

BANISHMENT FROM HOME IN SERBAN MEDIEVAL HISTORY*

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Abstract. *Banishment from home is an old type of punishment, which was mainly used in regulating family relationships. It was first recorded in the Hammurabi's Code and subsequently envisaged in other legal systems. The first record of this punishment in Serbian legal history dates back to the medieval times, when King Stephen the First-Crowned banished his wife Eudokia for adultery. It was also recorded in the second Charter of Ziča, in Emperor Dušan's Code, in the abridged version of Mateus Blastares' Syntagma Canonum, and in the Code of Justinian, but not always as a form of punishment. It was more frequently envisaged in the medieval statutes of the Adriatic Sea coastal towns of Kotor, Budva and Skadar. Although it served various purposes, banishment was often used as a form of punishment. It was a common form of punishment for widows and widowers who failed to act on a pledge or failed to take proper care of the deceased spouse's property. It was also applicable in cases when parents (usually the father) wanted to punish their children for disobedience or failure to perform the duties they were expected to perform.*

Key words: *banishment from home, wife, children, the Kotor Statute, the Budva Statute, the Skadar Statute*

INTRODUCTION

Banishment from home is a social phenomenon that has been around from the earliest human history. Notwithstanding its prevalence and longevity in both time and space, this phenomenon has not been substantially researched by criminal or civil law scholars, either in terms of its civil and criminal law regulation or as a form of social conduct or penalty primarily used in family relations. Theodore Taranovsky, who wrote most extensively about punishment in the Serbian medieval state, never mentioned banishment from home as a form of punishment. It was not part of his commentary on a similar punishment of exile which was followed by forfeiture of property (dowry) (Тарановски, 1931: 50-53),

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nor was it part of his writings on church punishments (Тарановски, 1931: 67-73), even though it was mentioned in Article 17 of Emperor Dušan's Code, dealing with monastic life. Srdjan Šarkic mentions exile and forfeiture of property as forms of punishment for heresy, insult to a judge, failing to capture thieves and pirates, and infidelity (Шаркић, 1996: 108-110; Шаркић, 1999: 269-270) but he does not mention banishment from home as a form of punishment either.

1. BANISHMENT FROM HOME IN EARLIEST LEGAL SYSTEMS

1.1. Banishment from home in the Code of Hammurabi

Banishment from home is an old form of punishment, which was first mentioned in the period of the Babylonian King Hammurabi (circa 1709 to 1669 B.C.) (Nikolić, Đorđević, 2013: 1). The Code of Hammurabi (enacted circa 1680 B.C.)¹ prescribed this type of punishment for one's wife, sons and mother. Thus, a husband could separate from his wife or release a woman who had given birth to his children without any explanation, but was obliged to return the wife's dowry and to provide her with the necessary means of subsistence (art. 137); in case she had not borne any children, he only had to return the dowry (art. 138) (Nikolić, Đorđević, 2013: 14). He was not obliged to return the dowry if he could prove that she was argumentative, wasteful or neglectful (art. 141) (Nikolić, Đorđević, 2013: 14). However, she could leave her husband and his home in case he falsely accused her of adultery (art. 131) (Nikolić, Đorđević, 2013: 13), or neglected her (art. 142) (Nikolić, Đorđević, 2013: 15), or in case he fled his hometown (art. 136) (Nikolić, Đorđević, 2013: 14) or took a second wife due to his first wife's illness (arts. 148, 149) (Nikolić, Đorđević, 2013: 15). A wife was allowed to leave her husband's home and go to another man's home if her husband was captured in war and she was left without any means of subsistence (art. 134); yet, if the husband came back after a while, she was obliged to return to the husband but the other man's children would remain with their father (art. 135) (Nikolić, Đorđević, 2013: 14).

A son would be banished from his father's home if, after the father's death, the son had been caught in *flagrante delicto* with the father's chief wife, who had borne him children (art. 158), given that the *chief wife* was considered to be a stepmother (Nikolić, Đorđević, 2013: 16). A son or sons could also banish the mother but the Code does not specify the reasons; the text only states that a judge should examine the reasons and if the son(s) were at fault, the woman should not leave her husband's house (art. 172.) (Nikolić, Đorđević, 2013: 18).

As we can see from these articles, leaving the house was not always considered as a form of punishment. In some cases, a husband could banish his wife from the house for no specific reason (arts. 137, 138), and we do not know whether it was done as punishment or not. It was certainly a form of punishment when the wife was banished for being argumentative, wasteful or neglectful of her husband (art. 141). On the other hand, it was not punishment when the wife left home of her own accord because the husband was captured in war or lacked the means to support her (art. 134). The wife was also entitled to

¹ The translation of the Hammurabi Code is available at Yale Law School: Lillian Goldman Law Library (2008): The Avalon Project- Documents in law, History and Diplomacy, the Code of Hammurabi (translated by L.W.King), <https://avalon.law.yale.edu/ancient/hamframe.asp>

leave home due to the husband's fault: if her husband falsely accused her of infidelity, if he fled the home country, if he neglected her, or if he took another woman due to the wife's illness (arts. 131, 136, 142, 148, 149). Banishment of a son and his mother from home was also a form of punishment; in the case of the son, the father had to state what sort of crime was the reason for banishment (art. 158), whereas no specific fault had to be stated in the case of the mother. However, if it turned out that the banishment was unjustified, she had to return home (art. 172). Therefore, we should carefully observe the use of different terminology used in the text: while banishment from home was a form of punishment, leaving the family home was not. It is evident that both children and the mother could be banished from home; in the latter case, she may be banished both as a wife and a mother.

1.2. Banishment from home in other legal traditions

Banishment from home was also a form of punishment in other groups or nations. As noted by Tacitus, in the German tradition, a husband who had caught his wife in adultery would cut her hair short, strip her naked, banish her from home, and flog her through the village in the presence of her relatives (Udaljcov, Kosminski, Vajnštajn, 2009: 32).

This type of punishment was also present in Byzantine law. Thus, Novel (decree) 32 issued by the Byzantine Emperor Leo VI the Wise (866-912) stated that a wife caught in infidelity was to be punished by cutting off her nose, confiscating her dowry and sending her to a monastery (Соловјев, 1935: 11), which was actually an act of banishment. Although leaving home was not always a form of punishment, it was present in different regions from the time immemorial to the Middle Ages. This legal practice commonly applied to family members, most frequently affecting unfaithful wives or wayward children.

2. BANISHMENT FROM HOME IN SERBIAN MEDIEVAL LAW

2.1. Banishment from home in the earliest Serbian legal tradition

In Serbian legal tradition, the first occurrence of banishment from home as a form of punishment was recorded in the case of Stephen the First-Crowned who banished his wife Eudokia, accusing her of adultery. Having caught her in the act, he undressed her, leaving her only in a thin, short undergarment barely covering her, banished her from the house and expelled her from Serbia (Калић, 1971: 164-166).

In the second Žiča Charter (1221- 1224 AD) of the Serbian ruler Stephen the First-Crowned, leaving home is mentioned as a consequence of a divorce or marriage annulment, including both lawful and unlawful divorces. In case of an unlawful divorce, if a wife left home after her husband had allowed her to do so, he was punished and obliged to bring her back. Lawful divorces occurred due to infidelity, when the wife was banished and had to leave home if the husband would not forgive her. In case of annulment, the wife had to leave her husband's home, but it was not considered as a form of punishment (Мошин, Ћирковић, Синдик, 2011: 93–95). However, if a husband moved in to live in his wife's home with his in-laws, it may be assumed that it was he who had to leave his wife's home.²

² The first Žiča Charter (1220 AD) refers to Tihomir with his mother-in-law and his children, which indicates that he was most likely the one who moved into his wife's home; otherwise, the mother-in-law (as head of the family) would not have been mentioned along with the son-in-law (Мошин, et al., 2011: 91).

It was recorded that the Byzantines required from King Milutin to relinquish his former wife, the Bulgarian princess Ana Terter, as a condition for marrying the Byzantine princess Simonida (Максимовић, 1988: 53–55). Although it cannot be considered as punishment, this case illustrates that two wives could not live together in the house, and that the former one had to leave. This case is interesting because it suggests that, if Milutin had not been obliged to abide by the Byzantines' explicit request, Ana might have stayed in his house even after he had formalised his marriage with Simonida.

2.2. Banishment from home in medieval Serbia

Banishment from home was also recorded in Emperor Dušan's Code (1349 AD). For instance, article 17 orders that all the ordained monks and nuns, who ceased to be novices, shall be banished from their homes and driven to live in the monasteries. This provision cannot be considered as punishment but more like the legislator's desire to introduce church discipline in the lives of monks and nuns, who were allowed to live only in monasteries and monasterial communities. Soloviev states that this article was taken from Mateus Blastares' Complete *Syntagma Canonum* (Chapter M–15 = 14 Bas. IV, 1) and that it was repeated almost to the letter (Соловјев, 1980: 186; Суботин-Голубовић, 2013: 303).

Article 28 of the shortened version of the Code of Justinian prescribes a punishment for someone who steals from the royal court something of religious significance: to be beaten and scorched, i.e. to have his hair and beard burnt, and to be banished from the court. The banishment from the royal court can be viewed in the same way as banishment from home, since the court was the place where the thief lived, his home (Марковић, 2007: 60, 69, 136).

In the Studenica manuscript of the abridged Mateus Blastares' *Syntagma Canonum*, Chapter 22 prescribes that a woman who committed adultery had to go to a monastery for two years. After that period, the husband could take her back, but if he did not want her or if he died, the wife had to stay at the monastery and to become a nun (Мошин, 1949: 61–62). In this case, leaving home was a form of punishment but, notably, there was a possibility that the husband could forgive her and let her come back home.

It should be noted that canon law of the time, such as Mateus Blastares' Complete *Syntagma Canonum*, states numerous cases of banishment from home for various reasons. For example, under letter V, Chapter 8 prescribes that if a woman marries before the expiry of the mourning period, she cannot inherit anything from her late husband (Суботин-Голубовић, 2013: 105), which also means that she loses the right to stay in his house. Under letter G, Chapter 4,4, there is a record of a woman who was banished by her husband and expelled from the house (Суботин-Голубовић, 2013: 61–62, 117). However, as this paper deals with banishment in the secular law, we shall not deal with the canon law provisions.

2.3. Banishment from home in the Statutes of Kotor, Budva and Skadar

Banishment from home may also be found in the provisions of three statutes of medieval coastal towns of Kotor, Budva and Skadar. The earliest one is the Kotor Statute of 1301. The Skadar Statute was passed before 1346 (Ћирковић, 2007: 113–121), as it mentions Stefan Dušan as king. The Budva Statute is of a later date; according to the most recent literature, it dates from the period 1349–1351 (*Statuta civitatis Cahrari*, 2009: 703; Ћирковић, 2007: 113–121; Вогојевић-Glušćević, 2016: 18). Besides the core texts that originated at the specific time, all these statutes also feature subsequently added provisions.

The Kotor Statute mentions banishment from home in eight provisions: Chapter CXCV from 1320 about the wife's right "to keep the bed" (i.e. stay in the house) after the death of her husband, (*Statuta civitatis Cahrari*, 2009: 115-116; Milošević, Ćirković, Danilović, 2009: 229-230); Chapter CXCV about the wife who "keeps the bed" but does not want to live in the household with her married son (*Statuta civitatis Cahrari* 2007, 116-117; Milošević, et al., 2009: 230– 231); Chapter CXCVII about a wife who does not have sons and does want to stay in the house but only wishes to take her dowry (*Statuta civitatis Cahrari*, 2009; 117-118; Milošević, et al., 2009: 231– 232); Chapter CXCVIII about a husband and a wife's pledge on property (*Statuta civitatis Cahrari*, 2009; 118; Milošević, et al., 2009: 232); Chapter CCII about a father who does not want to live with his married sons (*Statuta civitatis Cahrari*, 2009; 120; Milošević, et al., 2009: 234); Chapter CCIII about a father's authority to arrange marriage for his sons (*Statuta civitatis Cahrari*, 2009; 121; Milošević, et al., 2009: 234); Chapter CCIV about a father who wants to discharge one (or more) of the married sons but keep the favoured one (*Statuta civitatis Cahrari*, 2009; 121; Milošević, et al., 2009: 234- 235) and Chapter CCXXII about those who banish slaves from home (*Statuta civitatis Cahrari*, 2009; 131; Milošević, et al., 2009: 242-243).

The Skadar Statute provides for banishment from home in five articles: article 159 about parents who arrange marriage for their minor son (Bogojević-Glušćević, 2016: 160, 268-269); article 161 about child marriages (Bogojević-Glušćević, 2016: 161, 269); article 265 about banishing a wife from home (Bogojević-Glušćević, 2016: 195, 300); article 170 about ordering the sons to leave home (Bogojević-Glušćević, 2016: 164, 273); and article 171 about disinheriting a son (Bogojević-Glušćević, 2016: 165, 273). This list may provisionally include article 26 about house rents and tenants (Bogojević-Glušćević, 2016: 115, 226).

The Budva Statute mentions banishment from home in six articles: article CXXXV about arranging sons' marriages, article CXXXVII about arranging marriages of children (Јакетић, Вучковић, 1988: 119, 43); article CXLV about keeping the widow's bed; article CXLVII about ordering the son to leave home (Јакетић, et al., 1988: 121, 45); article CXLVIII about disinheriting the children (Јакетић, et al., 1988: 121-122, 45-46); and article CXCVII about banishing the wife from home (Јакетић, et al., 1988: 131, 55). Also, another chapter could be included here, article XXVI about renting a house (Јакетић, et al., 1988: 97-98, 21).

Notably, the number of articles dealing with repudiation or banishment from home is much greater in the coastal town statutes than in the inland written laws. The largest number of provisions in the Kotor Statute are about widows and the parents' right to banish children from home (three provisions each); one provision is slaves and one provision deals with the husband and wife's pledge on property. The Skadar Statute includes four provisions about the parents' right to banish their children from home and one provision about a ban on banishing the wife. The Budva Statute also contains four provisions about the parents' right to banish their children from home, one provision about a widow and one provision about a ban on banishing a wife. One can also notice that all the statutes give the same consideration to banishment of sons from home. Of all these statutes, the Kotor Statute gives most consideration to the position of the widow, whereas the Budva Statute includes only one provision on this matter and the Skadar Statute provides none. The Kotor Statute is the only one that deals with the issue of slaves and pledge on property. Yet, unlike the Skadar and the Budva statutes, the Kotor Statute does not deal with the wife's banishment from home.

As already shown in the examples from the inland laws, banishment from home primarily referred to a wife in cases of divorce or marriage annulment. However, none of

the statutes regulates the wife's status and position after divorce. It may be assumed that this issue used to be resolved by applying *ius communis*, without a need to be included in these statutes.

We shall first consider the ban on banishing one's wife from home.

Ban on banishing a wife from home. The Skadar and Budva statutes provide for a possibility of prohibiting the husband to banishing his wife from home. Under the Skadar Statute, a husband may not banish his wife if she has brought him dowry. He is obliged to keep her in the house, which makes him entitled to keep the dowry. If one does the contrary (which probably implies her banishment from home), he shall pay a fine of 8 perpers, half of which goes to the Prince of Skadar and the other half to the claimant. The Budva Statute (Chapter CXCVII) envisages the same article almost verbatim, the only difference being that the other half of the fine would go the Budva Council instead of the claimant. It is clear that banishing one's wife from home was considered a criminal offence.

The statutes commonly provide for banishing sons from home.

Marriage of a minor son. All three statutes provide for the father's right to arrange a marriage for his minor son. The Kotor Statute (Chapter CCII) prescribes that the daughter's-in-law dowry is to be given to the father of the groom. However, when the son requires the transfer of dowry from the father to the son, the father is obliged to do so and a special document is drafted. Thus, a father in Kotor was left without a possibility to banish his son.

The Skadar and Budva statutes contain different provisions. Article 159 of the Skadar Statute, which also allows the father to arrange a marriage for his minor son, explicitly states that it has to be done with the son's consent. The father also takes the daughter-in-law's dowry to freely dispose of it, but again with the son's consent. If the son wishes to keep the dowry for himself, the father may (but does not have to) banish both the son and his wife from home.

The Budva Statute (Chapter CXXXV) allows a father to arrange a marriage for his minor son even against the son's will.³ As in other statutes, the father is the one who disposes of the daughter-in-law's dowry. However, if the son does not wish for his father to keep the dowry and wants it for himself, then the father has the right to banish his son and his wife. As in the Skadar Statute, the father may but does not have to do it. In case of banishment, the dowry has to be returned to the daughter-in-law. Besides the father and the son stated as the individuals who could return the dowry, this statute also includes the mother. Does it mean that the mother also had the right to banish her son from home? If the dowry had to be returned by the mother, we may only assume that the father may have not been alive.

Thus, if the son challenged the father's right to freely dispose of the daughter-in-law's dowry, under the Kotor Statute he was not allowed to banish his son and his wife, whereas the Skadar and Budva statutes allowed for such an option.

Marriage of a daughter. The Skadar and Budva statutes provide for the parents' obligation to make arrangements for their daughters' marriage first and then for their sons. The Skadar Statute (Chapter 161) provides that if the parents have children who are eligible to marry, they first have to arrange for their daughters' and then their sons' marriage. If a son wishes to marry before his sister(s), the parents have the right to banish him from home.

³ This article provides that, if a father arranges a marriage for his adult son, he may do so only with the son's consent, which implies that he may arrange a minor son's marriage without his consent.

The Budva Statute (Chapter CXXXVII), prescribes that the father is supposed to arrange marriages for his daughters first, if eligible, and only then to do so for his sons. If a son wishes to marry against his parents' will before his sister(s), the parents have the right to banish him from home. Just like in the Skadar Statute, the parents may banish their son but do not have to. Notably, the Kotor Statute contains no provision on this matter although such situations must have been present there as well. Thus, the only difference between the Skadar Statute and the Budva Statute is that the former assigns the obligation of arranging a daughter's marriage not only to the father but also to the mother.

On banishing married sons from home. The Kotor Statute has three articles on this issue. Chapter CCII of the Kotor Statute provides a possibility that, if a father does not wish to live with his married son(s), he has the right to banish him/them from home. The Statute does not say that such a decision does not necessarily have to involve the son's fault but only the father's wish. In that case, the son would leave home only when the father returned the dowry the daughter-in-law had brought to the house. If the son had accumulated some means with the help of his wife's dowry or through his own competence, he had the right to take them, whereas other brothers or the father could not claim any. If the father was not able to return the dowry, he was obliged to make a compensation from his own assets up to the value of the original dowry. Then, the son would have to accept such means and leave the house.

Chapter CCIV of the same Statute additionally provides that the father can banish one (or more) of his married sons and keep one (or more) at home. In that case, the father has to provide the banished son(s) with some financial resources in the same amount that he gives to those who stay at home. If he does not provide such resources, he cannot drive them out.

Chapter CXCIV of the Kotor Statute provides that a widowed mother, who does not wish to remarry, has the right to banish her married son. As no reasons for such a decision are given, it means that the mother (just like father) was not obliged to state any reason for the decision, nor was it the result of son's fault or wrongdoing. However, if the father or mother have taken the dowry, they have to return it. If the widowed mother is not able to return the dowry, she can sell some part of her inheritance to make a compensation for the taken dowry. Only then the son and his wife have to leave the house. Considering the way this provision is formulated, it cannot be construed as a form of punishment but as the parents' desire to separate from the son(s) who established their own families.

Banishment of sons who disobey their widowed mother or father. This provision is contained in both statutes. Thus, Article 170 of the Skadar Statute, titled *When a child can be driven out from home*, allows the widowed father or the widowed mother to banish a child or children from home when such children do not wish to live in their parents' home or do not obey their parents. In such cases, the parents do not have to provide them with any financial resources for the rest of their lives. Notwithstanding a slightly different wording, most provisions in Chapter CXLVII of the Budva Statute, titled *On banishing sons from home*, are essentially the same.

In both statutes, banishment from home is provided as an option rather than the parents' obligation. The only difference is that the Skadar Statute specifies that such a punishment can be applied to children (without stating the gender), whereas the Budva Statute explicitly mentions the sons only, in which case such punishment is provided as an option.

Disinheriting one's children. Both the Skadar and the Budva statutes provide that the children can be disinherited and, thus, banished from home.

Article 171 of the Skadar Statute, titled *When the children lose their right inheritance*, provides that the father or mother can exclude their children from inheritance. The son can be excluded if he beats his parents, if he fails to provide food for his impoverished parents (despite being able to do so), and if he does not bail his parents from prison. A daughter can be disinherited if she turns to prostitution. In case both father and mother die, brothers have the right to disinherit their prostitute sister. If she has neither living parents nor brothers, but only a sister who is virtuous, the virtuous one will inherit the portion of the other. It may be assumed that the parental house might have been part of the inheritance, at least in cases when there were no brothers. It may also be assumed that the punishment was bestowed by the parents; if they were not alive, it was most likely to be pronounced by the brothers (if any), but it is not possible to determine who bestows the punishment in case she only has a sister.

Most of the provisions contained in Chapter CXLVIII of the Budva Statute, titled *On disinheriting one's children*, are essentially the same as those in the Skadar Statute. Yet, the Budva statute envisages an additional reason for disinheriting a son, who may be deprived of paternal property if he denies or abandons the Roman-Catholic faith.

Therefore, both statutes provide specific transgressions, for which parents can punish their children by disinheriting them and possibly banishing them from home, but it is always provided as an option rather than an obligation.

Disinheriting a widow or a widower. Both the Kotor and the Budva statutes envisage that a wife or a husband can lose the right to stay at home when they become widowed.

Chapter CXCIV of the Kotor Statute provides that a widow can stay in her late husband's house and enjoy all his property. It further provides that two closest relatives and a trustee shall make an inventory of the deceased person's property and then monitor the widow for a year. When the period expires, the relatives, the trustee and another person appointed by the court of justice are to visit the widow and ask her if she wishes to remarry or remain a widow. If the woman wishes to remarry, she has to relinquish all the property and leave the house. However, the appointed representatives will have to return the widow's dowry and everything her late husband left to her. Only then will she be obliged to leave the house.

Chapter CXCVII of the Kotor Statute focuses on a widow who has no children and who does not wish to remarry. She is entitled to take her dowry but has to leave her late husband's house. She has to claim the return of her dowry from those who inherited her late husband's property. The Statute prescribes in detail the possible ways of recuperating the dowry or obtaining relevant compensation. After the court verifies all the documents pertaining to the recovery or reimbursement of dowry, they are certified and notarised. The widow leaves the house only after she regains her dowry or get reimbursed.

Chapter CXCVIII of the Kotor Statute also provides rules for the property of a deceased spouse. A widower who did not wish to remarry was entitled to enjoy his late wife's dowry but he had to pledge that he would not squander or destroy any assets. If he did not give such a pledge, he was obliged to return the dowry to his late wife's family. A widow who did not wish to remarry, but had not brought the dowry to her husband, was obliged to pledge that she would not squander or destroy any of her late husband's property. Otherwise, she was obliged to relinquish her late husband's property. In both cases, it may be assumed that the house could be part of the inheritance.

Therefore, when these three articles of the Kotor Statute are compared, it can be concluded that they envisage various situations after the death of a spouse. The first article provides that, a year after the husband's death, a widow has to state whether she wishes to

remarry or remain a widow. It is explicitly stated that in the former case she has to return all the property but can take her dowry and everything her late husband has left to her. The second article refers to the widow who wishes to remarry but has no children with her late husband; it addresses the issues of returning the dowry or obtaining reimbursement, after which she has to leave the house, but it does not specify what happens if she has children. In any case, none of the given examples of leaving the house is considered as punishment.

The third article regulates the enjoyment of property of the deceased spouse, when neither a widow nor a widower wishes to remarry. In such a case, they are both required to pledge that they will take good care of the late spouse's property. If they did not wish give an oath, the punishment was different. The widower had to return his late wife's dowry, whereas the widow had to leave the house. It may be assumed that a house was sometimes part of the wife's dowry, in which case the widower had to return the house. In this case, the obligation to leave the house may be perceived as a form of punishment for not giving a pledge. Unlike the other examples, punishment has to be enforced in this case, irrespective of one's wishes.

Chapter CXLV of the Budva Statute regulates the positions of widows and widowers who do not wish to remarry, and their right to inherit the property of the deceased spouse. The provision explicitly states that the house is part of the inheritance, and sets a period of one year for monitoring whether the spouse living in the house acts with due diligence. Furthermore, it specifies that if the surviving spouse does not cover the house (as needed), he/she may lose the right to enjoy the house and has to relinquish it to the rightful owner(s), which means that he/she has to leave the house. If it turns out that the surviving spouse has acted in good faith, he/she can stay in the house but, on an annual basis, he/she is obliged to host a memorial dinner in the place where the deceased is buried. All the memorial dinner costs are to be borne by the surviving spouse; this obligation cannot be excused by poverty. Therefore, in the medieval town of Budva, banishment from home was a form of punishment.

Banishment of a slave. This issue is regulated only in the Kotor Statute, while the other two statutes do not include provisions on this matter. Chapter CCXXII of the Kotor Statute envisages that the master or the mistress can banish a slave from the house if he or she has a vice. However, as the legislator did not specify any particular vice, masters or mistresses were free to interpret each case as they see fit. In such cases, a slave could be banished and, as stated by the legislator, justifiably exposed to hunger or bad clothing. The master could bring the banished slave back home whenever he wanted, but the provision does not specify after what period of time. On the other hand, the legislator envisaged a possibility that someone else could take the banished slave into his/her house without asking for the previous master's consent. In that case, if the slave escaped, got hurt or died, the responsibility would lie with the person who had taken him/her in. That person was then obliged to indemnify the value of the slave and compensate the real master. The value of the slave was determined by an oath given by the slave owner. The one who had taken in the banished slave was also obliged to pay twelve perpers per capita. In this case, it is evident that banishment of a slave from home is a punishment. Besides the slave who was punished for the specific vice, any person who had taken pity on the banished slave or taken him/her in for some gain was at risk of being punished if the slave ran away, got hurt or died.

Renting out a house. The Skadar and the Budva statutes envisage a possibility of renting out a house and eviction of the tenant who rented it. Chapter XXVI of the Skadar Statute states that that a person who has rented someone's house (either for a month or a year) cannot be evicted from the house prior to the rent expiry date, unless the landlord

wishes to live there. If evicted earlier, the tenant is not obliged to pay the rent. However, the provision does not specify whether the tenant is obliged to pay rent for the entire rental period or only for the remaining period when he/she will not be living there.

The provisions in Chapter XXVI of the Budva Statute are literally the same those in the Skadar Statute, including the dilemma about the period when the lessee is not obliged to pay the rent when evicted. On the whole, eviction from a rented property is not considered as punishment, particularly in case when the landlord wishes to return to live there.

CONCLUSION

The overview of relevant ancient and medieval legal documents has shown that every event of leaving the house (even when forced) cannot be construed as punishment either in the inland laws or in the medieval statutes of coastal towns of Kotor, Skadar and Budva. For instance, monks had to leave their homes and go to live in the monasteries. It was not a form of punishment but church discipline. In Kotor, a widow had to leave the house after one year if she decided to remarry, while a tenant had to leave the house if the landlord decided to go back and live there. In all these cases (including eviction), leaving the house was not a form of punishment.

On the other hand, there are cases when banishment from home is a form of punishment. From the narrative sources and the Žiča Charter, we find that divorce ensued in case of infidelity, as a result of which the wife had to leave the husband's house. In inland law, the act of leaving the house due to an unlawful divorce was considered as a criminal offence. The Code of Justinian provided that banishment from the royal court was a punishment for someone who stole from the court something of religious significance. The abridged Mateus Blastares' Syntagma provided that an unfaithful wife was sent to a monastery for two years, as a form punishment. After that period, the husband could forgive her and let her return home. If the husband died or would not forgive her, she had to remain in the monastery. In that case, banishment from home was for life. So, this punishment was imposed for a limited period of time (which was not a very common) or for life (which was quite common).

Banishment from home was quite a common feature in the medieval statutes of Kotor, Skadar and Budva. The Kotor Statute provided such a punishment for a widow or a widower. A widower who did not wish to remarry could keep the late wife's dowry which could theoretically include a house, but was obliged to pledge that he would not squander or destroy the assets. Similarly, the widow who did not wish to remarry, but who had not brought a dowry to her husband, could enjoy her late husband's assets if she gave an oath. Otherwise, she had to relinquish all her late husband's property, presumably including the house, which she had to leave. In this case, it was a form of punishment for not giving an oath. The Budva Statute prescribed that a widow or a widower could be banished from home if they neglected the late spouse's house or did not annually host a memorial dinner for the deceased spouse.

Under the Skadar and the Budva statutes, a father could impose such a punishment on his son whose marriage had been arranged when he was still a minor, when a son wanted to deny the father the daughter-in-law's dowry, or when a son wished to get married before his sister(s). Then, both mother and father could use such a punishment as part of disinheritance, if the son used to beat his parents, if the son did not provide food for his

impoverished parents (although he could do so), if the son did not bail the parents out of prison, and if a daughter became a prostitute. In Skadar, a widow or a widower could banish a son and daughter from home, without an obligation to give them any family assets. In Budva, the same provision applied to a son only. Such a punishment was applied when such children did not wish to live in their parents' home or did not obey the parents.

In Kotor, banishment was also a form of punishment for a slave who had some vice. They were driven away from home, without food and proper clothing, but their owner could bring them back after a while. It was an option rather than an obligation, and the Kotor Statute did not specify the period of banishment. In all three statutes, banishment from home was a form of punishment that could but did not have to be applied.

It is also worth noting that, in Skadar and Budva, a husband was banned from banishing a wife if she had brought him dowry. If he did so, the husband was to be punished.

The research has shown that banishment from home was a type of punishment but that leaving home was practiced for various purposes, other than punishment. Therefore, this legal institute had different features and functions in the observed period.

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PROTERIVANJE IZ KUĆE KOD SRBA U SREDNJEM VEKU

Proterivanje iz kuće je stara kazna koja se javlja u regulisanju porodičnih odnosa. Pominje je još Hamurabijev Zakonik, a beleži se i kasnije u pravima drugih naroda. Prvi pomen kod Srba zabeležen je kada je kralj Stjepan Prvovenčani proterao zbog bračne nevere suprugu Jevdokiju. Zabeleženo je u drugoj Žičkoj povelji kao i u Dušanovom Zakoniku, Skraćenoj sintagmi Matije Vlastara, Justinijanovom zakoniku ali nije uvek kazna. Češće se spominje u statutima primorskih gradova: Katorskom, Budvanskom i Skadarskom. Iako ima različitu ulogu, izriče se i kao kazna. To je kazna za udovice ili udovce, koji ne daju zalogu ili ne vode računa o imovini pokojnog bračnog partnera. Njome su mogli roditelji da kazne decu koja ne ispunjavaju dužnosti koje od njih očekuju pre svega otac, odnosno roditelji.

Кључне речи: *proterivanje iz kuća, žena, deca, Katorski statut, Budvanski statut, Skadarski statut*