

ARCHIVE: All the letters are conserved by Professor Mario Varvaro (Università degli Studi di Palermo, Dipartimento di Storia del Diritto) thanks to the concession of Salvatore Riccobono's heirs. Professor Varvaro himself discovered the documents in Salvatore Riccobono's house. Therefore they are not stored in an official archive.

FULL ARCHIVAL REFERENCE: There are no archival reference. Professor Varvaro stored all the documents found in Salvatore Riccobono's house in different folders he himself shields.

PERSON: Paul Koschaker

SHORT DESCRIPTION OF CONTENT: Nine letters written by Paul Koschaker (plus three written by his wife, Helene) to Salvatore Riccobono. Some letters are written in Italian, some in German.

PERSON VISITING ARCHIVE: Tommaso Beggio

DATE VISITED: 10.-12.07.2014

DATE TRANSCRIBED: 21.07.2014

KNOWN REFERENCES IN LITERATURE: The letter written by Paul Koschaker on the 22nd of January 1930 is quoted and studied in depth in M. Varvaro, "La Antike Rechtsgeschichte, la Interpolationenforschung e una lettera inedita di Koschaker a Riccobono", *AUPA* 54 (2010-2011), 301-315.

NOTES ON THE ARCHIVAL SOURCE:

Nine letters written by Paul Koschaker (plus three written by his wife Helene) and sent to Palermo, to Salvatore Riccobono.

The letters were written between 1930 and 1951, but in the three letters written by Helene only the day and the month are specified.

The letters have different length, they are not numbered and were discovered in Salvatore Riccobono's house by Professor Mario Varvaro.

Seven of Paul Koschaker's letters are handwritten, the others are typewritten.

The three by Helene are all handwritten.

Letter written on the 22nd of January, 1930.

Typewritten, in German, 2 pages long (not numbered), sent from Leipzig, where Koschaker had the chair of Roman Law at that time.

The envelope has been conserved too.

Mario Varvaro deals with this letter in the article *La Antike Rechtsgeschichte, la Interpolationenforschung e una lettera inedita di Koschaker a Riccobono*, in *AUPA* 54, 2010-2011, 301-315.

Koschaker replies with delay to Riccobono's letter, sent on the 9th of November, 1929. The German Scholars thank the latter for the suggestions and advices he gave him, with regard to his last article on Roman Law and then Koschaker reaffirms his deep appreciation for Riccobono's way of studying the topic and, in particular, for his great effort to find "gesunde Basis" for the Interpolationenforschung [T.B.: it is known that

Riccobono – and Koschaker too – deeply criticized the exaggerations of the Interpolationenforschung’s scholarship].

Koschaker admits he always try to follow Riccobono’s way of studying Roman sources, but then the German scholar wants to specify his point of view about what he wrote in the *Savigny Zeitschrift* 49, 1929, page 197.

Actually he decided to reply to Riccobono, who included Koschaker among the supporter of the *Antike Rechtsgeschichte*. The latter wanted to underline once again how he never shared Wenger’s original aim and position; at the same time this one changed partially his conception during the years, how he explained, in particular, in his article in *Studi Bonfante*. Koschaker admits therefore that he could agree with this modified version of Wenger’s *Antike Rechtsgeschichte*.

In the end Koschaker explains that he’s studying again the ancient public Law in the Oriental Countries and how much the representation of the absolute monarchies, which reigned there, needs to be corrected.

Letter written on the 31st of December, 1939.

Handwritten, in German, 4 pages long (not numbered), sent from Walchensee.

Koschaker reciprocates to Riccobono the best wishes for the New Year.

The letter then immediately continues dealing with the problem of the crisis of the teaching of Roman Law in Germany and Koschaker writes he hopes there will be a “Wendung”, a turning point for the better, during 1940.

The rest of the letter is difficult to read. Anyway Koschaker describes the situation of Roman Law and its teaching in the last years and [T.B.: so I think, but I’m not sure] what happened after the time of the Pandectistic School and 1900.

He writes that his piece of writing about the crisis of Roman Law [*Die Krise des römischen Rechts und die romanistische Rechtswissenschaft*] has been criticized, for the ideas this about this topic contained in it. But then he quotes his article “L’alienazione della cosa legata”, later published in “Conferenze romanistiche dell’Università di Pavia”, as an example of the method he would like to apply to the study of Roman Law.

Letter written on the 22nd of May, 1939.

Handwritten, in German, 2 pages long (not numbered), sent from Grünewald-Berlin.

It is very difficult to understand what Koschaker wrote.

At the beginning the German scholar thanks Salvatore Riccobono for his friendship.

There is then a passage about a recent article written by Riccobono, appreciated by Koschaker, in which the first one criticizes the trend of the “Interpolationismus”.

[T.B.: the rest of the letter is difficult to read].

Letter written on the 20th of January, 1940.

Handwritten, in German, 3 pages long, not numbered, sent from Walchensee.

Koschaker deals with something likely written [T.B.: but it’s not clear, because the handwriting is difficult to read] by Riccobono about Roman Law and he reconnects the problem to his piece of writing “Die Krise des römischen rechts und die romanistische Rechtswissenschaft”, underlining that it received quite a strong criticism, because Koschaker seemed to want to bring back again the method of the Pandectistic. Furthermore, he was perceived as a “Feind der Rechtsgeschichte”.

Actually he wants to stress that his idea is different and he doesn’t want only to use again the pandectistic method; and he is not an “enemy” of the *Rechtsgeschichte*, because he recognizes its importance in the study of a Law of the Antiquity, as the

Roman Law. The historical methodology then should help to understand what was the “classical” Roman Law and what was instead the Roman Law of the time of Justinian. In the second page he deals with the topic of the “actio de dolo” in the texts of Marcellus and he agrees with Riccobono’s point of view.

Very important: Riccobono has received the official communication from the *Preußische Akademie der Wissenschaften*, that he would have been a *korrespondierendes Mitglied* of the latter. The proposal Koschaker submitted to the Academy had been therefore accepted.

Letter written the 6th of October, 1946.

Handwritten, in German, 2 pages long (not numbered), sent from Oberbayern [T.B.: not better specified].

Koschaker spent some time in Bayern and Walchensee during the occupation of Tübingen by the French army.

He writes that he spent three weeks in that city in September, but his apartment had been occupied by the French, so then he moved to Bayern and probably he wanted to postpone as much as possible his return to Tübingen.

He writes he is now “67 1/2” years old and he’s got some diseases.

But he complains particularly for the situation of Roman Law, that is not good in Italy – he writes -, but it’s anyway worse in Germany.

He thanks Riccobono for an article the latter wrote on the *Bullettino dell’Istituto di Diritto romano* in 1946 [T.B.: but I cannot precisely understand which is the reason why Koschaker thanks Riccobono].

There is a “post scriptum”, in which he quotes Biondi.

On the envelope we can read “Deutschland, American Zone”.

Letter written on the 23rd of August, 1948.

Handwritten, two pages long (not numbered), in German, sent from Walchensee.

Koschaker talks about his travel to Ankara [T.B.: he spent part of 1948 and 1949 as “Gastprofessor” in Turkey] and about a congress, which would have taken place in Verona, in the month of September of the same year [T.B.: see the letter of the 11th of April, 1949].

He writes something about the possibility to fly from Venice or Rome to Istanbul and then he alludes to a travel to Sicily and Palermo, likely to visit Riccobono, but the text is here not easy to read. It seems, in any case, that Koschaker thinks to stay in Rome for some days, after the congress in Verona, and probably he would like Riccobono to come there to meet him, but the Italian scholar was almost 85 years old at the time.

Letter written on the 11th of April, 1949.

Handwritten, in Italian, 4 pages long (not numbered) and sent from Ankara, were Koschaker had been invited to hold a course on Roman Law.

Koschaker replies with delay to the letters Riccobono sent him on the 28th of December, 1948 and on the 6th of March, 1949.

The reason why he is on late is due to incredible tiredness he feels, provoked by the long and very cold winter in Turkey.

Last time Koschaker was in Verona, in Italy, he got many books and articles from the colleagues and he received the copy of the BIDR Riccobono himself sent him. In the volume there was the article on the *ius ars boni et aequi* the latter wrote.

Koschaker couldn't bring with him all the books he received, so asked for help to doctor Hagemann, who sent all the stuff to Koschaker's house in Waldensee (furthermore, Pietro de Francisci sent him a copy of his *Arcana imperii*).

Reading the letter we can appreciate how much Koschaker admires, in general, Riccobono, and in particular the last article he published on the *Bullettino*, in which he condemned once again the theory of the "Oriental-hellenistic" Roman Law.

Koschaker writes that, even if some institutions and rules were influenced by the Hellenistic Law (and he makes an example), the so-called post-classic Roman Law is still based on classic principles and permeated by the spirit of the Roman tradition.

Then he describes the situation in Ankara: he is quite satisfied about it, in particular because the students are really interested in what he teaches and because teachers in Turkey have a great authority.

Teaching in Ankara, Koschaker had some confirmation about his ideas on Roman Law, and he writes that this one "non può esser insegnato che storicamente, ma da punti di vista dommatica (T.B.: sic!). Ciò che importa sono i concetti romani (T.B.: underlined in the letter), la connessione fra loro ed in quanta misura sono passati nei sistemi moderni..." and again: "Storia vi è dappertutto" (T.B.: this point is very interesting. We can find this ideas in his *Europa und das römische Recht*, but there are some different nuances in his conception).

He would also like to write a brief handbook, gleaned by the stuff he uses for his course on Roman Law.

The biggest problem in Ankara is the research, because there is a great lack of books, in particular the German ones.

Koschaker doesn't know if he will remain in Ankara and who, in case, could substitute him, but he asks Riccobono for some names of young Italian good scholars, who could spend some years teaching Roman Law in Ankara.

He wants to come back to Germany to spend there the Summer, but he has got to go to Rome before, to the American Embassy, to get the "entry permit".

He hopes therefore he could meet Riccobono there.

Letter of the 10th of June, 1950.

Handwritten, one page long (it is like a postcard), in Italian and sent from Ankara.

Koschaker advises Riccobono that his travel plan to Italy has changed and he will spend there a day more (see the previous letter).

At the same time, we can read that the American Embassy had granted him the passport to Berlin, where Koschaker would have probably spent some days (during the Christmastime?).

Letter of the 31st of March, 1951.

Typewritten, 3 pages long (not numbered), in Italian and sent from Waldensee.

He wrote this letter just two months before he died (in Basel, on the 1st of June, 1951).

Koschaker replies to the letter Riccobono sent him on the 22nd of March of the same year and in the beginning the tone is very informal and friendly (Koschaker knew that Riccobono used to smoke the pipe and he appreciated this habit).

He regrets that Salvatore Riccobono jr. had been badly treated in the competitive exam to get a chair at the University and nonetheless he declares his consideration for him.

Koschaker sent to Riccobono the text of the brief autobiography he was asked to write, in which he writes something about the way of teaching Roman Law too.

Koschaker feels more convinced in his ideas, after the recent experience in Bonn and criticizes the approach of the German students (he prefers rather the ones he found in Turkey, when he taught Roman Law in Ankara; see letter of the 11th of April, 1949). About his way of teaching, he writes: “cerco sempre la connessione col diritto moderno, dimostrando agli studenti come i pensieri dei giuristi romani sono praticabili anche per la soluzione dei problemi del diritto moderno”.

Anyway he feels not such confident about the future of Roman Law at the University and he criticizes the Romanists, who adhere to the “positivismo storico”, preferring rather to study the “valori eterni del diritto romano che consistono nei suoi concetti giuridici e la loro evoluzione che bisogna perseguire fino ai nostri tempi nei principali diritti positivi” (T.B.: this passage is important and significant; even if there are some similarities to what Koschaker than will write in *Europa und das römische Recht*, I think that the position emerging in this letter is not exactly the same we find in the book). The aim of teaching Roman Law consists in “formare una scienza giuridica generale, basata nelle linee fondamentali sul diritto romano, insegnata al principio degli studi giuridici e destinata a procurar agli studenti la capacità di pensare giuridicamente”.

Koschaker states that it’s a pleasure for him to discuss about this topic with Riccobono, because the latter influenced many of his ideas (T.B.: !!).

He informs Riccobono that he had a heart attack at the beginning of the month, in Leiden (Koschaker will die because of a new heart attack two months later, in Basel). The last, very important information we get regards the topic Koschaker studies at the moment he writes the letter. Indeed he is working on “Oriental Law and comparative Law” and he has just wrote a piece of writing entitled “Conclusioni di matrimonio e compra-vendita”, about the marriage in Ancient Orient.

He writes that the research permitted him to get new ideas and point of views about the same topic in ancient Roman Law too (T.B.: this passage is very interesting, because we understand that Koschaker, some months before he died, was dealing with the topic of marriage in Ancient East and there could be a connection with the manuscript titled “Die Ehe von Ruth”, found in Westfälische Wilhelms-Universität Münster, Institut für Rechtsgeschichte, among the “Sonderdrucke” of the Sammlung Koschaker).