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P. Ital. 10-11 and the date of emperor Zeno's novel "De donationibus" cited in Nov. Iust. 52.2

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Jan Prostko-Prostyński

**P. ITAL. 10-11 AND THE DATE
OF EMPEROR ZENO'S NOVEL DE DONATIONIBUS
CITED IN NOV. IUST. 52.2***

OUR ENTIRE KNOWLEDGE ABOUT the 'chancellory' of Odovacar rests on one text preserved in *P. Ital.* 10-11.¹ In these papyri are recorded the *gesta municipalia* of Syracuse dated *post* 18 March 489.² These *gesta* are presently extant in two fragments in which the royal document with the

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¹ The papyrus is best edited by J.-O. TJÄDER, *Die nichtliterarischen lateinischen Papyri Italiens aus der Zeit 445-700*, I. *Papyri* 1-28, Lund 1955, pp. 288, 290, 292 (hereafter cited as *P. Ital.*). Compare edition by L. SANTIFALLER, "Die Urkunde des Königs Odovakar vom Jahre 489. Mit Faksimile", *MIÖG* 60 (1952), pp. 20-24. For the "migratory history" of this papyrus, see J.-O. TJÄDER, "De ravennatiska papyrusurkunderna-byten för samlare och gävor för furstar", *Kungl. Humanistiska Vetenskaps-Samfundet i Uppsala* 1995 (1996), p. 91. Tristiano Calchi (died between 1507 and 1516) from Milan, knew of yet another bequest by Odovacar written on papyrus but his information on its contents is rather too brief and general to be used for research on Odovacar's chancellory. For this papyrus, see C. TANZI, "Un papiro perduto dell' epoca di Odoacre", *Archeografo Triestino. Raccolta di memorie, notizie e documenti, particolarmente per servire alla storia di Trieste, del Friuli e dell'Istria*, n.s. 15 (1890), pp. 413-415.

² *P. Ital.* 10-11, col. 2.5-6 and p. 286.

record of the bequest for count Pierius was insinuated. Odovacar's document was first read before the curia of Ravenna and then inscribed into the *gesta* of Ravenna, dated 18 March 489 and subsequently as a result of completing *traditio corporalis* for the land property given to Pierius by Odovacar in Sicily, together with the Ravenna *gesta*, presented to Pierius' representatives, read before the curia of Syracuse, and insinuated into the Syracuse *gesta municipalia*.³

It is certain that Odovacar's document was written before 18 March 489⁴ though it is not known exactly when the Syracuse *gesta municipalia*, into which this document was inscribed, were written. Tjäder suggests that these may have been written in 489, of course after 18 March. Ferrari however, is of a different opinion, arguing that the necessity of allegating Odovacar's bequest (*pagina regiae largitatis*) into the Ravenna *gesta municipalia* proves that during this period royal bequests were subject, as far as *allegatio* is concerned, to the same rules of law relating to gifts made by private individuals. Ferrari argues further that on this basis it is possible on the one hand to date the lost *lex* of Zenon cited in the Justinian novel (52.2 from 537) which foresaw that imperial bequests be not subject to entry into the *gesta municipalia*.⁵ On the other hand, which is less logical, the entry of Odovacar's bequest cannot be later than the year 491. Ferrari also argues, 'Se non si volesse accertare questa ipotesi, bisognerebbe ammettere che la predetta legge di Zenone non fosse applicata in Italia, oppure che la dona-

³ The most important recent comments on this papyrus, in SANTIFALLER, "Die Urkunde" (cit. n. 1), p. 1-30; P. CLASSEN, *Kaiserreskript und Königsurkunde. Diplomatische Studien zum Problem der Kontinuität zwischen Altertum und Mittelalter* (= *Byzantine Text and Studies* 15), Thessaloniki 1977, pp. 123-128; C.-R. BRÜHL, "Diplomatique comparée des royaumes barbares" [in:] IDEM, *Aus Mittelalter und Diplomatik. Gesammelte Aufsätze*, vol. 2. *Studien zur Diplomatik*, Hildesheim - München - Zürich 1989, pp. 506-507 and my book, *Odovacar* (to be published).

⁴ M. SANNAZARO is mistaken, "Un'epigrafe di Garlate: Il *comes domesticorum* Pierius e la bataglia dell'Adda del 490", *MEFRA* 105 (1993), p. 202 dates Odovacar's bequest to March 18 489. The date of March 18 489 is the date insinuating for Odovacar's bequest in the *gesta municipalia* of Ravenna. The bequest itself would have had to have therefore at least several days space before its insinuation into the Ravenna *gesta*.

⁵ *Nov. Iust.* 52.2.19-22: *Haec autem inaequalitas* (sc. between imperial bequests for private individuals and those of private individuals for emperors) *facta est ex novitate quam Zenonis pia memoriae introduxit constitutio, ut imperiales donationes non egeant monumentis.*

zione di Odoacre non fosse considerata βασιλική.⁶ In truth, Odovacar's bequest in its *dispositio* contains a clause concerned with the necessity of *allegatio*⁷ for the document in the municipal records and, as it seems from the presently extant *gesta* of Syracuse, Odovacar's document was in fact presented to the municipal authorities in Ravenna and inscribed into the *gesta*. It does not follow from this, however, that Ferrari's arguments here are convincing.

Firstly, Tjäder justifiably points out that the Syracuse *gesta* ought rather be dated for the year 489. In support of this speaks simply the circumstance that count Pierus who was to be endowed, or indeed his representatives (*actores Pieri*), most probably did not wish to wait long until the royal bequest became legally binding and for *traditio corporalis* relating to land property in Sicily. Moreover, the *terminus ante quem* of the *gesta* coming to be must be marked by Pierus' death in battle at Adda, which took place on the 29/30th of August 490.⁸ There is no basis to suggest that the *actores Pieri* made representation on his behalf after the death of their patron.

Secondly, it needs to be emphasised that both Ferrari and Tjäder overlooked that it is possible to establish exactly the *terminus ante quem* for the promulgation of Zeno's novel. It is thus almost certain that it is cited in

⁶ G. FERRARI, "La donazione nei papiri di Ravenna", [in:] *Studi in onore di Salvatore Riccobono nel XL anno dei suoi insegnamenti*, Palermo 1936, pp. 459-460. Ferrari's date of *P. Ital.* 10-11 "ante a. 491 p. C.?" is followed by *FIRA* 1943 (V. ARANGIO-RUIZ).

⁷ Coll. 2.3-5: *Quam donationem Marciano v(iro) c(larissimo), notario nostro, scribendam dictavimus, cuique Andromachum v(irum) i(n)lustrem et magnificum, magistrum officiorum, consiliario nostro, pro nobis suscribere iussimus, tribuentes adlegendi fiduciam, ita, ut a tuis actoribus fiscalia tributa solvantur.* TJÄDER, *P. Ital.*, p. 289 translates the last clause as: "unter der Bedingung, daß Deine Vertreter die Steuern an den Fiscus zahlen". The present author offers a slightly different interpretation: "so that from your administrators can be collected the taxes to the treasury". Odovacar's bequest gained legal force in fulfilling the conditions of *allegatio* in municipal records, not after paying taxes, it seems.

⁸ *Excerpta Valesiana*, rec. J. MOREAU & V. VELKOV, Lipsiae 1968: under the consulate of Faustus and Longinus (= 490) ... *ocissus est Pierius comes domesticorum III idus Augustas...* (= 30 August 490). The funeral inscription of count Pierius gives another date of his burial: [*dep(ositus) s(ub) d(ie) IIII idus Acus* = 29 of August, SANNAZARO, "Un'epigrafe" (cit. n. 4), p. 192. The issue of the precise date of Pierius' death must remain unresolved. It cannot therefore be excluded here either that no mistake was made in the transmission of the *Excerpta Valesiana* text, or indeed by the stonemason making the inscription, see SANNAZARO, "Un'epigrafe", pp. 198-199.

another law of Zeno also concerning bequests, dated *D. k. Mart. Constanti-nopoli Ello vc. cons.* = 1st of March 478 where it can be read:

CI 8.53.31: In donationibus, quae actis insinuantur, non esse necessarium iudicamus vicinos vel alios⁹ testes adhibere: nam superfluum est privatum testimonium, cum publica monumenta sufficiant. Verum et illas donationes, quas gestis non est necessarium adlegari, si forte per tabellionem vel alium scribantur, et sine testium subnotatione valere praecipimus ...

In the case of bequests that are insinued into records [municipal], it is ordered that there is no need [by the donor] to present any neighbours or other witnesses for private testimony is superfluous if proof will exist in the form of public documents. The same applies to those bequests that do not need to be alleged in public records if they were scribed by a *tabellio* of another authorised person. These gifts too it is ordered, are legally binding without the signature of witnesses ...

It is not the intention of this short note to provide a exhaustive comment to the above mentioned law of Zeno. It is, however, rather obvious that as far as bequests that “do not need to be alleged in public records” are concerned, only imperial bequests for private individuals are affected, about which *Nov. Iust.* 52.2 refers. This is so for earlier legislation of the emperors spoke clearly that all bequests without exception, to be recognised as legally binding, had to be inscribed into municipal records.¹⁰ There is not the slightest indication that whensoever or whosoever of the emperors beyond of course Zeno, changed this legal position. It also clear that Zeno’s constitution, which has not been preserved, cited in *Nov. Iust.* 52.2, has to be earlier than this emperor’s law of 1 March 478,¹¹ where the earlier known quote of this constitution is found. This also signifies that for the dating of the Syracuse *gesta*, that is, *P. Ital.* 10-11, Zeno’s novel which is referred to is not of use, since *P. Ital.* 10-11 are later than 18th of March

⁹ One of MS here have *alias* but other MSS: *illas*. A reading *alias* is admitted by P. KRÜGER. This author therefore prefers the preposition *illas*, for it is in better harmony with the construction of the sentence as a whole.

¹⁰ *CI* 8.53.25 (316); 8.53.27.2 (316); 8.53.29 (428); 8.53.30 (459).

¹¹ CLASSEN, *Kaiserreskript* (cit. n. 3), p. 33 n. 84 is mistaken suggesting that *Nov. Iust.* 52.2 can relate to *CI* 8.53.31. *Nov. Iust.* 52.2 refers to Zeno’s law which is cited by *CI* 8.53.31.

489 and the lost novel of Zeno is earlier than 1 March 478. The dating of the *gesta* from Syracuse by Tjäder for the year 489 (after 18 March) therefore, ought to be considered as practically certain. The issue whether Zeno's legislation was at all applied in the West remains alas, an unresolved question.

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1. PROLEGOMENA

DIE IN KOPTISCHER SPRACHE ÜBERLIEFERTEN RECHTSURKUNDEN DOKUMENTIEREN IN VERTRAGSURKUNDEN, ABTRAGS- UND GARANTIEKLÄRUNGEN EIN BREITES SPEKTRUM PRIVATRECHTLICHER GESCHÄFTSTYPEN, STANGE KIRCHENRECHTLICHE MATERIE¹ SOWIE DEN ÖFFENTLICHRECHTLICHEN BEREICH DER STEUEREHEBUNG

¹Vgl. z. B. A. STERNWINDER, „Die Ordinationsurkunden koptischer Klöster“, *Ägypten 11*