

THE MANUMISSION OF SLAVES IN THE VIEW OF THE *FORMULAE VISIGOTHICAE*¹

Abstract: One of the few testimonies of the direct application of Visigothic law are the so called *Formulae Visigothicae*. In spite of their uncertain origin, they are thought to have been written in the reign of king Sisebut, circa 620. Of the 46 formularies that comprise the collection, the present work is centred on the group specifically dedicated to the manumission of slaves, placing special emphasis on the analysis of one, which could be considered to contain almost all of the elements assumed to be found in this kind of document. The importance which Roman Law (especially the notarial tradition) had in the elaboration of these texts is also emphasized.

Resumen: Uno de los pocos testimonios de la aplicación directa del derecho visigodo son las denominadas *Formulae Visigothicae*. A pesar de su incierto origen, se considera que fueron redactadas en tiempos del rey Sisebuto, hacia 620. De los 46 formularios que componen la colección, el presente trabajo se centra en el grupo dedicado específicamente a la manumisión de esclavos, poniendo especial énfasis en el estudio de uno de ellos, que puede considerarse que reúne prácticamente todos los elementos que en principio habría de encontrarse en un documento de este tipo. También se hace hincapié en la importancia que el Derecho Romano (especialmente la tradición notarial) tuvo en la elaboración de los textos.

INTRODUCTION

The collections of documents used like models for different kind of businesses are known, in a wide sense, as formularies. We will refer, more specifically, to the formularies of the middle-ages. The most important of those collections, due to the antiquity and number, are probably the different formularies written by the francs², starting in the sixth century with the *formulae Andecavenses*³. The creation of these different collections became quite widespread, and despite most of them were redacted by private individuals, many kings used to make a compilation of these different formularies, so giving them a *de facto* official value⁴.

The specific object of this article will be the visigothic collection known as *formulae visigothicae*, probably written in the time of King Sisebut, in the second decade of the seventh century⁵. These

¹ The complete bibliographical references, for sake of clarity and simplicity, can be found at the end of the text.

² Nonn, *LMA 4, Formel*, p. 646-648.

³ They were written on a manuscript of the beginning of the VIIIth century, which is actually conserved in the public library of Fulda, in Germany. Of end of VIIth century are the also Frankish *Formulae Marculfi*, enlarged in times of Charlemagne with the *Formulae Marculfinae aevi Karolini*. In the VIIIth century *Formulae Turonenses, Arvernenses, Salicae Bignonianae, Salicae Merkelianae, Salicae Lindenbrogiana*, the *Cartae Senoni-*

cae and the *Collectio Flaviniacensis* came to light. These are the most important documents, but not the only ones, Siems, *Handel und Wucher im Spiegel frühmittelalterlicher Rechtsquellen*, p. 348-349.

⁴ See, in general, García Gallo, *Los documentos y los formularios jurídicos en España hasta el siglo XIII*.

⁵ This affirmation is quite risky, due to the lack of objective elements to support it. The majority of authors thinks that this dating is correct. For different theories about this, see Canellas, *Diplomática hispano-visigoda*, p. 16-17; Mentxaka, *En torno a Formulae Visigothicae 44*, p. 827-830.

formulae were transmitted through a *codex* written by Pelayo, bishop of Oviedo, in the twelfth century. That *codex*, known as *Códice ovetense de don Pelayo*, is nowadays lost. Luckily, in the sixteenth century that *Códice de don Pelayo* was copied; thanks to this copy, discovered by Knust in Madrid, almost all of the *formulae visigothicae* are known to us. This *Codex Matritense* is the one who was used as base to Zeumer's critical edition. In spite of the existence of recent works related to the visigothic law⁶, one of the problems in this area of knowledge, is the lack of specific studies about the *Formulae Visigothicae*⁷. The research of this *formulae* is very important out of the point of view of the reception of the roman law in the middle-ages, precisely because the visigoths were, doubtless, the most romanized of the different Germanic people. Researching the *formulae* we could have a quite approximated idea about how the visigothic juridical praxis was, as well as which the real relationship between law and life was. Because no other kind of source has survived the pass of time, these texts are the only direct and clear evidence of visigothic juridical praxis⁸.

We have forty-six *formulae*, of which almost all are related to private law businesses, with a few related to the judicial practice⁹. They are sorted in different groups, each of one is created in the basis of different thematic criteria. Of these groups, perhaps the most important is the one dedicated to the manumission of slaves. This group is comprised by six texts, numbered one to six. I will try to summarise their contents in the next few words. After that, and before establishing the general conclusions, I will make some deeper comments about one of those six *formulae manumissionis*, the second, which could be considered a good example of a visigothic *epistula manumissionis*.

GENERAL COMMENTS ABOUT THE SIX *FORMULAE LIBERTATIS*

Generally speaking, the ways by which the visigothic slaves were manumitted¹⁰, where practically the same used by the Romans, especially the *manumissio sacrosanctis ecclesiis, inter amicos* and *per epistulam*. With these, they accepted different ways to give freedom to their slaves, that is to say, the exceptional instances which were stated by law. More precisely, they were a.-the second sale out of the borders of the kingdom, b.-as reward for denouncing counterfeiting, c.-the case of tortured

⁶ For instance, Javier Alvarado Planas, 1997, *El problema del germanismo en el derecho español*, Madrid; Enrique Álvarez Cora, 1996, *Qualis erit Lex: La naturaleza jurídica de la ley visigoda* in AHDE 66, p. 11-117; Abilio Barbero De Aguilera, 1992, *La sociedad visigoda y su entorno histórico*, Madrid; Dietrich Claude, 1980, *Freedmen in the Visigothic Kingdom* in *Visigothic Spain*, Oxford, p. 189-222; Roger Collins, 1992, *Visigothic law and regional custom* in *Disputes in early medieval Spain*, in *Law, culture and Regionalism in early medieval Spain*, Norfolk; Yolanda García-López, 1996, *Estudios críticos y literarios de la «Lex Visigothorum»*, Alcalá de Henares; Luís Agustín García Moreno, 1992, *Le royaume wisigothique et son unité religieuse*, Madrid; Aquilino Iglesia Ferreirós, 1977/78, *La creación del derecho en el reino visigodo* in RHD 2,1, p. 115-167; P.D. King, 1980, *King Chindasvind and the First Territorial Law-code of the Visigothic Kingdom* in *Visigothic Spain*, Oxford, p. 131-157; Rosa Mentxaka, 2002, *Algunas consideraciones sobre los derechos reales de garantía en la Lex Visigothorum* in *Estudios jurídicos in memoriam del profesor Alfredo Calonge II*,

Salamanca, p. 705-724; José Orlandis, 1992, *Le royaume wisigothique et son unité religieuse* in *L'Europe héritière de l'Espagne wisigothique*, Madrid, p. 9-16; Esperanza Osaba García, 1997, *El adulterio uxorio en la Lex Visigothorum*, Madrid; Carlos Petit, 1995, *Iustitia y Iudicium en el reino de Toledo. Un estudio de teología jurídica visigoda* in *La giustizia nell'alto medioevo*. Spoleto, p. 843-932; Harald Siems, 1992, *Handel und Wucher im Spiegel frühmittelalterlicher Rechtsquellen*, Hannover; María R. Valverde, 2000, *Ideología, simbolismo y ejercicio del poder real en la monarquía visigoda: Un proceso de cambio*, Salamanca; Artur Völkl, 1993, *Der Verkauf der fremden Sache im Westgotenrecht* in ZSS 110, p. 427-500.

⁷ Mentxaka, *En torno a Formulae Visigothicae* 44, p. 2-3.

⁸ Zeumer, *Formulae Visigothicae*, p. 573.

⁹ Mentxaka, *En torno a Formulae Visigothicae* 44, p. 2-4.

¹⁰ About the possible original Germanic ways of manumission, see Goldmann, *Beiträge zur Geschichte der germanischen Freilassung durch Wehrhaftmachung*.

and crippled slaves during a trial, being innocent, and d.-the prohibition of having Christian slaves established against the Jews¹¹.

One of the most evident thing to highlight is the double structure of all of these six *formulae*. With other words, each *formula* has a strictly juridical part, where the juridical consequences of the manumission are set, and another social or religious one. In some *formulae*, here are set the spiritual consequences of the rupture of the terms of the manumission, normally in the form of damnation¹².

Let's have a look at these different elements, paying special attention to the juridical point of view, where the influence of the Roman law will be most notorious.

The six *formulae* are referred to the *manumissio per epistulam* which, bearing in mind the formal requirements is a quite simple slave releasing procedure. Only a few elements must be present in the liberation document, of which only the name of the slave appears to be necessary. As I have just quoted, another typical element is the mention to the religious consequences of the rupture of the manumission terms, but that has almost nothing to do with the juridical point of view. One thing which clearly appears after reading the contents of these six *formulae*, is that the idea of *manumissio per epistulam* that the visigoths had was undoubtedly taken from the Romans, specially because of the fact of the lack of Germanic elements, aside, of course, from the direct influence of roman institutions, to which I will refer shortly.

Another element present in most *formulae*, is the mention to the *obsequium*¹³, that is to say, the bound which is established between the former slave, now a *libertus*¹⁴, and the former owner, now the *patronus*. The characteristics of this bound are almost the same as the roman ones, especially in the two main elements:

- First, the statement of a *peculium*, which quantity and using limitations are normally written in the document. These characteristics are practically identical to the ones observed in Roman law, seeing the *peculium* as the patrimony of a person with limited capacity, like a slave or a *libertus*, but also a priest, monk or a nun¹⁵.

¹¹ About this, Verlinden, *L'esclavage dans l'Europe médiévale I*, p. 95-98; Claude, *Freedmen in the Visigothic Kingdom*, p. 164.

¹² Like in *formula* 1: «(...) *Sit ille Deo reus, sit a sancta communione alienus, sit a consortio iustorum extraneus, sit a grege catholico segregatus; atque dum ille tremendae examinationis iudicisque dies illuxerit, inter impiorum cruciamenta sortis Iudae damna substineat, inter crepitantibus flammis aeternis conflagretur incendiis sitque erga hominibus manendo obnoxius, illa parti vestrae suppleat, quae de maculanda ingenuitate legalis sonat sententia, hunc vero factum nostrum nequaquam disrumpere valeat* (...)», or *formula* 7: «*iudicium Iudae Scariotis sumat, ut in eius condemnatione communem habeat participium ac in adventum Domini sit anathema maranatha vel in hoc seculo exors ab omni coetu catholicae religionis, Gyezi lepra percuciat, qui nostrae oblationis cartulam sacrilega mente inervare voluerit*». Beneito Pérez, *Sobre las fórmulas visigodas «Judae, Datán y Abirón»*.

¹³ For a general commentary about this question in roman law, see Doria, *Civitas, operae, obsequium*, especially p. 111-115; Kaser, *Das römische Privatrecht II*, p. 140. About the possible origins of the institution in Visigothic

law, Claude, *Freedmen in the Visigothic Kingdom*, p. 161. Synonyms for *obsequium* are *reverentia, gratitudo, honor, pietas, verecundia* or *operae*, Grieser, *Sklaverei im spätantike und frühmittelalterliche Gallien (5.-7.-jh.)*, p. 151.

¹⁴ The ancient Germanic tribes, knew the existence of this institution, Tacitus, *De origine et situ germanorum*, 25: «*Ceteris servis non in nostrum morem descriptis per familiam ministeriis utuntur: suam quisque sedem, suos penates regit. Frumenti modum dominus aut pecoris aut vestis ut colono iniungit, et servus hactenus paret; cetera domus officia uxor ac liberi exequuntur. Verberare servum ac vinculis et opere coercere rarum: occidere solent, non disciplina et severitate, sed impetu et ira, ut inimicum, nisi quod impune est. Liberti non multum supra servos sunt, raro aliquod momentum in domo, numquam in civitate, exceptis dumtaxat iis gentibus quae regnantur. Ibi enim et super ingenuos et super nobiles ascendunt: apud ceteros impares libertini libertatis argumentum sunt*». Claude, *Freedmen in the Visigothic Kingdom*, p. 160.

¹⁵ Hägermann, *LMA 6, Peculium*, p. 1849-1850; Niermeyer, *Mediae Latinitatis Lexicon Minus, Peculium*, p. 780-781; Isidorus, *Etymologiarum*, 5,25,5: «*Nam peculium est quod pater vel dominus filium suum vel servum*

— And second, the arising of an obligation of mutual respect, especially on the part of the *libertus*¹⁶, who has the same limitations as in roman law, with regard to the prohibition to file a lawsuit against the *patronus* or his family¹⁷, and, more particularly, in the possibility of returning to the slavery in case of ingratitude. For this, the visigoths used, like the Romans, a procedure similar to the so called *accusatio ingrati liberti*¹⁸, being the causes to lodge it equal to the roman ones¹⁹. Other common elements are also present, like the limited testifying capacity. Only in case there are no more witnesses, the *liberti* have the capacity to give evidence²⁰.

Most of these elements are established in the different *formulae*, even, like the fourth *formula*²¹, the renunciation to the *obsequium*²². In regard with this *obsequium*, one of the most notorious differences between the visigothic and roman treatment could be found in the very development of the institution. Indeed, with the time the roman bound between *libertus* and *patronus* vanished; quite the opposite, the visigoths tended to reinforce this bound, especially, as some authors have quoted, in the context of the ecclesiastical manumissions²³.

AND NOW, PRECISELY, A FEW WORDS ABOUT THIS DIRECT GENERAL ROMAN INFLUENCE

First element to emphasise, are the different references to the *Lex Aquilia*, especially in the *formulae* number one and six²⁴. The most interesting thing about these, is that they are a clear proof

pro suo tractare patitur. Peculium autem a pecudibus dictum, in quibus veterum constabat universa substantia». The limited disposability of the *peculium* comes to an end with King Chindasvind and his law LW 5,7,14 (see text below), Nehlsen, *Sklavenrecht zwischen Antike und Mittelalter*, p. 169. This king established the possibility of even alienate the less valuable things of his *peculium* without the permission of the slave's owner, D'Ors, *El Código de Eurico*, p. 220. He can defend it before a judge and could be composed of real estate (in this case, the slave will need permission to alienate), Verlinden, *L'esclavage dans l'Europe médiévale I*, p. 88-89. Levy, *Weströmisches Vulgarrecht. Das Obligationenrecht*, p. 70 and following.

¹⁶ Probably after Leovigild, could we talk about a specific social class comprised by the *liberti*, Claude, *Freedmen in the Visigothic Kingdom*, p. 162-163.

¹⁷ Kaser, *Das römische Privatrecht II*, p. 139. In general, see Krause, *Spätantike Patronatsformen im Westen des römischen Reiches*; Giglio, *Patrocinio e diritto privato nel tardo impero romano*.

¹⁸ That is stated in LW 5,7,9 y 10, and, specially 5,7,20: «(...) quicumque libertus seu liberta vel filii libertorum —ita valitura lege iubemus— si manumissoribus suis sive etiam filiis prolibusque vel nepotibus eorum, vel qui ex nepotibus fuerint geniti, inobedientes extiterint aut quocumque tempore de eorum patrocinio quacumque subtilitate aut ingenio vel argumento fraudis vel leviter de eorum patrocinio se auferre voluerint, tunc in tempore transgressionis eorum careant libertatem (...)».

¹⁹ Kaser, *Das römische Privatrecht II*, p. 139.

²⁰ Like in CTh 4,10,2: «post alia: liberti non modo adversus patronos non audiantur, verum etiam eandem quam

patronis ipsius reverentiam praestent heredibus patronorum, quibus ingrati actio sic ut ipsis manumissoribus deferetur, si illi datae sibi libertatis immemores nequitiam receperint servilis ingenii», which forms the basis of LW 5,7,12 (*Flavius Gloriosus Reccesvindus Rex*): «Ne testificent manumissis: Libertus vel liberta in nullis negotiis contra quemquam testimonium dicere admittantur, excepto in aliquibus causis, ubi ingenuitas deesse dinoscitur, sicut permissum est et de servis; quia indignum nostra pensat clementia, ut libertorum testimonio ingenuis damna concutiatur (...)».

²¹ Formula IV: «Fidelium famulorum servitia immaculata mentis obedientia ministranda condigna merito libertatis beneficia consequuntur. Haec enim nunquam sunt naefanda commercia, quandoquidem fideliter servientibus provocamur recompensare dignissima praemia. Et ideo, inoffensibilem servitiorum vestrorum sedulitatem pensantes nobisque ante Deum sortem beatitudinis acquirere cupientes, mercedis intuitu compellimur, debitum vobis relaxare servitium et splendidum idoneumque conferre libertatis statum. Quapropter ingenuum te civemque Romanum esse constituo atque decerno, ut, abstersa a vobis omne originali macula ac fece servili, perfectu gradu fervendo, nullius reservato obsequio, in splendidissimo hominum coetu atque in aulam ingenuitatis plerumque vos esse congaude-te; ita ut ab hac die, ubi ubi».

²² Claude, *Freedmen in the Visigothic Kingdom*, p. 165.

²³ For a summary, see Claude, *Freedmen in the Visigothic Kingdom*, p. 181-183; Mans, *Las clases serviles bajo la monarquía visigoda y en los estados cristianos de la reconquista*, p. 36-37.

²⁴ Formula I: «... In quam rem, vi doloque secluso, praesens praesentibus stipulatus sum et sponsondi, supter manu mea subscripsi et testibus a me rogitis pro firmitate tradidi

of, not only the direct influence of the roman juridical system, in the way of different kind of laws, but also of the general influence of roman culture in the form of the prestige irradiated by all the institutions related to Rome.

By this time the original meaning of *Lex Aquilia* and the complex juridical constructions derived from it are completely lost. As is already known, the slow simplification suffered by the essence of this law and, specially, the concept of guilt derived from the same, lead to the complete misunderstanding of the original sense of the *Lex Aquilia*²⁵. But that doesn't mean a loss of importance; for the visigoths, the *Lex Aquilia* is a kind of general unwritten law, which gives validity to all agreements between the parties. Expressions found in this first group of *formulae*, like *Aquiliam quippe commemorans legem, qui omnium scripturarum suo vigore iugiter corroborat actos* and *Aquilianae legis innodatione subinterfixa, qui omnium scripturarum solet adicere plenissimam firmitatem*, are clear evidences about the general new meaning of this ancient roman law. In short, we could say that the visigothic jurists could be ignorant about the complex classical meaning of the *Lex Aquilia* but, at least, they granted her the wide and general authority to validate the written contracts. For the visigoths, the *Lex Aquilia* was that which gave juridical value to the will of the parties.

In second place, I will underline one of the most repeated elements of this group of *formulae*, that is, the references to the roman citizenship. The *formulae* two²⁶, three²⁷, four, five²⁸ and six establish that,

roborandam, Aquiliam quippe commemorans legem, qui omnium scripturarum suo vigore iugiter corroborat actos.

Facta cartula libertatis in civitate illa sub die Calendis, ill., anno ill. ill. regnante, era ill.

Ego ill. hanc cartulam libertatis in praedictorum personas a mea voluntate collatam relegi, cognovi et subscripsi. Sunt dies et annos et era, quae supra.

Ille, rogatus a domino et fratre illo, in hanc cartulam libertatis ab ipso factam testamentum suprascriptum, die, anno, et era, qua supra.

Formula VI: «... Si quis vero, quod fieri non reor, ex adverso consurgens contra huius epistolae materiem venire conaverit, sacrilegii crimine teneatur obnoxius, et nec sic huius paginae valeat fundamenta disrumpere. Cui rei, vim doloque secluso, praesens praesentibus vobis stipulatus sum et spondei, atque Aquilianae legis innodatione subinterfixa, qui omnium scripturarum solet adicere plenissimam firmitatem.

Quam cartulam manu mea subscripsi».

²⁵ Levy, *Weströmisches Vulgarrecht. Das Obligationenrecht*, p. 328 and following.

²⁶ *Formula II: «Ill. ill. liberto nostro salutem. Incertum vitae tempus, quo mortali ducimur; nulli cognitum est dies, quia nec initium nascendi novimus, dum in hac vita venimus, nec finem scire possumus, dum a seculo presenti transimus. Haec res nos excitat, ut aliquem beneficium ante Deum invenire mereamur. Quam ob rem ingenuum te civemque Romanum esse constituo atque decerno, ut ab hodierna die, ubi ubi manendi, vivendi laremque fovendi volueris, liberam in Dei nominis habeas potestatem. Nam et, ut haec libertas plenissimam habeat firmitatem, do et dono tibi hoc et illud cunctoque peculio».*

²⁷ *Formula III: «Cum humanis sensibus omnia, quae ex bona voluntate proveniunt, Dei arbitrio probantur infundi, id maxime divinae adhortationis esse dignoscitur,*

cum ad faborem libertatis animus provocatur. Hac itaque contemplatione permoti, quidquid in vobis nubilum contulerat origo nascendi, ad splendorem ingenuitatis, habita munificentia, institui roborare. Proinde ex hac die ad instar civium Romanorum ingenuum te civemque Romanum esse constituo atque decerno; ea tamen conditione servata, ut, quousque advixeris, ut ingenuus in patrocinio mihi persistas et ut idoneus semper adhaereas. Post obitum vero meum nullius reservato obsequio, ubi ubi manendi».

²⁸ This *Formula* is very similar in its contents to number V: *«Ill. dilectis meis ill. libertis salutem. Quia semper sunt apud Deum quaerenda animae remedia et saluti-fero consilio bonorum est operum devotio celebranda, qui et peccato exiliet et augeat merito, et ideo servitii conditio est praemio muneranda, ut ad aeternam perveniat libertatem. Pro qua re vestrae devotionis contemplamus servitium, ingenuos civesque Romanos vos esse decerno; et ideo relaxato omni peculio, quod habere visi estis, in vestro maneat iure; et donamus vobis de propria facultate nostra propter confirmandam ingenuitatem vestram in loco ill. hoc et illud, quod nobis ex munificentia gloriosi domini nostri illius in iure adventit; ita tamen, ut, quousque advixeris, ut ingenui obsequium mihi prestare debeatis; post obitum vero meum, ubi ubi larem vobere volueritis, liberam habeatis potestatem. Quod etiam iuratione confirmamus per divini nominis maiestatem et regnum gloriosissimi domini nostri ill. regis, quia mihi numquam licebit, contra hunc mercedis mee factum venire, neque a quacumque infringi unquam persona. Quod si forte, quod fieri non credo, contra hanc libertatem aut ego aut quicumque venire temptaverit, primitus iudicium Dei incurrat et a sacrosancto altario efficiatur extraneus, et sicut Datam et Abiron vivus in infernum descendat et cum Iudam Scarioth participium sumat, et insuper inferat vobis auri libras tantas, et nec sic quoque hanc libertatem inrumpere permittatur. In quam rem».*

after the manumission, the former slave will turn into an *ingenuus civesque romanus*. This allusion to the roman citizenship could be considered a proof of the personality of the visigothic law; these *formulae*, therefore, could be aimed only to the roman citizens of the visigothic kingdom. In this case, it should be logical to the other *formulae* to make a mention to the gothic nature of the other, non-roman, citizens, a fact that doesn't happen. Even more, this mention to the roman citizenship appears also in the *Lex Wisigothorum*, but referred to the Christian citizens. I will return to this subject later.

THE 2ND FORMULA

I would like to take one of the shorter texts as an example of the different elements taken into account by the writer of the *formulae*, as is the case of *formula* number two. I have divided the text in five parts, which I will briefly comment one by one.

Formula 2: «(Ill. ill. liberto nostro salutem.) (Incertum vitae tempus, quo mortali ducimur; nulli cognitus est dies, quia nec initium nascendi novimus, dum in hac vita venimus, nec finem scire possumus, dum a seculo presenti transimus. Haec res nos excitat, ut aliquem beneficium ante Deum invenire mereamur). (Quam ob rem ingenuum te civemque Romanum esse constituo atque decerno,) (ut ab hodierna die, ubi ubi manendi, vivendi laremque fovendi volueris, liberam in Dei nominis habeas potestatem). (Nam et, ut haec libertas plenissimam habeat firmitatem, do et dono tibi hoc et illud cunctoque peculio)».

Translation: «We greet ill. ill. our libertus. Uncertain is the time of our life, through we mortals are driven; it is unknown to us the day in which we are born, when we come to life, nor can we be aware about the end, when we leave the present age. This question gives us reasons to obtain the reward of some benefit in the presence of God. That is why I establish and decide that you will be a free Roman citizen, to have in ubi ubi from today, the free right to dwell and live at home and keep it warm in the name of God. And for this freedom to be fully firm, I give and donate to you (this) and (that) with your complete peculium».

- 1 The first part is an introduction to the name of the *libertus*: *Ill. ill. liberto nostro salutem*. The manumissor greets his former slave and, without directly referring to it, establishes the bound of the *patronatus*. That is manifested with the use of the word *libertus* and, specially, the possessive pronoun *nostro*, meaning this way that this new bound substitutes the old one. As has been said above, there are other *formulae* where this bound is expressly revoked, but in this one that's not the case²⁹.
2. The second, is the most literary part of the *formula*: *Incertum vitae tempus, quo mortali ducimur; nulli cognitus est dies, quia nec initium nascendi novimus, dum in hac vita venimus, nec finem scire possumus, dum a seculo presenti transimus. Haec res nos excitat, ut aliquem beneficium ante Deum invenire mereamur*. As I have just quoted, it's quite typical in this *formulae* to include a moralising text which justifies the manumission or, at the same time, establishes the religious consequences of the rupture of the terms of manumission. This time, the writer uses a style which could be defined as pessimistic in order to justify the manumission. This refers to the transitory nature and uncertainty of life, which is exclusively in God's hands, and appears to consider the manumission a true act of Christian charity³⁰.

²⁹ In that documents, the sources use expressions like *manumissio absoluta* (A law by Wamba, LW 4,5,7) or *manumissio directa* (IV council of Toledo). See Claude, *Freedmen in the Visigothic Kingdom*, p. 165.

³⁰ See, for example, the next *formula* (3) or, specially, the nr. 20. In this sense, Schwerin, *Sobre las fórmulas visigóticas y las andecavenses*, p. 181.

3. The third is, perhaps, the most interesting part of the text: *Quam ob rem ingenuum te civemque Romanum esse constituo atque decerno*. As I have already quoted, this is not the only reference to the roman citizenship contained in the *formulae*. Nor it is the only one in the visigothic legislation; in a law by King Sisebut³¹, which forgives the tenancy of Christian slaves to the Jews, and which could have been written more or less at the same time than the *formulae*³², the roman citizenship appears to be a synonym of christian citizenship, in contrast to the reduced rights of the non-Christian inhabitants of the kingdom, in this case, the Jews.

That's why I think that it could be a sign of the personality of the visigothic law but, more probably, we are in front of a rhetorical resort which bounds the concept of true (Christian) citizenship with the roman citizenship³³. As in the case of the mentions to the *Lex Aquilia*, the visigothic jurists, one more time, used the references to the roman world as a legitimation tool³⁴.

On the other hand, the use of the word *ingenuus* referring to the enfranchised slaves is quite typical in this age³⁵, when the original meaning³⁶ of the term, in connection with the free born citizens, is already long lost³⁷.

But there is also another element which makes this part of the text especially interesting; I'm referring to the use of the expression *Quam ob rem*, meaning that the manumission is a consequence of something. After the pessimistic description of the futility of life and the need to do

³¹ LW 12,2,14 (*Flavius Sisebutus Rex*): «(...) *Libertare vero servum christianum Hebreus si maluerit, ad civium Romanorum dignitatem eundem manumittere debebit; nulli scilicet Hebreo nec cuiuslibet obsequio reservato, sed vitam suam ubi voluerit manumissus procul ab Hebreorum consortio transigendo habeat potestatem*. (...)».

³² That should be so if the *formulae* were written in time of Sisebut, if the most accepted (and even so, uncertain) theory is correct.

³³ As a simple reference, in favour of the personality principle, Zeumer, *Historia de la legislación visigoda*, p. 14, 21-24, 66-68, 84, *et.al.*; Ureña, *La legislación gótico-hispana*, p. 235 and following.; Dahn, *Westgothische Studien*, p. 3-4; Merêa, *Estudos de Direito Visigótico*, introduction; more recently, King, *Derecho y sociedad en el reino visigodo*, p. 19 and following.; Idem, *King Chindasvind and the First Territorial Law-code of the Visigothic Kingdom*, p. 135 and following.; Pérez Prendes, *La Monarquía*, p. 71-78; Seyward Lear, *The public law of the Visigothic Code*, p. 2; Reilly, *Las españas medievales*, p. 52-53; Luiselli, *Storia culturale dei rapporti tra mondo romano e mondo germanico*, p. 572-573 and 582-583, who considers that the step to the territoriality principle was given with Leovigild's *Codex Revisus*; Thompson, *The Goths in Spain*, p. 210 and following.; Guterman, *From personal to territorial law*, p. 20 and following, 86-87, who thinks that the real territorial unity had never existed, due to the short time lapse between the promulgation of the *Lex Wisigothorum*, and the Arab invasion. Mitteis, *Deutsche Rechtsgeschichte*, p. 79, the CE would have had territorial applicability; this applicability ended with LRW, imposing, from then on, the personality principle.

From the other side, in favour of the territorial applicability, García-Gallo, *Nacionalidad y territorialidad del derecho en época visigoda*, p. 168 and following.; *Con-*

sideración crítica de los estudios y la legislación visigoda, p. 344 and following.; D'Ors, *El Código de Eurico*, p. 6 (considers that the LRW was a kind of law manual directed to the preparation of judges) and, more recently, Iglesia Ferreirós, *La creación del Derecho. Una historia de la formación del derecho estatal español*; idem, *La creación del derecho en el reino visigodo*, p. 115 and following.; Fdez. Cano, *Una explicación de la presencia de CTh. 1.4.3 en la Lex Romana Wisigothorum*, p. 290-291; Lalinde-Abadía, *Los gastos del proceso en el Derecho Visigodo*, p. 102-103; Liebeschütz, *Strategies of distinction*, p. 141 and following.

³⁴ It could be logical to think that this reference to the *romana civitas* was a way to establish a *manumissio plena* or *absoluta*. That proposal has been made by some authors, like Mans, *Las clases serviles bajo la monarquía visigoda y en los estados cristianos de la reconquista*, p. 35. But, as it is shown by this text, that is not the case. Claude, *Freedmen in the Visigothic Kingdom*, p. 166. On the other hand, I would underline the absorption of *constituere* and *decernere*, verbs frequently found in roman sources as proof of the legitimising power of the roman culture. Heumann-Seckel, *constituere* and *decernere*, p. 98 and 123; OLD, *constituo* and *decerno*, p. 420 and 489.

³⁵ Niermeyer, *Mediae Latinitatis Lexicon Minus, Ingenuus*, p. 537. In the postclassical roman law, this word is already used in relation which every free person, regardless of origin, Kaser, *Das römische Privatrecht II*, p. 113. See Melluso, *La schiavitù nell'età giustiniana*, p. 127-128.

³⁶ Kaser, *Das römische Privatrecht I*, p. 296.

³⁷ Isidorus takes the word in the ancient sense when he states, *Etymologiarum* 9,4,46: «*Ingenui dicti, quia in genere habent libertate, non ifacto, sicut libertis*».

good deeds in the face of God, I think that it's clear that this manumission is more directed at the salvation of the own soul of the patron, than to the welfare of the former slave. In that respect, could be said that, at least this sort of manumission, is a kind of safe-conduct to eternal life.

4. The fourth part of the *formula* says: *ut ab hodierna die, ubi ubi manendi, vivendi laremque fovendi volueris, liberam in Dei nominis habeas potestatem*. I would like to stand out the expression used to define the contents of this freedom, showing that the key element is the possibility of having an independent life in a home. The key here is that the former slave will have the right to live, undisturbed, in a home in the name of God. The existence of the *obsequium* will, of course, reduce this autonomy.

Aside from this question, the use of the expression *manendi*³⁸, *vivendi*, *laremque fovendi*³⁹, is also typical in Roman law, and we can find it in different sources. This fact is remembered to us by Zeumer himself⁴⁰, so, for sure that we are facing a very common expression which has a roman origin⁴¹.

5. Finally, the *formula* states the possibility to give a *peculium* together with some kind of present⁴²: *Nam et, ut haec libertas plenissimam habeat firmitatem, do et dono tibi hoc et illud cunctoque peculio*. This way, the writer of this text recognises that, without the existence of an own patrimony, the recently obtained freedom has no sense: without wealth there is no real autonomy. That is why he talks about *plena firmitas*. This fact, the existence of a *peculium liberti*, is not necessary for the manumission to be effective, that is to say, this is not a formal requisite, just as the *Lex Wisigothorum* states, but the *Lex Wisigothorum* itself in different places assumes that the former slave will be enfranchised alongside with his peculiar patrimony, which turns, together with the possible donations, into the new *peculium liberti*⁴³. That means that the present *formula* has a double nature: on the one hand, it is a manumission document but, on the other, and at the same time, it is a patrimony grant which has the characteristics of a donation⁴⁴. Indeed, the expression *do et dono*⁴⁵ could not be separated from the institution of the *donatio*, specifically the

³⁸ Niermeyer, *Mediae Latinitatis Lexicon Minus*, *Manens* and *Manere*, p. 636

³⁹ Heumann-Seckel, *Handlexikon*, p. 220; 305. It is important to bear in mind that the text belongs to the age when christianity was yet established; that's why I've translated *larem fovere* as «to keep the home warm», regardless of the ancient roman meaning «to gossip the *lares* gods».

⁴⁰ Zeumer, *Formulae Visigothicae*, p. 576, n. 6.

⁴¹ CTh 6,2,20: «*Id. aa. florentino praefecto urbi. Dudum praecepimus, ut aurum oblativum senatores, qui in sacratissima urbe degunt, in urbe compleant, ii vero, qui in provinciis larem foverent, per censualium officia in provinciis solverent (...)*». CI 1,3,48,2: «*Imperator Justinianus: «Et si quidem captivos scripserit heredes, civitatis, in qua testator larem fovere ac degere noscitur, episcopus et oeconomus hereditatem suscipiant et omnimodo in redemptione captivorum procedat hereditas sive per annuos redditus sive per venditionem mobilium seu se moventium rerum: nullo penitus ex hoc lucro vel oeconomo vel episcopo vel sacrosanctae ecclesiae relinquendo (...)*».

The expression *larem fovere* could be translated, in its original meaning, as «gossip the *lares* gods», Heumann-Seckel, p. 305; but, in a christian environment, I would interpret the expression more literally, as stated above, as «keep the home warm». OLD, *lar*, p. 1002.

⁴² See above.

⁴³ Specifically 5,7,14: «*De conditionibus a manumissione in scripturam manumissi conscriptis: Qui mancipium suum per scripturam liberum faciens constituerit fortasse, non licere ei de peculio suo aliquid iudicare, si quid exinde libertus libertave distraxerit vel donaverit, modis omnibus invalidum erit, patronus eius scilicet aut patroni filii omnia sibi vindicaturi. Certe si nulla talis condicio intercesserit, liberum erit illi, qui liber est redditus, de peculio suo facere quod voluerit; aut etiam si inordinatus moriens filios legitimos non reliquerit, vel aliam quamcumque conditione dominus eius per eandem libertatis scripturam non statuerit, ad patronum aut ad patroni filios universa res eius ad integrum pertinebit*».

⁴⁴ See Niermeyer, *Mediae Latinitatis Lexicon Minus*, *Donatio*, specially 1st and 4th, p. 355.

⁴⁵ Not only the visigoths used this expression. In another *chartula donationis* found in the *Codice Diplomatico Longobardo* we can read: «*(...) ideoque ego qui supra Urso religioso presbiter, licet indigno, de ista sancta Maria maiore civitatis nostre Cremonensis do et dono in perpetuum et pro indefinito portiuncula mea quanta pars mihi advenit ad matre mea Mathilda bone memorie honoranda femina filia domni Dagilberti quondam gloriosi ducis civitatis Placentine viro illustrissimo, et abet in territorio ipso Placentino iuxta Florentiam vicum (...)*». About this kind of donation in Roman law, Archi, *La donazione*, p. 85-94.

*donatio in dando*⁴⁶; this is not the place to talk about that, but suffice it to say, that the influence of the roman law in the theory of visigothic donation is determinant⁴⁷.

Thus, the grant of a *peculium* could be considered to have a confirmatory sense⁴⁸, even being unnecessary from a strictly formal point of view.

In conclusion I would say that, taking into consideration the different facts about which I have spoken above, it's clear that the construction of a regulation about the manumission in the Visigothic kingdom could not be possible without bearing in mind the roman precedence, and not only from the material point of view, that is, the direct influence that the roman sources exert on the Visigothic jurists, but also, and more generally, in the acceptance of the *auctoritas* that every roman institution has. It is sure that the visigoths knew for long time the existence of slavery, and that they had their own ways to handle it, but after the course of the centuries, in the same way

⁴⁶ Isidorus, *Etymologiarum*, 5,24: «*Donatio est cuiuslibet rei transactio*».

⁴⁷ The key law is LW 5,2,6, based in CE 308, which in turn is based in CTh 8,12,1. Levy, *West roman vulgar law. The law of property*, p. 164; D'Ors, *El Código de Eurico*, p. 236. CTh 8,12,1 (*Interpretatio*): «*Donatio aut directa est aut mortis causa conscribitur. Directa donatio est, ubi in praesenti res donata traditur. Mortis causa donatio est, ubi donator, dum advivit, rem, quam donat, sibi reservat, scribens: si prius mortuus fuero quam tu, res mea ad te perveniat, ut postea ad illum, cui donat, non ad heredes donatoris res donata perveniat. Quod si prius moriatur, cui res mortis causa donata est, res in iure permaneat donatoris. Est et alia donatio, ubi donator obligat illum, cui donat, ut aliquid faciat aut non faciat, id est, si aliquid iubeat fieri, quod impossibile iudicetur, aut quod honestati contrarium videatur; aut si id ordinet fieri, quod honestum est et possit impleri: quia tunc infirmatur donatio, quando condiciones honestatis possibilis impletas non fuerint. Nam si inhonestae et impossibiles condiciones ponantur, remotis condicionibus firma donatio est (...)*». The first three chapters of book LW 5 are about donations. Of these, the first one is dedicated to the donations in favour of the church, specially paying attention to the conservation of the patrimony; the development of this legislation is materialised in the council-legislation, see Vives, *Concilios Visigóticos e Hispano Romanos*. The second group, in spite of the title, «*De donationibus generalibus*», is mainly dedicated to the matrimonial donations (LW 5,2,3;4;5;7). The third is dedicated to the donations of the *patronus*, specially with regard to the grants to the *saiones*.

Generally speaking, the formalities required for the validity of the donations in the different barbaric codes, were directly taken from the roman tradition. For instance, the words as are expressed by LB 60,2: «*Ceterum si quis post haec barbarus vel testari voluerit vel donare, aut Romanam consuetudinem aut barbaricam esse servandam, si vult aliquid firmitatis habere quod gesserit, id est: ut aut scripturis legitimis, quod largiri cuicumque voluerit, teneatur, aut certe quinque ingenuorum testimonio, quod dimittere voluerit vel donare, robur accipiat et in eius, cui res deputata fuerit, iura commigret*»; The same could be said

about this texts from *Fragmenta Vaticana*, 249,5: «*Post in iisdem conscribendis praecipue nomen donatoris, ius ac rem notans proscribat. Tum utrumque iure compleatur neque id occulto aut per imperitos aut privatim; his enim rebus saepe clandestina fraus, et quae facta sunt infecta et inducta quae scripta sunt simulans aliisque ac dehinc aliis largiendo atque donando ac saepe venum dando, multos habendi spe allectos concurrere in expugnanda sibi proprietate impulsit*», and 249,6: «*Tabulae itaque, aut quodcumque aliud materiae tempus dabit, vel ab ipso vel ab eo quem fors sumministraverit scientibus plurimis perscribantur eaeque, ut supra comprehensum est, rebus nominibus personisque distinctae sint; ac tum corporalis traditio (in quam saepe multi talia simulando inrepentes aut vi corpora capientes sollemne illud ius ac voluntarium inconcessa usurpatione praeripiunt) ea igitur ipsa rerum traditio praesentium, advocata vicinitate omnibusque arbitris, quorum post fide uti liceat, convento plurimorum celebretur*». Levy, *West roman vulgar law. The law of property*, p. 143; Rügger, *Einflüsse des römischen Rechts in der Lex Burgundionum*.

As an example, the text of the 7th formula, related to the ecclesiastical donations: «*... Haec transgressor, divina ulciscense severitate, suscipiat, nulla tamen ratione huius nostrae oblationis formam involvere valeat. In quam cartulam praesens praesentibus stipulatus sum et sponsondi, et quia literas ignoro, rogavi et dominum et fratrem ill., qui pro me suscriptor accessit, ego vero manu mea signum feci et testibus a me rogatis, bene natis viris, pro firmitate tradidi roborandam, Aquilianam quippe commemorans legem, qui omnium scripturarum plenissimam tribuet firmitatem.*

Facta cartula oblationis sub die calendis, in loco ill., anno ill. regnante ill., era ill.

Ill., rogatus a domino et fratre ill. quia ipse literas ignorat, pro eum scriptor accessit et hanc oblationem ab eius voluntate factam pro confirmationem suae personae subscripsi; ipse vero subter manu sua signum fecit, sub die, anno et era, quae supra.

Signum ill., qui hanc oblationis cartulam cum rebus conlatis sancto martiri ill. spontanea voluntate contulit.

Finally, see FG 15.

⁴⁸ Claude, *Freedmen in the Visigothic Kingdom*, p. 177-178.

that happened to other institutions, and in a greater degree that it is known to other Germanic people, they almost completely took the roman regulation on manumission and adapted it to their own needs.

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