

## "Dans la tradition d'Harménopoulos..."

Some notes on the tradition of  
Harmenopoulos' *Hexabiblos* in the Netherlands

*To the memory of Professor Constantine G. Pitsakes*

### 1. Racine, Aristophanes and Harmenopoulos\*

Jean Racine (1639-1699), one of the most known French dramatists of the 17<sup>th</sup> century, wrote the comedy *Les Plaideurs* (The Litigants) in 1668.<sup>1</sup> The plot of this play is an adaptation of Aristophane's *Wasps*. Protagonist in Racine's comedy was a judge named Dandin, who was addicted to courtroom life and was obsessed with judging cases. His son, Léandre in order to please his father's obsession, sets up a fake court at his house so his father can 'judge' some domestic cases. A 'case' is brought before the judge Dandin. The defendant is a dog which is brought to trial because he ate an appetizing capon.<sup>2</sup> His lawyer (L'Intimé), in his speech before the domestic court, supports his legal arguments by referring to the most famous names that he can think of in the field of law. He refers to Aristotle, to Jacques Cujas and to ... Harmenopoulos:

L' INTIMÉ: [...] Aristote, <i>primo, peri Politikon</i> , Dit fort bien...	LAWYER: [...] Aristote, <i>primo peri politikon</i> says very properly...
DANDIN: Avocat, il s'agit d'un chapon, Et non point d'Aristote et de sa <i>Politique</i> .	DANDIN: Laywer, this is about a capon and not about Aristotle and his <i>Politics</i> .
[...]	[...]
DANDIN: Au fait.	DANDIN: To the point.

\* This paper is based on the research I had done for the following article in Greek "Κωνσταντίνος Αρμενόπουλος και Ολλανδοί ουμανιστές: Scriptor mediocris et jurisprudentia elegantior" in *Byzantika* 31 (2014), p. 217-241.

1 This is the only comedy by Racine. On Racine see, for example, G. Forestier, *Jean Racine*, Paris, Gallimard, 2006.

2 In Aristophane's *Wasps* (422 B.C.) the plot is similar. Philocleon who serves on juries has a passion for court sessions. His son Bdelycleon in order to keep his father at home and cure him from his obsession, holds a fake court at home where his father can judge. The defendant is a dog that has stolen a piece of cheese. Aristophanes wanted *inter alia* to satirize with this play the jury system introduced by Cleon. The names of the protagonists indicate their attitude towards Cleon. Bdelycleon one who despises Cleon (βδελυρός = disgusting) and Philocleon (φίλος = beloved) one who loves Cleon.

L' INTIMÉ: Rebuffé...	LAWYER: Rebuff...
DANDIN: Au fait, vous dis-je.	DANDIN: To the point, I say.
L' INTIMÉ: Le grand Jacques...	LAWYER: The great Jacques...
DANDIN: Au fait, au fait, au fait.	DANDIN: To the point, to the point, to the point.
L' INTIMÉ: <u>Armeno Pul, in Prompt...</u>	LAWYER: Armeno Pul (= Harmenopoulos) in his <i>Prompt...</i> (= <i>Promptuarium iuris</i> )
DANDIN: Ho! je te vais juger.	DANDIN: Oh! I will sentence you.
L' INTIMÉ: Ho! vous êtes si prompt! <sup>3</sup>	LAWYER: Oh! You are so hasty!

This testimony, as Constantine Pitsakes notes in his memorable introduction to his 'practical' edition of the *Hexabiblos*, is a unique example of how the memory of Harmenopoulos was preserved in the intellectual life in the West.<sup>4</sup> I would like to add here two remarks about this play of Racine. Firstly, that despite the fact that the play was not from the beginning a raging success, it gradually became very popular to the circles of French aristocracy. It was even played at Versailles before the court of Louis XIV of France. Imagine - there, at the top of intellectual life, the name of Harmenopoulos is mentioned next to that of Aristotle and to the "great Jacques"... This is rather a unique honour for a writer deriving from the Byzantine legal tradition, which was mostly looked upon -and still is?- as a decadent legal tradition. A second observation here is that Racine did not have a legal education. The speech of the lawyer in his play must have been based on the average legal speeches of that time. The legal sources that he refers to must have been the common legal sources that an average sensible lawyer would use. It is also remarkable that Racine does not refer to many names in the legal field but only a few, characteristic ones and Harmenopoulos is one of these! Could this be an indication that the *Hexabiblos* of Harmenopoulos was used at that time even in French courtrooms?

A few words are here necessary about Harmenopoulos and his work, the *Hexabiblos* (Ἑξάβιβλος = the Six-Books), also known as the *Procheiron Nomōn Konstantinou tou Harmenopoulou* (Πρόχειρον Νόμων Κωνσταντίνου τοῦ Ἀρμενοπούλου = Handbook of Laws of Constantine Harmenopoulos) and in Latin "Promptuarium iuris, Constantino Harmenopulo autore". There are more variations of the title in Latin translations. Constantine Harmenopoulos was a Byzantine judge who lived in Thessaloniki around the middle of the 14<sup>th</sup> century. We do not know a lot about his life. The first time we encounter his name is the year 1345 when he signs a judicial document as judge of Thessaloniki.

3 Racine, *Les Plaideurs*, Paris 1669 (this fragment is from the third scene of the third act).

4 C.G. Pitsakes, *Κωνσταντίνου Ἀρμενοπούλου, Πρόχειρον Νόμων ἢ Ἑξάβιβλος*, Ἀθήνα 1971, p. 87; hence-forth abbreviated as Pitsakes, *Hexabiblos*. This is not a new critical edition of the *Hexabiblos*, as the author notes in his introduction. Pitsakes uses the edition of Heimbach (Leipzig 1851, repr. Aalen 1969) and corrects it so that it becomes better and easier to use. He corrects typographical and spelling mistakes of the edition of Heimbach, omits or changes the position of some scholia that are included in Heimbach's critical apparatus depending on their type, i.e. whether they were originally inserted in the *editio princeps* or added by later scholars. See in detail Pitsakes, *Hexabiblos*, p. 81-83.

Around that period Harmenopoulos compiles his *Hexabiblos*, a legal handbook consisting of six books, as the Greek word *Hexabiblos* implies ("ἕξ" = "six", "βιβλίον" = "book"). Harmenopoulos based his compilation on the *Procheiron*, a law book of the time of the Macedonian emperors<sup>5</sup> and he added excerpts from the *Synopsis Basilicorum Maior*, the *Peira* and other Byzantine legal sources. His aim was to create a legal handbook, easy to use in legal practice. This is also implied in the Greek title "procheiron nomōn" since the word "procheiros" means something that is "at hand", "easy"; in this case, it is an "easy handbook of laws". As Pitsakes has observed many people seem to forget the nature of this work. The *Hexabiblos* was not the result of a learned committee; it was not ordered by an emperor; it was not even a law. It became however in practice law because it was an easy text to consult. The fact that many people forget the real nature of the *Hexabiblos* together with the influence that *Hexabiblos* exerted in the centuries to come has created a rather unfair criticism for this collection.

The influential 'career' of the *Hexabiblos* goes by far beyond the wildest expectations of our poor Harmenopoulos. Because of its simplicity, the *Hexabiblos* became an influential text in the Eastern part of Europe. It was rendered many times into Modern Greek, it has been reprinted several times in Greece and it was used in legal practice up to the promulgation of the first Greek civil code in 1946. The *Hexabiblos* has also been translated into Slavic languages and was spread throughout the Balkan region.<sup>6</sup> But also in Western Europe it received much attention, as it is proven by the number of critical editions and translations. The first edition of the *Hexabiblos* was made by Th. A. de Suallemberg in Paris in 1540. In 1587 there follows a second edition in Geneva by D. Godefroy with a Latin translation by J. Mercier. In 1780 a third edition follows, by O. Reitz in The Hague, with a new Latin translation. In 1564 a German translation of the *Hexabiblos* is published in Frankfurt made by J. Göbler, based on an earlier Latin translation of the *Hexabiblos*. As Pitsakes notes, there are thirteen editions of the *Hexabiblos* in the West in the original, in Latin or in German translation.<sup>7</sup> Moreover the sixth book of the *Hexabiblos*, which deals with criminal law, was also translated in English by E. H. Freshfield and published in Cambridge in 1930.<sup>8</sup> In this paper I will express some first thoughts about the reception of Harmenopoulos' *Hexabiblos* in the Netherlands.

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5 Some scholars date the *Procheiron* between 870-879 and others in 907. See in detail Troianos Sp.N., *Oi πηγές του Βυζαντινού Δικαίου*, Αθήνα/Κομοτηνή 2011, 3<sup>rd</sup> revised edition, p. 246-249 with bibliography. This work of Troianos has been recently translated in Italian, see Sp. Troianos, *Le fonti del diritto Bizantino*, traduzione a cura di P. Buongiorno, Torino 2015, p. 160-162.

6 See Pitsakes C.G., 1998, "Πόλεις και περιβάλλον στα Βυζαντινά νομικά κείμενα. Η συλλογή του Ιουλιανού του Ασκαλωνίτου στην Εξάβιβλο του Κωνσταντίνου Αρμενοπούλου", in *Φυσικό και δομημένο περιβάλλον στις Βυζαντινές νομικές πηγές, Υλικό, φυσικό και πνευματικό περιβάλλον στον βυζαντινό και μεταβυζαντινό κόσμο*, eds. Sp.N. Troianos and C.G. Pitsakes, Athens 1998 (henceforth abbreviated Pitsakes, *Julian of Ascalon and the Hexabiblos*), 87-90 with bibliography and Pitsakes, *Hexabiblos*, p. 70-79.

7 See Pitsakes, *Hexabiblos, Julian of Ascalon and the Hexabiblos*, p. 87-88.

8 See Pitsakes, *Hexabiblos*, p. 70-71.

## 2. Abraham Haverkamp and his thesis on a fragment of the *Hexabiblos* (Leiden, 1738)

The first Dutch scholar who was interested in editing the *Hexabiblos* was Abraham Haverkamp.<sup>9</sup> He was the son of the pastor Syvert or Sigebertus Haverkamp (1684-1742) who became also professor of Greek at the University of Leiden. Abraham Haverkamp gave up early on the *Hexabiblos* edition but his doctoral thesis relates to a part of it, as its title shows: "*Specimen juridicum inaugurale ad Constantini Harmenopuli Promtuarium L. II, Tit. IV § 34. Leg. XIII. pr. D. de S.P.R. Leg. XXVIII. D. de S.P.U.*". The thesis was published in Leiden in 1738 and has as a subject paragraph 34 of the fourth title of the second book of the *Hexabiblos* and two fragments from the *Digest* dealing with urban and rustic servitudes. The thesis consists of 29 pages and the first 16 refer to the part of Harmenopoulos. The fourth title of the second book of the *Hexabiblos* is about rules on building (*περὶ καινοτομιῶν*) and it is a title that has raised the interest of many scholars, mainly because Harmenopoulos uses in this part the treatise of Julian of Ascalon.

Julian was an architect who lived in 6<sup>th</sup> - century Ascalon in Palestine and presumably between 531 and 533 wrote a treatise entitled *On the Laws or Customs in Palestine* consisting of rules on the construction of buildings in the area.<sup>10</sup> It seems that Harmenopoulos admired Julian's treatise since he included the whole treatise in his *Hexabiblos* with the exception of the first two paragraphs that form a sort of introduction. Julian attempts in this introduction to structure his work by using the four elements of fire, air, water and earth. He then refers to rules concerning the construction of buildings, such as distances between buildings, drainage, obstructing someone's view, planting etc. An interesting part of his treatise is where he writes about the issues concerning owners of apartment buildings in a multistore building and refers, for example, to the distribution of construction costs of a new building, the method of dividing the cost of repairs among the concerned parties and the use of common spaces. The 'fate' of Julian's treatise is in any case remarkable. It receives a second life because Harmenopoulos includes it in his *Hexabiblos* and then we find a short part of this treatise -as transmitted in the *Hexabiblos*- in the thesis of the Dutch scholar Haverkamp, defended in Leiden in 1738.

In the beginning of his thesis Haverkamp emphasizes the significant role that Byzantine sources play in understanding Roman law. He mentions that the collection of Greek interpreters (*Graecorum collatio Interpretum*) helps in the restitution and understanding of parts of the *Romanae Jurisprudentiae* that are preserved with Tribonian's care and adds that among these Greek interpreters, Constantine Harmenopoulos, the judge from Thessaloniki holds no last position; in other words, the work of Harmenopoulos is

9 E. Hulshoff Pol, *Studia Ruhnkeniana, Enige hoofdstukken over leven en werk van David Ruhnkenius (1723-1798)*, Leiden 1953 (henceforth Hulshoff Pol, *Studia Ruhnkeniana*), p. 95 note 55.

10 Edition and translation in French of Julian's treatise in C. Saliou, *Le traité d'urbanisme de Julien d'Ascalon. Droit et architecture en Palestine au VIe siècle*, Collection Travaux et Mémoires du centre de recherché d'histoire et civilisation de Byzance 8, Paris 1996.

significant (*In explicandis & nitori pristino restituendis Romanae Jurisprudentiae, quae residua nobis fecit industria Triboniani, fragmentis, haud parum saepe juvat Graecorum collatio Interpretum, quos inter non ultimo loco ponendus est Constantinus Harmenopulus, Judex Thessalonicensis*).<sup>11</sup>

In the following Haverkamp refers to the method that Harmenopoulos used to compile his collection. According to the Dutch scholar, Harmenopoulos collected fragments of the *iurisconsulti* which were translated into Greek, while he kept what was used in practice. Then, continues Haverkamp, Harmenopoulos added to these fragments imperial constitutions and parts from "eparchika",<sup>12</sup> collecting everything in one book and following the practice of the *iurisconsulti*. Harmenopoulos named his collection "Procheiron" which means "Manuale" (*Hic, prout Jureconsultorum istius aevi mos erat, memoriae adjuvandae causa, ex veterum prudentum laciniis, in Graecum jam tum Sermorum versis, ista collegerat, quae in quotidiano fori usu maxime obtinebant, eaque, intermixtis posteriorum Principum Constitutionibus, & ex Eparchicis seu Edictis Praefectorum Praetorio nonnullis, in unum conjecerat libellum, quem ad priscorum Jureconsultorum imitationem inscripsit Πρόχειρον sive Manuale*).<sup>13</sup> Haverkamp's admiration for Harmenopoulos is confirmed by the way the Dutch scholar refers to the latter: "Ad Constantinum nostrum" and "noster Harmenopulus."<sup>14</sup> This is the honorary "noster" that is used also in Roman texts to describe the great Roman jurists. For example, in Justinian's legislation, Gaius is mentioned as "Gaius noster". Cujas uses the "noster" in the same way, for example, for the *antecessor* Theophilus and for Accursius and refers to them as "Theophilus noster" and "Accursius noster."

An amusing part in Haverkamp's thesis which is related to Harmenopoulos and confirms once again the admiration of the first for the latter is the part where the Dutch jurist directly addresses Harmenopoulos in a second person singular, praises his work and expresses the hope that he (Haverkamp) would be able to dedicate his work to Harmenopoulos (*Sed quemadmodum post fata mortuis opem saepe adfert Harmenopulus, ita summo suo jure exigere posset a vivis, ut & sibi, tum ab Interpretibus tum a Librariis non raro male habito, justum praestetur auxilium. Meam tibi, Constantine, si quid possim, vel in posterum postero, operam lubens addico*).<sup>15</sup> I think that the whole meaning of this passage is Haverkamp's wish that his own work will be made worthy of that by Harmeno-

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11 A. Haverkamp, *Specimen juridicum inaugurale ad Constantini Harmenopuli Promptuarium L. II, Tit. IV § 34. Leg. XIII. pr. D. de S.P.R. Leg. XXVIII. D. de S.P.U.*, (henceforth abbreviated Haverkamp, *Specimen*), Leiden 1738, p. 1 (picture no 5).

12 In particular he mentions "ex Eparchicis seu Edictis Praefectorum Praetorio." These are parts from the *Book of the Eparch* (Ἐπαρχικὸν Βιβλίον), a 10<sup>th</sup> - C. collection, which is addressed to the *Prefect* of Constantinople and includes rules on the function of guilds. See however, the observation of Pitsakes about how Harmenopoulos uses the "eparchika" in his preface (προθεωρία) to his *Hexabiblos* in Pitsakes, *Hexabiblos*, p. 38-39.

13 Haverkamp, *Specimen*, p. 1-2.

14 Haverkamp, *Specimen*, p. 2 and p. 12 respectively.

15 Haverkamp, *Specimen*, p. 3.

poulos. The Dutch scholar quotes in the following the 34<sup>th</sup> paragraph of the fourth title of the second book of the *Hexabiblos* from the edition of D. Godefroy, which was published in Geneva in 1587 with a Latin translation of J. Mercier.<sup>16</sup> Haverkamp quotes first the Greek text and then the Latin translation by Mercier. This paragraph is entitled "περὶ οἰκοδομῆς οἴκων" (= about building houses) and refers to the distance that should be kept from neighbours in the case of building a new house as well as to the possibility of allowing for windows and / or doors. The question whether the text refers also to doors or not depends on the reading of the extant Greek word as "θυρίδας" (windows) or "θύρας" (doors).

### 3. David Ruhnkenius and the annotated copy of Falkenburg's *Hexabiblos*

David Ruhnkenius (1723-1798), a representative of the Dutch school of elegant jurisprudence (*Hollandse Elegante School*), showed also an interest in Harmenopoulos and started working on the edition of the *Hexabiblos*. There is a Dutch thesis on Ruhnkenius by E. Hulshoff Poll published in 1953.<sup>17</sup> Ruhnkenius was born in the city of Stolp of Pomerania, which at that time was part of Germany (today this city is called Słupsk and is in Poland). He went to school in Prussian Königsberg. The German philosopher Immanuel Kant (1724-1804) attended the same school in the same period. After following classical studies and courses of law by the Professor J.D. Ritter at the University of Wittenberg, Ruhnkenius travelled to Leiden to continue his studies in ancient Greek. Greek studies were flourishing at that time in the Dutch Republic, mainly because of Tiberius Hemsterhuis (1685-1766), who started teaching ancient Greek at the University of Franeker in Friesland and later moved to the University of Leiden. Ruhnkenius was a student of Hemsterhuis and soon they became close friends. In fact it was Hemsterhuis who advised Ruhnkenius to study law so that the latter would have a better chance of becoming a university professor.<sup>18</sup> Ruhnkenius worked at the University of Leiden and in 1761 he became professor of History and Rhetorics at the same university. Hulshoff Pol, in her thesis about Ruhnkenius, writes that "the name Constantine Harmenopoulos was a name which played for a long time important role in the correspondence of Ruhnkenius".<sup>19</sup>

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16 In the edition of Heimbach (1851) and the practical edition of Pitsakes (1971) the passage that Haverkamp quotes corresponds to paragraph 23<sup>rd</sup> of the fourth title of the second book.

17 E. Hulshoff Pol, *Studia Ruhnkeniana, Enige hoofdstukken over leven en werk van David Ruhnkenius (1723-1798)*, Leiden 1953. This was a doctoral thesis for which the author also studied the correspondence of Ruhnkenius kept at the library of the University of Leiden.

18 G.C.J.J. van den Bergh, *Die holländische elegante Schule, ein Beitrag zur Geschichte von Humanismus und Rechtswissenschaft in den Niederlanden 1500-1800*, [Studien zur europäischen Rechtsgeschichte 148] Frankfurt am Main 2002, p. 204.

19 Hulshoff Pol, *Studia Ruhnkeniana*, p. 90.

Already in 1745 Ruhnkenius writes that he spends most of his research time on Harmenopoulos. One year earlier, in 1744, Ruhnkenius had come in contact with the bibliophile Gerard Meerman (1722-1771), a collector of manuscripts and rare books.<sup>20</sup> Gerard Meerman was the man who published the monumental work *Novus thesaurus juris civilis et canonici, (continens varia et rarissima optimorum interpretum, inprimis Hispanorum et Gallorum, opera, tam edita antehac, quam inedita, in quibus utrumque jus emendatur, explicatur, atque ex humanioribus literis, antiquitatibus, et veteris ævi monumentis illustratur)* in The Hague within the period 1751-1753. His son Johan, who continued the collection of his father, published a supplement to this edition and there we find the edition of the *Hexabiblos* by O. Reitz. The first steps for this edition of the *Hexabiblos* were made by Ruhnkenius.

That Ruhnkenius was working on the *Hexabiblos* was something that was known in the academic world at that time. In 1747 Johannes Däniel van Lennep publishes the work *The abduction of Helen (Ἀρπαγή Ἑλένης)* by the Greek poet Colouthos of Lykopolis of Egypt, who lived during the reign of Anastasios I (491-518). Van Lennep notes in his preface that Ruhnkenius helped him and characterises him as a very learned and cultivated man (*insignis eruditionis atque humanitatis Vir*).<sup>21</sup> Van Lennep adds that Ruhnkenius will soon complete the edition of the *Procheiron tōn Nomōn* by Constantine Harmenopoulos and praises the work of the Byzantine jurist (*...qui brevi egregium florentis doctrinae pignus Constantini Harmenopuli πρόχειρον τῶν νόμων splendidiori indutum veste orbi erudito impertietur....*).<sup>22</sup> In 1753 Meerman expresses the hope that Ruhnkenius will complete the edition of the *Hexabiblos* but in the same year Ruhnkenius writes to one of his friends that he gives up on this work. His decision was probably based on the difficulties that he encountered in collecting the relevant material for the edition. As Hulshoff Pol describes, in that period, not only the manuscripts of the work to be edited played an important role, but also former editions of the relevant work with annotations by other scholars.<sup>23</sup> If these scholars had actually seen the original manuscripts then their notes were especially valuable. Travelling to all the cities where the manuscripts were located and studying them there was amounted to a particularly process. One had to rely on the notes by other scholars, so the better these scholars were, the better and more accurate information one would acquire on the actual manuscripts. Hulshoff Pol describes thoroughly Ruhnkenius' efforts to collect the relevant material in order to edit the *Hexabiblos*. As she notes, significant role in Ruhnkenius' decision to begin with the *Hexabiblos* was the fact that at the library of Leiden there was a copy of the first edition of the *Hexabiblos* by Sualleberg in Paris in 1540, which had previously belonged to Gerard Falkenburg (ca.

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20 On Meerman, see J. van Heel et alii, *Een wereld van verzamelaars en geleerden, Gerard en Johan Meerman, Willem van Westreenen en Pieter van Damme en hun archieven*, Hilversum 2012.

21 J. D. van Lennep, *Κολούθου Ἀρπαγή Ἑλένης, Coluthi Raptus Helenae*, Leovardiae 1747, praefatio XIII.

22 Van Lennep, *idem*, praefatio XIII.

23 Hulshoff Pol, *Studia Ruhnkeniana*, p. 91.

1538-1578) and retained his (Falkenburg's) annotations.<sup>24</sup> Falkenburg or Falkenburgius was a Dutch humanist who had studied law in Bourges and had been the student of Jacques Cujas, the "grand Jacques" - to use the words of Racine. This copy of the *Hexabiblos* is kept today at the library of the university of Leiden and its location number is 759 C 50.

It must have been indeed an important tool for Ruhnkenius because it is full of rich scholia on the Greek text. Falkenburg's scholia refer to all kinds of issues: scholia on the grammar and the syntax of the text, explanations of a word or a passage, analysis of the structure of the text, references to other sources of ancient Greek, Byzantine and contemporary literature, information on the manuscripts etc. It is a typical sample of a humanistic approach to a text.<sup>25</sup> It is clear that Falkenburg's intention was not to make a critical edition of the *Hexabiblos*. His annotations aim towards understanding and analyzing the text for himself; it is his personal reading of the *Hexabiblos*. In the first pages under the title of the *Hexabiblos* he writes that this book belongs to Gerard Falkenburg and his friends (Γεραρτοῦ τοῦ Φαλκεπυργείου κτῆμα κ(αί) τῶν φίλων) and he 'translates' his name in Greek by writing "τοῦ Φαλκε-πυργείου" ("πυργεῖον" means in Greek "a tower", "a castle", a "burg").<sup>26</sup> Falkenburg refers to many Byzantine legal sources, such as the Justinianic legislation, writings of the *antecessors*, the *Basilica*, the *Synopsis Basilicorum*, the *Novels* or Leo VI the Wise but also to other literary Byzantine sources, such as the 12<sup>th</sup> - century historians Kedrenus and Choniates, the churchman Eusebios of Caesarea (born ca. 260, died 339 or 340), the theologian and saint Gregory of Nyssa (born between 335 and 340, died after 394) and more.<sup>27</sup> He also refers to the writings of his teacher Coujas.

At the library of the University of Leiden there is also a 'notebook' by Ruhnkenius with his observations on the annotations of Falkenburg on the *Hexabiblos* with location number 759 C 51.<sup>28</sup> In this notebook Ruhnkenius has copied the Falkenburg's comment that would have been useful for the edition of the *Hexabiblos* that he (Ruhnkenius) was preparing. Ruhnkenius omits, for example, references to other sources and focuses on Falkenburg's comments on understanding the Greek text and on information about the manuscripts. From what I have seen Ruhnkenius does not add in this notebook his own comments, but rather he makes a selection of Falkenburg's comments and in the end he adds a few scholia on the *Hexabiblos* of three other scholars, of J. J. Scaliger, Andr. Pena and P. Somerius.

It is interesting to note that at that time there was at least another valuable copy of the *editio princeps* of the *Hexabiblos* circulating in the Dutch Republic. It was a copy that had

24 Hulshoff Pol, *Studia Ruhnkeniana*, p. 91-92.

25 Marie Theres Fögen has referred to this copy of the *Hexabiblos* in her article "Humanistische Adnotationen zur editio princeps der Hexabiblos" in *Ius Commune*, vol. XIII, ed. D. Simon - W. Wilhelm, Frankfurt am Main 1985, p. 213-242 (henceforth Fögen, *Humanistische Adnotationen*). For that paper Marie Theres Fögen had studied some copies of the *editio princeps* of the *Hexabiblos* in the libraries of Cambridge, Heidelberg, Leiden, Leipzig, Oxford and Paris.

26 See picture no 1.

27 For the Byzantine legal sources see Fögen, *Humanistische Adnotationen*.

28 See picture no 4.



originally belonged to the French humanist Antoine Le Conte (or Antonius Contius or Leconte, 1517-1586) that retained his annotations. We know that this copy had belonged to Cornelis van Bijkershoek (1673-1743), the President of the Supreme Court of Holland, Zeeland and West-Frisia (*Hoge Raad van Holland, Zeeland en West-Friesland*) but that, after his death, this valuable copy ended in the hands of the jurist and librarian Coulon. Ruhnkenius had desperately tried to see this copy but without success.<sup>29</sup> In any case Ruhnkenius probably lost his patience with collecting all this material for the edition of the *Hexabiblos* and definitely gave up on the edition in the year 1753.<sup>30</sup>

#### 4. Otto Reitz and his posthumous edition of the *Hexabiblos* (The Hague 1780)

Meerman seemed determined to include a critical edition of the *Hexabiblos* in his *Novus thesaurus juris civilis et canonici*. When Ruhnkenius gave up on the edition, Meerman turned to Reitz who carried on and completed the edition. Reitz was by then known for his Byzantine interests and was no stranger to Meerman. Otto Wilhelm Reitz (1702-1768) was a teacher of Latin who became *rector* in a Latin school in Middelburg, Zeeland and had already worked on Byzantine texts. The best-known Byzantine edition by Reitz is the *Paraphrasis* by the *antecessor* Theophilus, a Greek version of Justinian's *Institutes* based on the teaching of the 6<sup>th</sup> - C. law professor Theophilus in Constantinople, published in The Hague in 1751.<sup>31</sup> Despite the lack of material and especially of first-hand manuscripts, the Reitz edition of Theophilus' *Paraphrasis* is, according to the last editors of this Byzantine work, "a splendid edition", "a monument of learning and a valuable tool for evaluating the editorial work of his predecessors."<sup>32</sup> Reitz had also edited four books of the *Basilica* (Books 49, 50, 51 and 52) and these were first included in the fifth volume of Meerman's *Novus thesaurus juris civilis et canonici*. Hence, when Reitz began on the edition of the *Hexabiblos*, he had experience in editing Byzantine texts and Meerman and Ruhnkenius had already collected an essential part of the material that he needed. As we can see in his edition of the *Hexabiblos*, Reitz used two manuscripts, the Codex Meermanianus A and B. One of them (Meermanianus 172) is kept today at the library of Berlin and has been renamed as 'Berolinensis 93', whereas the other has been lost, as Pitsakes writes.<sup>33</sup>

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29 Hulshoff Pol describes the whole story in detail in her thesis, *Studia Ruhnkeniana*, p. 93-94; see also Chr. Korbeld, *Over de vryheit van gevoelen en spreken den rechtsgeleerden eigen. Leven en werk van Christiaan Hendrik Trotz (1703-1773)*, (phd) Nijmegen 2013, p. 322-324.

30 Hulshoff Pol, *Studia Ruhnkeniana*, p. 90.

31 New edition of this Byzantine legal source by J.H.A. Lokin, R. Meijering, B.H. Stolte and N. van der Wal with an English translation by A.F. Murison, *Theophili antecessoris paraphrasis institutionum*, Groningen 2010.

32 J.H.A. Lokin, R. Meijering, B.H. Stolte and N. van der Wal, *idem*, p. xxxix.

33 Pitsakes, *Hexabiblos*, p. 59.

Although Reitz uses only these two manuscripts, he does take into account all kinds of other supplementary material, which he carefully enumerates in his preface<sup>34</sup>: for example, annotated copies of earlier editions of the *Hexabiblos* that had belonged to Falkenburg, le Conte and Haverkamp, comments on different fragments of the *Hexabiblos* by scholars such as Scaliger, Pena, Somerius etc. Reitz makes a new Latin translation of the Greek text placed next to it and provides many scholia on the text. In fact, his critical apparatus is full of rich scholia, which do not only refer to the manuscripts he uses (for example, if there are differences between them) but they include all kinds of information, such as references to other legal sources as well as to literary sources, a comparison to the annotations of previous scholars (Falkenburg, Scaliger etc.) etc. It is obviously a humanistic approach to the text.

Reitz died in 1768 and Gerard Meerman died in 1771 but Meerman's son, Johan published eventually Reitz's edition of the *Hexabiblos* in the *Supplementum novi thesauri juris civilis et canonici, (continentis varia et rarissima optimorum interpretum, inprimis Hispanorum et Gallorum, opera, tam edita antehac, quam inedita, in quibus utrumque jus emendatur, explicatur, atque ex humanioribus literis, antiquitatibus, et veteris aevi monumentis illustratur)* in The Hague in 1780.

## 5. The inexhaustible tradition of Harmenopoulos

Zachariä von Lingenthal was one of the first who brought harsh criticism against the *Hexabiblos* and characterised Harmenopoulos as a "mediocre writer" (*scriptor mediocris*). As mentioned in the beginning, the *Hexabiblos* has met with a rather unfair criticism mainly because many scholars tend to forget the nature of this work. In any case, the *jurisprudentia elegantior*, as it is shown from this paper, was particularly interested in this *scriptor mediocris*. There was even a doctoral thesis defended in Leiden in 1738 by A. Haverkamp having as a subject a fragment from the *Hexabiblos*. The critical edition of the *Hexabiblos* was fortunately completed and published in The Hague in 1780. It was undertaken by O. Reitz, although he based this edition on the work of many others. Most interesting is the fact that annotated copies of the *Hexabiblos* were circulating in the Dutch Republic at that time and members of the *jurisprudentia elegantior* were particularly interested in studying them. The influential Cornelis von Bijnkershoek had also such a copy in his possession.

Today there are six copies of the *editio princeps* of the *Hexabiblos* kept at Dutch libraries. Three of them are kept at the library of the University of Leiden. These are: 1) copy with

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34 This recalls the method of Reitz in his edition of Theophilus' *Paraphrasis*. See J.H.A. Lokin, R. Meijering, B.H. Stolte and N. van der Wal, *idem*, p. xxxix-xl.

location number 271 C 16 with a few scholia of an anonymous writer, 2) copy with location number 759 C 50 with the rich annotations of Falkenburg, to which I have already referred<sup>35</sup> and 3) copy with location number 759 C 51, which belonged to Ruhnkenius and has very few annotations.<sup>36</sup>

Moreover, in the National Library of the Netherlands (*Koninklijke Bibliotheek*) in The Hague there are two copies as follows: 1) copy with location number KW 1084 B7 without scholia and 2) copy with location number KW 227 F 5 with very few annotations. Finally, at the library of the University of Amsterdam (UvA) there is one copy with location number OTM: O 80 - 834, which has unfortunately no comments. At the library of the University of Leiden there is also a copy of the second edition of the *Hexabiblos* (the one made by D. Godefroy in Geneva in 1587) with location number 759 and it does include some scholia. These scholia are not written on the book itself but in ten separate pages that are found in the book. Tracking down and studying copies of not only of the *editio princeps* of the *Hexabiblos*<sup>37</sup> but also of later editions of this Byzantine collection and checking whether they have annotations is another step in unraveling the tradition of the *Hexabiblos* in the West.

As I have already mentioned in the beginning of this paper, Racine's testimony could be an indication that the *Hexabiblos* was in fact used in French courtrooms. I do not consider this possibility irrational if we take into account that the *Hexabiblos* must have been already used in German courtrooms, as the following information documents. The *Hexabiblos* had been translated into German by Justinus Göbler (or Gobler, 1504-1567) and was published in Frankfurt in 1564.<sup>38</sup> As Pitsakes notes, the German translation of the *Hexabiblos* was published twice again in Frankfurt (in 1566 and ten years later, in 1576). The fact that the German translation is published three times and in a rather short period of time proves that it must have been rather popular in German legal circles. Moreover, Göbler describes in the preface to his translation that he has made this German translation because of the "common benefit" (*gemeinem nuz*) and for the ones that are interested in the text from the jurists, the judges, officers, writers and others whose Latin was not so good in order to help them. Here is the relevant abstract:

"...es (= das Handbuch von Harmenopulos) vorhin in Griechischer uund<sup>39</sup> darnach in Lateinischer Sprach im Druk außgangen auch in Deutsche Sprach durch mich (gemeinem nuz zum besten)

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35 See also the pictures numbers 1-3.

36 As I have already mentioned in the library of the University of Leiden we also find a notebook of Ruhnkenius. See above, under 3) *David Ruhnkenius and the annotated copy of Falkenburg's Hexabiblos*.

37 As I have already mentioned Marie-Theres Fögen had traced down important copies of the *editio princeps* of the *Hexabiblos* in European libraries. See note 25.

38 Göbler had based his translation on the Latin translation of B. von Rey, published in Cologne in 1547; see Pitsakes, *Hexabiblos*, p. 69.

39 I follow the spelling of the Gothic handwriting.

verwandelt würde. Unnd also in gemein den Deutschen Liebhabern deß Rechten/ Richtern/ Amptleuten/ Schreybern/ und andern deß Lateins nicht so ganz kündigen oder erfahren Leyen zu gutem."<sup>40</sup>

Göbler continues by acknowledging that good books should be translated in many languages, especially books that can provide good guidance and instructions to the jurists and to court practitioners so that no one can excuse himself for not knowing the law, as Harmenoulos himself says and then Göbler quotes a sentence from the *Hexabiblos*:

"Unnd wirr zwar non verstendigen Leuten nüzlich geachtet daß gute Bücher in vielerley Sprachen gesezt und gelezen werden sonderlich die jhenigen welche zum Rechten und Gerichtshendeln gute anleytung und unterweyzung geben und je das Recht menigklich an allen orren kündig unnd bewußt sein sol damit sich vor dem Rath und Gericht keiner der unwissenheit halben entschuldigen möge wie unser Harmenopoulos auß den beschriebnen Rechter in disem Manual und Handbuch auch sein kürzlich eyngeführt da er sagt: τοῦ νόμου ἄγνοια, οὔτε γυναιξὶ βοηθεῖ ἐπὶ κέρδους (= ignorance of the law brings no advantage, even to women."<sup>41</sup>

It is clear from these abstracts that Göbler translated the *Hexabiblos* in German because it was a useful text for courtroom practice. One could argue here that perhaps this could have been Göbler's intention but whether the *Hexabiblos* was actually applied in practice is another question. The fact that this edition was re-edited just two years after the first edition and a third time later on testifies to the fact that it was read and used in German legal circles. There is another source that confirms this thought.

In 1832 the Bavarian prince Otto was appointed King of Greece by the three Great Powers of that time (Britain, France and Russia). Because he was a minor, a regency of three men was also appointed to govern until Otto reached adulthood. One of the regency members was Georg Ludwig von Maurer (1790-1872). Von Maurer was responsible for justice, ecclesiastical and education issues of the New Greek State. Despite his short stay in Greece (he was recalled in 1832) he managed to achieve an impressive amount of work especially in the legal field. Just after he was recalled von Maurer published the book "*Das griechische Volk in öffentlicher, kirchlicher, und privatrechtlicher Beziehung vor und nach dem Freiheitskampf bis zum 31. Juli 1834*" in Heidelberg (1835-1836). As the title implies the book gives information on public, ecclesiastical and private affairs before the Greek war of Independence and up to the first years of the regency. It is a useful source of Greek history and especially of legal history for this period. Von Maurer sketches in the first volume the Greek legal sources and he inevitably refers to the *Hexabiblos*. He writes that he owns a copy of Göbler's German translation. He adds that the fact that there were three editions of this work within 12 years means that it must have

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40 J. Göbler, *Handbuch Und außzug Kayserlicher und bürgerlicher Rechten : In sechß unterschiedliche Bücher*, Frankfurt 1564, preface (Vorrede), p. iii.

41 Göbler, *idem*.

been useful for the law students in Germany and that presumably it must have been used in German courts too, judging from the preface and the cover of the German translation of the *Hexabiblos*, where it is mentioned that it is for the judges, the officers, the jurists, the courtroom practitioners etc.:

"Die erste Ausgabe dieser Uebersetzung<sup>42</sup> erschien zu Franckfort am Mayn an. 1564. Da nun in einem Zeitraume von 12 Jahren drei verschiedene Ausgaben erschienen sind, so folgt daraus von selbst, dass es auch in Deutschland häufig studirt und wahrscheinlich auch bei Gericht gebraucht worden ist, wofür insbesondere noch einige Aeuserungen in der Vorrede, so wie auf dem Titelblatte, sprechen, wo es heisst: Hofrichtern, Räthen, Amptleuten, Verwaltern, Vögten, Advocaten, Procuratoren, Notarien, Schuldeissen, Schössen, Statt- und Gerichtsschreibern - nöthig und nützlich zu lesen und zu wissen."<sup>43</sup>

The causes of the popularity of the *Hexabiblos* are to be sought in the nature of the text itself. It is an easy and practical text to use. It is ironical that the nature of this collection has caused a harsh criticism against it while at the same time it has made it an incredibly popular text! What is also remarkable and has drawn the attention of a few scholars<sup>44</sup> is the actual structure of the legal material by Harmenopoulos. The Byzantine judge structures the civil law material in a very different way than the legal sources had done up to his time. He divides civil law into the following five parts: i. general principles, ii. property law, iii. law of obligations, iv. family law and v. law of succession.<sup>45</sup> Before giving all the credits to the later natural lawyers for their influence on the structure of the material of some modern civil codes, I really think that we should acknowledge -at least- the originality of our "scriptor mediocris" at this point. There is still a lot to be said about the rich tradition of Harmenopoulos. Pitsakes' interest in the Harmenopoulos' tradition is reflected in Pitsakes' writings and lectures. In his French lectures Pitsakes would often start his sentence with these very words: "Dans la tradition d'Harménopoulos..."

The words of a great and dear *daskalos* still echo...

D. Penna<sup>46</sup>

Groningen

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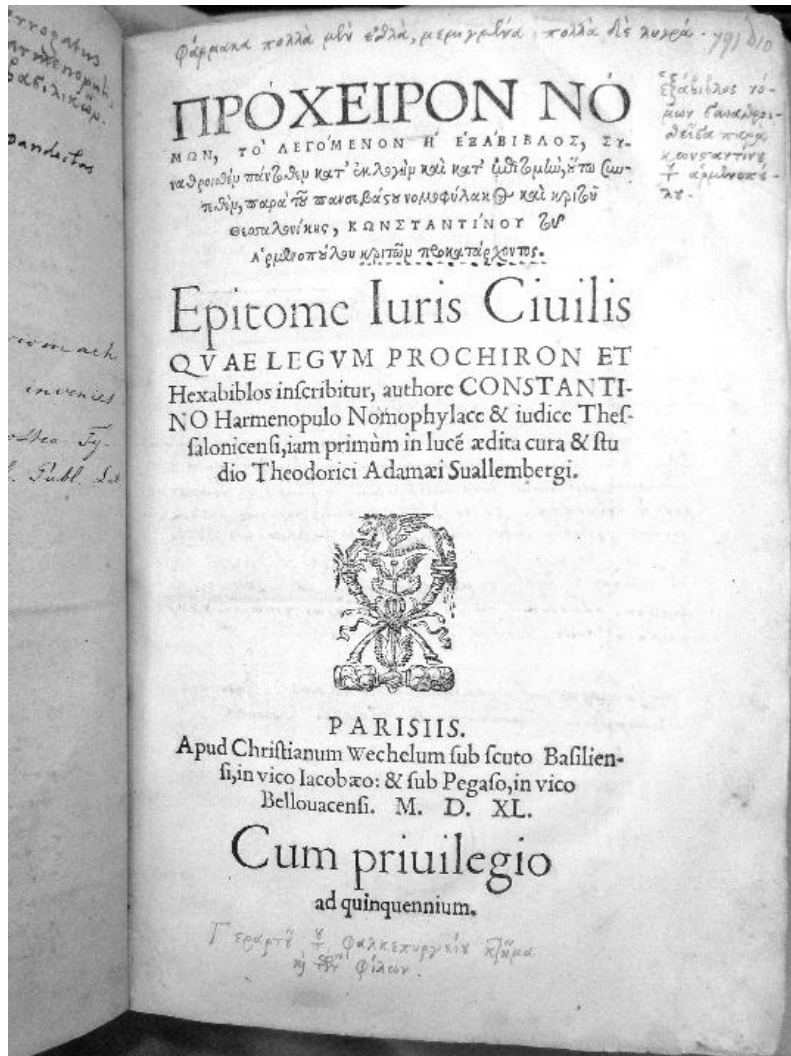
42 I follow the spelling of the author.

43 G.L. von Maurer, *Das griechische Volk in öffentlicher, kirchlicher, und privatrechtlicher Beziehung vor und nach dem Freiheitskampf bis zum 31. Juli 1834*, vol. I, Heidelberg 1835, p. 104-105, note 92.

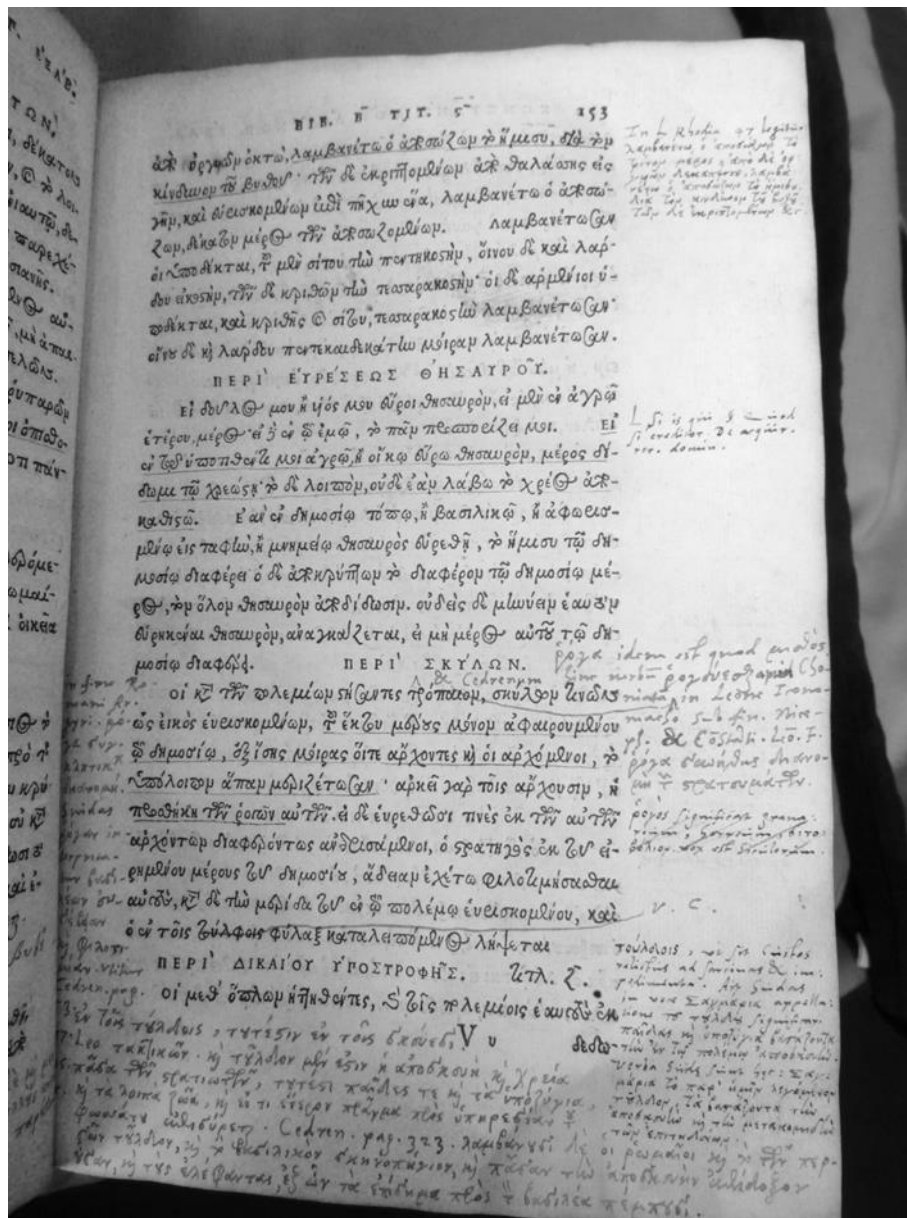
44 See Pitsakes, *Hexabiblos*, p. 43, especially note 45.

45 These parts correspond to the first five books of the *Hexabiblos*. The last, sixth book refers to issues of criminal law.

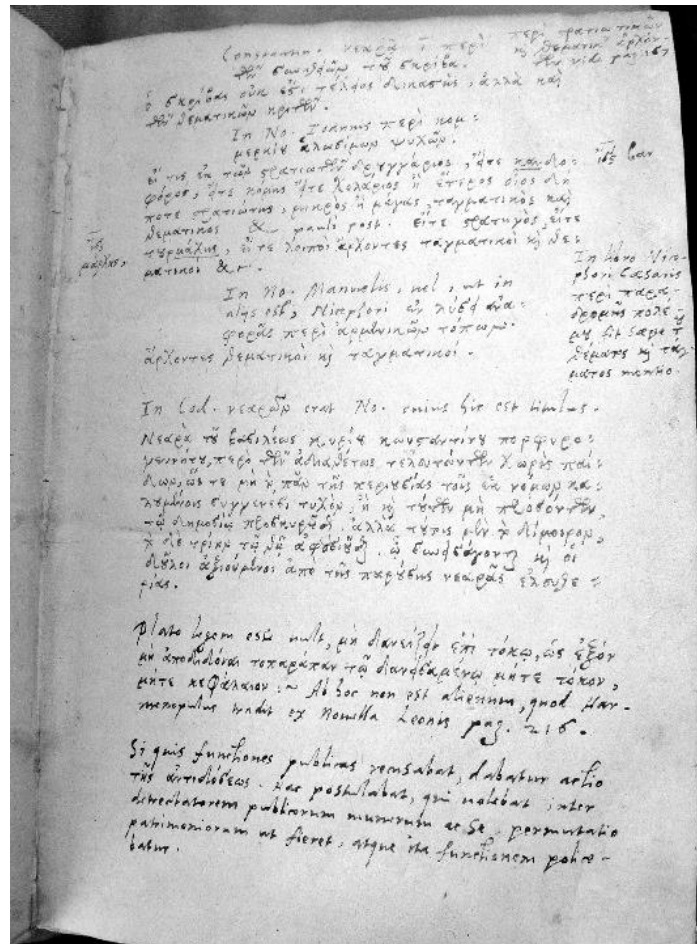
46 Mr Daphne Penna is universitair docent verbonden aan de sectie Rechtsgeschiedenis van de Rijksuniversiteit Groningen en gespecialiseerd in Byzantijns recht.



Picture no 1: From the annotated copy of the *editio princeps* of the *Hexabiblos*, which belonged to G. Falkenburg, Library of the University of Leiden, location no 759 C 50.



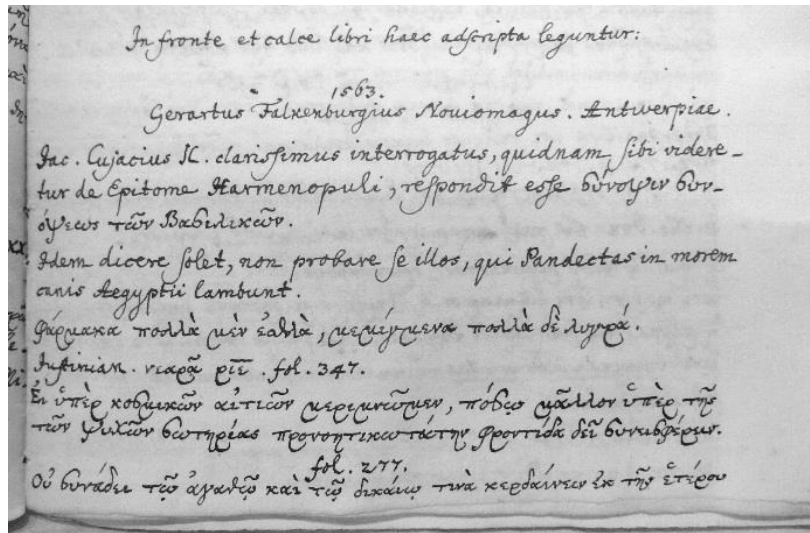
Picture no 2: From the annotated copy of the *editio princeps* of the *Hexabiblos*, which belonged to G. Falkenburg, Library of the University of Leiden, location no 759 C 50.



Picture no 3: From the annotated copy of the *editio princeps* of the *Hexabiblos*, which belonged to G. Falkenburg, Library of the University of Leiden, location no 759 C 50.



"DANS LA TRADITION D'HARMÉNOPOULOS..."



Picture no 4: From the notebook of Ruhnkenius, Library of the University of Leiden, location no 759 C 51.



Picture no 5: From the doctoral thesis of A. Haverkamp, Leiden 1738