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TRIALS WITH RELIGIOUS AND POLITICAL CHARGES FROM THE PRINCIPATE TO THE DOMINATE

The aim of this paper is an analysis of different aspects of judicial trials in imperial Rome with a close relationship both to religion and to politics which include charges of fortune-telling and sorcery. All the aspects will be dealt considering supposed changes that occurred during the transition from the Principate to the Dominate. Magic and vaticination were often connected to politics and seen as a threat to the Emperor and the state. The selected sources prove that the Principate did not considerably differ from the Dominate as to the trials of this sort: Ammianus Marcellinus himself is the witness that honorati were tortured only in exceptional cases and, on the other hand, the use of judicial torture against highborn citizens is attested already for the Principate.

Keywords: Principate, Dominate, political trials, magic, political soothsaying, crimen maiestatis

The paper seeks to analyze trials where an accusation of religious character can also be understood as political or can help explain the relationship between religious and political crimes, which is why the trials concerning magic and vaticination have been chosen as the most appropriate (thus omitting trials with Christians under the Principate and heretics under the Dominate). The works of historians Cornelius Tacitus, Cassius Dio, Ammianus Marcellinus, and the collection of late ancient biographies called *Historia Augusta* will serve as prime sources of information. Due to chosen sources the period will be delimited by the reign of the Emperor Tiberius (AD 14–37)¹ and the death of the Emperor Valens by Adrianople in AD 378.

¹ Although the studies of R. S. ROGERS in the field of political trials of the Principate are extensive, they will be disregarded here for prof. Rogers doubts most of the information of Tacitus we could profit from (the charges, the sentences...) reducing a lot of causes to a dealing of the Emperors with alleged conspirators; e.g. ROGERS (1931);

We will focus only on the aforementioned sources because they provide us with the most complete information on the selected issue, though scattered references can be found in sources of other types. As to the legal sources, the Code of Theodosius will be preferred to that of Iustinianus for both its greater reliability² and the proximity to the period under consideration.

Since we are dealing with trials standing between religion and politics, the relationship between social status of defendants and their penalties proves to be a highly intriguing question.

During the reign of Tiberius five people, two men and three women, of a high social rank (senators and wives of senators) were condemned for magic and soothsaying, the fourth woman was acquitted.³ Six people, four men and two women, were condemned under Claudius, all senators (with two exceptions) and members of senatorial families,⁴ and four people, two men and probably two women under Nero.⁵

ROGERS (1933); ROGERS (1952).

² HONORÉ (1986).

³ **M. Scribonius Libo Drusus** (TAC. *ann.* 2.27–32; PIR² S 268) achieved the *praetura* in 16; **Mamercus Aemilius Scaurus** (TAC. *ann.* 6.29; PIR² A 404) was a *consul suffectus* under Tiberius (perhaps in 21); **Aemilia Lepida** (TAC. *ann.* 3.22–23; PIR² A 420) was the first spouse of Mamercus Scaurus (her first husband having been P. Sulpicius Quirinius, consul in 11 BC), a sister of M'. Aemilius Lepidus, a consul in 11, among her predecessors we find Sulla and Pompeius; **Sextia** (TAC. *ann.* 6.29; PIR² S 682) was the second wife of Mamercus Scaurus, first having been married to L. Cornelius Sulla Felix (perhaps a *frater arvalis* in 21); **Claudia Pulchra** (TAC. *ann.* 4.52; PIR² C 1116), a cousin of Agrippina Maior, was probably a daughter of M. Valerius Messalla Barbatus Appianus (a consul in 12 BC), and a spouse of P. Quintilius Varus, who was killed in the Teutoburg forest (a consul in 13 BC); **Fabia Numantina**, absolved as innocent (TAC. *ann.* 4.22; PIR² F 78), was the first wife of Plautius Silvanus (the *praetor urbanus* in 24), and perhaps also of Paulus Fabius Maximus (a consul in 11 BC).

⁴ Two *equites cognomento Petrae* (T. Pomponius Petra, a *tribunus* of the Tenth legion among other things, whose highest achievement was the *aedilitas*, was probably their relative; TAC. *ann.* 11.4; PIR² P 744); **Furius Scribonianus** (TAC. *ann.* 12.52.1–2; PIR² A 1147), a son of L. Arruntius Camillus Scribonianus (a consul in 32); **Statilius Taurus** (TAC. *ann.* 12.59; PIR² S 856), a consul in 44, the proconsul of Africa in about 52/53, T. Statilius Taurus' son (a consul in 11), on his mother's side a grandson of M. Valerius Messalla Corvinus (a consul in 31 BC); **Lollia Paulina** (TAC. *ann.* 12.22; 14.12; PIR² L 328), a daughter of M. Lollius (a consul in 21 BC), a wife of P. Memmius Regulus (Tiberius' *quaestor*, a *consul suffectus* in 31) and of the Emperor C. Caligula; **Domitia Lepida** (TAC. *ann.* 12.64–65.1; PIR² D 180), a daughter of L. Domitius Ahenobarbus (a consul in 16 BC), a sister of Cn. Domitius Ahenobarbus (a consul in 32, the Emperor Nero's father).

⁵ **P. Antei** (TAC. *ann.* 16.14–15; PIR² A 731) perhaps a *consul suffectus* under Claudius, the governor of the imperial province of Dalmatia (in 51, he was appointed gover-

Taking under consideration all the information provided by Tacitus, it seems that the persons condemned under Claudius were most guilty of the Emperor's or the Empress's personal disfavor. The charge of secret sorcery might have been very fitting when inconvenient men or women were to be disposed of (especially women who theoretically could not be accused of some crimes under the *maiestas*, such as the instigation of an armed rebellion). In the preserved part of his *Annales*, Tacitus writes about three trials for personal reasons of Agrippina the Younger (Lollia Paulina, Statilius Taurus, Domitia Lepida) and one of Claudius (Furius Scribonianus).

To sum up, according to our sources there were eight men and women tried for crimes of religious nature associated with politics under the reign of the Julio-Claudian dynasty, thus we cannot say these charges served only the purpose of destroying inconvenient women, even if it appears so when reading Tacitus' accounts on the wives of Claudius – but four men and only two women were condemned for sorcery during his reign, taking into account the partial preservation of Tacitus' work. Further we have reports about one man under the Flavians and four other under the Severans.

The penalties were mild under Tiberius, i.e. banishment.⁶ By law, it should be the *deportatio in insulam* for all of those who practiced certain forms of magic. After a legal differentiation between the *honestiores* and *humiliores* came to use,⁷ the penalty for the latter was death *ad bestias*.⁸

The initial law, Sulla's *lex Cornelia de sicariis et veneficiis*, was issued in 81 BC and comprehended various deeds intended to harm the others,

nor of Syria for the year 55 but intentionally detained in Rome); **M. Ostorius Scapula** (TAC. *ann.* 16.14–15; PIR² O 162), a *consul suffectus* in 59 (his father had governed Britannia); **Iunia Lepida** (TAC. *ann.* 16.8–9; PIR² I 861), a daughter of M. Silanus (a consul in 19) and Augustus' great-granddaughter Aemilia Lepida; **Marcia Servilia** (TAC. *ann.* 16.30–33; PIR² S 606), a daughter of Barea Soranus (a consul in 52) and a wife of Annius Pollio exiled by Nero in 65.

6 Only Libo and Scaurus and his wife committed suicide (however, before the accusation was completed and the sentence passed). Lepida was banished, Numantina acquitted, Pulchra was probably also banished. MCALINDON (1956: 115) points to the leniency of Tiberius in this sense – during the first seventeen years of his reign (which is four years more than the whole reign of Claudius) no senator was condemned to death. The number of executions under Claudius is a bit shocking, regarding Claudius' conciliation policy towards the senate and the senatorial opposition, therefore the most plausible appears MCALINDON's explanation of the obstinate hereditary opposition maintained in the aristocratic *gentes* for generations.

7 According to JONES (1968: 64), the first case of this differentiation is Dig. 48.19.15 (Hadrian's order forbidding the capital punishment of the *decuriones*).

8 *solent hodie capite puniri, nisi honestiore loco positi fuerint* (MARC. Dig. 48.8.3.5). The following list of laws concerning magic and fortune-telling will be rendered here in a simplified form with no regard to details of the chronology.

not only murder and poisoning (or sorcery).⁹ The crime of poisoning was important for political trials of the imperial era – illegal was both the preparation and administration of the poison (*Dig.* 48.8.1.1) as well as keeping and selling it with the purpose of killing someone.¹⁰ The *lex Cornelia* considered also the malice a crime which explains on the one hand many seemingly unjust cases, on the other hand it enabled accusing people known for their unfriendly attitudes to the government.¹¹

The malice instead of the result was crucial for judging the cases of harmful sacrifices during the Principate (*mala sacrificia facere habere Dig.* 48.8.13):¹² according to the rescript of Hadrianus, *in maleficiis voluntas spectatur, non exitus (Dig.* 48.8.14).¹³ Harmful (and) nocturnal sacrifices, human sacrifices, incantations, defixiones etc.¹⁴ were punished by death (*ad bestias* for the inferior classes).

In the 2nd and 3rd century AD the laws affect the acquaintance, too, *magicae artis conscii* should be thrown to beasts or crucified,¹⁵ mere knowledge of this art is illegal.¹⁶ Ulpianus states¹⁷ that *mathematici, chaldaei, arioli*

⁹ Also incendiarism, arming one's self against fellow citizens, false accusation leading to the condemnation of an innocent person, acceptance of a bribe by a judge or a magistrate, castration of a free citizen or a slave, selling slaves to the arena etc. (*Dig.* 48.8)

¹⁰ *qui venenum necandi hominis causa fecerit vel habuerit, plectitur (Dig.* 48.8.3pr.)

¹¹ *dolus pro facto accipitur (Dig.* 48.8.7). Having caused someone's death was enough for condemnation (*nihil interest, occidat quis an causam mortis praebeat; Dig.* 48.8.15).

¹² The so-called *Sentences* of Paulus (5.23) cite *senatus consulta* that exempt abortion and love potions from the unintentional, that is non-penalized deeds (*abortionis aut amatorium poculum*), sanctioning them as *mala exempla* with relegation with partial confiscation of property in the case of *honestiores*, and with the penalty *ad metalla* for *humiliores*; if death is caused, the offender is to be executed (PAUL. *sent.* 5.23.14). Similarly who administers a medicine with death as a result, should be relegated to an island (*honestior*) or executed (PAUL. *sent.* 5.23.19). Laws in chronological order also in LIEBS (1997: 146–7).

¹³ It should be noted that astrologers, Chaldeans and magicians were being banished from Rome from 139 BC almost regularly and their activities prohibited. *Aedil* Agrippa expelled them in 33 BC, *senatus consultum de mathematicis* was issued after the trial of Libo Drusus in 16 and again in 52 (after the trial of Furius Scribonianus) or in 54 (after the trial of Domitia Lepida), and in 69 that exiled them from Italy.

¹⁴ PAUL. *sent.* 5.23.15–16.

¹⁵ PAUL. *sent.* 5.23.17.

¹⁶ *non tantum huius artis professio, sed etiam scientia prohibita est (PAUL sent.* 5.23.18)

¹⁷ *Mosaicarum et romanarum legum collectio* 15.2.1 (Ulpianus, *De officio proconsulis* 7, he cites a *senatus consultum* from AD 17).

et ceteri, qui simile inceptum fecerunt ought to be banished (*aquae et ignis interdictio*), foreigners executed; *magi* in Paulus are burnt alive.¹⁸ The possessors of books of magic were being expelled to an island (*deportatio*, lower classes executed – there are specific examples in Ammianus), having had their property seized and the books burnt in a public place.¹⁹ Private vaticination and sacrifices were prohibited by Augustus in AD 11 together with questioning about anyone's death even before witnesses, Tiberius banned also the private haruspicry.²⁰

The first death sentences were passed already under Claudius²¹ and other followed under Nero (as we have seen, all the condemned were of high senatorial/equestrian ranks). However, in our sources we find the charges of magic itself very rarely,²² usually they are connected with politics, thus forming a part of the *crimen maiestatis* (political fortune-telling, attempts to poison the Emperor etc.) rather than being a religious offence. Often they were supplemented with the charge of adultery, charge *de vi publica* unusual for women stands in the case of Domitia Lepida (in 54). Special was the case of Vibia, the mother of Furius Scribonianus, who was included in the accusation of her son, even though she had already been relegated (because of the support of her husband Camillus who led the rebellion against Claudius). All the cases under Nero were tried in the tense atmosphere after the revelation of the Piso's conspiracy, in 65 and 66, so the more severe attitude is not startling.²³

According to Dio Cassius, an unknown man was sentenced to death under Domitianus for contacts with astrologers²⁴ which is the first case in selected sources we could take as an example of *capitis damnatio* for magic/soothsaying itself.

¹⁸ PAUL. *sent.* 5.23.17.

¹⁹ It happened e.g. during the reign of Valens within the continuation of the affair of *notarius* Theodorus (AMM. 29.1.41), vide infra.

²⁰ LIEBS (1997: 147); FUNKE (1967: 149–50).

²¹ Both Petrae and Domitia Lepida were executed, Statilius Taurus committed suicide, Furius Scribonianus and Lollia Paulina were sent to exile where they died shortly after (Scribonianus was probably poisoned, Paulina was compelled to commit suicide).

²² Fabia Numantina in 24, but she was acquitted, an anonymous case under Domitianus that we know nothing specific about, the first accusation of Sempronius Rufus in 205 who was punished by *deportatio in insulam* by law (vide infra).

²³ Two persons out of four committed suicide (P. Anteius by his own will immediately after the denunciation, Ostorius Scapula was compelled to), and one (Servilia Sorani) was sentenced to death.

²⁴ ὡς ἀστρολόγοις ὀμίληκός (DIO CASS. 67.12.2)

The sentences passed within aforementioned cases are of little information value as to the Emperor's attitude towards the law, because most of them were tried by the senate, except for the reign of Claudius (not Nero's – even Servilia Sorani stood before the senate). The death sentence of former *aedil* Baebius Marcellus, based on dubious testimonies which resulted from the trial of senator Apronianus,²⁵ had been passed by the senatorial court before the Emperor Severus was at least notified about the case.

It is interesting that we find the trials with religious motives from the end of the 2nd century AD (i.e. not far from the Dominate) during the time of persecuting the supporters of usurpers or the deposed, once mighty imperial officers. Such is the case of the usurper Avidius Cassius under Marcus Aurelius and the *praefectus praetorio* Plautianus under Septimius Severus; D. Liebs connects to the case of deposed Plautianus the trial of Sempronius Rufus in 205, an eunuch of Hispanic origin.²⁶ Plautianus himself prompted the Emperor Severus to depose of the followers of the defeated usurper Pescennius Niger (including his own friends) on charges of consulting the Chaldeans and astrologers about the Emperor's fate (*quasi chaldaeos aut vates de sua salute consulissent*).²⁷

Two cases of future Emperors point to the increasing danger of these kinds of charges Septimius Severus and Marcus Aurelius who were blamed for political fortune-telling and harmful magic,²⁸ Severus supposedly even tried (his accuser was crucified).²⁹

The trials during the Dominate³⁰ are characterized by Ammianus Marcellinus as immensely cruel. He accuses the investigators and judges of excessive atrocity which is sometimes attributed to their severity,³¹ another

²⁵ Apronianus himself was also condemned to an unknown penalty on the charge of political witchcraft (DIO CASS. 76.8–78.9.2).

²⁶ A poisoner and sorcerer who had been deported to an island, and rehabilitated afterwards at the court (211) where he achieved a great influence but was finally condemned as a denunciator in 217. LIEBS (1997: 148, 152), with citations of Dio.

²⁷ Hist. Aug. *Sept. Sev.* 15.5.

²⁸ Hist. Aug. *Aur.* 6.9: young Marcus was said to have prayed in front of the statue of Apollo for the death of Antoninus Pius.

²⁹ *quasi de imperio vel vates vel chaldaeos consulisset, reus factus* (Hist. Aug. *Sept. Sev.* 4.3)

³⁰ For a detailed list of the trials mentioned below vide LIEBS (1997), a sum of all ancient Roman “religious” trials, and especially FUNKE (1967: 146–175), not only about Ammianus. For a further bibliography vide FUNKE (1967), and MATTHEWS (1989: 510).

³¹ *Apronianus...iudex integer et severus* (AMM. 26.3.1)

time it is the cause of a disaster.³² Ammianus' emphasizing the cruelty of trials is well known,³³ yet we should not overrate his statements about unbelievable ferocity of some of the investigators and the Emperors in respect of historical value due to the selective methods and rhetorical qualities of his work. Cruel penalties existed already during the Principate for the inferior social classes; they were only extended toward the higher ones.³⁴ Ammianus' laments on the harsh treatment of people of the highest ranks can be considered as an example of the validity of the law for all social classes rather than a proof of the Emperor's bad relations with the senate.

Ammianus is often found an unreliable source for the study of political trials for his confused chronology³⁵ and omitting information: perhaps he did it on purpose because disclosing sensitive information from recent times was for some reasons dangerous.

Ammianus demonstrates that the waves of trials with magicians and especially soothsayers had a political motivation. The Emperors Constantius II., Valentinianus and Valens used them as a kind of protective shield against alleged or imminent conspiracies, and usurpers, common problems in the 4th century.³⁶

Already the Emperor Constantinus I. dealt with soothsaying in his laws. In the constitution from 319 he renewed the ban on the private haruspicy forbidding *haruspices* to enter private houses, not even under the pretext of a friendly visit, under pain of cremation for the *haruspex* and deportation with confiscation of property for those who consulted or paid him.³⁷ In

32 *internarum rerum atrocitas* (AMM. 28.1.14)

33 ANGLIVIEL DE LA BEAUMELLE (1992 : 91–113).

34 MATTHEWS (1989: 261–2).

35 E.g. the *vicariatus* of Maximinus – COŞKUN (2000: 82); MATTHEWS (1989: 209–211).

36 LIEBS intimates the possibility of a connection between the confession of the investigator and the accused since some investigators in the magic-trials were Christians, but in my opinion it is of no use as well as considering the imperial decrees against magic and soothsaying religiously motivated only on the basis of the Emperors' religion. FUNKE (1967: 160) shows most convincingly Ammianus portraying the trials as a persecution of the political, not religious opposition; NOETHLICH (1971: 177–8) proves that even the anti-pagan laws of the Emperor Theodosius reacted mainly to a "pagan renaissance" at the court of the usurper Eugenius.

37 *post ademptionem bonorum in insulam detrudendo* (Cod. Theod. 9.16.1–2). The denunciator should be awarded: *accusatorem autem huius criminis non delatorem esse, sed dignum magis praemio arbitramur*. The public haruspicy stayed legal: *superstitio-ni enim suae servire cupientes poterunt publice ritum proprium exercere* (Cod. Theod. 9.16.1).

addition, he restored the prohibition of harmful sorcery under severe penalties.³⁸

The law of Constantius II. from 357³⁹ no longer makes the difference between the private and public sphere or social classes: Constantius wants to punish everyone who dares to search for anyone's fortune by death⁴⁰ together with all kinds of soothsayers and magicians.⁴¹ The law states the sort of death penalty rather generally.⁴² Groundbreaking appears to be the law from 358⁴³ that equalizes magic (*magicae artes, magi*) and fortune-telling with the *crimen maiestatis (ipsam pulsant propemodum maiestatem)* emphasizing that not even the *corpora honoribus praedictorum* are immune to judicial torture in such cases (the law speaks of the imperial *comitatus*).

Ammianus' *History* is our witness that death was not always the penalty for crimes connected with magic during the Dominate.⁴⁴ Only two people were executed for a sort of political vaticination under Constantius II. (*magister peditum* Barbatio and his wife Assyria),⁴⁵ astonishingly, quite clear case of *maiestas* and magic charges against the *ex duce Phoenices* Serenianus (later *comes domesticorum*) was concluded with the absolution of the accused by the caesar Gallus⁴⁶ (otherwise blamed for cruelty by Ammianus). In another case of political vaticination (*super adipiscendo imperio*) – during the “fury” of the *notarius* Paulus Catena in Scythopolis, Palestine, portrayed with strong rhetorization by Ammianus as horrific and inhuman – mere banishment was the sentence.⁴⁷

³⁸ *eorum est scientia punienda et severissimis legibus vindicanda (Cod. Theod. 9.16.3)*

³⁹ More detailed reading about the laws of Constantius II. and other Emperors up to the beginning of the 5th c. in NOETHLICHS (1971: 63–69).

⁴⁰ *sileat omnibus perpetuo divinandi curiositas (Cod. Theod. 9.16.4)*

⁴¹ The law names *haruspices, mathematicos, hariolos, augures, vates, chaldaeos, magos et ceteros, quos maleficos ob facinorum magnitudinem vulgus appellat (Cod. Theod. 9.16.4).*

⁴² *supplicium capitis feret gladio ultore prostratus, quicumque... (Cod. Theod. 9.16.4), and hos, quoniam naturae peregrini sunt, feralis pestis absumat (Cod. Theod. 9.16.5)*

⁴³ *Cod. Theod. 9.16.6*

⁴⁴ The death sentence for *malefici* was legal only if they confessed, were convicted by a univocal evidence or conclusively apprehended in the act (*Cod. Theod. 9.40.1; Constantinus I., AD 314*).

⁴⁵ *AMM. 18.3.1–5.*

⁴⁶ Serenianus is said to have sent his slave with a hat enchanted *vetitis artibus* to an oracle to ask whether he would gain a firm and safe reign (*AMM. 14.7*). Ironically, Serenianus was later in 354 one of the executioners sent by Constantius to kill Gallus (*PLRE I, Serenianus*, 825).

⁴⁷ Ammianus writes about *lata fuga* for Simplicius, a son of the *praefectus praetorio*

On the other hand, people were often being condemned for nocent or potentially nocent magic, because they owned a healing amulet or were seen passing by a graveyard in the night (illegal and punished already during the Principate).⁴⁸ A new law⁴⁹ against night, black and nocent magic⁵⁰ with a “proper” penalty for its offenders⁵¹ was issued by the Emperors Valentinianus I. and Valens. They banned activities of astrologers (*mathematici*) during the day and night under penalty of death for them and those who would like to learn their art.⁵² To be sure about their motives, the Emperors exempted haruspicy (371) from prohibited arts as a part of religion of the ancestors,⁵³ except for the harmful one.⁵⁴

There are many cases of executions for crimes listed above in Ammi-
 anus, especially from the lowest social classes, such as the *auriga* Hilarinus during the urban prefecture of L. Turcius Apronianus (362–4) who gave his son as an apprentice to a poisoner/sorcerer (*venefico*). Crimes like this were severely prosecuted: the right of asylum in a church was violated during Hilarinus’ flight from the executioner’s hands. At the same time there was a senator who taught his slave magic and escaped perhaps the same penalty using a bribe.⁵⁵ It should be noted that Hilarinus was beheaded (*abscisa cervice consumptus est*) despite being only a charioteer. Another charioteer, Athanasius, was sentenced (at first conditionally) to be burnt for using arts of a poisoner/sorcerer (*veneficiis usum*).⁵⁶ For suspicious magic techniques used for healing a stomach in public baths, a young man was tortured and beheaded in Gallia, obviously of a low social status,⁵⁷ and an old woman was guilefully executed for using magical practices on the daughter of the

Flavius Philippus (PLRE I, Simplicius₄, 843), and *exilium* for the *ex praefecto Aegypti* Parnasius (PLRE I, Parnasius₁, 667–8). Only the philosopher Demetrius Cythras was tortured, even though the Emperor ordered it for Simplicius, too.

48 AMM. 19.12.

49 From AD 370 or 373.

50 *nocturnis temporibus aut nefarias preces aut magicos apparatus aut sacrificia funesta* (Cod. Theod. 9.16.7)

51 *competenti animadversione mactari* (Cod. Theod. 9.16.7)

52 *neque enim culpa dissimilis est prohibita discere quam docere* (Cod. Theod. 9.16.8)

53 *neque ipsam aut aliquam praeterea concessam a maioribus religionem genus esse arbitror criminis* (Cod. Theod. 9.16.9)

54 *nocenter exerceri vetamus* (Cod. Theod. 9.16.9)

55 AMM. 26.3.1–4.

56 AMM. 29.3.5.

57 AMM. 29.2.28.

proconsul Festus even though she used them with his approval.⁵⁸ The *notarius* Faustinus wanted to heal his weak hair with spells, as well, and he killed a donkey for that purpose but for some additional talks about the Emperor he, a Nigrinus, and many others were condemned to death.⁵⁹ The death sentence was the penalty for a marriage achieved through magic (*artibus pravis affectasse coniugium*) as indicated by the trial of *causarum defensor* Marinus whose cause was perhaps not tried as prudently⁶⁰ as for instance the Apuleius' one some two hundred years ago. Furthermore, black magic and adultery was the cause of execution of the *vicarius Romae* Aginatus.⁶¹

For the higher ranks there was still the *exilium* (in spite of the strictness of Constantius' law): young Lollianus, a son of the *ex praefecto Urbis* Lampadius,⁶² had been first sentenced to exile for copying a book on magic, but on the advice of his father he appealed unto the Emperor who sent him to be executed.⁶³ It was possible to disprove the charges as shows the case of a group of senators in Amm. 28.1.27 which stood before the court of the *vicarius* Maximinus for its support of a charioteer suspected of sorcery and was acquitted for the lack of evidence (and an intercession of a friend).

Many nobles were being sent into exile for charges of political magic and soothsaying: this time after a successful appeal the *ex proconsule Africae* Hymetius was sentenced by the senate into exile for *maiestas*⁶⁴ and sacrifices for placating the Emperor;⁶⁵ the *ex vicario Britanniarum* Alypius was exiled and his property confiscated, his son Hierocles had been sentenced to death but was later pardoned.⁶⁶ Both of them were sued for poisoning/sorcery⁶⁷ – the sentence of the charioteer Athanasius and two senators charged under the *vicarius* Maximinus demonstrates, how severe the punishment

58 AMM. 29.2.26.

59 Nigrinus asked Faustinus to make him a *notarius*, and Faustinus replied that he must make him an Emperor first (AMM. 30.5.11–12).

60 *transeunter indiciorum fide discussa* (AMM. 28.1.14)

61 [*Anepsia*]...*appetitam se nefarii artibus sibi vim in domo Aginati perpersam asseveravit* (AMM. 28.1.50).

62 C. Ceionius Rufius Volusianus (PLRE I, Lollianus, 511–2).

63 AMM. 28.1.26. LIEBS (1997: 155) thinks that the father was executed, too.

64 *quaedam invectiva...in principem* in a letter. He was called back after the emperor Valentinianus' death (PLRE I, Iulius Festus Hymetius, 447).

65 It was probably a common excuse for suspicious sacrifices made in private houses of the nobility – the same accusation appeared already in the trial of Servilia Sorani under Nero.

66 AMM. 29.1.44.

67 *Alypius...ut veneficus reus citatus est cum Hierocle filio adolescente*

could be.⁶⁸ “Many relatives” of those already sentenced had their property confiscated, were tortured and executed during the denunciatory activity of Palladius within the continuation of the trials around the Theodorus’ affair – they were being charged with harmful magic – all unjustly, according to Ammianus – because Palladius had managed to convey some nocent spells secretly to their houses to be found there.⁶⁹

The confiscation of property only was used against those whose charge of political scheming through vaticination was not supported sufficiently by the evidence,⁷⁰ in exceptional instances the death sentence could be changed into mere confiscation.⁷¹

There are instances when the accused were tortured and executed in an inhuman manner, but we can say it was happening only to a certain degree of social status. If we disregard Ammianus’ rhetorical comment of general nature on maltreating and horrible questioning of high-ranking dignitaries in the great causes of the second half of the 4th century,⁷² we can conclude that people usually tortured and beaten during the investigations were mostly *haruspices*, fortune-tellers, interpreters of horoscopes, and persons referred to by the indefinite pronoun *quidam*.⁷³ In addition to these, were the *praeses* Fidustus (Theodorus’ affair, charged with political fortune-telling)⁷⁴ and the *notarius* Faustinus were tortured; the *consiliarius* of the African proconsul Hymetius Frontinus was sent to exile for assisting in some nefarious sacrifices having been beaten by rods.⁷⁵ Even the torturing of the *vicarius Asiae* Euserius might have been legal, if we turn our attention to

68 Paphius and Cornelius, they confessed and were executed, together with a *procurator monetae* (AMM. 28.1.29).

69 AMM. 29.2.1. Other people thought they would divert the same fortune from themselves burning whole libraries (AMM. 29.2.4). Based on the traditionally positive approach to magic in the Eastern provinces of the Empire (including North Africa), it should not be excluded that many of these persons may in fact have owned items linked to magical rites.

70 *consuluisse et agitasse quaedam super imperio*; AMM. 29.2.9; the accused were former consuls, they were later pardoned (PLRE I, Flavius Hypatius, 448–9).

71 AMM. 29.2.5: the cause of the rich *notarius* Bassianus who contended he had asked the oracle about his unborn child, not the Emperor – but any questioning of an oracle was in that time (371–2) already forbidden.

72 *dignitatibus et nobilitate conspicui* (AMM. 29.1.12)

73 AMM. 29.2.27.

74 *Praesidialis* in Ammianus (AMM. 29.1.6.; PLRE I, Fidustus, 337).

75 *concisus virgis ablegatus est in exilium* (AMM. 28.1.21)

the decree of Constantinus I. (AD 316) that long ago deprived everyone of the privileges of his rank before the court in criminal cases.⁷⁶

Other forms of the death penalty consisted of burning alive or beating by leaden whip.⁷⁷ All the defendants in Theodorus' cause were, according to Ammianus, strangled – most of them being obviously soothsayers, philosophers⁷⁸ and *haruspices*, two *palatini* and the *notarius* Theodorus.⁷⁹

Generally we can state that our research based on Ammianus' *History* for the Dominate has revealed that there was not such a great difference in the attitude of the government to the problem studied between the Principate and the Dominate.

According to sources which focus on the events in the highest spheres, magic and soothsaying were usually tightly connected to politics in both periods. Political fortune-telling was regarded dangerous to the state and was often being banned with increasing severity – it was punished by death as *maiestas* already under Claudius. The political meaning was further emphasized by the Christian Emperors Constantinus I., Valentinianus I. and Valens who prohibited all sorts of fortune-telling and magic exempting only haruspicy as a part of pagan religion.

The punishment of religious and political crimes did not differ much in the Dominate and the Principate. Not all penalties were cruel or illegal, the defendants had the opportunity to appeal unto the Emperor (not always to a better result), they could be absolved or pardoned, *honestiores* could be sent into exile. Note that the first to torture free citizens (senators and equestrians) was the Emperor Nero during the investigation of the Pisonian conspiracy. From Ammianus results that the people tortured or executed in a horrifying manner (burning, beating to death) in the 4th century were *haruspices*, philosophers and similar, dignitaries and officials in exceptional cases (Theodorus' affair). Based on the various examples it seems that equal punishments were applied throughout the society against magical rites themselves and those associated with politics – by the law of Constantinus II. (AD 358) everything that had to do with magic constituted a part of the *crimen maiestatis*.

⁷⁶ *Cod. Theod.* 9.1.1: ...*Omnem enim honorem reatus excludit, cum criminalis causa et non civilis res vel pecuniaria moveatur.* For a detailed explication of Ammianus' confusion over the senatorial rights vide COŞKUN (2000).

⁷⁷ AMM. 28.1.29.

⁷⁸ They may have had something to do with haruspicy and astrology, too, as MACMULLEN (1966: 135–9) examines.

⁷⁹ AMM. 29.1.38.

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RESUMÉ

Magie a věštění se za principátu i dominátu spojovaly velmi často s politikou. Věštění bylo považováno za státu nebezpečnou činnost, bylo opakovaně zakazováno pod tresty, které se s postupem doby zpříšňovaly, jako *maiestas* se v některých případech trestalo smrtí už za císaře Claudia. Podle zkoumaných právních a narativních pramenů, které se z větší části vyjadřují k dění v nejvyšších společenských kruzích, vyplývá, že mezi principátem a dominátem neexistovaly přílišné rozdíly, pokud jde o procesy s *maiestas* zasahující do náboženské sféry. Tresty za dominátu nebyly vždy kruté ani protizákonné, obžalovaní měli možnost se odvolat k císaři, dosáhnout zproštění obžaloby/milosti a pro vyšší vrstvy byl stále ještě používán trest vyhnanství. Naopak k mučení senátorů a jezdců přistoupil s velkou pravděpodobností už císař Nero při vyšetřování Pisonova spiknutí, v Ammianem citovaných případech k němu docházelo u osob typu haruspiků nebo filozofů, u hodnostmi nadaných se vyskytovalo ve výjimečných případech *maiestatis*, jako byl monstrproces kolem *notaria* Theodora.