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The Sanction for Parricidium in the Light of Cassiodorus' Variae – Comments on Cass., Variae 1, 18, 4 in the Light of Roman Criminal Law and Leges Romanae Barbarorum

Abstract

The traditional punishment for *parricidium* under Roman law was the *poena cullei* (“the penalty of the sack”). Its continued use in late antiquity is confirmed by the constitution of Emperor Constantin the Great later adopted in the Theodosian Code of 438 (C. Th. 9, 15, 1). It is not clear, however, whether this punishment was also applied in practice to *pars Occidentis* in the period after the abdication of Emperor Romulus Augustulus (476). The official royal correspondence preserved in Cassiodorus' *Variae* mentions the penalty of exile imposed for fratricide (Cass., *Variae* 1, 18). The aim of the study is an attempt to interpret the indicated letter of Theodoric the Great, as well as a number of other sources (the provisions of *Edictum Theoderici regis* and *Breviarium Alarici*) to reconstruct the penal policy of this ruler towards the perpetrators of *parricidium* and *homicidium*.

Keywords: parricide, homicide, *parricidium*, *poena cullei*, penalty of the sack, Theodoric the Great, Cassiodorus

Słowa kluczowe: krewnobójstwo, zabójstwo, *parricidium*, *poena cullei*, kara worka, Teodoryk Wielki, Kasjodor

1. Introductory remarks

The *Variae* of Cassiodorus is a collection of official correspondence, legal acts, and formulas of appointment to offices in Ostrogothic Italy.¹ Numerous passages in the collec-

¹ Italy under Teodoric's rule was not an independent *regnum* (despite its ruler being titled the king and *de facto* ruling as the king of the Goths and Italics) and was considered part of the Roman Empire forming a continuation of *pars Occidentis*. Cf. in particular the study by Prostko-Prostyński, *Utraeque* (especially conclusions: 202).

tion refer directly to the criminal law then in force,² either as rescripts issued by kings in response to letters sent by officials, instructions given by rulers, or acts of general application, most often referred to as edicts. In some of them, kings also refer to the crime of homicide of relatives (*parricidium*).³ The greatest interpretive problems arise in this regard from the letter of king Theodoric the Great (reigned 471–526) addressed to Domitianus and Wilias.⁴ According to its content, the sanction provided for *parricidium* was being exiled from the province.

This prompts a more detailed analysis of Theodoric's letter and an investigation into whether the sanctions for parricide in Roman law could actually be waived in the 6th century. As is well known, under Roman law, this crime was in principle punishable by death. The traditional sanction for *parricidium* was the dreaded *poena cullei* ("the penalty of the sack"), sometimes replaced by burning alive (*crematio vivi*) or sentencing for being devoured by wild animals (*damnatio ad bestias*).⁵ It is therefore necessary to analyse the reasons for which Theodoric wrote in his letter about the relatively lighter penalty of exile. This issue has not been the subject of much scientific inquiry to date, although there has been much literature on both the *parricidium* and *poena cullei*.⁶ A closer analysis of the letter, taking into account other contemporary sources (including, in particular, juridical ones), allows some insights to be made into the practice of applying Roman criminal law in the barbaric states that emerged after the fall of the Western Roman Empire.

2. Content of the Theodoric's letter and circumstances in which it was written

The letter in question is found in Book I of the *Variae*, which contains royal correspondence edited by Cassiodorus at the behest of king Theodoric the Great. The addressees of the letter are Domitianus and Wilias, whose function is not explicitly stated. The names suggest that the former was a Roman and the latter a Goth. It is sometimes assumed that they were special commissioners of the king to combat abuses in the province.⁷ However, this thesis may raise doubts – the letter analysed indicates that their responsibilities covered something more than issues of restitution of Roman property seized by

² See Vismara, "Rinvio", 364–75.

³ See Cass. *Variae* 1, 18, 4; 2, 14 (both letters come from king Theodoric the Great's chancellery, second covering entirely the issue of patricide); 9, 1 (the letter comes from king Athalaric's chancellery and is addressed to Hilderic, king of the Vandals).

⁴ *Ibid.* 1, 18, 4.

⁵ See in particular: P.S. 5, 24, 1.

⁶ It is worth noting at least some items: Brunnenmeister, *Das Tödtungsverbrechen*; Radin, "The Lex Pompeia", 119–30; Düll, "Zur Bedeutung", 361–408; Cloud, "Parricidium", 1–66; Kupiszewski, "Quelques remarques", 601–14; Fanizza, "Il parricidio", 266–89; Nardi, *L'otre*; Thomas, "Parricidium", 643–715; Lassen, "The Ultimate Crime", 147–61; Dębiński, "Poena cullei", 133–46; Egmond, "The Cock", 159–92; Amielńczyk, *Parricidium*, 139–50; Jońca, *Parricidium*; Jońca, "Poena cullei", 83–100; Biavaschi, "L'ambiguo destino", 169–86; Kranjc, "Parricidium", 5–40.

⁷ Martindale, *The Prosopography*, 370, s.v. *Domitianus* 7.

the barbarians. They were also supposed to adjudicate on criminal matters, or at least on *parricidium*. It is not clear whether it had any direct connection with the assignment mentioned in the first part of the letter.

It is also not clear which province was the area of activity of Domitianus and Wilias. The content of the letter provides only hints in this regard. It mentions the river Sontius (Isonzo). To the northeast of the river was an estate, probably one of many, that had been illegally seized by barbarians.⁸ It is not certain whether this was on the outskirts of Italy or perhaps even one of the slightly further north-eastern provinces of Theodoric's dominion.⁹ Perhaps the area of activity of Domitianus and Wilias was *Noricum Mediterraneum* or, even more likely, *Pannonia Savia*.¹⁰ For it was the area from which the Ostrogoths set out to conquer Italy,¹¹ an explicit reference to which is made in the letter (*ex quo deo propitio Sonti fluenta transmisimus, ubi primum Italiae nos suscepit imperium*). Given that around year 497 the provinces of *Pannonia Savia* and *Dalmatia* were placed under the administration of a single governor residing in Salona (*Salonae*),¹² it seems likely that the officials were sent to *Pannonia Savia*, which was a long way from the administrative centre. It is possible that Domitianus was to assume the office of governor (*praeses*), while Wilias was to be a count of the Goths (*comes Gothorum*) – these officials are known to have functioned in this province in later times.¹³ It should also be borne in mind that the whole region was in turmoil, as evidenced in other royal letters appointing Colossaeus as the new governor of neighbouring *Pannonia Sirmiensis*.¹⁴ There are even references to the murder of relatives, though rather used as a metaphor to emphasise the reprehensibility of the bloody quarrels within the local community.¹⁵ In the letter appointing Fridibad as governor of *Pannonia Savia*, the ruler explicitly threatens with

⁸ The letter does not specify exactly which barbarians are involved. Perhaps they were *Lucristani*, not known in more detail, who according to the caption of one of the letters contained in the *Variae* (Cass., *Variae* 1, 29) settled on the Isonzo river. As regards theories about that mysterious tribe in the context of archaeological excavations, see: Ciglencčki, "Insediamenti", 118.

⁹ These provinces are mentioned by Arnold, "Ostrogothic Provinces", 73.

¹⁰ On the Pannonian provinces in the light of Cassiodorus' *Variae*, see: Gračanin, "Late Antique Dalmatia", 211–73. But the author does not discuss the letter to Domitianus and Wilias.

¹¹ Papeša, "Early Mediaeval", 417.

¹² *Ibid.*; Gračanin, "Late Antique Dalmatia", 223. Salona is situated far south from Isonzo, near today's Split.

¹³ See Cass., *Variae* 5, 14, 8 dated as 523–526. As pointed out in the literature, although *Pannonia Savia* and *Dalmatia* were subject to the management of one governor, they retained the status of separate provinces and officials residing in only one of them were sent there. Gračanin, "Late Antique Dalmatia", 223.

¹⁴ See Cass., *Variae* 3, 23–4.

¹⁵ *Ibid.* 3, 23, 3: *Nosti qua te nobis conversationis sinceritate commendes, sola tibi placendi via est, si quae gerimus imiteris. aequitatem fove, innocentiam animi virtute defende, ut inter nationum consuetudinem perversam Gothorum possis demonstrare iustitiam: qui sic semper fuerunt in laudum medio constituti, ut et Romanorum prudentiam caperent et virtutem gentium possiderent. remove consuetudines abominanter inolititas: is verbis ibi potius, non armis causa tractetur: non sit coniunctum negotium perdere cum perire: abiurator alieni furtum, non animam reddat: ne plus intentio civilis rapiat quam bella consumant: scuta in hostes erigant, non parentes.* On the other hand, the king addressed directly the inhabitants of the provinces as follows: *ibid.* 3, 24, 4: [...] *deponite ferrum, qui non habetis inimicum. pessime contra parentes erigitis brachium, pro quibus constat gloriose moriendum.*

severe punishment for a number of offences, which – in addition to theft (*furtum*) and the unlawful seizure of cattle (*abigeatus*) – also mentions homicide (*homicidia*).¹⁶

Later royal correspondence – dated 523–526 – shows that Roman and barbarian societies coexisted in *Pannonia Savia*, with some barbarians coming into possession of former Roman estates.¹⁷ It seems that proprietary relationships already raised no doubt in this period, as the main problem described in later letters are fiscal issues.¹⁸

The letter addressed to Domitianus and Willias concerns several issues related to provincial governance. After the rhetorical introduction, it gives instructions concerning the restitution of Roman property unlawfully seized by barbarians, unless the claims would be time-barred due to the expiry of a thirty-year period.¹⁹ In such situations, the addressees are to dismiss the actions. It is only at the end of the letter that there is a sketchy reference to *parricidium*:

Cass., *Variae* 1, 18, 4: De percussore tantummodo, non etiam peremptore fratris, quamquam omnium communi lege damnatur solumque sit parricidium quod totius tragoediam reatus exsuperet, tamen humanitas nostra, quae sibi etiam in sceleratis locum pietatis inquirat, praesenti auctoritate definit, ut huius modi portenta provinciae finibus abigantur. nam quibus fuit exosa societas parentum, civium non merentur habere consortium, ne puri corporis iucunda serenitas nebulosis maculis polluat.

Translation: Concerning the man accused only of assaulting his brother, and not also of killing him, although he is condemned by the common law of all and only parricide would exceed so tragic a crime, nonetheless our humanity, which finds evidence for itself in an instance of criminality as much as an instance of devotion, determines by the present order that monstrosities of this nature should be driven beyond the borders of the province. For to whomever the company of family is detested, the society of citizens should not be deserved, lest the pleasant serenity of a pure civic body be polluted with dark blemishes.²⁰

At first glance, this passage may give the impression of a general instruction. It differs from the long and metaphor-rich description of the case of patricide Romulus, discussed

¹⁶ *Ibid.* 4, 49: *Districtio semper subtrahi non debet regiae iussionis, ut et audaces metus comprimat et laceratos spes futura refoveat. plerumque enim denunciata comminatio plus efficit quam poena componit. et ideo deo auspice Fridibadum locis vestris praesesse censuimus, qui abactores animalium legitima severitate coerceat, homicidia resecat, furta condemnet quietosque vos ab sceleratis ausibus reddat, quos nunc praesumptio iniqua dilacerat. vivite compositi, vivite bonis moribus instituti, nullum natio, nullum promeritus honor excuset. necesse est vindictae subiaceat qui pravis moribus obsecundat.*

¹⁷ *Ibid.* 5, 14, 6: *Antiqui barbari, qui Romanis mulieribus elegerunt nuptiali foedere sociari, quolibet titulo praedia quaesiverunt, fiscum possessi cespitis persolvere ac superindicticiis oneribus parere cogantur.*

¹⁸ This was about unfair tax burden transfer onto lower social strata by landowners. See *ibid.* 5, 14–15.

¹⁹ *Ibid.* 1, 18, 1–3: *[1] Oportet vos colere et observare iustitiam, qui aequitatem populi dicere suscepistis, quando non licet delinquere, qui alios creditur sub aequitatis regula continere, ne fiat exemplum pravum qui electus ad laudabile cognoscitur institutum. et ideo ad interrogationem vestram curavimus praebere responsum, ne per dubitationem possitis errare, nisi, quod absit, velitis excedere. [2] Si Romani praedium, ex quo deo propitio Sonti fluentia transmisisimus, ubi primum Italiae nos suscepit imperium, sine delegatoris cuiusquam pittacio praesumptor barbarus occupavit, eum priori domino summota dilatione restituat. quod si ante designatum tempus rem videtur ingressus, quoniam praescriptio probatur obviare tricennii, petitionem iubemus quiescere pulsatoris. [3] Illa enim reduci in medium volumus, quae, nostris temporibus praesumpta, damnamus, quia locus calumniandi non relinquitur, cum longi temporis obscuritas praeteritur. Cf. C. Th. 4, 14; Ed. Theod. 12.*

²⁰ As translated by M.S. Bjornlie in: Cass., *The Variae*, 53.

in the letter to Patriarch Simmachus from about the same period.²¹ However, the reference to fratricide (*non etiam peremptore fratris*) suggests that it was a specific case, perhaps in some way related to the problem of restitution of the property seized by barbarians. It is known that fratricide was only one of a number of offences which could have qualified as *parricidium* and was not a kind of “model” example of that crime (a kind of such model example would rather be patricide).²²

A more accurate reconstruction of the factual state is hindered by the perfunctoriness of the letter. Surely Domitianus and Wilias had already known some of its elements, and perhaps even at the royal court the facts of the case were considered to have already been established. Indeed, the letter does not refer to the necessity of an investigation or any instruction in that regard. It is therefore evident that it is about fratricide, but its circumstances, or even whether the act itself was committed or merely attempted (to use contemporary terminology), cannot be definitely determined. The translation proposed by M. Shane Bjornlie suggests rather attempted fratricide. However, it is also possible to interpret that fratricide was committed. The Latin term *percussor* primarily means a stabber, a murderer or even a professional assassin.²³

However, the most surprising element of the letter is the ruler's directive on the criminal sanction to be imposed on the perpetrator of the act. It seems to have been exile outside the province (*provinciae finibus abigere*). The verb *abigo* used in this context may have different meanings, which gives room for various interpretations. In legal sources, it was used, among other things, in the context of artificially causing miscarriage (abortion).²⁴ This could suggest that *abigo* means depriving the *parricidium* offender of his life. However, this raises doubts. Although from the 3rd century abortion was sometimes punished, the incrimination included the situation where abortion was carried out without the consent of child's father. Thus, the rationale was not to protect child's life but rather to protect the right of the mother's husband to have offspring. It must also be kept in mind that the level of medical knowledge of the Romans was relatively low and there was no consensus even as to whether the human foetus was a living being at all.²⁵

A simpler, because literal, interpretation of *provinciae finibus abigere* seems more plausible. It would therefore mean “expulsion out of the borders of the province”, and

²¹ See Cass., *Variae* 2, 14.

²² As an example, see the account of Martianus that lists blood and affinal relatives and other people the killing of whom was classified as *parricidium* – D. 48, 9, 1. Similarly Modestinus (D. 48, 9, 9, 1). Constantine the Great, in a constitution addressed to Verinus, vicar of Africa (C. Th. 9, 15, 1) lists first parents, then children. Father is also mentioned as first in the Visigothic *Interpretatio* to Constantine's constitution. But caution is recommended with regard to theories demonstrating etymological relation between terms *pater* and *parricidium* – see Jońca, *Parricidium*, 11–7; Biavaschi, “L'ambiguo destino”, 171. According to Pieczonka, literature sources show that the word *parricida* must be earlier than the neologism *parenticida* – Pieczonka, “Parricida”, 89–93. Nonetheless, in the same late antiquity period both terms were mutually associated, which is demonstrated by the *Etymologies* of Isidore of Seville (7th century). See Isid., *Etym.* 5, 26, 17 and 10, 226. Thus, taking into account the notion by the then educated people about the etymology of the term *parricida*, it must be concluded that if it were a question of illustrating an abstractly understood *parricidium*, Cassiodorus should have first referred to the example of patricide, not fratricide. This suggests that the fragment of the letter in question concerned a specific case.

²³ See Cic., *Phil.* 2, 29, 74; Tac., *Ann.* 2, 31. Cf. also: D. 48, 8, 1, 3; D. 48, 8, 17; P.S. 5, 23, 4.

²⁴ See D. 47, 11, 4; D. 48, 8, 8; D. 48, 19, 39. Cf. also: Zalewski, “Crimen abortionis”, 202.

²⁵ See *ibid.*, 212, footnote 50.

thus exile. This sanction was considered, for obvious reasons, to be less severe than the capital punishment.²⁶ It involved only a ban on staying in the territory of a given province, and thus was the equivalent of the Roman *relegatio*.²⁷ It is thus a lighter form of exile penalty, which in a more severe form could take the form of *deportatio*, i.e., a lifetime exile in a specific place (usually an island – *in insulam*).²⁸ Nor did it have to involve the confiscation of property.²⁹

The issue of the unexpected leniency of criminal repression in the case discussed in the letter may, of course, be linked to details, unknown to us, concerning the facts of the case of fratricide. This may have been due to the fact that the offender failed to carry out the act despite his efforts. The offender (or attempted offender) may have also fled to other parts of the province to seek rehabilitation. Theodoric's mild stance may have resulted from other questions, including his reluctance to impose harsh penalties on a representative of the provincial social elite, due to the high social tensions that can be inferred from the first part of the letter. However, it must first be determined whether it can be really ruled out that the traditional Roman punishment applicable to *parricidium* offenders was simply generally rejected in the Ostrogothic state.

In considering whether the letter in question represents a general mitigation of penal repression in the Ostrogothic *regnum* of Theodoric, one should analyse the problems of punishing homicide in late Roman law and in the so-called Roman-barbarian collections (*leges romanae barbarorum*) issued by the Gothic rulers. Theodoric was considered to be a particularly Romanised king, an enthusiast of Roman culture.³⁰ It would therefore seem that he would also respect Roman traditions in terms of criminal sanction applied to parricide. At the same time, however, account must be taken of the possible impact of the tradition of the Amali (or, more broadly, Germanic traditions), which may have influenced the ruler's criminal policy. It should also be noted that the *Edictum Theodorici regis* attributed to the ruler did not regulate the penalty for *parricidium* separately, as it did not refer explicitly to it at all. Nevertheless, taking into account the provisions contained therein, particularly those relating to *homicidium*, is important for the correct interpretation of the letter in question.

²⁶ Cf. P.S. 5, 17, 2. Paulus classified exile as the category of least severe punishment.

²⁷ Cf. Berger, *Encyclopedic*, 673, s.v. *Relegatio*. The sources lack terminological consistency with regard to the penalty of exile, and the very term *relegatio* usually means expulsion from a given area, but quite frequent is also the expression *relegatio in insulam*, understood as not a ban on staying in a given territory but deportation to a specific place (a determined island).

²⁸ Cf. in particular the account of Martianus: D. 48, 22, 5. The jurist refers therein to three forms of exile: the ban on staying in a defined area (*interdictio locorum*), the order to stay in a specific place, and deportation to an island. On the other hand, Ulpian (D. 48, 22, 7, pr.) points to two forms of the penalty of exile, using the more general term *relegatio*. He writes about *relegatio in insulam* (deportation to an island) and *simpliciter relegatio*, which means expulsion from a specific area. A peculiar kind of exile practiced in Egypt was the deportation to an oasis as a substitute of *relegatio in insulam* (D. 48, 22, 7, 5).

²⁹ Cf. D. 48, 22, 1; D. 48, 22, 4 (the fragment discusses the stricter *relegatio in insulam*).

³⁰ Cf. Saitta, “«Custodia legume civilitas est indicium»”, 391–403.

3. Penalties for *parricidium* in the *Codex Theodosianus* and in the *Breviarium Alarici (Lex Romana Visigothorum)*

As already mentioned, the traditional Roman punishment applicable to killers of their relatives was the *poena cullei*. During the late antiquity period, it was undoubtedly in use.³¹ This is evidenced by the constitution of Emperor Constantine the Great of 318 (or 319),³² addressed to the Vicar of the Diocese of Africa, Verinus. It was included in the Theodosian Code (438) as follows:

C. Th. 9, 15, 1 [Imp. Constantinus a. ad Verinum vicarium Africae]: Si quis in parentis aut filii aut omnino affectionis eius, quae nuncupatione parricidii continetur, fata properaverit, sive clam sive palam id fuerit enisus, neque gladio, neque ignibus, neque ulla alia solenni poena subiugetur, sed insutus culeo et inter eius ferales angustias comprehensus serpentum contuberniis misceatur et, ut regionis qualitas tulerit, vel in vicinum mare vel in amnem proiciatur, ut omni elementorum usu vivus carere incipiat, ut ei coelum superstiti, terra mortuo auferatur.

Translation: [Emperor Constantine Augustus to Verinus, Vicar of Africa] If any person should hasten the fate of a parent or a son or any person at all of such degree of kinship that killing him is included under the title of parricide, whether he has accomplished this secretly or openly, he shall not be subjected to the sword or to fire or to any other customary penalty, but he shall be sewed in a leather sack and, confined within its deadly closeness, he shall share the companionship of serpents. As the nature of the region shall determine, he shall be thrown into the neighboring sea or into a river, so that while still alive he may begin to lose the enjoyment of all the elements, that the heavens may be taken away from him while he is living and the earth, when he is dead.³³

The Constantine's constitution probably originally referred only to the diocese of Africa, as indicated by the person to whom it was addressed.³⁴ Vicar Verinus probably faced the problem of punishing a *parricidium* offender, perhaps doubting about the local practice of punishing the perpetrators of this crime by beheading them with a sword or burning them alive. With these doubts, he turned to the emperor,³⁵ who settled the case definitively by excluding the use of other sanctions than *culleus* and describing precisely the procedure of execution.³⁶ The constitution is an example of Constantine's attachment

³¹ Irrelevant to the problem analysed herein is the question of whether the *poena cullei* fell out of use during the Principate period and was restored only by Constantine (which could be suggested by a passage from the Sentences of Paulus: P.S. 5, 24, 1), or perhaps the practice of its application – despite the theoretical derogation with the *lex Pompeia de parricidis* – continued uninterrupted, and Constantine only excluded the application of other punishments along the *poena cullei*. In this respect, see in particular: Cloud, "Parricidium", 49–51; Fanizza, "Il parricidio", 273–4; Amielańczyk, "Zmierch", 21–3; Jońca, *Parricidium*, 252–3.

³² Cf. Seeck, *Regesten*, 167; Jońca, *Parricidium*, 210; Wiewiorowski, *Sądownictwo*, 151; Zalewski, *Humanitas*, 154 and 302; Biavaschi, "L'ambiguo destino", 169; Kranjc, "Parricidium", 26.

³³ As translated by C. Pharr in: Pharr, *The Theodosian Code*, 237.

³⁴ Jońca, *Parricidium*, 213; Zalewski, *Humanitas*, 157.

³⁵ On the process of creating imperial constitutions that were usually a response to *suggestiones* of officials sent to the ruler, see Gaudemet, *La formation*, 11–2; Honoré, "The Making of the Theodosian Code", 136–7; Harries, "Introduction", 8–11; Olszaniec, *Comites consistoriani*, 54ff; Zalewski, *Humanitas*, 24–5.

³⁶ It is also worth mentioning that the cited Constantine's constitution was also analysed in the context of the abrogation of father's *ius vitae ac necis*, though both its text and the later *interpretatio* focus on the issue of penal sanction to be applied for a *parricidium*. This question is discussed in more detail by Amielańczyk, "Zmierch", 7–24.

to traditional Roman values.³⁷ As a result of its inclusion in the Theodosian Code at the latest, it acquired the characteristics of a generally applicable law. As it is supposed in the literature on the subject, it was used in both the eastern and western parts of the Roman state.³⁸

The quoted constitution – included also in the *Breviarium Alarici regis* (*Lex Romana Visigothorum*, around 506)³⁹ – also bears a Visigothic *interpretatio*,⁴⁰ the text of which concerns the way the Constantine's law was understood in the 6th century:

Si quis patrem, matrem, fratrem, sororem, filium filiam aut alios propinquos occiderit, remoto omnium aliorum genere tormentorum, facto de coriis sacco, qui culeus nominatur, in quo cum missus fuerit, cum ipso etiam serpentes claudantur et, si mare vicinum non fuerit, in quolibet gurgite projiciatur, ut tali poena damnatus nullo tempore obtineat sepulturam.

Translation: If any person should kill his father, mother, brother, sister, son, daughter, or other near kinsman, all other kinds of tortures shall be rejected, and a sack, called a culleus, shall be made of leather, into which he shall be cast; then serpents shall be enclosed with him, and, if there should not be a neighboring sea, he shall be thrown into whatever stream there may be, so that a person condemned to such a penalty may never obtain burial.⁴¹

It is argued in the literature that the *interpretatio* on the one hand indicates that the writings of Roman *prudentes* were known, but on the other hand, the way of describing the offence and the criminal sanction, together with the precise definition of what *culleus* was, suggests that the penalty of the sack was not known in the Gothic tradition.⁴² Although formulating far-reaching conclusions based on the *interpretatio* alone is risky, in the context of the findings made by scholars in the field regarding the genesis of the *poena cullei*,⁴³ it can indeed be assumed that both the Visigoths and the Ostrogoths did not know it before their encounter with the Romans. However, the text suggests that the penalty of the sack was in use in the Visigothic state, at least since the release of the *Breviarium Alarici regis*. This is also indicated by the fact that in the *Epitomae Aegidii* – the oldest extract from the *Breviarium* prepared by monk Aegidius in the 8th century – a slightly modified *interpretatio* has been inserted, which would suggest the continued practice of application of the penalty of the sack in this period.⁴⁴

³⁷ Wiewiorowski, *Sądownictwo*, 151; Biavaschi, "L'ambiguo destino", 178; Zalewski, *Humanitas*, 304.

³⁸ Wiewiorowski, *Sądownictwo*, 152.

³⁹ Brev. Al. 9, 12 in: Haenel, *Lex Romana Visigothorum*, 186.

⁴⁰ For the *interpretationes* to the constitutions contained in the Theodosian Code, see especially: Cintio, *L'«interpretatio visigothorum»*. The author discusses also the *interpretatio* ad C. Th. 9, 15, 1: *ibid.*, 128–30.

⁴¹ As translated by C. Pharr in: Pharr, *The Theodosian Code*, 237.

⁴² Cintio, *L'«interpretatio visigothorum»*, 130. Cf. also Biavaschi, "L'ambiguo destino", 185.

⁴³ See Jońca, *Parricidium*, 235ff.

⁴⁴ Epit. Aeg. 11 in: Haenel, *Lex Romana Visigothorum*, 186: *Si quis propinquum suum occiderit, sive clam sive palam id fuerit enisus, facto de coriosacco, qui culeus nominatur, in quo quum missus fuerit, cum ipso etiam serpentes claudantur: et si mare vicinum non fuerit, in quolibet gurgite proiciatur*. On the *Epitome Aegidii* and other extracts from the *Breviarium Alarici*, see Gaudemet, *Le Breviaire*, 42ff.; Riché, *Enseignement*, 13. A monograph on the significance and reception of the *Epitome Aegidii* has recently been published: Trump, *Römisches Recht*.

However, this picture may be disturbed by the fact that the *Breviarium* also includes an extract from the Sentences of Paulus,⁴⁵ which indicates that the use of the *poena cullei* has been abandoned in favour of other ways of execution – burning alive (*crematio vivi*) and throwing to wild animals (*damnatio ad bestias*):

P.S. 5, 24, 1: Lege Pompeia de parricidiis tenentur qui patrem matrem avum aviam fratrem sororem patronum patronam occiderint, etsi antea insuti culleo in mare praecipitabantur, hodie tamen vivi exuruntur vel ad bestias dantur.

Translation: Those who kill their father or mother, grandfather or grandmother, brother or sister, patron or patroness, are liable under the *lex Pompeia de parricidiis*. Earlier they would be sewed up in a sack and thrown into the sea, now they are burned alive, or thrown to wild beasts.⁴⁶

The noticeable divergence in the content of the *Breviarium* may raise doubts as to whether the *poena cullei* was actually applied in the Visigothic state. As indicated above, it was foreign to their tribal tradition. John D. Cloud even assumed that the aforementioned passage of the Sentences was interpolated in the 6th century by compilers (or a compiler), who worked on this collection of laws at the behest of Alaric II.⁴⁷ A more moderate view was expressed by Detlef Liebs, who pointed out that the subsidiarity clause was applied here.⁴⁸ Paola Biavaschi, on the other hand, has recently presented a different position, arguing that the need to explain what *culleus* means in the *interpretatio* of the Constantine's constitution at all suggests that the penalty of the sack had to be applied by the Visigoths in practice.⁴⁹ She explains the contradiction between the Constantine's ruling and the content of the *Pauli Sententiae* merely by the auxiliary nature of a jurist's opinion and its usefulness in view of the catalogue of persons whose murder qualified as *parricidium*.⁵⁰ This thesis can be confirmed by the passage of St. Isidore of Seville, who mentions drowning⁵¹ among the methods of executing the death penalty, and describes in more detail the penalty of the sack:

Isid., *Etym.* 5, 27, 36: Culleum est parricidiale vasculum ab occulendo, id est claudendo dictum. Est autem uter ex corio factus, in quo parricidae cum simio et gallo et serpente inclusi in mare praecipitantur. Omnium autem istarum mortium genus animadversio nominatur.

⁴⁵ See also Epit. Suppl. Lat. 215 11 in: Haenel, *Lex Romana Visigothorum*, 186: *Parricida, qui patrem matrem, fratrem sororem, filium aut filiam vel alios propinquos occiderit, cum serpentibus insutus corio aut in mare aut in amne vicino iactatus, nullo unquam tempore accipiat sepulturam. In libro autem Pauli Sententiarum quinto hera XXVI. ad Legem Pompeiam omnes parricidae aut ignibus concrementur aut bestiis deputentur. Sed ibi hoc habet amplius, quia non solum interfectores parentum, sed etiam patrono a parricidii nomine et poena plectuntur.*

⁴⁶ Own translation.

⁴⁷ Cloud, "Parricidium", 51. See also: Jońca, *Parricidium*, 252–3; Zalewski, *Humanitas*, 303–4. Another position has been taken by P. Biavaschi, who maintains that the fragment of Paulus' Sentences in question refers to the practice which intensified especially in Africa in late 3rd century. Biavaschi, "L'ambiguo destino", 176–7.

⁴⁸ Liebs, "Die Kodifizierung", margin ref. no. 34.

⁴⁹ Biavaschi, "L'ambiguo destino", 182ff.

⁵⁰ *Ibid.*, 185–6.

⁵¹ Isid., *Etym.* 5, 27, 35: *In ipso quoque genere necis differt. Crudelius est enim in aqua spiritum torquentes extingui, ignibus uri, frigore et fame necari, canibus et bestiis exponi. Nam ferro mori aetas quoque maior optavit. Gladius enim sine graviore cruciatu compendiosa morte vitam finire novit.*

Translation: A *culleum* (i.e. a leather bag in which parricides were sewn up and drowned) is a container for parricides, named from covering (*occulere*), that is, enclosing. It is a bag made of skin, in which parricides were closed up along with an ape, a rooster, and a snake, and thrown into the sea. The type to which all these deaths belong is called *censura*.⁵²

It would seem that Isidore's account confirms the thesis of the vitality of the *poena cullei* in the Visigothic state as late as in the 7th century. The Bishop of Seville describes it as if it were still in use. However, one cannot pass by the doubts that arise in this regard. First of all, the animals listed by Isidore does not correspond to the content of Constantine's regulation included in the *Breviarium Alarici*. One rather gets the impression that the priest is relying on literary accounts rather than on his own observations.⁵³ The text only says about throwing the perpetrator into the sea, but does not mention rivers, which would make it much more difficult to punish perpetrators of *parricidium* tried in the Iberian interior. In this respect, it also departs from the Constantinian constitution and the later *interpretatio*, which allowed the condemned to be drowned in a river. For these reasons, it is difficult to regard St. Isidore's account as conclusive, as it can reasonably be argued that it does not concern the practice of the time, but merely refers to this author's idea of the punishment for parricide traditionally applied by the Romans.

For the sake of argument, it should be added that a collection of Visigothic royal laws, known as *Liber Iudiciorum*, probably dating from 654, prescribed for *parricidium* the capital punishment to be carried out in such a way as to reflect the mode of action of perpetrator, and thus the rule of talion (retaliation).⁵⁴ Thus, it must be assumed that the penalty of the sack was abandoned in Visigothic Spain by the mid-7th century at the latest, if it was used in practice at all. It is worth mentioning that the law which modified the punishment for parricide emphasises the reprehensibility of this act as worse than "ordinary" *homicidium*.

However, regardless of whether in the early 6th century the Visigoths punished parricides with the penalty of the sack, or alternatively used the *crematio vivi* or *damnatio ad bestias* or, finally, the penalties mentioned by Paulus replaced the traditional Roman sanction altogether. It is certain however that the perpetrator was punished by death and not by exile as mentioned in the surviving royal correspondence of Theodoric the Great.

⁵² As translated by Barney, Lewis, Beach, Berghof in: Isid., *The Etymologies*, 125.

⁵³ It is not clear, which specific work could have been a source for that Isidor's account. As regards the list of animals to be placed in the sack with the parricide, M. Jońca notes: "The serpent appears in the writings of Quintilian, Seneca the Elder, and Seneca the Younger, while Juvenalis is the only one to mention the ape. Eusebius of Caesarea writes about the dog and the viper. The *Hadriani Sententiae* contain the same catalogue of animals found in the fragment of Modestin, although in a slightly different order. Isidore of Seville omits the dog in his enumeration, as does the Byzantine chronicler Cedreno". Jońca, *Parricidium*, 262.

⁵⁴ Lib. Iud. 6, 5, 17. This specifically relates to a law of king Chindasuinth who reigned in the period 642–653.

4. Punishment for *homicidium* in the *Edictum Theoderici regis* and the *Variae* of Cassiodorus

As already mentioned, the Edict of Theodoric does not regulate the issue of the penal sanction provided for *parricidium* offenders. This act – traditionally attributed to Theodoric the Great⁵⁵ – refers only to *homicidium*:

Ed. Theod. 99: [Qui hominem sine audientia occiderit, aut occidi suaserit.] Qui hominem sine audientia, et sine potestate vel iurisdictione iudicis competentis immerito iusserit vel suaserit occidi, tanquam reus homicidii occidatur.

Translation: [Anyone who kills a man or urges that he be killed without a hearing before a judge.] Anyone who unjustly orders a man to be killed or urges that he be killed without a hearing before a judge and lacking the permission or legal authority of a judge exercising the appropriate jurisdiction, shall himself be killed as one guilty of homicide.⁵⁶

It can be concluded from the content of the *Edictum Theoderici regis* that the murderer – like the person ordering him to commit the murder and instigator – was punishable by death. Although the cited provision does not contain a directly formulated norm addressed against murderers, it would be difficult to suppose that the ruler provided for a stricter liability of a person ordering the crime (“directing perpetrator”) or instigator.⁵⁷ Due to the fact that the Edict is based on Roman law, it is worth mentioning that the Sentences of Paulus indicated that persons who ordered the murder (*mandatores*) should be treated as perpetrators.⁵⁸ Such a solution probably had its genesis in the original content of *lex Cornelia de sicariis et veneficis*, which in the case of people managing the activities of gangster groups provided for the same liability as against those loitering with weapons *necandi causa*.⁵⁹

⁵⁵ The first publisher of the edict, a Renaissance humanist, Pierre Pithou (1539–1596), did not hesitate to attribute it to king Theodoric the Great. That view was approved by numerous later researchers, for example: Savigny, *Histoire*, 36; Calasso, *Medioevo*, 74ff.; Nehlsen, “Giulio Vismara”, 246–60 (a review article on the study by G. Vismara, which criticises the thesis on Visigothic origin of the Edict of Theodoric); Cervenca in: Talamanca, *Lineamenti*, 709; König, *Edictum Theoderici*, 12ff.; Wiemer, *Theoderich*, 16–7. The origin of the text of the edict as coming from the king Theodoric the Great was first challenged by P. Rasi in a series of studies on this problem – see in particular Rasi, “Sulla paternità”; Rasi, “Ancora sulla paternità”. A fervent advocate of the concept that the edict had been issued by Theodoric II, the king of Visigoths, was G. Vismara (among numerous studies, see especially: Vismara, *Edictum*). Yet another view was formulated in more recent literature, according to which the document known as the Edict of Theodoric is in fact a private compilation of laws for the purposes of judicial practice. This was proposed by O. Licandro in *Edictum*. The dispute on the origin of the Edict is described in detail by: Raiola, “La «questione teodericianana»”, 1–12 (based on these proposed by O. Licandro before the publication of the monograph in question); Lafferty, *Law and Society*, 24ff.; Oźóg, “The Authorship”, 11–22; Oźóg, “Wstęp”, in: Oźóg, *Edykt*, VIIIff. One should agree with the conclusion stated by M. Oźóg that there is no convincing argument to firmly challenge the thesis that the Edict was issued by Theodoric the Great.

⁵⁶ As translated in: Lafferty, *The Edictum Theoderici*, 246.

⁵⁷ Although the casuistic approach of the Romans to punishing instigators is noticeable (when the crimes were not of a political nature), the literature indicates that in principle, when held liable, they faced the same sanctions as the perpetrators of the act. Amielańczyk, *Crimina*, 156; Jońca, *Rzymskie prawo*, 70.

⁵⁸ P.S. 5, 23, 10: *Mandatores caedis perinde ut homicidae puniuntur*.

⁵⁹ See Coll. 1, 3, 1; D. 48, 8, 1, pr. See Amielańczyk, *Crimina*, 155.

Analysing the terminology of the quoted provision, it should be added that it could refer to a judge exceeding his powers. The term *iusserit* (from *iubeo*) used in this regard also appears in the commentary *ad legem Iuliam de vi publica et privata*, preserved in the Sentences, when describing the abuse of judicial power.⁶⁰ However, it was not its primary purpose to punish judicial murders, since this issue is regulated separately in the Edict of Theoderic.⁶¹ The fact that the Edict starts with a whole group of provisions related to the functioning of the judiciary, intended to penalize various types of abuse,⁶² leads to the conclusion that the quoted regulation referred to every order and incitement to kill another person. It is therefore unreasonable to reduce it only to judicial murders.

The Code does not specify how the penalty is to be executed. In this respect, the earlier Roman legislation was probably applied.⁶³ This would mean the execution by beheading with a sword for people of higher status (*honestiores*), and for “commoners” (*humiliores*) by throwing to wild animals (*ad bestias*).⁶⁴ In practice, however, representatives of the social elite could expect preferential treatment. One can learn from the *Variae* of Cassiodorus that a certain Crispianus was sentenced to exile for murder.⁶⁵ On the other hand, the slaves of Stephanus, who had killed their master and left him unburied were to be punished with death.⁶⁶ Sometimes the way the ruler behaved and the degree of his severity was determined by political circumstances – for example, in the case of riots which took place during the shows, the king ordered his subjects and officials to be restrained.⁶⁷ In the case of an attempted murder committed by Procula, the wife of an unknown person close to Brandila, the king allowed her husband himself to administer justice in the first place.⁶⁸

⁶⁰ P.S. 5, 26, 1: *Lege Iulia de vi publica damnatur, qui aliqua potestate praeditur civem Romanum antea ad populum, nunc imperatorem appellentem necaverit necarive iusserit, torserit verberaverit condemnaverit inve publica vincula duci iusserit. Cuius rei poena in humiliores capitibus in honestiores insulae deportatione coeretur.*

⁶¹ Ed. Theod. 1: [*Iudex si pecuniam acceperit, ut male iudicet.*] *Priore itaque loco statuimus, ut si iudex acceperit pecuniam, quatenus adversum caput innocens contra leges et iuris publici cauta iudicaret, capite puniatur.*

⁶² See *ibid.* 1–9.

⁶³ Similarly regarding the punishment for *stuprum*. See *ibid.* 60–61, and C. Th. 9, 9, 1, and C. Th. 9, 24, 2. Concerning the *adulterium*, a clear confirmation of such practice can be found in the Edict of King Atalric. Cass., *Variae* 9, 18, 5: *Ceterum in adulteris totum districtissime volumus custodiri, quicquid divali potuit commotione decerni.*

⁶⁴ P.S. 5, 23, 1: *Lex Cornelia poenam deportationis infligit ei, qui hominem occiderit eiusque rei causa furtive faciendi cum telo fuerit, et qui venenum hominis necandi causa habuerit vendiderit paraverit, falsumve testimonium dixerit quo quis periret, mortisve causam praestiterit. Quae omnia facinora in honestiores poena capitibus vindicari placuit: humiliores vero aut in crucem tolluntur aut bestiis subiciuntur.* The literal wording of Ed. Theod. 99 rules out the admissibility of using the penalty of exile for the offences listed therein. It is hardly possible that crucifixion (*crucifixio*) was used – as regards its abandonment, see Zalewski, *Humanitas*, 336ff. According to a mention made by St. Augustine, it may be concluded that crucifixion was not used in practice in the early 5th century. August., *Serm.* 88, 9.

⁶⁵ Cass., *Variae* 1, 37; cf. also Ed. Theod. 38. The addressee of the letter filed an appeal (*petitio*) against the Vicar’s ruling, invoking the fact of acting under the *ius occidendi iuris mariti*. Although Crispianus is not titled, he supposedly came from the privileged class.

⁶⁶ Cass., *Variae* 2, 19.

⁶⁷ *Ibid.* 1, 30–33.

⁶⁸ *Ibid.* 5, 32. Procula and her husband Brandila were Goths. However, it does not seem that the scope of the husband’s authority over wife in the Gothic tradition was broad enough to sentence his wife to death.

Ultimately, however, it seems that exile was only exceptionally applied to murderers. This is confirmed both by the quoted provision of the Edict and by Theodoric's letter addressed to Ampelius and Liviritus, who were to take charge of the "province of Spain" (*provincia Hispaniae*).⁶⁹ The letter contains a guidance for proceeding by officials. It instructs, *inter alia*, as follows:

Cass., *Variae* 5, 39, 4: Homicidii scelus legum iubemus auctoritate resecari: sed quantum vehementior poena est, tanto eius rei debet inquisitio plus haberi, ne amore vindictae innocentes videantur vitae pericula sustinere. pereant itaque soli nocentes in correctione multorum, quando et hoc pietatis genus est coercere infantiam criminis, ne iuvenescat augmentis.

Translation: We order the crime of homicide to be restrained with the authority of the laws; but, however much more severe the penalty, the inquiry ought to be considered with that much more care, lest the innocent seem to endure harm to life on account of a zeal for punishment. And so, let the guilty alone fall for the correction of many, since it is even a kind of piety to imprison the crime in its infancy, lest it should increase with maturity.⁷⁰

The passage confirms the regulation from the Edict of Theodoric relating to criminal liability for murder. The general punishment was to be death, as indicated by the phrase *pereant itaque soli nocentes*. However, from other royal rulings preserved in the *Variae*, it can be inferred that, in practice, the capital punishment used to be sometimes waived due to a variety of circumstances. These include the social status of the offender (less severe criminal repression applied to the privileged classes – maybe not in principle, but as a special favour done by the ruler) and sex (the Procula case shows that lighter penalties were imposed on women).⁷¹ One can guess that the young age of the offender was of similar significance.⁷² Sometimes the ruler could also intervene in individual cases and order a deviation from the accepted practice or literal application of the law. For example, in the aforementioned case of the murder of Stephanus committed by his slaves, Theodoric showed particular severity. Not only did he sentence the perpetrators to death, but also forbade the burial of their remains, which were to be left for the vultures to prey

Roman law did not provide grounds for this either. The *ius vitae ac necis* never applied to the wife, and during the period in question it was no longer applied at all. Symptomatically, even a wife caught by her husband while committing an adultery could not be killed with impunity under the *ius occidendi* (the husband could only kill her partner) P.S. 5, 26, 4–5; Stolarek, *Adultera*, 58; Amielańczyk, *Crimina*, 119. It can be inferred from this that the king did not expect that Procula would be sentenced to death by her husband. Interestingly, the edict of king Athalaric contains a similar solution with regard to a slave cohabiting with her married owner. In such a situation, the punishment was determined by the owner's wife herself, but with the proviso that she could not sentence the slave to death. Cass., *Variae* 9, 18, 7.

⁶⁹ *Ibid.* 5, 39.

⁷⁰ As translated by M.S. Bjornlie in: Cass., *The Variae*, 235.

⁷¹ Criminal repression against men and women in Roman law, as a rule, was equally severe, though there were exceptions resulting from stereotypical perception of women as those ignorant in law, physically weaker and reckless. For more detail, see Jońca, *Rzymskie prawo*, 92–4; Jońca, s.v. *Mulier*, in: Jońca, *Leksykon*, 187–8.

⁷² On the significance of age for the possible lack of criminal liability of the offender due to the impossibility to attribute fault to him, see in particular: Kuryłowicz, "Odpowiedzialność «nieletnich»", 9–19; Kuryłowicz, s.v. *Aetas*, in: Jońca, *Leksykon*, 9–10; Amielańczyk, *Crimina*, 134–6; Jońca, *Rzymskie prawo*, 89–91.

upon.⁷³ As a side note to these considerations, referring to the discussion on the origin of the *Edictum Teodorici regis*, it is therefore worth noting that it is highly risky to infer the authorship of this collection based on discrepancies between its provisions and the royal decisions preserved in the *Variae* of Cassiodorus. This is so because the ruler pursued a very flexible policy in criminal matters.

Its manifestations can also be seen in the case of the punishment that Theodoric ordered to be imposed on the *parricidium* offender in the letter to Domitianus and Wilias analysed herein. The ruler was probably guided by some special considerations related to the specific case to be recognised by the addressees of the letter. The most likely explanation is that the king did not want to aggravate the already tense situation in the province of *Pannonia Savia*. He preferred to punish the fratricide, who may have come from among the local elite, with the milder punishment of exile. While the application of the penalty of the sack would have been a spectacular show of force, but Theodoric was clearly focused on the problem of restitution of Roman property and sorting out property relations in the province.

5. Comments on the rhetorical background of *Variae* 1, 18, 4

To confirm the thesis that the sanction described in the discussed section of the royal correspondence was only an act of individual grace of the ruler, probably motivated by political considerations, one can use, as an auxiliary measure, arguments concerning the rhetorical background of *Variae* 1, 18, 4. Cassiodorus was a highly educated man, showing both intellectual culture and literary sensibility. He consciously chose rhetorical measures that would have the intended effect in the sphere of monarch's self-presentation.

This letter underlines the monarch's *humanitas*, understood as a typical element of the royal titlature (*humanitas nostra*), but which has a specific axiological dimension. Through Cassiodorus writings, the ruler, following the example of his imperial predecessors, emphasized his graciousness and humanity, and thus certain archetypal virtues attributed to the perfect model monarch.⁷⁴ Noteworthy is also the continuation of the phrase *humanitas nostra, quae sibi etiam in sceleratis locum pietatis inquirat*. As the direct author of the letter, Cassiodorus clearly seeks to create a kind of rhetorical tension between the wickedness of the act committed by the perpetrator and the "paternal" gentleness of the king. This is evidenced by the use of the term *scelus*, which emphasizes not only the negative emotional attitude but also the moral condemnation of the act and

⁷³ Cass., *Variae* 2, 19, 3: *Vultur ipse, cui vita est cadaver alienum, tantae magnitudinis corpus, nec exiguis alitibus probatur infestum, sed magis accipitrem, vitam plumigerum avium persequentem, alis caedit, ore dilaniat totoque suo pondere periclitantibus nititur subvenire: et homines parcere nequeunt, cuius se genus esse cognoscunt. ille non vult extinguere quo poterat vesci: servi maluerunt occidere qui eos superstes consueverat enutrire. fiat ergo pastus pii vulturis, qui necem potuit crudeliter desiderare pastoris. tali potius sepulcro recipiatur, qui dominum reddidit insepultum.*

⁷⁴ Cf. Zalewski, *Humanitas*, 299–300.

its perpetrator.⁷⁵ The dishonesty of fratricide is also emphasized by the use of terms such as *percussor* (criminal, murderer, executioner), *exosus* (hated, abominable, disgusting), *macula* (flaw, something disfiguring) or *polluere* (defile, pollute). In contrast, the royal attitude is characterized by the use of the word *pietas*, which has clear religious connotations and refers to the characteristics of family relationships based on mutual affection, respect and care about the loved ones.⁷⁶ This underlines the role of Theodoric, who, on the one hand, administers justice, and, on the other, manifests his monarchic majesty through paternal care and gentleness towards his subjects.

Thus, there are no such means of expression as to the severity of the ruler, although the despicable nature of *parricidium* itself is clearly stressed. It should be remembered that this term was also sometimes treated as an insult.⁷⁷ Nevertheless, Cassiodorus purposefully highlights the horror of the crime and the tragedy of the whole situation by using the phrase *parricidium quod totius tragoediam reatus exsuperet*. It is therefore evident that literary measures are used to build a dichotomy between the moral condemnation of the offence and its perpetrator, and the extraordinary clemency of the king. Thus, the rhetorical context of that passage clearly indicates that the application of the penalty of exile in the case, irrespective of the real motivations of the ruler, was to be perceived as a special act of mercy by Theodoric.

6. Conclusions

Contrary to what may seem, the content of the letter addressed to Domitianus and Willias preserved in the *Variae* of Cassiodorus does not allow us to assume that during the reign of Theodoric the Great there was a general mitigation of penal repression for *parricidium*, consisting in abandoning the imposition of the death penalty for this crime. The penalty of exile from the province provided for in the letter referred only to a specific case. The adoption of a different interpretation would be untenable, especially in the context of the use of the death penalty for *homicidium*, which is confirmed both by the Edict of Theodoric and numerous passages of Cassiodorus' *Variae*. Also, the surviving Visigothic sources do not provide grounds to suppose that *parricidium* was punished with a more lenient punishment than death. At the same time, it is noticeable that Theodoric's penal policy – similarly to that of Roman emperors before him – was sometimes conditioned by the needs of the moment. The ruler was prone to apply stricter or milder measures, depending on the circumstances, sometimes for purely pragmatic reasons.

Unfortunately, the sources analysed herein do not allow for an unequivocal assessment of whether the *poena cullei* was used in practice in the areas under Theodoric's rule in the discussed period. Sources referring to Italy itself – especially the *Variae* of Cassiodorus – do not contain any direct information on this subject. The practice of applying previously existing penalties and frequent declarations of attachment to Roman

⁷⁵ Cf. Stachura, *Wrogowie*, 144–5.

⁷⁶ Cf. Zalewski, *Humanitas*, 114–6.

⁷⁷ Cf. Jońca, *Parricidium*, 27–8.

law may, however, suggest that parricides were still punishable with the penalty of the sack. As for the kingdom of the Visigoths (where Theodorik was regent in the years 511–526), it must be said that the preserved accounts are mutually contradictory and subject to diverse scientific interpretations. Undoubtedly, the memory of the *poena cullei* lasted until the 7th century, which is confirmed by the *Etymologies* of St. Isidore of Seville.

Bibliography

Primary sources

- Augustine [August.]. *Sermones*. In: Augustine, *Opera omnia*, vol. 5, ed. Jacques-Paul Migne. Paris: apud J.-P. Migne, 1865 [= Patrologiae Cursus Completus. Series Latina, vol. 38] [*Serm.*].
- Baviera, Giovanni, ed. *Mosaicarum et Romanarum legum Collatio*. In: *Fontes Iuris Romani Anteiustiniani*, pars secunda, ed. 2, eds. Giovanni Baviera, Ferrini Contardo, Giuseppe Furlani. Florentiae: apud S. A. Barbèra, 1940 [Coll.].
- Baviera, Giovanni, ed. *Pauli Sententiae*. In: *Fontes Iuris Romani Anteiustiniani*, pars secunda, ed. 2, eds. Giovanni Baviera, Ferrini Contardo, Giuseppe Furlani. Florentiae: apud S.A. Barbèra, 1940 [P.S.].
- Bluhme, Friedrich, ed. *Edictum Theoderici regis*. In: *Monumenta Germaniae Historica, Leges*, vol. 5. Hannoverae: impensis Bibliopoli Hahniani, 1875–1889.
- [Cassiodorus] [Cass.] *Cassiodori Senatoris Variae*. Ed. Theodor Mommsen. Berolini: apud Weidmannos, 1894.
- Cassiodorus [Cass.] *The Variae: The Complete Translation*. Transl. M. Shane Bjornlie. Oakland: University of California Press, 2019.
- Cicero, Marcus Tullius [Cic.]. “Philippica II”. In: *M. Tulli Ciceronis Orationes*, ed. Albert Curtis Clark. Oxonii: E typographeo clarendoniano, 1918 [*Phil.*].
- Haenel, Gustav, ed. *Lex Romana Visigothorum*. Lipsiae: Sumptibus et typis B.G. Teubneri, 1849.
- Isidore of Seville [Isid.]. *Isidori Hispalensis episcopi Etymologiarum sive Originum libri XX*. Ed. Wallace Martin Lindsay. Oxonii: E Typographeo Clarendoniano, 1911 [*Etym.*].
- Isidore of Seville [Isid.]. *The Etymologies of Isidore of Seville*. Transl. Stephen A. Barney, W.J. Lewis, J.A. Beach, Oliver Berghof. Cambridge: Cambridge University Press, 2006.
- Isidore of Seville [Isid.]. *O prawach*, eds. Antoni Dębiński, Maciej Jońca. Transl. Antoni Dębiński, Maciej Jońca. Lublin: Wydawnictwo KUL, 2021.
- König, Ingemar, ed. *Edictum Theoderici regis. Das Edikt Theoderichs des Großen. Das “Gesetzbuch” des Ostgotenkönigs Theoderich des Großen – Lateinisch und deutsch (Texte zur Forschung)*. Darmstadt: wbg Academic, 2018.
- Mommsen, Theodor, and Krueger, Paul, eds. *Digesta Iustiniani Augusti*. Berolini: apud Weidmannos, 1892.
- Mommsen, Theodor, and Krueger, Paul, eds. *Theodosiani libri XVI cum Constitutionibus Sirmondianis et Leges novella ad Theodosianum pertinentes*. Berolini: apud Weidmannos, 1905.
- Ożóg, Monika, ed. *Edykt króla Teodoryka*. Transl. Agnieszka Caba, Monika Ożóg. Kraków: Polska Akademia Umiejętności, 2018.
- Ożóg, Monika, Pietras, Henryk, eds. *Cassiodorus Senator. Variarum libri XII*. Transl. Anna Kołtunowska, Robert Sawa. Kraków: Wydawnictwo WAM, 2017 [=Synodi et collectiones legum, vol. 11].

- Pharr, Clyde, ed. *The Theodosian Code and Novels and the Sirmondian Constitutions: A Translation with Commentary, Glossary, and Bibliography*. Princeton: Princeton University Press 1952.
- Seeck, Otto. *Regesten Der Kaiser und Päpste für die Jahre 311 bis 476 n. Chr.* Stuttgart: J.B. Metzler, 1919 (reprint: Frankfurt am Main: Minerva, 1984).
- Tacitus, Publius Cornelius [Tac.]. *Annalium ab excessu divi Augusti libri*, ed. Charles Dennis Fisher. Oxonii: e typographeo Clarendoniano, 1906 [Ann.].
- Zeumer, Karl, ed. "Liber iudiciorum". In: *Leges Visigothorum*, ed. Karl Zeumer, Hannoverae et Lipsiae: Impensis Bibliopolii Hahniani, 1902 [*Monumenta Germaniae Historica, Leges nationum Germanicarum*, vol. 1] [Lib. iud.].

Studies

- Amielińczyk, Krzysztof. *Crimina legitima w rzymskim prawie publicznym*. Lublin: Wydawnictwo UMCS, 2013.
- Amielińczyk, Krzysztof. "Parricidium i poena cullei". In: *Crimina et mores. Prawo karne i obyczaje w starożytnym Rzymie*, ed. Marek Kuryłowicz, 139–50. Lublin: Wydawnictwo UMCS, 2001.
- Amielińczyk, Krzysztof. "Zmierzch ius vitae necisque (z badań nad prawodawstwem karnym cesarza Hadriana)". *Annales UMCS, Sectio G – Ius* 54/55 (2007/2008): 7–24.
- Arnold, Jonathan J. "Ostrogothic Provinces: Administration and Ideology". In: *A Companion to Ostrogothic Italy*, eds. Jonathan J. Arnold, M. Shane Brjornlie, Kristina Sessa, 73–97. Leiden: Brill, 2016.
- Berger, Adolf. *Encyclopedic Dictionary of Roman Law*. Philadelphia: The American Philosophical Society, 1953 (reprint: 1991).
- Biavaschi, Paola. "L'ambiguo destino della poena cullei tra sopravvivenza e innovazione". In: *Ravenna Capitale. Codice Teodosiano e tradizioni giuridiche in Occidente. La terra, strumento di arricchimento e sopravvivenza*, eds. Gisella Bassanelli Sommariva, Simona Tarozzi, Paola Biavaschi, 169–86. Dogana: Maggioli Editore, 2016.
- Brunnenmeister, Emil. *Das Tötungsverbrechen im altrömischen Recht*. Leipzig: Duncker & Humblot 1887.
- Calasso, Francesco. *Medio evo del diritto*. Vol. 1: *Le fonti*. Milano: Giuffrè, 1954.
- Ciglencečki, Slavko. "Insedamenti ostrogoti in Slovenia". *Archeologia in Frontiera* 5 (2006) (thematic issue *Goti nell'arco alpino orientale*): 107–22.
- Cintio, Lucia, di. *L'«interpretation visigothorum» al. «Codex Theodosianus» il libro IX*. Milano: Edizioni Universitarie di Lettere Economia Diritto, 2013.
- Cloud, John D. "Parricidium from the lex Numae to the Lex Pompeia de parricidiis". *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Romanistische Abteilung* 88 (1971): 1–66.
- Dębiński, Antoni. *cudzysłów górny. Poena cullei w rzymskim prawie karnym*". *Prawo Kanoniczne. Kwartalnik Prawno-Historyczny* 37, no. 3–4 (1994): 133–46.
- Düll, Rudolf. "Zur Bedeutung der poena cullei im römischen Strafrecht". In: *Atti del congresso internazionale di diritto romano*, vol. 2, 361–408. Roma: Prem. Tipografia successori F. Fusi, 1935.
- Egmond, Florike. "The Cock, the Dog, the Serpent, and the Monkey. Reception and Transmission of a Roman Punishment, or Historiography as History". *International Journal of the Classical Tradition* 2, no. 2 (1995): 159–92.
- Fanizza, Lucia. "Il parricidio nel sistema della «Lex Pompeia»". *Labeo* 25, no. 3 (1979): 266–89.
- Gaudemet, Jean. *Le Breviaire d'Alaric et les Epitome*. Milano: Giuffrè, 1965 (*Ius Romanum Medii Aevi*, Pars I, 2b aa β).

- Gaudemet, Jean. *La formation du droit séculier et du droit de l'Église aux IV^e et V^e siècles*. Paris: Sirey, 1957.
- Gračanin, Hrvoje. "Late Antique Dalmatia and Pannonia in Cassiodorus' *Variae*". *Millenium. Jahrbuch zu Kultur und Geschichte des ersten Jahrtausends n. Chr.* 13 (2016): 211–73.
- Harries, Jill. "Introduction: The Background of the Code". In: *The Theodosian Code: Studies in the Imperial Law of Late Antiquity*, eds. Jill Harries, Ian Wood, 1–16. London: Duckworth, 1993.
- Honoré, Tony. "The Making of the Theodosian Code". *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Romanistische Abteilung* 103 (1986): 133–222.
- Jońca, Maciej, ed. *Leksykon rzymskiego prawa karnego. Podstawowe pojęcia*. Warszawa: Wydawnictwo C.H. Beck, 2022.
- Jońca, Maciej. *Parricidium w prawie rzymskim*. Lublin: Wydawnictwo KUL, 2008.
- Jońca, Maciej. "Poena cullei. Kara czy rytuał?". *Zeszyty Prawnicze* 5, no. 1 (2005): 83–100.
- Jońca, Maciej. *Rzymskie prawo karne. Instytucje*. Lublin: Wydawnictwo Werset, 2021.
- Kranjc, Janez. "Parricidium and the penalty of the sack". In: *Selected Aspects of Human Life in Civil and Criminal Law*, eds. Suzana Kraljić, Damjan Korošec, Yener Ünver, 5–40. Maribor: University of Maribor Press, 2021.
- Kupiszewski, Henryk. "Quelques remarques sur le parricidium dans le droit romain classique et post-classique". In: *Studi in onore di Eudardo Volterra*, 601–14. Milano: Giuffrè, 1971.
- Kuryłowicz, Marek, "Odpowiedzialność «nieletnich» za czyny bezprawne w prawie rzymskim". In: *Postępowanie z nieletnimi. Orzekanie i wykonywanie środków wychowawczych i poprawczych*, ed. Tadeusz Bojarski, 9–19. Lublin: Wydawnictwo UMCS, 1988.
- Lafferty, Sean D.W. *Law and Society in the Age of Theoderic the Great: A Study of the Edictum Theoderici*. Cambridge: Cambridge University Press, 2013.
- Lassen, Eva M. "The Ultimate Crime. Parricidium and the Concept of Family in the Late Roman Republic and Early Empire". *Classica et Mediaevalia* 43 (1992): 147–61.
- Liebs, Detlef. "Die Kodifizierung des römischen Strafrechts im Breviar Alarichs II". *Mélanges de l'École française de Rome – Antiquité* 125, no. 2 (2013). <https://journals.openedition.org/mefra/1785?lang=en> (accessed: 10.10.2022).
- Licandro, Orazio. *Edictum Theoderici. Un misterioso caso librario del Cinquecento*. Roma: L'Erma di Bretschneider, 2013.
- Martindale, John R. *The Prosopography of the Later Roman Empire*. Vol. 2: A.D. 395–527. London: Cambridge University Press, 1980.
- Nardi, Enzo. *L'otre dei parricidi e le bestie incluse*. Milano: Giuffrè, 1980.
- Nehlsen, Hermann. "Giulio Vismara. Edictum Theoderici. Ius Romanum Medii Aevi I, 2 b aaa. Milano 1967. Gr. 8°. 191 S." *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Germanistische Abteilung* 86 (1969): 246–60.
- Olszaniec, Szymon. *Comites consistoriani w wieku IV. Studium prosopograficzne elity dworskiej cesarstwa rzymskiego 320–395 n.e.* Toruń: Wydawnictwo UMK, 2007.
- Ożóg, Monika. "The Authorship of the So-Called Edict of Theoderic". In: *Leben Zwischen und Mit den Kulturen. Studien zu Recht, Bildung und Herrschaft in Mitteleuropa*, eds. Renata Skowrońska, Helmut Flachenecker, 11–22. Toruń: Wydawnictwo UMK, 2015.
- Papeša, Anita R. "Early Mediaeval Barbarian Elements in Late Antique Southern Pannonia". In: *The Archeology of Roman Southern Pannonia: The State of Research and Selected Problems in the Croatian Part of the Roman Province of Pannonia*, ed. Branka Migotti, 415–39. Oxford: Archaeopress Publishers of British Archaeological Reports, 2012.
- Pieczonka, Joanna. "Parricida a parenticida. Hipoteza etymologiczna na podstawie żartu w pasusie Plauta Epidicus 349–351". *Czasopismo Prawno-Historyczne* 64, no.1 (2012): 89–93.
- Prostko-Prostyński, Jan. *Utraeque res publicae: The Emperor Anastasius I's Gothic Policy (491–518)*. Transl. Przemysław Znaniecki. Poznań: Wydawnictwo UAM, 2019.

- Radin, Max. "The Lex Pompeia and the Poena Cullei". *The Journal of Roman Studies* 10 (1920): 119–30.
- Raiola, Marcella. "La «questione teodericiana»: Un'ipotesi ricostruttivo-costitutiva dell' «Edictum»". *Rivista di diritto romano* 11 (2011): 1–12.
- Rasi, Piero. "Ancora sulla paternità del c.d. Edictum Theoderici regis". *Annali di storia del diritto. Rassegna internazionale* 5–6 (1961–1962): 113–36.
- Rasi, Piero. "Sulla paternità del c.d. Edictum Theoderici regis". *Archivio Giuridico* 145 (1953): 105–62.
- Riché, Pierre. *Enseignement du droit en Gaule du VI^e au XI^e siècle*. Milano: Giuffrè, 1965 (*Ius Romanum Medii Aevi*, Pars I, 5b bb).
- Saitta, Biagio. "«Custodia legume civilitas est indicium». Theoderico L'Amalo e la civiltà romana". *Antigüedad y cristianismo* 7 (1990): 391–403.
- Savigny, Carl Friedrich von. *Histoire du droit romain au Moyen Âge*. Vol. 1. Transl. Charles Guenoux. Paris: Charles Hingray, 1839.
- Stachura, Michał. *Wrogowie porządku rzymskiego. Studium zjawiska agresji językowej w Kodeksie Teodozjusza, Nowelach Postteodozjańskich i Konstytucjach Sirmondiańskich*. Kraków: Towarzystwo Wydawnicze Historia Iagellonica, 2010.
- Stolarek, Dorota. *Adultera w świetle lex Iulia de adulteriis coercendis*. Lublin: Wydawnictwo KUL, 2012.
- Talamanca, Mario, ed. *Lineamenti di storia del diritto romano*. Milano: Giuffrè, 1979.
- Thomas, Yan. "Parricidium. Le père, la famille et la cité (La lex Pompeia et le système des poursuites publiques)". *Mélanges de l'école française de Rome* 93, no. 2 (1981): 643–715.
- Trump, Dominik. *Römisches Recht im Karolingerreich: Studien zur Überlieferungs- und Rezeptionsgeschichte der "Epitome Aegidii"*. Ostfildern: Jan Thorbecke Verlag, 2021.
- Vismara, Giulio. *Edictum Theoderici*. Milano: Giuffrè, 1967 (*Ius Romanum Medii Aevi*. Pars I, 2 b aaa).
- Vismara, Giulio, "Rinvio a fonti di diritto penale ostrogoto nelle *Variae* di Cassiodoro". *Studia et Documenta Historiae et Iuris* 22 (1956): 364–75.
- Wiemer, Hans U. *Theoderich der Große und das gotische Königreich in Italien*. Berlin: Walter de Gruyter, 2020.
- Wiewiorowski, Jacek. *Sądownictwo późnorzymskich wikariuszy diecezji*. Poznań: Wydawnictwo UAM, 2012.
- Zalewski, Bartosz. „Crimen abortionis w rzymskim prawie karnym”. *Studia Prawnicze KUL* 1 (77) (2019): 201–24.
- Zalewski, Bartosz. *Humanitas w ustawodawstwie Konstantina Wielkiego. Religia – polityka – prawo*. Lublin: Wydawnictwo UMCS, 2021.