

## ***Exempla* in the Tenth Book of Correspondence between Pliny the Younger and Emperor Trajan – Introductory Remarks**

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### **Abstract:**

The correspondence between Pliny the Younger and Emperor Trajan provides examples of legal issues which Pliny had to face as an imperial magistrate sent to the province of Bithynia and Pontus by the emperor. The aim of the article is to determine the way in which the authors of the correspondence address the question of precedents. The present work concentrates on all the instances where the concept of *exemplum* was used *expressis verbis* and on the way in which the authors of the letters referred to their preservation, eradication or creation.

**Key words:** *exemplum*; precedent; Trajan; Pliny; correspondence

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The term *exemplum* has multiple possible meanings.<sup>1</sup> One of the ways in which it could be interpreted in juridical sources is an example to be followed, a precedent.<sup>2</sup> This is how the concept was approached, for instance, by Ulpian, who in his first book of *Institutions* observes:

“[1] therefore, whatever the emperor has determined by a letter over his signature or has decreed on judicial investigation or has pronounced in an interlocutory matter or has prescribed by an edict is undoubtedly a law. There are what we commonly call *constitutiones* (enactments). [2] Plainly, some of these are purely *ad hominem* and are not followed as setting **precedents**. For only the specific individual is covered by an indulgence granted by emperor to someone according to his deserts or by a penalty specially imposed or by a benefit granted in an unprecedented way.”<sup>3</sup>

Precedents provided the basis for governors to decide on the matters of the inhabitants of the province.<sup>4</sup> The judgements issued by imperial courts with regard to the inhabitants of the province and the emperors’ answers to legal questions (*rescriptum*) had also an impact on Roman criminal law. It seems that in determining whether the emperor’s decision was issued with the intention of establishing a future precedent, it was precisely the intention of the ruler that might be taken into account, and possibly the conviction of his successors or the opinion of his subordinate officials and judges.<sup>5</sup> What is important, the emperor’s decision could also result in abandoning the application of precedents that had been in use until then. An example to that effect was related by Pomponius in the fourth book of the *Commentary to the Writings of Sabinus*:

“A chapter of the deified Trajan’s rescript to Didius Secundus: ‘I know that by reason of the avarice of former times the property of relegated persons was claimed by the imperial

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<sup>1</sup> GLARE, P. G. W. (ed.). *The Oxford Latin Dictionary*. Oxford: Oxford University Press, 1968, p. 639.

<sup>2</sup> A different meaning of the *exemplum* in juridical sources is that of a copy, e.g., a copy of a document. They were to be found not only in official archives but also in possession of private individuals. The inhabitants of the province presented such documents to the governor in the hope that in their cases he would follow the guidelines contained in the documents. Such copies did not necessarily concern the cases that had taken place in their province. LEVAN, M. Pliny Epistles 10 and Imperial Correspondence. In: KÖNIG, A. – WHITTON, C. *Roman Literature Under Nerva, Trajan and Hadrian*. Cambridge: Cambridge University Press, 2018, pp. 286–288.

<sup>3</sup> D. 1, 4, 1, 1–2 (Ulp. 1 *inst.*): *Quodcumque igitur imperator per epistulam et subscriptionem statuit vel cognoscens decrevit vel de plano interlocutus est vel edicto praecepit, legem esse constat. haec sunt quas volgo constitutiones appellamus. Plane ex his quaedam sunt personales nec ad exemplum trahuntur: nam quae princeps alicui ob merita indulset vel si quam poenam irrogavit vel si cui sine exemplo subvenit, personam non egreditur*. English translation according to WATSON, A. *The Digest of Justinian*. Vol. I. Philadelphia: University of Pennsylvania Press, 1998.

<sup>4</sup> The discussion on the subject of rescripts and decrees treated as precedents has its long and rich history. Of the works that have been recently published one might mention, for instance, a text by DAALDER, E. *Aequum putavit imperator*. Imperial representation and juristic self-fashioning in the Decreta and Imperiales Sententiae of Julius Paulus, *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Romanistische Abteilung*, 2022, 139, pp. 149–153.

<sup>5</sup> A precedent was created by the actions of officials, who decided whether in the cases under consideration there was any resemblance to the factual state as delineated in the rescripts. This is the attitude that can be found in the summary of the text by ANDO, C. In: LOWRIE, M. – LÜDEMANN, S. *Exemplarity and Singularity: Thinking Through Particulars in Philosophy, Literature, and Law*. London: Routledge, 2015, pp. 111–122. He indicates that, in spite of the authority that the emperor enjoyed as a legislator, he was not the one to determine whether his decision would become a precedent.

treasury. But it is otherwise agreeable to my clemency, since I have left this example among the others in which I have regulated the integrity of my accounting.”<sup>6</sup>

The above passus, addressed to Didius Secundus, who most probably held the position of governor of one of the provinces, concerned the property of the persons who had been relegated.<sup>7</sup> Trajan clearly distanced himself from the practice of his predecessors in referring to the “former times”, however, he obviously had in mind a very specific emperor – Domitian.<sup>8</sup> In the preserved letters, exchanged with Pliny the Younger, governor of Bithynia and Pontus,<sup>9</sup> he used a similar pattern of rhetoric, even though he did not depreciate the activities of his predecessor in each case.

### Examples of maintaining precedents

Pliny used the term *exemplum* while he was discussing the question of the status of abandoned children<sup>10</sup> (Plin. *ep.* 10, 65). He informed Trajan that it was the case that required imperial intervention and that he himself, as governor, could not base his judgement on local precedents (*neque putavi posse me in eo, quod auctoritatem tuam posceret, exemplis esse contentum*). He reported that the case was of great importance to the whole province

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<sup>6</sup> D. 48, 22, 1 (Pomp. 4 *ad Sab.*): *Caput ex rescripto divi Traiani ad Didium Secundum: 'scio relegatorum bona avaritia superiorum temporum fisco vindicata. sed aliud clementiae meae convenit, qui inter cetera, quibus innocentiam rationum mearum temporum, hoc quoque remisit exemplum'*. SCHETTINO, M. T. Trajan's Rescript De bonis relegatorum and Plutarch's Ideal Ruler. In: STADTER, P. A. – VAN DER STOCKT, L. *Sage and Emperor: Plutarch, Greek Intellectuals, and Roman Power in the Time of Trajan (98–117 A.D.)*. Leuven: Leuven University Press, 2002, pp. 201–212.

<sup>7</sup> Relegation consisted in removing a given person from a specific city or province, or in some cases in placing a person in the compulsory place of residence. GARNSEY P. *Social Status and Legal Privilege in the Roman Empire*. Oxford: Clarendon Press, 1970, p. 116; ROBINSON, O. F. *Penal Practice and Penal Policy in Ancient Rome*. London: Routledge, 2007, p. 189. Relegation could be imposed on a temporary basis or for life and Ulpian indicates that only permanent relegation entailed the confiscation of property of the relegated person: “It is shown in certain rescripts that those relegated for a period should not be deprived of either all or part of their property.” (D. 48, 22, 7, 4 /Ulp. 10 *de off. procons.:* *Ad tempus relegatis neque tota bona neque partem adimi debere rescriptis quibusdam manifestatur*).

<sup>8</sup> For instance, in the letter regarding compulsory loans (Plin. *ep.* 10, 55) Trajan used a pompous phrase *iustitia nostrorum temporum*, which emphasizes a new quality which his rule brought to the running of the state, as opposed to the rule of emperor Domitian. Cf. LEVAN, *op. cit.*, p. 298.

<sup>9</sup> On the specificity of the Bithynia and Pontus province and the challenges that Pliny faced there, see recent GIBSON, R. *Man of High Empire: The Life of Pliny the Younger*. Oxford: Oxford University Press, 2020, pp. 190–237. The subject literature containing analyses of the correspondence with the emperor is very extensive. See for instance, STADTER, P. A. *Pliny and the Ideology of Empire: The Correspondence with Trajan*. *Prometheus*, 2006, 32, pp. 61–76; WOOLF, G. *Pliny's Province*. In: BEKKER-NIELSEN, T. *Rome and the Black Sea Region: Domination, Romanisation, Resistance*. Aarhus: Aarhus University Press, 2006, pp. 93–108; NOREÑA, C. F. *The Social Economy of Pliny's Correspondence with Trajan*. *The American Journal of Philology*, 2007, 128, 2, pp. 239–277. MORELLO, R. – GIBSON, R. K. (eds.). *Re-imagining Pliny the Younger*. *Arethusa*, 2003, 36, 2; WOOLF, G. *Pliny/Trajan and the Poetics of Empire*. *Classical Philology*, 2015, 110, 2, pp. 132–151.

<sup>10</sup> Pliny used the Greek term ἄρρητος, which had a wider meaning than only abandoned newborns, which he was writing about in the said letter. Here, however, he focused on receiving an answer to the question on the status of children who survived after being abandoned by their parents. HARDY, E. G. *Epistulae ad Traianum imperatorem cum eiusdem responsis*. London: MacMillan, 1889, p. 173.

(*ad totam provinciam*), even though the use of the word *quaestio* suggests that it was not an emergency or a crisis, but rather a problem to solve and an issue to discuss.<sup>11</sup>

In his reply Trajan admitted that it was a common problem, but after an inquiry into the matter had been made, the imperial registers were found to contain nothing that would contribute to the solving of those issues (Plin. *ep.* 10, 66).<sup>12</sup> The emperor emphasized that his predecessors had not created a universal solution for all the provinces. Such a statement should not come as a surprise as the emperors extremely rarely issued instruction with regard to the entire *Imperium Romanum*, with the exception of procedural issues. What is significant, the emperor further mentioned Domitian's letters to proconsuls Avidius Nigrinus and Armenius Broccus, emphasizing that it would be advisable to adhere to the solutions contained in them (*quae fortasse debeant*) in spite of the fact that they had not been issued for Bithynia. It therefore transpires that the research ordered by Trajan resulted in a partial success and a few documents were indeed found – those whose untidy transcripts had been referred to by Pliny. A lack of proper rescript for Bithynia meant that theoretically Pliny was not obligated to follow the stance outlined in them. Nevertheless, the tone of Trajan's letters suggested that his own solution corresponded closely to the decision made by Domitian.<sup>13</sup>

Another situation in which Pliny referred to precedents concerns the letters regarding the relocation of the graves (Plin. *ep.* 10, 68–69).<sup>14</sup> In this context, referring to the practice of imperial magistrates of the provinces (*exemplum proconsulum*),<sup>15</sup> he asked the emperor

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<sup>11</sup> BRACCI, F. *Plinio il Giovane: Epistole. Libro X. Introduzione, traduzione e commento*. Pisa: PLUS-Pisa University Press, 2011, p. 211.

<sup>12</sup> The *commentarii* referred to by the emperor were properly-ordered registers, which contained documents regarding specific issues. Cf. Tac. *ann.* 13, 43; Suet. *Dom.* 20; Plin. *ep.* 10, 95. All precedents, if they had been appropriately archived, should have ended up right there. It is also possible that the *commentarii* were part of *scrinii* of the departments of the imperial archive. Cf. Plin. *ep.* 10, 65. The departments were interconnected, forming a single space that was the archive, referred to as *tabularium principis*. SHERWIN-WHITE, A. N. *The Letters of Pliny: A Historical and Social Commentary*. Oxford: Oxford University Press, 1966. There are also attested *tabularia* in provinces – see ANDO, C. *Imperial Ideology and Provincial Loyalty in the Roman Empire*. Berkeley – Los Angeles – London: University of California Press, 2000, p. 95.

<sup>13</sup> Trajan put it in the following words: “[...] for that reason I do not think that the right to free status should be refused to those who be proved to be entitled to freedom on grounds of this kind, nor should they have to buy back their actual freedom by paying for the costs of their rearing.” (Plin. *ep.* 10, 66: [...] *et ideo nec adsertionem denegandam iis, qui ex eius modi causa in libertatem vindicabuntur puto, neque ipsam libertatem redimendam pretio alimentorum.*). English translation according to WILLIAMS, W. *Pliny: Correspondence with Trajan from Bithynia: Epistles X 15–121*. Aris & Phillips Classical Texts. Liverpool: Liverpool University Press, 1990.

<sup>14</sup> VIDMAN, L. *Étude sur la correspondance de Pline le jeune avec Trajan*. Praha: Nakladatelství Československé akademie věd, 1960, p. 65; GAUDEMET, J. La juridiction provinciale d'après la correspondance entre Pline et Trajan. *Revue Internationale des Droits de l'Antiquité*, 1964, 11, p. 343. JONČA, M. Pliny the Younger and the Problem of translatio cadaveris. *Krytyka prawa*, 2016, 8, 2, pp. 17–26.

<sup>15</sup> *Exemplum proconsulum* developed through the activity of the governors of the provinces. The procedural frameworks within which the governors were allowed to act were established at central level (cf. D. 48, 1, 12pr. /Modest. 3 *de poen.*/; D. 48, 1, 13pr. /Pap. 15 *resp.*/; D. 48, 3, 11pr. /Cels. 37 *dig.*/; D. 48, 3, 11, 1 /Cels. 37 *dig.*/; D. 48, 10, 29 /Modest. *l.S. de enucl. cas.*/), which meant that, among others, delineating the directions for actions, as well as establishing boundaries, which representatives of the central authority in the provinces should not cross (cf. D. 47, 2, 64 /Macer 2 *publ. iudic.*/; D. 48, 19, 27pr. /Callist. 5 *de cogn.*/; D. 48, 22, 6, 1 /Ulp. 9 *de off. procons.*/; D. 48, 22, 7, 1 /Ulp. 10 *de off. procons.*/; D. 48, 22, 7, 6 /

about the possibility of implementing the practices that were in use in Rome in that respect. He had primarily in mind the necessity of obtaining the approval of the College of Pontiffs.<sup>16</sup> What is interesting, in his writing to the emperor he clearly indicated that he had viewed their plea positively, but the issue was so disturbing to him that he decided to resort to the emperor – as the highest priest (*pontifex maximus*).<sup>17</sup> In his answer, Trajan ordered him to adhere to the existing local rules established by those who administered the province previously and not to emulate Roman patterns.<sup>18</sup>

As it transpires, in the examples above, the emperor ordered Pliny to maintain the application of the existing practices and to avoid solutions that would be a novelty to the province. The local customs regarding family life of the inhabitants of the province were left without undue intrusion from the side of the administration. However, as J. Harries rightly observes, in spite of the fact of establishing *lex Pompeia* for the province of Bithynia and Pontus, the boundaries would blur with time. Yet, in the times of Trajan, the changes that were to occur at later periods were still far off.<sup>19</sup> With regard to family and private matters,

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Ulp. 10 *de off. procons.*). Numerous innovative solutions which had been originally put to test in specific provinces evolved into a model to emulate across the entire state. In a similar vein, emperors' answers to legal questions had a significant impact on the development of Roman criminal law (Plin. *ep.* 10, 96–97). JOŃCA, M. (ed.). *Leksykon rzymskiego prawa karnego*. Warszawa: C. H. Beck, 2022, p. 114.

<sup>16</sup> This custom had continued since the earliest times and during the reign of Emperor Trajan it held up quite well. The epitaph belonging to an imperial freedman Marcus Ulpian from the times of Trajan says that he died on 12 August and on 3 February his remains were relocated from Selinus to Rome with the consent of the Pontiffs (CIL VI 1884: *Marco Ulpio Augusti liberto Phaedimo divi Traiani Augusti a potione item a laguna et tricliniarcha lictori proximo et a commentariis beneficiorum vixit annos XXVIII abscessit Selinunte pridie Idus Augustas Nigro et Aproniano consulibus reliquiae treiectae eius III Nonas Februarias ex permissu collegii pontificum piaculo facto Catullino et Apro co(n)sulibus dulcissimae memoriae eius Valens Augusti libertus Phaedimianus a veste bene merenti fecit*). DEBIŃSKI, A. – JOŃCA, M. – LERACZYK, I. – ŁUKA, A. *Pliniusz Młodszy. Korespondencja z cesarzem Trajanem. Komentarz*. Lublin: Wydawnictwo KUL, 2017, pp. 106–107.

<sup>17</sup> In the *Digests* one can find a text written by Ulpian which indicates that “If someone has carried bones or corpse for burial to a place belonging to somebody else, is the owner permitted to dig up or remove these remains without a decree by the priests or an order from the emperor? Labeo says he must wait to receive either the permission of the priests or the command of the emperor [...]” (D. 11, 7, 8 /Ulp. 25 *ad ed.*: *Ossa quae ab alio illata sunt vel corpus an liceat domino loci effodere vel eruere sine decreto pontificum seu iussu principis, quaestionis est: et ait labeo expectandum vel permissum pontificale seu iussionem principis [...]*).

<sup>18</sup> An interesting example regarding the issues related to the cult practices – both provincial and Roman – can be found in the letters addressing the subject of the temples. With regard to the temple of the Great Mother it was decided that there was absolutely no need to observe the principle of *religio*, “[...] since land in foreign state is incapable of undergoing the consecration which takes place under our law.” (Plin. *ep.* 10, 50: “[...] *nec te moveat, quod lex dedicationis nulla reperitur, cum solum peregrinae civitatis capax non sit dedicationis, quae fit nostro iure*.”). However, Trajan’s decision was entirely different in the case of the ground where allegedly the temple of Claudius had been erected. Trajan declared that “[...] if it was put up, even though it may have fallen down, its religious influence has filled by site.” (Plin. *ep.* 10, 71: “[...] *Nam, si facta est, licet collapsa sit, religio eius occupavit solum*.”). Cf. D. 1, 8, 6, 3 (Marci 3 *inst.*). Drawing a contemporary analogy to the above, one could refer to the principles regarding diplomatic representatives. Therefore, the ground containing the ruins of the temple of Claudius would be subject to Roman regulation. All the activities conducted within its boundaries and in relation to it should be carried out in compliance with Roman order, not the local law. DEBIŃSKI – JOŃCA – LERACZYK – ŁUKA, *op. cit.*, p. 104.

<sup>19</sup> HARRIES, J. *Legal and Literary Letter Collections*. In: KÖNIG, A. – WHITTON, C. *Roman Literature Under Nerva, Trajan and Hadrian*. Cambridge: Cambridge University Press, 2018, p. 276.

Trajan believed in the necessity of preserving the *status quo*. In a similar vein, the emperor was skeptical towards the creation of new precedents, such as, e.g., assisting specific cities with military support, which would not only entail excessive burden to the budget but would also decompose the larger military units (Plin. *ep.* 10, 77–78).<sup>20</sup>

The question of granting freedmen the full range of rights of free-born individuals, which was an emperor's prerogative, lied halfway between Roman law and local practices. In further letters (10, 72–73), Pliny turned to Trajan with regard to the issue of the so-called *restitutio natalium*.<sup>21</sup> Pliny observed that the interested persons (*postulantes*), who turned to him with a plea to find a solution, suggested that:

“[...] [he] should [himself] exercise jurisdiction in cases of children being acknowledged and having their freeborn status restored, in accordance with epistle of Domitian written to Minicius Rufus and with the precedents set by the proconsuls [...].”<sup>22</sup>

The institution of *restitutio natalis* concerned granting a freed person the rights of the free-born person. Opinions of selected jurists were included in the *Digest of Justinian* and, what is important, they agree in the matter that this privilege belongs to the emperor (D. 40, 11 *De natalibus restituendis*). In the opinion of the interested party who addressed Pliny, there was a precedent which also entitled the governor to act in similar cases. We do not know the emperor's decision and his letter merely contains an order that Pliny sends him the resolution of the senate, as to which the governor had some doubts. Restraint in taking the decision might suggest that the legal problem in question was not trivial and the solution would necessarily involve a compromise between Roman regulations and local customs. It is assumed that the institution of *restitutio natalis* could have arisen during the reign of the Nerva–Antonine dynasty,<sup>23</sup> hence it is quite probable that it was none other than Trajan who raised it to the status of a privilege bestowed solely by emperors, thus eliminating provincial practices.

### Problematic precedents

The subsequent *exempla* referred to in the correspondence concern crimes and punishments. The first case concerns Cocceianus Dio, known also as Dio Chrysostom or Golden-Mouthed.<sup>24</sup> He supervised the construction of a building, which he proposed to donate to the

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<sup>20</sup> Cf. Plin. *ep.* 10, 20.

<sup>21</sup> *Restitutio natalis* concerned granting freedmen a full range of rights of a free-born person, therefore it abolished all restrictions, including the right of patronage, contrary to *ius aureorum annulorum*, abolishing restrictions only in the public-law sphere. A consent to the *restitutio natalis* had to be given by the patron, which made him forfeit the right to succession after his freedman (D. 40, 11, 5 /Modest. 7 *reg.*/). SEELTAG, A. M. *Ius pontificium cum iure civili coniunctum: das Recht der Arrogation in klassischer Zeit*. Tübingen: Mohr Siebeck, 2014, pp. 199–212.

<sup>22</sup> Plin. *ep.* 10, 72: [...] *ut de agnoscendis liberis restituendisque natalibus et secundum epistolam Domitiani scriptam Minicio Rufo et secundum exempla proconsulum ipse cognoscerem*, [...].

<sup>23</sup> GARDNER, J. F. The Adoption of Roman Freedmen. *Phoenix*, 1989, 43, 3, p. 246. Fragment of *Legal advice* by Scaevola is the first juridical source mentioning the execution of the act of *restitutio natalis* by the emperor (D. 40, 11, 3 /Scaev. 6 *resp.*/). Although literary sources describe earlier examples of similar acts, they are presented as misuse of authority. DUFF, A. M. *Freedmen in the Early Roman Empire*. Cambridge: Clarendon Press, 1958, pp. 86–88.

<sup>24</sup> He is not an anonymous person but a philosopher who lived in the town of Prusa, whose mother was a Roman citizen and father a *peregrinus*. He received Roman citizenship probably from Domitian and he maintained close relations with Nerva. He also had good relations with Trajan and he dedicated some of his

city during the town council meeting. On hearing this, on behalf of Flavius Archippus, one Eumolpus proposed a motion to verify the finances of the investment, as in his opinion, the actual construction differed from the initial plans. Then, Pliny continues to report the incident to Trajan, stating that Eumolpus further “added [publicly] that your statue had been placed in the same building as well as the bodies of persons who had been buried, the wife and son of Dion, and he requested that I should hear the case in open court.”<sup>25</sup> With a great deal of certainty, the claim might have been motivated by personal grievances. Nevertheless, both the *crimen maiestas*,<sup>26</sup> as well as the desecration of graves (*sepulchri violatio*)<sup>27</sup> constituted very serious allegations. Pliny further reported on the steps undertaken by Dio and Eumolpus in the matter and, what is noteworthy, he claimed: “[...] I had decided that an adjournment should be granted and that you must be consulted on a matter which involved a precedent [...]”<sup>28</sup>

The precedent Pliny asked Trajan about might have concerned the issuing of an opinion by the emperor on the basis of which it would be possible to identify a catalogue of deeds that would qualify as the said crimes. There is one known example with regard to the crime of *adulterium*<sup>29</sup> from the times of Septimius Severus:

“If a girl below the age of twelve who has formally been given in marriage commits adultery and not long after at [her husband’s] house passes that age and begins to be

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works to him. SIDEBOTTOM, H. Dio of Prusa and the Flavian Dynasty. *The Classical Quarterly*, 1996, 46, 2, pp. 447–456.

<sup>25</sup> Plin. *ep.* 10, 81, 2: *Adiecit etiam esse in eodem positam tuam statuam et corpora sepulcorum, uxoris Dionis et filii, postulavitque ut cognoscerem pro tribunali.*

<sup>26</sup> Since the times of *lex Iulia de maiestate*, issued on the initiative of Augustus, the crime of *maiestas* was redefined. It then included activities threatening the external and internal security of the state, as well as all actions threatening the well-being of the ruler and his family. Those who were convicted of *maiestas* were sentenced to death (including burning alive, crucifixion, fighting wild animals, as well as *decolatio*), relegation and confiscation of property. On numerous occasions *lex maiestatis* was subject to far-reaching overinterpretations and proceedings were initiated on the basis of information delivered by people who notoriously built their fortunes on political denunciations. The court proceedings in cases of treason involving senators took place before the court of the senate (cf. Plin. *ep.* 2, 9; 3, 9; 5, 20; 6, 5; 6, 11; 6, 12. Tac. *ann.* 2, 28; 2, 29; 2, 50; 3, 10. Quint. 7, 2, 20). CHILTON, C. W. The Roman Law of Treason under the Early Principate. *The Journal of Roman Studies*, 1955, 15, 1–2, pp. 73–81; DYJAKOWSKA, M. Fund Collection through Litigation by the State Treasury in the Roman Empire (with Special Reference to the First Three Centuries A.D.). *Studia Ceranea*, 2012, 2, pp. 27–44.

<sup>27</sup> In the imperial times, the destruction of or damage to the grave was considered a crime (*crimen*), examined *extra ordinem*. With time, the catalogue of acts qualifying as *sepulchri violatio* expanded and included also obstructing burial, devastating the grave by obtaining building materials designed for the tomb, living in the tomb, burial in somebody else’s grave, and burial within the city walls (SHA Marc. Aur. 13, 3–4; PS 1, 21, 2; 1, 21, 3; D. 47, 12, 3, 5 /Ulp. 25 *ad ed. praet.*/; CTh. 9, 17, 6; Cod. Iust. 3, 44, 12). MACMULLEN, R. Judicial Savagery in the Roman Empire. *Chiron*, 1986, 16, pp. 147–166. The penalty imposed was dependent on the form of the crime and the status of the perpetrator and in extreme cases the punishment included the death penalty, condemnation to hard labour in a mine or exile. However, there were exceptions, which allowed certain people to be buried within the city walls, for instance in the case of distinguished people, the city founders. WILLIAMS, *op. cit.*, p. 130.

<sup>28</sup> Plin. *ep.* 10, 81, 5: [...] *Ego cum dandam dilationem et te consulendum existimarem in re ad exemplum pertinenti [...].*

<sup>29</sup> Apart from the main line of thought in our present discussion, an extension of responsibility onto a woman who at the time of committing an act was not yet 12 years old is an interesting issue itself. In the case of theft, Ulpian claimed that a minor commits such an act “if he be already capable of guilty intent” (D. 47, 2, 23 /Ulp. 41 *ad Sab.*/: [...] *non putamus cum impubere culpa capace aquilia agi posse. [...].*)

a wife, she cannot, as a married woman, be accused under a husband's right on account of the adultery which she committed before [she came of] age, but she can be accused as if betrothed, under the rescript of the deified Severus which is set out above."<sup>30</sup>

The above-mentioned rescript assumed the extension of criminal liability onto minors (*impuberes*), which created a precedent tightening the existing criminal policy. Nonetheless, in the case of Pliny's letter, A. N. Sherwin-White puts forward a thesis that the governor turned to the emperor with a question whether there existed a precedent in favour of Dio. The second part of the letter seems to indicate this:

"I ask you, sir, to deign to guide me especially in this kind of case, since there is in addition great public interest, as it inevitable with an issue which is both not contested and is defended by precedents."<sup>31</sup>

The governor pointed out that the *status quo* is not in public interest. Most probably, he feared that in case Dio was found guilty, numerous other allegations would be raised against other people. Additionally, it would be worth considering what exactly the precedent Pliny was mentioning referred to. Did it concern the *sepulchri violatio*? The governor's account in which he refers to the on-site verification that he conducted in the building raises some doubts as to this: "I have been to the spot myself and seen your statue also which has been placed in the library, and the site where Dion's son and wife are said to be buried, which lies in open ground which is enclosed by colonnades."<sup>32</sup> Pliny indicated that the assumption that the burial of Dio's family had indeed occurred on that estate was merely a speculation made by some people. He did not mention any external signs that the graves might be located there, such as, *e.g.*, epitaphs. Another problem in analyzing the above situation results from the fact that it is unclear whether the allegation concerns two separate crimes or whether Dio's deed was merely considered a treason – the burial of a cadaver in the proximity of a statue might have been interpreted as such.

The emperor's answer was unequivocal:

"Traianus to Plinius

You could have been in no uncertainty, my dearest Secundus, about that matter on which you decided that I should be consulted, since you were very well aware of my determination not to obtain respect for my name through inspiring men with fear or terror or through charges of treason. Accordingly, that charge which I should not allow even if it were supported by the precedents should be dropped; rather let the accounts of the building carried out under the supervision of Cocceianus Dion be examined, since the interest of the city requires it and Dion does not object, nor ought he to object."<sup>33</sup>

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<sup>30</sup> D. 48, 5, 14, 8 (Ulp. 2 *de adult.*): *Si minor duodecim annis in domum deducta adulterium commiserit, mox apud eum aetatem excesserit coeperitque esse uxor, non poterit iure viri accusari ex eo adulterio, quod ante aetatem nupta commisit, sed vel quasi sponsa poterit accusari ex rescripto divi Severi, quod supra relatum est.*

<sup>31</sup> Plin. ep. 10, 81, 8: *Te, domine, rogo, ut me in hoc praecipue genere cognitionis regere digneris, cum alioqui magna sit exspectatio, ut necesse est in ea re, quae et in confessum venit et exemplis defenditur.*

<sup>32</sup> Plin. ep. 10, 81, 7: *Ipse in re praesenti fui et vidi tuam quoque statuam in bibliotheca positam, id autem, in quo dicuntur sepulti filius et uxor Dionis, in area collocatum, quae porticibus includitur.*

<sup>33</sup> Plin. ep. 10, 82: *TRAIANUS PLINIO Potuisti non haerere, mi Secunde carissime, circa id, de quo me consulendum existimasti, cum propositum meum optime nosset non ex metu nec terrore hominum aut criminibus maiestatis reverentiam nomini meo acquirere. Omissa ergo ea quaestione, quam non admitterem, etiam si*



In his answer, the emperor focused on the accusation of treason and financial reports from the building site. He indicated that threats, inducing fear in his subjects or false accusations of *maiestas* do not fit the character of his rule and that they belong to the past. Further, he emphasized that in this case he did not order research into the archives with a view to finding appropriate documents. In the case of the rescript addressed to Didius Secundus, in which the situation also concerned “improving” the law after emperor Domitian, Trajan had prior knowledge of the precedent regarding the confiscation of the property of convicted individuals. However, here he seemed not to be interested – he clearly pointed out that even if a precedent that would be proper for the case existed, he would prohibit its application. Such a downright prohibition on the use of an *exemplum* with regard to the *lex maiestas* fits well within the narrative in which Trajan is juxtaposed with Domitian. In his *Panegyric*, Pliny emphasized on several occasions that the moment Trajan ascended the imperial throne marked the end of times when one could be accused of treason on trivial or completely spurious grounds.<sup>34</sup> Cocceianus Dio wrote in a similar vein – apparently Trajan was to promise, just as Nerva had done, that during his reign senators would not be sentenced to death.<sup>35</sup>

The present, preliminary analysis, does not take into account precedents which were not directly referred to as such by either Pliny or Trajan although other sources confirm their existence. An example of such a precedent is to be found in one of the most famous letters from the whole collection of correspondence between Pliny and Trajan – the one referring to the accusation of Christians. The letter introduced a precedent which allowed to convict the accused on the basis of his answer to one question, that would be repeated several times: whether or not they were believers in Christ (*nomen Christianum*).<sup>36</sup> Despite the fact that Pliny had already sentenced many people to death, he resorted to Trajan asking him for precedents or guidelines as to the procedure in similar cases: “[...] what the charge usually is and to what extent it is usually punished”.<sup>37</sup> On his part, the emperor confirmed that the governor’s approach was appropriate.

Nevertheless, it is worth considering the last sentence of the emperor’s answer: “[...] However, pamphlets posted up without an author’s name ought to have no place in any criminal charge. For they both set the worst precedent and are not in keeping with the spirit of our age.”<sup>38</sup> Thus, Trajan condemned initiating court proceedings on the grounds of anonymous denunciation. At the same time, it should be remembered that numerous cases were started on the grounds of *delatio*. The *delator* did not take part in court proceedings but on the basis of the information provided by him, the competent official would initiate legal action. In the times of Tiberius<sup>39</sup> or Domitian the *delatio* served the purpose of fighting political adversaries and denouncers themselves earned considerable money as

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*exemplis adiuvaretur, ratio totius operis effecti sub curatura Cocceiani Dionis excutiatur, cum et utilitas civitatis exigat nec aut recuset Dion aut debeat recusare.*

<sup>34</sup> Plin. *pan.* 42, 1.

<sup>35</sup> Dio 68, 5, 2, cf. Dio 68, 2, 3.

<sup>36</sup> Plin. *ep.* 10, 96, 3. JOŇCA, M. Pliny the Younger and Christians: an Attempt at Evaluation. *Revue církevního práva / Church Law Review*, 2020, 78, 1, p. 27.

<sup>37</sup> Plin. *ep.* 10, 96, 1: “[...] *ideo nescio, quid et quatenus aut puniri soleat aut quaeri.*

<sup>38</sup> Plin. *ep.* 10, 97, 2: “[...] *Sine auctore vero propositi libelli in nullo crimine locum habere debent. Nam et pessimi exempli nec nostri saeculi est.*

<sup>39</sup> Suet. *Tib.* 61.

a result of such practices.<sup>40</sup> In spite of their negative reception by society, the denouncers functioned under the rule of all emperors. All the attempts to impose limitations on such practices usually concerned false or, indeed, anonymous information.<sup>41</sup>

### Precedent or interpretation of the law

A different example, albeit also concerning the issues related to crime and punishment, is to be seen in the correspondence pertaining to the matter of escaped slaves. Pliny reported to the emperor that such individuals were identified among the recruits for the army. However, he postponed punishing them until he received an answer from the emperor, the creator and propagator of military discipline (*disciplina militaris*).<sup>42</sup> Explaining the reasons for his doubts, he wrote the following: “[...] So I ask you, sir, to write me about what course I should follow, especially since this would set a precedent.”<sup>43</sup> He emphasized thus the significance of future resolutions. It is worth quoting the answer in full:

“Traianus to Plinius

Sempronius Caelianus acted in obedience to my instructions in sending to you those persons who will need to be the subject of a hearing to decide whether they should be held to have deserved the capital penalty. Now it makes a difference whether they put themselves forward as volunteers or were conscripted or even offered as substitutes. If they are conscripts, it is the examination which was at fault; if they were offered as substitutes, blame lies at the door of those who offered them; if they came forward on their own initiative, when they had full knowledge of their status, they will deserve execution. For the fact that they have not yet been enrolled in the ranks is of no great importance. For that day on which they were first approved demanded that they tell the truth about their origin.”<sup>44</sup>

It is assumed that the law-making activity of governors developed, among others, through decisions they took in an *extra ordinem* courts, which dealt with new types of *crimina*. In fact, the name, however, does not imply a new type of criminal offence, as already Livy emphasized that the service in the legions was a privilege of free people, Roman citizens.<sup>45</sup> Nonetheless, it was a deed that was related to *crimina militaria*, despite the fact that it was not committed by soldiers. Arrius Menander is the author of a *passus* added to the *Digests*, in which he states: “It is reckoned a serious offence for a man, who may lawfully do so, to enlist as soldier; and [the seriousness] is increased, as with other crimes, by the status, the rank, and the type of the service.”<sup>46</sup> Marcian, in his *Codes of Law*

<sup>40</sup> Suet. *Dom.* 11. Denouncers were also referred to as *quadruplicatores* since they received a fourth part of the property of the accused.

<sup>41</sup> CTh. 9, 34.

<sup>42</sup> Cf. Plin. *pan.* 6, 2; 18, 1; Plin. *ep.* 10, 78. On the subject of the *disciplina militaris*, see BRAND, C. E. Discipline and Criminal Law. In: *Roman Military Law*. New York: University of Texas Press, 2021, p. 32–45.

<sup>43</sup> Plin. *ep.* 10, 29: “[...] *Quid ergo debeam sequi rogo, domine, scibas, praesertim cum pertineat ad exemplum.*

<sup>44</sup> Plin. *ep.* 10, 30: *TRAIANUS PLINIO Secundum mandata mea fecit Sempronius Caelianus mittendo ad te eos, de quibus cognosci oportebit, an capitale supplicium meruisse videantur. Refert autem, voluntarii se obtulerint an lecti sint vel etiam vicarii dati. Lecti si sunt, inquisitio peccavit; si vicarii dati, penes eos culpa est, qui dederunt; si ipsi, cum haberent condicionis suae conscientiam, venerunt, animadvertendum in illos erit. Neque enim multum interest, quod nondum per numeros distributi sunt. Ille enim dies, quo primum probati sunt, veritatem ab iis originis suae exegit.*

<sup>45</sup> Liv. 26, 2: *Quiritium Romanorum exercitum, honeste genitos, liberaliter educatos.*

<sup>46</sup> D. 49, 16, 2, 1 (Menen. 1 *de re milit.*): *Dare se militem, cui non licet, grave crimen habetur: et augetur, ut in ceteris delictis, dignitate gradu specie militia.* Also those persons whose status appeared doubtful should

directly referred to enslaved persons: “Slaves are forbidden all military service; otherwise, they suffer capital punishment.”<sup>47</sup> In view of the above, Trajan’s solution is less categorical towards the slaves themselves. Depending on whether they volunteered, were conscripted or were enlisted as substitutes, they were guilty themselves or the guilt lied with the official who enlisted them<sup>48</sup> or those whom they substituted. Nevertheless, the emperor’s attitude was not an act of benevolence towards the enslaved, but a willingness to punish those who approached their duties carelessly or those who avoided military service on purpose. Sempromius Caelianus could not punish the wrongdoers himself so he sent them to the governor of the province. Predicting that there might be more such cases in the future, Pliny turned to the emperor to consult him. What is significant, he postponed punishing the slaves until he received specific instruction from the emperor. In spite of the fact that Trajan differentiates between the possible status of the recruits, he is unequivocal in indicating that it must be determined whether the accused deserve the death penalty (*cognosci oportebit, an capitale supplicium meruisse videantur*).<sup>49</sup> Even though it belonged among Pliny’s duties, the emperor did not leave him any discretion as to the course of the proceedings.<sup>50</sup>

## Conclusion

The tenth book of the *Correspondence* is not an exhaustive archive and cannot be treated as a source providing a comprehensive and complete picture of Pliny and Trajan’s activities with regard to the province of Bithynia and Pontus. Therefore, on the basis of the examples analyzed above, it is not possible to draw general conclusions as to Trajan’s policy regarding locally-applied precedents. Indeed, it is virtually impossible given the various areas of law they are related to.

However, what is worth emphasizing is the idea of presenting Trajan as the best emperor in the light of Pliny’s letters. Through the letters Trajan emerges as an emperor who maintained and strengthened the application of just precedents, but he was equally adamant in abolishing the application of those which threatened Roman citizens.<sup>51</sup> It may be clearly seen in the letter to Pliny regarding Cocceianus Dio, in which Trajan was very direct in

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not do military service. D. 49, 16, 8 (Ulp. 8 *disp.*): Persons whose status is in dispute, even if they are in actual fact freemen, ought not, for the time being, to enroll the military service (*Qui status controversiam patiuntur, licet re vera liberi sunt, non debent per id tempus nomen militiae dare, maxime lite ordinata, sive ex libertate in servitutum sive contra petantur*). See also DOLGANOV, A. Documenting Roman Citizenship. In: LAVAN, M. – ALDO, C. (eds.). *Roman and Local Citizenship in the Long Second Century CE*. Oxford: Oxford University Press, 2021, pp. 185–229.

<sup>47</sup> D. 49, 16, 11 (Marci. 2 *reg.*): *Ab omni militia servi prohibentur: alioquin capite puniuntur*.

<sup>48</sup> *Inquisitores* served the function close to contemporary military recruitment committees. They checked the general health and physical form of the recruits. Papyrological sources reveal that information about recruits contained details such as names, age and height (cf. P. Oxy. VII 1022). Those were the factors taken into account in determining their capability for doing military service.

<sup>49</sup> On the subject of the phrases used by Pliny and Trajan, see COLEMAN, K. M. Bureaucratic Language in the Correspondence between Pliny and Trajan. *TAPA*, 2012, 142, 2, pp. 216–217.

<sup>50</sup> Trajan usually avoided providing definitive solutions, encouraging Pliny to undertake independent decisions. Cf. Plin. *ep.* 10, 20; 10, 68.

<sup>51</sup> Trajan’s attention to impression management or self-presentation can be clearly seen when the emperor, albeit in a few words, explains his decision. Similar strategies in the rescripts of Severus Alexander were described recently by HERZ, Z. Precedential Reasoning and Dynastic Self-Fashioning in the Rescripts of Severus Alexander. *Historia. Zeitschrift für Alte Geschichte*, 2020, 69, 1, pp. 103–125.

his statement: “[...] you were very well aware of my determination not to obtain respect for my name through inspiring men with fear or terror or through charges of treason.”<sup>52</sup> Indeed, it would be hard to be more specific in one’s message to the reader. *Optimus princeps* moves away from the policy of terror and accusations of treason (*maiestas*) and the time of persecuting political adversaries is over. The suggestions that attempts were made to eradicate precedents which had been applicable in the times of Domitian were not even really concealed. If a thesis that the letters were meant to be published during Pliny’s lifetime is true,<sup>53</sup> to the contemporary readers, Roman aristocracy, the message was evidently unmistakable. The figure of emperor Domitian is not presented in the letters in a categorically negative light, even though Pliny seems to be merely one step before expressing an absolute condemnation for the ruler.<sup>54</sup> An evidently hostile attitude towards Domitian transpires from both governor’s letters, as well as emperor Trajan’s answers. The latter emphasized on numerous occasions the new beginning and a different style of policy-making he wanted under his rule. The essence of this consciously-created and conspicuous antagonism between the times of Domitian and the times of Trajan are the words of the emperor himself, who in the case of the accused Christians stated that anonymous denunciation is among the worst types of behaviour, unworthy of the time he was the emperor (*nam et pessimi exempli nec nostri saeculi est*).

Nonetheless, if one were to make an attempt to systematize the above precedents, an overriding criterion would be that of functionality, one that synthesizes Trajan’s policy-making in the province. As a result, the *exempla* in the present work might be categorized into the following groups: *exempla* which were [a] maintained, [b] abolished and [c] created by Trajan. The above puzzle set of precedents should be supplemented by those which Pliny regarded as necessary and suggested their creation to the emperor, but which were refused by the ruler – [d] rejected precedents. Another possible categorization might be one based on the criterion of authority on whose decision the emergence of a precedent was based. In such a case, *exemplum provinciale* would be ideally illustrated by the example of relocating the graves (Plin. 10, 68–69), as well as by *restitutio natalis* (Plin. 10, 72–73). The source of all the others is the emperor. Therefore, they were created on the grounds of a decision of the central authority, even though it is noteworthy that the range of their application varied considerably.

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<sup>52</sup> Plin. *ep.* 10, 82: [...] *cum propositum meum optime nosset non ex metu nec terrore hominum aut criminibus maiestatis reverentiam nomini meo acquirere.*

<sup>53</sup> NOREÑA, *op. cit.*, pp. 239–277.

<sup>54</sup> In the *Panegyric* Pliny did not have such scruples. Domitian is presented there as a spiteful and incompetent ruler. To illustrate his opinion, Pliny argued that since Domitian was a poor sailor, he also must have been a poor commander. Plin. *pan.* 82. More on this: WATERS, K. H. The Character of Domitian. *Phoenix*, 1964, 18, 1, pp. 49–77. A justification for such a stance might be the fact that Pliny might be treated as a spokesperson for the opposition, with which he sympathized. STRUNK, T. E. Domitian’s Lightning Bolts and Close Shaves in Pliny. *The Classical Journal*, 2013, 109, 1, pp. 88–113.