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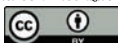
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CRIMINAL OFFENCES AGAINST LIFE,
LIMB AND PROPERTY IN KOTOR
(FIFTEENTH TO SEVENTEENTH CENTURY)

Jelena ĐURIŠIĆ

University of Donja Gorica, Faculty of Law, 81000 Podgorica, Montenegro
e-mail: jelena.djurisic2@udg.edu.me

ABSTRACT

This paper explores the history of criminal law of the Venetian-ruled city of Kotor from the fifteenth to the seventeenth century. The paper is primarily interested in the norms, punishments, and the application of the Venetian, municipal, and customary criminal law, with a specific focus on criminal offenses against life and limb and property. Drawing on the largely unexplored wealth of archival material preserved in the Historical Archives of Kotor, the paper foregrounds the history of public law in Kotor where the existing scholarship has tended mostly to study private law. By reconstructing from the hitherto unused archival sources the norms, the application, and the institutions of criminal law of the late medieval and early modern Kotor, the paper calls for a renewed, interdisciplinary approach to the study of the city's legal, political, and institutional history. The research specifically aimed to uncover original archival material related to criminal offenses against life and limb, as well as property offenses, punishment and its practical application. The findings reveal highly valuable and significant archival records, which have not been the subject of legal scientific research until now.

Keywords: Kotor, fifteenth century, sixteenth century, seventeenth century, Kotor Book of Statutes, criminal offences, punishment

DELITTI CONTRO LA PERSONA E IL PATRIMONIO COMMESSI A CATTARO
(XV – XVII SECOLO)

SINTESI

Questo articolo esplora la storia del diritto penale della città di Cattaro sotto il dominio veneziano dal XV al XVII secolo. L'articolo si concentra principalmente sulle norme, sulle pene e sull'applicazione del diritto veneziano, municipale e consuetudinario, con un'attenzione specifica ai reati contro la vita, l'integrità fisica e la proprietà. Basandosi su un vasto e largamente inesplorato materiale documentario conservato presso l'Archivio Storico di Cattaro, lo studio mette in primo piano la storia del diritto pubblico nella città,

laddove la storiografia esistente si è prevalentemente occupata del diritto privato. Ricostruendo, attraverso fonti archivistiche finora inutilizzate, le norme, l'applicazione e le istituzioni del diritto penale di Cattaro tra il tardo medioevo e la prima età moderna, l'articolo invita a un rinnovato approccio interdisciplinare allo studio della storia giuridica, politica e istituzionale della città.

Parole chiave: Cattaro, XV secolo, XVI secolo, XVII secolo, statuto, delitti penali, punizione

INTRODUCTION

This article explores the legal history of the late medieval and early modern Kotor (Cattaro in Italian), an urban commune with its own statute which, from its submission to Venice in 1420 to the Republic's end in 1797, functioned as capital of the Venetian province of Albania Veneta and was an important center on the border with the Ottoman Empire. More specifically, this article is concerned with the history of criminal law and punishment applied by the Venetian and municipal authorities in accordance with statutory law, Venetian legislation and local customs. The article is based on research conducted in the old Venetian archives of Kotor (now the Historical Archives of Kotor, a division of the State Archives of Montenegro), where I was able to find previously unknown records of several criminal procedures with relevant data. This research has yielded two important findings.

The first of these findings concerns the history of criminal law in the narrower sense. I was able to identify the presence of several forms of criminal punishment, as well as the state-sanctioned use of popular customary tribunals in the administration of criminal justice.

The second finding concerns more broadly the legal discourse of “custom” which often framed the administration of justice in general and of criminal justice in particular. The rhetorical appeal to well-established and time-honored customs as they had been historically applied in Kotor was an important civic and juridical discourse which bound the statutory, the Venetian and the *stricto sensu* customary law into a more or less coherent whole. In the first section of the article, I will offer an overview on relevant legal and historical scholarship which has thus far treated the history of criminal and customary law of Kotor as well as its political and administrative status under the Venetian Republic. In the second, I sketch the statutory law of the city as it relates to criminal law. In the third section, I discuss the archival material and reconstruct from them criminal procedures and punishments, as well as the attendant legal discourse in which their application was framed.

HITHERTO RESEARCH AND HISTORICAL BACKGROUND

Kotor's long history and heritage have been the object of continued and fruitful interest from historians and legal scholars (cf., e.g., Gelcich, 1880; Milošević, 2008; Sindik, 1950, 1953). The former have largely tended to focus on political history, noting the city's important commercial and diplomatic role for the medieval Nemanjić state in the Balkan hinterland, and on various regional lords who had flourished between its collapse in mid-fourteenth century and the advent of the Ottomans in mid-fifteenth (Čirković et al., 1970a; 1970b). This intermediary and connective position between the hinterland and the Adriatic, as well as the Mediterranean and Central Europe, marked also the history of other Dalmatian cities in which the communal form of government arose in the twelfth and the thirteenth centuries (Raukar, 1980–1981). More recent scholarship reconstructed the fundamental role Kotor played in the transmission of Venetian mail to and from Istanbul from the early sixteenth to the late eighteenth century, serving as the junction between the overland and maritime routes along which the mail was carried (Dursteler, 2009; Molnár, 2014; Santoro, 2024). In the early seventeenth century, this critical position allowed Kotor to function as the headway for missionary activities; by the Roman curia aimed at Catholics in the Ottoman hinterland as well as at forging a union with the Orthodox hierarchy (Molnár, 2019). Kotor also played an important role in the Republic's east Adriatic defense system as one of modernized "artillery fortifications" along the coast and a point of naval presence, while members of the city's nobility actively participated in the Venetian administration as officers, recruiters, and intermediaries (Čoralić & Markulin, 2018).

Kotor's legal history is largely to be understood within the context of other East Adriatic cities with analogous forms of government and a shared legal culture. Dubrovnik (Ragusa in Italian) in particular influenced the development of the municipal law of Kotor, including its criminal law, in which a general overlap between norms, procedures, and customs is observable between the two cities (Gogić, 2018; Lonza, 2014; Ravančić, 2014). Similar overlaps are noticeable with the statutes of Brač, Split and Zadar (Brazza, Spalato and Zara in Italian, respectively). The Byzantine influence on the system of punishments in the East Adriatic communes was especially strong and lasting in Kotor (Gogić, 2018, 171). Venetian legal influences, traceable across the late Middle Ages, became fundamental after the city decided to submit to Venice in 1420, following a period of independent government from 1391. Notwithstanding these parallels, the legal scholarship on Kotor has tended, as noted by Nevenka Bogojević-Gluščević (2006, 101) in a paper on the city's criminal law, to focus on private legal matters while the public law aspect remains largely unexplored. Zoran Stojanović (2023, 93), the author of another important contribution to the subject, highlighted the same issue. This focus on private law is normally attributed to the uneven preservation of archival material related to public law, in particular for the earlier centuries of Kotor's history.

This gap is precisely what inspired the research behind this paper. My idea was to try to find in the surviving Venetian archival material in Kotor the data on the application of criminal law in Kotor from the beginning of Venetian rule in the early fifteenth century and throughout the early modern period. I was particularly interested in how Venetian law, the statute of Kotor, and local customs combined to form the municipal legal system. In the course of this research, I was able to locate original archival materials of which the existence and preservation were previously either unknown to or overlooked by scholars. This paper summarizes a part of the research results, focuses on criminal offenses against life and limb, as well as offenses against property, with particular emphasis how the perpetrators of such offenses were prosecuted and punished. As the criminal statutory law regulated only murder, I was also interested in how cases of vendetta (blood feud) were addressed. In this sense, the most important finding has been that, despite strict statutory provisions regulating the matter, the influence of customary law remained very strong. What I mean by customary law is what in Kotor's legal usage was referred to as *consuetudo*, the city's ordinary law, a term which, apart from signifying old and well-established legal institutes, customs, and procedures, could also be employed more broadly and figuratively as the sum of the city's legal and political system. The application of the *consuetudines* regarding vendetta were in the last instance sanctioned by Venetian state authorities. The customs were thus integrated into the municipal law of Kotor.

The main custom of this type was the Court of Good Men, a medieval institution which continued to be applied to certain criminal offenses also in the modern era. The Court was composed of equal numbers of arbitrators ("good men") appointed by each party involved, normally requiring twenty-four arbitrators for blood feuds. The arbitrators, usually local men of influence and experience in the matter, evaluated the facts of the case and determined the blood money to be paid by the culprit; non-monetary provisions in the form of godparenthood and blood-brotherhoods were also prescribed in order to strengthen the peace between the parties. The arbitration was usually preceded by the mediation of rural communal leaders who persuaded the parties to enter the process of peace-making. Aleksandar Solovjev has argued that by the eighteenth century the arbiters in these courts had come to function not merely as representatives of the parties involved (as in the medieval prototype of the court) but as jurors who examine evidence and rule by majority (Solovjev, 1947, 208–216). This custom, if uniquely present in Kotor's legal system among other Dalmatian cities, fits within broader patterns of blood feud in medieval and early modern Europe. Blood feud is a system of social control that regulates violence and leads towards the reestablishment of social equilibrium through dispute resolution (Ergaver, 2016, 126). The custom of blood feud and peace-making was widespread across the early modern world; in Montenegro, Albania, and some other neighboring areas, the practice continued at least until the end of the nineteenth century, and the oral tradition regarding the customs even longer (Ergaver, 2016, 126). The peace-making consisted of three phases and

each phase included symbolic words, gestures, and objects that indicated a similar ritual structure to the one present in public contractual agreements in the medieval Europe. The similarities indicate common origins of some European legal traditions (Ergaver, 2016, 126). A comparative look at relevant documents across Europe suggested that a similar reconciliation ritual observed in the countryside and the wider vicinity of Kotor, Montenegro in particular, was also present in other European countries (Darovec, 2017, 82). In the case of Montenegro, as it was recorded in the ethnographic and anthropological studies at the turn of the nineteenth and the twentieth centuries (Boehm, 1984), the compromise and the reconciliation of the two feuding parties was reached by the public expression of humiliation, penance, and a plea for forgiveness, which were evidently elements of the customary system of conflict resolution in other European countries as well (Scotland, Iceland, France, Italy, Germany, the Balkans, etc.) (Darovec, 2018, 38; Carroll, 2023).

The custom was preserved throughout the centuries as both Venetian and Ottoman administration acknowledged the existing legal customs. This was because the customary peace-making often proved more efficient in settling cross-border conflicts than direct state involvement. The Venetian authorities on several occasions ordered the rural communities in the coastal area to make customary peace with their neighbors in hope of preventing vendettas from escalating, across or within their borders (Ergaver, 2017, 179). Therefore, the Venetian authorities in Kotor were well-acquainted with the legal customs of the communities in the district, which included the custom of vendetta and reconciliation (Ergaver, 2017, 179). In accepting the submission of local communes, whether that of the city of Kotor in 1421, or the rural community of the Paštrovići in 1423, the Venetian authorities respected local statutes (Mijušković, 1955, 15; Solovjev, 1933, 1–2). The fifteenth-century acts of pacification between parties recorded in the notarial register of Kotor testify that local groups were well able to resolve their disputes on their own through implementation of their legal customs of pacification (Ergaver, 2017, 198). It is impossible to say to what extent the Venetian authorities participated in the peace-making, but the parties involved still frequently took care to formalize their peace-making in the notarial office of Kotor for greater legal security. If this may be taken to testify to a degree of insubordination on the part of the local population (something which national historiography has tended to highlight)¹, it can just as well speak for the central position which the Republic's representatives occupied in mediating between divergent local interests.

The Venetian Republic encountered similar traditions of dispute resolution in its possessions in the Terraferma, where in the fifteenth century a similar duality in the legal tradition also existed. In Veneto, in the area of Vicenza and Verona, the nobility in the cities resolved their disputes according to statutory law, whereas inhabitants of their rural

1 This was an understanding of the nature of the popular criminal tribunals taken in Đorđe Milović's seminal collection of sentences issued by Courts of Good Men in criminal matters in the jurisdiction of Herceg Novi (Castel Nuovo) (Milović, 1953).

areas resolved their disputes according to the existing legal customs, but with the help and the presence of the town notary (Povolo, 1980; Ergaver, 2017, 126, 179; Zamperetti, 1980). In the course of the sixteenth and the seventeenth centuries, the Republic was able to impose centralization in the domain of penal justice over the subject cities of the Terraferma, breaking local opposition while preserving the outer form of local self-government (Povolo, 1980); it was the culmination of a long process in which medieval customary frameworks for handling conflict and blood feud were transformed from an affair between the parties and communities involved into an affair of the state (Povolo, 2014). In general, it was the Republic's approach in governing subject cities and territories to try to integrate the local law and customs within its own legal-administrative system: a "political and empirical" understanding of the law, which prized satisfactory and expeditious settlement of causes over "technical and doctrinal" application of the letter of the law, distinguished the Republic not only from the sovereigns who applied the Roman law but also from many of its own subject communities (Cozzi, 1980, 18). Similar arguments were made for fifteenth and sixteenth-century *Stato da Màr* and eighteenth-century Ionian possessions of the Republic (O'Connell, 2009, 75–96; Arbel 2013, 235–239). The Venetian Republic thus, while seeking to impose its own penal justice over subject communities, nevertheless continued to rely considerably on local mediation and local institutions, which was particularly the case in Albania Veneta.

THE KOTOR BOOK OF STATUTES

The legal system of the Kotor commune in the Middle Ages was based on written decisions of the city councils and customary law. This is supported by documents from the early period of Venetian rule of Kotor. Recognizing the importance of customary law in Kotor, the Venetians instructed their officials, whose competences included civil and criminal judicial authority, to apply customary law in cases where the Kotor Book of Statutes did not provide specific regulations for certain behaviors.

The statutory legal framework which the Venetian government promised to uphold was the outcome of a gradual evolution, across centuries, of Kotor's municipal self-government, aimed at regulating the social and economic life of its citizens and strengthening its institutions and administration (Gogić, 2018, 159). Most cities on the east Adriatic coast adopted their statutes in the thirteenth and fourteenth centuries. These statutes served not only as instruments of governance and the foundation of legal order but also as expressions of the communities' individuality and symbols of their autonomy. The Book of Statutes of Kotor were probably adopted in the early decades of the fourteenth century, their oldest parts dating to 1301; their template were the statutes of Dubrovnik, dating to 1272 (Milošević & Ćirković, 2009, 11). The statutes were revised and amended several times during the fourteenth century continuing until 1425. The revisions added to the existing statutory decisions new ones which were adopted in response to the evolving needs of city life (Milošević & Ćirković, 2009, 15). The final form of the statutes known to us dates to 1614. Shortly after the arrival of the new Venetian rector of the city, Zanfrancesco Dolfin,

the municipal councils ruled on October 27, 1614, to print the text of the statutes. The stated goal was to preserve from decay the existing Book of Statutes, which contained the system of government “which our fathers created”, thus ensuring its preservation for future generations (Milošević & Ćirković, 2009, 16).

As the Statutes’ language suggests, Kotor’s ruling class understood and sought to legitimize the city’s legal system in “customary” terms. The Statutes were, in the ideology of that class, the work of generations, each generation preserving, modifying, and passing them on to the next one, sometimes by giving an explicit, written form to what by then had been self-understood and well-established customs of the city. Down to the very decision to print the Books of Statutes, these maintain a systematic distinction between the customs and the written law, *statuta et consuetudines*, between the norms which were prescribed by competent councils and officeholders in a written form and those which drew their force from general observance. But the unwritten norms could easily be given a written form through appropriate legal procedure, in addition to not losing their force and currency for the lack of such a form. The decision in the Book of Statutes of Kotor (codified in its Chapter 37) on advising in case of doubts in disputes not covered by Statute reads: “We establish that if a dispute arises between some people before the judges, and there is no provision about it in the Statute, the judges are obliged to consult with old men of the City. After consulting, they should end the dispute by judgment as they think is right based on ancient legal custom.” In the language of political legitimacy of the medieval and early modern Kotor, customs, though technically distinct from and not infrequently contradictory to written law, were nevertheless an integral and adhesive part of the city’s legal system, underpinning also the overall rhetorical defense of that system by the city elites. Kotor enjoyed a high degree of autonomy in the Middle Ages, which is also evident in its criminal law. The criminal law provisions contained in its Book of Statutes—a collection of decisions made by officeholders and councils—are not grouped or treated systematically but in response to specific problems and situations that those decisions sought to address (Stojanović, 2023, 93). Therefore, criminal law was an expression of that dynamic, incremental development of Kotor’s legal system. Its provisions are scattered across various decisions made by officeholders and councils, which made it difficult to systematically study these provisions. In this sense, the paper will highlight some of the more prominent characteristics of criminal law from that period, including the conduct of criminal proceedings and punishments in Kotor. Focusing on personal and property injuries, I attempt to reconstruct not only the norms and procedures but also the practice of applying these provisions, comparing them with the neighboring areas by presenting a few interesting examples from the Paštrović and Grbalj areas, with a particular focus on the application of criminal law provisions in practice.²

2 Among the rare works examining the application of penal provisions in the Kotor Book of Statutes, an analysis of preserved court-notarial records from the first half of the fourteenth century reveals that fines were the dominant form of punishment during this period. Notably, the analyzed documents contain no instances or mentions of corporal punishment involving mutilation (cf. Stojanović, 2023, 93).

The Archival Material

In this section I will present the archival material that I was able to find in the old Venetian archive of Kotor. The material overwhelmingly dates either to the very beginning of Venetian rule of Kotor or to the seventeenth century. These two temporal points allow us to observe the continuities in the application of criminal law and the accompanying legal discourse. This archival material not only covers the two main groups of criminal offenses studied—crimes against life and limb, and property crimes—but also includes other offenses such as espionage and crimes “against the army and the service”, which were severely punished by the Venetian state. Taken together, these cases testify to a parallel application of Venetian, statutory, and customary law in criminal procedures and punishments.

The provisions addressing criminal conduct and its sanctioning are well-represented in the Kotor Book of Statutes. Thus, in addition to the extensive list of proscribed criminal behaviors, there was a still broader and more varied system of sanctions. This system reflects multiple intertwined influences, including customary law, the legal system of Kotor’s various sovereigns and the communal laws of other cities (Ćirković & Milošević, 2009b, 73). This is an aspect of Kotor’s municipal law that has, perhaps, attracted most scholarly attention. Notably, the Book of Statutes, dedicates its chapter 92 to the subject of homicide, detailing rules on punishment based on the social status of both the victim and the perpetrator (Ćirković & Milošević, 2009b, 73).

The use of the customary Court of Good Men is recorded from the very beginnings of Venetian rule. In a murder case from 1435, Milin Nenadich was fatally struck by Miladin Jurasevich, who was subsequently murdered. Following the homicides, the two parties agreed to make peace and appointed twenty-four arbitrators to render a verdict. The arbitrators required Novac, the son of Miladin, to marry Xivana, the daughter of Milin. The verdict also required the defendant and his descendants to pay 500 perpers to the heirs for the victim (DACG, IAK, SN VI, 553).

From another case of homicide, from 1439, again settled by a court of arbitrators, we have records that the municipal enforcement officer collected 200 perpers as a fine. This amount was collected from the perpetrators Radissa Dobrich and Milich Petroevich from Lastva in the countryside of Kotor, who were responsible for the homicide of Radissa Radognich and Mikaz Jurgevich (DACG, IAK, SN VI, 809).

In the records of another case from 1440 we read that in the lodge of the municipal office, in the presence of rector Albano Segredo (Milošević, 1977, 164) and the proveditor (*provveditore*, overseer) for Istria, Dalmatia, and Albania, Morosini, representatives of two families made peace after a homicide. The arbitrators, chosen by the parties from among community elders and notables, questioned the members of one family from Paštrović and reached a verdict that settled the blood feud. This decision was confirmed by the proveditor and the municipal judges (DACG, IAK, SN VI, 935).

In 1440, Ceriepp Maruscovich from Zeta received 150 perpers as blood money from Ostojica Mathievich, his father's killer, in the presence of rector Segredo and the judges. The payment, a part of the compensation prescribed by the arbitrators, served as a gesture of reconciliation with the perpetrator (DACG, IAK, SN VII, 8).

At the other end of our timeframe, the Venetian archives preserve the minutes, the verdict, and the list of "good men" who in 1688 judged and ruled on a homicide. The Court of Good Men, consisting of twenty-four arbitrators, found the defendant guilty and sentenced him to pay eight "blood monies" each equivalent to sixty reals, totaling 480 reals. Additionally, he was sentenced to a godfatherhood and a blood-brotherhood with the victim's family, both of which entailed expenses in money and gifts (DACG, IAK, UPM V, 257).

Wounds inflicted in a fight or attack were adjudicated by the same sort of procedure. The punishment for such offenses depended on the severity of the injury (Ćirković & Milošević, 2009b, 73). Records of one such case, from 1712, attest the procedure identical to that followed in cases of murder. The parties involved chose, according to the custom, individuals among the "good men" to adjudicate the dispute. After deliberation, the judges rendered their judgment at the monastery of St. Nicholas, by which one party was condemned to pay "blood money" in the value of one *brazo* (cubit) of purple-colored cloth (*paonazzo*) and, moreover, to reimburse the wounded person for the expenses for medicines and the surgeon. The judgment also prescribed the bestowal of godfatherhood, along with one scarf and one silver ducat as its common monetary equivalent (DACG, IAK, SN CXXXIII, 195).

In addition to the norms that prescribed punishments for offenses related to physical harm, including those as severe as homicide, the Kotor Book of Statutes also included provisions for punishing behaviors such as insulting someone, which could involve causing minor bodily injuries (Gogić, 2018, 174–175). Thus, plucking someone's beard was fined with 10 perpers, as this act not only involved physical assault but also elements of great humiliation and insult. Additionally, insults were categorized into two types: those involving physical actions and those involving words. Insults with physical actions were subject to double the punishment compared to those with words. Insulting someone with offensive words was punishable by a fine of three perpers (Ćirković & Milošević, 2009b, 74). However, if the insult occurred in a court setting, the fine was increased to 10 perpers. Insulting a judge or notary while they were performing their duties was punishable by a fine of 50 perpers. The most severe punishments were prescribed for attacks on the prince and his procession (Ćirković & Milošević, 2009b, 74).

According to the provisions of the Book of Statutes, anyone who killed a citizen of Kotor who had resided in the city for ten years was subject to the capital punishment by hanging. Similarly, this provision applied if a foreigner killed another foreigner. However, if a citizen killed a resident of Kotor who had not lived in the city for ten years, the murderer would be fined 500 perpers

(Ćirković & Milošević, 2009b, 73–74). If a resident of Kotor or another person killed a foreigner, the punishment, according to the statutory provisions, would be reciprocal or equivalent to the punishment that a resident of Kotor would receive for the same offense (Ćirković & Milošević, 2009b, 73).

And while death sentences were commonly commuted, records show that some of them were indeed carried out. Thus Iana, the widow of Vuleta, of Krtoli, stipulated in her will to be buried in the village Church of St. John and bequeathed, among other things, 15 thalers to the church of Our Lady on the Island near Krtoli for the soul of her deceased husband Vuleta, who had been executed in accordance with a verdict (DACG, IAK, SN LXXII, 1005). It is unclear from the testament's meager wording who, and in accordance with what laws, condemned Iana's husband to death, and what punishment was inflicted upon him, though most likely it was a sentence by the extraordinary proveditor. But even where more detail is known, as in the verdicts of Venetian and municipal authorities or in those of the Courts of Good Men, much remains unclear, e.g. in which cases the Courts of Good Men were convened and in which statutory norms were directly applied. Though the former institute was commonly used in adjudicating causes between Venetian and Ottoman subjects, it was widely used between Venetian rural subjects as well. What is clear is that statutory and Venetian law was applied alongside the "customary" one in punishing certain offenses.

Two further cases that I was able to find are also very important for the analyzed topic. In the first case, criminal proceedings were conducted against two soldiers who attempted to escape to Ottoman Bar, the first city across the border. One soldier was sentenced to death, while the other received a seven-year sentence as a galley slave (DACG, IAK, UPM XI, 529–546). The second case involved Raso Dabcevič and Luca Braich, from Brajići, who were tried for the homicide of Simon C., their superior in the military company under captain Bolizza at the Trojica fort. They tried to escape but were caught on the run; Raso was beheaded during the pursuit, while Luca was captured, tried in Kotor, and subsequently hanged (DACG, IAK, UPM XI, 547–571). As soldiers in the Venetian army these local men were tried by the extraordinary proveditor, who was the competent military authority in Albania Veneta, subject to the general proveditor in Zara. Interestingly, during Luca's interrogation in the Kotor prison in, Raso's severed head was shown to Luca so that he could ascertain the identity of his companion. The head was thereafter publicly exposed *sù la pietra del bando* at the city's pillory, in testimony of the punishment; it was still on display when the day after Luca himself met his own punishment on the same spot (DACG, IAK, UPM XII, 571).³ It is worth remembering here that these men, members of a local community which customarily settled homicides through Courts of Good Men, would not have been subject to capital punishment had they not been soldiers.

3 Cf. Povoło (2017) on how banishment in the course of the sixteenth century acquired a new harshness and a new function in the exercise of the state's penal justice.

In the criminal proceedings against Jovan Sacotich who was accused of espionage on behalf of the “Turks”, the proveditor’s Court, after conducting a search, found him guilty of espionage. Given that he had previously served a sentence for similar offenses, he was sentenced to eighteen months of galley slavery (as a rower) and to three years of exile from Herceg Novi (Castel Nuovo) and other areas (DACG, IAK, UPM IX, 5.) Also, the verdict sentenced the fugitive soldier Carlo Battista Mariano to ten years of galley slavery for the crime of deserting from the army and abandoning his guard post (DACG, IAK, UPM IV, 331–332). In the criminal proceedings against Nicolo Dufila, who was charged with the homicide of Irdian Bieloglav, threats to his superior, and desertion from the army, he was sentenced by a verdict dated October 20, 1693, to three years of galley slavery with iron shackles on his feet. If he was unable to serve this sentence, he was to serve a prison sentence of five years (DACG, IAK, UPM XI, 100–148).

The earliest references to punishment by mutilation for theft can be found in a document from 1203, which represents the oldest known medieval examples of such regulations along the eastern coast of the Adriatic (Gogić, 2018, 181). The practice, established by the early thirteenth century in the legal systems of Kotor, Korčula (Curzola in Italian), Dubrovnik, and other Dalmatian communes, has Byzantine and Venetian antecedents. Among offences against property, theft was the primary object of statutory penal regulation (Gogić, 2018, 181). The Kotor Book of Statutes, similar to other statutes of the Adriatic, stipulates corporeal and monetary punishment in relation to the status of the perpetrator and the victim. In this sense, the perpetrator of lower social status was punished with more severe corporal punishment and lower monetary fine, while the perpetrator of the higher social status could not receive corporal punishment and could only have been fined. The higher social status of the victim meant harsher punishment. Hence, the heavy punishment for some property offenses, such as theft, may have been proportional to the status of the perpetrator and the victim. A thief caught in the act faced severe punishment: removal of both eyes or a fine of 500 perpers. Amputation was also outlined in other sections dealing with theft, specifically for cases where the thief was unable to pay the prescribed fine (Ćirković & Milošević, 2009b, 74). The literature also indicates that the severity of the punishment for theft was proportional to the value of the stolen item. For theft of items of lower value, punishments included flogging and branding. In historiography dealing with criminality, much has been written on punishment as a social message communicated in various ways, among other things, by using a convict’s body as a medium, such as face branding and other forms of mutilation (Lonza, 2014, 59). For the theft of more valuable items, penalties ranged from removing one eye and severing the right hand to removing both eyes and both hands for the most severe cases. If the same person was caught again, the punishment would be increased by one degree. For the third offense, the prescribed punishment was hanging (Ćirković & Milošević, 2009b, 74). A fine of 24 perpers was imposed for violently breaking into a house and stealing items, along with the obligation to return the stolen goods (Ćirković & Milošević, 2009b, 74).

In 1690, criminal proceedings were conducted against two soldiers, Michiel Vilaroe (from Spain) and Andrea Massa (from Milan), who were stationed at the Kotor Presidium. They were accused of “qualified theft” for breaking into the apartment of the Kotor noble Marin Buchia during his absence and stealing the items listed in the criminal charges. During the investigation, their guilt was confirmed. The court sentenced M. Vilaroe to three years of galley slavery, which could be converted into banishment or incarceration if he failed to serve the sentence. A. Massa was sentenced to remain in prison until he had compensated Marin Buchia for what had not yet been settled (DACG, IAK, UPM IX, 9).

The research also uncovered a verdict in which the extraordinary proveditor found bannerman (*alfier*) Michiel Vilevoi guilty of theft and sentenced him to three years of Venetian galley slavery, bound in shackles, as well as to paying litigation costs (DACG, IAK, UPM IX, 805). Again, the extraordinary proveditor was punishing soldiers under his direct command. Another verdict was issued in absentia against Zuanne Punos, Stiepan Radusinovich, and Mattio Gargosto, who were convicted of robbing small Christian-owned ships. They were sentenced to twenty years of exile or, if captured, ten years of galley slavery. They were not to be released even after serving their sentences until they collectively and individually paid for the damages in solidum (DACG, IAK, UPM IX, 3v). In the criminal proceedings conducted in 1690 against Stiepaz Vuletin from Budva and Petar Bogović from the Paštrovići territory, the defendants, along with ten accomplices, pretended to be assisting the crew of a shipwrecked Venetian vessel, of the Marciliana type, owned by patron Mattio Zombarini, near the coast of Budva or Paštrovići on January 23, 1690. Instead of helping, they committed piracy, stealing various items, breaking into a safe, taking 89 silver ducats, and then discarding the safe into the sea. After the trial, the court sentenced them to exile for three years or, if they were caught, to prison for six months (DACG, IAK; UPM IX, 7).

These sources testify that the punishment of galley slavery—rowing on a galley in chains—was practiced despite not being prescribed by the provisions of the Kotor Book of Statutes. It is a clear example of the direct application of Venetian criminal law administered by the representatives of the Venetian state.

The above cases also show that the strict application of Venetian criminal law could be mitigated with alternative punishments. In addition to galley slavery, sentences often provided the possibility of serving fixed prison terms if the primary punishment could not be enforced due to incapacity or other reasons. In one such sentence, from March 3, 1686, the extraordinary proveditor sentenced two soldiers to eighteen months of galley slavery in shackles or, as an alternative, to three months in prison without light; if they escaped, they were to be considered *ipso facto* banished, i.e. bandits (DACG, IAK, UPM IV, 160v):

Che li costituiti Gregorio Franich et Zorzi Saletich [?] ambi soldati della Galeotta Podgorizza [under the command of an officer surnamed Podgorizza] siano mandati seruire sopra una Gallera de Condannati per huomeni da remo con ferri à piedi giusta

gl'ordini della Camera dell'Armamento per mesi disdotta, et in caso di innabbilità star debbano in priggion serata alla luce per mesi tre continui, dalla qual fuggendo siano e s'intendano banditi da questa Città, e Giurisd[izione] da queste Bocche à quelle. (DACG, UPM IV, 160–162)

This case reflects the Republic's pragmatistical approach to punishment, particularly during wartime, when the soldiers were offered the possibility of serving a shorter term in the province rather than being banished or sent to galley slavery.

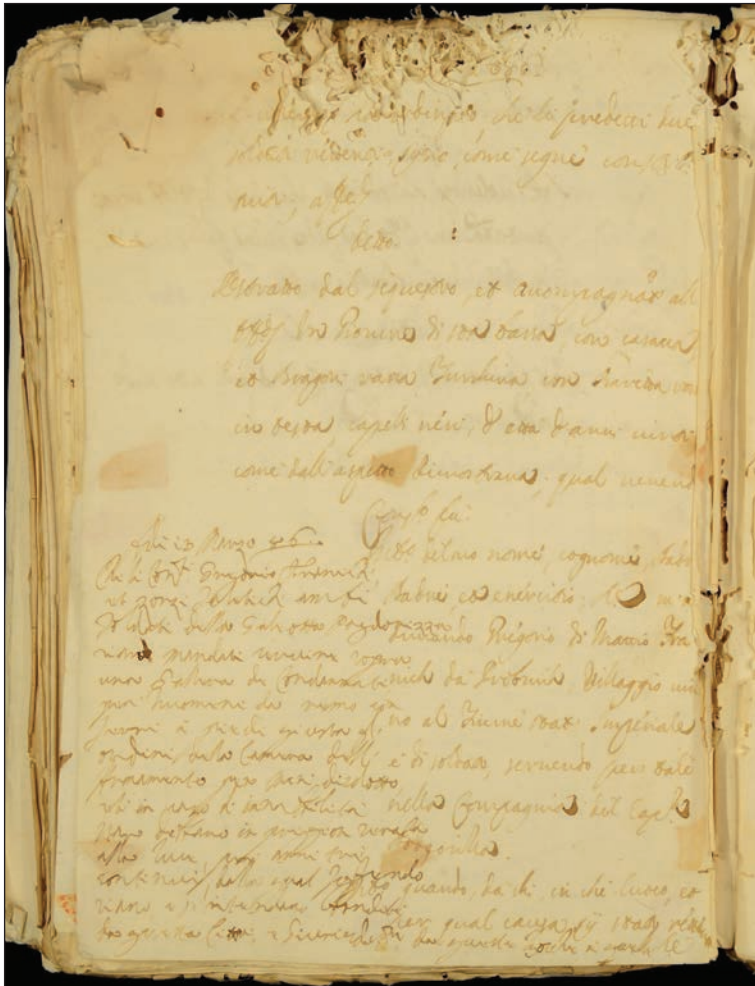


Fig. 1: The page recording the sentence of the extraordinary proveditor in the Franich-Saletich case (DACG, IAK, UPM IV, 160).

The social development and daily life of the Kotor commune required the strict sanctioning of all socially harmful behaviors. During the analyzed period, Kotor encountered numerous challenges that posed a threat to the city's stability and the safety of its inhabitants. Consequently, the authorities imposed strict punishment for any actions classified as criminal. Violations of long-established rules and disruptions to social and legal order weakened the Kotor commune and exposed it to dangers that the authorities were determined to prevent.

The Kotor Book of Statutes placed significant emphasis on regulating the conduct of court proceedings. Thus, in accordance with the statutes' provisions, legal proceedings were initiated either by the prosecutor or the injured party. However, in cases involving serious criminal offenses, the proceedings were always conducted *ex officio*, as these matters were considered in the public interest of the city (Marinović, Vukotić & Drakić, 1998, 86).

Court Procedure

The cases of Venetian extraordinary proveditors acting in an investigative and judicial capacity abound, particularly since their old archive in Kotor is rather well preserved. Let us consider some of them as they cast light on the application of Venetian criminal law. On March 26, 1688, the extraordinary proveditor Pietro Duodo conducted a military review based on the instructions he had received from the general proveditor, his superior stationed in Zadar, the supreme civil and military authority over the Venetian East Adriatic possession. On that occasion, he noticed the torn flag of Captain Pozzo di Borgo's military company and immediately ordered that criminal proceedings be initiated against the unknown perpetrator of the crime. After hearing the witness and the testimony of the accused, Corporal Pietro Maria Arbitrici from Corsica admitted during his interrogation that he, along with other soldiers from his company, decided to tear apart the company's flag. Amidst the ensuing commotion, they managed to break the flagpole. The ensign defended the flag, and the captain thwarted the plan with a few blows, preventing it from being fully carried out. The court then emphasized the full gravity of the crime, stressing the malicious desecration—*lèse-majesté*—and tearing apart of the Doge's flag. After this, the defendant altered his testimony, attempting to justify his actions by claiming that he grabbed the flag to prevent it from being damaged further. At the end of his revised statement, he argued that it would be unfair for him to bear full responsibility and blame for actions that were carried out by the entire group. On the same day, March 26, 1688, through an expedited procedure, Arbitrici was sentenced to death by firing squad based on his confession to the crime. On March 27, 1688, the imposed death sentence was commuted to eighteen months as a galley slave. In the event of an escape from the galley, Arbitrici would face an additional five years of exile from the entirety of the Venetian dominion (DACG, IAK, UPM IX, 121–122).

Another criminal case, 1684, is worth considering here. The extraordinary proveditor, acting upon reliable information that counterfeit money was in circulation, and that the “crime of counterfeiting money” had been committed, ordered an official hearing of the innkeepers, as well as other witnesses. After reviewing the recorded statements, the proveditor issued a decision to detain a French woman and her two tenants, as well as to order a search of their apartment. After their arrest, a report on the search was submitted, stating that several counterfeit coins had been found. Upon receiving the results of the apartment search, the proveditor ordered the hearing of the detained individuals. After the hearing, the proveditor commissioned an expert assessment to determine the authenticity of the disputed money. On this occasion, Jovan Babić was summoned to provide his expert opinion. The proveditor also ruled that the defendants were to submit their defense within three days, allowing them to plead against the charges. The proveditor later noted that the defendant Piere Legransa, a private in the Venetian army, failed to comply with the summons to submit his defense within the deadline. Consequently, the defendant was summoned again, requiring him to submit his defense including possible motions within three days, under threat of legal consequences. Upon the verbal request of the defendant’s attorney, the proveditor ordered that a complete copy of the criminal proceedings be provided to him. Subsequently, the copy was handed over. In addition, the proveditor instructed Legransa to propose any supplementary measures for his defense, if he deemed them necessary, and to submit his proposal within three days. Legransa complied, stating that the counterfeit scudi were already in circulation before his arrival in Kotor, and that one had even been found in his military company. To support this claim, the defendant proposed that Captains Giacomo Sale, Bastian Pauletti and Rinaldo Soarvo be called as witnesses in the ongoing proceedings (DACG, IAK, UPM IV, 231). While the outcome of this criminal procedure was not found in the examined archival material, the way the case was handled provides valuable insight into the conduct and course of criminal proceedings during the period in question.

It is also important to note that the Kotor Book of Statutes contains numerous provisions that protected citizens in court. For example, a provision from 1373 appointed four court lawyers tasked with representing parties in legal proceedings (Ćirković & Milošević, 2009a, 65). It is also noted that, in this and certain other cases, the suspect was allowed to present his defense by swearing an oath in front of a specified number of individuals (Ćirković & Milošević, 2009b, 74). Enforcement and collection of fines and costs were requested immediately after the judgment was rendered the regulations on contumacy were designed to protect the interests of plaintiffs, but the Book of Statutes imposed much stricter rules for ignoring court summons in criminal cases compared to private law disputes. In criminal proceedings, the consequences of non-attendance could not be corrected afterward; the imposed sentence remained in effect, as the judgment became final and enforceable upon its adoption (Ćirković & Milošević, 2009a, 65).

According to the provisions of the Kotor Book of Statutes (Chapter 118) in force at the time, a person who killed another in (legitimate) self-defense would not be punished but had to pay some restitution to the victim's family. Similarly, a person who killed a robber during a break-in would also not be punished (Ćirković & Milošević, 2009b, 73).

Regarding sanctions, it is concluded that in nearly all the analyzed judgments where individuals were sentenced to galley slavery, a prison sentence was also imposed as a substitute in case the primary sanction could not be executed due to incapacity or inability.

The research also uncovered evidence of other imposed sanctions. For example, in the case of a young soldier from Istria who deserted from his company, the punishment of flogging was prescribed (DACG, IAK, UPM XI, 449–451). Additionally, in a criminal case against Giuseppe Ivancevich he was punished with three blows with a rope (DACG, IAK, UPM XII, 329a). Furthermore, it is interesting to note that, although not specifically mentioned in the provisions, in a case against two soldiers for a public argument and near-fight, the punishment was imposed that they should spend two hours on the (wooden) horse (DACG, IAK, UPM XI, 438–445).⁴

Finally, it is important to mention the institute of guarantees, which frequently appears in the analyzed files. For instance, several *harambašas* (*hajduk* leaders) requested the release of Vido Perovich from Risan (Risano in Italian), offering their guarantee to ensure his appearance at every court summons. What followed is the decision granting the aforementioned request, on the condition that the listed individuals provide a “security deposit” (surety) of 100 ducats. There is a statement from an individual who, under the surety of 100 ducats, guaranteed that Vido Perovich would respond to any court summons if released (DACG, IAK, UPM VI, 127.) Additionally, Nico Marcov, Trippo Andriin, Giano Radov, Ivan Marcov, Giano Liesscov, Nico Trippov and Stipo Niccov from Krtole (Cartolli in Italian), from the city of Kotor acted as the main guarantors for Nicolo, son of Vlatcco Gianccov who was sentenced to eighteen months of galley slavery. They were guarantors for his debt of 500 ducats and guaranteed that he would not escape (DACG, IAK, SN LXXI, 473).

A significant number of provisions in the Book of Statutes were dedicated to the who acted as both judicial and political heads of the commune. In this context, considerable attention was given to ensuring their objectivity, as the judges lacked formal legal training and education (Ćirković & Milošević, 2009a, 63). Their authority was based on their exceptional personal reputation and their mandatory status as members of the nobility.⁵ According to the provision from 1347, no one was allowed to seek justice while serving as a judge. During the Venetian period, it was also prohibited for a judge to adjudicate cases involving

4 *Cavalletto* in Italian, a torture device signifying either the rack or perhaps the wooden horse.

5 For more on this, cf. Sindik (1950) and Marinović (1957).

family members or individuals with whom they had financial obligations. The judges were elected for terms ranging from six months to a year and always rendered their judgments in the presence of a notary. On the other hand, judges were protected by law, and a severe punishment was imposed on anyone who offended a judge or councilor, regardless of whether they were in office at the time or not (Ćirković & Milošević, 2009a, 63).

In the context of analyzing the provisions of criminal proceedings from that time, it is important to note that, according to ancient custom, the extraordinary proveditor had the prerogative to suspend further criminal proceedings by issuing an act (decision) on the Day of St. Tryphon, the patron saint of Kotor. Evidence of criminal proceedings has been found in relation to the complaint of Captain Simon Podgorizza, including criminal records and a medical certificate in which surgeon Tullio Smacchia testified that he treated Podgorica for severe wounds inflicted by a cold weapon. On the same day, June 20, 1684, the proveditor issued a decision to initiate criminal proceedings for this crime and to formally hear the injured Captain. During the hearing, the Captain requested that the eye-witness Vuchsan Ceclich, who was present when he was “treacherously” wounded by Vuchsan Vuchsanovich and Antonio Marcoeovich, also be heard. After considering the request, the proveditor ordered that the proposal be added to the case file and that the witness be heard, approving also the proposal to supplement the evidence by hearing additional witnesses. The proveditor issued a decision ordering that they be summoned by public notice, with the obligation to present themselves within eight days. They were to appear at the court to give their testimony and answer for the criminal offenses of wounding a man and causing bodily injury. Shortly after, the extraordinary proveditor of Kotor, based on his prerogatives and at the request of the Admiral and the entire Navy, decided to suspend further proceedings in this criminal case (DACG, IAK, UPM IV, 92). There was also a case in which the proveditor Pietro Duodo ordered the suspension of criminal proceedings against J. M. This decision was made by accepting the request submitted by the Kotor Navy and its Admiral on the Day of St. Tryphon (DACG, IAK, UPM IX, 851–852). There are also records of another instance where the proveditor determined that further prosecution of the criminal proceedings against Nicolo Davidovich and Marco Coiovich should be suspended. This decision was made on the Day of St. Tryphon, at the request of the Navy and its Admiral, in accordance with the ancient custom granting the extraordinary proveditor the prerogative to pardon criminals on this day (DACG, IAK, UPM IX, 885v).

In scholarly literature regarding the strictness of criminal proceedings and punishment by the Venetian authorities, it is noted that the remedy was brought by the institution that “ordered a stay in judicial proceedings” during the celebrations in honor of the city’s patron, Saint Tryphon. Each year, on February 3, the Venetian government allowed, at the request of the Grand Council of Kotor or the Navy, full pardons and permitted the return of two exiles or bandits. However, it is also noted that the Venetian authorities were cautious regarding criminal offenses of a political

nature, especially in cases where the return of an exile who had committed such an offense could provoke new unrest in Kotor (Milošević, 1948, 304). The Venetian government in Kotor and Albania Veneta was concerned with striking a balance between guaranteeing justice to its subjects and satisfying divergent local interests, while maintaining discipline over its armed forces.

CONCLUSION

This article addresses the early modern public law of Kotor, more specifically its penal law, for which historians and legal scholars so far tended to focus on private law (Bogojević-Glušćević, 2006, 101). Given that the application of criminal law in practice during the analyzed period has not been studied until now, this article, firstly, offers insights into the criminal law norms and institutions, and their application in early modern Kotor. Secondly, the article highlights an important feature of Kotor's legal system, namely that with respect to criminal offenses against life and limb—primarily homicide—despite strict statutory provisions regulating this matter, the influence of customary law long remained very strong. Consequently, judgments in cases of homicide were often issued by Courts of Good Men consisting of twenty-four arbitrators (or fewer, depending on the gravity of the offense), appointed by the conflicting parties, to make peace (*pacificatio*) between them and determine the amount of blood money. Parallel to the perseverance of local norms and institutions, the Venetian archives of Kotor allow us to follow the direct application of Venetian penal law by the Republic's extraordinary provveditor. Kotor's case thus fits the wider pattern observed in Venetian possessions in Terraferma, where the state was able to gradually impose its penal system and procedures while nevertheless preserving local legal frameworks and coopting legal mediation. It is beyond the scope of this article to determine whether the centralizing or the centrifugal forces prevailed in the early modern Kotor and its surroundings, but it is clear that the state, the municipal, and the customary law lived in a delicate symbiosis. This article has drawn only a tiny fraction of the inexhaustible wealth of the old Venetian archive in Kotor as a means of inviting deeper and more comprehensive research.

In conclusion, the examination reveals that there exists considerable archival material on the application of criminal law and punishment in Kotor for the analyzed period. These findings, alongside others which outside of the scope of this article, point to the fruitfulness legal historical research in the archives of Kotor.

KAZNIVA DEJANJA ZOPER ŽIVLJENJE, TELO IN PREMOŽENJE V KOTORJU
(15.–17. STOLETJE)*Jelena ĐURIŠIĆ*

Univerza Donja Gorica, Pravna fakulteta, 81 000 Podgorica, Črna gora

e-mail: jelena.djurisic2@udg.edu.me

POVZETEK

Članek proučuje zgodnjenovoveško javno pravo Kotorja, natančneje njegovega kazenskega prava, medtem ko sta se zgodovinska in pravna znanost doslej osredotočali predvsem na zasebno pravo. Glede na to, da vprašanje uporabe kazenskega prava v praksi v analiziranem obdobju do sedaj ni bilo raziskano, članek najprej ponudi vpogled v norme in institucije kazenskega prava ter njihovo uporabo v praksi v zgodnjenovoveškem Kotorju. Drugič, članek izpostavlja pomembno značilnost kotorske pravne ureditve, in sicer da je kljub strogim zakonskim določbam običajno pravo ohranilo zelo močan vpliv pri sankcioniranju kaznivih dejanj zoper življenje in telo, predvsem uboja. Posledično so sodbe za uboj pogosto še vedno izdajala sodišča dobrih mož, sestavljena iz 24 arbitrov (ali manj, odvisno od teže kaznivega dejanja), ki so jih imenovali sprte strani, da bi med njimi dosegle pomiritev (*pacificatio*) in določile krvnino. Vzporedno z vztrajanjem lokalnih norm in institucij nam beneški arhivi v Kotorju omogočajo spremljati, kako je izredni providur Republike v analiziranem obdobju neposredno uporabljal beneško kazensko pravo. Primer Kotorja se tako ujema s širšim vzorcem, ki ga je opaziti na beneških posestvih v Terrafermi, kjer je država lahko postopoma uveljavljala svoj kazenski sistem in postopke, hkrati pa ohranjala lokalne pravne okvire in kooptirala pravno mediacijo. V okviru tega članka ni mogoče ugotoviti, ali so v zgodnjem novem veku v Kotorju in njegovi okolici prevladovale centralizacijske ali centrifugalne sile, vendar je jasno, da so državno, komunsko in običajno pravo živeli v občutljivi simbiozi. Ta članek predstavi le majhen delček bogastva starega beneškega arhiva v Kotorju, da bi spodbudil globljo in celovitejšo raziskavo tega izjemno pomembnega gradiva o uporabi kazenskega prava in kaznovanja v Kotorju v analiziranem obdobju in doslej ni bilo predmet raziskav. Raziskava je odkrila dragocene podatke o izreku kazni galjotstva, ki v kotorskih statutih ni bila predvidena vrsta sankcije.

Ključne besede: Kotor, 15. stoletje, 16. stoletje, 17. stoletje statut, kazniva dejanja, kaznovanje

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