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The novella (37) of Justinian of 535 and its anti-Judaic character

Nowela (37) Justyniana z 535 r. i jej antyjudaistyczny charakter

Abstract: The considerations contained in this article concern legal regulations directed against the followers of Judaism, included in novella 37, issued by Emperor Justinian in 535 and in force only in the prefecture *praetorio* of Africa. Controversies in the historical discourse are caused by both the reasons for the introduction of a restrictive law, which has no equivalent in other parts of the Roman empire, and its actual reception. The conducted analysis questioned the appropriacy of using the passage from *De aedificiis* of Procopius of Caesarea as an example of the practical application of this law and, based on the epistolography of Pope Gregory, determined the hypothetical *terminus ante quem* of its validity.

Keywords: Byzantine Africa, Justinian I, Jews, Justinian's novels

Streszczenie: Przedstawione w artykule rozważania dotyczą regulacji prawnych wymierzonych w wyznawców judaizmu, zawartych w noweli 37 wydanej przez cesarza Justyniana w 535 r. i obowiązujących jedynie na terenie prefektury *praetorio* Afryki. Kontrowersje

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w dyskursie naukowym są wywołane zarówno przez przyczyny wprowadzenia restrykcyjnego prawa, nieznanego odpowiednika w innych częściach imperium rzymskiego, jak i jego rzeczywistą recepcję. Przeprowadzona analiza zakwestionowała zasadność wykorzystywania passusu *De aedeficiis* Prokopiusza z Cezarei jako przykładu praktycznego stosowania omawianego prawa, a na podstawie epistolografii papieża Grzegorza wyznaczyła hipotetyczny *terminus ante quem* jego obowiązywania.

Słowa kluczowe: bizantyńska Afryka, Justynian, Żydzi, nowele Justyniana

The army of Belisarius's reconquest of Africa from the Vandals in 533 and reincorporation into the structures of the Roman Empire meant that the local Jewish community¹ was subject to legal restrictions when the provisions of the Code of Justinian were applied. The separate status of this group, motivated by religious reasons, pushed it to the margin of social life, but less than two years after the reconquest, Jews in the African prefecture found themselves in a much worse situation than their peers in other areas of the empire, thanks to the publication of the novella *De Africana ecclesia*, which lifted the *religio licita* status of Judaism and equated its followers

¹ The preserved source material makes it impossible to draw general conclusions about the number and distribution of Jewish communities in Roman Africa. Literary information confirming their presence at the beginning of the 3rd century can be found in Tertullian (*Adversus Iudaeos*, ed. E. Kroymann, CCL 2, Turnhout 1954, pp. 1337–1396), and at the turn of the 5th century in Augustine, bishop of Hippo (*Sermo* 196,4; Ep. 8, ed. J. P. Migne, PL 38, Paris 1865), for more, see S. Adamiak, *Żydzi w rzymskiej Afryce Północnej*, “Biblica et Patristica Thoruniensia” 2014, vol. 7, no. 1, pp. 100–103; R. Laham-Cohen, *The Jews in late antiquity*, Leeds 2018, pp. 28–30. Archaeological excavations revealed the remains of synagogues in three places (Leptis Magna, Carthage, Naro), but only the building in Naro can be clearly identified as a temple, also built in the period of late antiquity, see R. Laham-Cohen, *The Jews in late antiquity*; about the hypothetical synagogue in Carthage, see J. Lund, *A synagogue at Carthage? Menorah lamp*, “Journal of Roman Archaeology” 1995, Supplement 8, pp. 7–29. There is also a collection of epigraphic monuments that confirm the occurrence of Judaic religious symbols, names and priestly functions throughout the entire African Prefecture, see Y. Le Bohec, *Juifs et Judaïsants dans l'Afrique romaine. Remarques onomastiques*, “Antiquités Africaines” 1981, vol. 17, pp. 209–229; K. B. Stern, *Inscribing devotion and death: Archeological evidence for Jewish populations of North Africa*, Leiden–Boston 2007.

with heretics and pagans – groups without legal opportunities to exercise religious worship.

The legal situation of the Jewish population during the reign of Emperor Justinian took a significant turn for the worse compared to the earlier period. Resuming work on codifying the law, the emperor included some of the provisions from The Codex Theodosianus and post-Theodosian *novellae*, while tightening penalties for breaking the law and adding new restrictions that influenced the life of Jewish communities, as well as their representatives in the public space of the Roman state.² The *Digesta* contains three passages discussing matters connected with the followers of Judaism: D.27.1.15 indicated that Jews were not exempt from the obligation to take care of non-Jews; D.48.8.11 stipulated that only Jews were allowed to circumcise their sons, otherwise it would be treated as castration;³ D.50.2.3 recalled the permission given by Septimius Severus and Caracalla for Jews to take up the post of decurion, provided that fulfilling the duties of a given office did not violate their faith. In the codex published in 534, Justinian collated the laws regarding the followers of Judaism in book I, chapters 9 of *De Iudaeis et caelicolis* and 10, where he used the provisions of the Codex Theodosianus in a restricted form, adding his own interpretation: e.g. an attack on a convert from Judaism to Christianity was punishable by burning alive (CJ I.9.2); Jews were deprived of the opportunity to perform military service, but they still had curial duties (CJ I.9.5); Christian-Jewish marriages were treated as *adulterium* and punishable by death (CJ I.9.6); the ban on building new synagogues was maintained, allowing only the repair of existing

² See A. Sharf, *Byzantine Jewry from Justinian to the fourth crusade*, Liverpool 1971, pp. 19–27; N. de Lange, *Jews in the age of Justinian*, in: *The Cambridge companion to the age of Justinian*, ed. M. Maas, Cambridge–New York 2005, pp. 410–418; A. M. Rabello, *Justinian and the revision of Jewish legal status*, in: *The Cambridge history of Judaism*, vol. 4, ed. S. Katz, Cambridge 2006, pp. 1074–1077; A. Dębiński, *Polityka ustawodawcza rzymskich cesarzy chrześcijańskich w sprawach religijnych*, Lublin 2020, pp. 49–50, 183–212.

³ Emperor Hadrian equated circumcision with castration and, based on the *lex Cornelia de sicariis et veneficiis*, which was almost two centuries earlier, and he imposed the same penalties for these acts, including confiscation of property to the state treasury, see *Digesta* 48.8.4.2, cf. A. Dębiński, op. cit., p. 191.

ones that were at risk of ruin;⁴ (CJ I.9.18.1–2); the ban on proselytism (CJ I.9.12) and circumcision of Christians (CJ I.9.16) was repeated; Jews were prohibited from holding the office of *defensor civitatis* (CJ I.9.18)⁵ and owning Christian slaves (CJ I.10.2), but synagogues and Jews themselves continued to be legally protected from violence (CJ I.9.4, 9.13, 9.14). Later, the ruler also published *novellae* that partially duplicated the provisions of the codex or interfered even more in the life of Jewish communities,⁶ one example of which was the most restrictive law to date, aimed exclusively at African Jews.

On 1 August 535, in Constantinople, Emperor Justinian issued a constitution addressed to the praetorian prefect Solomon with the general title *De Africana ecclesia* (Nov. 37), in the form of *lex specialis* and solely applicable to the African prefecture.⁷ The initiators of this act of legislation were, as

⁴ CJ I.9.18 exactly reiterated the entries of Nov. Theod. 3.1.5, where anyone building a new synagogue would be informed that he was working for the glory of the Church (the building and the area on which it was erected were confiscated for the benefit of the Church), and he would be punished with a fine of 50 pounds of gold, confiscation of his property and the death penalty.

⁵ The gradual exclusion of Jews from imperial service began in the 5th century. CTh XVI.8.16 of 404 excluded them from holding certain state offices, as well as from the ranks of *agentes in rebus*; CTh XVI.8.24 of 418 extended this scope to include further palace offices (*militia palatina*) and ordered the expulsion of followers of Judaism from the army; in 425, this provision was repeated (Sirmond. 6), while in 438, Theodosius II radically deprived them of the possibility of holding any state and municipal offices, actual or honorary (Nov. Theod. 3.2). Justinian adopted the 5th century regulations, tightening the sanctions for non-compliance (CJ I.5.12.9, 13, 15), and also prohibited Jews from practicing law (CJ I.4.5)

⁶ Nov. 45 of 537 deprived the followers of Judaism of the opportunity to benefit from curial positions; Nov. 131 of 545 repeated the ban on building new synagogues, while Nov. 146 of 553 interfered directly in matters of worship, ordering the reading of sacred texts in Hebrew, Greek or Latin, but clearly favouring the Septuagint – in the legislator’s intention, the resistance of Jews to conversion to Christianity resulted from an incorrect understanding of the Bible, cf. A. Sharf, *op. cit.*, p. 24; A. M. Rabello, *op. cit.*, pp. 1076–1077.

⁷ Novela 37 is often used as a source by researchers of the history of the African Church during Byzantine rule see, e.g., Ch. Diehl, *L’Afrique byzantine: histoire de la domination byzantine en Afrique (533–709)*, Paris 1896, pp. 408–452; R. Devreesse, *L’Église d’Afrique durant l’occupation byzantine*, “Mélanges d’archéologie et d’histoire” 1940,

indicated in the preamble, Reparatus, the bishop of Carthage, and the bishops who came to the Pan-African synod, probably in the year 535.⁸ This would somehow seem to be a response to the law published on 1 January of the same year (Nov. 36), also addressed to prefect and *magister militum* Solomon, concerning the return of property belonging to African inhabitants confiscated during the rule of the Vandals. However, it neglected to mention the issue of the legal and property status of the African Church.⁹ There-

vol. 57, pp. 145–146; S. Adamiak, *Rywalizacja między stolicami biskupimi w Afryce Północnej w VI wieku*, “U Schyłku Starożytności. Studia źródłoznawcze” 2010, vol. 9, p. 13; Y. Modéran, *L’Afrique Reconquise et les Trois Chapitres*, in: *The crisis of the Oikoumene. The three chapters and the failed quest for unity in the six-century Mediterranean*, eds. C. Chazelle, C. Cubitt, Turnhout 2007, p. 77, although a detailed historical analysis was conducted by C. Saumagne, *Étude sur la propriété ecclésiastique à Carthage d’après les nouvelles 36 et 37 de Justinien*, “Byzantinische Zeitschrift” 1913, vol. 22, pp. 77–87 and S. Adamiak, *Carthage, Constantinople and Rome: Imperial and papal interventions in the life of the Church in Byzantine Africa (533–698)*, Roma 2011, pp. 62–65. *Lex specialis*, to put it very simply, is a law issued by the emperor, which does not behave as a general law applicable throughout the country. In the case in question, this nature of the act is supported by the restriction of its area of application to one prefecture of the empire. General information about Justinian’s novellas see T. Honoré, *Justinian’s codification*, in: *The Oxford classical dictionary*, eds. S. Hornblower, A. Spawforth, London 2003, pp. 780–782; C. Humfress, *Law and legal practice in the age of Justinian*, in: *The Cambridge companion...*, pp. 161–166; D. Liebs, *Roman law*, in: *The Cambridge ancient history*, vol. 14: *Late antiquity: Empire and successors, AD 425–600*, eds. A. Cameron, B. Ward Perkins, M. Whitby, Cambridge 2007, pp. 244–252; in detail, T. Kearley, *The creation and transmission of Justinian’s novels*, “Law Library Journal” 2010, vol. 102, part 3, pp. 377–395.

⁸ Nov. 37.1: “Cum igitur Reparatus vir sanctissimus sacerdos eiusdem nostrae Carthaginis Iustinianae [...] una cum ceteris eiusdem provinciae reverentissimis episcopis litteris propriis per Theodorum virum religiosum diaconum et responsalem eiusdem venerabilis ecclesiae civitatis Carthaginis Iustinianae destinatis nostram deprecati sunt malestatem [...]”. The dating of the African synod to 535 see R. Devreesse, op. cit., pp. 145–146; S. Adamiak, *Carthage, Constantinople and Rome...*, p. 63.

⁹ Novella 36 was defined by the legislator as a pragmatic sanction and had a strictly defined time-space framework for its validity. It allowed the inhabitants of the African prefecture to recover property confiscated during the reign of the Vandals, but it introduced significant restrictions, including: a plea could only be brought to the prefect’s courts or provincial governors in the prefecture, claims could concern the recovery of property confiscated at most during the times of *patres et avos*; the plaintiff had only four years from the date of promulgation of the act to file a suit and collect evidence, cf. C. Saumagne,

fore, Reparatus and bishops gathered at the synod requested that church relations be regulated in terms of property and economic matters, and, for purpose of issuing a law, such a definition was included in the preamble of the imperial constitution: “*possessiones ecclesiarum totius Africani tractus tyrannico quidem tempore ablatas eis*”, enabling the church authorities to pursue their rights of ownership, pursuant to novella 36.¹⁰ As suggested by Stanisław Adamiak, the regulations contained in the act regarding the recovery of temples, real estate, equipment and liturgical vestments that remained illegally in the hands of Arians, pagans and others were in line with the intentions of the bishops’ synodal letter, but further legislation focused on the situation of the non-orthodox population, from the point of view of the emperor’s religious policy, came at Justinian’s own initiative.¹¹ The prefect of Africa was obliged to supervise the orthodoxy of the official apparatus under his jurisdiction, while at the same time prohibiting heretics from taking any public action.¹² Moreover, Arians, Jews and Donatists were forbidden from owning temples, exercising their religious beliefs, ordaining

op. cit., pp. 77–87; A. H. M. Jones, *The Later Roman Empire 284–602: A social, economic and administrative survey*, vol. 1, Oxford 1986, p. 274; Y. Modéran, op. cit., pp. 68–69.

¹⁰ S. Adamiak, *Carthage, Constantinople and Rome...*, p. 62, analysing Justinian’s references to earlier laws in this novella, suggests that together with the law CJ I.27.1 regarding the creation of the prefecture of Africa, the emperor also issued a law regulating church relations in this area, which, however, has not survived. There are no such conclusions in the analytical article by C. Saumagne, op. cit., pp. 77–87. Presumably, this hypothesis is incorrect because the earlier regulation of church relations before 1 August 535 would probably exclude the description of Justinian’s Carthaginian primacy in novella 37, so all references to earlier legislation on property matters should probably be associated with novella 36.

¹¹ S. Adamiak, *Carthage, Constantinople and Rome...*, p. 64.

¹² Nov. 37.6: “*Omnes autem haereticos secundum leges nostras quas imposuimus publicis actibus amoveri, et nihil penitus publicum gerere concedantur haeretici nec aliquam administrationem quibuslibet subire ambitionibus, ne videantur haeretici constituti orthodoxis imperare, cum sufficit eis vivere, non etiam sibi aliquam auctoritatem vindicare et ex hac orthodoxos homines et dei omnipotentis rectissimos cultores quibusdam afficere detrimentis*”. The main ideological motivation of the legislator was to deprive dissenters of the opportunity to exercise power over the Orthodox population, but from a practical point of view, the reason could also be the need to cleanse the administration of the created territorial unit of people previously working for the Vandals, cf. *The Novels of Justinian*.

priests and conducting baptisms (ban on proselytism) in accordance with the legislation developed since the reign of Theodosius I, and their only right was the right to life (“sufficit eis vivere”).¹³ The law prohibiting Jews from owning Christian slaves was also reiterated (see CJ I.10.1), and their synagogues were to be turned into churches.

The aforementioned constitution is the first legal act equating the status of Jews in Africa with pagans and heretics, who had been subject to imperial repression throughout the empire from the end of the 4th century, and synagogues ceased to be *licitae*, which undermined the previous pillars of religious policy in the Roman state. The reason for such a dramatic turnaround is unclear and ambiguously described in sources, which leads to the formation of various hypotheses explaining Justinian’s decision, which was so restrictive towards the followers of Judaism. Presumably, the very idea of regaining Africa from the hands of heretics, as the implementation of God’s plan, was supposed to mark the liberation of suffering, orthodox Christians and the restoration of orthodoxy to this area, while creating a monolithic religious structure.¹⁴ Justinian would therefore seek to make

A complete annotated English translation, vol. 1, eds. D. J. D. Miller, P. Saris, New York 2018, p. 355, note 10.

¹³ By introducing restrictions against Arians, Donatists, Jews and others, the emperor directly referred to the legislation of his predecessors: “[...] non solum a nobis, sed etiam ab anterioribus legibus condemnatae sunt” (Nov. 37.5). The above issues were addressed in the acts of the code of Justinian CJ I.5.8, CJ I.5.18 and CJ I.9.18. The analysis of the anti-heretical legislation contained in the Codex Theodosianus, with particular emphasis on the legislation of Theodosius I and his successors, was conducted by M. Stachura, *Here-tycy, schizmatycy i manichejczycy wobec cesarstwa rzymskiego (lata 324–428, wschodnia część Imperium)*, Kraków 2000, pp. 83–120; cf. A. Dębiński, op. cit., pp. 57–122. The issuance of laws against heretics proceeded in several stages, with particular intensification after the First Council of Constantinople, and the restrictions were varied in nature, including: prohibition of worship (CTh XVI.5.6–9; CTh XVI.5.12); an order for confiscation of property where assemblies were held (CTh XVI.5.4; CTh XVI.5.8); prohibition on the ordination of clergy (CTh XVI.5.14; CTh XVI.5.21; CTh XVI.5.24); prohibition on holding state offices (CTh XVI.5.25; CTh XVI.5.29). Laws regarding Donatists were issued in *Pars occidentalis* (CTh XVI.5.37–41, 43, 44, 52, 54, 55; CTh XVI. 6.4.5), and a generalisation covering all non-Catholics – Donatists, heretics and Jews – appeared in the law of Emperor Honorius from 408 (CTh XVI.5.44).

¹⁴ The preamble of the Constitution CJ I.27.1 indicates the primarily religious

the African prefecture a model area of Orthodoxy, eliminating all religious dissidents through administrative methods, on the basis of expected conversion rather than deportation or physical liquidation. The ban on Jews owning Christian (or catechumenal) slaves, reiterated in *De Africana ecclesia*, originally issued by Constantius II in 339 and included in the Code of Justinian, was presumably intended to encourage Jewish *possesores* to be baptised in order to keep their slaves, thus applying economic pressure.¹⁵ The second hypothesis concerns the involvement of Jews in the rule of the Vandals. Raúl González Salinero in an article on Jews in Byzantine Africa as well as David Miller and Peter Sarris in their comments on the English translation of Justinian's *novellae* claim that the followers of Judaism had full religious freedom in the kingdom of the Vandals, but such a statement has no support in the sources.¹⁶ During the Roman reconquest of North Africa in 533 carried out by the troops of Belisarius – *magister militum per*

reason for the reconquista of Africa, and the aim of the military intervention was to free the orthodox population persecuted by the Vandals. Procopius of Caesarea BV. I.9–10 broadly describes the causes of the outbreak of the war, also ultimately indicating a religious motivation, cf. idem, *De aedificiis* VI.5.6. Generally on the ideological premises of the Reconquista, see S. Pulatti, *Ricerche sulla legislazione "regionale" di Giustiniano. Lo statuto civile e l'ordinamento militare della prefettura africana*, Milano 1980, pp. 63–66; R. González Salinero, *Presiones políticas sobre una incómoda minoría: los judíos en el Africa bizantina*, "Erytheia" 2010, vol. 31, pp. 11–12.

¹⁵ Nov. 37.7. In this appendix, the legislator refers to previously issued laws containing detailed sanctions: "quod et legibus anterioribus cavetur et nobis cordi est illibatum custodire". The Act of Constantius II specified that slaves acquired contrary to the regulations should be transferred to the state treasury, while Justinian (CJ I.10.2) introduced a total ban on Jews owning Christian slaves – failure to comply was punishable by a steep fine of 30 pounds of gold, cf. A. Dębiński, op. cit., pp. 197–202. In the analysed novella, the emperor also prohibited the ritual of circumcision on slaves – according to earlier legislation, such an act was punishable by death, cf. ibidem, pp. 190–193.

¹⁶ R. González Salinero, op. cit., p. 10; *The Novels of Justinian...*, p. 354, note 1. The preserved source material does not in any way present the situation of the Jewish population in Roman Africa after the Vandal conquest, and the case of Ostrogothic Italy shows that the new rulers maintained imperial legislation in this matter, limiting the possibilities of expansion of Judaism. In this case, retrogressive argumentation based on novella 37 is a hypothesis that, given the current state of preservation of the source base, is impossible to prove.

Oriente – the Jews were said to have been hostile to the Byzantine army, as they were later during the siege of Naples in 536, where, according to the account of Procopius of Caesarea, they put up effective resistance to the attacking imperial army.¹⁷ Presumably, however, this situation during the war against the Ostrogoths could have resulted from the local Jewish population's fear of repressive action from the Roman administration, which they had experienced previously in Africa, and it should not necessarily be attributed to Jewish hostility towards the Byzantines in 533 during the liquidation of the Vandal kingdom. Moreover, the issue of the above-mentioned religious freedom before the reconquest is debatable, because the Arian rulers of the states established in the Western Empire either still followed the legislation contained in the Codex Theodosianus regarding Judaism, or acted in an openly anti-Jewish manner.¹⁸ It seems that the first theory is more probable and novella 37 was, in a sense, a continuation of the policy of religious unification of the empire, implemented by Justinian, who turned the African prefecture into a kind of experiment, including in the field of civil and military administration.

Academia is polarised regarding the actual effects of the introduction of the *De Africana ecclesia* act. Some researchers express the opinion that the law prohibiting the practice of Judaism and the takeover of synagogues

¹⁷ Procopius, BG V.10.25–26; R. González Salinero, op. cit., p. 17.

¹⁸ An example of continuous compliance with imperial legislation was Ostrogothic Italy, where King Theodoric, in letters addressed to the Jewish population, confirmed their rights from the laws of CTh XVI.8.2–5, 8–13, 20–21 (Cassiodorus, *Variae* IV.33 to the Jews from Genoa), confirmed the legal protection of synagogues (Cassiodorus, *Variae* V.37 to the Jews from Milan), and, directly referring to the Theodosian *novellae* (3, 3 and 5), allowed Jews to repair the temple, but forbade any expansion of the building (Cassiodorus, *Variae* II.27 to the Jews living in Genoa), cf. R. Laham-Cohen, *The Jews in late antiquity*, p. 18. The legal situation of the Vandal kingdom was different, but it is not possible to clearly reject the thesis that they did not use imperial legislation in the matter of relations with the followers of Judaism, especially since they captured Carthage a year after the promulgation of the Codex Theodosianus and all the individual laws relating to the Jews contained therein. According to D. J. D. Miller and P. Sarris (*The Novels of Justinian...*, p. 354, note 1) as well as R. Laham-Cohen (*The Jews in late antiquity*, pp. 42–51), Byzantine activities in Africa probably inspired the Visigothic rulers to introduce restrictive anti-Jewish policy in Spain too, but this hypothesis is impossible to verify.

by the Church in the African Prefecture had no real consequences and practically did not affect the Jewish communities existing in this area at all, or to a very limited extent at most.¹⁹ However, some theories also posit that the confiscation of temples and forced conversion to Christianity were actually carried out by the emperor, as evidenced by the passus contained in Procopius of Caesarea's *De aedificiis* regarding the fortress of Boreum.²⁰ Belisarius's secretary, reporting on Justinian's investments in Africa in book six of his work, includes a relatively long description of imperial interventions in the social situation of towns located west of Pentapolis. He mentions, inter alia, the history of the Jews living around Boreum and their temple, supposedly built by Solomon, and the fact that, thanks to Justinian's efforts, they adopted Christianity and their synagogue was turned into a church.²¹ Nevertheless, presenting the above fragment of Procopius's narrative as an example (and the only information about the mass conversion of followers of Judaism to Christianity during the reign of Justinian) of the practical application of the provisions of novella 37 is definitely a misguided argument.

¹⁹ A. Sharf, op. cit., p. 26: "The decree was never seriously applied. It was omitted from many collections of his laws, including their first modern edition"; A. H. M. Jones, op. cit., p. 286: "[...] but this seems to have been a local and temporary measure"; S. Adamiak, *Żydzi w rzymskiej Afryce Północnej*, p. 104 – the researcher's argument that the provisions of novella 37 were not implemented in terms of destroying synagogues or converting them into churches, because such events were not mentioned in the narrative of Procopius of Caesarea, is not convincing. In his works, Procopius did not show any particular interest in the Jewish population of the Empire, but when indirectly describing the introduction of novella 37 in the context of the causes of the Easter revolt in 536, he focused on the Arians entirely.

²⁰ J. Juster, *Les Juifs dans l'Empire Romain*, vol. 1, Paris 1914, p. 472; A. Sharf, op. cit., p. 35 (cites the Boreum case as evidence of the limited scope of the impact of the new regulations); N. de Lange, op. cit., p. 423, note 16; R. González Salinero, op. cit., pp. 16–17; *The Novels of Justinian...*, p. 354, note 1.

²¹ Procopius, *De aedificiis* VI.2.22–23: "οἱ δὲ Ἰουδαῖοι ᾤκηοντο ἐκ παλαιοῦ αὐτῶν ἀγχιστα· οὗ δὴ καὶ νεῶς ἦν ἀρχαῖος αὐτοῖς, ὄνπερ ἐσέβοντό τε καὶ ἐτεθήπεσαν μάλιστα, δειμαμένον τοῦτο Σολομῶνος, ὡσπερ φασί, βασιλεύοντος Ἑβραίων τοῦ ἔθνους. ἀλλὰ καὶ αὐτοὺς ἅπαντας Ἰουστινιανὸς βασιλεὺς μεταγνῶναί τε τὰ πάτρια ἤθη, καὶ Χριστιανοὺς γεγόνενα διαπραξάμενος, τοῦτον δὴ τὸν νεῶν ἐς ἐκκλησίαις μεθηρμόσατο σχήμα". In the passage above, the author does not directly mention forced conversion, although this is usually how it is interpreted in the literature.

The aforementioned Boreum was located in the diocese of Egypt, which was part of the *praetorio Orientis* prefecture, so was not administratively subject to the prefects of Carthage and therefore not covered by the provisions contained in the discussed legal act. Created by Act CJ I.27.1 of April 534, the Prefecture of Africa included seven provinces, along with the easternmost Tripolitania, excluding the areas of Greater Sirte and the Pentapolis region, which had been associated with Egypt since the Diocletian reforms. The empire did not lose control over it during invasion of the Vandals in the 5th century, and only the recovered areas comprised the newly established African prefecture.²²

However, questioning the use of arguments based on Procopius's narrative from *De aedificiis* does not mean that the hypothesis about the implementation of the *De Africana ecclesia* law should be considered groundless. In order to implement the provisions of this constitution, Justinian ordered Solomon to issue appropriate executive orders ("suis disponere praeceptionibus"), and although they have not survived, narrative sources do confirm that the praetorian prefect complied with this order. On Easter 536, soldiers of the imperial army rebelled against the authorities in Carthage. This mainly involved units of the Arian Heruli, but soldiers of a denomination officially recognised as Orthodox also participated – their goal was to assassinate the *magister militum* Solomon (about a thousand

²² Procopius, *De aedificiis*, VI.2.11 names Boreum as the westernmost city of Pentapolis. In turn, Sozomen, *Historia ecclesiastica* II.3 mentions Boreum as the westernmost cape, subject to the rule of Constantinople. For more information about the city, see R. G. Goodchild, *Boreum of Cyrenaica*, "The Journal of Roman Studies" 1951, vol. 41, pp. 11–16. The provinces of Zeugitana/Africa Proconsularis, Byzacena, Numidia, Tripolitania, Mauretania Cesariensis, Mauretania Sifitensis and Sardinia were included in the African Prefecture after 533, although their boundaries at the time of the issuance of Act CJ I.27.1 were only of a theoretical nature, and the Byzantines probably obtained direct control only over the coastal strip of Tripolitania and both Mauritania, cf. Ch. Diehl, op. cit., pp. 107–108; D. Pringle, *The defence of Byzantine Africa from Justinian to the Arab conquest: An account of the military history and archaeology of the African provinces in the sixth and seventh century*, "British Archaeological Reports", Oxford 1981, pp. 60–65; A. Urbaniec, *Cywilna administracja prowincjonalna bizantyńskiej prefektury praetorio Afryki w latach 533–590*, "Res Gestae. Czasopismo historyczne" 2020, vol. 11, pp. 154–158.

Arian soldiers were stationed in the capital of the prefecture).²³ Procopius mentions several factors that contributed to the revolt, including unpaid wages, the economic consequences of novella 36 affecting Roman soldiers who had married Vandal women after the Battle of Trikamarum, as well as religious issues arising directly from novella 37.²⁴ Presumably, it was not the legislation itself that caused the rebellion in this case, but its extended interpretation by the prefect, by which he convinced the army, inter alia, that the post-Vandal estates should go to the state treasury, while the religious crisis occurred only at Easter, due to the ban on baptisms in the Arian rite – it is possible that only then did Solomon publish an executive edict making the new law known to the population of the prefecture,²⁵ and he certainly must have put it into practice. The situation in Carthage in 536 proves that the prefectural administration attempted to implement the provisions of novella 37, despite the presumed awareness of the governor of Africa regarding possible discipline issues in the army, which was the basis of the Byzantine presence in the area, resulting from restrictive religious law. Despite the lack of direct source references, it can be cautiously assumed that the persecution also affected (or was supposed to affect) other religious communities mentioned in the act (including Jews), who had much less importance, opportunities to resist, or influence on the general situation in the prefecture. The Easter rebellion in 536 caused a periodic decomposition of the imperial administrative and military apparatus in Africa (perhaps postponing anti-Jewish action on the part of

²³ Procopius, BV IV.14.22–42. The author directly states that the initiators of the attack on the life of the *magister militum* and the *praetorio* prefect were Arians dissatisfied with being banned from taking part in religious ceremonies during Easter. cf. W. E. Kaegi, *Arianism and the Byzantine army in Africa, 533–546*, “Traditio” 1965, vol. 21, p. 43. For more on the presence of the Heruli in Byzantine Africa, see J. Prostko-Prostyński, *A history of the Heruls*, Poznań 2021, pp. 109–122.

²⁴ Procopius BV IV.14.8–20. For more on the Easter rebellion, see also Ch. Diehl, op. cit., pp. 75–77; E. Stein, *Histoire du Bas-Empire*, vol. 1–2, Paris–Bruxelles 1959, pp. 321–322; W. E. Kaegi, op. cit., pp. 42–43; D. Pringle, op. cit., p. 25; M. Stachura, *Chwiejna lojalność żołnierzy Justyniana. Przyczyny rebelii w rzymskiej armii w Afryce w latach 536–546 n.e.*, “Studia Historica Gedanensia” 2022, vol. 12, pp. 95–98.

²⁵ M. Stachura, *Chwiejna lojalność żołnierzy Justyniana...*, pp. 97–98.

officials due to the prevailing chaos), but during his second term as prefect in 539–544 Solomon fully completed the tasks set before him in terms of the empire's religious policy.²⁶

Another issue that requires consideration is how long the legislation in question remained valid. In the Roman legal system, laws ceased to have force when they were revoked or amended. There is no surviving evidence that the law introduced by Justinian was withdrawn, so theoretically it was also in force under his successors.²⁷ The obvious *terminus post quem* is 1 August 535, the date when the law was issued. Nevertheless, in order to determine the *terminus ante quem*, in the absence of narrative material clearly confirming the real impact of the novella on the situation facing the Jewish population in Africa, other materials, including epistolographic, must be analysed. Two collections of Justinian novellas from the 570s–90s, authored by the lawyers Athanasius of Emesa and Theodore of Hermopolis, contain novella 37, but it is actually devoid of any anti-Judaic sentiment.²⁸ The correspondence of Pope Gregory the Great from the end of the 6th century is also helpful in establishing this period – specifically, two letters from June and October 598 regarding the situation in Panormos and one from July 599 about the conflict in Caralis.²⁹ In the former, the Pope advises Victor,

²⁶ After taking over the office of *praetorio* prefect again in 539, Solomon deported the Vandals remaining in Africa, including women – the actions taken were repressive, but also preventive, see Procopius, BV IV.19.3. Their removal most likely resulted in the complete disappearance of the Arian issue in the prefecture.

²⁷ R. González Salinero, op. cit., pp. 20–21.

²⁸ A. Sharf, op. cit., p. 26, believed that the argument for the lack of real impact of novella 37 was also the fact that it was omitted in legal compilations created after 575 (cf. P. Noailles, *Les collections de nouvelles de l'empereur Justinien*, Paris 1914, pp. 179, 184, 195, 258), although it was included in the works of Athanasius of Emesa and Theodore of Hermopolis writing in the last three decades of the 6th century, see R. González Salinero, op. cit., p. 20. Both lawyers included a list of sanctions contained in novella 37, translated into Greek, but, importantly, without an anti-Judaic character, leaving only the ban on Jews owning Christian slaves, cf. A. Linder, *The Jews in the legal sources of the early Middle Ages*, Detroit–Jerusalén 1997, pp. 27–29, 33–35.

²⁹ Gregory, *Epistulae* VIII.25; IX.38; IX.195. R. Laham-Cohen, *Los judíos en el Registrum epistularum de Gregorio Magno y la epigrafía judía de los siglos VI y VII*, “Henoch” 2013, vol. 35, p. 214 noticed that of the 860 preserved letters of Pope Gregory, 26 concern

Bishop of Panormos, to acquaint himself with the law regarding the Jews and to strictly observe it. The latter, addressed to *defensor civitatis* Photinus, is an explanation of the previous correspondence – Bishop Victor seized synagogues, inns and movable property belonging to the Jewish community. Due to the fact that the temples had already been consecrated as churches and it was not possible to return them, Photinus was to make sure that Bishop Victor paid the compensation owed to the Jews, after proper valuation, and immediately returned the movables, especially liturgical objects. In turn, a letter from July 599 was addressed to Januarius, bishop of Caralis, and mentioned a situation in which a certain convert from Judaism named Peter, who *adhibitis sibi quibusdam indisciplinatis sequenti*, the day after his baptism, occupied the synagogue and put a Theotokos image, a cross and a white tablecloth there. *Dux Sardiniae* Eupatorius and *praeses provinciae* Spesindeus had previously written to the Pope on this matter – by order of Gregory, Bishop Januarius was to remove the church paramenta from the synagogue and return the synagogue to the Jews, because according to the law they were not allowed to build new temples, but they could retain those that had been previously built.³⁰

For González Salinero, this became the basis for his conclusion that during the reign of Emperor Mauricius, despite the lack of formal withdrawal of Justinian's laws, there was a liberal approach to the issue of the Judaic religion, especially in the exarchate of Ravenna.³¹ However, this

Jews living in Italy. Analysing the epigraphic material from the 6th and 7th centuries, the researcher concluded that the 57 preserved inscriptions stem mainly from the south of the Italian Peninsula, but the correspondence of the Bishop of Rome proves that epigraphic monuments do not indicate the presence of Jewish communities in a given area (*ibidem*, pp. 217–225).

³⁰ Gregory, *Epistulae* IX.196: “[...] sicut legalis definitio Iudaeos novas non patitur erigere synagogas, ita quoque eos sine inquietudine veteres habere permittit”. The Bishop of Rome was probably referring here to the Act CTh XVI.8.9–11 = CJ I.9.14 defining synagogues as permitted places of worship, protected by the state against violence and desecralisation, and to the Act CJ I.9.18 regarding the ban on building new temples by Jews.

³¹ R. González Salinero, *op. cit.*, p. 21; J. Juster, *op. cit.*, p. 472 believed that the anti-Jewish provisions in novella 37 were probably revoked by Justinian himself: “Mais, Justinien donne lui-même, le premier parmi les empereurs, l'exemple de spoliation, en

hypothesis is disproved by the fact that in both cases Gregory refers to the applicable law, and – even more significantly – Caralis, as well as the whole of Sardinia, was under the jurisdiction of Rome in ecclesiastical matters, while administratively belonging to the prefecture of Africa, not the exarchate of Ravenna. So, if Justinian’s laws were still in force, a synagogue in the provincial capital should not have existed or was located there illegally – therefore, the action of Peter the convert would have been justified.³² Another matter of confusion is Gregory’s (indirect) reference to the provisions contained in the Codex Theodosianus regarding the return of confiscated synagogues or the payment of compensation, which were not included in the Justinian Code and therefore theoretically should not have had legal force.³³ Therefore, it would seem justified to adopt the hypothesis

transformant en église les synagogues des Juifs d Afrique, en 535, mesure qu il révoque probablement par la suite”, although he did not provide any argument to substantiate his thesis.

³² Sardinia, which in the 5th century was part of the diocese of Italy (in *Notitia Dignitatum* Sardinia and Corsica appear as separate provinces managed by governors with the rank of *praeses*) was included in the African prefecture under Act CJ I.27.1. In the work of George of Cyprus *Descriptio orbis Romani* (675–684) the island appears as Ἐπαρχία defined as Νῆσος Σάρδων. Evidence of Sardinia’s administrative affiliation to the African prefecture in the 7th century is the correspondence of Pope Honorius, addressed to the prefect Gregory, in which the Bishop of Rome demands punishment of Theodore, who was *praeses eiusdem Sardiniae* – Honorius, *Epistulae*, 9 (PL 80.478). More on the Byzantine province of Sardinia, see S. Cosentino, *Byzantine Sardinia between east and west: Features of a regional culture*, “Millennium” 2004, vol. 1, pp. 337–341; M. Orrù, *Byzantine administrative influence in medieval Sardinia*, in: *The making of medieval Sardinia*, eds. A. Metcalfe, H. Fernandez-Aceves, M. Muresu, Leiden–London 2021, p. 161; A. Mastino, *Ancient historical contexts: Phoenicians, Carthage, Rome and Barbaricini*, in: *The making of medieval Sardinia...*, p. 81; L. Gallinari, *The Iudex Sardiniae and the Archon Sardinias between the sixth and eleventh century*, in: *The making of medieval Sardinia...*, pp. 204–205.

³³ CTh XVI.8.25.1 of 15 February 423 describes in detail the procedure for returning a seized synagogue or paying appropriate compensation if the building had already been consecrated as a church. However, the second point of this law reiterates the ban on building new Jewish temples and the necessity to leave existing ones unchanged. In the Code of Justinian, only the provisions of Nov. Theod. 3.3; 4; 5 of 438, extending the scope of criminal sanctions against persons violating the ban on building new synagogues (CJ I.9.18), completely omitting the issue of the possible return of an illegally occupied temple. In turn, Pope Gregory, in his letter regarding the situation in Panormos

that the liberalisation of anti-Jewish regulations, including the repeal of the section of the *De Africana ecclesia* novella concerning Jews (as in the collections of Athanasius of Emesa and Theodore of Hermopolis), and the return to the almost hundred-year-old practice of coexistence with Jewish communes on the basis of the Codex Theodosianus, occurred after Justinian's death when Justin II took the throne. In the first years of his rule, the latter pursued a much more liberal policy than his predecessor.³⁴ Therefore, it seems probable that novella 37 was no longer in force in Africa at the end of the 6th century, and the legislation in the prefecture was unified with the legal status applicable to the entire territory of the empire.

Justinian's novella 37, despite its presumed impact being limited to around 10–20 years and its territorial scope to the area of the African prefecture, had unprecedented significance for the development of relations between the imperial authorities and the Jewish communities residing within the empire. For the first time, Judaism was legally equated with heretical trends and paganism, whose religious practice the Christian Empire categorically prohibited. The ephemeral nature of the legislation and the lack of direct sources make it impossible to formulate conclusions relating to its practical application. It is symptomatic, however, that the first collections of Justinian *novellae* formulated at the end of the 6th century that include the legislation in question clearly omit the anti-Judaic nature of the legal act and only sanctions directed against heretics are left. However, the correspondence of Pope Gregory indicates that at the beginning of the 7th century the legal status in this matter not only did not take into account the *De Africana ecclesia* novella, but also other limitations and restrictions introduced in the Code of Justinian. Therefore, it seems justified to conclude that the legislation aimed at Jewish communities was one of many elements of the religious

(Ep. IX.38), in his recommendations for the defender of *civitatis*, directly refers to the provisions contained in the Act CTh XVI.8.25.1, indicating them as the applicable law.

³⁴ For some general information about Justin II and his policies, see A. Cameron, *The early religious policies of Justin II*, "Studies in Church History" 1976, vol. 13, pp. 51–67; M. Whitby, *The successors of Justinian*, in: *The Cambridge ancient history...*, pp. 86–94. The new ruler sought a compromise with the Miaphysites, an example of which is the edict he issued encouraging unification, cf. Evagrius Scholasticus, HE V.4, eds. J. Bidez, L. Parmentier, London 1898.

policy of Emperor Justinian, which fell from legal force after the death of this ruler. The situation changed in the 630s when Emperor Heraclius decided to force the conversion of all Jews living in Byzantium – accounts of the mass conversion of Jews during this period are only known to have occurred in Africa.³⁵

³⁵ Maximus the Confessor, who was staying in Carthage, mentioned the forced conversion of Jews in the Empire in one of his letters (Ep. 8, PG 91, ed. L. Combefis, Paris 1865) and a polemic work entitled *Doctrina Jacobi nuper baptizati (Juifs et chrétiens en Orient byzantin)*, eds. G. Dagron, V. Déroche, Paris 2010, pp. 17–273), where the scene of the baptism of Jews performed on the orders of George, the prefect of Africa, is described. Moreover, mentions of such a decision by Emperor Heraclius appear in the chronicles of Pseudo-Fredegar IV.65 (MGH SRM 2, ed. B. Krusch, Hannover 1888, pp. 1–193) and Michael the Syrian XI.4 (*Chronique de Michel le Grand*, ed. V. Langlois, Venice 1868); for more, see A. Cameron, *Byzantines and Jews: Some recent work on early Byzantium*, “Byzantine and Modern Greek Studies” 1996, vol. 20, pp. 249–274; R. González Salinero, *op. cit.*, pp. 24–28.

