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PERSON: Paul Koschaker

SHORT DESCRIPTION OF CONTENT:

1. Koschaker's proposal about a reform of the teaching of Roman Law in German universities, 1942.
2. A *Bescheinigung* attesting the actual activities of Paul Koschaker, written on 17th February, 1945.
3. A letter from Paul Koschaker to Fritz Brüggemann, on 20th November, 1943.
4. A letter from Paul Koschaker to Hero Moeller, on 8th October, 1943.
5. A letter from Hero Moeller to Georg Leyh, on 27th November, 1941.
6. A letter written by Wilhelm Merk to Hero Moeller, on 13th January, 1942.
7. A letter from Hero Moeller to Wilhelm Merk, on 14th January, 1942.
8. A letter from Wilhelm Merk to Paul Koschaker, on 16th October, 1941.
9. A letter from Wilhelm Merk to Paul Koschaker, on 30th October, 1941.
10. A letter from Wilhelm Merk to Paul Koschaker, on 20th October, 1942.
11. A letter from Wilhelm Merk to Paul Koschaker, on 10th November, 1942.
12. A letter from Hans Erich Feine to Paul Koschaker, on 20th October, 1943.
13. A letter from Hans Erich Feine to Paul Koschaker, on 13th September, 1944.
14. A letter from Hans Erich Feine to Paul Koschaker, on 22nd November, 1945.
15. A letter from Hans Erich Feine to Paul Koschaker, on 28th November, 1945.
16. A letter from Hans Erich Feine to Paul Koschaker, on 15th December, 1945.
17. A letter from Hans Erich Feine to Paul Koschaker, on 16th January, 1946.
18. A letter from Hans Erich Feine to Paul Koschaker, on 6th February, 1946.

19. A letter from Hans Erich Feine to Paul Koschaker, on 15th February, 1946.
20. A letter from Paul Koschaker to Hans Erich Feine, on 28th February, 1946.
21. A letter from Hermann Hoffmann to the *Kultminister* of Baden-Württemberg, on 4th March, 1941.
22. A letter from Hero Moeller to Hermann Hoffmann, on 4th March, 1941.
23. A letter from Robert Wetzel to Hermann Hoffmann, on 5th March, 1941.
24. A letter from Hero Moeller to Hermann Hoffmann, on 7th March, 1941.

PERSON VISITING ARCHIVE: Tommaso Beggio

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KNOWN REFERENCES IN LITERATURE: G. Neumann, "Paul Koschaker in Tübingen (1941–1946)", *Zeitschrift für Altorientalische und Biblische Rechtsgeschichte* 18 (2012), 23-36.

NOTES ON THE ARCHIVAL SOURCE:

1.

Koschaker's proposal about a reform of Roman Law teaching in German universities, sent to the Dekane der Rechts – und Wirtschaftswissenschaftlichen Fakultäten and the Rektoren der Wirtschaftshochschulen. A document, typewritten, 12 pages (numbered).

There is a first page (not numbered) attached, consisting of the letter sent for reference to the "Reichsminister für Wissenschaft, Erziehung und Volksbildung" on 22nd of June, 1942. On the first page we can read that Koschaker would have presented his proposal on the 10th of July of the same year, at the conference of the "Dekane der Rechts – und Staatswissenschaftlichen Fakultäten". There is something handwritten on the letter, but only a date (11th of July, 1942) is actually readable.

The document deals with the crisis of Roman Law in German universities and Koschaker criticizes both the approach of many scholars, more interested in a kind of research, that he defines the one of the "Rechtsarchäologen", than in studying those aspects of Roman Law, which could be useful for the Law in force at the time, and the students, who are no longer interested in attending the courses of Roman Law (and even if they would attend them, they wouldn't learn anything).

Therefore there are only three possibilities for the future of Roman Law, according to Koschaker: a) its teaching could be definitively abolished, but such a decision would sound like a "Barbarei". b) The situation could remain the same as at the time he was writing, but it would have been too damaging for the Roman Law and

its teaching and its abolishment would have been maybe preferable, at some extent. c) Then, only the way of the reform could remain, as a valid option. In his proposal, Koschaker stresses the value of Roman Law, not only for what could be used of it, in order to enforce the existing Law, but also because it represents one of the foundations (the most important) of the “Europäische Rechtswissenschaft”. In this document, Koschaker proposes again some of the ideas already presented in his work, “Die Krise des römischen Rechts und die romanistische Rechtswissenschaft”, and again, he doesn’t criticize openly the paragraph 19 of the *Parteiprogramm* of the Nazi regime, affirming that the formulation of this point of the program was not clear at all.

2.

A *Bescheinigung* written on 17th of February, 1945, to attest Koschaker’s activities at the time. A certificate, one page long, typewritten. The document attests that Koschaker is working at the project for a “Untersuchung über europäisches Recht”, at the Gesellschaft für europäische Wirtschaftsplanung und Grossraumforschung, coordinated by the Reichsamtsleiter Gesandter Daitz. The request made by Koschaker, to be allowed to work in Walchensee, where he had his second house, is accepted, because Koschaker would have been working during his vacations too, and the conditions in Walchensee were more advantageous for his work than in Tübingen.

3.

A letter, two pages long, typewritten, sent by Paul Koschaker to Professor Fritz Brüggemann, *Literaturhistoriker* and *Germanist* at the University of Berlin, at the time. On the top of the first page (pages are not numbered), there is a sort of code: RW 265-8125 [Tommaso Beggio: I don’t know precisely what it refers to].

Koschaker replies to the invitation, received by letter three days before by Brüggemann, to write an article, and he suggests he could prepare something on “europäische Rechtswissenschaft”, dealing at the same time with the “romanistische Rechtswissenschaft” (that “ist die Mutter aller Rechtswissenschaft geworden”).

He then explains that the origin of the crisis of the teaching of Roman law, at the time, is the *Punkt 19* of the Nazi’s *Parteiprogramm* [Tommaso Beggio: Koschaker in this passage is for the first time really clear on the *Punkt 19* and the consequences deriving from it, a lot clearer than in *Europa und das römische Recht*] and the new *Studienordnung*; the aim of the latter would consist in “das Studium des römischen Rechts an unseren Universitäten totzuschlagen”.

Koschaker continues affirming that, even if he could be prudent in his piece of writing, he wouldn’t in any case avoid to express his ideas and point of view (“Sollte ich daher den Artikel schreiben, so müsste ich die Freiheit haben, diesen meinen Standpunkt suaviter in modo, aber fortiter in re zum Ausdruck zu bringen”).

Koschaker wants to be clear with Brüggemann and asks this one to do the same with him, but, at the same time, he wants to avoid problems for the future for both of them, if possible.

4.

This letter is handwritten and not numbered. A letter, two pages long, sent on 8th October, 1943 by Paul Koschaker to the Dekan der Rechts- und Wirtschaftswissenschaftlichen Fakultät der Universität Tübingen, Hero Moeller. The letter contains some handwritten comments and some words and names are underlined. Something has been added after Koschaker sent the letter and Moeller received it and it hasn't been Koschaker to add these new further lines.

5.

A letter from Hero Moeller, at the time Dekan der Rechts- und Wirtschaftswissenschaftlichen Fakultät der Universität Tübingen, to the director of the University library, Professor Georg Leyh, on 27th of November, 1941, regarding Koschaker's request to get books from the library. There should have been an attachment, because at the bottom of the letter we can read: "1 Anlage". We don't possess it.

Moeller arranges that a librarian stays at Koschaker's disposal, delivering to the latter all the books he needs; the librarian will be paid for this work.

A copy of the letter was sent to Koschaker, to the director of the Rechtswissenschaftliche Abteilung of the Law Faculty (Prof. Merk) and to the board of the Franz-List-Stiftung.

6.

This letter is not numbered. A letter, one page long, typewritten, sent by the director of the Rechtswissenschaftliche Abteilung, Professor Wilhelm Merk, to the Dekan der Rechts- und Wirtschaftswissenschaftlichen Fakultät der Universität Tübingen, Hero Moeller.

Koschaker asked the director for a telephone relay for himself.

Merk reports the question to Moeller, because it could be necessary to use an already existing telephone relay and give it to Koschaker. Another possibility could be offering Koschaker a telephone relay, using one of the two at hand at the Institut für Württ. Wirtschaft.

7.

A letter written by Hero Moeller, Dekan der Rechts- und Wirtschaftswissenschaftlichen Fakultät der Universität Tübingen, to reply to Wilhelm Merk, director of the Rechtswissenschaftliche Abteilung of the Faculty of Law, and written on 14th of January, 1942.

A letter, one page long and not numbered, typewritten, save a few words (not readable) and a couple of numbers at the bottom, handwritten.

Hero Moeller, Dekan der Rechts- und Wirtschaftswissenschaftlichen Fakultät der Universität Tübingen, replies to Merk's letter of the previous day, concerning Koschaker request for a telephone relay for himself (compare the letter from Merk to the Rektor der Universität Tübingen, written on the 2nd of December, 1941).

Considering that the number of telephone relays was limited at the Faculty at the time, Moeller replies that the Wirtschaftswissenschaftliche Abteilung could not give away one of its. In other parts of the Faculty there were telephone relays, but they were necessary and so they couldn't be used for Koschaker.

Moeller doesn't consider unnecessary the request of the latter, so suggests Merk to check if one of the two relies existing in the *Dozentzimmer* could be differently used.

8.

This letter is not numbered. A letter, one page long, typewritten, sent by the director of the Rechtswissenschaftliche Abteilung, Prof. Merk, to Paul Koschaker on 16th of October, 1941.

Merk writes to the latter, that he has sent a communication to Karl-Heinz Below, who has been appointed as a "Hilfskraft in der Rechtswissenschaftlichen Abteilung". Furthermore, there is the possibility that Below could get the position of "Vollassistent" [Tommaso Beggio: of Koschaker], in the case he will succeed in the *Doktorprüfung*.

9.

A letter, one page long, typewritten, sent by Prof. Merk, director of the "Rechtswissenschaftliche Abteilung" on 30th of October, 1941 (this letter is not numbered).

Koschaker is in Walchensee.

His predecessor Kreller had been called to Wien on 1st of October, 1941.

The *Dekan* of the Faculty, ill at the moment Merk was writing to Koschaker, asked the first one to reply to the letter Koschaker had sent.

Seven or eight copies of Koschaker's *Denkschrift über das romanistische Rechtsstudium in Deutschland* could be prepared by Miss Schmollinger; the Faculty members would have discussed of the text in one of the following Faculty meeting.

10.

Some of the letters in the folder are numbered (this is not).

A letter, two pages long, typewritten, sent by Prof. Merk, director of the "Rechtswissenschaftliche Abteilung" to Koschaker (who is in Walchensee, at the moment) on 20th of October, 1942.

Merk enumerates three questions to Koschaker.

The first one, sub 1), regards an affair concerning Wesenberg [Tommaso Beggio: he obtained his *Habilitation* with Koschaker, in Tübingen, in 1943]; Merk discussed the question together with the *Dekan* of the University and they were all waiting for a reply from the Reichswissenschaftsministerium, at the time [Tommaso Beggio: Wesenberg's affair involved the *Wehrmacht* too].

The second point is a reply to Koschaker's letter of 11th of October. Merk writes that, at the moment, no special extra course for people, who went to war, have been taken into consideration.

The last point, sub 3), deals with a lecture given by Koschaker, entitled "*Römische Rechtsgeschichte (Grundzüge des römischen Privatrechts als Einführung ins europäische Rechtsdenken)*". According to Merk, Koschaker in this work depicts the "*Grundzüge der Rechtsgeschichte*" more or less in the same way Jörs, Kunkel and Wenger do in their book on Roman law.

11.

Some of the letters in the folder are numbered (this is not).

A letter, one page long, typewritten, sent by Prof. Merk, director of the "Rechtswissenschaftliche Abteilung" on 10th of November, 1942

Koschaker is in Walchensee.

Merk replies to a previous letter Koschaker sent him on the 3rd of the same month; the director agrees completely with the latter about the content of the course on Roman Law: the "Hauptsache" should be the "Privatrecht" and public Law could be studied only with regard to those parts of it, that could be useful to a better understanding of the "Privatrecht".

Koschaker then likely complained about the small number of students attending the course; Merk replies that, even if he had tried to encourage the attendance, at the moment it was not possible to do more than this.

12.

Some of the letters in the folder are numbered (this is not).

A letter, one page long, typewritten, sent by Prof. Hans Erich Feine to Paul Koschaker, on 20th of October, 1943.

Feine (professor of *Rechtsgeschichte* and supporter of Hitler, even if not a member of NSDAP) had to reply to the letter Koschaker sent to the Dekan on 8th of October. Koschaker asked if it would have been possible to appoint as his assistant Pierre Pescatore (at a later stage a judge of the European Court of Justice); it would have been possible, but only after Pescatore had passed the "Referendarexamen" [Tommaso Beggio: Pescatore had then the position as Koschaker's assistant].

13.

A one page long, typewritten letter written by Hans Erich Feine to Paul Koschaker, to communicate him that the "Bescheinigung" he was waiting for had been written. Both the documents were written on 13th of September, 1944. On the same page we can find a copy of the "Bescheinigung" and the letter.

The document attests that Koschaker has got to hold "Ferienkurse für Kriegsteilnehmer" for about 14 days, beginning from 20th of September, 1944, according to a decree of the "Reichswissenschaftsminister" and for this reason he needs to come to Tübingen.

Feine sent to Koschaker a copy of the "Bescheinigung" and in the letter he informs Koschaker that he will send a copy of the certificate to the "Bürgermeister" too and that the first classes will take place from the 20th to the 22nd and from the 25th to the 27th of September, from 17 to 19 p.m., as requested by Koschaker himself.

14.

A letter, one page long, typewritten, sent by Prof. Hans Erich Feine to Paul Koschaker, on 22nd of November, 1945.

Koschaker is already in Walchensee.

His colleague Feine (we can understand that he wrote this letter from the letter "F" he commonly used to sign) replies to Koschaker's letter, written on the 12th of the same month. The letter deals with Dr. Below, who decided to spend the winter in Freiburg; Feine was really displeased about it, because he wrote that it was not the first time, in which Below decided not to come to Tübingen at the eleventh hour. For this reason Below couldn't be anymore the assistant of Koschaker during

the semester. Feine wrote to the first one that he was not sure that he could be appointed as an assistant in the spring.

15.

A letter, one page long, typewritten, sent by Prof. Hans Erich Feine to Paul Koschaker, on 28th of November, 1945.

Koschaker is already in Walchensee.

His colleague Feine (we can understand that he wrote this letter from the letter "F" he commonly used to sign) replies to Koschaker's request to receive some books, that are in the "Seminarbibliothek" of the University. Feine explains that they need to wait, before sending the books, because they are quite valuable and in the French zone (Tübingen was under the French influence) the despatches could take months or not being delivered at all, at the time. The situation seemed to be easier in the American zone.

16.

A letter, typewritten, not numbered and two pages long, sent by Prof. Hans Erich Feine to Paul Koschaker, on 15th of December, 1945.

Koschaker is in Walchensee, where he spent a lot of time during and after the WWII.

Furthermore, at the time Koschaker was "Dekan" of the Faculty of Law at the University of Tübingen (the previous one, Hero Moeller, resigned on the 7th of May, 1945).

Feine (professor of *Rechtsgeschichte* and supporter of Hitler, even if not a member of NSDAP) received one after the other two letters by Koschaker of the 2nd and 7th of December, 1945. The book by Westphal requested by Koschaker had not already been found.

In any case, Koschaker discussed with Feine (and hoped to find something about it in the abovementioned book) on the hypothesis that "das Dritte Reich Nachfolger des Heiligen Römischen Reiches ist"; Feine thought that the *Rechtskontinuität* had been interrupted twice in the history of Germany: "erstens ist schon der Deutsche Bund nicht rechtsnachfolger des Heiligen Römischen Reiches gewesen (...) dagegen wird man die Rechtskontinuität bezüglich des Bismarckreiches, der Weimarer Republik und des Dritten Reiches wohl bejahen müssen".

In Koschaker's *Seminarraum* work at the moment Feine himself and then Schönfeld, Dölle and Rupp.

Koschaker asked for a new assistant, and the name he made was the one of Dr. Bernhardt (Dr. Below was not any longer at Koschaker's disposal).

Nothing was touched in Koschaker's personal library and Feine personally supervised that no one used or took a book without permission.

17.

Some of the letters in the folder are numbered, but this is not.

A letter, one page long, typewritten, sent by Prof. Hans Erich Feine to Paul Koschaker, on 16th of January, 1946.

Koschaker is already in Walchensee, where he spent a lot of time during the years after the WWII.

Furthermore, at the time Koschaker was “Dekan” of the Faculty of Law at the University of Tübingen.

Feine can only now answer to two previous letters by Koschaker.

The latter asked for some books, found for him by a colleague, Herr Kurth; some other bureaucratic stuff is ready.

Koschaker is free to decide who will be his assistant, during the “Sommersemester” and it seems probable, that he will opt for Below. Feine hopes that the conditions will be good enough for Koschaker to have his course in Tübingen, by the beginning of the “Sommersemester”, but, for example, professor Eisser has not been released from his being held prisoner and professor Fechner’s position hasn’t been confirmed.

18.

Some of the letters in the folder are numbered (this is not).

A letter, one page long, typewritten, sent by Prof. Hans Erich Feine to Paul Koschaker, on 6th of February, 1946.

Koschaker is in Walchensee, where he spent a lot of time during the years after the WWII.

Furthermore, at the time Koschaker was “Dekan” of the Faculty of Law at the University of Tübingen.

Feine (professor of *Rechtsgeschichte* and supporter of Hitler, even if not a member of NSDAP) sends Koschaker this letter to inform him about the will of Dr. Below to move to Tübingen, to get there his *Habilitation* and a job as “Assistant” in Koschaker’s “Seminar für das Sommersemester 1946”. All this information is important for Below, because he needs to send the “Fragebogen” to the Military government.

Feine needs then to know if Koschaker will be back in Tübingen, to give lessons and classes during the “Sommersemester” [Tommaso Beggio: Koschaker had likely begun, at that time, to be always less present in Tübingen, because he really disliked the conditions there, as we can understand reading some letters he sent to Guido Kisch].

As a matter of fact, there is a need to gather some people for the teaching of Roman Law, at the University of Tübingen, considering that is not sure if Professor Georg Eisser will be back or not.

19.

A letter, one page long, typewritten, sent by Prof. Hans Erich Feine to Paul Koschaker, on 15th of February, 1946.

Koschaker is already in Walchensee, where he spent a lot of time during the years after the WWII.

Furthermore, at the time Koschaker was “Dekan” of the Faculty of Law at the University of Tübingen.

Feine begins dealing with the impossibility to call and offer some assignment to Prof. L. v. Witte at the University of Tübingen; Feine is very sorry about it and he asks Koschaker to communicate to Witte the sorrow for such an unpleasant situation.

He hopes, anyway, that Witte could hold the course about “Römisches Recht”, during the “Sommersemester”, at the University of Tübingen.

He then adds that Professor Erler will spend the time of the “Sommersemester” in Tübingen.

Another problem Feine wants to deal with is connected to the high number of students, who will attend the university classes during the “Sommersemester”; even if it meant a lot of work, it was at the same time a great success for the University.

20.

Some of the letters in the folder are numbered (this is not).

A letter, two pages long, handwritten on both sides, like a sort of postcard sent by Paul Koschaker to Hans Erich Feine, on 28th of February, 1946.

Koschaker is in Walchensee, where he spent a lot of time during the years after the WWII.

He replies to a previous letter sent by Feine (professor of *Rechtsgeschichte* and supporter of Hitler, even if not a member of NSDAP).

21.

A letter, two pages long (not numbered), typewritten, sent by the Rektor der Universität Tübingen, Hermann Hoffmann, to the *Kultminister* of Baden-Württemberg, on the 4th of March, 1941.

The text deals with the call of Koschaker as new professor in Tübingen, as the successor of Prof. Kreller.

Hoffmann wrote that the Rechts- und Wirtschaftswissenschaftliche Fakultät considered Koschaker suitable to hold the place, that had been Kreller's.

The Dekan of the Faculty wrote a report about it, in which he affirmed that Koschaker very likely would have accepted the call. Hoffmann himself was really persuaded about the reasons supporting this choice and he supported it. Hoffmann knew that the *Dozentenführer* agreed with it too.

For all these reasons, Hoffmann hoped that it would have been possible to order up the request to the *Reichswissenschaftsminister* as soon as possible.

22.

A letter, three pages long (second and third are numbered), typewritten, sent by the Dekan der rechts- und wirtschaftswissenschaftlichen Fakultät Tübingen, Hero Moeller, to the Rektor der Universität Tübingen, Hermann Hoffmann, on 4th of March, 1941. It deals with the call of Koschaker to Tübingen, as successor of Prof. Kreller (see the letter Moeller sent to Hoffmann on the 7th of March of the same year).

Moeller writes to Hoffmann to submit the proposal for the call of Paul Koschaker, as a successor of Kreller, considering the compelling and extraordinary situation they're facing [Tommaso Beggio: unfortunately we don't know precisely what made the situation so exceptional].

The Faculty board and Moeller himself agreed with the call of Koschaker and they were quite confident he would have accepted; for these reasons, they renounced to propose other candidates.

This is the definition of Koschaker Moeller gives: “der anerkannt erste Vertreter des Römischen Rechts auf deutschen Lehrkanzeln, dessen Bedeutung in Deutschland und weit über Deutschlands Grenzen hinaus, besonders auch in Italien, uneingeschränkt gewürdigt wird”.

A short description of Koschaker's career and an enthusiastic enumeration of his qualities follow.

The Faculty board also took into account if Koschaker could be considered too old to get the Chair in Tübingen at the time, but he seemed to them this was not the case.

Moeller considers then the importance of the publication *Die Krise des römischen Rechts und die romanistische Rechtswissenschaft*, and the debate roused on the writing in Germany and, in particular, in Italy.

There were not so many other potential candidates comparable to Koschaker; two of the few, Wieacker and Felgentraeger (Breslau), were not "erreichbar für Tübingen", according to the information coming from the *Reichswissenschaftsministerium*.

Another possible candidate could have been Erich-Hans Kaden, from Geneva, but Koschaker had been preferred to him.

[Tommaso Beggio: Moeller at the moment doesn't consider at all the names of Coing and Erbe, supported instead by the *Dozentenführer* Robert Wetzel, but he will have to explain how they are considered by the Faculty board and which their position is, as candidates, in a following letter to Hoffmann - see the letter of the 7th of March].

23.

A letter, one page long, not numbered, typewritten, sent by the *Dozentenführer Tübingen*, Robert Wetzel, to the Rektor der Universität Tübingen, Hermann Hoffmann, on 5th of March, 1941.

Just a day before Hoffmann wrote a letter dealing with the call of Koschaker to Tübingen and sent it to the *Kultminister* of Baden-Württemberg [see the note on Rektor-Kultminister].

Hoffmann was favourable to this choice, but Wetzel had not the same opinion about it. He wrote he was not enthusiastic about the call of Koschaker, even if it had been strongly supported by the Faculty, but at the same time, without any other alternative, he had no reasons to reject it.

Wetzel wrote that, if it was not possible to get the best choice, Franz Wieacker, and if it was not possible to call "jüngere Kräfte", in that case one should agree with the call of Koschaker [but he writes again: "An solchen jüngeren Kräften wird mir noch Coing und Erbe genannt; was ist mit Ihnen?"].

But one of the reasons why Wetzel was not favourable about the choice regarded the economic burden connected to Koschaker's call (calculated with regard to the *Reichswissenschaftsministerium's* regulations).

24.

A letter, one page long, not numbered, typewritten, sent by the Dekan der rechts- und wirtschaftswissenschaftlichen Fakultät Tübingen, Hero Moeller, to the Rektor der Universität Tübingen, Hermann Hoffmann, on 7th of March, 1941. It deals with the call of Koschaker to Tübingen, as successor of Prof. Kreller (see the letter Moeller sent to Hoffmann on the 4th of March of the same year).

There should have been a discussion at the University about this choice (see the letter from the *Dozentenführer* Robert Wetzel to the same Hero Moeller) and now the Dekan replies to the request of the Rektor to get more information about two other candidates, Coing and Erbe, strongly supported by Wetzel.

There is a brief description of the actual position of the two scholars, respectively working at the time in Frankfurt a.M. and Jena (even if Erbe had been appointed as *Professor für deutsches bürgerliches Recht, römisches Recht und Rechtsvergleichung* in Berlin).

Erbe, in particular, seemed to fit as a successor of Kreller, but Moeller wrote that both the two scholars were still at the beginning of their career, thus they couldn't be compared to Koschaker.