Criminal offenses and violence in medieval Kotor (1326 - 1337)

Valentina Živković
Balkanološki institut
Srpska akademija nauka i umetnosti
Belgrade, Serbia
e-mail: Valentina.Zivkovic@bi.sanu.ac.rs

The topic of the paper is the analysis of the types of criminal offenses mentioned in the earliest preserved judicial notary documents of Kotor (1326 - 1337), and which are defined and sanctioned by the Statute of Kotor. Protection of interests of the community and principles of good administration were the priorities upon which the criminal justice system of Kotor was based. On the other hand, protection of private property was the most common topic because of which civil litigations were initiated.

Keywords: Kotor, medieval society, criminal justice, *Buon Comune*, violence, deprivation of freedom

The analysis of appearance, type, and socio-historical background of criminal offenses and violent behavior in the medieval Kotor (modern Montenegro) is methodologically and temporally limited by the nature of the preserved written sources. Concerned is the earliest preserved body of judicial notary documents of the county of Kotor (*Catharo*, *Cattaro*) of the period between 1326 and 1337, which also contains a part of penal material, i.e. litigations initiated in cases of minor violations of the provisions from the Statute of Kotor. Due to the type of sources, insight into the crimes and offenses that have occurred during this period in the city and its district is limited. On the other hand, this type of source trial enables us to gain an idea of the dynamic of social relations in the first half of the fourteenth century in Kotor, but also of the attitude of the people of Kotor towards the legal organization of their county. The provisions of the Statute of Kotor represented the socially prescribed framework which connected the community of the urban commune. The backbone around which the criminal legal system of Kotor was formed was the protection of interests and prosperity of the community, and then the protection of personal property.

The matter of criminal law found in the first preserved body of judicial notary documents of the county of Kotor from the period between 1326 and 1337 is made

out of lawsuits initiated in cases of minor offenses such as trespassing with use of force (*violenter*), forceful planting of other people's arable land, disputes over returning borrowed or hypothecated property, disputes over illegal construction, non-compliance with a deadline for settling debt, and litigations over failures to fulfill testament will. Judging from the number of this type of litigations, one would say that they have constituted everyday life in the courtroom of the late medieval Kotor. Brawls and infliction of bodily injuries are more rarely encountered in comparison to criminal offenses of violation of personal property.

Due to the nature of the matter mentioned in these sources, it is necessary to also reflect on the examples of permitted and legitimate use of violence, i.e. physical punishment of binding and holding in dungeons which people were able to carry out in certain situations without a special permission from the court. This most often pertained to cases when housemaids and apprentices would escape before the end of their service or if they would cause some kind of damage to the landlord, as well as when debtors did not possess property which they could have used to settle their debts. In those cases, the other party had the opportunity for *capere et ligare sine curia et aliqua questione*.[1]

In order to gain insight into the nature of criminal offenses mentioned by the Kotor sources from this period, it is necessary to first single out mentions of criminal offenses from the body of notary documents, and then define them by types of offenses recognized and sanctioned by the Statute of Kotor. The research of crime and violence, as well as the society's attitude towards various types of violations of the community statute requires that the results obtained on the basis of analysis of processed archival information are observed in historical and social context, as well as in the context of mentality of population of the environment being examined.[2] I would also like to point out another, not any less important context in which it is possible to observe the appearance and sanctioning of violence and offenses - the spiritual framework of Christian moral requirements which the Church has promoted via religious messages intended for the believers. The spiritual imperative of the late middle age embodied in the religious practice, but also in the everyday life of a believer was the *caritas* idea.

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1 *Statuta civitatis Cathari. Statut grada Kotora*, book 1, ed. Jelena Antović, (Kotor: State archive of Montenegro, 2009, 46-50 (cap. 80), 52 (cap. 83).

2 Modern research and methodology of the history of crime tends towards overcoming the anedoctal approach to this subject, the kind of which was prevalent in the past, and to offer an analysis based on systematically and statistically processed information from the source. On the methodological approaches to the subject of crime in modern historical science: Barbara A. Hanawalt, *Crime and Conflict in English Communities*, 1300-1348, (Cambridge /Mass.: Harvard University Press, 1979); Edward Powell, "Social Research and the Use of Medieval Criminal Records", *Michigan Law Review* 79/4 (1981): 967-978; Sarah Rubin Blanshei, "Criminal Justice in Medieval Perugia and Bologna", *Law and History Review*, 1/2 (1983): 251-275. On crime and violence in medieval Dubrovnik, see: Nella Lonza, "La giustizia in scena: punizione e spazio pubblico Nella Repubblica di Ragusa", *Acta Histriae* 10 (2002): 161-190; Ead, "Tužba, osveta, nagodba: modeli reagiranja na zločin u srednjovjekovnom Dubrovniku", *Anali Dubrovnika* 40 (2002): 57-104; Ead, "Srednjovjekovni zapisnici dubrovačkog kaznenog suda: izvorne cjeline i arhivsko stanje", *Anali Zavoda za povijesne znanosti HAZU u Dubrovniku* 41 (2003): 45-74.

For the topic of crimes and offenses, it is especially important to dwell on the ethical meaning of this concept. Namely, with the principles of emphasizing neighborly love as a prerequisite for maintaining peace, *caritas* represented the moral strength of each *Buon Comune*. The basis for development and functioning of good administration in the urban commune lied in connecting all social layers of the community - both in economical and moral context.[3]

The protection of interests of the community and principles of good administration represent the general idea on which the legal organizations of many late-medieval municipal urban societies were based. Such principles were also used as basis for the statutory legal system of Kotor. The idea of good administration is clearly stated at the very beginning of the Statute, in the provision on the need for election of judges: "The shine of the sublime light has illuminated, by the divine grace, the wishes of our mind so that we can recognize in it that which is beneficial for the preservation of the Republic and which pertains to the healthy state and wellbeing of the Administration of the city of Kotor (*bonum Regimen Ciutatis Catharensis*) and that we pay tribute to God, the Creator, and along with everyday prayers to the Blessed Tryphone, the martyr, strive towards willing and sincere emotions. Therefore we, the Community of the aforementioned city, with the goal of reaching the state worthy of praise and for the better administration of our city, with reason and care determine: that every year, on the Saint George's Day in the Small council, the gathered, according to the custom, at the sound of the bell and invitation from the messenger, by judges and councilors of the Small council and by that Council itself, elect via ballot boxes and pellets three noblemen, trustworthy and loyal men, for the judges of this city," Maintaining of good administration and honor of the community of Kotor (*pro bono statu Cathari Ciutatis*, *ad honorem Communis Cathari*) was an imperative that was often accentuated in various statutory provisions, as in e.g. the contents of the oath which the judges have sworn on the day of their admission into service.[4] On the other hand, the idea of an interconnection between a city and its district (i.e. a countryside) as a prerequisite for a good administration (the idea which has been developed in Italian cities during mature and late middle age) is accentuated in the article pertaining to the election of the duke of Slavs and all inhabitants of the district of Kotor - his obligation is to administer justice *ad honorem Communis*.[5] The *Buon Comune* concept is also accentuated

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[3] On *caritas* principles that were honored in medieval cities, cfr. Robert N. Swanson, *Religion and Devotion in Europe, c.1215–c.1515*, (Cambridge: Cambridge University Press, 1995), 191–234; John Henderson, *Piety and Charity in Late Medieval Florence*, (Chicago & London: University of Chicago Press, 1997), 257, 357–359
Especially interesting is the study in which the ethical principles used in reports on prescription of punishments are scrutinized in the context of a local court of a certain rural community in England: Barbara A. Hanawalt , "Good Governance in the Medieval and Early Modern Context", in *Controlling (Mis)Behavior: Medieval and Early Modern Perspectives*, *Journal of British Studies* 37/3 (1998): 246-257.

[4] *Statuta civitatis Cathari*, book 1, 1-2 (cap. 1), 15-16 (cap. 27).

[5] *Statuta civitatis Cathari*, book 1, 7 (cap. 8) In the first half of the fourteenth century, Ambroggio Lorenzzeti has presented the prerequirements that needed to be fulfilled in order that good administration and

in the provision of the Statute from 1355 pertaining to the parish Grbalj (*Gherbili*, *Çopa de Gherbili*, *Zoppa de Gherbli*) and its significance for prosperity of the medieval Kotor: „*Nos Communitas Catharensis ad sonum campanae ut moris est congregati, pro bono et pacifico statu nostrae civitatis statuimus et ordinamus*..." Also, it has been stipulated that the governors of *Zoppae de Gherbli* are required to tour the entire precinct once per month and accomplish that which will be on the honor and wellbeing of the city (*quod erit honor et bonus status civitatis nostrae*).[6]

The range of the idea of protection of interests of the community is also observed in the statutory provision which forbade a citizen of Kotor to become a bishop in his city, and a priest to become a notary.[7] The priority of interests of the community over the interests of an individual is also identified in the provision on the election of judges: three judges, who were elected for that position every year were not allowed to be most closely related. The law has also prescribed that they could have been awarded the same function only after a period of three years.[8] The same idea also lies in the basis of the low ("That who has one service cannot have another"); "It often happens that some who have multiple services still get elected to receive others, which they are unable to perform properly or beneficially, but to the not inconsiderable detriment and loss of our Community. Therefore, by desiring that our other fellow citizens also receive this kind of services and appropriate honors, we have reasonably deemed that it shall be forbidden than anyone who has or will have one service is elected for another service, or that he can receive it in any way. Only a legal counselor, procurator of a monastery, major captain or captain of a guard can receive another service. We do not plan to forbid that someone who has any kind of service is elected for a sworn judge."[9]

In the stated examples from the Statute of Kotor, strong expressions of endeavor which the medieval society of this small city was investing in order to legally place the interests of the community above the power of individual people and families should be seen. How big the endeavor to keep peace within the community was is also demonstrated by the fact that even all possible quarrels and intrigues between the citizens of Kotor were sanctioned because they caused damage to the city: "As disputes and arguments often occurred between citizens (*discordiae, & rixae*),

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prosperity reign in a single city community with a picture. On the *Buon Comune* idea and the picture, see Diana Norman, '"Love justice, you who judge the earth': the paintings of the Sala dei Nove in the Palazzo Pubblico, Siena", in *Siena, Florence and Padua: Art, Society and Religion 1280–1400*, vol. II, ed. Diana Norman, (New Haven: Yale University Press, 1995), 145–167.

6 *Statuta civitatis Cathari*, book 1, 236 (cap. 413, 414)

7 On the statutory provisions and issues related to the election of bishops in medieval Kotor, see *Историја Црне Горе* 2/1, (Титоград: Редакција за Историју Црне Горе, 1970), 92-93; Jovan J. Martinović, *Crkvene prilike u Kotoru prve polovine XIV vijeka*, (Perast: Gospa od Šrpjela, 2003); Lenka Blehova Čelebić, *Hrišćanstvo u Boki 1200-1500*, (Podgorica: Pobjeda - Narodni muzej Crne Gore - Istorijski institut Crne Gore, 2006), 47-50, *et passim*; Валентина Живковић, "Претње казном изопштења у Котору (XIII – XV век)", *Историјски часопис* LX (2011): 123-138.

8 *Statuta civitatis Cathari*, book 1, 1-2 (cap. 1).

9 *Statuta civitatis Cathari*, book 1, 13-14 (cap. 22).

because of which intrigues and damages occurred in the City (*scandala, & damna*), we determine that whenever a dispute or quarrel occurs between some parties, judges in force have authority that without a bell announcement set a fine which amounts to up to fifty perpers to those between whom a quarrel has emerged."[10] On the other hand, the Statute of Kotor placed the traitor of the community at the very top of the most severe crimes. *Inimicus totius civitatis* was punished with an eternal exile from the territory of Kotor, his house was demolished to the ground, and all of his other goods were divided among the city folk. According to the Statute, exile as punishment was applied only in case of treason and did not foresee a possibility of amnesty, not even by the duke.[11]

On the way in which the citizens of Kotor have accepted the priority of respecting the statutory principles and interests of the community, what is especially interesting is the testimony provided by the vocabulary used in lawsuits and offenses recorded in the judicial notary records of the county of Kotor. One such document, invaluable in regards to the way in which the priority respect of the statute of the community was expressed, is the document written by the notary of Kotor in the month of November of 1335. Namely, France Vaclescia has, in front of the judges, reprimanded *Lose Çopto*, who has, at the time, performed construction works on his home, in regards that he should take into account to not construct doors, windows, and balconies opposite of his. To this, *Lose* responded that he was not intending to do that what is in opposition to the statutory provisions: „*Nec ego volo facere contra statutum*."[12]

The criminal law norms of the Statute of Kotor sanction ten types of criminal offenses: murder, poisoning, rape, theft, robbery, blasphemy, treachery, infliction of bodily injury, misdeeds committed while performing official duty and misdeeds against legal trade, production, and traffic.[13] The criminal law provisions in the Statute of Kotor were created in dependence on specific needs which were imposed in practice, which is indirectly described by the fact that provisions were not systemized, but were instead located in various places in the statute. New statutory provisions were entered into the statute only when a certain criminal offense would endanger interests of the community and government. It needs to be emphasised that not every offense from

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10 *Statuta civitatis Cathari*, book 1, 35-36 (cap. 60).

11 *Statuta civitatis Cathari*, book 1, 227 (cap. 398).

12 The judges have also extended this ruling on an appeal which was filed against *Lose Çopto* by *Radogost de Dudici*, see *Kotorski spomenici. Druga knjiga kotorskih notara god. 1329, 1332-1337*, ed. Antun Mayer, (Zagreb: JAZU, 1981), 946. (hereafter referred to as: MC II).

13 The analysis of the criminal statutory provisions of the Statute of Kotor was conducted by Nevenka Bogojević – Gluščević, "Krivično pravo u srednjovjekovnom kotorskom Statutu", *Revija za kriminologiju i krivično pravo* 42/ 2 (2004): 33-70. The author establishes the characteristics of criminal provisions, the criminal offenses that were tried for, and the system of punishment. The criminal law of medieval Kotor was essentially repressive - the statutory regulation punished and intimidated, and prevention was almost non-existent - norms can be characterized more as norms of punishment than criminal law. On criminal provisions, see Илија Синдик, *Комунално уређење Котора. Од друге половине XII до почетка XV столећа*, (Београд: САН, 1950), 122-127.

the domain of the criminal legal material was sanctioned by the statute. For many offenses, valid norms of common law, i.e. customary sanctioning of offenders existed. Everything that did not represent a problem in everyday practice was located outside of the Statute's regulatory.[14] A difference between public and private lawsuit was made - those who were a danger for society in general were called *publicus latro*, while everyone else were a *malefactor*. For a criminal offense, two terms are encountered in the statute: *iniuria* and *maleficium*. For an offense committed against nobility, the term *maleficium* was used, and against a lower class, it was *iniuria*. Namely, the judges had a statutory instruction that during trial and deciding on a sentence, they had to take the social status of people who were on trial into account. Three types of *maleficium* are mentioned: with fatality (*maleficium ad mortate*), with infliction of bodily injuries (*maleficium personale ad membrum*), and against property (*maleficium pecunarium*).[15] For the most severe offense - murder - penalties differed and were dependant on the situation in which the murder was committed, as well as on the social status of a victim and murderer. As evidence for establishing culpability of person accused for murder, identical statements from two witnesses were required. In the selection of application of the most severe punishment, expression of inviolability of interests of the community and protection of rights of its citizens needs to be seen. Namely, the death penalty (hanging for common folk, i.e. beheading for nobility) would follow for anyone who would murder *cives et habitatores Cathari*, i.e. a citizen of Kotor who has continuously lived in the city for ten years and paid provided taxes.[16] Those who would commit a murder in necessary self-defense or would kill a thug who broke into their house were not punished.[17]

Due to the nature of the sources, only one case of murder is directly referenced in the judicial notary documents. *Deua*, the widow of Stepan from Budva (*de Budua*) has in 1334 received a promise from the cobbler *Miloslauus* that he will stop harassing her son *Iohannes* with accusations of murder because it was proven that he was innocent in court.[18]

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14 Thus, in the second half of the fourteenth century, multiple provisions which punished violations of property relationships of the nobility of Kotor, especially the land it owned in the city's surroundings. Also, the legal possibility to use analogy or custom in resolutions of litigations at court was permitted by the statutory provision of general character, see N. Bogojević – Gluščević, "Krivično pravo", 36.

15 N. Bogojević – Gluščević, "Krivično pravo", 37, 39, 43-44.

16 *Statuta civitatis Cathari*, book 1, 56-57 (cap. 92).

17 *Statuta civitatis Cathari*, book 1, 76 (cap 118). The same also held true in case a foreigner would murder a foreigner. On the other hand, a fine which amounted to 500 perpers was prescribed in case a citizen of Kotor would murder a fellow citizen who has not lived in the city for ten years. If a citizen of Kotor or someone else would murder a foreigner, the personal principle of law application applied, and an application of punishment according to laws of the city from which the murder victim originates was prescribed, see N. Bogojević – Gluščević, "Krivično pravo", 44-47.

18 MC II, 615 (October 23rd, 1334).

The Statute of Kotor has stipulated penalties for intentional bodily injuries of another person in a physical manner (real injuries). Injuries inflicted with the use of tools (*cultellum*), knife, or a weapon (*spatam*) were penalized with a higher fine than those inflicted with club, piece of wood, or a rock (*macia, ligna vel petra*). While deciding on a sentence, the severity of injuries was taken into account, and the fine has varied depending on whether blood was spilled, whether or not scars were present, and whether the attacked person has lost some of its extremities. The basic rule that was followed was that the person who strikes first was the one who pays the fine. A failed attempt, raising a hand to attack, an attack without any spillage of blood, as well as knife-pulling without a strike were also penalized.[19] How that has looked in practice is evidenced by three lawsuits filed to the court of Kotor for infliction of physical injuries. In 1327, the messenger of the county of Kotor (*riuarius communis Catarensis*), *Stoyan Golie* has sued *Peruoye, Brathoslauo et Bratteco fratres, filios Cecusse*, for heavily beating and injuring him at the time he, by the order of judges, has went to perform a duty. Stojan's statement reads: "*Me eunte de mandato nostrorum iudicum ad exequendum officium meum, sicut moris est, dicti Peruoye, Bratohoslauo et Brattheco me fotiter uerberarunt. Volo ergo, quod venumdentur secundum formam statuti*." After *Stoyan* has validated his accusation in front of the accused, the court has stipulated a fine which amounted to 30 perpers for them.[20]

In the month of April of 1333, two lawsuits filed for infliction of bodily injuries were on the court agenda on the same day. *Gregorius Guimanoy* has sued Priboy, servant (*famolum Belle Iohannis*), for smashing the head of his gardener with a rock and bloodying him (*ververauit [h]ortulanum meum predictum etfregitsibi capud usque ad sanguinis effugionem sum uno lapide*). The court has decided that the accused, who has ignored the lawsuit, shall be punished *secundum formam statuti*.[21] The other lawsuit was filed by the wife of *Iura Cuciman* against another wife of *Bugussa* (*Bugusia*), former servant of *Bella Iohannis Dragonis*. She has accused her for forcefully entering her house and beating her up: „*Intrasti domum, in qua sto, violenter et verberasti me, volo ergo, ut venumderis secundum formam statuti*." Although *Bugussa* has denied her claims („*Nescio, quid dicis*."), after confirmation by the witnesses, the court has fined *Bugussa* with 24 perepers *secundum formam statuti*.[22]

Insult was also sanctioned as a criminal offense by the Statute of Kotor. A difference was made between insulting by acts and insuling by words, whereby insulting by acts was sanctioned with a penalty twice as large. Verbal *iniuriae* - violations of honour and reputation of a person (insulting) were treated as a separate kind of offense an

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19 *Statuta civitatis Cathari*, book 1, 54-55, 58, 75-76 (cap. 89, 90, 93, 116, 118). Special legal provisions pertained to brawls of *Sclauus, vel Albanensis* (cap. 117), then to servants' brawls (cap. 119, 120), and multiple times larger sentences were applied for hittig vicars and riparias (cap. 85, 86). On legal regulations pertaining to these criminal acts, see N. Bogojević –Gluščević, "Krivično pravo", 52-53.

20 *Kotorski spomenici. Prva knjiga kotorskih notara od god. 1326-1335*, ed. Antun Mayer, (Zagreb: JAZU, 1951), (hereafter referred to as: MC I), 290 (May 11th, 1327).

21 MC I, 1124 (April 10th, 1333).

22 MC I, 1094 (April 10th, 1333).

were punished according to the same rules applicable in cases of bodily *iniuriae*. The largest fines were intended for the cases of insulting of judges and notaries.[23] In the body of judicial notary documents, only one case of insulting of notary is encountered. Specifically, the court of Kotor has issued a license to city captains, *Theodorus Gige* and *Marinus Mechesce* to claim payment from a citizen of Dubrovnik *Dome Marini Mence de Ragusio* for his insult (*pro iniuria*) against the notary of Kotor. Also, the court has authorized the captains to imprison (*capere in persona*) *Mence* in case he refuses to pay the fine.[24]

For blasphemy (*De blasphemantibus Deum*), the citizens were, in Kotor, trialed in front of a secular court - the penalty was of monetary nature (i.e. a fine), and in case a defendant was unable to pay, physical punishment of bindng to a column was applied (*ligetur ad columnam*).[25]

After murder, the most severely penalized offense by the Statute of Kotor was theft. Theft and robbery were two of the biggest offenses against property and both have been accurately addressed in the Statute with a pronounced desire to define every disputable situation in practice. The protection of property and material interests of the nobily had priority. Theft (*furtum*) was regulated by cap. 107 – *De furtis factis in Ciuitate et districtu Cathari* – a difference between *fur manifestus* (caught in the act) and a situation when there was no direct evidence of seizure of someone's property (*fur nec manifestus*) was not made. Even just an attempt of theft was punished in the same way. If a theft was committed by a clergyman, the perpetrator would be punished by a bishup and not a secular court (cap. 106 – *De Clerico inuento in furto*). Penalties for thefts were fines (triple the amount of the value of stolen goods if a perpetrator committed a theft for a first time), and if a fine would not be paid, the thief was incarcerated in a county prison until fulfillment of obligation towards a damaged party and would be whipped for theft across the city (for theft up to five perpers), and for a bigger theft (twenty-five perpers), the perpetrator was also seared (*frustetur ut bulletur*). Physical punishment for theft of twenty-five to fifty perpers (if a fine was not paid) was a removal of an eye, removal of an eye and hand amputation for theft of fifty to hundred perpers, and for theft of over a hundred perpers, removal of both eyes and amputation of both hands. In case a thief was caught in the act of theft for a second time, he was obliged to pay an amount six times greater than the value of stolen goods, and physical punishments in case of non-compliance were stricter and for a theft of over a hundred perpers (if the fine would not be paid), the thief was sentenced to death by hanging. Torture as means of proof was permitted

[23] *Statuta civitatis Cathari*, book 1, 27, 52, 75 (cap. 41, 84, 115); N. Bogojević – Gluščević, "Krivično pravo", 53-54. On verbal insults in Dubrovnik, see Zdenka Janeković-Römer, *Okvir slobode. Dubrovačka vlastela između srednjovjekovlja i humanizma*, (Zagreb-Dubrovnik: HAZU, 1999), 256-264; Невен Исаиловић, "Два документа из XV века о вербалним деликтима Дубровчана и Босанаца", *Мешовита грађа (Miscellanea)* XXXI (2010): 23-38.

[24] MC II, 1013 (April 13th, 1336).

[25] *Statuta civitatis Cathari*, book 1, 59 (cap. 97).

by the Statute of Kotor in cases of murder and theft of over five perpers. Armed theft was regulated by cap. 105 – *De publicis latronibus*. A robber was considered a person who was publicly caught in grand theft, and a stipulated penalty for that act was the removal of eyes.[26]

Minor cases of theft are encountered in judicial notary documents. *Triphon Buchia* has filed a lawsuit against artisan *Henricus*, the locksmith, because the latter had an obligation to pay a certain amount of money to his former assistant *Radomirus*. Namely, *Radomirus* was handed over to *Triphon Buchia* in order to compensate for theft (*pro satisfactione furtii*) which he has committed in Tripun's house. Artisan *Henricus* has admitted that he owes his assistant twenty-eight perpers, but that, according to the contract they have signed, the assistant had to serve him for two more months. The court has ruled that *Henricus* has to pay his debt to *Triphon* within six months.[27]

Refusal to return borrowed items was also treated as theft. *Nutius Gille* has asked *Basilius Marci* to return his silver belt (*unam centuram argenteam*). As *Basilius* has ignored the court summon and went to Dubrovnik, the judges have allowed *Nutius* to enter his estate and seize twice the value of the belt.[28]

In judicial notary documents of the county of Kotor, lawsuits filed because of two types of offenses stand out as most numerous: cases related to agricultural relations and cases of failures of debt settlement. The first type of offenses was carefully elaborated in the Statute of Kotor, which is testified by the fact that the inviolability of properly had a clear priority in the Statute of Kotor.[29] In the context of this category of offenses, citizens of Kotor have most often filed lawsuits in following cases: violent trespassing, displacement of boundaries, cutting of trees and nursery gardens, and unauthorized picking of fruit (most often grapes, used for winemaking). It should be noted that an abuse of judiciary also existed and that judicial proceedings were sometimes initiated for revenge or resolution of personal disputes which were not directly related to the lawsuit.[30] In Kotor documents, such cases would possibly firstly be hidden in particular lawsuits initiated for trespassing, especially in cases for which judges would determine that such actions have not occurred.

Linguistic terms used by plaintiffs for describing criminal offenses on their property were most often: violently and secretly. *Budoye Stanche* has presented the fact that his wineyard was harvested to the judges in such a way. *Budoye* has sued two

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[26] N. Bogojević – Gluščević, "Krivično pravo", 50, 54-58.

[27] MC II, 967 (January 24th, 1336).

[28] MC I, 1099 (April 10th, 1333).

[29] A special provision made in 1368 sanctions the offense of theft committed by peons on nobility's estates. The prescribed punishment for this type of offense was the reparation of all damages to the owner and public whipping across the city (cap. 214, *De Poluinicis vinearum*). The date on which the provision was made is connected to the time of social turmoil and disturbances between nobility and serfdom, Nevenka Bogojević – Gluščević, *Svojinski odnosi u Kotoru u XIV vijeku*, (Nikšić: Univerzitetska riječ, 1992), 154-242.

[30] Such abuse of judicial procedures in Italian cities in late middle age was the subject of writing of Trevor Dean, *Crime and Justice in Late Medieval Italy*, (Cambridge: Cambridge University Press 2007).

women (wives of *Petrus* and *France de Sabe*) for harvesting grapes in his vineyard in a *violenter et furtiue* manner. The defendants have denied that by claiming that their mother-in-law did that. The judges have ordered the defendants to return the wine that they have made from Budoye's grapes to him, and that the defendants are to be punished according to the provisions prescribed by the Statute.[31]

Due to linguistic terms which were used by plaintiffs who wanted to use them to explain controversial situations to judges, one dispute over a vineyard is particularly interesting. *Dragoslaus de Miloie* has sued *Petrus de Gosti* for cutting down his nursery grapevines. On that occasion, *Dragoslaus* told the judges that the nursery garden was in possession of his ancestors "since the beginning of the world" – *quod fuit antisisorum meorum ab inicio mundi*. *Petrus* has suggested an investigation: „*Eamus ad locum*." The judges have, due to a lack of time, postponed the litigation for the next selection of judges.[32] Even though judges of Kotor have, during their taking of the oath, obliged to resolve cases in a timely manner and not postpone them, that was not what happened in practice. In the month of April, when the end of service was near, numerous lingering litigations were opened, and resolution of those disputes was most often postponed for the next selection of judges who were elected on the Saint George's Day. The reason cited for such behavior was - a lack of time. The fact that lawsuits are not encountered as recorded in judicial notary documents for a long time, after which they are grouped in an immensely large number in a few days in April[33] certainly speaks in favor of a presumption of deliberate postponement of trials. Only the simplest cases were resolved. Consolidated lawsuits were mostly those related to forced entries into other people's properties. Two lawsuits that the judges have postponed on April 16th, 1330 can be singled out as examples. The lawsuit filed by the priest *Petrus Sarani*, (*archidiaconus Catari*) archdeacon of Kotor against *Micho Cragui* is particularly picturesque for this topic. The archdeacon has accused *Micho* for forcefully entering (*intrasti violenter*) the house of his brother *Damianus* which was entrusted to the archdeacon *Petrus* by breaking down the door (*ianuam eius fregisti*). After that, he has also forcefully entered into Damian's vineyard. The reason because of which the archdeacon *Petrus* has filed the lawsuit is the fact that the house and the vineyard were entrusted to him. On the other hand, *Micho* has claimed that his brother has left the contentious house and wineyard to him: „*Predictam domum et vineam dedit michi dictus frater meus, tibi non facio raçionem*." It should be noted that the priest *Petrus Sarani* has also appeared in the function of epitrop in testaments which the citizens of Kotor have used to leave their property *post mortem*.[34]

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31 MC II, 1072 (December 4th, 1336.) The act of cutting a vineyard was sanctioned with several legal provisions in the Statute as a criminal offense, see *Statuta civitatis Cathari*, book 1, 51, 70-71, 74 (cap. 82, 110 i 114).

32 MC I, 529 (April 17th, 1330).

33 MC I, 515 – 539 (April 16th and 17th, 1330).

34 MC I, 520, 718; MC II, 906.

Another lawsuit that was postponed that day was filed by *diaconus Sergius, filus condam Nuce de Goni* who has sued *Johannes condam Nicolai Dabronis* for devastating his land in *Coruese*, planting nursery vines on it, setting boundaries, and cutting down his fig tree. *Johannes* denies the accusations by claiming that the contentious land is his and that it has been ceded to him by the capitol of Saint Tryphon.[35]

In the first half of the fourteenth century, citizens of Kotor have mostly demanded judicial resolution of disputes relating to property, and cases in which two parties would resolve their dispute and settle without application of punishments were rather rare. One such case has occurred between *Johannes Basilii* and *Sergius* of the late *Triphonis Iacagne*. *Johannes* has sued *Sergius* for moving the boundary on his land on Šuranj (*Surana*), thus assuming his walnut tree, after which he sent water to his part. In regards to that accusation, *Sergius* has asked the question: „*Usque quo est tuum*?", and *Johannes* has responded: „*Usque ad capud macerie*." Then, *Sergius* said: „*Firma secundum formam statuti, et sit tuum*." In order to not take oaths, the two parties settled among themselves (*concordati sunt inter se*), and the court has approved of that.[36] However, this dispute has had its prehistory in which it is possible to ascertain the reasons for conclusions of an agreement between *Johannes* and *Sergius*. Their dispute started three years before conclusion of agreement on the contentious land. Back then, the lawsuit against *Sergius condam Triphonis Iacagne* was filed by *Johannes Basilii*, *Palma filius Luce Basilii*, and *Marcus filius Basilii*. However, this case was one of those that have entered the agenda in the month of April and which the court has postponed "due to a lack of time". The lawsuit against *Sergius* was identical - members of the *Basilius* family claimed the defendant has moved the boundaries and sent water to their lands and asked for compensation and punishment. *Sergius* has denied the accusations: „*Maceriem in loco non posui et aquam non revolvy*."[37] It can be assumed that the agreement between the parties was aided by the fact that a timely reaction from the court has not occurred.

Also one of the more numerous types of offenses in regards to agrarian legal relations were the lawsuits for cut trees. Through her attorney, a noblewoman of Kotor *Jelena filia condam Medoscii Dragonis* has sued *Micho Base Pelegrina* for cutting down the trees in her wineyard and moving her boundaries. After the judges have performed an investigation, they have prescribed a punishment to *Micho* in accordance to the statute. On the same day, *Jelena Drago* has sued *Micho Pelegrina* for obstructing the path in the same vineyard.[38]

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35 MC I, 522.

36 MC I, 1111 (April 10th, 1333).

37 MC I, 521 (April 16th, 1330).

38 MC I, 1032, 1033 (July 28th, 1332). All immovable and movable property was listed in detail by *Jelena Drago* in her testament. On the contents of her message, with a special emphasis on testaments for salvation of the soul, see Валентина Живковић, "Последње завештање которске властелинке Јелене Медошеве Драго", *Историјски записи* LXXXV/1-2 (2012): 37-48.

Presbyter *Johannes Sestani* has called the judges to come to his garden and see for themselves that seventeen trees have been cut down: „*Domini iudices, rogo vos, quod detis michi vicarium, ut veniat ad [h]ortum meum extra fluuium visurus dampnum michi per aliquos ibidem factum de incisione arborum*." After the judges have gone to the garden and saw the cut trees, the presbyter has accused *Grube filius Stanoye* who has denied that. After the judges have questioned the witnesses, they ruled that *Grube* has to pay compensation and be punished according to the statute.[39]

Among frequent violations of property, cases in which a forceful entry into other people's property is followed by planting on arable areas also appear. Due to this type of offense, *Prouce de Vraneo* has filed a lawsuit against *Gregorius Gimanoy* (*Intrasti in terras meas... et detines illas violenter*.)[40] *Nuce, uxor condam Donatus de Bugon, et cum tota societate sdrebi de Gherbili*, has sued *Marinus* of the late *Micho Vrachien* for forcefully entering their lands (*violenter intrasti laborando eas et recipiendo fructus ipsarum sine voluntate societatis*.)[41]

By respecting the statutory provisions, judges demanded that the person which claims that the land is his backs up his claim with a title deed which he was supposed to verify with an oath and a signature. The method of taking the oath was also prescribed by the statute. Namely, for estates inside the city, that who owes an oath had to take it along with twelve of his best and closest persons (but not father for son and brother for brother, unless they are separated by property). What is particularly interesting is that the person swore by the souls of those who are taking the oath.[42] Such was the case when *Russinus Pimme* has sued *Marcus*, son of *Basilius Marchi* for entering his estate. For that, the judges demanded: *Firma cartam tuam per sacramentum et recipias dictum factum*.[43] In case that the suing party did not want to take the oath when its property was in question, the court would reject such a lawsuit. That happened to *Matheus*, archpresbyter of Kotor, who has sued *Matheus Iacagne* for taking over his wineyards and nursery garden. After refusing the request of the judges to support his lawsuit with an oath (*Firma secundum staututum et sint tua*.), his lawsuit was rejected.[44]

A special issue is the punishment of deprivation of liberty. It was rendered by a court for the convict until payment of fine or in case of an investigative procedure for more severe criminal offenses, but it was rarely applied in everyday practice. The reasons for that lied in the fact that the prisoners presented a large economic burden

39 MC I, 351 (July 6th, 1327).

40 MC I, 533 (April 17th, 1330). A special provision (cap. 284.) was used to sanction a criminal offense of someone planting on land disputed by another party, see *Statuta civitatis Cathari*, book 1, 158.

41 MC II, 1018 (April 14th, 1336).

42 For estates outside of city, it was asked that six of the most loved and best ones swear an oath of the party which owes an oath, see *Statuta civitatis Cathari*, book 1, 72-78 (cap. 121, 122).

43 MC II, 953 (November 4th, 1335).

44 MC II, 952 (November 4th, 1335), 970 (November 19th, 1335) It is prescribed in the Statute that when a cleric has a litigation in front of a secular court, he has the same obligations in front of a court as laymen have when they have proceedings among themselves, *Statuta civitatis Cathari*, book 1, 44 (cap. 75).

to the county. Because of that, the so-called personal confinement in prison (*in carcere*) was resorted to much more often. That was a permission which the court would give to the party which won the dispute in civil cases about debt settlement. The convict was incarcerated until complete debt settlement.[45] What is more often encountered in judicial notary documents is the application of statutory provision that one is to come into possession of twice the value of the unsettled debt, but also granting of permission for application of *capere in persona* punishment. *Magister Darde Viliforio* has sued *Marinus condam Siriaçi* from Kotor for not keeping to his end of the deal and handing over silver and gold to *Marinus* from Bar which was entrusted to him by *Darde* in Bulgaria when *Marinus* was coming back *de partibus Rasie* (medieval Serbian state). *Marinus* has stated that he has burried the treasure, but that he did not find anything once he came back (*Et veniens ad locum non inveni nichil*). The court has ruled that *Darde* can keep *Marinus* incarcerated (*teneat illum in carcere*) until he returns silver and gold.[46] Innkeeper, husband of Miloslava (*Tauernar, vir Miloslaue*) borrowed money from *Matheus de Iacana* and, on that occasion, obliged to return the debt until the Saint Michael's day, and that otherwise, *Matheus* can personally imprison him and hold him until he pays (*Si non autem, quod possit me capere in propria persona et detinere, donec dictos perperos integre persoluero*).[47] Stonecutters, *magister Çuppanus petrarius* and his son borrowed money from *Marinus Golie* and promised that if they do not return the money by the agreed deadline, *Marinus* will have the right to incarcerate them until debt settlement.[48] *Chitun Scegotich* owed 2000 of cut stones for construction to *Domagna Base de Salue*. If he would not return the debt, *Domagna* had the right to *capiendi me, ligandi et carcerandi sine curia et aliqua questione*.[49] *Negoslavus* has obliged to return the debt to *Petrus Cathene*, otherwise the latter had the right to incarcerate him and take away all of his property without a special permission from the court.[50]

The same punishment was also given by the judges in the context of particular lawsuits. *Thomas de Bugon* has sued *Micho de Gemberos* for not paying his debt. As Miho has ignored the summon, the judges have decided that *Thomas* is to enter into his estate for double the value of the debt *secundum formam statuti*. If he has no estate in which one could enter, the judges have allowed that *Thomas* can personally incarcerate *Micho - posit ipsum Micho capere in propria persona*.[51]

In judicial documents of the county of Kotor, examples of permissible use of violence which artisans were allowed to utilize against their disobedient apprentices

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45 *Statuta civitatis Cathari*, book 1, 46-50, 52 (cap. 80, 83) On this sentence, see N. Bogojević – Gluščević, "Krivično pravo", 63-64. On debtor's detention in medieval Serbia, see Сима М. Ћирковић, "Дужници и дужнички затвор у средњовековној Србији", *Прилози КЈИФ* 70, св. 1-4 (2004): 3-25.

46 MC I, 560 (February 1st, 1331).

47 MC I, 596 (April 17th, 1330).

48 MC I, 249 (December 23rd, 1326).

49 MC I, 842 (December 9th, 1331).

50 MC I, 1274 (May 26th, 1335).

51 MC I, 531 (April 16th, 1330).

are found. The punishment an artisan could use to sanction faliure of contracted obligations and transgressions of his apprentices was personal incarceration in some sort of a dungeon. Judging from the sources, such permitted violence was known only to certain professions (carpenters, stonecutters, tanners...). It should be noted that this part of the contract is not encountered among artisans that occupied higher social classes such as, for example, jewelers. When *Braylus filius Dobrichine* has obliged to learn carpentry from artisan *Nycola*, son of artisan *Johannes Vechia*, he also had to accept the following part of the contract: if *Braylus* would escape, the artisan had the right to, without a special permission from the court, capture him, incarcerate him, bound him (*Nycolaus habeat potestatem capiendi me et ligandi sine aliqua curia*) and fine him with 30 perpers.[52] A similar sanction was also found in the contract signed by *Stepan*, son of *Criuosie* from Bar (*de Antibaro*), when starting his work with the stonecutter *Angelus* of the late *Laurentius* from Zadar (*de Iadra*) on a year-long period. In case *Stepan* was to escape of cause damage, the artisan *Angelus* had the right to bound him.[53] *Niycola* from Drač (*de Durachio*), son of the priest Andreus de Albania, obliged to serve *Niycola* the blacksmith (*ferrario*) for two years and that he will not escape, under the punishment of incarceration (*quod si fugerem ab eo infra dictum tempus, ipse possit me personaliter capere ubicumque*).[54] A certain amendment to this kind of contract is found in a document according to which Marinus has committed himself to learn the leather trade from artisan *Crestol*. Apart from the provision that in case of apprentice's escape, the artisan has the right to incarcerate him without any kind of permission from the court, it has been added that the master's word always has to be trusted (*et suo simplici uerbo sit plene danda fides*).[55] Permitted use of personal incarceration is also encountered in certain contracts signed by servants. *Milloye Radinouich de Morigne* (Morinj) has employed his daughter *Iagoda* as a servant of *Matheus Iacagne* for six years for food and suits, and if she was to escape *eam possit capere et ligare sine curia et aliqua questione*.[56]

Permitted use of violence without initiation of a lawsuit was also possible in other cases when two parties would agree with such a contract provision. Such a possibility for dispute resolution without a court had to be specifically accentuated in a contract. *Marinus Mirabule* has issued land of the late *Paulus de Bari* to *Bogdanus*, servant of the late *Grube Ursi* so he can build a house. If he would not repay in time, *Marinus* could have evicted him without a special permission from the court (*possim eam expellere sine curia et aliqua questione*).[57]

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52 MC I, 115 (October 14th, 1326).

53 MC II, 1185 (August 5th, 1335).

54 MC II, 271 (February 7th, 1333).

55 MC II, 1505 (March 9th, 1337).

56 MC II, 1644 (April 7th, 1336).

57 MC I, 916 (February 4th, 1332).

Disputes about unsettled debts were most often resolved in court. Aside from disputes about agrarian legal issues, this type of cases is most frequent within the preserved material in question. Lawsuits for unsettled debt were most often followed by stipulated punishments when the accused party would ignore a subpoena.[58] In the same day, *Matheus Triphonis Iacobi* has sued first *France* son of the late *Sabe Petri*, and then, together with his brother *Sergius*, he has also sued *Luca Marci de Gosti* for unsettled debts. The court has ruled that given how they have ignored the subpoena, *Matheus* has the right to enter their estate.[59] *Micho Buchia* has, on the same day of July 24th, 1335 sued two debtors for unsettled debt in the amount of six hundred perpers and the court has allowed him to enter their estates and claim double of that amount.[60]

One document was particularly interesting because it unambiguously speaks of the background of the issue - failure to settle debt due to frequent drinking in inns. Namely, *Andreas faber una cum uxore mea Rose* has stated that the two has lent their anvil (*encusenem nostram*) from *Petrus Cathena* which they have previously hypothecated with him for ten perpers. *Andreas* promised *Petrus* that he will not drink in the inn, except on holidays (*Preterea ego dictus Andreas obligor dicto Petro non potare in taberna preter die festiuo*). On the contrary, Petar can fine him with two perpers without special permission from the court.[61]

This example also speaks of a certain aspect that is encountered in judicial notary documents less frequently, which is accentuating of that what is personal on one side and direct intrusion of authorities into privacy in case when it represented an obstruction for operation of typical business on the other side.[62] The agreement between smith *Andreus* and *Petrus Cathena* speaks of confidence of citizens of Kotor that the deal between two parties, crowned by a notary document certified at court can resolve a wide variety of issues, even those caused by someone's drunkenness. The document represents a clear testimony of the trust of citizens of Kotor in documents certified at court and possibilities which the judges had in Kotor in the first half of the fourteenth century. It should not be forgotten that accentuating of privacy, i.e. a personal issue of debtor, has occurred in the function of preservation of private

58 The largest number of litigations were initiated by Venetians against indebted citizens of Kotor which did not have the money to pay back their debts and were losing their properties because of that, see MC I, 446-448, 500, 502, 509, *et passim*. The following have written on Italian merchants in Kotor: Bariša Krekić, "Venetian Merchants in the Balkan Hinterland in the Fourtheenth Century", in *Wirtschaftskräfte und Wirtschaftswege. Festschrift für Hermann Kellenbenz*, vol. I, Mittelmeer and Kontinent Beiträe zur Wirtschaftsgeschichte 4, (Stuttgart: Klett-Cotta, 1978), 413–429; Ружа Ћук, *Србија и Венеција у XIII и XIV веку*, (Belgrade: Посвета, 1986).

59 MC I, 367, 368 (August 1st, 1327).

60 MC II, 928, 929 (July 24th, 1335).

61 MC II, 541 (July 18th, 1334) On inns in the medieval Dubrovnik and especially mentions of crimes in them, see Gordan Ravančić, *Život u krčmama srednjovjekovnog Dubrovnika*, (Zagreb: Hrvatski institut za povijest – Dom i svijet, 2001).

62 On intertwining of that private and public in the medieval Kotor, see Валентина Живковић, "Котор – модел касносредњовековног града", in *Приватни живот у српским земљама средњег века*, (Београд: CLIO, 2004), 80 -110.

property. Protection of property relations and movable and immovable property was a priority because of which most litigations recorded in the body of judicial notary documents in the period from 1326 to 1337 have been initiated in front of the court of Kotor. Standing above personal interests was the municipal organization of the county of Kotor and its emphasizing of priority of protection of good administration and welfare of the commune in the contents and form of statutory legal provisions.