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PREVENTION OF THE ABUSE OF THE RIGHT TO COURT: ROMAN *SACRAMENTUM* AND CONTEMPORARY SLAPPS

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Abstract

This article examines the issue of preventing the abuse of the right to a court. The author highlights that the phenomenon of abusing this right and the measures to prevent it have accompanied the development of law and legal regulations since ancient times. The article explores the abuse of the right to a court in relation to the Roman *sacramentum* and discusses the essence of contemporary SLAPPs (Strategic Lawsuits Against Public Participation) along with methods of counteracting them. *Sacramentum* was a procedural law institution with deep roots in the religious tradition of ancient Rome and significant symbolic meaning, whereas SLAPPs represent a modern, undesirable phenomenon linked to procedural and financial aspects of the legal system. The article also examines the relationships, similarities, and differences between the ancient Roman *sacramentum* and modern SLAPPs and attempts to answer the question whether an equivalent of the Roman *sacramentum* could effectively curb contemporary SLAPPs.

Keywords: *Sacramentum*, *legis actiones*, SLAPP, right to a court, abuse of the right to a court

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There are several legal mechanisms designed to prevent the abuse of the right to a court, including judicial pettifogging.[1] One of the oldest was the *sacramentum*, employed in the ancient Roman *legis actiones* procedure. In contemporary legal systems, this function is primarily served by court fees and other procedural costs.[2] Both the *sacramentum* and the fees paid by the party initiating proceedings can deter the hasty filing of lawsuits, thereby preventing courts from being excessively burdened by parties who, for example, may not be fully convinced of the validity of their claims. On the other hand, the costs of litigation or even the mere fear of excessive expenses can serve as a deterrent, discouraging individuals with limited financial means or low legal awareness from pursuing legitimate claims or defending values they consider just. This, in effect, restricts their right to a court. Conversely, such costs pose no obstacle for wealthy entities, allowing them to engage in unjustified litigation, which may constitute an abuse of the right to a court. A significant contemporary example of this phenomenon are the so-called SLAPPs (Strategic Lawsuits Against Public Participation).

This article emphasises that the abuse of the right to a court and the means of preventing it have been present since the earliest legal systems. It examines this issue in relation to the Roman *sacramentum* and modern SLAPPs and seeks to determine whether the application of an equivalent of the Roman *sacramentum* could effectively limit modern SLAPPs.

1. *SACRAMENTUM* IN THE ANCIENT ROMAN *LEGIS ACTIONES* PROCEDURE

In ancient Rome, during the period of the oldest form of civil procedure – the *legis actiones* procedure – with its most important and, at the same time, fundamental method, *legis actio sacramento*,[3] which had general application, one of the most was important elements of procedural law was *sacramentum*. It played a key role in resolving legal disputes and securing the rights of the parties. This term, although ambiguous,[4] in legal proceedings referred to an asset security provided by the disputing parties. It is inseparably linked to the Roman *legis actiones* procedure.

The origins of the *sacramentum* date back to the early history of ancient Rome and are closely associated with the religious and cultural practices of the time. The term

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[1] More on the subject of judicial pettifogging as a form of abuse of the right to a court, see L. Jamróz, *Prawo do sądu a zjawisko pieniactwa procesowego*, in: Balicki R., Jabłoński M. (eds), *Dookoła Wojtek…: księga pamiątkowa poświęcona Doktorowi Arturowi Wojciechowi Preisnerowi*, Wrocław, 2018, pp. 495–504.

[2] See judgment of the Constitutional Tribunal of 17 November 2008, SK 33/07 (OTK ZU 2008, series A, No. 9, item 154); judgment of the Supreme Court of 20 December 2017, III KK 203/17, Legalis No. 1713870.

[3] G. 4,13: *Sacramenti actio generalis erat: de quibus enim rebus ut aliter ageretur lege cautum non erat, de his sacramento agebatur* (…).

[4] For the etymology of the word *sacramentum* see A. Dębiński, 'Sacramentum: On the Legal Meaning of the Term as Used in the Letters of Pliny the Younger', *Studia Iuridica Lublinensia*, 2022, No. 3, pp. 46–48.

sacramentum in the context of legal proceedings most likely originally referred to a sacred oath taken by litigants, reflecting the religious aspects of securing rights and holding symbolic significance for both the parties involved and the legal procedure itself. In Roman society, religion played a central role in everyday life, including in the field of law. Taking an oath as part of the *sacramentum* carried religious seriousness, lending this act special weight and obligation. The religious nature of the *sacramentum* meant that its violation was not only seen as a deliberate breach of contract but also as a profanation of a divinely sacred duty. A party committing perjury incurred the wrath of the gods, and to prevent this, a propitiatory offering (*piaculum*) was made, which was forfeited to the temple. The offering could consist of sheep or oxen, which were deposited in the temple.[5] Only the party who had not committed perjury and simultaneously won the dispute recovered its *sacramentum*. In cases concerning property claims (*legis actio sacramento in rem*), if neither party was deemed correct, both forfeited their *sacramentum*.[6]

From the enactment of the *Laws of the Twelve Tables* in the 5th century BC, the *sacramentum*, instead of being a propitiatory sacrifice offered in the temple, evolved into a financial penalty paid to the state. This was required from the parties to the dispute as a result of mutual *provocatio sacramento*.[7] The payment was made by the party whose *sacramentum* was deemed *iniustum*,[8] i.e., the one who lost the dispute.[9] The penalty varied depending on the value of the subject matter of the dispute: 500 *asses* if the disputed property was worth at least 1,000 *asses*, or 50 *asses* in cases of lesser value or when concerning human freedom.[10] The 500 *asses* originally corresponded to the value of five oxen, while 50 *asses* equated to the value of five sheep,[11] maintaining the *sacramentum's* original nature, which was accompanied by a *piaculum* offered in the temple.

However, it is worth noting that the *sacramentum* was not without its flaws and certain associated controversies. In some cases, particularly those involving the lowest social classes, the required sum of either 500 or 50 *asses* could constitute an

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[5] M. and J. Zabłoccy, *Ustawa XII tablic. Tekst – tłumaczenie – objaśnienia*, Warszawa, 2003, pp. 20–21; A. Dębiński, 'Sacramentum…', op. cit., p. 49; F. Bertoldi, 'I sacramenta nelle legis actiones. Da un processo "divino" a un processo laico', *Vergentis*, 2018, No. 6, pp. 165–168.

[6] F. Longchamps de Bérier, in: W. Dajczak, T. Giaro, F. Longchamps de Bérier, *Prawo rzymskie. U podstaw prawa prywatnego*, Warszawa, 2009, p. 163.

[7] G. 4,16: (…) *Deinde qui prior vindicaverat, dicebat: QUANDO TU INIURIA VINDICAVISTI, QUINGENTIS ASSIBUS SACRAMENTO TE PROVOCO; adversarius quoque dicebat similiter: ET EGO TE. Aut si res infra mille asses erat, quinquagenarium scilicet sacramentum nominabant* (…). See also W. Litewski, *Rzymski proces cywilny*, Kraków, 1988, pp. 24–25.

[8] E. Gintowt, *Rzymskie prawo prywatne w epoce postępowania legisakcyjnego (od decemwiratu do lex Aebutia)*, Warszawa, 2005, p. 10.

[9] G. 4,13: (…) *Nam qui victus erat, summam sacramenti praestabat poenae nomine eaque in publicum cedebat* (…).

[10] G. 4,14: *Poena autem sacramenti aut quingenaria erat, aut quinquagenaria, nam de rebus mille aeris plurisve quingentis assibus, de minoris vero quinquaginta assibus sacramento contendebatur, nam ita lege duodecim tabularum cautum erat. At si de libertate hominis controversia erat, etiamsi pretiosissimus homo esset, tamen ut quinquaginta assibus sacramento contenderetur* (…).

[11] K. Kolańczyk, *Prawo rzymskie*, Warszawa, 1999, p. 120. See also T. Frank, *An Economic Survey of Ancient Rome*, Vol. 1, Baltimore, 1933, p. 47.

insurmountable barrier. Not everyone had such financial resources at their disposal, or even if they did, they may have been unwilling to risk losing them in the event of an unfavourable judgment, even if they were convinced of the correctness of their position in the dispute. In other words, as Wiesław Litewski rightly observes, this system favoured the wealthier,[12] for whom the loss of even 500 *asses* was negligible. Consequently, they could afford to pursue a risky lawsuit or enter into a dispute even when uncertain of their claim's validity. This situation resembles that of poker or other gambling games, where even without good cards, a player with substantial funds is able to take the risk of losing some of them by raising the stakes or joining a stake to check the other player's hand. In this metaphor, good cards represent the equivalent of objective right in a dispute, while the stake corresponds to the *sacramentum*. As is well known, in card games, the winner is often the player who bluffs well rather than the one holding the best cards – or, putting aside this card metaphor, the one who is actually right in a dispute. The necessity of paying the *sacramentum* could lead to a similar negative effect. On the one hand, it served to prevent judicial pettifogging; on the other, it could, in practice, deprive individuals of access to court and a fair verdict.

As a result, less affluent or poor individuals had to seriously consider whether to initiate legal proceedings when they were not fully convinced of their arguments, which effectively prevented judicial pettifogging. However, the fear of losing the *sacramentum* did not pose a significant barrier to financially well-off individuals; on the contrary, their awareness of their strong financial standing in comparison to a potential opponent could encourage them to take a relatively small risk and enter into a dispute, even if they were not entirely convinced of their position. On the other hand, the poorest members of society, even if fully convinced of the validity of their claims, were deprived of procedural protection due to a lack of funds. Naturally, this was not an issue for the wealthy.

Moreover, the fact that there were only two fixed rates for the *sacramentum* meant that the risk of forfeiture did not always correspond to the actual value of the subject of the dispute. Kazimierz Kolańczyk rightly observed that it was 'too great in trials for small values, where the value of the *sacramentum* exceeded the value of the subject of the dispute or differed little from it'.[13] In such cases, pursuing a dispute was not always a rational decision. The existence of two flat-rate, rather than percentage-based, *sacramentum* fees was particularly disadvantageous for poorer individuals, who, as one might expect, usually disputed small amounts. In these cases, the *sacramentum* amount often led individuals to forgo asserting their rights in court. This clearly conflicted with the principles of justice. One advantage, however, was that this system reduced the number of court cases concerning disputes over minor values.

Given the above, it is unsurprising that abuses and false oaths occurred in court practice, meaning that the *sacramentum* did not always guarantee honesty and fairness in trials. Initially, the *sacramentum* played an important role in the

[12] W. Litewski, *Rzymski proces*…, op. cit., p. 24.
[13] K. Kolańczyk, *Prawo*…, op. cit., p. 121.

social and moral life of ancient Rome, influencing both the perception of law and the practical functioning of the justice system. However, the abuses and doubts associated with it led to its gradual decline in significance over time. With the development of Roman law, the *sacramentum* was eventually replaced by other mechanisms for securing rights, such as *sponsio* or *fideiussio*.

2. SLAPPS AND WAYS TO COUNTERACT THEM

SLAPPs (Strategic Lawsuits Against Public Participation) are a significant tool for manipulating the legal process to silence critics and those engaged in public activities, as well as to spread disinformation or distract from matters of public importance.[14] They maintain the appearance of legality but, in reality, constitute an abuse of the right to a court, where the plaintiff files a lawsuit not to pursue a legitimate legal claim but to intimidate, discredit, or financially weaken individuals or organisations participating in public debate who hold opposing views on a given issue.

These lawsuits are typically filed against individuals or social organisations that monitor or criticise the actions of the state, politicians, large corporations, or other entities with an impact on public life.[15] SLAPPs are employed by individuals or institutions with substantial financial resources to suppress criticism or protests against their actions. They exploit court procedures and the high costs of legal defence to deter further public involvement in public activities or criticism of institutions and public figures. The considerable expenses associated with defending against SLAPPs can lead to abandonment of the defence, even when defendants are confident in the legitimacy of their position. Meanwhile, those initiating SLAPPs usually have significant financial resources, making legal costs negligible for them.

By abusing the judicial system, these baseless lawsuits pose a serious threat to freedom of speech, civic participation, and democratic values. Numerous examples illustrate their various forms of misuse.[16] NGOs, social activists, journalists, and others involved in the defence of human rights and environmental protection

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[14] The concept of SLAPPs was introduced in the 1980s by Penelope Canan and George W. Pring. See P. Canan, G.W. Pring, 'Strategic Lawsuits Against Public Participation', *Social Problems*, 1988, No. 5, pp. 506–517; G.W. Pring, 'SLAPPs: Strategic Lawsuits Against Public Participation', *Pace Environmental Law Review*, 1989, No. 1, pp. 5–21; P. Canan, 'The SLAPP from a Sociological Perspective', *Pace Environmental Law Review*, 1989, No. 1, pp. 23–32; P. Canan, G.W. Pring, 'Studying Strategic Lawsuits Against Public Participation: Mixing Quantitative and Qualitative Approaches', *Law & Society Review*, 1988, No. 2, pp. 385–395.

[15] P.C. File, L. Wigren, 'SLAPP-ing Back: Are Government Lawsuits Against Records Requesters Strategic Lawsuits Against Public Participation?', *Journal of Civic Information*, 2019, No. 2, pp. 2–3; M. Fierens, F. Le Cam, D. Domingo, S. Benazzo, 'SLAPPs against journalists in Europe: Exploring the role of self-regulatory bodies', *European Journal of Communication*, 2023, Vol. 39, Issue 2, pp. 2–3.

[16] Ibidem, pp. 4–5; H. Young, 'Canadian Anti-SLAPPs Laws in Action', *SSRN Electronic Journal*, 2022, No. 1, pp. 186–222; A. Bodnar, A. Gliszczyńska-Grabias, 'Strategic Lawsuits Against Public Participation (SLAPPs), the Governance of Historical Memory in the Rule of Law Crisis, and the EU Anti-SLAPP Directive', *European Constitutional Law Review*, 2023, Vol. 19, Issue 4, pp. 645 et seq.

are often targeted by SLAPPs, which serve as tools for silencing, intimidating, and discrediting them. Such lawsuits can lead to self-censorship, a decline in the quality of public debate, and restrictions on freedom of speech, all of which undermine fundamental principles of democracy and the rule of law.

In response to the growing threat of SLAPPs, special legal measures and actions are increasingly being introduced to prevent such abuses of the judicial process. In some jurisdictions, so-called anti-SLAPP laws have been enacted to safeguard freedom of speech and public participation from procedural misuse.[17] Such laws can enable a swift and effective defence against SLAPPs through dedicated court mechanisms, for example, by allowing the early dismissal of a lawsuit upon determination that it constitutes a SLAPP.[18] Additionally, they can provide legal support to individuals or organisations targeted by SLAPPs, helping them to identify such lawsuits, mount an effective defence, and potentially seek damages for abuse of process.[19] It is equally important to educate the public about SLAPPs, their consequences, and methods of defence. The more informed people are, the less effective intimidation through legal repression becomes. Beyond these measures, monitoring court cases involving SLAPPs is essential, as it can help identify trends and methods of abuse, enabling a swift and effective response to such tactics.

3. *SACRAMENTUM* AND SLAPPS

Sacramentum Roman procedural law was an important element of court procedures, combining religious, moral, and procedural aspects. Its genesis, characteristics, and evolution reflect profound changes in Roman society and law. The *sacramentum* was intended to serve both as asset security for a financial penalty and as a means of ensuring the fairness of the trial while limiting judicial pettifogging. Giving the *sacramentum* was a way of confirming commitment to the court process. Additionally, it was an element of court ritual, giving the trial ceremony and formality, which

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[17] P.C. File, L. Wigren, 'SLAPP-ing Back…', op. cit., pp. 5 et seq.; H. Young, 'Canadian Anti-SLAPPs…', op. cit., pp. 187 et seq.; F. Farrington, M. Zabrocka, 'Punishment by Process: The Development of Anti-SLAPP Legislation in the European Union', *ERA Forum*, 2023, Vol. 24, Issue 4, https://doi.org/10.1007/s12027–023–00774–5, pp. 1–16 [accessed on 17 March 2025]. An important example is the recently adopted Directive (EU) 2024/1069 of the European Parliament and of the Council of 11 April 2024 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings ('Strategic lawsuits against public participation'), OJ L 2024/1069, 16.4.2024.

[18] M. Zabrocka, J. Borg-Barthet, B. Lobina, *The Use of SLAPPs to Silence Journalists, NGOs and Civil Society*, DG IPOL/Policy Department for Citizens' Rights and Constitutional Affairs 2021, https://www.researchgate.net/publication/361040431_The_Use_of_SLAPPs_to_Silence_Journalists_NGOs_and_Civil_Society, pp. 47–48 [accessed on 17 March 2025].

[19] J. Bayer, P. Bárd, L. Vosyliute, N. Chun Luk, *Strategic Lawsuits Against Public Participation (SLAPP) in the European Union. A Comparative Study*, EU-CITIZEN: Academic Network on European Citizenship Rights, 2021, https://www.researchgate.net/publication/359790139_Strategic_Lawsuits_Against_Public_Participation_SLAPP_in_the_European_Union, pp. 59–60 [accessed on 17 March 2025].

contributed to respecting the court's decision. Parties to a dispute gave the *sacramentum*, which functioned as a guarantee in the event of defeat, serving to protect the opposing party's interests and encourage honest conduct and adherence to the truth. In the event of victory, the *sacramentum* was returned to the party that had given it. In the event of defeat due to failure to fulfil obligations or dishonest conduct, it served as a form of punishment.

Meanwhile, SLAPPs represent a modern form of abuse of process in legal systems. SLAPPs are strategic lawsuits against public participation intended to silence criticism, spread disinformation, or divert attention from socially significant issues. They exploit court procedures as a tool to intimidate and suppress critics, often through expensive litigation designed to financially and psychologically weaken the defendant.

Although the *sacramentum* no longer exists in modern legal systems and does not play the same role as in ancient Rome, it remains an important element of legal history and legal culture. This raises the question of whether introducing an equivalent of the *sacramentum* into modern court procedures could help reduce SLAPPs.

Paradoxically, although the Roman *sacramentum* and the modern phenomenon of SLAPPs are entirely different legal issues, a comparison of the practices associated with them reveals a common feature – one that is also problematic: the manipulative use of legal procedures and financial resources to achieve specific goals, such as pursuing unjustified claims or intimidating the opposing party. In both cases, legal mechanisms are exploited not primarily to achieve justice, but rather to secure individual advantages through the abuse of financial position.

However, there are also important differences between the *sacramentum* and SLAPPs. First, the *sacramentum* was an integral part of the Roman *legis actiones* civil procedure, deeply embedded in historical and cultural traditions, whereas SLAPPs are an undesirable modern phenomenon arising from specific social and political issues. Second, the *sacramentum* was essentially a mechanism to ensure procedural truth, whereas SLAPPs are designed to suppress the truth or restrict public debate, thereby distorting reality.

Despite these differences, analysing the relationship between the *sacramentum* and SLAPPs can provide valuable insights into the functioning of legal processes and their manipulation in various historical and contemporary contexts. In both cases, there is a need to protect the fairness of legal proceedings and ensure that legal procedures serve justice rather than manipulation or the silencing of social criticism. Therefore, combating contemporary SLAPPs requires effective legal, social, and political measures to protect freedom of speech and public participation, much like in ancient Rome, where procedural law was intended to serve truth and justice.

It is worth noting that although the *sacramentum* was designed as a mechanism to deter excessive litigation by providing security in case of losing a lawsuit, it was not a perfect solution. Manipulation and abuse of the process, particularly by wealthy citizens, could still occur. Consequently, as legal systems evolved, other measures and sanctions were introduced to more effectively prevent and penalize such practices. Given the shortcomings of the Roman *sacramentum*, introducing a modern equivalent into contemporary legal systems would not resolve issues

related to SLAPPs. Unfortunately, history seems to be repeating itself, as wealthy entities can once again exploit the law by filing costly lawsuits that impose financial burdens on both parties.

4. CONCLUSION

Analysing the connections, similarities, and differences between the ancient Roman *sacramentum* and SLAPPs provides a deeper understanding of their impact on legal effectiveness and, consequently, on society. Both *sacramentum* and SLAPPs have had a significant influence on the outcomes of judicial processes, both historically and in modern times. They have been and can be used as tools to manipulate legal proceedings, leading to inequalities in access to justice and a decline in democratic quality. Their use as instruments to intimidate and silence critics is another notable common element. In both cases, there is also a financial dimension – the *sacramentum* had a monetary aspect, while SLAPPs can be employed as a means of financially harassing critics.

The differences between *sacramentum* and SLAPPs primarily concern their nature and purpose. The *sacramentum* was a procedural institution with deep roots in the religious traditions of ancient Rome and a symbolic meaning, whereas SLAPPs are a modern, undesirable phenomenon linked to the procedural and financial mechanisms of contemporary legal systems. Understanding these connections, similarities, and differences is essential for the further development of legal systems and the pursuit of fairness, equality, and justice for all legal subjects.

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