

Adam Świętoń

Verbal aggression in the legal language of The Late Roman Empire - the case of the constitutions preserved in the book 16 of "Codex Theodosianus"

Studia Prawnoustrojowe nr 25, 51-64

2014

Artykuł został opracowany do udostępnienia w internecie przez Muzeum Historii Polski w ramach prac podejmowanych na rzecz zapewnienia otwartego, powszechnego i trwałego dostępu do polskiego dorobku naukowego i kulturalnego. Artykuł jest umieszczony w kolekcji cyfrowej bazhum.muzhp.pl, gromadzącej zawartość polskich czasopism humanistycznych i społecznych.

Tekst jest udostępniony do wykorzystania w ramach dozwolonego użytku.

Adam Świętoń

Katedra Prawa Rzymskiego i Porównawczego

Wydział Prawa i Administracji UWM

**Verbal aggression in the legal language
of the Late Roman Empire
– the case of the constitutions preserved
in the book 16 of *Codex Theodosianus***

Introduction

In the course of the 4th century the clash between the Christianity and the traditional religious system of the ancient Roman world kindled strong mutual animosity. When the Christian religion had attracted attention and the approval of the Roman authorities, their attitude towards old religions became more and more unfavourable – till the climax during the reign of emperor Theodosius the Great. Along with the *pagani* also other enemies of the new order appeared – apostates and heretics. This paper briefly presents the question of the verbal aggression that marked the late Roman imperial legislation. It is clearly visible in the laws published towards all those who were in opposition to an existing order and system of values preferred by the imperial court. I will focus here only on the invectives and manifestations of intolerance occurring in the imperial constitutions preserved in the 16th book of the *Codex Theodosianus* devoted to religious issues.

Imperial constitutions were not only the tool of the dissemination of the law, but also established the channels of communication between the emperor and his officials. In this manner the ideological message spread according to the shape of the late Roman propaganda. Therefore the late imperial law may be treated (to some extent) as expression of the governmental orders and wishes than as real testimony of the social and political situation in the Late Roman Empire. Research of such scholars as Tony Honore, Fergus Millar, Jill Harries on the style of the legal language in the literary, rhetorical and historical context examined its ideological and propaganda layer and

allow to come to the interesting conclusions about the role of the law in establishing and developing the link between the emperor and his subjects¹.

Late Roman imperial propaganda left its mark on the process of creation and distribution the law – especially in relation to key areas of the emperor’s authority such as economy and taxes, succession of the power, mechanism of the administration and the question of Christianity. In this period the verbal aggression accompanied by insult and threat was increasing – it is clearly evident for the areas of social life that were the most vulnerable to disruption and disintegration. Emperor’s attention was focused on the efficiency of the administration threatened by corruption, nefarious *suffragium*, nepotism and on the unity of the Christian world endangered by heretics, unorthodox movements, apostates and pagans. Thus the aim of law was not only to order and to demand but also to educate. Educational role on law is visible in the construction of invective which is accompanied by the appeals for betterment. Sometimes threat was added – but as a rhetorical complement to the emperor’s reprimand rather than criminal sanction. For instance in his famous constitution emperor Constantine called the officials to stop the corruption: “The rapacious hands of the officials shall immediately cease, I say, the shall cease”² (*cessent iam nunc rapaces officialium manus, cessent inquam...*), and then “if they, after this warning, do not cease, they shall be cut off by the sword” (*nam si moniti non cessaverint, gladiis praecidentur...*)³. Cutting off the hands was in this case rather a kind of harsh rhetorical figure than announcement of the punishment for the disobedient officials. Specific function in the spreading of the propaganda, education of the subjects and communication between them and the highest authority had *praefatio* (equivalent of the modern preamble). The compilers of the *Codex Theodosianus* and *Codex Iustinianus* had shortened the texts of constitutions and removed the *praefationes* before they put the extract in the

¹ J. Harries, *Law and Empire in Late Antiquity*, Cambridge University Press 1999; idem, *Legal Culture and the Identity in the Fifth-Century West*, [in:] S. Mitchell, G. Geoffrey (eds.), *Ethnicity and Culture in Late Antiquity*, Duckworth, London 2000, p. 45–57; idem, *Roman Law Codes and the Roman Legal Tradition*, [in:] J.W. Cairns, P.J. du Plessis (eds.), *Beyond Dogmatics. Law and Society in the Roman World*, Edinburgh University Press 2007, p. 53–82; T. Honoré, *Emperors and Lawyers*, Duckworth, London 1981; idem, *Law in the Crisis of Empire 379–455 AD. The Theodosian Dynasty and its Quaestors*, Clarendon Press, Oxford 1998; F. Millar, *Emperors at Work*, “The Journal of Roman Studies” 1967, no. 57, p. 9–19. As for literature about the ideological and legislative role of the constitutions see also M. Stachura, *Foreword to: Codicis Theodosiani Liber Sextus Decimus*, A. Caba, (transl.), M. Ozóg, M. Wójcik (eds.), Wydawnictwo Akademii Ignatianum, Kraków 2014, p. XIV, n. 5.

² All cited translation of the constitutions denoted as CTh. follows C. Pharr (transl.), *The Theodosian Code and Novels and the Sirmondian constitutions. A translation with commentary, glossary and bibliography*, Princeton University Press 1952.

³ CTh. 1.16.7. For detailed analyze of the constitution see. M. Stachura, *Wrogowie porządku rzymskiego. Studium zjawiska agresji językowej w Kodeksie Teodozjusza, Nowelach Postteodozjańskich i Konstytucjach Sirmondiańskich*, “Historia Iagellonica”, Kraków 2010, p. 64f.

Codes⁴, but in some cases the remains of propaganda and admonition penetrated parts of the texts which were preserved in the Codes.

Legal language of late antiquity was quite specific and in comparison with the law of classical era was permeated with the verbal aggression⁵. As Michał Stachura states in his work, 29% of texts preserved in the *Codex Theodosianus* contains one offensive word and almost 3% of them contain five or more offensive expressions. As for the Post-Theodosian Novels which were untouched by the compilers about 76% of the material contain one insulting or aggressive expression and nearly 24% contain five or more invectives⁶. The relatively high diversity of invective and also a high degree of repeatability is distinctive. So the question arises about the harsh style of the constitutions which not survived in its original form.

Concerning misbehaviour of the subjects such as corrupted officials, apparitors, imperial agents or judges such phrases are used as banditry (*latrocinium*), robbery (*rapacitas*), violent action, assault (*impetus*), plunder (*depraedatio*). They are driven by greed, nefarious ambition (*avaritia*, *cupiditas*), hate or envy (*invidia*), audacity (*audacia*), insolence (*insolentia*) or madness (*furor*). Sometimes appears the association with the despised animals – for example the efforts of the officials promoted unlawfully to higher grades are defined as *subreptio* which suggest slithering into the world of privileges like a snake or viper⁷. Apparitors are verbally branded as wicked, arrogant (*superbus*) and nefarious (*nefarius*)⁸. Wrongdoers and antagonists are described as public enemies (*hostes publici*) for instance sorcerers (*magi*) and soothsayers (*haruspices*) are shown as the enemies of mankind (*inimici humani generis*)⁹. Some laws depict them as *inimici*: “an enemy alike of the fisc and of the women” (*fisci et mulieris inimicus*) or “the public enemy and Our own enemy” (*publicus ac noster inimicus*). In this latter instance emperor Constantine II is considered hostile to the People and at the same time personally to the emperor Constantius¹⁰.

⁴ Ibidem, p. 45.

⁵ As for the distinctions between the legal terminology of the classical and post-classical age see: ibidem p. 38–42.

⁶ Ibidem, p. 63.

⁷ E.g. CTh. 1.15.10, CTh. 1.16.3, CTh. 1.16.7, CTh. 1.28.3, CTh. 1.32.32, CTh. 5.14.31, CTh. 6.4.22.3, CTh. 6.29.5, CTh. 6.35.11, CTh. 8.4.28.3, CTh. 10.4.1, CTh. 11.1.32, CTh. 11.7.3, CTh. 13.11.11. See also M. Stachura, *Wrogowie porządku rzymskiego...*, p. 109f, 112f, 132f.

⁸ CTh. 1.16.7.

⁹ CTh. 6.4.22.3, CTh. 9.16.6. The term *humanum genus* means all human kind which lives on the world – *orbis terrarum* (after enlargement of the territory of the Roman State described often as *orbis Romanus* or *orbis noster*). *Humanum genus* is opposed to animals (see D. 1.1.1.3). For more precise interpretation of the term see L. Janssen, “*Superstitio*” and the *Persecutions of the Christians*, “*Vigiliae Christianae*” 1979, no. 33, p. 144f.

¹⁰ CTh. 10.11.1, CTh. 11.12.1. M. Stachura points out the difference between the words *inimicitia* and *hostilitas*. *Inimicitia* appears in the sources in relation to the personal unfriendliness inside the Roman community (it is antonym of *amicitia*). *Hostilitas* (antonym of *societas*)

Verbal aggression towards heretics and pagans

As for the imperial constitutions related to religious issues the verbal aggression turned against some groups of subjects which can be generally described (as in some constitution) by the expression “enemies of the Catholics”¹¹. The bulk of legal texts referred to this problem is preserved in the followed titles of 16th book of the *Codex Theodosianus*: title 5 (*De haereticis*) and title 10 (*De paganis, sacrificiis et templis*) from which the title devoted to the heretics is the most marked by verbal violence.

The end of the fourth century in the Roman Empire was a period of the consolidation of the state’s religious policy. Its nucleus was the orthodox Christianity with the emperor in its centre as the guarantor and protector of the Christian religious unity and the leader of the Christian world¹². Theodosius II saw the role of the emperor just “as a sort of mediator between God and Man, who received from God the duty to rule in order that there be harmony between the religious and temporal life of the people”¹³. Thus the concept of the “only true faith” (*una catholica veneratio*¹⁴) was harmonized with the idea of the one absolute (in the secular and religious sense) ruler of the state that was multicultural but united in God.

One of the most fundamental rule which characterises and at the same time explains the attitude the Christian orthodox towards the dissenters was *credo* of Nicene. Emperors repeatedly acknowledged the Nicene Creed as the ground of the “true faith”. In their constitution addressed in 380 AD to the people of Constantinople (that is the people of the Roman East)¹⁵ emperors Theodosius the Great, Valentinian II and Gratian drew up the distinct line

is applies to the situation of hostility in the relationships outside the Roman state. But sometimes these two words were used as a synonyms. M. Stachura, *Wrogowie porządku rzymskiego...*, p. 84, 87 n. 339 and p. 87–92.

¹¹ CTh. 16.5.42 (*Eos, qui catholicae sectae sunt inimici...*), CTh. 16.5.62, CTh. 16.5.64. It is worth to note that this hostility might move from internal relationships to external – the majority of Goths, Vandals and Ostrogoths that invaded Roman territory was Arian faith. M. Wójcik, „Szaleństwo Arian” jako przestępstwo godzące w jedność państwa, [in:] A. Dębiński, H. Kowalski, M. Kuryłowicz (eds.), *Salus rei publicae suprema lex. Ochrona interesów państwa w prawie karnym starożytnej Grecji i Rzymu*, Wydawnictwo KUL, Lublin 2007, p. 367.

¹² Bishop Ambrosius praised Gratian and Theodosius the Great as a head of Christian community (*Ambrosius, De obitu Theodosii* 51). Theodosius I deserved with absolute certainty to be remembered as promoter of the Christian faith. On the one hand he supported *fides Catholica*, on the other actively and radically fought off the heretic movements and controversies. In this respect his reign was landmark. See I. Fargnoli, *Many Faiths and One Emperor. Remarks about the Religious Legislation of Theodosius the Great*, „Revue Internationale des droits de l’Antiquité” 2005, no. 52, p. 146f.

¹³ M.R. Salzman, *The evidence for the conversion of the Roman empire to the Christianity in book 16 of the “Theodosian Code”*, “Historia” 1993, no. 42, p. 362.

¹⁴ CTh. 16.5.38.

¹⁵ CTh. 16.1.2. See G.G. Archi, *Teodosio II e la sua codificazione*, Edizioni Scientifiche Italiane, Napoli 1976, p. 159.

between Catholics¹⁶ and the rest “whom We adjudge demented and insane”¹⁷. Those who do not adhere to the Nicene Creed the constitution ascribed the foolishness and uncontrollable madness (*dementia, vesania*) and opposed them to the believers of the *fides Catholica* – the only true and official religion¹⁸. They were undoubtedly heretics and apostates, but in wider sense besides the Christian dissenters the constitution also branded those who worshipped the old Roman gods. Next year (381 AD) Theodosius the Great issued another constitution that strengthened the foundation of the Catholic faith by the supporting the Nicene Creed and made the Catholics its protectors¹⁹. The law is also the great example of the elaborate invective against unorthodox sects (see below). Both constitutions were included by Theodosius II in his *Codex* as a *leges generales* and almost hundred years later by Justinian in his Code. Their location in the structure of the 1st book of the Justinian Code indicates that these laws constituted one of the most important principles of the state policy in the field religious and ideological affairs²⁰ and defined Roman Empire as an orthodox Christian.

The religious policy built on the conception of the one true religion was by definition intolerant and unfriendly to any misrepresentations. It must be also remembered that hostile attitude to the heretics aroused due to the character of some religious disputes and quarrels. Not all of them took place in an atmosphere of intellectual debates. Some controversies were discussed in the way of the riots and street fights. Consequently the heretics were seen as serious threat to the public order²¹.

The imperial law on the religious affairs was characterised by strong antagonism. On the one side there are Catholics on the other four groups of subjects may be distinguished: heretics and schismatics (*haeretici et schismatici*, those who undermine the orthodox dogmas), apostates (*apostatae*, those

¹⁶ *Catholici* were Christians which confessed the dogma of “the single Deity of the Father, the Son, and the Holy Spirit, under the concept of equal majesty of the Holy Trinity” (*hoc est, ut secundum apostolicam disciplinam evangelicamque doctrinam patris et filii et spiritus sancti unam deitatem sub parili maiestate et sub pia trinitate credamus* [CTh. 16.1.2]). Therefore they were loyal to the *catholicum* “the general principle” (see s.v. *catholicum*, P.W. Glare (ed.), *Oxford Latin Dictionary*, Clarendon Press, Oxford 1996, p. 285) which was the Nicene Creed. According to T. Honoré *Catholici* represented “the whole body of the church” (T. Honoré, *Law in the Crisis of Empire 379-455 AD. The Theodosian Dynasty and its Quaestors*, Clarendon Press, Oxford 1998, p. 5).

¹⁷ CTh. 16.1.2 (*reliquos vero dementes vesanosque iudicantes...*).

¹⁸ G.G. Archi, op. cit., p. 159.

¹⁹ CTh. 16.5.6, CTh. 16.5.6.2 (*Is autem nicaenae adsertor fidei, catholicae religionis verus cultor accipiendus est...*).

²⁰ The constitution CTh. 16.1.2 opens first book of the Justinian Code. The law promulgated by Theodosius I in 381 (CTh. 16.5.6) comes after. As for the Justinian’s religious policy in relation to *fides Catholica* see S. Kurša, *Ochrona ortodoksyjnej wiary w ustawodawstwie Justyniana*, “Zeszyty Prawnicze UKSW” 2012, z. 12.2, p. 7f.

²¹ A. Dębiński, *Ustawodawstwo karne rzymskich cesarzy chrześcijańskich w sprawach religijnych*, Redakcja Wydawnictwa KUL, Lublin 1990, p. 50.

who abandon the Christian faith – *qui ex christianis pagani facti sunt*²²), Jews and pagans (*pagani*, those who cultivate old Roman worship). Out of them the heretics were treated with the strongest aggression. It may be explained by the awareness of the threat caused by the heretical doctrines to the ideological unity of the state (and thus also political). Legal language of the constitutions reflects this anxiety – those who diminish “true religion” are “authors of sedition”, “disturbers of the peace of the Church” and “disturbers of the Catholic faith”²³. In this way they also violate the dignity, prestige and authority (*auctoritas*) of the emperor²⁴. The number of issued and preserved constitutions demonstrates the concern of the Roman authorities over the problem of heretics. *Codex Theodosianus* contains 66 constitutions against heretics compared with 25 related to pagans and only 7 related to schismatics (but it must be remembered that these proportions show the scope of situation in the first half of the 5th century when the Code was promulgated)²⁵.

It should be also noted that despite the aggressive, intolerant and insulting overtones of the law the orthodox Christianity kept the door open for the repentant sinners. Harsh invectives in the language of the law-makers and intellectuals were accompanied by the appeals for patient and gentle actions to bring heretics, apostates and pagans back to the bosom of the Church. Lactantius in his work *Divinarum Institutionum libri VII* recommended to act in moderation and patiently²⁶. Even the radical legislation of Theodosius the Great was in fact oriented to the restoration of the heretics to the orthodox Church and only in the case of failure the sinners should be definitively separated from the Christian society²⁷.

Legal sources do not propose the explicit definition of the word “heretic” or “heresy”. Sometimes the legislation used the name of particular heresy in order to clarify²⁸. In the year of 395 emperors Honorius and Arcadius included among the heretics all those who “deviate, even in a minor point of doctrine, from the tenets and the path of the Catholic religion”²⁹. It is

²² CTh. 16.7.1.

²³ CTh. 16.1.4 (*ut seditionis auctores pacisque turbatae ecclesiae...*) = CTh. 16.4.1 (*seditionis auctores pacisque turbatae ecclesiae...*), CTh. 16.4.3 (*et fidem catholicam turbat...*).

²⁴ CTh. 16.4.4.

²⁵ See M.R. Salzman, *The evidence for the conversion...*, p. 375.

²⁶ E. DePalma Digeser, *Lactantius, Porphyry, and the Debate over Religious Toleration*, “The Journal of Roman Studies” 1998, no. 88, p. 124. On the religious tolerance and intolerance see. A.H. Armstrong, *The Way and the Ways: religious tolerance and intolerance in the fourth century AD*, “Vigiliae Christianae” 1984, no. 38, p. 1–17.

²⁷ I. Fargnoli, op. cit., p. 150.

²⁸ M. Wójcik, *Szaleństwo Arian...* p. 371. See eg. CTh. 16.5.6, CTh. 16.5.11, CTh. 16.5.12, CTh. 16.5.65.

²⁹ See CTh. 16.5.28. The meaning of the word “heretic” was enlarged by Theodosius II (and in consequence by Justinian) through the reception of the constitution promulgated in 380 AD by Theodosius I (CTh. 16.1.2 = C. 1.1.1) and covered also pagans and Jews (A. Dębiński,

difficult to consider this view as complete and sufficient definition especially as it do not distinguish the heretics from the schismatics (the difference which was seen by the contemporaries³⁰).

Heretics were considered as a heterogeneous group of the members of the communities outside of the main Orthodox Christian Church supported by the state. On the other hand from the legal point of view the Roman authorities saw them as homogeneous body and this is attested by the governmental religious policy (for example, there is only one title in Codex Theodosianus devoted to the various heretic movements)³¹. A policy which reached its climax during the reign of the Theodosius the Great.

Heresy as such is described as *crimen, sacrilegium*. This is denotation of the crime in the legal sense³², furthermore by using the word of *sacrilegium* in a rhetorical figures the heretics were stigmatized as wicked men, wrongdoers, *malefici* equal to traitors to the state and emperor (because of identification of the *crimen laesae maiestatis* with the crime of *sacrilegium* in the Roman criminal law)³³. Some the constitutions contain the expression which amplify the meaning the word of *crimen*. Term of *scelus* is used to describe the criminal activity as extremely atrocious³⁴.

Herezja jako przestępstwo prawa rzymskiego, [in:] A. Dębiński, H. Kowalski, M. Kuryłowicz (eds.), *Salus rei publicae...*, p. 49; M. Stachura, *Foreword to: Codicis Theodosiani Liber Sextus Decimus*, p. XXXI). In short heretics follows the "heresy" which is very opposite of the "orthodoxy" ("true", "correct", "right", "appropriate" doctrine). See N. Widok, *Ortodoksja, herezja, schizma - wyjaśnienie pojęć*, [in:] F. Drączkowski, J. Pałucki, P. Szczur, M. Szram, M. Wysocki, M. Ziółkowska, *Ortodoksja, herezja, schizma w kościele starożytnym*, Polihymnia, Lublin 2012, p. 16. For more comparison between these two terms see F. Zuccotti, „*Furor haereticorum*”. *Studi sul trattamento giuridico della follia e sulla persecuzione della eterodossia religiosa nella legislazione del Tardo Impero Romano*, Giuffrè Editore, Milano 1992, p. 186f.

³⁰ In the early Christian writings words of "heretic" and "schismatic" were used as a synonyms but probably as soon as in the fourth century in the East these two words gained different meaning. See N. Widok, *op. cit.*, p. 29, 32. The difference is visible in the phrases contained in constitutions CTh. 16.5.1 (*haereticos autem atque schismaticos...*), CTh. 16.5.62 (*Manichaeos haereticos schismaticos sive mathematicos omnemque sectam catholicis inimicam...*) and CTh. 16.5.64 (*Manichaeos haereticos sive schismaticos omnemque sectam catholicis inimicam...*). Interesting constitution of Arcadius, Honorius and Theodosius II issued in the year of 405 (CTh. 16.6.4) attests the awareness of such distinction: the schism is quite different from heresy (*quae, ne haeresis vocaretur, appellationem schismatis praeferebat*), but heresy can be born out of the schism (*Ita contigit, ut haeresis ex schismate nasceretur*).

³¹ M. Stachura, *Wrogowie porządku rzymskiego...*, p. 188

³² Eg. CTh. 16.5.34. A. Barzanò (ed.), *Il cristianesimo nelle leggi di Roma imperiale*, Paoline Editoriale Libri, Milano 1996, p. 91. Regarding to the heresy as a crime of sacrilege see A. Dębiński, *Ustawodawstwo karne rzymskich cesarzy chrześcijańskich...*, p. 83f; idem, „*Sacrilegium*” w prawie rzymskim, Redakcja Wydawnictw KUL, Lublin 1995, p. 168f; idem, *Herezja jako przestępstwo...*, p. 45f.

³³ See A. Dębiński, *Sacrilegium...*, p. 113f.

³⁴ CTh. 16.5.7, CTh. 16.5.34.1, Nov. Val. 18. Term of *scelus* emphasizes the inhumanity of the act. In the legal sense there is no dissimilarity between *crimen* and *scelus* at least as for the constitutions preserved in the 16th book of the *Theodosian Code*. See M. Stachura, *Wrogowie porządku rzymskiego...*, p. 145.

The term of *haereticus* is the invective on par with the name of the specific heresy (like the Arians, the Eunomians the Manichaeans, Pepyzites, Macedonians etc.³⁵). In the constitution from the year of 381 Theodosius the Great declared that the very name of the founder of heresy is ominous as bad omen (*prodigium*)³⁶. Christians opposed the names of founders of heresy to the Name of Christ.

As it has been mentioned above the constitutions reflect the fear of heresies because of the threat to security of state and public order. Assemblies (*conventus*) or communities of heretics were compared with noisy rebellious crowd which is accompanied by bustle, quarrels, verbal skirmishes and scuffles. Emperors Valentinian and Valens put in 372 AD in the law against assemblies of Manicheans word *turba*³⁷. There was always a danger of the transformation the quiet discussion into the noisy quarrel accompanied by the riots, but the main intention of this expression was to associate the heretics with the savage crowd of aggressive plunderers. The participants of the heretical assemblies were seen as riotous “disturbers” of the peace (not only of state but also Church) which acted “with flagrant and damnable audacity”³⁸. Participation in such meeting was considered as incitement towards the Catholic faith and society³⁹. Another laws described congregations of heretics as tumultuous⁴⁰.

Heretics were also named as impious (*profanus*). For Theodosius I the Manichaeans were defilers and corrupters of the Christian doctrine (*profanator atque corruptor catholicae disciplinae*), who “leave the community of good people” and choose “secret turbulent gatherings” (*secreta turba*). In the law of Honorius and Theodosius II promulgated in 408 AD heretics are described “as hostile to Catholics”⁴¹.

Invectives were applied also in order to humiliate the heretical doctrines. According to the rhetorical structures the propagation and teaching of heresy bring discredit on God (*imminutio Dei*)⁴², offend His mighty name and insult His divinity⁴³. They were defined as impious (like those of Mani-

³⁵ CTh. 16.5.11 (*id est Eunomiani, Arriani, Macedoniani, Pneumatomachi Manichaei, Encratitae, Apotactitae, Saccofori, Hydroparastatae...*), CTh. 16.5.12 (*Vitiorum institutio deo atque hominibus exosa, Eunomiana scilicet, Arriana, Macedoniana, Apollinariana ceterarumque sectarum...*), see also CTh. 16.5.59 and 16.5.60.

³⁶ CTh. 16.5.6.

³⁷ CTh. 16.5.3 (*Ubi cumque manichaeorum conventus vel turba huiusmodi reperitur...*).

³⁸ CTh. 16.1.4 (*ut seditionis auctores pacisque turbatae ecclesiae...*), CTh. 16.4.2 (*Et si quis posthac ausu gravi adque damnabili contra huiusmodi legem veniendum esse crediderit...*).

³⁹ CTh. 16.4.3 (*et fidem catholicam turbat et populum...*).

⁴⁰ CTh. 16.4.4 and 16.4.5.

⁴¹ CTh. 16.5.9pr, CTh. 16.5.42 (*Eos, qui catholicae sectae sunt inimici...*).

⁴² CTh. 16.5.5.

⁴³ CTh. 16.5.15 (*Omnes diversarum perfidarumque sectarum, quos in deum miserae vesania conspirationis exercet...*), CTh. 16.5.26 (*audeat coetus illicitos congregare profanaque mente omnipotentis dei contaminare mysterium...*), Nov. Val. 18 (*detestandam divinitas iniuriam...*). See also M. Stachura, *Wrogowie porządku rzymskiego...*, p. 85

chaeans), profane (*institutio profana*⁴⁴), false (*religio falsa*⁴⁵), vicious (*institutio nefaria*⁴⁶), perfidious (*perfidia*)⁴⁷, profane teaching (*profanum praecet-pum*)⁴⁸, superstition (*superstitio*⁴⁹ – sometimes the meaning was amplified by adding the adjectives: perverse or nefarious – *superstitio perversa*, *superstitio nefaria*⁵⁰), error (*error*)⁵¹. Dissemination of the heretical doctrines was equated with widespreading pestilence (*pestis*)⁵². In one of the constitutions emperors stated that heretics are hateful to God and man (*vitiorum institutio deo atque hominibus exosa*)⁵³. According to the rhetorical style they take part in “ritual performance of their own perfidy” or “ceremonies of their dire communion”⁵⁴.

Teachers and propagators of the heresies were refused to the access to the community of all human – for instance by promulgation of the law of Valentinian and Valens in 372 AD⁵⁵. They should live – as Theodosius,

⁴⁴ CTh. 16.5.3.

⁴⁵ CTh. 16.5.4.

⁴⁶ CTh. 16.5.5.

⁴⁷ CTh. 16.5.25, 16.5.63. *Perfidia* is the antonym of *fides* and in general sense means the lack of loyalty and untruthfulness. Perfidious person is untrustworthy (see s.v. *perfidia*, *perfidiosus*, *perfidus*, [in:] P.W. Glare, (ed.), *Oxford Latin Dictionary*, p. 1338). Here *perfidia* means the betrayal of the *fides Christiana*. M. Stachura, *Wrogowie porządku rzymskiego...*, p. 138.

⁴⁸ CTh. 16.5.24.

⁴⁹ CTh. 16.5.10 (*ad nullam tamen ecclesiam haereticae superstitionis turba conveniat...*), CTh. 16.5.34 (*Eunomianae superstitionis clerici...*), CTh. 16.5.39 (*Donatistae superstitionis haereticos...*), CTh. 16.5.51, CTh. 16.5.54, CTh. 16.5.56, CTh. 16.5.65.1, CTh. 16.5.66, Nov. Val 18. *Superstitio* meant irrational and unreasoning attitude to religion, religious exaltation (see s.v. *superstitio*, [in:] P.W. Glare, (ed.), *Oxford Latin Dictionary*, p. 1878; M.R Salzman, “*Superstitio*” in the *Codex Theodosianus and the persecution of pagans*, “*Vigiliae Christianae*” 1987, no. 41, p. 173). For Livy *superstitio* was the perversion (*pravitas*) hostile to the Roman order which was represented among other things by the traditional worship. In the early Roman empire Christian *superstitio* threatened to the *Pax Deorum* and exposed all citizens to the wrath of the Gods. Heretical *superstitio* was hostile to the late Christian community just as the Christian *superstitio* was hostile to the early Roman state of the Nero and Domitian (A. Barzanò (ed.), *Il cristianesimo nelle leggi...*, p. 25f; L. Janssen, op. cit., p. 151f; M. Stachura, *Wrogowie porządku rzymskiego...*, p. 127). At the turn of the third century this term appeared in the pejorative sense in the technical legal language (with reference to the Jewish faith). During the fourth century its meaning was getting more and more offensive – at first in relation to the paganism (during the reign of the Constantine) and then in relation to each religion different from the orthodox Christianity. Lactantius put the false *superstitio* in opposition to the true Christian faith (M.R Salzman, “*Superstitio*”..., p. 174f). In the late antiquity term *superstitio* was used also in relation to the Jewish religion (D. 50.2.3.3, CTh. 2.1.10, CTh. 12.1.158, CTh. 16.8.24, CTh. 16.8.28). For more detailed survey of term *superstitio* in the legal language see also M. Stachura, *Wrogowie porządku rzymskiego...*, p. 169f and the literature cited there.

⁵⁰ CTh. 16.5.5, CTh. 16.5.48.

⁵¹ CTh. 16.5.11 (*Omnes omnino, quoscumque diversarum haeresum error exagitat...*), CTh. 16.5.20 (*Nulla eorum perversitati vel publica conventicula vel latentiora erroribus secreta tribuantur*), CTh. 16.5.21 (*In haereticis erroribus...*). Sometimes *error* was synonym of heresy, see CTh. 16.5.19 (*sub cuiuslibet haeresis sive erroris nomine constituti...*).

⁵² CTh. 16.5.44.

⁵³ CTh. 16.5.12.

⁵⁴ CTh. 16.5.12.

⁵⁵ CTh. 16.5.3.

Valentinian II and Gratian ordered in the years of 384 and 388 – far away from the good and honest men, city walls (it must be remembered that in the Antiquity “the city” meant “the civilization”) and community of the saints⁵⁶. The same emperors said harshly about Manichaeans: “In short, they shall have nothing common with the world” (more precisely it meant probably Christian world)⁵⁷. In the legal language it meant banishment (in the sphere of the public law) and deprivation of some rights in the sphere of the private law (e.g. *testamenti factio activa*). The technical sense of these laws were covered by rhetorical invective which branded heretics as outcast of the Christian society.

Through the use of the invectives legislators threw doubt on the mental abilities of the heretics. According to the offensive expressions they remained in the state of mental weakness which is described as *dementia haereticorum*⁵⁸, *furor*⁵⁹, *furor religionis*⁶⁰, *insania haereticorum*⁶¹ or *vesania*⁶². *Dementia* is a state of mental confusion caused by stubborn remaining in *error*, the foolishness caused by the polluted mind⁶³, the “derangement of the mind”⁶⁴. *Furor* is a state of total confusion caused by struggle between irrational passion and intellect in which this latter was defeated⁶⁵. The heretical *furor* is also a state of blind and arrogant trust in the power rationalistic mind that cause misguidance⁶⁶. It appears that sometimes *dementia* and *furor* were synonyms⁶⁷.

Excellent example of perfectly constructed invective is the constitution of Theodosius the Great which was promulgated in 381 AD just before the Christian Orthodox Council at Constantinople⁶⁸. It defended the Nicene Creed and was aimed at heresies – by its provisions the heretic assemblies were prohibited and the heretic cults stigmatized. In this law the suggestion

⁵⁶ CTh. 16.5.13 (*in aliis locis vivant ac penitus a bonorum congressibus separentur...*), CTh. 16.5.14 (*Apollinarianos ceterosque diversarum haeresum sectatores ab omnibus locis iubemus inhiberi, a moenibus urbium, a congressu honestorum, a communione sanctorum...*).

⁵⁷ CTh. 16.5.18 (*Nihil ad summum his sit commune cum mundo...*).

⁵⁸ CTh. 16.5.24, see CTh. 5.16.32 “foolishness of Eunomias” (*dementia Eunomianorum*).

⁵⁹ CTh. 16.5.31, 16.5.32; in both constitutions: *quorum furor tantum suasit errorem...*; see also CTh. 16.5.60. Term *furor* appears also in early Christian writings – for example in relation to the “madness of Arius” (M. Wójcik, *Szaleństwo Arian...*, p. 360). Arians were styled by Ambrosius as mad or foolish men (*ibidem*, p. 367).

⁶⁰ CTh. 16.5.25.

⁶¹ CTh. 16.5.65 pr.

⁶² CTh. 16.5.15, CTh. 16.5.25.

⁶³ CTh. 16.5.6 pr (*nulla ad exercendam animi obstinatiois dementia pateat occasio*), CTh. 16.5.26 (*eorumque sanctissima nomina pollutis mentibus usurpare*).

⁶⁴ See s.v. *dementia*, [in:] P.W. Glare (ed.), *Oxford Latin Dictionary*, p. 511.

⁶⁵ M. Stachura, *Wrogowie porządku rzymskiego...*, p. 125f. For more explanation of the term see *ibidem*, p. 124–131.

⁶⁶ *Ibidem*, p. 130.

⁶⁷ See CTh. 16.5.32, where *dementia* is equal to *furor*.

⁶⁸ CTh. 16.5.6. M. Stachura, *Wrogowie porządku rzymskiego...*, p. 77.

appear that heretics are different kind of men. The scornful phrase “this kind of men” (*huiusmodi hominum genus*) distinctly distinguish those driven by *furor haereticorum* from Christians. It is worth to note that in another law⁶⁹ this “other kind of men” is opposed to orthodox Christian community called simply “a good men” (*boni*). Thus we have here simply distinction between good and evil, moral and unmoral. Next comes the rhetorical construction by which emperor expresses his extensive disgust at “contamination of the Photinian⁷⁰ pestilence, the poison⁷¹ of the Arian sacrilege, crime of the Eunomian⁷² perfidy, and the sectarian monstrosities, abominable because of the ill-omened names of their authors”⁷³. Heresy is sinister, polluted and dangerous like a venom of snake. The contact of the Christian with the heretic is as dangerous as contact with the viper or with the infected by the plague⁷⁴. Here the strong contrast is visible between heretical outcast and orthodox Christian who is described as “a defender of the Nicene faith and as a true adherent of the Catholic religion who confess that Almighty God and Christ the Son of God are One in name, God of God, Light of Light, who does not violate by denial the Holy Spirit which we hope for and receive from the Supreme Author of things; that man who esteems, with the perception of inviolate faith, the undivided substance of the incorrupt Trinity...”⁷⁵.

Imperial constitutions against pagans were less harsh in the verbal and legal context. The range and intensity of the insults were not so large as in the case of the heretics. In the late fourth century the belief in the old Roman gods was not a crime. A crime was only the sacrifice offered to the gods and participation in some traditional ceremonies (like *auspicia*). The religious policy towards the pagans focused mainly on the places of cult, temples and shrines and another manifestations of pagan worship. As M. Stachura says the Roman law created the category of the “quiet pagans” who lives in accordance with the law. However, as M. Salzman points out, the intention of the total

⁶⁹ CTh. 16.5.11.

⁷⁰ *Fotiniani* were followers of the doctrine of Fotinus, bishop of Sirmium. A. Barzanò (ed.), *Il cristianesimo nelle leggi...*, p. 365; *Codicis Theodosiani Liber Sextus Decimus*, p. 43*, note D.

⁷¹ The word of “venom” (*venenum*) is more appropriate because of the association with snake or viper.

⁷² An extreme Arian sect. A. Barzanò (ed.), *Il cristianesimo nelle leggi...*, p. 365; *Codicis Theodosiani Liber Sextus Decimus*, p. 44*, note A.

⁷³ CTh. 16.5.6.1 (*Fotinianae labis contaminatio, Arriani sacrilegii venenum, Eunomianae perfidiae crimen et nefanda monstruosis nominibus auctorum prodigia sectarum ab ipso etiam aboleantur auditu*).

⁷⁴ As for the rare comparison of the heretics with venomous snakes and vipers see M. Stachura, *Wrogowie porządku rzymskiego...*, pp. 77, 132–133.

⁷⁵ CTh. 16.5.6.2 (*Is autem Nicaenae adsertor fidei, catholicae religionis verus cultor accipiendus est, qui omnipotentem deum et Christum filium dei uno nomine confitetur, deum de deo, lumen ex lumine: qui spiritum sanctum, quem ex summo rerum parente speramus et accipimus, negando non violat: apud quem intemeratae fidei sensu viget incorruptae trinitatis indivisa substantia...*).

conversion was hidden behind the offensive language⁷⁶. At the beginning of the fourth century the authorities' policy was relatively moderate⁷⁷. In the course of years the more discriminative approach appeared – the pagans were debarred from *militia armata* and *militia cohortalis (palatina)*, in the sixth century they lost among other *testamenti actio*⁷⁸.

Despite the fact that pagans were not the object of the severe aggression, the legal language treated them with some contempt. The term *paganus* describes the man who lives in the countryside and it has pejorative connotation – in the world of antiquity there was a clear opposition between town community and the country dwellers. In this context the *paganus* who lived on the outskirts of civilization was considered as an uncivilized simpleton. The offensive character of word of *paganus* is visible on the social background. In the late fourth century traditional Roman cults were still supported to some extent by the elite of the Roman society, especially by members of senatorial order in Rome and *potentiores* in the west of Empire⁷⁹.

The old worship is described as superstition (*pagana superstitio*) – but only with reference to the pagan sacrifice and rites, as in the law of 320 AD and of 323 AD⁸⁰. By promulgation this former Constantine debarred the *haruspices* from the religious life of Roman. This latter forbade to compel the Christians to performance of lustral sacrifice – described here as *ritus alienae supersitionis*⁸¹. Only sometimes term *superstitio* relates in general to the pagan religions⁸². For example constitution of Theodosius I of 381 AD⁸³ contain phrase “mad and sacrilegious” (*vesanus ac sacrilegus*) in order to describe the pagan who offer the sacrifice to the old gods, but this is still less

⁷⁶ M.R. Salzman, *The evidence for the conversion...*, p. 368; M. Stachura, *Wrogowie porządku rzymskiego...*, p. 191.

⁷⁷ As for the policy of Constantine and his successors towards pagans see. T. D. Barnes, *Christians and Pagans in the Reign of Constantius*, [in:] F. Vittinghoff, E. P. Meijering, W.H.C. Frend and others (eds.), *L'Église et l'Empire au IV^e siècle*, Genève 1989, p. 322f; R.M. Errington, *Constantine and the Pagans*, “Greek, Roman and Byzantine Studies” 1988, no. 29.3, p. 309f.

⁷⁸ A.H.M. Jones, *The Later Roman Empire 284-602. A social economic and administrative survey*, Basil Blackwell, Oxford 1964, p. 938.

⁷⁹ One of the most eminent representatives of paganism in the West was Symmachus. As for the pagan senators see M. Piechocka-Kłos, *Chrześcijananie i poganie. Rozkład sił w senacie rzymskim pod koniec IV wieku*, “Studia Warmińskie” 2013, no. 50, p. 285f. See also I. Fagnoli, op. cit., p. 154; A.H.M. Jones, *The Social Background of the Struggle between Paganism and Christianity*, [in:] A. Momigliano (ed.), *The Conflict between Paganism and Christianity in the Fourth Century*, Clarendon Press, Oxford 1963, p. 18f; idem, *The Later Roman Empire 284-602...*, p. 938–943.

⁸⁰ CTh. 9.16.1, CTh. 16.2.5.

⁸¹ As for the prohibition of the sacrifice which were treated as *superstitio* see also law of Constantine promulgated in 341 AD (CTh. 16.10.2) moreover those of Theodosius (CTh. 16.10.12.2, 392 AD), Arcadius and Honorius (CTh. 16.10.18, 399 AD).

⁸² As in the law promulgated in 353 AD (CTh. 16.10.5), 395 AD (CTh. 2.8.22) 399 AD (CTh. 16.10.16) and in 415 AD (CTh. 16.10.20).

⁸³ CTh. 16.10.7.

offensive than term *furiosus* used with reference to the heretics. The term of *hostis fidei Christianae* appears in the constitution of Valentinian III (445 AD) towards Manichaeans⁸⁴ – they are styled as hostile to Christian faith and public order⁸⁵.

Conclusions

Study of M. Stachura on the invective in the late antiquity show that the verbal aggression related mainly to the heretics. They were the most condemned social group in the Christian Roman empire⁸⁶. The abusive language was used not only to stigmatize them as the enemies of the public order, but also to distinguish them from the Christian community. By the creation of the visible division into “good men” and “madmen” the emperors tried to disarm the dangerous power of the heretical doctrines. Imperial constitutions which are devoted to the religious issues have created *sacrilegium* as a religious crime, but also have divided the Roman community and have assigned the heretics and apostates to the place on the outskirts of the community of “good men”. When Theodosius I ordered to expel heretics and their madness outside the walls of the cities (CTh. 16.5.6.3, and CTh. 16.5.14), he symbolically removed “another kind of men” from the civilized community. It must be remembered that heresies raised disputes and quarrels which sometimes caused religious rebellions. In this way the heresies have undermined the unity of the Christian world. Thus the harsh and offensive forms of communications are more understandable as the only way of dialogue with the enemy within.

Streszczenie

Agresja językowa w tekstach aktów prawnych z okresu późnego cesarstwa rzymskiego na przykładzie konstytucji zachowanych w 16 księdze Codex Theodosianus

Słowa kluczowe: herezja, pogaństwo, Codex Theodosianus, późne cesarstwo rzymskie, wczesne chrześcijaństwo.

Cechą charakterystyczną późnego cesarstwa rzymskiego jest seria fundamentalnych zmian w obszarze polityki, administracji, ekonomii i życia społecznego. Przemiany w życiu religijnym wzbudzały najczęściej kontrowersji

⁸⁴ Nov. Val. 18. M. Stachura, *Wrogowie porządku rzymskiego...*, p. 83. It is interesting that Manicheans are styled as pagans and their religion as pagan superstition (*superstitio paganis*).

⁸⁵ Nov. Val. 18 (*inimica publicae disciplinae et hostis fidei Christianae...*).

⁸⁶ M. Stachura, *Wrogowie porządku rzymskiego...*, p. 202, 205.

i w sposób najbardziej istotny zmieniły oblicze *Imperium Romanum*. Napięcia i tarcia społeczne na tle religijnym nasiliły się drastycznie w momencie, gdy religia chrześcijańska osiągnęła status „państwowej” i zaczęła przyciągać uwagę cesarskiej władzy. Jedność religijna stanowiła dla rzymskich cesarzy chrześcijańskich istotny problem. W okresie pomiędzy IV a VI w. podjęli oni szereg działań mających na celu utrzymanie spójności ideologicznej dogmatów religii chrześcijańskiej. Wiele wydanych w tym czasie regulacji prawnych miało charakter dyskryminacyjny, m.in. na gruncie prawa prywatnego (np. zakaz sporządzania testamentu przez heretyków) i publicznego (w tym karnego – jak sklasyfikowanie herezji jako przestępstwo *sacrilegium*). Przekaz wzmocniony był przez zastosowanie nacechowanych agresją sformułowań, które stygmatyzowały zachowania sprzeczne z wizją społeczeństwa rządzonego przez jedyną prawdziwą religię. W niniejszym artykule autor bada skalę i intensywność agresji językowej w języku prawa w kontekście społecznym i historycznym. Analizie poddane zostały cesarskie konstytucje zachowane w 16 księdze Kodeksu Teodozjańskiego ze szczególnym uwzględnieniem tytułu 5 (*O heretykach*) i 10 (*O poganach, ofiarach i świątyniach*).