

Maciej JONCA*

AUDIATUR UTRAQUE PARS IN BOOK X OF THE CORRESPONDENCE OF PLINY THE YOUNGER

(Summary)

The correspondence between Pliny the Younger and Emperor Trajan provides a fascinating material for research into the genesis of the contemporary and modern legal norms. Interestingly, the scholars studying the roots of the principle of *audiatur et altera pars* have so far omitted that source, even though in one of the letters one can find quite a revealing imperial directive, that is *audita utraque parte*. The latter is even semantically close to the expressions of later origins, such as *audi partem alteram* and *audiatur et altera pars*. Nevertheless, taking into account the whole content of the correspondence, it is hard to accept the view that at the beginning of the 2nd century AD the Romans used the rules whose meaning would correspond to the contemporary legal regulations. What stood in the way of such an advancement of Roman law was the political climate of the principate, together with the “constitutional” omnipotence of the emperor. Thus, in so far as the actions of the rulers and their representatives could be subject to ethical evaluation, on the other hand, they eluded any verification from the legal perspective.

Keywords: Roman law; legal rules; *audiatur et altera pars*; Pliny the Younger; Trajan

The genesis of legal norms formulated in the Latin language has given rise to numerous misunderstandings, unjustly elevating Roman law to a position of nobility. One of such norms is the commonly known principle of *audiatur et altera pars*, enforcing the hearing of both parties before the judgement is passed. The reasons of academic courtesy and the respect for the Latin language cause that its “Roman nature” is often emphasised, and if it is not that, the emphasis is made with regard to its ancient origins¹.

* Professor of Roman Law, John Paul II Catholic University of Lublin, Chair of Roman Law; e-mail: jonca@kul.pl

¹ Cf.: **D. Asser**, *Audi et alteram partem: a limit to judicial activity*, in: **A.D.E. Lewis, D. Ibbetson** (eds.), *The Roman Law Tradition*, Cambridge 1994, pp. 209–223; **J.M. Kelly**, *Audi alteram partem*,

Yet there are numerous reasons to believe that the evolution of legal norms in the contemporary meaning of the word was not possible on the Roman grounds. The authoritarian system of rule, whose essence can be seen in the sayings “the prince is not bound by the laws”² and “that which pleases the ruler has the force of law”³, excluded the adoption of any catalogue of norms, which would bound the emperor and thus allow for a critical evaluation of his actions from the perspective of their legality. The postulate of hearing “all parties” could not be enclosed in a form of a law (let alone be implemented) also due to the social system in existence in Rome, which was based on inequality⁴. Hearing was reserved only to a person of equal or higher status than the judge. The rest could only cherish the hope.

A Roman tyrant, who in an authoritarian way shed blood or confiscated estates did not break the law, but merely turned out unworthy of the office that fate had bestowed upon him. However, what was not subject to critical assessment on the legal ground did not escape moral evaluation. The deeds of emperors and their personnel were subject to continuous assessment from the ethical perspective. Everyone who wanted to be perceived in the public eye as a fair judge knew that before passing the judgement he should listen to both parties. This was contained in the canons, which were respected by the Romans, and which had their origin not only in philosophy and tradition but also in common sense. Hence, it is not difficult to find examples of such behaviour⁵. However, there are also ample testimonies showing an entirely different, darker side of Roman procedures in the period of the empire.

In the light of the high standards of the contemporary legal procedure, what is ambiguous is not only the actions of the emperors whom hagiography labelled as the “bad” ones, but also those who did their best to be perceived as “good” and this is how they have been remembered. This phenomenon is very accurately illustrated by the actions of Emperor Trajan, handed down for the next generations in the correspondence of Pliny the Younger.

Natural Law Forum 1964/4, pp. 103–110; **A. Wacke**, *Audiat et altera pars. Zum rechtlichen Gehör im römischen Zivil- und Strafprozeß*, in: *Ars boni et aequi. Festschrift für W. Waldstein zum 65. Geburtstag*, Stuttgart 1993, pp. 369–399; **M. Zablocka**, *U źródeł zasady Audiat et altera pars (At the sources of the principle of Audiat et altera pars)*, *Zeszyty Prawnicze UKSW* 2016/16.4, pp. 5–10. See also: **M. Kaser**, *Das römische Zivilprozessrecht*, München 1966, pp. 9, 275.

² D. 1.3.31: *princes legibus solutus*.

³ D. 1.4.1 pr.: *quod principi placuit legis habet vigorem*.

⁴ Cf.: **M. Jońca** s.v. *homo*, in: **A. Dębiński, M. Jońca** (eds.), *Leksykon tradycji rzymskiego prawa prywatnego. Podstawowe pojęcia*, Warszawa 2016, pp. 169–170.

⁵ See: **M. Jońca**, *Prawo rzymskie. Marginalia*, Lublin 2015, pp. 61–67; **J.M. Kelly**, *op. cit.*

Trajan, who replaced on the imperial throne the elderly Nerva in 98 AD desired to be remembered not merely as a good ruler, but “the best” (*optimus princeps*)⁶. The line of imperial propaganda was perfectly known to Pliny the Younger who, at the end of his days, was sent as the imperial governor to the province of Bithynia and Pontus⁷. From the time of his governorship, his correspondence with the Emperor has been preserved, which contains one hundred and twenty-one letters. Specially prepared for the readers from the highest circles of the Roman aristocracy, this collection was widely read and enjoyed considerable popularity. The issues raised by Pliny were endowed with such a general appeal (by the very author or the editor) so that the collection became a mine of information for anybody wishing to become familiar with the technique of a successful management of the state and effective administration of the provinces⁸.

One of the persons who crossed paths with Pliny during his term of office was a largely unknown philosopher Flavius Archippus of Prusa, a man who was well-connected and active in his local community, but someone who, as it appears, did not enjoy the sympathy of his fellow citizens⁹. Thus far, he had managed to successfully deal with his adversaries, due to, amongst other things, imperial protection¹⁰. Taking advantage of Pliny’s visit to Prusa, Archippus decided to once again resort to a tried-and-tested method. One of the numerous conflicts in which he had been involved concerned a court trial instigated by a woman¹¹ who brought a case against him in the criminal proceedings¹². Pliny referred the matter to the ruler in the following words:

⁶ See: **J. Bennett**, *Trajan. Optimus Princeps. Życie i czasy*, Oświęcim 2015, pp. 185–205.

⁷ Literature on Pliny’s writing output and his mission is considerably broad. Some of the most important texts in English published in recent years, together with the accompanying subject literature were collected in the series **R. Gibson, Ch. Whitton** (eds.), *Oxford Readings in Classical Studies: The Epistles of Pliny*, Oxford 2016.

⁸ **G. Woolf**, *Pliny’s Province*, in: **R. Gibson, Ch. Whitton** (eds.), *The Epistles of Pliny*, Oxford 2016, p. 449.

⁹ Cf.: *Plin. ep.* 10.58.

¹⁰ There exist writings by Domitian confirming the good repute of Archippus. *Plin. Cf.: ep.* 10.58.

¹¹ **F. Bracci**, *Plinio il Giovane. Epistole. Libro X. Introduzione, traduzione e commento*, Pisa 2011, p. 165: „Furia Prima. The Roman name indicates a person belonging to the upper social class, whose family had had Roman citizenship for many generations”.

¹² From the perspective of the standards existing in the Roman criminal procedure at that time, the appearance of a woman in the above story, who appears in front of the court by herself (which is rendered by the noun *accusatrix*) and does not use a man to represent her constitutes a considerable singularity. Cf.: **A.N. Sherwin-White**, *The letters of Pliny: a historical and*

PLINY TO THE EMPEROR TRAJAN

Flavius Archippus has charged me by your prosperity and immortal name, to forward a petition which he has placed in my hands. I thought it my duty to grant a request made in this way, provided that I informed Furia Prima, his accuser, of my intention. She has also handed me a petition which I am sending with this letter, so that you can hear both sides of the case and be better able to decide what is to be done¹³.

It is surprising that so far the scholars searching for the ancient sources of the principle of *adiatur et altera pars* have not paid attention to the above text¹⁴. As a matter of fact, the very phrase *audita utraque parte* is even semantically close to the later *audi partem alteram* and *audiatur et altera pars*! What is more, contrary to the Augustinian *audi alteram partem*¹⁵, its context is identical to the situation in which at present the principle of *audiatur et altera pars* is applicable on the ground of law! Nevertheless, it could not have played the role which is suggested in the current analysis, as the letters collected in Book X of Pliny's correspondence, although known in the post-classical period¹⁶ and even in the Middle Ages in their basic form, as a whole were not published until the beginning of the 16th century¹⁷. At that time (beginnings of modern era), the phrases *audiatur et altera pars* decorated town hall rooms of Latin Europe far and wide¹⁸.

However, let us move back to the Pliny's letter. Taking action in accordance with the guidelines of the stoical philosophy and examining the case in accordance with the best judiciary practice have a double dimension for Pliny. After the intervention of Archippus (carried out, most probably, behind-the-scenes), the

social commentary, Oxford 1966, p. 645: "In the Roman system based on the *ordo* she would not be allowed to appear as an accuser".

¹³ Plin. *ep.* 10.59: *C. PLINIUS TRAIANO IMPERATORI. Flavius Archippus per salutem tuam aeternitatemque petit a me, ut libellum quem mihi dedit mitterem tibi. Quod ego sic roganti praestandum putavi, ita tamen, ut missurum me notum accusatrici eius facerem, a qua et ipsa acceptum libellum his epistulis iunxi, quo facilius velut audita utraque parte dispiceres, quid statuendum putares.*

¹⁴ Naturally, this group also includes myself.

¹⁵ August. *de duab. anim.* 22. Cf.: **M. Jońca**, *Marginalia*, p. 65: "*Audi partem alteram* – wrote one of the Fathers of the Church and it had by no means anything to do with a narrow or broad understanding of the law. While dealing with the mistakes of the doctrine of the Manichean sect on the subject of the human soul, the learned bishop encouraged his adversaries to familiarise themselves with the arguments of the opposing camp".

¹⁶ **A. Cameron**, *The Fate of Pliny's Letters in the Late Empire*, *The Classical Quarterly* 1965/15.2, pp. 289–298.

¹⁷ **S.E. Stout**, *The Basis of the Text in Book X of Pliny's Letters*, *Transactions and Proceedings of the American Philological Association* 1955/86, pp. 233–249.

¹⁸ **M. Jońca**, *Marginalia*, p. 66.

governor not only called for his opponent and asked to see her, but also presented the whole documentation on the matter under dispute to the Emperor. He deemed it fair that since he acceded to the request of the resourceful philosopher, he should offer the same chance to the woman who had pressed charges against him.

The approach produced the expected result. In its tone, Trajan's answer is far from the panegyric style transpiring from the letters of praise about Archippus formulated by Domitian¹⁹. This time, in his rescript the Emperor states dryly:

TRAJAN TO PLINY

It is possible that Domitian was unaware of Archippus's position when he wrote all these letters of recommendation, but I personally find it more natural to believe that Archippus was restored to his former status by the Emperor's intervention. This seems more likely because the people of Prusa several times voted Archippus the honor of having his statue set up, though they must have known about the sentence passed by the governor Paulus. But none of this means, my dear Pliny, that if any new charge is brought against him you must give it a hearing.

I have read the petitions from Archippus and his accuser, Furia Prima, which you sent me in your second letter²⁰.

The phrase closing the above arguments is key to the importance of the whole text: *Libellos Furiae Primae accusatricis, item ipsius Archippi, quos alteri epistulae tuae iunxeras, legi*. Irrespective of the decision of the Emperor in the matter at issue, the very fact that he examined the arguments of both sides, elevates the whole judgement to the status of fair and equitable²¹.

In the correspondence collected in Book X of Pliny's letters, the author on several occasions presents himself as a hard-working representative of Roman authority in the provinces, being a specific, as it were, deputy emperor, standing

¹⁹ See above: footnote 15. Bracci describes Trajan's statement as "cautious" – **F. Bracci**, *op. cit.*, p. 165.

²⁰ Plin. *ep.* 10.60: *TRAIANUS PLINIO. Potuit quidem ignorasse Domitianus, in quo statu esset Archippus, cum tam multa ad honorem eius pertinentia scriberet; sed meae naturae accommodatius est credere etiam statui eius subventum interventu principis, praesertim cum etiam statuarum ei honor totiens decretus sit ab iis, qui non ignorabant, quid de illo Paulus proconsul pronuntiasset. Quae tamen, mi Secunde carissime, non eo pertinent, ut, si quid illi novi criminis obicitur, minus de eo audiendum putes. Libellos Furiae Primae accusatricis, item ipsius Archippi, quos alteri epistulae tuae iunxeras, legi.*

²¹ There is one more thing. The ending of the letter stands out amongst the other texts signed with Trajan's name – **A.N. Sherwin-White**, *op. cit.*, p. 645.

in for the real ruler engaged in the matters of the state in Rome. Additionally, he constantly tries to evoke in the reader the impression of smooth co-operation at the level of emperor-official, as a result of which the inhabitants of the province feel secure and take advantage of the benefits.

The *modus procedendi* demonstrated in the course of the next case with which Pliny addressed the Emperor in its general outline resembles the case of Flavius Archippus²². However, they both differ in one significant detail. Pliny writes:

PLINY TO THE EMPEROR TRAJAN

The people of Nicaea, Sir, have officially charged me by your immortal name and prosperity, which I must ever hold most sacred, to forward their petition to you. I felt that I could not rightly refused, and so it has been handed to me to dispatch with this letter²³.

The motivations which accompanied the representatives of the city council of the city of Nice were similar to those which drove Archippus: the officials desired to increase the status of their petition by “putting it through” the hands of the governor who enjoyed the Emperor’s favour²⁴. Nevertheless, their efforts did not bring about the expected results and the Emperor’s reaction turned out to be markedly different. At that time, as it turns out, the Emperor had not received full documentation with regard to the case, but merely the petition demonstrating a vantage point of merely one of the parties. That is why he left it to Pliny to fulfil the duty of delivering the judgement in the case in question, while at the same time he offered him a significant instruction:

TRAJAN TO PLINY

The Nicaeans state that they have the right granted by the deified Emperor Augustus to claim the property of any of the citizens of Nicaea who die intestate. You must therefore examine this assertion with care, summon all the persons concerned, and call on the procurators Viridius Gemellinus and Epimachus, my freedman, to help you; so that after weighing their arguments against those on the other side you can reach the best decision²⁵.

²² It is worth paying attention to the petitioners’ reference to the motif of the Emperor’s immortality. The inclusion of such a motif was a very popular technique used in the epistolary texts at that time – F. Bracci, *op. cit.*, pp. 164, 196.

²³ Plin. *ep.* 10.83: C. *PLINIUS TRAIANO IMPERATORI. Rogatus, domine, a Nicaeensibus publice per ea, quae mihi et sunt et debent esse sanctissima, id est per aeternitatem tuam salutemque, ut preces suas ad te perferrem, fas non putavi negare acceptumque ab iis libellum huic epistulae iunxi.*

²⁴ This method of reaching the Emperor was also much cheaper and faster. The city council saved considerable resources as it did not have to send a delegation to Rome with customary gifts. The officials could also count on their case to be given priority – F. Bracci, *op. cit.*, pp. 196.

²⁵ Plin. *ep.* 10.84: *TRAIANUS PLINIO. Nicaeensibus, qui intestatorum civium suorum concessam vindicationem bonorum a divo Augusto affirmant, debetis vacare contractis omnibus*

Pliny's hesitation in the above case is understandable. In accordance with Roman law in operation in the capital of the empire, if a free citizen died without leaving the last will, the procedure of determining succession was implemented by virtue of the law²⁶. Neither the Law of Twelve Tables nor the praetorian edict list any public body among those entitled to inheritance. In the provincial Nice, under a largely unknown privilege granted to the city by Augustus²⁷, the procedure seemed to be different²⁸.

Trajan's rescript should be understood in the following way: I, the Emperor says, cannot make a decision in the case presented to me, as you have not given me an opportunity of listening to the arguments of the other side. That is why you must do it yourself, in accordance with the requirements of credibility and professionalism. The basis for arriving at the right decision in the given case is to listen to the arguments from all concerned parties, which include on the one hand the city of Nice, and on the other the relatives of the Nicene citizens who died *ab intestato*²⁹.

In the texts quoted above there is a postulate formulated *expressis verbis* that before the passing of the judgement the two sides should be given a hearing with due care and attention. From the content of other letters it transpires that such a procedure was an integral part of the official bureaucratic rigour. Sometimes, the governor himself presents the situation to the Emperor by summarising the stance of the parties involved in the conflict or by enclosing an appropriate attachment. This is precisely how it was done in the case of the donation granted by the city of Amisus to Piso (the governor's summary)³⁰ or the control of the municipal

personis ad idem negotium pertinentibus, adhibitibus Viridio Gemellino et Epimacho, liberto meo, procuratoribus, ut aestimatis etiam iis, quae contra dicuntur, quod optimum credideritis, statuatis.

²⁶ Gai. 3.27–27; *Reg. Ulp.* 28.7. See also: **E.G. Hardy**, *C. Plinii Caecilii Secundi epistulae ad Traianum cum eiusdem responsis*, London–New York 1889, p. 199.

²⁷ The year 20 BC is the possible date of implementing this regulation – **A.N. Sherwin-White**, *op. cit.*, p. 680.

²⁸ **F. Bracci**, *op. cit.*, p. 197.

²⁹ **A.N. Sherwin-White**, *op. cit.*, p. 680. See also: *ibidem*: “Trajan suspects that the city is in the right, however, justice must be done”. The opinion that the sides of the above-mentioned dispute included the city of Nice and the Roman treasury, as proposed by E.G. Hardy, should be rejected (*op. cit.*, p. 199).

³⁰ *Plin. ep.* 10.110.

finances in Apamea (attachment)³¹. It also happened that the Emperor acquired the necessary knowledge not from the governor but through other channels, as was the case in the matter of granting an escort to Gavius Bassus³² and the fate of slaves discovered among the recruits³³. All of the above, it might be claimed, was carried out in the spirit of the principle of *audiatur et altera pars*.

If we were to concentrate merely on the letters contained in the contemporary editions of Pliny's correspondence in Book X under the figures 59, 60, 83 and 84, and then add to them the content of letters number 21, 22, 29, 30, 110 and 111, it would not be difficult to propose a thesis that would be hard to question, namely, that the Romans in the times of Pliny the Younger knew and respected the principle of *audiatur et altera pars*. What is more, it might seem that the said principle constituted a significant component of the Emperor's legal policy, whose example, just like the sun, enlightened the practices of multifarious courts and offices of the empire.

Nonetheless, the positive impression is marred by the content of other texts from the same book. Apparently, it turns out that in numerous cases the ruler made the decision without even trying to get to the core of the problem and without paying attention to the arguments of both sides. Trajan is completely uninterested in the opinion of the inhabitants of Prusa with regard to the state of the financial books of the city. Pliny does not even consider giving a hearing to the slaves discovered among the recruits³⁴. As *instrumenta vocalae* they do not represent any significant party to him. In spite of the fact that the Emperor orders a hearing of the slaves, he does so only with a view of better understanding the pathological phenomenon, which might negatively impact on the effectiveness of the army. Pliny does not see any necessity of analysing the situation and emotions of the convicts, who are, as a matter of fact, free citizens, serving the function of public slaves³⁵. He is merely worried about the anomaly created by that situation, contrary to the prevalent standards he was used to in Rome and the whole of Italy.

The letters number 56 and 57 are especially significant, as it transpires from them that neither the Emperor nor Pliny are interested in the slightest in the motivations of the man sentenced to relegation by one of Pliny's predecessors

³¹ Plin. *ep.* 10.47.

³² Plin. *ep.* 10.21–22.

³³ Plin. *ep.* 10.29–30.

³⁴ Plin. *ep.* 10.29–30.

³⁵ Plin. *ep.* 10.31–32.

– Julius Bassus³⁶. This time, the Emperor neither avoids delivering the judgement personally, nor does he offer any mentoring, advice or instruction. He merely states:

TRAJAN TO PLINY

As for the man who was banished for life by Julius Bassus, he had two years in which he could have asked for a re-trial if he thought his sentence was unjust, but, as he took no steps to do so, and remained in the province, he must be sent in chains to the officers in command of my imperial guards. It is not sufficient to restore his former sentence when he evaded it by contempt of court³⁷.

However, of key importance for the current discussion is the tragedy of the Bithynian Christians³⁸, described in letter 96 and 97. Having received an anonymous letter with a list of persons suspected of professing Christianity, Pliny started an investigation *ex officio*, and then limited himself to addressing the suspects with three identical questions: “Are you a Christian?”. Those who answered in the positive were sentenced to death. The pagans who proved their loyalty to Roman deities were set free. Finally, the Roman citizens who adhered to the Christian faith but whom Pliny did not dare to send to death without the Emperor’s approval, were sent to Rome. The true reason for writing a letter to Trajan was Pliny’s uncertainty as to how to deal with the apostates. As for the others, he passed the death sentence on them without listening to their arguments, as it is hard to accept that forcing an answer to the question: *Christianus es?* might equal a proper hearing of the other party. While waiting for the ruler’s response, he subjected to torture two female slaves, so that (only then!) he could learn something about the Christian religion. The whole procedure can hardly be placed within the framework of the maxim *audiatur et altera pars*. Trajan’s statement has even less relevance to it:

³⁶ Plin. *ep.* 10.56.

³⁷ Plin. *ep.* 10.57: *TRAIANUS PLINIO. Quid in persona eorum statuendum sit, qui a P. Servilio Calvo proconsule in triennium relegati et mox eiusdem edicto restituti in provincia remanserunt, proxime tibi rescribam, cum causas eius facti a Calvo requisiero. Qui a Iulio Basso in perpetuum relegatus est, cum per biennium agendi facultatem habuerit, si existimat se iniuria relegatum, neque id fecerit atque in provincia morari perseverarit, vincitus mitti ad praefectos praetorii mei debet. Neque enim sufficit eum poenae suae restitui, quam contumacia elusit.*

³⁸ More on the background of the trial and its course – **R. Freudenberger**, *Das Verhalten der römischen Behörden gegen die Christen im 2. Jahrhundert: Dargestellt am Brief des Plinius an Trajan und den Reskripten Trajans und Hadrians*, München 1967; **M. Jońca**, *Głośnie rzymskie procesy karne*, Wrocław 2009, pp. 246–265.

TRAJAN TO PLINY

You have followed the right course of procedure, my dear Pliny, in your examination of the cases of persons charged with being Christians, for it is impossible to lay down any general rule to a fixed formula. These people must not be hunted out; if they are brought before you and the charge against them is proved, they must be punished, but in the case of anyone who denies that he is a Christian, and makes it clear that he is not by offering prayers to our gods, he is to be pardoned as a result of his repentance however suspect his past conduct may be. But pamphlets circulated anonymously must play no part in any accusation. They create the worst sort of precedent and are quite out of keeping with the spirit of our age³⁹.

As can be seen from the above quotation, the imperial directive does not contain even one word on the subject of conducting an honest investigation and trial! What is interesting, even the Christians did not raise objections of a formal nature in this case. Having legal education himself, the apologist Tertullian, even though he voiced massive criticism against Trajan's rescript, which was devastating in its effects, he never objected to it from the legal perspective⁴⁰.

The conclusion is clear: This is what the Emperor liked and this is what he decided. *Quid enim principi placet legis habet vigorem*. Both the Emperor, as well as Pliny, delivering the judgement on the Emperor's behalf, had the right to conduct a macabre selection which ended in the death of many people. Their conduct was legal, but not ethical.

With regard to the dispute between Archippus and Furia Prima, as well as the question of uncertainties concerning the succession in Amisus, Trajan's decisions fitted well with the existing standards at that time. However, those writings cannot be analysed in separation from the whole body of correspondence between Pliny and Trajan. In other matters, especially relating to the Christians, the Emperor behaved entirely differently, as he was not bound by anything. As Paul Veyne rightly observes, "Everything the ruler

³⁹ Plibn. ep. 10.97: *TRAIANUS PLINIO. Actum quem debuisti, mi Secunde, in excutiendis causis eorum, qui Christiani ad te delati fuerant, secutus es. Neque enim in universum aliquid, quod quasi certam formam habeat, constitui potest. Conquirendi non sunt; si deferantur et arguantur, puniendi sunt, ita tamen, ut, qui negaverit se Christianum esse idque re ipsa manifestum fecerit, id est supplicando dis nostris, quamvis suspectus in praeteritum, veniam ex paenitentia impetret. Sine auctore vero propositi libelli in nullo crimine locum habere debent. Nam et pessimi exempli nec nostri saeculi est.*

⁴⁰ Tertull. apol. 2.7–10.

decides is legal”⁴¹. In the reality of the Roman Empire (not to mention any previous period) it was not possible that there would exist any legal principles in the shape similar to the ones in force in the modern times, including the principle of *audiatur et altera pars*.

Trajan’s rule popularised the practice according to which “the judge is more important than the law”⁴². Thus, the key role in the procedure of a fair and at the same time humane approach in dealing with various matters was played not by legal norms but by personality traits of the judge⁴³. A much greater importance for the proper course of the legal procedure (from the contemporary vantage point) might rather be assigned to ethical postulates, such as the *alterum ne laedas*⁴⁴, than to the imaginary legal norms. As the example was set at the top, the governors of provinces, enjoying broad discretionary powers, as well as lower personnel, equipped with judiciary competences, all emulated the behaviour of the rulers on multiple occasions.

The material collected in Book X of the correspondence of Pliny the Younger fully proves the proposed thesis. It was not the legal norms, but moral directives⁴⁵ firmly established in philosophy that allowed for conducting categorisations and evaluations of the behaviour of emperors and their personnel from the ethical perspective. It seems that similar conclusions might be drawn on the basis of the analysis of any source, starting with the Justinian Code, on condition that the examination would be conducted in a holistic way.

References

- Asser Daan**, *Audi et alteram partem: a limit to judicial activity*, in: Andrew D.E. Lewis, Dawid Ibbetson (eds.), *The Roman Law Tradition*, Cambridge 1994, pp. 209–223.
- Bennett Julian**, *Trajan. Optimus Princeps. Życie i czasy*, Oświęcim 2015.
- Bracci Francesco**, *Plinio il Giovane. Epistole. Libro X. Introduzione, traduzione e commento*, Pisa 2011.
- Budzanowska Dominika**, *Cztery cnoty władcy w De clementia Seneki Młodszego*, Warszawa 2012.

⁴¹ **P. Veyne**, *Kim był imperator rzymski?*, in: *Imperium grecko-rzymskie (Greco-Roman empire)*, Kęty 2008, p. 25.

⁴² *Ibidem*, p. 26.

⁴³ *Iustitia* was perceived as one of the virtues marking a good ruler. See: **D. Budzanowska**, *Cztery cnoty władcy w De clementia Seneki Młodszego*, Warszawa 2012, pp. 191–274.

⁴⁴ Cf.: *Sen. ep. ad Lucill.* 120.2.

⁴⁵ Nothing more than precisely such a directive, having nothing to do with the contemporary principle of the presumption of innocence is e.g. Seneca’s postulate that the judge should “favour the innocence” (*Sen. de clem.* 1.20.2: *ut innocentiae faveat*).

- Cameron Alan**, *The Fate of Pliny's Letters in the Late Empire*, *The Classical Quarterly* 1965/15.2, pp. 289–298.
- Freudenberger Rudolf**, *Das Verhalten der römischen Behörden gegen die Christen im 2. Jahrhundert: Dargestellt am Brief des Plinius an Trajan und den Reskripten Trajans und Hadrians*, München 1967.
- Hardy Ernest G.**, *C. Plinii Caecilii Secundi epistulae ad Traianum cum eiusdem responsis*, London–New York 1889.
- Jońca Maciej**, *Głośnie rzymskie procesy karne*, Wrocław 2009.
- Jońca Maciej**, *Prawo rzymskie. Marginalia*, Lublin 2015.
- Jońca Maciej**, s.v. *homo*, in: Antoni Dębiński, Maciej Jońca (eds.), *Leksykon tradycji rzymskiego prawa prywatnego. Podstawowe pojęcia*, Warszawa 2016, pp. 169–170.
- Kaser Max**, *Das römische Zivilprozessrecht*, München 1966.
- Kelly John M.**, *Audi alteram partem*, *Natural Law Forum* 1964/9, pp. 103–110.
- Sherwin-White Adrian N.**, *The letters of Pliny: a historical and social commentary*, Oxford 1966.
- Stout Selatie E.**, *The Basis of the Text in Book X of Pliny's Letters*, *Transactions and Proceedings of the American Philological Association* 1955/86, pp. 233–249.
- Veyne Paul**, *Kim był imperator rzymski? (Who was the Roman Emperor?)*, in: *Imperium grecko-rzymskie (Greco-Roman empire)*, Kęty 2008, pp. 9–73.
- Wacke Andreas**, *Audiat et altera pars. Zum rechtlichen Gehör im römischen Zivil- und Strafprozeß*, in: *Ars boni et aequi. Festschrift für W. Waldstein zum 65. Geburtstag*, Stuttgart 1993, pp. 369–399.
- Woolf Georg**, *Pliny's Province*, in: Roy Gibson, Christopher Whitton (eds.), *The Epistles of Pliny*, Oxford 2016, pp. 442–460.
- Zablocka Maria**, *U źródeł zasady Audiat et altera pars (At the sources of the principle of Audiat et altera pars)*, *Zeszyty Prawnicze UKSW* 2016/16.4, pp. 5–10.

Maciej JOŃCA

AUDIATUR UTRAQUE PARS W 10 KSIĘDZE KORESPONDENCJI PLINIUSZA MŁODSZEGO

(Streszczenie)

Korespondencja Pliniusza i cesarza Trajana dostarcza fascynującego materiału do badań nad genezą nowożytnych i nowoczesnych zasad prawnych. Uczeni badający pochodzenie zasady *audiatur et altera pars* osobiście pomijają to źródło, mimo że w jednym z listów pojawia się wiele mówiąca dyrektywa cesarska w brzmieniu: *audita utraque parte*. Jest ona nawet semantycznie bliska legitymującym się późniejszymi wyrażeniami takim jak: *audi partem alteram* oraz *audiatur et altera pars*. A jednak, spojrzawszy całościowo na treść korespondencji, trudno przyjąć, że na początku II w. n.e. Rzymianie posługiwali się jakimikolwiek zasadami w znaczeniu zbliżonym do współczesnego. Na przeszkodzie temu stał polityczny klimat pryncypatu i związana z nim „konstytucyjna” omnipotencja cesarza. Tym samym, o ile czyny władców oraz ich przedstawicieli mogły podlegać ocenie etycznej, to pod kątem prawnym często wymykały się wszelkim klasyfikacjom.

Słowa kluczowe: prawo rzymskie; zasady prawne; *audiatur et altera pars*; Pliniusz Młodszy; Trajan