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A FEW REMARKS ON REGULATIONS CONCERNING *DELATIONES*
IN FISCAL MATTERS IN THE IMPERIAL LEGISLATION
OF THE FIRST HALF OF THE 4TH CENTURY A.D.

For years, the issue of combating the widespread phenomenon of denunciation in the classical law of ancient Rome has aroused many doubts among Romance scholars. Most controversy is precisely related to the treatment of fiscal and/or¹ criminal delations by particular sources,² as well as the nature of the ban on denunciation, which by some researchers is understood in a very rigorous and general manner,³ whereas others interpret it with

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¹ An interpretation covering both types of denunciation was presented by Jean Gaudemet, see J. GAUDEMET, “La répression de la délation au Bas-Empire,” in *Φιλίας χάριν. Miscellanea di studi classici in onore di Eugenio Manni* (Rome: Bretschneider, 1980), 3: 1077. However, it was rightly criticised by some, for example Tullio Spagnuolo Vigorita, see T. SPAGNUOLO VIGORITA, *Exsecranda pernicies. Delatori e fisco nell’età di Costantino* (Naples: Jovene, 1984), 24–25. Currently, however, the said interpretation is endorsed by Carmela Russo Ruggeri, see C. RUSSO RUGGERI, *Indices e indicia. Contributo allo studio della collaborazione giudiziaria dei correi dissociati nell’esperienza criminale romana* (Turin: Giappichelli, 2011), 146n476.

² A literature review of this controversy is presented in S. PIETRINI, “Delazione criminale o fiscale in alcune costituzioni di Costantino?” *Atti dell’Accademia Romanistica Costantiniana* 11 (1997): 171–72n1, and also in S. SCIORTINO, “Intorno a Interpretatio Theodosiani 9.39 ‘de calumniatoribus’,” *Annali de Seminario Giuridico (AUPA)* 52 (2007–2008): 243–44nn89–91, and D.A. CENTOLA, *Il crimen calumniae: contributo allo studio del processo criminale romano* (Naples: Jovene, 1999), 128nn39–41.

³ As demonstrated, for example, by G. PROVERA, *La vindicatio caducorum. Contributo allo studio del processo fiscale romano* (Turin: Giapichelli, 1964), 166, in the light of *edictum Costantini*. A similar perspective, with an indication of the disappearance of fiscal denunciation, is shown in F. MERCOGLIANO, “La petitio fiscale nell’organizzazione finanziaria da Costantino a Teodosio II,” *Atti dell’Accademia Romanistica Costantiniana* 12 (1998), 405.

much more liberty,⁴ as closely related to the idea of protecting innocent people from false accusations, which not only harm their good name but also pose a serious threat to their property and bring the risk of undeserved punishment. Considering the greatest wealth of source material relating to the phenomenon of informing in post-classical law, we shall analyse the imperial constitutions contained in Book 10, Title 10 of the Theodosian Code.⁵ Since the scope of the presented study is limited, I will focus on the constitutions issued by Emperor Constantine and regarded as the earliest regulations included in this source, which may refer to reports related to

⁴ This controversy is indirectly pointed out by Provera, who argues that there are doubts as to the severity of this punishment, mentioned in the constitutions under numbers 2 and 3, as referring to each case of *delatio*, or only to its specific type, i.e. an unfounded denunciation. See PROVERA, *La vindictio caducorum*, 164.

⁵ On the reliability of the source, the frequent practice of abridging and amending the constitutions, see for example N. VAN DER WAL, “Die Textfassung der spätrömischen Kaisergeretze in den Codices,” *Bullettino del Istituto di diritto romano* 83 (1980), pages 8–27 in particular, G.G. ARCHI, *Teodosio II e le sua codificazione* (Naples: Edizioni Scientifiche Italiane, 1976), 396–98; E. VOLTERRA, “Il problema del testo delle costituzioni imperiali, La critica del testo,” in *Atti del II Congresso Internazionale della Società Italiana di Storia del diritto (Venezia, 1967)* (Florence: Olschki, 1971), 2: 822–1097; J. GAUDEMET, “Un problème de la codification théodosienne: les constitutions géminées,” *Revue internationale des droits de l’antiquité* 4 (1957): 253–67; T. HONORÉ, “The Making of the Theodosian Code,” *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Romanistische Abteilung* 10 (1986): 156–61. It should be emphasized that according to T. Honoré (p. 161), despite minor changes in the constitutions referred to in the Code (Jean Gaudemet and Eoardo Volterra arguing otherwise to indicate considerable changes), the truthfulness of the message enables an in-depth text analysis. On the rich literature relating to the interpolation of the Code, see collectively e.g. M.A. DE DOMINICIS, “Registro delle alterazioni (glossemi ed interpolazioni) nelle costituzioni del Codice Teodosiano e nelle Novelle postteodosiane segnalate della critica,” *Bullettino del Istituto di diritto romano* 57–58 (1953): 396–7.

On contradictions within the code, see U. VINCENTI, “Codice Teodosiano e interpretazione sistematica,” *Index. Quaderni camerti di studi romanistici* 24 (1996): 111–31. On two versions of the Theodosian Code, one of which forming the framework of its today’s version and the other used by the Justinian compilers, both justifying discrepancies in the content of the two codes, see A. BISCARDI, “Studi sulla legislazione del basso impero, I. La legge delle citazioni,” *Studi Senesi* 53 (1939): 401–17, and also G.L. FALCHI, “La duplicità della tradizione del Codice Teodosiano,” *Labeo* 32 (1986), especially page 291. This argument is criticized by G. SCHERILLO, “La critica del Codice Teodosiano e la legge delle citazioni di Valentiniano III,” *Studia et documenta historiae et iuris* 8 (1942): 21–22. On the differences between the constitutions contained in the two Codes, in relation to the argument on the two versions of the Theodosian Code, see also E. GERMINO, “Codex Teodosianus e Codex Iustinianus: un ipotesi di lavoro,” in *Società e diritto nella tarda antichità*, ed. L. da Giovanni (Naples: D’Auria, 2012), 61–84.

In addition, with regard to the criteria for the choice of the constitution in the Theodosian Code, see E. VOLTERRA, “Sul contenuto del Codice Teodosiano,” *Bullettino del Istituto di diritto romano* 23 (1981), 85–124.

fiscal matters, as well as the constitutions issued by Emperor Constantius and directly related to denunciations of this character.

THE TYPE OF DELATION REFERRED TO BY THE SOURCES
—FISCAL OR CRIMINAL?

With regard to the first of the research problems identified, on the face of it, the decisive argument seems to be the title itself, which clearly puts the issue of delation, or more precisely that of delators,⁶ in the context of petitions and the allocation of assets by the State Treasury to individual entities—*De petitionibus et ulro datis et delatoribus*. The first two constitutions contained in this title, however, raise doubts,⁷ as they contain no reference in their content to the fiscal nature of the reported matter.

⁶ On the notion of *delator*, see for example SPAGNUOLO VIGORITA, *Exsecranda pernicies*, 26–41. On the term *delator* from a fiscal point of view, see the analysis Y. RIVIÈRE, *Les délateurs sous l'empire Romain* (Rome: École Française de Rome, 2002), 27–44. On the criminal meaning of the term *delator*, see C. Th. 10, 10, 10, 1 and 2, in the context of the *edictum de accusationibus*, see S. PIETRINI, *Sull'iniziativa del processo criminale romano (IV–V secolo)* (Milan: Giuffrè, 1996), 97; IDEM, *Delazione criminale o fiscale*, 186–8. On the contrary, as regards the edition mentioned above, see RIVIÈRE, *Les délateurs*, 131–6. See also C. RUSSO RUGGERI, “L'«Edictum de accusationibus» di Costantino e i delatori,” in *Studi in onore di Antonino Metro*, ed. C. Russo Ruggeri (Milan: Giuffrè, 2010), 425–54.

On *edictum de accusationibus*, see especially Th. MOMMSEN, “Nuovo esemplare dell'editto ‘de accusationibus’ di Costantino,” *Bullettino del Istituto di diritto romano* 2 (1899): 129–35; J. MOREAU, “Fragment, découvert à Sinope, de l'édit de Constantin ‘de accusationibus’,” *Historia: Zeitschrift für Alte Geschichte* 5/2 (1956): 253–6 (as far as the wording or the edict is concerned), and also M. AMELOTTI, “Da Diocleziano a Costantino. Note in tema di costituzioni imperiali,” *Studia et documenta historiae et iuris* 27 (1961), 249 together with footnote 30; PIETRINI, *Sull'iniziativa*, 98–99; CENTOLA, *Il crimen*, 125–7. The omission of *edictum de accusationibus* in the Theodosian Code, despite the compilers' knowledge of its contents, which is confirmed by the case of the *crimen maiestatis* accusation (C.Th. 9.5.1), see M. SARGENTI, “Il Codice Teodosiano: tra mito e realtà,” *Studia et documenta historiae et iuris* 61 (1995): 379–80.

⁷ As PIETRINI, *Delazione criminale o fiscale*, 171, rightly points out, two extreme interpretations can be distinguished—the first relates the ban on denunciation to criminal and the other one to fiscal interpretations. On the question of doubts in the doctrine as to the either fiscal or criminal interpretation of the delations in C.Th. 10.10.2, see PROVERA, *La vindictio caducorum*, 164; SCIORTINO, “Gli indices,” 60n3; IDEM, “Intorno,” 243–5nn89–91.

On the criminal character of *delationes* in the first two constitutions, definitely see PIETRINI, “Delazione criminale o fiscale,” 184; H. WIELING, “Constantinische Schenkungen,” *Atti dell'Accademia Romanistica Costantiniana* 9 (1993): 273; CENTOLA, *Il crimen*, 130–35. On the opinions regarding the recognition of the constitution contained in C. Th. 10.10.1 as one relating to the subject of criminal denunciations, and those under numbers 2 and 3 to fiscal denunciations, see SPAGNUOLO VIGORITA, *Exsecranda pernicies*, 22–23n2. However, the Author himself

The first of these constitutions mentions only the capital punishment for violating the previous regulations relating to delators, while the second one explicitly mentions strangling the informer and cutting out his tongue so that judges can hear neither his calumny nor his voice at all.⁸

C. Th. 10.10.1⁹ (313 Jan. 18)¹⁰

IMP. CONSTANTINVS A. AD POPVLVM. POST ALIA: De delatoribus iam certa statuimus; quibus si quis contra fecerit, poenam capitale[m] excipiet.¹¹
P(RO)P(OSITA) XV CAL. FEB. CONSTANTINO A. III ET LICINIO III CONSS.

C. Th. 10.10.2 [=BREV.10.5.1]¹² (319 [?] Dec. 1).

IDEM A. AD POPVLVM: Conprimatur unum maximum humanae vitae malum delatorum exsecranda pernicies et inter primos conatus in ipsis faucibus stranguletur et amputata radicibus invidiae lingua vellatur, ita ut iudices nec calumniam nec vocem prorsus deferentis admittant, sed si qui delator exstiterit,

believes that both constitutions concerned only fiscal delators—see *ibid.*, 87. See also earlier in IDEM, “‘Prohibitae delationes.’ Il divieto di delazione fiscale nel Panegirico del 313,” in *Hestiasis: studi di tardi antichità offerti a Salvatore Calderone* (Messina: Sicania, 1987 (1991)), 3: 337–72. Similarly in C. VENTURINI, “Recensione a T. Spagnuolo Vigorita, *Exsecranda pernicies. Delatori e fisco nell’età di Costantino*, Napoli 1984,” *Iura* 35 (1984): 153–60; B. SANTA-LUCIA, *Diritto e processo penale nell’antica Roma*, 2nd ed. (Milan: Giuffrè, 1998), 292, together with footnote 92; RIVIÈRE, *Les délateurs*, 131. PIETRINI was critical of this argument in her *Delazione criminale o fiscale*, 179–180. The criminal character of the anonymous *delatio* referred to in C.Th. 10.10.2, in relation to the *calumnia*, has already been pointed out by E. COSTA in *Crimini e pene. Da Romolo a Giustiniano* (Bologna: Zanichelli, 1921), 137. The Constitution placed under number 2 as referring to the general ban on fiscal denunciations is interpreted in L. FANIZZA, *Delatori e accusatori. L’iniziativa nei processi del età imperiale* (Rome: “L’Erma” di Bretschneider, 1988), 107–8. See also S. SCIORTINO, “Gli indices nel processo criminale extra ordinem,” *Iuris antiqui historia* 3 (2011): 60–61.

⁸ On the subject of penalties for delators, see GAUDEMET, “*La répression*,” 1074–75.

⁹ The fragments of the Theodosian Code are quoted after: Th. MOMMSEN, P.M. MEYER, *Theodosiani libri XVI cum Constitutionibus Sirmondianis et Leges novellae ad Theodosianum pertinentes*, vol. 1/2 (Berolini: Apud Weidmannos, 1905), 549–51.

¹⁰ On the earlier origin of the constitution, see GERMINO, *Codex Teodosianus*, 63, note 10, who underscores that the indicated date refers to its promulgation rather than its publication, regarding the constitution contained in C.Th. 10.10.1 as the earliest (and noting that the constitution contained in C.Th. 13.10.1 has the same dating) of those issued by Constantine. However, see footnote 15.

On the problems with dating the constitutions and with their recipients in the Theodosian Code, see, in particular, SARGENTI, *Il Codice*, 394–96.

¹¹ As underscored by CENTOLA, *Il crimen*, 132, the very wording of the constitution implies that only part of the norm (*post alia*) has been cited, and moreover, it clearly refers to the earlier regulation of this matter, which was the Constitution contained in C.Th. 10.10.2.

¹² Besides questioning the date of the publication of the constitution (1 Dec. 319), discussed below, also the fragment “sed si quis delator [...] subiungentur” raised doubts as to originality in U. BRASIELLO, *La repressione penale in diritto romano* (Naples: Jovene, 1937), 525–6n17. See DE DOMINICIS, “Registro,” 427.

capitali sententiae subiugetur. DAT. ET P(RO)P(OSITA) IN FORO DIVI
 TRAIANI KAL. DECEMB. CONSTANTINO A. V. ET LICINIO CAES.
 CONSS.¹³

Although both constitutions therefore focus on punishing delators, the constitution no. 2¹⁴ implies a tight connection between the activities of a delator and the defamatory content provided by him or her, to which the judges adjudicating the case should be immune. Therefore, it is not clear from the constitution that the activity of informants was banned entirely, as it could be assumed pursuant to the constitution placed under the number 1, but only that reports based on false claims will cause the informants to be severely punished. This, together with the severity of the punishment indicated, testifies to the extension of the regulation concerning false accusations—calumnies¹⁵—to the status of delators in criminal proceedings, who were now liable for their slanderous denunciations on the same terms as false accusers previously.¹⁶ Therefore, it is not clear from the constitution

¹³ See the noteworthy study J. GAUDEMET, “Constantin, restaurateur de l’ordre,” in *Studi in onore di Siro Solazzi nel cinquantésimo anniversario del suo insegnamento universitario (1899–1948)* (Naples: Jovene, 1948), 653, who stresses that both the addressing of the constitution to the people and its announcement at the Trajan’s Forum indicate that, according to Constantine, it deserved wide publicity. On the dissemination of imperial constitutions, even during the later period, see for example S. PULIATTI, “Le costituzioni tardoantiche: diffusione e autenticazione.” *Studia et documenta historiae et iuris* 74 (2008): 99–133.

It should be stressed, after GAUDEMET, *Constantin*, 653–4, that the constitution contained in C.Th. 10.10.2, was in line with Constantine’s policy of restoring order, aiming to suppress the phenomenon or danger of delation abuse by the victims of the tyrannical Maxentius, who might thus have wanted to take revenge on his supporters.

On the revulsion and resentment that marked the emperor’s statement about delators, see in particular WIELING, *Constantinische*, 273; CENTOLA, *Il crimen*, 132.

¹⁴ The Constitution, under number 2 and dated 319, was in fact considered to be earlier than the one placed under number 1, dated 313 and referring to this constitution contained in C.Th. 10.10.2. It must therefore be assumed that this constitution was issued in December 312, so it is not only the earliest constitution on the matter we are familiar with, but also the earliest of all known constitutions issued by this emperor, announced shortly after his victory over Maxentius. See GAUDEMET, “Constantin,” 653n6; SPAGNUOLO VIGORITA, *Exsecranda perniciés*, 6–8; AMELOTTI, “Da Diocleziano,” 253n38.

¹⁵ On the Constantine perspective of the notion of *calumnia*, see CENTOLA, *Il crimen*, 119–24; S. GIGLIO, *Il problema dell’iniziativa nella «cognitio» criminale. Normative e prassi da Augusto a Diocleziano* (Turin: Giappichelli, 2009), 186 (as regards C.Th. 9.10.3). For more on the regulations concerning *calumnia*, see CENTOLA, *Il crimen*, 136–47 (regarding the 4th century regulations) and 147–49 (regarding the 5th century regulations); IDEM, “In tema di responsabilità penale nella legislazione tardoimperiale,” *Studia et documenta historiae et iuris* 68 (2002): 18–30.

¹⁶ On the close link between the activities of a delator and *calumnia*, see CENTOLA, *Il crimen*, 132 and also SCIORTINO, *Intorno*, 245, who argues that C.Th. 10.10.2 adopts the definition of

itself that it can be referred to denunciations in fiscal matters, and the similarity of a false delator to a calumniator argues in favour of regarding the constitution as referring to criminal delations.

The fiscal theme accompanies, however, the criminal theme in the Visigothic *interpretatio*¹⁷ of the constitution no. 2, where delators were defined as those who report on the property of others as presumably owing to the State, or whose delation exposes another man's life to danger.

INTEPRETATIO. Delatores dicuntur, qui aut facultates prodiderint alienas aut caput inpetunt alienum. Quicumque delator cuiuslibet rei exstiterit, in ipso

calumnia together with C.Th. 9.39.3, indicating that it is realised through false or unproven denunciations.

On the role of *delationes*, *subscriptions* and *inscriptiones* in accusations in criminal cases, see in particular L. MER, *L'accusation dans la procedure penale du Bas-Empire romain* (Rennes: Université de Rennes, 1953), and the corresponding review by G. CRIFÒ in "Procedimento accusatorio criminale nel basso Impero," *Index. Quaderni camerti di studi romanistici* 2 (1973): 389–94. See also the remarks made by F. PERGAMI in "Il processo criminale nella legislazione degli imperatori Valentiniano I e Valente," *Index. Quaderni camerti di studi romanistici* 25 (1997): 503–6 concerning the meaning of *inscriptio* in the latter half of the 4th century. CENTOLA, *Il crimen*, 135, goes even further in his argumentation on the connection between the two institutions, indicating that the constitutions contained in C. Th. 10.10.1 and 2 accelerated the transformation of the *calumnia* into unproven accusation.

¹⁷ The subject of this *Interpretatio* is discussed more extensively in SPAGNUOLO VIGORITA, *Exsecranda pernicies*, 42–47. See in particular the author's conclusions (*ibid.*, 47) on the dualistic character of the *interpretatio*, whose first part was to only explain the term *delator*, in isolation from the constitution—and as a result, apart from fiscal delators addressed in it, we see criminal delators—and only its second part was already related to the constitution placed under number 2. This position was rightly criticised in PIETRINI, *Delazione criminale o fiscale*, 180–1, where clear links between *interpretatio* and *calumnia* were demonstrated without any doubts about the criminal nature of the *delatio* in question. The author also draws attention to the difference in penalties in the case of the second and third constitution and *interpretatio*—in the case of *interpretatio* it was indicated that the delator was to be punished *gladio*, but only after a hearing conducted at the request of the party wronged by the unfounded denunciation, while the punishment of the delator by judges provided for in the constitution is automatic—see *ibid.*, 183.

For different styles of Visigothic interpretations, see F. WIEACKER, "Lateinische kommentare zum Codex Theodosianus," in *Symbolae Friburgenses in honorem Ottonis Lenel* (Leipzig: Tauchnitz, 1931): 259–56; HONORÉ, "The Making," 157. On the reliability of Visigothic *interpretationes*, see HONORÉ, *The Making*, 157–8. The observation made in M.A. DE DOMINICIS, "Satura critica sulle fonti postclassiche," in *Studi in onore di Edoardo Volterra* (Milan: Giuffrè, 1971), 503 and 510, is particularly valuable in relation to the *interpretatio* at hand, according to which *interpretationes* sometimes referred to a more complete version of the constitution, containing information that is missing from the text cited in the Theodosian Code. See HONORÉ, *The Making*, 157, together with footnote 116. See DE DOMINICIS, "Registro," 393–4n30, on the question of supplementing the content unknown in the *Breviarium withinterpretatio*, with a reference to A. CHECCHINI, *Studi storico-critici sulla Interpretatio al Codice Teodosiano*, in: *Scritti storici in memoria di Giovanni Monticolo*, ed. Carlo Cipolla et al. (Venice: G. di S. Fabbri, 1913), 6–53.

proditionis initio a iudice loci correptus continuo stranguletur et ei incisa radicitus lingua tollatur, ut is qui proditor futurus est nec calumnia nec vox illius audiatur.

The regard for cases of denunciation concerning property owing to the Treasury is probably only of later origin¹⁸ and, as it can be reasonably assumed, does not refer to the Constantine adjudication. However, it is in line with the general tendency to toughen regulations and sanctions against those who make false or unfounded claims,¹⁹ a trend also manifest in regulations concerning the related issue of *libelli famosi*.²⁰

If we recognise that both of the said constitutions originally referred only to denunciations of a criminal nature, we will still have doubts about their inclusion in the title concerning both denunciations and petitions in fiscal matters. The proposed assumption that the Constantine regulations were used to combat the increasing phenomenon of false or at least unfounded denunciations on fiscal matters should be deemed legitimate.²¹

¹⁸ SEE ALSO PIETRINI, *Sull'iniziativa*, 107–8n147; IDEM, *Delazione criminale o fiscale*, 186–7.

¹⁹ In the context of *edictum de accusationibus* and C.Th. 9.5.1 the issue of the criminal nature of delations referred to in C.Th. 10.10. 1 and 2, is also considered by PIETRINI, *Delazione criminale o fiscale*, 171–7. The author points out to the aim of the edict, which was the desire to protect innocent people against unfounded and ill-considered accusations. On the relationship between the public interest in the fiscal process and the protection of individuals, see F. PERGAMI, “Interesse pubblico e tutela del privato nella legislazione tardoimperiale in materia di processo fiscale,” *Atti dell'Accademia Romanistica Costantiniana* 12 (1998): 413–31.

²⁰ *Libelli famosi*, as anonymous and defamatory denunciations, which were comprehensively addressed by the constitution contained in C.Th. 9.34.7 (earlier in chronological terms, cited in C.Th. 9.34 under numbers 2,3,4, but not targeting *ad populum*), see SARGENTI, “Il Codice,” 389. The author stresses, however, that there existed an earlier norm concerning this matter, contained in the *edictum de accusationibus*, which was not included in the Theodosian codification, but contained a chapter on *libelli famosi*, banning anonymous denunciations and ordering them to be destroyed. On the reasons why this edict was not reflected in the Theodosian Code in the form of proposals for text conciseness [the proposal by A.D. MANFREDINI, “Osservazioni sulla compilazione teodosiana (C. Th. 1, 1, 5, 6 e Nov. Th. 1) in margine a C. Th. 9,34 (de famosis libellis),” *Atti dell'Accademia Romanistica Costantiniana* 4 (1981): 425], as totally unconvincing, see SARGENTI, “Il Codice,” 389–90, together with footnote 40. For more on *libelli famosi*, see for example C. DUPONT, “Injuria et délits privés dans les constitutions de Constantin,” *Revue internationale des droits de l'antiquité* 1 (1952): 435–37 (in Constantine's interpretation); MANFREDINI, “Osservazioni,” 385–428; B. SANTALUCIA, “Costantino e i ‘libelli famosi’,” *Index. Quaderni camerti di studi romanistici* 26 (1998): 185–98; SARGENTI, “Il Codice,” 392–3; D. NOWICKA, *Zniesławienie w prawie rzymskim*, (Wrocław: Prawnicza i Ekonomiczna Biblioteka Cyfrowa, 2013), 153–84. On *libelli famosi* as those for which C.Th. 10.10.10 provides death penalty, see PERGAMI, *Il processo*, 506–10, arguing that the norm against delators should be identified with the *edictum* contained in C.Th. 9.34.7. The constitution in C.Th. also has a similar implication. 9.34.8. Ibid.

²¹ Deeming the denunciations referred to in the first two constitutions cited in this title as having a criminal nature, such a claim was formulated by PIETRINI in her *Delazione criminale o fiscale*,

THE NATURE OF THE BAN ON DENUNCIATION
IN FISCAL MATTERS

The issue of fiscal delations is certainly addressed by the constitution no. 3,²² which provides grounds for deliberations of the nature of the ban on denunciation in this regard.

186. Likewise, CENTOLA, *Il crimen*, 131, is in favour of such a possible explanation why criminal constitutions were included in Title 10. However, Pietrini considered that the inclusion of constitutions relating to criminal delations in the title on fiscal delations and petitions resulted from the fact that after Constantine's regulations were introduced—proving effective in the reduction of the scale of unfounded reporting in criminal cases—this matter no longer required further regulations (with the exception of Emperor Valentinian's constitution of 365). However, it is difficult to endorse such a far-reaching view on the effectiveness of the Constantine regulations with regard to the suppression of reporting in criminal cases. It should be emphasized that even the *interpretatio* for C.Th. 10.10.2 does not limit the application of the constitution to denunciations in fiscal matters, i.e. those intended to attack someone's property, but also indicates attacks on another person's *caput*. It seems, therefore, that such a broad treatment of both the issue of *delatio* and fiscal *petitio* visible in the Theodosian Code was due to the increasing proliferation of unfounded petitions for granting property based on false claims made by informers in the immediately preceding period and the time when the Code was being born—a trend ultimately reflected in the ban on fiscal petitions (see footnote 35)—is not related to the alleged and doubtful disappearance of the phenomenon of (false) reporting in criminal cases.

²² WIELING, *Constantinische*, 278, also regarded this constitution as concerning only delators providing false information on fiscal matters. Similarly in PROVERA, *La vindicatio caducorum*, 164, to distinguish the constitution from the rather general statements with regard to the first two constitutions (which, according to PIETRINI, *Delazione criminale o fiscale*, 184, demonstrate their reference to *delationes par excellence*, i.e. criminal denunciations). In this context, we can point out that the fragment of *Pauli Sententiae* 5.13.1, concerning the total ban on denunciation in fiscal matters, is sometimes referred to a regulation not earlier than the one by Constantine (see S. SOLAZZI, "Saggi di critica romanistica," in *Scritti di diritto romano* (Naples: Jovene, 1963): 692–5) or Constantine's (FANIZZA, *Delatori e accusatori*, 108), rather than, as it was claimed in older doctrine, to norms from the time of Severus Alexander (a view endorsed by T. MOMMSEN, *Römisches Strafrecht* (Leipzig: Duncker & Humblot, 1899), 800n4). As PROVERA, *La vindicatio caducorum*, 166–7, suggests, there are possibilities of interpretation in this respect, already indicated by Siro Solazzi (SOLAZZI, "Saggi," 695), namely either the author of *Pauli Sententiae* misinterpreted this constitution, as a result of which the fragment of *Sententiae* implies a general ban on denunciations of all kinds—or he managed to reproduce its content faithfully. According to G. Provera, the second approach is correct. Similarly, SPAGNUOLO VIGORITA, *Exsecranda pernicies*, 81–86, recognises the credibility of the sentence as reproducing the idea of Constantine regulations with regard to fiscal *delationes*. PIETRINI, *Delazione criminale o fiscale*, 184–185, highlights the contrast between the fragment taken from *Pauli Sententiae* and the Constitution of C. Th. 10.10.3. GAUDEMET, *La répression de la délation*, 1077, also drew attention to the disconnectedness of *Pauli Sententiae* from the Constantine regulation. See also S. GIGLIO, "PS. 5.13-15, Edictum de accusationibus e giurisdizione criminale nel tardo impero romano," *Studia et documenta historiae et iuris* 68 (2002): 205–63; A.M. GIOMARO, *Per lo studio della calunnia. Aspetti di deontologia processuale in Roma antica* (Turin: Giappichelli, 2003), footnote 245.

C. Th. 10.10.3 [=BREV.10.5.2]²³ (335 Mart. 22)

IDEM A. AD PROVINCIALES. Omnes iudices invigilare praecipimus et delatores poenis adficere. Apertissimi enim iuris est, ut, quod ex cuiuscumque patrimonio ceciderit in casum, et legibus et retro iuris ordine fisci advocatis agentibus vindicetur. Sed quia nonnulli praecipites secundum ius possessa patrimonia deferre non cessant, damus omnibus, qui se laesos existimant, contra delatores severitatem iudicum inplorare ferro dstrictam. Nemo enim potest delatorem plus agnoscere quam ille, qui iniuriam per eius nequitiam sustinuit. DAT. XI. KAL. APRIL. CONSTANTINOP(OLI) CONSTANTIO ET ALBINO CONSS.

In this constitution, the emperor explicitly indicates that delators are to be punished and the judges are recommended to be vigilant. He also stresses that if someone's property is now owed to the State Treasury as *caducum*,²⁴ it belongs to the State's attorneys to claim it, not private individuals. Therefore, due to the problem of hasty reporting of legitimate assets as due to the Treasury, persons who felt wronged by such false claims were entitled to remedy the harm suffered by appealing to judges authorised to punish the informers by sword. Interestingly, what transpires from this constitution is that fiscal delators were not prosecuted and punished *ex officio*, but on the initiative and at the explicit request of the party who had suffered injury by their defamatory denunciation.²⁵ The justification saying that it is the wronged party who is the most likely to identify the one whose wickedness caused them harm, clearly makes reference only to an infringement of individual interest resulting from the denunciation which was in fact unfounded. In addition, we should note the likely motivation of a delator who, while remaining anonymous, was not likely to act in the public interest but rather with every intention of harming a particular person. The doubts provoked by the informer's denunciation not only jeopardised the victim's property

²³ G. BESELER, in his *Beiträge zur Kritik der römischen Rechtsquellen* (Tübingen: Mohr, 1911), 12–20, together with footnote 1, regarded the expression *in casum* as non-original, placed in the text instead of *in commissum*. See DE DOMINICIS, "Registro," 427.

²⁴ For a literature review in respect of *bona caduca* and *vacantia*, see F. FASOLINO, "La petitio di beni fiscali nella legislazione di Teodosio II e Valentiniano III," *Teoria e Storia del Diritto Privato* 9 (2016): 3–4, together with footnote 5.

²⁵ Similarly in PIETRINI, *Delazione criminale o fiscale*, 183, it is stressed that a penalty was administered only on the initiative of the victim and therefore only concerned cases where a hasty denunciation referred to legitimately owned property. Interestingly, G. Provera believes that if the delator was exposed by a citizen, only an unfounded denunciation would be considered because should it become the basis for the victorious action of *advocatus fisci*, he would eagerly cover up his informer's contribution. See PROVERA, *La vindictio caducorum*, 169. SOLAZZI, "Saggi," 695, presents a different perspective, pointing to the purpose of regulation in the form of severe punishment of false reporters, in order to eliminate their perfidy by making their acts punishable by death.

interests, but also, if such information was disseminated, it could have negative impact on his or her reputation.²⁶

The informer's anonymity, to be compromised by the victim's initiative, seems to be crucial for an interpretation of this constitution. Following this lead, we would need to say that the Roman State had no particular interest in discovering the informer's identity, especially that the information he or she leaked—which was deemed unsubstantiated as regards the procedure for the recovery of assets by the defenders of the State's fiscal interest—could only constitute informal guidelines subject to verification before any decisive action was taken by competent persons, that is *advocati fisci*,²⁷ who were the only ones authorised to initiate recovery proceedings in respect of assets owed to the State Treasury. It is therefore difficult to conclude that a denunciation which was shown to be false seriously undermined the interests of the State in view of the applicable ban on founding any formal recovery proceedings on such a claim. Since an anonymous denunciation could only indirectly serve to obtain informal information by *advocati fisci*—just as any rumours heard, even by chance, concerning the alleged ownership of certain assets by the Treasury—the only interest of the State that could be breached by such a false denunciation was the unnecessary work of imperial officials to verify the reliability of the denunciation.

In the case of anonymous information, addressed by the said constitution, the material effort to find the false reporter in order to hold them liable was apparently considered to exceed the possible damage resulting from taking action to verify the unfounded report. At the same time, the authorisation granted to a person whose property had been attacked by the denunciator's false assertion plus the shifted burden of exposing their personal data onto a private person, contributed to the “cost-free” battle of the state authorities against false, anonymous denunciations in the name of protecting the interests of individuals whose property had been jeopardised.²⁸

²⁶ The possibility of regarding such behaviour to be an act of *iniuria* is a separate issue, exceeding the scope of the presented study, whose post-classical scope is addressed by such studies as M. HAGEMANN, *Iniuria. von den XII-Tafeln bis zur Justinianischen Kodifikation* (Cologne–Weimar–Vienna: Böhlau 1998), 115–222.

²⁷ For this, see for example P. LAMBRINI, “In tema di “advocatus fisci” nell’ordinamento romano,” *Studia et documenta historiae et iuris* 59 (1993): 325–36.

²⁸ G. Provera, on the other hand, is of the opinion that shifting the burden of searching and identifying the informer to the citizen was caused by the fact that the emperor was not convinced that a meticulous search for a hiding informant in each case and the imminence of the capital punishment would be sufficient to eliminate delators' activities in fiscal matters. See PROVERA, *La vindictio caducorum*, 169. Interestingly, in the case of *libelli famosi*, the burden of identify-

Given our analysis of the ban on informers' leaking information on fiscal matters, it must be underscored that the constitution no. 3 refers only to denunciations that are both false and anonymous, and in no way can it confirm the argument about a general ban on denunciation in fiscal matters during the reign of Constantine.

The next constitution, already enacted by Constantius, contains merely a general note that actions against the property of others by way of secret provision of information will²⁹ not be permitted in connection, on the one hand, with the intention of safeguarding the innocence of persons legally in possession of property and, on the other hand, with the aim of curbing the impertinence of "certain individuals," namely delators. However, there is no mention of any sanctions for providing information of this kind, especially harsh ones as it would follow from the first two constitutions provided under this title.

C. Th. 10.10.4³⁰ (338 Iun. 12)³¹

IMP. CONSTANTIVS A. CELSINO P(RAEFECTO) P(RAETORI)O.³²
Innocentiam securitate firmantes et quorundam audaciam prohibentes edictum

ing the author of the claims contained in an anonymous note was not placed upon the person slandered by it. See, for example, the constitution of Emperor Constantine of 319, contained in C.Th. 9.34.1, which clearly points to the search for the authors of *libelli famosi*.

²⁹ G. Provera presented an interesting interpretation of this constitution that anonymous and secret informers are implied here. According to this author, the *ratio legis* of this regulation was to eliminate situations in which the *advocati fisci* themselves concealed not only the identity but even the participation of the delators in the creation of the statement of claim and provision of evidence. Considering that all denunciations were forbidden and severely punishable, Provera argued that harbouring delators was intended to ensure future, also undercover, collaboration with the defenders of the fiscal interest of the State. The operation of *advocati fisci* in such circumstances was contrary to the actions taken by citizens when the case concerned an unfounded denunciation. See PROVERA, *La vindictio caducorum*, 176; see also PIETRINI, *Sull'iniziativa*, 111–2, who believes that also in the case of this constitution, in fact a criminal denunciation was referred to, drawing on the Constantine regulations concerning *libelli famosi* (especially C. Th. 9.34.4 and 5). In this way, Pietrini assumes a stance which coincides with that expressed by Manfredini in terms of its interpretative value (*Osservazioni*, 412–28). For a critical approach to limiting the understanding of *libelli famosi* only to information about the crimes committed, see NOWICKA, *Zniestawienie*, 166–79.

³⁰ On the links between this constitution with the one cited in C.Th. 9.34.5, see SARGENTI, "Il Codice," 392.

³¹ According to M. Sargenti (*ibid.*), this date should be later than the publication date of the constitution contained in C.Th. 9.34.5 since that was a copy attached to a previously formulated *epistula* (see footnote 33).

³² See Sargenti's remarks (*ibid.*) about the error in defining the function of the addressee, who in 338 held the office of pro-consul of Africa. According to M. SARGENTI, *ibid.*, 392–3, this constitution represents the content of an *epistula* addressed precisely to the African proconsul, in

promulgavimus, ne quid occultis delationibus possit in hominum licere fortunas.
DAT. PRID. ID. IVN. VIMINAC(IO) VRSO ET POLEMIO CONSS.

Although this *prima facie* regulation does not provide any new information on the nature of the ban on denunciation in fiscal matters, we can notice a shift in the emphasis from false and anonymous denunciations to those which are only anonymous. Although the slanderous nature of *delationes* may be demonstrated by the above-mentioned consideration for the innocence of persons whose assets were deemed to belong to the Treasury, it seems that the second of the above-mentioned motivations is conclusive. At the core of this constitution lies the need to curb denunciators' insolence, who provide information anonymously. It may be supposed that the informer's avoidance of having his or her personal data disclosed, and thus avoiding responsibility for false denunciation, was interpreted as at least a lack of certainty as to the reported issue (or even a desire to harass the rightful owner of the wrongly denounced goods), and as a consequence the credibility of the claims was questioned. The Constitution was therefore intended to discourage anonymous reports, pointing to the ineffectiveness of such methods. However, it is not clear whether the anonymity of the informer was sufficient to punish him or her. However, in the context of the transfer of the prosecution initiative to a person who felt wronged by the defamatory claim of the delator, in line with Constantine's constitution, this seems unlikely.

The emphasis on eliminating not all, but only anonymous and thus unbelievable denunciations can also be confirmed by the later constitution of Constantius, placed in the Theodosian Code under number 7.

C. Th. 10.10.7 (345 Mai. 15)

IDEM A. AD EVSTATHIVM COM(ITEM) R(ERVM) P(RIVATARVM). Nulli palatino delatorios libellos de competentibus rei privatae nostrae rebus accipere liceat, nec delatori ad comitatum nostrum vel officium sublimitatis tuae pateat accessus, priusquam ordinarius iudex cognitione suscepta veram esse delatoris adsertionem probaverit adque ad tuam sublimitatem rettulerit. DAT. ID. MAI. TREV(IRIS) AMANTIO ET ALBINO CONSS.

In terms of the content, the beginning of the constitution does not depart greatly from the one cited above, only specifying it—the emperor forbids palatines to accept formal accusations from delators concerning property

which the imperial chancellery gives him a copy of the edict against the *libelli famosi*, addressed to *Afros*. A different view is presented by Wiesław LITEWSKI, "Recenzione a Pietrini S., Sull'iniziativa del processo criminale romano (IV–V secolo)," *Index. Quaderni camerti di studi romanistici* 8 (2000): 438.

potentially owed to the emperor, prohibits delators from access to the imperial court and the office of the addressee of the constitution, which is the administrator of imperial domains. However, the ruling does not end with such a firm statement and remains valid only until the Provincial Governor, after investigating the matter, has proved that the delator's allegations are true and presents the matter to the addressee of the constitution.³³ We can then validly conclude that the use of information provided by informers was not as such prohibited, but rather it was inadmissible to base a formal decision directly on the information provided by them. Only when officially verified, it could become the basis for the initiation of formal proceedings for the recovery of assets owed to the Treasury, as soon as the administrator of imperial domains was notified, but never directly.³⁴

The constitution differs from the previous ones in particular in the lack of the informer's anonymity—it is a specific person with a known identity who, despite not being able to play any formal role (the ban is permanent and absolute in relation to the role of the party initiating the proceedings on behalf of the Treasury, and it is relative with respect to the possibility of being formally heard before an imperial court or an imperial administrator) will not, however, be held liable for providing the information. What is more, this information, if positively verified, may become the basis for further proceedings, not only informally but also before an imperial court or an imperial domain administrator as a result of a formal admission of the delator. Thus, a non-anonymous reporter who provided reliable information, and thus presumably acting in the interest of the State Treasury and not for personal gains, would not only go unpunished but was even heard. This constitution, therefore, confirms the previously formulated statement that the prohibition of fiscal denunciation in the constitutions at hand did not have an absolute or general character, but rather it addressed only false and anonymous or, possibly, any anonymous *delationes*.

³³ See also WIELING, *Constantinische*, 278. The author notes, however, that in this case the delator's statements are used in the proceedings before the provincial governor and points to the similarity of this solution to the one adopted in the constitution cited in C.Th. 10.10.9.

³⁴ This constitution was interpreted by Giuseppe Provera in an interesting yet unacceptable manner. In the constitution, he saw traces of the old way of regulating the conduct of fiscal proceedings, in which a delator acting on behalf of a third party was obliged to provide information about his or her principal. Similarly here, the denunciators were required to take part in the proceedings and provide evidence in support of the information denounced, but were not assigned the role of claimant, but a denouncer only. See PROVERA, *La vindicatio caducorum*, 176–7. They were apparently addressed by the constitution placed under number 10, which provided for death penalty should the denounced facts not be substantiated.

We will have a complete picture of how Roman emperors of the first half of the fourth century treated fiscal denunciators if we make reference to the constitution of Constantius placed under number 7, indicating the leading role of informers in the situation when a person applied for the allocation of some property, which, as it was claimed, was due to the Treasury.³⁵

C.Th. 10.10.8 (353 [352?] Mart. 5).

IDEM A. AD ORIONEM COM(ITEM) R(ERVM)(RIVATARVM). Qui largientibus nobis aliquid fuerint consecuti, cum delatoribus suis ad iudicia veniant, in iure constant, negotia persequantur, ut adseveratio delatorum prodat fisco debitas facultates. In eos autem, qui aliquorum detulerint patrimonia, adfirmantes ad fisci nostri dominium pertinere, si non potuerint ostendere quod adstruxerant, severitas competens exeratur. Consequens igitur erit petitiones legibus minime consentaneas a iudiciis removeri nec eos adfici metu, qui legibus possident proprias facultates. DAT. III NON. MART. SIRMIO CONSTANTIO A. VI ET CONSTANTE CAES. CONSS.

In such a situation, the *petitor* was obliged to present to the court his or her informer (known also as *delator*),³⁶ whose claims regarding the nature of the assets as belonging to the Treasury had to be substantiated. In this constitution, the emperor also stresses that an appropriate degree of severity³⁷

³⁵ Mr Provera sees the introduction of a new type of process in which the *petitor* became the complainant and the delator(s) were required to provide evidence to support the information upon which the petition was founded. See PROVERA, *La vindictio caducorum*, 179. On the subject of *petitio* in fiscal matters, see T. SPAGNUOLO VIGORITA, "Nuovi indirizzi di politica fiscale nella legislazione di Costantino," in *Istituzioni, ceti, economie*, ed. A. Giardina. Vol. 1 of *Società romana e impero tardoantico* (Rome: Laterza, 1986), 71–80; F. MERCOGLIANO, "Die petitores in der Fiskalgesetzgebung: petitores in der Fiskalgesetzgebung," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Romanistische Abteilung* 111 (1994), 449–57; IDEM, "La petitio," 405–12; FASOLINO, "La petitio," 1–43, together with the literature indicated. On the role of delators in the case of *petitiones*, see also WIELING, *Constantinische*, 278–81.

³⁶ Bearing in mind the obligation of the *petitores* obligation to disclose their informers in the proceedings for the allocation of assets owed to the treasury, we encounter views that the activity of delators was maintained, but not as individuals entitled to initiate a fiscal process, but only as informants of *petitores*, becoming actual informants of fiscal officials. See MERCOGLIANO, "Die petitores," 456; IDEM, "La petitio," 411. See also PROVERA, *La vindictio*, 182–88. For a critical view on the argument about the transformation of a delator into a petitor, see FASOLINO, *La petitio*, 5–15, who emphasizes the differences between the two roles: the role of a *delator* was to effect transfer of assets from a private person to the Treasury, while the *petitor* requested the allocation of State assets to a private person, that is to himself (ibid., 8).

It should be underscored, after MERCOGLIANO, *La petitio*, 412, that the attitude towards the activity of petitioners, and their informants, evolved during the reign of Theodosius II and Valentine III, which was manifested in the constitution contained in C.Th. 10.10.33 and Nov.Theod. 17.2.1 (=C.10.12.2). See ibid., footnote 36. For more on *petitio* in the legislation of the said emperors, see FASOLINO, "La petitio," 4, 21–41.

³⁷ WIELING, *Constantinische*, 278, explicitly refers to death penalty in this particular case, meaning a situation in which a judge cannot be persuaded to accept delator's claims as legitimate.

will be used with respect to those who indicate the property of others as owing to the State Treasury, unless the delators can validate their claims.³⁸ Where such petitions are not justified, they will be removed from the court records and the legitimate holders of their own assets should not fear that that their property might be confiscated unlawfully.

It is therefore a situation in which the declaration of property as belonging to the Treasury is made directly for the Treasury to seize the property or part thereof, which was the subject of the petition.³⁹ The obligation imposed on the petitioner requesting the grant of the said property to present his or her informer, in other words to show the grounds for the petition eliminates the problem of basing a potential decision⁴⁰ on information derived from an anonymous source.⁴¹ The person concerned, that is someone who is petitioning for the grant of certain assets, is obliged to divulge the personal details of his or her informer, the fulfilment of that obligation being a precondition for the petition to be reviewed. Such regulation was certainly intended to take appropriate measures against the person whose claims would be unsupported without involving the state authorities in the discovery of the false and anonymous delator.

It should be emphasized that if the informer's claims were found to be false, they would be treated as an attempt to obtain another person's legitimate assets unlawfully, specifically misleading the State Treasury system to achieve this purpose. Consequently, no initiative was given to the person wronged by the baseless denunciation—all false denunciators were to be treated with "appropriate severity." The automatic imposition of a penalty for a false report, which in fact served to mislead the imperial administration, was therefore applied instead of leaving the initiative to the person whose assets were denounced. Significantly, the difference in relation to the constitution no. 3 can also be seen in the scope of the alleged motivation of the delator. Since this person decided to convey information not to the state authorities (as in the case of the constitution no. 7) but to the person who was to apply for the grant of the property indicated as due to the Treasury,

³⁸ On the necessity of proving the delator's claims as a premise extremely often repeated in the constitutions, see *ibid.*, 279, together with footnote 60 (with reference to C.Th. 10.10.7; 9; 12; 13; 18; 20; 22; 28; 30).

³⁹ For the procedure used when petitions are registered, see FASOLINO, "La *petitio*," 15–18.

⁴⁰ The imperial decision took the form of a *rescriptum* or *adnotatio*, see *ibid.*, 16.

⁴¹ Verification of information was one of the tasks of *comes rei privatae*, although in practice the most important role was played here by *rationalis*, who examined the legal status of the real estate on the spot, see *ibid.*, 16–17.

thus contributing to the creation of a substantial benefit for himself or herself, he probably did not act selflessly, counting on some form of gratification. As the whole undertaking—the granting of property on the basis of a false report—was intended to have a significant impact on the economic situation of both the petitioner and, most likely, his or her informant, decisive steps were needed to discourage this type of activity. This automatic character of punishment, besides the conditions indicated earlier, could have been an additional factor discouraging people from taking the risk to submit unsubstantiated petitions which were based on false information.

In this way, the necessity of presenting the delator's personal data eliminated proceedings based on anonymous and therefore unreliable information, at the same time excluding the necessity of searching for informers by the imperial authorities should a report prove to be false. Provision of truthful information by delators whose personal details were known—also in cases when *petitores* were applying for the grant of the denounced property—was not subject to penalty, and even constituted a formal basis for initiating proceedings for the recovery of assets owed to the State Treasury, which if successful opened for them the possibility of obtaining the said property.

CONCLUSIONS

With regard to the first controversy addressed at the beginning of this article, it should be noted that although the first two constitutions included in the Theodosian Code in Title 10 originally were not concerned with the issue of fiscal *delationes*, but the other constitutions at hand issued by emperors Constantine and Constantius were directly related to this matter. For this reason, they provide a solid base for the analysis of the second problem outlined at the beginning.

Even an superficial analysis of the said constitutions clearly shows that the use of information provided by delators was not totally banned.⁴² This, after all, makes perfect sense given the interest of the State in obtaining information about ownerless property or assets owing to the Treasure by

⁴² See PIETRINI, *Delazione criminale o fiscale*, 187. Similarly, with regard to criminal denunciations, see SANTALUCIA, *Costantino*, 196. For example, the Constantine constitutions contained in C.Th. 9.16.1 or 24.1.4 provide for the explicit admissibility of *delationes*. See GAUDEMET, *Constantin*, 655n18. For further examples of the admissibility of *delationes* and even the establishment of prizes for delators, see WIELING, *Constantinische*, 274nn38–41.

escheat.⁴³ Much as the substitution of the fiscal defender of the State's financial interests (*advocatus fisci*)—who was responsible for the recovery of estate owing to the State Treasury—by delators was completely ruled out since Emperor Constantine,⁴⁴ in the first half of the fourth century there was no general and absolute ban on fiscal denunciation. Nonetheless, based on our analysis of the constitutions issued by both emperors, we should conclude that the incidence of anonymous, false reports in cases when allegedly illegitimately owned property was supposed to belong to the Treasury, reached such proportions that it was necessary to take a decisive remedial action. The impossibility of initiating proceedings for the recovery of the assets indicated by the delator on the basis of anonymous claims, as well as the service of a severe punishment on him or her—in the event that the victim of the defamatory claim identified the informer—were certainly in line with the Constantine policy of restoring order and protecting the innocent. At the same time, however, it should be stressed that failing to prosecute anonymous, false informers completely shifted the burden of discovering their personal data on individuals who were wrongly accused of owning goods belonging to the Treasury, which may indicate that the State Treasury had little interest in finding false informers. It should also be noted in this context that although the information provided by an anonymous informer could not be formally used, his or her allegations could—indirectly and informally—help to draw the attention of imperial officials to the property indicated in the report and, after a preliminary verification, to institute debt recovery proceedings on behalf of the State Treasury. For this reason, the context in which Constantine speaks about the punishment of fiscal delators deserves our special attention—despite the general character of the statement found at the beginning of the constitution under no. 3, the emperor ultimately focuses not on the delators as such, but only on those who leak false information without disclosing their personal details. The order to punish

⁴³ The complete ban on denunciation can be found, for example, in the constitutions contained in C. 9.35.3 or C. 10.14.4. See *ibid.*, 272.

⁴⁴ There is a view that this change, introduced by Constantine, resulted from the gradual decline in the importance of delators, who had previously officially collaborated with the defenders of the fiscal interest of the State, usually by initiating proceedings and furnishing evidence. This could have been due to their insignificant procedural role, which ultimately led to the former collaborators acquiring the status of denunciators. Constantine gave the entire initiative in fiscal processes only to *advocati fisci*, cancelling any powers that *quivis de populo* had. In support of which, see PROVERA, *La vindictio caducorum*, 168. On the development of the fiscal process, see also T. SPAGNUOLO VIGORITA, "Aspetti e problemi del processo fiscale in età costantiniana," *Atti dell'Accademia Romanistica Costantiniana* (1996): 149–70.

them therefore seems to apply only to both anonymous and false informers. As a result, the treatment of only anonymous deliverers who provided true information after all is questionable. However, partial clarification of this issue can be found in the constitution issued by Constantius only three years later. It directly implies that anonymous denunciations in matters relating to property will not be admissible, as presumably justifying any proceedings against the property owners or holders. As there are no grounds to believe that the policy towards fiscal informants changed significantly during that period, our analysis of the constitutions at hand permit a claim that in the first half of the fourth century anonymous reports concerning fiscal matters could not provide grounds for any procedure for the collection of property allegedly owing to the State Treasury, but they were punishable only if they turned out to be false and only to the extent that the victim of false claims identified the delator. Simultaneously, a denunciation provided by a person who would not like to keep his or her identity confidential, if positively verified by imperial officials, could serve as the basis for proceedings for the recovery of the assets indicated by the informer as belonging to the Treasury. However, for as long as the informer's allegations had not been verified, he or she could not be formally heard.

On the basis of the above regulations, we can then conclude that the information provided by anonymous delators was not formally usable and that *delationes* from individuals who did not hide their identity were verified and, if shown to be true, formed the basis for further action of the imperial officials.

In this context, it should be stressed that the last of the constitutions we briefly analysed above, though no longer referring to *delationes* but to *petitiones* in fiscal matters, clearly permits and even obliges a person who seeks to obtain property from the emperor—as owing to the Treasury—to present his or her informer. In this way, this denunciator had to be formally heard. Most importantly in this regard, he was liable to sanction if his claims proved to be true.⁴⁵ Only those who failed to demonstrate the truthfulness of their information faced severe punishments.

⁴⁵ As can be presumed, as previously in the case of *delationes* and over time also *petitiones*, this led to the development of “professional” informers. In order to curb this phenomenon, the emperors introduced restrictions on appearance as an informer who would formulate claims concerning the legal status of the real property indicated in the *petitio*, even if his or her claims corresponded to the actual state of affairs. When the delator was called upon as such for the third time, despite proving the truthfulness of the allegations, he or she was subject to capital punishment (see C.Th. 10.10.12.2; C.Th. 10.10.13). In time, the intensification of the phenomenon led to

Indicated in the constitutions at hand, the bans on instituting proceedings, as well as the refusal to hear or to base a decision on unverified denunciations, as well as severe penalties for delators, were therefore not intended to prevent the activity of informers as such, but that manifested in anonymous yet imprudent or deliberately false denunciations. In the context of the second doubt manifest in the doctrine of Roman law we alluded to at the beginning, we should conclude that when it comes to regulations dating back to the first half of the fourth century, there could be no question of a general and absolute ban on denunciation in fiscal matters, but rather we should speak of significant restrictions imposed on this instrument.

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further toughening of regulations and, ultimately, to the exclusion of the possibility of appearing as informers presented by *petitores*, as well as of submitting petitions concerning assets allegedly belonging to the State Treasury. See footnote 33.

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A FEW REMARKS ON REGULATIONS CONCERNING *DELATIONES*
IN FISCAL MATTERS IN THE IMPERIAL LEGISLATION
OF THE FIRST HALF OF THE 4TH CENTURY A.D.

Summary

The aim of the article is to examine the constitutions contained in the Theodosian Code dating to the first half of the 4th century, and related to the phenomenon of fiscal denunciation (C. Th. 10,10,1–8). For years, controversy among the authors has been aroused by the first two constitutions of this title and their reference to issues related only to either criminal procedure or fiscal procedure, or both. The first issue addressed by the presented article is therefore the question of the nature of *delationes*, referred to in C.Th. 10,10,1 and 2. The second problem, formulated and subjected to scrutiny, is the question of the nature of the ban on reporting activities in fiscal matters – whether it was of a general nature or related only to certain forms of denunciation. It seems that, in the light of the last constitutions within our scope, it is not possible to assume that all forms of providing information in fiscal matters were severely punished.

Key words: delator; informer; Theodosian Code; fiscal procedure; *vindicatio caducorum*.

Translated by Tomasz Pałkowski



The preparation of the English version of *Roczniki Nauk Prawnych (Annals of Juridical Sciences)* and its publication in electronic databases was financed under contract no. 836/P-DUN/2018 from the resources of the Minister of Science and Higher Education for the popularization of science.