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DISPUTE OVER OWNERSHIP IN GREEK LAW:  
PRELIMINARY THOUGHTS ABOUT A NEW  
INSCRIPTION FROM MESSENE (*SEG LVIII 370*)

In 2008 Petros Themelis provisionally has published the first part of a highly important new inscription from Messene, the *psaphisma* summing up a dispute over territory. The work on publishing the full dossier, altogether 190 lines, is in progress. In the years after 182 BC the polis (partly) had defeated its opponent Megalopolis in several trials: the Messenian *psaphisma* is followed by a *proklēsis* (challenge of the Megalopolitans directed to the Messenians to stand trial), a *zamia* (fine imposed on the Messenians for contumacy), and a *krima* (judgment voiding the fine). In March 2011 Professor Themelis generously communicated and discussed the whole text in a seminar performed in Vienna and he also allowed to make some references to it in this paper. For the history of the Achaian League the *psaphisma* is most prominent, for legal history knowledge of the *proklēsis* is essential. Since Arnaoutoglou (2009/10) instantly has started discussing the topic “dispute settlement,” this paper too aims at explaining some juristic passages of the *psaphisma* in the light of the entire text – not anticipating the editor’s work. To my view this inscription is the first source showing in full details the principles of private dispute over ownership of land in Greek law. But this topic can be discussed exhaustively only when the whole text will be published definitely. At the moment, only preliminary thoughts are possible.

First I will print the Greek text of the *psaphisma* following Themelis’ *editio princeps* with an English translation (part one). Then I will reconstruct the different legal actions planned and taken by the opponents and the decisions given by the different law courts chronologically (part two). Finally, as a short preview, I will focus on possible new results for the knowledge of ownership dispute in Greek law (part three).

Part One. Text and translation

Col. I

ψ ά φ ι [ σ μ ] α

ἐπειδὴ κατασ[χόν]των τῶν Ἀχ<sup>ν</sup>αιῶν  
Ἐνδανίαν καὶ [Πυλ]άναν, τᾶς δὲ πόλε-  
ος ἀποκατασ[ταθείσ]ας εἰς τὰν συνπολι-

- 5            τείαν τῶ[ν Ἀχαιῶν], τὸ μὲν πρῶτον ἠθέλη-  
σαν Μεγ[αλοπολίτ]αι διὰ τῶν Ἀχαιῶν ἀφελέ-  
[σθαι ἀμῖν τά]ς τε πόλεις καὶ τὰν χώραν τὰν  
[Ἐνδανίκαν κ]αὶ Πυλαγίκαν πᾶσαν αἴτηνα  
[- - - c. 10 - - -]ο τοὺς Ἀχαιοὺς, τῶν δὲ Ἀχαι-  
10           [ῶν α]ὐτοῖς π[ρο]ειπάντων μὴ κα περιθέμεν  
[Με]γαλοπολίταις τὰν Μεσσανίων, πάλιν  
[- - -]φαν ἐν τᾷ ἐν Ἄλει συνόδωι θέλειν κριθῆ-  
[μεν μ]ἔν ποθ' ἀμέ, περί τε τὰς πρότερον χώρας  
ἀντελέγασαν ἀμῖν καὶ περὶ τὰς Ἐνδανίκας  
15           καὶ Πυλανίκας καὶ ἀμῶν συνελομένων κρι-  
τήριον ποτ' αὐτοὺς ὃ καὶ αὐτοὶ συνευδόκη-  
σαν τοὺς ἀγεμόνας Ἀπολλωνίδαν Ἐτε-  
άρχου, Ἀλέξανδρον Ἀλεξάνδρου, Κλέαν-  
δρον Κλεάνδρου Σικυωνίους, Ἄρχωνα Φιλο-  
20           κλέος, Ἐξαίνετον Ἐξαίνετου Αἰγυράτας, Φά-  
λακρον Φαινολάου, Λαφείδη Ξενοκλέος,  
Στιάπυρον Στιαπύρου, Δαμόξενον Κλεο-  
ξένου, Ἄντανδρον Δαμοξένου Αἰγιεῖς, Ἄν-  
τανδρον Ὑπερβίου Δυμαῖον, Ἐπικράτη Καμ-  
25           ψία, Γοργίδαν Νικίδα ὙΑρκαδίωνα Λέ-  
οντος Φαραιεῖς, Καλλικράτη Θεοξέ-  
νου Λεοντήσιον, Νικόδρομον Φιλιστίδα,  
Φίλωνα Σατύρου Ἀλείους, καὶ περὶ τούτων  
ἐνστάλου γενομένου ἀμῖν, ἀποδόν-  
30           τες οἱ Μεγαλοπολίται ὄρους Ἀπολλωνί-  
δαί τῶι στραταγῶι τὰς τε Ἐνδανίκας  
καὶ Πυλανίκας καὶ τὰς Ἀκρειάτιος καὶ  
Βιπειάτιος, καὶ ἀμῶν ἀποδόντων τοὺς  
περιέχοντας ὄρους ἀπὸ Νέδας ἄχρι Κλε-  
35           ολαίας, καθὼς ἐστὶ ἀμῖν ἡ χώρα, παρα-  
γενομένων τῶν δικαστᾶν εἰς τὸ Καρ-  
νειάσιον καὶ ἀποδειξάντων ἀμῶν ἐ-  
κατέρων τὰν χώραν καθὼς καὶ τοὺς ὄ-  
[ρο]υς ἀπεδώκαμες, καὶ γενομένας  
40           [ἐν] τῶι Καρνειασίωι δικαιολογίας ἐπὶ  
[τρεις ἀ]μέρας μεθ' ὕδατος, ἀπὸ μὲν τὰς  
[Ἀκρειά]τιος καὶ Βιπειάτιος ἀποστάντων

45 [τῶν Με]γαλοπολιτᾶν, τοὺς δὲ Καλιά-  
 [τας οὐ πα]υσάντων ἀντιποιήσασθαι  
 [ἀμῖν καὶ] ἄλλο κριτήριον μεταλα-  
 [βόντων τῶν Κ]αλιατᾶν πάλιν κρίνωνται  
 [- - - c. 9 - - -]ν ποθ' ἀμέ, ἀμῶν δὲ συ-  
 [- - - c. 9 - - -]σιν ποτί τε Καλιάτας  
 50 [καὶ Μεγαλοπολί]ας περὶ τᾶς Ἀκρειάτιος  
 [καὶ Βιπειάτιος καὶ συ]νελομένων δικασ-  
 [τήριον τὰν πόλιν τῶ]ν Αἰγιέων καὶ δικαι-  
 [ολογίας γενομένης] Μεγαλοπολιτᾶν  
 Col. II [- - - c. 15 - - -] ὅτι Ἀκρειᾶτις *vacat*  
 55 καὶ Βιπειᾶτις Ἀρκαδία εἴη καὶ] Με-  
 γαλοπολίτις, ἀμῶν δὲ δι[δ]ασκόν-  
 των ὅτι Μεσσανία εἴη, ὄντων ἑκατὸν  
 τεσσαράκοντα ἑπτὰ τῶν κρινόντων  
 καὶ ταυτᾶν μεταλαβόντων Καλια-  
 60 τᾶν καὶ Μεγαλοπολιτᾶν ψάφους  
 ἑπτὰ, ἀμῶν δὲ ἑκατὸν τεσσαρά-  
 κοντα, κρινάντων Μεσσανίαν εἶ-  
 μεν τὰν χώραν τὰν Ἀκρειᾶτιν καὶ  
 Βιπειᾶτιν κατὰ τοὺς ὅρους οὓς ἀπε-  
 65 δώκαμες τοῖς κοινοῖς δαμιοργοῖς,  
 ὕστερον, ἐπεὶ ὑπεγραψάμεθα περὶ  
 τῶν καρπῶν τῶν ἐκ ταύτας τᾶς χώ-  
 ρας τᾷ πόλει τῶν Μεγαλοπολιτᾶν  
 ταλάντου διπλασίου, ἐπεὶ λαβοῦ-  
 70 σα μεσοκοίνους τοὺς καρποὺς οὐ-  
 κ ἀπεδίδου καὶ κεκριμένων ἀμῶν  
 περὶ τᾶς χώρας, πάλιν ἀμὲ προεκα-  
 λέσατο ἅ πόλις τῶν Μεγαλοπο-  
 λιτᾶν περὶ τᾶς Ἀκρειάτιος χώρας  
 75 ὡς κριτήριον συνελώμεθα ὡς οὐ  
 κεκριμένων ποθ' ἀμέ, τῶν δὲ κοι-  
 νῶν δαμιοργῶν ἐπακολουθησάν-  
 των αὐτᾷ καὶ ζαμίαν ἀμῖν ἐπι-  
 βαλόντων ὅτι οὐ συναιρούμεθα  
 80 κριτήριον καὶ εἰσαγαγόντων εἰς τὸ  
 δικαστήριον τῶν Μιλησίων ἐνικά-

σαμεν πάσαις ταῖς ψάφοις καθότι  
 εἶημεν κεκριμένοι περί τε ταύτας  
 τᾶς χώρας <sup>v</sup> καὶ τᾶς Βιπειάτιος πο-  
 τὶ Μεγαλοπολίτας· ὅπως οὖν ὑπό-  
 85 μαμα εἶ καὶ εἰς τὸν ὕστερον χρόνον  
 ὅτι περί τε τᾶς Ἀκρειάτιος καὶ Βιπειά-  
 τιος κρίμασιν ἐνικάσαμες τοὺς Με-  
 γαλοπολίτας καὶ περὶ τᾶς ζαμίας  
 ἅς ἐζαμίωσαν ἀμὲ οἱ δαμιοργοὶ ἐ-  
 90 νικάσαμες <sup>v</sup> δεδόχθαι τῶι δάμωι·  
 ἀναγράψαι εἰς τὸ ἱερὸν τᾶς Μεσ-  
 σάνας εἰς τὸ βᾶθρον τὸ παρὰ τὸ Βου-  
 λεῖον ἧ οἱ ἰππεῖς ἐντὶ τάν τε πρόκλη-  
 σιν τὰν γενομένην ὑπὸ τῶν Μεγα-  
 95 λοπολιτᾶν καὶ τὰν ζαμίαν τὰν  
 ἀπὸ τῶν δαμιοργῶν γενομένην  
 ἐπὶ Αἰνητίδα καὶ τὰν κρίσιν τὰν γε-  
 νομένην ὑπὸ τοῦ δικαστηρίου τῶν  
 Μιλησίων Βίωνος, Βάβωνος, Αἴσχρου,  
 100 Ἑραγόρα, Φιλίσκου, Ἀρτέμωνος, ὁμοί-  
 ως δὲ καὶ τὸ ψάφισμ<sup>v</sup>α τοῦτο. *vacat*  
*vacat* (5 lines)

*Notes:* Text and supplements as published in Themelis' *editio princeps* (2008), see now also *SEG* LVIII 370. Some *vacat* in the text are due to the fact that the cutter had to respond to existing damages of the stone (communication of Themelis in the seminar in Vienna, March 2011); meanwhile Luraghi-Magnetto 2012, p. 510-12 (autopsy by Luraghi).

8/9. αἴτημα | [τε ἠτήσαντ]ο L-M *app.* 10. [ἀντ] L-M, Chr. Jones 12. [ῥῥ]φαν(?) L-M *app.*  
 13. [ῥμ]ῥέν L-M *app.* 41. [δύο] Thür, L-M 45. [ἀμῖν ὅπως] L-M 47. [ἐκάτεροι αὐτῶν] L-M  
 48. – κρί]σιν L-M 53. [μὲν προειπάντων ὅτι](?) Thür in discussion with Habicht 70/71.  
 comma changed Thür : ἀπεδίδου, καὶ κεκριμένων ἀμῶν περὶ τᾶς χώρας πάλιν *ed.pr.*, L-M.

Translation<sup>1</sup>

(col. I, line 1) *Decree (of the Messenians)*

**I** (line 2) *Concerning that, when the Achaians had occupied Endania (= Andania) and Pylana and (our) polis was readmitted to the League of the Achaians, first the Megalopolitans wanted to deprive us, through the Achaians, of the poleis and the entire territory of Endania and Pylana and presented a request to the Achaians; (9) but the Achaians contradicted that they would not transfer the Messenian (territory) to the Megalopolitans.*

**II** (11) *In turn, in the synodos (of the League) at Alis (= Elis) (the Megalopolitans) declared that they were ready to undergo a trial with us and contradicted us both regarding the territory (under litigation) previously and the territories of Endania and Pylana, and (for the trial) with them we jointly chose as a tribunal to which they too agreed (17) the hagemones Apollonidas, son of Eearchos, (...sixteen further names...). (28) And when we (both) obtained a written decree on this issue the Megalopolitans handed over the (scheme of) borders of the territories of Endania and Pylana and of Akreiatis and Bipeiatis to the stratagos Apollonios, and we handed over the (scheme of) borders from the river Neda to the Kleolaia indicating the territory as it belongs to us.*

**III** (35) *After the judges came to the Karneiasion and we both demonstrated (to them) the territory according to the (schemes of) borders we had submitted, and after court debate took place over two days in the Karneiasion, with (speeches measured by) water-clock, (41) the Megalopolitans on the one hand abandoned Akreiatis and Bipeiatis, but on the other hand did not restrain the Kaliatai from disputing with us, so that, when the Kaliatai would obtain another law court, they both could again have a trial with us. (47) [We agreed to undergo] a trial with the Kaliatai and the Megalopolitai over Akreiatis and Bipeiatis*

**IV** (50) *and we jointly chose the polis Aigion as law court.*

**V** (51) *And after a court debate had taken place, in which the Megalopolitans affirmed that Akreiatis (col. II) and Bipeiatis were Arkadian and belonged to Megalopolis, but we explained that they were Messenian, out of the one hundred forty-seven judges sitting in the court the Kaliatai and Megalopolitans obtained seven votes, and we one hundred forty. They decided that the territory of Akreiatis and Bipeiatis is Messenian according to the (scheme of) borders we had handed over to the common damiorgoi.*

**VI** (65) *Later, when we had brought a lawsuit against the polis of the Megalopolitans about the fruits of this territory for a double talent, since after having taken a half common share of these fruits (the polis) did not surrender (its share), although we (both) had had a trial over the territory,*

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<sup>1</sup> I am grateful to Professor Christian Habicht for providing me in 2009 with his first German draft in Princeton and to Professor Nino Luraghi, Princeton, for thoroughly discussing the text in November 2011 in a seminar in Vienna; for better understanding I have followed some of his suggestions for supplementing; see now text and notes in Luraghi-Magnetto 2012, p. 510-513 (indicated also in my notes to the text). Generously he also communicated a draft of his English translation to me, which prevented me from some mistakes – notwithstanding my own responsibility. See also the English translation by Arnaoutoglou 2009-10, p. 199-201.

**VII** (71) *the polis of the Megalopolitans challenged us again regarding the territory of Akreiatís to choose jointly a law court, as if it had had no trial with us.*

**VIII** (75) *Responding to it (= the polis) the common damiorgoi imposed on us a fine since we did not cooperate in choosing a law court. And when they had introduced (us) into the court of the Milesians,*

**IX** (80) *we won obtaining all the votes according to the fact that we had already been judged in regard of this territory (= Akreiatís) and Bipeiatís (in a trial) with the Megalopolitans.*

(84) *In order that, also for future times, there be a memorial of the fact that in several trials we defeated the Megalopolitans (first) regarding Akreiatís and Bipeiatís, as well as we prevailed regarding the fine imposed upon us by the damiorgoi, let it be sanctioned by the damos:*

(91) *to inscribe (the following) in the sanctuary of Messana on the base close to the bouleion, on which the horsemen stand: the challenge issued by the Megalopolitans, the fine decreed by the damiorgoi in the year of Ainetidas, the judgment rendered by the court of the Milesians Bion, Babon, Aischros, Heragoras, Philiskos, Artemon, as well as this decree.*

#### Part Two. Legal actions planned and taken in the territorial dispute

The territorial dispute between Megalopolis and Messene was embedded in a dramatic warlike situation within the Achaian League.<sup>2</sup> In 191 T. Quinctius Flamininus had ordered that Messene was to join the Achaian League, with which it recently had been at war, and some poleis dependent to it became autonomous members of the League. When the Messenians revolted in 183/2, they were defeated by the League and the leaders were punished cruelly. Achaian troops were stationed in the Messenian territory and the last three small poleis still linked to Messene were detached. However, negotiations on restoring the Messenians to their previous position in the League started. A general condition for being admitted in the League was to settle all territorial claims between old and new members beforehand.<sup>3</sup> This was the situation in summer 182,<sup>4</sup> when the events reported in the lines 2-11 of the Messenian *psaphisma* took place. Consequently, in 182/1 Messene was readmitted into the League.<sup>5</sup>

Nevertheless, putting the legal actions referred to in the *psaphisma* into a chronological order one cannot start with the first paragraph just mentioned. Before that, the words περί τε τῶς πρότερον χώρος (line 13) “the territory (under

<sup>2</sup> Here it is not necessary to retell it in all details; see Themelis 2008, p. 220-21; Luraghi 2008, p. 262-4 and the article by Luraghi-Magnetto 2012, p. 514-21, generously communicated to me in advance. — All years are B.C.

<sup>3</sup> Harter-Uibopuu 1998, p. 17f., 128-9.

<sup>4</sup> For the date see Themelis 2008, p. 221.

<sup>5</sup> Polyb. 24, 2, 3; see Walbank 1979, p. 16-17.

litigation) previously”<sup>6</sup> must be explained. From that we also will get an idea of the dispute over the fruits referred to in 65-71 (ὑστερον...). This will guide us to the most exciting general results, the principles of private dispute over ownership, currently to be presented only in a very preliminary version.<sup>7</sup>

1. *Beginning of the dispute over Akreiatis, first proklēsis issued by the Megalopolitans (ll. 104-15 of the proklēsis document)*

Akreiatis can be located only by conjecture. In the context of the inscription it must be a small territory producing fruit (69) situated in the rough mountains at the border between Messenia and the territory of the Arcadian polis Megalopolis. In the course of the dispute it became connected with Bipeiatis, most probably unfertile pastureland close by or surrounding it. Anyway, ownership and the right of exploiting the produce of Akreiatis was the real topic of the whole dossier published in the inscription (see 82-3).

According to the beginning of the unpublished text, on this issue the Megalopolitans directed a first *proklēsis* to the Messenians. In international litigation one party cannot “summon” the opponent to appear in court.<sup>8</sup> Surrendering to international arbitration is always voluntary, even if a league – as we will see later – may indirectly force a reluctant member through fines to cooperate in choosing the tribunal (so called ‘obligatory arbitration’).

In their first *proklēsis* the Megalopolitans claimed ownership of the land and their right to derive fruits thereof. Their argument was, that they *had the land as owners, when they joined the League (ll. 108-10)*<sup>9</sup> (in 235), and the Messenians, *when they joined* (in 191), *did not (ll. 110-12)*.<sup>10</sup> Therefore the Messenians must

<sup>6</sup> Cf. *IPArk* 31 II B 10-11: *περὶ τῆς χ]ώρας ἀμφιλλεγομένης*; for this inscription see now Taeuber 2006, p. 343f.

<sup>7</sup> For both topics it is necessary to consult the *proklēsis* mentioned in 71-2 and 93-4. The (unpublished) *proklēsis* document, stylized as a letter of the polis of the Megalopolitans to that of the Messenians, runs for 64 lines; cf. Themelis 2008, p. 211. After recapitulating two earlier *proklēseis* directed to the Messenians asking them to undergo trials over Akreiatis, and recapitulating negotiations through several embassies, the Megalopolitans formally summoned the Messenians to cooperate in choosing a law court regarding Akreiatis (for the last see 71-4, 78-9); kindly communicated by Themelis in the Seminar in Vienna.

<sup>8</sup> Only in intrastate jurisdiction the plaintiff can summon the opponent by *prosklēsis* resulting in condemnation in case of default, see Harrison 1971, p. 85-7. For the use of *proklēsis* (challenge) in private litigation see Thür 1977, p. 28-40 (similar is the meaning of *proklēsis* in Ager 1996, no 21.33, 43; Magnetto 1997, no 14; Knidos-Kos, ca. 300), for international cases (challenge to submit to arbitration) see e.g. Harter-Uibopuu 1998, no 10.12-13 (Hermione-Epidauros, 1<sup>st</sup> half of 2<sup>nd</sup> cent.).

<sup>9</sup> With kind permission of the editor I quote some words (in English) from the unpublished *proklēsis* text. I print these and the references to the lines in Italics.

<sup>10</sup> For the concept of “ownership” see below part three.

have occupied possession after 191, probably in the first successful phase of revolting against the Achaian League in 183/2.

There can be no doubt that the Messenians accepted this *proklēsis* and for the trial – without any intervention of the League – both parties chose a court of Mitylenian judges mentioned later (ll. 147, 153) but – for good reasons (see below section 10) – omitted in the text of the Messenian *psaphisma*. The terms how to proceed were drafted in a *sylon document* (l. 113), in which the parties also might have agreed to a *friendly dispelling* (*exagōga*, ll. 124-5, cf. 129). Both words, pointing to a lawsuit for ownership framed on the model of private litigation, will be explained later in part three.

This first *proklēsis* was issued and accepted before negotiations on readmitting Messenia to the League took definite shape, either immediately after the revolt was struck down or after the first meeting of the League referred to in lines 2-11. The first arbitration the parties had agreed on was to be carried out in a completely different way than the other ones referred to in the whole dossier. At issue was ownership, not the borders between two poleis as in the other ones clearly conducted under the authority of the League. Therefore each party had taken half a share (μεσόκοινοῦς, 69) of the fruits due to the owner of the land under dispute. The shares might have come from the latest harvest, probably grain from early summer of 182, and were (according to the *proklēsis* document) considered as *common surety until a judgment regarding the land will... be rendered* (ll. 131-3). As long as the dispute did last, year-by-year, the Messenians sent this share to Megalopolis. At the end the party defeated in the territorial dispute had to render twice the value of his half of the divided harvests to the winner, finally estimated by the Messenians as one talent to be doubled: τάλάντου διπλασίου (68).<sup>11</sup>

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<sup>11</sup> From the text of the *proklēsis* the tempting interpretation of the hitherto unknown word μεσόκοινοῦς (69) indicating an agreement of “shared exploitation” of borderland, Themelis 2008, p. 219 n. 16 (referring to *IPark* 28.14); Arnaoutoglou 2009-10, p. 186 n. 21 (with further references), seems to be impossible. Here, sharing the produce half and half was not the outcome of the dispute, but rather an intermediate means only for the time of the ongoing trial (ll. 131-3, see above). Since Messene was the defendant (being in possession of the land and exploiting it), if there had been an agreement of “shared exploitation,” after winning the case it would have had no reason to claim the Megalopolitans’ share: Messene quietly could have kept its share. The produce from Akreiatis belonged exclusively to the owner of this land. For an award explicitly assigning the fruits to the victorious party see Piccirilli 1973, no 4.19-20 (Samos-Priene, beginning of the 4<sup>th</sup> cent.). – In Roman law fruits of land under dispute were not intermediately divided between the litigants, but rather the party promising the other the higher compensation when losing the case was entitled to possess and exploit the land for the time of the ongoing dispute; for *fructus licitatio* and “intermediate possession” see Kaser-Hackl 1996, p. 419. Such a rule can work only in intrastate, not in international jurisdiction.



2. *First synodos of the Achaian League* (section I of the *psaphisma*, 2-11)

In summer of 182, when the Achaian troops still were stationed in Messene, the League held an assembly at Megalopolis and decided that the leaders of the Messenian revolt, responsible for poisoning the Achaian *stratagos* Philopoimen from Megalopolis, were to be executed immediately.<sup>12</sup> The conditions for readmitting Messene to the League, at least detaching the last three poleis dependent to Messene, could have been on the agenda too. Most probably the Megalopolitans took this opportunity<sup>13</sup> for submitting considerable territorial requests towards Messene, namely for Andania and Pylana.<sup>14</sup> The *synodos* did not respond to them<sup>15</sup> and presumably just adjourned disputes over territory until a further meeting. It is not likely that the Achaians – as suggestively reported in the Messenian *psaphisma* – formally decided “that they would not transfer the Messenian (territory) to the Megalopolitans” (9-11).

Strikingly Akreiatis is not mentioned in this section of the *psaphisma*. One possible explanation could be that the dispute had not yet started. Nevertheless it seems more convincing, that at this moment the Megalopolitans still were confident of winning the pending case at the court of the Mitylenians. Moreover, for Megalopolis concentrating on the main issue would have been the better strategy at the actual *synodos*.

3. *Second proklēsis issued by the Megalopolitans* (ll. 117-21 of the *proklēsis* document)

Carrying on the arbitration over Andania and Pylana the Megalopolitans changed their strategy on claiming Akreiatis. Now they saw a better chance to submit also this claim to a tribunal under the authority of the League instead of applying to the court of the Mitylenians they formerly had agreed to. Therefore they issued a second *proklēsis* to the Messenians now demanding them to show up at a *synodos* regarding Akreiatis too. Thereby the Megalopolitans changed the character of the claim: as reported in the (unpublished) *proklēsis* document, they switched (from a dispute about ownership) to a dispute *about borders* (*peri termonōn*, l. 119), connecting the

<sup>12</sup> Polyb. 23, 16, 10-13.

<sup>13</sup> Suggested by Luraghi in the Seminar ; see now Luraghi-Magnetto 2012, p. 524-5.

<sup>14</sup> Andania is located on the western side of the Stenykleros plain, for Pylana see Luraghi-Magnetto 2012, p. 522-4. The words τὰν χώραν τὰν ἰ [Ἐνδανίκαν κ]αὶ Πυλαγίκαν πᾶσαν in 7-8 (the “entire” territory) seem a bit strange to me: were Akreiatis (and Bipeiatis) part of Andania or Pylana? Rather an award given at the Karneiasion (40) might not have concerned the “entire” territories of Andania and Pylana; see below section 5 and n. 22.

<sup>15</sup> When asked to interfere the *synodos* normally did not decide territorial disputes between members of the League by itself, but rather, in consent with the litigants, appointed arbitrators, Harter-Uibopuu 1998, p. 122-4. However, in the situation after the war and the territory occupied by Achaian troops the Megalopolitans might have expected special treatment.

fertile land with the pasture. For this reason, in the *psaphisma* document the dispute is called over “Akreiatis and Bipeiatis”.<sup>16</sup> The second argument is, that the trial now was to be conducted *according to the laws* (*kata tos nomos*, ll. 118-9). These are statutes of the League<sup>17</sup> ordering “obligatory arbitration” in territorial disputes with the consequence of fining a reluctant defendant for not cooperating in choosing a court.

#### 4. Synodos of the League at Elis (section II of the *psaphisma*, 11-35)

In 182/1 under the *stratagos* Apollonidas<sup>18</sup> the League held a meeting in Elis. Here Megalopolis and Messene agreed to undergo arbitration over two issues: the *psaphisma* mentions first “the territory (under litigation) previously” and only in second place the principal case submitted already in a meeting before, Andania and Pylana (13-15). This is a tactic in pure rhetorical manner – to be observed in the whole document (and in the *proklēsis* document of the Megalopolitans too). The *psaphisma*, issued by the Messenians, aims to celebrate their victory regarding Akreiatis and as far as possible keeps silence about Andania and Pylana. Furthermore the Messenians are blurring the fact that “previously” the dispute was over the ownership of Akreiatis (never decided by the court of the Mitylenians) and not, finally successful, over the borders of Akreiatis and Bipeiatis.

The panel of arbitrators, to which both parties had agreed, was an extraordinary one: it was made up of 17 *hagemones*, prominent politicians of the League,<sup>19</sup> presided by the *stratagos* Apollonidas in person (16-28). To keep impartiality none of the arbitrators came from Arcadia (arbitrators from Messene, not yet in the League, are not to be expected). The agreement was sanctioned by a formal decree of the League (29), and in different sets each party handed over a description of the borders to the presiding magistrate Apollonidas (29-35).

#### 5. Arbitration at the Karneiasion (section III of the *psaphisma*, 35-50)

The 17 *hagemones* met in the Karneiasion, the Andanian sanctuary at the borders between Messenia and Arcadia. Again the events are blurred in a rhetorical manner. The first two steps are quite clear: as usual, in presence of both parties the arbitrators inspected the controversial borders in autopsy<sup>20</sup> followed by formal court hearings,

<sup>16</sup> In lines 32-3, 42, 49-50, 53-54, 62-3, 83, 86-7 (correctly not in 73).

<sup>17</sup> For *nomoi* of the Achaian League see *IPArk* 31 IIA 13 (frgm., Megalopolis-Thuria, 182/1?) and explicitly for laws on procedure Harter-Uibopuu 1998, no 11.14-15 (Ager 1996, no 137; Sparta-Megalopolis, after 164).

<sup>18</sup> For chronology see Luraghi-Magnetto 2012, p. 540-4.

<sup>19</sup> For prosopographic evidence see Themelis 2008, p. 217-18; Arnaoutoglou 2009-10, p. 184 n. 11; Luraghi-Magnetto 2012, p. 543-4

<sup>20</sup> Cf. the *periēgēsis* of the judges under guidance of each of the parties, Harter-Uibopuu 1998, no 10.11-12 (Moretti 1967, no 43; Hermione-Epidauros, 1<sup>st</sup> half of 2<sup>nd</sup> cent.) and p. 19 n. 10. For a *periēgēsis* with 31 judges (*termonizontes*), see Harter-Uibopuu 1998, no 3.7-11 (*IG IV/1*<sup>2</sup>, 71; Epidauros-Corinth, 242/1).

where speeches measured with a water clock were delivered. According to the most probable supplement of line 41 the debate ran over two days, presumably one day for each of the two issues, Andania-Pylana and Akreiatis-Bipeiatis respectively. For the first and principal case, surprisingly, the Messenians don't tell the outcome. From the very structure of the *psaphisma* one may conjecture, that they had lost Andania (and Pylana) at that time.<sup>21</sup> Glorifying the modest victory in the minor case of Akreiatis they wouldn't have ignored a favorable decision on the essential one.<sup>22</sup>

From the legal point of view the question how the dispute over Akreiatis and Bipeiatis went on is more interesting. At some point of the trial the Megalopolitans had withdrawn their claim for this territory but “did not restrain the Kaliatai from disputing with us” (43-5). An Arcadian polis or settlement named Kaliai (or Kalliai) at the Messenian border – close to Akreiatis and Bipeiatis, unknown too – is not identified.<sup>23</sup> Doubtless the Kaliatai were present at the trial in the Karneiasion supporting the side of Megalopolis. Primarily they could have acted the role of witnesses for this party.<sup>24</sup> Following the chronological order of the narrative, after the Messenian delegates, as defendants, had spoken their last word at court, the Megalopolitans, the plaintiffs, could have realized that the *hagemones* would not favor their position. To avoid the court rejecting their claim for Akreiatis and Bipeiatis they might have instigated the Kaliatai to object, that in reality they and not the Megalopolitans were the right plaintiffs. Therefore, at the last moment, the Megalopolitans withdrew their action<sup>25</sup> to give way for the “right” plaintiffs, and the Messenians agreed with them.<sup>26</sup> Because of this compromise the *hagemones* were neither allowed to give an award on the case nor to open a new trial between parties, for whom they were not authorized by the League. Therefore, at the Karneiasion the issue regarding Akreiatis and Bipeiatis remained undecided. In their *psaphisma*, rebuking this maneuver the Messenians used the words τοὺς δὲ Καλιά[τα]ς οὐ πα]υσάντων ἀντιποιήσασθαι (43-4). That means: instead of accepting an

<sup>21</sup> Pace Luraghi-Magnetto 2012, p. 529-30.

<sup>22</sup> However, Messene might not have lost “the entire territory” (18) of Andania and Pylana. Maybe in the words καθὼς ἐστὶ ἀμὶν ἡ χώρα (35, present tense indicative instead of optative) one even can see some criticism on the award, see below n. 49.

<sup>23</sup> Not helpful Arnaoutoglou 2009-10, p. 186 n. 19. On a survey one may look for a fertile small valley (Akreiatis) surrounded by pasture land high up in the mountains at the border between Arcadia and Messene with easy access from an Arcadian settlement (Kallia) but also to be reached from Messenian territory – not crossing Andania and Pylana (if really detached from Messene); see Luraghi-Magnetto 2012, p. 526-7.

<sup>24</sup> For a witness deposition in an international territorial dispute see IG IX 2.521.5-18 (Larisa, beginning 3<sup>rd</sup> cent.) and Harter-Uibopuu 1998, p. 156-7.

<sup>25</sup> On this topic I found no records from international arbitrations. In Athens a lawsuit can be withdrawn from the jury by compromise at the last moment, Isai. 5, 18; Dem. 48, 3; see Harrison 1971, p. 103.

<sup>26</sup> The agreement to stand a second trial is to be supplemented in line 48; the next step, choosing a law court, is reported in lines 50-1.

unfavorable award the Megalopolitans did not “restrain” the Kaliatai – most important: depending on them – from opening a new trial.

6. *Embassy of the Messenians to Megalopolis* (ll. 121-5 of the *proklēsis* document) Nevertheless, after the Kaliatai had intervened, the Messenians still were threatened by the Megalopolitans’ pending first claim for Akreiatīs (above section 1). They sent an embassy to Megalopolis, which negotiated an agreement on *deferring*<sup>27</sup> (*epimonon genesthai*, l. 123) the trial to be submitted to the court of the Mitylenians. Anyway, this trial was to be initiated by a formal *courteous dispelling* (*philanthrōpos exagōga*, ll. 124-5).

7. *Appointing Aigion as ekkletos polis* (section IV of the *psaphisma*, 50-1)

In the meantime also the Kaliatai were active. Maybe by *proklēsis* they summoned the Messenians before the *damiorgoi*,<sup>28</sup> the executive board of the League, to cooperate in choosing a law court regarding Akreiatīs and Bipeiatīs. Apparently the *damiorgoi* accepted the polis of the Kaliatai as independent subject for international arbitration and started preparing the trial. The parties agreed to let the renowned Achaian polis Aigion as *ekklētos polis*<sup>29</sup> decide their territorial dispute (50-1). Again, each party handed over a description of the borders, but this time only of the smaller territory under dispute and not to the *stratagos*, but rather to the “common” *damiorgoi*, i.e. those of the League (63-4). Far from being a *cause célèbre* the dispute was treated like an ordinary case.

8. *Arbitration at Aigion* (section V of the *psaphisma*, 51-64)

In Aigion the case came before a political board of 147 members, probably being present at the moment, acting as law court in this special case. Without another survey of the (far away) territory, after speeches held by the parties the court decided with overwhelming majority against the plaintiffs, the Kaliatai (51-63). In this part of the *psaphisma* the Kaliatai consequently are mentioned together with the Megalopolitans. However, after having withdrawn their claim at the Karneiasion (above section 5) the Megalopolitans couldn’t have been plaintiffs in Aigion. Nevertheless they could have acted as supporters (*sunēgoroi*) or witnesses for the Kaliatai – and therefore formally were not affected by the verdict.

For the League, with this decision the way was free for readmitting Messene in their former position, and in 182/1 a stele confirming this act was drawn up in Elis.<sup>30</sup> All the events reported until now must have taken place before or in this year.

<sup>27</sup> Translation suggested by Professor Alberto Maffi in discussion.

<sup>28</sup> One can conclude this step of the trial from lines 63-4.

<sup>29</sup> For the use of an *ekklētos polis* in the Achaian League see Harter-Uibopuu 1998, p. 139-43.

<sup>30</sup> See above n. 5.

9. *Embassy of the Megalopolitans to Messene* (ll. 126-39 of the *proklēsis* document)  
 After the Kaliatai had lost their case in Aigion the Megalopolitans, plaintiffs in the still pending first lawsuit over Akreiatis (above section 1), continued pursuing this issue on their own initiative. They sent an embassy to Messene first to demand a date for the trial (probably at the court of the Mitylenians), and at any rate to engage in the formal act of a *dispelling* (l. 129) to initiate this trial. The Messenians again tried to *defer* (l. 134) the case but, after negotiations, finally consented either to negotiate a peaceful agreement about Akreiatis or – allegedly – to have the case tried in a law court appointed by the Achaian League instead of the Mitylenian one. They further agreed, that the fruits retained from Akreiatis were *common surety until a judgment regarding the land will... be rendered* (ll. 129-33), and – allegedly again – conceded that, at the time being, such a decision was not yet rendered.

These negotiations regarding Akreiatis could have taken at least three years; the sudden end of the dispute is dated in the year of the *stratagos* Ainetidas (97).<sup>31</sup>

10. *Messene's claim for compensation for the fruits* (section VI of the *psaphisma*, 65-71, and ll. 139-53)

By no means had the Messenians consented that the Akreiatis case was still open. On the contrary, they claimed that, having defeated the Kaliatai, this award encompassed the Megalopolitans too. Therefore the Messenians held that in Aigion the territory of Akreiatis and Bipeiatis had been definitely adjudicated to them (70-1, 74-5); from their point of view an award about ownership of Akreiatis to be rendered by the Mitylenian court and any further decision regarding this territory were redundant. However this did not concern the fruits shared for surety as long as the trial was going on. Therefore, after long and unsuccessful negotiations the Messenians sued Megalopolis for double the value of half the produce they had delivered to Megalopolis all the years before, namely for two talents (68-9).<sup>32</sup>

Strikingly, the court to decide on the two talents is not mentioned in the *psaphisma*, and the text even doesn't mention a *proklēsis* Messene might have directed to Megalopolis, as one should expect. It rather speaks of ὑπεγραψάμεθα, simply "we had brought a lawsuit" (65, corresponding to l. 140). One can assume that the agreement on the fruits was part of the very first dispute over Akreiatis mentioned in the dossier (above section 1). At that time Megalopolis and Messene had chosen the court of the Mitylenians. Because of the first *proklēsis* which they had accepted the Messenians held that this court was still in charge, although no more for the question of ownership, but rather for the claim for compensation for the

<sup>31</sup> For chronology see Luraghi-Magnetto 2012, p. 534-5. The word ὅστερον (65, corresponding to l. 140) denotes an uncertain but probably not too short distance.

<sup>32</sup> See above n. 11. The overall produce is estimated at one talent: if one takes four years from the first *proklēsis* issued by Megalopolis (above section 1) to the present lawsuit regarding the fruits we come to an average of 1,500 drachms for one year, not a great sum for international arbitration indeed.

fruits (see *ll. 146-8*). Therefore the Messenians now simply may have entered their claim for the two talents in the time schedule of the Mitylenians.<sup>33</sup> But Megalopolis was not ready to stand this trial and turned the tables.

The problem with the Mitylenian court was, that in the very first stage of the dispute over Akreiatīs, when Messene still was outside the Achaian League, the litigants had chosen it without authorization by the League (see above section 1). Now, Messene being readmitted each party tried to blur this uncomfortable choice: in the *proklēsis* text the Megalopolitans mention this court only in negative sense when they assert that both parties *had agreed that there will be no more trial over the land before the Mitylenians* (*ll. 152-4, cf. 147*, which does not automatically exclude a trial over the fruits), and in their *psaphisma* the Messenians don't allude to the Mitylenians at all.

11. *Third proklēsis issued by Megalopolis* (section VII of the *psaphisma*, 71-5; the whole *proklēsis* document in the dossier, *ll. 103-65*)

Against the Messenians' claiming the fruits the Megalopolitans immediately struck back. Holding that their dispute with the Messenians over Akreiatīs and Bipeiatīs (above section 3-5) was still undecided (74-5) – ignoring the decision against the Kaliatai at Aigion (above section 8) – the Megalopolitans issued a *proklēsis* to the Messenians to appear at the *damiorgoi* of the League for jointly choosing a new law court, again *about borders* (*peri termonōn, ll. 154-5*)<sup>34</sup> of this territory. The Messenians appeared, but relying on that very decision against the Kaliatai refused to cooperate.

12. *Fine imposed on Messene* (section VIII of the *psaphisma*, 75-80, and *ll. 166-82*)  
More or less automatically the *damiorgoi* imposed a fine of 3,000 drachms (*l. 171*) on the reluctant Messenians and responding to their demurrer submitted<sup>35</sup> the decision on the fine to a *chosen* tribunal of six Milesians. We don't know whether the *damiorgoi* of the League on their own initiative could reject a member

<sup>33</sup> However, we have no source that for such a long time a Mitylenian court was available in the Peloponnesos. Nevertheless, like the court of the Milesians (*ll. 80, 99*) also the Mitylenians' one could have been quickly at hand. For another hitherto unexpected court see Taeuber 2006.

<sup>34</sup> To underline that the issue "about borders" was settled (but with the Kaliatai and formally not with the Megalopolitans) the Messenians mention the *horoī* several times in their *psaphisma* (30, 34 and, here most relevant, 63).

<sup>35</sup> From *εἰσαγγώντων* (79) one cannot conclude that one of the *damiorgoi* was presiding over the court of the six "foreign judges" like an Athenian "introducing" magistrate. In fact, here the verb *εἰσάγειν* denotes the *damiorgoi*, as representatives of the League, "acting as plaintiffs" against the objecting Messenians, who refused to pay the fine; cf. Thür 1985, p. 68. In Harter-Uibopuu 1998, no 11.2, 5, 55 (Ager 1996, no 137, Sparta-Megalopolis, from 164) "the Achaians" claim a fine against the Spartans; see also below n. 41.

demanding a law court. By imposing a fine also on an objecting defendant, who argued that he had the right to refuse to cooperate, the *damiorgoi* opened for him the way to a tribunal that controlled the rightfulness of the fine. As plaintiffs, in this trial the *damiorgoi* had the burden of proof that they had fined the Messenians rightfully. Anyway, this was a method of curbing the magistrates' discretion.<sup>36</sup>

The Messenians were fined in the year of the *stratagos* Ainetidas (97, 168-9).<sup>37</sup> All the tightly connected events from the Messenians' claiming the value of the fruits until the judgment of the Milesians (sections 10-13) must have occurred during a very short time immediately before or in this year.

### 13. *Judgment of the Milesians* (section IX of the *psaphisma*, 80-4, and ll. 183-90)

Indeed, the Messenians were brought to the court of the Milesians and obtained a unanimous vote that the fine was unjustly imposed. Indirectly, thereby the court adjudicated Akreiatis and Bipeiatis to Messene.

Before considering the reasons, which may have guided the Milesians, one has to look at the shape of the awards mentioned in the *psaphisma*. For the trials at the Karneiasion and in Aigion (above sections 5 and 8) formal court speeches are mentioned (40 and 51-2), also the (unpublished) *krima* of the Milesians refers to *speeches being held* (ll. 188-9). Then the judges voted. For the court session at the Karneiasion, for good reasons, votes are not reported for the Andania and Pylana case,<sup>38</sup> and voting was thwarted for Akreiatis and Bipeiatis<sup>39</sup>. In Aigion (58-61) and at the Milesian court (81) the judges did vote. Generally, when Greek law courts formally voted they never gave reasons on their decisions. Since voting had the shape of a simple "yes" or "no" the judges just put in force the plaintiff's claim or the defendant's plea.<sup>40</sup> Despite coming from international arbitration also the court decisions mentioned in the *psaphisma* followed this pattern. This is evident for the 147 judges in Aigion. They enacted the scheme of the borders the Messenians had submitted: κατὰ τοὺς ὅρους οὓς ἀπελδῶκαμες τοῖς κοινοῖς δαμιουργοῖς ("according to...", 63-4), and not that of the Kaliatai. In the same way the six Milesians put into force the Messenians' defense plea<sup>41</sup> against the fine imposed by the *damiorgoi*: καθότι... ("according to the fact that we had already been judged in regard of this

<sup>36</sup> For controlling the rightfulness of fines meted by magistrates see Harter-Uibopuu 2002, p. 154-6; 2009. In Athenian (intrastate) jurisdiction, in some cases a magistrate was not competent rejecting a claim, but rather had to bring the defendant's demurrer (*paragraphē*) before a law court, that decided on this very issue; for an unjustified *paragraphē* the defendant had to pay a fine, see Wolff 1966, p. 87-105; Harrison 1971, p. 184.

<sup>37</sup> See above n. 31.

<sup>38</sup> See above at n. 22.

<sup>39</sup> See above at n. 25.

<sup>40</sup> Thür 1987, p. 478-81.

<sup>41</sup> Exacting the fine and claiming its rightfulness the *damiorgoi* were plaintiffs and the Messenians defendants, see above n. 35.

territory,” 81-3). This was the wording of the Messenians, not that of the Milesian judges.<sup>42</sup>

Correctly Arnaoutoglou points to the legal question of this case, the principle of *res iudicata*<sup>43</sup> (or *ne bis in idem*). But he is overlooking that here the essential prerequisite ‘identity of litigants’ was debated. The formally correct view of Megalopolis was, that the award at Aigion (above section 8) only concerned the Kaliatai and the Messenians: in the Megalopolitans’ view their claim against Messene for Akreiatis was not decided at the Karneiasion (above section 5) – and not even by the Mitylenians (above section 1) – but was still pending. Against this opinion, at the Milesian court the Messenians held that the Kaliatai, dependent on Megalopolis, had been only pretend plaintiffs; therefore the decision against them was valid against their masters and supporters too. With these arguments Messene was able to convince the Milesian court that in this case the litigants were identical. Messene’s argumentation is echoed in their *psaphisma* by constantly mentioning the Kaliatai together with the Megalopolitans deliberately confusing plaintiffs with (probably) supporters or witnesses at Aigion. However, one cannot compare this special legal situation in one and the same ongoing dispute, finally under authority of the Achaian League, with the long lasting territorial controversies between Greek poleis.<sup>44</sup> The *res iudicata* principle only could work under “obligatory arbitration,”<sup>45</sup> also ignored by Arnaoutoglou. Voluntarily – even under political pressure or threatened with war –, again and again Greek poleis did submit a neighbor’s territorial claim to a tribunal on the same issue.<sup>46</sup>

By voiding the fine, indirectly the court of the Milesians confirmed the borders of Akreiatis and Bipeiatis in favor of Messene and, indirectly again, Messenian ownership of the fertile land in Akreiatis. Strikingly the – Messenian – *psaphisma* doesn’t mention the outcome of the Messenians’ claim for the two talents compensation for half the fruits of Akreiatis intermediately sent to Megalopolis

<sup>42</sup> The (unpublished) *krima* has no reasoning; it only mentions the result with one word *they acquitted* (l. 189). In contrast, the decree of the *damiorgoi* fining the Messenians (the *zamia*) has a short reasoning: *because they didn’t jointly chose law court* (l. 175-6).

<sup>43</sup> Arnaoutoglou 2009-10, p. 192. Though quoting Lanni 2004 he is confusing the *res iudicata* principle with that of “precedent” (pace p. 193 n. 38). Precedents never concern the same dispute between the same litigants. For *res iudicata* he better would have referred to Wolff 1966, p. 90-1; see Dem. 20.147, 24.55 and further IPark 17.61-63, Syll.<sup>3</sup> 13-17, IMilet I 150.36-39, O.Bodl. 277.1-8 (the last three kindly committed by Prof. Julie Velissaropoulos).

<sup>44</sup> For these see Chanotis 2004 and Arnaoutoglou 2009-10, p. 192-3.

<sup>45</sup> It is interesting to compare how the *res iudicata* principle was observed in intrastate and international jurisdiction: in Athens the defeated party of a *paragraphē* (see above n. 36) had to pay the *epōbelia* (one-sixth of the value of the claim in issue) after the trial (Harrison 1971, p. 183-4), while in the Achaian League the magistrates (the *damiorgoi*) first meted a fine on the objecting defendant and then they had to exact it at a tribunal. Responding to the Messenians’ plea of demurrer the Milesian judges voided the fine.

<sup>46</sup> For the ways of justifying such claims see Chanotis 2004.



during the years of the ongoing dispute.<sup>47</sup> Possibly, after engraving the inscription the Messenians again might have sued Megalopolis at a tribunal, this time authorized by the League. However, avoiding the risk of another trial they might have been better off to be quiet on this issue. Probably they were comfortable with deriving the entire fruits from the year of Ainetidas on, when they had defeated Megalopolis. Thus, I think, raising the inscription really was the end of the dispute.

All in all, the Messenians' juridical victory in the aftermath of the war of the year 183/2 was a very modest one: on the one hand they won the juristic battle over the small fertile territory Akreiatis (with the adjacent Bipeiatis) high up in the mountains, but on the other hand in the plain they – probably – lost great parts of Andania with its renowned sanctuary (and of Pylana, not yet identified) and resigned the two talents compensation for the produce from Akreiatis. Was this worth raising such a splendid monument at the most prominent place of the polis? Surely the Messenians saw it in that way. First, the inscription was a memorial (ὑπόμνημα, 84-5) of a juridical victory over Megalopolis after a humiliating military defeat. Then, between the lines, I see some criticism on an unfavorable decision not even mentioned in the text: the loss of Andania. The text starts mentioning the fact that Andania was occupied by Achaian troops followed by alluding to an (alleged<sup>48</sup>) decision of the League not to deprive the Messenians of territory (9-11). Moreover, the Messenian scheme of the borders presented to the leader of the *hagemones* is reported as if the territory (still) “is ours” (35),<sup>49</sup> and not a single word is said about the decision of the *hagemones* regarding Andania, well-known to all contemporaries. Finally, Messene never defeated Megalopolis in a direct way (see 86-90), but rather indirectly twice through other opponents.<sup>50</sup> Cleverly packed in this rhetorical concept the Messenians' message seems to be: the court of the Achaian *hagemones* simply confirmed the outcome of the war, but rule of law will prevail also in this issue as it did in the Akreiatis case.<sup>51</sup>

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<sup>47</sup> See above n. 11.

<sup>48</sup> See above section 2.

<sup>49</sup> See above n. 22.

<sup>50</sup> The Messenians celebrate their victories in lines 86-90: “... that in several trials we defeated (ἐνικάσαμες, 87) the Megalopolitans (1<sup>st</sup>) regarding Akreiatis and Bipeiatis, as well as we prevailed (ἐνικάσαμες, 89-90, without object) (2<sup>nd</sup>) regarding the fine imposed upon us by the *damiorgoi*.” The first victory was at Aigion (as defendants, sued by the Kaliatai) the second one in the court of the Milesians (as defendants too, sued by the *damiorgoi*).

<sup>51</sup> And apparently, some years later Andania is proved to be Messenian; for the time being see the discussion in Harter-Uibopuu 2002, p. 36 with n. 7.

## Part Three. Dispute over ownership in Greek law

Reconstructing the whole dispute between Megalopolis and Messene was possible from the published text of the *psaphisma* and – with kind permission of the editor – by referring to a few words of the *proklēsis* document not yet published. For full discussion of the very beginning of the dispute over Akreiatis (the trial at the court of the Mitylenians, planned but never executed)<sup>52</sup> arguing from the Greek text would be indispensable. Apart from an agreement regarding the fruits (65-70)<sup>53</sup> the *psaphisma* doesn't touch this topic. Therefore, in the following I can only sketch some preliminary thoughts.

The whole dossier published on the stone, evidently, speaks of two types of international controversies over land: about borders<sup>54</sup> on the one hand and about “ownership” (*ll. 106-12*) on the other; finally, both of them bring about the same results, full sovereignty over a territory, but in different procedures. Although the Greek language has no noun for ownership, in private law this legal institution does exist.<sup>55</sup> One of the meanings of the adjective ἴδιος can be “one's own.”<sup>56</sup> With the same word also poleis justified their territorial claims.<sup>57</sup> To justify the first claim for Akreiatis Megalopolis asserted that it had *had the land as owner* (*ekhōsa... idian tanni tan khōran, ll. 109-10*); hereby the Megalopolitans emphatically used the language of private law. In the inscription, combined with other evidence, one also may find a clue to the shape of private ownership disputes.

In modern scholarship the nature of disputes about ownership in ancient Greek law is much debated. Of course, not every polis had exactly the same rules governing this issue. Nevertheless, two leading principles (*Grundgedanken*) are in discussion. The traditional position holds, that disputes over ownership had the shape of a *diadikasia* (*Prätendentenstreit*) similar to inheritance cases: two (or more?) claimants claim to have the better legal position.<sup>58</sup> Apparently not a single genuine source for such a *diadikasia* exists.<sup>59</sup> The other position is based on lexicographical sources showing ownership disputes performed in an indirect way

<sup>52</sup> See above section 1 of part two.

<sup>53</sup> For my understanding of this passage see above n. 11.

<sup>54</sup> This was the type used under authority of the Achaian League; see above, text at n. 16 and n. 34.

<sup>55</sup> Kränzlein 1963, p. 28-9, but this doesn't implicate that legal actions protecting ownership in the same way existed as in Roman or modern law, p. 139.

<sup>56</sup> Kränzlein 1963, p. 24-6.

<sup>57</sup> Chaniotis 2004, p. 188, in n. 13 referring to Ager 1996, no 74 I 117; 139.8 and *SEG* 35, 823.23-4 (however, all three texts don't refer to special types of legal procedure).

<sup>58</sup> Established by Leist 1886 (comparing *diadikasia* with the Roman *legisactio sacramento in rem*), prevailing since Kaser 1944 and still followed e.g. by Maffi 2002.

<sup>59</sup> Kränzlein 1963, p. 141 (with some doubts about this procedure). In Greek law *diadikasia* is not a “technical term,” but rather comprises a number of different legal procedures. I deny the existence of an “ownership *diadikasia*” at all, Thür 1982.

by claims in tort, suing the unjust possessor for penalties (*Deliktsverfahren*).<sup>60</sup> Presenting the first historical case of a dispute over land formed upon the pattern of private litigation the new inscription seems to back the second theory.

Based on tort, in Athens there were two options for an owner to file a lawsuit against a person unlawfully holding his real estate: on the one hand, by filing a *dikē karpou* or *enoikiou* the owner could charge the possessor for compensation for the produce unjustly obtained from the property.<sup>61</sup> Deciding about produce, indirectly, the court adjudicated also on the question of ownership. In general, unlawfully holding another's property (ἔχειν in the Harpokration text) was regarded as tort (*blabē*); the penalty in this case was double the value of the produce.<sup>62</sup> To avoid further consequences, usually, a defeated possessor voluntarily would have also rendered the property under dispute to the owner.

On the other hand the owner could start a *dikē exoulēs* procedure, for example when the possessor, defeated in a *dikē karpou* or *enoikiou*, was not ready to abandon the estate.<sup>63</sup> In our context, foremost the activities to initiate the trial are of interest:<sup>64</sup> the person claiming ownership invaded the estate for one reason only, to be

<sup>60</sup> Already considered by Kränzlein 1963, p. 140-3, finally proposed by Thür 1982 and 2003, p. 94-6.

<sup>61</sup> Harpokr. s.v. καρποῦ δίκη· εἰ γὰρ τι ἐγκαλεῖς τῷδε τῷ μειρακίῳ καὶ σὼν τι ἔχει, δίκασαι αὐτῷ κατὰ τοὺς νόμους, εἰ μὲν χωρίου ἀμφοισβητεῖς, καρποῦ, εἰ δὲ οἰκίας, ἐνοικίου, ὡσπερ οὗτος σοὶ νῦν ἐπιτροπῆς δικάζεται (Lysias, Gernet-Bizos fr. 21.1: "If you charge this boy and he [really] is holding something belonging to you bring a claim against him according to the laws, when disputing over land, for produce, when over a house, for rent, in the same way as he is suing you now regarding guardianship"). The speaker is *sunēgoros* of a ward, who after coming of age is calling his former guardian to account. He anticipates an objection of the defendant, that the young man unjustly is holding some of his, the defendant's, property; the anticipated replication is: this doesn't concern the present guardianship case, bring the proper action for ownership against your former ward.

<sup>62</sup> Considered by Kränzlein 1963, p. 143 (for ownership disputes over movables), also for the Lysias fragment Thür 1982, p. 69.

<sup>63</sup> Harpokr. s.v. ἐξούλης; see Harrison 1968, p. 311-14; Thür 2003, p. 58-60. On this topic further analysis will be necessary. The problem is, that the damaged text does not list the owner who is entitled to a *dikē exoulēs* beside the creditor (secured by *hypothēkē*, as known from other sources, and therefore in a position parallel to ownership, Thür 2008, p. 174-5). The *hypothēkē* document provided a manifest title, and an owner seldom might have had similar strong evidence at hand; therefore *dikai exoulēs* by owners without manifest titles might rarely have been brought to the courts. Furthermore, because of lower court fees (the value of the produce is much less than – the double – value of the whole estate) owners might have preferred the *dikē karpou*. Since the debtor remained in possession of the pledged estate and rightfully derived its produce, the creditor was barred from filing the cheaper *dikē karpou*. These statistical features could have influenced the lexicographical evidence.

<sup>64</sup> In detail reported for a dispute over a shipload of grain in Dem. 32, 14-20, see Thür 2003, p. 65-8.

hereupon “formally dispelled” (ἐξάγειν, ἐξαγωγή) by the – in his opinion – unlawful possessor, and the possessor objecting to the invader’s claim did so. For this tort the dispelled intruder filed a *dikē exoulēs* against the dispeller for double the value of the estate (one half due to the polis). Deciding on this huge penalty, indirectly as in a *dikē karpou*, the court adjudicated on the question of ownership. Legitimated by this sentence the victorious plaintiff was allowed to use real force against the defeated possessor to seize the estate. These were, in short, the two options of “*Deliktsverfahren*” over ownership in Athenian law.

Returning to the Messene inscription, one can observe that in connection with the territorial dispute over Akreiatis *karpou* and *exagōga* (*exagein*) are mentioned. To my mind both items belong to the first agreement between Megalopolis and Messene to submit this dispute to the Mitylenian arbitrators, made in the first stage yet beyond the authority of the Achaian League.<sup>65</sup> Following the clue that Megalopolis claimed *to have had the land as owner* (ll. 108-10) one can compare the *exagōga*<sup>66</sup> with the Athenian “formal dispelling” to initiate a trial about ownership. Megalopolis was claiming the fertile land in Akreiatis held and exploited by Messene. To start the trial the Megalopolitan representatives formally had to invade the land to be hereupon in the same formal way “dispelled” by the Messenians;<sup>67</sup> before, when Megalopolis and Messene had come to the compromise

<sup>65</sup> See above section 1 in part two.

<sup>66</sup> Of course, there are several ways to understand the word *exagōga* (ll. 124, 129), in the text connected with the adjective *philanthrōpos* (ll. 124-5). The adjective can be explained from its possible opposite in the special historical situation: “courteous” (in agreement) and not “warlike” (cf. φιλανθρώπως καὶ δημοτικῶς in Dem. 24, 24: statutes regulating affairs in a “courteous, consenting, and democratic” manner and not in a “violent and oligarchic” one, οὐδὲ βίαιον οὐδ’ ὀλιγαρχικόν). Thus, for the meaning of *exagōga* one can discuss: 1) courteous or generous “export;” this can be excluded because here a direct complement would be necessary. 2) Against peaceful “exit (of the army)” (Maffi referring to Polyb. 5, 24, 4) one can object that – even when in the year 182 the army of the League had occupied whole Messenia up to Akreiatis high in the mountains – it had withdrawn long before the negotiations between Megalopolis and Messene took place (see above section 9 of part two). 3) For a voluntary “withdrawing” of the Messenians from Akreiatis (Luraghi) not the noun *exagōga* (with Megalopolis being the active part) would have been used, but rather a verb like ἀφεῖσθαι (cf. Dem. 37, 1) in the medium with Messene as subject. 4) Therefore “formal dispelling” after an agreement seems to fit both the historic and the juristic situation. – The expression *exagōga philanthropos* has a parallel in the Roman *vis ex conventu* (*deductio quae moribus fit*) in the dispute over *possessio* of land, see Kaser-Hackl 1996, p. 418.

<sup>67</sup> This fits the Athenian pattern: the Messenians were in possession of the land and therefore in the position of the defendants. In this position, on two occasions they tried to defer the trial over Akreiatis (*epimōnon*, ll. 123, 134; see above sections 6 and 9 of part two); only in this connection the Megalopolitans mention the *exagōga* in their *proklēsis* document. Finally, after having defeated Megalopolis the Messenians had no reason to touch this detail in their *psaphisma*.

for arbitration, they probably had agreed on both formal acts.<sup>68</sup> These formalities done, Megalopolis, as plaintiff, could submit the case to the Mitylenian judges. They had to decide whether the Messenians (the defendants) had dispelled the Megalopolitans lawfully or not; when unlawfully and liable in tort, the judges indirectly adjudicated ownership to Megalopolis and this polis was entitled to seize the land in Akreiatis, if necessary by justified war.<sup>69</sup> When it turned out that the dispelling was lawfully done and the Messenians were acquitted and thereby adjudicated as owners, they just kept Akreiatis in possession. No autopsy of borders was envisaged in this kind of procedure. This was, as far as I see, the way the opponents had planned to litigate but never executed because the Achaian League took over the case.

Comparing this international dispute with the Athenian domestic procedure of *dikē exoulēs* one question remains open: what penalty did the Messenians have to pay when they were sentenced for unlawful “formal dispelling”? One cannot suppose that the intrastate Athenian rule paying double the value of the whole estate – with one half due to the polis – automatically was applicable in international arbitration. Rather no penalty was fixed by any statute (for – outside a league – common statutes didn’t exist over independent poleis); therefore the litigants had to agree also on this topic already at the outset. To my mind this was the reason for intermediately dividing the fruits derived from the land during the ongoing dispute: half a share (μεσόκοινος, 69) of the fruits of Akreiatis was sent (l. 131) by the Messenians up to Megalopolis, and the looser had to pay the winner double the value of the share (διπλάσιον, 68) he had obtained or retained, respectively.<sup>70</sup> Doubling the value was the penalty. Therefore in the dispute over Akreiatis no action like the Athenian *dikē karpou* was envisaged.

Anyway, the *proklēsis* document proves, that an action like *dikē karpou* did exist also in international litigation. The Messenians, having defeated the Kaliatai at Aigion, sued the Megalopolitans for compensation for the fruits of Akreiatis.<sup>71</sup> Holding that the dispute over Akreiatis was still undecided (ll. 144-6) the Megalopolitans (in the *proklēsis* document) objected: *by means of the fruits you wish to get a judgment on the land* (ll. 148-50). This is exactly what the speaker in the Lysias fragment proposes for deciding an ownership dispute.

<sup>68</sup> This agreement could have been made in a *written sylon document* (mentioned only in the *proklēsis* document, ll. 112-3); for a possible parallel of *sulan* with formal dispelling see Thür 2003, p. 77-8 (to *IPArk* 32 and there p. 334-5; Messene, dated 103-1).

<sup>69</sup> Anyway, not allowed between members of the Achaian League. Therefore litigation initiated by *exagōga* fits the situation when Messene was not yet readmitted.

<sup>70</sup> See above n. 11. In the *proklēsis* document the share is called *security* (l. 131-2). For Athenian law we don’t know if an unsuccessful plaintiff in a *dikē exoulēs* beside losing the court fees had to pay any penalty.

<sup>71</sup> See above section 10 of part two. Arnaoutoglou 2009-10, p. 186 suggests a suit for *blabē*; for Athens see above n. 62.

Summing up, in the dispute “over ownership” of Akreiatis the principles of intrastate jurisdiction were observed. There are no hints to a *diadikasia* (*Prätendentenstreit*). In contrast, the multiple and complex procedures regarding the fertile land can be explained satisfactorily through claims in torts (*Deliktsverfahren*) resulting in indirectly adjudicating ownership. The inscription proves the first actual case of such a type of judicial litigation in ancient Greece, until now only known from the lexica. However, international arbitration “over borders” was different. It was not formed upon the pattern of intrastate civil jurisdiction, but rather might have been derived directly from private arbitration.

*Final note:* Very quickly Professor Themelis gave access to a preliminary version of the first part of this most important inscription from Messene he recently had found. The published document illustrates the “historical side” of the story. Most generously he allowed me to discuss also the unpublished second part at “Symposion 2011” in Paris shedding light on the “juristic side.” I thank the participants for helpful comments, especially Dr. Kaja Harter-Uibopuu, Professor Alberto Maffi and Prof. Michael Gagarin who also checked my English. To publish preliminary thoughts about an inscription on the way to its publication seems odd. To keep the deadline of the Symposium acts I asked Professor Themelis to allow me quoting *some words* of the second part in English translation with references to the lines of the text (printed in Italics). At the moment this seems to be unfair to the scientific audience, but as soon as the definite edition of the whole text will be out every reader easily will find the corresponding Greek text. I thank Professor Themelis also for this extraordinarily generous agreement.

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[Postscript: The best achievement in discussing a new inscription occurred in my case: responding to my paper Maria Youni found, as I should think, the correct interpretation of the term (*philanthropos*) *exagoga* (ll. 124, 129 of the *proklēsis* document). Her reference to Polyb. 9.33.11-12 and Ager 1996, no. 71 I 5-10, 16-20 (*diexagoga*) is convincing: “*conciliation amicale*.” Therefore my suggestions in note 66 are erroneous, and note 63 (including the paragraph in the text) is no more relevant to the inscription from Messene. Most probably I have to correct my conjecture alluding the *proklēsis* “*epi sylōi*” in IPark 32 D 12 (p. 334, and Thür 2003: 77) to an *exagein* too. Nevertheless, the *sylon* (regarding fruits?) in IPark 32 (see above n. 68) took place in an intrastate, not in an international dispute. So I would maintain stressing the different character of the first dispute (only over Akreiatis and its fruits, above part II section 1 — only in this context *axiosylos*, l. 108, and *to sylon*, l. 113, are mentioned) and the following ones (regarding borders) under the authority of the Achaian League. Arguing about fruits seems to have been a general Greek pattern of private dispute over land (see above n. 61 and ll. 149-50). — Consequently, following Youni, I can return to translating *epimonos* (ll. 123, 134) with “persistent” previously suggested by Kaja Harter-Uibopuu (pace n. 27 above).

Summing up, at the moment I see a consistent structure of the whole *proklēsis* document issued by Megalopolis to Messene after its claim for the value of the fruits: **1)** Greetings (103-104). **2)** Subject of the present summons: Akreiatis wherefrom the fruits were taken from Megalopolis by an act of *sylon* (104-108). **3)** Justification of the claim: earlier possession of the land (108-112). **4)** Report of the previous steps of the dispute (112-54): **a)** Agreement between Megalopolis and Messene to undergo arbitration (not mentioned: by a tribunal of Mitylenians) about the land, *sylon*-Dokument (about sharing the fruits for the time of the dispute) (112-17). — omitted: the *synodos* in Megalopolis (above II 2) — **b)** Megalopolis summoning Messene to agree to an arbitration under the authority of the Achaian League (117-21). **c)** Embassies between Messene and Megalopolis about changing the tribunal, in case they would not come to an amicable settlement regarding the land (121-39) — omitted: the *synodos* in Elis, Megalopolis withdrawing its claim to Akreiatis at the Karneiasion, and the defeat of the Kaliatai in Aigion regarding Akreiatis (above II 4-8; my nos. 6 and 9, the embassies, are chronologically erroneous; their right place is after no. 3 = 3a) — **d)** Messene’s claim for the value of the fruits of Akreiatis at the tribunal of the Mitylenians despite the claim to the land (allegedly) is not yet decided (139-54). **5)** Tenor of the summons: Messene should agree to an arbitration about the borders of Akreiatis (154-65).

I thank my respondent Professor Youni for her helpful objections and, again, Professor Themelis for providing me with the exciting text; full discussion will follow when it will be published. Meanwhile one can find Themelis’ text of the *psaphisma* also in SEG LVIII 370.]