CHAPTER 8

Use and Abuse of Legal Procedures to Impede the Legal Process

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1 Introduction

Many studies have approached Athenian legal practices and the social functions of the Athenian judicial system from the perspective of dispute settlement: for example, the extent to which a plaintiff could choose a specific type of lawsuit from among various alternatives, considering the risks and prospects of success, or the degree to which the courts were regarded as the appropriate arena for pursuing feuds with a prosecutor’s personal enemies.¹ However, the legal procedures available after the official initiation of a legal case but before the beginning of the trial in court, such as hypōmosia and paragraphē, have remained largely unexamined in terms of the litigants’ perspective, despite the fact that Athenian litigants in the fourth century BC seem to have used these procedures strategically from time to time. To obtain a larger view of the nature of dispute settlement practices in classical Athens, it is necessary to investigate the strategies that were available to litigants during the preliminary stage of a court case, namely before the beginning of the trial in court. This study examines how various procedures were used and abused during this preliminary stage in order to impede legal proceedings, and suggests that the stage that followed the filing of a case could be used not merely as inactive waiting time but rather as a period during which strategic negotiations between the disputants could be conducted.²

¹ Osborne 1985 triggered debates on the flexibility of the legal procedures that were available in the Athenian judicial system (cf. Todd 1993; Harris 2000; Carey 2004; Osborne 2010: 200–204). Cohen 1991; Cohen 1995 argues that the courts of law were another arena for pursuing private enmities, which provoked various responses (e.g. Harris 1994; Christ 1998, esp. 160–192).
² Recent important works on the preliminary stage before a trial came into court include, e.g. Hunter 1994: 55–66 (arbitration); Scafuro 1997, esp. 31–42, 117–141, 393–399 (arbitration); Johnstone 1999 (dare or proklēsis).
2 Ways and Means of Postponing a Case

2.1 Private and Public Arbitration and anakrisis

Athenian litigants used various means during the preliminary stage of trials to impede the progress of legal proceedings. First, private arbitrations provided litigants with opportunities to delay the legal process. Since a matter could be handed over to private arbitrators even after the official initiation of a dikē, unsurprisingly some litigants tried to impede or evade trial in court by delaying their private arbitrations. Hegesandros is said to have gained a distinct advantage by delaying such a private arbitration. In 361/0 BC or slightly earlier, Pittalakos, a public slave, brought a dikē against Hegesandros for his insolent treatment of Pittalakos. The defendant claimed that the plaintiff was his private slave and attempted to enslave him for his personal use only. One Glaukon of Cholargos, however, sought to have Pittalakos freed through aphairēsis eis eleutherian. Hegesandros, in turn, initiated a dikē exaireseōs against Glaukon, but the matter was subsequently handed over to Diopeithes of Sounion for arbitration. According to Aischines, this arbitrator, who was a fellow desman and an old friend of Hegesandros, evaded his duty for a long time and this delay worked to Hegesandros’ advantage. While the hearing was repeatedly postponed, Hegesandros began to speak in the Assembly and his brother Hagesippos regularly made public speeches, which eventually discouraged Pittalakos from continuing with the case. When Mantitheos and his half-brother ‘Boiotos’ brought dikai against each other in the middle of the fourth century BC, they submitted their claims to Solon of Erchia for arbitration; however, according to Mantitheos, Boiotos evaded the arbitration for such a long time that the arbitrator died and they filed their cases afresh. It is uncertain for how long the hearing was delayed in this particular case, but arbitration was obviously regarded as a typical mechanism for delaying and/or evading legal proceedings.

Public arbitration, which was instituted for the majority of private cases, could likewise be postponed. According to Demosthenes, on the day of the public arbitration for the dikē kakēgorias against Meidias, their public arbitrator, Straton (presumably, though Demosthenes does not say, at Meidias’ request) asked Demosthenes to adjourn the arbitration for a while, and subsequently to

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3 Scafuro 1997: 38, 396–397 shows that, among the extant cases, most private arbitrations were offered after legal action had begun.

4 Aischin. 1.62–64. For details of the affair concerning Pittalakos and the relevant legal procedures, see Fisher 2001: 199–201; Scafuro 1997: 400–401.

5 [Dem.] 40.16, 19, 30.