

THE LEGAL BACKGROUND OF THE “GREAT PERSECUTION”

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Abstract

The name “Great Persecution” is the term used to identify the largest campaign of the Roman state launched against Christians in the 4th century; the name itself refers to the fact that the state set the complete elimination of Christianity as its priority goal in this period. It should be noted here that Christianity had spread in all provinces of the empire by this period and it was practically a state within the state, posing a real threat to the existence of the Roman religion and the unity of the society. For the explanation of why the Roman state introduced measures affecting religious life, it is indispensable to review the religious system of the Roman people and its role as we can only find an explanation for the legal instruments applied by the Roman authorities for almost three centuries against this background.

Keywords: Christianity, Diocletian, edicts, sacrifice, obligation

1. Introduction

According to István Hahn, the Roman religion was a so-called “lawyer’s” religion, which assumed some kind of contractual relationship between the gods and the people. The rules regulating the Roman religion and the clergy constituted part of the *ius publicum* (Roman public law), which also explains why official bodies holding priestly positions acted as law enforcement authorities against Christians according to some contemporary sources. The acceptance of foreign cults in the Roman religious system was the result of a public law decision so the Roman state declared a fierce fight against cults that were not officially accepted.¹ One example of this is the procedure conducted in 186 BC, the so-called Trial of the Bacchanalia, which resulted in expelling the representatives of the foreign religion, banning their ceremonies, and ordering their religious documents to be burnt, as reported by Livy.² Christianity, however,

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¹ BAJÁNHÁZI István: Az antik Róma vallási rendszere, *Publicationes Universitatis Miskolcensis Sectio Juridica et Politica*, Tomus XXXI. (2013), 9.

² Cf. LIVY 3.25.1. “When the aediles and the triumvirs supervising public order, whom the senate had severely scorned for they did not act against the phenomenon, made an attempt to remove this crowd from the Forum and have the sacrificial tools taken away, were very nearly assaulted. And as this aberration had obviously become too excessive for the officials of lower rank to eliminate it, the senate trusted city praetor M. Aemilius to free these people from the superstitions. At the general assembly, he read the decree of the senate and ordered that everybody who possessed books of oracle, prayers or any written act of sacrifice should submit all such books and writings before the Calends of April; and that no one should offer sacrifice on public or sacred ground after new or foreign rites.” 6.39.16. “to search for and burn books of divination; and to abolish every mode of sacrificing that was not conformable to the Roman practice. For they, who had a thorough knowledge of every divine and human law, maintained that nothing tended so strongly to the subversion of religion as foreign sacrifices.”

proved to be much more dangerous over the centuries as an “unaccepted” religion, against which the previous legal instruments, which increased the number of martyrs but could not prevent the spread of Christianity, turned out to be ineffective. Nevertheless, the measures of Emperor Diocletian’s era were taken as an overall attempt of elimination attacking from all fronts. The acts on martyrs and stories of suffering recording the procedures of the time clearly illustrate this objective. Starting from 295, Christians refused military service and this behaviour kept spreading in the empire. Some theories suggest that this may have prompted the monarchs to take more serious measures. However, specific anti-Christian edicts were only issued after 303. In the beginning, the decrees were aimed at the destruction of Christian churches and books, the dissolution of religious communities and the confiscation of their estates, including the threat of imprisonment for the leaders of the church and the deacons in case of resistance to the previous provisions. Finally, the last one was an edict of general scope assumedly issued as a result of the mutual agreement of co-emperors Galerius and Maximian, which ordered all the subjects of the empire to present the obligatory sacrifice to the gods of Rome under pain of the death penalty. The content of the listed decrees and the actions of the bodies participating in the implementation of the decrees can be clearly followed in the surviving source texts, through the examination of which I would like to present in detail how the ritual of offering sacrifice developed as a legal obligation and how the procedures of the time evolved in comparison to the previous practice, with particular attention to the bodies participating in the procedure, as well as their powers and cooperation.

2. Historical background

Starting from the time of Emperor Septimius Severus (202), the Romans were increasingly worried by the growth of the number of Christians as they had a growing influence in political life, which is why they attempted to suppress the expansion of Christianity with decrees. From the reign of Emperor Decius onwards, the number and influence of Christians almost equalled that of paganism, the consequence of which was, according to Decius, that the gods of Rome turned away from supporting the empire and this led to a critical state of the empire. During the reign of Emperor Diocletian (284–305), Christianity and paganism became rivals from a religious aspect. The increase in their numbers had become significant especially in Asia Minor, Syria and Egypt. In some places, entire Christian villages and towns were formed (e.g. in Bithynia, Phrygia).³ Since the Edict of Toleration (260) of Emperor Gallienus, the church had enjoyed relative peace with Christians having gained a place in all strata of society, even in the imperial court. When he came to power, Diocletian began to reform the administration of the entire empire. Having ascended the throne, Diocletian divided his power. He entrusted the ruling of the western provinces to Maximian (285–305/306–308/310), who had excellent military commander skills. We can regard this as a necessary and rational step as there was hardly a province in 285 that was not affected by an uprising or an attack by enemy armies. Due to the difficulties, Maximian’s help proved to be insufficient and in 293 Diocletian decided to share the chores of administration with Constantius Chlorus (305–306) and Galerius (305–311) as well. The two men joined the two emperors, ruling together since 285, in some sort of a

Cf. LIVY 6.39.16. “to search for and burn books of divination; and to abolish every mode of sacrificing that was not conformable to the Roman practice. For they, who had a thorough knowledge of every divine and human law, maintained that nothing tended so strongly to the subversion of religion as foreign sacrifices.”

³ TAKÁCS Ince: *Nérótól Diokléciánig. A keresztény üldözések története*, Szent István Társulat, Budapest, 1933. 179–180.

deputy position as Caesars, thus creating the system of tetrarchy, which means the “rule of four” in Greek.⁴

3. The background of issuing the edicts

During his two decades of reign, the emperor who had risen from obscurity managed to consolidate the empire that had almost fallen apart during the time of the barracks emperors. He crushed the internal uprisings and divided the main power, creating peace in the empire by way of the so-called tetrarchy he had introduced. Through the reorganisation of public administration and the transformation of the tax system, he “prolonged” the life of Rome by nearly two centuries. He used eastern despotism as a model for his rule. This is what he tried to copy and even perfect. Following a Persian model, he introduced the ceremony of “adoratio”, which basically meant greeting the deity by saluting. According to the Persian ceremony, one had to bow down before the deity, kiss the ground and then the deity’s hands and feet. According to the ceremony introduced by Diocletian, one had to kneel down at the feet of the ruler (or his statue) and then put his arms around his knees. This type of ceremony received great emphasis especially in the eastern half of the empire.⁵ After creating the defence against the external attacks, Diocletian set out to break down internal opposition. At the end of the 290s the emperors started to persecute first Manichaeism⁶ and then Christians as they regarded them as a hazard to the stability of their reign.⁷

4. Emperor Diocletian’s measures

4.1. The measures preceding the issue of edicts

The removal of Christians started in the military organisation in North Africa between 295 and 300 as the number of Christian soldiers directly serving the emperors was demonstrably high there. The idea of removing the Christian soldiers may have come from Maximian. However, the content of the issued order was not based on the fact of Christianity, but on the refusal of the oath of service.⁸ Earlier the fact of Christianity was accepted unless it entailed the rejection

⁴ TARJÁN M. Tamás: Diocletianus római császár halála, *Rubicon Online Történelmi Magazin*, http://www.rubicon.hu/magyar/oldalak/312_december_3_diocletianus_romai_csaszar_halala/ (Date of download: 25.06.2022.).

⁵ LADOCSE Gáspár: *A keresztényüldözés a Római Birodalomban*, Szent István Társulat, Budapest, 2018, 143–145.

⁶ Manichaeism: a syncretistic religion blending Iranian, Buddhist and Christian elements. Its founder is Mani, who took the dualism defining Manichaeism from the ancient Iranian religion. According to this dualistic view, eternal and absolute good stands against eternal and absolute evil, which are symbolised by light and darkness. These two principles fight with one another. Darkness grabs particles from the light, from which the world is created, a mixture of darkness and light. Man also belongs to the world, whose soul (light) is bound to the body (dark). God sent messengers to man to redeem man from this slavery. Such messengers were Buddha, Zoroaster, Jesus and finally the true apostle, Mani. Salvation can only be achieved through the strictest form of asceticism, which is why it was necessary to do without marriage and live as a vegetarian. Fasting, prayers and confession helped believers to reach the pleroma. The followers of Manichaeism were eliminated with sword and fire in Persia after Mani’s death, but his doctrines spread in Rome, North Africa and even in China thanks to its excellent church organisation (bishops, priests and deacons). From Diocletian (297) to Justinian (527–565), his followers were punished by death. ADRIÁNYI Gábor: *Az egyháztörténet kézikönyve*. Szent István Társulat, Budapest, 2001. 89.

⁷ TARJÁN op. cit..

⁸ W. H. C. FREND: *Martyrdom and Persecution in the Early Church*, Basil Blackwell, Oxford, 1965, 477–488.

of the legitimate claim of the state. However, the attitude of refusing the military service began to spread among Christians starting from 295. As a lot of Christians had previously served in the army, this way of thinking could result in a decrease in the number of soldiers and people's alienation from military service. Some theories claim that this may have prompted the rulers to take more serious measures against the Christians. Compulsory military service was a public law obligation Roman citizens were subject to. Since the existence of a strong army was an essential necessity for the survival and defence of the empire, the conduct of recruitment was of particular importance from the aspect of the state. The record entitled Maximilian's act taken down on 12th March 295 presents to us the events of a specific military recruitment. The rules regulating recruitment were already formed during the era of the republic. As sufficient physical strength was required for the use of the military technology of the time, compulsory military service only extended to those with the required physical abilities and, consequently, the lower limit was the age of puberty or reaching the age of 17. In the beginning there was no upper limit established but as a result of practical experience soldiers were only recruited over the age of 46 in exceptional cases, in the event of a defensive war. Based on illnesses and physical condition, only those were considered who were fit.⁹ Military recruitment was of central significance in the life of Romans and it usually lasted for several days. In the early times recruitment was conducted by way of simple selection, which was later replaced by making lists of the selected.¹⁰ Attendance at the recruitment events was ensured by strict criminal law tools, too, and those who were absent or failed to report without due justification were considered to have committed high treason (*perduellio*) and faced capital punishment.¹¹ In the act of Maximilian, we can read that the candidate soldier was led to the forum by the appointed imperial official competent in the affairs of recruitment. In addition to the imperial official, the procedure was also attended by the military tax collector, the so-called "teomonarius", whose task was to collect the tax necessary to ensure the supplies for the new recruits.¹² During the recruitment the candidate's fitness was determined to begin with. When the recruitment took place, the magistrate had the name of the citizen who had to turn up before him read out from the lists compiled by the censor, after which the fitness was determined. If the candidate proved to be fit for military service, he was told where and when he had to report for service.¹³

⁹ BAJÁNHÁZY István: Hadkötelezettség a római köztársaság korában, in: *Ünnepi kötet Dr. Molnár Imre egyetemi tanár 80. születésnapjára* (eds.: Jakab Éva – Pozsonyi, Norbert), Faculty of Law and Political Sciences of the University of Szeged, Szeged, 2014, 25.

¹⁰ BAJÁNHÁZY: op.cit. 26.

¹¹ ZLINSZKY János: *Római büntetőjog*, Nemzeti Tankönyvkiadó, Budapest, 1991, 115.

¹² The Act of Maximilian 1.1. Cf. KELLY, C. (2004): *Ruling the Later Roman Empire*. Cambridge–Massachusetts–London, The Belknap Press of Harvard University Press. 186 et seq. *Another element of Diocletian's reforms to be highlighted, even more significant than the structural and organisational transformation of the imperial government, was the reorganisation of the maintenance and operation system of the administration. He introduced the so-called thema system. The goal behind organising the new system, functioning as a "proportionate local supply system" of public charges, was that the taxpaying population of the provinces should ensure the supply and remuneration of the army stationed in the territory of the administrative units and the bureaucracy in the form of public charges, thus the generation of the financial sources for the administration, became a public charge that was levied directly on the taxpaying population*". Cf. KELEMEN Miklós: Adalékok római igazgatásfinanszírozás késő császárkori változásaihoz. *Pro Publico Bono – Magyar Közigazgatás*, 2019/1, pp. 184–213. 186.

¹³ BAJÁNHÁZY: op.cit. 26.

According to the examined act prepared at the time, Maximilian was deemed fit for military service so it was ordered that his height be measured and a seal¹⁴ registered.¹⁵ In this case, although the candidate objected, he was forced to take up military service. The new recruit referred to his being a Christian a number of times but this was not sanctioned at the time; what is more, the proconsul himself mentioned that there were Christian soldiers serving in the imperial army. As the citizen obliged to recruitment kept refusing to take up his service, he was subject to a strict treatment; his name was erased from the list and then a judgment was announced.¹⁶ Zlinszky lists the refusal of participating in the recruitment or being included in the civil register, the refusal of the military service, escaping from the military service and the organisation of uprisings among crimes against the state (*crimen laesae maiestatis*).¹⁷ Refusal to participate in the recruitment really had serious consequences, which led to capital punishment and the beheading of the candidate according to the examined document.¹⁸ Another example of military measures is the act of Marcellus, according to which Marcellus, who was performing his military service, refused to participate in the feast organised to celebrate the emperor's birthday. He threw off his military belt and expressed his faith in Jesus, refusing any further military service as it was incompatible with his religion. In this act, the charge was not Christianity even after the obvious admittance of his faith by the soldier, but violation of the military oath. In accordance with military laws, he was sentenced to death by the sword in this case as well.¹⁹ We can examine further evidence of the spread of Christianity among soldiers in the documents describing the martyrdom of martyrs Saint Julius and Saint Dasios. However, both records can be dated to the period when the fourth edict of Emperor Diocletian was issued and the ceremony of offering the sacrifice was made obligatory for all citizens. These two documents support the assumption that the main goal was the performance of the ceremony and not identification with the ideology. The prefect advises Saint Julius to calm his guilty conscience by telling himself that he has acted under pressure and even offers money in exchange. In the act of Saint Dasius, we can also witness the benevolent attitude of the acting military commander, who particularly wished to spare the accused. However, they were punished by beheading in both cases as a result of their persistent stubbornness.

Following the purges started in the army, a religious cleansing commenced.²⁰ Around 296-297 after Manichaeism had taken roots in Carthage, an edict was issued against the Manichaeans on 31st October 297. The edict issued against the Manichaeans proves that the official view of religion had changed little from the time of the Republic to the reign of Diocletian. The leaders of Manichaeism were captured, their books confiscated and burned. Diocletian and his co-rulers regarded Christianity as their enemy as they considered that Jesus and his followers had created an independent "state" within the Roman state, which rejected the worship of the emperors as gods. This religion promoted the equality of people, by which it questioned the basic principles of the system of dominate (the god-emperor's state).

4.2. *Diocletian's first edict*

¹⁴ Cf. The Act of Maximilian 2.6. The seal was a small sign that the Roman soldiers wore around their neck. It is likely that it contained their personal data with a seal or stamp to prove that they were performing official military service.

¹⁵ The Act of Maximilian 1.3-5

¹⁶ The Act of Maximilian 2,3.1

¹⁷ ZLINSZKY op. cit. 106.

¹⁸ The Act of Maximilian 3.1

¹⁹ The Act of Marcellus 1.1; 5.1

²⁰ TARJÁN op. cit..

According to the definition of Eusebius, the date of issue of the first specific anti-Christian edict was issued in the nineteenth year of Diocletian's reign, when imperial edicts were posted everywhere.²¹ The day when the persecution began was 23rd February 303, the festival of Terminalia. This edict was probably published in the whole empire because it came out in Palestine, too in March 303 according to the sources.²² The contents of the first edict read as follows as reported by Eusebius: "*the churches shall be destroyed and the Secret Scriptures shall be burned, and it was ordered that those holding offices shall be deprived of their offices and domestic servants of their freedom if they insist on Christianity as their faith.*"²³ According to Takács, the pagans understood that the Christians' courage and zeal were nourished most by the holy books. So they wanted to cut the ground from under the Christians' feet and destroyed the writings to the disadvantage of Christian culture.²⁴ In the first three centuries of Christian persecution, the Roman Empire did not attack Christian books. The edict issued in 303 during the time of Diocletian ordered that the writings of the Christian church should be destroyed by burning them. Eusebius saw with his own eyes as the sacred scriptures burnt in the fire in the marketplace.²⁵ The Roman religion enjoyed protection by the Roman state and the Roman *magistrates*. In many cases, the protection of the state religion involved burning the writings containing the foreign ideas, implemented in the form of official book burning. Around 186 BC books were burnt on the basis of *senatus consultum Bacchanalibus*. Further similar cases followed in 181, about which we can learn from the annals of the time. Some pages from the book of Numa dealt with Pythagorean philosophy, which the senate considered irreconcilable with the Roman religion. In 168 BC Antiochus Epiphanes wanted to destroy the writings containing the Jewish law and those about the prophets.²⁶

Keresztes refers to the assumption that the old emperor was plagued by a guilty conscience because of the edict so the proceedings against the Christians had to be conducted without bloodshed for a while.²⁷ According to Croix, in the interpretation of some modern writers this statement means that the decree completely prohibited death penalty. He firmly rejects this view, which is improbable in his opinion. Because, based on the reliable evidence available of the execution of Christians, there is no sign that the decree provided for a more lenient punishment in the case of those who failed to obey the obligation stipulated in the first part of the edict and refused to hand over the holy scriptures. What seems most probable is that no specific punishment was prescribed in the case of denial.²⁸

Within the collected acts on martyrs, the document read before Consul Zenophilus describes in a detailed record how this edict was implemented. Thus the provisions of the first edict of Emperor Diocletian, as quoted above, stipulated that Christian books and documents had to be collected and destroyed. As a matter of fact, the Romans were basically tolerant of foreign religious cults and tended to adopt them or incorporate them into their own religious system, the decision on which was made by the state. However, they declared fierce battles

²¹ EUSEBIUS: Ecclesiastical History 8,2

²² Paul KERESZTES: From the Great Persecution to the Peace of Galerius, *Vigiliae Christianae*, Vol. 37, No. 4 1983, 379–399, 381.

²³ EUSEBIUS: Ecclesiastical History 8,2,4

²⁴ TAKÁCS op.cit. 199.

²⁵ Clarence A. FORBES: Books for the Burning. *Transactions and Proceedings of the American Philological Association*, vol. 67, 1936, pp. 114–25. 120.

²⁶ FORBES op. cit. 120.

²⁷ KERESZTES op.cit. 381.

²⁸ G. E. M. De Ste CROIX.: *Christian Persecution, Martyrdom, and Orthodoxy*, Oxford University Press, 2006, 39.

against officially unrecognised cults. The concrete actions taken during these battles included the expulsion of religious leaders from Rome, banning foreign ceremonies, and burning religious documents.²⁹ The trial of the Bacchanalia, referenced above, demonstrates this procedure well.³⁰ The above-referenced record thus preserves the process of implementing such a measure. The acting official was Felix, a permanent flamen³¹, the administrator of public affairs. The flamen's was a clerical office, which means that in this case, too, a religious official acted in a public law role, who appeared in the company of two other office servants during the implementation of the procedural actions. On the basis of the record, it can be established that the competence of the official conducting the procedure included searching the venue and he could confiscate³² the Christians' books and other religious objects. If he experienced resistance, he had the right to order the arrest of the resisting person.³³ Since the Romans considered the will of the gods to be a state-creating factor; the rules and persons determining religious life also formed part of the state's system of power. The rules of procedures conducted against Christianity can only be understood against the background of this religious mind-set.

The further practical implementation of the edict is depicted by the procedure against the bishop Saint Felix; the authenticity of this text is questionable but its contents reflect the characteristics of the procedures of the time. In this act, the venue of the procedure is the town of Tibiuca in North Africa (in today's Tunisia), where the edict was announced on 5th June 303 according to the text. Based on the document, curators³⁴ called upon the leaders and officials of the town to collect the holy scriptures of the Christians. Interrogation also fell into the curator's competence.³⁵ When the accused had refused to comply with the law before the competent official, he was sent to the proconsul after the 3-day period for consideration had passed.³⁶ In the case of capital crimes, the local official could not order a death sentence.

²⁹ Cf. LIVY 3.25.1.

³⁰ Cf. LIVY 6.39.16. Cf. The Martyrdom of Saints Agape, Irene and Chone in Thessaloniki 6.1. Cf. The Sufferings of Saint Philip, Bishop of Heraclea 5.

³¹ Cf. NÓTÁRI Tamás: Római jog. Lectum Kiadó Szeged, 2014. The flamen was a clerical function, which can be related to the Indian brahman. The flamen represented the gods. According to the number of the gods, there were 15 flamens (later their number increased), who did not form a body but each acted independently. Cf. BAJÁNHÁZY István: Az antik Róma vallási rendszere. Publicationis Universitatis Miskolciensis Sectio Juridica et Politica, Tomas XXXI. (2013), 7-30. 17. Their person was appointed by the *pontifex maximus*. He performed his duties in the city of Rome, mainly offering the daily sacrifice, while he could also fill other secular offices (e.g. praetor urbanus, praetor peregrinus, censor).

³² The confiscation of goods (*publicatio bonorum*) as a financial punishment had been applied in Rome since ancient times. (Cf. Liv. 2,5,2; 2,8,2; 3,55,7). As its first form, the fine meant the complete confiscation of assets. It belonged to the circle of private penalties and it was applied to the benefit of the beneficiary of the obligation. Confiscation was later also applied to individual assets, not just the entire wealth. Some sources suggest that the confiscated assets were destroyed. Zlinszky compares this practice to the confiscation and destruction of the instruments and object of the crime (for example, the house of the guilty party was demolished). In the pre-classical period (probably from 169 BC, Cf. LIVY. 43,16,10) it developed into an additional punishment as a secondary punishment of the death penalty.

³³ The act read at the trial held before Zenophilus.

³⁴ *curator civitatis*: he was an official selected from among the highest-ranking Roman citizens who had limited police powers; the proconsul acted in more important cases. Cf. PÓKECZ. Kovács Attila: A principatus közjoga. Budapest-Pécs, Dialóg Campus Kiadó, 2016. 114. The curators were responsible for operating the city of Rome. The most important curatorial positions: the two officials responsible for public works (*curator aedium sacrarum* and *curator operum locorumque publicorum*), the official responsible for water supply (*curator aquarum*), and the officials entrusted with the supervision and maintenance of the River Tiber and Rome's canal network (*curator alvei Tiberis et riparum*). These offices were created by the princeps, who appointed their leaders.

³⁵ The Suffering of Bishop Saint Philip 2.

³⁶ The Suffering of Bishop Saint Philip 18.

According to the contents of the document, the bishop was transported to the headquarters of the proconsul in Carthage, where he spent another 16 days in captivity in handcuffs. This act supports the presumption that the refusal to submit the writings on the basis of Diocletian's edict indeed incurred a strict punishment as this specific procedure ended in the decapitation of the accused. The document registering the suffering of Saint Philip of Heraclea³⁷ offers further information regarding the implementation of the first edict. In this procedure, following the order issued by the prefect, the stationarius³⁸ who had arrived in the town closed down the church of the Christians with a seal pressed in wax in order to prevent their further congregation. The stationarius searched for every single church and sealed down all of them. The officials collected the containers and documents they had found and the bailiffs led the accused to the square as a deterrent and then the holy scriptures collected were burnt in the square publicly.³⁹ This document, however, suggests that the implementation of the first edict did not cease as the further edicts of the emperor were issued. For the act emphasises the order of the second edict in the reference of the prefect. *"The order is that our lords have instructed all Christians to present sacrifice and if they are not willing to do so voluntarily, they are to be forced by violence and those refusing are to be tortured."*⁴⁰ The procedure conducted against Saint Philip and his companions demonstrates the realisation of this objective well. Following their lengthy capture and tortures, they were eventually sentenced to death by fire as the consequence of their resistance to being forced.⁴¹ This act also supports Croix's assumption that even though the edict itself did not include the prospect of the death penalty, refusal of fulfilling the obligation still incurred capital punishment.

Thus the first decree had extremely serious consequences for Christianity as their gatherings were banned, their meeting places were destroyed and the books containing their teachings were eliminated. The nobles were demoted, the commoners were turned into slaves, and the slaves lost their hope of ever being freed. All in all, the Christians had lost all their human and civil rights; they could not initiate lawsuits before the court and the forms of lawsuits did not apply to them during the criminal prosecution, meaning that they had actually become outlaws.⁴²

4.3. *The sources of Diocletian's second and third edicts*

Lactantius mentions that Galerius was not satisfied with the first edict and managed to persuade Diocletian to take even more drastic steps against the Christians. As a first step, the Christians in Diocletian's court were obliged to offer sacrifice. The Christians in Diocletian's court became the first martyrs of this persecution. The news received about the riots in Syria and Milan convinced Diocletian that the Christians had indeed plotted against the empire so he issued the second edict.⁴³ Eusebius summarises the second edict as follows, *"all the leaders of the church, wherever they be, must first be put in handcuffs and then they must be persuaded to*

³⁷ ancient Greek town.

³⁸ *"in other words the curiosus, who served at the military police in the imperial era and whose tasks included the supervision of streets, the investigation of crimes and many other similar activities"*.

<https://www.arcanum.com/hu/online-kiadvanyok/Lexikonok-okori-lexikon-CA894/s-CCA80/stationarius-CCDIE/> (author's translation) (Date of download: 13.05.2022).

³⁹ The Sufferings of Saint Philip, Bishop of Heraclea 4, 5.

⁴⁰ The Sufferings of Saint Philip, Bishop of Heraclea 8.

⁴¹ The Sufferings of Saint Philip, Bishop of Heraclea.

⁴² VARGHA Dezső: A kereszténység jogi helyzete a római birodalomban. Szent István Társulat, Budapest, 1901, 597.

⁴³ KERESZTES op. cit. 382.

present a sacrifice using all sorts of tricks."⁴⁴ As a consequence, priests of all ranks filled the prisons. The date of issue of the edict can be put to spring or early summer of 303.⁴⁵ We can read about the evidence of its implementation in the account Eusebius wrote about the martyrs of Palestine. Thus, according to this decree, all the leaders of the churches had to be handcuffed and then forced to offer sacrifice using all means available.⁴⁶ The first victim of this edict was Procopius, who was followed by a great many others, suffering terrible tortures.⁴⁷ Eusebius mentions that many got weak as they saw the hardships and chose to present the sacrifice.⁴⁸ Although the text we can read in Eusebius does not prescribe the death penalty at this point either, the procedures claimed a lot of victims as a result of the torture. In the regions where the number of Christians had increased too much, it seems that the implementation of the edict caused a big problem due to the rudimentary prison system as prisons in those days were not intended to carry out punishments, but to temporarily hold the accused.⁴⁹ Thus imprisonment as a form of punishment as we know it today did not exist in Rome; the function of the prison was keeping the persons sentenced to death captured until the sentence was carried out, meaning that they served as a form of remand.⁵⁰ We can also find written legal evidence to support this in Ulpian (48. 17.1pr.1.), who mentions that the prison served to guard the suspects and it was also used to ensure other punishments. (Dig. 48.19,10 pr.). Imre Molnár, however, points out that the function of the prison was not obvious even by the standards of the time, especially in the provinces. In one of his notes, Ulpian stepped up against the practice of the prefects of the provinces in which they brought sentences of imprisonment. This means that Ulpian, too, reflected the position according to which the prison did not serve to punish people but to keep them captured. (D. 48,19,8,9)⁵¹

*"Innumerable crowds of people were imprisoned everywhere and the prisons, which had previously been created for murderers and corpse-robbers, were then filled with bishops, priests, deacons, readers and exorcists all over the place so that there was no more room left for those convicted of crimes."*⁵² According to Croix, the government took advantage of the Vicennalia (the twenty-year anniversary of Diocletian's accession) in the month of September or November 303 to grant amnesty to the imprisoned Christian priests on condition that they presented a sacrifice. In his opinion, this may have been the third edict.⁵³ Here is what Eusebius

⁴⁴ EUSEBIUS: Ecclesiastical History 8,2,5

⁴⁵ KERESZTES op.cit.. 382.

⁴⁶ EUSEBIUS: The Martyrs of Palestine 2.

⁴⁷ EUSEBIUS: The Martyrs of Palestine 1.1

⁴⁸ EUSEBIUS: The Martyrs of Palestine 1.3

⁴⁹ Cf. ZLINSZKY János: „Herculesre, milyen hidegek a fűrdőitek!” (Néhány szó Róma börtöneiről). Jogtörténeti Szemle 1992/1, 30; The Roman state prison was the so-called Mamertinum, which was made complete by adding an underground cavity. Regarding its characteristics, Zlinszky writes that it was a dark, wet hole of several floors, where crowds were often imprisoned. The Numidian king called this place the “cold bath of Hercules”. However, the majority of Roman jurists accept Mommsen's position and hold that Roman law did not apply prison sentences. Cf. SÁRY Pál: A börtönviszonyok változásai a keresztény római birodalomban. Publicationes Universitatis Miskolcensis Sectio Juridica et Politica, Tomus XXXIII (2015), 76–83.

⁵⁰ Cf. ZLINSZKY op. cit. 84. However, according to Zlinszky, it is also possible that the *magistrates* also applied imprisonment as a means of *coercitio* in order to keep debt slaves in the prison as a measure of discipline.

⁵¹ MOLNÁR Imre: A császárkori Róma büntetési rendszere, Tanulmányok Dr. Bérczi Imre egyetemi tanár születésének 70. évfordulójára Acta Universitatis Szegediensis de Attila József Nominatae; Acta Juridica et Politica (Tom. 58.; fasc. 1–41.). JATE Állam- és Jogtudományi Kar, Szeged, Magyarország, 365–382.

⁵² EUSEBIUS: Ecclesiastical History 6,9

⁵³ CROIX op. cit. 37. Cf. However, according to Keresztes, identifying the amnesty with the third edict is unlikely because Eusebius specifically writes about a third decree. Thus, in his opinion, the amnesty provided by the decree is not the same as the amnesty granted to criminals on the occasion of the Vicennalia.

wrote about this: *“those prisoners who present a sacrifice may leave free; those, however, who insist, shall be tormented with a thousand kinds of tortures.”*⁵⁴ So this decree stipulated that if they refused to fulfil the obligation of making sacrifices, they would have to be forced to offer the sacrifice by means of torture. Eusebius also writes about the sufferings of these priests in his Ecclesiastical History and in his work titled The Martyrs of Palestine. It can be clearly proved based on the words of Eusebius that the officials did everything they could to force the priests to make the sacrifice.⁵⁵ Some were grabbed by the hand and dragged to the altar, where the sacrifice was pressed into their hands and then they were released saying that he had made the sacrifice. It also happened that the accused who had been tortured to death was registered among those who had made the sacrifice after his death. This way they tried to pretend that they had fulfilled their obligation.⁵⁶ Racking was originally applied in order to extort confessions and only in the case of slaves.⁵⁷ Racking was an ancient method of investigation that was primarily aimed at revealing the offender who had committed the crime. It was listed among the evidentiary methods and it was completely accepted for centuries. Dig. 48.18. deals with racking and this source states that the accused, witnesses, free people and slaves could also be subjected to racking. Ulpianus mentions that it is not essential to apply racking as an evidentiary tool in the course of the procedure. He also mentions that the procedure does not have to be started with this unless other evidence suggests the charges are true. Referring to the rescript of Emperor Paulus Augustus, he points out that racking is not necessary in all cases but it has to be applied in order to reveal the offender in the case of crimes committed with particular cruelty. It was possible to use the method of racking both during the investigation and before the court. However, the Roman law restricted the application of racking in certain cases:

- if a confession was made (Modestinus D.48.18.16).
- in the case of pregnant women and children under the age of 14 (Dig. 48.18. 10-19.3)
- in the case of those who were arrested without charge
- sibling against sibling (D. 48.18.1.10.)

Thus racking served ascertaining the truth but it was the task of the judge to assess the testimonies of the witnesses as one step of the evidentiary procedure.⁵⁸ In the case of Christians, on the other hand, we can observe a special application of racking as it was used after the accused had admitted their guilt and its purpose was not to force the accused to make their confession but to withdraw or deny it. Regarding the methods of torture, the Phileas, the bishop of Thmuis, gives a detailed account of the sufferings of the martyrs in his letter. *“...They were at the mercy of everybody who wanted to torment them as they wished, and if someone invented a new kind of torture out of boredom, they went on to try it on them. Some were beaten with sticks, others with canes, still others with whips; some were stretched with straps or hung on ropes. And every time they tried to find a new way of torture....”*⁵⁹ The same method of procedure is supported by the proceedings conducted against the accused Victor and Alexander

⁵⁴ EUSEBIUS: Ecclesiastical History 6,10

⁵⁵ Cf. KERESZTES op. cit. 382. However, according to Keresztes, identifying the amnesty with the third edict is unlikely because Eusebius specifically writes about a third decree. Thus, in his opinion, the amnesty provided by the decree is not the same as the amnesty granted to criminals on the occasion of the Vicennalia.⁵⁵

⁵⁶ EUSEBIUS: The Martyrs of Palestine (translation: Baán, István) 1.4.5

⁵⁷ Theodor MOMMSEN: A rómaiak története. <https://mek.oszk.hu/14900/14950/pdf/> (Date of download: 26.06.2022) 201.

⁵⁸ MOLNÁR Imre: Tanúvallomások (kínvallatás) értékelése a bűnösség megállapításánál az ókori római büntetőjogban, In: Memorial Book to Celebrate the 70th Birthday of Dr. András Szabó. Acta Universitatis Szegediensis de Attila József Nominatae; Acta Juridica et Politica (Tomus 53 Fasc. 17). JATE Faculty of Political Sciences and Law, Szeged, Hungary, 243–250. (1998)

⁵⁹ The Letter of Phileas 4,5

from Massilia (today's Marseille), where all tricks and threats were used in the case of the Christians brought before the emperor's court and they were subjected to evil-hearted and cruel tortures. They would not save Roman citizens either, and they acted mercilessly against all Christians regardless of gender and age.⁶⁰ The text mentions that this magnitude of cruelty gave the crowds the opportunity to commit massacre during the visits of the rulers as this way they expressed their loyalty to him. During Maximian's visit a similar procedure did take place in 290 and 303, when he visited the city.⁶¹

4.4. General edict about making it mandatory to offer sacrifice

A fourth decree was also issued during the period of the great persecution. Eusebius refers to this in his *Martyrs of Palestine*. The fourth edict was a general directive, in which everybody was ordered to offer a sacrifice under pain of the death penalty. Eusebius places the announcement of this edict in Palestine in the second year of the persecution around 304.⁶² We may have doubts about the date and announcement of the edict but it was certainly issued during the time of Diocletian, who was probably already ill before the edict was issued.⁶³ Thus the real author of this fourth edict was probably Galerius and, as a result, the persecution of Christians began throughout the empire, except for the part under the rule of Constantius, and even more cruel procedures were carried out.⁶⁴ This edict prescribed the obligation for all residents to offer a sacrifice. However, according to Croix, it can be proven that the central government did not oblige the municipalities to implement the edict until 306. In 306, in his decree, Maximian ordered the local magistrates to ensure the performance of the general sacrifice ceremony in the case of men, women and children. The further detailed instructions for local magistrates were also defined in this decree.⁶⁵ This edict was more systematically implemented than the previous one. The names of the residents were registered and then the messengers called each citizen one by one to fulfil their obligation stipulated in the edict.⁶⁶ The similar implementation of the edict in 304 is not proven, which is supported by the fact that, according to Eusebius, Maximian was far crueller regarding the persecution of the Christians than his predecessors.⁶⁷ Although the sources attribute the edict to Maximian, he could only publish it jointly with Galerius. According to the instructions of the new edict, the city prefects were appointed to ensure that the obligatory religious ceremony was conducted and supervised. Everywhere in the city of Caesarea, messengers went from house to house and drove the people into the temples, where the *chiliarch*⁶⁸ read the names one by one from a list in order to perform the sacrifice ceremony. The text contains a reference to the fact that the governor was present during the ceremony along with the entire military team.⁶⁹ *“By way of regulations, letters, and general orders, the governors of the provinces and the supreme commander of the army urged the magistrates of*

⁶⁰ The Martyrdom of Saints Victor, Alexander, Felician and Longinus 1.

⁶¹ The Martyrdom of Saints Victor, Alexander, Felician and Longinus 1.

⁶² EUSEBIUS: *The Martyrs of Palestine* 3.1

⁶³ KERESZTES op. cit. 382.

⁶⁴ TAKÁCS op.cit. 184.

⁶⁵ CROIX op. cit. 98-100.

⁶⁶ CROIX op. cit. 99.

⁶⁷ EUSEBIUS: *The Martyrs of Palestine* 4,8

⁶⁸ The meaning of the Greek word (*chiliarchos*): 'commander of 1000 soldiers'. Cf: EUSEBIUS: *The Palestinian Martyrs* IX. 7. It is here where we read that Ennathas was insulted by a chiliarch of the soldiers stationed in the area without the knowledge of the higher authorities. It can be concluded from this that the name chiliarch may have been some kind of military position.

⁶⁹ EUSEBIUS: *The Martyrs of Palestine* IV. 8.

*all the cities, as well as the tabularii*⁷⁰ to carry out the imperial instructions.”⁷¹ The Romans used all kinds of methods against the Christians. They prescribed the presentation of the sacrifice without exception, pointing it out that they should taste the meat of the sacrifice carefully. The food in the market was sprinkled with a libatio (drink sacrifice) and those who wanted to take water from the public wells had to offer a sacrifice first. Sacrifices also had to be made before concluding sales transactions or initiating court proceedings.⁷² The inspectors of the baths were ordered to require those who bathed there to dirty themselves with the “filthiest” sacrifices.⁷³ Even the believers of the Roman religion themselves regarded these measures to be crazy.⁷⁴ We can witness an extraordinary cooperation and coordinated activity on the part of the local and imperial authorities of the Roman Empire. Eusebius mentions a number of local officials who were involved in the tasks resulting from the implementation of the edict. Alexandru explains the effective realisation of the anti-Christian legislation with the undisputed authority of the Roman Empire even though the extent of the implementation varied in each province, depending on the interests and dedication of the governors.⁷⁵ In Croix’s opinion, the capacity of the army and the imperial leaders to implement the decree proved to be insufficient in all the provinces of the empire, which is why the coordinated involvement of local officials was necessary.⁷⁶

Discussing the way the fourth edict was implemented, we have to examine one more question. Regarding its content, the decree is very similar to the regulation issued by Decius that prescribed the general obligation to present the sacrifice; he had also obliged all citizens to perform the sacrificial ceremony. However, according to the procedure followed at the time, those who completed the mandatory ceremony received a certificate (libellus) about it. All those who did not possess this certificate could then be punished. However, many of the Christians managed to take advantage of the officials’ openness to bribery to obtain the certificate, without actually performing the sacrificial ceremony. According to Croix, a list of the residents who had performed the ceremony probably only existed in the larger cities, based on the letter by Dionysios. During the great persecution, on the other hand, no reference is made to the issuance of such certificate in the sources or among the papyri. Eusebius does not mention any instructions regarding the implementation of the edict when he notes down its contents. It seems like there was no list or roster of the residents who had fulfilled the provisions of the edict in the years following its issuance. Later, however, Eusebius speaks of the names being called and Croix assumes that this administrative procedure could be considered a continuation of the legislation by Decius. Considering the fact that Christians from the poorer strata of the urban population were not included in the official register of the cities, it was necessary to take measures in 306 with a new edict so that the local authorities would make this list complete, supplementing the previous register.⁷⁷ Sara Lazic takes the position that the actual implementation still depended on the circumstances despite the fact that Maximian made sure

⁷⁰ “recordkeeper and head accountant in the municipia and provinces during the imperial period, later also controller in Rome and Italy” <https://www.arcanum.com/hu/online-kiadvanyok/Lexikonok-okori-lexikon-CA894/t-CCE10/tabularius-CCE20/> (Date of download: 13.05.2022)

⁷¹ EUSEBIUS: The Martyrs of Palestine IX. 2.

⁷² ADRIÁNYI Gábor: Az egyháztörténelem kézikönyve. Auróra Könyvek, München, 1975. 36

⁷³ EUSEBIUS: The Martyrs of Palestine X. 2.

⁷⁴ EUSEBIUS: The Martyrs of Palestine X: 3.

⁷⁵ Ionut-Alexandru TUDORIE: “The Great Persecution of Diocletian and Its Consequences”, in: E. dal Covolo, G. Sfameni Gasparro (a cura di), Costantino il Grande alle radici dell’Europa, Città del Vaticano: Libreria Editrice Vaticana, 2014, 105–119, 110.

⁷⁶ CROIX op. cit. 98–100.

⁷⁷ CROIX op. cit. 98–100.

the edicts were implemented more effectively by using the register and applying a more advanced administrative apparatus.⁷⁸ According to the remaining sources, the cruellest procedures mainly took place in the eastern provinces of the empire and in North Africa. They treated everyone with the same cruelty, regardless of gender, age, or status.⁷⁹ Accordingly, Christian women were also subject to strict judgment regardless of their status. In spite of her noble origins, Crispina from North Africa had to suffer the same humiliating measures as her lower-ranking counterparts Agape, Irene and Chione in Thessaloniki. Knowing their moral integrity, it was mostly humiliating and shaming coercive measures that were used. Crispina was threatened that her hair would be cut off and her face disfigured,⁸⁰ while they tried to break Irene and make her perform the sacrificial ceremony by forcing her to stand outside a brothel. In addition to her refusal to perform the sacrificial ceremony, another charge was brought against Irene as she had possessed codices and scrolls. The punishment was also directed at her female modesty, presumably in the hope that this way they might be able to break her solid faith. The execution of this punishment was as follows. After the accused was taken to the brothel to stand there, the notaries and the executioners of the sentence constantly checked her, threatening her with punishment, so that she would not move from the place. During all this time, she received only one portion of bread a day. The authorities probably regarded this punishment to be more appropriate for a Christian virgin as her moral integrity was questioned with this measure. In Rome, prostitution was a tolerated phenomenon, while the Roman law did pose a lot of legal disadvantages to prostitutes. The most serious legal disadvantage against a prostitute was that she automatically became stigmatised (*infamia*) simply by virtue of her profession even from the moment she submitted her application for a permit to the aedile. In addition to the moral stigma, infamy also limited civil rights (legal capacity). Thus, for example, she could not bear witness and she could only marry a dishonest man or a man freed from slavery (*libertinus*). She did not regain her honour even if she abandoned her profession as the infamy was lifelong.⁸¹ The Roman authorities did not achieve their goal even with this humiliating punishment because Irene continued to insist on her Christian faith and refusing to consume the sacrificial food during the repeated interrogation. This time, however, she could no longer avoid the death sentence and she was also sentenced to death by fire. Being burnt alive, as a form of capital punishment, was a type of punishment often applied against Christians. That said, it should be noted that the Roman authorities did not disregard the application of certain basic rules of procedure in the case of women. Due to Eutychia's pregnancy, her execution was postponed.⁸² Ulpianus mentions that the punishment of pregnant women sentenced to death had to be postponed until after they had given birth and he also adds that, to his knowledge, pregnant women were not subjected to torture, either, which was confirmed by another jurist, Paulus.⁸³

Ince Takács states that the procedures initiated by Diocletian were crueller than anything before.⁸⁴ Nevertheless, recent research make less strict observations about the persecution

⁷⁸ Sara LAZIC: The Trials of the Christians in the Eastern Roman Empire at the beginning of the 4th century, International Congress of Byzantine Studies Belgrade 22- 27 August 2016, https://www.academia.edu/28176258/The_Trials_of_the_Christians_in_the_Eastern_Roman_Empire_at_the_beginning_of_the_4th_century (Date of download: 26.06.2022)

⁷⁹ TAKÁCS op. cit. 184.

⁸⁰ The Martyrdom of Saint Crispina 3.1

⁸¹ FÖLDI András: Prostitúció és a római jog. <https://rubicon.hu/cikkek/prostitutio-es-a-romai-jog> (Date of download: 26.06.2022)

⁸² The Martyrdom of Agape, Irene and Chone in Thessaloniki 3.7

⁸³ Digesta 48,19,3, Paul 1,12,4

⁸⁴ TAKÁCS op. cit. 184.

attributed to Diocletian. Ionut-Alexandru arrives at the conclusion that Diocletian's decrees did not differ that much from previous anti-Christian measures, the goal of which was also the restoration of religious unity. The number of victims does not serve as a convincing argument for the extreme severity of the Diocletianic persecution, either. In his opinion, the sudden terror that followed the long period of peaceful growth of Christianity evoked this perception in the Christian communities.⁸⁵ It is a fact, however, that the authorities did not investigate for any type of crime in the case of the accused after they had professed their Christian faith during the procedures carried out on the basis of Diocletian's edicts. The sole purpose of the procedures was to force Christians to abandon their faith and return them to the state religion. Therefore, apostasy ensured complete impunity, as well as gifts, wealth, honours and offices. In the description of Lactantius, we can read that they were happier with an apostasy than if they had conquered a barbarian nation.⁸⁶ According to Adriányi, the new and devious method of persecution and the extraordinary tortures applied by the Romans undermined the faith of many Christians, even bishops. There were numerous clerics who submitted the books of the church. Yet the majority remained faithful and the church would build on the example of the enthusiastic martyrs.⁸⁷

According to Ladocsi, this edict reinforced what had been ordered since Decius.⁸⁸ After Diocletian and Maximian had passed on their power, the new rulers tried to strengthen their positions. The inspirer of anti-Christianity, Galerius (305-311), remained true to his initial approach. Maximian's son, Maxentius wanted to create peace so for the time being he gave the impression of himself that he was tolerant towards the Christians. Constantius had shown benevolence towards the Christians from the beginning and did not intervene in the war against the Christians, and his son, Constantine, followed a similar policy. In the end, the great persecution of Christians continued until 311 before the death of Galerius, who was already seriously ill at the time, when he issued the Edict of Nicomedia together with his co-emperors, finally ensuring freedom for the Christians.⁸⁹

5. Summary

The surviving sources prove that eventually the Roman political authorities were fully aware of the impossibility of any coexistence of paganism and Christianity and it was a consequence of this that Christianity became an officially forbidden religion. It now became clear that the ideological conflict could not be decreased and drastic measures had to be introduced against Christianity. Christianity advanced at an unimaginable pace: the blood of its martyrs did not deter Christians; instead, it fuelled the growth of their numbers. As a matter of fact, the Romans signed defeat and accepted the victory of Christianity with the Edict of Milan, issued at the beginning of the fourth century. Thus, as a summary, the conflict between paganism and Christianity was unavoidable and this conflict was reflected first in the hatred of Christians and then in the regular war the imperial authorities waged against Christianity.⁹⁰ However, the policy of persecution failed. The pagans wanted to know more and more about this faith, until

⁸⁵ TUDORIE op. cit. 117–118.

⁸⁶ VARGHA op. cit. 598–599.

⁸⁷ ADRIÁNYI op. cit. (1975), 36.

⁸⁸ LADOCSI op. cit., 149.

⁸⁹ ADRIÁNYI op. cit. (1975), 36.

⁹⁰ Joseph PLESCIA: On the Persecution of the Christians in the Roman Empire, *Latomus*, T. 30, Fasc. 1 (1971) 120-132, 132.

Christianity was no longer a foreign and new religion in the end.⁹¹ Regarding the instruments of the procedure, it can be established based on the sources that the judges and governors of the provinces implemented the edicts in different ways. Sometimes they applied all sorts of devious torture before the execution of the death penalty and in some cases the accused died during the torture. However, they did not manage to achieve the goal of the great persecution, the creation of the unity of the empire. In the western provinces of the empire, far fewer proceedings were conducted and the persecution of Christians subsided in 305. In the eastern provinces, however, much greater enthusiasm could be observed in the implementation of the imperial goal in the eastern provinces and it continued until 312. Based on the examined sources, the willingness of the provincial governors was the decisive factor regarding the outcome of the persecution, which was not executed uniformly throughout the empire even though the imperial edicts were mandatory.

⁹¹ FRENK op. cit. 520–521.