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in Roman law and in tradition of European law

Edited by:

Sebastiano Tafaro, Onorato Bucci, Florian Lempa

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Sebastiano Tafaro, Onorato Bucci, Florian Lempa

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Contents / Indice

Second part: Family / Parte seconda: Famiglia

KRZYSZTOF SZCZYGIELSKI*

CHRISTIAN EMPERORS' ATTITUDE TOWARDS CONCUBINAGE

Concubinage, as a form of a permanent, extramarital union between a man and a woman, was already known and practiced by ancient societies[1]. The phenomenon was also known to the citizens of ancient Rome. At first, *concubinatus* was just a relation that actually existed[2] but law remained indifferent to it. It differed from legally acknowledged marriage (*iustum matrimonium or iustae ac legitimae nuptiae*) mainly in that it lacked *affectio maritalis*, i. e. mutual will of the parties to be a married couple. Concubinage was also a relation between people who had no *connubium* to one another, i. e. capacity to get married in accordance with the conditions of the Roman *ius civile*[3].

Partners either did not want to or could not impart a matrimonial character to their relation. The enormous popularity of concubinage was undoubtedly an effect of the influence of matrimonial legislation of emperor Augustus[4],

* Ph. D., University of Bialystok and Lazarski School of Commerce and Law in Warsaw

1 R. TAUBENSCHLAG, *Rzymskie prawo prywatne na tle praw antycznych*, Warszawa 1955, p. 251-252; see also P. CRUVEILHIER, *La monogamie et le concubinat dans le Code de Hammourabi,* "Revue Biblique" 14 (1917), p. 270-286; idem, *Le droit de la femme dans la Genèse et dans la Recueil de lois Asyriennes*, „Revue Biblique" 36 (1927), p. 350-376; P. RENARD, s.v. *concubine*, in: *Dictionnaire de la Bible*, t. II, Paris 1899, col. 906-907; L. M. EPSTEIN, *The institution of concubinage among the Jews*, „Proceedings, American Academy for Jewish Research" 6 (1934-1935), p. 153-188; S. MAYER, *Die Rechte der Israeliten, Athener und Römer*, t. II, Leipzig 1866, pp. 339-342; E. Caillemer, s. v. *concubinatus (Grèce)*, in: Ch. DAREMBERG, E. SAGLIO, *Dictionnaire des antiquités grecques et romaines d'après les textes et les monuments*, t. I, 2, Paris 1873, p. 1434-1436; E. GRACE, *О конкубинате в Афинах классического периода*, „Вестник Древней Истории" 103 (1968), p. 28-52; R. SEALEY, *On lawful concubinage in Athens*, „Classical Antiquity" 3 (1984), p. 111-133; E. HARTMANN, *Heirat, Hetärentum und Konkubinat im Klassichen Athen,* Frankfurt 2002.

2 J. PLASSARD, *Le concubinat romain sous le Haut-Empire*, Toulouse 1921, p. 16.

3 P. E. CORBETT, *The Roman Law of Marriage*, Oxford 1930 (reprint Aalen 1979), p. 24 et seq.

4 Many publications were devoted to Augustan marriage laws, see inter alia: M. ANDRÉEV, *La lex Iulia de adulteriis coercendis*, „Studi Classice", t. V, Bucuresti 1963, p. 165-180; P. CSILLAG, *The Augustan Laws on Family Relations*, Budapest 1976; L. F. RADITSA, *Augustus' Legislation concerning Marriage, Procreation, Love Affairs and Adultery*, „Aufstieg und Niedergang der römischen Welt II" 13 (1980), p. 278-339; D. NÖRR, *The*

especially laws of 18 B. C.: *lex Iulia de adulteriis coercendis and lex Iulia de maritandis ordinibus*. The former law provided for penalties for public crimes of *adulterium* and *stuprum*[5], but not for extramarital sexual union being a concubinage[6]. The latter of the marital laws, apart from other things, banned senators from getting married to freedwomen, actresses or actors' daughters and prostitutes, and freeborn Roman citizens from getting married to women having reprehensible reputation[7]. The above mentioned regulations as well as other obstacles of a social, ethical, moral and even political nature caused an unusually dynamic development of these extramarital unions[8]. That is why, when Christianity came into being, concubinage had already been an institution present in almost every social group and - in terms of the affected area – the territory of the whole Empire[9].

Sharing the opinion of X. D'Haucour[10], we can distinguish three basic phases in the Christian emperors' legislative activities concerning concubinage: the first one – started by Constantine, the second one – being the work of emperor Justinian, and the third, final one – including the decisions

Matrimonial Legislation of Augustus: An Early Instance of Social Engineering, „The Irish Jurist" 16 (1981), p. 350-364; K. Galinsky, *Augustus' Legislation on Morals and Marriage*, „Philologus" 125 (1981), p. 126-144; R. Astolfi, *La lex Iulia et Papia*², Padova 1986; M. Zabłocka, *Przemiany prawa osobowego i rodzinnego w ustawodawstwie dynastii julijsko-klaudyjskiej*, Warszawa 1987; T. A. J. McGinn, *Concubinage and the Lex Iulia on Adultery*, „Transactions of the American Philological Association" 121 (1991), p. 335-375.

5 Adultery comprised sexual relations between a respectable married woman and a man not her husband. *Stuprum* covered illicit sexual relations between a man and a girl or an unmarried or widowed woman of respectable status, or homosexual relations with a respectable man or boy, see O. F. Robinson, *The Criminal Law of Ancient Rome,* Baltimore 1995, pp. 59-60.

6 D. 25, 7, 3, 1: "*Nec adulterium per concubinatum ab ipso committitur, nam quia concubinatus per leges nomen assumpsit, extra legis poenam est*".

7 Women called *feminae famosae* were: prostitutes, procuresses and the daughters of people involved in this profession, women caught committing adultery or sentenced for other public crimes, and actresses involved in stagecraft (*Tituli ex corpore Ulpiani* 13, 2), see also S. Solazzi, *Il concubinato con l'obscuro loco nata*, in: *SDHI* 13-14 (1947-1948), p. 269-277.

8 Concubinage became more popular as a result of banning provincial officials from marrying women coming from or living in those provinces (D. 23, 2, 38 pr.; D. 25, 7, 5). Roman soldiers on active service (*missio*) could not get married, either. The ban was repealed at the end of the second century of the modern era.

9 H. Insadowski, *Rzymskie prawo małżeńskie a chrześcijaństwo*, Lublin 1935, p. 90; G. Kuleczka, *Prawo rzymskie epoki pryncypatu wobec dzieci pozamałżeńskich*, Wrocław-Warszawa-Kraków 1969, p. 36-39; M. Niziołek, *Legal Effects of Concubinage in Reference to Concubine's Offspring in the Light of Imperial Legislation of the Period of Dominate*, Kraków-Warszawa 1980, p. 9.

10 X. D'Haucour, *L'évolution historique du concubinat romain*, „Nouvelle Revue Historique de Droit Français et Ètranger" 18 (1894), p. 736.

of Leo VI the Philosopher. It is of course not possible to meet the period between the reign of Constantine and Justinian with silence as laws on concubinage were issued at that time, too. But they did not have such a principal character as those issued in the above mentioned phases.

The first Christian Roman emperor, Constantine the Great (306-337), with the constitution of 326, banned men from having a concubine if they had already had a legitimate wife[11]. This way, he wanted to eliminate probably frequent cases of marriage and concubinage co-existence. It must be stated here that the constitutions issued in 336 were especially important. The first one, the text of which is incomplete, most probably banned a man from making any donations to his concubine and natural children. The whole acquired property was to be recovered to his legitimate offspring. If a man had no legitimate offspring, brother, sister or father, it would have been taken by the fisc (*fiscus*)[12]. The emperor's second constitution contained similar regulations dealing with a ban on donations also made by third parties. They had to be returned to the legitimate children, to the donor's brothers and sisters or parents. If it had occurred that there had been no such persons or they had failed to claim a return in a period of two months, the fisc would have obtained the right. To guarantee the effectiveness of the provisions, the use of some very restrictive methods was provided for, including a possibility to make a woman subject to examination under torture[13]. Those restrictive regulations put a concubine and her children at a disadvantage in the field of law of inheritance. On the other hand, the emperor enabled, under certain conditions[14], legitimation of children born from concubinage by the introduction of *legitimatio per subsequens matrimonium*[15]. It was to encourage parents to transform concubinage into marriage. It should be added that the above mentioned form of legitimation was a temporary solution[16]. Only persons who

11 C. 5, 26, 1: " *Nemini licentia concedatur constante matrimonio concubinam penes se habere*".

12 C. Th. 4, 6, 2: „ *...ri fecit vel si ipsorum nomine comparavit, totum legitima suboles recipiat. Quod si non sint filii legitimi nec frater consanguineus aut soror aut pater, totum fisci viribus vindicetur...*" .

13 C. Th. 4, 6, 3 = C. 5, 27, 1.

14 Concubine had to be a freeborn woman (*ingenua*), then there could not be any obstacles prohibiting her from getting married. Her partner could not be married or have legitimate offspring. For more about conditions for and legal consequences of this kind of legitimation in Constantine's law, see P. M. Meyer, *Der römische Konkubinat nach den Rechtsquellen und den Inschriften*, Leipzig 1895 (reprint Aalen 1966), p. 130-132; H. Insadowski, op. cit., p. 258; K. Rebro, *Konkubinát v práve rímskom od Augusta do Justiniána*, Bratislava 1940, p. 76-77; M. Niziołek, op. cit., p. 24-28.

15 Constantine's constitution got lost, but we can learn about it indirectly from emperor Zeno's constitution of 477 preserved in C. 5, 27, 5 pr.

16 J. Evans Grubbs, *Law and Family in Late Antiquity.The Emperor Constantine's*

were *in concubinatu* at the moment when the constitution was announced had the right to use it. Therefore, it could not be treated as an impulse to create new relations. No sooner than at the reign of emperor Justinian was it made permanent but it seems that at the reign of Constantine it had really been a tool in the fight against the phenomenon of concubinage[17]. According to the opinion dominating in the Roman literature, this emperor's reign was the time when the children born from concubinage, defined with the use of a technical term *liberi naturales*[18], were differentiated from other illegitimate children (*spurii, vulgo concepti*).

Summing up the first Christian Roman emperor's legislative activities concerning concubinage, it is necessary to state that with the use of different means he strived to limit the number of such extramarital relations, although the binding law still allowed to live in such unions. It can be noticed that the emperor had a negative attitude towards the children born from concubinage, which can be a bit surprising because of the fact that Constantine himself as well as his first son, Crispus, was born as a result of such a relation[19]. The emperor started a process aimed at transferring principles and ideas propagated by the Christian religion into the field of statutory law[20]. And although after the proclamation of the Milan edict in 313 the situation seemed to be favourable for this kind of activities, the emperor had to act thoughtfully and carefully[21]. An observation made by R. T. Troplong is especially pertinent

Marriage Legislation, New York 1995, p. 298.

17 See X. D'Haucour, op. cit., p. 739; R. Génestal, *Histoire de la légitimation des enfants naturels en droit canonique*, Paris 1905, p. 114; K. Rebro, op. cit., p. 77; M. Niziołek, op. cit., p. 28.

18 For more about the meaning of the term in the postclassical period, see K. Rebro, op. cit., p. 113-125; M. Niziołek, *Liberi Naturales and Their Denotiation in the Roman Law Sources of the Post-Classic Period*, „Archivum Iuridicium Cracoviense" 10 (1977), p. 139-156.

19 A. Krawczuk, *Konstantyn Wielki*, Warszawa 1985, p. 92-93.

20 The influence of Christianity on Constantine's legislation on concubinage is noticed by R. Génestal, op. cit., p. 111-112; S. Pawłowski, *Wpływ chrześcijaństwa na prawodawstwo Konstantyna Wielkiego*, Stanisławów 1907, p. 6. The author emphasizes that the emperor *"took special care to improve the level of matrimonial life in the spirit of Christianity"*. Banning a man who had a legally married wife from maintaining a concubine was one of the decisions to serve meeting that objective, p. 24; H. Insadowski, op. cit., p. 95; C. Dupont, *Les constitutions de Constantin et le droit privé au début du IVe siècle. Les personnes*, Lille 1937, p. 126 (however, the author stresses that in practice this influence was very slow and moderate because of a very strong consolidation of concubinage in the customs); B. Biondi, *Il diritto romano cristiano*, vol. III, Milano 1954, p. 129-132; M. Niziołek, *Legal Effects...*, pp. 17-19. However, a contrary opinion is presented by J. Evans Grubbs, op. cit., p. 298-299; T. A. J. McGinn, *The social policy of emperor Constantine in Codex Theodosianus 4, 6, 3*, „Tijdschrift voor Rechtsgeschiedenis" 67 (1999), p. 61-62.

21 R. A. Markus, *Chrześcijaństwo w świecie rzymskim*, przeł. R. Turzyński, Warszawa 1978, p. 67-69.

here. According to him: *"si l'empereur était chrétien, l'empire était encore à demi- païen"*[22]. This best describes why the activities he undertook did not take the form of a frontal attack on the actual state of things, although they became a certain determinant of decisions made in this field by the successive emperors for a long time.

Constitutions issued by Constantine's successors' law offices dealt mainly with estate related matters concerning inheritance by a concubine and her offspring. They either aimed at making his provisions more lenient or returned to the former regulations[23]. And so, Valentinian I (364-375), Valens (364-378) and Gratian (367-383) permitted to make donations and execute the last will to the advantage of a mother and her natural children up to one ounce, i.e. one twelfth of the inheritance when the testator had legitimate offspring, a father or a mother. If there was not such a person, a testator could bequeath 3/12 of his estate to his illegitimate children and their mother [24]. In 397 emperor Arcadius (395-408) together with his younger brother, Honorius (395-423), banned bequeathing any part of the estate belonging to the legitimate offspring to the children born from concubinage[25], and only a few years later, in 405, together with emperor Theodosius II (408-450) they issued a constitution which let them return to the former provisions of Valentinian I, Valens and Gracian[26]. In case of the lack of *liberi naturales*, a concubine alone could inherit 1/24 of the estate (*semiuncia*)[27]. Finally, Teodosius II and Valentinian III (425-455) with a constitution of 426 permitted to bestow one eighth of the estate on a concubine and her children (*sescuncia*)[28], and next, after only two years, invoking the strictness of the latest law, they decided to restore the solutions introduced by Valentinian I, Valens and Gratian[29]. In 443, the two above mentioned emperors also introduced another form of legitimation of offspring born from concubinage - *legitimatio per oblationem curiae*[30]. De-

22 R. T. Troplong, *De l'influence du Christianisme sur le droit civil romains*, Tours 1902, p. 82 and p. 174-176.

23 J. Beaucamp, *La statut de la femme à Byzance (4e-7e siècle)*, vol. I, Paris 1990, p. 197-199.

24 C. Th. 4, 6, 4.

25 C. Th. 4, 6, 5.

26 C. Th. 4, 6, 6.

27 C. 5, 27, 2: „*...si sola sit concubina, semiunciam largiendi vel relinquendi habeat potestatem*".

28 C. Th. 4, 6, 7.

29 C. Th. 4, 6, 8.

30 C. 5, 27, 3. This form of legitimation consisted in granting a child born from concubinage a status of a legitimate child through an increment made for a child by a natural father with an exception of a person who became a decurion (*decurio*). Also a natural daughter could take advantage of this possibility in case she got married to a decurion, with a simultaneous dowry provided by her father. Initially, this kind of legitimation was possible

spite a limited subject range and the fact that its basic aim can be recognized as clearly fiscal, it enabled the improvement of the concubinage children status. The constitution issued by emperors Leo (457-475) and Anthemius (467-472) in 470 gave so legitimated concubinage children the right to intestate succession from their father (C. 5, 27, 4). Reference to concubinage can be found during the reign of emperor Zeno (474-491), who wanted to reduce it and decided to use *legitimatio per subsequens matrimonium*, i.e. return to the solutions introduced by Constantine (C. 5, 27, 5).

This form of legitimation also drew the attention of Anastasius (491-518), who – unlike his predecessors – largely broadened the range of its use allowing to get *iustum matrimonium* to freedwomen concubines (*concubinae libertinae*)[31]. He also permitted to adopt (*adrogatio*) natural children if a marriage of the parents had not been possible because of various reasons. Anastasius's innovations had an ephemeral character and were changed already during the reign of his successor – Justin I (518-527)[32].

The regulations presented above let us state that the constitutions issued by the emperors during the period of almost two hundred years from Constantine's death were usually limited to certain modifications or amendments to the already existing solutions. Completely new solutions in the discussed area were very seldom introduced.

A lot of attention was drawn to concubinage by emperor Justinian[33], being in power in 527-565. The earliest legal act dealing with *concubinatus* was a constitution of 528 (C. 5, 27, 8). It enabled a natural father to bestow six ounces, i.e. half of the estate, on the illegitimate children and their mother in case he had no legitimate wife or offspring. The Novel 89 of 539 introduced other changes to testamentary succession. If a father had not had legitimate offspring or ascendants, he could bequeath all his estate to his natural children[34]. But the most important reform introduced by the emperor

only in case there was a lack of legitimate offspring. Justinian allowed to execute it also in case a father had legitimate children (C. 5, 27, 9).

31 C. 5, 27, 6.

32 C. 5, 27, 7 pr. See also M. Nizioł ek, *Legal Effects*..., p. 51-54.

33 R. Danieli, *Sul concubinato in diritto giustinianeo*, in: *Studi in onore di V. A. Ruiz*, vol. III, Napoli 1953, p. 175-179; C. St. Tomulescu, *Justinien et le concubinat*, in: *Studi in onore di G. Scherillo*, vol. I, Milano 1972, p. 299-326; D. Gemmiti, *Il concubinato nel diritto romano e giustinianeo*, Napoli-Roma 1993, p. 31-42.

34 Nov. 89, 12, 3: "*Si vero filios non habuerit quispiam legitimos aut quemquam ascendentium, quibus necessitas est legis relinquere partem propriae substantiae competentem, testatori licentia sit etiam in duodecim uncias scribere filios naturales heredes, et dividere inter eos quocumque voluerint modo res, et per donationes aut simplices aut antenuptiales aut per dotes aut per alium quemlibet modum legitimum suas in illos substantias transponere*". In the same Novel (cap. 12 § 2) Justinian also decided that if a father

was granting *liberi naturales* the right to inherit ab intestato from a natural father (Nov. 18, 5; Nov. 89, 12, 4-5). There were some conditions for this possibility. Firstly, a man had to be *in concubinatu* with the children's mother. Secondly, a concubine and her children should live in the father-testator's house and she should raise them there and in case of death or separation from him, his offspring should continue to stay in the father's house. Concubinage had to be monogamous because if a man had had relations with many women (*concubinae fornicantes*), the regulation would not have been applied. And finally, also the presence of filii legitimi (or their descendents) or a wife automatically excluded natural children from inheritance. If all the discussed conditions had been fulfilled, *liberi naturales* together with their mother would have received 1/6 of the estate devided in capita. Justinian was also the emperor who developed *legitimatio per oblationem curiae*[35] and l*egitimatio per subsequens matrimonium* (C. 5, 27, 10-11), which he made a durable institution. But first of all, he introduced *legitimatio per rescriptum principis*[36]. This form of legitimation, consisting in an act of natural father's application to the emperor to acknowledge legitimacy of his illegitimate children, was intended to serve people who could not get married. *Pater naturalis* also had a chance to legitimate his offspring in the testament (*legitimatio per testamentum*)[37]. In both cases, *liberi naturales* acquired a status of legitimate children only after the issue of the imperial rescript. There was also an innovative solution which imposed an obligation on a natural father to provide maintenance to the children born from concubinage. At the same time, the father's legitimate offspring was obliged to support the children born from concubinage if they had not inherited any shares of his estate[38]. It is worth mentioning that in the Novel 115, among cases of ungratefulness justifying disinheritance of descendants, there is a sexual relation of a son with a father's wife or concubine[39].

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had legitimate offspring, he could not bequeath more than 1/12 of the estate to his natural children and a concubine, and if he had had no *liberi naturales,* but only a concubine, she could inherit 1/24 of the estate value.

35 C. 5, 27, 9. For more details about the introduced changes, see P. M. Meyer, op. cit., p. 148-149; K. Rebro, op. cit., p. 93-96; M. Niziołek, *Legal Effects...,* p. 65-70.

36 Nov. 74, 1-2; Nov. 89, 9-10.

37 Nov. 89, 10: „*Si vero is qui solummodo naturalium filiorum est pater per quosdam fortuitos casus non valuerit hoc agere, moriens autem sub quodam praedictorum casuum scripserit testamentum, volens sibi legitimos esse filios successores, et in hoc damus ei fiduciam:supplicantibus tamen etiam sic filiis post mortem patris, et hoc docentibus et ostendentibus patris testamenta, et heredibus existentibus secundum legem, hocque donum habeant patris et principis, idem est dicere naturae simul et legis*".

38 Nov. 89, 12, 6; Nov. 89. 13. Earlier, the obligation to support and raise extramarital offspring was solely their mother's. See also C. St. Tomulescu, op. cit., p. 305.

39 Nov. 115, 3, n. 6: „*Si novercae suae aut concubinae patris filius sese miscuerit*".

A son had the same rights towards his father who had a sexual relation with his wife or concubine[40].

In the light of the quoted sources, it is clear that Justinian's reforms were much different in their contents from the former provisions of other emperors. It is especially easy to notice his friendly attitude to children born from concubinage. All the activities undertaken by the emperor in this field were based on the Christian ethics. His intention was to bring concubinage closer to marriage. That was the time when *concubinatus* was raised to marriage of a lower status (*inaequale coniugium*)[41] that resulted in legal consequences, including monogamous character of the relation[42], appropriate age of a woman[43] as well as a ban on incestuous concubinage[44].

The influence of Christian thought is demonstrated in an even stronger way in the Byzantine law. Emperor Basil I the Macedonian (867-886) in the Prochironie[45], which was written about 879, decided that it was necessary to discuss a question of allowing a man to have a relation with a concubine. He decided that no man can keep such a woman in his house. In the emperor's opinion, the argument for this solution was that this kind of behaviour did not differ at all or very little from *stuprum*. To comply with the legislator's expectations and live an unblemished life, it was necessary either to lawfully marry a concubine or dismiss her. Basil's son and successor, Leo VI the Philosopher (886-911) presented a very clear attitude towards concubinage. In one of his Novels[46], he called the previous rulers' leniency with this extramarital relation a legislator's mistake that brought dishonour to the state. In his opinion such regulations should be forgotten forever. Invoking regulations of God's law as the only ones which are recommendable to the Christians, he strictly prohibited to support a concubine because such an

40 Nov. 115. 4. n. 3: "*Si pater nurui suae aut concubinae filii sui sese miscuerit*".

41 According to C. St. Tomulescu (op. cit., p. 310), raising concubinage to a marriage of a lower status, Justinian was driven by the Eastern influence.

42 C. 7, 15, 3, 2: "*Omnibus etenim uxores habentibus concubinas vel liberas vel ancillas habere nec antiqua iura nec nostra concedunt*".

43 D. 25, 7, 1, 4: "*Cuiuscumque aetatis concubinam habere posse palam est, nisi minor annis duodecim sit*".

44 D. 23, 2, 56: „*Etiam si concubinam quis habuerit sororis filiam, licet libertinam, incestum committitur*".

45 *Prochiron* IV, 26, see J. Zepi, P. Zepi (cura), *Ius graecoromanum*, vol. II: *Leges imperatorum Isaurorum et Macedonum*, Athenis 1931, p. 128.

46 Nov. 91, see J. Zepi, P. Zepi, op. cit., vol. I: *Novellae et Aureae Bullae imperatorum post Iustinianum*, Athenis 1931, p. 157-158; see also K. E. Zachariae von Lingenthal, *Geschichte des griechisch-römischen Rechts*, Berlin 1892, p. 58-59; P. M. Meyer, op. cit., p. 157-160; D. Gemmiti, op. cit., p. 45-47; E. Karabelias, *Le concubinat à Byzance: discipline ecclésiastique et droit imperial*, in: *La droit de la famille en Europe*, Strasbourg 1992, p. 745-746.

insult would be not only against the principles of faith but also just against nature. "If you have a spring which is your obligation, you must act sensibly in what refers to you – and, although you are allowed to draw from clean springs, you choose a marsh. And if there is no spring, at least it is not forbidden to make attempts to obtain it. As a matter of fact, it is not difficult to find a female life companion"[47]. At the same time, the style of the emperor's speech was extremely pompous and the use of certain metaphors was intended to evoke a state of reverie and provoke reflection. Leo's decision was directed against concubinage which was acknowledged and tolerated by law. Of course, it could not result in complete elimination of that kind of relation but it must be remembered that the main aim of the undertaken activities was to demonstrate disapproval of the legal acknowledgement of those relations[48]. The emperor categorically condemned the practice of marriage gradation, suggesting very clearly that there is no place for the existence of a relation in between celibacy and fully legal marriage.

In conclusion, it must be stated that the Christian emperor's legislation regarding cuncubinage was mainly a reflection of opinions and ideas propagated by the Church. The influence of Christianity is easily recognizable[49], although its spread to the juristic state order occurred as a process in gradual progress. Its intensity and specificity often depended on the personality and direct involvement of the emperors. That was the source of different means used to fight against concubinage. Some emperors directed their main attention at activities aimed at limiting a concubine's and her offspring's position, while others created conditions for the transformation of this extramarital relation into *iustum matrimonium*. The Christian emperors tried to emphasize that concubinage cannot co-exist with a legitimate marriage and this was probably the most luminous manifestation of being under the influence of new religion trends. According to C. St. Tomulescu[50], this influence was not limited to absolute compliance with the principle of monogamy but it also reaches the forms of legitimation of offspring born from concubinage, giving the children a limited right to inherit *ab intestato* from a father and made both parents obliged to pay maintenance to their children born from such a relation.

47 Nov. 91, J. Zepi, P. Zepi, op. cit., p. 157-158.

48 X. D'Haucour, op. cit., p. 744-745.

49 R. T. Troplong, op. cit., p. 174-179; H. Insadowski, op. cit., p. 95-99; B. Biondi, op. cit., vol. III, p. 129-138; M. Niziołek, op. cit., p. 18.

50 C. St. Tomulescu, op. cit., p. 325.