8. Снетков В. А. Субъективные портреты: изготовление, возможности использования в оперативно-розыскной работе / В. А. Снетков, А. М. Зинин. – М. : ВНИИ МВД СССР, 1972. – 92 с.

9. Снетков В. А. Частота встречаемости признаков элементов лица / В. А. Снетков, А. М. Зинин, И. Ф. Виниченко. – М. : ВНИИ МВД СССР, 1972. – 48 с.

10. Терзиев Н. В. Идентификация и определение родовой (групповой) принадлежности / Николай Владимирович Терзиев. –М. : ВЮЗИ, 1961.

11. Терзиев Н. В. Криминалистическое отождествление личности по признакам внешности : учеб. пособ. / Николай Владимирович Терзиев. – М., 1956.

12. Топорков А. А. Словесный портрет : практическое пособие / Анатолий Алексеевич Топорков. – М., 1999.

13. Топорков А. А. Словесный портрет. Практикум / Анатолий Алексеевич Топорков. – М. : Юристъ, 2000.

14. Торбин Ю. Г. Словесный портрет. Использование данных словесного портрета в оперативной и розыскной работе / Юрий Григорьевич Торбин. – М., 1980.

15. Шепітько В. Ю. Ідентифікація людини за ознаками зовнішності : науково-практичний посібник / В. Ю. Шепітько. – Х. : ВКФ «Гриф», 2003. – 112 с.

16. Штофф В.А. Моделирование и философия / Виктор Александрович Штофф. – М. – Л., 1966. – 302 с.

17. Frowd C. D. EvoFIT: A Holistic, Evolutionary Facial Identification Technique for Creating Composites / C. D. Frowd, P.J.B. Hancock, D. Carson. Association for Computing Machinery Transactions on Applied Psychology. – 2004. – 1 (1).

18. Hancock P. J. B. Evolving faces from principal components. Behavior Research Methods. Instruments, Computers, – 2000. – 32 (2).

19. Kovera M. B. Identification of computer generated facial composites / M. B. Kovera, S. D. Penrod, C. Pappas, D. L. Thill // Journal of Applied Psychology. – 1997. – 82.

20. Mcquiston-Surrett D. Use of facial composite systems in U.S. law enforcement agencies. / D. Mcquiston-Surrett, L. D. Topp, R. S. Malpass // Psychology, Crime and Law. – 2006. – 12.

21. Swanson Charles R.. Criminal investigation / Charles R. Swanson, Neil Chamelin, Leonard Territo. – 6-th ed. – 2008.

THE PRINCIPLE OF PUBLICITY IN ROMAN CIVIL PROCEDURE

V. KROYTOR,
Professor, Candidate of law, Kharkov national university of internal affairs

SUMMARY

Procedural principles and jura which were created in Ancient Rome (publicity, oral verbal communication, directness, and controversy) have been taken as far as possible by modern legal frameworks.

Publicity of Roman justicement is caused be many factors: the place where it was held – Forum Romanum, where the social life of Rome took place, the time – dies fasta (at summer and winter months when every citizen of Rome could be present at the court trial), examination of the most important cases by several judges (collegiate body of centumvors, decemvors and recuperators), public pronouncement of judgments (pronuntiatio) and also promulgation of praetors' claims according to which judges had to determine a case.

Key words: Civil procedure, Court, Formular procedure.

***

Процессуальные начала и принципы, выработанные в Древнем Риме (публичности, устности, непосредственности, состязательности), были в той или иной мере восприняты современными правовыми системами Публичность римского судопроизводства обуславливалась многими обстоятельствами: местом его проведения – Римским форумом, на котором проходило общественная жизнь Рима, временем – *dies fasti* (в летние и зимние месяца, когда любой гражданин Рима мог присутствовать на судебном заседании), коллегиальным рассмотрением наиболее важних категорий дел (коллегиями центумвиров, децемвиров, рекуператоров), публичным провозглашением судебных решений *(pronuntiatio)*, а также преданием огласке преторських формул, согласно которым было разрешено дело.

Ключевые слова: римский гражданский процесс, суд, формулярный процесс

Introduction. During its development Roman law has created not only institutions and categories of substantive law but also has defined the basic principles of justicement on which modern civil procedure is based.

Assertion that Roman law didn't have knowledge of its division into adjectival law and substantive law has become fact of common knowledge in scientific roman literature but even a superficial survey of Roman law's sources has shown that Roman lawyers paid special attention to questions of procedure as due to formalism strict observance of procedure rules was decisive when of a civil case was tried in a court. For instance incorrect appeal to pretor with the lawsuit, making mistakes in claim drafting resulted in plaintiff's defeat even if justice was on his side. Procedural principles and jura which were created in Ancient Rome (publicity, oral verbal communication, directness, and controversy) have been taken as far as possible by modern legal frameworks. Describing the significance of Roman law O. A. Pidoprugora stresses that Romans has managed to achieve such high level of legal culture that it also can be used by humanity nowadays [7, p.3-4].

Methods and used material. We must say that nowadays in law science there aren't many pieces of work which research exactly the aspects of Roman procedure. So one should recollect only two monographs: «Принципы римского гражданского и уголовного процесса» written by L. N. Zagursky (Л.Н. Загурский) [3] in Russian language and «Римский гражданский процесс» written by O. V. Salogubova (О. В. Салогубова) [9]. Among foreign scientists who research Roman civil procedure can be named E. Metzger («Roman Judges, Case Law, and Principles of Procedure»)[12], H.F. Jolowicz «Case law in Roman Egypt»[13]. We also should point to primary sources: Gay's institutes, the fourth book of which gives the detailed data on Roman civil procedure [6].

Nowadays there is lack of modern research of Roman civil procedure in Ukraine. According to perspectives of cardinal reforms in procedural legislation in our country appealing to the experience in jurisprudence of Ancient Rome is considered to be current. As Roman civil procedure is the

topic which by its content can be and is the basis of monograph research so in his article we consider appropriate to confine to researching one of the most important principles of Ancient Rome procedure law – publicity.

The aim of the article is to distinguish the basic sings of the principle of publicity in Roman civil procedure that can help to research deeper the meaning of the principle of publicity in civil procedure of Ukraine.

Exposition of basic material. In the first place the conception of publicity for Roman private law is to be defined. Quoting F. N. Millar E. Metzger defines publicity as requirement of procedure to be public even for those who aren't directly interested in its results [12]. This definition of publicity should to be taken as working for its researching in Roman private law.

Admittedly the concept «civil procedure» in Ancient Rome should be considered as one of its historic types: Legislating one, Formular one and Extraordinary one. The indicated historical types (or its forms) are certain stages of a thousand-year-development of civil procedure in Ancient Rome. Publicity to a large extent is typical for the first two historical types: Legislating one and Formular one.

As E. Metzger stresses that the principle of publicity guides Formular procedure and earlier Legislating one. According to this requirement the public participating of parties restricts abusing in the procedure. The opposition to publicity isn't privacy but secrecy. E. Metzger admits that the principle of publicity wasn't broken by the fact that some legal suits were tried in private houses. Such trials also could be tried publicly [12].

Once L. N. Zagurckij who was the professor of Harkiv imperial university at the end of his monograph that was dedicated to principles of Roman civil and criminal procedure emphasized that publicity went through all stages of procedure and there weren't any exception to this rule in Roman law: the indictment was proclaimed publicly, witnesses were subpoenaed at the pressure of other persons and even jurors rendered a judgment orally in a whisper [3, p.431].

Legislating procedure (from Latin legis actio – «lawsuit bases on law») appeared in 509 BC and had been lasting till 120 BC that is it began with the foundation of Republic in Rome. But it doesn't mean that Romans hadn't known judicial institutions before that moment. As once L. N. Zagurckij explained that king conducted a trial on certain days (dies fasti) at the square that is publicly [3, p.431]. The square where the trial was conducted was called forum.

A well-known Forum Romanum which architectural buildings have been kept till nowadays wasn't only the place where civil and criminal cases were tried and also the place for public meetings, orators' speech and settlement of a legal transaction. That is almost all events of legal importance relevant in law events in the life of ancient Romans were held at forum at the presence of people, officials (praetors, quaestor, consuls), witnesses. Forum Romanum was the place of social activities in Rome [2, p.97]. It means nothing but that publicity describes not only civil procedure and also any other social activity on the whole that is inherent to ancient legal conscience.

As E. I. Temnov states ancient people appreciated their civicism, participating in state affairs, they didn't understand those who were lost in their own concerns. The state in an ancient world was made of the life of all citizens and their contribution to it. Ordinary citizens in Athens, Rome felt that the state lived in the life of each of them. And each of them was the «part», «the member», «the authority» of state, its smallest part, its atom (that is from Greek – from Latin individuum − indivisible)[10, p.508].

So publicity of Roman procedure is conditioned by forum – the place where civil investigation was held. Then the word forum that once had meant the place of court trial began to mean court. L. N. Zagurckij directly points to the fact that Roman competent court is called forum [3, p.323]. For instance, forum rei – the court defined by the place of civil defendant's residence, forum domicilii – the court defined by the place of person's dwelling, forum delicti comissi – the court defined by the place where the infraction was committed and et cetera. The original meaning of the word forum is open place, square [1, p.136].

«Court» as the meaning of this word has been preserved in some modern languages. That is for instance this word among other its meanings has such definitions: from Italian foro – court; from Spanish foro – court, tribunal; from German Forum – jurisdiction; from English forum – court [2, p.98].

Publicity of Roman procedure also was conditioned by the time when lawsuits could be brought. As it was earlier said lawsuit had to be brought on certain days – dies fasti, that were only 40 ones per year. Trials were held at summer and winter months. Praetor couldn't make civil defendant attend court at the stage in jus (D. 2.12.1.) during harvest time and vintage. That is in Ancient Rome lawsuits could be tried for terms if every member of society was able to appear at the forum and see and listen to praetor.

As L. N. Zagurckij admits one of the factors that guarantied good faith in relation to parties was precisely oral verbal communication and publicity of the procedure [3, p. 326]. It wasn't allowed to render a judgment by default in Legislating and Formular procedures. If the judgment was rendered by default such judgment was considered to be invalid (sentential nullius esse momenti). In Roman law there wasn't a trial by default, the person was given a one-year term to appear in case when the person violated that rule. If the person didn't appear, the crime was unpunished but the court didn't dare to render a judgment by default, without proof without defense [3, p.326]. We should admit that modern civil procedure of Ukraine allows to render the judgment by default that distorts this Roman rule.

We also should say that warrant to appear (in jus vocatio) had to be made publicly at the presence of witnesses (antestatio) whom plaintiff turned to saying such words: «memento quod tu mihi in illa causa testis eris» − «Remember that you will be the witness in this case! ». The number of witnesses has the exceptional meaning for the trial. A famous Roman rule should be mentioned: «Testis unus – testis nullus» − «Jne witness isn't a witness». There had to be at least two witnesses, the maximum was defined differently by different laws. According to July's law about bribe (de repetundis) there had to be 120 witnesses. Witnesses testified publicly, they were cross questioned [3, p.363-364].

The implementation of publicity of Roman civil procedure also was examination of cases by several judges. During the stage of Republic there was a collegiate body of decemvors for procedures of disincarceration that consisted of 10 trial jurors. Vindication cases, inheritance cases, landowning cases, special status cases were tried by a collegiate body of centumvors which consisted of 105 jurors (5 persons from 35 tribes). That is a collegiate body consisted of rep-

resentatives from all administrative-territorial units of Roman state at that time. In order to expedite trial pretor as an exception could appoint collegiate body consisted of 3 or 5 persons from recuparators that had to render a judgment in certain time. It happened at procedures concerning disincarceration, compensation for damage under the provisions of international treaties, extortion and bribe and also among foreigners [10, p. 44].

In Roman procedure the judgment was called sententia, it was public. The sententia made by a judge was pronounced (this action had the name pronuntiatio) publicly and it became res judicata (a determined case) that is a law for pasties concerning which one couldn't initiate any new question, it became right for parties. The judge couldn't insert amendments to a text of a pronounced publicly judgment because his power expired when the judgment was made and pronounced [3, p.404]. That is public pronouncement of a judgment was to some extent a guarantee for parties so that any other action wouldn't be commenced with regard to their determined case. There was even a statement: «res judicata pro veritate habetur» −«Judgment is considered to be truth». It is the public pronouncement (pronuntiatio) that enacted a judgment in the way that made it irrevocable.

Formular procedure had been lasting from 120 BC till III AD. The essence of Formular procedure was that praetor made a written claim which contained directions to the jury concerning how to determine a case. Similar cases repeated and a claim which was made once was used as a model in other cases. In order to save labor the model of a claim was written on a special wooden board (album) which stood at forum for general acquaintance [4, p.283]. Soon praetors' practice made constant claims for most cases which were brought to society with the helping of edicts in the form of law blanks.

So the historical type of Formular procedure has the features of publicity due to issuing of constant claims and edicts by praetors according to which judges had to determine cases.

With the beginning of Extraordinary procedure the principle publicity lost its meaningfulness as well as quite a lot of other basic principles. As a well-known legal scholar I. O. Pokrovsky says changes in the forms of justicement and the change of Formulate procedure to Extraordinary one meant a fundamental change of quite a lot of fundamental principles [8, p.155]. Judicial system and justicement of the Republic period significantly differs from judicial system and justicement of the Emperor period. Plaintiff's lawsuit was registered in judicial acts. Warrant to appear was made by government officials. Civil defendants were informed about plaintiff's lawsuit officially. The trial was held at the establishment «in a secret» with the limited access to courts. All stages of procedure were processed in written form [11, p.14].

It is the last form of Roman civil procedure has become a certain prototype of modern model of justicement. We may come to the conclusion that the requirement of Roman principle of publicity of civil procedure which was one of the basic principles of Legislating and Formular procedures isn't presented completely in modern civil procedure.

Conclusions. Summarizing the research of the principle of publicity in Roman civil procedure we should say that publicity of Roman justicement is caused be many factors: the place where it was held – Forum Romanum, where the social life of Rome took place, the time – dies fasta (at summer and winter months when every citizen of Rome could be present at the court trial), examination of the most important cases by several judges (collegiate body of centumvors, decemvors and recuperators), public pronouncement of judgments (pronuntiatio) and also promulgation of praetors' claims according to which judges had to determine a case.

Nowadays during performance of a great number of reforms in judicial system and procedural laws it is high time to pay the attention of the legislator to the expression of principle of publicity in Roman classical law to avoid mistakes at law-making.

Literature:

1. Бартошек М. Римское право: понятия, термины, определения / М. Бартошек. – М. : Юрид. лит., 1989. – 448 с.

2. Биография слов синонимического ряда со значением «собрание, объединение, союз»: Лексикограф. пособие по интернационал. лексике / [под ред. Лапиной М. С.]. – Х. : Изд-во НУА, 2006. – 124 с.

3. Загурский Л. Н. Принципы римского гражданского и уголовного процесса : [монографія]. / Л. Н. Загурский. – Х. : Университетская типография, 1874. – 431 с.

4. Муромцев С. А. Гражданское право Древнего Рима / С. А. Муромцев ; [отв. ред. А. Д. Рудоквас]. – М. : Статут, 2003. – 684 с.

5. Назаренко В. Поняття, сутність та тенденції розвитку юридичного процесу і юридичної процесуальної форми від Стародавнього Риму до сучасності / В. Назаренко // Підприємництво, господарство і право. – 2010. – № 5. – С.7 – 11.

6. Памятники римского права: Законы XII таблиц. Институции Гая. Дигесты Юстиниана. – М. : Зерцало, 1997. – 608 с.

7. Підопригора О. А. Основи римського приватного права / Підопригора О. А. – К.,1997. – 336 с.

8. Покровский И. А. История римского права / И. А. Покровский – Мн.: Харвест, 2002. – 528 с.

9. Салогубова Е. В. Римский гражданский процесс. / Е. В. Салогубова. – 2-е изд. – М. : Городец-издат, 2002. – 157 с.

10. Темнов Е. И. Звучащая юриспруденция : монография / Е. И. Темнов. – М. : Волтерс Клувер, 2010. – 560 с.

11. Эклога. Византийский законодательный свод VIII века. Византийская книга Эпарха. – Рязань: Александрия, 2006. – 592 с.

12. Metzger Ernest. Roman Judges, Case Law, and Principles of Procedure [Електронный ресурс] / Ernest Metzger // Law and History Review. – 2004. – Vol.22. – №.2. – Режим доступу : http://hghltd.yandex.net/yandbtm?url=http://www.historycooperative.org/journals/lhr/22.2/metzger.html&text=jolowicz+\%26quot;case+law+in+roman+egypt\%26quot;

13. Jolowicz H. F. Case law in Roman Egypt [Електронный ресурс] / H. F. Jolowicz // Jornal of the Socitety of Public Teachers of Law. –1937. – №14. – P.1-16. – Режим доступу : http://iuscivile.com/materials/reprints/jo-1.pdf