

Comes Hispaniarum Octavianus - the special envoy of Constantine the Great (some Remarks)

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RESUMEN

Dedico el texto a uno de los *comites Hispaniarum*, Octaviano, un emisario especial del emperador Constantino (306-337). En caso de Octaviano, se refiere al puesto de un colaborador del emperador, mandado a una diócesis para controlar las relaciones existentes y elaborar un informe (*comites dioecesium*). Hay que distinguir entre *comites Hispaniarum* de los tiempos de Constantino y los jefes militares conocidos de *Notitia dignitatum* bajo el mismo nombre. Según una opinión común los *comites Hispaniarum* eran una clase de emisarios especiales del soberano, que pertenecían a los llamados *comites dioecesium*, enviados por el emperador a algunas diócesis para controlarlas y para restablecer el orden público. Eran una especie de superintendentes de gobernadores ordinarios de provincias, junto a pe pretorio. Se conocen sólo cuatro personas que ejercían el cargo de *comes Hispaniarum* y el primero de ellos fue Octaviano en los años 316-317, no sólo el primer *comes Hispaniarum*, sino también el primero de todos los *comites dioecesium* conocidos. El fue conocido sólo por dos constituciones del Constantino de los años 316 (CTh 9,1,1. —el texto está relacionado con la pérdida de *praescriptio fori* por los senadores que cometieron un crimen, sobre todo el rapto de virgen o la violación de fronteras de terrenos de otras personas.) y 317 (CTh 12,1,4. —el texto está dedicado a la cuestión *cursus honorum* de *decuriones*). Al autor demuestra que ambas constituciones mencionadas arriba fueron rescriptos del emperador, publicados probablemente en Serdica (Sofia en Bulgaria) o en sus alrededores. La prueba de eso puede ser el hecho de que, desde que se incluyeron en *Codex Theodosianus* (438 d.C), se hicieron *lex generales* y estaban vigentes en todo el Imperio. Luego se presentan las opiniones de historiadores anteriores sobre Octaviano y se prueba, después de un análisis largo, que no es cierto si se pueda identificarlo con Rufinus Octavianus, *corrector Lucaniae et Brittorum* (Italia) en 313. No obstante, es probable que Octavianus perteneciera a capa senatorial como la mayoría de los comites en los tiempos de Constantino y no procediera de Hispania ni fuera cristiano. A continuación el autor demuestra, que Octavianus no podía ejercer el cargo de comes por mucho tiempo —probablemente desde el verano/otoño de 316 hasta 317 o 318. El autor toma en consideración las causas por las cuales Octavianus estuvo en Hispania e indica que por lo menos según el texto de CTh 9,1,1 (recibido por Octavianus en Corduba/ Córdoba, capital de la provincia Romana Baetica), demuestra que Octaviano resolvía las disputas en la provincia. Además, su presencia allí y el título prueban de modo indirecto que a lo mejor inspeccionaba también otras capitales de las provincias que formaban parte de la *diocesis Hispaniarum*, o incluso las capitales de anteriores *conventus iuridici*. Sugiere, que tampoco se puede excluir que Constantino recibiera la información sobre la situación en la diocesis Hispania de manos de su colaborador íntimo, el obispo Osio de Córdoba, lo que lo llevo a mandar allí a Octaviano.

Palabras clave: Octavianus, comes Hispaniarum, comites dioecesium, emperador Constantino, Codex Theodosianus, Codex Iustinianus, rescriptum, Córdoba, Baetica, Osio de Córdoba, prosopographia.

ABSTRACT

Text is devoted to Octavianus, one of the *comites Hispaniarum* of Constantine the Great (306-337). Counts of Spain belonged to the group of emperor's trusted collaborators, who were dispatched to the dioceses to inform the ruler about the situation there and to put it in right if necessary (*comites dioecesium*). Constantine's *comites Hispaniarum* should be distinguished from the Military Commanders in the diocese of Spain also called *comites Hispaniarum* by the *Notitia Dignitatum*. On the contrary, they were a kind of civil officials, the superintendents of ordinary governors of the provinces. The first of Constantine's *comites Hispaniarum* was Octavianus in 316-317 A.D., who was not only the first count of Spain but also the very first known *comes dioecesium* at all. Two constitutions of the Emperor are addressed to him — CTh 9,1,1 = C 3,24,1 (316 A.D.) — ordering the loss of senators' prescription of forum in all criminal trials when they were caught, especially the senators who abducted a maiden or invaded the boundaries of another and CTh 12,1,4 (317 A.D.) — devoted to a particular question of decurion's *cursus honorum*. Author indicates that both constitutions were emperor's rescripts, issued probably in/around Serdica (Sofia in Bulgaria). He points that at least since the publishing of the Theodosian Code in 438 A.D. they acquired binding force in all provinces of the Roman empire, although at the beginning these constitutions were probably applied only to the cases which had happened in the diocese of Spain. Author discusses the opinions concerning the person of count Octavianus and he states that it is better to distinguish Octavianus, the *comes Hispaniarum* and Rufinus Octavianus, *corrector Lucaniae et Brittorum* (Italy) in 313. He points that Octavianus was probably a descendent of a Roman family as his traditional name suggests, maybe the member of some senatorial family, like most of different *comites* in the epoch of Constantine the Great but probably he was not of Spanish origin or a Christian. Author deduces that Octavianus was *comes Hispaniarum* not for a long time — perhaps between Summer/Fall of 316 and the end of 317 or beginning of 318. He indicates that Octavianus judged some disputes which arose in Spanish dioceses as at least CTh 9,1,1 shows (received by Octavianus in Corduba/Córdoba, the capital of Roman province Baetica and the former seat of one of *conventus iuridici*). He suggests the possibility of Octavianus' visits also in other provinces of Spanish diocese and their capitals or even old capitals of *conventus iuridici* because of the nature of *comites dioecesium* missions. According to his opinion, it is not excluded that the emperor Constantine could be well informed about the state of affairs in Spanish diocese — and the necessity of the extraordinary inspection of emperor's *comes*— thanks to the contacts of his trusted collaborator and spiritual adviser, bishop Ossius of Cordoba.

Key Words: Octavianus, comes Hispaniarum, comites dioecesium, Constantine the Great, Codex Theodosianus, rescriptum, Corduba, Baetica, Ossius of Cordoba, Prosopography.

According to the Constantin the Great¹, the term “comes” —well known before him as a legal and later also a military adviser who accompanied the *princeps*— referred to the group of close collaborators of the emperor, called at the beginning of his reign *comites domini nostri Constantini Augusti*².

¹ It is impossible to quote even the most important works devoted to him. See e.g. the incomplete list of the recent studies: <http://www.fu-berlin.de/fmi/antike/Bibliographie.html>.

² See: G. Humbert, *Comes* [in:] DS 1, 2, 1371-1372; O. Seeck, *Comites*, [in:] RE 4, col. 622-679, esp. col. 629-636; A.H.M. Jones, *The Later Roman Empire (284-602). A social, economic and administrative Survey*, Vol. I-III, Oxford-Cambridge Mass. 1964, 104 f. and 525 f.; H. Löhken, *Ordines dignitatum. Untersuchungen zum formalen Konstituierung der spätantiken Führungsschicht*, Köln-Wien 1978, 98 f.; G. de Bonifis, *Il comites et quaestor nell'eta dell dinastia constantiniana*, Napoli 1981, 1-39 (see also the review of A. Lippold, [in:] ZSS RA 99 (1982) 541-542); R. Scharf, *Comites und comitiva primi ordinis*, Mainz 1994, esp. 5 f. (see also the reviews of: M. Claus, [in:] Historische Zeitschrift, 26,1 (1996) 191-192; D. Schlinkert [in:] Klio, 78,2 (1996) 547-549; R. Delmaire, [in:] Latomus, 57 (1998), 185-186); Ch. Gizewski, *Comes, comites*, DNP 3 (1997), col. 89-91.

Based on different data we know that Constantine treated his “comites” as the backbone of his regime, rightly called “a new Empire”³, started with reforms of Diocletian and established by Constantine.⁴ His *comites* may be called “the Order of Imperial Companions”, a kind of “new aristocracy, dedicated to the person of the emperor”, “a third order of nobility”⁵, along with *senatores* and *equites romani*. Therefore the *comitiva* comprised those who belonged to *ordo senatorius*, *equites romani* and ambitious *homines novi* and who became new palace élite⁶.

In the case of Constantine’s *comites Hispaniarum* we should distinguish them from the Military Commanders in the diocese of Spain in the turn of the 4th and 5th centuries, who were also called *comites Hispaniarum* in the *Notitia Dignitatum*⁷.

Otto Seeck noticed, that Constantine’s *comites Hispaniarum* were most probably extraordinary envoys (“ausserordentliche Sendlige”) of the emperor himself and his opinion is followed by other scholars⁸. They belonged to a group of other special

³ T.D. Barnes, *The New Empire of Diocletian and Constantine*, Cambridge 1981.

⁴ See about the problem of the reforms from modern studies also: M. Sargenti, *Le strutture amministrative dell'impero da Diocleziano a Costantino*, [in:] “Atti del 2-o Convegno internazionale dell’Academia Romanistica Constantiniana”, Perugia 1976 = idem, *Studi sul diritto del tardo impero*, Padova 1986, 111-176; S. Williams, *Diocletian and the Roman Recovery*, Londres, Batsford 1985; F. Kolb, *Diocletian und die erste Tetrarchie. Improvisation oder Experiment in der Organisation monarchischer Herrschaft*, Berlin-New York 1987; S. Corcoran, *The Empire of the Tetrarchs. Imperial Pronouncements and Government. AD 284-324*, Oxford 1996; W. Kuhoff, *Diocletian und die Epoche der Tetrarchie. Das römische Reich zwischen Krisenbewältigung und Neuaufbau (284-313 n. Chr.)*, Frankfurt-Berlin-Bern-Bruxelles-New York-Oxford-Wien 2001.

⁵ A.H.M. Jones, op. cit., 104, 106 and 526.

⁶ D. Schlinkert, *Vom Haus zum Hof. Aspekte höfischer Herrschaft in der Spätantike*, Klio 78, 2 (1996), 468. About the counts at the imperial court see the collection of articles: A. Winterling (ed.), *Comitatus. Beiträge zur Erforschung des spätantiken Kaiserhofes*, Berlin 1998.

⁷ See about the military organisation of Spain according to *Notitia*: J. Arce, *La Notitia Dignitatum el l’armée romaine dans Diocesis Hispaniarum*, Chiron 10 (1980) 593-607, esp. 604-606. The case one of military *comites Hispaniarum* was discussed recently by M. Kulikowski: *The Career of the ‘comes Hispaniarum’ Asterius*, Phoenix 54 (2000) 123-141. About the Spain in Late Antiquity see: M. Torrez Lopez, *La Península Hispánica, provincia romana (218 a. de J.C.-409 de J.C.)*. *Instituciones económicas, sociales y político-administrativas*, [in:] *Historia de España*, (ed.) Menéndez Pidal, II, Madrid, 1982, 285-519; J. Arce, *El último siglo de la España romana: 284-409*, Madrid 1982 (reed. 1986), passim; J.M. Blázquez, A. Montenegro, J.M. Roldán, J. Mangas, R. Teja, J.J. Sayas, L.G. Iglesias, J. Arce, *Historia de España Antigua II. Hispania Romana*, (2ed.) Madrid 1985, 499-590; Á. Montenegro Duque, J.M. Blázquez Martínez, J.M. Solana Sáinz, *Historia de España. España Romana*, Madrid 1986, 335 f.; S.J. Keay, *Hispania romana*, Barcelona 1992, 188-212; J.S. Richardson, *The Romans in Spain*, Oxford-Cambridge Mass. 1996, 264-308; Fe Bajo Alvarez, *Historia 16. Historia de España 5, Los últimos hispanorromanos. El Bajo Imperio en la Península Ibérica*, http://ar.geocities.com/bastadecopywright/Los_ultimos_hispanorromanos/Bajo_Alvarez_Fe_Los_ultimos_hispanorromanos.htm; R. Teja (ed.) *Hispania del siglo IV. Administración, economía, sociedad, cristianización*, Bari 2002. About the economy and social life see also J. Arce, *La penisola iberica*, [in:] *Storia di Roma*, III: *L’età tardoantica. 2: Il luoghi e le culture*, (ed.) A. Carandini, L. Cracco Ruggini, A. Giardina, Torino 1993, 379-404 and recently M. Kulikowski, *Late Roman Spain and Its Cities*, Baltimore 2004, passim.

⁸ O. Seeck, op. cit., col. 631 and 655. See A.H.M. Jones, op. cit., 105; C. Dupont, *Constantin et les Diocèses*, [in:] “Studi in memoria di Guido Donatuti” I, Mailand 1973, 317-321, 324-326, 334-336 (esp. 311: „l’empereur y délégua un comes et cette pratique représente une innovation, d’ailleurs éphémère de Constantin.”); Á. Montenegro Duque, J.M. Blázquez Martínez, J.M. Solana Sáinz, op. cit., 340 (“los missi dominici por encargo directo de Emperador”); J.J. Sayas, [in:] J.M. Blázquez, A. Montenegro, J.M. Roldán, J. Mangas, R. Teja, J.J. Sayas, L.G. Iglesias, J. Arce, op. cit., 533-534; J. Arce, *El último...*, 54, 56.

representatives of the emperor called *comites dioecesium*, although Constantine also referred them as *comites qui per provincias constituti sunt* or simply *comites provinciarum*⁹. They were first of all the emperor's trusted collaborators¹⁰, who were obliged to inform the emperor about the situation in their diocese and to put it in right if necessary¹¹. They were a kind of civil officials, the superintendents of ordinary governors of the provinces together with *praefecti praetorio*. Constantine the Great, a strong, upright ruler¹², wanted to control the dioceses where his personal appearance was impossible, especially after 324 A.D. when he became the sole ruler of the empire. We know about such *comites* in the days of Constantine I – maybe except one case (see further), especially in the dioceses which were not visited by the emperor himself¹³.

Following the reforms of Diocletian and Constantine, provincial governors were first of all ordinary judges (*iudices ordinarii*)¹⁴, and it seems that *comites dioecesium* probably played also a role of an appeal court from the sentences of the governors¹⁵. Therefore the *comites* sent to dioceses are often identified with the vicars of dioceses¹⁶,

⁹ CTh 2,26,1 = C 3,39,3; 8,4,5; CTh 1,16,6 and 7.

¹⁰ H. Löhken, *op. cit.*, 100.

¹¹ See: O. Seeck, *op. cit.*, col. 631-632; C. Dupont, *op. cit.*, 318-319.

¹² See here one of the nick-names of Constantine —“Trachala”, what might have been merely descriptive—“someone with strong neck” or rather might have been used metaphorically – “strong, good, upright ruler”. See Ch. Bruun, *The Thick Neck of the Emperor Constantine. Slimy Snails and “Quellenforschung”*, *Historia* 44 (1995) 459-480.

¹³ Spain, Africa, Oriens, but for Macedonia - CTh 11,3,2. See: O. Seeck, *Comes Macedoniae*, [in:] RE 4, col. 658; C. Dupont, *op. cit.*, 319, 331-332. She suggested even that sending of the *comites* caused the lack of constitutions addressed to vicars, what was connected with the establishment of regional prefectures (*ibidem*, 323 and 334-336). I do not follow her opinion: it is not excluded that constitutions addressed to vicars were simply omitted by the commission preparing the Theodosian Code because they were not useful in 5th century. See studies quoted further in n. 43.

¹⁴ See about the role of governor as a judge recently e.g.: S. Corcoran, *op. cit.*, 245-253; F.M. Ausbüttel, *Die Verwaltung des römischen Kaiserreich von der Herrschaft des Augustus bis zum Niedergang des Weströmischen Reiches*, Darmstadt 1998, 58-61; C. Rouché, *The Functions of the Governor in late Antiquity: Some Observations*, *AnTard.* 6 (1998) 31-36; J. Harries, *Law and Empire in Late Antiquity*, Cambridge 1999, 53-55. See also other studies quoted by J.-M. Carrié, *Le gouverneur romain à l'époque tardive, Les directions possibles de l'enquête*, *AnTard.* 6 (1998) 21-25; W. Kuhoff, *op. cit.*, 334-336. Most of the imperial constitutions concerning governors stressed their role as the judge. See in the light of Justinian's codification: H.E. Mierow, *Roman provincial Governor as he appears in the Digest and Code of Justinian*, Colorado 1926. The list of Spanish governors is still supplemented. See e.g. E. G. González, *Los gobernadores provinciales en el Occidente bajo-imperial*, Madrid 1987, 58-91; J. Vilella, *Rang i procedència geogràfica dels vicaris i governadors de la ' Dioecesis Hispaniarum' (300-409)*, *Fonaments* 8 (1992), 79-97; J. Arce, *Los gobernadores de la Dioecesis Hispaniarum (ss.IV-V d.C.) y la continuidad de las estructuras administrativas en la Península Ibérica*, *AnTard.* 7 (1999), 73-83; A.U. Stylow, *Nuevo gobernador de la Bética del siglo IV*, *Gerión* 18 (2000), 425-437.

¹⁵ See about the appeals in Constantine's legislation: J. Gaudemet, *Constitutions constantiniennes relatives à l'appel*, *ZSS RA* 98 (1981) 47-76. Therefore Constantine's constitutions addressed to *comites* are probably the emperor's answers concerning civil and criminal or administrative law questions (*rescripta principum*). So correctly C. Dupont, *op. cit.*, 324-326 and 334-336, esp. n. 169. See also further.

¹⁶ See about the establishment of vicars from recent works: J. Migl, *Die Ordnung der Ämter. Prätorianpräfektur und Vikariat in der Regionalverwaltung des Römischen Reiches von Konstantin bis zur Valentinianischen Dynastie*, Frankfurt am Main 1994 (but see the critical review of D. Liebs, [in:] *ZSS RA* 116 (1999), 341-344) and P. Porena, *La origini della prefettura del pretorio tardoantica*, Roma 2003, 152-186.

who had similar duties but unlike counts, were fixed officials with more or less fixed responsibilities¹⁷.

Because of their extraordinary character, *comites dioecesium* were of different rank – among them there were *virī clarissimi* and one *vir perfectissimus*, different from the ordinary officials in the later Empire, whose honorary titles were connected in general with the performed duty¹⁸; they probably had no fixed office (*officium*) too¹⁹.

In the case of *comites*, even more importantly than in the case of other late Roman officials²⁰, there was the mutual trust between them and the emperor, apart from their personal achievements, experience, qualifications etc. Therefore, we know about the same “sycophants” of the emperor, performing the duties or the tasks of *comes* in different dioceses, like one of *comites Hispaniarum*, C. Annius Tiberianus, who was first the count of Spain and a few years later was dispatched to Africa as the *comes* of this diocese (CTh 12,1,15; 12,5,1 and C 6,1,6)²¹.

We only have data about four persons who held the office of *comes Hispaniarum*²².

The first of them was Octavianus in 316-317 A.D. He was not only the first *comes Hispaniarum* but also the very first known *comes dioecesium*²³. Then we also have data from 330's about C. Annius Tiberianus (a. 332), Severus (a. 333-336), and Tiberius Flavius Laetus, who possibly was *comes Hispaniarum* between 337-340, after the death of Constantine²⁴. The information about Octavianus' activity as *comes Hispaniarum* is given by two constitutions of this emperor²⁵.

¹⁷ See: *Prosopography of the Later Roman Empire*, ed. A.H.M. Jones, J.R. Martindale and J. Morris, Cambridge 1971 (PLRE) I, 1080; R. Teja, [in:] J.M. Blázquez, A. Montenegro, J.M. Roldán, J. Mangas, R. Teja, J.J. Sayas, L.G. Iglesias, J. Arce, *op. cit.*, 570; J. Arce, *El último...*, 41, 54, 56, 58, 59 and J. Vilella, *Rang i procedència...*, passim. Correctly for the distinguishing of counts and vicars: A.H.M. Jones, *op. cit.*, 105; A. Chastagnol, *Les espagnols dans l'aristocratie gouvernementale à l'époque de Théodose* [in:] “Les empereurs romains d'Espagne”, Paris 1965, 272-278; T.D. Barnes, *The New Empire...*, 145 M. Kulikowski, *Late Roman Spain...*, 81, n. 79. See also C. Dupont, *op. cit.*, esp. 317-319, 324-334 who argued in details for the difference between counts and vicars. For A.P. Monge, *La provincia Romana de la Betica (253-422)*, Ecija 1989, 86 *comites Hispaniarum* were vicars, who were given the honorific title *comes primi ordinis*. See also further.

¹⁸ See about the ranks still current P. Koch, *Die byzantinischen Beamtitel von 400 bis 700*, Jena 1903 (diss.) and e.g. works of R. Guillard: *La noblesse byzantine à la haute époque (IVe-Ve siècles). Observations diverses*, [in:] idem, *Recherches sur les institutions byzantines*, t. I, Berlin-Amsterdam 1967, 23-31; *Egrègue-perfectissime-clarissime*, [in:] idem, *Titres et fonctions de l'Empire byzantin*, London 1976, I.

¹⁹ On the contrary the office of vicar consisted of 300 clercks (J. Arce, *El último...*, 88). See also A.H.M. Jones, *op. cit.*, 592 f. and about officium e.g. A.E.R. Boak, *Officium*, [in:] RE 17, 2, col. 2047-2056; R. MacMullen, *Roman Bureaucracy*, Traditio 18 (1962), 364-378.

²⁰ See about the importance of the loyalty toward emperor in later Roman administration: H. Löhken, *op. cit.*, 135 f.

²¹ See C. Dupont, *op. cit.*, 328.

²² See: A. Chastagnol, *Les espagnols...*, 272-273, n° 1-4; PLRE I, 492 (Tiberius Flav. Laetus 1), 637 (Octavianus 1), 831 (Severus 4), 911-912 ((C. Annius Tiberianus 5); C. Dupont, *op. cit.*, 318 and 324-326. J. Vilella, *op. cit.*, 89, 90, 93-94 and J. Arce, *El último...*, 54, 56, 60. See also A.P. Monge, *op. cit.*, 86, n. 576.

²³ See H. Löhken, *op. cit.*, 100, n. 170.

²⁴ Probably therefore he was omitted by C. Dupont, *op. cit.*, 318. According to the authors of PLRE I, 492 and 1080 he was not *comes Hispaniarum* but simply “count in Spain”.

²⁵ It is not useful to cite the bibliography concerning the imperial constitutions; see e.g.: L. Wenger, *Die Quellen des römischen Rechts*, Wien 1953, 424-473; J. Gaudemet, *Institutions de l'antique*, Paris 1967, 732 f.; D. Liebs, *Das Gesetz im spätrömischen Recht*, [in:] “Das Gesetz in Spätantike und frühen Mittelalter. 4. Symposium der Kommission Die Funktion des Gesetz in Geschichte und Gegenwart”, Abhandlungen der Akad. der Wissenschaften 6, Göttingen 1992, 11-27 with comprehensive bibliography.

The text of the first one (CTh 9,1,1) —in chronological order— is preserved by the Theodosian Code²⁶ and with small, but important changes²⁷ by *Codex repetitae praelectionis* of Justinian (534 A.D.)²⁸ The constitution is incorporated in Theodosian Code into the 1st title of the 9th Book: *De Accusationibus and Inscriptionibus* (Accusations and Inscriptions) while in Justinian Code is included in the 24th title of the 3rd Book: *Ubi senatores vel clarissimi civiliter vel criminaliter conveniantur* (Where senators or clarissimi may be proceeded against either civilly or criminally)²⁹. The law was given on December 4, 316 and was received by Octavianus

²⁶ See e.g. from modern works: G.G. Archi, *Teodosio II e la sua codificazione*, Napoli 1976; J. Gaudemet, *Aspects politiques de la codification théodosienne*, [in:] „Institutioni giuridiche e realtà politiche nel tardo impero (III-V sec. d.C.), Atti di un incontro tra storici e giuristi, Firenze, 2-4 Maggio 1974”, a cura di G.G. Archi, Milano 1976, 261-279; T. Honoré, *The Making of the Theodosian Code*, ZSS RA 116 (1986) 133-222; *The Theodosian Code Studies in the Imperial Law of Late Antiquity*, ed. by J. Harries and I. Wood, London 1993; M. Sargenti, *Il Codice Teodosiano fra mito e realtà*, SDHI 61 (1995) 373-398; J. Harries, *op. cit.*, 59-64; J.F. Matthews, *Lying Down the Law. A Study of the Theodosian Code*, New Heaven and London 2000.

²⁷ See also about the innovation's of Justinian in general: K.L. Noethlichs, *'Imperatoria interpretatio'. Zum Umgang der spätrömischen Kaiser mit Gesetzestexten*, [in:] „STIMULI. Exegese und ihre Hermeneutic in Antike und Christentum. Festschrift für E. Dassmann“, (ed.) G. Schölgen, C. Scholten, Münster 1996, s. 210-227.

²⁸ The codification of Justinian I is described in all handbooks of Roman Law and the works devoted to him. See also P. Krüger, *Kritik des justinianischen Codex*, Berlin 1867; P. Jörs, *Codex Justinianus*, [in:] RE 4, col. 170-173; L. Wenger, *op. cit.*, 562-679; Z.V. Udalcova, *Zakonodatelnye reformy Justiniana*, VV 26 (1965) 3-45 and VV 27 (1967) 3-38; G.G. Archi, *Giustiniano legislatore*, Bologna 1970; *l'imperatore Giustiniano, Storia e Mito. Giornate di studio a Ravenna 14-16 ottobre 1976*, a cura di G.G. Archi, Milano 1978.

²⁹ CTh 9,1,1 = C 3,24,1 (the amendments of Justinian are given in brackets; fragments omitted or changed by him are underlined). I quote English translations of them according to Pharr's edition, with some amendments of my own: *The Theodosian Code and Novels and the Sirmondian Constitution*, a translation with commentary, glossary and bibliography by C. Pharr with an introduction by C. Dickermann Williams, Princeton 1952.

Imp. Constantinus A. ad Octavianum comitem Hispaniarum. Quicumque clarissime dignitatis [non illustris, sed tantum clarissima dignitate praeditus] virginem rapuerit vel fines aliquos invaserit vel in aliqua culpa seu crimine fuerit deprehensus, statim intra provinciam, in qua facinus perpetravit, publicis legibus subiugetur que super eius nomine ad scientiam nostram referatur nec fori praescriptione utatur. Omnem enim [huiusmodi] honorem reatus excludit cum criminalis causa et non civilis res vel pecuniaria moveatur. Dat. Prid. non. Dec. Serdicae, accepta V non. Mart. Corduba Gallicano et Basso Cons. Interpretatio: Quicumque damnabile vel puniendum legibus crimen admiserit, non se dicta in foro suo, id est in loco ubi habitat, debere pulsari, sed ubi crimen admissum est, ab eius loci iudicibus vindicetur nec de eius persona ad principem referatur.

“Emperor Constantine Augustus to Octavianus, Count of Spain. Anywhome who is clarissimus [whosoever is not *illustris* but *clarissimus*] should abduct a maiden or invade the boundaries of another or be apprehended in any wrongdoing or crime, he shall immediately be subjected to the public laws, within the province wherein he perpetrated the offence. Neither shall his name be referred to Our knowledge nor shall he make use of any prescription of forum; for any accusations excludes all prerogatives of rank where a criminal case, not a civil or pecuniary suit, is brought. Given on the day before the nones of December at Serdica (e.g. nowadays Sofia in Bulgaria) – (e.g. December 4, 316). Received on the fifth day before the nones of March at Cordoba in the year of consulship of Gallicanus and Bassus – (e.g. March 3, 317 A.D.). Interpretatio: If any person should commit a crime damnabile and punishable by law, he shall not assert that he ought to be prosecuted in his own forum, that is, in the place where he lives, but he shall be punished by the judges of the district in which the crime was committed; and there shall be no reference to the Emperor concerning such person”. As we can see, according to Justinian only *illustres* possessed still praescription of forum. Contrary and false O.F. Robinson, *The Criminal Law of Ancient Rome*, London 1995, 12.

on March 3, 317 A.D. The constitution belongs to different laws of Constantine I concerning the legal status of women³⁰, the family and morality as well as the protection of real estates³¹.

In CTh 9,1,1 the emperor wrote about the holders of the title *clarissimus*, that is about senators³². According to him senators lost the right of *praescriptio fori* in all criminal trials when they were caught, especially those who abducted a maiden or invaded the boundaries of another³³. Senators, on the other hand, kept their *privilegium fori* in civil cases³⁴.

³⁰ There are plenty of studies concerning women in Antiquity, mostly written in last decades of 20th century. See: *Diotima. Materials for the Study of Women and Gender in the Ancien world* (www.stoa.org/diotima); A. Arjawa, *Comprehensive Bibliography on Woman in Late Antiquity* (<http://www.nipissing.ca/department/history/muhlberger/orb/arjava3.html>); T. Gouma-Peterson (ed.), *Bibliography on Woman in Byzantium* (<http://www.doaks.org/WomaninByzantium.html>)

³¹ L.S. Maruotti, *Esperienze giuridiche a confronto. Aspetti del diritto pubblico e privato dall'età Romana alle configurazioni moderne*, Napoli 2001, 101 f., esp. 104. Constantine I was especially interested in both fields. See K. I. Novickaja, *Nekatoryje voprosy agrarnoj politiki načala Dominata*, Vestnik Drevnoj Istorii, 78,4 (1961), 85-97, esp. 90 f.; L.S. Maruotti, op. cit., 105 f. See also J. Evans-Grubbs, *Law and Family in Late Antiquity: the Emperor Constantine's Legislation on Marriage*, Oxford 1995 (reed. Oxford 1999; I quote the first edition). See also eadem, *Constantine and Imperial Legislation on the Family*, [in:] *The Theodosian Code...*, 120-142.

³² See the works quoted in n. 18 and esp. P. Koch, op. cit., 11 f.; R. Guillard, *Egrège...*, 27 f.; W. Enßlin, *Spectabilis*, [in:] RE 3A, 2, col. 1552-1568 About senators in late antiquity see e.g.: P. Arsac, *La dig-nite senatoriale au Bas-Empire*, RHDfE 47 (1969), 198-243; A. Chastagnol, *Le Sénat romain à l'époque impériale. Recherches sur la composition de l'Assemblée et le statut de ses membres*, Paris 1992, esp. 293-324; D. Schlinkert, *Ordo senatorius und nobilitas. Die Konstitution des Senatsadel in der Spätantike. Mit einem Appendix über den praepositus sacri cubiculi, den "allmächtigen" Eunuchen am Kaiserlichen Hof*, Stuttgart 1996, passim. About Spanish senators see esp. K.F. Stroheker, *Spanische Senatoren der spätrömischen und westgotischen Zeit*, [in:] idem, *Germanentum und Spätantike*, Zürich 1965, 54-87; A. Balil, *Aspectos sociales del Bajo Imperio (s. IV-s. VI). Los senadores hispánicos*, Latomus 24 (1965), 886-904 and recently Ch. Gabrielli, *L'aristocrazia senatoria ispanica, nel corso del III e del IV secolo d.C., dall'avvento di Settimio Severo alla morte di Teodosio (193 d.C.-395 d.C.)*, Studia historica historia antiqua 13-14 (1995-1996), 331-377.

³³ Cf. S. Giglio, *Il tardo Impero d'Occidente e il suo Senato. Privilegi fiscali, patrocinio, giurisdizione penale*, Napoli 1990, 197 f.; U. Vincenti, *Praescriptio fori e senatori nel tardo impero romano d'Occidente*, INDEX 19 (1991), 433-440; S. Puliatti, *La dicotomia 'vir-mulier' e la disciplina del ratto nelle fonti legislative tardo-imperiali*, SDHI 61 (1995), 481-482 and L.S. Maruotti, op. cit., 106 f., contrary to the view that senators lost this privilege only in 316 —with the enactment of CTh 9,1,1.— if they committed the crime in the province. So also in Pharr's edition of the Theodosian Code: op. cit., 224, n. 5. About the abduction (*raptus*) see F. Gorla, *Ratto, (diritto romano)*, ED 28 (1987), 707-724; J. Evans-Grubbs, *Abduction Marriage in Antiquity: a Law of Constantine (CTh IX. 24. 1) and Its Social Context*, JRS 79 (1989), 59-83; eadem, *Law and Family...*, 183-193; J. Beaucamp, *Le statut de la femme à Byzance (4e-7e siècle)*, vol. I: *Le droit impérial*, Paris 1990, 109-120; S. Puliatti, op. cit., passim and about CTh 9,1,1 my sketch: *Odpowiedzialność senatora, który wprowadził dziewczę (pannę) – uwagi na marginesie CTh 9.1.1. = C 3.24.1* (The responsibility of senator who abducted a maiden – some remarks in the light of CTh 9.1.1. = C 3.24.1) [in:] *Contra leges et bonos mores. Przestępstwa obyczajowe w starożytnej Grecji i Rzymie*, Lublin 2005, 363-377 (in polish). See also general remarks about abduction of maiden in Roman law: J.F. Gardner, *Women in Roman Law and Society*, London-Sydney 1986, 118-121; G. Clark, *Woman in Late Antiquity. Pagan and Christian Life-styles*, Oxford 1993, 36-38; O.J. Robinson, op. cit., 71-73.

³⁴ See M. Kaser, *Das römische Zivilprozessrecht. Zweite Auflage, neu bearbeitet von K. Hackl*, München 1996, 537 and 589.

The second constitution addressed to Octavianus was issued in 317 A.D. on January 19 (CTh 12,1,4)³⁵. The text was preserved only by the Theodosian Code in the 12th Book, *De Decurionibus* and is devoted to particular question of decurion's *cursus honorum*. It is connected with the practise of abandoning their rank by curiales, and confirms their pressure of the curiales to fulfil as soon as it was possible the duties in cities³⁶. Curiales tried to avoid them because they were treated as burdensome and heavy. They did it, among others³⁷ by achieving genuine posts in imperial service, also in the lesser *officia*, what was possible for curiales only after holding a regular series of offices in their native cities³⁸.

³⁵ *Idem A(ugustus) ad Octavianum comitem Hispaniarum.*

Hi, qui indebiti arripere insignia voluerunt, cum in consilium primates municipalesque coguntur, adsistentibus his, quibus emeritis omnis honor iure meritoque debetur. Ideoque sublimitas tua nullum omnino faciet praesidatus praerogativa laetari, nisi qui cunctos in patria gradus egressus per ordinem venerit, ita ut illi etiam, qui praesidatum ante tempus reportarunt, post expletos honores civicos honestamentis praestitis potiantur. P(ro)p(osita) XIII Kal. Feb. Gallicano et Basso cons.

“The same Augustus [Constantine] to Octavianus, Count of Spain.

Persons who have presumed to appropriate the insignia of an undue honor shall stand, when the chief decurions of the municipalities and the decurions are gathered together in council, and those persons shall remain seated to whom every honor is legally and rightfully due because they have actually served in office. Therefore, Your Sublimity shall provide that no person at all shall enjoy the prerogative of the governorship except a person who has passed through each step of rank in his municipality and attained the foremost rank in due order. Thus persons also who have obtained the governorship before the proper time shall obtain these distinguished marks of honor that shall be granted them, after they have fulfilled the honorable duties of their own municipalities. Posted on the fourteenth day before the kalends of February in the year of the consulship of Gallicanus and Bassus”.

³⁶ Fe Bajo Alvares, *op. cit.*, 17, and among the others: “Hispania no escapó a esta tendencia, como demuestra una constitución de Constantino del 317 dirigida al Comes Hispaniarum en la que se trata de la deserción de muchos curiales hispanos”. See about the constitution also R. Ganghoffer, *L'évolution des institutions municipales en Occident et en Orient au Bas-Empire*, Paris 1963, 50, 60 and 114 (the latter two about the identity of the terms *municipis*, *possessor* and *decurio*) and D. Liebs, *Privilegium und Ständezwang in den Gesetzen Konstantins*, RIDA 24 (1977), 339.

³⁷ See the examples of another ways to avoid the duties e.g. B. Kübler, *Decurio*, [in:] RE 4, col. 2319-2352, esp. 2349.; R. Ganghoffer, *op. cit.*, 62 f. and W. Schubert, *Die Rechtliche Sonderstellung der Dekurionen (Kurialen) in der Kaisergesetzgebung des 4.- 6. Jahrhunderts*, ZSS RA, 99 (1969), 287-333, esp. 299 f.; W. Langhammer, *Die rechtliche und soziale Stellung der Magistratus municipales und Decuriones in der Übergangsphase der Städte von sich selbstverwandelten Gemeindegemeinden zu Vollzugsorganen des spätantiken Zwangsstaates (2.-4. Jahrhundert der römischen Kaiserzeit)*, Wiesbaden 1973, 188-278.

³⁸ From the later part of Constantine's I reign more and more officials carried senatorial rank and possessed the privileges of the *ordo senatorium*. The reason why curiales wanted to become imperial clerk was also connected with a desire for the prestige and security which senatorial rank afforded. See e.g. A.H.M. Jones, *op. cit.*, 543 f., 737 f.; R. Guiland, *Egrège...*, passim; G. Alföldy, *Römische Sozialgeschichte* [in polish transl. of the 3rd German ed. from 1984], Poznań 1998, 260 f.; F. Vittingoff, *Späte Kaiserzeit*, [in:] “Handbuch der Europäischen Wirtschafts- und Sozialgeschichte. Bd 1.: Europäischen Wirtschafts- und Sozialgeschichte in der römischen Kaiserzeit”, (ed.) F. Vittingoff, Klein-Cotta Stuttgart 1990, 331-340; D. Schlinkert, *Ordo senatorius...*, 66-65, 74-83 and 103-116. Therefore it was an example of the increasing social mobility in late antiquity. See: P. Charanis, *On the Social Structure of the Later Roman Empire*, Byzantion 17 (1944-1945) 39-57; R. MacMullen, *Social Mobility and the Theodosian Code*, JRS 54 (1964) 49-53; W. Ceram, *Stagnation and Fluctuation in Early Byzantine Society*, Byzantinoslavica 31 (1970) 192-203; A.H.M. Jones, *The Caste System in the Later Roman Empire*, Eirene 8 (1970) 79-96.; F. Vittingoff, *op. cit.*, 349-356; and A. Marcone, [in:] CAH, vol. XIII (1998), 363-366 and 369-370.

It seems most probable that both constitutions addressed to Octavianus were in fact rescripts written in a form of *epistula principum* (a letter of the princeps). Especially in the case of the first constitution, from December 316 (CTh 9,1,1), we can notice that the emperor described how to deal with legal problems concerning the *praescriptio fori* of *clarissimi*. Also the constitution from January 317 (CTh 12,1,4) seems to be an answer to the question of Octavianus, although at the first sight it looks like an example of *mandatum*³⁹. We should remember that the mandates were instructions issued by the emperor to an official. We do not possess the copies of the whole *mandatum*. But we can imagine what they could contain thanks to the description given by Justinian I in his Novel 17th from 535⁴⁰. According to it, the *mandatum* gave a precise account of how an official should behave especially toward the provincials but it did not describe how to resolve special cases as the discussed constitution did.

We also have to remember that the constitution was issued in January 317, when Octavianus was already in Spain. To our knowledge the mandates were given to the official together with his appointment, but not later, during his term of office. Therefore it seems that both constitutions were rescripts.

CTh 9,1,1 was given by Constantine I in Serdica (nowadays Sofia in Bulgaria)⁴¹. I suppose that also CTh 12,1,4 was given in Serdica or near the city. By December 316 Constantine I was in Serdica with his army and some time between 1 December and 28 February 317, he defeated Licinius on the Campus Ardiensis, north-east of this city⁴².

At least since the publishing of the Theodosian Code both constitutions acquired binding force in all provinces of the Roman empire, although at the beginning they were probably applied only to the cases which had happened in the diocese of Spain⁴³. The text of CTh 9,1,1 also includes the statement *intra provinciam, in qua*

³⁹ About rescripts see recently: B. Sirks, *Making a Request to the Emperor*, [in:] "Administration, topography and appointed policies in the Roman empire: proceedings of the first international workshop of the international network, Impact of Empire (Roman Empire, 27 B.C.-A.D. 406), Leiden, June 28-July 1, 2000", Amsterdam 2001, 121-135. D. Liebs, *Privilegien...*, 339 was not sure who wanted to resolve the problem described by the constitution: *curiae*, provincial governor or emperor himself.

⁴⁰ Nov. Just., 17 (535 A.D.), esp. in *principium*. and other novels of Justinian I: 24, 6; 25, 2 i 5; 27, 1; 28, 7; 29, 5, 1 (all from 535 A.D.) and 30, 9, 1 (536 A.D.). See also O. Seeck, *Codicillus* [in:] RE IV, col. 179-183, esp. col. 180; L. Wenger, *op. cit.*, 425-426; P.C. Berger, *The Insignia of the 'Notitia Dignitatum'. A Contribution to the Study of the Late Antique Illustrated Manuscripts*, New York, London 1981, 191-195 and the detailed study concerning the nature of *mandates*: V. Marotta, *Mandata Principum*, Torino 1991, esp. 69 f.

⁴¹ See e.g. Ch.M. Danov, *Philippopolis, Serdica, Odessos. Zur Geschichte und Kultur der Bedeutendsten staedte Thrakiens von Alexander d. Große bis Justinian*, ANRW II, t. 1, (1979) 267-281.

⁴² On the 1st of March Constantine and Licinius reached an agreement in Serdica and the sons of Constantine, Crispus and Constantine II and the son of Licinius, younger Licinius were proclaimed Caesars. See e.g. T.D. Barnes, *The New Empire...*, 44; A. Chastagnol, *L'accenrtrarsi del sistema: la tetrarchia e Costantino*, [in:] *Storia di Roma*, vol. III, *L'età tardoantica*. 1. *Crisi e trasformazioni*, (ed.) A. Carandini, L. Cracco Ruggini, A. Giardina, Torino 1993, 216.

⁴³ See about the controversial problem of binding force of imperial constitutions e.g.: G.G. Archi, *Il problema delle fonti*, [in:] "Studi sulle fonti del diritto nel tardo impero romano. Teodosio II el Giustiniano", Cagliari 1974, esp. 113 f.; idem, *Teodosio II...*, 96 f.; W. Turpin, *The Law Codes and Late Roman Law*, RIDA 32 (1985) 339-353; B. Sirks, *From the Theodosian to the Justinian Code*, [in:] "Atti del VI Convegno internazionale dell'Accademia Romanistica Costantiniana", Perugia 1986, 265-302; D. Liebs, *Das Gesetz...*, 18-23;

facinus perpetravit = “within the province wherein he perpetrated the offence” and I think that it is obvious that it must have applied to all provinces under Octavianus power, that is *diocesis Hispaniarum*⁴⁴. We should remember, however, that the commission which prepared both imperial Codes cut most of the texts of the preserved constitutions. They were also in a position to change the terms used in the previous versions before putting them into a list of constitutions worth being reported in the codes, and they really did so⁴⁵. Therefore we must approach their texts very carefully, always bearing this in mind.

It is nothing strange that in spite of abolishing the post of *comes Hispaniarum*, the constitutions mentioning it were included into both Codes. They were simply treated as an example of how to deal with the cases described by their texts. Therefore, the quoted laws were included in different books of the Theodosian Code: CTh 9,1,1 concerning the accusations and inscriptions (by Justinian, in the book devoted to the situations where senators or clarissimi may be proceeded against either civilly or criminally) and the CTh 12,1,4, concerning the decurions.

As we can notice, both constitutions do not give us direct information about Octavianus himself, except his post, of course. Therefore all prosopographical statements are hypotheses based on various other data.

For Willhelm Ensslin, the author of the short note in *Paulys Real-Encyclopädie der classischen Altertumwissenschaft* Octavianus was in fact the same person as Rufinus Octavianus, *corrector*, that is the governor of Lucaniae and Brittorum in Italy in 313, known as Octavianus only thanks to imperial constitutions⁴⁶. He probably based his opinion on the authority of Otto Seeck, who was sure that Octavianus had been promoted from the post of corrector to the *comitiva*⁴⁷.

The same opinion was shared by André Chastagnol⁴⁸ and Spanish scholars follow his point of view⁴⁹. But the most popular prosopographical study concerning the Later Empire: the *Prosopography of the Later Roman Empire* distinguishes between Rufinus Octavianus from Italy and Octavianus from Spain and states they are possibly identical⁵⁰.

Taking into consideration the small number of the Roman officials in late antiquity – at least no more than few hundred in each province and between 16.000 to

J.F. Matthews, *The Making of the text...*, [in:] *The Theodosian Code...*, 13-44; idem, *Lying...*, 65-71, 159-164; B. Sirks, *The Sources of the Code*, [in:] *The Theodosian Code...*, 45-67; S. Corcoran, *op. cit.*, 170-198; E. Dovere, *Ius principale e catholica lex (secolo V)*, Napoli 1999, esp. 88 f.; J. Harries, *op. cit.*, 21 f. and 82 f. According to C. Dupont, *op. cit.*, 324-325 most of the constitutions addressed to counts were applied to the provinces outside Spanish diocese.

⁴⁴ See L.S. Maruotti, *op. cit.*, 104.

⁴⁵ See e.g. T. Honoré, *op. cit.*, passim; J.F. Matthews, *The Making of the text...*, 13-44; idem, *Lying...*, 55-84, 200 f.; B. Sirks, *The Sources of the Code...*, 45-67; J. Harries, *op. cit.*, 59-64; D. Schlunkert, *Between Emperor, Court and Senatorial Order: The Codification of the Codex Theodosianus*, *Ancient Society* 32 (2002), 283-294.

⁴⁶ RE Suppl 7, col. 693-694.

⁴⁷ *Die Zeitfolge der Gesetze Constantins*, ZSS RA 10 (1889) 208-209 and [in:] RE 4, col. 655.

⁴⁸ *Les espagnols...*, 272, n° 1.

⁴⁹ Á. Montenegro Duque, J.M. Blázquez Martínez, J.M. Solana Sáinz, *op. cit.*, 340; E.G. González, *op. cit.*, 148-149; J. Arce, *El último...*, 60; J. Vilella, *Rang i procedència...*, 90-91.

⁵⁰ PLRE I, 637-638 (Octavianus 1, Rufinus Octavianus 5).

30-35.000 in whole empire⁵¹, it seems that Rufinus Octavianus and Octavianus were the same person. It is almost impossible that among Constantine's close collaborators in the period of a few years there were two separate persons who had the same Cognomen of "Octavianus".

However Cognomina were even inherited in some families, and from this point of view it is not impossible that Rufinus Octavianus and Octavianus could be members of the same family, which seems almost improbable.

Someone could ask, if Octavianus and Rufinus Octavianus were the same person, why are they given different names by the constitutions? The imperial quaestor, the later *quaestor sacri palatii*, who was responsible for the preparation of its texts⁵², seemed to know that they were not identical.

Unfortunately, we have very little information about how often late Roman laws were applied, and there is no other reference to the constitutions concerning Rufinus Octavianus and Octavianus extant in fourth and fifth-century sources. It may well have been forgotten in the century after Constantine's death, until the publication of the Theodosian Code in 438 brought it to light⁵³. The members of commission who prepared this code, could simply have found the texts of constitutions in the imperial archive and then altered their texts according to codification needs. If so, it cannot be ruled out that their primary texts were talking about Rufinus Octavianus.

As you can see it is almost impossible to draw a final conclusion. Basing on the sources it is better to distinguish between Octavianus, the *comes Hispaniarum* and Rufinus Octavianus, the corrector from Italy⁵⁴.

Apart from it we cannot say anything particular about Octavianus.

He was probably a descendent of a Roman family as his traditional name suggests, maybe the member of some noble, most probably senatorial family, like most different *comites* in the epoch of Constantine the Great⁵⁵.

The same occurs in the case of the Spanish provinces of the later Empire. *Homines novi* achieved the highest ranks in the civil administration of the *diocesis Hispaniarum* only under the successors of Constantine after his death in 337 A.D.⁵⁶.

⁵¹ According to A.H.M. Jones, *op. cit.*, 594 there were about 100 emperors officials in each province. F.M. Ausbittel, *op. cit.*, 160-161, pointed out the increasing of their number to about 230 in Vth century. The total number of 16.000 I borrowed from J. Arce, *El último...*, 55 who assumed that there was around 1500 imperial clerks in the whole Spanish diocese. Total number in the beginning of 6th century could be more than 30-35,000. See Ch. Kelly, *Ruling the Later Roman Empire*, Cambridge, Massachusetts and London, England 2004, 111.

⁵² See about the quaestors e.g.: G. de Bonfils, *op. cit.*, 41-131; J. Harries, *The Roman Imperial Quaestor from Constantine to Theodosius*, JRS 78 (1988) 148-170; R. Delmaire, *Les institutions du Bas-Empire romain de Constantin à Justinien: I. Les institutions civiles palatines*, Paris 1995, 57-63; J. Harries, *Law and Empire...*, 42-47; A. Gkoutzioukostas, Ο θεσμός του κοιαιστώρα του ιερού παλατίου: Η γένεση, οι αρμοδιότητες και η εξέλιξή του (*O thesmos tou koiaistora tou ierou palatiou: e geneese, oi armodioteses kai e ekselikse tou*), Thessaoloniki 2001.

⁵³ I have "adapted" here the opinion of J. Evans-Grubbs concerning the CTh 9,9,1 ("*Marriage more shameful than adultery*"). *Slave-mistress relationships, "mixed marriages", and Later Roman Law*, Phoenix 47,2 (1993) 152).

⁵⁴ So did C. Dupont, *op. cit.*, s. 317, 318, 324-325, who did not discuss the question in detail.

⁵⁵ G. de Bonfils, *op. cit.*, 23. J. Arce, *El último...*, 60 was sure that all *comites Hispaniarum* were senators.

⁵⁶ See J. Vilella, *Rang i procedència...*, 80-81.

When we assume the identity of Octavianus and Rufinus Octavianus, and other prosopographical data concerning vicars of Spain and other *comites Hispaniarum*, we can also deduce that “our” *comes Hispaniarum* belonged to a Roman senatorial family from the city of Rome itself or Italy, as each corrector in Italy did⁵⁷.

We can almost be sure that he did not belong to a Spanish noble family like probably one of the next *comites Hispaniarum* – Severus⁵⁸. Until the reign of Theodosius the Great, who, as we well know was of Spanish origin, only a few Spanish senators played an important part in the political life of the empire since the beginning of 3rd century⁵⁹.

We can not say that he belonged to the *comites primi ordinis* although he could be a senator⁶⁰, because the *comitiva* were divided into classes: *primi, secundi et tertii ordinis* most probably just before 330 or in the decade between 330 and 340⁶¹.

We can deduce nothing about his attitude to Christianity, although it was well established through most of the Iberian peninsula by the beginning of 3rd century⁶².

A one-part name —as in the case of Octavianus— was common among Christians in the 3rd and at the beginning of 4th centuries⁶³. But it does not mean that Octavianus was Christian as possibly one of his followers, count Severus⁶⁴. Octavianus name is typically Roman and we must also remember that paganism was much more popular than Christianity among the Roman élite even in the later period⁶⁵.

Octavianus must have performed the duty of *comes Hispaniarum* some time before the CTh 9,1,1 was issued on December 4, 316 and some time after receiving it in March 3, 317. It seems that Octavianus must have been called *comes Hispania-*

⁵⁷ See e.g. R. Orestano, [in:] NDI 4 (1957) 873; C. Dupont, *op. cit.*, 319-321 (generally about the career of vicars and counts under Constantine); J. Vilella, *Rang i procedència...*, passim.

⁵⁸ See A. Chastagnol, *Les espagnols...*, 272-273; R. Teja, *op. cit.*, 569 and J. Vilella, *Rang i procedència...*, 92.

⁵⁹ J. Vilella, *Rang i procedència...*, 83. See also idem, *Hispaniques et non-Hispaniques: motifs et itinéraires des voyages et des correspondances dans l'Antiquité tardive (IVe-VIe s.)*, Ktéma 14 (1989), 143 f. and Ch. Gabrielli, *op. cit.*, 361 f. and 369 f. See about the senators in the epoch of Theodosius in detail: J. Vilella, *El “ordo senatorius” en la “Hispania” de Teodosia*, Congreso Internacional La Hispania de Teodosio, vol. 1, Salamanca 1997, 293-306.

⁶⁰ So: A.P. Monge, *op. cit.*, 86 about all *comites Hispaniarum*.

⁶¹ See from modern works G. De Bonfils, *op. cit.*, 1 f.; R. Scharf, *op. cit.*, 6 f and idem, *Zur comitiva flavialis*, ZPE 114 (1996) 151-152.

⁶² See about the problem generally L.G. Iglesias, [in:] J.M. Blázquez, A. Montenegro, J.M. Roldán, J. Mangas, R. Teja, J.J. Sayas, L.G. Iglesias, J. Arce, *op. cit.*, 663-684; J. Arce, *El último...*, 137-150; Fe Bajo Alvarez, *op. cit.*, 31-44.

⁶³ They wanted to distinguish them from the Pagans, which —among the others— caused the decay of the traditional Roman name system in the course of the 4th century. See e.g. C.N. Kaufmann, *Handbuch der altchristlichen Epigraphie*, Freiburg 1917, 35 f.; I. Kajanto, *Onomastic Studies in the Early Christian Inscriptions of Rome and Carthage*, Helsinki 1963, 9 f.; idem, *The Latin Cognomina*, Helsinki 1966, 53 f., 135.

⁶⁴ See: A. Chastagnol, *Les espagnols...*, 272-273; R. Teja, *op. cit.*, 569 and J. Vilella, *Rang i procedència...*, 92.

⁶⁵ See e.g. R. von Haehling, *Die Religionszugehörigkeit der hohen Amtsträger des römischen Reiches seit Constantinus I Alleinherrschaft bis zum Ende der Theodosianischen Dynastie (324-450 bzw. 455 n. Chr.)*, Bonn 1978, passim.

nianum at least since the summer/fall of 316, because Constantine I was in Serdica by December 316 when he gave the rescript, which, as I pointed out before, was the answer to the question of Octavianus⁶⁶.

Taking into consideration the speed of the transportation by the Roman *cursus publicus*⁶⁷, the discussed constitution is an example of unusually quick communication. It took only three months to deliver it—in comparison, for example, to the constitutions for African provinces; issued in the autumn in Europe, they practically never reached Africa till the following spring or early summer⁶⁸.

Assuming the usual short term of the official's duties in the later Roman empire, we can be sure that Octavianus must have been recalled already in 317 or at least a year later⁶⁹. Other *comites Hispaniarum* were discharged from their duties probably also in short periods⁷⁰.

After the completion of his duty as a *comes Hispaniarum*, we know nothing about the successive stages of Octavianus' career.

He did not seem to be as successful as one of his successors, C. Annius Tiberianus, who achieved the posts of *vicarius Hispaniarum* and prefecture of Gaul. Maybe he was not so well educated as the latter was (Tiberianus was a poet⁷¹), although not professionally trained, because specialized qualifications were much less regarded than general education for civil officials in the later Empire⁷². It might be the case that other sources concerning Octavianus have been lost.

We could also consider why Octavianus was in Corduba (Cordoba) in March 317 while the capital of the whole *dioecesis Hispaniarum* was probably Augusta Emerita⁷³.

⁶⁶ According to A. Chastagnol, *Les espagnols...*, 271 first comes Hispaniarum (that is Octavianus) was sent to Spain after 313 and his opinion is followed by J.J. Sayas, *op. cit.*, 533 and R. Teja, *op. cit.*, 569.

⁶⁷ Even 40 km per day by land in 4th century. See from the recent works A. Kolb, *Transport und Nachrichtentransfer im Römischen Reich*, Berlin 2000 with the comprehensive bibliography (esp. 310-317). She rejects the using of the misleading terms "post" or "imperial post" as the equivalent of the Roman term *cursus publicus* and argues that the *cursus publicus* provided an infrastructure for magistrates and messengers who travelled through the empire and was not a body of imperial messengers (see esp. 8 f. and 333-339).

⁶⁸ A.H.M. Jones, *op. cit.*, 402-403, esp. n. 76.; R. Duncan-Jones, *Structure and Scale in the Roman Economy*, Cambridge 1990, 27 f.; J. Matthews, *Lying...*, 180 f.

⁶⁹ See e.g. O. Karlowa, *Römische Rechtsgeschichte*, t. I, Leipzig 1885, 873-874, 875 f.; A.H.M. Jones, *op. cit.*, 380 f.; Ch. Kelly, *op. cit.*, 192 f.

⁷⁰ See studies quoted in n. 22.

⁷¹ Cf. *ibidem*.

⁷² See e.g. G. Alföldy, *op. cit.*, 249 and 259; Ch. Kelly, *op. cit.*, 18 f. About the weakness of the officials' education see also the sketch of F.S. Pedersen, *Late Roman public professionalism*, Odense 1976.

⁷³ See recently J. Arce, *¿Hispalis o Emerita? A propósito de la capital de la Diocesis Hispaniarum en el s. IV d.C.*, *Habis* 33 (2002), 501-506 against the view that the capital was Hispalis (Sevilla). See also *idem*, *El último...*, 51-52; Fe Bajo Alvarez, *op. cit.*, 10. M. Kulikowski, *Late Roman Spain...*, 71 f. The *comites Hispaniarum* are attested in Emerita only by inscriptions from 330th (Severus and T. Flavius Laetus). See studies quoted in n. 22. R. Thouvenot, *op. cit.*, 175 resolved the problem by short insufficient statement: "mais il n'était peut-être qu'un délégué extraordinaire".

Roman Corduba, with the area of 70 ha⁷⁴ was in Antiquity the capital of the deeply romanized, agriculturally rich province *Hispania Baetica*⁷⁵, one of the capitals of Roman Spain, among others the seat of *conventus iuridici*⁷⁶. The city was an important crossroad and “nucleus of population”⁷⁷ in the province, which was —as a whole diocese— not in bad economic condition even in the later Empire⁷⁸. During the Principate *conventus* was in general a kind of territorial division like a judicial circuit, a gathering of the people in the provinces for judicial purposes, on days fixed by governors, who, during their obligatory official trips through the province, at least once a year, made a halt in larger cities in order to administer justice⁷⁹. Later, at least after the introduction of provincial reforms by Diocletian, when the number of provinces increased to more than 100 and their size was reduced⁸⁰, the need for governor’s visits were not so necessary⁸¹ — the term simply meant a session of any court⁸².

Baetica was divided into four *conventi* which were created most probably by Octavianus Augustus, while the whole of Spain into 14⁸³. There were four *conventi* in Baetica: *Astigitanus*, *Gaditanus*, *Hispalensis* and the most important *Cordubensis*.

⁷⁴ Similar to the average area of other centres of identical rank. By present standards it does not look impressive, but we have to remember that the majority of cities in Roman Spain were much smaller, and would occupy between 5 and 10 ha (hectares). The number of cities decreased in late Antiquity, while the number of people was rather fixed —around 4— 7,5 million in Iberina Peninsula. See C. Carreras Monfort, *A New perspective for the demographic study in Roman Spain*, *Revista de Historia da Arte e Arqueologia* 2 (1995-1995), 60, 65, 68, 69 (I quote the figures presented in his study — he argued for the 4,5 million of inhabitants); Fe Bajo Alvarez, *op. cit.*, 16-18 and generally in western part of the Empire and the problems concerning the calculation: W. Suder, *Census populi. The Demography of Ancient Rome* [in polish], Wrocław 2003, 149-170 [Spain: – 163-164].

⁷⁵ See still useful R. Thouvenot, *op. cit.*, passim and from modern works e.g. A.P. Monge, *op. cit.*, passim.

⁷⁶ See about Cordoba in antiquity e.g.: J.R. Carrillo, R. Hidalgo, J.F. Murillo, Á. Ventura, *Córdoba. De los orígenes a la antigüedad tardía*, [in:] F. García Verdugo y F. Acosta (eds.), “Córdoba en la Historia, la construcción de la Urbe”, Córdoba, 1999, 37-74; *Córdoba: Colonia Patricia Corduba* (ed. Xavier Dupré Raventós et al.), “Las capitales provinciales de Hispania”, vol 1., Roma 2004, both with comprehensive bibliographies.

⁷⁷ See C. Carreras Monfort, *op. cit.*, 59-82, esp. 66, 72.

⁷⁸ J. Arce, *El último...*, 85-136; idem, *La península Ibérica...*, passim. See also generally Fe Bajo Alvarez, *op. cit.*, 13-28.

⁷⁹ See e.g. Kornemann, *Conventus*, [in:] RE 4, col. 1173-1200; F. Grelle, *Conventus* [in:] NDI 4 (1957) 801-802; G.P. Burton, *Proconsul, assizes and the administration of Justice*, JRS 65 (1975) 92-106. See about *conventi* in Spain: M.D. Dopico Caímzos, *Los conventos iuridici. Origen, cronología y naturaleza histórica*, *Gerión* 4 (1986) 265-283.

⁸⁰ See e.g. T.D. Barnes, *op. cit.*, 209-210; S. Williams, *op. cit.*, 221-224; W. Kuhoff, *op. cit.*, 329 f. and 338 f. In the case of Spain see also J. Arce, *El último...*, 51.

⁸¹ R. Thouvenot, *op. cit.*, 175.

⁸² As the towns became the permanent seats of standing courts, the *conventi* were superseded and the term *conventus* was finally applied to certain bodies of Roman citizens living in a province, forming a sort of enfranchised corporation, and representing the Roman people in their district as a kind of gentry. See studies quoted in n. 79.

⁸³ M.D. Dopico Caímzos, *op. cit.*, 266 f. and 282.

Possibly Octavianus received the constitution CTh 9,1,1. while he performed his judicial duties in Corduba, the former capital of *conventus* as well as the capital of province Baetica. Very probably, he heard there appeals from the sentences of the governor of the province concerning the cases which had happened in *conventus Cordubensis* or the whole of province Baetica. This could be the reason why our comes was there in 317. But most probably he had sent the letter to the emperor, asking him how to deal with some abuses. The answer of the emperor is the CTh 9,1,1 issued in December 316.

We cannot say how Octavianus reached Corduba. Considering the importance of water transport in the Roman empire, which was less tiring, faster and cheaper than travelling by land⁸⁴, Octavianus could travel to the *dioecesis Hispaniae* partly by sea. He could also travel only by land using famous via Augusta, from Pyrenees to Cadiz (Gades)⁸⁵. It was also possible to get via the Guadalquivir river to Corduba itself⁸⁶ and for this reason he might have reached the town by boat.

We do not know much about Octavianus' inspection. His arrival in Corduba, the capital of province *Hispania Baetica*, indicates that he had visited before at least some other capitals of provinces in Spanish diocese, or even each of the 14 places where *conventi* were conducted in the times before provincial reorganisation of Diocletian. It looks almost incredible that Octavianus was dispatched by the emperor only to Corduba. We have no information about any events in province Baetica or in the densely populated Guadalquivir valley⁸⁷, which required urgent interference of the emperor's extraordinary representative. The title of Octavianus —*comes Hispaniarum*— also suggests that he travelled all around the Spanish diocese and visited other important towns, by land⁸⁸ and, if it was possible, by boats. Most probably he used wagons and stations of *cursus publicus*, what was a privilege of all higher officials⁸⁹.

I also have another theory why Octavianus was sent to the Iberian Peninsula. The best known Spaniard of the epoch of Constantine was bishop Ossius of Cordova, Constantine's trusted spiritual and official adviser, who stayed by the emperors side between 312 and 326⁹⁰. Ossius could be in touch —by letters too— with the mem-

⁸⁴ See about the costs of land and sea or river transport e.g. R. P. Duncan-Jones, *The Economy of the Roman Empire. Quantitative Studies*, Cambridge 1974, 366-369; M. Hendy, *Studies in the Byzantine Monetary Economy c. 300-1450*, Cambridge 1985, 554-561; A. Kolb, *op. cit.*, 123 f.

⁸⁵ There are plenty of works concerning the roads of Roman Spain, see: <http://wwwcsun.edu/~hcf1004/viaeromanae.html> and <http://traianus.rediris.es/viasromanas/>. About the problems concerning the travelling through the Iberian Peninsula see J. Arce, *La penisola...*, 378-388.

⁸⁶ See e.g. R. Thouvenot, *op. cit.*, 521-525.

⁸⁷ Already before the Roman conquest; see e.g. C. Carreras Monfort, *op. cit.*, 72.

⁸⁸ The roads were in good condition in the late Antiquity. See e.g. R. Thouvenot, *op. cit.*, 478-499.

⁸⁹ See from recent works M. Bianchini, *Otium agere ed evectioes: privilegi degli al ti funzionari nel tardo impero*, [in:] "Mélanges F. Sturm", Liege 1999, 41-51.

⁹⁰ The most comprehensive study is still V.C. De Clerq, *Ossius of Cordova; a contribution to the history of the Constantinian period*, Washington 1954. See also recently J. Fernández Ubiña, *Osio de Córdoba, el Imperio y la Iglesia del siglo IV*, Gerión 18 (2000) 439-473. The essential data are given by F.W. Bautz, [in:] *Biographisches-Bibliographisches Kirchenlexicon*, II (1990), Sp. 1074-1075 (http://www.bautz.de/bbkl/h/hosius_b_v_c.shtml).

bers of his family and his friends who lived in Spain, just like he sent letters in religious matters after his coming back to his bishopric capital⁹¹. Therefore Ossius could be well informed about the situation in his homeland and he could influence Constantine about the necessity of dispatching an extraordinary representative to the Spanish diocese. The emperor put trust in Ossius not only when he sent him with the mission concerning the arian controversy to Alexandria in 324 or gave him the chairmanship over the Nicea Council a year later, but also in social matters, like in the case of the constitution addressed to Ossius concerning the *manumissio* of the slaves in the church⁹².

Another famous Spaniard in the epoch of Constantine, Acilius Severus, consul before 323 and *praefectus urbi* in Rome in 325-326, probably one of the most prominent senators of the early fourth century was too young when Octavianus was in Spain⁹³. Two other important persons from the list of Spaniards in the epoch of Constantine: Iulius Severus, vicarius Italiae in 318 and Iulius Verus, praeses Tarraconensis in 316⁹⁴, seemed to be much less influential than Ossius.

⁹¹ See e.g. J. Vilella, *Les voyages correspondances à caractère religieux entre l'Hispanie et l'extérieur selon la prosopographie chrétienne (300-589)*, *Jahrbuch für Antike und Christentum* 20,2 (1995) 1255-1261.

⁹² CTh 4,7,1 (321). See recently C. Buenacasa Pérez, *Un exemple de la caritat cristiana a l'Església primitiva: la manumissió dels esclaus a "Hispania" segons les fonts dels segles IV-VII*, *Annals de l'Institut d'Estudis Gironins* 38 (1996-1997), 1231-1243, esp. 1234.

⁹³ See e.g. PLRE I, 834 (Acilius Severus 16). He could be the father of Severus, *comes Hispaniarum* in 333-335. See also A. Chastagnol, *Les espagnols...*, 272-273.

⁹⁴ PLRE I, 836 (Iulius Severus 25) and 953 (Iulius Verus 3). They were possibly identical. The Spanish origin of another official from the beginning of IVth century —Domitius Latronianus, *corrector Siciliae* before 314 and *Proconsul Africae* in 312/324— is hypothetical (PLRE I, 496, Domitius Latronianus 2).