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## ***Senatus Consultum Ultimum* – State of Emergency in Ancient Rome**

**Keywords:** *senatus consultum ultimum*, Roman Republic, senate, consul, state of emergency

**Słowa kluczowe:** *senatus consultum ultimum*, republika rzymska, senat, konsul, stan zagrożenia

### **Abstract**

This paper presents the *senatus consultum ultimum*, i.e., the final resolution of the senate passed in moments of extraordinary danger to the Roman Republic. We answer the question what was the legitimacy of such resolutions and indicate their rationale and the effects of their issuance. *Senatus consultum ultimum* was the most powerful weapon of the Roman senate in the fight against internal political enemies in the late republic, so it needs to be clarified whether the SCU was a legitimate measure to protect the state or it cared only for the political self-determination of the senate and the optimates.

### **Streszczenie**

#### ***Senatus consultum ultimum* – stan wyjątkowy w starożytnym Rzymie**

W niniejszym opracowaniu zostanie przybliżona *senatus consultum ultimum*, tj. ostateczna uchwała senatu podejmowana w momentach nadzwyczajnego zagrożenia rzymskiej

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republiki. Postaram odpowiedzieć na pytanie, jaka była legalność ustrojowa takich uchwał, ponadto wskazać ich przesłanki oraz skutki wydania. *Senatus consultum ultimum* było bowiem najpotężniejszą bronią rzymskiego senatu w walce przeciwko wewnętrznym wrogom politycznym w późnej republice, dlatego wyjaśnienia wymaga, czy SCU było zgodnym z prawem środkiem służącym ochronie państwa czy dbało tylko o polityczne samostanowienie senatu i optymatów.

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## I.

The legislation of each country should provide special regulations in case of situations threatening its functioning, and even more so – the very existence of the state. These situations are called states of emergency. The institution of states of emergency dates back to the times of Roman dictatorships. A dictator was appointed by the consul based on a resolution of the senate (*senatus consultum*), usually from among the former consuls, in case of a threat to the republic's existence. It was a one-man office, which concentrated the *imperium maius*, i.e., the highest military and civil power, also the consuls, whose *imperium* for the time of his office was suspended or exercised within limits set by the dictator. With the cessation of the threat, the dictator should resign from his office<sup>3</sup>.

The model of Roman dictatorship influences modern states of emergency. The systemic practice of states has led to the formation of different ways of responding to emergencies, and thus the formation of different legal forms and practical responses of public authorities that could be applied to especially dangerous situations. In the state of law, the Constitution defines the requirements of states of emergency, which is particularly relevant in pandemics<sup>4</sup>.

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<sup>3</sup> D. 1,2,2,18: *Itaque dictatores proditi sunt, a quibus nec provocandi ius fuit et quibus etiam capitis animadversio data est. Hunc magistratum, quoniam summam potestatem habebat, non erat fas ultra sextum mensem retineri* – see J. Zabłocki, A. Tarwacka, *Publiczne prawo rzymskie*, Warsaw 2011, p. 81; A. Dębiński, J. Misztal-Konecka, M. Wójcik, *Prawo rzymskie publiczne*, Warsaw 2010, p. 27.

<sup>4</sup> In Poland the tradition of regulating states of emergency dates back to the times of the Second Republic of Poland and the issuance of a decree on the introduction of a state of

In this paper, however, we would like to present another institution adopted at times of extraordinary danger to the Roman republic, namely *senatus consultum ultimum*<sup>5</sup>. Firstly, we answer the question what was the legitimacy of such resolutions of the senate and indicate their grounds and the effects of their issuance. The *senatus consultum ultimum* was the most powerful weapon of the Roman senate in the fight against internal political enemies in the late republic, so it needs to be clarified whether the SCU was a lawful means of protecting the state or whether it only cared for the political self-determination of the senate and the optimates.

## II.

The preserved source material of Roman law indicates more than a dozen cases of the enactment of the *senatus consultum ultimum*<sup>6</sup>. In three specific cases, extant sources confirm that the SCU was passed: against the tribune Gai-

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emergency by the Provisional Head of State on January 2, 1919. The Constitutions of 1921 and 1935 already regulated the institutions of martial law and state of emergency, as did the so-called Small Constitution of 1947. The Constitution of 1952 regulated only martial law, but in a way combining both these states, and it was not until the amendment of 1983 that the concept of a state of emergency was introduced. The next Small Constitution of 1992 included the notion of martial law and a state of emergency, and the currently valid Constitution regulates also a third type of state of emergency – a state of natural disaster.

<sup>5</sup> This term is nowadays known under the shortcut SCU = *senatus consultum ultimum* or *senatus consultum de re publica defendenda*. The name is based on the writings of Julius Caesar (Civil wars I 5,3).

<sup>6</sup> H. Appel, *Kontroversje wokół senatus consultum ultimum. Studium z dziejów późnej republiki rzymskiej*, Toruń 2013, p. 22 et seq.; H.H. Scullard, *From the Gracchi to Nero. A history of Rome from 133 b.c. to a.d. 68*, 2011; J. Bleicken, *Senatsgericht und Keisergericht. Eine Studie zur Entwicklung des Prozessrechtes im frühen Prinzipat*, Vandenhoeck & Ruprecht, Gottingen 1962, pp. 18–19; L. Garofalo, *Studi sulla sacertà*, Padova 2005, p. 75 et seq.; S. Shump, *The Senatus Consultum Ultimum and its Relation to Late Republican History*, 2011 [http://soundideas.puget-sound.edu/summer\\_research](http://soundideas.puget-sound.edu/summer_research) (22.05.2021); G. Plaumann, *Das sogenannte Senatus consultum ultimum, die Quasidiktatur der spätere nrömischen Republik*, <https://www.degruyter.com/document/doi/10.1515/klio-1913-1325/html> (22.05.2021); S.M. Da Costa Sanchez, *O senatus consultum ultimum umaretórica da exceçã*, Rio de Janeiro 2010, p. 3 et seq.; R. Scevola, *Senatus consultum ultimum Orientamenti interpretativi e questioni aperte*, dav-medien.de.

us Grakchus in 121 BC, during the Catiline conspiracy in 63 BC, and finally against Caesar in 49 BC<sup>7</sup>.

Thus, the first instance<sup>8</sup> of applying the *senatus consultum ultimum* occurred in 121 BC, when, by resolution, the tribune Gaius Grakchus and his supporters were sentenced to execution without trial or opportunity to defend themselves<sup>9</sup>.

Another instance of the use of the *senatus consultum ultimum* was in 100 BC, when Gaius Marius, the six-time consul, was asked to intervene because of fighting in the city's streets that broke out between supporters of the populars and the optimates. Gaius Marius locked the initiators of the reform in the *Curia Hostilia*, wanting them to debate and settle the dispute. Eventually, however, an angry mob lynched the populars to death. Cicero, referring to the actions against Rabirius, claims that the litigants simply wanted to attack the SCU, which made it possible to take decisive action against the threat the Roman republic could face<sup>10</sup>.

A later example of *senatus consultum ultimum* is a resolution passed by the Roman senate in 83 BC. According to Iulius Exsuperantius, during the consulship of Norbanus and Scipio, when Sulla arrived from Asia with hostile in-

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<sup>7</sup> Other instances of using the *senatus consultum ultimum*: in 87 BC, against Lucius Cornelius Cinna; in 62 BC, against Quintus Cecilius Metellus Nepos and Caesar; in 48 BC, against Marcus Cecilius Rufus; in 47 BC, against Publius Cornelius Dolabella; in 40 BC, against Salvidienus Rufus.

<sup>8</sup> The application of the *senatus consultum* was first demanded in 133 BC. Pontifex maximus Scypion against Tiberius Grakchus, but according to Plutarch he was refused by the consul Publius Mucius Scevola (Plutarch, Tiberius Grakchus XIX). One can see in these events the genesis of the *senatus consultum ultimum* – H. Appel, *Controversy around*, p. 78.

<sup>9</sup> Caes., *de Bello Civ.* 1,7: “Quotiescumque sit decretum, darent operam magistratus, ne quid res publica detrimenti caperet (qua voce et quo senatus consulto populus Romanus ad arma sit vocatus), factum in perniciosis legibus, in vi tribunicia, in secessione populi templis locisque editoribus occupatis”.

<sup>10</sup> Cic., *Rab. Perd.* 2,5: “Non enim C. Rabirium culpa delicti, non invidia vitae, Quirites, non denique veteres iustae gravesque inimicitiae civium in discrimen capitis vocaverunt, sed ut illud summum auxilium maiestatis atque imperi quod nobis a maioribus est traditum de re publica tolleretur, ut nihil post hac auctoritas senatus, nihil consulare imperium, nihil consensus bonorum contra pestem ac perniciem civitatis valeret, idcirco in his rebus evertendis unius hominis senectus, infirmitas litudo que temptata est”.

tentions against Marius, the senate passed the SCU so that the republic would suffer no harm<sup>11</sup>.

On the other hand, in 77 BC. The senate sent Marcus Emilius Lepidus to govern the province of Transalpine Gaul, as there was a dangerous rivalry between the populars and the optimates in the city. Lepidus, however, returned to Rome at the head of troops and supporters, intending to support the populars. As a last resort, the Senate declared a *senatus consultum ultimum*.

Another use of the “final resolution of the senate” was in 63 BC, when the senate voted against Lucius Sergius Catiline, who wanted to stage a coup. By resolution of the senate (*senatus consultum ultimum*), the consul Cicero delivered four speeches, and the conspirators were executed by strangulation<sup>12</sup>.

On the other hand, in 52 BC, when Publius Clodius Pulcher was killed in a clash with supporters of the optimates, the senate passed the *senatus consultum ultimum*, but the newly elected consul Gnaeus Pompeius did not have to intervene because the riots had ceased<sup>13</sup>.

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<sup>11</sup> Ex.7,43: “Nam Norbano et Scipione consulibus, cum ex Asia Sulla contra Marium atque factionem veniretin festus, timens senatu iram, ne malo publico certamina inter duces orirentur, statui tut curarent consules ne res publica acciperet detrimentum. Hoc itaque senatus consulto excitati consules, contra venientem Sullam atque omnibus exitium minitantem, praesidia sibi cuiusque generis parare coeperunt”.

<sup>12</sup> All those speeches were translated to Polish. Marek Tulisz *Cyceron, Mowy*, eds. S. Kołodziejczyk, J. Mrukówna, D. Turkowska, Kęty 1998, pp. 28–76; A. Chmiel, *Proces katylinarczyków jako przykład rzymskiego „procesu politycznego”*, [in:] *Prawo karne i polityka w państwie rzymskim*, eds. K. Amielińczyk, A. Dębiński, D. Słapek, Lublin 2015, pp. 47–62; H. Kowalski, *Prawne i filozoficzne aspekty kary śmierci w procesie Katylinarczyków*, [in:] *Kara śmierci w starożytnym Rzymie*, eds. H. Kowalski, M. Kuryłowicz, Lublin 1996, pp. 41–58; T. Łoposzko, *Niewolnicy wobec sprzysiężenia Katyliny*, “*Annales UMCS, Historia*” 1985, No. 40, pp. 29–47; H. Nohl, S. Bednarski, *Cycero. Cztery mowy przeciwko Katylinie*, Kraków 1922, p. XX; B. Sitek, *Senatus consultum ultimum. Ochrona interesu państwa w sytuacji wewnętrznego zagrożenia na przykładzie procesu Katyliny*, “*Teka Kom. Praw. – OL PAN*” 2018, vol. XI, No. 1, pp. 343–355; Th.N. Mitchell, *Cicero and the Senatus “consultum ultimum”*, “*Zeitschrift für Alte Geschichte*” 1971, vol. 71, pp. 47–61.

<sup>13</sup> Three sources have survived that provide information on this subject: Cicero (Cic. Pro Mil., 26,70: “Cn. Pompeium, iuris publici, moris maiorum, rei denique publicae peritissimum, cum senatus ei commiserit ut videret Ne quid res publica detrimenti caperet (quo uno versiculo satis armati semper consules fuerunt, etiam nullis armis datis), hunc exercitu, hunc dilectu dato, iudicium exspectaturum fuisse in eius consiliis vindicandis, qui vi iudicia ipsa tolleret?); Askoniusz (Asconius, Pro Milone 3,34: Itaque primo factum erat S.C. ut interrex

Another *senatus consultum ultimum* was issued against Caesar<sup>14</sup>. In 49 BC, the senate voted to strip Julius Caesar of his command of the army and ordered him to return to Rome. Negotiations ensued between Caesar's supporters and the senate. As a result of the disagreement, the senate again tried to vote against Caesar, but two tribunes spoke against the resolution. In this situation, the senate passed the *senatus consultum ultimum* and thus declared Caesar an enemy of the state (*hostis*) to break the dissenting vote. Upon hearing this, Caesar crossed the Rubicon, later arguing that even Sulla did not oppose the decisions of the tribunes<sup>15</sup>.

Thus, the *senatus consultum ultimum* was a resolution of the Roman Senate passed in moments of extraordinary internal danger. It was used only in cases of internal disturbances during the late republic<sup>16</sup>. By issuing such a resolution, the senate informed officials that it considered the situation to be critical. It was usually combined with declaring someone an enemy of the state (*hostis rei publicae*). According to Cicero, the SCU imposed on the consuls the duty to "see to it that the republic does not suffer any harm" (*res publica detrimenticaperet*)<sup>17</sup>.

*Senatus consultum ultimum* posed and still poses a considerable problem when it comes to interpreting it. How complex the issue was can be

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et tribuni plebis et Cn. Pompeius, qui pro cos. ad urbem erat, viderent ne quid detrimenti res publica caperet") and Cassius Dio (Dio 40,49,5: "μίασμα περιχωρήσειν ἤλπισεν εὐθὺς γοῦν τῆς δέιλης ἐς τὸ Παλάτιον δι' αὐτὸ τοῦτο συλλεγόντες τὸν τε μεσοβασιλέα προχειρισθῆναι, καὶ τῆς φυλακῆς τῆς πόλεως καὶ ἐκεῖνον καὶ τοὺς δημάρχους καὶ προσέτι καὶ τὸν Πομπήιον ἐπιμεληθῆναι ὥστε μηδὲν ἀπ' αὐτῆς ἀποτριβῆναι, ἐψηφίσαντο, προήει τε ἐς τὸ μέσον καὶ τῆς ἀρχῆς ὁμοίως ἢ καὶ μᾶλλον ἀντεποιεῖτο").

<sup>14</sup> Quint., *Inst.* 11,1,80: *Ligarium et perseverasse et non pro Cn. Pompeio, inter quem et Caesarem dignitatis fuerit contentio, cum salvam uterque rem publicam vellet* – see also Cic., *Att.* 7,11,1 and 10,7,1.

<sup>15</sup> N. Rogosz, *Stanowisko senatu wobec rywalizacji Pompejusza z Cezarem (I XII 50 r. – II I 49 r. p.n.e.)*, [in:] *Rzym antyczny: polityka i pieniądź*, vol. 2, ed. A. Kunisz, Katowice 1997, pp. 9–37; A. Pókecz Kovács, *Economic crisis and senatus consultum ultimum (48 AND 47 BC)*, "Fundamina" 2014, vol. 20, No. 2, pp. 729–737.

<sup>16</sup> H. Kowalski, *Religia i polityka w zamachach stanu w Rzymie w okresie republiki*, [in:] *Zamach stanu w dawnych społecznościach*, eds. A. Sołtysiak, J. Olko, Warsaw 2004, p. 12 et seq.

<sup>17</sup> Sall. *Cat.* 19: "Senatus decrevit darent operam consules ne quid res publica detrimenti caperet. Inna forma: Videant consules, ne quid detrimenti res publica capiat" – see also Cicero, *In Catilinam* 1,4; *Pro Milone* 26,70.

seen from the first use of the resolution against Gaius Gracchus and his supporters in 121 BC<sup>18</sup>. They were put to death without a court or possibility of appeal, which conflicted with *lex Valeria* and *lex Porcia*<sup>19</sup>. Consul of the year 121 BC. Lucius Optimus answered for this in a court of law, and the trial was intended to answer how far an official could go in exercising his power (*imperium*) in emergencies. Importantly, the defendant did not deny that he had broken existing law but claimed that he had done so under the *senatus consultum ultimum* for the good of the state, as a result of which he was acquitted<sup>20</sup>.

Therefore, it is assumed that under the *senatus consultum ultimum*, consuls had powers equal to those of a dictator, which allowed them to take all necessary measures, including the temporary suspension of certain offices and institutions. Based on the SCU, consuls even obtained the right to execute a Roman citizen without judicial proceedings (*coërcitio*).

All the sources quoted in the annotations contain neither detailed prerequisites for the enactment of the SCU, nor precisely regulated powers vested in the consuls. According to H. Appel<sup>21</sup>, the very general and indefinite formula of *senatus consultum ultimum* is precisely the most significant feature of this extraordinary resolution. The SCU was taken in exceptional situations. Therefore, any further specification could limit its application and introduction of modifications concerning the executors of this resolution. It seems that due to its general nature, the SCU was difficult to veto.

The lack of a strictly defined formula of SCU and very general formulations caused various interpretations and legal consequences. A detailed analysis of historical events in the Roman republic and surviving source accounts<sup>22</sup> allows us to conclude that the SCU could grant consuls broad dictatorial powers (121 BC and 63 BC), including *coërcitio*, as well as merely preventive measures or police functions (52 BC). *Senatus consultum ul-*

<sup>18</sup> Plut. C. Gracch. 14: “κ τούτου πάλιν ε σ τ βουλευτήριον πελθόντες ψηφίσαντο κα προσέταξαν πιμί τ πάτ σ ζειν τ ν πόλιν πως δύναιτο, κα καταλύειν το σ τυράνους”.

<sup>19</sup> Appian, *The Foreign Wars I*, 26.

<sup>20</sup> Cic. Catil. 1.1.2: “Decrevit quondam senatus uti L. Opimius consul videret ne quid res publica detrimenti caperet”; see also Cicero, *De oratore II*, 106.

<sup>21</sup> H. Appel, *Kontrowersje wokół...*, p. 286 et seq.

<sup>22</sup> H. Appel, *Kontrowersje wokół...*, p. 22 et seq.



*timum* was a recommendation by the senate that the officials named in the resolution should do their utmost to ensure that the republic suffered no harm. Based on the surviving examples of the SCU, it is impossible to show that there was a clear indication in the text of the resolution of the danger or the persons against whom the resolution was directed, nor did it suggest what specific actions were to be taken. All this testifies to the adhortative character of the *senatus consultum ultimum*. Therefore, in the surviving source fragments, one can find texts<sup>23</sup> in which the exercise of powers by individual officials based on the SCU was questioned. An example is the activity of the consul Lucius Optimus<sup>24</sup> and Cicero in the trial of Catiline<sup>25</sup>. They were held criminally responsible in both cases, except that Lucius Optimus was acquitted due to citing the *senatus consultum ultimum*, while Cicero was sentenced to exile.

Due to the succinct wording of the source accounts, we also do not know how long the SCU was in effect. For example, the *senatus consultum ultimum* of 63 BC, when the senate voted against Lucius Sergius Catiline, who wanted to stage a coup, was taken on October 12, and on December 5, most of the conspirators were already dead. Thus, after convincing the senators and taking the *senatus consultum ultimum*, the consuls could introduce something akin to a modern state of emergency and declare individuals or groups as enemies of the state (*hostis publicus*). The consul could then take all measures to eliminate the threat, including the physical elimination of enemies of the state without trial. Such SCU seems to have been in force until the state of emergency was brought under control<sup>26</sup>.

<sup>23</sup> Plut. C. Gracch. 14 Cic. Pro Mil., 26,70; Cicero, *In Catilinam* 1,4; Cicero, *Pro Milone* 26,70; Cicero, *De oratore* II, 106.

<sup>24</sup> Cic. Catil. 1.1.2.

<sup>25</sup> Cic. In Cat. 3.9: “Volturcius vero subito litteras proferri atque aperiri iubet, quas sibi a Lentulo ad Catilinam datas esse dicebat. Atque ibi vehementissime perturbatus Lentulus tamen et signum et manum suam cognovit. Erant autem sine nomine, sed ita: «Quis sim scies ex eo quem ad te misi. Cura ut vir sis et cogita quem in locum sis progressus. Vide quid tibi iam sit necesse, et cura ut omnium tibi auxilia adiungas, etiam infimorum.» Gabinius deinde introductus, cum primo impudenter respondere coepisset, ad extremum nihil exiis, quae Galli insimulabant, negavit”. Salust. Bell. Cat. 18.3: “Post paulo Catilina pecuniarum repetundarum reus prohibitus erat consulatum petere, quod intra legitimos dies profiteri nequiverat”.

<sup>26</sup> H. Appel, *Kontrowersje wokół...*, p. 292.



Moreover, the literature on the subject raises the problem of whether it was possible to regulate employing *senatus consultum* the issues for which *lex* should be issued<sup>27</sup>. The legal validity of the SCU can be traced back to the *mos maiorum*, that is ancestral customs, which were considered the source of law. According to Sallustius, the Roman historian and politician<sup>28</sup>, the SCU was taken *more Romano*, i.e., according to Roman custom, which completely justified its use. Except that, as Sallustius points out, this still did not mean compliance with *mos maiorum*. Therefore, the *senatus consultum ultimum* did not acquire the status of an equivalent *lex*, for the senate during the republican period was an advisory body and did not have a legislative role. However, this does not seem to have been important for the Romans of that time because in a situation of danger (which was an indispensable prerequisite for undertaking SCU) no thought was given to the legitimacy (in modern terms) of the actions taken, following the motto propagated by Cicero *salus rei publice suprema lex esto* (let the good of the republic be the supreme law)<sup>29</sup>. The state interest justified the use of force in a crisis. An analysis of all cases of the application of *senatus consultum ultimum* allows us to conclude that *salus rei publice* always depended on the political point of view (most often that of the optimates)<sup>30</sup>.

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<sup>27</sup> Resolutions of the senate (*senatus consulta*) were advisory only and provided instructional guidance to the *magistratus*. They were usually focused on the current political or administrative problems in the Roman republic or legislative proposals. On the other hand, they did not contain generally binding legal norms. They were not legally binding; instead, the authority of the senate caused officials to rely on the advice given. In the late republic, however, the senate exceeded its powers and passed resolutions on matters that required the enactment of *leges*. In the preserved source material one can find statements by Cicero, among others, which suggest that sometimes the resolutions of the senate could be treated as the source of law – for more, see W. Litewski, *Historia źródeł prawa rzymskiego*, Kraków 1989, p. 62.

<sup>28</sup> Sall., *Cat.* 29, 1–3: “Ea cum Ciceroni nuntiarentur (...), senatus decrevit darent operam consules ne quid res publica detrimenti caperet. Ea potestas per senatum more Romano magistratui maxuma permittitur: exercitum parare, bellum gerere, coercere omnibus modis socios atque civis, domi militiaeque imperium atque iudicium summum habere; aliter sine populi iussu nullius earum rerum consuli ius est”.

<sup>29</sup> Cicero, *Leg.* 3,8: *Ollis salus populi suprema lex esto*.

<sup>30</sup> In the literature, one can encounter the term *optimatistische Notstands politik* (optimistic emergency policy) – cf. H. Appel, *Kontroversje wokół...*, p. 291 and literature cited therein.

### III.

To summarize, the *senatus consultum ultimum* was the most powerful weapon of the Roman senate in the fight against internal political enemies in the late republic. On this basis, the consuls obtained quasi-dictatorial powers that allowed, among other things, the suspension of certain offices and institutions. Proceedings before the senate were always initiated by the consul in the case of an internal threat to the state. The consul's task was to convince the senators to adopt the *senatus consultum ultimum*. The adoption of such a resolution allowed the consul to introduce a state of what today we would call a state of emergency and declare a person or a group of people enemies of the state (*hostis publicus*). The consul could then take all measures to eliminate the threat, including the physical elimination of enemies of the state without a court sentence. An analysis of the cases of the application of *senatus consultum ultimum* allows us to conclude that *salus rei publice* always depended on the political point of view of the senate<sup>31</sup>.

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<sup>31</sup> The proceedings before the Senate can be compared to the proceedings before the State Tribunal, with the difference that the State Tribunal cannot sentence anyone to death – B. Sitek, *op.cit.*, p. 348, note 20.

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