

*Veronika Čunderlík Čerbová*

Comenius University, Bratislava

veronika.cerbova@gmail.com

ORCID: <https://orcid.org/0000-0002-0678-6134>

## Chosen Roman and Canon law institutions in the Recent Positive Law of the Slovak Republic

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### 1. Introduction

The influence of Roman law and Canon law as such on European legal culture is certainly indisputable. The theory of Roman and Canon law has imprinted an indelible mark on the development of the continental legal system, and most of the institutions contained in it are also taught within the framework of current legal theory. What Roman law represented in theoretical law, in private law acted as a balance to Canon law in the field of public law.<sup>1</sup> Some regulations of Roman law and also Canon law are, however, significantly marked by the historical context of its origin and time period of its development; and therefore one can argue whether these regulations have found their modern representation in the positive law. *Senatus Consultum Velleianum* (hereinafter referred

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<sup>1</sup> V. Vladár, *Prínos kánonického práva k výučbe právnej teórie v histórii a súčasnosti*, "VŠEHRD – časopis českých právníků" 2018. Retrieved from: [https://www.vsehrd.cz/clanek/prinos-kanonickeho-prava-k-vyucbe-pravnej-teorie-v-historii-a-sucasnosti\\_9bb315d6-f872-422f-a8b9-05c21d531562](https://www.vsehrd.cz/clanek/prinos-kanonickeho-prava-k-vyucbe-pravnej-teorie-v-historii-a-sucasnosti_9bb315d6-f872-422f-a8b9-05c21d531562) (access: 19.09.2021).

to as the “SCV”), which forbade women to intercede<sup>2</sup> on behalf of others in case of debt, and the institution of canonical equity are certainly among these regulations. Despite the fact that the said provisions might at first appear to be discriminatory in terms of gender equality in modern law, I will point out different variations of application or exclusion of application of the SCV provisions in this paper. At the beginning, in my point of view, it can be noted that in the provisions of the SVC we can observe the art of the Roman lawyers in dealing with various circumstances of a case, and discover cases in which the protection of women is required, and it cannot be stated that the purpose of the SCV was any kind of discrimination against women on the grounds of gender.<sup>3</sup> The institution of canonical equity does not cover the protection of specific persons, but acts as a means of protection in general, in the case of the harshness of the law. The aim of this paper is to find the basic sense of the SCV and the canonical equity and content and possibly identify its representation in the Slovak positive law.

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<sup>2</sup> Intercession means any assumption of obligation on behalf of others, which can occur in three different forms: a) cumulative intercession, where the intercessor commits alongside the debtor either as a solidary debtor or as an accessory debtor, possibly as pledger; b) private intercession, where the intercessor commits instead of the debtor, for example in novation based on passive delegation or expromission, *litiscontestatio* or compromise; c) intercession conducted tacitly (*intercession tacita*), where the intercessor commits him/herself by loan, for example, instead of concluding the debt for which it intercedes. O. Sommer, *Učebnice soukromého práva římského, díl II. Právo majetkové*, Praha 1946, p. 130–131.

<sup>3</sup> Also an institution that might at first appear to be as discrimination against women is the institution of guardianship over women, which was justified by the frivolous spirit of the female gender. (Gaius, 1, 144). However, the significance of guardianship over women is questioned by Gaius himself, when he states that there is hardly any real reason for guardianship. The fact is that a frivolous mind is easily mistaken, and therefore, it is fair that women are led by an authority of a guardian: it is a reason rather sympathetic than real. After all an adult woman manages her affairs on her own and the guardian intervenes only for effect in some cases. A guardian is often even against his will forced by a praetor to give his consent to the woman's action. (Gaius, 1, 190).

## 2. Senatus Consultum<sup>4</sup> Velleianum<sup>5</sup>

The resolution of the Velleianum senate is dated between 41 and 65 AD<sup>6</sup> and was expressed as follows:

Ulp. D. 16, 1, 2, 1 *quod marcus silanus et velleus tutor consules verba fecerunt de obligationibus feminarum, quae pro aliis reae fierent, quid de ea re fieri oportet, de ea re ita censuere: quod ad fideiussores et mutui dationes pro aliis, quibus intercesserint feminae, pertinet, tametsi ante videtur ita ius dictum esse, ne eo nomine ab his petitio neve in eas actio detur, cum eas virilibus officiis fungi et eius generis obligationibus obstringi non sit aequum, arbitrari senatum recte atque ordine facturos ad quos de ea re in iure aditum erit, si dederint operam, ut in ea re senatus voluntas servetur.*<sup>7</sup>

The creation of the SCV was, according to certain authors, the result of increasing emancipation of women from the time of the Punic wars and the effort to return to the good old habits. For this reason, the senate tried to limit the given development through precautionary restrictions against women in business transactions and return women to their proper place, home. The reality was, however, not that bad, since the SCV in fact conveyed an idea that if commitment for a debt of another person should be only a matter of men, it is in the best interests of women to be protected.<sup>8</sup>

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<sup>4</sup> Resolution of a senate is what the senate orders or enacts; and this receives the force of law, although this issue was debated. (Gaius, 1, 4).

<sup>5</sup> Senatus Consultum Velleianum is also used. A. Berger, *Encyclopedic Dictionary of Roman Law*, Philadelphia 1991, p. 700.

<sup>6</sup> R. Zimmerman, *The Law of Obligation, Roman Foundations of the Civilian Tradition*, New York 1996, p. 145.

<sup>7</sup> Because Marcus Silanus and Velleus Tutor, the consuls, had written what ought to be done concerning the obligations of women who became debtors on behalf of others, the senate lays down the following: Although the law seems to have said before what pertains to the giving of verbal guarantees and loans of Money on behalf of others for whom women have interceded, which is that neither a claim by these persons nor an action against the women should be given, since it is not fair that they perform male duties and are bound by obligations of this kind, the senate considers that they before whom the claim would be brought on this matter would act rightly and consistently if they took care that, with regard to this matter, the will of the senate was observed. A. Watson (ed.), *The Digest of Justinian*, Vol. 2, Philadelphia 1998, p. 1.

<sup>8</sup> R. Zimmerman, op.cit., p. 147. Zimmerman points out also the view

For the application of the SCV, it is necessary to distinguish the status of a woman. When a woman performed what she promised in contradiction with the SCV provisions in full awareness of her legal status, she was not entitled to claim back her performance. (C4, 29,9) The given fact represents a principle followed by the Roman lawyers that there is no need to deviate from the legal rules<sup>9</sup> when the person knew that s/he is not committed by the effect of his/her action.<sup>10</sup>

The SCV dealt with situations where the women acted in the interest of somebody else; this third party was a “true” debtor, who was to be ultimately responsible for the debt incurred. Thus, the woman could easily be tempted to think of her own obligation as a mere formality which she would never be required to fulfil. Emotionally inclined to rush to somebody else’s help when required to do so, acting with undue confidence in this other person’s ability and readiness to honour his promise, unable, especially, to withstand the importunacy of their husbands or friends, and generally prone to be influenced by unscrupulous or well-meant but unsound advice – so one probably thought – women tend to be somewhat frivolous, over-optimistic, and reckless of their own interest. The SCV combated these dangers, under which women committed themselves for others. Roman lawyers were prepared to apply the SCV in all the above-specified situations, where women owing to their emotional nature might be threatened in their own interests.<sup>11</sup>

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of Hugo Grotius, who perceived the SCV as a privilege, means of protection, benefit of female gender. Other essential bibliography: H. Vogt, *Miscellanea ad senatusconsultum Velleianum*, “Tijdschrift voor Rechtsgeschiedenis/Revue d’Histoire du Droit” 1967, Vol. 35, p. 99; D. Medicus, *Zur Geschichte des Senatus Consultum Velleianum*, Köln–Graz 1957; U. Mönnich, *Frauenschutz vor riskanten Geschäften: Interzessionsverbote nach dem Velleianischen Senatsbeschluss*, Köln 1999.

<sup>9</sup> For example, deviate from the principle of equal position of contractual parties.

<sup>10</sup> R. Zimmerman, op.cit.

<sup>11</sup> Where a woman stood surety, incurred joint obligations (D 16,1), gave security for another by way of pledge (D 16, 1, 8), released the debtor by means of novatio (C 4,29,1), took out a loan on somebody else’s behalf and

Women were afforded *exceptio senatusconsulti Vellaeani* against the commitment of prohibited intercession. Therefore, the liability from intercession was *iure honorario* void.<sup>12</sup> At the same time, the purpose of the legislator was distinguished against the background of the real interests of the involved parties and action was not taken on the basis of formal classification of the contractual transaction.<sup>13</sup>

The provisions of the SCV could have been misused by women also. Roman lawyers were trying to prevent such possibilities. The following fragment proves the aforementioned fact: D 16, 1, 2, 3 *Sed ita demum eis subvenit, si non callide sint versatae: hoc enim divus pius et severus rescripserunt. nam deceptis, non decipientibus opitulatur et est et graecum severi tale rescriptum: tais apatusais gunaicin to dogma tys sugklytou boulyis ou boyvei. infirmitas enim feminarum, non calliditas auxilium demeruit.*<sup>14</sup>

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thus saved him from incurring any liability himself. For more details refer to: R. Zimmerman, op.cit., p. 149.

<sup>12</sup> O. Sommer, op.cit., p. 166.

<sup>13</sup> D 16, 1, 13 pr. *Aliquando, licet alienam obligationem suscipiat mulier, non adiuvatur hoc senatus consulto: quod tum accidit, cum prima facie quidem alienam, re vera autem suam obligationem suscipiat. ut ecce si ancilla ob pactio-nem libertatis expromissore dato post manumissionem id ipsum suscipiat quod expromissor debeat, aut si hereditatem emerit et aes alienum hereditarium in se transcribat, aut si pro fideiussore suo intercedat.*

Translation: Sometimes a woman may undertake the obligation of another and not be given assistance under senatus consultum; this is the case where she assumes an obligation which at first sight appears indeed to be that of another, but is in truth her own, as, for example, where a female slave, in view of a pact of liberty, having provided a promisor, undertakes after manumission precisely that which the promisor owes, or where she buys an inheritance and transfers to herself the debts of the inheritance, or where she intercedes on behalf of her own verbal guarantor.

D 16, 1, 4 pr But if I have contracted with a woman from the very beginning, when I did not know on whose behalf this act was intended, I do not doubt that the *senatus consultum* does not apply; and so the deified Pius and our own emperor have stated by rescript. A. Watson (ed.), op.cit., p. 2.

<sup>14</sup> But relief is only granted to them if they have not been guilty of deceit; for this the deified Pius and Severus have laid down by rescript. This is because relief is given to those who have been deceived, not to those who deceive. This has also been stated in a Greek rescript of Severus in the following terms: "The decree of the senate does not give assistance to women who are guilty

Justinian modified the prohibition on intercession by women not inconsiderably; he generally followed the policy of (further) reducing the protection afforded to women by the SCV and of thus recognizing their increasing emancipation and business experience.<sup>15</sup> Justinian created for women the possibility of validating their acts of intercession by confirming them after a lapse of two years, or by acknowledging the receipt of compensation in a formal document, drawn up by a tabellio (notary) and signed by three witnesses. (C 4,29,22 pr.) However, Justinian imposed an absolute prohibition on women's interceding on behalf of their husbands. The only exceptions were cases, where the money received as a result of their intercessions was spent for the benefit of the women themselves. (C 4,29,22 pr.) This enactment, later known as the *Authentica si qua mulier*, effectively re-enforced the policy of the SCV for those situations in which women had always been particularly susceptible of acting in an unduly altruistic and unbusinesslike manner.

Laurens Winkel in his article *Forms of Imposed Protection in Legal History, Especially in Roman Law* identifies legal protection of the weaker party in the Roman law, in the field of family law, and the matter of restriction of legal capacity to act,<sup>16</sup> in legal protection through legislation and magistrates, in rules dealing with defects of law, and he identifies the elements of protection also through the expanding protection concept of good faith (*bona fides*).<sup>17</sup> Directly under the legal protection through legislation or magistrates, Lau-

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of deception", for it was the vulnerability of women, not their cunning that deserved assistance. Ibidem, p. 1.

<sup>15</sup> For more details refer to: R. Zimmerman, op.cit., p. 151.

<sup>16</sup> Circumstances limiting legal capacity to act in the Roman law were age, gender, mental illness, physical defects, harm to honour, status, and religion.

<sup>17</sup> L. Winkel, *Forms of Imposed Protection in Legal History, Especially in Roman Law*, "Erasmus Law Review" 2010, Iss. 3(2), p. 155–162. For the concept of *bona fides* principles refer to: V. Čunderlík Čerbová, *Bona fides ako jeden z princípov rímskeho záväzkového práva*, in: *Milníky práva v stredoeurópskom priestore 2015*, Bratislava 2015, p. 462–469; V. Čunderlík Čerbová, *Bona fides v zákone č. 99/1963 Zb. Občianskom súdnom poriadku a novom Civilnom sporovom poriadku*, in: K. Stloukalová (ed.), *Soudobé reflexe římského práva: římské právo v moderních kodifikacích*, Praha 2015, p. 202–210.

rens Winkel identifies the SCV as a source in which protection of the weaker party can be found, in this case protection of a woman. The given proposition acts controversially since the principle of equality of the contractual parties can be considered as one of the principles of the Roman law of obligations, which implies that none of the parties could have a more favourable position than the other. A specific structure of family relations was characteristic for Roman law, where *pater familias* was the dominant person who had extensive privileges in relation to the members of his own *familia*. The rules concerning the status of an immature son or daughter under paternal power (*alieni iuris* persons) are notorious; however, even in the background of the respective rules, the effort of the Romans to specifically approach persons with insufficient age or women can be identified, which can be, in terms of content, assessed as a form of protection, based on which, if such person entered into any legal relationship, the said person had a more favourable position according to the said special protection.<sup>18</sup>

### 3. Canonical equity

Legal moderation arises because of the generality of the society's rules, which are imposed on its members to ensure the common good and establish justice, so that all individual cases can be subsumed under them. Justice (*justitia*) is an ideal, and canonical equity (*aequitas*) serves as a means of realizing the ideal in practice. Canonical equity (*aequitas*) is a relative idea that envisages a higher principle of justice or the moderation of law in its application.<sup>19</sup> Medieval legal education in the 11<sup>th</sup> and 12<sup>th</sup> centuries

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<sup>18</sup> For example, the institutions of *cura impubertum* can be perceived as a form of protection. Young people over the age of 12/14, who were emancipated from the paternal power, disposed of advisory of a guardian and had the right to restitution in case the contract was disadvantageous for them. J. Kincl, V. Urfus, M. Skrějpek, *Římské právo. 2. vydání*, Praha 1995, p. 77.

<sup>19</sup> J.J. Coughlin, *Law, Person, and Community, Philosophical, Theological, and Comparative Perspectives on Canon Law*, Oxford 2012, p. 102–103.

made it possible to develop a clear idea of canonical equity. Early Christianity and medieval canonism were considerably influenced by Roman law.<sup>20</sup>

In the words of S. Kuttner, “the medieval canonists harmonized the contradictions of law and grace and developed the idea of canonical equity, which was permeated by their analytical thinking and individual solution of cases”.<sup>21</sup>

Medieval thinkers developed canonical equity as a form of legal analysis that attempts to integrate the transcendent with the historical. This form of analysis has developed in Canon law in a way consistent with the Christian understanding of man. Christian anthropology endowed the Roman idea of justice with three distinct characteristics: medieval canons transformed the classical idea of natural law to reflect the Christian understanding of man.<sup>22</sup> Hostiensis promoted justice contained in evangelical love, compassion, and grace. He tried to reconcile theology with natural law. Canonical equity included, not only natural justice, but also love, compassion, and grace, which are perfectly portrayed by the person of Jesus Christ. The medieval canonists regained the Justinian corpus of law and endowed it with a dynamic quality that conveyed a new sense of order and justice in society. A similar role was played by the *praetor urbanus* and *praetor peregrinus* in the innovation of Roman law, and medieval justice required that the

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<sup>20</sup> For example, Saint Izidor of Seville adopted Ulpian’s definition of natural law, Gracian devotes the introduction of his Decree to the model of Justinian’s Digest to natural law. For more details refer to: V. Vladár, *Graciánov dekrét. Analyticko-prekladová štúdia k 1. Dištinkcii*, “Iurium scriptum” 2018, No. 2(1), p. 36–79.

<sup>21</sup> S. Kuttner, *Harmony from Dissonance: An Interpretation of Medieval Canon Law*, Latrobe 1960, p. 50.

<sup>22</sup> When it comes to the contrast of the ancient perspective, the Christian understanding postulated the doctrine of human freedom in which human existence is historically conditioned. St. Thomas Aquinas argued that through the use of good reason, and especially when enlightened by grace, a system of universal and transcendent moral principles is available to every human being. This view has an anthropological basis, because the natural law was understood as written by the human heart.



legislature and judges be aware of a history that allowed them to adapt to changes in social reality for the common good.<sup>23</sup>

Canonical equity, just like many other institutions of Canon law, is an expression of the requirement to take into account the specific circumstances of the case in order to protect the weaker party in the legal relations (e.g. in dispute resolution). The expression of the canonical equity appears in the Code of Canon Law 1983 seven times.<sup>24</sup> There is also a possibility to identify in these institutions the significant influence of Roman law, and thus in the identification of one institution in modern law, it is possible to speak of the existence of the other.

#### 4. The SCV and canonical equity in the Slovak Positive Law

It might seem that the SCV, owing to its specialization, restricting women to legal capacity, despite the purpose of protection in the current law, does not and cannot have its expression *de lege lata*. However, it is necessary to look at the essence of the SCV, which provided protection for women who, owing to their emotional state of mind, were more prone to be misused by third parties. According to Wolfgang Ernst, the protective regime of the SCV is still visible in the modern consumer law. He demonstrates this fact on the background of the German private law,<sup>25</sup> in particular on the provisions of Art. 138 of BGB.<sup>26</sup>

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<sup>23</sup> J.J. Coughlin, *op.cit.*, p. 113–114.

<sup>24</sup> Can. 19 uses the term *aequitas canonica*, can. 221 § 2 *aequitas*, can. 271 § 3 *naturali aequitas*, can. 686 § 3 *aequitas et caritas*, can. 702 § 2 *aequitas et evangelica caritas*, can. 1148 § 3 *iustitia, christianana caritas et naturalis aequitas* and can. 1752 *aequitas canonica*.

<sup>25</sup> L. Winkel, *op.cit.*, p. 158–159.

<sup>26</sup> According to Section 138 of BGB, immoral legal action, usury is: (1) A legal action which is contrary to public policy and is void. (2) In particular, a legal action is void by which a person, by exploiting the predicament, inexperience, lack of sound judgment (is simple) or considerable weakness of will of another, causes himself or a third party, in exchange for an act of performance, to be

A similar provision laying down usury in the Slovak civil law was amended by Act No. 106/2014 Coll., amending Act No. 40/1964 Coll. the Civil Code, as amended, and by amendments to certain acts effective from June 1, 2014. In particular, pursuant to the provisions of Art. 39a of the Civil Code, a legal act made by a natural person – non-entrepreneur is void when anyone misuses duress, inexperience, intellectual maturity, distress, trustfulness, frivolity, financial dependence, or inability of the other party to fulfil its liabilities, and causes himself or another person to be promised or granted a performance, the value of which is grossly disproportionate to the value of mutual performance.

To verify the similarity of provisions related to civil usury<sup>27</sup> with the purpose of the SCV, it is deemed necessary to know the content of some terms used in the provisions of Art. 39a of the Civil Code.

The explanatory memorandum to the respective amendment of the Civil Code, by which civil usury was laid down in the positive law, defines the content of terms under which can be identified the focus of the legislator to protect certain groups of people.

**Inexperience** is, for example, lack of knowledge of prices, purchase possibilities usually in connection with trustfulness. It is mainly lack of experience in dealing with property issues. This may result from inexperience in a broader sense or inexperience in a certain field of human activity, which has impact on the property of a person. Inexperience may be in tandem with early age, especially of minors.

**Intellectual immaturity** is the inability of the damaged party to recognize the value of his performance or promise to the val-

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promised or granted pecuniary advantages which are clearly disproportionate to the performance.

<sup>27</sup> Criminal usury is defined by the provision of Art. 235 of Act No. 300/2005 Coll., Criminal act, as amended. Any person who by taking advantage of another person's distress, inexperience, or unsoundness of mind or agitation, causes himself or a third party to be granted or promised performance, the value of which is grossly disproportionate to the value of mutual performance, or who enforces such claim or, with the intention of enforcing it, transfers the claim to himself, shall be liable to a term of imprisonment of one to five years.

ue of mutual performance of the offender; the reason might be slow-wittedness, loss of intellectual abilities and other mental disorders owing to personality disorders or diseases, or delayed development manifested primarily in the inability of logical reflection and thinking.

**Distress** is a state of sudden affection induced by a certain directly preceding event which has particularly intensively hit the emotional aspect of the mental life of the damaged party in such extent that he/she was not able to weigh up in this condition whether the value of his performance or promise corresponds to the value of performance of the offender towards the damaged party.

**Trustfulness** means the state and action of a person who, as the so-called weaker contractual party, does not have such degree of prudence as would ensure protection of its right under the economic domination of the other contractual party. The person is thus prone to believe all presented facts since impartially it is incapable of making a qualified assessment of the provided facts.

**Frivolity** is manifested in such a way that the person, owing to a reduced level of perception or intellectual maturity, does not attribute to its action such consequences as should have been attributed in reality. The given sign can be also put as that the person makes light of his actions.

**Financial dependence** or inability to fulfil liabilities towards the other party – this expresses the relationship between the consumer and the supplier, when the consumer (or citizen) is economically dependent on the supplier, e.g. owing to chaining of loans, because of being over-credited, committed, and economically dependent on the supplier, who is able to indirectly control the party's actions. The other sign is the misuse of the inability to fulfil liabilities while neglecting the assessment of creditworthiness. Negligence of the assessment of creditworthiness and its misuse by the supplier is very closely related to financial dependence, while to catch usury, identification of one subjective sign is sufficient. (Explanatory memorandum to Act No. 106/2014 Coll. amending Act No. 40/1964 Coll. Civil Code, as amended, and on amendments to certain acts, 2014).

Some of the defining features of civil usury indicate **inexperience** in dealing with property issues. Knowing the status of women in Roman law, women were certainly persons whose economic behaviour was limited owing to their protection. **Distress** that intensively affects emotions was an emotion that was attributed rather to women as emotionally weaker persons in Roman society. **Trustfulness** or **reduced level of prudence** were qualities that often characterized women in Roman society. **Frivolity or profligacy** were facts that led to the initiation of protection mechanisms in the legal status of women. In the case of marriage *in manu* the woman – wife was certainly **financially dependent** on her husband (although not in the sense of chaining of loans or over-crediting).

Despite the fact that the provision of Art. 39a of the Civil Code is applicable to relationships between consumers<sup>28</sup> and suppliers,<sup>29</sup> a common protection purpose can be identified; a person emotionally distressed, trustful, and/or negligent about his/her own interests, has become an entity of a contractual relationship, in which the said person's obligations are grossly disproportionate to the rights arising from the contractual relationship. The SCV as well as civil usury can be perceived as an effort to establish justice, restore good faith (*bona fides*), the main source of which is natural law (*ius naturale*).

Canonical equity is also an institution that has its roots in natural law and is also a requirement for justice in specific legal relationships. The taking into account of the above criteria in assessing the legal relationship can thus also be examined from that point of view and its expression found in the interpretation. The *bona fides* are an expression of justice and a reduction in the rigours of the law. For example, the *bona fides* are expressed in the Slovak Civil Code eleven times.<sup>30</sup>

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<sup>28</sup> Pursuant to the provisions of Art. 52, Par. 4, of the Civil Code, a consumer is a natural person, who is not acting within the scope of its commercial or business activity when concluding and satisfying a consumer contract.

<sup>29</sup> Pursuant to the provisions of Art. 52, Par. 3, of the Civil Code, a trader is a person who is acting within the scope of its commercial or business activity when concluding and satisfying a consumer contract.

<sup>30</sup> Art. 3, Par. 1; Art. 39; Art. 148 Par. 2; Art. 424; Art. 469a Par. 1a);

## 5. Conclusion

On the basis of the identification of the real aim of the SCV provisions, the protection of a person emotionally distressed, credulous, negligent about his/her own interests, who has become an entity of a contractual relationship, in which the said person's obligations are grossly disproportionate to the rights arising from the contractual relationship, the SCV cannot be identified as discriminatory towards women. The fact that the subject matter of the SCV were women arises from the time and nature of the society, in which the protective regime of the SCV emerged. On the basis of this conclusion, the representation of the SCV is to be found in the Slovak positive law. With respect to the common content links of the defining features of a person protected by the SCV, the reflection of the SCV in the Slovak legal order can be found directly in civil usury, which is part of the consumer law in terms of the legislation scheme. In my point of view, legal protection against usury is an expression of the requirement of justice and good morals: these provisions may also include requirements to mitigate the severity of the law and to take into account the specificities of each individual case. The same requirements are subject to canonical equity.

### SUMMARY

#### Chosen Roman and Canon law institutions in Recent Positive Law of the Slovak Republic

The essence of *Senatus Consultum Velleianum* (hereinafter referred to as the "SCV") was to forbid intercession of women in case of debt of another person. The art of Roman lawyers to deal with different circumstances of a case can be observed and situations in which protection of

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Art. 471, Par. 1; Art. 482, Par. 2; Art. 564, Art. 630; Art. 711, Par. 1c) and Art. 759, Par. 2 of the Civil Code. For example: Art. 3, Par. 1 of the Civil Code: Exercise of rights and duties following from civil legal relationships must not groundlessly infringe the rights and lawful interests of others and must not be at variance with *bona fides*.

a woman is required can be discovered in the individual fragments of the SCV. Canonical equity (*aequitas*) is a relative idea that calculates with a higher principle of justice or the moderation of law in its application. After analysis of the individual cases, it can be stated that the aim of the SCV was to protect women, who in these cases acted as the weaker party, based on the general experience that in the majority of cases women are emotionally more inclined to help, and act with undue confidence in the ability of the other person to honour his promise; they are unable, especially, to withstand the importunacy of their husbands or friends, and they are generally prone to be influenced by unscrupulous or well-meant, but unsound advice. Under the influence of emotions and strong life situations, women tend to be naive, very optimistic, and negligent about their own interests. The common purpose of protection – a person emotionally distressed, trustful, negligent about his/her own interests, who has become an entity of a contractual relationship, in which the said person's rights are grossly disproportionate to the rights arising from the contractual relationship – can be identified even in civil usury, which is part of Slovak positive law. Legal protection against usury is, likewise, an expression of the requirement of justice and good morals in legal relations. Based on the given conclusions, it can be stated that the essence and aim of the SCV and canonical equity has found its representation also in the legal order of the Slovak Republic.

**Keywords:** protection; Roman Law; Canon Law; canonical equity; status of Women in Roman Law; Senatus Consultum Velleianum; usury; Civil Code; *bona fides*

## STRESZCZENIE

Wybrane instytucje prawa rzymskiego i kanonicznego  
we współczesnym prawie pozytywnym Republiki Słowacji

Istotą Senatus Consultum Velleianum (dalej: SCV) był zakaz udzielenia przez kobietę poręczenia za długi osoby trzeciej. Można tu zaobserwować kunszt jurystów rzymskich w rozwiązywaniu różnorodnych spraw, jak i dostrzec w poszczególnych fragmentach SCV różne okoliczności, w których istniała potrzeba ochrony kobiet. Kanoniczna zasada słuszności (*aequitas*) jest ideą uwzględniającą wyższą zasadę sprawiedliwości lub umiarkowanie w stosowaniu prawa. Na podstawie analizy poszczególnych przypadków można stwierdzić, że celem SCV była ochrona kobiet, które działały jako

strona słabsza, co wynika z ogólniejszego przeświadczenia, że w większości przypadków kobiety są bardziej skłonne do udzielenia pomocy, działają z nadmierną wiarą w zdolność innych osób do dotrzymywania obietnic, nie są w stanie oprzeć się natarczywości swoich mężów i przyjaciół, a także są podatne na wpływ pozbawionych skrupułów lub wypowiedzianych w dobrych intencjach, aczkolwiek nierozsądnych, rad. Pod wpływem emocji i poważnych problemów życiowych kobiety wykazują się naiwnością, zbytnim optymizmem i zaniedbywaniem własnych interesów. Ogólny cel ochrony – osoba niestabilna emocjonalnie, ufna, zaniedbująca własne interesy, będąca podmiotem stosunku umownego, w którym jej uprawnienia są rażąco niewspółmierne do praw wynikających z tego stosunku, można dostrzec również w instytucji lichwy, stanowiącej część współczesnego prawa słowackiego. Ochrona prawna przed lichwą jest także wyrazem wymogu zachowania sprawiedliwości i dobrych obyczajów w stosunkach prawnych. Opierając się na tych wnioskach, należy stwierdzić, że istota i cel SCV oraz kanonicznej idei słuszności znalazły swój wyraz w porządku prawnym Republiki.

**Słowa kluczowe:** ochrona; prawo rzymskie; prawo kanoniczne; słuszność kanoniczna; pozycja kobiet w prawie rzymskim; Senatus Consultum Vel-laeanum; lichwa; kodeks cywilny; *bona fides*

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