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## LEGAL PROCEDURE IN HELLENISTIC CRETE RESPONSE TO ANGELOS CHANIOTIS

International relations among Cretan *poleis* in the Hellenistic age are illuminated by a remarkably high number of epigraphical texts, mostly recording treaties but also decrees, which have been systematically studied and commented on in a fundamental book by Professor Chaniotis<sup>1</sup>. Together they reveal two parallel and, apparently, opposite phenomena, namely a striving for autonomy sometimes coupled with hegemonial ambitions on the part of the individual cities and, as a result, constant potential hostility among them, on the one hand, and, in a new historical context dominated by territorial monarchies and federal states, a tendency towards unity or, at least, towards the creation of large alliances, thus transcending political division, on the other. In respect to the latter phenomenon, treaties were obviously of capital importance as their aim was, among other things, to develop a set of commonly accepted legal instruments and procedures with a view to solving conflicts peacefully without resorting to war.

Both aforementioned phenomena feature prominently in the history of the Cretan *koinon*, the κοινὸν τῶν Κρηταίων, probably founded before the mid-III century B.C.<sup>2</sup>. It was not, strictly speaking, a federal state but a looser confederation bringing together Knossos and Gortyn, the two leading Cretan powers, and their allies. Although there were no advanced federal institutions, the *koinon* had a *synedrion* and a general assembly (*IC IV 197* = Rigsby 1996, nr. 175, ll. 1-2: [ἔδοξ]ε τοῖς συνεδρίοις καὶ τῶ[ι κοινῶ]ι τῶν Κρηταίων) and had developed judicial procedures to solve «international» disputes legally by means of a *κοινοδίκιον* and a set of common rules, defined both in a number of treaties and in a *diagramma*, integrated by *symbola* concluded between individual communities.

In his enlightening paper, Professor Chaniotis has provided the first complete commentary on the contents of a still unpublished inscription, recording the fragmentary text of a treaty, found in Cretan Chersonesos<sup>3</sup> in 1955, which, as shown by the clauses concerning the ὄρκος to be sworn by the contracting parties upon ratification of the treaty itself and the ἀρχαί to be pronounced on the same occasion and thereafter annually<sup>4</sup> (B 11-24), clearly belongs to this context and significantly

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<sup>1</sup> Chaniotis 1996; see also Capdeville 1997.

<sup>2</sup> Chaniotis 1996, pp. 29-38, 99-100; 1999, pp. 289-295.

<sup>3</sup> Perlman 2004, p. 1155.

<sup>4</sup> On ἀρχαί in the Hellenistic period see most recently Rubinstein 2007.

enriches our information on the character of the *koinon*. The stele is broken and its upper part, bearing probably a substantial section of the document, is now lost. In the preserved provisions, judicial procedure stands out as the area where the new document can to a larger extent contribute to enhancing our knowledge. Mention of ἀφάιρεςις in connection with fines and with the διάγραμμα (A 14-17)—the text is, however, partly restored—confirms that the latter consisted of a list of offences and corresponding fines (τιμαί), together with provisions concerning procedure for trials (δίκαι) and the exaction of fines, as indicated by the decree of the Cretan *koinon* granting ἀσυλία to Anaphe (*IC* IV 197 = Rigsby 1996, nr. 175, ll. 21-27: ὑπόδικος ἔστω [δίκαν]....[κ' ἐν κ]οινοδικίῳ ἀπρ[όδικον κ' ἀπ]άρβαλον καὶ κ[υρία ἀ]πρῶξις ἔστω κατ[ὰ τὸ διάγραμμα]<sup>5</sup>. As the text refers to *the* κοινοδικίον as opposed to *a* local *polis* δικαστήριον, the new inscription moreover conclusively demonstrates that, following Ph. Gauthier, the *koinodikion* was *the* federal court of the Cretan *koinon*<sup>6</sup>, constituted either by representatives of the member states or, perhaps, as suggested by Professor Chaniotis, to be identified with the general assembly of the *koinon*, and not a mixed, joint tribunal formed by representatives of the disputing communities, as proposed by Sheila Ager<sup>7</sup>. Concerning the competence of the *koinodikion*, Professor Chaniotis argues, against Ph. Gauthier, that no clear-cut distinction between public and private charges can be made and that the federal court dealt with «international» disputes, no matter whether they were of a public or private character<sup>8</sup>. I shall return to this point later.

In the brief observations that follow I would like to focus on the substance of the treaty and the concrete problems the document was meant to address. Owing to the fragmentary character of the inscription, this aspect remains rather obscure, although some guesswork can be attempted on the basis of a number of technical and legal terms that need to be more closely examined. The first is αὐτόμολος, «deserter», «somebody who goes his own way» and changes sides, which perfectly suits the war conditions in response to which the treaty was drafted. *The* war that is several times mentioned in the text is almost certainly the «Lyttian War» (c. 222/1-219 B.C.) described by Polybius 4,53,4-8 and it is interesting to note that the historian not only refers to a state of war among *poleis* belonging to the κοινὸν τῶν Κρηταιέων (see also *I.Magnesia* 46, ll. 10-12: καὶ τὰν εὐε[ργ]εσίαν, ἃν [συ]ντελέσαντο εἰς τὸ κοινὸ[ν] τῶν Κρηταιέ[ων] δι[α]λύσαντες τὸν ἐμφύλιον πόλεμον) but also to *stasis* in Gortyn (cf. also *IC* I, 9, 1, ll. 49-70, suggesting similar conditions at Dreros). The term αὐτόμολοι does not occur frequently in the classical sources, although it can be inferred from Herodotus (1,127,3; 3,154,2 and 160,2; 6,38,2; 7,219,1; 8,26,1),

<sup>5</sup> On the question of the *diagramma* and the δίκη ἀπρόδικος see Vélissaropoulos 1975; Chaniotis 1996, pp. 137-141; Maffi 2006, pp. 304-314.

<sup>6</sup> Gauthier 1972, pp. 316-325.

<sup>7</sup> Ager 1994.

<sup>8</sup> Cf. also Chaniotis 1999, pp. 292-295.

Thucydides (1,142,4; 2,57,1; 3,77,2; 4,41,3 and 118,7; 5,2,3 and 14,3; 7,13,2, etc.)<sup>9</sup>, Xenophon (*Anab.* 1,7,2 and 13; 2,1,5; *Hell.* 6,2,15; *Cyr.* 3,3,48; 6,1,25; 7,5,2), Polybius (1,19,7, 67,7 and 88,8; 4,57,8; 8,37,2; 18,1,13 and 44,6, etc.) and, e.g., Aeneas Tacticus (22,14; 23,1 and 5; 24,16; 28,2) that «deserters», whether freemen or slaves, were a typical feature of ancient conflicts. It mainly had a descriptive value and it seems doubtful that it was, technically speaking, a legal term. In the inscriptions it is attested even more rarely. In fifth-century Athenian epigraphy it appears in the decree concerning the Colophonians, where, in the oath of allegiance, the Colophonians had to commit themselves not to revolt from Athens as a community nor to desert as individuals (*IG* I<sup>3</sup> 37, ll. 46-49: οὐκ ἀποστ[έ]σομαι τῷ δέμῳ τῷ Ἀθηναίῳ οὔτε λ[ό]γοι οὔτ' ἔργ[οι]...καὶ οὐκ αὐτομολ[έ]σο)<sup>10</sup>. An unpublished inscription from Argos contains a series of «official» lists of *automoloi* who had apparently joined the Macedonians at the end of the fourth century B.C. (*SEG* 37,280; 54,433)<sup>11</sup>. In the *senatus consultum de Thisbensibus* (170 B.C.) οἱ αὐτόμολοι who had joined and actively supported the Roman cause were granted permission to fortify the acropolis (but not the *polis*) and reside there (*SIG*<sup>3</sup> 646 = Sherk 1969, nr. 2, ll. 27-30: ὡσαύτως περὶ ὧν οἱ αὐτοὶ λόγους ἐποιήσαντο, ὅπω[ς] οἱ αὐτόμολοι οἱ ἴδιοι ἐκεῖ φυγάδες ὄντες, τὴν ἄκραν αὐτοῖς ὅπως τειχίσαι ἐξῆι καὶ ἐκεῖ κατοικῶσιν οὔτοι, καθότι ἐνεφάνισαν, οὕτως ἔδοξεν· ὅπως ἐκεῖ κατοικῶσιν καὶ τοῦτο τειχίσωσιν. ἔδοξεν. τὴν πόλιν τειχίσαι οὐκ ἔδοξεν)<sup>12</sup>. Aeschines, to conclude this brief survey, praised written records as, metaphorically, they did not shift sides together with those who were αὐτόμολοι ἐν τῇ πολιτείᾳ (3,75: ἀκίνητον γάρ ἐστι, καὶ οὐ συµμεταπίπτει τοῖς αὐτομολοῦσι ἐν τῇ πολιτείᾳ).

Although, from the point of view of those they changed sides to, deserters were useful and, to a certain extent, welcome, among other things because of the information they might convey (an aspect several times underlined by the ancient sources)<sup>13</sup>, from the point of view of those they deserted *automoloi* could only be regarded as traitors. One need only think of Lycurgus' speech *Against Leocrates* and the offences of λιποτάξιον, ἀστρατεία and, possibly, λιποστράτιον in Athenian law<sup>14</sup>. It must therefore be surmised that the treaty, which seems to have dealt

<sup>9</sup> On Thuc. 7,13,2 see now Hornblower 2008, p. 564.

<sup>10</sup> For the date of the decree contrast now Rhodes 2008 (c. 447/6) and Papazarkadas 2009, esp. p. 70 (after 427). Cf. also *IG* I<sup>3</sup> 58 (= Clinton 2005, nr. 31), l. 24.

<sup>11</sup> Piérart 1987, pp. 176-177 with n. 20; Piérart-Touchais 1996, pp. 63-64; Chaniotis 2004, p. 489. On the historical context cf. Landucci Gattinoni 2006, pp. 318-325, esp. 324 with n. 57.

<sup>12</sup> Gehrke 1993.

<sup>13</sup> Russell 1999, pp. 49-54.

<sup>14</sup> On γραφή ἀστρατείας and γραφή λιποταξίου in Athenian law see Harrison 1971, pp. 31-34; Hamel 1998; Hansen 2003; Christ 2006, pp. 59-65, 118-121; cf. also Whitehead 2008, with the *Response* by P.J. Rhodes, pp. 37-40. In case of conviction, the penalty in both legal actions was total atimia (And. 1,74; Aesch. 3,175-176; [Dem.] 59,27). On

specifically with the problem of *automoloi* (A 12-13, 20; B 6) and must have been part of a cooperative effort among the members of the κοινὸν τῶν Κρηταιέων, was first of all meant to enforce severe penalties (exile, atimia? and, as we shall see, in all likelihood confiscation of property) against those who deserted (this part of the document is, however, lost) and then, secondarily, *also* inflicted heavy fines to those who absconded them (καὶ τῶι κρύποντι) in other member states of the *koinon*. Whether the *automoloi* were citizens or individuals of dependent status with military obligations remains a moot-point. Professor Chaniotis is inclined to prefer the second option but I wonder whether, in this case, it would have been necessary to grant ἀσφάλεια, «personal security»<sup>15</sup>, to prosecutors (B 2-10): all Cretan cities must have shared an interest to keep the dependent population subdued. It is therefore more likely that they were citizens involved in internal strife.

If my interpretation so far is correct, the subject of the following clauses (A 12-13: [οὐ]ρίσκηται; A 15-17: ἀφέληται) should be identified with the αὐτόμολος (and not with ὁ κρύπτων). The adjective αὐτομολικά is, as far as I can see, an *hapax*. I have consulted the *Reverse Index of Greek Nouns and Adjectives* (1945) and the most likely restoration of the preceding substantive is, as proposed by Professor Chaniotis, [σῦ]λα<sup>16</sup>. In the Attic orators σῦλα or σῦλαι is attested three times and is used in a legal sense with reference to the right of seizure exercised by members of a foreign community<sup>17</sup>. In Dem. 35,26: «In our own city, without ourselves having committed any wrong or having had a judgement rendered against us in their favour, we have been robbed of our own possessions by these men who are Phaselites, just as if rights of reprisal had been given to Phaselites against Athenians» (σεσυλήμεθα τὰ ἡμέτερ' αὐτῶν ὑπὸ τούτων Φασηλιτῶν ὄντων, ὡσπερ δεδομένων συλῶν Φασηλίταις κατ' Ἀθηναίων), it is significantly associated with the verb δίδωμι (cf. also *Lex. Seg.*, p. 303 Bekker, s.v. σῦλα δοῦναι κατὰ τῆς Χαλκηδονέων πόλεως)<sup>18</sup>, thus confirming Professor Chaniotis' restoration (ἐγδ[ιδόντων σῦ]λα αὐτομολικά). It can therefore be inferred that, in case the *automolos* absconded and could not be found, during the war the citizens of his own *polis* were given the legal right to seize his property (σῦλα αὐτομολικά) in the member state of the *koinon* where he had sought refuge, whereas in peace time it was first necessary to obtain a conviction in front of the πλήθος (whatever this term alluded to). In the following provision the opposite situation seems to be envisaged:

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deserters as *anti-citizens* see Velho 2002. According to Chaniotis 1996, p. 18, citizenship in Cretan *poleis* was defined by «die kriegerische Ausbildung und die Teilnahme an den Syssitien...und die Herrschaft über eine abhängige Bevölkerung von verschiedenen rechtliche Stellungen (Kaufsklaven, Hörige, freie Nichtbürger)».

<sup>15</sup> On ἀσφάλεια, «la sécurité à la fois de la personne et des ses biens», Bravo 1980, pp. 749-750.

<sup>16</sup> [ῶπ]λα is admittedly another possible restoration but it does not seem to fit into the context equally well.

<sup>17</sup> Bravo 1980, pp. 735-750; Pritchett 1991, pp. 121-122.

<sup>18</sup> Bravo 1980, p. 744, «accorder à quelqu'un le droit de saisie contre quelqu'un».

if the *automolos* could be found but «carried away for himself» (ὄς κα ἀφέληται) and hid his property, thus hindering confiscation, he was to be tried and sentenced to pay a fine double the amount set out in the *diagramma*. He was to be tried by the local ἐρευταί and the money of the fine, after exaction by the same magistrates, was to be sent to the wronged city. In case he was unable to pay the fine, the *ereutai* had to seize him and hand him over to the *polis* he had betrayed.

If these suggestions are correct, it appears that, most probably during the Lyttian War, the problem of deserters had become acute and threatened to undermine civic order in the *poleis* of the Cretan *koinon*. In this treaty the member states agreed on some common rules to solve such problem without damaging the interests of the communities deserted by the *automoloi*. They were to be treated as exiles and their property confiscated. Through a multi-tiered system of federal and local courts, special procedures were designed in case this proved to be impossible. The recipient of the confiscated property was in all cases the wronged *polis* and some forms of compensation and redress were envisaged if the magistrates of the *polis* where the deserters had fled did not fulfil their duties. In the light of this, because of the clearly public nature of the offences involved, the inscription Professor Chaniotis has presented cannot be used to support the assumption that the *koinodikion*, the federal court of the κοινὸν τῶν Κρηταιέων, had competence over *both* public and private charges. Although he has brought forward strong arguments to this effect, they must be based on other documents, namely the famous συνθήκα between Hierapytna and Priansos (*IC* III, 4, 4 = Chaniotis 1996, nr. 28 = Magnetto 1997, nr. 72, ll. 47-53 and 58-74) and the decree granting *asylia* to Anaphe (*IC* IV 197 = Rigsby 1996, nr. 175, ll. 17-27). My impression, considering that in the former treaty a σύμβολον clearly preceded the new agreement (ll. 70-71: κατὰ τὸ δοχθὲν κοινῶι σύμβολον), is that, as maintained by Professor Chaniotis, in so far as they concerned the interests of the community as a whole these actions were always in principle regarded as public, no matter who the disputing parties were<sup>19</sup>.

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<sup>19</sup> See also Magnetto 1997, p. 429-430.

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