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## LEGAL STANDING AND CIVIC IDENTITY OF ATHENIAN MERCENARIES A CASE STUDY

*The author examines different issues considering legal and social standing of mercenaries, mostly being focused upon the fourth court speech (On the Estate of Nicostratus) of the Athenian speech writer Isaeus, teacher of Demosthenes. On the one hand, he reveals a number of neglected data about mercenaries in terms of their legal activities in and out of their native polis. On the other hand, based on those findings and on other sources, the author studies the issue of Athenian civic identity in the case of mercenaries who spent years or decades out of their city state without participating in the political life of the polis. In that context he examines the question of whether a mercenary was regarded as “politikos” or “idiotes”. As civic identity was mostly based on the citizenship, the author claims that mercenaries enjoyed a kind of sub identity or “frozen civic identity”.*

Key words: *Isaeus. Law of inheritance. Athenian citizenship. Politikos (anthropos). Idiotes. Sub identity. Frozen civic identity.*

### 1. THRIVING OF MERCENARIES IN ANCIENT GREECE

Ancient Greece and its neighbors were among the first civilizations where mercenaries were employed on a quite large scale. According to the tradition, the first mention of professional soldiers in history is connected to the biblical Jewish king David who in the 10<sup>th</sup> century B.C.

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employed as mercenaries people from Crete who spoke Greek language.<sup>1</sup> Although Greece was not the cradle of mercenary soldiering, Greek mercenaries were among the most famous and preferred soldiers who fought for money. Citizens of different Greek city-states were engaged all around the Mediterranean area and in Asia Minor for different “employers”. Numerous Greek professional soldiers participated during the 5<sup>th</sup> century B.C. in the Sicilian wars between the Carthaginians and Greek colonies in *Magna Graecia*, either on the side of Syracuse against Carthage or fighting against Syracuse having been engaged by the Carthaginians. Greeks became renowned mercenaries particularly in Persia, both in Persian internal conflicts<sup>2</sup> or during the conquest of other countries.

The greatest expansion of mercenary service took place in the 4<sup>th</sup> century B.C. along with the economic crisis that affected many city-states including Athens.<sup>3</sup> Many professional Greek soldiers were hired by Philip II and took part in the battle of Chaeronea in 338 B.C. Alexander the Great took advantage of even broader use of professional soldiers from Greece in his conquest of Persia. Mercenaries constituted the core of Hellenistic armies.<sup>4</sup> Professional and experienced soldiers hired by Alexan-

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<sup>1</sup> Paul Cartledge, *Agasilaos and the Crisis of Sparta*, Baltimore, MD 1987, 315; H.W. Parke, *Greek Mercenary Soldiers from Earliest Times to the Battle of Ipsus*, Oxford 1933 (1970), 3.

<sup>2</sup> A very important source for Greek mercenary service is Xenophon's *Anabasis*. He describes both life and engagement of mercenaries, their destiny and journey back to Greece when their “employer” Cyrus the Younger was killed in the battle at Cunaxa. Xenophon was elected by the Greek soldiers to lead the expedition of about 10.000 mercenaries (the so called “Ten Thousand”) to take them back home. His description of the tactics, different adventures and events, is one of the most popular and valuable sources for the Greek history. However, he offers very few data about the legal standing and civic identity of mercenaries. There is a recent book on Xenophon's expedition but it also reveals exclusively military aspects of mercenary service ignoring social, political, legal and other aspects, J. W. I. Lee, *A Greek Army on the March: Soldiers and Survival in Xenophon Anabasis*, Cambridge 2007. See also H. W. Parke, 23 42.

<sup>3</sup> The “boom” of mercenaries in the 4<sup>th</sup> century B.C. can also be explained by other factors, as shown by M. M. Austin, P. Vidal Naquet, *Economic and Social History of Ancient Greece*, London 1977, 136 (development of military monarchies, a demand in the Middle East, Persia and Egypt, need for specialization in war, etc.). But they also stress that impoverishment of the people was the chief reason why professional soldiers appeared in such a great number. An interesting text on that issue is offered Harvey F. Miller “The Practical and Economic Background to the Greek Mercenary Explosion”, *Greece and Rome* 31, 2/1984, 153 160. A. G. Russel, “The Greek as a Mercenary Soldier”, *Greece and Rome*, 11/1942, 104 also points that poverty was the chief reason for the emergence of professional soldiering (and compares it with Greek emigration in modern times). But he also adds crowded conditions in the cities, political troubles (exile), etc. as possible causes to choose foreign military service. H. W. Parke, 227 231 also contributed to this discussion.

<sup>4</sup> Antonio Santosusso, *Soldiers, Citizens & the Symbols of War: From Classical Greece to Republican Rome 500 167 B.C.*, Colorado 1997, 89.

der the Great were a decisive factor for his swift conquest of the Persian Empire. The same phenomenon, on the other hand, contributed to the alienation of Greek mercenaries from their native poleis.<sup>5</sup>

The Greeks themselves did not use professional soldiers extensively, particularly during the Greco-Persian Wars. Engagement of mercenaries became more common during the Peloponnesian War.<sup>6</sup> Most of the city-states established their military power relaying upon their own citizens, non-professional soldiers, who did not engage in military activities regularly and habitually (except in Sparta and some other mostly Doric city-states). Citizen-soldiers were mostly farmers, artisans, merchants and many others, including the most distinguished members of the community.<sup>7</sup> In the beginning, ordinary citizens who were able to afford the armor and weapons formed the core of the army and were expected to perform their military service as hoplites.<sup>8</sup> Citizen army was adequate for inter-polis conflicts but the “military quality” of these regular troops became inadequate for the big conflicts in the 4<sup>th</sup> century B.C. Many sources note that indigent citizens chose the profession of mercenary soldiers in order to improve their economic condition,<sup>9</sup> while Isocrates clearly states that many Greeks enlisted into foreign armies out of necessity, often bringing their wives and children along.<sup>10</sup>

Trundle rightly observed that the military aspects of the Greek mercenary service were very carefully investigated in a few books de-

<sup>5</sup> The role of professional mercenaries in the conquests of Macedonian kings and their inclusion in the new state system by being allotted a piece of land (*kleros*) connected with the obligation to serve in the army (*misthophoroi klērouhoi*), is strongly stressed by Victor Ehrenberg, *The Greek State*, London 1969, 219. He also points that only very few of the new settlers were Macedonians. Those were mostly Greek mercenaries who, after they accepted the lot assigned to them, soon merged with the local population.

<sup>6</sup> H. W. Parke, 14 15.

<sup>7</sup> A. G. Russell, 103 112 reminds us of those cases. One of the most famous examples is Socrates, who took part in the battle at Delium in Boeotia in his forties, as mentioned by Plato in *Symposium*, 220d 221c.

<sup>8</sup> R. T. Ridley, “Hoplite as Citizen: Athenian Military Institutions in their Social Context”, *Antiquité Classique* 48/1978, 508 548. According to Gat Azar, *War in Human Civilization*, New York 2006, 295 298, about one third to one half of adult male citizens in the polis were encompassed by this duty. In the time of Isaeus military duty of citizens was still regarded as a very important obligation towards the polis. In his court speeches, we meet interesting objections to those who neglected to join the army (Isaeus V 46), considerations about the solidarity among the citizen soldiers in their private life (Isaeus IX 4), data about the importance of military service in the city state for social recognition (X 26).

<sup>9</sup> E.g. Demosthenes, 14, 31.

<sup>10</sup> Isocrates, 4, 167.168; 5, 121. P. Loman, “Mercenaries, Their Women, and Colonisation”, *Klio* 87, 2/2005, 346 365 analyses in detail the relocation of whole families together with mercenaries and their settling in new places.

voted mostly to that topic.<sup>11</sup> But this is not the case with social, economic, political, ideological and other settings. Above all, there is almost no research on different legal aspects related to mercenaries in ancient Greece. Many aspects of their legal position, their family relations, their property rights, their involvement in judiciary, their civic activities, etc. remain unknown.

Particularly challenging is the issue of civic identity of mercenaries, as many of them spent years or even decades outside their native poleis. An important question may be asked: was a mercenary who stayed so long abroad, who performed no service to his city (particularly military duty), who did not contribute to the political life of the city-state, regarded as a *politikos* (*anthropos*) or as *idiotes*, a person who does not participate in public affairs?<sup>12</sup> Of course, both *politikoi* (*anthropoi*) and *idiotai* were Athenian citizens, provided they met the criteria for the citizenship status.<sup>13</sup> Some sources, particularly Isaeus' speech on Nicostratus' estate, leave impression that mercenaries who were absent from the polis during a lengthy period were perceived almost as foreigners. Although formally not foreigners, they were substantially alienated from their native community.

## 2. MERCENARIES IN ISAEUS' SPEECH ON THE ESTATE OF NICOSTRATUS

Isaeus, the teacher of Demosthenes, was a famous logograph in the 4<sup>th</sup> century B.C. who left twelve court speeches valuable for legal history and understanding of the Athenian society. One of them could be particularly useful in shedding more light on the general social position of mer-

<sup>11</sup> Matthew Trundle, *Greek Mercenaries from the late Archaic Period to the Alexander*, London 2004, XVIII. There is also a recent book by S. English, *Mercenaries in the Classical World*, Barnsley 2012, but it has mainly popular rather than academic ambitions (mainly interpreting Trundle's findings). Among older literature the most influential works were H. W. Parke, (1933); Marco Bettalli, *I mercenari nel mondo greco. Dalle origini alla fine del V sec. a. C.*, Pisa 1955; Ludmila P. Marinović, *Le Mercenariat grec au IVe siècle avant notre ère et la crise de la polis*, Paris 1988. For the Hellenistic period see more G. T. Griffith, *The Mercenaries of the Hellenistic World*, Groningen 1968 (1935). However, they all mostly concentrate on military issues. As already said, J. W. I. Lee, (2007) also ignores social and other aspects of mercenary soldiering.

<sup>12</sup> More on the notions of *politikos* and *idiotes* in Serbian, Sima Avramović, "O podeli na javno i privatno pravo u pravu grčkih polisa", [On the division between public and private law in the Greek polis], *Anali Pravnog fakulteta u Beogradu* 5/1982, 821-826. For a useful overview of the ancient Greek meaning of *idiotes* see A. W. Sparkes, "Idiots, Ancient and Modern", *Politics* 28, 1/1988, 101.

<sup>13</sup> W. Robert Connor, "The Problem of Civic Identity", *Athenian Identity and Civic Ideology* (ed. A. L. Boegehold, A. C. Scafuro), Baltimore London 1994, 34. We will come back to the issue of relation between citizenship and civic identity.

cenaries in Athens, and particularly on the different aspects of their legal status and activities. There are at least a few interesting but quite neglected points about Athenian mercenaries that can be deduced from the speech *On the Estate of Nicostratus*.

Nicostratus was a mercenary who spent eleven years outside Athens performing his military service and died abroad (in *Ake*<sup>14</sup>) leaving a fortune of two talents. Many claimants tried to get his fortune in court (Isaeus described so vividly the state of affairs in sect. 7–8 of the speech<sup>15</sup>). Two young brothers, Hagnon and Hagnotheus, clients of Isaeus, defeated many opponents in previous cases claiming that they are first cousins of Nicostratus. The last pretender was a certain Chariades, who asserted that he had been adopted in the will (*diatheke*) left by Nicostratus far away from Athens, as his close military-mercenary friend. Additionally, he contests the identity of Nicostratus declaring that Nicostratus is the son of a Smicrus and not of a Thrasymachus (a frequent trick with personal identity in Athenian courts to make the case more complicated). He offered a few witnesses from the army to confirm the alleged will by Nicostratus. The two previously mentioned brothers have a doubly unpleasant task: firstly, to show that the will is invalid (false) and secondly, that they are cousins and heirs of Thrasymachus' son Nicostratus. The court speech was delivered by an old family friend of young brothers. There is a possibility that the speaker was Isaeus himself as *synegoros* (although this theory is questionable).

Let us skip over many controversial issues of the case and the tactics chosen by the parties.<sup>16</sup> We will try to find out something more inter-

<sup>14</sup> Nowadays Acre in northern Israel.

<sup>15</sup> Isaeus (transl. E. S. Forster), Cambridge MA London (Loeb), 1962: "For who did not cut the hair when two talents arrived from Ake? Who did not wear black, hoping by mourning to inherit the estate? What was the number of would be kinsmen and adopted sons who claimed Nicostratus's property? Demosthenes (not the famous politician and orator, *note S.A.*) declared himself to be his nephew, but renounced his claim when he was unmasked by my clients. Telepus asserted that Nicostratus had made him a gift of all his property; he too soon desisted. Ameiniades appeared before the archon and produced as Nicostratus's son a child not yet three years old, although it was eleven years since Nicostratus had been in Athens. Pyrrhus of Lamptra declared that the property had been consecrated by Nicostratus to Athena but that it had been given him by Nicostratus himself. Ctesias of Besa and Craneus at first asserted that Nicostratus had been condemned to pay them a talent; when they could not prove this, they pretended that he was their freedman; they were no better able to prove their statement. These were the men who at the very beginning swooped down upon the estate of Nicostratus. Chariades at that time made no claim, but came forward latter, foisting in not only himself but also his child from the mistress. It was all the same to him whether he was going to inherit the estate or have his son recognized as a citizen. He, too, perceiving that he would be defeated on the question of the child's birth, jettisoned the child's claim and paid a deposit to bring an action asserting his own right under a will".

<sup>16</sup> More on that in William Wyse, *The Speeches of Isaeus*, Cambridge 1904, 367–401. He was quite rigid in commenting Isaeus' tactic and stability of his argumentation,

esting – information about the two protagonists, Nicostratus and Chariades, since it might be very relevant for the reconstruction of the social, legal and civic standing of mercenaries.

At first sight, according to Nicostratus' case, it seems that a Greek mercenary could earn quite a lot of money from his military service. It is strange that Nicostratus' wealth did not attract proper attention in current literature and that it was not analyzed accurately in the context of mercenary's earnings and property.<sup>17</sup> It is particularly curious as there is a great controversy about mercenary wages and the terminology for different kind of income earned by mercenaries.

There were different types of payments and many terms were in use. *Misthos* was a salary or wage for military services. *Chremata* is often mentioned as an alternative, as a monetary term for the payment of mercenaries. *Trophe*, deriving from the verb 'to feed' (*trephein*), stood for the food they were served. *Ephodia* often meant travelling expenses. Finally, *siteresion* was the amount of money provided for the purchase of food. Consequently, as *misthos* was the main expression for the salary of mercenaries (as well as for the salary earned by other people working for wages), a mercenary soldier was often denoted simply as *misthophoros* – a wage-earner.<sup>18</sup> But mercenary soldiers were also often described simply as *stratiotai*, with the generic Greek word for a soldier.<sup>19</sup> The Greek language did not coin a more specific noun for a mercenary nor a verb to denote the performance of mercenary service. *Misthophoros* was most common, although it is a general term denoting all people who earn money for their work.<sup>20</sup> The early Greek writers also use the term *epikouros*

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due to his general negative attitude towards Isaeus. I tried to perceive Isaeus speeches more impartially and this led me to the conclusion that Isaeus was not a "juggler of the truth" more than other logographers. I also attempted to show that many data deriving from his speeches are very relevant, particularly as a source for ancient Athenian law and society, Sima Avramović, *Isejevo sudsko besedništvo i atinsko pravo*, Beograd 2005<sup>4</sup>, also published in Italian as Sima Avramović, *Iseo e il diritto attico*, Napoli 1977.

<sup>17</sup> Paul McKechnie, *Outsiders in the Greek Cities in the Fourth Century BC*, London New York 1989, 90 completely neglects the case and wealth of Nicostatus, although he devotes a lot of attention to mercenary salaries. Nicostratus would be a very important example, but McKechnie analyzes in details only the less significant case of two brothers mercenaries from Isaeus' speech *On the Estate of Meneclēs*.

<sup>18</sup> *Misthophoros* was used to denote any person who was regularly paid for some work, including *dikastai* – members of the jury, etc. as Trundle, 16 points. H. W. Parke 231 stresses that the word *misthophoros* was simultaneously used for "State pensioners", those who received state maintenance, which was a rather recent invention then, Aristotle, *Politics* 1293 a. However the term *misthophoros* was most frequently used for mercenaries.

<sup>19</sup> M. Trundle, (2004), 10.

<sup>20</sup> Other languages developed more specific words for mercenary service (like the Latin word *mercenarius*, which became the root for the French term *mercenaire* and the

(helper, ally) to designate a mercenary soldier. The word for the foreigner (*xenos*) was also used of mercenaries by the 5<sup>th</sup> century B.C. Among the Greek historians of the Roman period *misthophoros* became the standard word used for the mercenaries of the Classical world.<sup>21</sup> However, Isaeus in his speeches does not use term *misthophoros* at all, although he mentions people who served as professional soldiers in few cases.<sup>22</sup>

So, what was the amount of that famed wage, salary of mercenaries? We know that it was paid in monthly instalments, sometimes on a daily basis as well,<sup>23</sup> but the issue of the amount of pay and earnings is still a matter of controversies.<sup>24</sup> Many sources attest that men were usually enrolled as mercenaries for one drachma a day but it varied considerably from period to period and from case to case.<sup>25</sup> Most scholars agree that the payment was decreasing through the 4<sup>th</sup> century B.C. along with the general economic crisis and changes on the “military market” caused by the increasing number of those competing for the job. “Four-obol men” is an expression used in the New Comedy for mercenaries.<sup>26</sup> Of course, some exceptions always exist and mercenaries used to get some extras sometimes. The sources often mention the famous case of Syracusans awarding their mercenaries with 100 minas after their success against the Dionysian tyranny in 357 B.C.<sup>27</sup> Cyrus promised five minas to each mercenary if they win, etc.<sup>28</sup> However, one drachma a day seems to have been the average wage.<sup>29</sup>

The evidence for the mercenary salary in the period 399–322 B.C. is poor and the whole issue controversial. For that reason, Nicostratus’

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English *mercenary*, deriving from *merces*, similiary as *misthophoros* derives from *misthos* loan for use, rent).

<sup>21</sup> M. Trundle, (2004), 10.

<sup>22</sup> Speaking about the two brothers in the speech *On the Estate of Meneclis* he only says that the brothers were able to *strateusthai* to serve in the army, Isaeus, II 6.

<sup>23</sup> Xenophon, *Anabasis* 1, 1, 10; II 11; III 21. William T. Loomis, *Wages, Welfare, Costs and Inflation in Classical Athens*, Ann Arbor, MI 1998, 266–271.

<sup>24</sup> H. W. Parke, 231–233. Also A. G. Russell, 110, M. Trundle, (2004), 91. P. McKechnie, 89, G. T. Griffith, 294–297, Yvon Garlan, *War in the Ancient World: a Social History*, London 1975, 95–98.

<sup>25</sup> Thucydides 7.27.2; M. Trundle, (2004), 91. By 350 B.C. the salary was even less than one drachma and fell down to four obols (6 obols = 1 drachma) including subsistence, G. T. Griffith, 297. Yvon Garlan, 102 also believes that the mercenary pay was one drachma a day at the beginning and just over half a drachma at the end of the 4<sup>th</sup> century B.C., which is close to the pay of a manual worker with average skills.

<sup>26</sup> Menandre, *Perikeiromene*, 380.

<sup>27</sup> Plutarch, *Dion*, 31.

<sup>28</sup> Xenophon, *Anabasis* 1, 4, 13.

<sup>29</sup> An Attic talent of silver (c. 26 kg) equaled the value of nine man years of skilled work. Also, *nota bene* again, one talent was equivalent for 6.000 drachmas (60 minas)

case is so important, particularly as it contradicts the general attitude that the majority of mercenaries could never have achieved enough wealth to return home.<sup>30</sup> This opinion finds confirmation in another speech of Isaeus (*On the Estate of Menecles*), where two brothers claim that they went abroad to serve as soldiers in Thrace and that they saved only “a little money”.<sup>31</sup> Only a minority of mercenaries came back home alive and wealthy.<sup>32</sup> On the other hand, two talents owned by Nicostratus were a considerable fortune in that time (according to some calculations, it could be the equivalent of about 50.000 \$ today). The sheer number of claimants who tried to get hold of that amount is a strong proof that a mercenary soldier could amass a significant sum of money. Isaeus’ testimony is convincing enough to prove that mercenaries had a well-paid job, depending on many variables (their position, military success, etc.). Of course, booty and plunder were also important motives for people to get into the adventure of mercenary soldiering.<sup>33</sup> H. F. Miller mentions four extra reasons to accept a risky military career, along with the basic pay and wage. It is private looting, official distribution of army plunder, special bonuses and awards, and in some cases a grant of free land.<sup>34</sup> In the case of Nicostratus there might have been an additional basis of his wealth. The first idea is that he might have had some (immovable) property in Athens. But if he was rich, why would he serve as a soldier abroad? Perhaps the answer can be deduced from another part of the speech dealing with legal issues and civic status that we are approaching.

The second point that appears clearly from Isaeus’ speech is that some mercenaries were freedmen. Namely, Isaeus mentions that unsuccessful plaintiffs in the previous trials claimed that Nicostratus was their

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<sup>30</sup> Trundle, (2004), 99. McKechnie. 93 also concludes that the rate of pay was consistently low. On the other hand, Isaeus IV 7 is explicit that the two talents earned by Nicostratus returned to Athens. According to the wording, it seems that Isaeus is speaking about the value in money and not about his property as a whole. One may guess that he had no other property, particularly not immovable in Athens, as it would also be a matter of the hereditary case.

<sup>31</sup> Isaeus, II 6. One of the brothers settled at home in Athens, but the other one one went abroad from time to time to travel (maybe as a mercenary?), coming back to Athens often, see Isaeus, II 12. It is strange that H. F. Miller, 153 starts his article by quoting this case from Isaeus, but completely wrongly attributes it to another speech of Isaeus, XI 40, where no mercenaries are mentioned!

<sup>32</sup> Nicostratus also did not come back to Athens alive, only his money arrived in Athens. It is not clear if Nicostratus was killed in a battle or died from some other cause after eleven years of mercenary service.

<sup>33</sup> Trundle, (2004), 98 claims that the amount of payment was therefore secondary to the real interests and other possible profits of mercenary soldiering. However, it is still very questionable who might receive booty after a successful campaign and in what amount. Special prizes for victory were usually also not very high – they took the form of double or rarely tripple pay, H. W. Parke, 234.

<sup>34</sup> H. F. Miller, 155.

freedman – and that they could therefore claim his property as his former masters.<sup>35</sup> Although they lost the case, this information on mercenaries of freedman status remains important for the social background of mercenaries, their civic status and identity. It confirms that mercenaries were drafted from all the social classes, particularly in the periods of acute economic crisis.

Now let us focus on some legal issues. We do not see from the speech if the alleged will of Nicostratus was of the usual type of *diatheke* whose legal consequence was adoption in case of death – the so-called adoption by will (usually referred to in the literature on Athenian law as *adoptio mortis causa*, which was different from the usual *adoptio inter vivos*). Nicostratus' testament could revive the issue of two types of wills (*diatheke*) in Athens – one that developed from adoption (testamentary adoption, *diatheke* with *esipoiesis*) and another that developed from the gift in case of death (*diatheke* without *esipoiesis*, *Legatentestament*).<sup>36</sup> Many elements of Nicostratus' case point to adoption by will. It opens new neglected legal issues.

If the alleged will of Nicostratus was a *diatheke* with adoption, it proves that it was possible in Athens to adopt (at least *mortis causa* – in a will) a man of the same or similar age, perhaps even older than *de cuius* (e.g. army-mate). Chariades was probably about the same age as Nicostratus, if not older (he served as a mercenary for about 17 years,<sup>37</sup> much longer than Nicostratus, who served 11 years). Isaeus does not attack the opponent on that point, showing thus that age of the adoptee was not an issue in the Athenian law on adoption (at least in the adoption *mortis causa*). This matter certainly deserves more attention, particularly if we keep in mind that the adoptee was supposed to continue the family of the adopter in order to prevent the *oikos* of the adopter to become *eremos* (empty, deserted).<sup>38</sup> Although Isaeus did not contest the age of Chariades as a possible problem for the adoption, it is still curious that Chariades at the beginning tried to obtain Nicostratus' property by imposing a child

<sup>35</sup> Isaeus, II 9.

<sup>36</sup> A long debate on this point started in the 19<sup>th</sup> century, mostly by F. Schulin, *Das griechische Testament vergleichen mit dem römischen*, Basel 1881 and E. F. Bruck, *Die Schenkung auf den Todesfall im griechischen und römischen Recht*, Breslau 1909. The discussion continued all through the 20<sup>th</sup> century, see particularly Alberto Maffi, “Adozione e strategie successorie a Gortina e ad Atene”, *Symposion 1990 Vorträge zur griechischen und hellenistischen Rechtsgeschichte*, Köln Weimar Wien 1991, 205–231 and my contribution Sima Avramovic, “Response to Alberto Maffi”, *Symposion 1990 Vorträge zur griechischen und hellenistischen Rechtsgeschichte*, Köln Weimar Wien 1991, 233–237.

<sup>37</sup> Isaeus, IV 29.

<sup>38</sup> David Asheri, “L' *oikos eremos* nel diritto successorio attico”, *Archivio giuridico* 1 2/1960.

Nicostratus supposedly had with a mistress.<sup>39</sup> Maybe he expected he would have a better chance of winning the case that way.

We can be sure that Nicostratus had no living sons, since otherwise he would not have been allowed to make a testamentary adoption. In addition, the mental capacity of the will-maker was an important point that Isaeus mentions just in passing, without seriously challenging it,<sup>40</sup> probably in order not to offend the memory of the deceased. Another interesting legal issue is related to Chariades. If we can believe Isaeus, Chariades was condemned for theft and then released by the Court of Eleven, but afterwards denounced to the Council as a malefactor.<sup>41</sup> Thereafter he spent 17 years abroad, probably as a mercenary, trying to evade possible troubles. This could signify that some people tried to escape legal and other problems by engaging in mercenary service abroad, far away from the jurisdiction of their own *polis*. We know that many mercenaries went abroad for political reasons, so that mercenary service could be a kind of self-imposed political exile.<sup>42</sup> In the case of Chariades we have unambiguous information that he wanted to escape the Athenian courts.<sup>43</sup>

### 3. NICOSTRATUS' CASE AND TIES OF A MERCENARY WITH HIS OWN POLIS

Although one can accept the general observation that mercenary armies were similar to small cities separate from the *polis* where they serve, they certainly had contacts with the local population. Of course, they also kept their family ties in their *poleis* of origin. However there is a room for statement that they created a new civic identity “beyond their own city-state boundaries”.<sup>44</sup> A mercenary did not belong to the community that he served and at the same time, his ties with his own city-state were weakening. Time and distance are mighty factors, so that some mercenaries practically became people without a country and family (except those who took their families with them to start a new life abroad).<sup>45</sup> It

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<sup>39</sup> Isaeus, IV 10.

<sup>40</sup> Isaeus, IV 16.

<sup>41</sup> Isaeus, IV 20.

<sup>42</sup> H. W. Parke, 227.

<sup>43</sup> Even if Isaeus was not telling the truth, his statement could be an acceptable explanation for the jurors. This leads us to the conclusion that the evasion of domestic jurisdiction was a credible motive for someone to opt for mercenary service.

<sup>44</sup> M. Trundle, (2004), 3. In his another text M. Trundle pays more attention to mercenary civic identity in the context of new social environment, Matthew F. Trundle, “Identity and Community among Greek Mercenaries in the Classical World: 700 322 BCE”, *The Ancient History Bulletin* 13/1999, 28 38.

<sup>45</sup> Of course, it is not same situation if someone was a short term mercenary (like brothers in *Isaeus* II), or a person who spends years and decades abroad (like Nicostratus

seems that Nicostratus was one of those people who did not have many close relatives in Athens anymore. His ties to his relatives became so weak that many claimants tried to acquire his estate on various grounds different from family relationship.

We do not know much about the ties that mercenaries kept with their native polis, about the life of their families without them, about friendships at home, about their duties to the polis.<sup>46</sup> This is why the speech of Nicostratus is an important source. We see that the legal standing of a mercenary was completely preserved in the city of his origin. Thanks to Isaeus, we realize that mercenaries continued to belong to their *polis* of origin but that they did not necessarily contribute to its well-being, perform civic services, etc. On the other hand, they had a possibility to escape the jurisdiction of their polis, as Chariades did when he was condemned for theft. It makes an impression on us to see that this was a comfortable position in legal terms: the mercenary does not belong to the city-state of his residence and profession (war) and simultaneously, he is not available for his polis of origin. In any event, a mercenary who serves for a longer period abroad becomes less and less of a *politikos anthropos* in his own city-state, but more and more alienated from it.

On the other hand, some legal bonds to the native city are well attested: the Nicostratus property trial was to be held in Athens and not where he died or located his property (*forum rei sitae*). The estate of Nicostratus has to be distributed and treated in accordance with the Athenian law and in an Athenian court.<sup>47</sup> Likewise, it seems evident that mercenaries had a valid standing in domestic courts as witnesses, as Chariades offered some testimonies about the alleged will of Nicostratus.

This speech also shows that it was the duty of the relatives to bury the body of the deceased mercenary when his remains arrive in his native *polis*.<sup>48</sup> However, it is not certain that all mercenaries were transported back to their cities. On the contrary, many of them were probably buried abroad.<sup>49</sup> However, when someone has amassed some wealth, to care

and Chariades in *Isaeus* IV). This is why I prefer to distinguish those two types of mercenaries while analyzing their legal and social standing and identity, having in mind primarily those who are away from the city of origin for a longer time.

<sup>46</sup> M. Trundle, (2004), 2 states that a mercenary was not a member of the community for which he fought and had no stake in that society, being neither a citizen nor a landholder. The importance of mercenaries in transforming the nature of Greek society cannot be deminished. In the hoplite community war was highly political. Mercenary service cut the links between the citizen and community service, between a son and his household, between an independent farmer and his land, between the ideal amateur and the professional specialist.

<sup>47</sup> Isaeus, IV 7.

<sup>48</sup> Isaeus, IV 26.

<sup>49</sup> As H. Parke, 234 observes, a mercenary sometimes received an honorable and glorious funeral abroad from his comrades. As wondering soldiers, cut off from family ties, they valued the ceremony even more.

about his burial can provide an advantage in a possible trial with other pretenders to the property. It is one of important arguments raised by Isaeus that his clients – two young brothers as next-of-kin – are entitled to the inheritance because they performed that duty.<sup>50</sup> To fight over the body of the deceased was not a rare event in Athens, as organization of the funeral pointed in a way to the right to inheritance (cf. the famous case of the quarrel over the body of deceased Cyron in Isaeus' speech *On the Estate of Cyron*).<sup>51</sup>

One more observation. This speech shows that the life of mercenaries was not focused exclusively on military service. It may include some business transactions, as well. Isaeus tried to deny all connections between Nicostratus and Chariades,<sup>52</sup> while Chariades claimed that he had a *koinonia* with Nicostratus – a “joint venture” or “joint ownership”, a “business association” (according to E. S. Forster's translation in the *Loeb* edition), and used this *koinonia* as an argument for their close relationship.<sup>53</sup> For this argument it is not important whether this was true or not. What is important is that mercenaries could have had a parallel business engagement in the city abroad where they served. Although it is only a guess, one cannot exclude the possibility that this business affair contributed to the wealth of Nicostratus. Business and other engagements of mercenaries abroad is another topic that is not yet explored in the existing literature.

However, the relationship between Nicostratus and Chariades was not particularly close in terms of military organization, and this fact was used by Isaeus to shape the juror's attitude. The two soldiers were not members of the same mess (they were not messmates), they were neither army-friends nor members of the same company.<sup>54</sup> This is one of the rare sources mentioning a messmate system of communal living abroad.<sup>55</sup> Trundle rightly observes that the Athenian evidence for messmates (*sys-sittoi*) is legal in its nature, suggesting that the relationship between messmates was regarded as a special one.<sup>56</sup> It is therefore quite relevant whether they served as soldiers together in the same company, as proba-

<sup>50</sup> Isaeus, IV 26.

<sup>51</sup> Isaeus VIII 21 25.

<sup>52</sup> “Chariades was never a friend of Nicostratus either here in Athens or in the army”, Isaeus IV 26.

<sup>53</sup> A. R. W. Harrison, *The Law of Athens*, I 242 stresses that the analogy with Aristotle's use of *koinoniai hrematon* illustrates an aspect of friendship (*Nicomachean Ethics*, 1163). It is important to note that the Athenians never achieved the convenient fiction of regarding such a group of joint owners as a single person juristically, like the Roman *so cietas*. They always remained joint several owners.

<sup>54</sup> Isaeus, IV 18.

<sup>55</sup> See also Demosthenes, 54, 4 5.

<sup>56</sup> M. Trundle, (2004), 140

bly claimed by Chariades. Whatever was the truth in this case, it is only relevant to note that the messmate relationship was expected by Isaeus to be a significant argument at court. In terms of their risky lives abroad, the military group sub-identity of mercenaries seems to have been more important than the civic identity.

#### 4. CIVIC IDENTITY OF ATHENIAN MERCENARIES

The research on the civic identity in Athens is a relatively recent venture in modern literature on identity issues. The general attitude reached by scholars is that the Athenian civic identity was mainly based on Athenian citizenship and this in turn means on birth and ancestry.<sup>57</sup> In another important study on the same subject, W. R. Connor connects the citizen issue (and civic identity itself) to three chief features. The first is birth, since Athenians regarded themselves as the original inhabitants of the land. The second is the political and cultural homogeneity of the Athenians. Thirdly, – very importantly in this context – citizenship is best approached through law.<sup>58</sup> His contribution attempts to investigate the Athenian civic identity in the 4<sup>th</sup> century B.C. mostly through an analysis of the law and the legal standing of mercenaries, based upon the data available from the court speech on the estate of Nicostratus.

S. Lape rightly connects the concept of Athenian identity with the Athenian democracy. She also stresses that the question of identity is not usually singled out for special investigation in the studies on Athenian democracy. She claims that “citizens assumed that having the right birth and ancestry not only qualified them for citizenship but also endowed them with capacities and characteristics associated with citizenship, including an inherited *love for democracy*”.<sup>59</sup> This is a very important conclusion. Nevertheless, what does it mean, “love for democracy”? Is it an emotional or a social, ethical or political category? How was it measured? Finally, how did it reflect on the life of a mercenary? This is the path we followed in this paper.

First, “love for democracy” was not a matter of feeling or a matter of rights (political and other). It was rather a matter of duties towards the polis. How was it evaluated? It was related to discharging of different

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<sup>57</sup> Susan Lape, *Race and Citizen Identity in the Classical Athenian Democracy*, Cambridge 2010, 3. In this recent study Lape investigates the birth based narrative of citizen identity and its opposition to “racial identity”, that is to say, to the ethnic background. Her “racial” approach is quite controversial but the author is well aware of that and tries therefore to soften the meaning of “race” and “racial”.

<sup>58</sup> W. Robbert Connor, “The Problem of Civic Identity”, *Athenian Identity and Civic Ideology* (ed. A. L. Boegehold, A. C. Scafuro), Baltimore London 1994, 34.

<sup>59</sup> S. Lape, IX.

political, religious, financial, social obligations, different contributions to the polis (public services, liturgies, etc.). It predominantly implied the participation of a citizen in polis institutions and his service in war times as a citizen-soldier.

Greek mercenaries were not stateless in the sense that they were not citizens of their *poleis*. They were still regarded as natives of their city of origin, they were perceived as citizens there, they applied Athenian law in their mutual relations abroad (as alleged by the will of Nicostratus), and they could appear at court once they were back home; at the end of their lives, their bodies could be buried in their polis (if they had enough wealth to be transported) in the traditional way. Nevertheless, while serving abroad in mercenary service, they became alienated citizens who were not able to perform any civic duties or participate in important state events. A mercenary who served a long time away from home became less and less of a *politikos anthropos*, a person who cares about his own polis and who is involved in its daily functioning. As he did not participate in the political, religious, economic and social life of his polis, he slowly became a private person interested only in his own welfare, an *idiotes*.<sup>60</sup> The famous Athenian speaker and logograph Lycurgus argued that a state is built up of three parts: the officeholder (*archon*), the juryman (*dikastes*), and the *idiotes*.<sup>61</sup> Famous are also the words in Pericles' *Funeral oration*: "We do not say that a man who takes no interest in politics is a man who minds his own business (*idiotes*); we say that he has no business here at all".<sup>62</sup>

Although Trundle argues that the mercenary service carried no stigma in and on itself,<sup>63</sup> one can in turn refer to Isocrates who disliked mercenaries and on one occasion compared them to barbarians.<sup>64</sup> Isocrates frequently mentions the problem of homeless mercenaries,<sup>65</sup> while in another place he defines them as "wanderers causing trouble to everyone they meet".<sup>66</sup> The New Comedy usually represents a mercenary as a braggart, a

<sup>60</sup> Josiah Ober, *Mass and Elite in Democratic Athens: Rhetoric, Ideology and the Power of People*, Princeton 1989, 108 112 points out to the word *rhetor* as an antonym for *idiotes*, whom he calls "ordinary citizen". However, he also admits that all Athenian citizens who were not serving as public officers or jurors were *idiotai*. See also S. Gol dhill, *The Good Citizen, in Love, Sex & Tragedy: Why Classics Matters*, London 2004, 179 94.

<sup>61</sup> Lycurgus, *Against Leocrates*, I 79.

<sup>62</sup> Thucydides, *The Peloponnesian Wars*, 1,22.

<sup>63</sup> M. Trundle, (1999), 29.

<sup>64</sup> Isocrates, *Epistle 9 (To Archidamus)*, 8. See more details in P. McKehnie, 85, 95.

<sup>65</sup> Isocrates IV 64, 168, V 120 121, VIII 24, 44 46.

<sup>66</sup> Isocrates, *Philippus* 120.

drunkard, sometimes as a fool.<sup>67</sup> Isaeus also tries to inflame the passions of the jurors claiming that his clients never once left Athens unless by “your order” (of the people, assembly), while Chariades spent 17 years abroad as a mercenary by his own volition.<sup>68</sup> Isaeus apparently wants to paint Chariades as a person who does not care about his own polis.

It seems that mercenaries held a position between citizen and non-citizen. They had the possibility to take advantage of their citizenship whenever they wanted to, simply by returning to their polis. At the same time, they had the option to escape the obligations, legal responsibilities and jurisdiction of their city of origin with a valid excuse of finding their livelihood in mercenary soldiering. Most important of all, nearly every aspect of their lives found new roots in foreign lands and local conditions. Sometimes they were completely assimilated in the new society, particularly when they received a piece of land and brought with them the rest of their families. A mercenary who served for a long period abroad became a sort of expatriate. One may say that Athenian mercenaries enjoyed a kind of Athenian sub-identity, half-identity or even better, that they were people with a frozen civic identity.<sup>69</sup> Once they want and need to, they were free to reactivate this identity to the full. To put it in Santuosusso’s words: “His allegiance as a citizen, if he still was one or if he still felt any attachment to his homeland, was usually directed toward a state far away”.<sup>70</sup> One can agree with the general statement that it was easy to accept the existence of a clear distinction between citizens and everybody else.<sup>71</sup> However, mercenaries are not a part of this sharp division. A mercenary, particularly the one who served for many years in a foreign country, far from his city-state, was somewhere in the middle. His civic identity was melted. Even worse, his original civic individuality was seriously endangered, as civic identity has its subjective, ethical and political facets and lies at the heart of common notions of citizenship and civic participation.<sup>72</sup>

<sup>67</sup> H. W. Parke, 234, referring to Menander’s fragments 293, 388, 440, 562, 723.

<sup>68</sup> Isaeus, IV 27. In another speech, Isaeus take a different approach when a short term mercenary is concerned. “Being of military age (*en elikia epi to strateuesthai*), we adopted the career of a soldier and went abroad with Iphicrates to Thrace. Having proved our worth there, we returned after saving a little money”, Isaeus, II 6. In other speeches he also points to the importance of soldiering for one’s state of birth, see note 8.

<sup>69</sup> A similar situation is characteristic for economic emigrants of modern times who are incorporated into the new community, gradually accepting the values of the new country and keeping ties with their home country only in emotional and symbolic ways. Some parallels between mercenaries and Greek emigrants of modern times are often mentioned in literature, A. G. Russel, 104.

<sup>70</sup> A. Santosusso, 89.

<sup>71</sup> Kostas Vlassopoulos, “Free Spaces: Identity, Experience and Democracy in Classical Athens”, *Classical Quarterly*, 57, 1/2007, 33.

<sup>72</sup> Daniel Hart, Cameron Richardson, Britt Wilkenfeld, “Civic Identity”, *Handbook of Identity Theory and Research* (eds. Seth J. Schwartz et al.), Leuven 2011, 771.

Although mercenaries could rebuild their Athenian civic identity, they will be – at least for a certain period – socially regarded as individuals with a particular social standing. Long-term mercenary will be actually (if not legally) someone “between citizen and non citizen” until he fully reintegrates himself into the society and re-establishes his full civic identity, starting to behave again like a “good citizen” with “inherited love for democracy”, performing his civic duties in a proper way. Or he will only find final rest in his grave in the homeland at the end of his life. Otherwise, his frozen civic identity will be buried along with his body somewhere far away from his *polis*.