court of Appeals in Poznań of March 21, 2017, II AKa 44/17, LEX no. 2398387; Judgment of the Court of Appeals in Wrocław of June 17, 2015, II AKa 140/15, LEX no. 1755250.

[27] The aggravated forms of the crime of deprivation of liberty has recently been discussed more extensively by Kozłowska-Kalisz, M. (2025). Typy kwalifikowane przestępstwa bezprawnego pozbawienia wolności, [in]: Bezprawne pozbawienie wolności, (ed.) Mozgawa M., Warszawa.

[28] A review of the case law in terms of the aggravating elements indicated has been presented by Hypś, 2024: 1301–1302.

[29] A compilation of the provisions of international laws that influence the shape of the crime of human trafficking is discussed in detail by Głogowska-Balcerzak, 2019. Also, cf.: Łyżwa, 2019: 42–127; Hypś, 2024: 1305.

[30] Act of May 20, 2010 on amending the Criminal Code, the Act on the Police, the Law introducing the Criminal Code, and the Code of Criminal Procedure (Journal of Laws no. 98, item 626). This occurred through the Act of May 20, 2010. (Journal of Laws no. 98, item 626).

[31] This occurred through the Act of May 20, 2010. (Journal of Laws no. 98, item 626).

[32] Article 115 § 22: Human trafficking is the recruitment, transportation, delivery, transfer, storing or receiving a person using: 1) violence or unlawful threats; 2) abduction; 3) deception; 4) misleading or exploitation of a mistake or inability to properly comprehend an action taken; 5) abuse of a relationship of dependence, taking advantage of a critical position or a state of helplessness; 6) giving or accepting a financial or personal benefit or the promise thereof to a person having custody or supervision of another person – for the purpose of exploitation, even with that person's consent, particularly in prostitution, pornography or other forms of sexual exploitation, forced labor or services, begging, slavery, or other forms of exploitation degrading human dignity, or for the purpose of obtaining cells, tissues or organs in violation of law. If the perpetrator's behavior involves a minor, it constitutes human trafficking, even if the methods or means listed in items 1–6 were not used. For information on the interpretation of the phrase "human trafficking" under norms of international law, see: Głogowska-Balcerzak, 2019: 99–140.

[33] Judgment of the Court of Appeals in Krakow of March 8, 2001, II AKa 33/01, Krakowskie Zeszyty Sądowe 2004, no. 5, item 29; judgment of the Court of Appeals in Białystok, May 24, 2004, II AKa 66/04, Ruling of the Court of Appeals in Białystok 2004, no. 3, item 30.

[34] The definition of "human trafficking" has been presented in detail by Mozgawa, 2016: 413–420 and Mroczek, 2024: 89–125.

[35] Judgment of the Court of Appeals in Szczecin of July 2, 2015, II AKa 48/15, LEX no. 1782021. Cf.: Decision of the Supreme Court of January 21, 2015, V KK 285/14, Legalis.

[36] This view is also expressed in case law: judgment of the Court of Appeals in Białystok of July 12, 2013, II AKa 116/13, LEX 1511615.

[37] During the imperial period, the criminal sanction for the *crimen plagii* was forced labor in a mine (*in metallum*) – cf.: D. 48. 15.7.

LEGAL ACTS

Act of June 6, 1997 – Criminal Code (consolidated text: Journal of Laws of 2025, item 383).

Act of May 20, 2010 on *amending the Criminal Code, the Act on the Police, the Law introducing the Criminal Code, and the Code of Criminal Procedure* (Journal of Laws no. 98, item 626).

COURT DECISION

Judgment of the Court of Appeals in Białystok of July 12, 2013, II AKa 116/13, LEX 1511615.

Judgment of the Court of Appeals in Krakow of March 8, 2001, II AKa 33/01, *Krakowskie Zeszyty Sądowe* 2004, no. 5, item 29.

Judgment of the Court of Appeals in Białystok, May 24, 2004, II AKa 66/04, Ruling of the Court of Appeals in Białystok 2004, no. 3, item 30.

Judgment of the Court of Appeals in Katowice of December 8, 2005, II AKa 68/05, LEX no. 286704.

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Judgment of the Court of Appeals in Katowice of March 8, 2007, II AKa 33/07, *Krakowskie Zeszyty Sądowe* 2007, no. 11, item 38.

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