



SOME ASPECTS OF THE PERSONAL LEGAL STATUS IN THE ROMAN ARMY WITH SPECIAL REGARD TO THE PERIOD OF THE III CENTURY AD

Nikolay Nedyalkov

Abstract

[Some aspects of the personal legal status in the Roman army with special regard to the period of the III century AD]. The presented article covers a few issues that could be linked to the general topic of the personal status in the Roman army with a special regard for the period of transition towards the Late Antiquity – III century AD. An analysis is made of the different types of discharge from the army and the veteran's certificate, given to the former soldiers. Some of the privileges, brought by this certificate upon the receiver are further researched, including the fact that it was a specific way of real estate acquisition. The second part of the article deals with the effect of military awards on the personal status and includes a short overview of their development through the centuries. Conclusions are made based on the analysis.

Key words:

Roman army, personal status, legal status, veteran, *dona militaria*, *corona civica*

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Some aspects of the personal legal status in the Roman army with special regard to the period of the III century AD Nikolay Nedyalkov*

I. Introduction

The article presented is a modest attempt to briefly overview a number of seemingly different aspects of Roman law. Despite the fact that they might seem eclectic at a first glance, they all have one major characteristic in common – namely, they are all connected to the personal status in the Roman army, either during the service in it, or after leaving it as a veteran. A major part of the analysis is concentrated within the III century AD – a time, considered by many to be the period of transition towards the Late Antiquity. Considering the scope, covered by the topic, it is inevitable that the focus should fall not only on private law issues, but on some problems, which are part of the public law in their nature – such are for instance the elements of the military discipline, the matter of military awards or the process of distributing public lands among the veterans.

II. *Missio honesta*, the veteran's certificates and the land distribution among veterans as specific elements, connected to the personal status in the army

The service in the Roman army had a specific influence on the personal legal status of the soldiers in a number of ways. Among them especially important was the legal status of

* Nikolay Nedyalkov is Law student at Sofia University „St. Kliment Ohridski“, Bulgaria.
Indirizzo mail: nedqtkov.1993@abv.bg

the veterans¹, who had already been discharged from service, because certain aspects of this status were in direct connection to their professional military achievements.

From the *Digesta* (and in particular, from the book, titled „*Concerning military affairs*“, or, in Latin, „*De re militari*“) ² we learn that there used to be three types of military discharge – *missio honesta*, *missio causaria* and *missio ignominiosa*. The last of them – the so-called „dishonorable discharge“ – was applied only in extreme cases towards army members, who had committed severe offenses against the military discipline³. In that sense it had a dual nature – both as a type of discharge and as a form of military punishment. In the cases, in which *missio ignominiosa* was applied, the offender would lose all privileges, which would normally derive from his veteran status. Therefore, this form of discharge shall not be examined in detail in this work.

The other two types of discharge – *missio honesta* and *missio causaria* – do, however, present a point of interest in connection to the topic of this work. Their legal consequences of the two were mostly the same. In these cases the discharged soldier would receive a military diploma, also known as a veteran's certificate – a document, which certified his status and rewarded him with certain privileges as a form of gratitude for his leal service⁴.

One of these privileges was the so-called *missio agraria* – a certain piece of farming land was given to the veteran and made his own private property. The cause of acquisition here was the veteran's certificate itself, or, in other words – an act, issued by the public authority⁵. What is specific here is the fact that normally private persons could acquire state-owned property (*ager publicus*) only through a public auction⁶; the veterans, however, were an exception, as they acquired such property on personal grounds and in direct connection to their army service. The thing, which allows us to connect the land distribution among veterans to the personal status in the army, is the fact that the general socio-economical status of the veterans (including the size and the location of the lands, given to them) directly depended on their military rank and their career achievements as a whole.

Before the II-III century AD the veterans certificates as a cause of property acquisition had one other specific feature as well. According to the provincial law one could own land only if one belonged to the respective provincial municipality⁷. Concerning the veterans, however, the situation was exactly the opposite – they would receive land and on that ground they would become members of the municipality, instead

¹ It is considered that the term „veteranus“, which derives from the Latin word for „old“ first came into prominent use in the middle of the I century BC.

² See *Dig.*, XLIX, 16, 3, 3 as well as the exception, noted by Ulpian in *Dig.*, III, 2, 2. It is specifically noted that *missio causaria* was still an honorable discharge on the grounds of the soldier's health condition, or, in other words, a „medical discharge“.

³ See the quoted passages from the *Digestae*. For a further analysis on the subject of *missio ignominiosa*, see S. E. PHANG, *Roman Military Service: Ideologies of Discipline in the Late Republic and Early Principate*, Cambridge University Press, 2008, p. 139-140.

⁴ See ИЛ. БОЯНОВ, „Two Fragments from Military Diplomas in Yambol Museum“. In: *Archaeologia bulgarica*, XI, 2007, 3, p. 69 - 74.

⁵ See ИЛ. БОЯНОВ, *Римските ветерани в Долна Мизия и Тракия [I-III в.]* (ИЛ. БОЯНОВ, *The Roman Veterans in Lower Misia and Thracia – I-III c.*), Авалон, 2008, p. 35-37.

⁶ About the processes of assignation, deduction and transformation of public real estate property into private, see М. НОВКИРИШКА-СТОЯНОВА, *Дългосрочните поземлени отношения в римското право*, София, 2000 and the sources and literature, quoted there. See also ИЛ. БОЯНОВ, *Op. cit.*, p. 36.

⁷ See ИЛ. БОЯНОВ, *Op. cit.*, p. 251.

of the other way round. This land would become their property *ex iure Quiritum*, instead of according to the provincial law. In short, this used to be yet another exception from the standard conditions and procedures of acquiring real estate.

During the II century AD, however, the whole practice of acquiring farming land through *missio honesta* began to die out. There are a number of reasons for that and they are thoroughly analyzed in the doctrine⁸. As a matter of fact, among the scholars there are some contrary opinions as well⁹, but the historical data that they step on is rather fragmentary and it does not lead to the certain conclusion that such practices continued throughout the III and into the IV century AD.

Nevertheless, the displacement of veterans among the provinces of the Empire did not die out in the II century. *Missio agraria* was replaced by *missio nummaria* – a monetary reward. For a large number of veterans, however, the owning and cultivation of farming lands remained a preferable way of spending their post-army years because of the relative economical certainty it offered. Here one also has to examine the amount of money, given through *missio nummaria*. Undoubtedly this amount was yet again in direct dependence to the career achievements and personal military qualities of the respective veteran. But there was one other major factor that influenced this amount – the continuous inflation processes, which went on throughout the II and the III century AD¹⁰. Despite the fact that the amount of the monetary reward was increased a number of times during this period, most sources indicate that usually it was not enough to acquire a large size of real estate in the Italian peninsula. Therefore, many veterans turned their attention to the remote parts of the Empire, including the Balkan provinces, where farming lands were between 50 and 70% cheaper in comparison to Italy¹¹. Thus, they had the opportunity to acquire real estate, the size of which was similar to the size of the lands that had been once given away through *missio agraria*.

During the whole of the II and the III century AD the veterans would also play a specific social role in the Balkan province of the Roman Empire through their participation in the administrative government, the judiciary and the religious life of their respective communities. This applied especially to those veterans, who had occupied a rank of centurion or a higher one before their discharge¹². The reasons for that are rather explainable. In provincial settlements one could occupy a position of higher public authority only if one had a certain property status. For ordinary veterans, who, after their discharge, would acquire a modest amount of farming land at best, achieving such property status was close to impossible. However, those among them, who had been high-ranking army officers, had an access to public positions of high authority and – as historical sources confirm – they would frequently take up such positions. It is beyond any doubt that one of the reasons for that was their experience as military commanders, which was most certainly useful in exercising administrative and judiciary functions as well. It could be concluded that there used to be a form of connection between the military career and status on one hand and the participation of the veterans in the public life after their discharge on the other hand. In other words this was yet another connection between the army status and the personal status as a whole.

⁸ See ИЛ. БОЯНОВ, *Op. cit.*, p. 250-254.

⁹ Such an opinion is shared by A. NEUMMANN, *Vigiliae*, 1962. For arguments against it see ИЛ. БОЯНОВ, *Op. cit.*, p. 255 and the literature, quoted there.

¹⁰ See ИЛ. БОЯНОВ, *Op. cit.*, p. 252-253.

¹¹ See ИЛ. БОЯНОВ, *Op. cit.*, p. 255-256.

¹² See ИЛ. БОЯНОВ, *Op. cit.*, p. 257-258.

Finally, in connection to the aforementioned phenomena, it is possible to make one more conclusion that is rather political and not strictly legal in its nature. According to sources, a large number of the veterans, who had occupied high-ranking positions before their honorable discharge, were not a part of the local population of the Balkan provinces of the Empire, but were rather from an Italian descent. Considering their later participation in the public life, one could wonder whether this whole tendency was encouraged on purpose by the central authorities. The data that we have concerning the socio-economical setting and the policy of some of the emperors during this period could potentially lead to the conclusion that perhaps the occupation of high-ranking army positions was not always a result of a soldier's skills and talents. It could be implied that sometimes it was instead somewhat a matter of a specific political mission – namely that soldiers of particular descent would become a part of the administrative and public life of the provinces after their discharge. This whole phenomena could possibly refer to a larger political concept, which dominated the centuries of the Principate – the turning of the veterans into a social stratum that would play a vitally important role in the process of „romanising“ the provinces of the Empire.

III. *Dona militaria* and the personal status. Some thoughts on the possible reflection of *corona civica* on private law matters

One other aspect, which deserves mentioning in connection to the personal status in the army, is the system of military awards (*dona militaria*) in the Roman army¹³. It is widely considered that the military awards with ceremonial characteristics first appeared in the early years of the Roman Republic and, in their essence, remained unchanged for a number of centuries afterwards. Yet, towards the end of the rule of the Severan dynasty the relatively conservative award system underwent a major reform¹⁴. This could be attributed to a large number of reasons, but quite certainly the most important one among them is the *Constitutio Antoniana* from 212 AD – the Emperor's Constitution, issued by Caracalla, which extended Roman citizenship to the entire free-born population within the Empire's borders.

Despite the fact that the period of transition towards the Late Antiquity lies within the primary focus of the work presented, it would be practically impossible to narrow down the research to these particular time constraints. The reason behind that is the fact that the most important characteristics of the military awards were shaped and developed in the previous centuries. Therefore, one has to offer a deeper analysis, the conclusions from which could be applied to a larger period of time.

It has been established with certainty among scholars that the military awards had no legal manifestation of their own and thus – no *direct* reflection on the personal legal status. However, as the analysis in the paragraphs below shows, the awarding of *dona militaria* could influence for instance the promotion in rank. Thus, they had an indirect effect on legal status, but this effect was definitely not negligible.

First of all, it is mandatory to mention the extremely precise doctrinal analysis, concerning the correlation between *dona militaria* and the other types of „rewards“ in the army – the monetary ones and the promotion in rank¹⁵. In a typical situation these two

¹³ Possibly the most thorough and in-depth analysis on the matter of military awards could be found in V. A. MAXFIELD, *The Military Decorations of the Roman Army*, University of California Press, 1981.

¹⁴ See V. A. MAXFIELD, *Op. cit.*, p. 55-66.

¹⁵ See V. A. MAXFIELD, *Op. cit.*, p. 110-120.

reward categories would go hand in hand. Sometimes, however, albeit in rare cases, a soldier that had distinguished himself would receive a promotion, without a military award. But the third possible option would transpire rather frequently – that is the situation, in which the soldier would receive a type of *dona* for his achievements, yet this would not lead to his immediate promotion. It was already mentioned that the military awards had no direct legal effect of their own. Taking this into consideration, one could reach the conclusion that the third example given above would not lead to a change in personal status and therefore does not present a point of interest for this research.

Such a conclusion would, however, be a premature one. Conventional logic dictates that the possibility of a distinguished soldier receiving a promotion in rank depended not solely on his achievements, but on the existence of vacant positions within the officer's staff of the respective battle unit. Obviously, the lack of the latter meant that *immediate* promotion was impossible. Historical sources, however, clearly show that soldiers, who had *previously* received *dona militaria* had a status of „marked men“ and a considerable advantage during future personal changes in the officer's staff. In that sense the influence of the *dona* on the promotion in rank – and therefore, indirectly, on the personal status in the army – is beyond any doubt, for it was a manifestation of the common principle that leadership should be granted to those, who had previously proven talented and capable.

All the aforementioned conclusions applied completely until the early-mid III century AD. The question stands, however, whether they have any value, concerning later time periods. The *Constitutio Antoniana* led to major reforms in many areas, but in connection to the army possibly its biggest immediate effect was that it erased the legal difference between the soldiers, who were Roman citizens, and those, who were not. The latter were typically foreign mercenaries, provincial allies etc. More often than not they were even segregated into separate „auxiliary“ battle regiments.

This resulted in a reform within the system of *dona militaria*, which during the previous centuries of its existence had invariably reflected the legal difference that derived from the *status civitatis* of the respective soldier by including certain awards, which were solely intended for one category or the other. Inevitably, some of the awards did not survive this reform and disappeared completely. Others continued their existence, but only in name, as their whole original nature underwent a significant change. Yet, there were some, which remained relatively unchanged¹⁶.

The military awards, which ceased to exist during the period of transition towards the Late Antiquity, were predominantly the ones given for lesser military achievements and whose ceremonial nature was relatively unimportant – the torques, the *phallerae*, the *basta pura* etc. Instead of them a more pragmatic tendency arose, as they were replaced by simple monetary rewards. In fact the whole process of „vulgarization“ of the army service that transpired during this time led to the disappearance of the ceremonialism of the *dona*. One could evaluate this tendency not only as pragmatic, but also somewhat as a return to the long forgotten practices of old – it has been established that the *dona militaria* began to appear around the V century BC and that before this time only monetary rewards existed in the army.

Nevertheless, as it was mentioned, some military awards not only continued to exist, but even remained relatively unchanged. Prime examples among them were the

¹⁶ A complete analysis of the historical development of the *dona militaria* during this period could be found in V. A. MAXFIELD, *Op. cit.*, p. 61-65.

ceremonial crowns (*coronae*). Thus, it could be safely said that the aforementioned conclusion about the nature of the *dona* during previous centuries continued to apply to them.

Since the *coronae* were already mentioned, the final part of this work will be devoted to the analysis of one particular issue, which arises in connection to this particular topic. As it was written in the above paragraphs, it has been established that the *dona militaria* lacked a particular legal effect of their own. This position has been supported by the majority of works, dedicated to the topic. Yet, the question arises – does it find the same support within the ancient historical sources that we rely on?

There is the following fragment from Polybius' „*Histories*“, which, at least at a first glance, seems to contradict that statement¹⁷:

(...) ὁμοίως δὲ καὶ τοὺς ὑπερασπίσαντας καὶ σώσαντάς τινας τῶν πολιτῶν ἢ συμμάχων ὃ τε στρατηγὸς ἐπισημαίνεται δώροισι, ὃ τε χιλιάρχοι τοὺς σωθέντας, ἐὰν μὲν ἐκόντες ποιήσωσιν, εἰ δὲ μὴ, κρῖναντες συναναγκάζουσι τὸν σώσαντα στεφανοῦν. [7] σέβεται δὲ τοῦτον καὶ παρ' ὄλον τὸν βίον ὁ σωθεὶς ὡς πατέρα, καὶ πάντα δεῖ τοῦτω ποιεῖν αὐτὸν ὡς τῷ γονεῖ.¹⁸

From the context one can conclude that the crown into question is the so-called *corona civica*, for it is known that this was the type of military award, given to a soldier, who had shown extraordinary skills and courage in order to save the life of his comrade in battle¹⁹. As a matter of fact, the aforementioned fragment is not the only one, which confirms the specific relation, which emerges between the rescued soldier and his savior. A similar quote could be found in Cicero's speech „*In defense of Plancius*“ („*Pro Plancio*“) ²⁰:

(...) *at id etiam gregarii milites faciunt inviti ut coronam dent civicam et se ab aliquo servatos esse fateantur, non quo turpe sit protectum in acie ex hostium manibus eripinam id accidere nisi forti viro et pugnanti comminus non potest, sed onus benefici reformidant, quod permagnum est alieno debere idem quod parenti.*

It should be noted that obviously these issues do not fall within the primary temporal borders of the topic. Nevertheless, they do deserve at least a brief analysis.

Everyone, who is familiar with the basic principles of Roman private law, will probably associate the quoted fragments with one particular legal institute – the authority,

¹⁷ The quote is taken from POLYBIUS, *The Histories, Volume III: Books 5-8* (translated by W. R. Paton), Loeb Classical Library 138. Cambridge, MA: Harvard University Press, 2011.

¹⁸ „[...] those [soldiers] who have shielded and saved any of the citizens or allies [in battle] receive honorary gifts from the consul, and the men they saved crown their preservers, if not under their own free will under compulsion from the tribunes who judge the case. [7] The man thus preserved also reverences his preserver as a father all through his life, and must treat him in every way like a parent.“

¹⁹ See V. A. MAXFIELD, *Op. cit.*, p. 68-70.

²⁰ „(...) even common soldiers (...) are reluctant to give a civic crown to a citizen, and to confess that they have been saved by any one; not because it is discreditable to have been protected in battle, or to be saved out of the hands of the enemy, (for in truth that is a thing which can only happen to a brave man, and to one fighting hand to hand with the enemy,) but they dread the burden of the obligation, because it is an enormous thing to be under the same obligation to a stranger that one is to a parent“. The translation of the quote is taken from MARCUS TULLIUS CICERO, *The Orations of Marcus Tullius Cicero* (literally translated by C. D. Yonge), B. A. London, George Bell & Sons, York Street, Covent Garden, 1891.

which the Roman *pater familias* exercised above his kin and which was named *patria potestas* in regard to his children or *manus* in regard to his wife and daughters-in-law. The nature and the boundaries of this authority have been the object of a thorough analysis within the doctrine²¹; therefore, considering the limited volume of the work at hand, only its basic principles will be briefly mentioned in the paragraph below.

It has been established that the authority, exercised by the *pater familias*, used to be the very ground on which the Roman family law stood. In many aspects, whose nature was both public law and private law, the underlings (*alieni iuris*), who were under either *patria potestas* or *manus*, lacked legal capacity or had a limited one. For instance they could not marry on their own, they were not eligible for certain public positions, they could not conduct certain contracts and the most ancient sources even speak of *ius vitae ac necis*²² – the right of the *pater familias* to inflict all types of corporal punishments, including death, upon his underlings for their disobedience. In short, falling under such authority led to severe restrictions in terms of one's personal legal status.

Thus, considering the fragments quoted above, one might at first easily reach the conclusion that if a soldier was rescued in battle and the civic crown was awarded to his benefactor, this would lead to legal effect, comparable with the authority of the *pater familias*. Furthermore, such a conclusion would prove the existence of a mutual connection between certain public law and private law institutes.

However, one has to look at such a possibility realistically. An objective overview of this aforementioned conclusion would show that it is rather premature and that it raises too many questions and objections, some of which – impossible to answer or deny. The biggest one among them, as it seems, is connected to the unrealistic severity of the presumed legal consequences. Of course, undoubtedly saving one's life in combat would result in an enormous *moral* obligation. With a hint of skepticism it could even be accepted that this obligation could have evolved into a legal one, instead of strictly moral. But is it realistic to consider that being awarded a civic crown could lead to legal consequences, which were so severe that they would even have an effect on the very core of one's legal status and legal capacity? Such a statement sounds completely implausible. A further argument to support that is the fact that none of the two quoted fragments actually uses the general term *patria potestas*. This cannot be attributed to chance. Thus, these quotes have to be interpreted above all with a certain level of realism and without adding unproven content to them on the basis of mere association. It could therefore be concluded that this „*alieno debere idem quod parenti*”²³ had a predominantly moral nature and not a legal one.

IV. Conclusion

The topic of the personal status in the Roman army is incredibly large in its scope and certainly cannot be entirely exhausted by researching only the issues, listed above. However, a complete analysis, which includes all of its aspects, such as the *peculium castrense*, the military testament²⁴, the discipline and the punishments in the army, the

²¹ See M. АНДРЕЕВ, *Римско частно право* (M. ANDREEV, *Roman Private Law*), Софи-Р, София, 1992, p. 175-179. See also M. KASER, *Zur altromischen Hausgewalt*, Z. Sav. St., 67, 1950, p. 474-497.

²² See M. KASER, *Op. cit.* See also W. KUNKEL, *Das Konsilium im Hausgericht*, Z. Sav. St., 83, 1966, p. 220-251 and M. АНДРЕЕВ, *Op. cit.*, p. 176.

²³ „obligation to a stranger as to a parent”

²⁴ On the matters of *peculium castrense* and the military testament see M. KASER, *Roemische Rechtsgeschichte*, Goettingen, 1950, p. 297 and M. АНДРЕЕВ, *Op. cit.*, p. 178.

matters of marriage and concubinate etc., is achievable only within the volume a full monograph on the topic – and this is an ambition that the modest work presented here definitely does not have.

Nevertheless, on the basis of the paragraphs above, one can still reach a number of conclusions in consideration to the narrow scope of sub-topics analyzed. Namely, first of all an emphasis should be put on the nature of the military certificates as a specific ground of property acquisition, which was a notable exception from the common rules and procedures. Second, any research on matters, connected to the status of the Roman army veterans has to take into consideration the unique role that was placed upon them as a social stratum within the provinces of the Empire. As for the *dona militaria*, one has no choice but to agree with the established doctrinal opinion that they lacked a direct legal effect of their own; however their potential indirect effects on the personal status should not be overlooked or underestimated either. The matter of the consequences, to which the awarding of *corona civica* led, has not been thoroughly analyzed in the doctrine yet. Therefore, only one basic conclusion could be made – namely that the obligation that it brought upon the rescued soldier had a predominantly moral nature, which may or may not have been sanctioned by some form of custom. The two ancient sources mentioned above lack specific information about the contents of this obligation, which hinders the possibility to fully analyze its nature. However, it could be concluded with a high amount of certainty that it had no particular legal expression that influenced the legal status or capacity of the person.

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