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ADRES REDAKCJI / REDAKTIONSADRESSE

Polnische Historische Mission an der Universität Würzburg
Am Hubland, 97074 Würzburg, Niemcy / Deutschland
<http://apcz.umk.pl/czasopisma/index.php/BPMH/index>
<http://pmh.umk.pl/start/wydawnictwa/biuletyn/>

Kontakt: *dr Renata Skowrońska*
tel. (+49 931) 31 81029
e-mail: r.skowronska@uni-wuerzburg.de

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WYDAWCA / HERAUSGEBER

Uniwersytet Mikołaja Kopernika
ul. Gagarina 11, 87-100 Toruń, tel. (+48 56) 611 42 95, fax (+48 56) 611 47 05
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SZYMON OLSZANIEC

Uniwersytet Mikołaja Kopernika w Toruniu

E-Mail: so@umk.pl

ORCID ID: <https://orcid.org/0000-0003-1980-2081>

THE PROBLEM OF EVADING CURIAL DUTIES BY DECURIONS IN THE 4TH CENTURY AD IN THE LIGHT OF THE *THEODOSIAN CODE*

The topic of this outline is the position of members of *curia* – city councils in the late Roman Empire period – viewed in the context of normative sources. Members of city councils (*curiae* in the West, *boulai* in the East) during the Principate period were relatively numerous, unlike senators and equites. According to estimates by Géza Alföldy, the group consisted of 100.000–150.000 members.¹ The basis of the importance of members of city councils was their land estates. Their wealth allowed them to perform tasks for the local community known as *munera* (liturgies) and to hold municipal offices or *archai*. Membership of councils was voluntary.

The term *munus*, *munera* first appeared in the 1st century AD to denote a citizen's duties towards the state or the city.² In the Principate period, many Roman jurists made attempts to categorize that term. Ulpian in *De officio proconsulis* distinguished between *munera personae* and *munera patrimonium*.³ Like Callistratus, he distinguished between *munera* and *honores*, which meant holding city offices. Hermogenianus, on the other hand, introduced the category of *munera civilia*, which he defined as

¹ Alföldy: *Historia*, p. 173.

² Olszaniec: *Prefektura*, p. 200 with references to scientific literature on the subject in footnote 280.

³ Mommsen (ed.): *Domini nostri sacratissimi principis Justiniani Digesta seu Pandecta* (further: *D.*), Book 50. Chapter 4. Law 6. Excerpt 3 (further on I use only numbers).

“munera patrimonii alias personarum.”⁴ In addition, Arcadius Charisius in *Liber singularis de muneribus civilibus* divides *munera* into “munera personalia, patrimonii and mixta.”⁵ *Munera publica* required contributing one’s own activity, which meant manual or intellectual work, whereas *munera patrimonii* means the obligation to involve one’s property or estates.⁶ As also noticed by Carsten Drecoll, the divisions used by Hermogenianus or Arcadius Charisius are not consequent, whereas liturgies differed depending on a province.⁷ Since the times of Constantine, those divisions started to blur, and the terms *munera curialia* for different duties of decurions and *onera extraordinaria* for various burdens of land possessors should rather be used.⁸ A call to serve the *munus* was addressed to the praetorian prefect, who then delegated its execution directly to the relevant authority.⁹

At the turn of the 3rd and 4th centuries, reforms by emperors Diocletian and Constantine resulted in increased tax burdens. The emperors of the late Roman Empire sought to ensure that none of the landowners avoided paying their due taxes. This led to changes in the position of members of city councils, who were assumed to be responsible for fulfilling the *munera* with their own property. A special role in normalizing their position was played by the legislation of Constantine I, based on the experience of the previous century. This changed the evolution of membership in the council from voluntary to obligatory: *conditio*.¹⁰

In the 4th century AD, a candidate for membership of the city council was expected, as mentioned earlier, to possess appropriate wealth (*substantia, fortuna*)¹¹ and be a citizen of the city where he was supposed to

⁴ D. 50. 4. 1. Prologue.

⁵ Ibidem, 50. 4. 18. Pr.

⁶ Olszaniec: *Prefektura*, p. 201.

⁷ Drecoll: *Die Liturgien*, p. 240.

⁸ Neesen: *Die Entwicklung*, p. 211.

⁹ Olszaniec: *Prefektura*, p. 202.

¹⁰ Laniado: *Recherches*, p. 5. Mommsen (ed.): *Codex Theodosianus* (further: *CTh.*), VIII. 4. 11 of 2.10.365 addressed to Festus, the *consularis Syriae*, still forbids the forced recruitment of former *cohortales* to the city councils citing a law issued by Emperor Diocletian.

¹¹ Krueger (ed.): *Codex Iustinianus* (further: *CJ.*), Book X. Chapter 42. Law 1 (further on I use only numbers): “fortuna”; Ibidem, XII. 1. 13: “substantia”; Ibidem, XII. 1. 133: “agro vel pecunia idonei”; Ibidem., XII. 1. 5: “possidendi condicione”; Drecoll: *Die Liturgien*, p. 41.

fill the liturgy. According to papyri sources in Egypt, nomination to city council was ultimately decided by *curator* (*logistes*), who represented the emperor in the city. He acknowledged the choice made by the council.¹² In normative sources, on the other hand, we find the constitution placed in the *Codex Theodosianus* (Book XII. Chapter 1. Law 66)¹³ of 21 June 365 addressed by Valentinian I (364–375) and Valens (364–378) to the praetorian prefect of Italy and Africa Vulcacius Rufinus,¹⁴ which proves that one became a council member through *nominatio* and *electio*. The nomination to fill the liturgy was also decided by the council.¹⁵ However, also in this case, the list of approved candidates was received by *logistes*.¹⁶ In 395 AD in Proconsular Africa, the nomination of new members of the council was decided by the *curia* itself. For the selection to be valid, it had to be made in the presence of at least 2/3 of its members, as stated in the constitutions: *Codex Theodosianus*, XII. 1. 84 of 15 February 384, addressed to Camenius, vicar of Africa, and *Codex Theodosianus*, XII. 1. 142, addressed on 16 May 395 to Ennoius, proconsul of Africa.¹⁷ The liturgy usually lasted for one year, just like the term in municipal offices: *archai*.¹⁸ Fulfilling *munera* was the primary duty of a council member. No *iudex* was exempt from it; no member of the city council could resign from it himself. In the case of a council member becoming impoverished, the decision to exempt him from *munera* for a strictly defined period of time (“certo temporis spatio”) was made by the emperor himself.¹⁹ Constantine also revoked all the rescripts granting exemptions from curial duties with the law: *Codex Theodosianus*, XII. 1. 17, from 25 October 329, addressed to Lucretius Paternus. In another constitution, he decreed that the lowest

¹² Ibidem, pp. 13–14.

¹³ Further on I use only numbers.

¹⁴ Jones et al., *The Prosopography of the Later Roman Empire*, I (further: *PLRE*, I), pp. 782–783, s.v. *Vulcacius Rufinus* 25.

¹⁵ Drecoll: *Die Liturgien*, p. 16.

¹⁶ Ibidem, p. 21.

¹⁷ See: *PLRE*, I, pp. 474–475, s.v. *ALFENIUS CEIONIUS IVLIANVS signo KAMENVS* 25 and pp. 278, s.v. *ENNOIVS*.

¹⁸ Drecoll, *Die Liturgien*, pp. 31–32; 35.

¹⁹ *CTh.*, XII. 1. 1 of 15.03.329. In the manuscript of the Code this law bore the date: 313. The constitution was addressed by emperor Constantine I (306–337) to the praetorian prefect Evagrius; on Evagrius see: *PLRE*, I, pp. 284–285, s.v. *Evagrius* 5.

age required to fulfil *munera curialia* was 18²⁰. The law indicates that some cities tried to charge seven- or eight-year-olds with curial duties. Issuing of this law was meant to put an end to that kind of practices. *Sacerdotes* (provincial priests) and members of the city council could not leave the borders of their cities²¹, as indicated by the law *Codex Theodosianus*, XII. 1. 60, addressed on 12 September 364 by emperors Valentinian I and Valens to the citizens of Byzacena (meaning the *koinon* of Byzacena). Members of the city councils were also not allowed to deal with the administration of somebody else's estates as procurators, under the penalty of deportation (*deportatio*), as stated in *Codex Theodosianus*, XII. 1. 92 of 23 October 382, addressed to the praetorian prefect Florus.²²

In such circumstances, members of city councils left them. This led to a decrease in their numbers in cities. Athens, which in the times of Hadrian had 500 *bouleutai*, and in the 3rd century AD as many as 750, according to Dexippus, during the last quarter of the 4th century had merely 300 of them. However, as noticed by Avshalom Laniado, the presented numbers do not correspond to the size of a city like Athens,²³ especially since city councils during the Principate period usually consisted of 50 to 70 members.²⁴ This number (50) *bouleutai* was mentioned in the case of a new town (*municipium*), Tymandus in Pisidia, established at the turn of the 3rd and 4th centuries.²⁵ In the 4th century, a sophist from Antioch, Libanios, in his letter (*Ep.*, 696²⁶) to the governor of province Cilicia (in the rank of *praeses*), Celsus, congratulates him on increasing the number of city council members in Alexandria ad Istrum to 15. The same author notes that whereas the city council of Antioch in the times of Constantine consisted of 600

²⁰ *CTh.*, XII. 1. 19 of 4.08.331 addressed to the praetorian prefect Evagrius.

²¹ Even being member of delegation of his municipality to the court a *curialis* should inform the provincial governor (*iudex*) about that and obtain his permission to depart, see: *Ibidem*, XII. 1. 9.

²² Theodosius II broadened the prohibition and expanded it by lease of estates (*conductio*) by the law Mommsen et al. (ed.): *Leges Novellae ad Theodosianum Pertinentes*, IX.

²³ Laniado: *Recherches*, p. 5.

²⁴ *Ibidem*, p. 7.

²⁵ Mommsen et al. (ed.): *Corpus Inscriptionum Latinarum* (further: *CIL*), III. *Supplementum*. no. 6866=Dessau (ed.): *Inscriptiones Latinae Selectae* (further: *ILS*) 2/1, no. 6090.

²⁶ Foerster (ed.): *Libanii Opera*, p. 631.

members, in the times of Theodosius the number had fallen to only 60²⁷. In this case, we are talking about one of the largest cities of the Roman East along with Alexandria, and after 330, also Constantinople. The album of Thamugadi in Numidia, dated to the reign of Julian (361–363) or the beginning of the reign of Valentinian I, provides a list of 263 names, 149 of which are members of the city council.²⁸ According to its publisher, André Chastagnol, the album contained 283 names at most.²⁹

The most important normative source registering the process of escaping from curial duties is the *Theodosian Code*, which is a collection of emperor's constitutions from Constantine I to Theodosius II (408–450), published in 438.³⁰ Unlike *munera extraordinaria sive sordida* (*Codex Theodosianus*, XI. 16), *munera civilia* are referred to in book XII, along with other chapters devoted to city government. Chapter 1 of that book, along with other chapters, consists of 192 constitutions, as many as 151 of which refer to the 4th century: from Constantine I to the death of Theodosius I in 395. Most of them address the issue at hand and show that council members were subjected to a series of restrictions in public life, including exclusion from higher offices, careers in court administration, provincial administration, the army, and the Church.

MILITIA ARMATA

When describing the topic of members of city councils avoiding service by joining the army in the 4th century, one should start with the law from outside book XII of the Code. *Codex Theodosianus*, VII. 20. 2 of 1 March 326, issued by Emperor Constantine, exempts veterans from *munera civilia*. However, in 325 Constantine, by the law *Codex Theodosianus*, XII. 1. 10

²⁷ Norman (ed.): *Libanius. Selected Orations* (further: *Lib., Or.*) 2. 33, whereas in many cities only 6; *Ibidem*, 48. 3: 600; *Ibidem*, pp. 408–409, 49. 8: decrease in the number of *bouleutai* in Antioch from 1200 to 12; see also Laniado: *Recherches*, p. 6 and Hahn: *Immunität*, p. 186, fn. 26.

²⁸ Dating once again indicates Emperor Julian: Chastagnol: *L'album*, 40–48, on Valentinian I: Horstkotte: *Die Datierung*, pp. 238–247.

²⁹ Chastagnol: *L'album municipal*, p. 39.

³⁰ Most of the laws included in the *Theodosian Code* were repeated in the *Justinian Code*.

addressed on 11 July³¹ to *vicarius Orientis Maximus*,³² ordered soldiers who escaped from performing curial duties, as well as those originating from decurion families, to return to performing those duties. The law applied not only to those who entered the service through *suffragium*, but also to those who did so by the emperor's favour (*beneficium*), underwent the *probatio* procedure and swore an oath.³³ The law *Codex Theodosianus*, XII. 1. 11 of 7 October 325, addressed to the praetorian prefect Constantius, specified that exemptions only applied to those serving as *primipilii*.³⁴

On 27 May 326, by the law,³⁵ addressed to the praetorian prefect Evagrius, Constantine ordered a return to city councils for all those who had served in the army or in administration (“ad legiones vel diversa officia currentibus”) as a result of a petition to the emperor (“militiam sibi per supplicationem poscentibus”), if their service had been shorter than 20 years. Thus, Constantine introduced a rule, which, in the 4th century, would appear in imperial legislation: sufficiently long service in the army or *militia inermis* at the imperial court would grant protection from being returned to city councils.³⁶ However, another constitution³⁷ addressed to count (of Spain) Annius Tiberianus, soon made previous provisions stricter, ordering even veterans' sons to return to city councils, just like *Codex Theodosianus*, XII. 1. 18 from 329,³⁸ which stated that curial duties applied to veterans' sons who did not serve in the army and were older than 35; the law also referred to previous legislation concerning that issue (*Codex Theodosianus*,

³¹ In the manuscript of the Code this law bears the date 17 June.

³² *PLRE*, I, pp. 590–591, s.v. *Valerius Maximus 49*, later praetorian prefect (327–328, 332–333, 337) and the consul of 327.

³³ It was the Emperor Diocletian who for the first time excluded decurions from the service in the Roman army: *CJ.*, XII. 33. 2.

³⁴ Thus, they have already completed their military service and are fulfilling the *munus primipili pastus*. With regard to the *primipilarii* of the Osroene area, the law *CTh.*, XII. 1. 79 of 3.12.375 addressed to the praetorian prefect of the East Domitius Modestus orders them to give one of their sons to sit in the city council of Edessa. These findings were repeated in *CTh.*, XII. 1. 105 of 4.05.384 (cites *CTh.*, XII. 1. 79) addressed to the praetorian prefect Cynegius, though he mentions “principes officii praesidis osdroenae” rather than *primipilarii*. He gives as his reason: “ob penuriam edessenorum municipum”.

³⁵ *Ibidem*, XII. 1. 13,

³⁶ About this law see: Baumann: *Freiheitsbeschränkungen*, p. 120–122.

³⁷ *CTh.*, XII. 1. 15 of 24 November 326 (in manuscript of the Code: 353).

³⁸ In manuscript of the Code: 353.

VII. 22. 1–2). The order was repeated in another law, *Codex Theodosianus*, XII. 1. 32 of 17 August 341, addressed to Hilarianus (civil officer, position unknown³⁹), and in 343, that age of veterans' sons who could be called to perform council duties was lowered to 16, which is mentioned in *Codex Theodosianus*, VII. 22. 4 of 27 June that year, addressed to the praetorian prefect Leontius.⁴⁰

Then, a return was made to the concept of minimal terms of service as a factor protecting from being returned to the city council. *Codex Theodosianus*, VIII. 7. 5, of 18 May 354, relieved curial duties from *chartularii* of master of the horse and foot, serving at least 25 years, whereas *Codex Theodosianus*, XII. 1. 6, of 6 October 354, established ten years of service for commissary officers (*primipilares*) supporting the distribution of food supplies. On the other hand, the law placed in *Codex Theodosianus*, XII. 1. 38, addressed to the praetorian prefect Anatolius⁴¹, dated to 23 May 357,⁴² ordered a return to councils (“oppidaneis [...] obsequiis”) for serving in *comitatenses* units for no longer than five years (“quinque stipendia”). Anatolius could claim such members of the city council, by writing letters to *magistri militum*. Emperor Julian, on the other hand, set the minimum of at least 10 years of “*militiae limitanae*” as the basis for exemptions from service in the councils.⁴³

Another law, *Codex Theodosianus*, XII. 1. 45, of 22 June 358, addressed to Martinianus, vicar of Africa,⁴⁴ ordered veterans to return to *munera*, both those fulfilling *militia*, and those who received *misso honesta*. A similar approach was demonstrated by Valentinian I, Valens and Gratian in the constitution, addressed to the praetorian prefect of Italy and Africa, Probus⁴⁵, as the law ordered veterans' sons to serve in city councils.

³⁹ PLRE, I, p. 433 s.v. *Hilarianus* 1.

⁴⁰ Ibidem, pp. 502–503, s.v. *F. Domitius Leontius* 20. On the other hand, *CTh.*, VII. 1. 5 of 363 only says that sons of veterans unable to serve in the army are supposed to be brought to service in councils, having reached the proper age.

⁴¹ PLRE, I, pp. 59–60, s.v. *Anatolius* 3.

⁴² In the manuscript of the Code: 346.

⁴³ *CTh.*, XII. 1. 56 of 21 December 363.

⁴⁴ PLRE, I, p. 564, s.v. *Martinianus* 5.

⁴⁵ *CTh.*, XII. 1. 78 of 16/17.05. 372; on Probus see: PLRE, pp. 736–740, s.v. *Sex. Claudius Petronius Probus* 5.

Somewhat earlier,⁴⁶ Emperors Valentinian and Valens ordered the unconditional return to city councils of *susceptores* (tax collectors) who did not complete fulfilling their duties and by *suffragium* who had obtained positions thanks to which they had the right to honour the imperial purple (“*nostras purpuras adoravit*”), which meant also those related to service in the army.

A return to the concept of a minimum five-year service in the army as the basis for exemption from being restored to the city council was made in the constitution *Codex Theodosianus*, XII. 1. 88, of 9 April 382, addressed to the praetorian prefect Flavius Syagrius. Another law,⁴⁷ issued on 26 February 383 and addressed to Eusignius,⁴⁸ proconsul of Africa, once again forbids council members to fulfil *militia*, but this time their return to city councils could be prevented by 15-year service in the army, provided they did not fail during a war or their service (“*neque bellicis necessitatibus neque muneribus militaribus ostenderit defuisse*”).

Both laws concern the state of Gratian, whereas in the East, in the state of Theodosius constitution, of 30 July 382, addressed to the praetorian prefect *Orientis* Florus,⁴⁹ imposed the duty to restore to the city council those who had abandoned them for military service (“*sacramentis militaribus cessantes ac stipendiis manciparunt*”). The law does not mention any period of service which would exempt them from curial duties. After several years, imperial constitutions got more severe in their tone. Emperors Valentinian II and Theodosius, by another law,⁵⁰ addressed “*universis comitibus et magistris equitum et peditum*”, admonishing all *duces*, *tribunes* and provosts that all fugitives from city councils are to be restored to their former status. Neither service in the army nor the duration of service protected them from this.

⁴⁶ On 30.01.370, with the law *CTh.*, XII. 1. 70 addressed to the praetorian prefect of Italy, Africa, and Illyricum Mamertinus; for more on him see: *PLRE*, I, pp. 540–54, s.v. *Claudius Mamertinus* 2.

⁴⁷ *CTh.*, XII. 1. 95.

⁴⁸ *PLRE*, I, pp. 309–310, s.v. *Flavius Eusignius*. After serving as proconsul of Africa, he was praetorian prefect of Italy and Illyricum in years 386–387.

⁴⁹ *CTh.*, XII. 1. 87; on Florus see: *PLRE*, I, pp. 367–368, s.v. *Florus* 1.

⁵⁰ *CTh.*, XII. 1. 113 of 3.09.386.

The return of council members' sons to city councils (regardless of the origins of their grandfathers and ancestors in general), as well as sons of veterans incapable of service is, on the other hand, the subject of the constitution *Codex Theodosianus*, XII. 1. 89, of 5 February 382,⁵¹ addressed to Fl. Syagrius, the praetorian prefect of Italy⁵² and *Codex Theodosianus*, XII. 1. 125, issued on behalf of Theodosius I, Arcadius and Honorius and addressed to the proconsul of Asia, Victorius, dated to 24 April 392. He orders *actuarii* who are council members' sons to return to council duties, regardless of the length of their service.

MILITIA INERMIS

The status of a city council member resulted in exclusion not only from military service, but also from service in offices of dignitaries of provincial administration and at the palace. It is referred to also by the laws included in chapter *Codex Theodosianus*, VII. 2: "Quid probare debeant ad quamcumque militiam venientes". They prohibit council members from fulfilling *militia*, requiring the person aspiring to it: "de natalibus ipsius ac de omni vitae condicione examen" (*Codex Theodosianus*, VII. 2. 1) and proving that "non patre, non avo esse municipe penitusque" (*Codex Theodosianus*, VII. 2. 2).⁵³ Although these are constitutions dated to as late as the 80s of the 4th century (383 and 385 respectively), they illustrate well the tendency of imperial legislation in this regard. How far-reaching was the practice of avoiding the city councils and protecting oneself by performing the *militia inermis* in *apparitio* of provincial governors, vicars, and praetorian prefects, as well as performing the *militia* in the imperial palace is shown by the frequency with which Roman emperors issued laws regulating these issues. This frequency results from the attractiveness of this type of carrier for

⁵¹ In manuscript of the Code: 381.

⁵² The foreshadowing of this change had already been the law *CTh.*, XII. 1. 64, according to Seeck: *Regesten*, p. 232 addressed by Valentinian I and Valens on April 23, 368 "Mauris Sitifiensibus", which orders the return to the *curia* of the sons of those fulfilling *militia* if their grandparents were council members ("privilegio militiae paternae se non vindicet, quem avitus curiae nexus adstringit"). The law does not specify, however, whether this refers to service in the army or in the imperial or provincial administration.

⁵³ For more about those two laws see: Baumann: *Freiheitsbeschränkungen*, pp. 124–125.

decurions who were not members of the highest stratum of city councils.⁵⁴ The first of them is constitution *Codex Theodosianus*, XII. 1. 14, addressed on 24 November 326,⁵⁵ to praetorian prefects. This recalls a law that has not been preserved, which orders the sons of counts, governors in the rank of *praesides*, *rationales* and *magistri privatae* who “ex origine curialium descendunt” to perform curial duties.⁵⁶ The law thus applies to the offspring of persons highly placed in the official hierarchy of the Empire. It makes no mention of ordinary *apparitores*, who constituted the administrative staff of middle and higher-ranking officials. The law leaves a gateway to promotion in the form of an imperial decision, which was in fact ceded to the praetorian prefect. The law directs that those who have committed fraud be sent back to the councils and does not allow them to enter the Senate. It should also be noted, in the context of further considerations, that the legislator did not order the return to the council of dignitaries of curial origin while serving in the administration; he called only their descendants. In the same year, Constantine proposed the minimum time of service which would protect ordinary *cohortales* and *officiales praesidum*, the administrative staff of middle and higher-ranking officials, from a return to fulfill the *munera* to be 20 years.⁵⁷

However, even towards the end of Constantine’s reign, *curiales*, their sons and *geniti*, who escaped “ad diversas militias”, were ordered to be restored to city councils. An exception was made for those *curiales* who served at the palace (“exceptis his, qui in palatii nostri iam habentur officiis”). This was stated in *Codex Theodosianus*, XII. 1. 22 of 22 August 336, addressed to the praetorian prefect Evagrius. That law did not specify how long militia at the palace should serve to obtain exemption from curial duties; perhaps service alone was enough. On the other hand, the constitution dated to 24 June 341 and addressed to the praetorian prefect of Italy and Africa Aco Catullinus⁵⁸ prohibits decurions and their sons from serving in any

⁵⁴ Ibidem p. 120.

⁵⁵ In the manuscript of the Code: 353.

⁵⁶ Schubert: *Die rechtliche Sonderstellung*, p. 300 argues wrongly that this constitution „vom Kurialendienst befreit“.

⁵⁷ *Codex Theodosianus*, VIII. 4. 1 of 28.04.326 to the praetorian prefect Constantius (for more on him see: *PLRE*, I, p. 245, s.v. *Fl. Constantius 5*); dating of the law: Seeck: *Regesten*, p. 176.

⁵⁸ *CTh.*, XII. 1. 31=VIII. 2. 1 (on the recipient, see: *PLRE*, I: 187–188, s.v. *Aco Catullinus*

militia; it also imposes stricter rules on those members of the city councils who fulfil *militia* duties at the imperial court (“intra nostrum palatium militant”).⁵⁹ “Curiiis officisque municipalibus” all those who had served at the palace for less than five years are to be sent back. Another law, of 11 October 338, addressed to Julianus,⁶⁰ orders a return to city councils for those called by three edicts (by the prefect).⁶¹ The persons called to service at the city council in this way had 30 days to abide by the edict. Restoring to the councils of all those fulfilling militia duties, regardless of the length of their service, appears also in the law *Codex Theodosianus*, XII. 1. 37, of 28 May 344, addressed to the praetorian prefect of Italy Placidus.⁶²

In the year 354, three important constitutions were published by the Emperor Constantius. The first, of 8 March 354, relieved from curial duties *agentes in rebus*, *cancellarii* and apparitors of the count of the sacred largesse and *comes rerum privatarum* after 20 years of service.⁶³ Then, the already quoted constitution *Codex Theodosianus*, VIII. 7. 5, of 18 May 354, decided that in the case of *ministeriales*, *paedagogiani*, *silentiarii* and *decuriones*,⁶⁴ 15 years of palatine service protected them from being recalled to a municipal council. Eventually, another already quoted constitution – *Codex Theodosianus*, VIII. 7. 6, of 6 October 354 – required almost 25 years of service from apparitors of the count of the sacred largesse, *rationalis rerum privatarum*, vicars, and prefects of the city⁶⁵.

However, the five-year period in the case of *militia palatina* as protection from returning to the city council reappeared in imperial laws. The

signo Philomatius 3),

⁵⁹ For more about that law see: Schubert: *Die rechtliche Sonderstellung*, p. 301 and Baumann: *Freiheitsbeschränkungen*, p. 122.

⁶⁰ *CTh.*, XII. 1. 23. According to *PLRE*, I, pp. 469, s.v. *IVLIANVS* 7 could be a provincial governor.

⁶¹ The praetorian prefect edict as the manner of calling for the fulfillment of council duties is also mentioned in *CTh.*, XII. 1. 119 p. 691 of 21.06.388 addressed to Tatianus, praetorian prefect.

⁶² *PLRE*, I, pp. 705–706, s.v. *M. Maecius Memmius Furius Baburius Caecilianus Placidus* 2.

⁶³ *CTh.*, VI. 27. 1.

⁶⁴ Commanders of *silentiarii*: Seeck: *Decuriones*, col. 2353; Idem: *Silentiarii*, coll. 57–58; Berger: *Encyclopaedic Dictionary*, p. 707.

⁶⁵ Those three constitutions are discussed by: Schubert, *Die rechtliche Sonderstellung*, p. 301.

already quoted *Codex Theodosianus*, XII. 1. 38, addressed to the praetorian prefect of Illyricum Anatolius and dated to 23 May 357, ordered a return to “oppidaneis [...] obsequiis” for not only those who served in *comitatenses* units, but also for “domestici, protectores, scholares, palatini”. Thus, a part of the law refers to those performing military service at the palace (“domestici, protectores, scholares”) and *palatini*: civilian personnel subordinate to the count of the sacred largesse. That is why a praetorian prefect was supposed to write on the matter of those people to the superiors of particular offices (“comites domesticorum equitum et peditum, comes sacrarum largitionum, magister officiorum, castrensis”). However, the law *Codex Theodosianus*, XII. 1. 40, addressed to the praetorian prefect Taurus on 21 July 357,⁶⁶ stated that neither the period of fulfilling *militia* nor the rank obtained during service protects from being returned to the city council.⁶⁷ The already quoted law, *Codex Theodosianus*, XII. 1. 44 of 22 June 358 addressed to the vicar of Africa Martinianus, continues the started tendency. It orders a return to “oppidaneis obsequium” for council members and their children, both those who “ad militiae sacramenta confugiunt”, and those who escaped from service at the city council through *suffragium*, among them being even *ex-comites* and “perfectissimi intra palatio” (!), as well as those who had such a rank, but hid in provinces (“intra provinciam repertus fuerit otiosus”).

A certain change took place in the times of Julian the Apostate. The emperor, with the law of 9 November 362, addressed to the praetorian prefect Salutius Secundus,⁶⁸ issued an exemption from curial duties for *scriniarii* serving in “*scrinia memoriae, dispositionum, epistularum, libellorum*”, whose fathers, grandfathers and other ancestors were members of the city councils as well (which does not mean them). Exemption was granted by the same emperor also for *agentes in rebus*, serving in the palace at least 3 years or discharged from the service in the year 363.⁶⁹ Finally, in 365

⁶⁶ In the manuscript of the Code: 353.

⁶⁷ The same was true of the rescript addressed to the *ordo* of Caesena, *CTh.*, XII. 1. 42 of 22.05.354: *curiales* who serve *militia* should be restored to the council. The law makes no mention at all of the length of service of such of those who per “*officia diversa nomina dederunt militia*”. Millar: *Empire and City*, p. 86 consider that constitution *CTh.*, XII. 1. 40 concerns “men [...] undergoing a purely nominal military service”.

⁶⁸ *Ibidem*, VI. 26. 1.

⁶⁹ *Ibidem* VI. 27. 2 of 28. 02. 363.

(28 June?) in the West, a breach was made in the previously established tradition: Valentinian and Valens exempted *palatini* from curial duties. This was mentioned in the constitution issued on behalf of those emperors and addressed to prefect of Rome Volusianus Lampadius.⁷⁰ However, already on 30 January 370, by the law addressed to the praetorian prefect of Italy Mamertinus,⁷¹ the same emperors ordered unconditional return to city councils of those *susceptores* (tax gatherers) who had not completed their duties and by *suffragium* obtained the ranks thanks to which they were entitled to honour the imperial purple (“nostras purpuras adoravit”). Thus, the law referred to the people who served at the palace, in the army, or even were members of the Senate. The above tendency was continued both in the East and the West of the Empire. Eutropius, as the praetorian prefect of Illyricum,⁷² was the addressee of the law dated to 21 July 381, ordering to return to the councils all those who “per illicita ambitionis” had shortened the period of fulfilling *munera* and obtained promotion, as well as for their offspring⁷³. In this context, it is worth remembering the previously issued law *Codex Theodosianus*, XII. 1. 71, dated to 5 May 370, addressed by Valentinian I, Valens, and Gratian to the consular of Campania, Amfilochius, and the consular of Picenum Sofronius. It goes as far as to order the return to the councils of all former council members who had obtained the highest rank of “convivente curia”, which means by the council’s consent. Strict in its tone is also the earlier law addressed by emperors Gratian, Valentinian II and Theodosius to the praetorian prefect of the East Neoterius,⁷⁴ bearing the date of 2 February 380. It orders an immediate return to the councils (“retractis legem hanc tulimus scribae [...] et logografos civitatum”, who had undertaken *milita*. Another confirmation of the existing orders took place on 30 July 382 by the law⁷⁵ of 30 July 382, addressed to the praetorian prefect of the East, Florus.

The Theodosian Code also contains regulations which demonstrate the problems faced by territorial, units smaller than prefectures. Thus, emperors

⁷⁰ Ibidem, XII. 1. 67.

⁷¹ Ibidem, XII. 1. 70.

⁷² *PLRE*, I, pp. 317–318, s.v. *Eutropius 2*.

⁷³ *CTh.*, XII. 1. 86.

⁷⁴ *PLRE*, I, p. 623, s.v. *Flavius Neoterius*.

⁷⁵ *CTh.*, XII. 1. 87.

Gratian, Valentinian II, and Theodosius I decided that a council member who had abandoned his duties must be returned to the council (“ut agenda persolvant”) or provide a substitute in his place (“in locum suum idoneos pro publica utilitate constituent”). This was stated in the constitution⁷⁶ of 6 August 382, addressed to *consularis* Darius (he held the office in the East of the Empire), that the law was “data Constantinopoli”). Constantian,⁷⁷ one of the few vicars from the Pontus diocese known by name, received on 31 January 383 a constitution formally addressed to him by emperors Valentinian II, Gratian, and Theodosius. The law once again mentions those who fled from service at the local city councils by fulfilling *militia* and illegally obtaining *dignitates* and *honores*, exempting them from *munera*. The emperors also decided that applying for higher ranks by the members of “collegium ordinum” is possible only after them having fulfilled the curial duties.⁷⁸

The previously quoted *Codex Theodosianus*, XII. 1. 88, of 9 April 383, addressed to the praetorian prefect Syagrius, talks not only about 5 years of military service as base for exemption from curial duties, but also about 30 years of service at the palace (“dignitas palatina”).⁷⁹ Thus, in the West a return was made to the concept of appropriately long service being a base for exempting *militantes* who had abandoned the councils from returning and fulfilling *munera*. Traces of that regulation are visible in another law, dated to 383 and addressed to the praetorian prefect of Italy and Illyricum, Hypatius.⁸⁰ The law ordered a return to the councils to all those who had fulfilled *militia* of various type (“omnes, qui ex origine curialium se diversis gradibus inseruere militia”), except for those who were protected by the old law, which defined its exact duration (“certum numerum stipendiorum vel palatinae militiae viris statuit”), which applied even to those serving at the palace.⁸¹ Thus, in the West towards the end of Emperor Gratian’s reign, the

⁷⁶ Ibidem, XII. 1. 91.

⁷⁷ *PLRE*, I, p. 222, s.v. *Constantianus 2*.

⁷⁸ *CTh*, XII. 1. 94 of 31.01.383.

⁷⁹ See: Schubert: *Die rechtliche Sonderstellung*, p. 301.

⁸⁰ *CTh.*, XII. 1. 100 of 19.04.383; *PLRE*, I, pp. 448–449, s.v. *Flavius Hypatius 4*.

⁸¹ Perhaps it refers to the already quoted law *CTh.*, XII. 1. 88, mentioning 5–year *militia armata* and 30 years of *militia palatina*.

prevailing concept was to exempt city council members from returning to *munera* after a specified period of service.

In the East of the empire, on the other hand, all evaders were ordered to be restored to the city councils. In 383 (5 March), the praetorian prefect of the East Florus was addressed by law⁸² under which, in the territory of Moesia II, all those who had escaped to become *apparitores* in the offices of the governors of the province after the times of Julian were to be restored to the cities. The law evidently originated as a response to a request from the local city councils members (*concilium provinciae*? “in quorum desiderio”) and shows the difficult situation of the councils in that province, for it permits also “e plebe idonea”, as well as “personae famulantium”, which meant artisans.⁸³

Another law⁸⁴, dated to 6 April 383 and addressed to the praetorian prefect of the East Postumianus⁸⁵ on behalf of emperors Valentinian II, Gratian, and Theodosius I, orders immediate fulfilment of all *munera*, but allows for leaving substitutes (“substituendis idoneis”) or sons (*filiis*). The constitution also stated that curial duties should also be imposed on advocates and sons of *magistri*⁸⁶ of council origin. That was a new tendency, which appeared in imperial law-making in the last decades of the 4th century.

Several other laws found in the *Theodosian Code* were addressed to the praetorian prefect of the East, Cynegius.⁸⁷ In his case, his mission as prefect was probably to continue what he had started as *questor sacri palatii*, which was to restore city councils in the East of the Empire. The law of 8 July 384,⁸⁸

⁸² Ibidem, XII. 1. 96.

⁸³ Which means, as claimed by Pharr (ed.): *The Theodosian Code*, p. 356, fn. 175: they were *de facto* slaves, as they were bound to their professions; similarly, Jones: *The Later*, p. 738, 860 and Laniado: *Recherches*, p. 15.

⁸⁴ *CTh.*, XII. 98.

⁸⁵ *PLRE*, I, pp. 718–719, s.v. *Postumianus 2*.

⁸⁶ According to Pharr (ed.): *The Theodosian Code*, p. 356 fn. 182 *magistri studiorum* or teachers. *CTh.*, XIII. 3. 1 of 1.08.321 exempted “medici, grammatici et professores litterarum” from *munera* (“cum rebus, quas in civitatibus suis possident”). By law *CTh.*, XIII. 3. 5 of 7.06. 362 provided that “magistri studiorum et doctores” were to be approved by the councils (“iudicio ordinis probatus decretum curialium mereatur”) and finally nominated by the emperor (“nostro iudicio studiis civitatum accedant”); see.: Drecoll: *Die Liturgien*, pp. 72–73.

⁸⁷ *PLRE*, I, pp. 235–235, s.v. *Cynegius 1*.

⁸⁸ *CTh.*, XII. 1. 106.

addressed to Cynegius as praetorian prefect, orders those who previously fulfilled “provinciales dignitates” – meaning provincial governors – to return to city councils and complete their *munera*. The next law addressed to the praetorian prefect Cynegius, dated to 6 November 384,⁸⁹ ordered those *officiales* who had escaped from them (“quis forte curiam defugiens”) to be sent to the councils. Another law, dated to 28 May 385,⁹⁰ addressed to the praetorian prefect Neoterius,⁹¹ ordered local councils to denounce fugitive decurions to relevant *cognitor* under the financial penalty of 30 pounds of gold. The same order had appeared in the law already quoted, in the context of military service, *Codex Theodosianus*, XII. 1. 113, of 3 September 386. There, emperors Valentinian II and Theodosius I reminded there that neither service in “diversis officiis” nor its duration protected those liable from curial duties. The councils, on the other hand, were threatened with “condemnatio [...] et periculo” if they did not try to regain the fugitives under the power of that law, regardless of the place they were in or the resistance they might give. Similarly, the constitution placed in *Codex Theodosianus*, XII. 1. 120, addressed on 17 December 389 to the praetorian prefect of the East Tatianus,⁹² orders those who served within the administrative structure of *magister officiorum*, *comes sacrarum largitionum* and *comes rerum privatarum* to return to the councils and council duties. The law does not mention any limitation on time, length of service etc. This was similarly decided in another constitution, dated to 22 November 392, addressed to the praetorian prefect Rufinus: those serving in any *militia* were to be restored to the councils and fulfil *munera*. Those who had obtained the “administrationum honor diversa suffragionum ambitione” were to be restored to the councils with the *honores* obtained.⁹³ Earlier, Valentinian II, Gratian and Theodosius I, by the law⁹⁴ dated 19 July 383, addressed to Postumianus,⁹⁵ *praefectus praetorio iterum* were also ordered not to accept

⁸⁹ *Ibidem*, XII. 1. 108.

⁹⁰ *Ibidem*, XII. 1. 110.

⁹¹ *PLRE*, I, p. 623, s.v. *Fl. Neoterius*. In 385 he was praetorian prefect of Italy; he was also praetorian prefect of East (380–381) and praetorian prefect of Gauls (390). He was also the consul of 390 along with Emperor Valentinian II.

⁹² *Ibidem*, pp. 876–879, s.v. *F. Eutolmius Tatianus* 5.

⁹³ *CTh.*, XII. 1. 129.

⁹⁴ *Ibidem*, XII. 1. 102.

⁹⁵ *PLRE*, I, p. 718, s.v. *Postumianus* 2.

“ex rescriptis nostris” exemptions. The issue returns in the constitution of 9 August 393, addressed to the praetorian prefect Rufinus. All those who were “municipibus genere [...] obnoxii” were to be restored to the fulfilled *militia* or *officium*, with neither an imperial rescript nor *adnotatio* capable of helping in this case (“nec rescripta aut adnotationes ad munerum fugam prodesse permittimus”).⁹⁶ Similarly, another constitution addressed to the praetorian prefect Rufinus on 30 May 393,⁹⁷ ordered those fulfilling *militia* to return to the councils. City councils in the prefecture of the East were obliged to give the praetorian prefect Rufinus the names of those people, with a subsequent law emphasizing that *adnotationes* are no longer significant. In case of such a person moving to “officia externa”, all their property was seized by the city council. An earlier constitution issued on behalf of emperors Valentinian II, Theodosius and Arcadius “omnibus vicariis”, not only orders all *vicariani* of council background to return to the councils but forbids them from quoting their age (“annositas”) as basis for exemption from service in the city council.

The last laws are a mark of further evolution in relations to council members. From the end of the 4th century, there were no periods in imperial law-making which would involve exemptions from returning to city councils.⁹⁸ And thus, the law addressed on 7 October 393 to Flaccianus, proconsul of Africa, orders him to send all *apparitores* to the councils to fulfil *munera* (“restitui eos debitis muniis mox iubemus”).⁹⁹ After the division of the empire of Theodosius I, we only encounter prohibitions on members of city councils to fulfil any kind of *militia*.¹⁰⁰

⁹⁶ *CTh.*, XII. 1. 137.

⁹⁷ *Ibidem*, XII. 1. 139.

⁹⁸ *Ibidem*, XII. 1. 154 of 21.12.397 to Florentinus, the prefect of Rome: “si qui municipum vel palatinam vel armatam aliquando militiam debitis praetulerit functionibus, nullis privilegiis, nullis postremo temporibus exuatur nec ei annorum spatia stipendiorumque merita supputentur, sed teneat suum curia et perpetua sibi obnoxium vindicatione defendat”; see: Drecoll: *Die Liturgien*, 60: *CTh.*, XII. 1. 16; in the East: *Ibidem*, XII. 1. 164 of 28.12.399 to the praetorian prefect Eutychianus: “nullo fori praescriptionis”; *Ibidem*, XII. 1. 188 of 3.04.436 to the praetorian prefect Isidorus: “nulla praescriptione temporis muniatur, sed ad condicionem propriam retrahatur”.

⁹⁹ *Ibidem*, I. 12. 4.

¹⁰⁰ On that topic, among others: *Ibidem*, I. 12. 6 of 21.05.398 to Dominator, vicar of Africa; *Ibidem*, XII. 1. 161 of 21.08.399=*CJ.*, X. 32. 51 to the praetorian prefect of Italy and

COLEGIA, CORPORA

In the already quoted law, *Codex Theodosianus*, XII. 1. 37 of 28 May 344, addressed to Placidus and speaking of the restoration to the councils of all those fulfilling *militia*, regardless of the period of that service, there also appears the question of council members fleeing from burdens to corpora: “calciarenenses, barbaricarii, argentarii”.¹⁰¹ The prohibition of fleeing to *fabri* guild in relation to *curiales* is also included in constitution *Codex Theodosianus*, XII. 1. 62, addressed on 10 December 364 to Symmachus, prefect of Rome, and *Codex Theodosianus*, XII. 1. 81 of 17 March 380, addressed to the praetorian prefect Neoterius.

HONORARY TITLES

Another way of avoiding curial duties for members of city councils was to obtain honorary titles exempting them from fulfilling their obligations. Emperor Constantine was the first to forbid such practices by the law *Codex Theodosianus*, VI. 22. 1, of 5 April 318,¹⁰² addressed to Severus, vicar of Italy.¹⁰³ Even earlier, however, by the law *Codex Theodosianus*, VI. 38. 1, of 19 January 317, addressed to Paternus Valerianus,¹⁰⁴ abolished the title of *perfectissimus* obtained “venali suffragio”. Already on 27 December 338, the emperors had punished those council members who tried to avoid *munera* in this way with a penalty of 30 pounds of silver. The law¹⁰⁵ addressed to Aco Catulinus, vicar of Africa¹⁰⁶ does not, however, talk about automatically restoring to the councils those people who had obtained *falsae honores* in this way. On the other hand, the next law, *Codex Theodosianus*, XII. 1. 25, of 28 October 338, which was in force in the eastern part of the Empire,

Africa Messala (hence the law concerns the state of Honorius) and *CTh.*, XII. 1. 168 of 18.05.409 addressed to the praetorian prefect Anthemius, concerns the Eastern Empire.

¹⁰¹ For more about this constitution see: Baumann, *Freiheitsbeschränkungen*, p. 136.

¹⁰² In the manuscript of the Code this law bears the date 324.

¹⁰³ *PLRE*, I, p. 836, s.v. *IVILIS SEVERUS 25*.

¹⁰⁴ *Ibidem*, 939, s.v. *Paternus Valerius 15* (governor or vicar), according to *PLRE*, I, may be identical to the vicar of unknown diocese *Valerianus 4* (*Ibidem*, I, p. 938).

¹⁰⁵ *CTh.*, XII. 1. 24.

¹⁰⁶ *PLRE*, I, pp. 187–188, s.v. *Aco Catullinus signo Philomatius 3*.

(it was issued by Emperor Constantius in Emesa) orders the persons who had obtained “emptae dignitatis”, or “suffragiis dignitatis insignia consecuti sunt” to return to city councils. An exception was made for members of diplomatic missions (“in officium legationis electi”) and those who had legally obtained honorary titles, as well as privileges and insignia related to the rank. The law thus indicates that in 338, in the East, honorary titles ensured exemptions from *munera civilia*. A year later, in 339, by the law of 1 November, addressed to Aco Catullinus, emperors Constans and Constantius restored the following categories of *honorarii* to city councils: *ex-comites* regardless of *ordo*, “*ex-praesides*, *ex-rationales*, *magistri studiorum*” and *ex-perfectissimi*, who had obtained their titles illegally.¹⁰⁷ A similar law was also delivered to Celsinus, proconsul of Africa,¹⁰⁸ (the proconsular province was exempt from the vicar’s administration and was subordinate directly to the emperor). The law issued on behalf of emperors Constans and Constantius ordered a return to the city council of Carthage of all the council members who had obtained their titles by purchasing them. Such people were to be stripped of the obtained honours and be capable of curial duties. The law also implies that the council of Carthage was already very small in terms of the number of its members. Illegally obtained rescripts exempting them from curial duties are also mentioned in the already quoted law *Codex Theodosianus*, XII. 1. 33, of 5 April 342, addressed to Rufinus, count of the East. At the same time, *Codex Theodosianus*, XII. 1. 34, of 8 April 342, addressed to Auxentius, governor of Augustamnica, gives an order to return to the councils and fulfil *munera* even to those who had been included into the *honorarii* by the constitution (“iuxta legem nostrum”). The return to council duties for honorary *ex-comites* and *ex-praesides* who had gained these dignities as a result of *suffragium* was also announced by the law¹⁰⁹ of 30 June 343, addressed to Titianus, the praetorian prefect. The only persons exempted from taking a seat in the city council were those fulfilling *administratio*¹¹⁰ and taking part in diplomatic missions (“in legationibus publicis versati sunt”). In this respect, the law repeated the provisions of the already

¹⁰⁷ *CTh.*, XII. 1. 26.

¹⁰⁸ *Ibidem*, XII. 1. 27 of 8 January 339; for more on Celsinus see: *PLRE*, I, pp. 192, s.v. *Aurelius Celsinus* 4.

¹⁰⁹ *CTh.*, XII. 1. 36.

¹¹⁰ According to Pharr (ed.): *The Theodosian Code*, p. 347 footnote 81 it means being province governor.

cited constitution *Codex Theodosianus*, XII. 1. 25 of 338. It also threatened with the loss of property those who, despite the passing of the law, would petition the emperor for exemption from their duties. The provisions of this constitution with regard to *ex-comites*, *ex-praesides* and *perfectissimi* are repeated by the law directed 22 May 354¹¹¹ to the city council of Caesena.¹¹² It is interesting to note that despite the obligation to return to service in the council, the law permitted the retention of the rank obtained. The law in question instead deprived holders of the illegally acquired rank of *clarissimi*. The prohibition of exemptions from curial duties thanks to illegally acquired imperial rescripts also appears in the previously cited law *Codex Theodosianus*, XII. 1. 37, of 28 May 344, addressed to the praetorian prefect Placidus. The *munera* were to be fulfilled also by those council members who had received the honorary titles of *ex-comites*, *ex-praesides* (this time there is no mention of *suffragium*) and others without holding office (“sine administratione adumbratarum dignitatum codicillos honorarios meruerint”). This is stated in another constitution, also addressed to the Carthaginian council (as we know otherwise experiencing troubles due to its small numbers) on 23 July 353.¹¹³ In this case, all titles and *honores* conferred as an expression of imperial favour remained intact. Thus, the content of this law was part of the trend already outlined.

SENATE

In 329, a law was issued, prohibiting members of city councils from holding seats in the Senate. Those, however, who were already its members, were allowed to retain their positions.¹¹⁴ Another tendency in the legislation concerning senators is presented by the law addressed on 19 January 340, to *ordo* of Constantina Cirtiensis¹¹⁵ (which was Cirta); the right to hold

¹¹¹ In the manuscript of the Code: 346.

¹¹² *CTh.*, XII. 1. 42.

¹¹³ *Ibidem*, XII. 1. 41; in the manuscript of the Code of this law bears the date 339.

¹¹⁴ The already quoted *CTh.*, XII. 1. 18 of 25.11.329; For more on this law see: Schubert: *Die rechtliche Sonderstellung*, p. 294.

¹¹⁵ *CTh.*, XII. 1. 29; although, probably to the governor of Numidia (the law starts with the words: “Magistratus desertores ad eam gravitas tua faciat necessitatem condicionis urgeri”); see also: Schubert: *Die rechtliche Sonderstellung*, p. 294.

a seat in the Senate was granted to those among members of the city council who had fulfilled their duties towards the city. In reality, holding a seat in the Senate by members of city councils was possible, which is confirmed by the law from 3 May 361, addressed by Emperor Constantius to the Senate¹¹⁶. After ordering the removal of council members from that body, however, it permits all praetors (and thus the lowest office in a senatorial career!) to remain in it under certain conditions.¹¹⁷ Holding a seat in the Senate by members of city councils is also sanctioned by the law addressed on 7 May 364, on behalf of the emperors Valentinian I and Valens to the praetorian prefect Mamertinus.¹¹⁸ This presupposes that a candidate for the Senate must fulfil all the *munera* and then undergo a *probatio* procedure before the *iudex* (“ordinarii iudicis adprobare”) and appoint a son as his substitute, who will continue to fulfil the *munera*. This is another strand in the imperial legislation concerning senators of council background. Thus, allowing a senator of curial origins to retain his position, completing the *munera* or appointing a substitute, would become the pillars of imperial policy in this regard. The tightening of imperial policy would not come until the 80s of the 4th century. The completion of curial duties is mentioned, for example, in *Codex Theodosianus*, XII. 1. 58, addressed to the praetorian prefect Mamertinus (dated to 13 May 364). The law had to assume, however, that after completing the *munera*, one could return to the Senate, as further on we find therein the words that by not being able to fulfil the fiscal duties connected with belonging to the *ordo senatorius*, one could abandon that social stratum. His sons who were born after the *adlectio* to the senatorial order are to be included into that class as praetors and quaestors and are not obliged to fulfil *munera*. His sons, however, who descended from among *curiales* are obliged to perform the liturgy after reaching the age of 22 (“cum duodeviginti annos expleverit militiam exercent”).¹¹⁹ The fact that the severe

¹¹⁶ *CTh.*, XII. 1. 48.

¹¹⁷ Schubert, *Die rechtliche Sonderstellung*, p. 294 footnote no. 19 argues that after filling financial expenditures resulted from his pretorship they were worthless for city councils.

¹¹⁸ *CTh.*, XII. 1. 57.

¹¹⁹ Drecoll: *Die Liturgien*, p. 59 thinks that only then did the father receive exemption from curial duties. In my opinion, however, this section of the law applies to sons who were born before the father was counted in the *ordo senatorius*. The previously issued *CTh.*, XII. 1. 7 of 21.02.320 in Proconsular Africa (“per provinciam Karthaginem”), on the other

tone of the law *Codex Theodosianus*, XII. 1. 57 was made milder as soon as a week after its being issued (7 May–13 May) is explained by Drecoll with senators' protests.¹²⁰

Another law related to the topic of former *curiales* to hold a seat in the Senate is probably the constitution addressed by emperors Valentinian I and Valens do Terentius, consular of Tuscia. The law talks about "usurpatam dignitatem" of those *curiales* who had reached it before completing their *munera*. They are to be restored to fulfilling their duties. The lawmaker concludes with words: "quod senatorio ordini concessum non est, concedi non posse ordinibus civitatum".¹²¹ Similarly, the law of 6 October 366,¹²² addressed to Auxonius, vicar of Asia¹²³: emperors Valentinian I and Valens allowed them to retain their senatorial status, at the same time ordering them to complete their duties they had "praematurae cupiditatae" abandoned, as well as delegating into the city councils their offspring who had been born before their fathers' obtaining the senatorial rank. *Codex Theodosianus*, XII. 1. 73, of 30 November 373, addressed to Symmachus, as proconsul of Africa,¹²⁴ orders senators who originated from *ordo* to fulfil *munera*. However, they were protected from being returned by performing *administratio*, serving in the palace or army ("administrationis honore fultus, nullis vel palatini laboris insignibus vel meritis iustis militia"). The passing of this law foreshadows a future change in the imperial policy. All previous currents of imperial policy towards senators originating from curias are united by the constitution of *Codex Theodosianus*, XII. 1. 74, addressed on 1 March 371 by the emperors Valentinian I, Valens, and Gratian to the praetorian prefect of the East, Modestus. Joining the senatorial order was possible only after fulfilling curial duties. It was also necessary to pass on his own duties in the council to a son, who thus could not be promoted to the Senate in the future, even if his father-senator would return to the council. If, in turn,

hand, specifies that sons of members of the city council who have reached the age of 18 are to be drawn to fulfill the *munera*.

¹²⁰ Drecoll: *Die Liturgien*, p. 67; see also: Schubert: *Die rechtliche Sonderstellung*, p. 294.

¹²¹ *CTh*. XII. 1. 65 of 28.05.365.

¹²² *Ibidem*, XII. 1. 69; in manuscript of the Code: 365.

¹²³ *PLRE*, I, pp. 142–143, s.v. *Auxonius 1*, in years 367–369 praetorian prefect of the East.

¹²⁴ *Ibidem*, pp. 865–871, s.v. *Q. Aurelius Symmachus signo Eusebius 4*, the prefect of Rome in years 384–385 and consul of 391; see: Sogno: *Q. Aurelius Symmachus*.

a senator with decurion origins had more than one son, he had to designate his successor in the Senate, capable of paying *collatio glebalis*. If, however, such a senator did not have a successor, he should leave the *ordo senatorius* by virtue of the unpreserved law of 360; if he had acquired his status before that year, he could remain in the Senate.¹²⁵ The above provisions were repeated in the constitution dated 8 March 382,¹²⁶ addressed to Proculus as the count of the East.¹²⁷ The regulations included in the law concern the period after 360, namely the 10th consulate of Constantius and 3rd consulate of Julian. The return to the fulfilment of the *munera* of persons of curial origins sitting in the Senate or performing *militia* (“per officia militantes obsequia patriae denegarunt”) is also assumed by the law from 17 March 380, addressed to the praetorian prefect Neoterius.¹²⁸ What might protect them from returning to the curia are their merits. The final change with regard to senators with decurion background comes in the constitution *Codex Theodosianus*, XII. 1. 93, of 25 November 382. The law, addressed to the praetorian prefect Clearchus,¹²⁹ orders senators originating from this class (“ex-decurionibus”) to return to city councils, along with their sons, regardless of whether they were born before their father’s ascension to the senatorial status or after it. In this case, for example, there is no mention of actually sitting in the Senate as a mitigating circumstance for the law. The new imperial policy towards the city councils in the East can be seen especially in the laws addressed to Cynegius, the praetorian prefect of the East. The series of laws to which Cynegius was the addressee suggests the rather deplorable state of the city councils in the East of the Empire. The law of 30 April 386 orders the *munera* to be fulfilled by a son or a substitute, as well as by a person who has delegated the duty of fulfilling the *munera publica* to his son or a substitute: “munerum publicorum enormia utrobique cogatur patrimonii subire dispendia”.¹³⁰ Thus, the *munera* should be fulfilled not only by the son-substitute, but also by the father who had

¹²⁵ For more about this constitution see: Baumann: *Freiheitsbeschränkungen*, p. 118.

¹²⁶ *CTh.*, XII. 1.90; in the manuscript of the Code this law is dated on 383.

¹²⁷ *PLRE*, I, pp. 746–747, s.v. *Proculus* 6.

¹²⁸ *CTh.*, XII. 1. 82.

¹²⁹ *PLRE*, I, pp. 211–212, s.v. *Clearchus* 1, *PLRE* identifies him as prefect of Constantinople, not praetorian prefect.

¹³⁰ *CTh.*, XII. 1. 111.

been withdrawn from the Senate. The provisions of this law (“*iterata lege praecipimus*”) are repeated in another constitution, dated on 6 July 387, also addressed to Cynegius,¹³¹ which adds to this the prohibition of leaving the city council on account of age. The law, addressed to the praetorian prefect Tatianus on 2 December 390, states, on the other hand, that those who are decorated with “*splendidos magistratus and insignibus dignitatum*”, but were born as members of the decurion class (“*ut nati sunt, curiales esse coeperint*”), must not hold a seat in the Senate; they are to retain their rank and *honores*, but at the same time: “*maneant in sinu patriae*” and “*sit illis piaculum inde discedere*”: so they are meant to formally remain members of *ordo decurionum*, with their sons replacing them in the city councils until the moment of their return.¹³² The provisions of this law are repeated in the constitution dated on 28 July 391, again addressed to the praetorian prefect Tatianus.¹³³ The estates of senators with decurion background are to continue to be burdened with obligations to the councils (“*obnoxium publicis descriptionibus haberetur*”), even if they have been alienated (“*in alios transtulissent*”). Even the reception of *honores* and a change of *dignitas* do not result in an exemption from fulfilling the *munera* (“*muneribus obligamus, quibus debitores patriae monstrabuntur*”). The legislator further refers to *Codex Theodosianus*, XII. 1. 86 and XII. 1. 122 as “*sanctionis definitio*”, which gives neither the father nor the son exemption from fulfilling the *munera*. In addition, it is stipulated that city councils may vindicate for themselves deprived and abandoned estates if they have no heirs¹³⁴.

The restoration of senators with decurion background to the fulfilment of *munera* appears once again in the already cited law *Codex Theodosianus*, XII. 1. 129, of 22 November 392, addressed to the praetorian prefect Rufinus. In addition, the legislator cites the “*praeterita et praesenti iussione praescriptum*”.¹³⁵ Meanwhile, in 393, there is a change: *Codex Theodosianus*, XII. 1. 130, addressed on 27 February 393 to prefect of Constantinople Aurelianus, allows a decurion to leave the city council after having fulfilled

¹³¹ Ibidem, XII. 1. 118.

¹³² Ibidem, XII. 1. 122.

¹³³ Ibidem, XII. 1. 123.

¹³⁴ According to Schubert: *Die rechtliche Sonderstellung*, p. 295 imperial policy towards the senators of curial origins is marked by „eine gewisse Verschärfung”.

¹³⁵ I.e. *C.Th.*, XII. 1. 82; 93; 113; 118; 122–123, among others.

all his obligations, but orders him to leave the property needed to fulfil his obligations, as well as to name a substitute (“*substitui idoneus*”); yet the law does not specify whether this should be, for example, a decurion’s son. In another law, addressed to Aurelianus of 20 March 393,¹³⁶ already being a praetorian prefect allows the decurion to designate one of his three sons to the Senate.

CHRISTIAN CLERGY

Another problem connected with the functioning of the city councils was the development of Christianity, for it was obvious that among the members of the clergy there were persons of decurion origins. Again, we begin with the legislation of Constantine I. That emperor, with the law *Codex Theodosianus*, XVI. 2. 3, addressed to the praetorian prefect Bassus,¹³⁷ prohibited members of the city councils from entering the clergy. The constitution makes no separation between the bishops and the lower-rank clergy, hence the conclusion that the law included everyone. On the other hand, however, Constantine forbade sending back to the councils those members of the clergy who were so before the promulgation of this constitution. Furthermore, *Codex Theodosianus*, XVI. 2. 6, of 1 June 329,¹³⁸ addressed to the praetorian prefect Ablabius, directed the return to the councils of members of the clergy with curial origins. The constitution forbids petitions and indicates ongoing discussions between local city councils and clergy. Both laws, in turn, permit the appointment of members of the clergy from among people of insufficient wealth to perform curial duties. Then constitution *Codex Theodosianus*, XVI. 2. 9, of 11 April 349, addressed to proconsul of Africa Severianus, established substitutes in fulfilling curial duties: the sons of the clerics with curial origins were obliged to perform municipal duties.¹³⁹ Another law regulating the status of clergy originating from the councils was that of 29 August 361, addressed to the praetorian

¹³⁶ Ibidem, XII. 1. 131; In the manuscript of the Code: 27 February.

¹³⁷ *PLRE*, I, pp. 154–155, s.v. *Iunius Bassus 14*; according to Seeck: *Regesten*, p. 179 the law is dated to 18 July 329, whereas *PLRE*, I, p. 154 hesitates between 320 and 326.

¹³⁸ In manuscript of the Code this law bears the date 326.

¹³⁹ About the law: Baumann, *Freiheitsbeschränkungen*, p. 132.

prefect Taurus.¹⁴⁰ It provided that only the bishop was exempted from having to leave his property to the council. In the case of the lower ranks of the hierarchy, i.e., priests, deacons, subdeacons and others, the decision was made by the city council under the chairmanship of the *iudex*. For him to retain his property, the council had to confirm the impeccable lifestyle of the person concerned, while the decision was to be supported by “totius voci populibus”. If, however, a decurion did not pass such a procedure before the *iudex* and did not gain the support of the people, he should leave his property to his children as substitutes for him in fulfilling the *munera*. If he had no descendants of his own, he should leave 2/3 of the estate to a close relative; if he did not have one, to the town council. The following could not become clergy: *praepositus horreorum*, *praepositus pacis*, *susceptor specierum*. This shows that also Christian emperors protected the interests of city councils.¹⁴¹ In this context, one should also notice that even in 360, the archbishop of Isaurian Seleukeia was deposed as he ordained members of the city council to bishops.¹⁴² The next emperor, Julian the Apostate, by the law of 28 August 362, addressed to the praetorian prefect Secundus Salutius, restored members of the Christian clergy to the councils.¹⁴³ Valentinian and Valens, on 12 September 364, by the constitution addressed to Byzacians,¹⁴⁴ reiterated the necessity of appointing a relative as a substitute, or of transferring property to the local councils to fulfil obligations.¹⁴⁵ The same emperors demanded a return to the fulfilment of the liturgy by the monks. Otherwise, they ordered that their property be transferred to others willing to fulfil the *munera*. The tone of the imperial statement was harsh; the monks were treated in the law addressed to the praetorian

¹⁴⁰ *CTh.*, XII. 1. 49.

¹⁴¹ About the law: Schubert: *Die rechtliche Sonderstellung*, pp. 305–306; Drecoll: *Die Liturgien*, p. 57.

¹⁴² Bidez et al.: *Sozomenus. Kirchengeschichte*, Book IV. Chapter 24 Excerpt 15; Milewski: *Depozycja*, p. 78; Laniado: *Recherches*, p. 12; another such example was Antoninus, bishop of Ephesus, see: Milewski: *Depozycja*, p. 52.

¹⁴³ *CTh.*, XII. 1. 50.

¹⁴⁴ *Ibidem*, XII. 1. 59.

¹⁴⁵ For more on both laws (that of Emperor Julian and that of Valentinian I and Valens) see: Schubert: *Die rechtliche Sonderstellung*, p. 506 and Baumann, *Freiheitsbeschränkungen*, pp. 132–133. According to Baumann, the constitution of Julian refers not only to clergy, but Christian laymen who evaded curial duties on the grounds of their religion, too.

prefect of the East, Domitius Modestus, dated 1 January 370 (373),¹⁴⁶ as persons in hiding, while the count of the East was made responsible for restoring them to the councils.¹⁴⁷ What is more, by another law, addressed on 17 October 370 to Modestus, it was permitted to impose curial duties on members of Christian clergy who were so for no longer than ten years.¹⁴⁸ In turn, another constitution, dated to 7 November 383 and addressed to the praetorian prefect Postumianus on behalf of the emperors Valentinian II, Gratian (then already deceased) and Theodosius I, repeats once again the principle that one can only become a member of the Christian clergy by leaving property that will continue to serve curial duties.¹⁴⁹ The provisions of this law were recalled once more by the law from 31 December 386, addressed to the praetorian prefect Cynegius.¹⁵⁰ Interestingly, an exception to these constantly repeated rules was made by Theodosius I (formally, the law was also issued by Valentinian II and Arcadius) by the constitution of 17 June 390, addressed to Tatianus, the praetorian prefect of the East.¹⁵¹ The exemption of the *patrimonium* from curial duties applied to those of the priests, deacons, and exorcists who had become priests before the second consulship of Theodosius I, i.e., 388. Nothing changed with regard to those who became them later. The provisions of this law were returned to by Theodosius in the constitution dated 28 July 391, also addressed to the praetorian prefect Tatianus.¹⁵² With regard to those of the council members who had joined the Christian clergy, he decided that their estates were still

¹⁴⁶ *CTh.*, XII. 1. 63, Seeck: *Regesten*, p. 239 dated this constitution on 1.01.370, whereas *PLRE*, I, p. 607 fluctuates between yearly dates 370 and 373; on Modestus see: *PLRE*, I, p. 605–608, s.v. *Domitius Modestus*.

¹⁴⁷ The diocese of Egypt was not separated from the *Oriens* diocese until 374.

¹⁴⁸ *Ibidem*, XVI. 2. 19. In turn, *CTh.*, XVI. 2. 21 of 17.05.371 addressed to the prefect of Rome Ampelius on behalf of Valentinian I and Valens directed the return to the *curia* of those members of the Christian clergy who became so after the accession of these emperors. Instead, it allowed those who had joined the clergy before Valentinian and Valens ascended the throne to remain (“*li, qui ecclesiae iuge obsequium deputarunt, curiis habeantur immunes, si tamen eos ante ortum imperii nostri ad cultum se legis nostrae contulisse constiterit*”).

¹⁴⁹ *CTh.*, XII. 1. 104.

¹⁵⁰ *Ibidem*, XII. 1. 115.

¹⁵¹ *Ibidem*, XII. 1. 121.

¹⁵² *Ibidem*, XII. 1. 123. Provisions of this law were repeated in *CTh.*, XII. 1. 163 of 11.12. 399 to the praetorian prefect of the East, Eutychanus.

to be charged with the *munera* (I must note that in the law we do not find an exemption for bishops). He went on to cite the *praeceptum*,¹⁵³ defining the consulship of Theodosius as a *caesura*, ordering that one's property be left for the performance of further curial duties. The son of a decurion who has become a member of the Christian clergy, if he does not join it himself, should perform curial duties.

Thus, the legislation of Book XII of the *Theodosian Code* sought to limit the provisions of the law issued by Constantine I in *Codex Theodosianus*, XVI. 2.2, of 21 October 313,¹⁵⁴ addressed to the governor (*corrector*) of Lucania and Bruttium Octavian, exempting the Christian clergy from all *munera* (“ab omnibus omnino muneribus excusentur”)¹⁵⁵ and enjoined its members to fulfil *munera civilia*. During the reign of Constantius, the clergy were admittedly exempted from the *munera sordida et extraordinaria* by the law *Codex Theodosianus* XVI. 2. 14, of 6 December 357; nevertheless, these exemptions did not apply to burdens related to *municipium*.

* * *

The legislation of the emperors of the 4th century AD shows that members of the local elite were nevertheless able to find safety valves in the form of service in the army, service at the palace and provincial administration, promotion to the Senate, membership of the Christian clergy, *collegia* and *corpora* operating in a given city, as well as obtaining codicils conferring an honorary dignity which entailed exemption from fulfilling the *munera*. Despite the often repeated prohibitions, officers of the palace and members of the provincial administration were very often recruited from among the *curiales* (*bouleutai*).¹⁵⁶ On the other hand, however, it is difficult to assess the significance of desertions from the city councils to the palace and offices of the praetorian prefect, even though these included many council members.¹⁵⁷

¹⁵³ I.e., the aforementioned law *CTh.*, XII. 1. 122.

¹⁵⁴ In the manuscript of the Code: 313.

¹⁵⁵ Similarly, Schwartz (ed.): *Eusebius. Kirchengeschichte*, Book X Chapter 7 Excerpts 1–2.

¹⁵⁶ Chastagnol: *L'albun*, p. 90; Idem: *L'évolution*, pp. 298–302, Heather: *New Men*, pp. 20–21.

¹⁵⁷ Laniado: *Recherches*, p. 8; Heather: *New Men*, pp. 18–20 believes that they were dominant there.

The analysis of the above examples shows at the same time the policy of the emperors of this century towards the city councils and *curiales*, which, I believe, became increasingly harsh during that century.¹⁵⁸

PROBLEM UNIKANIA POWINNOŚCI KURIALNYCH PRZEZ DEKURIONÓW W IV WIEKU N.E. W ŚWIETLE *KODEKSU TEODOZJAŃSKIEGO*

STRESZCZENIE

Na przełomie III i IV wieku n.e. pozycja członków rad miejskich uległa zmianie. Szczególnie legislacja cesarza rzymskiego Konstantyna I (306–337) spowodowała, że członkostwo w radach stało się obowiązkowe. Prowadziło to do unikania służby przez kuriałów i spadku liczebności członków rad miejskich. Jak głęboki był to proces, jest kwestią dyskusji współczesnych badaczy. W niniejszym artykule prezentuję najważniejsze sposoby unikania służby w radach miejskich na podstawie źródeł normatywnych, szczególnie *Kodeksu Teodozjańskiego* (rozdział I, księga XII). Na przełomie IV i V wieku w cesarskim ustawodawstwie pojawiają się rozwiązania znacznie ograniczające pozycję dekurionów, zaostreniu ulega też ton ustaw.

DAS PROBLEM DER VERMEIDUNG VON KURIALPFLICHTEN DURCH DEKURIONEN IM 4. JAHRHUNDERT N. CHR. IM LICHT DES *CODIX THEodosIANUS*

ZUSAMMENFASSUNG

An der Wende vom 3. zum 4. Jahrhundert n. Chr. hat sich die Position der Stadt-ratsmitglieder geändert. Besonders die Gesetzgebung des römischen Kaisers Konstantin I. (306–337) machte die Mitgliedschaft in den Räten obligatorisch. Dies führte zu einer zunehmenden Dienstvermeidung durch die Curialen und zu einem Rückgang der Zahl der Ratsherrn. Wie tiefgreifend dieser Prozess war, wird von zeitgenössischen Forschern diskutiert. In diesem Artikel stelle ich anhand normativer Quellen, insbesondere des *Codex Theodosianus* (Kapitel I, Buch XII), die wichtigsten Wege zur Vermeidung des Dienstes in Stadträten vor. An der Wende vom 4. zum 5. Jahrhundert führte die kaiserliche Gesetzgebung Lösungen ein, die die Position der Dekurionen erheblich einschränkten. Zudem wurde der Ton der Gesetze verschärft.

Übersetzt von
Renata Skowrońska

¹⁵⁸ *CTh.*, XII. 1. 158 of 25.10.398: "Omnes omnino curiales in originalibus ac debitis perpetuo curiis perseverent".

THE PROBLEM OF EVADING CURIAL DUTIES BY DECURIONS
IN THE 4TH CENTURY AD IN THE LIGHT OF THE *THEODOSIAN CODE*

SUMMARY

At the turn of the 3rd and the 4th century AD, the position of the members of the city councils underwent important changes. In particular, the legislation of the Emperor Constantine I (306–337) made membership of the council obligatory. This caused avoidance of the service by *curiales* and a decrease in the number of the members of the city councils. How deep this process was is a matter of discussion by modern scholars. In this paper, I present the main ways to evade service in the town and city councils based on normative sources, especially the *Theodosian Code* (Chapter I, Book 12). At the turn of the 4th and 5th centuries, solutions which significantly limited the position of decurions appeared in imperial legislation, and the tone of the laws seemed to be more severe.

SŁOWA KLUCZOWE / SCHLAGWORTE / KEYWORDS

- późne Cesarstwo Rzymskie; kurie miejskie; dekurionowie; munera; obciążenia fiskalne; źródła normatywne
- spätrömisches Reich; Stadtkurien; Decurionen; Munera; steuerliche Belastung; normative Quellen
- Late Roman Empire; city councils; decurions; munera; fiscal burdens; normative sources

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