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Pompeius Magnus: his Third Consulate and the *senatus consultum ultimum*

A s*enatus consultum ultimum* (*SCU*) was a decree passed by the Senate which authorized the magistrates referred to in such an act to take measures in order to overcome an emergency situation faced by the state[1]. The *SCU* included a formulary expression that

[1] See Ch. Meier, *Der Ernstfall im altem Rom*, in: *Der Ernstfall*, ed. R. Altmann, (*Schriften der Carl-Friedrich-von Siemens-Stiftung* 2, 1979), p. 51: "Der Ausdruck *senatus consultum ultimum* ist nicht technisch, Caesar benutzt ihn gelegentlich, um die Sache zu beschreiben. Heute ist er der übliche". C. Iulius Caesar, *Bellum Civile*, I 5,3: "illud extremum atque ultimum senatus consultum". Cf. T. Livius, *Ab Urbe Condita*, II 4,9: "forma senatus consulti ultimae necessitatis". Cf. G. Plaumann, *Das sogenannte senatus consultum ultimum, die Quasidiktatur der späteren römischen Republik*, "Klio", 13 (1913), p. 321ff., who suggests: "*Senatus Consultum de republica defendenda*"; S. Mendner, *Videant Consules*, "Philologus", 110 (1966), p. 258 argues: "Angesichts der Tatsache, dass die antiken Schriftsteller das SCU immer mit der Formel zitieren, irritiert eine Bewertung wie "richtiger" (e.g. J. Bleicken); J.E. Gaughan, *Murder was not a Crime. Homicide and power in the Roman republic,* (2010), p. 124 emphasizes that: "The *SCU* was not a declaration of a state of emergency; therefore,

had no fixed form and was related to the specific nature of the decree itself. Most typically, the decree was worded: *consules* (etc.) *dent operam* (or *videant* or *curent*), *ne quid res publica detrimenti capiat* (-eret)[2].

The *SCU* is one of the most controversial issues of the late Roman Republic in the period of its decline[3]. This research focuses on such aspects as whether it could be legally applied[4] and in what cases, that is, in other words, "welche Voraussetzungen zum Erlass eine *SCU* gegeben sein mussten: Zu welchem Zeitpunkt und unter welchen Umständen durfte der Senat zu diesem Mittel greifen"[5]. In addition the ideological and political background of the *SCU's* development is analyzed. Of course, there are many other questions and issues raised by this topic. Furthermore each specific instance when an *SCU* was applied triggers different questions. These questions are addressed in diverse ways by present-day research, and

it did not require a particular formula to be valid. […] each time the decree was voted on by the senate, the wording was different, another indication of the ambivalence that surrounded its promulgation".

[2] Mendner, *Videant*, p. 263ff.

[3] See for instance J. v. Ungern-Sternberg, *Untersuchungen zum spätrepublikanischen Notstandsrecht. Senatusconsultum ultimum und hostis-Erklärung*, (1970); E.T. Sage, *Senatus Consultum ultimum*, "The Classical Weekley", 13 (1920), p. 185–189; L.A. Burckhardt, *Politische Strategien de Optimaten in der späten römischen Republik*, (1988), p. 86ff.; T.N. Mitchell, *Cicero and the Senatus Consultus Ultimum*, "Historia", 20 (1971), p. 47–61. B. Rödl, *Das senatus consultum ultimum und der Tod der Gracchen*, (1969).

[4] However, it has recently been argued rightly by M. Lowrie, *Sovereignty before the Law: Agamben and the Roman Republic*, "Law and Humanities", 1 (2007), pp. 31–56 (26), here p. 43 that: "since the *SCU* was authorized by the Senate, which at this time did not have a law-making role, but only advisory capacity residing in its *auctoritas*, the legality of the *SCU* is not so much questionable as irrelevant".

[5] Burckhardt, *Politische,* p. 106ff.

the matter is even more difficult in view of the fact that the ancient Romans' response to this decree was equally equivocal. This is clearly shown by the surviving sources which present the facts of each specific case in which an *SCU* was passed. Furthermore, the fact that the decree was formulated in a very imprecise manner allowed many possible interpretations. Clearly, even its application might have led to cases of misuse. It might even be argued that the formulary ambiguity of the *SCU* was very convenient. Given that emergencies had to be addressed, it was hard to foresee which measures would be the most effective to overcome a specific threat. In addition, it was unclear how the individuals against whom an *SCU* was intended, would react to it; therefore, no fixed action plan could be specified in advance. Hence the magistrates referred to in the decree had to take what they believed to be the best decisions on each such occasion. Whereas the good of the state (*salus rei publicae*) was the imperative, the interpretation of an *SCU* was vested in the hands of the consuls (or other addressees of the decree as the case might be).

What researchers dealing with this extraordinary Senate decree mostly focus on are cases which might be described as *spectacular*. Indeed, these include the events related to the death of Gaius Gracchus in 121 BC[6], the deaths of Saturninus and Glaucia in 100 BC and the death sentence passed on the Catilinarian conspirators in 63 BC. On each of these occasions, the Senate announced that the Republic faced an extraordinary danger and appropriate measures were called for in order to prevent damage. Such a gen-

[6] The case of the death of Tiberius Gracchus in 133 BC is disputed as the ancient sources often refer to Tiberius' death as an instance of application of an *SCU* in 133 BC, whereas it was not until the events related to the death of the younger of the Gracchi brothers that the first confirmed case of an application of a *senatus consultum ultimum* was described.

eral declaration allowed very diverse interpretations, and the magistrates responsible for the good of the state would usually take very resolute measures which would eventually lead to the physical elimination of political opponents (and quite often, their supporters as well[7]).

Thus Tiberius Gracchus[8] was killed by P. Scipio Nasica or those from his milieu, and Gaius Gracchus' death, even if self-inflicted[9], was merely a way to avoid being killed by Opimius' men. Saturninus, in turn, was stoned by a mob[10], and five of Catiline's supporters imprisoned by Cicero were executed after the famous debate in the Senate on 5 December 63 BC[11] .

The *SCU* of 52 BC was passed – what is obviously – under different circumstances. The political situation was particularly difficult at the time. The period between 54–53 BC saw anarchy spread across the Republic, reaching its climax in 52 BC. Caesar was then in Gaul while Pompey had been observing daily events in Rome for quite a long time (and even co-directing them, in a way[12]). Except for the tribunes and two plebeian *aediles*, there were no prominent magistrates in the capital at that point in time[13]. The office of *praetor* was sought by Clodius who claimed

[7] Given that each of these cases was of a different nature, this general statement is clearly a far-reaching simplification.

[8] Whether or not Tiberius was killed by Nasica himself is unknown. This is elaborated by E. Badian, *The pig and the priest*, in: *Ad fontes: Festschrift für Gerhard Dobesch*, hg. v. H. Heftner, K. Tomaschitz, (2004), p. 270.

[9] He actually ordered his slave Philocrates (or Euporus) to kill him in order to avoid being apprehended by Opimius' men. See Plutarchus, *Gaius Gracchus*, 17.

[10] See e.g. Appianus Alexandrinus, *De bellis civilibus*, I 33, 146.

[11] See e.g. C. Sallustius Crispus, *Bellum Catilinae*, 55; Plutarchus, *Cicero*, 22.

[12] See e.g. Plutarchus, *Pompeius*, 54; Appianus, *De bellis civilibus*, II 20, 73.

[13] However, we read in L.C. Dio Cocceianus, *Historia Romana*, XL 48,1

to have been endorsed by Caesar[14], whereas the *Optimates* supported Milo who ran for the consulate. The gravity of the situation was heightened even more as Clodius unexpectedly encountered Milo on the Appian Way. We know that Milo killed Clodius during the brawl that followed[15]. The victim's supporters used this event as an opportunity for impulsive and dangerous political demonstrations. Clodius' body was first carried to the forum, and then to the curia. The funeral pyre was lit and the building caught fire in result. The plebeian tribunes kept on inciting the crowd against Milo. Under these circumstances, the Senate passed an *SCU*, considering that the situation was indeed hard to bring under control. Hence, passing an extraordinary decree in order to save the state does not seem strange at all[16]. There are two sources of information on this topic: Asconius and Cassius Dio[17]. Asconius says: "decreverat enim senatus, ut cum interrege et

that "men were eager to win the offices and employed bribery and assassination to secure them" .

[14] M.T. Cicero, *Pro Milone oratio*, 88: "Caesaris potentiam suam esse dicebat".

[15] See Dio, *Historia Romana*, XL 48–50. Appianus, *De bellis civilibus*, II 21–25. A detailed description of the events related to Milo's death is provided in Asconius' commentary to Cicero's *Pro Milone*. A.W. Lintott, *Cicero and Milo*, "Journal of Roman Studies", 64 (1974), p. 69: "Asconius' view of the affair, which was based on a study of the evidence and pleas on both sides in the Acta Diurna, should be accepted". Cf. J.S. Ruebel, *The Trial of Milo in 52 B.C.: A Chronological Study*, "Transactions of the American Philological Association", 109 (1979), pp. 231–249.

[16] Indeed, what seems stranger is that no such decree had been passed much earlier and that the Senate had chosen to use Milo's armed groups against Clodius instead of passing an *SCU*.

[17] According to Dio, *Historia Romana*, XL 49,5, the *SCU* was passed immediately after Milo's assassination on 19 January. According to Ruebel, *The Trial of Milo*, p. 238: it happened between 3 and 10 February.

tribunis plebis Pompeius daret operam, ne quid res publica detrimenti caperet"[18]. Hence the Senate decided that – in addition to the *interrex* and the *tribunus plebis*; the only *magistri* in office at the time – Pompey was henceforth to be responsible for the good of the Republic (*salus rei publicae*)[19]. Such a decision was quite unusual as Pompey had only been a proconsul[20]. The Senate's behavior shows that it was helpless against the situation which had evolved, to the extent that the individual appointed stood in fact in opposition to the Senate itself. Nevertheless, the senators had no doubt that only Pompey (or Caesar) would be able to handle anarchy in the Republic.

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[18] Q. Asconius Pedianus, *Pro Milone*, 51C.

[19] G. Plaumann, *Das sogenannte senatus consultum ultimum, die Quasidiktatur der späteren römischen Republik*, "Klio", 13 (1913), p. 336 believes it impossible that the Senate should have addressed all the tribunes with this instruction as some of them were in fact responsible for the confusion that had arisen. He argues that the *SCU* was intended precisely against the tribunes who had incited the people against Milo, and therefore the formula of the decree should be construed as follows: *ut interrex adhiberet tribunos plebis, quos ei videretur*. No such formula was added, though. It seems that Plaumann supports his interpretation with a reference to the Senate's extraordinary decree of 100 BC, intended against the then praetors Saturninus and Glaucia. The Senate of the day ordered the consuls to select tribunes and praetors at their discretion in order to prevent any harm to the Republic. The state of affairs in 52 BC was clearly different, though. Serious confusion which had resulted from two years of riots prevented the appointment of any magistrate other than tribunes, and the successive *interreges* were designated by the Senate. Hence the Senate called upon Rome's only magistrates at that time to restore order to the Republic.

[20] Asconius, *Pro Milone*, 34C: "Itaque primo factum erat S.C. ut interrex et tribuni plebis et Cn. Pompeius, qui pro cos. ad urbem erat, viderent ne quid detrimenti res publica caperet, dilectus autem Pompeius tota Italia haberet" . It is known, however, that the *SCU* of 77 BC already addressed the interrex and proconsul Catulus.

Given that the *senatus consultum ultimum* was always addressed to the highest level of magistrates, leaving out the tribunes and the *interrex*, would mean that it was in fact not merely passing a decree but rather awarding a dictatorship to Pompey, especially in view of the fact that he had not served as a magistrate at the time. The rationale of this particular *SCU* was not to confront any specific individual but to restore order at Rome, shown by the fact that the typical *SCU* formula had been extended with one more instruction from the Senate: that Pompey was to recruit troops across Italy ("dilectus autem Pompeius tota Italia haberet")[21]. According to Asconius, the Senate passed the *SCU* and the conscription decrees on the same day (present-day research shows[22] that it happened between February 3 and 10); Cassius Dio's account (40.49.5), in turn, shows that the *SCU* was passed immediately after Milo's return to Rome (which had already happened in January), whereas the conscription decree was not passed until the next riots broke out in the city (40.50.1). It seems that, in the light of subsequent events, Asconius' account is right rather than Cassius Dio's. Following the passing of the *SCU*, and in accordance with the Senate's instruction, Pompey indeed assembled his troops, but chose not to cross the *pomoerium* lest he should lose his proconsular empire[23]. Hence he refrained from any further action (and we hear nothing of any other steps that might have

[21] W. Nippel, *Policing Rome*, "Journal of Roman Studies", 74 (1984), pp. 20–29, here p. 11: "The decision to authorize the employment of troops marked the breakdown of the Republican system which had always excluded the use of regular troops *domi*. It was significant that the aristocracy was no longer able to cope with genuine mass protest without sacrificing the fundamental principles of Republican government".

[22] See Ruebel, *The Trial,* p. 238.

[23] See W. Nippel, *Public order in Ancient History*, (1995), p. 80. It also deserves a mention that Pompey did not, at the same, lose his proconsular empire.

been taken by the other magistrates referred to in the decree[24]). This might be the reason why more and more voices were raised demanding the dictatorship for Pompey[25]. Instead, the Senate found it safer to make Pompey consul *sine collega*[26]. Interestingly enough, even Cato[27] found it reasonable to transfer power to

[24] This does not seem strange, however, as an *interrex* was only appointed for a five-day period at a time, and the plebeian tribunes themselves incited people against Milo.

[25] An earlier motion to declare Pompey dictator had been made in 53 BC by Lucilius Hirrus (who had nearly lost his tribunate because of this fact). At that point in time, the motion had been firmly opposed by Cato, see Plutarchus, *Pompeius* 54. According to Dio, *Historia Romana*, XL 50,3: some preferred Caesar as consul.

[26] Asconius, *Pro Milone*, 35–36C: "Inter haec cum crebresceret rumor Cn. Pompeium creari dictatorem oportere neque aliter mala civitatis sedari posse, visum est optimatibus tutius esse eum consulem sine collega creari, et cum tractata ea res esset in senatu, facto in M. Bibuli sententiam S.C. Pompeius ab interrege Servio Sulpicio V Kal. Mart. Mense intercalario consul creatus est statimque consulatum iniit". According to R. Bauman, *Lawyers in Roman transitional politics. A study of the Roman jurists in their political setting in the Late Republic and Triumvirate*, (*Münchener Beiträge zur Papyrusforschung und antiken Rechtsgeschichte* 79, 1985), p. 28, Suplicius' role is underestimated in this case. No wonder that he was elected consul of 51 BC as the elections were presided over by Pompey. Cf. Dio, *Historia Romana* XL 50,4.

[27] Plutarchus, *Cato Minor*, 47. At first, when some had argued that Pompey should preside over the elections, Cato is quoted to have said that "the laws ought not to derive their security from Pompey, but Pompey from the laws". Then, however, he concluded that appointing Pompey would be "the most moderate of unconstitutional measures [employed] as a healing remedy for the conservation of the greatest interests". So when Bibulus moved in the Senate that Pompey be chosen consul "with no colleague", Cato not only did not oppose it, but approved of the motion and said that any government would be better than anarchy, and that, under the circumstances, Pompey would be the best choice to save the Republic. Plutarchus *Pompeius* 54 says that Bibulus was Pompey's enemy, but he believed that Pompey should be elected consul *sine collega* for "the city would either be set free from the prevailing disorder, or

Pompey before the situation could evolve to a point of danger which would call for extreme measures anyway. The Senate agreed and Pompey was voted consul *sine collega*[28]. A reservation was made that, should Pompey wish to appoint a colleague, he would only be able to do so in two months' time[29].

The fact that Pompey had expected some form of power to be granted to him (consulate, dictatorship) shows that what had been sought by him was specific power rather than a decree of the Senate, even an extraordinary one. We know from the sources that Pompey had been manipulating the situation in order to become a dictator. It was he who had provoked the anarchy and prevented the elections of magistrates in order to show the Senate's inability to address the situation[30]. Indeed, the Senate's actions show that he was right.

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would become the slave of its strongest man". In Caesar's biography, in turn, Plutarch says (*Caesar* 28) that the situation was so dire that some even dared say in public that the state could be cured by nothing but monarchy and that this remedy could only be applied with the least pain by Pompey.

[28] See M. Ziółkowski, *Historia Rzymu* [The History of Rome], (2008), p. 350: "Pompeius miał więc władzę dyktatorską w niemal sullańskim wymiarze, ale bez tytułu dyktatora" [Hence Pompeius did have dictatorial power nearly equal to that of Sulla's, albeit without the title of a dictator].

[29] Plutarchus, *Pompeius* 54. Dio, *Historia Romana*, XL 50,5 says that Pompey was appointed sole consul because it was feared that Caesar might be the other one. As a matter of fact, Dio admits, Pompey caused some fear, too, however it was Caesar who "favored the populace", and Pompey much less so. Thus the senators hoped to make Pompey their own, and turned out to be right. Allegedly, he was so elated by this honor that he would do anything just to please the Senate.

[30] Cicero, *Epistulae Ad Atticum*, IV 18, 3: wrote to Atticus that a dictatorship was "in the air": "res fluit ad interregnum et est non nullus odor dictaturae […]"; cf. Plutarchus, *Pompeius* 44, according to Appianus, *De bellis civilibus*, II, 20: Pompey pretended that he was discontented with the expectations with regard to his dictatorship, but in fact he actively supported whatever might

The senators realized that authorizing Pompey to take care of the Republic by virtue of an *SCU* was not enough to overcome the difficult situation. Perhaps, if Pompey had only been an addressee of the decree but had not become consul, he would not have done anything more than recruit troops (*dilectus*). In any case, he waited until his nomination to take resolute measures. He proposed two bills to the senate: *de vi* and *de ambitu*[31]. This legislation imposed stricter criminal sanctions on the use of violence (including a precise list of offences concerned) and electoral corruption[32]. Furthermore, the courts were to act on the basis of a simplified summary procedure[33]. Perhaps, just like Marius in 100 BC, Pompey did not venture to jeopardize his career by killing citizens without trial, and therefore he refrained from resorting

bring it about. Dio, *Historia Romana*, XL 45.5–46.1; cf. N. Rogosz, *Polityczna rola senatu w republice rzymskiej w latach 59–55* [*The Political Role of the senat in the Years 59–55 b.c.*], (*Prace Naukowe Uniwersytetu Śląskiego w Katowicach* 2184, 2004), pp. 334–335.

[31] Asconius, *Pro Milone*, 36C: "Deinde post diem tertium de legibus novis ferendis rettulit: duas ex S.C. Promulgavit, alteram de vi qua nominatim caedem in Appia via factam et incendium curiae et domum M. Lepidi interregis oppugnatam comprehendit, alteram de ambitu: poena graviore et forma iudiciorum breviore".

[32] How exactly the sanctions were to be made stricter is unclear; most likely, seizure of property was added to exile (a life-long one, not just 10 years as under the *lex Tullia de ambitu*). Yet it is uncertain whether what is meant by Asconius, *Pro Milone*, 54C, in his remark on the sale of Milo's property is not a fact that such a sale was supposed to satisfy the creditors' claims.

[33] At first, witnesses were to be heard, and then the prosecutors and the defense counsels pled their cause during just one day. The prosecutor was allowed two hours, the defense was allowed three hours. See: Asconius, *Pro Milone*, 36C: "utraque enim lex prius testes dari, deinde uno die atque eodem et ab accusatore et a reo perorari iubebat, ita ut duae horae accusatori, tres reo darentur".

to the methods applied by his predecessors in their implementation of an *SCU* [34]. Such an argument would indeed be reasonable if the situation of 100 BC was in a way comparable to that of 52 BC. The crisis in 52 BC, however, was much more complex. In 100, Marius' objective was to eliminate Saturninus and his supporters. Pompey's task, in turn, was to overcome the confusion created by armed groups of both the *Optimates* and the *Populares*. In order to appear as impartial as possible, he decided that the best way to put a stop to the chaos, bribery and turmoil in the *res publica* was through legislation[35]. Even with the *lex Cornelia de sicariis et veneficis*, *lex Plautia de vi* and *lex Licinia de sodalicis*[36] and other *de ambitu* laws still in place, Pompey found that the existing legislation would be insufficient in the circumstances, and he proposed new bills which provided penalties for offences committed during the riots of 52 BC.

Pompey's legislative measures may be regarded as *extraordinaria*. He put the legislation to a vote which provided the senators with an opportunity to voice their opinions. We know that Hortensius shared the view that *extra ordinem* trials were to be held, although in compliance with the applicable laws[37], and therefore he regarded the legislation proposed by Pompey as superfluous.

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[34] As rightly argued by Gaughan, *Murder was not a crime*, p. 124.

[35] The sources are rather impassive when mentioning citizens who lost their lives during the riots. And "The Caesarians […] made violent and bitter attacks on the legal campaign conducted under Pompey's military protection" see E. Wistrand, *Sallust on Judicial Murders in Rome. A philological and historical study*, (*Acta Universitatis Gothoburgensis. Studia Graeca et Latina Gothoburgensia* 24, 1968), p. 32.

[36] More on this in H. Mouritsen, *Plebs and the politics in the Late Roman Republic,* (2001), p. 149 ff. About *Leges de ambitu* see: D. Cloud, *The Constitution and Public Criminal Law*, "Cambridge Ancient History", 9 (1992), pp. 516–517.

[37] Asconius, *Pro Milone*, 44C.

Then, tribune Fufius Calenus, a supporter of Caesar and Clodius, moved for the Senate to divide the debate into two: firstly, the *extra ordinem* trials were discussed, and then agreed as the manner to conduct the investigations. The issue of the validity of the existing legislation was, in turn, abandoned as a result of an *intercessio* by Plancus and Sallust. In this way, Pompey was able to push his bills through[38]. Furthermore, it was decreed that the killing of Clodius and subsequent events had been harmful to the interest of the state (*contra rem publicam esse facta*)[39].

L. Domitius Ahenobarbus was elected *quaesitor* of the new court appointed under Pompey's law[40]. Milo and many others were punished on the basis of both Pompey's legislation and other laws still in force[41]. The hearings, however, were disturbed from time to time, and Pompey had to send his troops in order to pacify the mob on a number of occasions. For instance, this was the case with the interrogation of the witness C. Causinius Schola by M. Marcellus, when a crowd of Clodians (*Clodiani*) became so tumultuous that Marcellus and Milo had to seek shelter at Domitius' tribunal, and request armed protection. Pompey promised to grant them such protection on the following day, and so he did[42].

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[38] Cicero, *Pro Milone oratio*, 13,15.

[39] See E. Meyer, *Caesars Monarchie und das Prinzipat des Pompeius*, (1922), p. 232; Asconius, *Pro Milone*, 38C, Cicero, *Pro Milone oratio*, 12. With the actions considered *contra rem publicam*, it was easier to accuse and pass a sentence under *de vi*. See Asconius, *Pro Milone*, 44C.

[40] Asconius, *Pro Milone*, 38C: "Perlata deinde lege Pompei, in qua id quoque scriptum 15 erat ut quaesitor suffragio populi ex iis qui consules fuerant crearetur, statim comitia habita, creatusque est 1. Domitius Ahenobarbus quaesitor".

[41] See M.C. Alexander, *Trials in the Late Roman Republic 149 BC to 50 BC*, (1990), pp. 151–165.

[42] Asconius, *Pro Milone*, 40,7–11C. Cf. 41,1–3C.

He also ordered an armed guard to protect his own villa[43]. Reportedly, he would be surrounded by soldiers even on his way to the court, and when some people raised an outcry against him during Milo's trial, Pompey ordered them driven from the Forum. There were even some fatal injuries on these occasions, according to Dio[44]. Nevertheless, the army did not play the role which it might have been granted in an emergency situation; even if soldiers fulfilled their orders, they could not have been prevented from sympathizing with the urban mob which they were supposed to pacify. Nippel stresses the fact that, from a legal and psychological point of view, sending troops to suppress the riots differed radically from the appeal to volunteers present in the city at the time[45]: "qui rem publicam salvam esse volunt me sequantur".

In general, the position enjoyed by Pompey for several months in 52 BC hardly differed from a dictatorship[46]. Even if Pompey's consulship *sine collega* did not last longer than several months (in August 52, another consul – his father-in-law Scipio – was elected), there is no doubt that he had the final say in everything. He hardly concealed his aversion to Milo and finally ensured his conviction[47], even if the latter had been supported by the *Optimates* (and certainly Cicero[48]) in his attempts at a consulate. It is believed that even Cato himself was one of those who voted for

[43] Asconius, *Pro Milone*, 50, 25C.

[44] Dio, *Historia Romana*, XL 53,3.

[45] Nippel, *Public Order*, p. 81.

[46] See N. Rogosz, *The Character and Scope of Cn. Pompeius's Power during the Third Consulate in Year 52 BC* in: *Studia Lesco Mrozewicz ab amicis et discipulis dedicata*, ed. S. Ruciński, C. Balbuza, Ch. Królczyk, (2011), pp. 333–343.

[47] Velleius Paterculus, *Historiae Romanae*, II 47,4.

[48] Asconius, *Pro Milone*, 30C: "Miloni et Clodio summae erant inimicitiae, quod et Milo Ciceronis erat amicissimus".

Milo's acquittal (had he been acquitted, this would have meant that it was allowed to kill a citizen who has done harm to the Republic). Indeed, in his oration *pro Milone* (Mil. 3), Cicero argued that Milo had killed a tyrant (Clodius), just as Nasica had with Tiberius Gracchus, and Ahala with Maelius, i.e. he had killed a vile man. Cicero also argued that Milo's killing of Clodius had been an act of self-defense[49]. Yet it seems that when an *SCU* and then Pompey's *consul sine collega* election were debated, neither Cato nor Cicero could have expected that Pompey would be fully obedient to the Senate. Cato stressed that it had been in the interest of Rome rather than Pompey himself that he had opted for the election of the latter to suppress the riots[50].

Therefore, the objective of the *senatus consultum ultimum* of 52 BC was indeed to put an end to confusion in the Republic rather than to ensure the physical elimination of opponents and restore the Senate's dominance, as had been the case in the past. If compared with previous measures under this kind of decree, the difference is clear. Before then, Opimius' name had mostly been associated with his actions against Gracchus in 121 BC under the relevant *SCU*; Marius' name is mentioned in the context of another such decree in 100 BC; Cicero's measures in connection with Catiline's conspiracy are also discussed in the context of the *SCU*. Pompey's measures in 52 BC are, in turn, related to his third consulate rather than the extraordinary decree of the Senate[51]. Clearly, he was aware of the mandate of force under the

[49] According to J. Bleicken, *Lex publica. Gesetz und Recht in der römischen Republik*, (1975), p. 489: Cicero's argumentation was not politically motivated, considering that no such motivation was allowed under the balance of power of the day: Pompey was supposed to pacify armed groups on both sides of the political arena.

[50] Plutarchus, *Pompeius*, 54, *Cato Minor*, 48.

[51] See Cicero, *Philipicae*, I,18. Cicero argues that Pompey based his third

SCU but decided that the situation still allowed for other methods and there was no need to resort to extreme solutions[52]. It seems that through such conduct, he wished to show how issues were to be solved, and that offenders could be punished even more strictly than usual,[53] although within the confines of the law even if only in appearance. The Senate realized that its position had long been lost, with little prospect of restoring it. Therefore, to elect Pompey was to choose the lesser evil[54]. Even if the performance of the courts founded under the *SCU* was closer to what

consulate on legislation. See V. Paterculus, *Historiae Romanae*, II 47,3. V. Maximus, *Factorum et dictorum memorabilium libri novem*, VI 2,11;

[52] Pompey's response (or rather his failure to respond) to Cicero's handling of Catiline's conspiracy deserves a mention here. Cicero had very much looked forward to receiving Pompey's approval for his actions, and when the latter failed to respond, the orator did not hesitate to express his disappointment over the fact. See Cicero, *Epistulae ad familiares*, 5,7: "ac, ne ignores, quis ego in tuis litteris desiderarim, scribam aperte, sicut et mea natura et nostra amicitia postulat. Res eas gessi, quarum aliquam in tuis litteris et nostrae necessitudinis et rei publicae causa gratulationem exspectavi: quam ego abs te praetermissam esse arbitror, quod verere, ne cuius animum offenderes. Sed scito, ea quae nos pro salute patriae gessimus, orbis terrae iudicio ac testimonio comprobari. Quae cum veneris, tanto Consilio tantaque animi magnitudine a me gesta esse cognosces, ut tibi multo maiori, quam Africanus fuit, tamen non multo minorem quam Laelium facile et in re publica et in amicitia adiunctum esse patiare".

[53] The laws introduced by Pompey are mentioned even in Tacitus, who called them "remedies more terrible than the evils": P.C. Tacitus, *Annales*, III 28: "[…] tum Cn. Pompeius tertium consul corrigendis moribus electus et gravior remediis quam delicta erant […]". According to Wistrand, *Sallust on Judicial Murders in Rome*, p. 34: Tacitus implies that Pompey was another Sulla.

[54] Bleicken, *Lex*, p. 485: "Das *SCU* v. J. 52 etwa […] ist gewiss nicht als Versuch der Senatspartei anzusehen, die Dinge wieder in den Griff zu bekommen. Es war in der Verwirrung der Zeit eher das geringere Übel, und keiner konnte voraussehen, ob dieses geringere Übel, nämlich die gefährliche Vergrösserung der Macht des Pompeius, wirklich auch das geringere bleiben würde".

Pompey intended rather than the Senate[55], the situation was brought under control as expected. It left Pompey politically stronger, whereas the Senate, whose significance had been fading for some time, lost its dominance completely after handing over actual power to him[56].

[55] R. Syme, *The Roman Revolution,* (2002), p. 40, argues that: "With armed men at his back Pompeius established order again and secured the conviction of notorious disturbers of the public peace, especially Milo, to the dismay and grief of the *Optimates*, who strove in vain to save him".

[56] Burckhardt, *Politische*, p. 156–157: "Die zögernde und wenig entschlussfreudige Haltung des Senates macht –wie viele andere Vorkomnisse dieser Jahre – deutlich, dass dieser seine selbständige Stellung weitgehend verloren hatte, also in Abhängigkeit von der grossen Männern des Dreibundes geraten war und er nicht einmal mehr die Massnahme, die wie keine sonst dazu angetan war, ihm aus einer Zwangslage heraus politischen Freiraum zu verschaffen, ohne Konzession an einen dieser Herren ergreifen konnte". A. Drummond, *Law Politics and Power. Sallust and the Execution of the Catilinarian Conspirators*, "Historia. Zeitschrift für alte Geschichte. Einzelschriften", 93 (1995), p. 95, note 98: "Pompey's recourse in 52 to the normal processes of law and to courts sanctioned by the people (despite the previous passage of the *SCU*) was in fact a calculated political statement […]".

Pompejusz Wielki, jego trzeci konsulat i *senatus consultum ultimum*

(streszczenie)

Przedmiotem rozważań jest wyjątkowa uchwała senatu (tzw. *senatus consultum ultimum* – *SCU*) podjęta w 52 roku p.n.e. dla zażegnania niepokojów w Rzymie po zamordowaniu Klodiusza przez Milona oraz wyborze Pompejusza na konsula *sine collega*. Na podstawie "communis opinio" *SCU* było podejmowane wówczas, gdy dominujący w senacie optymaci zamierzali ostatecznie rozprawić się z przeciwnikami politycznymi. Jednakże podjęcie nadzwyczajnej uchwały w 52 roku wynikało, jak się wydaje, z odmiennych okoliczności. Sytuacja polityczna była w tym czasie szczególnie trudna. Czołowi optymaci byli tak zdesperowani, że skierowali *SCU* m.in. do Pompejusza, który wówczas był jedynie prokonsulem. W wypadku tego *SCU* nie chodziło o wystąpienie przeciwko jakimś konkretnym osobom, lecz o zaprowadzenie porządku w Rzymie, czego dowodzi fakt, że do charakterystycznej dla *SCU* formułki dodano jeszcze jedno polecenie: Pompejusz ma zrobić zaciąg żołnierzy w całej Italii. Pompejusz podjął się wykonania swego zadania dopiero wtedy, gdy uczyniono go *consul sine collega*. Wówczas jego działania były podejmowane *lege artis*. Pompejuszowi wyraźnie chodziło o to, by pokazać, że można rozwiązywać problemy i ukarać sprawców surowiej niż zwykle, lecz z zachowaniem prawa, choćby to były jedynie pozory. Wyjątkowość sytuacji polegała na tym, że dominujący w senacie optymaci nie pozbyli się swoich przeciwników politycznych, jak to bywało dawniej, gdy uchwalano *SCU*, oddając zaś władzę Pompejuszo-

wi utracili dominację. Pompejusz wyszedł z tego konfliktu wzmocniony politycznie, a jego działania w 52 roku zostały zapamiętane jako wynik jego działalności nie w ramach wyjątkowej uchwały senatu, lecz w ramach trzeciego konsulatu.

Opracowane przez Autorkę / Prepared by the Author

Pompeius Magnus, sein drittes Konsulat und *senatus consultum ultimum*

(Zusammenfassung)

Der Gegenstand der Überlegungen ist der außerordentliche Beschluss des Senats (sog. *senatus consultum ultimum* – *SCU*), der 52 v. Ch. gefasst wurde, um die Unruhen in Rom nach der Ermordung Clodiuses durch Milo und dem Wahl Pompeius zum Konsul *sine collega* abzuwenden. Aufgrund "communis opinio" wurde das *SCU* damals gefasst, als die im Senat überwiegenden Optimaten mit den politischen Gegnern definitiv abrechnen wollte. Die Fassung des außerordentlichen Beschlusses im Jahr 52 v. Ch. ist aber wahrscheinlich aus anderen Gründen entstanden. Die politische Situation war damals besonders schwer. Die führenden Optimaten waren so sehr verzweifelt, dass sie das *SCU* u. a. an Pompeius, der damals nur ein Prokonsul war, gerichtet haben. Im Fall dieses *SCU*s ging es nicht um das Auftreten gegen einige konkrete Personen, sondern um die Schaffung der Ordnung in Rom. Das ist durch die Tatsache bewiesen, dass zu der für das *SCU* charakteristischen Formel noch eine Anordnung des Senats hinzugegeben wurde: Pompeius soll eine Soldateneinrückung im ganzen Italien berufen. Pompeius hat die Aufgabe erst dann übernommen, als er zu dem *consul sine collega* ernannt wurde. Damals war seine Tätigkeit *lege artis*. Pompeius wollte damit deutlich zeigen, dass man die Probleme lösen kann und die Täter härter bestrafen als normalerweise – rechtmäßig, auch wenn das nur dem Anschein nach ist. Die Einzigartigkeit der Situation liegt in der Tatsache,

dass die Optimaten seine politischen Gegner nicht losgeworden sind, wie es vorher bei dem *SCU*-Beschluss war. Als sie dem Pompeius die Macht übergaben, haben sie seine Dominanz verloren. Pompeius ist aus dem Konflikt gestärkt herausgegangen, und seine Tätigkeit im Jahr 52 v. Ch. wurde als im Rahmen des dritten Konsulats in Erinnerung behalten, statt im Rahmen des außerordentlichen Senatsbeschlusses.

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