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THE ARMENOPOULOS' SIX BOOKS AS A KNOWLEDGE SOURCE OF TORT LIABILITIES OF ANCIENT ROME IN EUROPE

In the article the historical and legal analysis of tort liabilities according to Roman private law and the Armenopoulos' Six-volume is carried out. It is specified that the Armenopoulos' Six-volume — the Manual Book of Laws (the XV century) was a source of knowledge of Roman private law on the Ukrainian lands (also Moldavian and Romanian). Also the history of expansion of the Armenopoulos' Six-volume on the Ukrainian lands, in particular in Bessarabia, is considered.

Key words: tort liability, public torts, private torts, Armenopoulos' Six-volume, Roman private law.

Problem statement. Today, no one has doubts about the value for national legal systems of Roman private law. Today no one asks oneself: why do we study the law of the state that doesn't exist — a dead law? This is predefined by the value of Roman private law for national legal systems.

National legal systems are based on the same general principles, legal culture, legal doctrine, legal traditions, authorized and unauthorized usages, etc. First of all they are a foundation of any legal system and family. They create a foundation and they fill every national legal system and legal family [1, p. 157–171]. These solid foundations of national legal systems were provided by Roman private law through its reception.

Traditionally, the reception of Roman private law is connected with direct and indirect (mediated) borrowing of its ideas and provisions. Direct reception occurs when ideas and provisions of Roman private law are perceived directly from primary sources of law of Ancient Rome. Indirect reception, on the contrary, is not a direct perception from primary sources, but through law of other states where this process has already taken place. To prove the fact of reception of Roman private law of direct kind is enough to compare the two legal systems: Roman and local. To prove indirect reception is much more difficult, as you need to ascertain a link between the provisions of Roman law and law of the first recipient country, as well as between the law of the first recipient country and the law of the next recipient country, discarding local

traditions of the first. As a result of direct influence of Roman private law the Byzantine legal system was formed. Legal systems of Western and Eastern Europe experienced the indirect influence of Roman law. In particular the formation and development of the legal system in Ukraine was carried out under the influence of Roman private law through the Byzantine, French, German, Polish, Czech, Austrian, Russian law (indirect reception). One of the sources of knowledge of Roman private law in the Ukrainian lands (also Moldavian and Romanian) was the Armenopoulos' Six-volume [1; 2].

Unlike other sources of knowledge of Roman private law in Europe, the Armenopoulos' Six-volumes can be considered as a law that recognized Rome Decrees as the law in these territories: « The local laws must be adhered to, but if not, then the customs, and if not, it is possible to apply the Rome Decrees» (I. (I) [1, p. 7]. That is, Roman private law represented the foundation of the legal systems of Ukraine, Moldova and Romania, not only due to indirect reception (the Armenopoulos' Six-volume), but due to direct (directly through the Rome Decrees).

Analysis of recent researches and publications. The value of Roman private law for national legal systems and its reception has been and is the subject of research of many scientists as in XIX century and in the Soviet period (P. Vinogradov, S. Muromtsev, P. Sokolovsky, V. Beck), so modern (E. Kharitonova, Z. Miller, V. Guteva, V. Goncharenko, R. Dostdar, P. Fedoseev, D. Prutyana, G. Puchkova, etc.). However, the Armenopoulos' Six-volumes are not considered as a source of reception of Roman private law in Europe, moreover — not even remembered. Apparently this can be explained by the lack of information about it in the textbooks on the history of state and law. The Armenopoulos' Six-volumes as a source of law was only in the works of L. Casso: «General and Local Civil Laws» (1896) and «Byzantine Law in Bessarabia» (1907) [2; 3]. However, the lawyer limited himself to study of its value as only local Bessarabian law source, even without analyzing its structure and content.

Paper purpose. In order to clarify the overall picture of the gradual development of law of the legal systems of Moldova, Romania and Ukraine for uncovering the general laws of Rome, which this development depended on, there is a need for a detailed analysis of the meaning and content of the Six-volume Armenopoulos. This is the historical value of this source of law; cause by definition of R. Iyering, the isolation is a deadly sin of peoples, as the supreme law of history is a communication [4, p. 6].

Paper main body. The Armenopoulos' Six-volume is also of interest in the context of the ideological, dogmatic and legal source of knowledge. Inheriting the idea of the Roman lawyers, in the Armenopoulos' Six-volume the system of obligations was the most developed. As it was noted by M. L. Duvernoy, the system of obligations was never developed to the same extent, as in Roman law [5, p. 19]. In fact, according to the scientist, for a proper understanding of the obligation concept, as opposed to the real rights law, the definition of liability from the Roman law should be the basic one [5, p. 19].

One of the first and the most complex institution of the law of obligations was the institute of tort liabilities, which were a legal form of society's reac-

tion to pathological processes, violations of private rights and interests. The study of value and system of tort liabilities, conditions of their appearance, subject composition in Armenopoulos' Six-volume, in comparison with the Roman sources, will allow us to make a conclusion about its value as a source of knowledge of Roman private law in Europe and the process of reception. Such reasoning predefined choice of the topic of this research.

To determine the influence of Roman law in Moldova and Romania (Wallachia) in the late middle ages is difficult because there are no legal digests and official texts. The Moldavian Prince Dimitri Cantemir recalled the reception of Byzantine law collections. In his short story «Description of Moldova» he noted that the Moldavian Prince Alexander I (Good), simultaneously with the crown from the Byzantine Empire, adopted the Greek laws, which were kept in the king's books, and from wide books chosen the laws, which is today the laws of Moldova [6, p. 16–17].

From the second half of the XVIII century, first in Romania (Wallachia), where Greek influence was stronger, and eventually in Moldova, there are judicial decisions made according to the provisions of the Manual Law Book (XV century), which went down in history as the Armenopoulos' Six-volumes, due to the author name Constantine Armenopoulos. It saved for six centuries value of legal source or judicial handbook on two European territories: in the Greek Kingdom and in Bessarabia province. For these territories it was printed in Greek, Latin, twice German, Moldavian, Russian languages, as other Byzantine digests either were completely forgotten, either was rarely opened by byzantists, and the compilation of Justinian ceased on the mainland to play the role of the applicable law document [6, p. 42].

For the basis of the Six-volumes, the author took «Prohiron», compiled under the Emperor Basil the Macedonian. «Prohiron» of Armenopoulos had almost no difference with the other texts of Byzantine law, while it lacks any independence or individuality of the author [6, p. 45]. Armenopoulos' work, wrote L. O. Casso, became the main legal manual for the Greek-Romanian people of the Balkan Peninsula, which contained preserved law of the previous periods [7, p. 6]. After the 1453 year, he was already known in the West; where it was seen as the last monument of law of already non-existent Empire.

Byzantine law was gradually penetrated into Moldavian life through the application in judicial practice. This reception was due not only to the need for additional norms, but also the glory of the Byzantine name, as in the West the compilation of Justinian was established thanks to the prestige of the Roman Empire. In addition, in Moldova in XVIII century the Greek language, in which was written compilation of Armenopoulos, became the official language as the Latin language on the West penetrated simultaneously to practice of law with the reception [6, p. 25].

Since the conclusion of peace between Russia and the Ottoman Porte (August 5, 1812 Russia annexed Eastern Moldavia or Bessarabia (Khotin, Bender, Cell, Ishmael, Ackerman and other commercial cities). In the Statute of the Region of Bessarabia (April 29, 1818) was indicated a need to follow customs and local laws in civil cases. There was the exception in this rule, that in all

civil cases, where claims and is responsible the treasury, it is necessary to apply the general laws of Russia. Criminal cases should be resolved under the laws of the Russian Empire [8, p. 11].

The laws of Moldavian rulers that were issued prior to 1812 and recognized by Russia were understood as local Bessarabian laws. However, such a law could be only the Collegiate Diploma of 1785 [6, p. 39].But the local population in Bessarabia continued to consider the usage as the main source of law, and the Basilica (Roman law) was seen as an auxiliary source. Therefore, the Supreme Council of the province of Bessarabia in 1826, considered as reference books the Armenopoulos' laws, that were used in the judicial practice for complementation and further development of local law, for which they have been translated into Russian language [6, p. 39].

By the Armenopoulos' Six books the realization of preventive-educational functions were charged on tort liabilities, which is clearly seen in the primarily wording of some of its rules: «if someone hurt or knocked out the eye of another, the other had to do the same, because it showed everyone his evil wrongdoing» (VI. 1) [3, p. 200]. That is the sanction for committing the offence evidences an «evil misdemeanor» of a person not only when applied to a particular offender, but when enshrined in law. In addition the sanction affects not only the offender, but also on all persons, educating the offender and preventing the commission of new offences.

Inheriting the Roman legal doctrine, Armenopoul in his Six-volumes authorizes honest revenge, which included such sentences as talion («talio»): «an eye for an eye, a hand for a hand» (VI. 1) [3, p. 200]. The talion system was acting at the cases of health or human life injury, robbery. However, in some cases, according to the tradition of decemviri, it was allowed to deprive people life under the circumstances stated by law. Thus, talion contained the idea of revenge and was a form of its manifestation. However, unlike blood (unlimited) revenge, about the talion was determined next: who has the right to revenge, methods and limits of its implementation.

With the talion system in the Armenopoulos' Six-volumes the system of compositions that has been already contained in the Laws of the XII tables was also applied: «Instead of punishment «an eye for an eye, a hand for a hand» to use property sanction in the form of deprivation of two third of an estate» (VI. 1) [3, p. 200]. That is, a composition was a private fine, which was paid to the victim, which should be met without the use of revenge. The choice of sanctions depended on the condition of delinquent: was wealthy, was applied a composition, if poor — then talion.

Thus, the implementation of preventive-educational functions of tort liability is seen also in authorization of talion system and compositions as characteristic features of the era.

Tort obligations entailed negative consequences of property character for the offender: compensation for inflicted harm. The use of such property sanctions resulted in the reduction or deprivation of offender's material goods to resume victim's property sphere: «If the body of the slave was damaged, then in addition to medical expenses and lost work time, it should be paid

the lost price of a slave» (VI. 1) [3, p. 200]. That is, tort obligations under the Armenopoulos' Six books performed restorative function. Thanks to the right-restoring function the responsibility of a private tort differed from liability of a public tort, to which also was typical a proprietary nature (e.g., public fines, confiscation of property of an offender).

According to the Roman tradition the legal consequences of offences were divided into public and private. *Public torts* were considered criminal offences against public order, which sometimes could encroach on the interests of an individual, so the perpetrators should be liable to public punishment in the form of the death penalty, deprivation of liberty or citizenship, corporal punishment, deprivation of property in favor of the state treasury and such. *Private torts* arose when the one has suffered from injury or loss, later were considered as a basis for the tort obligations to protect the property interests of an injured person. Respectively property satisfaction for committing of private tort got the victim, not the state. Thus protection was applied on the initiative of the victim: «Claims come from a treaty, amisconduct (fact — *from Greek*) or from an execution of smth.» (I. III) [2, p. 29]. Thus, the sources of obligations were only private torts.

Adhering to the Roman legal tradition on the Armenopoulos' Six books system of private delicts had a secluded nature, as them was an exhaustive list: theft (furtum), damage or destruction of other people's things (damnum injuria datum), offence (injuria).

Regarding theft they allocated two varieties of it(furtum): apparent theft (furtum manifestum) and implicit theft (furtum nec manifestum). So if the thief is caught at the scene, it was furtum manifestum. Conversely, if it is not caught at the crime scene, then — furtum nec manifestum. The Roman penalty for furtum (T. VIII.16) [9, p. 197] appears in the Armenopoulos' Six-volume: «who ever commits theft in the afternoon, if it is obvious, the thief is condemned to be paid in four, and if it is not explicit, then in two» (VI. V). Inheriting decemviri (T. VIII.12) [9, p. 196], for furtum manifestum was allowed punishment on the principle of talion — «kill in the crime scene». However, unlike Roman law, which gave the victim the right to choose the punishment of the offender, the right to apply such a sanction was granted on the condition that «the nigh thief cannot be pardoned without danger to a person» (VI. V) [3, p. 214].

The starting point of rules construction about tort liability resulting from damage or destroy of other people's things was the Roman Law of Aquilius: «...about all the laws regarding damages it was recognized that the most important is the Law of Aquilius» (VI) [3, p. 199]. The content of this law was extended to all cases of property damage (as things and human body). The amount of compensation was determined differently for damaged or destroyed items, as well as to human health damage or death.

According to the Roman tradition the great importance in the Armenopoulos' Six-volumes is provided to person's dishonor, which caused his mental suffering: «When there are two lawsuits, one of which is an important quantity and in the other it comes about dishonor, it is given the advantage of a

claim for dishonor» (I. III) [2, p. 30]. It should be noted that for the offense in the form of dishonor criminal liability was also established: «... the one who accused someone of committing a crime shall within two years prove his accusation otherwise disposes of the fourth part of the estate and is admitted as dishonest» (I. II) [2, p. 17].

Thus, the system of tort liabilities is not only based on common concept of tort, but on individual species. Therefore, for making claim about damage compensation or loss was necessary to move it to a separate tort. The compensation method of caused harm, the calculation of compensation amount of property damage depended on the assault objects of offender.

Tort liability (for damages) was considered as such that are not transmitted in legacy: «The theft claim does not proceed against heirs» (VI. V) [3, p. 213]. This situation was predetermined by the fact that violated property rights of the victim identity were defended by penalty claims. Accordingly, the application of them to the offender's successors was considered unfair so in Roman law (D. 47.1.1). However, the right to file a claim from a private tort passed to the heirs: «The lawsuit which an important punishment is followed, if initiated litigation, passes to the successors» (I. III) [2, p. 30]. Unlike tort claims, inheriting the idea of Roman lawyers, «a claim for return to the owner of things and claim to the one who ran the business, always passes to the heirs and against the heirs» (I. III) [2, p. 32].

The Armenopoulos' Six books considered tort liabilities as temporary: «Claims are not eternal, that is the same thing cannot always be asked, so there is a time limit after which any right of claim is terminated» (I. III) [2, p. 25]. That is, tort liabilities existed within the period of limitation, which according to the Roman tradition was equal to one year. For the occurrence of tort liabilities it was required to set the conditions that allow characterizing the behavior of the tortfeasor as an offence. These include presence of harm, wrongfulness of its infliction, relationship between cause (illegal job) and consequence (harm), guilty.

The starting point of tort obligations construction under the Armenopoulos' Six books was the presence of harm. Such conclusion can be drawn from the title of the book VI «Of the Harm and Loss», where it's talking about individual delicts. That is, the harm itself was regarded as a tort, inheriting this idea of the Roman jurists: «Noxia est autem ipsum delictum», the harm is itself a tort [10, p. 387]. Besides from the title of this book implies that in the Six books there is no distinction of the terms «injury» and «damages» (in Roman sources «harm» and «loss» was designated by the single term «damnum»).

Liability for harm caused by the offence had restorable and free nature. Primarily the tortfeasor was obliged to compensate the actual damage (losses): to return to the owner a dead animal (VI. V) [3, p. 215], to pay the cost of damaged or stolen items (VI. V) [3, p. 215], to pay the costs of the treatment of victims (VI. (I) [3, p. 200].

Loss of benefit was also recovered: «If body of the slave is damaged in addition to treatment costs lost work time is paid» (VI. 1) [3, p. 200]. If the

harm was caused to the owner as a result of theft, the thief was supposed not only to turn the stolen thing, but «the income received from it, even when there was no income» (I. XII) [2, p. 111].

Reflecting the ideas of the Roman lawyers, not only direct damages, caused to the direct object of assault, were recovered, but also indirect, caused to the victim as a result of the infringement of any other interests. So, «...if the damage is in the body of the slave, in addition to medical expenses and lost work time, had to be paid the price of a slave» (VI. 1) [3, p. 200]. That is, indirect harm is not identified with loss of profits. The main difference between these concepts was the object of encroachment: loss of profits when damage was applied directly to the object of infringement («lost time»), in the case of indirect harm suffered other interests of the victim, but linked to the direct object of infringement («lost cost slave» in the future from the sale of the slave).

According to the Armenopoulos' Six-volumes punitive damages were distinguished: «If wild or subdued animal will cause harm to other items (will not cause death or damage to health) you will be charged double price of loss» (VI. 1) [3, p. 199].

Thus, the damage caused by the offence according to the Armenopoulos' Six-volumes was recovered on the principle of full compensation, which consisted in giving the tortfeasor a duty to indemnify in full, to compensate the actual damages, lost profits, indirect damage (loss). The application of this principle allows the victim to compensate all the lost property goods. The laying on the tortfeasor of obligation to pay the penalty damage (loss) was based on the principle of high multiple liability, which provided tort liabilities with a penal character.

Unlike Roman private law, where lawyers emphasized the wrongfulness as a mandatory feature of the harm of tort (Aquila's law applies only «when slave were killed illegal» (9. 2. 3) [10, p. 393], according to the Armenopoulos' Six-volumes contains indication to wrongfulness only in one rule, formulated in a reverse form: «If someone saving his home from fire destroyed the house of a neighbor to prevent the fire from a neighbor's house to overturn on his house, he is not condemned as for an *illegal violation (italic — S. G.)* and shall not cover damages caused by the Law of Aquilius» (VI. 1) [3, p. 199]. Such an approach of the legislator can be explained referring to the content of the rule: «Must adhere to local laws, but if not, then customs, and if not, it is possible to apply the decrees of Rome» (I. (I) [2, p. 7]. And in the next rule on the harm or loss states that «of all the laws regarding damages the most important was recognized the Law of Aquilius» (VI. 1) [3, p. 199]. Thus, applying the content of Aquilius Roman Law it is possible to draw a conclusion about the belonging of wrongful acts «committed not accordingly to law, which means against the law, that is so, it seems the murder was committed in the presence of guilt» (Ulpian) (D. 9. 2. 5. 1) [10, p. 393] to the tort obligations conditions occurrence under the Armenopoulos' Six-volume. The main evidence of illegality was violation of the objective law norms and connection with the fault of tortfeasor.

Wrongful conduct had always been expressed in a concrete form, because it didn't exist outside. As in Roman private law, in the Armenopoulos' Six books wrongful conduct was expressed only in the form of action (delicta in commissione), which caused losses in the assets of the victim and harmful consequences in the sphere of moral relations.

Damage must be caused by the person directly (by direct influence of the person on the thing) by touch of body. If such an impact of the person on the thing was absent, also wrongfulness was absent, so it should be submit a claim for fact of injury and not on the fact of the tort. In this case, the person responsible for the damage was charged with the duty to indemnify not a real harm (damages) but a penalty harm (damages): «who struck or injured horse, have to pay twice, because it (*the horse, the animal — S. G.*) didn't cause harm by his body» (VI. 1) [3, p. 200].

Not any deviation from the requirements of law was recognized as illegal. For the Armenopoulos' Six books damage was not considered as one that caused in wrongful way in the cases of self-defense. Self-defense applies to such methods of protection that everyone had the right to apply for preservation of their own rights. Two ways of self-defense are distinguished: self-defense and extreme necessity.

Self-defense was used when the attack occurred on the person or on his property. Thus, the limits of its legitimacy were established: «Any person has the right to repel force by force, weapons by weapon» (I. XI) [2, p. 99]. According to Roman tradition, the legislator granted the right to go beyond the set limit by killing a thief in the night found at the crime scene: «Who killed the night thief was not subject to punishment only when he could not pardon him without danger to himself» (VI. V) [3, p. 214].The indication of condition of such sanctions for the thief was simultaneously the indication of lawfulness condition of self-defense: occurred when creating a real threat of harm and was applied only to the person whom the threat came from.

Inheriting the ideas of the Roman lawyers, the Armenopoulos' Six-volumes forbid the exercise of self-defense in the form of arbitrariness. The main difference between self-defense and arbitrariness was the fact that self-defense meant maintaining by the own power of the status quo in it infringement by other persons by means of resistance when it takes place the person's right violation. But arbitrariness was considered the restoration of status quo by own power, according to subjective law. To arbitrariness it was attributed the fulfillment of law requirements by removing debt, own things, any self-satisfaction. For example, «who takes without verdict forcibly from another his thing, he loses it forever; if a thing was alien, he returns the thing itself and its cost» (VI. (VII) [3, p. 222]; «who hurts or kills another man's ox or donkey, if he finds him at own field damaging to the crop, instead of returning the animal to the owner and to claim damages, he must return to the owner an ox for an ox, a donkey for a donkey» (VI. VII. 4) [3, p. 244]. The self-defense was considered as lawful action and the use of arbitrariness — illegal, so it was forbidden.

To eliminate the danger threatening injury was used such method of self-defense as extreme necessity. The issue of extreme necessity arose when

for protection of personal subjective rights the damage was applied to a third party. For example, «if someone saving his home from fire destroyed the house of a neighbor to prevent the fire from a neighbor's house to overturn on his house, he is not condemned as for an *illegal* violation and shall not cover damages caused by law of Aquilius» (VI. 1) [3, p. 201]. Thus, the act committed in extreme necessity was recognized as legitimate and does not qualify as a tort. The obligation on compensation of the harm caused to him didn't arise.

Closely related to extreme necessity was damage in general average, using modern terminology: «If to relieve tossing the goods are thrown away in the sea, the owners of the goods shall receive compensation and the ship itself is involved in a loss» (II. XI) [2, p. 237]. Characteristic features of general average were: 1) the donation was carried out with the intention to save the ship and cargo from a common danger; 2) the danger must be for the vessel and cargo total.

Shared between general average and extreme necessity was that they were carried out in emergencies to rescue both personal and third party interests from real danger. Unlike extreme necessity, losses by general average already give rise to obligations on compensation of the harm caused by lawful actions (and therefore were not delict). Such losses were distributed between the ship, freight and cargo, depending on their value.

Mandatory condition for the occurrence of tort liabilities was a causal link between the wrongful act and the deleterious effects, as in the Armenopoulos' Six-volume was provided reparation to the victim at the expense of those who violated the rights of another person. That is, the requirement of causality is expressed by pointing to the person causing the harm: «Who hurts or kills another man's ox or donkey, he must return to the owner an ox for an ox, a donkey for a donkey» (VI. VII. 4) [3, p. 244]; «whoever commits theft in the day… is liable to be paid in four…» (VI. V) [3, p. 213], and such as.

Following the ideas of the Roman lawyers, the Armenopoulos' Six-volume provided legal values for both direct and indirect causality between the wrongful conduct and its consequence. Direct causality occurred when in the chain of events that has been developing between the wrongful conduct and harm, there are no circumstances relevant to tort liability. In cases where between the wrongful conduct and harm there are circumstances which the law gives as important in deciding on tort liability (wrongful conduct of third parties, force majeure), there is an indirect causality. For example, «who struck or injured horse, have to pay twice, because it (*the horse, the animal — S. G.*) didn't cause harm by his body» (VI. 1) [3, p. 200]. That is, between the wrongful conduct of the person that struck or injured horse that has resulted in infliction of a horse, and the harm an indirect causality (mediated) is present, therefore there was a duty to indemnify on the fact of injury, not a tort. The sanction to guilty person that was used for damage depended on it: was charged with the duty to compensate the actual damages (losses) or penalty damages (losses).

Laying duty on someone who caused harm would be his fault (culpae) recognition. In Roman legal tradition, the fault in tort liabilities were treated as

the person's attitude to their behavior and its consequences, which manifested itself in the form of intent (dolus) or negligence (culpa). For the Armenopoulos' Six-volumes intent if implies a loss for another was defined as malice, anger of soul, deception or concealment (I. XII) [2, p. 103]. Therefore, even liable minors were held for intentional causation of harm: «Age does not help minors in crimes, i.e.: when they have used deception or concealed, and it is associated with damage to the other» (I. XII) [2, p. 103]; «Age helps a minor when the offence was committed without malice and not out of anger of the soul» (I. XII) [2, p. 103].

The lack of care and foresight fell under negligence. For example, the owner of the animals (dog, wolf, lion, etc.) were prosecuted in the presence of his guilt: «... doesn't leash on the road where people are walking or leash not so that he could not corrupt» (VI. 1) [3, p. 199]; «if someone shrugged his field and moved back his cattle, which caused damage to the neighbors, who did not reap the field, got 30 shots and made reparation for the cattle damage» (VI. VII. 5) [3, p. 246].

Negligent infliction of harm entailed the involvement of liable person only in the cases provided by law or contract between the parties. Unlike negligence, for willful harm causation responsibility always came for its causer. Even if in the contract the reservations about the lack of responsibility for the intent were made, according to the Roman jurist Celsius, such a reservation should be considered invalid, because of its contradiction to the principles of a good faith [11, p. 529]. We find confirmation of such a rule in other maxims of the Roman jurists: «No agreement shall not dismiss the responsibility of malice» (D. 2.14.27.3) [12, p. 279]; «if the transaction is performed that the victim will not sue with furtum or injuria, it is not enforceable as immoral; but if such actions have already been implemented, it is possible to enter into such a contract (for example, on payment of a thief of a certain amount to the victim as compensation for a tort)» (D. 2.14.27.4) [12, p. 279].

The above allows concluding that the form of guilt of harm causer mattered for the emergence of tort liabilities, and not just the finding of guilt. However, the form of guilt of harm causer did not affect the amount of compensation, as any harm causer's fault was reimbursed in full. On the model of the Roman sources, the Armenopoulos' Six-volumes enshrined the presumption of harm causer's guilt that had to prove that the damage was caused by the fault of third parties, due to the intent or force majeure circumstances.

To the Armenopoulos' Six-volumes not every individual was brought in harm liability caused by tort. In the list of incapable for responsibility persons there were minors and invalid persons. Therefore the ability of individuals to act as the debtor in tort obligations under the Roman legal tradition depended on its legal capacity, which in turn depended on three factors: 1) the status of freedom (status libertatis); 2) family (status familiae); 3) ability to understand the significance of their actions.

Minors were called «man to 14 years and a woman to 12 years from birth, which were under the care» (I. XII) [2, p. 99]. Therefore, the «minors never act participants in contractual relations, except when they are damaged or

they had obligations for their own mistakes or fraud of the other» (I. XII) [2, p. 107]. Freeing a minor from obligation to compensate damage under the Armenopoulos' Six-volume was imposed by the Roman tradition to persons under the care of whom was an infant: «Care was seen as the right and the power that is given to someone over a free man to protect him in childhood, or to preserve true wealth» (IV. HEE) [2, p. 184]. That is, the trustee compensated the damage caused by the wards, at the expense of his property (in general being likened to the father of the family). If the trustee was appointed the child's mother (if after the death of her husband there were children and if she didn't get married second time (I. XIII) [2, p. 112], it was not obligated to pay: «Mother, if you co-sign for her child, still enjoys accepts («no obligation to pay»), but if promised to pay a dowry, the law does not protect» (I. XIII) [2, p. 113].

On the Roman legal tradition the minor in juvenile age «close to adolescence (~14 years) is able to steal and to injury» (I. XII) [2, p. 116]. That is, the law did not associate the presence of the person's capability with the attainment of a specific age.

Always the adult (over 25 years) and the minor (aged 14 to 25 years) were brought to tort liability for damages. «Age does not help minors in crimes, i.e.: when they have used deception or concealed, and it is associated with damage to the other» (I. XII) [2, p. 103]. The only circumstance, liberated young person from the duty in tort was committing the crime «without malice and not out of anger of the soul» (I. XII) [2, p. 103]. Those «who did something from fear or violence and those who suffered something or received due to error or lack» (I. XII) [2, p. 106] were equaled to minors/

Responsible for damage caused by animals (dog, wolf, lion, etc.) were considered their owner. According to Roman tradition it was provided the noxal responsibility: «If a four-footed animal caused someone harm, he was given the right to sue for extradition of animals or compensation of damages» (VI. 1) [3, p. 199].

For the Armenopoulos' Six-volume the right to sue in tort was given to the trustee of a child and an incapable person, a minor and an adult. As for woman — the trustee Roman rule acted: «a woman may not file criminal charges, only when it comes to murder her parents, children, masters, who released her, their children and grandchildren and other relatives, against whom she can't testify» (I. XIII) [2, p. 112].

Minors had such a right if he applied to the court with the consent of the trustee, then his petition was met (I. XII) [2, p. 100].

Regarding the possibility for the slave to act as capable for responsibility person or victim, there are Roman ideas: «a servant is not subject to any of the claim»; «a slave cannot own thing, which is managed, as he could not have nothing»; «slavery is similar to the death» (I. XIV) [2, p. 120–121].

Conclusions. Thus, the ideas of Roman jurists on the institute of tort liabilities were reproduced in the content of the Armenopoulos' Six-volume. In the context of torts gaps in the legal regulation it was filled with the Law of Aquilius. This allows making a conclusion about the value of the Armenopou-

los' Six-volume as sources of knowledge of Roman private law about tort liabilities, as well as the Law of Aquilius as Roman legal source in vigor in Ukrainian, Moldavian and Romanian lands before 1862.

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ШЕСТИКНИЖЖЯ АРМЕНОПУЛА ЯК ДЖЕРЕЛО ПІЗНАННЯ ДЕЛІКТНИХ ЗОБОВ'ЯЗАНЬ СТАРОДАВНЬОГО РИМУ В ЄВРОПІ

Резюме

У статті здійснено історико-правовий аналіз деліктних зобов'язань за римським приватним правом і Шестикнижжям Арменопула. Вказано, що джерелом пізнання римського приватного права на українських землях (також молдавських і румунських) було Шестикнижжя Арменопула — Ручна книга законів (XV ст.). У роботі розкрито історію поширення дії Шестикнижжя Арменопула на українських землях, зокрема в Бесарабії.

Встановлено, що у Шестикнижжі Арменопула найбільш розробленою була система приватних деліктів, яка носила замкнутий характер, оскільки містила вичерпний їх перелік.

Вказано, що вихідною точкою побудови норм про деліктні зобов'язання внаслідок пошкодження чи знищення чужих речей був римський Закон Аквілія. Зміст цього Закону було поширено на всі випадки завдання майнової шкоди (як речам, так і тілу людини).

Ключові слова: деліктна відповідальність, публічні делікти, приватні делікти, Шестикнижжя Арменопула, римське приватне право.

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ШЕСТИКНИЖИЕ АРМЕНОПУЛА КАК ИСТОЧНИК ПОЗНАНИЯ ДЕЛИКТНЫХ ОБЯЗАТЕЛЬСТВ ДРЕВНЕГО РИМА В ЕВРОПЕ

Резюме

В статье осуществлен историко-правовой анализ деликтных обязательств по римскому частному праву и Шестикнижию Арменопула. Указано, что источником познания римского частного права на украинских землях (также молдавских и румынских) было Шестикнижие Арменопула — Ручная книга законов (XV в.). В работе раскрыта история распространения действия Шестикнижия Арменопула на украинских землях, в частности в Бессарабии.

Установлено, что в Шестикнижии Арменопула наиболее разработанной была система частных деликтов, которая носила замкнутый характер, так как содержала исчерпывающий их перечень.

Указано, что исходной точкой построения норм о деликтных обязательствах вследствие повреждения или уничтожения чужих вещей был римский Закон Аквилия. Содержание этого Закона было распространено на все случаи причинения имущественного вреда (как вещам, так и телу человека).

Ключевые слова: деликтная ответственность, публичные деликты, частные деликты, Шестикнижие Арменопула, римское частное право.