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TURPITER INTERFECTUS. THE SEIGNEURS OF MOMIANO AND PIETRAPELOSA IN THE CUSTOMARY SYSTEM OF CONFLICT RESOLUTION IN THIRTEENTH-CENTURY ISTRIA

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ABSTRACT

The documents concerning the feud between the Patriarch of Aquileia and the Counts of Gorizia (1267–1277) are evidence of how written laws show that the ritual forms and gestures of the customary system of conflict resolution were not only maintained but were regularly inserted into the ritual formulas of written law. Above all they document how the customary system of conflict resolution, in its ideal image and through rituals, reflected social values based on the mediation of the community, reciprocity and the propensity to achieve a lasting peace. This is a general structural aspect of conflict, while the local or particular aspect is shown concretely through the struggle for resources, in the interweaving of single circumstances, where those who succeed in forming the greatest number of loyalties, differing and often contrasting alliances, are the ones who prevail. In our case this was clearly better accomplished by the Counts of Gorizia than by the Patriarchs of Aquileia.

Key words: feud, vendetta, homage, truce, peace, Patriarchs of Aquileia, Counts of Gorizia, Momiano, Pietrapelosa, Istria

TURPITER INTERFECTUS. I SIGNORI DI MOMIANO E DI PIETRAPELOSA NEL SISTEMA CONSUETUDINARIO DI RISOLUZIONE DEI CONFLITTI DEL DUECENTO ISTRIANO

SINTESI

I documenti relativi alla faida tra il patriarca di Aquileia e il conte di Gorizia (1267–1277), testimoniano che concetti espressi dalle leggi scritte mostrano come le forme e i gesti rituali del sistema consuetudinario di risoluzione dei conflitti non si fossero soltanto mantenuti ma fossero stati prontamente inseriti nelle formule rituali del diritto scritto. E non solo, ma soprattutto il sistema consuetudinario di risoluzione dei conflitti che, nella

sua immagine ideale e attraverso il rito, riflette i valori sociali basati sulla mediazione della comunità, sulla reciprocità e sulla tendenza verso una pace duratura. Questo è un aspetto strutturale generale del conflitto mentre l'aspetto locale o particolare si manifesta in concreto attraverso la lotta per le risorse, nell'intreccio di singole circostanze, dove prevalgono coloro che riescono a stabilire il maggior numero di alleanze leali, differenziate e spesso contrastanti, il che nel nostro caso evidentemente meglio riusciva ai conti di Gorizia che ai patriarchi di Aquileia.

Parole chiave: faida, omaggio, tregua, vendetta, pace, patriarchi di Aquileia, conti di Gorizia, Momiano, Pietrapelosa, Istria

THE *VENDETTA*[1]

"After Carseman and Henry of Pietrapelosa horribly murdered (*turpiter interfectus*) Biaquino of Momiano, Seigneur Count [of Gorizia], the people of Koper and Seigneur Conone, the victim's brother, attacked and destroyed the Castle of Pietrapelosa. And the authors of the misdeed were beheaded."[2]

Freely translated, this is how the paragraph of the attachment to the peace treaty between the Patriarch of Aquileia, Raimondo della Torre, and Count Albert I of Gorizia and Istria, dated 19th August 1274, read. This treaty is recorded in nine densely written pages in the Istrian Diplomatic Codex of Pietro Kandler (CDI, II, 361, 596–604), which describes with precision the turbulent events of the second half of the 13th century in Istria.

Lasting peace (*pax et concordia perpetua*) was declared on 9th June 1277, following the feud over Koper that broke out in July 1267 between Count Albert I of Gorizia and the Patriarch of Aquileia, Gregory da Montelongo. The people of Koper, who had opposed the Patriarchs of Aquileia since the outset of their temporal power in Istria (1208), felt that the time had come to gain their independence from Aquileia and assert their dominion over other Istrian cities and towns. In fact, Koper had already formed an alliance with Piran, while Izola, Muggia, Umag, Novigrad, Buje, and Motovun seemed to support its intentions (De Franceschi, 1939, 89).

The blood feud of the Seigneurs of Momiano against the Seigneurs of Pietrapelosa represents only one aspect of this decades-long saga. But it clearly also represents the high point of the rise of these two families, who took their name from their places of residence, Momiano and the Castle of Pietrapelosa, where above all in the last half of the

1 This research is supported by a Marie Curie Intra European Fellowship within the 7th European Community Framework Programme within the project FAIDA. Feud and Blood Feud between Customary Law and Legal Process in Medieval and Early Modern Europe. The case of the Upper-Adriatic area. Grant Agreement Number 627936.

2 *Item quando Dominus Biaquinus de Mimiliano fuit per Carsemannum et Henricum de Petrapilosa sic turpiter interfectus, tam Dominus Comes, quam Justinopolitani, et etiam Dominus Chono Frater occisi expugnaverunt Castrum de Petrapilosa, et illud comuniter destruxerunt. Illos autem malignos qui tam nefandam rem fecerunt decollati fuerunt.* (CDI, II, 361, 602).

13th century they were responsible for social-political conditions in the Istrian peninsula, as well as in Friuli, the Karst and in certain zones of nearby Carniola.[3]

THE EXPANSION OF KOPER IN THE 13TH CENTURY

Thirteenth-century Istria was characterized by a multitude of conflicts. It was the site of merciless battles between the Patriarchs of Aquileia, supported by their vassals, the most important of whom were the Counts of Gorizia, and the most influential Istrian seigneurs such as the Seigneurs of Momiano and of Pazin, the Castropola and the Pietrapelosa, as well as the developing urban centres – which boasted the first collections of written laws (statutes) – and Venice, which thanks to its commercial monopoly had taken control of the Istrian towns loyal to her. The King of Bohemia, Ottokar II, held an important role also thanks to this feud, but by the end of the century the influence of the Habsburg politics of seaward penetration was making itself felt, especially in this, the northernmost part of the Mediterranean.

Their favourable maritime position and the trade opportunities found in the towns of Istria had attracted a continual flow of money and consequently created economic and political independence. Thanks to various land grants in favour of the Istrian bishops, the cities with bishop's sees such as Trieste, Koper, Novigrad, Poreč, Pula and Pićan had spread inwards, taking possession of the peninsula hinterlands so important for food provision and defense.

Fig. 1: The Battle of Benevento between Guelfs and Ghibellines, 1266, miniature in the Nuova Cronica of Giovanni Villani (Wikimedia Commons. File: Villani Benevento.jpg)

3 There are published studies on both the Seigneurs of Momiano and those of Pietrapelosa: on the former, I refer to the article by De Franceschi (1939) and Štih (2013); for the latter, see Darovec (2007).

In northern Italy the various forms of autonomous town government gave proof of their capacity for military mobilization, especially in the Battle of Legnano of 1176, when the town militia defeated the feudal army of Friderik Barbarossa, who was consequently forced to allow and confirm the autonomous government of the towns. From that moment town autonomy grew, organizing itself around the figure of two or more consuls (called Podestà), initially taken from the ranks of the most influential local inhabitants and later, after the spread of the practice of favouritism, from that of non-local legal and administrative officials. In the 13th century, the Podestà elected by the local population was prevalently Venetian, while the Patriarchs of Aquileia did their best to have Istrian and Friulian nobles loyal to them elected to this office. In this century the right to freely elect the Podestà constituted the foundation of town self-government (De Vergottini, 1925, II).

In the years of the last lay feudal Istrian seigneurs, those of the Spanheims and the Andechs-Meranias, Istrian towns freely elected their rulers. Moreover, the towns had the power to stipulate trade agreements even "over a great distance", as for example Piran did with Ragusa in 1188 and with Split in 1192, and Poreč, with Ragusa in 1194. They also could autonomously resolve conflicts, as happened in the case of the peace treaties between Labin and Rab and between Piran, which was threatened by the troops of Koper, and Rovinj (1210).

It was the Patriarchs of Aquileia, to whom Istria was granted as a feud by the emperor in 1208,[4] who limited most of the decision-making rights of the towns. Indeed, the Patriarch Volfero started to appoint his own representatives to the towns and larger villages. For a certain time, the "*potestas marchionis*" resided in Koper, with its seat in the Palazzo dei Pretori; while in Pula there was the "*comes regaliae"*. Later the administrators, named by the Patriarchs of Aquileia, were called main stewards (*generalis gastaldus*), judges (*richtarius*) and margraves – marquis (*marchio*).

Though power over all of Istria was exercised by a marquis, the possessions of the counts of Gorizia in central Istria and those of the counts of Duino on the Quarnero were excluded from the jurisdiction of the Patriarchs of Aquileia. However, in 1220 the Patriarch of Aquileia Bertoldo Andechs obtained from the emperor the right to enact measures regarding trade, exercise judiciary power, concede grace, mint coin, as well as to forbid the towns to elect the ruler – Podestà (especially if he was a Venetian citizen) without the Patriarch's prior assent.

Since in the marquisate of Istria the politics of the Patriarchs aimed at constituting a totally new central power, the realization of this design inevitably led to the rebellion of the towns on the west coast and to conflict with Venice. Thanks to the support of Koper, in 1230 Venice succeeded in creating a pan-Istrian law, called *Universitas Istriae*, with a Venetian at the head. This league dissolved one year later, also because of Koper's attempt to impose itself over other towns. In 1232 the Patriarchs occupied Pula, while in 1238 they managed to have Koper on their side. In Pula the Patriarchs gave broad powers to the Sergi family, naming Nassinguerra de' Sergi ruler and administrator of the posses-

4 As the ecclesiastic and secular authority at the time of this fact, the Patriarch of Aquileia represented a unique example in the organization of power. For fuller details, see Scarton (2013).

sions of the Patriarch in the town's surroundings. This policy led Pula to a conflict with Venice in 1242. In the peace treaty the town promised to accept a Venetian citizen as ruler and to rebuild the town walls only after obtained Venice's permission.

The situation in Istria grew particularly tense in the second half of the 13th century, when Gregorio da Montelongo (1251–1269) became Patriarch of Aquileia. Though it had been weakened in the provinces, the Patriarch's authority was still able to influence politics in the towns, especially considering that this Patriarch was a nephew of Pope Gregory IX and at the same time also the head of the Guelph party in northern Italy. His contemporary and acquaintance, Salimbene, described him as *Homo magni cordis et doctus ad bellum* (De Vergottini, 1925, 8). That he was expert in the arts of war was shown in his military campaigns, as we shall see below. However, in those years the main protectors (lawyers) and vassals (ministerial) of the Patriarchs of Aquileia were the counts of Gorizia, who were generally loyal to the Ghibelline party and the imperial crown.

Initially the Patriarch upheld Koper's role against Trieste and the southernmost coastal towns and the towns of the hinterland. In 1254, he granted Koper jurisdiction over Buje, Oprtalj, Buzet and Dvigrad. In the same year Koper, at war with Trieste, conquered the lands of Trieste between Osp and Rachitovich, thereby consolidating its influence over Piran and Muggia.

THE PATRIARCH, THE COUNT, THE VASSALS AND THE CITY OF VENICE

At that time, using the same strategies used for a military campaign, alliances that went beyond the offices they held were often made between individuals. This was especially true of many small feudatories, or vassals, who supplied troops necessary to their Seigneurs. But these alliances were clearly often overlapping. Self-interest led to

Fig. 2: Aquileia. Gregory of Montelongo (1251–1269). Coin with eagle. Monete e Medaglie di Zecche Italiane. Bernardi 22. AG. g. 0.99 R. BB. (http://www.icollector.com/Aquileia-Gregorio-di-Montelongo-1251-1269-Denaro-con-aquila)

relatively important shifts from one side to another, with the consequent loss of loyalty to the Seigneurs.

This was indeed the case of the two Istrian families, vassals of Aquileia, who are the object of our study, i.e., the da Momiano and the da Pietrapelosa families.

The Seigneurs of Momiano were in origin a branch of the Seigneurs of Duino, who were among the most powerful vassals of Aquileia. Voscalco, founder of the Seigneur of Momiano, was mentioned for the first time as *Wosalcus de Mimilano* in two documents of 1234, along with his two sons, Cono and Biaquino. They were important vassals and ministeriales of Aquileia, in origin faithful to the politics of that town, which produced important benefits for them. Indeed, the two brothers held the office of Podestà in several Istrian towns: Cono in Piran (1259, 1272) and in Buie (1272); and Biaquino in Novigrad (between the years 1259 and 1261), Poreč, (1261) and Motovun (1263). However, in those very years the two brothers of the Momiano house were already in contact with the Count of Gorizia. This is demonstrated not only by the mention of their names in a series of acts in which the Count of Gorizia is also named, but also by family ties that had linked the Seigneurs of Momiano for fully two generations with the Seigneurs of Rifembergo, in the hinterland of Gorizia, one of the most important ministeriales families of the Counts of Gorizi. In fact, in 1249, Biaquino da Momiano took as wife Geltrude, daughter of Ulrico I of Rifembergo (Štih, 2013, 171–172).

Fig. 3: Coat of arms of the County of Gorizia. Hans Ingeram. Codex d. ehem. Bibliothek Cotta, 1459 (Wikimedia Commons. File:XIngeram Codex 091b-Görz.jpg)

The Seigneurs of Pietrapelosa were also vassals of Aquileia, but documents of the time show that they were supporters of Gorizia at well. During the 13th century the family had control of the Quieto and consequently control over the defense of the peninsula. Its possessions spread to the north and the south of the upper course of the Quieto and included Grožnjan and Motovun. In the first two decades of the 14th century, Vicardus II of Pietrapelosa was the lord of Raspruch. The family had widened its sphere of influence over Pazin with the marriage of Elisabeth, daughter of Vicardus I of Pietrapelosa (Marsich, 1869, 12), to Henry of Pazin. Vicardus II later became the guardian of Henry II of Pazin (Bianchi, 1847, 337) and governor of the possessions which under the Habsburgs constituted the essential nucleus of the principality of Pazin.

The name of the feudatory of Pietrapelosa (Vulingius de Petra Pilosa) is mentioned for the first time as a vassal of Aquileia in a document dated in Aquileia, 18th December 1210 (Kos, 1928, 166), in which he is numbered among those that the Patriarch Volchero (or Wolfger) wanted to accept the pact between the Patriarchy and the inhabitants of Piran against the Istrian rebels – in this case Koper, whose territorial claims led to its isolation and long decline.

The historical sources mention Vicardus of Pietrapelosa, Seigneur of Grožnjan, in the context of Koper's rebellion against the Patriach, which occurred on the 13th January, 1238 – more precisely, in an agreement sign at Cividale (Kos, 1928, 715) on the 3rd July 1239 between the Patriarch of Aquileia and Meinhard, Count of Gorizia (Kos, 1928, 685), in which the latter is granted the freedom to elect the Podestà in Istria or in Friuli, but not elsewhere,

Fig. 4: The Castle of Momiano (photo: D. Podgornik, 2007)

without the assent of the Patriarch of Aquileia. This occurred despite the fact that in a previous agreement between Berthold, Patriarch of Aquileia, and the representative of Koper, Koper had yielded to the Patriarch's demands regarding the appointment of the Podestà. This had been confirmed by Emperor Frederick in October, 1238, and a visit of the Patriarch concerning the revision of the statute had been announced (Kos, 1928, 696).

Vicardus of Pietrapelosa is also mentioned in Venice in 1253 and in Pazin in 1255, where with the surname "da Grožnjan" rather than "da Pietrapelosa" (Weisflecker, 1949, 155–156, 164, in: Klen, 1977, 13) he appears as a witness, or better representative, of the Count of Gorizia. In a document of Motovun dated 20th August, 1256, it emerges that Carseman, Baron of the Castle of Pietrapelosa and a vassal of the Marquis of Istria (CDI, 20 Aug. 1256), was Podestà of Motovun.

Henry of Pietrapelosa, along with Henry of Pazin and Philip of Kožljak (Cosliacco), in the role of ministeriales of the Count of Gorizia, is mentioned in two documents written in Buzet on 20th March, 1264. These documents show his involvement in re-establishing relations between the Patriarch of Aquileia and the Counts of Gorizia, Meinhard and

Fig. 5: The Castle of Pietrapelosa (photo: D. Podgornik, 2007)

Albert (Joppi, 1885, 31–35). On 13th July, 1264, Henry of Pietrapelosa was present in Muggia when the Patriarch Gregorio of Montelongo granted Henry I of Pazin and his wife Elisabeth of Pietrapelosa (daughter of the deceased Vicardus of Pietrapelosa) and their children the feud of the Castle of Lupoglav (*castrum de Lupoglau*) and upper Lupoglav (*Ober Lupoglau*), situated below the Castle, five farms at Dobrepolje near Ilirska Bistrica (Villa del Nevoso) and some other possessions in the Windic March (Schumi, 1882–1883, 1884–1887), which Henry of Pazin and Cono of Momiano confirmed in the name of their offspring already born and yet to be born. This might prove that the da Momiano and the da Pietrapelosa families were also related. In any case, it did not prevent the violent conflicts that broke out in 1267, probably also caused by contrasting family interests. In which case, as the sources seem to indicate, this was an authentic feud between the Patriarch of Aquileia and the Counts of Gorizia with their allies.

So, we ask, what actually happened?

THE FEUD AND THE VENDETTA

The situation was particularly aggravated in 1267 when Koper besieged Poreč and other places in Istria. The Patriarch tried to limit Koper's expansion with the help of Albert, Count of Gorizia, obliging him, along with several ministeriales of the Patriarch, to take a solemn oath (in Cividale on 3rd July, 1267) against the citizens of Koper. Among those who took the oath was Cono of Momiano, and Biaquino of Momiano was also among the witnesses present (CDI, II, 346, 569–570).

Though by this oath Count Albert had solemnly promised in a public act to support the Patriarch with all his troops in the exploit against Koper, he then proceeded to make an alliance with the town of Koper against the Patriarch. This iniquitous U-turn of Count Albert, who betrayed Patriarch Gregorio, moving troops against him, was decided only a few days after swearing to support him – a veritable dream for the people of Koper and a nightmare for Gregorio, Patriarch of Aquileia.

The primary objectives of this new alliance of the towns of Koper, Izola and Piran with Albert, Count of Gorizia, were the small fortresses situated along the upper courses of the tributaries of the river Quieto. Under Albert's guidance the troops of Koper, united with those of Piran and Izola and those of Cono of Momiano, first destroyed the Castle of Castelvenere and the Tower of Buzet, and then, with the intention of razing them to the ground, attacked at least five more neighbouring castles (Witsperch, Musche, Wisnavich, Zazilet, Muscardi). Then, on the night of 20th July, 1267, Count Albert and his brother, Count Meinhard, captured Patriarch Gregorio in his bed at Villanova near Rosazzo and dragged him barefoot on a nag to Gorizia,[5] where they held him for over a month (CDI, II, 361, 602; De Franceschi, 1939, 89; Greco, 1939, 33).

5 *Captus fuit venerabilis pater Gregorius patriarcha Aquilegiensis per nobilem virum Albertum comitem Goritiae apud Villam-novam sub Rosacio in aurora diei, dum erat in lecto, et nudipes ductus fuit Goritiam in uno roncino anno Domini 1267. die Mercurii,12. exeunte Iulio; nullo alio capto praeter Iohannem Lucensem et paucis aliis vulneratis.* (AF, 197).

Fig. 6: Abbey of Rosazzo – detached fresco in the church (Wikimedia Commons. File: Rosazzo - fresco 2.jpg)

This action clearly gave some breathing time to the troops of Gorizia and Koper, who were joined by other Istrian notables, including the vassals of the Patriarch, among whom there was once again Cono of Momiano. Cono certainly had an ulterior motive for taking an active part in these preliminary skirmishes, which were followed by the above-mentioned assault of the fortified town of Pietrapelosa and the beheading of Carseman and Henry of Pietrapelosa: i.e. to revenge the murder of his brother Biaquino. As we shall see later on, in this conflict the murder of Biaquino was clearly closely connected to the first attack against Castelvenere. This reprisal was followed by the assault of the Castle of Kršan (Chersano, *Castrum Carsach*) (Štih, 2013, 133) in Istria; but when Count Meinhard "arrived in Udine [...] with his troops, he set many fires and the booty was so great that Count Albert couldn't even imagine it", as our source picturesquely describes the scene. Other assaults on fortified towns were made successfully in Istria, Friuli and the Karst Plateau (CDI, II, 361, 602).

The chief goal of the alliance was the conquest of the entire peninsula. Besides destroying numerous properties and redistributing political power in the Istrian hinterland in favour of the counts of Gorizia, this conflict led to another change: some Istrian towns and

Fig. 7: The Castle of Pietrapelosa (photo: D. Podgornik, 2007)

lands put themselves under the care and protection of Venice. Under the pressure of the troops of Koper and Gorizia, that first to do so was Poreč, on the 27th July, 1267. Although the alliance between Koper and the Count of Gorizia weakened liberties and autonomies, other Istrian towns followed the example of Poreč. Among these were Umag (1269), Novigrad (1270), Sveti Lovreč (1271) and later also Motovun (1275). Even though by these agreements the towns did not "transfer" sovereignty, which still remained in the hands of the Patriarchs of Aquileia, but "[...] entrusted themselves to the Venetians in protection and defense", they succeeded in preserving their municipal autonomy, balanced by the powers exercised by the Podestà chosen from the Venetian aristocracy (De Vergottini, 1925, 22).

Considering the course of events, it could be argued that this was a classic case of feud as described by Otto Brunner (Brunner, 1939) known to us in a vast literature.[6] Particularly interesting is the fact that all the vassals of the Patriarch of Aquileia were also materially involved in these encounters, to the extent that the Count of Gorizia, the main vassal of the Patriarch of Aquileia, even broke his oath of alliance in order to side with Koper.

In this type of feud single vendettas (of blood) were the rule rather than the exception. They were usually resolved through arbitration, which took into account all the damage caused by both sides. The fact investigated here shows some further curiosi-

6 See detailed analyses complete with bibliographical references in Povolo, 2015, 195–244.

ties. Another clarification is offered by a relatively marginal comment made by Seigneur Pašpental (Štih, 2013, 175–179) in the medieval document on the resolution of property lines (*Istarski razvod*) (Bratulić, 1989, 149–150)[7] between Castelvenere, Momiano and Piran, "[...] and these confusions, which you have started, after abandoning and repudiating your legitimate Seigneur, and slaughtered him in his own bed, and exterminated his heirs and posterity, and subjected yourselves to a new lord, […]." (CDI, II, 364, 644).[8] According to several authors, this citation refers precisely to the "*turpiter interfectus*" that involved Biaquino of Momiano in July 1267 (Benedetti, 1964, 7–8).[9] The fact that the first attack made after the agreement of 3rd July, 1267 (between the Patriarch and the Count of Gorizia against Koper) was against Castelvenere suggests that the change in alliances within the structure of vassalage of the Patriarchs of Aquileia was of considerable significance. The events that followed also lead us to conclude that from the start of the conflict between the Patriarch and the allies of the Count, the Seigneurs of Momiano were completely on the side of the latter, while the Seigneurs of Pietrapelosa remained loyal to the common Seigneur, the Patriarch of Aquileia. It was probably the change in alliances that caused the intervention of Carseman and Henry of Pietrapelosa against Biaquino of Momiano. It would seem that Carseman and Henry of Pietrapelosa – at the time allies of the Patriarch – convinced some inhabitants of Castelvenere to show them the road to the Castle of Momiano, in order to reach Biaquino of Momiano's bed and strangle him, as we read in the citation from the *Istarski razvod* quoted above.[10]

But was it really this event that led Counts Albert and Meinhard of Gorizia to disrespect the alliance with their Seigneur, the Patriarch of Aquileia, and to give them the pretext for joining forces against him? Unfortunately, the documents do not allow us to establish this for certain, though the evidence points in this direction. Indeed, independently of the circumstance that at the time the Counts of Gorizia were certainly among the most influential feudal lords in the region, in the system of conflict resolution in force in those years there had to be a justified motive for the cancellation of an agreement or for a challenge – or "revolt" – against the lord.

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7 This particular document is conserved only in the Glagolitic transcription of 1502. Some have denied the authenticity of the document. See De Franceschi,1885, 41–118, but a more recent study of Bratulić indicates a collection of various authentic acts of reconfining in Istria in the period between 1275 and 1375 (Bratulić, 1989, 6–12). Without doubt, the document was chiefly drawn up because of this feud in the years 1267–1277.

8 In the Glagolitic document: *"A te zmutnje ke vi jeste oblikovali pokle se jeste vašega pravega gospdina odvrgli i njega na postelje zaklali i njega red zatrli,* [...]" (Bratulić, 1989, 149–150).

9 In note 16 the author mentions the resolution of the Istrian borders, when the borders were set between Castelvenere e Momiano, then property of the Pašpental, accusing the castellans of murdering the legitimate Seigneur.

10 There are those who would certainly have liked to complicate this story still more and make an even more tragic picture of it by claiming that Pietrapelosa actually castrated Biaquino in his bed (cf. http://tibor-pula.bloger.index.hr/post/Momiano--kastel-momjan-castrum-mimilianum/14363467.aspx#at_pco=cfd-1.0). But on the sole basis of the definition "horrendous crime" (*turpiter interfectus*) committed at the beside, it is not possible to confirm this hypothesis. In the epoch of conflicts among knights, a vile murder in the heart of the night, thanks to the betrayal of serfs, when the victim cannot defend himself as a knight, is without doubt a terrible homicide.

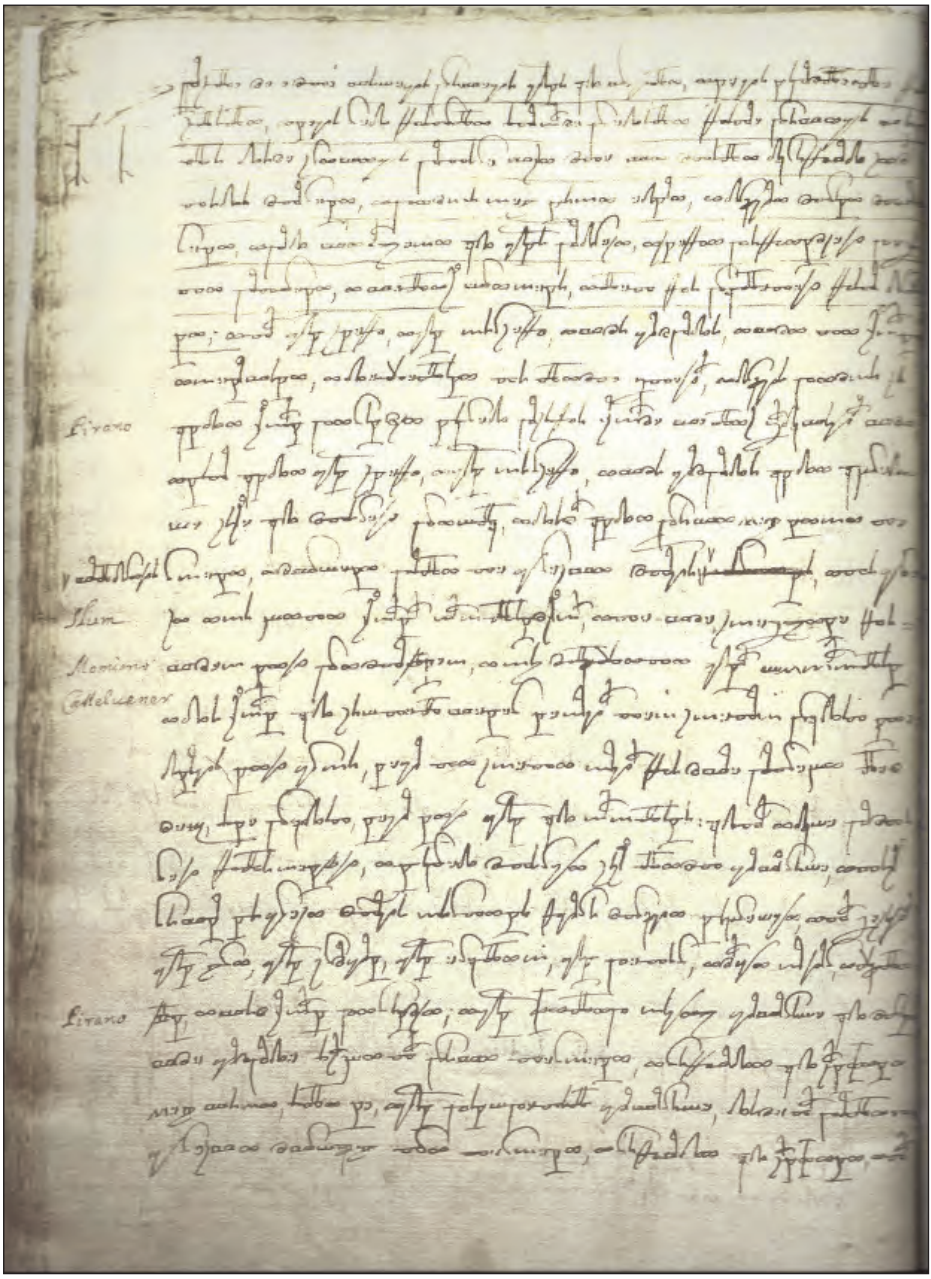

Fig. 8: Page of the Glagolitic manuscript that refers to the "turpiter interfectus" concerning Biaquino da Momiano in July 1267 (Bratulić, 1989, 31b)

The fact is that at that time the Seigneurs of Momiano were the most authoritative persons in the area. As vassals of Aquileia, they undoubtedly exercised great influence over the nearby towns, where they held the office of Podestà even against the wishes of Venice, and above all over Piran, which in that period was a declared ally of Koper and Izola. Though no specific document exists, it is still legitimate to suppose that in the days immediately preceding and following the solemn oath of 3rd July, 1267 (concerning the alliance of the Count of Gorizia with the Patriarch of Aquileia against Koper, which several ministeriales of the Patriarch had also joined, including, as we have said above, Cono of Momiano who took the oath along with Biaquino of Momiano) there had been considerable intense and lively diplomatic activity, since the alliance with Koper succeeded in shifting the balance in favour of that town. Considering the later developments, it seems legitimate to conclude that it was chiefly the Seigneurs of Momiano who tried to persuade the Count of Gorizia to join the alliance with Koper against the Patriarch, and that this is the reason why the Patriarch sent the Seigneurs of Pietrapelosa, who were loyal to him, against the Seigneurs of Momiano. No doubt Cono of Momiano was so lucky as not to be in the castle at that moment, and so Biaquino was killed in his stead. This event was evidently a sufficient and justified reason for breaking the solemn oath, and so for starting a feud.

These events shed particular light on the peculiarities of medieval feuds, which were characterized by frequent changes in alliances and founded on a network of family relations and spheres of interest in conflict over the exploitation of natural and human resources. And these circumstances also clarify the specificities of the system of conflict resolution in that age.

CONFLICT RESOLUTION

The captivity of Patriarch Gregorio of Montelongo, as well as the conflicts and destruction that resulted until he was released on the 27th August 1267,[11] was the main reason for a series of truces between the Count of Gorizia and the Patriarch of Aquileia in the following decade. Until a lasting peace was declared (*pax et concordia perpetua*) on June 9th 1277 between Patriarch Gregorio's successor, Raimondo della Torre, and Count Albert of Gorizia, there were litigations and conflicts, compromises, truces, arbitrations and on-the-spot investigations. Below we examine 10 documents about the feud between the Patriarchs of Aquileia and the Counts of Gorizia and their allies, though the capture of the Patriarch remains the main offense:

1. *Compromisso* of the Patriarch (Aug. 1267) (AKG, 29, C, 114–115).
2. First *Compromisso* of the Count (25 Aug. 1267) (FRA, 87–90).

11 Redemptio Gregorii patriarchae. *Gregorius patriarcha Aquilegiensis anno 1267. die quinta exeunte Augusto exivit captivitatem dicti comitis Alberti Goritiae, et conductus fuit Civitatem; procurato tamen per venerabilem patrem Wlotislaum archiepiscopum Salspurgensem cum ipso domno patriarcha, dum erat in captivitate, et cum Foroiuliensibus ex parte una et cum dicto comite ex altera, quod fuit per partes compromissum in ipsum archiepiscopum et domnum regem Bohemiae et postea confirmatum* (AF, 197).

Fig. 9: The Castle of Momiano (photo: D. Podgornik, 2007)

3. Second *Compromisso* of the Count (26 Aug. 1267) (AKG, 29, CI, 115–117).
4. *Truce* (Patriarch) (Aug. 1267) (AKG, 29, XCIX, 112–113).
5. *Compromisso* (after the murder of the Patriarchal vice-dominium and the destruction of the bridge over the Isonzo by the Patriarch) (30 Aug. 1268) (AKG, 22, 377; cf. AF, 197).
6. *Pax in forma conventionis pro bono pacis et concordie – fidantia seu treuga* (18 Aug. 1274; addition 19 Aug. 1274) (CDI, II, 361, 596–604).
7. *Truce* (hostility as before) (2. Oct. 1274) (AKG, 22, 401).
8. *Truce* between the Patriarch of Aquileia Count Albert of Gorizia and truce between the Patriarch and Koper (24 Feb. 1275) (CDI, II, 363, 606–609).
9. *Concordia – compromisso* (*de damnis hinc inde illatis postquam facta fuit praedicta pax*;) (13 May 1277) (AKG, 24, 429).
10. *Pax et concordia perpetua* (9 June 1277) (AKG, 24, 429).

The documents relative to these events clearly illustrate the chief features of the system of conflict resolution. In this period, with the rise of medieval towns there arose the scholastic structures and especially the universities that contributed significantly to the spread of writing as a technological-cultural means for the consolidation of power (cf. Goody, 1993). Moreover, this is the period in which so-called common law drew inspiration from the heredity of Roman law, which in that age had come back in vogue,

and from a series of legislative dispositions of Germanic laws, if we can call them that, in agreement with the collection *Monumenta Historica Germanica*[12], as well as from the specificity of city law, in particular from customary law (Bellomo, 2011). The case of the conflict between the Patriarch of Aquileia and the Count of Gorizia is one of the examples of how common law was being formed.

An evaluation of these documents is therefore of great interest in order to understand how unwritten customs influenced the formation of written law in the social system of conflict resolution. First of all, it is possible to affirm that all the documents examined concerning that conflict were drawn up and adequately named according to notary rules, i.e., in agreement with the indications given to notaries by the famous Bolognese notary and judge, Rolandino de' Passaggeri,[13] in the middle of the 13th century. His monumental collection of norms and interpretations, which served mainly for university education and further training for the education of notaries, until today has been used only by notary scholars (Tamba, 2002) while legal historians are practically unaware of its existence. The printed version was published in 1546 in Venice in 1,186 large-format pages. It furnished an impressive quantity of legal suggestions and concrete examples for drawing up all types of written contracts known up to that time. In the sixth chapter, entitled *De Compromissis*, arbitration documents and drawing up treaties of peace and agreement (*pax et concordia*) are examined (Rolandino, 1546, in: Anastatic reprint, 1977, 147–159).

The military encounters that are the object of our study for the most part took place from 3rd July to 27th August 1267 (AF, 197),[14] when Counts Mainhard and Albert of Gorizia freed the Patriarch Gregorio from prison. At this point is would be useful to stress that these battles involved a large number of European personalities of the time, since the Bohemian king Ottokar II Přemysl, who during the imperial *interregnum* was undoubtedly the most powerful sovereign in this region, took interest. Thanks to his diplomatic skill and his resourceful politics, along with the Czech crown Ottokar II also won the titles of Duke of Austria (from 1251), Duke of Styria (from 1261) and Duke of Carinthia and Carniola (from 1269). What is more, in 1272 he was appointed General Captain of Friuli, thereby becoming *de facto* administrator of the Patriarchy of Aquileia and so of Istria. Thus, his power extended from Bohemia to the Adriatic until the time of his defeat at the hand of Rudolph of Habsburg in the Battle of Marchfeld on 26th August 1278. Therefore it comes as no surprise that these events were also carefully followed by the Venetians[15], and in two letters of September and October 1267, even by Pope

12 I should like to emphasize that my research on this topic would have been far more difficult if in the last few years important collections of medieval documents had not been published online. They are available MGH, AKG, AF, FRA. In MGH the entire repertory of medieval legislation can be found.

13 Lat. *Rolandinus Rodulphi de Passageriis,* Bologna, 1215 about – Bologna, 1300.

14 Actually, De Franceschi (1885, 90), holds that the encounters continued until about 23rd October 1267, since on that date Patriarch Gregory granted feudal possession in Friuli to two inhabitants of Castelvenere, a certain Luvisino and a certain Giovannutto, in payment for services given and damages suffered during the recent encounters.

15 *Venetos multum ad patriarcham liberandum attuisse docet nos Andreas Dandulus, lib. X. part 41 apud Murat. SS. XII, 375* (AF, 197).

Clement IV in person, when he thanked King Ottokar for intervening in this conflict (AKG, 22, 375).

These documents testify to the extensive diplomatic activity between the two conflicting parties, which was carried on by mediators of the king in the name of the community, as well as to the modalities of conflict resolution, in particular to the drawing up of the acts of reconciliation, which guaranteed the preservation of individual and community honour in the social order. These compromises and reconciliations, though (or, as in the case dealt with here, just for this reason) imposed by the central power, out of tradition and ritual rules and, as we have seen, in agreement with the written law then establishing

Fig. 10: Otokar II. Přemysl (Wikimedia Commons. File 270px-Po2vNM.jpg)

itself in the structure of conflict resolution, led to lasting reconciliation and peace (Povolo, 2015, 217–220).

In the analysis of this conflict we should bear in mind that the parties involved were connected at least institutionally. The Counts of Gorizia were ministeriales and lawyers of the Patriarch of Aquileia and so his vassals, like the majority of their allies and even like King Ottokar in person. So why did the King not intervene with his own army, which was one of the strongest in Europe in this period, or why did he not submit the conflict to a court instituted by himself? Because, according to the customs and written laws of the times, it was also possible to resolve conflicts with the opponents' acceptance of a pacific transaction of the reasons for the dispute, in which the main role was entrusted to mediators who represented the community. According to custom, a conflict of this sort was treated in the same manner as a family feud (*Vindicta parentum, quod faida dicimus*)[16]. In these cases conflicts were resolved according to Lombard law, with reference to so-called private law, still based on the principles of tribal communities and collective responsibility, according to which every family, brotherhood, clan or tribe exercises social control at the same time as it answers for the single members of the community.[17] Social control and the safety of members of the community and of the community as a whole were also guaranteed by vendetta for injustices. But this customary system of conflict resolution allows both a violent solution and a pacific one, which had to be accepted by both of the opposing parties. Therefore it should not be thought that these customs were left to purely arbitrary acts; on the contrary, the rules of the game were very well defined. Still, in every legal system, as in every game, rules can be got round.

Many of these situations can be seen in the feud between the Patriarch of Aquileia and the Count of Gorizia in the years 1267–1277. Both parts recognized that they were in conflict (*querimonia*) and that "violent justice and injustice" (*violentiis iuribus et iniuriis*) recurred (FRA, 89), while the Count of Gorizia went so far as to admit in writing that he had rebelled against the Patriarch (*fuerimus contraria uel rebelles*).[18] Still, we can conclude that the system of conflict resolution was based on customary tradition which through community mediation aimed at friendly relations (… *cum via amicabilis composicionis;* AKG, 29, 114) and peace (*pace et concordia perpetua*), in contrast with the hatred (*inimititia*)[19] which at that time doubtlessly led to conflicts, in general bloody ones.

From the political-military point of view, the Counts of Gorizia took advantage of a particularly favourable situation when they fixed the conditions of the reconciliation,

16 See Du Cange, 1733. Cf. word of order: feud; under this term appear the majority of medieval laws determining these conflicts. Available at: http://www.uni-mannheim.de/mateo/camenaref/ducange.html.

17 Here I should like to mention two classical studies of conflict resolution in tribal communities: Evans-Pritchard, 1940; Gluckman, 1955.

18 *Verum si in hac parte nos uel heredes homines complices et fautores nostri inuenti fuerimus contrarii uel rebelles, ex tunc eadem duo castra nostra in Aquilegensis ecclesie potestatem debent tradi et ipsi domini Rex et Archiepiscopus contra nos siue heredes uel homines siue complices et fautores nostros ipsi domino Patriarche suisque successoribus et Capitulo Aquilegensis ecclesie atque ipsius ecclesie fidelibus et deuotis in prestando auxilio adherebunt.* (FRA, 89).

19 See Du Cange, 1733, the word 'inimititia'.

Fig. 11: Vendetta in Florence, 1300 (www.storiadifirenze.org)

since they were holding the Patriarch in captivity. We need only think of the many descriptions of medieval prisons, for example the story of the English King Richard the Lion-Hearted, to understand that at that time situations like these were commonplace (Kos, 1994, 109–115). In the case under examination, the proof can be clearly inferred in the quotation of the above-mentioned truce of 1274, when in 1267 the counts of Gorizia imprisoned the Patriarch, "just as always happens in wars" (*que solent fieri in guerris*).[20]

And so the Counts of Gorizia, Meinhard and Albert, freed the Patriarch Gregorio only after the intervention of authoritative mediators.[21] In the case of the Counts of Gorizia, the intercessor was Vladislav, Archbishop of Salzburg and nephew of the Bohemian King

20 *Item interfuerunt cum ipso Comite ac Fratre suo Comite Mainhardo a captione Domini Gregorii Patriarche, in quorum servicio fuerunt dampna omnia, que solent fieri in guerris.* (CDI, II, 361, 602). According to studies of Italian cultural environments in that age, the word "feud" was unknown, and in its place were used "*inimicizia*", "*querimonia*", "*querela*" and even "*guerra*" (cf. Vocabolario, 1612).

21 Redemptio Gregorii patriarchae. *Gregorius patriarcha Aquilegiensis anno 1267. die quinta exeunte Augusto exivit captivitatem dicti comitis Alberti Goritiae, et conductus fuit Civitatem; procurato tamen per venerabilem patrem Wlotislaum archiepiscopum Salspurgensem cum ipso domno patriarcha, dum erat in captivitate, et cum Foroiuliensibus ex parte una et cum dicto comite ex altera, quod fuit per partes compromissum in ipsum archiepiscopum et domnum regem Bohemiae et postea confirmatum.* (AF, 197).

Ottokar II, who acted in his name (AKG, 22, 375); while in the case of the Patriarch of Aquileia, it was the Bishop of Olomouc, Bruno (AKG, 29, 112–117), who reached a compromise and truce (AKG, 29, 113) between the two opposing parties (AKG, 29, 113). It was determined that the truce would last until the next Pentecost (28th May 1268), while before All Saints' Day (1267) two arbiters, one representing the Patriarch and the other the Counts of Gorizia, were to describe and assess the damages caused by the conflicts in Friuli, and the same would be done by two other arbiters for the damages in Istria and on the Karst. Later, between Easter and Pentecost on 28th May 1268, they would announce the peace (*concordia et pace*).

As trustees of the agreement that "*deberet et posset componere, arbitrari, sentenciare et laudare, sive amicabiliter sive de iure inter partes, prout sibi placeret et videretur melius expedire*", Bruno, Bishop of Olomouc, was chosen for the Aquileian party, and for the Gorizia party Vladislav, Archbishop of Salzburg. Moreover, the terms of reconciliation imposed the restoration of the prior situation[22], and whoever violated or in any way offended or disturbed it or, worse, caused further damage, would have to pay a fine of 2,000 Aquileian marks[23], half to the opposing party and the other half to his own repository of the contract. As security, the Patriarch of Aquileia gave his trustee, Bruno da Olomouc, lien upon the castle and the estate of Schwarzenegg near *Divača,* while the count of Gorizia as security gave the Archbishop of Salzburg, Vladislav, the castles of Gorizia and Karsperg[24].

Four documents report these provisions, two for each party. It is likely that they were drawn up before the Patriarch of Aquileia was freed (FRA, 87–90; AKG, 29, 112–117).[25] As regards the contract of the reconciliation of August 1267, four documents have been conserved: two for the Patriarch of Aquileia (AKG, 29, 112–115), the compromise (*compromissis*) and the truce (*treuga*); while for the Count of Gorizia, Albert I, there are two versions of a compromise (FRA, 87–90; AKG, 29, 115–117). Clearly there was a reciprocal offer of and commitment to reconciliation, as well as a further definition of the conflict through arbitration. But it is interesting that each party made a commitment with

22 ... *in statum pristinum in quo ante captiuitatem ipsius domini Patriarche fueramus constituti* ... (FRA, 88).

23 … *secundum ius possint et debeant terminare, promittentes sub pena duorum milium marcarum argenti* … (AKG, 29, 114).

24 Karsperg or Carsperg was a castle near the village of Golac, south of Obrov, in the Brkini Hills; see Štih, 2013.

25 The dates have been preserved only for the two Gorizian documents, i.e., one of 25th August 1267 (FRA, 87) and the second of 26th August (AKG, 29, 117) but without the year. Still, since these two documents are almost the same – they differ slightly only in two points of the text, while all four agree that the key point of the resolution of the conflict is the detention of the Patriarch and the damage caused in Friuli, Istria and the Karst – we can conclude that they all date back to 1267, though the compiler of the published documents attributes to three of the documents (that of Gorizia of 26th August and the two of the Patriarch) the year 1268 (AKG, 29, 112–117). But, according to the contents, we can maintain without any doubt that this is the contract of the compromise between the two conflicting parties after the mediation of the above-mentioned bishop Bruno and archbishop Vladislav, before the declaration of truce and the release of the patriarch Gregory that took place on 27th August 1267 (cf. AF, 197). Cases of feud are known in which the opposing party avoided prison by signing a written document containing his renunciation of the vendetta (*Unfehde*) (Kos, 1994, 110–114).

its own procurator to cease hostilities: the Patriarch of Aquileia with the envoy (*missi*) of King Ottokar, Bruno, Bishop of Olomouc; and Albert Count of Gorizia, along with his followers, with the Archbishop of Salzburg, Vladislav. Therefore, the King's envoy was responsible for guaranteeing that his client would not violate the compromise agreed on, that is, the truce. If that were to happen, the transgressor would have to pay a penalty and surrender the properties given as security.

The two acts of reconciliation of the Count of Gorizia, the first on 25th August 1267 and the second on the following day, 26th August 1267, differ very little. At one point in the first document a part of the phrase that strictly obliges the Gorizian party to obey the King's dispositions is omitted.[26] Before the notary's signature a phrase is added which declares that the Gorizian party has signed and sealed the document. Here it is interesting to note that the first document was drawn up by the notary *Hermannus de Pertica Imperiali Auctoritate Notarius,* and the second by *Johannes de Lupito Sacri Imperii Publicus Notarius*. The reason for this change of notary is unknown; the missing part of the sentence leads us to think that, probably at the request of the Patriarch of Aquileia, the procurator Vladislav had obliged the Count to respect his dispositions as well as those of the King.

The difference between the Patriarch's two documents is more complicated. The first is a compromise (*secundum formam compromissi facti*), while the second is a truce (*treuga*) that was to last until the following Pentecost.[27] In both of them Bishop Bruno da Olomouc acts as guarantor for the reconciliation; to him is entrusted arbitration and judgment of the case with the Count of Gorizia[28], "taking into account both the friendly reconciliation and the law".[29] This undoubtedly recalls the formulas that frequently appeared in legal documents, according to which in order to judge it was necessary to take into account both the customs and the laws (*consuetudines et iuris*). In this case the friendly reconciliation refers to the customary rite of reconciliation in conflicts.

Gregorio, the Patriarch of Aquileia, handed over both of these documents to Bishop Bruno;[30] by so doing he promised and solemnly swore to respect the agreement. In the same way, as has already been observed, the Count of Gorizia swore to Archbishop Vladislav. But whereas in the Aquileian compromise attention is called to the fact that it

26 At the beginning, the whole phrase read: … *quod eorundem dominorum Regis et Archiepiscopi ordinationi seu amicabili compositioni absque cuiuslibet contradictionis et dilationis obstaculo nos et nostri complices et fautores stabimus et obediemus* … (FRA, 88), and after with the addition: … *quod eorundem dominorum Regis et Archiepiscopi ordinationi obediemus* … (AKG, 29, 116).

27 *fecimus et dedimus firmas treugas usque ad proximas octavas penthecostes* (AKG, 29, 113).

28 … *quod cum nos libere, mere et pure compromiserimus in venerabilem patrem dominum Brunonem dei gracia episcopum Olomucensem tamquam in arbitrum, in arbitratorem et amicabilem compositorem sive iudicem de omnibus controversiis, litibus et questionibus, quas habemus et habere videmur cum nobilibis viris Meinchardo et Al. comitibus Gor. et ipsi contra nos,* … (AKG, 29, 114).

29 This definition was repeated in several parts of the four documents, for example, also in the following form: … *in arbitratorem et amicabilem compositorem sive iudicem de omnibus controversiis,* … *componere, arbitrari, sentenciare et laudare, sive amicabiliter sive de iure inter partes* ovvero (AKG, 29, 114) … *complementum iustitie vel compositionis amicabilis* (FRA, 89).

30 … *omnia namque supradicta in manu dicti domini Olomucensis episcopi promittimus attendere et inviolabiliter observare.* (AKG, 29, 113) … *dedimus, tradidimus et consignavimus in manus supradicti domini Olomucensis episcopi* … (AKG, 29, 114).

is sealed both by the Patriarch of Aquileia and the Count of Gorizia, the truce act seems to be unilateral: that is, the Patriarch of Aquileia guarantees it to the Counts of Gorizia and their followers.[31] At the same time, the truce meant renouncing recourse to vendetta, and the relative act was itself a document used in feuds, (Brunner, 2011, 105–106) prodromic to arbitration and friendly agreement, as well as to a legal solution of the conflict. Consequently, it is less important that the Patriarch was superior to the Counts of Gorizia (in both the religious and the civil hierarchies) than that the detention by the Counts of Gorizia had offended the party which for this reason had the possibility and the right either to declare a truce or else to continue the hostilities and the blood vendetta. Under the pressure of influential procurators, the parties involved in this conflict were forced to come to terms, and the two procurators of the King had the role of guaranteeing their reconciliation, so that if one of the parties violated the agreement, the procurators would have to punish him, as written in both the act of compromise and the truce.

At this point I would venture to compare the role of the above-mentioned guarantors with the rites of conflict resolution of Montenegro and Albania (*osveta, gjakmarrja*). In those regions there exists the institution of a person called *dorzoni* (in Albanian) or *jemci* (in Montenegrin, *jemac*[32]). This person is delegated to keep the truce, in Albanian *besa*, in Montenegrin *umir* (Đuričić, 1979, 8). After the victim of the dispute had accepted the procedure of reconciliation instead of the arbitrary solution of conflict, once the compensation promised him by the offender had been deposited, the compromise was stipulated thanks to the ritual mediation of the community. On this basis, and again thanks to the community's mediation, the opposing parties reached a truce, which meant the renunciation of vendetta and the continuation of negotiations and arbitration between the two parties. The truce could last for a maximum of one year. The truce oath, the *besa*, was pronounced publicly by the victim. For this reason the victim was called "donor of the *besa*", which was "put into the hands" of one of the mediators named by the author of the crime. On their part, the mediators had the right to ask for the guarantee of the truce (Đuričić, 1979, 33). The guarantor of the truce was the so-called *dorzon* (etymologically from the Albanian *dorë* – hand), or *jemac* (in Montenegrin, guarantee), who supervised the respect of the agreement, and during the truce prevented a vendetta against those responsible for the crime.

A fundamental source for the study of the customary system of conflict resolution, not only for the territories of Montenegro, Herzegovina and Albania, but also for the European context, along with the Kanun of Lek Dukagjini and the Kanun of Skanderbeg, is doubtlessly the survey conducted by Valtazar Bogišić and his collaborators in the second

31 *Nos G. dei gracia ... Aquilegensis patriarcha ... fecimus et dedimus firmas treugas usque ad proximas octavas penthecostes viris nobilibus M. et Al. comitibus G. ac suis adiutoribusque eorum tam in personis quam in bonis,* … (AKG, 29, 112–113).

32 In the Kanon Leke Dukađina (KLD); in the context of the blood feud and the truce, there are three sectionsrelative to the guarantee: Ubistvo pod jamstvom (KLD §§ 939–940), Jemci krvne osvete (KLD §§ 973–976), Jemci novca za krvnu osvetu (KLD §§ 977–981); in general, the guarantee, or the dorzonia, is appliedin all types of the contracts drawn up (KLD §§ 683–694), but also as a guarantee in favour of someone inproceedings before a tribal judge (Djuričić, 1975; cf. KLD §§ 1044–1072; Bogišić, Čizmović, 1999).

Fig. 12: Miniatura from the Liber feudorum Ceritaniae represents an homage (about 1200–1209) (Wikimedia Commons. File: Cerit7.jpg)

half of the 19th century.[33] However, Bogišić's sources say that the *jemci* were chosen only in the most serious cases, while it happened frequently that a *jemec* or *dorzon* – and in some cases even more than one – was chosen for each side (Đuričić, 1979, 27). The Albanian legal historian Surja Pupovci picturesquely mentions the importance of the *dorzoni* in the resolution of conflicts, describing the concluding rite of the *besa*: the agreement was reached when the two representative of the parties conclude it by holding hands, but

33 Several collections of legal customs of the southern Slavs have been published, edited by Valtazar Bogišić. As regards the customary stystem of conflict resolution, or the vendetta (bloody), that is, *osveta (mn.), gjakmarjja (alb.),* the most interesting is the study based on a questionnaire of 1873 (Bogišić, Čizmović, 1999, 345–383).

he adds that "during the agreement they could hold hands hundreds of times, but without the presence of the *dorzon* the agreement is still weak" (Đuričić, 1979, 14).

The *dorzon* whose role was to act as guarantor was chosen by the offender (KLD § 973). This had to be a person who was trusted by both parties, and who enjoyed honour and prestige; his family could not be involved in any blood feud (Đuričić, 1979, 24). He took a public oath (*faith* – in Albanian, *beja*) and guaranteed with his estate and honour to preserve the truce. If, on the contrary, the person he represented did not respect the truce and revenged himself, the *dorzon* had to kill him or use another adequate punishment; this worked in both directions, in the sense that if he failed to punish him, he himself would be punished (Đuričić, 1979, 42–43). In this case, therefore, the *dorzon* was also an authority who held repressive powers. He was the guarantor of the truce for the injured party, as well as being the culprit's fiduciary.

The guarantors or fiduciaries (*fiduciarii*) were also often present in conciliation and/or judicial procedures in later periods.[34] While in civil matters this institution still plays an important role today, it has completely disappeared in the criminal sphere in European countries, though it has been kept in the United States as an institution in the penal system.

According to the rite we have just described, Albert put into the hands of Vladislav his commitment, or his oath, as we can understand from the document (*data fide manuali vice sacramenti in manus supradicty domini Wlodizlay*) (AKG, 29, 117). In this sense it was clearly a question of *immixtio manuum*, as we find it in the rite of investiture of vassals or notaries. This ritual gesture also constituted a form of penitence, since it was performed on the knees (*flexibus genibus*) or in some other position expressing penitence. A clear example of penitence in the reconciliation or the blood feud is given by the description of the concluding ceremony of the Montenegrin rite[35]. The party guilty of the crime publically states his repentance to the injured party, in the presence of representatives of the community, by crawling on the ground wearing only some of his underwear, barefoot and bareheaded, while slung across his shoulders there is a long shotgun attached to his belt. Drawing near and facing him, the injured party first takes away and then gives back the arm, saying: "First of all brother, then blood enemy, then once again brother for eternity. Is this the gun that took my father's life?" After which, the injured part reconfirms his complete pardon to the culprit and they kiss one another fraternally. Despite the fact that there are other gestures in this ceremony that express the culprit's profound penitence and humiliation,[36] the rite safeguards the honour of both the injured party and the culprit, as well as of the whole community, thereby establishing and maintaining norms and values.

34 At this point I should like to call attention to the extraordinary richness of the Venetian State Archive, which conserves in numerous funds documents relative to judicial proceedings e.g., the Council of Ten, the Heads of the Council of Ten, the *Avvogaria Comun*, the *Quarantia Criminal*, and so on.

35 This scene is also described by Boehm (1984, 136); but it was already registered in the field in an original manner by Bogišić in his questionnaire in the second half of the 19th century (Bogišić, Čižmović, 1999, 371–372) and it had been already painted by Vialla De Sommières in 1820.

36 He runs up to Bojković to pick him up quickly from the ground, but at that moment Bojković kisses his feet, his breast and his shoulder in Boehm (1984, 136).

Fig. 13: Paja Jovanović, Umir krvi (truce), 1889. The ritual of the community mediation with children in their cradles to persuade the offended to compromise, that's the truce, compensation, reconciliation, forgiveness and peace perpetual. Galerija matice srpske u Novom Sadu (https://buki81.wordpress.com/2011/05/22/the-muzej-2-paja-jovanovic/krvna-osveta/)

Just the sole gesture of taking away and then giving back the gun shows a clear tendency to hear the ritual appeal of reciprocity and community mediation. With the help of these rites the community creates a balance, exercises social control, and permits the reintegration and lasting reconciliation of the conflicting parties (Verdier, 1980, 24–30). Naturally, this is an ideal social formula, but it was evidently effective in the system of conflict resolution, as J. M. Wallace-Hadrill illustrates at the end of his legendary study, *The Bloodfeud of the Franks*:

> *Feuding in the sense of incessant private warfare is a myth; feuding in the sense of very widespread and frequent procedures to reach composition-settlements necessarily hovering on the edge of bloodshed, is not. The marvel of early medieval society is not war but peace. (Wallace-Hadrill, 1959, 487).*

Before going on to illustrate other features of the medieval conflict resolution system, we shall briefly examine some other documents about the conflict between the Patriarch of Aquileia and the Counts of Gorizia and their allies.

Fig. 14: Act of public reconciliation in Montenegro. Voyage historique et politique au Montenegro (1820) by Vialla De Sommières (Wikimedia Commons. File: VDS pg390 Act de Réconciliation publique devant le Tribunal du Kméti.jpg)

After the exchange of the acts of compromise and the declaration of truce, which in all likelihood led to the release of Patriarch Gregorio, the agreement was also confirmed (AF, 197). Unfortunately, the documents available do not allow us to know if the chosen arbiters managed to make an inventory of and assess the damages suffered by the two opposing parties by All Saints' Day (1st November 1267) or Easter (8th April 1268). We have no notice of possible conflicts during the truce, but just one month after its expiration (All Saints' Day, 28th May 1268), the reasons for the dispute had undoubtedly worsened, since on 3rd July 1268, under the hill of Medea to the west of Gorizia, the troops of Gorizia killed in an ambush the Patriarch's vice-dominium, Bishop Albert of Concordia.[37]

37 *De interfectione domni Alberti episcopi Concordiensis vicedomini patriarchae. 1268. die 3. intrante Iulio mense ante tertiam apud montem Medeam interfectus fuit venerabilis pater Concordiensis episcopus, vicedominus reverendi patris Gregorii patriarchae, et quidam alii cum eo per insidias ei impositas per fautores domni Alberti comitis Goritiae.* (AF, 197).

At this juncture Gregorio responded with force, showing his military prowess. On 27th July 1268 he set out from Udine with his troops to march against the Count of Gorizia, attacking him and destroying the bridge over the Isonzo on 12th August. Evidently, this violence once again triggered off the mechanisms of conflict resolution in use at the time, with the result that an act of compromise and reconciliation between the parties was made on 30th August 1268.[38]

Further information about the conflict dates to 1269 and refers to the death of the Patriarch of Aquileia, Gregorio of Montelongo, on 8th September. The new Patriarch, Raimondo della Torre, was not appointed until the first months of 1274. In the regions administered secularly by the Patriarch of Aquileia, i.e. in Friuli, Istria and the Karst, this was a period characterized by an interregnum, not only at the top of the hierarchy but also locally. More or less important conflicts continued in the areas under Venetian influence – the Istrian towns and those of the Counts of Gorizia and their vassals. The vassals of the Patriarchs of Aquileia were also involved; in keeping with their interests and expectations, they regularly passed from one side to the other, between Guelphs and Ghibellines, more or less under cover and in a confusion of lay and ecclesiastical powers. Nor was it by chance that for a certain time until the end of the conflict (1277) the situation was taken advantage of for his own personal interest by the Bohemian king Ottokar, who also became General Captain of Friuli in 1272.

The election of Raimondo della Torre as Patriarch of Aquileia at the end of 1273 coincided with the appointment of Rudolph of Habsburg as king of the Germans, though the German kings had claimed the imperial throne since 962. The Counts of Gorizia soon formed ties with the new ruling family, which benefitted them at first, but later it gradually took possession of all their properties (in 1363, the Tyrol; in 1374, Istria; in 1500, the lands of Gorizia). The rivalry existing with the Bohemian king helped them. Indeed, in 1274, on the strength of a decree of the National Assembly, Rudolph of Habsburg ordered the Bohemian king, Ottokar II Přemysl, to restore the properties of Babenberg and Spainheim, which led to a war between them. With the treaty of peace of Vienna in 1276, Ottokar renounced Austria, Stiria, Carinthia and the Slovenian March (or Windic March) in favour of Rudolph, who gave them to be administrated to Count Meinhard of Gorizia. After which, in the Battle of Marchfeld of 1278, Ottokar was killed. With the double marriage of his children to those of Ottokar, Rudolph neutralized his enemies and created in Austria, Styria, Carinthia and Carniola (that is, in the so-called hereditary Habsburg lands, to which the Tyrol was also annexed in 1363) the basis for the rise of the Habsburg dynasty.

And so in the conflict with Ottokar, Rudolph of Habsburg acted in full accordance with the concept of the system of conflict resolution in force at the time – particularly with his final, mythical act which, according to the mentality of the age, was the only thing that

38 *De exitu exercitus et de destructione pontis Goritiam. Dicto anno die Veneris 5. exeunte Iulio, exivit Gregorius patriarcha Utino cum suo exercitu contra dictum comitem. Et tunc die 12. Augusti destructus et dirutus fuit pons Isuntii prope Goritiam. Reversus est die penultima Augusti Civitatem; facto iterum compromisso inter dictas partes. Aug. 30.* (AF, 197; AKG, 22, 377).

Fig. 15: Coin of the Patriarch Raimondo della Torre with episcopal vestments, seated on the front with the gospels in his hand. Tower of the family coat of arms (Wikimedia Commons. File: Raimondo della Torre – Denaro.jpg)

could guarantee a lasting peace: the marriage between representatives of the opposing parties, or at least, as became prevalent later, the exchange of godparents.[39]

The new Patriarch of Aquileia also went to work at once to resolve the conflicts shaking the temporal power of the Patriarchs. Thus, on 11th February 1274 he and the Doge of Venice, Lorenzo Tiepolo, reconfirmed the peace that had been previously declared by Patriarch Gregorio with the Doge of Venice, Rainerio Zeno, in 1254[40]. Next he turned to what at first sight seemed to be the most difficult problem: the normalization of relations with the Count of Gorizia and his allies, above all Koper.

And so the often-mentioned document on the truce of 18th August, 1274 came into being.[41] Among other things, it is a document that contains a large quantity of interesting and original data useful for the study of the past both on the micro and the macro scale (CDI, II, 361, 596–604). As a supplement to this document, the very next day, i.e. on 19th August, as the agreement had stipulated, the Patriarch was presented with the inventory

39 Here, too, it is possible to compare this rite to the Montenegrin and Albanian ones, but medieval documents from all over the Europe also testify the use of this rite (see Smail, Gibson, 2009, 417–441).

40 *Cum inter Venerabilem Patrem dominum Raymundum Dei gratia Sanctae Sedis Aquilegiensis patriarcham ex una parte et Magnificum dominum Laurentium Theupulo Dei gratia Venecie Dalmacie atque Chroacie Duce dominum quarte partis et dimidium tocius imperii Romanie et Comunis Veneciarum ex altera … pacta et conventiones … caudet ad talem concordiam* (CDI, II, 358).

41 *Pax in forma conventionis pro bono pacis et concordie – fidantia seu treuga.* Rolandino nel '200 illustra: *forma conventionis*; *Treuga est conventio de non provocando bellis ...* est securitas ad tempus personis, & rebus … (Rolandino, 1546, 158 v).

Fig. 16: Rudolf of_Habsburg_Speyer.jpg (Wikimedia Commons)

of the damages and the list of participants in the battles that had taken place in July and August of 1267. This supplement tells of a vendetta of the Seigneurs of Momiano against those of Pietrapelosa following the murder (*turpiter interfectus*) of Biaquino of Momiano. And not only: the gruesome vendetta of Cono of Momiano had led him to undertake other military expeditions in the lands of Gorizia in the same years, seeing that, besides assaults on the Tower of Buzet and the Castle of Pietrapelosa, the document also reports attacks on other castles of the Patriarch.[42] Among the protagonists mentioned in the document we find not only Cono da Momiano but also Friderico de Mimiliano, Woscalco filio dicti Domini Chononis de Mimiliano, as well as Frater Galvanus et Fridericus de Mimiliano.

42 *Item Dominus Chono de Mimilliano interfuit cum Comite et in servicio Comitis apud Pinguentum et apud Writsperch apud Mascher et apud Wisnavich.* (CDI, II, 361, 602; AKG, 22, 399).

Despite the fact that the conflicting parties had promised friendship (*facti sunt amici*) and had sworn (*iuravit*) to respect the decisions of the three arbiters[43] in order to reach a settlement, harmony and peace (*de composition et concordia et pace*), it is clear that very soon new dissensions broke out (*facti inimici sunt ut prius, non obstante iuramento ...*).

The object of the next conflict was the small fortress of Cormons. The Count of Gorizia had already started out from Cividale with his soldiers to claim his right, but King Ottokar interceded once again, concluding a truce between the two parties. This is reported in a document of 2nd October 1274, (AKG, 22, 401) according to which the two parties agree that in case of future conflicts each side will name an arbiter to pass judgment on the reasons for the conflicts. Like many other times in the past, the conflicting parties committed themselves to respect the arbiters' decisions.

It would seem that in the arbiters' act of persuasion success smiled upon the Count of Gorizia once again, for the Patriarch of Aquileia confirmed his right to half of Cormons in an act of 24th February, 1275 issued in Cividale (CDI, II, 363, 606–609). In general, when this type of agreement was made in the presence of allies and followers of the disputing parties in the High Council[44] there were also representatives of the city of Koper present during the solemn oath of truce. In reality, in some other documents concerning the same conflict the representatives of Koper were among the witnesses, but in this case it was a question of a separate truce between the Patriarch of Aquileia and the city of Koper. Indeed, in this meeting the representatives of Koper seemed to have read the resolution of their own Major and Minor Town Council, and also, in agreement with the whole community of Koper, to have solemnly sworn on the holy Gospels that they would prevent all attempts at fraud or iniquity and would respect the truce faithfully, in no case and without any exceptions violating it.[45] Given that Koper was also under the secular dominion of the Patriarchs of Aquileia, we can see here the great autonomy that medieval communities had in the system of conflict resolution.

It seems that after this reconciliation the process of arbitration on the field finally got started, as we can see in the above-mentioned Glagolitic document, *Istarski razvod*. But things got complicated again in May 1277, when a new compromise was stipulated along with an agreement on the inventory of the damages caused after the peace agreement (*de*

43 *Unde datis securitatibus et praestitis iuramentis … Dominus Patriarcha elegit Dominum Gothfredum Potestatem Paduanum. Dominus Comes elegit Dominum Ulricum de Tauures, et hii duo communiter elegerunt Dominum Gerardum de Cammino* (AF, 199; CDI, II, 361, 597).

44 *Memoratus insuper Dominus Patriarcha nomine Suo et supradictorum suorum desponsione solempni promisit; et prefatus Dominus Comes ad sancta Dei Evangelia corporaliter juravit firmam pacem; ambo inter se ad invicem et omnia et singula sapradicta inviolabiliter observare pro se et suis, tenere et non contravenire aliqua occasione vel exceptione sub pena Trium Millium Marcharum denariorum Aquilegensium* (CDI, II, 363, 608–609).

45 *… predicte Civitatis Justinopolis de voluntate et consensu totius minoris et majoris Consilii et totius Comunitatis Justinopolis, damus et concedimus plenam licentiam, et libertatem Nobilibus Civibus Nostris, videlicet Dominis Albertino Paduano, Carsto de Miriza, Zanetto de Upso, Varino Hengeldei, Ricardino Blajono, Johanni Dietalmo, Almerico Spandinuci, Lanceloto Paltono, Facine de Tarsia, Nazario Bertulini, jurandi ad sancta Dei Evaugelia, … omni fraude remota et malicia inviolabiliter observare et non contravenire aliqua occassione vel exceptione*. (CDI, II, 363, 609).

damnis hinc inde illatis postquam facta fuit praedicta pax) (AKG, 24, 429). And in all likelihood it was just this agreement that led to the proclamation of lasting peace on 9th June 1277. Unfortunately, the reference to the proclamation of lasting peace is very succinct: it only reports that both parties would respect the arbitration of the four arbiters and would proclaim lasting peace (*pax et concordia perpetua*).[46]

Thus, just as the ideological structure of the high Middle Ages was built on the wave of the so-called peace movement after the year 1000, which separated God's truce – a temporary suspension of hostilities, distinct from God's peace, which meant perpetual peace – so the rite of resolution of conflict included the truce as a phase of suspension of hostilities. However, for the peace to endure peace it was also necessary to proclaim the so-called lasting peace, which was based solely on the satisfaction of both parties. It should therefore not come as a surprise that in the system of conflict resolution, already established in tribal communities, the ideal final ritual intended to guarantee an enduring peace envisioned marriage exchanges between the conflicting parties, or at least the exchange of godparents between the families involved.

On this subject there exists abundant documentation and evidence, to be interpreted using suitable methods of investigation. To clarify this cultural phenomenon more fully, I look to Guille-Escuret's interpretation. According to this scholar, the formula of a tribe of New Guinea reported by the renowned anthropologist Marshall Sahlins on the basis of field research is present in many places on our planet, "We fight against those we marry". (Sahlins, 1980, 71; Guille-Escuret, 1998, 171). Or, again, the publication of certain acts of conflict resolution in Marseilles in the middle of the 14th century: when after the vendetta (*vindicta*) the parties to the case had deposited the declaration of peace with a notary, there followed a notary's entry concerning the marriage between representatives of the families previously in dispute (Smail, Gibson, 2009, 426–427). At this point I certainly do not intend to go more deeply into the unifying role of conflicts in the community, but it is possible to confirm the observations or even just the insights of certain researchers, according to whom the system of conflict resolution in tribal communities was doubtlessly of great importance in forming the cohesion and unification of wider communities, not the least of which were national communities.[47]

The degree to which, thanks to written law, pacific resolution of conflicts through recourse to the law had taken the place of violent resolution – the key role of guarantor of agreements now being taken on by a notarial act[48] – is shown in customary rites by

46 De pace inter domnum patriarcham Raymundum et nobilem comitem Goritiae Albertum. *Anno Domini 1277. indictione 5, die Mercurii 9, intrante lunio, in Civitate Austria in palatio patriarchali fuit per domnos Walterobertoldum de Spengimbergh, loannem de Zuccula patriarchae, Ugonem de Duino et Henricum de Pisino, comitis Alberti arbitros pronunciata arbitrando inter eos firma pax et concordia perpetua.* (AKG, 24, 429). Notaries were chosen as judiciary administrators.

47 "Zmora's claim that feuding contributed to state-building fits well with this model", explains Carroll in his review of Zmora's book (Carroll, 2012).

48 Notaries were chosen as judiciary administrators, "*able to give concrete answers to whoever wanted to protect his own interests without having recourse to arms, but to the law intead"*, Irnerio (1050–1130 about), the first glossator, see Bellomo, 2011, 71.

significant elements of free will, since single individuals and communities were given the freedom to choose whether to resolve the conflict through friendly means, with community mediation, or to continue the violent solution.

The concept of a system of conflict resolution, which was reiterated and maintained in the community through symbolic ritual activities, established norms and values which, at least in the initial phases of written law, were included as obvious elements in written legal formulas. Thus, as a compulsory integrating element in the process of reconciliation and of guaranteeing lasting peace, the ritual gesture of the kiss of peace (*osculum pacis*) between the conflicting parties was maintained at the end of the rite of reconciliation. In some cases, this gesture was described in notarial acts.[49]

But let us return to the conflict in consideration. In 1277, with the proclamation of lasting peace, after ten years a settlement was reached to end the conflict between the Patriarch of Aquileia and the Count of Gorizia over the confinement of Patriarch Gregorio in 1267 and the damage it had caused. Is it legitimate to believe that the Patriarch of Aquileia and the Count of Gorizia, at the proclamation of lasting peace, exchanged the kiss of peace (*osculum pacis*)? The answer could be positive, considering that in drawing up all the ten documents regarding the resolution of the conflict, the indications of the Bolognese notary, judge and university professor, Rolandino, were adopted. Indeed, Rolandino maintained that there could not be a genuine lasting peace without its being reciprocally guaranteed between the parties directly responsible for the conflict and reconfirmed by the kiss of peace (*pax et concordia perpetua*) (Rolandino, 1546, 158–159v). It is precisely these concepts, expressed in written laws, that prove how the forms and ritual gestures of the customary system of conflict resolution were not only kept but were regularly included in the ritual formulas of written law. The documents that have come down to us regarding the conflict between the Patriarch of Aquileia and the Count of Gorizia explicitly testify to this. And not only, but also to the customary system of conflict resolution, in whose ideal image and rituals social values based on community mediation, reciprocity and the goal of enduring peace were reflected. What community would not desire these values? Both in social and interpersonal relationships, conflicts not only reflect the ongoing struggle for control of resources, but they are socially constitutive and are integrated into the system of social order (Gluckman 1955, 109–136). Conflicts generate alliances between different groups, in the past chiefly between kin groups or clans (Lévi-Strauss, 1963, 55–66). This is a general structural aspect of conflict, while the local or particular aspect comes out concretely through the struggle for resources, in the fabric of individual circumstances. Those who succeed in forming the greatest number of alliances that are loyal, various and often contrasting are those who prevail (Gluckman, 1955, 1–26). In our case, this was clearly better accomplished out by the Counts Gorizia than by the Patriarchs of Aquileia.

49 Some examples of documents on the exchange of the *osculum pacis* at the end of repacification procedures in the 14th century have been published in the above-mentioned study, see Smail, Gibson, 2009, 417–441, but a very precise testimony is that of Rolandino, 1546, esp. 158–159. Rolandino says that without personal contact between the parties peace cannot be enduring, and so at the end of the reconciliation the gesture of the *osculum pacis* is prescribed (Rolandino, 1546, 158–159), meaning the kiss on the mouth (*ore ad os*). Cf. Le Goff, 1985, 383–461, esp., 392; Petkov, 2003.

However, these disputes caused other actors to enter their territories – first the Venetians and then the Habsburgs themselves.

THE ISTRIAN WAR

The enduring peace of 1277 did not put an end to the presence of Koper and Gorizia in Istria. In Pazin in the year 1278 Count Albert and the representatives of Koper, formed an alliance against Venice and its Istrian allies in the name of the Patriarch, though he was not actually present. They made a pact concerning the division of spheres of influence, according to which if they were victorious Koper would take control of the coastal towns, while to the Count would be left the possessions in the hinterlands of Istria.

In this circumstance, the alliance took advantage of the fact that Venice was engaged in a war with Ancona. After the siege of Motovun, which tried to defend itself courageously, the count of Gorizia conquered Sveti Lovreč (San Lorenzo del Pasenatico).

Fig. 17: Two churchmen giving the kiss of peace, 1240 (http://www.jobev.com/medrom.html)

If the Serenissima had initially decided not to oppose the alliance between Koper and the Count of Gorizia, preferring to tighten a vice around them gradually, at this point Venice attacked with all its forces. After the siege of Izola in February of 1279 it took possession of Koper, destroying part of the town walls and deporting the majority of the population. In January, 1283 the High Council of Venice got the news of the "surrender" of Piran, which represented not only the definitive end of the alliance between Koper and the Count of Gorizia but also the gradual loss of the political autonomy of the towns of Istria, though there were still to be attempts at regaining it in the future (Greco, 1939, 45–46).

Peace had still not arrived for the Istrians: the relations of force in the peninsula changed radically. The war between the Patriarch of Aquileia and the Counts of Gorizia and Istria against Venice, which lasted from 1283 to 1291, gave further proof of how alliances could change in the space of twenty-four hours.

In Muggia in March, 1283 the Count of Gorizia and the Patriarch of Aquileia made an alliance, which was joined by Padua, Treviso and Trieste. On that occasion all the Istrian towns that had put themselves under Venice took the side of Venice, including Koper, though the party of the Patriarch was still active. In this war, which Venice waged mainly against Trieste as it was a rising maritime port, Koper played an important role, since this city was the seat of the *Capitaneus Istriae*, which represented the embryo of the future centralized military government in Istria.

In the war, which lasted until the end of 1291 with an interruption between 1285 and 1287, besides the coastal towns from Muggia to the Canale di Leme, Venice conquered Antignana, a possession of the Patriarch in the hinterlands of the peninsula; the territory around San Pietro in Selve; and the Castle of Grožnjan, a possession of the vassal of Pietrapelosa. Dvigrad, Buje and Muggia surrendered. As compensation for war damages, the Patriarch gave up *de facto* his rights over the towns that had been lost.

It is no surprise, therefore, that Vicardus II of Pietrapelosa, whom the alliance with the Count and the Istrian cost towns the loss of his father Henry and his uncle Carseman, was the last vassal to pass to the side of the Venetians, opening the doors of the Castle of Grožnjan to them in 1287 (De Vergottini, 1925, 33; CDI, II, 428, 768–769). In 1285, during the two-year truce, in consequence of the armed resistance to the Patriarch of Aquileia put up by Vicardus II, the latter was forced to promise the Castle of Salež (Salise) for a value of 300 marks. The following year he exchanged this castle with that of Grožnjan (CDI, II, 735–736). In the years to come Vicardus II was to remain faithful to the Count of Gorizia, and after the disappearance of the Seigneurs of Momiano he was the most fervent supporter of the Seigneurs of Gorizia in northern Istria.

Despite the numerous occasions when he opposed the Patriarch, especially in questions concerning Friuli, where the conflict that had started in Istria had moved, Vicardus II was not excommunicated by the Patriarch until 1297, after the sack of the Friuli town of Perteole. After the excommunication, in October of the same year, Vicardus II had to repent publicly in Udine in the presence of the eminent prelates and nobles who made up the Patriarch's court (CDI, II, 415, 735–736). It is interesting to note that more than of the slaughter of innocent people, Vicardus II was accused of destroying the campanile.

Fig. 18: The lion of Montovun, with the closed book (photo: D. Podgornik, 2007).

In his defense, Vicardus II blamed the destruction on Count Henry, who confirmed the accusation (CDI, II, 469, 838).

In 1302 Vicardus II, with Biaquino II of Momiano and other vassals of the Count of Gorizia and Istria, was once again in Friuli, where they continued the plunder of the possessions of the Patriarch. Nonetheless, five years later the Patriarch himself, by virtue of his guardianship over Henry II of Pazin, donated the feud of Kodolje to Vicardus II (Bianchi, 1847, 337, no. 1146).[50]

The Seigneurs of Momiano also frequently changed their banner. In the eighties they once again supported the side of Aquileia. It so happened that in 1290 Count Albert I of Gorizia captured and imprisoned Ulrico of Momiano. In 1309, during the war fought between Aquileia and Venice, when Henry II Count of Gorizia allied himself with the Patriarch of Aquileia, the Seigneurs of Momiano allied themselves with the Venetians. Not only: they subsequently took part in the rebellion of the Friuli nobles against the Patriarch, which ended in February, 1310 (Štih, 2013, 173). This change of sides was the likely reason for the uncontested occupation of Momiano by Vicardus II of Pietrapelosa the following year.

After the loss of Momiano in 1311, the Patriarch of Aquileia gave the Seigneurs of Momiano the feud of Castiglione between Buje and Grožnjan, where they continued to

50 De Franceschi (1897, 163–164) held that the village Colton was Kršan below Pazin, while Klen (1977, 32), claimed that it was Kodolje (Codoglie), which later was part of the feud of Pietrapelosa.

practice their political pragmatism. So it was that in November of 1343 Biaquino and his son Francesco Voscalco put themselves and their Manor of Castiglione under the protection of Counts Meinhard VI, Henry III and Albert III of Gorizia, thereby siding with Venice in the Veneto-Gorizian war. In 1345, to punish this betrayal, the Patriarch of Aquileia had the vassal captured and the walls surrounding Castiglione destroyed. As citizens of Venice, Biaquino and his son were freed, but only thanks to the intervention of Venice.

The line of the first Seigneurs of Momiano died out in 1358 with the death of Francesco Voscalco, son of Biaquino, *qui decessit absque masculis heredibus ex se descendentibus*. All the feuds that the house had obtained from the Aquileian church went back to the Patriarch of Aquileia, who conferred them to Simone of Valvasone in Friuli on condition that *quod in loco de Castiglono numquam habeat facere Castrum aliquod edifican* (Štih, 2013, 179).

Almost at the same time the Seigneurs of Pietrapelosa also died out. The last member of this glorious and important Istrian family of feudal lords is found in the investiture of Nicolò, son of the deceased Peter Pietrapelosa. The division of all the possessions of his ancestors (Pietrapelosa and Grožnjan) (CDI, II, 741, 1253; Benedetti, 1964, 15–16) was confirmed in 1352 by the Marquis of Istria Jacopo Morello of Lucca.

CONCLUSIONS

As we have seen, the last decades of the 13th century in Istria are marked by continual struggles for territorial conquests and wars that produced victims and devastation. The disastrous effects of these struggles were aggravated by the frequency with which epidemics were spread, also in neighbouring areas (so much so that bordering populations struck by the epidemic sometimes found refuge in Istria). This is what happened, for instance,

Fig. 19: Amor Sacro e Amor Profano by Titian as apology of Divine and Profane Law (Wikimedia Commons. File:Tiziano – Amor Sacro y Amor Profano (Galería Borghese, Rome, 1514).jpg)

after the military encounters that occurred between 1267 and 1277, and even more after the 1283–1291 war between Venice and Aquileia that was fought in Friuli and Istria. The peninsula was hit especially hard, "decimated, burnt down, desolate and brutally debauched". The inhabitants of adjacent zones such as Carniola, Carinthia and Croatia arrived in the region, settling chiefly in the territory of Koper, Izola and Piran, which were among the most vulnerable areas.

However, it is the documents concerning the feud between the Patriarch of Aquileia and the Counts of Gorizia that are evidence of how written laws show that the ritual forms and gestures of the customary system of conflict resolution were not only maintained but were regularly inserted into the ritual formulas of written law. Above all they document

Fig. 20: The Ark of Rolandinus Rodulphi de Passageriis in Piazza San Domenico, Bologna (Wikimedia Commons. File:San domenico, bologna, arca.JPG)

how the customary system of conflict resolution, in its ideal image and through rituals, reflected social values based on the mediation of the community, reciprocity and the propensity to achieve a lasting peace. Comparisons with the custom of conflict resolution in Montenegro, Albania and Herzegovina confirm the hypothesis of a number of the ritual and procedural features of custom in written law. In addition, they confirm the fact that the customary conflict resolution system, also called *vindicta, faida, blood revenge, krvna osveta, gjakmarrja* etc., was in fact a concept. Ritually it consists of three phases: gift (compromise), the truce (Oath) and lasting peace (amor). The three phases, brilliantly descripted by Le Goff on the case of knights' investiture in his work The Symbolic Ritual of Vassalage, are valid on the level of secular authorities' organisation. Concept, obviously developed back in primary human communities. In social and interpersonal relations, conflicts are not only a reflection of the continual struggle for control of resources; rather, they are an integral part of the system of social order. Indeed, conflicts generate alliances between different groups, in the past chiefly between kin groups and clans. This is a general structural aspect of conflict, while the local or particular aspect is shown concretely through the struggle for resources, in the interweaving of single circumstances, where those who succeed in forming the greatest number of loyalties, differing and often contrasting alliances, are the ones who prevail. In our case this was clearly better accomplished by the Counts of Gorizia than by the Patriarchs of Aquileia.

The fact remains, however, that already in 1305 Biaquino II alienated Momiano to Fredrick of Prampero Friulano, only to buy it back two years later (1307). In the spring of 1311, Viskard II of Pietrapelosa conquered Momiano, and on 7th May of the same year transferred ownership of the castle to Fredrick of Prampero for 200 marks, with the commitment not to cede it to anyone for six years, especially not to the Venetians or the city of Koper. Subsequently, the Patriarch of Aquileia invested Fredrick of Prampero with the feud of Momiano. But already in December of 1311 Fredrick *de sua manu et tenuta* surrendered it, selling it and investing Count Henry II of Gorizia and his heirs with the Seigneurage of Momiano; the Patriarch could do nothing but ratify the investiture of Count Henry II of Gorizia and his heirs with the feud of Momiano. The ceremony took place on 6th October 1312 in Udine (Carli, 1791, 158–159).

Thus it was that in 1312 the feud of Momiano passed into the hands of the Counts of Gorizia. This was, in fact, the ultimate vendetta of the family of Pietrapelosa, with the important difference that this time it came about without a *turpiter interfectus*.

TURPITER INTERFECTUS. GOSPODI MOMJANSKI IN PETRAPILOŠKI V OBIČAJNEM SISTEMU REŠEVANJA SPOROV V ISTRI V 13. STOLETJU

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POVZETEK

Listine o sporu med oglejskim patriarhom in goriškim grofom (1267–1277), ki so v ospredju pričujočega članka, kažejo tedanje značilnosti sistema reševanja sporov. To je čas, ko so se z vzponom srednjeveških mest oblikovale izobraževalne ustanove, zlasti univerze, ki so bistveno pripomogle k razširjenosti pisave kot kulturno-tehnološkega pripomočka za izvajanje oblasti. To je še čas, ko je t. i. učeno pravo črpalo svojo snov tako iz dediščine rimskega prava, ki je tedaj ponovno vzniknila, kot iz vrste pravnih določb germanskih predpisov, če naj jih tako poimenujemo skladno z zbirko Monumenta Historica Germanica, svojskosti mestnega prava ter še zlasti na podlagi običajnega prava, ki v svoji idealizirani podobi in s pomočjo obreda izražajo družbene vrednote temelječe na mediaciji skupnosti, reciprociteti in težnji k trajnem miru. Primerjave z običajem reševanja sporov v Črni gori, Albaniji in Hercegovini potrjujejo hipotezo o mnogih ritualnih in procesnih značilnosti običaja v učenem pravu. Potrjujejo še, da je bil običajni sistem reševanja sporov, imenovan tudi vindicta, faida, krvna osveta, gjakmarrja …, *koncept. Ritualno je sestavljen iz treh faz: dar (kompromis), premirje (prisega) in trajni mir (amor). Tri faze, ki jih je v delu Simbolno obredje vazalstva na primeru investiture vitezov briljantno opisal Le Goff, veljajo na ravni organizacije posvetne oblasti. Koncept, ki se je očitno razvil že v primarnih človeških skupnostih.*

*Oblikovanju učenega prava tako lahko sledimo tudi na primeru spora med oglejskim patriarhom in goriškim grofom v drugi polovici 13. stoletja. Vseh 10 obravnavanih dokumentov o reševanju spora pri sestavljanju listin namreč sledi napotkom bolonjskega notarja, sodnika in univerzitetnega profesorja Rolandina (*Rolandinus Rodulphi de Passageriis*) iz druge polovice 13. stoletja. Rolandino med drugim pravi, da ni pravega trajnega miru, če si tega ne zagotovita neposredno odgovorni strani v konfliktu, in to potrdita tudi s poljubom miru. Prav te dikcije v zapisanem pravu pričajo, kako so se ritualni obrazci in ritualne geste običajnega sistema reševanja konfliktov ne le obdržali, temveč bili neposredno sprejeti v ritualnih obrazcih učenega prava.*

V družbenih odnosih in interakcijah so spori ne le odraz nenehnega boja za resurse, temveč so družbeno konstitutivni, so vgrajeni v sistem družbenega reda. Spori namreč generirajo tudi zavezništva med različnimi skupinami, v preteklosti v glavnem sorodstveno oziroma klansko povezanih. To je globalni strukturni vidik sporov, lokalni ali partikularni vidik pa se v praksi kaže tako, da v boju za resurse v spletu posameznih okoliščin prevladajo tisti, ki uspejo združiti čim več različnih in pogosto konfliktnih

lojalnih zavezništev, kar je očitno v našem obravnavanem sporu bolje uspevalo goriškim grofom kot pa oglejskim patriarhom. Toda njuna nasprotja so na njune teritorije privedla druge igralce: Benečane in Habsburžane.

Ključne besede: fajda, krvno maščevanje, dar, premirje, mir, oglejski patriarhi, goriški grofi, Momjan, Petrapilosa, Istra

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IL PATRIZIATO TRA VENDETTA, RITUALITÀ PROCESSUALE E AMMINISTRAZIONE DELLA GIUSTIZIA. VENEZIA, INIZIO XVI SECOLO

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SINTESI

Il patriziato veneziano è stato da lungo tempo considerato come un ceto nobiliare differente da tutti gli altri sulla base dell'assunto storiografico che lo considerava come non propenso alla pratica della faida e della vendetta. Questa ricerca si pone l'obiettivo di confutare tale posizione analizzando alcuni episodi di conflittualità patrizia di inizio XVI secolo attraverso l'integrazione di fonti narrative e processuali. Tale scopo è stato raggiunto grazie alla disanima del rapporto tra manifestazioni della conflittualità, ritualità processuale adottata dai tribunali della Dominante e modalità con cui le istituzioni politico-giudiziarie veneziane amministravano la giustizia.

Parole chiave: Venezia, patriziato, vendetta, XVI secolo, ritualità processuale, giustizia

THE PATRICIATE BETWEEN REVENGE, TRIAL RITUALITY AND JUSTICE IN VENICE, THE BEGINNING OF 16th CENTURY

ABSTRACT

The venetian patriciate has been considered, so far, as a nobility that was different from the other on the base of the historiographical assumption which regarded it as not used to resort to feud and vengeance. The present research aims to refute this statement by analysing some episodes of patrician conflicts in the early 16h century through the integration of narrative and trial sources. This purpose has been achieved thanks to the examination of the relationship between conflict's manifestation, trial rites adopted by Venice's courts and modalities through which political-judicial venetian institutions administrated justice.

Key words: Venice, patricians, vengeance, 16h century, trial rites, justice

INTRODUZIONE: IL MITO DEL PATRIZIATO

La ricerca storica che si dedica allo studio della faida, all'interno della storia europea, rappresenta un campo di studi da tempo consolidato: molteplici analisi hanno infatti esaminato il manifestarsi di tale fenomeno in un'ampia gamma di differenti realtà storiche e geografiche[1]. Indubbiamente, ci sono ancora molti contesti da indagare e questioni relative alla stessa pratica della vendetta da approfondire. La storiografia ha però da vari anni decretato come una ben specifica realtà non fosse in alcun modo affetta da tale forma di conflittualità, vale a dire quella del patriziato veneziano. Un risultato raggiunto tramite il controllo e la repressione delle fazioni in seguito a cambiamenti introdotti dalla Serrata del Maggior Consiglio (Lane, 1978, 129–131). Questa affermazione, insieme ad altre considerazioni precedentemente espresse (Chojnacki, 1972), rappresenta il nocciolo di quello che potremmo definire come un assunto storiografico che si rafforzò nei decenni successivi e raggiunse il proprio culmine negli anni '90. Infatti, l'opera di analisi storica più rappresentativa di questa tendenza è, forse paradossalmente, *Mad Blood Stirring* (Muir, 1993), una brillante disamina delle vicende della Cruel Zobia Grassa e della vendetta nell'Italia settentrionale rinascimentale.

Nelle pagine dedicate al dominio veneziano sulla provincia friulana si afferma che l'obiettivo principale era il seguente: «almost exclusively to control and even to obliterate the inconvenient aspects of another culture, which emphasized male aggressiveness and obligations of honorable revenge» (Muir, 1993, 50). La distanza qualitativa che intercorre tra le due realtà, quella della dominante e quella della società soggetta, assume qui rilievo antropologico, dato che il patriziato veneziano è ritratto come portatore di una cultura diversa e costretto a confrontarsi con una società che si connota per l'aderenza a valori avulsi, alieni, non intellegibili. Le pagine successive dell'opera spiegano come si sia formato questo vero e proprio *gap* culturale e quali ne fossero le conseguenze. Per la verità, lo storico americano ha formulato le sue osservazioni sulla scorta di una, già all'epoca, ampia bibliografia che stabiliva con fermezza la separatezza antropologica della nobiltà veneziana rispetto al mondo socio-culturale in cui essa era calata[2]. Non ci interessa in questa sede esaminare in profondità tali argomentazioni a sostegno della disuguaglianza del ceto patrizio veneziano, quanto più confutare tale posizione attraverso l'analisi di alcuni episodi che rivelano le modalità con cui tale forma di conflittualità venne gestita all'interno della città lagunare.

VIOLENZA, PACIFICAZIONE E AMMINISTRAZIONE DELLA GIUSTIZIA

Questo lavoro si vuole inserire infatti all'interno di un recente indirizzo di studi che affronta la tematica della faida e della vendetta ricorrendo ad un approccio più globale.

1 Questo articolo è una prima rielaborazione ed approfondimento della tesi di laurea *Vendetta e parentela patrizia. Venezia, XVI secolo*. Colgo l'occasione per ringraziare Claudio Povolo per il costante supporto ed incoraggiamento. Per una rassegna si veda Netterstrøm, Poulsen, 2007.

2 I principali riferimenti segnalati dallo storico a supporto di questa distinzione sono il già citato lavoro di Chojnacki; Ruggiero, 1980, 125–137, 138–155, e 1985, 89–108; Queller, 1986, 75–84, 234–239; Crouzet-Pavan, 1992; ma si veda anche Finlay, 1982, 145, e Dean, 1997, 35.

La presente analisi si propone di considerare non solo gli episodi di violenza e di pacificazione che si verificarono, ma anche il sistema posto in essere per controllare tale conflittualità nobiliare. Condurre e guidare la faida patrizia entro binari socialmente accettabili era un compito che sia la compagine governativa che gli stessi soggetti partecipanti, le parentele, si erano assunti. In quest'ottica si rende necessario esaminare perciò il rapporto instauratosi tra le dinamiche della violenza nobiliare e l'amministrazione della giustizia veneziana: all'interno di questa relazione trova spazio anche l'azione dei gruppi parentali. In sintesi, questa ricerca vuole evidenziare l'importante ruolo svolto dalla ritualità processuale nell'incanalare questa forma di violenza, sulla scorta di quanto suggerito dal saggio *Feud and vendetta: customs and trial rites in Medieval and Modern Europe*[3], dove viene compiutamente dimostrata, nel lungo periodo, la relazione tra vendetta, giustizia e procedura.

Un quesito che è necessario porsi subito è il seguente: in quale misura il sistema dell'amministrazione della giustizia veneziana, la cui peculiarità era data dall'assenza di tecnici del diritto e dal conseguente monopolio esercitato dalla nobiltà lagunare (Cozzi, 1982, 219–221; Povolo, 2004a, 349), poteva perseguire i medesimi obiettivi di contenimento della conflittualità basata su faida e vendetta? Una domanda che evidenzia come non sia possibile trascurare un accurato studio delle istituzioni legali e delle loro interazioni con le pratiche socio – culturali, qualora si voglia comprendere fino in fondo la complessità di tali conflitti. Eppure questo stretto rapporto è stato a lungo tralasciato o minimizzato: ora si presta invece come utile metodo d'analisi di un fenomeno, la faida patrizia, di cui finora non è stata riconosciuta l'esistenza[4].

Gli episodi presentati nelle pagine successive saranno pertanto esaminati alla luce di due aspetti: la funzione della riconciliazione tra parti antagoniste all'interno della risoluzione processuale del conflitto ed il ruolo dei gruppi parentali in seno a tali vicende. Per quanto concerne la prima tematica, la storiografia ha più spesso rivolto attenzione a forme e manifestazioni della violenza[5], ma recentemente ha rivalutato l'importanza della pacificazione all'interno delle dinamiche della conflittualità, cogliendone i nessi con l'apparato della giustizia[6]. Il ruolo delle parentele nella gestione dei conflitti è invece già da tempo oggetto d'analisi degli antropologici (Beattie, 1982) e si è posto al centro di una recente ridefinizione di faida e vendetta (Resta, 2015). Scarsa attenzione però è stata diretta dagli storici verso i gruppi famigliari veneziani ed il ruolo da quest'ultimi interpretato nella gestione della faida patrizia, una probabile conseguenza del mito del patriziato come ceto civile e concorde.

È infine necessaria un'ultima premessa inerente alle fonti utilizzate, vale a dire, i *Diari* di Marin Sanudo e le carte processuali prodotte dalle principali magistrature giudi-

3 Povolo, 2015.

4 In Muir, 2013, 492, lo stesso autore ribadisce il profondo distacco che caratterizza Venezia dalla società friulana, quest'ultima fondata su di una cultura della vendetta e dell'onore che non sarebbe affatto penetrata all'interno della laguna.

5 Sull'ampia produzione storiografica incentrata sulla violenza si rinvia limitatamente ai recenti Body-Gendrot, Spierenburg, 2008 e Davies, 2013.

6 Oltre a Bellabarba, 2001, si segnala anche Broggio, Paoli, 2011.

ziarie veneziane, l'Avogaria di Comun e il Consiglio di Dieci. Dall'incrocio di queste due diverse fonti si è potuto ricavare una notevole quantità di dati, ma non solo, l'integrazione di queste differenti forme di narrazione è risultata efficace nella misura in cui una spesso arricchisce l'altra: il celebre patrizio, i cui *Diari* sono contraddistinti da una «onnivora narratività» (Aricò, 2009, 389), fornisce spesso dettagli che non sono riportati nei registri ufficiali[7]; viceversa, quest'ultimi contengono il punto di vista governativo, necessario per comprendere le scelte operate nella gestione dei conflitti. In aggiunta, le suppliche[8] inviate al Consiglio di Dieci dai protagonisti delle vicende mettono a volte in luce taluni aspetti che sono sottintesi dal diarista.

IL PERDONO DI ALVISE D'ARMER

Il 17 febbraio 1521 – *more veneto* – in Quarantia Criminal si conclusero le vicende processuali che coinvolsero due fratelli, Lorenzo e Francesco Sanudo, figli di Angelo, e Giovanni di Nicolò Soranzo, loro cugino: essi erano accusati di aver aggredito e ferito un altro patrizio, Giacomo di Alvise d'Armer. L'analisi di questa vicenda prende avvio dalla registrazione dei rispettivi processi nelle *Raspe* dell'Avogaria (ASV, AC, 3664, 68 v.–69 r.). Il procedimento giudiziario che essi affrontarono presentava una ritualità processuale speculare a quella riscontata nei centri maggiori dell'Italia centro-settentrionale: dal Basso Medioevo fino alla seconda metà del XVI secolo, la procedura penale si componeva generalmente di tre fasi: processo informativo, offensivo e difensivo (Povolo, 2004b, 62, 87–88). Le prime due erano gestite, all'interno del panorama giudiziario veneziano, dagli avogadori, che avviavano il procedimento e raccoglievano testimonianze e confessioni insieme ad un preposto collegio, mentre nella terza si verificava il confronto tra difesa, rappresentata dagli avvocati dell'accusato, e accusa, ruolo ricoperto ugualmente dagli avogadori (Cozzi, 1982, 103).

La narrazione processuale presenta dunque inizialmente i risultati dell'*inquisitio* degli avogadori: Lorenzo Sanudo, in compagnia del fratello Francesco e del cugino Giovanni Soranzo, nelle vicinanze del Banco di Ca' Capello a Rialto, aveva aggredito, il giorno 8 agosto 1521, il nobile Giacomo di Alvise d'Armer. Non si fa accenno ad eventuali moventi, ma c'è una precisa descrizione dei danni fisici subiti dal patrizio (ASV, AC, 3664, 68 v.). Si procede quindi al piano processuale e alla fase del processo offensivo: per il reato di aggressione, Lorenzo si presentò spontaneamente alle prigioni, dove fu interrogato *de plano*, cioè fu preso il suo *costituto*. Questa forma di interrogatorio era generalmente blanda e con essa si chiedeva all'accusato se volesse confessare i crimini a lui imputati (Povolo, 2004b, 87–91). Egli rispose affermativamente, riconoscendo le sue azioni e non adducendo alcuna giustificazione. Ebbe dunque inizio l'ultima fase, quella difensiva, dinnanzi al tribunale della Quarantia Criminale. Nel frattempo, i tre imputati rimasero in prigione, come si evince da quanto scritto dal diarista al termine del proces-

7 Su tale figura e le sue opere si rimanda anche a Finlay, 1982, 318–353; Cozzi, 1997, 87–108.
8 Su tale forma narrativa si rinvia a Nubola, Würgler, 2002; Biasolo, De Luca, Povolo, 2015.

so[9]. Nelle sedute della Quarantia furono lette le scritture di ambo le parti e presentate le *accusationes* degli Avogadori e le *defensiones* degli avvocati (ASV, AC, 3664, 68 v.) – di cui non abbiamo tracce.

Terminato il confronto tra le parti, la corte composta dai nobili veneziani doveva stabilire l'innocenza o la colpevolezza di Lorenzo Sanudo. Dei trentanove votanti, ci furono sei astenuti, cinque a favore dell'assoluzione e ventotto a sfavore. Delle varie proposte – non registrate – venne scelta la seguente pena da infliggere: un anno di bando da Venezia e distretto e il pagamento di medici e medicine per la vittima dell'aggressione (ASV, AC, 3664, 68 v.). Un dato merita di essere segnalato: la mitezza della pena, se paragonata alle altre condanne solitamente inflitte per questa categoria di crimine[10]. Sicuramente essersi presentato spontaneamente alle prigioni e aver confessato il delitto ha influito sulla determinazione della pena, ma questa comunque rimane troppo blanda. Gli altri due imputati furono invece assolti dalla medesima accuse. Anch'essi si presentarono volontariamente alle carceri e confessarono di aver sguainato le armi in difesa di Lorenzo Sanudo, mentre quest'ultimo feriva Giacomo d'Armer. Entrambi non giustificarono le proprie azioni ed, introdotti in Quarantia Criminale e seguito lo stesso *iter* processuale, essi furono, come detto, dichiarati innocenti (ASV, AC, 3664, 68 v.–69 r.). In questo caso, l'assoluzione sembra essere ricondotta ad un ruolo più passivo dei due rispetto a quello di Lorenzo Sanudo, autore materiale delle ferite. Tuttavia, stupisce comunque registrare che la loro complicità, in uno scontro dove del sangue era stato versato – sangue nobile, per di più –, non fosse affatto punita, anche se presentata nei termini più accettabili della difesa del parente. La narrazione processuale di questa vicenda presenta, quindi, alcuni elementi ambigui, che non sono decifrabili se ci limitiamo ad analizzare le *Raspe*: esaminiamo perciò quanto il diarista scrisse in merito a questo episodio.

Nelle pagine dei *Diari* reperiamo una descrizione dello scontro armato simile a quella presentata, ma con una determinante differenza: il diarista afferma che ciò avvenne «per cazon di certa femena mojer di Zuan Paolo di Bechesta a San Jacomo di Orio in certa corte» (Diari, XXXI, 183). Marin Sanudo addusse come motivo che diede scoppio alla contesa la gelosia, la quale si configura come una forma di competizione maschile sul piano dell'onore sessuale[11], rivalità che si trasferisce sul piano dello scontro armato. Alcuni mesi più tardi, a inizio gennaio 1522, il diarista avvisa che Giacomo d'Armer è guarito dalle ferite riportate e ha dato «una querela contro di loro e di uno sier Zuan Soranzo di sier Nicolò a li Avogadori, li quali voleano andar in Quarantia e meter di retenirli» (Diari, XXXII, 340). Il giorno 11 febbraio ebbe inizio il processo in Quarantia Criminale a carico dei tre patrizi (Diari, XXXII, 450) e proseguì nei giorni successivi, per giungere infine alla seduta del 17 febbraio, nella quale vennero emanati i verdetti. In questa sessione avvenne però un fatto non menzionato nelle *Raspe* e che influenzò profondamente l'esito

9 «et cussì tutti tre veneno a disnar a caxa, che fin hora è stati in prexon.» (Diari, XXXII, 246)

10 Si veda l'analisi per il periodo precedente in Ruggiero, 1980, 138–155.

11 Per la tematica dell'onore maschile e femminile declinato sul piano sessuale si rinvia a Pitt-Rivers, 1977; non è comunque un caso isolato: sono motivati dalla gelosia anche gli omicidi perpetrati da Vettor Pisani (Diari, IV, 345), e Angelo Bragadin (Diari, XX, 367–368, 511).

del processo: Alvise d'Armer, padre di Giacomo, si presentò in tribunale per parlare, nonostante gli avvocati difensori si opponessero, temendo che il patrizio avrebbe perorato la causa del figlio. Accadde l'esatto contrario:

> *Disse: non dirò cossa che vi dispiaqua; et cussi a pe' di la renga disse era venuto lì a dir che li à dolesto assai dil caso di so' fiol, ma è cossa che intravien fra zoveni. So fiol sta ben et è varito et ex nunc feva ogni paxe, pregando li XL havesseno questi per ricomandati; et altre parole usando, che commosse tutti a lacrimar. Et vene da sier Marin Sanudo qu. sier Francesco et lo abrazoe, et cussi sier Nicolò e sier Alvise Soranzo; poi a sier Francesco e Lorenzo Sanudo qu. sier Anzolo, e sier Zuan Soranzo di sier Nicolò li abrazò perdonandoli ogni ofesa et feva larga paxe per lui e suo fiol, ch'è in caxa. Li quali tre se butono in zenochioni chiedendoli perdono, adeo indolzì tutti li XL; et poi parlò sier Alvise Badoer avochato in suo favor. (Diari, XXXII, 466)*

Il linguaggio qui impiegato da Alvise d'Armer è quello della rinuncia della querela, del perdono e della pacificazione (Bellabarba, 2001; Niccoli, 2007), la quale sarebbe stata in seguito perfezionata al di fuori dell'aula del tribunale.

Comprendiamo ora come si giunse all'esito registrato nelle *Raspe*: il processo venne condizionato sensibilmente dalle parole e dai gesti di Alvise d'Armer. Il diarista ci offre ulteriori preziose informazioni anche in merito alle pene proposte per Lorenzo Sanudo. Infatti, oltre alla risoluzione già presentata, avanzata da alcuni consiglieri e dai Vicecapi della Quarantia e accettata a larga maggioranza, gli avogadori proposero un'altra *parte*: cinque anni di bando, oltre al pagamento di una multa. Una pena ben più dura, ma in linea con le norme giuridiche vigenti nei tribunali della città. Tuttavia, come detto, quest'ultima venne respinta e fu scelta l'altra proposta, molto più blanda. La divergenza tra le due non si colloca nella differenza quantitativa, bensì nei principi di fondo: da una parte, la pena degli Avogadori esprimeva una concezione di *retributive justice*, focalizzata sulla punizione del crimine, inteso come una trasgressione della legge, mentre quella dei consiglieri e dei Vicecapi faceva proprie le istanze della *restorative justice*, che pone l'accento sulla vittima e le sue richieste[12].

In questo caso, nella misura in cui la riconciliazione tra le famiglie avvenne sotto gli occhi dei giudici – politici, vennero a mancare le necessità di infliggere una punizione significativa che fungesse da deterrente o che imponesse la concordia tra le parti, poiché questa era già stata autonomamente raggiunta. Le assoluzioni adottate e la condanna imposta riflettono perciò una concezione di giustizia che ammette la commistione tra pratiche della giustizia comunitaria e negoziata, basata su faide, accordi e pacificazioni[13], e la ritualità processuale del centro Dominante, che si caratterizza per azione del giudice, procedure formali e pena. Difatti solamente Lorenzo Sanudo, che inflisse il colpo grave ma non mortale, fu punito, tuttavia solo a un anno di bando ed a un risarcimento. I *Diari*, che si sono rivelati essenziali per la comprensione della vicenda, ce ne forniscono an-

12 Su *retributive* e *restorative justice* c'è un'amplia bibliografia: ci limitiamo a segnalare Cantarella, 2007; Johnstone, Van Ness, 2007; Aladjem, 2008.

13 Su tale tema, e anche quello della giustizia egemonica, si rinvia a Lenman, Parker, 1980; Sbriccoli, 2001.

che l'epilogo. Nel marzo 1522 Marin Sanudo avvistò Giacomo d'Armer, completamente ripresosi (Diari, XXXIII, 92). Infine, nel marzo 1525, la riconciliazione tra le famiglie approdò alla fase conclusiva, quando avvenne la pubblica pacificazione:

> *In questa sera, in chiexia di San Zuminian a San Marco, fo fato la paxe tra sier Jacomo d'Armer di sier Alvise, qual fu ferito in su la testa in Rialto da sier Francesco Sanudo qu. sier Anzolo, sier Lorenzo suo fratello et sier Zuan Soranzo qu. sier Nicolò, per la qual ferita fono retenuti e assolti per Quarantia ; li pagano di miedegi e medesine ducati ... et cussì si hanno abrazadi insieme. Dove erano multi parenti de una parte et l'altra, et etiam Io Marin Sanudo vi fui. (Diari, XXXVIII, 45)*

L'ODIO DI MARCANTONIO LOREDAN

Il 31 ottobre 1513 fu letta una supplica dal Consiglio di Dieci riunito con la Zonta in materia pecuniaria, inoltrata da Matteo di Francesco da Priuli. L'*incipit* descriveva la situazione della famiglia: lui e i suoi fratelli, Giovanni Francesco e Marco, erano rimasti orfani e con i figli a carico. La strategia familiare aveva destinato uno di questi giovani patrizi a partecipare alla *muda* per Alessandria del 1511, cioè Antonio, figlio di Marco. Nello stesso viaggio verso il Levante era presente anche Giorgio di Marcantonio Loredan, figlio di un importante patrizio che in quel momento era membro del Consiglio di Dieci. Il convoglio raggiunse l'isola di Candia, dove ebbe luogo uno scontro tra i due ragazzi, la cui causa è imputata, secondo quanto affermato nella supplica, dal fatto che il nipote fu «da lui (Giorgio Loredan) a più modi inzuriato» (ASV, CX, MR, 36, 95 r.–95 v.). I giovani passarono allo scontro armato e Antonio ferì Giorgio sul braccio e sulla testa. Danni che però, Matteo da Priuli sottolineò, non erano stati ritenuti mortali dai medici che curarono il giovane, infatti quindici giorni dopo lo scontro quest'ultimo era ritenuto fuori pericolo. La ragione che ne causò la sua morte era da imputare non alla lotta armata, ma ad altro:

> *[…] e fidandose lui de tal pronostico, volendo contentar a li sui appetiti, ussite de ogni obbedientia a li sui medici, per modo che li soprazonse la freve granda: et in capo de xxiii (giorni) morite, come el tuto se può provar chiaramente. (ASV, CX, MR, 36, 95 r.–95 v.)*

In realtà, la percezione dell'evento a Venezia fu diametralmente opposta: varie lettere giunte in città indicarono Antonio da Priuli come colpevole della morte di Giorgio Loredan (Diari, XII, 427, 432).

La supplica proseguiva spiegando perché il nipote venne bandito in contumacia: fu inizialmente denunciato al Reggimento di Candia da un balestriere della *muda*, che lo accusò di premeditazione. L'imputazione di omicidio *pensado* – cioè premeditato – venne tuttavia dismessa dal Reggimento, quindi Antonio venne chiamato a difendersi dall'accusa di omicidio *puro*, al cui processo però non si presentò. I motivi addotti dallo zio paterno sono – comprensibilmente – fragili e difatti quest'ultimo richiamò l'attenzione ancora una volta

sull'effettiva causa della morte di Giorgio Loredan[14]. A questo punto è opportuno evidenziare come la possibilità di presentarsi prima per rispondere dell'accusa di premeditazione e poi per quella di omicidio *puro* fosse uno dei vari istituti giuridici, come la *difesa per patrem*, la *difesa per procuratore* e la *piezaria*, adottati dalla ritualità processuale bassomedievale di matrice dotta, che si fonda cioè sul diritto comune, per canalizzare i conflitti (Povolo, 2004b, 50–51). L'utilizzo da parte del Reggimento di Candia di tale procedura potrebbe indicare che anche nei tribunali della Dominante l'istituto fosse impiegato: quest'ipotesi è confermata dal processo del patrizio Giorgio di Vittorio Duodo, che uccise per un'offesa verbale Marco di Donato Tiepolo (Diari, LIV, 279). Convocato dagli avogadori, il patrizio si presentò in carcere per difendersi dall'accusa di omicidio *pensado*, venne esaminato *de plano* e presentò le sue difese e giustificazioni. Ci furono due votazioni in Quarantia Criminale per stabilire il grado premeditato o puro del delitto, ma non ci fu una netta maggioranza. Venuto a sapere dell'esito incerto delle due *ballotazioni*, probabilmente temendo di venire imputato per la premeditazione, Giorgio Duodo fuggì dal carcere. Egli venne quindi bandito perpetuamente da Venezia e distretto, da terre e luoghi della Repubblica e da navigli armati e disarmati (Diari, LIV, 456–457; ASV, AC, 3666, 185 r.–185 v.).

Possiamo ora procedere con il resto della supplica di Matteo di Priuli: egli propose un salvacondotto per il nipote di centouno anni in cambio di mille ducati. Lo zio paterno pose però alcune ben chiare condizioni: egli chiese l'oblio processuale per quanto commesso da Antonio e domandò che, durante il periodo del salvacondotto, il processo svolto a Candia non venisse *impazado*, cioè intromesso dagli Avogadori o da altri magistrature e quindi riaperto. Matteo proponeva anche di posticipare l'inizio del salvacondotto e il ritorno a Venezia del nipote di due anni, nell'ottobre 1515. La ragione di tale consiglio trovava fondamento nel netto rifiuto opposto fino a quel momento – cioè nei due anni trascorsi dalla morte di Giorgio fino all'invio della supplica – da Marcantonio Loredan nel perdonare Antonio da Priuli, nonostante i ripetuti tentativi di pacificazione promossi dai parenti dell'offensore:

> *[…] aziò che in questo tempo la Mag[nificen]tia de Mis[sier] MarcoAntonio Loredan a la M[agnificen]tia del qual siamo stadi a casa sua a domandarli mille perdonanze: aziò che in questo tempo le si apra le viscere a la misericordia che cussì come el nostro signor Dio ne perdona i nostri peccadi simelmente la Mag[nificen]tia sua perdoni a sto povero puto quale è tanto dolente de la offesa a la Mag[gnificen]tia sua quale lei che l'ha ricevuta. (ASV, CX, MR, 36, 95 r.–95 v.)*

Una ferrea volontà che venne registrata anche da Marin Sanudo nel momento in cui la supplica venne presentata (Diari, XVII, 271). Nonostante il rifiuto di Marcantonio, a indicare che la pacificazione non avvenne, il salvacondotto fu garantito dal Consiglio di Dieci, a condizione che, oltre alla cifra di mille ducati, Antonio – o chi per lui – fornisse un contingente armato di cinquanta uomini o pagasse la quantità necessaria di denaro per arruolarli. Ciò indica come la cattiva situazione finanziaria in cui versava la Serenissima

14 «[…] era morto per li sui desordini come l'è notorio a tuta Candia» (ASV, CX, MR, 36, 95 r.–95 v.)

a causa della guerra[15] influì sulla scelta dei membri di tale consiglio, decisione che ineluttabilmente sconvolgeva le normali modalità di gestione del conflitto patrizio.

Nel giugno 1516, quasi tre anni dopo l'accettazione della supplica, Antonio da Priuli fu designato come candidato per la carica di *Camerlengo di Comun*. Egli non fu tuttavia eletto e, da quanto riportato da Sanudo, ciò è da imputare al persistente odio di Marcantonio Loredan: «Et come ozi el fo nominato, dito sier Marco Antonio si levò e andò fuora per non balotarlo, et molti se ne acorse di questo, et cazete» (Diari, XXII, 307). Un sentimento che non si manifestò in concrete forme di ritorsione al di là della pura opposizione politica. Forse questa forte emozione venne nutrita anche dalla difesa retorica esposta dai familiari di Antonio da Priuli, i quali indicavano la morte di Giorgio Loredan come conseguenza della sregolatezza del giovane e non dello scontro armato provocato da questioni d'onore. L'odio di Marcantonio non scemò con gli anni: la carriera politica di Antonio da Priuli decollò grazie a un matrimonio con una figlia del potente banchiere Alvise Pisani (Diari, XXVIII, 432, 456). Di lì a pochi anni dopo, egli entrò nel Senato dietro pagamento di un prestito di quattrocento ducati (Diari, XXXII, col. 112), per poi divenire, con l'aiuto del suocero, banchiere assieme ai fratelli. Al momento dell'apertura del nuovo *bancho*, il giorno 15 dicembre 1522, erano presenti i patrizi di più alto rango, con una prevedibile eccezione. Un'assenza che il diarista ritenne degna d'essere segnalata:

> *[…] li Procuratori quasi tutti excepto sier Zacaria Gabriel, ch'è impotente, e tutto il Colegio, da sier Marco Antonio Loredan consier in fuora, però che'l dito sier Antonio di Prioli al viazo de Alexandria amazò sier Zorzi Loredan suo fiol, fu posto in exilio, et poi in sta guerra con danari asolto. (Diari, XXXIII, 545)*

Marcantonio morì poco dopo, nella primavera del 1524, mentre copriva l'ufficio di Inquisitore del defunto doge (Diari, XXXII, 182). Due anni dopo Antonio da Priuli divenne un membro del Consiglio di Dieci (Diari, XLII, 589). L'apice della sua ascesa politica fu raggiunta con l'elezione a Procuratore nel maggio 1528 (Diari, XLVII, 427–428). L'odio di Marcantonio Loredan sparì insieme a lui, lasciando spazio ad Antonio da Priuli per raggiungere le vette del governo veneziano.

Un episodio che attesta che i patrizi più giovani potevano permettersi d'indulgere in comportamenti violenti e turbolenti, che li ponevano anche al di fuori della legalità, come già evidenziato (Chojnacki, 2000). Essi avevano comunque la possibilità di essere sostenuti dalla loro rete parentale per ottenere aiuto politico e anche per gestire i conflitti in cui essi erano parte attiva, come le azioni di Matteo da Priuli dimostrano. Un patrizio adulto e impegnato nella sfera pubblica, come Marcantonio Loredan, non avrebbe avuto lo stesso spazio di manovra e le medesime attenuanti. Dobbiamo perciò ritenere che Marcantonio – o un membro del gruppo familiare – non avrebbe potuto compiere la vendetta? No, egli fece una precisa scelta. Si oppose con altri mezzi ad Antonio da Priuli, con azioni evidentemente non violente: una decisione che potrebbe avallare la visione di un patriziato non dedito alla faida e alla vendetta. Tuttavia, risulta difficile non ritenere che l'odio

15 Si veda, in generale, Pellegrini, 2009. Per il punto di vista veneziano Cozzi, Knapton, 1986; Mallett, 1996.

sviscerale e duraturo di Marcantonio non coincida con quello stato di reciproca ostilità che alcuni autori, come abbiamo visto, hanno indicato come caratteristica della faida. La mancata ritorsione e il perdurante rancore sono dunque il riflesso di una già accennata ambiguità da cui il patriziato veneziano non poté liberarsi: ceto chiamato a dirigere la *res publica*, e quindi oggetto a pressioni disciplinanti, e al tempo stesso ceto aristocratico, che condivideva l'idioma culturale dell'onore e in competizione – anche violenta – per lo *status* (Chojnacki, 1972, 192). Le emozioni e le decisioni di Marcantonio Loredan, per essere comprese, non possono essere scisse da questa dualità.

IL PRODITORIO ECCESSO DI MARCO MICHIEL

> *Fu posto et preso una gratia, che a sier Marco Michiel qu. sier Alvise, bandito per la morte di sier Vicenzo da Molin di sier Alvise procurator, al qual fu fato salvoconduto da poter star in le nostre terre per anni ..., che se intendi in vita, e cussì navilii armadi e disarmadi etc. (Diari, LIV, 596)*

L'amnistia accordata dal Consiglio di Dieci era stata presa a larga maggioranza (ASV, CX, CR, 4, 184 v.) e preceduta due anni prima, nel settembre 1529, dalla concessione, da parte dello stesso organo, di un salvacondotto della durata di cinque anni, per essersi «portato ben in Puia» (Diari, LI, 593), per dodici voti a favore e quattro contro (ASV, CX, CR, 4, 138 v.). Due provvedimenti che avevano posto fine ad un lungo periodo di bando, che durava da circa quindici anni, e che permettevano a Marco di Alvise Michiel di rientrare nello stato veneto. La causa di questo lungo esilio era riposta in una forte passione, ritenuta innaturale e quindi condannata, che si trasformò in sete di vendetta. L'incipit delle vicende che ebbero per protagonista Marco Michiel si colloca nel giorno 11 febbraio 1515 *m.v.*, quando il Consiglio di Dieci convocò Marco per difendersi dalle accuse. Le imputazioni erano gravi: tentato adescamento e aggressione armata a danni di alcuni giovani «causa sodomitii» (ASV, CX, CR, 2, 162 r.). Marin Sanudo ci fornisce alcune indicazioni precise che permettono di comprendere meglio gli sviluppi successivi:

> *Questo fu fato intervenendo sier Zuan Malipiero qu. sier Hironimo, dito Fixolo, al qual, è pochi zorni, sul campo di Santa Maria Formosa (Marco Michiel) li tajò la vesta, e questo per certo amor e zelozia di sier Domenego da Molin di sier Alvise per il qual dito sier Marco Michiel, è morto; e fece ditto atto. (Diari, XXI, 514)*

Il motivo dell'assalto di Marco Michiel ai danni di Giovanni di Girolamo Malipiero si riconduce perciò al sentimento della gelosia, che si è detto nascondere al proprio interno la competizione maschile sul piano dell'onore sessuale, aggravata in questo caso dalla combinazione con il più grave reato di sodomia. Marco di Alvise Michiel non si presentò e fu conseguentemente condannato, *in absentia*, il giorno 23 febbraio a quindici anni di bando da Venezia e dal distretto e venne scartata la proposta di una condanna più mite, di sei anni di bando (ASV, CX, CR, 2, 163 v.). Si profilava perciò un lungo periodo di esilio per Marco Michiel, il quale non avrebbe dovuto arrischiare il ritorno a Venezia o nel Dogado, in quanto

ciò avrebbe peggiorato la sua condizione, già compromessa. Tuttavia, le sue successive gesta dimostrarono che simili considerazioni passarono in secondo piano rispetto alla volontà di compiere vendetta. Questa si concretizzò lunedì 25 gennaio 1517 *m.v.*:

> *È da saper: in questa matina, a hore zercha 18, sequite un caxo, che volendo andar a disnar sier Vicenzo da Molin di sier Alvixe procurator e sier Domenego da Molin qu. sier Marin suo zerman cuxin, partidi di San Marco, a San Zulian apresso la chiesia, uno stravestito da maschara da schiavon si voltò contra di loro e ferite el dito sier Domenego da Molin, et sier Vicenzo da Molin volendo corer via cazete, et lui li menò una bota mortalissima su la testa di una arma candida chiamata cazona, curta e larga. (Diari, XXV, col. 217)*

Girolamo da Molin, fratello di Domenico, anch'egli presente, riuscì a fuggire. Seguì un combattimento con alcuni famigli da ca' Molino, ma l'individuo mascherato si difese con grande abilità e riuscì a scappare e nascondersi. Seguì una frenetica caccia all'uomo, durante la quale Marino e Nicolò Michiel, figli di Alvise, furono informati del fatto che gli ufficiali erano alla ricerca del loro fratello Marco, di cui erano certi fosse a Venezia, nonostante il bando. I due infatti si erano recati armati nel luogo dell'ultimo avvistamento dell'assalitore dando «segnali grandissimi sapesseno chi era la maschara ; qual con effeto era suo fradelo Marco predito» (Diari, XXV, 217).

Mentre le ricerche continuavano, il Consiglio di Dieci non rimase inerte: venne annunciato «Che per la atrocità del proditorio e detestando caso hozi commesso», di cui «per evidentissimi indicii si intende esser stato perpetratore Marco Michiel q[uonda]m Alvise q[uonda]m Maphio se fa asaper a tutti […]» (ASV, CX, CR, 2, 212 v.) che si poneva una taglia di tremila lire e si annunciavano dure sanzioni per chi lo nascondesse in casa o lo aiutasse in alcun modo. Si concedeva l'impunità a chi, nel tentativo di catturarlo, lo avesse ucciso in caso di resistenza all'arresto. Marin Sanudo ci offre nuovamente riflessioni che nella documentazione ufficiale non si reperiscono:

> *Et aziò il tutto se intendi, questo sier Marco Michiel […] era imbertonato in dito sier Domenego da Molin, et per zelosia di sier Zuan Malipiero qu. sier Hironimo qual al presente è Provedador a le biave, ferite zoè volse ferir l'anno passato il prefato sier Zuan Malipiero, per il che per il Consejo di X fu bandito per anni 6 di Veniexia e dil destreto. Et par che ditto sier Vicenzo da Molin solicitasse suo padre a farlo bandir, per il che si ha voluto vendicar. Altri dice volea ammazar dito sier Alvixe da Molin procurator perché l'havia promesso di aiutarlo con prestar danari a la Signoria e cavarlo dil bando, e tamen nulla havia fato. (Diari, XXV, 219)*

Comprendiamo ora che Marco Michiel volle colpire Domenico da Molin perché questi spinse suo padre a punire con un pesante bando colui che molestava il cugino oppure decise di vendicarsi per le colpe di Alvise da Molin, procuratore, dunque membro più prestigioso del lignaggio, il quale aveva rotto gli accordi stretti con i parenti di Marco per il raggiungimento di una pacificazione. Entrambe le ipotesi presentate dal diarista offrono una valida chiave di lettura dell'azione premeditata di Marco Michiel, che gli costò un'ulteriore ri-

chiesta di comparire innanzi al Consiglio di Dieci. Il giorno 26 gennaio, in quanto egli era «maxime indiciatus perpetrasse proditorium excessum» (ASV, CX, CR, 2, 212 v.) ai danni di Domenico e Vincenzo da Molin, venne convocato per difendersi dalle accuse.

Nel frattempo le ricerche proseguirono, mentre Domenico da Molin morì (Diari, XXV, 230). Le pagine dei *Diari* esprimono in maniera molto puntuale il senso dello shock causato dall'azione violenta di Marco Michiel e la frenesia generale che colpì la città nella caccia all'uomo. Ciò è comprensibile nella misura in cui la sua vendetta era stata perseguita con modalità che superavano fin troppo le soglie della tolleranza, anche informale, che si riserbava alla violenza patrizia. Un gesto ritenuto eccessivo perché compiuto mentre Marco scontava già una dura pena inflittagli dal Consiglio di Dieci per un altro grave crimine e per le modalità del delitto: l'essersi mascherato e la premeditazione comportarono una reazione perentoria da parte dello stesso Consiglio di Dieci. Fermezza che si esplicò nella severità della pena: la condanna, stabilita in contumacia a inizio febbraio 1517 *m.v.*, prevedeva il bando perpetuo non solo da Venezia e distretto, ma anche da tutti i domini veneti sia di terra che di mare e anche da tutti i navigli armati e disarmati. Se avesse infranto il bando e fosse stato catturato, Marco Michiel sarebbe stato condotto a coda di cavallo da Santa Croce fino a San Giuliano, dove ebbe luogo il suo proditorio assalto e dove gli sarebbe stata mozzata la mano destra, per essere poi condotto tra le due colonne a San Marco. Qui sarebbe stato *descopato*, cioè ucciso con un forte colpo alla nuca, e poi squartato in quattro parti (ASV, CX, CR, 2, 213 r.).

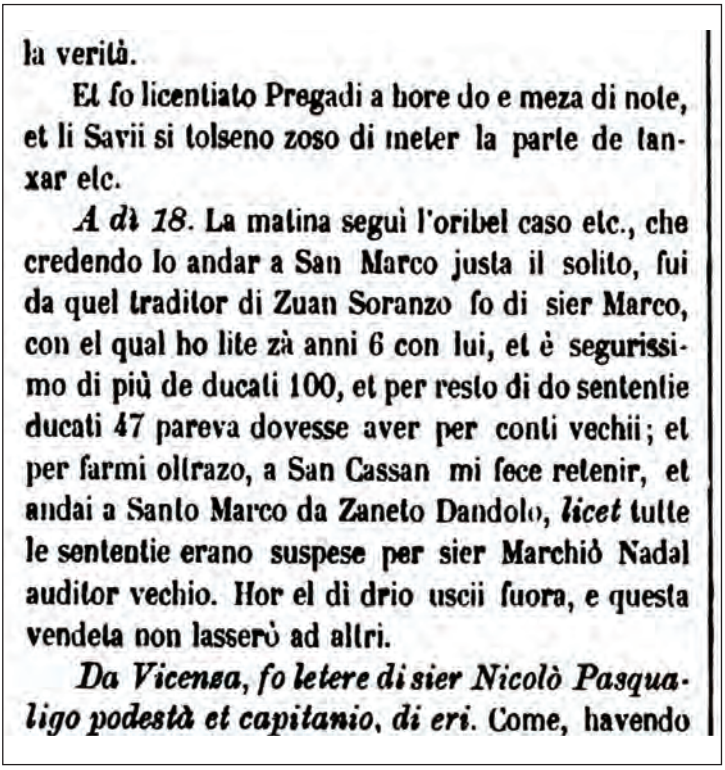
Alla fine degli anni '20, in coincidenza con il nuovo tentativo veneziano d'impadronirsi dei porti pugliesi (Cozzi, Knapton, Scarabello, 1992, 12–14), le capacità del patrizio in esilio gli fecero guadagnare l'appoggio di varie figure militari, sia straniere che patrizie, le quali intercedettero presso la Signoria affinché fosse concesso un salvacondotto a Marco Michiel (ASV, CX, CF, 6, cc. non numerate né intitolate[16]). Nelle *Filze* sono allegate le molte attestazioni comprovanti il valore del patrizio esiliato che aveva continuato a servire la sua patria. Più importante è però segnalare come, prima di prendere qualunque decisione, il giorno 12 agosto 1529 vennero

> *Chiamati alla p[rese]ntia delli ex.mi s.ori Capi dello Ill.mo Consiglio x li N[obeli] homini s[ier] Marco da molin procurator et s[ier] andrea da molin q[uondam] s[ier] marin, et dimandati se hanno fatta la pace, et remessa ogni iniuria al N[obile] homo s[ier] Marco Michiel s[opradi]tto. Risposero de si, et esse[r] molto contenti ch[e]l sia exaudito della gra[tia] ch[e]l dimanda, et cosi esta notato p[er] ordine, e com[m] andame[n]to delli p[re]fati ex.mi s.ori capi. (ASV, CX, CF, 6, 1° allegato al fascicoletto su Marco Michiel)*

Tre mesi dopo venne concesso quanto richiesto. Due anni dopo, nel 1531, ulteriori testimonianze del valore di Marco Michiel si unirono ad una nuova supplica richiedente

16 Tale registro raccoglie le carte in fascicoli numerati per anno secondo il *more veneto*. La supplica inviata a nome di Marco Michiel è inserita nel fascicolo dell'anno 1529 alla data 23 settembre, quando venne concesso il salvacondotto alla terza votazione.

un salvacondotto che durasse per il resto della vita del patrizio. Anche in questo caso i Capi del Consiglio di Dieci convocarono preventivamente Vincenzo e Andrea da Molin, a cui chiesero ancora conferma della pacificazione avvenuta: essi risposero positivamente (ASV, CX, CF, 7, 1° allegato al fascicoletto su Marco Michiel, nel fascicolo dell'anno 1531, inserito alla data 19 settembre, data della concessione del nuovo salvacondotto). Si concluse così la vicenda del proditorio eccesso di Marco Michiel.



la verità.

El fo licentiato Pregadi a hore do e meza di note, et li Savii si tolseno zoso di meter la parte de tanxar etc.

A dì 18. La matina seguì l'oribel caso etc., che credendo lo andar a San Marco justa il solito, fui da quel traditor di Zuan Soranzo fo di sier Marco, con el qual ho lite zà anni 6 con lui, et è segurissimo di più de ducati 100, et per resto di do sententie ducati 47 pareva dovesse aver per conti vechii; et per farmi oltrazo, a San Cassan mi fece retenir, et andai a Santo Marco da Zaneto Dandolo, *licet* tutte le sententie erano suspese per sier Marchiò Nadal auditor vechio. Hor el dì drio uscii fuora, e questa vendeta non lasserò ad altri.

Da Vicenza, fo letere di sier Nicolò Pasqualigo podestà et capitanio, di eri. Come, havendo

Fig.1: Diari, XXIII, col. 343. Il diarista racconta un episodio di cui fu protagonista. Come si evince dal testo, delle vecchie questioni di debiti irrisolti indussero Giovanni di Marco Soranzo a far arrestare Marin Sanudo. L'imprigionamento di Marin Sanudo di per sé non avrebbe risolto la questione pendente: Giovanni Soranzo intendeva invece, e il diarista non ebbe dubbi a riguardo, macchiare l'onore del suo debitore oltraggiandolo con questo gesto, infamandone la reputazione e colpendolo nello status. La manifestazione lampante dell'incapacità di estinguere un debito e l'incarcerazione avrebbero infatti arrecato vergogna al diarista e alla sua famiglia. Un danno che spinse il diarista a trascrivere nei suoi Diari l'intenzione di vendicarsi. Tuttavia, nonostante l'annuncio, non ci sono altre prove che dimostrino che Marin Sanudo si sia effettivamente rivalso su di Giovanni Soranzo, quindi è plausibile che i dissidi siano stati ricomposti pacificamente.

CARTA DELLA PACE OTTENUTA, IMPOSTA E IRRAGGIUNGIBILE

L'ultimo argomento affrontato riguarda l'esistenza e l'interazione della *charta pacis* in seno all'amministrazione della giustizia veneziana. Il punto di partenza di quest'analisi è il processo intentato contro Domenico di Daniele Tron. Il giorno 3 gennaio 1524 *m.v.*, in Quarantia Criminale, egli fu condannato per aver ferito Fantino di Vittorio Pisani e avergli mozzato il dito medio della mano destra. La pena scelta, molto simile a quella inflitta a Lorenzo Sanudo, fu quella di un anno di bando da Venezia e dal distretto e il versamento di cento ducati a Fantino, a pagamento di medici e medicine (ASV, AC, 3664, 261 r.–261 v.). Le analogie con il caso dei due fratelli Sanudo e del cugino Soranzo sono confermate dal fatto che, come si evince dai *Diari*, prima dello svolgimento del processo, era stata «fata pace insieme» (Diari, XXXVII, 401) tra le parentele. Con ogni probabilità, nei capitolari delle *scritture* difensive, se reperibili, avremmo trovato l'allegazione della *charta pacis*. L'attestazione dell'avvenuta riconciliazione è ancora una volta la ragione della mitezza della pena inflitta.

In un episodio che implicò alcuni patrizi di Ca' Nani ci sono indizi più concreti della presenza della carta della pace e del suo valore a fini giudiziari[17]. Nel maggio 1514, mentre camminava in una calle a San Giovanni Nuovo, una grossa pietra cadde sulla testa di Vincenzo di Antonio Pisani, causandone la morte (Diari, XVIII, 186). I fratelli del defunto in seguito querelarono Giovanni Battista di Paolo Nani, accusandolo di aver gettato il masso «per caxon di zelosia di certe forestiere stava lì apresso di la chiexia di San Zane Novo» (Diari, XVIII, 228). Venne formato perciò il processo in Quarantia Criminale e anche Giacomo Nani, fratello di Giovanni Battista, fu convocato a difendersi dalla medesima accusa. Poiché Giovanni Battista si presentò, mentre Giacomo preferì assentarsi, il primo venne assolto dalle accuse e il secondo condannato contumace (ASV, AC, 3662, 141 r.; 140 v.–141r.). Non ci interessa stabilire chi fu effettivamente il colpevole. È molto più importante prendere in considerazione la supplica inviata dal padre, Paolo Nani, e letta nel Consiglio di Dieci circa un anno dopo, il giorno 16 maggio 1516. In questa richiesta il patrizio, dopo aver riassunto le vicende processuali che coinvolsero i suoi figli, pregò umilmente che Giacomo venisse liberato dalla bando perpetuo a cui era stato condannato, in quanto

> *quelli piatissimi et ver zentilho[meni] M[agnifi]co mis[sier] Antonio moresini, M[agnifi]co Vetor pisani cugnadi et altri parenti et fratelli del ditto defunto hanno come veri e catholici e christiani remosso ogni loro rancor e affanno e total[i]t[e]r perdonata ogni offesa imputatoli et publico instrumento facto e concessagli bona e vera pace. (ASV, CX, MR, 40, 74 r.–74v.)*

La vicende presa in analisi si risolse con la risposta positiva[18] da parte del Consiglio di Dieci, dietro il versamento di trecento ducati, una cifra ben inferiore ai mille sborsati

17 Come già affermato, a livello generale, in Bellabarba, 2001, 190–192.

18 Con diciassette voti a favore e otto a sfavore (ASV, CX, MR, 40, 74v.).

da Antonio di Priuli, con ogni probabilità perché Giacomo Nani, a differenza dello stesso Antonio, ottenne la *charta pacis* dai parenti della vittima.

Infine, l'ultima vicenda presa in considerazione ha come scenario iniziale l'isola di Candia, dove ebbe luogo uno scontro che coinvolse alcuni nobili di origine veneziana a da tempo insediatisi nell'isola[19]. Questo caso merita attenzione perché venne risolto all'interno dei tribunali della Dominante: in una supplica, Giorgio Dono descriva di aver ucciso per legittima difesa Giovanni Francesco Bon, il quale lo aveva attaccato senza apparente motivo mentre, insieme ad altri gentiluomini, cenavano nella casa del primo (ASV, CX, MF, 33, c. 208, 1° allegato r.; supplica ricevuta il giorno 17 maggio 1514). Fu perciò bandito per omicidio puro e, durante gli anni più critici della Lega di Cambrai, partecipò alla difesa di Padova. Come ricompensa per i servigi chiese al Consiglio di Dieci d'essere assolto dal bando. La risposta che ricevette è significativa: sarebbe stato assolto

> *havendo la carta de la pace da s[ier] nic^{o} bon fradello del q[uondam] s[ier] zuan franc^{o}: del che immediate scrisi a quatro mei fradelli di praticare tal pace. Et loro […] con parenti amici religiosi homini hanno fato ogni experie[n]cia con el dito s[ier] nic^{o}. (ASV, CX, MF, 33, c. 208, 1° allegato r.; supplica ricevuta il giorno 17 maggio 1514)*

Tuttavia, ogni sforzo si rivelò vano: Nicolò Bon non intendeva riappacificarsi con Giorgio. Non solo, il primo si macchiò di una colpa più grave, commettendo un omicidio premeditato mentre si trovava nella Dominante, per il quale fu convocato dagli avogadori e poi condannato. Giorgio denunciava perciò come fosse impossibile per lui ottenere la pace da tale individuo e chiedeva che «sendo dito s[ier] nic^{o} renitente a p[er]donar, la mia absolutio[n] se intenda libera et sine aliq[uo] conditione pacis» (ASV, CX, MF, 33, c. 208, 1° allegato r.; supplica ricevuta il giorno 17 maggio 1514). Date le circostanze, il Consiglio di Dieci accolse la richiesta, concedendo un salvacondotto di cento anni (ASV, CX, MF, 33, 208 r.).

CONCLUSIONI

Le questioni emerse sono molteplici: la principale è di quella di aver restituito alla tematica della faida e delle vendetta uno spazio finora negato all'interno della realtà del patriziato veneziano. Tale ceto appare ora non più così diverso rispetto la nobiltà di Terraferma, con la quale condivide valori e pratiche socio – culturali che si declinano nelle forme di conflittualità sopra presentate. Tuttavia, come si è visto, queste contengono al proprio interno le soluzioni per raggiungere la pacificazione tra le parti. L'amministrazione della giustizia veneziana ha posto in evidenza l'influenza che queste forme, consuetudinarie, di risoluzione dei conflitti esercitarono nei confronti delle procedure formali e dotte. Un risultato che quindi avvalora quanto già espresso in sede storiografica: non c'è

19 Per un'introduzione sui rapporti non solo giuridici, ma anche politici, sociali ed economici tra Venezia e l'isola di Creta si rinvia a Ortalli, 1997.

contrapposizione, bensì commistione tra i due livelli (Povolo, 2015). Un'altra osservazione riguarda il grado di contenimento e la gestione della conflittualità patrizia: il ruolo di protagonista è interpretato dalla Quarantia Criminale.

La sua ritualità processuale, in linea con quella generalmente adottata nel resto della penisola dal Basso Medioevo, si presta al confronto tra le parti e concede il necessario spazio d'azione alla difesa. Il risultato è quello di favorire la ricomposizione attraverso l'inflizione di pene, come quella del bando, finalizzate a quest'obiettivo. Anche se generalmente era il Consiglio di Dieci a ratificare l'avvenuta ricomposizione, ad esempio mediante le suppliche inviate per richiedere la remissione della pena, quest'ultimo organo non poteva concedere alle parti, in sede giudiziaria, la stessa facoltà d'iniziativa della Quarantia. Quest'impossibilità si radicava in quel peculiare rito processuale che lo contraddistingueva e che prevedeva una procedura segreta, rapida e senza avvocati (Cozzi, 1982, 102–103). Conseguentemente, il Consiglio di Dieci interveniva attivamente all'interno dei meccanismi della vendetta e della faida solo quando l'aggressività superava i limiti della tolleranza. Un confine non basato tanto sulla violenza di per sé – ferimenti, assalti e omicidi erano generalmente discussi in Quarantia – quanto sulle modalità con cui questa prendeva forma. Una situazione che si sarebbe modificata indelebilmente quando, nel 1571, lo stesso Consiglio di Dieci avrebbe avocato a sé la giurisdizione su qualunque fatto di sangue coinvolgente un patrizio veneziano, sia come offeso che offensore (Cozzi, 1982, 168–169). Una misura che, per il momento possiamo solo ipotizzare, avrebbe comportato profonde conseguenze nella gestione della faida e della vendetta patrizia.

PLEMSTVO MED MAŠČEVANJEM, PROCESNIMI RITUALI IN PRAVOSODJEM V BENETKAH, NA ZAČETKU 16. STOLETJA

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POVZETEK

*Zgodovinopisje je dolgo obravnavalo beneško plemstvo kot unikum, ker naj razred plemičev ne bi bil odvisen od praks fajde in maščevanja, za razliko od prevladujočih družbeno-kulturnih norm tistega časa. Avtorji so to prepričanje podprli z več dokazi. V nasprotju s temi je namen pričujoče raziskave ovreči to stališče na podlagi analize nekaj primerov konfliktov med plemstvom iz začetka 16. stoletja, in sicer z obravnavo dnevnikov Marina Sanuda in sodnih virov mestnih advokatov (*Avogaria di Comun*) ter Sveta desetih (*Consiglio di Dieci*).*

Rezultati kažejo, da se je tudi beneško plemstvo ravnalo po načelu časti in maščevanja. Poleg tega je širši pristop, ki analizira odnos med konfliktom, procesnim ritualom in pravosodjem, omogočil preveriti prepletanje običajnih praks z reševanjem konfliktov, v skladu s tem kar je že bilo ugotovljeno za družbe, katerih pravosodni sistem je bil utemeljen na običajnem pravu, ki v Beneški republiki ni bilo prisotno. Ta pristop je osvetlil tudi vlogo protagonista Quarantie Criminale, *organa, ki je zaradi svojih procesnih ritualov uspešno reševal plemiške fajde, medtem ko je Svet desetih posredoval na zahtevo strank z ratifikacijo uspešne sprave. V primeru, da do slednje ni prišlo, je za njegovo dosego poskrbel Svet desetih, kar je jasen dokaz ambicij takratnega pravosodja.*

Ključne besede: Benetke, plemstvo, maščevanje, 16. stoletje, procesni rituali, pravosodje

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WILL AUSS DER VNORDNUNG NIT SCHREITTEN: A CASE OF *FEHDE* FROM 17th CENTURY STYRIA

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ABSTRACT

In the autumn of 1654 a Fehde (feud) broke out in the Styrian town of Ptuj between the Moscon and Qualandro noble families. With the killing of one of Simon Moscon's subjects, this history acquired another twist, the threat of blood vengeance. The Qualandros, the perpetrator and his son fled the vengeance into monastic asylum and into the burgher estate respectively. The Ptuj town authorities assumed the role of the mediator, in accordance with legal customs, with almost no interference from the princely (state) authorities. With the town's mediation, peace was made in the summer of 1655; also by monetary restitution (composition) to the killed subject's family.

Key words: vengeance, vindicta, feud, Fehde, Ptuj, Moscon, Qualandro, 17th century

WILL AUSS DER VNORDNUNG NIT SCHREITTEN: UN ESEMPIO DI FAIDA NELLA STIRIA DEL SETTECENTO

SINTESI

Nell'autunno del 1654 a Ptuj scoppiò una faida tra le famiglie nobili Moscon e Qualandro. Uccidendo uno dei servi dei Mosconi acquistò ulteriori risvolti: la minaccia di una vendetta di sangue. Per evitare la rappresaglia Qualandra, l'autore del reato e suo figlio, si rifugiarono nel monastero ovvero nello status borghese. La mediazione venne assunta dalle autorità cittadine di Ptuj, che la condussero secondo la tradizione giuridica, quasi senza che le autorità del principato regionale (dello Stato) interferissero. Con l'intervento della città si arrivò alla pace nell'estare del 1655, pagando anche un indennizzo (una composizione) per la famiglia del servo ucciso.

Parole chiave: vendetta, vindicta, faida, Ptuj, Moscon, Qualandro, secolo XVII

PROLOGUE: PTUJ, THURSDAY OCTOBER 22ND, 1654

On the day of the feast of St. Salome in 1654 the Styrian town of Ptuj witnessed an unusual event: Simon Moscon leading a force of about forty of his armed subjects entered the town and headed for the *Freihaus*[1] of the Qualandro family. Simon and the Qualandros had by this point already been in an inheritance dispute over the house for about a decade. The court had only ten days earlier allocated the deeds of the house to Simon Moscon, who was now about to take it by force, since his uncle, Fermo Qualandro, had squatted the house in the meantime and barricaded himself inside, supported by a handful of his family's servants and subjects. When Simon's subjects tried to break into the house for the fourth consecutive time, Fermo attempted a warning shot to scare the attackers away. However, his carbine misfired and fatally shot Lukas Pankicher, one of Simon's subjects. The assault on the house ceased as the rest of the attackers scattered. The incident, such as was not within living memory of the town, evoked more than fear and astonishment, it brought to the fore something else that humanity as a whole has in common: the need for vengeance.[2]

INTRODUCTION: *VINDICTA* AND *FEHDE* IN BRIEF

Due to the length and nature of this paper, a lengthy and detailed discussion of the customary legal institution or, better yet, legal custom (Althoff, 1997, 228) (preformed through ritual or enforced by law) of vengeance (*vindicta*) has to be omitted. Therefore, for the purpose of this paper, only the bare basics needed for understanding the matter at hand shall be presented.

As a rule, vengeance followed the pattern of *dispute – injury – hostilities – mediation – truce – peace*. The original dispute could be just about anything that had to do with the real or perceived violation of one's rights and/or honour. Thus, the background of disputes could be just as "trivial" or as serious as today. Generally, disputes were settled within the community. If not among the parties themselves, then with the help of the community's judiciary institutions, which as a rule were comprised of its rulers, respected elders or elected officials *i.e.* its authorities, regardless whether the community was a tribe, village, market town, town, city or the nobility of a certain region or province. It was in every community's interest that vengeance and the violence that as a rule accompanied it, would not break out, and so the customs (rituals) regarding *vindicta* were directed towards ending the violence and the restoration of peace and social balance within the community. As such, vengeance also served as a form of social control (Büchert Netterstrøm, 2007, 8–12; Brown, 2011, 144, 146; Povolo, 2015, 196–199).

1 *Freihaus* (free house) was a house, which, while located within a medieval or early modern town or city, was exempt from the jurisdiction of its court. *Freihäuser* (plural) were owned by nobility and religious institutions, and were under the same jurisdiction (Vilfan, 1961, 161).

2 Both Austrian and Slovene historiography so far more or less only brushed against the matter (ZAP 0070, R 32, 201–202; ZAP 0070, R 40, 405; Jutro, 28. 9. 1937, 3; Saria, 1965, 47; Valentinitsch, 1973, 74; Tednik, 28. 11. 2002, 13; Hernja Masten, 2005a, 231).

Fig. 1: Ptuj ca. 1681 (Vischer, 2006)

The pursuit of vengeance meant that at least one of the parties to a dispute chose to renounce the orderly and peaceful communal way, *i.e.* the community's judiciary or legal system. A dispute resulted in vengeance because of an injury (*iniuria*), the final draw in violating one's honour or rights, which had to be restituted, *i.e.* avenged or restored by means of vengeance. Once vengeance had been resorted to, its course had to obey certain rules in order not to be regarded as asocial violence and result in the parties being persecuted. To ensure their legitimacy, hostilities had to be declared publicly. This made the other party know that enmity existed between them, also giving sufficient time for them to prepare themselves and their kin (in the first place family, but also "extending" to retainers, subjects, etc.). Kin and similar groups in general, up to different degrees of familiar involvement, always took part in the vengeance, since it was seen as a collective responsibility. In the Holy Roman Empire, on which the following text is centred, from the high Middle Ages to the early modern period, hostilities were announced by a renouncement of fidelity or peace (*Absage* or *diffidatio*), as a rule at least three days prior to any acts of violence (*e. g.* Peace of Mainz 1235). The German term for such a state of enmity was *Fehde* (*faida*), the meaning of which is somewhat narrower than the English word feud[3] despite their common origin (*fæhde* or *faithu*: enmity), and shall therefore be used in the paper (Büchert Netterstrøm, 2007,

3 For instance, it can also encompass blood feud, for more on the matter see: Halsall, 1999, 7–29.

38–39). As all forms of vengeance, *Fehde* aimed at the restoration of one's rights and/or honour by coercing the adversary (enemy) back on the judiciary course, preferably on one's own terms. Violence was not the goal of vengeance, but its means. A *Fehde* mostly employed it as "robbery and arson" (*Raub und Brand*), *i.e.* the dispossession and destruction of the adversary's means of (agricultural) production (save for the prohibited destruction of orchards and vineyards, gardens, plows, mills or killings of animals). This included claiming the other's subjects in a *Fehde* between noblemen. Killing in a *Fehde* was not only prohibited as an ideal, but fairly uncommon in reality, since the injury had to be restituted (avenged) by a peace settlement, which is possible only with living people (Brunner, 1990, 79–80, 84–89; Patschovsky, 1996, 164–168; Wadle, 1999, 79, 86; Þorláksson, 2007, 83–85, 89–90; Zmora, 2007, 149–158).

Also, homicides could lead to blood vengeance. This form of vengeance followed the law of talion: (human) blood for (human) blood, and generally was not part of a *Fehde*, but could "help" bring it to an end, *i.e.* bring about truce followed by a peace settlement (Vilfan, 1996, 461; Þorláksson, 2007, 77–79, 85–86).

Truce and peace could be negotiated among the parties themselves, if this proved impossible however, through mediation by a third party of the aforementioned rulers, respected elders or members or the elected authorities of a community, for instance (aside from rulers), by the town or city authorities, tribal or village elders, the courts or by an individual whom both hostile parties respected and trusted to be impartial and just in the matter. It was in this way that customary and communal law (*e. g.* town statutes) incorporated vengeance into its rites to contain the violence when hostilities broke out, and to direct the parties towards a peaceful resolution on its own terms. Since the late Middle Ages, the role of the mediator was increasingly claimed and transformed by the rulers, *i.e.* the state and its judiciary (Büchert Netterstrøm, 2007, 17–18; Þorláksson, 2007, 77–79, 85–86; Povolo, 2015, 206–215, 221–225).

After hostilities broke out, truce (*Friede*, *treuga*) had to be achieved first, which stopped the violence and gave the parties time to negotiate terms for a peace settlement. At this point, hostilities could still erupt again and the *Fehde* could resume. Sometimes the truce was made possible by the renouncement of vengeance or hostilities (*Urfehde*); an *Urfehde* was also vowed by freed crime suspects to the authorities that had them imprisoned. Once the terms were negotiated, a formal and public peace settlement (*Sühne*, *pax*) could be made. In the Middle Ages, such formalities could also be sealed by a "kiss of peace" (*osculum pacis*) (*e. g.* Petkov, 2003). The kiss of peace symbolised that the parties to the *Fehde* would (ideally) become closer to each other, not only in peace, but also in friendship and love (*Minne*) (*e. g.* Kos, 1994, 78) as the opposite of hostility (*Fehde*). This was sometimes additionally strengthened by marriage (Brunner, 1990, 105–106; Darovec, 2014, 492, 498–499).

Blood vengeance followed much the same course. The restitution for a homicide or drawing of human blood could also be made by (payment of) composition: in goods or cash, *i.e.* weregild (*Wergeld*). As stated above, marriages were also a means of ensuring peace and friendship between former enemies (Brunner, 1990, 105–106; Þorláksson, 2007, 77, 88, 91; Darovec, 2014, 492, 498–499; Povolo, 2015, 196).

While blood vengeance had been common and legitimate for all estates for the longest period of time, *Fehde* was most common among, but not exclusive to, nobles. For the nobility, it also remained legitimate for the longest period of time. The first prohibition for the nobility in the Holy Roman Empire came with Emperor Maximillian's General Peace of 1495 (confirmed in 1512), yet the implementation thereof generally started more vigorously only following the *Constitutio Criminalis Carolina* (1532) and the *Reichsexecutionsordnung* of 1555 (Carl, 1996, 473–474, 492). The first to lose their right to *Fehde* were the peasants, but it could still regionally be regarded as somewhat legitimate, for instance in Brandenburg (Reinle, 2007, 164). The burghers were somewhere in between. Towns and cities as communities had the right to announce hostilities, even if it was generally their lord who led the *Fehde*, but individual burghers were prohibited to renounce peace, because in so doing, they could draw the town and its lord into a *Fehde*, as both had the obligation to protect their burghers. Only those who could own estates, *i.e.* rich enough or burghers raised into nobility (as a rule because their wealth was of use to the Land Sovereign or prince (*Landesfürst*)), were allowed an *Absage*. Towards the end of the Middle Ages, a *Fehde* between different estates had come to be increasingly regarded as rebellion or outright criminality. By the end of the 15th century, the right to renounce peace or announce hostilities had been greatly diminished, and as a rule reserved for towns and nobility, with the latter managing to cling to it as legitimate for at least another century. Still, as late as in 18th century Habsburg Monarchy, announcing hostilities due to a suffered grave injury could still be regarded as an attenuating circumstance for the otherwise criminal offence (CCT 1769, Article 73, §5, 201–202, § 14, 205). This is proof of the resilience of legal custom of vengeance, regardless of its criminalisation. In the meantime, the role of the community in settling vengeance was steadily taken over by the early modern state and its professional judiciary. *Vindicta* began to be claimed by the state alone (within the Empire, at first by the princely state), and its institutions and codified law intruded increasingly into customary and communal proceedings and rites, until finally prevailing towards the end of the 18th century. Today, only the State retains the legal right to avenge an injury or attack. Since the high Middle Ages, it had gained this monopoly on violence with the use of *Fehde* itself. For the rest of society, vengeance has acquired the infamy of savagery, crime or in folk and popular culture – vigilante romanticism (Brunner, 1990, 50–54; Patschovsky, 1996, 162–172; Rill, 1996, 106–114; Reinle, 2003, 40–41; Büchert Netterstrøm, 2007, 12, 25–28, 45–46; Povolo, 2015, 197–198, 212–214, 222–223).

THE ORIGINS OF THE MOSCON-QUALANDRO DISPUTE

As pointed out in the introduction, every vengeance had its origin in an actual or at least perceived violation of ones rights and/or honour, in some kind of sustained injury (*iniuria*). Since the dispute that led to the *Fehde* between the Moscon and Qualandro[4] families was one over inheritance, their kinship has to be analysed first.

4 Since Helfried Valentinitsch has already done thorough research on the genealogy of the Qualandro family in Ptuj (Valentinitsch, 1973, 66–78), only the information pertaining to their dispute with Simon Moscon is given here. A few wrong dates and similar data by Valentinitsch have been corrected without indication.

Othmar Pickl presumed that the Moscon (*Muscon*, *Muschkhon*) family originated from the town of Lovere near Lago d'Iseo, northeast of Bergamo. Its members are believed to have immigrated to Inner Austrian lands[5] at the beginning of the 16th century, when their presumed birthplace lay in the Italian continental part of the Republic of Venice, the Terraferma. The area surrounding Lovere in the early modern period was famous for its sheep and wool production. Venetian merchants also traded wool and wool products (textiles) with Hungary over the so-called Ljubljana road,[6] which ran through the Styrian town of Ptuj. It was in this way that the Moscons joined the Venetian-Hungarian cattle trade. Among them was Alexius Moscon, the first family member attested in Styria, who already in 1513 had been a Ptuj burgher. Alexius had become rich trading cattle, hides and textiles, but also through dealing in finance. By 1532 he was already wealthy enough to buy the pawned princely County of Pazin in Istria. Even after the family split into several lines, some of which settled in Carniola as well, its main seat of commerce remained Ptuj (Valentinitsch, 1998, 98, 105).

The family acquired lordships in Carniola and Styria respectively and was raised into the nobility in the first half of the 16th century. One family line completely renounced commerce around 1600, while another was awarded the title of barons in 1618 and counts a century later. The Ptuj line however, remained in commerce regardless of its new estate (Valentinitsch, 1973, 105–106).

The first Moscons relevant to this paper were the brothers Bernhardin and Josef who were burghers not nobles. They were hide and textile merchants, operating together with Gabriel Caccia, a member of another Ptuj merchant family, originating from somewhere in northern Italy. The roots of Simon Moscon's dispute with the Qualandro family lay in Josef's marriage in 1624 to Otilia,[7] the daughter of the wealthy and infamous Ptuj merchant, Matthias Qualandro. Otilia outlived her husband and married Hans Schauer in

5 An entity of Habsburg hereditary lands (1564–1619/1749) encompassing the Duchies of Styria, Carniola and Carinthia, the Princely County of Gorizia and Gradisca, the Free City of Triest and the Margraviate of Istria and other smaller territories (Bakar, Bovec, Rijeka/Fiume, Tolmin). Its capital until 1619, when the Princely court moved to Vienna, was the Styrian capital Graz, which remained the seat of the Inner Austrian Government until 1746. The latter was the Princely governing body second only to the Princely Privy Council in Inner Austria. The Government had the authority over those at the lower Land level, *i.e.* the *Landeshauptmann*, the courts, Princely towns, market towns and parishes (Spreitzhofer, 1988, 64–66).

6 Booming international trade with cattle, hides and textiles along this route and through Ptuj, situated near the border to Hungary, was the main factor for Italian merchants to have established a foothold in town. The boom started in mid-15th century, subsiding in the second half of the 16th century and coming to an end in 1641 with the break-down of trade between Venice and Hungary. Until then, starting in 1500, many Italian merchant families established themselves in town: Asti, Caccia, Gualandro (Qualandro), Guffante, Inzaghi, Liscutin, Marenzi, Miglio, Molfetti (Mofetti) and Moscon. Many other Italian merchants only remained briefly. Most of these families had died out in Ptuj by the 18th century (Valentinitsch, 1998, 98–108).

7 Or Otilia Alda, since (only) Alda was supposedly written on the couple's commemorative wedding bowl, which was still kept at the Ptuj Conventual Franciscan monastery in the mid-19th century (ZAP 0070, R 32, 151, 201). It seems that Otilia never used her other given name, as it is not attested in other historical sources. Judging by Simon Moscon's approximate age upon his return to Ptuj in 1642, it would seem impossible that the names Otilia and Alda would have meant two different wives of Josef, *i.e.* two different women.

1630, a high-ranking employee of the Styrian Land Estates (*Landstände*).[8] At the time of Josef's death in 1629, the goods from his inheritance alone were worth several thousand guldens, but all the wealth went into less capable hands. The guardianship over his inheritance and underage sons Simon and Dominik[9] was entrusted to Josef's brother Bernhardin, who invested all the money into a commercial enterprise trading in oxen and grain. Bernhardin had founded it with two Italians, Carlo Miglio and Antonio Campioli, most likely immigrants from Milano. Campioli was later succeeded by Miglio, his nephew Tulio Miglio and Peter (*Pietro*) Curti, and it seems that Fermo Qualandro joined the enterprise as well (Gestrin, 1981, 233; Gestrin, 1986, 420). However, the enterprise fell into ruin in the years 1641–1642, supposedly under scandalous circumstances. Bernhardin squandered his brother's and his nephews' inheritance. At the end of 1643 the once respected, wealthy man and former town councilman (*Stadtrat*) died in Ptuj, destitute and ill. Following Bernhardin's ruin, his late brother's father-in-law Matthias Qualandro provided for him. At his death, Bernhardin left not only his nephews in debt, but also his wife Magdalena Anzella (née Minussi), whom he married on 6th February, 1629. They had no children of their own (Valentinitsch, 1998, 102, 106).[10]

If Ludvik Pečko was right about the year of marriage between Josef Moscon and Otilia Qualandro, then Simon Moscon could not have been more than 18 years old when he returned to Ptuj[11] in 1642, at which point he tried to reclaim at least his mother's inheritance following his uncle's bankruptcy. She, *i.e.* her widowed husband Hans Schauer, was supposedly dispossessed by her brothers Fermo and Cyprian following the death of their father Matthias Qualandro, or so Simon had claimed. Simon, however, also needed the money to repay his late uncle's debts. By demanding his mother's inheritance he started a decade-long dispute with his mother's kin, the Qualandro family. Apparently, he did not even live to see the dispute end, dying in 1686 (Valentinitsch, 1973, 73, 75).[12]

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8 Simon Moscon acquired a stepsister named Eva Sidonia from the marriage. She married Hieronimus von Hornburg on 25th July 1654. Both of her parents had passed away by then, Otilia in 1635 and Hans in 1644 (StLA, LAA, LR 736, Collated transcript of the marriage agreement between Eva Sidonia Schauer and Hieronimus von Hornburg, 24th March, 1657, Graz; Valentinitsch, 1973, 70, 75).

9 He later joined the Dominican monastery in Ptuj and took the name Maria Dominik (StLA, LAA, LR 736, Order by the Inner Austrian Government regarding the request of Simon Moscon regarding the inheritance of Matthias Qualandro, 7th August, 1657, Graz).

10 StLA, LAA, LR 736, Inheritance inventory of the late Berhardin Moscon, 7th December, 1643, Ptuj; StLA, LAA, LR 736, Certificate of the Ptuj town judge and council for Simon Moscon, 6th July, 1657, Ptuj; StLA, LAA, LR 736, Edict of the *Landesverwalter* Count Maximillian von Saurau in the case of Matthias Asti vs. Antonio Campiolli (transcript), *sine dato*, *sine loco*; StLA, LAA, LR 736, Legal opinion in the case of Simon Moscon vs. the heirs, inheritance caretakers and creditors of Matthias Qualandro, 22nd February, 1656, *sine loco*.

11 Simon also married here, taking Ana Schauer as his wife, a relative of his stepfather. Their only known child was Ferdinand Moscon (StLA, LAA, LR 736, Letter of the Styrian *Landeshauptman* regarding the capital from the Schauer inheritance, 30th July, 1655, Graz; Valentinitsch, 1998, 106). Dejan Zadravec (ZAP), to whom I am grateful for his observation, is of the opinion, that Simon Moscon inherited his noble title from his stepfather (not before his death in 1644) if ever at all.

12 StLA, LAA, LR 736, Legal opinion in the case of Simon Moscon vs. the heirs, inheritance caretakers and creditors of Matthias Qualandro, 23rd August, 1656, *sine loco*.

The Qualandro (*Guallandri*, *Guallandro*, *Quallandro*) family originated from Bergamo and arrived in Ptuj literally in the person of Simon's grandfather Matthias, originally presumably *Matteo Guallandri*. Just like the first Ptuj Moscon, Alexius in the 16th century, Matthias proved himself a very capable merchant a century later. He probably arrived in Styria with other Venetian merchants at the beginning of the 17th century. Here, he is first attested in a document from 1609, as a cattle merchant in Ptuj, yet he initially traded with textiles and groceries. Matthias presumably gained a command of the language or, rather, both languages (German and Slovene) of his new homeland – at least a working understanding, although he never mastered writing. Nevertheless, this did not impede his becoming the wealthiest merchant in the Land of Styria over the following two decades. He mainly traded with oxen, but also with textiles and other goods, beginning at first as a salesman for other Venetian merchants. His big break came with the extreme debasement of money and the following financial crisis of the *Kipper- und Wipperzeit* (1619–1623). In 1622, when the meat supply of the Styrian capital Graz collapsed, Matthias was immediately able to stand in as a supplier, which brought him huge profits. He also supplemented his wealth with illegal business methods: smuggling and the exchange of bad currency. This certainly did not bode well for his reputation in Styria, as he was already hated for his rough methods,[13] because of which he was referred to using the pejorative term *Bergamasco* after the region of his origin. Nevertheless, his relentless and rough methods certainly aided him in taking over the entire Hungarian-Venetian trade in 1626. This was without a doubt made possible solely due to him being raised into nobility by the Styrian Land Sovereign and Holy Roman Emperor Ferdinand II in 1621, who also bestowed the title of Imperial Servant (*kaiserlicher Diener*) on him. In addition to that title, he signed himself as Matthias Qualandro at Pogled and Plumberk (*auf Pogled und Brunnberg*), after his main lordships. Hungarian magnates eventually did manage to dissolve his monopoly, but he did not live to see all the consequences after his death, as it seems, prior to 26th May[14] 1636. Matthias had a splendid funeral in the former Minorite[15] Church in Ptuj, which was destroyed in 1945. He left approximately 185,000 guldens to his heirs, in addition to 72,000 guldens worth of debts. His estates[16] amounted to the largest part of his inheritance, including the *Freihaus* in Ptuj. Matthias also bought estates around his native Bergamo, which were managed and, following his death,

13 For instance, some time prior to 1631, he had his employee Ulrich Engel imprisoned in one of the Ptuj towers, because he had not repaid his debt of 4,000 guldens (ZAP 0177, 2, Town protocol 1653–1655, f. 184v–185r). But he was soon freed and already in the same year was attested as Matthias' heir in the textile and groceries business. Still, Engel found himself in trouble because of him again in 1631 or 1632, when Matthias' subjects from Zavrč, whom the merchant-made-noble treated very badly, seized and robbed him (Valentinitsch, 1973, 69, 71).

14 StLA, LAA, LR 950, Inventory of financial transactions that Fermo Qualandro inherited after the death of his father Matthias Qualandro and further expenses, 1640, Ptuj; ZAP 0177, 7, Repertory of inheritance inventories of the town of Ptuj (1590)–1777–1808.

15 Church of the Ptuj monastery of the Order of Friars Minor Conventual.

16 Which lordships and estates these encompassed is somewhat disputed. Helfried Valentinitsch counted Dornava, Pogled, Pobrežje, Plumberk and Zavrč (Valentinitsch, 1973, 69–70; Valentinitsch, 1998, 108), while Hans Pirchegger was of the opinion that at the time of his death, Matthias Qualandro had owned only Pogled, Plumberk and Zavrč (Pirchegger, 1962, 73–74, 93, 102–104, 148–149, 182).

taken over by his brother Marco Antonio who had remained in Italy (Valentinitsch, 1973, 67–68, 70; Valentinitsch, 1998, 107–108).

Matthias had three children of his own, one adoptee[17] and was married at least twice. His first wife was probably a Marenzi[18] widow. His second wife was Katharina née Delfari (*Delfaro*), whom he married in November 27th 1626.[19] She might have been from the Croatian town of Varaždin,[20] where she still had a house of her own after Matthias' passing.[21] Yet it seems Matthias had all of his children from his first marriage: the daughter Otilia, who first married Matthias' business partner Josef Moscon (Valentinitsch, 1973, 74), and the sons Cyprian and Fermo. The elder Cyprian was an imperial officer and took over the lordship Pogled while his father was still alive. He had however treated his subjects so harshly that they joined the so-called second Slovene peasant revolt in 1635 and burned the Pogled mansion to the ground. Six years later, his demeanour, which he had "inherited" from his father, got him in trouble again: he provoked a duel with Count Gottfried von Tattenbach and was fined 200 guldens because of it (Valentinitsch, 1973, 74). Cyprian quickly squandered the inheritance, got in debt and fled to Italy in 1642 or 1643, most likely to the Republic of Venice, never to return to Ptuj again. His wife Margarethe (*Margherita*) was the daughter of the wealthy Triest merchant Germanico von (*di*) Argento. Cyprian married her in 1628 in Triest and they had a son, Johannes (*Giovanni*) Antonio, baptised on the 9th of October, 1635. Margarethe died in 1637. Abandoned in Ptuj, Johannes Antonio was taken into care by his father's uncle Marco Antonio from Bergamo who occasionally visited his relatives in Ptuj. Following Cyprian's flight, the debts to Matthias' creditors fell onto the shoulders of his younger son. Fermo Qualandro tried to re-join the oxen trade, without success. As an unfortunate consequence he had to sell or pawn lordship after lordship, estate after estate, and only with his uncle's financial help was the family able to retain the *Freihaus* in Ptuj, the lordship Zavrč and the estates Pobrežje and, as it seems,[22] Pogled as well. Fermo's children left the trade business. Rather unsurprisingly, his eldest son was named Marco Antonio, after the relative who saved the family from ruin (Valentinitsch, 1973, 70–72, 74; Valentinitsch, 1998, 108).[23]

17 Prospero Marenzi. Matthias' first wife probably married into the Marenzi family, which came to Ptuj in the 16th century, allegedly from either the Counties of Gorizia or Gradisca, the Free City of Triest or the Margraviate of Istria (Valentinitsch, 1973, 67–68).

18 Valentinitsch, 1973, 67–68.

19 StLA, LAA, LR 949, 2, Recording of the first day in the dispute between Katharina Qualandro, née Delfaro, and Baron Georg Heinrich von Helfenburg, 1643, *sine loco*; ZAP 0177, 2, Town protocol 1653–1655, f. 296r.

20 The family is also attested in Leibnitz (today Austrian Styria), so Helfried Valentinitsch thought that Katharina could have been the daughter of the Leibnitz town councilman Lorenz (Valentinitsch, 1973, 68, 73). This might be just as plausible. Even if the historical sources never mention her as a widow prior to her marriage to Matthias, she was over 40 years of age at the time of their marriage, so she could just as well have been one. Be that as it may, she had lived in Varaždin before marrying Matthias.

21 StLA, LAA, LR 949, H. 2, Recording of the first day in the dispute between the heirs of Katarina Qualandro and Count Jakob Leslie, 1671, *sine loco*; ZAP 0177, 2, Town protocol 1653–1655, f. 296r.

22 Two of the subjects who helped Fermo Qualandro defend the *Freihaus* from Simon Moscon were from Pogled (ZAP 0177, 2, Town protocol 1653–1655, f. 303v).

23 StLA, LAA, LR 950, H. 2, Reply of Matthias Qualandro's heir to the Inner Austrian Government regarding the dispute with Johannes Antonio Qualandro, received 26th September, 1678, *sine loco*; StLA, LAA, LR

Next to Marco Antonio, Fermo had at least the son Johannes Baptist and the daughter Anna Maria with his wife, who is however not attested in historical sources.

Fermo's younger son lived secluded on the Pobrežje estate, which he inherited from Katharina Qualandro. Johannes Baptist married late, taking Anna Katharina, the widow of some lieutenant in Count Leslie's regiment, as his wife in 1685. They had no children of their own, but Johannes provided for Anna's after her death in 1690 (Valentinitsch, 1973, 76).

Anna Maria Qualandro married the Ptuj burgher Horatio Caccia, a member of an allegedly northern Italian family that is first attested in Ptuj in the first half of the 17th century (Valentinitsch, 1973, 77; Valentinitsch, 1998, 102).[24]

Marco Antonio, whose part in the *vindicta* shall be elaborated below, was married twice. His first wife was Virginia Caccia who died in 1666 and bore him four children. Their affection for each other must have been great, since the widower had not remarried until 14 years later, taking Susanna Barbara Marenzi as his second wife. They had three sons. Marco Antonio died on 4th July 1678 (Valentinitsch, 1973, 72, 75).[25]

FROM THE INHERITANCE DISPUTE TO THE *FEHDE*

Losing his father's inheritance as a result of his uncle's negligence, misfortune or commercial ineptitude, Simon Moscon returned to Ptuj to reclaim at least his mother's inheritance. Wherever in La Serenissima or elsewhere in Italy where he used to live until then, he probably didn't have it easy if he returned to the distant, if native Ptuj, knowing full well how his uncle Bernhardin fared. Yet without a doubt, Simon's actions were also driven by a strong sense of honour.

At the time of the outbreak of hostilities between the relatives, Simon Moscon was the Lord of Dranek and Lancova vas. He had been the owner of Dranek mansion and estate at least between 1649 and 1658, and acquired the mansion and estate of Lancova vas sometime after 1636 and held it until 1665. The money that he got from selling both must have been used to buy the Podlehnik estate (Pirchegger, 1962, 96, 98, 102–103).

His uncle Fermo was, at the time the *Fehde* began, the Lord of Zavrč and the Pogled estate, which, as it seems, was at that time no longer pawned. The Pobrežje estate, owned by Fermo's stepmother Katharina, was also in the family's hands.

950, H. 2, Excerpt from the parish register of the Ptuj parish regarding the baptism of Johannes Antonio Qualandro, January 25th 1661, Ptuj.

24 StLA, LAA, LR 949, H. 2, Recording of the first day in the dispute between the heirs of Katarina Qualandro and Count Jakob Leslie, 1671, *sine loco*.

25 The children from Marco Antonio's first marriage were: Ruprecht, who became a Benedictine at St. Paul in Lavanttal in Carinthia, Johannes Karl who pursued a military career and later inherited Zavrč, Maximillian who supposedly became a monk somewhere as well, and Esther Katharina. The sons he had with Suzanna Barbara were: Alois Franz Xaver, who served in the military – and later inherited Zavrč (Hernja Masten, 2005b, 113) –, and Johannes Georg and Matthias who became Conventual Franciscans in Ptuj (StLA, LAA, LR 949, H. 1, Letter of Balthasar Pauritsch to the Styrian *Landesverwalter* regarding the inheritance of Marco Antonio Qualandro, 28th May, 1680, Ptuj; StLA, LAA, LR 949, H. 1, Letter of Balthasar Pauritsch to the Styrian *Landesverwalter* regarding the inheritance of Marco Antonio Qualandro, 4th June 1680, Ptuj).

Fig. 2: The former Qualandro Freihaus in Ptuj (photo: Žiga Oman, 2015)

Yet, as it seems, the ownership of these lordships and estates was not contended. Simon Moscon only claimed his mother's inheritance (only once[26] in the historical sources referred to as Hans Schauer's inheritance) that included: the Qualandro *Freihaus* in Ptuj (valued at 2,250 guldens), two burgher houses in the same town, a downtrodden grange (*Meierhof*) at the St. Oswald church, a few pastures, fields, gardens and a vineyard. Apart from the houses, the real estate was valued at around 1,900 guldens, although Simon also demanded a substantial amount of money in cash and at least some of his mother's jewellery, totalling at 6,678 guldens. This total excludes the two burgher houses, which were in the meanwhile seized by the town council[27] (*Stadtrat*) and bought by Simon Moscon for 1,600 guldens.[28]

26 StLA, IÖReg, Cop-1655-XII-23, Trial protocol of Fermo Qualandro for the killing of Moscon's subject, Lukas Pankicher, 23rd July, 1655, Ptuj.

27 According to Article 12 of the Ptuj town statute of 1513, the town council had 12 members who elected the town judge from among their number (Hernja Masten, Kos, 1999, 74, 76). In 1654 the town council had 11 councilmen, coming back to 12 the following year (Hernja Masten, 2005a, 219).

28 StLA, LAA, LR 736, Appraisal of the inheritance of Otilia Moscon, née Qualandro, 30th August 1655, *sine loco*; StLA, LAA, LR 736, Certificate of the Ptuj town judge and council for Simon Moscon, 6th July, 1657, Ptuj; ZAP 0177, 2, Town protocol 1653–1655, f. 256v.

But how did the *Fehde* start, who set it in motion and why? The lawsuit of Simon Moscon against the heirs, inheritance caretakers and creditors of the late Matthias Qualandro probably started soon after his return from Italy to Ptuj in 1642 or, at the very latest, after Bernhardin's death a year later. After what were certainly many years of litigation, on 24th February 1648 the sentence was passed that the Qualandro *Freihaus*, which through Otilia came into Hans Schauer's inheritance, belonged to Simon Moscon and those he represented in court, his brother Maria Dominik and stepsister Eva Sidonia.[29]

Yet this did by no means settle the dispute. In the only preserved Ptuj town protocol, the historical source that by far best records the dispute and the resulting *Fehde*, the matter was first recorded on 12th March, 1653. Exactly one month earlier, the town council prompted Matthias Qualandro's heirs to pay the taxes due for their "smaller house", one of their two burgher houses, before the town would pawn it, since a buyer had been found.[30]

The dispute was resumed before the town court (*Stadtgericht*) in the summer.[31] As the parties to the dispute, the town council recorded Fermo Qualandro and Simon Moscon. This happened on 20th June, when the town councilman Gregor Liscutin[32] (*Lischkhutin*) was supposed to testify before the town judge (*Stadtrichter*), Simon Doringer. A problem arose when Simon Moscon insisted that the councilman ought to swear a special oath as witness, whereas the latter countered that the oath, which he had sworn when he became a town councilman ought to suffice. Simon's claim, however, prevailed in the end; he then demanded that the testimony be postponed.[33]

A month later, the Ptuj town protocol records the *Freihaus* being mentioned for the first time, but for other reasons: its roof and a part of the walls were in very bad condition. The town council urged Matthias' heirs to take proactive measures to prevent the structural problems affecting the whole house.[34]

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29 StLA, IÖReg, Cop-1655-XII-23, Trial protocol of Fermo Qualandro for the killing of Moscon's subject Lukas Pankicher, July 23rd 1655, Ptuj.

30 ZAP 0177, 2, Town protocol 1653–1655, f. 28r–v, 53r, 61r.

31 In the meantime, on May 16th, Simon Moscon started a fight with the ferryman Georg Luedel and his assistant Simon Gallätsch in Ptuj, when Luedel refused to ferry him across the Drava river due to bad weather. Moscon must have taken the refusal as an injury of or, rather, an attack on his honour, and first struck a blow at Gallätsch with his fist and then with the flat of his sword, going after Luedel next. Yet the ferryman overwhelmed Moscon and went to seek advice from the town judge. In the meantime, Moscon left for the Ptuj Dominican monastery, which then took care of ferrying the nobleman across the river (ZAP 0177, 2, Town protocol 1653–1655, f. 73v–74r). Any potential sanctions or reprisals because of this incident have not been preserved in historical sources.

32 Georg Liscutin was a descendant of Italian immigrants (Valentinitsch, 1998, 101). He was most likely born in 1593, and came into the employ of Matthias Qualandro in September 1631 (ZAP 0177, 2, Town protocol 1653–1655, f. 184v–185r), in which he stayed until the merchant's death. Afterwards, Liscutin at least occassionally worked for Fermo Qualandro as well, who at least once sent him on business to Venice. Fermo also paid him 1,000 guldens from Matthias' inheritance, which the latter had owed Liscutin (StLA, LAA, LR 950, Inventory of financial transactions that Fermo Qualandro inherited after the death of his father Matthias Qualandro and further expenses, 1640, Ptuj).

33 ZAP 0177, 2, Town protocol 1653–1655, f. 82v–83r.

34 ZAP 0177, 2, Town protocol 1653–1655, f. 97v; StLA, LAA, LR 736, Appraisal of the inheritance of Otilia Moscon, née Qualandro, August, 30th 1655, *sine loco*.

The Qualandro family also continued to experience legal issues with its two burgher houses which faced seizure by the town council, arising because it could or would not pay the due taxes. On 1st December 1653, the council grew tired of waiting for the payment, and the town judge ordered their appraisal. As it seems, the family had also taken no action in their dispute with Simon Moscon, despite the town council having summoned them before the town judge in this matter a couple of times, to no avail before the end of 1653.[35]

It appears there was no response on the Qualandro side until the spring of 1654. The witness examination however took place on 17th June 1654. The Qualandro family, *i.e.* Fermo and Katharina, was represented in court by Johannes Kaspar Pfanzelter, Simon Moscon on the other hand, by a certain Michelitsch whose first name remains unknown. Pfanzelter explained that the opponents were ignored, because the Qualandros were of the opinion that the matter of the inheritance dispute was not in jurisdiction of the town court. Michelitsch, *i.e.* Moscon, however was arguing that Matthias had been a burgher and died as one, so that his heirs belonged in jurisdiction of the Ptuj town court. As this had not been the case, Pfanzelter rightfully countered that Matthias, although a burgher at first, was raised into nobility and thus the matter had to be settled at the *Landeshauptmann* Court (*Landschrannengericht*) in Graz.[36]

The two parties found themselves at that same court on 15th September, apart from Katharina, for whom a special exception was made, most likely due to her old age, being 73 or 74 years old at the time; she was allowed to testify at the Ptuj town court eleven days later. Katharina testified in the matter of the disputed jewellery and silverware: a gold necklace, two bracelets, one ring, three small silver belts and two silver gilded cups. The widow claimed that the gold jewellery was a gift from Matthias Qualandro, received in Varaždin prior to their wedding, the rest having been presented as gifts afterwards.[37]

With this she obviously rejected some claim by Simon Moscon that the items were a part of his mother's or even his grandmother's inheritance, thus belonging to him. Yet Katharina's claims are also the last time the Qualandro-Moscon dispute is recorded in the town protocol prior to the eruption of violence, so the question remains of how the dispute moved into hostilities, *i.e.* turned into a *Fehde*.

Other historical sources clarify the matter. Some time prior to 12th October, the *Landeshauptmann* Court in Graz finally ruled that the Qualandro *Freihaus* belonged to Simon Moscon. With the deed (*intimation schreiben*) in hand, he then took over the house, sealed it and changed the locks on the same day. When his uncle Fermo Qualandro learned about this, he squatted the house, trying to prevent its takeover. Being thoroughly fed up with the decade-long dispute with his relatives, primarily with his uncle, Simon responded differently to the occupation than Fermo had evidently expected. The latter namely claimed that he expected Simon to take further legal action against him in court, after he had occupied the *Freihaus*. However, a "few days" after the occupation, Simon responded with force.[38]

35 ZAP 0177, 2, Town protocol 1653–1655, f. 98r, 105r, 111v, 153r–v.

36 ZAP 0177, 2, Town protocol 1653–1655, f. 192r, 201r, 256v–257v.

37 ZAP 0177, 2, Town protocol 1653–1655, f. 295r–296r.

38 StLA, IÖReg, Cop-1655-XII-23, Supplication of Fermo Qualandro to the Holy Roman Emperor etc. for *salvus conductus* (transcript), 29th October, 1654, *sine loco*; StLA, IÖReg, Cop-1655-XII-23, Trial protocol of Fermo Qualandro for the killing of Moscon's subject Lukas Pankicher, 23rd July, 1655, Ptuj; StLA,

The injury (*iniuria*) inflaming the dispute was Fermo's occupation of the *Freihaus*, which led to a *Fehde* when Simon took leave from the legal procedures and took the matter into his own hands (self-redress) with the armed arrival into town and attempted storming of the house. A formal declaration of hostilities (*Absage*, *diffidatio*) is not attested in the historical sources, probably because in mid-17th century it was already illegal to do so explicitly.[39]

DIESES SELZAME SPECTÄCHKL: OUTBREAK OF HOSTILITIES

Here, finally, the storyline from the prologue can be continued. Two days after the attempted storming of the *Freihaus* and the killing of Lukas Pankicher, on 24th October, Willibald Werlmayr testified under oath in the matter before the town judge.[40] The twenty-year-old Bavarian (most likely from Moosburg (*Möchburg*)) was a servant of Fermo's son Marco Antonio, and one of the men who helped Fermo Qualandro occupy and defend the disputed house that fateful day. It is safe to assume that Werlmayr probably knew the house well, since his master used to live in it. The testimony he gave was demanded from him by Simon Moscon. Even though it was Simon who started the *Fehde*, as his subject was killed in it,[41] he seems to have been regarded as the more injured party and thus could dictate the proceedings.

So what happened on the day the *Fehde* erupted, according to Werlmayr's testimony? When the *Freihaus* had been delegated to belong to Simon Moscon, he had sealed it off and left. This happened on 12th October. It was some time afterwards, neither Werlmayr nor any known historical sources give an exact date, Fermo decided to occupy it. At first, Werlmayr and two subjects of the Qualandros from Pogled, Tomaž (*Thomäsch*) Gaulländer and Martin Gonsmäkh, crept into the *Freihaus* through Wolf Lorenz Lampertitsch's house and garden, next into the *Freihaus*' garden through a hole in the garden wall, then through the back door into the house itself. Only after that did Fermo Qualandro enter the house with three more men by the main door, from which Simon's lock was struck off. Two of them were subjects of the Qualandros from Pobrežje, whom Werlmayr did not recognise; the third one was Thoman, the coachman of Katharina Qualandro. As the head of the family, Fermo could obviously command all of the family's "resources" for the occupation (defence) of the *Freihaus*.[42]

IÖReg, Cop-1655-XII-23, Trial protocol of Fermo Qualandro for killing of Moscon's subject Lukas Pankicher (transcript), *sine dato*, *sine loco*.

39 The *Ferdinandea (1656)* stipulated, that those who broke or, rather, cancelled the peace and fidelity, *i.e.* declared hostilities or a *Fehde* (*Diffidatores, oder Absager*), were regarded as violators of state peace (*Landfriede*), and dealt with the same way as offenders of His Majesty, rebels, conspirators, money forgers and traitors (CA 1704, Lit. L, *Ferdinandea*, Article 61, 690). The earlier *Carolina (1532)* left the decision whether an *Absage* was legitimate to the legal authorities (CCC 1609, Article 129, 58).

40 Article 27 of the Ptuj town statute from 1513 stipulated, that when the perpetrator of a homicide is unknown, everyone present at the killing had to be arrested, reported, interrogated and charged. Should one of them admit that he was the killer, charges against the others should be dropped and they should be set free, provided they had nothing to do with the homicide (Hernja Masten, Kos, 1999, 92).

41 ZAP 0177, 2, Town protocol 1653–1655, f. 302r–303v.

42 ZAP 0177, 2, Town protocol 1653–1655, f. 303r–v.

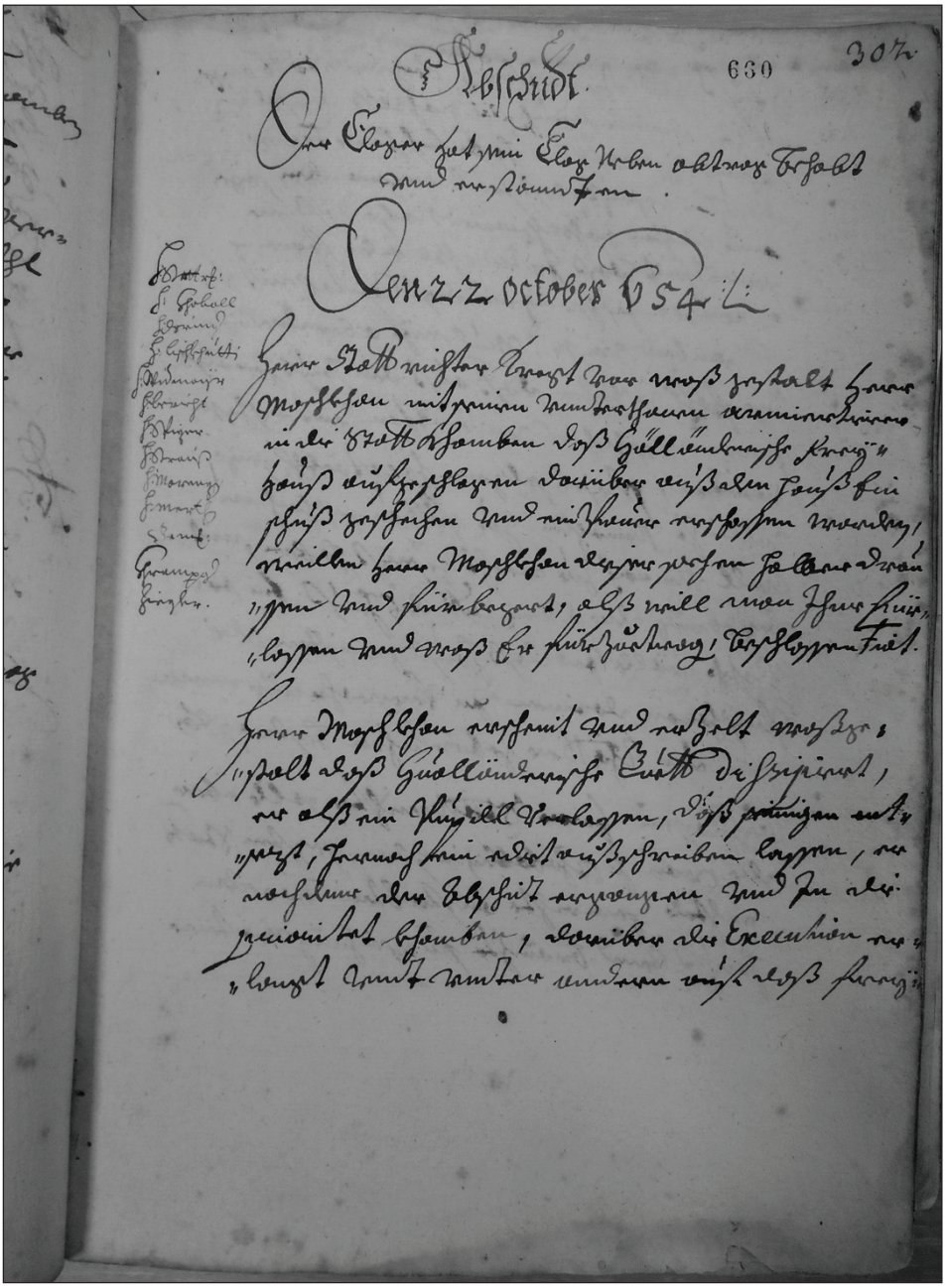

Fig. 3: ZAP, Ptuj town protocol 1653–1655 f. 302r, record of the shooting (photo: Žiga Oman, 2014)

As mentioned above, a "few days" had passed between Fermo's occupation of the *Freihaus* and Simon's armed entry into town on 22nd October with "many peasants", as Werlmayr had put it. Seeing the group of about forty armed men, Fermo ordered his six men in the house to prepare themselves for a break-in and to strike down any who would attempt to break in. At the time of the attackers' first charge, the occupiers were at a meal – they'd made some cabbage stew. Simon's subjects had tried to break through the front door with some sort of an improvised battering ram or a simple log (*tremblen*). At this Fermo called, 'lads, brace yourselves!' (*pursch zuer weher*) to the "defenders", and excluding himself and Werlmayr, who stayed at the meal, the five rushed to the front door.[43]

A part of what happened next was a few days later explained in a letter by Fermo himself, and not given by Werlmayr. Fermo claimed that following the first charge at the door, he called out to his attacker to stop the action and take the orderly path (*der ordnung nach*), *i.e.* take the matter to court; to no avail, as the besiegers, spurred by Fermo's call, charged roaring at the door with even more ferocity.[44] If Fermo really did call out to Simon remains somewhat doubtful. Werlmayr did not mention it, and Fermo might have only written this to justify his actions.

Referring back to Werlmayr's testimony, whether Fermo called out to Simon or not, his subjects unsuccessfully attempted to storm the gate three times. Then, at the fourth charge, Werlmayr heard a shot and immediately ran upstairs, to where he had heard it originate. There, he found Fermo Qualandro holding a carbine, who said to him that 'a shot went off'. Werlmayr seems to have been confused, since he asked who fired, to which Fermo responded that he had brushed up against the trigger and the carbine fired. After the shot was fired, Simon's subjects scattered. Save for Lukas Pankicher[45] who was killed by Fermo's shot. Werlmayr however emphasized that he could not say that Fermo had the intention to harm (*zubelaidigen*) or shoot anyone.[46]

In his supplication to the Emperor, Fermo had claimed the same: that he only wanted to scare the attackers away with a warning shot, when he brushed up against the trigger too soon and the weapon misfired, with the unfortunate effect of killing one of Simon Moscon's subjects.[47]

The *Fehde* gained another twist with this killing, as it could now turn into blood vengeance (*Blutrache*, *Totschlagsfehde*), due to the obligation that a lord had to avenge his subjects if they were killed or their blood was spilled by another lord or his subjects (Brunner, 1990, 57, 62).

As mentioned above, since Simon's subject was killed, he was now, as it seems, regarded as the more injured party in the conflict and dictated the proceedings, even if he had initiated the *Fehde*. Right after the shooting, he requested to appear before the town

43 ZAP 0177, 2, Town protocol 1653–1655, f. 304r.

44 StLA, IÖReg, Cop-1655-XII-23, Supplication of Fermo Qualandro to the Holy Roman Emperor etc. for *salvus conductus* (transcript), October 29th 1654, *sine loco*.

45 ZAP 0177, 2, Town protocol 1653–1655, f. 391r.

46 ZAP 0177, 2, Town protocol 1653–1655, f. 304r–v.

47 StLA, IÖReg, Cop-1655-XII-23, Supplication of Fermo Qualandro to the Holy Roman Emperor etc. for *salvus conductus* (transcript), 29th October 1654, *sine loco*.

council, which had already been notified of the incident. The town protocol registered that (Simon) Moscon had entered the town armed, together with his subjects and tried to break into the Qualandro *Freihaus*, from which then a shot was fired, killing one of his subjects.[48]

When the nobleman was allowed to appear before the Ptuj town judge and council, Simon reiterated the origins of the dispute with the Qualandros, which included the *Freihaus*, and that the *Landeshauptmann* Court in Graz ruled that the house belonged to him. Simon tried to take possession of it, but Fermo Qualandro who rejected paying him out, claiming that Simon had no right to it, overtook him and occupied the *Freihaus* himself.[49]

Regarding the *Fehde* – the word itself is never used in any of the pertaining historical sources – and the shooting, Simon urged the town council to finally decide to whom the house belonged (although this was not within its jurisdiction) and take action in the matter of "this unusual spectacle, which has probably never happened in Ptuj before" (*dieses selzame spectächkl seÿe vielleicht niemahlen zue Pettau geschechen*), of this "sad case" (*der laidige fahl*) in which one of his subjects had been shot from within the *Freihaus*. By action he specifically demanded the intervention of the town council in the house, the arrest (*verwahrung*) of those inside and a fitting punishment (*gebürlichen bestraffen*) for the perpetrator (*thätter*).[50]

Yet, before the town council took action against the then still unknown shooter, Simon Moscon also had to answer for his actions. He was told that he faced two or three[51] days in prison because he had severely violated town privileges[52] and caused a breach to the peace (*die ordnung weit ÿber schritten*) with the storming of the *Freihaus*[53] – nothing, however, had been specifically recorded regarding his armed arrival into town. The attempted break-in had been a violation of the sanctity of one's home (*Heimsuchung*), which was also a violation of *Fehde* rules (Brunner, 1990, 95; Reinle, 2003, 76, 81). Whether Simon really was imprisoned or only apprehended and threatened with arrest remains unknown. The latter seems somewhat more likely, as he had already on the day of the shooting taken the oath of renouncement of vengeance against his captors – in this case, the town council, which had arrested him. It was recorded that "Sir Moscon offered not to harm the honourable councilmen for [the arrest for] violating the house in the future" (*herr Moschkhon erbitt sich des er wegen des eingriffs in die behaussung ein er: rathe khünfftig ohne allen schaden halten will*).[54]

48 ZAP 0177, 2, Town protocol 1653–1655, f. 302r.

49 ZAP 0177, 2, Town protocol 1653–1655, f. 302r–v.

50 ZAP 0177, 2, Town protocol 1653–1655, f. 302v.

51 The number is smudged.

52 Article 103 of the Ptuj town statue from 1513 stipulated, that those who broke into someone else's house (home) with malicious (criminal) intent or dragged someone out of it, should be fined the sum of 32 guldens or executed (Hernja Masten, Kos, 1999, 142).

53 StLA, IÖReg, Cop-1655-XII-23, Trial protocol of Fermo Qualandro for the killing of Moscon's subject Lukas Pankicher, 23rd July, 1655, Ptuj.

54 ZAP 0177, 2, Town protocol 1653–1655, f. 303r.

The legal term of the renouncement of vengeance against ones captors or *Urfehde*[55] had thus not been recorded in the protocol, only implied in the descriptive form quoted above. Even so, had he been arrested, Simon was obligated by law (Brunner, 1990, 24–27) to issue a written renouncement (also known as *Urfehdebrief*). Since he probably had not, a formal *Urfehde* was perhaps deemed unnecessary.

When considering the shooting, it is possible even before the matter of Simon's (alleged) *Urfehde* was settled that the town council had taken the action the nobleman had demanded.

The town judge, Francesco Guffante,[56] entrusted the task to town councilman Peter Khobäll. He was to make sure that the town guard was posted at the houses of town councilmen, Lucio Bonicelli and Wolf Lorenz Lampertitsch, at the Zimmerman house and the house of the woman (probably widow) Steiner.[57]

The mentioned were, if not simply neighbours to the *Freihaus*, known as relatives, friends or allies of the Qualandro family. Since the first three of Fermo's men to enter the house did so through the Lampertitsch house and garden, at least Wolf Lorenz seems to have been both a neighbour and an ally.

Guards were also posted on the way to Ptuj castle and at the town gates, so that no one would escape the town before the suspect could be interrogated and processed. It goes without saying that guards were also posted at the Qualandro *Freihaus*. The town council decided to interrogate Fermo Qualandro, especially in the matter of whether he intended to hand over the perpetrator.[58]

The following day on the 23rd of October, the town council sent a member, Gregor Liscutin, to talk to Fermo,[59] presumably with the thought that the former employee of both Matthias and Fermo would have most success in persuading the nobleman to hand over the shooter responsible. It would seem, Liscutin's visit to Fermo has to be regarded as the first mediation in the *Fehde*. Sending Liscutin was a double-edged sword, however, as he might have felt obliged to help "his" family in a time of need instead of helping the town council, whose stakes in the matter were not nearly as high. In the end, Liscutin's loyalty lay with the Qualandro family, as he withheld the information from the town council concerning the shooter's identity. The council might have suspected who the perpetrator was, but his identity had only been confirmed a day later by Willibald Werlmayr's testimony.

Werlmayr had namely claimed that he did not himself see Fermo fire the carbine, but that he could confirm that this had happened, as he had heard it from Fermo himself. The nobleman admitted to this to Gregor Liscutin, when the councilman visited him, explaining that he did not shoot a burgher but a peasant.[60]

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55 For a contemporary example from neighbouring Carniola see: ARS 781, Iustitialia, 7, *Urfehde* by Jurij Sauerschnig for the Ljubljana town judge Ludwig Schönleben et al., 20th July, 1645, Ljubljana.

56 The family arrived in Ptuj in mid-16th century, supposedly from the today Swiss town of Lugano, then part of the Duchy of Milan (Valentinitsch, 1998, 103–104, 109).

57 ZAP 0177, 2, Town protocol 1653–1655, f. 302v–303r.

58 ZAP 0177, 2, Town protocol 1653–1655, f. 303r.

59 ZAP 0177, 2, Town protocol 1653–1655, f. 304v.

60 ZAP 0177, 2, Town protocol 1653–1655, f. 304v.

Knowing that an interrogation before the town judge and council was imminent, Liscutin had in the meantime bought his former employer some time by withholding the crucial information to the town authorities. Thus the town's attempt at mediation really turned out a typical case of familiar, friendship and alliance bonds that were at work in every feud.

Fermo Qualandro took advantage of the time that Liscutin provided him to flee the guarded *Freihaus* and seek asylum at the Ptuj monastery of the Order of Friars Minor Conventual (Conventual Franciscans), which he was granted. The rumours of this came to the attention of the town council prior to the testimony given by Willibald Werlmayr on 24th October. The servant had claimed that all he knew of Fermo leaving the house was that he ordered him to seal the ground door when he left, and that "there is no one at the monastery but the Franciscans".[61]

Fermo must have fled[62] in the night of 23rd–24th October, through the neighbouring Cävisch house, which was, as it seems, not under guard. Neither, as it happened, was the Conventual Franciscan monastery – the only place in town where Fermo could ask for asylum considering the entrances to the other two were guarded, lying as they did between the house and the Ptuj castle: the fortified house of the Ptuj castellan, the so-called Mali grad (small castle) and the Dominican monastery.[63]

Following Fermo's flight to the monastery, the town council had the guards moved there. Altogether, the guard was set at various buildings for 14 days.[64]

WILL AUß DER VNORDNUNG NIT SCHREITTEN: VENGEANCE

As stated above, with Fermo Qualandro's killing of Simon Moscon's subject, Lukas Pankicher, the *Fehde* took a turn that could well lead to blood vengeance, since Lukas' lord was obligated to avenge his death by another lord. Fermo had fled the direct consequences into asylum at the monastery – but what of his kin, who were now also in danger?

Right after Werlmayr's testimony ended, his master and Fermo's eldest son, Marco Antonio Qualandro, requested to appear before the town judge and council, which request was granted that same day, 24th October. Marco Antonio appeared accompanied by Johannes Kasper Pfanzelter, who already represented his father before the council earlier that same year, and requested to be granted citizenship by the town council, which would

61 ZAP 0177, 2, Town protocol 1653–1655, f. 304r.

62 The distance through the same streets today can be managed in under five minutes on foot at a leisurely pace.

63 According to Article 22 of the town statute from 1376 and Article 47 of the statute from 1513, the castellan had the right to grant asylum in his house, and the monasteries in their respective administrative buildings (*Amthof*) (Hernja Masten et al., 1998, 119; Hernja Masten, Kos, 1999, 16, 104). Asylum could not be granted by anyone to violators of peace, the so-called "peaceless" (*Friedlose*) (Brunner, 1990, 31), "malicious persons" (*malefiz personen*) or criminals (Reinle, 2003, 85). During the early modern period the increased containment of feuds reflected in the churches becoming increasingly more reluctant to grant asylum to those who were involved in a *Fehde* (Reinle, 2003, 159; Povolo, 2015, 223).

64 StLA, IÖReg, Cop-1655-XII-23, Trial protocol of Fermo Qualandro for the killing of Moscon's subject Lukas Pankicher, July 23rd, 1655, Ptuj.

make him a burgher of Ptuj. The council, which had no reservations, save that its representation was numerically too weak to decide on the matter, decided that Marco Antonio was to wait until the following Friday 30th October. Yet, since he intended to depart on some urgent business before that, Marco Antonio requested to be granted citizenship as soon as Monday, 26th October. Due to the town council's failure to agree to that, the young Qualandro had to wait for almost a week to have his burgher's oath confirmed. Still, the admission into the burgher estate was granted to him; meanwhile, Marco Antonio was also allowed to take the oath.[65]

At first sight, the matter in which Fermo's son came before the town judge and council might seem as having nothing to do with the shooting; however, this was without doubt not the case. Two things stand out here: the descent of a member of a noble family to the burgher estate,[66] from which it had relatively recently arisen to nobility, and the rather quick procedure[67] of Marco Antonio's admission among Ptuj burghers. The cause of this is evident from the aforementioned events. That Marco Antonio's request to be admitted as a burgher would be simple coincidence seems highly unlikely. His father Fermo Qualandro had just killed Lukas Pankicher, a subject of Simon Moscon's, for which he and his kin were now under the threat of blood vengeance. Fermo got to safety by requesting and being granted asylum at the Ptuj Conventual Franciscan monastery, while his son Marco Antonio obviously took refuge in the burgher estate, thus coming under the protection of the town community,[68] perhaps also supporting his father's right to asylum in so doing.

Should Simon Moscon have attempted reprisal, *i.e.* vengeance against Marco Antonio now, he would have most likely come into conflict with the town itself (Brunner, 1990, 51), a princely town no less. Thus, should he start a *Fehde* with Ptuj, Simon could have even gone against the owner of the town (Brunner, 1990, 51), the Styrian Land Sovereign and Holy Roman Emperor Ferdinand III. Had only the fear of the courts dictated the actions of Fermo and Marco Antonio, becoming a burgher would not have helped the latter. Thus, everything points to the conclusion that it was the fear of vengeance, because a death had to be avenged, even the fear of blood vengeance that dictated the actions of both father and son. It is in this context that the "urgent matters" for which Marco Antonio was to depart town were likely, more than anything, a form of pressure on the town council for a faster admission into the burgher estate. Running away, especially publicly implied, would not have helped him much, if at all.

65 ZAP 0177, 2, Town protocol 1653–1655, f. 304v–305v.

66 Generally, only lower nobility with little economic power voluntarily descended into the burgher estate (Štih, 2011, 8). Even if the Qualandro family could at the time of the *Fehde* clearly be counted among lower nobility, the context reveals, that Marco Antonio's burgher oath had no direct economic background. Indirectly, the *Fehde* of course had its origins in the inheritance dispute.

67 The applicant for citizenship as a rule came before the town council with two burghers as witnesses, made his request, swore the oath, payed the admission fee of 24 guldens and presented his confession paper. The admission ceremony and issue of documents were then held on Saint Lucy's Day (Hernja Masten, 2005a, 222–223), 13th December.

68 Article 74 according to the town statute of 1513 (Hernja Masten, Kos, 1999, 122).

It also is noteworthy that it is somewhat unusual for Marco Antonio to have even been admitted. Town authorities generally did not give citizenship to those involved in feuds, as to not become involved (Brunner, 1990, 63).

After waiting for almost a week, Marco Antonio Qualandro took his burgher's oath on Friday, October 30th 1654.[69] This time he came forward with the other required witness, the burgher Matthias Asti(us). As he was born in Ptuj, Marco Antonio did not have to present any birth certificates. Only his confessional papers had to be acquired from the town parish priest, since Marco Antonio for some reason had them from the town's gatekeeper. Nevertheless, he was allowed to take the oath, after paying 20 guldens as an admission fee.[70]

Marco Antonio was now in relative safety, but how about his father Fermo Qualadnro? In the time between Marco Antonio's request for admission among Ptuj burghers and his oath, the town judge and council attempted to intervene with the Conventual Franciscans to deliver the shooter. Town judge Francesco Guffante and, presumably (Hernja Masten 2005a, 219), town councilman Melchior Widmayer went to see Anthonius Gotscheer,[71] the guardian (custos) of the monastery, with the request to deliver the fugitive, Fermo, to the town authorities. This happened on 28th October, four days after Fermo was granted asylum. The town judge and councilman were however given the answer that Fermo can freely go by the same door he came to the monastery, but that he cannot be sent away against his will. The same answer was repeated on two subsequent occasions.[72] The monastery's right to grant asylum prevailed and the town judge, realising that Fermo would not be delivered, had the guard at the monastery strengthened. At the same time, presumably on 28th October, the Inner Austrian Government (*Innerösterreichische Regierung*) in Graz was notified about the matter.[73]

Both the posting and strengthening of the guard at the monastery points primarily to the fear of the town judge and council that Fermo could flee town, but could also have been useful in the rather unlikely case that Simon Moscon would not respect the asylum given to his uncle.

On 29th October 1654, a day after his delivery to the town authorities had first been prevented by the guardian of Conventual Franciscans, Fermo Qualandro finally gave his own view of the day of the shooting, from which time, exactly a week has passed. Fermo's account was presented in his supplication to the Holy Roman Emperor Ferdinand III for safe escort (*salvus conductus* or *sichere gelaith*) (Vilfan, 1995, 87) for a period of three months, so that he could prepare his defence.[74]

69 In the following years Marco Antonio came to be both a town councilman and town judge of Ptuj, yet even if he was a burgher, he allegedly continued to live solely off his estates (Valentinitsch, 1973, 76).

70 ZAP 0177, 2, Town protocol 1653–1655, f. 305v–306r.

71 ZAP 0070, R 32, 201.

72 StLA, IÖReg, Cop-1655-XII-23, Trial protocol in the case of Fermo Qualandro for the killing of Moscon's subject Lukas Pankicher, 23rd July, 1655, Ptuj.

73 ZAP 0177, 2, Town protocol 1653–1655, f. 306v.

74 StLA, IÖReg, Cop-1655-XII-23, Supplication of Fermo Qualandro to the Holy Roman Emperor etc. for *salvus conductus* (transcript), 29th October1654, *sine loco*.

Safe conduct was of utmost importance to Fermo as it protected fugitives from arrest when they appeared in court (CA 1704, Lit. L, *Ferdinandea*, Article 28, 668–669), especially guaranteeing protection from aggravating circumstances in advance to those suspected of homicide (Povolo, 2015, 217). Furthermore, it was in general only granted to those, who were already given the chance to make peace with their opponents or the court (Reinle, 2003, 89).

As Fermo's perspective on the development prior to the *Fehde* and the shooting is given above, there is no need to repeat it in detail here. In his supplication he confessed to the homicide, stressing that it was accidental and that he was very repentant for the killing of Simon Moscon's subject.[75]

Fermo's supplication to the Emperor (who was, as mentioned above, also the Styrian Land Sovereign and town lord of Ptuj), meant that by the end of October the state (princely) authorities, *i.e.* the Inner Austrian Government, were involved in the matter as well. The report which was to be sent to them by the town judge and council however, was obviously not sent prior to Fermo's supplication, as the government demanded a report from them on the matter by 3rd November.[76] According to the town statute,[77] following Fermo's confession to the killing the town authorities interrogated no further witnesses, allowed the remaining "defenders" of the *Freihaus* to leave town[78] and disbanded the guard posted at the monastery.[79]

In accordance with the government decree, the Ptuj town judge set Fermo's trial for March 1655. Both following the decree and at the request of the defendant, the town council also attested that Fermo's parents had been well respected in Ptuj and that the councilmen never heard that he had ever caused any trouble (*vngelegenheit oder insolenz*). They also were certain (just as Willibald Werlmayr) that the shot happened against Fermo's will, which his written purgation[80] should confirm.[81]

A week after the first government decree,[82] another decree came from Graz, this time regarding the involvement of Fermo's son Marco Antonio and stepmother Katharina Qualandro in the killing. The decree demanded the arrest of Matthias Qualandro's heirs, by whom the government regarded the aforementioned two, along with the inheritance

75 StLA, IÖReg, Cop-1655-XII-23, Supplication of Fermo Qualandro to the Holy Roman Emperor etc. for *salvus conductus* (transcript), 29th October1654, *sine loco*.

76 StLA, IÖReg, Cop-1655-XII-23, Decree of the Inner Austrian Government to the Ptuj town judge and council to report regarding Fermo Qualandro's supplication for *salvus conductus*, 3rd November, 1654, Graz; StLA, LAA, LR 736, Report by the Ptuj town judge and council to the Inner Austrian Government regarding the trial against Fermo Qualandro, 29th July 1655, Ptuj.

77 Article 27 of the Ptuj town statute from 1513 (Hernja Masten, Kos, 1999, 92).

78 Probably requiring them to issue their own renouncements of vengeance (*Urfehde*) to the town authorities.

79 StLA, IÖReg, Cop-1655-XII-23, Trial protocol in the case of Fermo Qualandro for the killing of Moscon's subject Lukas Pankicher, 23rd July 1655, Ptuj.

80 In this case meant as a public vow of clearing oneself from suspicion or guilt (Carl, 1996, 488).

81 ZAP 0177, 2, Town procotol 1653–1655, f. 311v, 313r.

82 The documents of the Inner Austrian Government for the year 1654 were not preserved and with that at least some regarding the killing of Lukas Pankicher. Among them the government decrees from November 1654, which are now only mentioned in the Ptuj and Inner Austrian Government protocols (StLA, IÖReg, Cop. Protokollband 1654).

caretaker, Francesco Brosin. Because of this, the Ptuj town council incited the interested parties to appear before it, notifying them of the decree, implying that it would follow through.[83]

This, without much doubt, must have been an attempt to force the hostile parties into the peace process, while at the same time maintaining town autonomy, keeping the involvement of the state (princely) authorities at bay.

Thus, on the 16th of November 1654, Simon Moscon, as well as Marco Antonio and Katharina Quallandro, appeared before the town council. First the Qualandros appeared and rejected the allegations on which the government decree had been based as unfounded. They also vowed not to leave town, stated that they were able and willing to pay the fine (*i.e.* composition for the killing or weregild) and promised to be at all times at the town council's disposal. For Simon, who appeared next, this was not enough. He claimed that the two Qualandros gave the "murderer advice and support" (*zue der mortt thatt rath vnd thatt geben*), and that he would therefore not "step out of disorder" (*will auß der vnordnung nit schreitten*), if they would not be arrested and executed as both he and, it seems, the government demanded.[84]

Here, the question has to be raised, what Simon Moscon's "disorder" (*vnordnung*) had meant and, without much doubt, it can be assumed that it meant a breach of peace, the opposite of order peace, court path, *Un-Ordnung*, an implied threat of vengeance or hostilities, as well as the *Fehde* itself. As *Absage* had probably already been illegal, the implied threat of "disorder" had most likely been the maximum extent to which Simon could go, without also getting himself in trouble with state law. From Simon's words one can only assume that he would avenge the killing himself, should the town council not meet his demands and the government's orders.

Up until this point, the town council, both in its own and the "outlaw's" (*banditten*) – as Simon had described Fermo – defence replied that the latter had never in the over twenty years during which he had been living in town committed anything of the like, and that the town council had ordered him to be seized immediately after the shooting. The council also decided to place Marco Antonio and Katharina Qualandro under arrest until a new government decree regarding the matter should arrive. Still, Simon persisted in his demand that the council should follow the government's order right away, threatening to inform Graz himself if it would not.[85]

Now the town council approached the furious nobleman in private. First, it reprimanded Simon Moscon not to insult the council with such (hostile) words and to satisfy himself with the Qualandros' arrest and their ability and willingness to pay the fine (composition). They were also once again forbidden by the council to leave town and had to pay any expenses that the town authorities would suffer because of them. Furthermore, and this was surely most important of all, they were forbidden to "allow themselves to cause either Sir Simon Moscon or his [people] even the slightest harm or danger" (*sich nit unterste-*

83 ZAP 0177, 2, Town protocol 1653–1655, f. 330v.
84 ZAP 0177, 2, Town protocol 1653–1655, f. 330v–331r.
85 ZAP 0177, 2, Town protocol 1653–1655, f. 331r.

hen sollen ihme h: Moschkhon weder für sich noch die seinigen den geringisten schaden oder gefahr zuezuefiegen). Marco Antonio and Katharina Qualandro thus had to renounce vengeance against Simon Moscon. This was a mandatory step in the peace process since the latter had just threatened with hostilities or to breach the peace, *i.e.* avenge his killed subject, should the town authorities not take action. At first, the renouncement seems to have had no effect on Simon, who persisted that the two Qualandros were "outlaws" (*banditten*), who had supported Fermo in the "murder" (*morthatt*). There was some truth to that, which the council surely knew, even if it did not have it recorded, as both Marco Antonio's servant Willibald Werlmayr and Katharina's coachman and her two unnamed subjects from Pobrežje took part in the occupation of the *Freihaus*. In the end the town council was able to persuade Simon to submit to its wishes, and content himself with the arrest of the two Qualandros, and to accept their vow not to leave town nor "themselves, their own [people] or outsiders undertake any actions against him" (*weder fur sich selbst noch die ihrigen oder frembde ihme ainigen thättligkheitt zuemuetten*).[86]

The "second *Urfehde*" by the two Qualandros seems to have finally persuaded Simon Moscon to take the path the town council had envisioned, the path of the peace process through the town court, *i.e.* the customary legal procedures. Simon's threats of continuing the hostilities or breaching the peace were just as successful for the truce to take place as the town council's mediation had been.

Following the renouncement of vengeance by Marco Antonio and Katharina Qualandro, Simon also surely must have issued his own *Urfehde*, even if it is not attested in the town protocols. However, the legal term for the obligatory step had not been used in any of the renouncements of vengeance recorded in the protocol, neither with Simon's to the town council, nor of the Qualandros' to him.

The procedure or, rather, the legal custom or ritual of the *vindicta*, had in mid-17th century in Ptuj remained much the same as in the past, albeit in the case at hand, without the expected legal (customary) terms. *Urfehde* is recorded in descriptive forms only in both or, rather, all three cases. *Absage* or *diffidatio* on the other hand could have only been implied in any case, as the explicit announcement was probably already illegal and harshly persecuted, at least on paper. It was either Simon Moscon or the Ptuj town council who opted for the word "disorder" (*vnordnung*) in which the former threatened to either remain or step in (also, as it seems, being an euphemism for *Fehde*). Perhaps not so much as a local term, if at all, but as an effort to avoid state (princely) sanctions and/or intervention. A further argument for this thesis is that there was no formal announcement of hostilities by Simon Moscon to the heirs of Matthias Qualandro, *i.e.* Fermo, prior to his attack on the occupied *Freihaus*, at least none are attested in the historical sources.

Be that as it may, with the mutual renouncement of vengeance and agreement to take the legal path (agree to the trial), as the town authorities had envisioned, the parties in the *Fehde* had entered into a truce. The threat of the blood vengeance had been curbed, but not completely averted. The peace process was handed over to the mediator, *i.e.* the Ptuj town council. The latter did not commit to this role simply because the killing occurred

86 ZAP 0177, 2, Town protocol 1653–1655, f. 331r–v.

Fig. 4: The old Ptuj town hall (photo: Žiga Oman, 2015)

in its jurisdiction, but also because it had to protect its newest burgher, doubtlessly also to retain its autonomy against the state (princely) authorities. The rather quick success the council had with persuading Simon Moscon to commit to the peace process also shows that it had been in the latter's interest as well.

TRIAL AND PEACE

During the winter, the town council, as it seems, gave the matter no further attention, at least not officially. It was not until March 1655, as was also decided in November, that the council let Fermo Qualandro know that it was time to prepare his defence for the killing of Simon Moscon's subject Lukas Pankicher. Both his widow and heirs in like manner as Fermo himself were to be notified on the date of his defence.[87]

It was only in March 1655 that Lukas Pankicher was for the first time mentioned by his name in the protocol. This goes for other preserved historical sources as well, since the subject's name is not attested in any documents prior to the court proceedings.

87 ZAP 0177, 2, Town protocol 1653–1655, f. 391r.

At this time Fermo Qualandro had already been a Conventual Franciscan himself, as he entered the order on the 1st of March, 1655.[88] Right at the end of the month, it was finally decided that Fermo was to present his defence on 16th April. Lukas Pankicher's widow and heirs were notified of the date, so that they could then bring their potential objections forward as well. In the end, Fermo's defence was given before the town court a month later.[89]

For the duration of the trial, Fermo had on 10th May finally been granted *salvus conductus*, for which he supplicated to the Holy Roman Emperor on 29th October 1654. However, it was only granted for two of the three requested months.[90]

Finally, on the 15th of May, 1655, Fermo Qualandro, the occupier (or defender) of the disputed *Freihaus* that bore his family name, the killer of Simon Moscon's subject Lukas Pankicher, and as of the 1st of March also a monk, stood trial before the Ptuj town judge and council, ready to present his defence. From the injured party, none were present, neither Pankicher's widow or heirs nor his lord Simon Moscon.[91]

The town council's session, *i.e.* the trial, was opened by one Dr Kreuzer (*Creüzer*, *Khreuzer*). Fermo started his purgation by first reiterating the events of October, starting with Simon Moscon taking over the *Freihaus* that had been ruled to belong to him on 12th October 1654. As Fermo's view of the events is given throughout the paper, there is no need to repeat it again here, save for one detail. It was only now that Fermo or anyone else in the historical sources had claimed that the inheritance dispute regarding the *Freihaus* originated from Cyprian Qualandro's debt. Hence, claimed Fermo, he had to occupy the house to keep it, as he could not pay off his older brother's debt.[92]

The claim should not come as a surprise, as it was Fermo who took over Matthias Qualandro's inheritance, including his debts, after Cyprian fled to Italy. What is interesting is that this was the only time this came forth in the matter at hand.

Apart from this, Fermo had claimed nothing new. Again, he admitted to have accidentally shot and killed Simon Moscon's subject Lukas Pankicher, after attempting a warning shot at the former's forty men, who tried to force their way into the *Freihaus*.[93] Yet how did Fermo justify the killing?

In his defence, Fermo pointed out that by law there are two kinds of homicide, unpremeditated (*simplex*; manslaughter) and premeditated (*deliberatorum*; murder), refer-

88 He remained with the order until his death in 1685. Upon receiving his orders, Fermo Qualandro surrendered half his wealth to the order (ZAP 0070, R 32, 201).

89 ZAP 0177, 2, Town protocol 1653–1655, f. 402r, 416r.

90 StLA, LAA, LR 949, Heft 2, *Salvus conductus* for Fermo Qualandro for the killing of Moscon's subject, 10th May 1655, Graz.

91 StLA, IÖReg, Cop-1655-XII-23, Trial protocol of Fermo Qualandro for the killing of Moscon's subject Lukas Pankicher, 23rd July 1655, Ptuj.

92 StLA, IÖReg, Cop-1655-XII-23, Trial protocol of Fermo Qualandro for the killing of Moscon's subject Lukas Pankicher (transcript), *sine dato*, *sine loco*; ZAP 0177, 2, Town protocol 1653–1655, f. 416r–v.

93 ZAP 0177, 2, Town protocol 1653–1655, f. 416v.

ring to the writings[94] of the influential Cologne jurist Andreas von Gail[95] (1526–1587).[96] According to Fermo, von Gail had written that a person who is assaulted and then kills one, two or even three of his attackers, should be acquitted, not sanctioned, as "a forced homicide [self-defence] or such that is not sanctioned by law has to go unsanctioned" (*ein gedrengt tottschlag oder der, welicher wegen gebüerenter vnstraffung beschechen nit straffbar*). Fermo stressed that Simon Moscon "came with force" twice – first sealing off the *Freihaus*, and then assaulting it – so that he was forced to defend himself. Furthermore, he accused Simon of being the one whose actions were the more illegal as he had violated town privileges through the use of force. Thus, even if he had shot at Simon's men with intent, Fermo claimed that he would not have broken the law. Again, Fermo referred to von Gail's words that "force has to be driven off by force" (*gewalt seye mit gewalt zuvertreiben*), which even the "ignorant animals" (*vnuernünfftig thüren*) know, and the Italians say '*homo semel incitato mezo*'. As the same had happened to him, Fermo claimed that even if the facts and the course of his actions would not have been known, he would have to be found innocent of the charges, as he was attacked by forty peasants, who attempted to break through his door by force, and who could say how they would have treated him, had they succeeded.[97]

Fermo then had to present his defence to the town council in writing[98] (*memorial*), so that the latter could decide upon the date of its ruling in the case of Fermo Qualandro vs. the widow and heirs of Lukas Pankicher. At first, it was decided that this should happen on 16th June, but then got delayed by a week due to unspecified circumstances.[99]

Thus, it was on the 23rd of June 1655, eight months after the killing of Lukas Pankicher, that the Ptuj town council fined Fermo Qualandro 150 guldens, of which he had to pay a third to each: the widow and heirs of Lukas Pankicher (this was composition, weregild), the chapel of St. Roch[100] and the town judge, *i.e.* the town, for its costs; all in cash within 14 days, so that he would then "be acquitted of homicide in return" (*entgegen von den begangenen homicidio ledig unnd maessig erkhent*).[101]

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94 *Andreas Gaillius 1: 2. pract: obser. obser ito gebe n: 8. 9. vnd hernach* (ZAP 0177, 2, Town protocol 1653–1655, f. 416v). Perhaps meant is his work *Practicarum observationum tam ad processum judiciarium praesertim imperialis camerae, quam causarum decisiones pertinentium libri duo* (Cologne 1578) (Nehlsen-von Styrk, 1994, 704).

95 His renown was largely founded in his work as Imperial Chamber Court (*Reichskammergericht*) judge and his publications on its judicial order. For more see: Nehlsen-von Styrk, 1994.

96 On how exactly the so-called *Ferdinandea* (*Landgerichtsordnung des Erzherzogthums Österreich unter der Enns*, 1656) addresses self-defence see: CA 1704, Lit L., *Ferdinandea*, Article 63, 693–695. Fermo's defence of course firmly followed its provisions.

97 ZAP 0177, 2, Town protocol 1653–1655, f. 416v–417r.

98 StLA, IÖReg, Cop-1655-XII-23, Recording of the defence of Fermo Qualandro for the killing of Moscon's subject Lukas Pankicher (transcript), *sine dato*, *sine loco*.

99 ZAP 0177, 2, Town protocol 1653–1655, f. 417v, 421v–422r, 436r.

100 The saint was commonly invoked for protection from the plague that had struck Ptuj and its environs more than once during the 17th century. The chapel was erected in 1650, following the outbreak five years prior (Travner, 1934, 109–117).

101 ZAP 0177, 2, Town protocol 1653–1655, f. 436r–v.

Delayed by (so-called) witch trials,[102] the Ptuj town judge and council had only reported on the trial and its outcome to the government in Graz over a month later. Thus, on 29th July 1655, the town authorities had requested that the Inner Austrian Government approve their ruling in the matter, with the argument that Fermo Qualandro had recently (1st March) entered the Order of Friars Minor Conventual, in which he would do much good with the celebration of holy mass and so redeem himself against his "evil act" (*begangne ÿble factum*). As for the amount of the fine, the town council defended it by stating that Fermo Qualandro had no assets of his own (being a monk). Already in the trial protocol, written yet obviously not sent on 23rd July, the town authorities had as an attenuating circumstance pointed out that Fermo did not even know Lukas Pankicher, whom he had killed, let alone ever having a quarrel with him in his life.[103] Also, in the eyes of the Ptuj town judge and council, the original culprit in the matter had been Simon Moscon, who had "against all custom and privileges" (*wider die gebühr vnnd alle rechten*) entered the town "in arms" (*armierter*) and attempted to take over the *Freihaus* by force (*gewaltettige stürmbung*), attacking (*attachiert*) Fermo Qualandro and thus forcing him to react in self-defence in so doing, instead of pressing charges against him in court. "Nobody could carry away the house and the estates belonging to it [from Simon] in the meantime anyway" (*das hauß vnnd angesezte grundtstückher niemandt entzwischen daruon hette tragen khünnen*), as the town authorities humorously noted. Regarding the right to kill in self-defence, they, like Fermo, referred to the writings of Andreas von Gail.[104]

As for the response by Simon Moscon along with the widow and heirs of Lukas Pankicher to the outcome of the trial against Fermo Qualandro, historical sources offer no information, aside from, as is given above that none of the injured parties had been present during Fermo's defence testimony.

The belated reply of the Ptuj town judge and council had then almost caused Fermo's arrest by the office of the Styrian *Landeshauptmann*. The latter had been ordered to do so by the Inner Austrian Government, due to the fact that it had by this time been over two weeks since Fermo's *salvus conductus* had run out, and his written defence still had not been handed over.[105]

The arrest almost without a doubt did not take place, yet this was, as far as the preserved historical sources make clear, about the most "interest"[106] the government had

102 As the Ptuj town authorities had explained their delay (StLA, IÖReg, Cop-1655-XII-23, Report by the Ptuj town judge and council to the Inner Austrian Government regarding the trial against Fermo Qualandro, July 29th 1655, Ptuj).

103 This was supposed to be further proof, that the homicide had been a spontaneous, not a premeditated act.

104 StLA, IÖReg, Cop-1655-XII-23, Trial protocol of Fermo Qualandro for the killing of Moscon's subject Lukas Pankicher, 23rd July, 1655, Ptuj; StLA, IÖReg, Cop-1655-XII-23, Report by the Ptuj town judge and council to the Inner Austrian Government regarding the trial against Fermo Qualandro, 29th July 1655, Ptuj.

105 StLA, LAA, LR 949, Heft 2, Decree by the Inner Austrian Government to the Styrian *Landeshauptmann* regarding Fermo Qualandro, 24th July, 1655, Graz.

106 This is not surprising, since even the *Codex Criminalis Theresiana* in the 18th century did not include homicides nor *Absage* among the crimes that had to be reported straight to the government (Dolenc, 1935, 462). The *Ferdinandea* a century prior however counted declarations of *Fehde* among those crimes which the *Theresiana* later demanded to be reported straight to Vienna (CA 1704, Lit. L, *Ferdinandea*, Article 61,

shown the matter as a whole. Still, it agreed to the town court decision on December 16th at the latest, on the condition that Fermo Qualandro remained a monk.[107] However, this was surely not one of the decisive reasons for him remaining a Conventual Franciscan until his death, as his devout faith and sincere repentance can hardly be questioned.

That Fermo's[108] payment of his fine, ought not have occurred prior to November 27th 1659, as Simon Povoden put it, is, however, refutable. The town council's order, issued to Fermo that autumn, ordering him to pay the 100 guldens he still owed, was completely unrelated to the homicide.[109]

In the end, Fermo Qualandro's claim of self-defence had succeeded. The fine he had to pay, especially[110] to the victim's family, is to be seen as composition or weregild. Thus, his payment is to be regarded as a peace settlement (*Sühne*), the end of the *Fehde* and the final aversion of blood vengeance that had threatened Fermo and his kin following the homicide.

The dispute over Otilia Moscon's inheritance however was not settled by this and went on at least into the following year.[111] In fact, as stated at the beginning of this paper, the dispute over Matthias Qualandro's inheritance had not been resolved neither prior to Fermo Qualandro's death in 1685 nor Simon Moscon's in the following year.

EPILOGUE

The *Freihaus* had, in this way or another, remained in the hands of the Qualandro family up until 1746, when, with the death of Alois Franz Xaver[112] Qualandro that spring, the family died out in the male line. The dilapidating house had been renovated towards the end of the 17th century and again at the beginning of the 18th. The last time renovations were carried out by the Qualandro family was after 1708, following the fire that devastated Ptuj in 1704 (Valentinitsch, 1973, 77).[113]

690). Had the town authorities not acted as they did, the government would, however, surely had stepped in.

107 StLA, IÖReg, Cop-1655-XII-23, Resolution of the Inner Austrian Government to the Ptuj town authorities regarding the ruling in the case of Fermo Qualandro, 16th December 1655, Graz.

108 Meaning, that it has not been paid by the caretaker of his inheritance, in 1655 Hieronimus Angelati (StLA, LAA, LR 736, Resolution of the Styrian *Landeshauptmann* Johannes Maximillian Count Herberstein regarding the appraisal committee for the property of Cyprian and Fermo Qualandro, 9th June 1655, Graz).

109 ZAP 0070, R 40, 405; ZAP 0397, 3, Supplication of Simon Moscon to the guardian of the Ptuj Conventual Franciscan monastery regarding the payment of owed interest by Fermo Qualandro, 18th September, *sine loco*.

110 The payment to the chapel was also an important part of the peace settlement in (blood) vengeance (*e. g.* Wackernagel, 1965, 299), as it was without a doubt made for the salvation of Lukas Pankicher's soul.

111 StLA, LAA, LR 951, Heft 1, Legal opinion in the case of Simon Moscon vs. the heirs, inheritance caretakers and creditors of Matthias Qualandro, 22nd February 1656, *sine loco*.

112 He also got involved in a violent dispute, with the Croatian Counts Drašković. In the first half of the 18th century, the dispute over the border between their respective lordships turned into cross-border violence, including devastations, claims and murder of subjects, even extrajudicial executions of so-called witches. Allegedly the outcome of the dispute, which Alois lost, determined a tiny fraction of the Styrian-Croatian border, supposedly due to the inertia of the Styrian Land Estates (Hernja Masten, 2005b, 113–117). Further research however is needed to establish if the dispute ought to be regarded as a *Fehde*.

113 StLA, LAA, LR 951, Heft 1, Inheritance inventory of the late Alois Franz Xaver Qualandro's property and possessions, 11th April 1746, Zavrč; ZAP 0070, R 32, 201; ZAP 0070, R 40, 405.

Fig. 5: Zavrč ca. 1681 (Vischer, 2006)

In the inheritance inventory of Alois' father, Marco Antonio made in 1679, there were tens of arms listed in Ptuj and at Zavrč. No carbine is explicitly mentioned, but it may have been "tucked away" among the 14 muskets listed as the property of Alois' great-grandfather, Matthias Qualandro.[114]

The memory of the *Fehde* and resulting vengeance faded away over the centuries, but allegedly survived in the inscription, which to this day still adorns the portal of the former Qualandro *Freihaus*: *QVID AD TE ZOILE SI ITA DOMINO PLACET AN̄O '692* or "what is it to you, Zoilus, if it pleases the lord?" Regarding the infamy of the Ancient Greek Cynic philosopher as a criticaster,[115] the connection between the inscription and the *Fehde* might be substantiated. The ridicule with Zoilus would then of course be directed at the "quarrelsome" Simon Moscon, the assailant of 22nd October 1654.

The major consequences of the *Fehde* and resulting threat of blood vengeance for the Qualandro family was that it retained the *Freihaus*, tightened its bonds with the Ptuj Conventual Franciscan monastery, whose ranks it later strengthened with a few more monks,[116] and, last but not least that the Qualandros seemed to have become a burgher family once again. For the Moscon family, specifically Simon, the *Fehde* in the end meant

114 StLA, LAA, LR 951, Heft 2, Inheritance inventory of the late Marco Antonio Qualandro's property and possessions, 29th May 1679, Zavrč.

115 http://encyclopedia.jrank.org/YAK_ZYM/ZOYLUS_c_400_320_BC_.html (20. 8. 2015).

116 ZAP 0070, R 32, 201–203.

the loss of the *Freihaus*, and of a subject. The latter, Lukas Pankicher and his family were the true victims of the conflict.

The violence that was occasionally part of life for the Moscons and Qualandros cannot, of course, be taken as some greater predisposition towards brutality. In part, it was a reflection of a more violent period, especially regarding violence among acquaintances and associates or colleagues, particularly in relation to honour (Ruff, 2004, 75–77, 248–253). Injuries to it demanded retribution, sometimes including vengeance. Just as well, the fact that both families originated from the Venetian, *i.e.* Italian, territories and maintained close relations with them, cannot be taken as some sort of greater "Mediterranean" sensitivity towards injuries to honour or a greater inclination towards feuds. The latter were an all-European phenomenon (Büchert Netterstrøm, 2007), and are attested as *Fehde* in Styria prior (*e. g.* Brunner, 1990, 43–44, 47, 53, 57; Kos, 1994, 115–116, 119) to the immigration of Italian merchants to Ptuj.

CONCLUSION

Given the theoretical framework presented in the introduction, the *Fehde* and vengeance (*vindicta*) that erupted in the autumn of 1654 in Ptuj between Simon Moscon and his relatives the family Qualandro, passed through all the anticipated stages. In the beginning, there is the preceding inheritance dispute that had already dragged on for over a decade. Then, Simon's uncle Fermo Qualandro, with a handful of men squatted the disputed Qualandro *Freihaus*, which had recently been allocated to Simon; the occupation was the injury (*iniuria*) to his rights and honour. Simon's answer or, rather, act of retribution (vengeance) was his armed entry with forty of his subjects into Ptuj. With the attempted forced entry into the *Freihaus* and Simon's breach of town peace, the dispute turned into a *Fehde*. The latter term however, was never recorded in any of the pertaining historical sources. Nor was a formal declaration of *Fehde* or hostilities (*Absage*, *diffidatio*). In an effort to prevent the storming of the house, Fermo Qualandro ventured a warning shot at the attackers to scare them away. This was the only "retaliation" to the attempted armed entry, yet Fermo misfired and fatally shot one of Simon's subjects, Lukas Pankicher. The expression "unusual spectacle", how Simon had labelled the homicide, cannot be understood only in the literal sense that the latter had not been a usual sight in Ptuj, but specifically that it was unusual to have happened with the use of firearms.[117] As homicides during a *Fehde* could also start blood vengeance, this event consequently became a serious threat for Fermo Qualandro and his kin, as Simon Moscon had the obligation as the lord over his subjects, to protect and consequently avenge the deaths of any aforementioned peasants (from threat of other lords or their subjects). Hence, from the moment of Lukas Pankicher's killing onwards, the *Fehde* was inexorably tied to the threat of blood vengeance. The communal, *i.e.* town authorities, the Ptuj town judge and council, started working towards the de-escalation of violence, a peace settlement between the parties,

117 A similar case of shooting in a *Fehde* (*faida*) in the mid-17th century occurred in the Venetian town of Cividale del Friuli (Makuc, 2015, 218).

almost immediately. Interestingly, the mediation was started by the visit of town councilman Gregor Liscutin, a long-time employee and, as it turned out, ally of the Qualandro family, at the *Freihaus*, where Fermo and his men were still barricaded in, surrounded by the town guard. It remains unclear, as to what exactly the town council had intended with Gregor's visit, as it appears to have partially backfired. The councilman had not only started the mediation directed at negotiations towards a peace settlement, but also covered for Fermo, thus enabling him to flee the house for the Ptuj Conventual Franciscan monastery, where he was granted asylum. Meanwhile, the *Fehde* passed into legal action before the town council, the terms of which were dictated by Simon Moscon. Even if it was he, who started the *Fehde*, he was regarded as the more injured party due to the killing of his subject. Still, as his armed entry into town and the subsequent attack on the *Freihaus* were serious violations of town privileges and peace, he had to renounce vengeance (perhaps with a formal *Urfehde*) to the town council under threat of pending arrest. Again, the term (*Urfehde*) is not used explicitly in the historical sources, but in a descriptive way. The same goes for Simon's threat of vengeance or "disorder" (*vnordnung*), as he called it, by which the *Fehde* itself most likely was implied as well. Why the term *Urfehde* was not recorded, remains unclear, as it was an integral part of the state (princely) legal system. *Absage* however, was perhaps already harshly persecuted by the state (princely) authorities, and thus veiling it as "disorder" would be logical. That *Absage* was implicitly threatened at the time during which mediation between the parties had already started, should come as no surprise: to Simon Moscon it could have simply been a means of leverage. That he was somehow hell-bent on revenge, should Fermo's family not be brought to (state) justice, would however, probably be assuming too much. Be that as it may, the town council soon convinced Simon to agree to a truce (*Friede*, *treuga*) with Fermo's aforementioned family, his son Marco Antonio and stepmother Katharina Qualandro. However, interestingly, this came to be only after both of them vowed to renounce vengeance (*Urfehde*, again only implied) against Simon Moscon (twice!) without him doing the same before. The reason for this might have been that it was Simon, who urged the town council to act in accordance with the government decree, which, like Simon at first, demanded their arrest and possibly even their execution for helping Fermo occupy the house (true) and kill Lukas Pankicher (unfounded). As was the case with all suspects it was they who had to renounce vengeance against their persecutors, captors and jailers. Also Simon's *Urfehde* to the Qualandros is assumed if not recorded. In any case, up until the truce both parties in the conflict were active in legal proceedings. These were dictated throughout by the Ptuj town authorities with barely any interference from state (princely) authorities, the Inner Austrian Government, which seems to have taken little interest in the matter. The town autonomy in legal matters, *i.e.* its privileges, remained intact and the town judge and council acted according to legal custom, not state law. The latter would have however surely interveened, would the town council's attempts at peace not take place or fail. The *Fehde* and the threat of blood vengeance were eventually brought to an end by the trial before the Ptuj town council in the spring of 1655. The trial acquitted Fermo Qualandro (by then a Conventual Franciscan, himself) who pleaded self-defence against the accusation of murder, and convicted him of manslaughter in self-defence instead. For that he

was fined and had to pay a third of the fine as composition (weregild) to the widow and heirs of Lukas Pankicher. The payment of the composition meant that the hostilities had ended and that Simon Moscon and the Qualandro family had reached a peace settlement (*Sühne*, *pax*), ending both the *Fehde* and the threat of blood vengeance. As with the aforementioned terms, neither brokering the truce, composition or weregild were mentioned in the historical sources. Still, the case evolved according to expectations: dispute – injury – *Fehde* (homicide – (blood) vengeance) – mediation – truce – peace. All proceedings were in accord with legal customs, more or less within the community and with very little interference from the state. As a whole, the presented case was not very different from similar ones known from the late Middle Ages (*e. g.* Vilfan, 1996, 457–458). As late as the mid-17th century, the legal customs or ritual of *vindicta* (in the form of both *Fehde* and (the threat of) blood vengeance respectively) had thus evidently remained an integral part of the legal procedure among at least the (Lower) Styrian *niederer Adel* ("gentry") and burghers, retaining at least some of its medieval legitimacy.

WILL AUSS DER VNORDNUNG NIT SCHREITTEN: PRIMER FAJDE NA ŠTAJERSKEM V 17. STOLETJU

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POVZETEK

Dolgotrajni spor med plemiškima družinama Moscon in Qualandro je 22. oktobra 1654 na Ptuju prešel v fajdo. Simon Moscon je z množico oboroženih podložnikov skušal iz Qualandrove svobodne hiše, ki mu jo je prisodilo sodišče, prepoditi svojega strica Ferma Qualandra, ki jo je s peščico pomočnikov zasedel. Fermo je napadalce skušal pregnati s strašilnim strelom, ki pa je ubil Simonovega podložnika Luka Pankicherja. Fajdi se je tako pridružila še grožnja s krvnim maščevanjem. Fermu se je uspelo pred maščevanjem zateči v azil v minoritski samostan na Ptuju, njegovemu sinu Marku Antoniju pa v meščanski stan pod zaščito mesta. S posredovanjem mestnih oblasti je fajda prešla v mediacijsko fazo, ki je vse do sklenitve miru med rodbinama potekala skoraj brez vmešavanja deželnoknežjih oblasti. Mir je bil sklenjen tudi s plačilom kompozicije družini ubitega podložnika. Pravni običaji oziroma obred maščevanja v predstavljenem primeru ni zgolj šel po podobnih korakih kot v srednjem veku, mesto je bilo v reševanju fajde povsem avtonomno.

Ključne besede: maščevanje, vindicta, *fajda, Ptuj, Moscon, Qualandro, 17. stoletje*

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POMIRITEV V OBIČAJU KRVNEGA MAŠČEVANJA. MEDIACIJA, ARBITRAŽA IN OBREDJE »NOVE ZAVEZE« MED STRANKAMA V SPORU V ČRNOGORSKIH IN ALBANSKIH OBIČAJIH

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IZVLEČEK

Članek obravnava običaj krvnega maščevanja in pomiritve na območju Severne Albanije in Črne gore, s posebnim poudarkom na običaje mediacije, arbitraže in zaključnega pomiritvenega obredja. Rekonstrukcija običajev je osnovana na analizi zbirk pravnih običajev severno-albanskih in črnogorskih patriarhalnih skupnosti, raziskav krvnega maščevanja iz 19. in 20. stoletja ter na novoveških dokumentih pomiritve iz območja današnje Črne gore. V običajih in gradivu je razvidno, da je plemenska skupnost s svojimi institucijami učinkovito reševala spore. Mirovno obredje črnogorskega in albanskega prostora nosi obilo vzporednic z evropskim srednjeveškim pogodbenim obredjem in nakazuje na skupne izvore evropske pravne tradicije.

Ključne besede: krvno maščevanje, mir, reševanje sporov, mediacija, arbitraža, Črna gora, Albanija

LA RICONCILIAZIONE NELLA CONSUETUDINE DELLA VENDETTA DI SANGUE. LA MEDIAZIONE, L'ARBITRAGGIO E I RITI DELLA "NUOVA ALLEANZA" TRA LE PARTI IN CAUSA NELLE CONSUETUDINI MONTENEGRINE E ALBANESI

SINTESI

L'articolo tratta la consuetudine della vendetta di sangue e riconciliazione nell'Albania settentrionale e nel Montenegro, con particolare attenzione sull'uso della mediazione, l'arbitraggio e i riti conclusivi della riconciliazione. La ricostruzione delle pratiche si basa sull'analisi delle raccolte delle tradizioni giuridiche delle comunità patriarcali dell'Albania settentrionale e del Montenegro, sulle ricerche della vendetta di sangue del XIX e XX secolo e sui documenti dell'età moderna sulla riconciliazione, provenienti dal territorio del Montenegro attuale. Nelle pratiche come pure nel materiale risulta evidente che la comunità tribale e le sue istituzioni erano capaci di risolvere i conflitti. Il rito

della riconciliazione del Montenegro e dell'Albania è spesso analogo ai riti contrattuali medievali europei e svela un'origine comune delle tradizioni giuridiche europee.

Parole chiave: vendetta di sangue, pace, risoluzione dei conflitti, mediazione, arbitraggio, Montenegro, Albania

KRVNO MAŠČEVANJE MED NASILJEM IN MIROM

Klasično pravno zgodovinopisje je obravnavalo institut maščevanja skozi evolucijo pravnih institucij in kazenskega prava, ki so vodili do razvoja moderne pravne države (prim. Vilfan, 1996, 261–275; Šćepanović, 2003). V 19. stoletju je veljalo prepričanje, da se je krvno maščevanje v evropskem prostoru skozi celoten srednji in novi vek sicer obstajalo, vendar se je z vzpostavljanjem centralne državne oblasti omejevalo, dokler se ni naposled popolnoma podredilo zakonodaji (Netterstrøm, 2007, 11). Ta predpostavka je zrasla na podlagi kvalitatitnih raziskav statistik umorov od zgodnjega novega veka dalje kot tudi skozi raziskovanje obdobij porasta in upada plemiških vojn (fajd) v srednjem veku (Carroll, 2007, 17–19). Fajde so po nekaterih interpretacijah veljale za obliko javnega dialoga med vodilnimi stanovi, v okviru katerega so se oblikovali konstitutivni družbeni dogovori. Plemiške vojne v srednjem in novem veku so predstavljale nadzorovano in pravno normirano nasilje, za razliko od afektivnega maščevalnega nasilja, ki naj bi bilo prisotno le med nižjimi stanovi (Brunner, 1994, 1–94; prim. Netterstrøm, 2007, 24–25) in naj bi, kot ostale prvinske nravi, izginilo skozi proces civiliziranja zahodno-evropske družbe (Elias, 2000, 333–365).

To prepričanje so v drugi polovici 20. stoletja omajale antropološke raziskave, ki so ponudile nove interpretacije vloge instituta oziroma običaja maščevanja. Skozi raziskovanje egalitarnih plemenskih in patriarhalnih skupnosti, ki so uspele ohraniti primarne družbene strukture in pravne običaje ter s tem tudi krvno maščevanje, se je svetovna znanost seznanila tako s povodi za krvno maščevanje, ki so pretežno vpeti v dinamiko časti in sramu (Peristiany, 1965; Blok, 2001; Horden, Purcell, 2000, 484–523), kot tudi z utemeljitvami, da je krvno maščevanje del splošnih pravnih običajev, ki kot sredstvo družbenega nadzora vzdržujejo družbeno ravnovesje (Gluckman, 1955; Porláksson, 2007, 72). V zahodno-evropski znanstveni produkciji naj bi bilo to prvič izpostavljeno z esejem Maxa Gluckmana, *Custom and Conflict in Africa* (1955), ki je v poglavju *Peace in the Feud,* s kritično analizo Evans-Pritchardove študije o političnih institucijah afriškega neolitskega ljudstva Nuer, ki je izšla leta 1940 (Evans-Pritchard, 1993), izpostavil usmerjenost družbe k ohranjanju notranjega sožitja ter k ponovnemu vzpostavljanju notranjega družbenega ravnovesja, ki je bilo porušeno s kršitvijo družbeno-pravnih norm in običajev. Gluckman je poudaril, da je krvno maščevanje običajni družbeni mehanizem, ki naposled privede do trajnega miru (Gluckman, 1955, 1–26). Slednjo ugotovitev je razvila tudi Mary E. Durham pri preučevanju albanskih rodovnih skupnosti (Durham, 1909, 25). Egalitarne patriarhalne skupnosti, v katerih so antropologi v 20. stoletju beležili ohranjanje običaja maščevanja, so bile geografsko oddaljene

od sedežev centralne državne oblasti, ki naj bi z institucijami in pisanimi zakoni omejevale uporabo nasilja. Določena območja so bila prav zaradi tega dolgo časa prepuščena relativno visoki stopnji notranje avtonomije (Horden, Purcell, 2000, 489–499). To pa nikakor ne pomeni, da so bila popolnoma brez institucij in nagnjena k anarhiji, ravno nasprotno. Rodovne skupnosti so bile strukturno in institucionalno razvejane ter so imele urejene običajno-pravne sisteme (prim. Durham, 1909; Hasluck, 1954; Evans-Pritchard, 1993). Družbena struktura v egalitarnih patriarhalnih skupnosti je z delitvijo družbenih vlog vodilnim predstavnikom skupnosti v roke polagala odgovornost za reševanje sporov. Preprečevanje nasilja v skupnosti je bilo splošna družbena odgovornost, za reševanje sporov pa so bili pristojni predvsem plemenski poglavarji in starešine (Evans-Pritchard, 1993, 180–223; Stein, 1984, 19). V plemenskih skupnostih na območju Severne Albanije, Črne gore in Hercegovine so glave posameznih družin predstavljali zbor vaških glavarjev in starešin (KLD §§ 18, 26–27, 132; Hasluck, 1954, 25–50; Jelić, 1926, 60–61; Bogišić, 1999, 241–242; prim. Dolenc, 1925, 114–115). Njihova vloga v reševanju spora je bila dvojna. Bili so mediatorji, ki so prepričali obe sprti stranki v sporu v pogajanja, in razsodniki v sporih. H glavarjem se je prebivalstvo zatekalo po pravne nasvete, do njih je pristopalo s pobudami za reševanje manjših sosedskih sporov, kot tudi s pritožbami in pravnimi odškodninskimi zahtevki, za poravnavo škode, ki jo je npr. živina drugega, sosednjega bratstva povzročila na njihovi skupni posesti (Bogišić, 1999, 349, 358; KLD §§ 735–736, 1108, 1119–1120). Naloga glavarjev je bila poskrbeti, da se stranki v sporu udeležita zborovanja, na katerem je bil z arbitražo rešen spor (KLD §§ 679, 681; Đuričić, 1979, 52).

Koncepcija Maxa Gluckmana, da je mir sestavni del samega sistema spora,[1] je ključno vplivala na paradigmatsko usmeritev lokalnih in nacionalnih zgodovinopisnih raziskav, ki so se od druge polovice 20. stoletja dalje usmerile v reševanje sporov v evropskem srednjem in novem veku (Netterstrøm, 2007, 11–67).[2] Spori so z naraščanjem intenzitete izmenjave maščevalnih dejanj med dvema strankama v sporu lahko vodile do krvnega maščevanja, vendar je bilo v tem procesu nasilje samo vedno nadzorovano z običaji, prav tako pa so na vsaki točki spora obstajale družbene institucije, ki so z mediacijo in arbitražo posredovale in spor zaustavile ter ga naposled s soglasjem obeh strank privedle v ponovni mir (Porláksson, 2007, 71, 74).

1 Povezava med sporom in mirom ni bila tuja niti Ottu Brunnerju, o čemer priča prvo poglavje študije *Land and Lordship (Land und Herrschaft)*, naslovljeno *Peace and Feud*, v katerem je reinterpretiral vlogo plemiških fajd v nemškem srednjeveškem prostoru (Brunner, 1994, 1–94).

2 Med raziskovalce, katerih raziskovanje je spodbudila Gluckmannova raziskava, veljajo John M. Wallace-Hadrill z delom *Bloodfeud of the Franks* (1959). Za območje Anglije, Whalesa in Škotske med srednjim in novim vekom so markantne prispevke podali Paul R. Hyams, Stephen D. White, Jenny Wormald in Keith Mark Brown ter Howard Kaminsky. V nemškem prostoru ne gre spregledati raziskav Hillaya Zmore, Gadija Algazija in Christine Reinle, ki se je posvetila maščevanja med nemškim kmetstvom. K raziskovanju krvnega maščevanja v novoveški Franciji sta, med drugimi, prispevala tudi Daniel Lord Smail in Stuart Carroll. Raziskave o maščevanju na Islandiji sta podala William I. Miller in Jesse Byock. V historiografskem raziskovanju krvnega maščevanja na Apeninskem polotoku v novem veku, sta kot tuja raziskovalca najbolj prepoznavna Edward Muir in Trevor Dean, poleg njiju pa še Claudio Povolo, Marco Bellabarba, Marco Gentile, M. Lepori, O. Raggio, A. Pigliaru, G. Angelozzi, C. Casanova, L. Covino, A. Zorzi, G. Cozzi, E. Maffei in drugi (Netterstrøm, 2007, 11–67; Povolo, 2015b, 199–202).

Gluckmanovim konceptom je sledil tudi John M. Wallace-Hadrill, ki je zavračal ustaljeno percepcijo spopadov in splošnega nasilja v srednjem veku in poudaril, da je bilo spopadanje del sistema, ki je vodil k miru, ter da je prav mir predstavljal samo srž srednjeveške družbene interakcije. »*Feuding in the sense of incestant private warfare is a myth, feuding in the sense of very widespread and frequent procedures to reach composition-settlements necesarily hovering on the edge of boodshed, is not. The marvel of early medieval sociaty is not war but peace*.« (Wallace-Hadrill, 1959, 487). Nasilje je sicer bilo prisotno v srednjeveški in novoveški družbi, vendar je bilo normirano in ritualizirano, tudi s samo eskalacijo nasilja in maščevanja (prim. Carroll, 2006, 83–109). Kot del običaja je bilo nasilje prisotno in celo potencirano ob večjih praznovanjih, ki so utegnili biti začetki ljudskih izgredov in uporov (prim. Wood, 2007, 100–113; Bianco, 2010, 23–105). Čeprav je bilo ljudsko nasilje dolgo dojemano kot nenadzorovano, spontano in afektivno, so ga nadzirali običaji, čast ter pritisk skupnosti, ki je spodbujala tako k maščevanju kot k pomiritvi oziroma oprostitvi (Nassiet, 2011, 117–226). Diskurzi o nasilju, pravni regulaciji nasilja in maščevanja, ter o pomembnosti nadzorovanja čustev in vzpostavljanja ter varovanja miru so pustili svoje sledi v tekstih najrazličnejših provenienc (Smail, Gibson, 2009) in nenazadnje v pravnih običajih in tradiciji. V srednjeveški in novoveški družbi so namreč elementi mirovništva obstajali na vseh ravneh družbe, tako v pravni torej profesionalni, kot tudi na laični, ljudski in običajni ter se med seboj prepletali ter složno in komplementarno soobstajali (Cummings, 2015, 257–258; prim. Smail, 2003, 7–8, 27–28; Antichi, 2011, 229–275; Mantecón Movellán, 2011, 351–361; Carroll, 2006, 185–230). Prakse mediacije in poravnave so bile tako v domeni vladarjev in sodnih oblasti (prim. Edigati, 2011, 369–409) kot tudi v domeni drugih vidnih predstavnikov skupnosti med nižjimi družbenimi sloji (prim. Archangeli, 2011, 43–44). Mir je bil predviden kot končni izid častnih dvobojev med aristokracijo (prim. Paoli, 2011, 129–200) kot tudi v sporih med kmečkim prebivalstvom (prim. Povolo, 2015a, 97–133). Vzporedno z evropsko pravno revolucijo in razvojem *ius commune*, ki je svoje osnove črpala v rimski pravni tradiciji in kanonskem cerkvenem pravu, so se tradicionalni elementi reševanja spora prenesli v profesionalno pravno sfero. V visokem srednjem veku je bilo doseganje sprave med strankama še vedno v fokusu posvetne sodne in vladarske oblasti v urbanih središčih, zaradi razpršenosti pravnih centrov pa so skupnosti v ruralnih predelih še uspele ohranjati svoje običaje krvnega maščevanja in pomiritve, s katerimi so nadzorovale in omejevale nasilje v skupnosti, ter ohranjale družbeno ravnovesje. V novem veku pa se je vzporedno s spremembo ekonomskih, političnih in družbenih dejavnikov, med drugim, pojavila mobilna oblika nasilja – razbojništvo, kateremu tradicionalni načini reševanja spora niso bili kos. V evropskih deželah je od 16. stoletja dalje prišlo postopoma do uvedbe *common law* in do novih pravdnih postopkov oziroma do razvoja procesnega prava. Akuzatorni postopek zamenjal inkvizitorni, postopoma pa so izrečene kazni postale višje. Šele od 16. stoletja dalje lahko za srednje in zahodno-evropski prostor rečemo, da je prišlo do sistematičnega omejevanja običaja krvnega maščevanja, doseganje miru pa je postopoma zamenjalo dosledno kaznovanje zločincev (Povolo, 2015b, 196–235).

Na območju Črne gore, Albanije in Hercegovine je bila zavest o povezavi maščevanja in miru del tradicije. Enega izmed prvih poljudnih opisov običajev maščevanja in pomiritve je sicer podal Alberto Fortis, ko je ob koncu 18. stoletja na Potovanju po

Dalmaciji (*Viaggio in Dalmazia*, 1774), opisal običaj poklona ubijalca pred bratstvom ubitega ter izpostavil podobnost tega običaja z albanskim (arbanaškim) običajem (Fortis, 1984, 39–42). V 19. stoletju se je pod vplivom srednjeevropskega romantizma začel povečevati pomen ljudskih običajev, šeg, navad, ustnega slovstva ter avtentičnih pravnih običajev (Imamović, 2008, 125). V opisovanje pravnih običajev na območju Črne gore se je v svojem potopisu *Reise nach Istrien, Dalmatien und Montenegro* (1851) poglobil Johan G. Kohl. Poudaril je, da so se skupnosti Morlakov, Črnogorcev, Albancev ter prebivalstva Boke Kotorske, ki so v sladu z običaji ohranjale tradicijo krvnega maščevanja, do potankosti zavedale tudi posledic, ki jih je krvno maščevanje prinašalo. Omenjene skupnosti so stremele k reševanju konfliktnih situacij, preden je prišlo do prelivanja krvi, kar je Johan G. Kohl dokazal s črnogorsko frazo, »*Ne prelivajmo, krvi, bratje, pri Bogu in svetem Janezu (Krstniku)*«. Poudaril je tudi, da je običaj krvnega maščevanja prisoten v vseh plemenskih skupnostih, v katerih ni razvita državna oblast in sodišča, istočasno pa sami običaji urejajo odnose v skupnosti in pravzaprav predstavljajo jedro njenega pravosodnega sistema. Krvnega maščevanja ne gre označevati kot samovoljo, temveč, da gre za urejen sistem pravil, ki se jih člani skupnosti držijo, da uveljavijo svojo pravico do zadoščenja z maščevanjem in izpolnijo odgovornost do zaščite članov skupnosti. Glede na stopnjo žalitve je obstajala dolžnost do krvnega maščevanja, kot tudi možnost, da se spor rešuje brez prelivanja krvi. Tako je prišlo tudi do pomiritve, ki je bila prav tako pospremljena s pravili oziroma z običaji (Kohl, 2005, 174–176). Prav nasprotno je običaj maščevanja (osvete) opredelil srbski etnograf Milorad Medaković v delu *Život i običai Crnogoraca* (1860) »*Maščevanje je nekaj, kar je vrojeno v človeku.*[3] *Nanaša se na rane v duši in v srcu. Črnogorec bi rekel, da je bolje umreti kot sramotno živeti. Če mu kdo kaj stori, mu tako tudi vrne.*« Milorad Medaković je poleg tega maščevanje med Črnogorci povezal s predpostavko, da duhovna zavest v samih Črnogorcih ni dovolj razvita, da bi se zavedali posledic maščevanja. Po njegovem mnenju naj bi namreč Črnogorci stremeli zgolj k zadovoljevanju svojega bahaštva ter verjeli, da z maščevanjem izvajajo junaško dejanje. Milorad Medaković je tudi ocenil, da je maščevanje strašno dejanje in da je hujše od samega uboja ter dodal: »*Maščevanje je namerno in naklepno zlo in greh*« (Medaković, 1860, 112–113). V zadnjih desetletjih 19. stoletja je ruski antropolog in geograf, Pavel Apolonović Rovinskij, v študiji o Črni gori (1901, Peterburg), jasno izpostavljal, da se je črnogorski živelj sicer zavedal socialne in moralne odgovornosti maščevanja, ki je povzeta v reklu »*Ko se ne osveti, taj se ne posveti*«,[4] hkrati pa poudarjal, da krvno maščeve-

3 V srbščini je uporabljen samostalnik *čovjek*, ki v kontekstu patriarhalne sredine vedno referira le na moškega in ga je zategadelj Boehm prevedel kot »man« (Boehm, 1987, 59), kar je popolnoma ustrezno. Vendar maščevanje v praksi ni bilo zgolj domena moških in tudi niso bili edini, ki so gojili maščevalne vzgibe, zato se odločam za samostalnik *človek*.

4 Alberto Fortis je podal italijansko inačico tega reka: »*Chi non si vendica, non si sanctifica*«. Ob tem je maščevanje (*osveto*) interpretiral kot maščevanje (*vendetta)* in posvetitev (*sanctificazione)* (Fortis, 1984, 42), ter s tem pojasnil etimološko vrednost besede »osveta« Fraza »*ko se ne osveti, taj se ne posveti*« je bila ena izmed najbolj znanih fraz v zvezi s socialno in moralno odgovornostjo krvnega maščevanja (Bogišić, 1999, 352). Koncept tega rekla je S. Vilfan povzel z besedami: »[…] *da duša ubitega ne najde miru, dokler ne bo njegova smrt maščevana.«* (Vilfan, 1996, 262).

vanje ni naravnano k temu, da bi spodbujalo uboje, temveč jih je prejkone preprečevalo (Rovinskij, 1994, 265).

Sistematično se je zbiranju pravnih običajev na območju Črne gore, Hercegovine in Severne Albanije posvetil Valtazar Bogišić v zadnjih desetletjih 19. stoletja, vendar je njegovo delo dolgo časa ostalo v rokopisu in hranjeno v njegovi knjižnici na Cavtatu. Prvič je bilo v celoti objavljeno šele leta 1984 (Nikčević, 1984, 1–15). Dalj časa je osnovo za preučevanje pravnih običajev Črnogorcev in Severnih Albancev predstavljala zgodovinsko-pravna študija Ilije Jelića *Krvna osveta i umir u Crnoj Gori i Severnoj Arbaniji* (1926), v kateri je že v naslovu jasno razvidna tradicionalna nerazdružljivosti maščevanja in miru. Jelić je bil sicer seznanjen z zbirateljsko dejavnostjo albanskega frančiškanskega duhovnika Shtjefëna K. Gjeçovija, ki je zbiral pravne običaje v Severni Albaniji (Jelić, 1926, 137), ki so v ustnem izročilu poznani kot *Kanuni i Lekë Dukagjinit* (Kanon Lekë Dukagjina, v nadaljevanju KLD), vendar je bilo Gjeçovijevo zbirateljsko delo objavljeno šele leta 1933 (Pupovci, 2011, 18) in dopolnjeno s Skenderbegovim kanonom, eno izmed lokalnih različic severno-albanskih običajev, ki jih je zbral Fran Illija (Berishaj, 2004, 104; Elsie, 2013, 213). Albanske in črnogorske običaje so preučevali tudi Mary Edith Durham (Durham, 1909), Margaret Hasluck (Hasluck, 1954) in Christopher Boehm (Boehm, 1987). Ustno izročilo o ljudskih običajih je kljub razvoju državnih sodnih instanc ostajalo živo še v času socializma, ko so nastale nekatere pravno-zgodovinske študije o pravnih običajih za območje Metohije (Djuričić, 1975; Đuričić, 1979) in Kosova (Zurl, 1978). Medtem se je črnogorska produkcija usmerila v objavljanje ustnega slovstva v obliki junaških epskih pesmi o maščevanju (Đaković, 1953; Dragoić-Đuriković, 1910) in pripovedi o običajih med plemeni (Radov, 1997; Miljanov, 1970). Kljub temu, da je še v 21. stoletju zanimanje črnogorsko-albanske pravne običaje še vedno živo (Šćepanović, 2003; Trnavci, 2008; Resta, 2015), se nihče ni posebej posvetil primerjavi ustnega izročila z arhivskim gradivom.

Z upoštevanjem vsega zgoraj navedenega ter z upoštevanjem ohranjenih arhivskih virov (IAK-SN), med katerimi so bili nekateri že objavljeni in interpretirani (Kovijanić, 1963, Kovijanić, 1974; Stanojević, 2007) ter ohranjenih in objavljenih dokumentov iz območja plemena Paštrovići (Božić, Pavićević, Sindik, 1959; Bojović, Luketić, Šekularac, 1990; Šekularac, 1999), v pričujoči študiji ponujam rekonstrukcijo običaja krvnega maščevanja na območju Severne Albanije, Črne gore in Hercegovine, s poudarkom na obrednem postopku mediacije, arbitraže ter zaključnega obredja, s katerim je bil dodatno utrjen mir.

OD KRVNEGA SPORA K MEDIACIJI

V albanskih običajih, ki so zapisani v Kanonu Lekë Dukagjina se nahaja obilo običajno-pravnih norm, v katerih nekdo dejanje ali posameznik »*pada pod kri*«, kar pomeni, da je posameznik sam ali s pomočjo storil tak moralni in pravni prekršek, škodo, poškodbo ali žalitev, da je ustvaril »krvni dolg« do (p)oškodovanega oziroma razžaljenega. Slednji s tem postane upravičen do krvnega maščevanja, s katerim poravna »krvni dolg«.[5] Okr-

5 Med javne žalitve je, med drugim, spadalo nespoštovanje etikete gostoljubja v času obiska gosta (KLD § 601, f, i, j; §§ 653–666; Berishaj, 2004, 149–153; Hasluck, 1954, 209). Vse verbalne žalitve v privatni sferi

njeno čast, oziroma »črni obraz«, bilo možno rešiti ali oprati s »*prelivanjem krvi ali s plemenitim odpuščanjem s posredovanjem prijateljev.*« (Boehm, 1987, xvii; KLD § 598).

Dosedanje raziskave sporov pri navajanju splošnih značilnosti sporov poudarjajo običajne načine reševanja spora z mediacijo in arbitražo, s posredovanjem tretje stranke, ki deluje kot instanca s pravnimi pooblastili v očeh obeh sprtih in je sposobna učinkovito rešiti spor (Boehm, 1987, 218–219; Miller, 1996, 180–181; Porláksson, 2007, 71, 74; Byock, 2007, 96–99). Zapisani običaji iz območja Jugovzhodne Evrope povedo precej več o tem, kakšna so bila sredstva za pomiritev spora ter kakšne so bile vloge posameznih akterjev v sporu.

Ohranjanje družbenega ravnovesja je vidno že v običaju, ki je vsem članom skupnosti dajal mediacijsko vlogo pri ustavljanju pretepov na javnih mestih.[6] Očividci so v skladu z družbeno odgovornostjo dolžni prekinili pretep in od pretepačev zahtevati osebni predmet kot garancijo oziroma varščino (srb. *zalog*), da bodo spor reševali v arbitraži pred glavarji bratstva (KLD § 681). Z arbitražo so se poravnale tudi hujše fizične poškodbe in prizadejane rane, ki so nastale hote ali nehote (po nesreči, srb. *grijehom*). Poškodovani se je lahko potožil glavarjem bratstva, ki so v imenu poškodovanega posredovali in od storilca zahtevali odškodnino (Bogišić, 1999, 360–361), ki je bila določena v postopku arbitraže.

V Paštrovićih so na novega leta dan 1695 razsodniki (*kmetje)*, ki sta jih izbrali obe sprti stranki, Marko Belak in Niko Lašković, za razbito glavo Marka Belaka razsodili 60 perper odškodnine ter dve botrstvi in eno pobratimstvo (Božić, Pavićević, Sindik, 1959, 85). Običaj je ostal v praksi tudi kasneje. V januarju leta 1843 sta pred Črnogorski senat[7] prišla sin Dojice Povića Đuraškovića in njegov po nesreči ranjeni bratranec Luka Prečovijev – Đuraković. Ker je bila rana povzročena po nesreči (*grijehom nekteći*), senat ni dosodil odškodnine, temveč le, da Dojičin sin plača stroške zdravljenja (*samo berberu po duši da plati*) (Jelić, 1926, 130).

V decembru leta 1837 je Črnogorski senat obravnaval primer popa Đure, ki je po nesreči poškodoval glavo Nikole Jovova Marovića. Sprva je Senat nameraval razsoditi odškodnino v višini krvnine (*i tako sud nađe za pravo da se naplati kao ostala glava*),

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in brez prič, niso veljale kot situacije, v katerih je bila nekomu oškodovana čast. Med javne žalitve spadajo predvsem javne obtožbe, da nekdo laže, če nekdo nekoga prevara, mu ne vrne posojila, ga v prepiru ali pretepu odrine ali pljune ali se norčuje iz njegovega orožja ali se norčuje iz njega in njegovih družinskih članov. Take situacije so utegnile izzvati prepire in pretepe (Boehm, 1987, 57; KLD § 601; Berishaj, 2004, 302; Bogišić, 1999, 247, 249), precej bolj kompleksen primer pa predstavljajo ugrabitve zaročenih deklet. S tem dejanjem je ugrabitelj namreč posegel v dogovor, ki je bil sklenjen med družino bodoče neveste in družino bodočega ženina, zato sta bili obe družini upravičeni do tega, da si čast povrneta z maščevanjem in ubijeta žalivca (Durham, 1909, 80–109; KLD §§ 41, 43; Berishaj, 2004, 141).

6 Po albanskih običajih je posrednik sprte razdvajal z besedami: »*prekinite s prepirom, ljudje, jaz sem vaš posrednik!«;* ali s: »*prekinite s streljanjem ljudje, jaz posredujem, dokler se ne boste sporazumeli. Prekinite s streljanjem, saj med vami posreduje vas, barjak*!« (KLD § 679); ali s kratko besedno zvezo »*me ndorë*« (Djuričić, 1979, 52).

7 Plemenska sodišča je v Črni gori je v 19. stoletju zamenjal Črnogorski senat, osnovan 2. oktobra 1831 (Andrijašević, Rastoder, 2006, 163). Senat je še nekaj desetletij deloval po enakih načelih kot plemenska razsodišča.

vendar so upoštevali okoliščine, da je rana nastala po nesreči (*s grehom iz igre*), ter razsodili, da pop Nikoli do dne svetega Jurija (23. aprila / 6. maja) plača 40 talierjev (Jelić, 1926, 128).

Posredovanje očividcev v javnem pretepu ni bilo vedno uspešno in je utegnilo priti do smrtnih žrtev. Običaji sicer govore, da obstajajo uboji nehote, uboji iz maščevanja in uboji iz koristi oziroma objestnosti. Samo slednje je po običaju obravnavano kot umor (Berishaj, 2004, 265) (srb. *ubistvo*, alb. *gjakësi*), njegov storilec pa ubijalec (srb. *ubica, rukostavnik, krivac* ali *krvnik*, (Bogišić, 1999, 345–384), kar je dobesedni prevod albanske besede za ubijalca, alb. *gjakësor – jemalec krvi*) (prim. Bogišić, 1999, 345–384; Hysa, 1995, 132). Maščevanje in uboj sta bila povsem ločena aspekta, kot je to jasno razvidno iz Skenderbegovega kanona: »*Kdor koga ubije iz maščevanja, ni v krvnem maščevanju, ker se je s tem dejanjem sam maščeval*.« (Berishaj, 2004, 265). Nekaj točk kasneje isti vir pravi: »*Po krvnem maščevanju kanon določi čimprejšnjo spravo*.« (Berishaj, 2004, 265).

Običaji po uboju

Do prave sprave je prišlo le skozi mediacijo in arbitražo, vendar so običaji narekovali tudi sprejemljivo obnašanje storilca. Če se je uboj v naraščajočem prepiru zgodil na samem in brez prič, je bilo nemogoče dokazati okoliščine, ki so privedle do uboja. Običaj je ubijalcu narekoval, da zbeži in se umakne, da bo javnost točno vedela, kaj se je zgodilo (KLD § 933), torej, da ne bo dvoma o tem, kdo je ubijalec.[8] V običajnem pravu na območju med Hercegovino, Črno goro in Albanijo so pogajanja za premirje lahko pričela nemudoma po uboju. Po albanskih običajih je sorodstvo ubijalca do hiše ubitega poslalo posrednike, glavarje bratstva, da zaprosijo za *beso* (Bogišić, 1999, 360–361; KLD §§ 845, 851, 965), za začasno premirje (KLD § 854).[9] Podelitev premirja (*bese*) je bila v skladu z običaju in krepostna gesta,[10] vendar je trajalo le 24 ur[11] (KLD §§ 856–857). Po preteku štiriindvajset-urne *bese* se je ubijalec ponovno odstranil iz javnosti in se poslužil običaja »prostovoljnega zapiranja«, posredniki pa so poskušali od glave družine ubitega pridobiti trideset-dnevno beso (KLD §§ 858–860). V času trideset-dnevne *bese* so potekala pogajanja za pomiritev med hišo ubitega in hišo ubijalca, ki so jih vodili posredniki

8 V praksi je ubijalec pogosto za seboj pustil delček svoje obleke, da ga je družina ubitega lahko identificirala (Hasluck, 1954, 228). Ubijalec je običajno zbežal iz svojega bratstva k prijateljem iz drugih bratstev ali plemen (Bogišić, 1999, 353, 357; KLD § 896).

9 »*Besa je rok slobode i sigurnosti, koju kuća ubijenog daje ubici i njegovim ukućanima da ih privremeno neće goniti za krv do isteka određenog roka*.« (KLD § 854). Patrizia Resta je v antropološkem članku sicer zapisala, da je *bese*da *besa* neprevedljiva in da v tem kontekstu pomeni premirje; »*'besa' (an untranslatable word that in this context means a truce)*« (Resta, 2015, 5).

10 *»Poslati ljudi po beso je po kanonu; dati beso je dolžnost in dostojanstvo«* (KLD § 855).

11 V času štiriindvajset-urne *bese* se je moral ubijalec udeležiti pogreba ubitega ter ga na zadnjo pot pospremiti z narekanjem in objokovanjem. Udeležiti se je moral tudi zadušnega obeda, kjer je bil obravnavan kot gost in počaščen s častnim mestom pri mizi (Jelić, 1926, 97). Ta običaj naj bi bil namenjen temu, da si je bratstvo ubitega dobro ogledalo ubijalca in tarčo maščevanja ter si ga zapomnilo. Poleg tega so lahko ocenili njegov značaj ter presodili ali je vreden odpuščanja ali ne (Karan, 1985, 31).

(*bestarje* ali *besnarje*), glavarji istega ali drugega bratstva oziroma plemena[12] (Karan, 1985, 38–39; Berishaj, 2004, 282; Jelić, 1926, 95). Podobni običaji prošenj za premirje so bili poznani tudi na območju Črne gore, kjer pa ni obstajal točno opredeljen časovni rok za začetek pogajanj in prošnje za premirje (Bogišić, 1999, 360).

PRISTOP POSREDNIKOV K HIŠI UBITEGA

Naloga posrednikov je bila pridobiti premirje oziroma prepričati glavo družino ubitega (običajni srb. naziv zanj je *umirnik*) in njegovo krvno sorodstvo, da pristane na arbitražni postopek oziroma pomiritev krvi (srb. *umir krvi*) z ubijalcem (*krvnikom*) in njegovim sorodstvom (Bogišić, 1999, 366). Posredniki so s klici z dvorišča pred hišo ubitega pozivali glavo družine, naj sprejeme botrstvo pri svetem Janezu Krstniku. Ti klici oziroma simbolne fraze so se na območju Črne gore glasili: »*Sprejmi botre pri svetem Janezu*«, na območju Hercegovine pa: »*Sprejmi botre, sklepamo botrstvo z bogom in svetim Janezom.*« Albanski obrazec priprošnje naj bi bil podoben črnogorskemu (Bogišić, 1999, 365). Posredniki s seboj niso nosili darov (Bogišić, 1999, 364) in so postopek pristopa ponavljali toliko časa, dokler jih *umirnik* ni sprejel v hišo na pogajanja[13] (Bogišić, 1999, 362, 363; Berishaj, 2004, 281). Ponavljanje pristopa posrednikov je utegnilo potekati tudi z botrami (srb. *kume, mironosnince*), katerih število je variiralo glede na lokalne običaje, od ena do dvanajst oziroma ponekod do petnajst. Botre so s seboj nosile zibke z dojenčki, ki so jih pred hišo ubitega pričele ščipati, da so pričeli jokati, kar naj bi omehčalo srce *umirnika* in ga prepričalo v pomiritev. Poklon z dojenčki je nakazoval na pokornost *krvnika* in njegovega bratstva pred sorodstvom ubitega (Bogišić, 1999, 363, 365, 376; Jelić, 1926, 99–100),[14] hkrati pa nakazoval, da je bratstvo *krvnika* dovolj močno, da preživi maščevanje in da predstavlja dobrega kandidata za zavezništvo.

Če interpretiramo pristop posrednikov s priprošnjo (z ali brez otrok) skozi splošne običaje obdarovanja, so posredniki s pristopom in poklonom izražali pokornost in ponujali dar – botrstva, nove družinske vezi. V okviru splošnih običajev obdarovanja je zavrnitev ponujenega daru nečastna gesta, ki je povzročila črn ali »gnil« obraz tistega, ki ni spoštoval običajev. S sprejetjem daru se je obdarovanec obvezal, da bo dar vrnil. S sprejetjem in vračilom daru pa je obdarovanec ohranil prejšnje ravnovesje nadrejenosti in podrejenosti med njim in darovalcem (Mauss, 1996, 34–81, 126). Po albanskih in črnogorskih običajih je *umirnik* uslišal priprošnjo posrednikov ter jim podelil beso, saj je

12 Za nalogo so se angažirali prostovoljno oziroma kot pravi kanon »*nihče ni postal posrednik za denar*«, so pa bili posredniki kljub temu upravičeni do povračila njihovih potnih stroškov oziroma do daril po uspešno opravljeni nalogi (Bogišić, 1999, 362; prim. KLD §§ 687, 852). K hiši ubitega so pristopali ob dela prostih dnevih, ko so vedeli, da bo glava družine ubitega (alb. *hoti i gjakut – gospodar krvi; srb. umirnik)* gotovo doma (Jelić, 1926, 95, 98). Njihovo število je bilo odvisno od okoliščin in lokalnih običajev, najpogosteje pa jih je nastopalo 6, 12 ali 20. V njihovem spremstvu so lahko bili tudi sorodniki ubijalca, nikoli pa ubijalec sam (Bogišić, 1999, 361–362; KLD §§ 845, 851, 965).

13 V običaju ni obstajalo določeno število pristopov, ki bi jih morali izvesti, da bi *umirnika* prepričali v pomiritev (Bogišić, 1999, 364–365).

14 Med hercegovskimi plemeni so z botrami in posredniki sodelovali tudi sami turški begi, da bi *umirnika* prepričali v pomiritev, turške ženske pa v tem običaju niso sodelovale (Bogišić, 1999, 365).

bilo to častno dejanje (KLD § 855). Ko je bil pripravljen na pogajanja, je glava družine ubitega sprejel posrednike in botre v hišo. Vstop posrednikov v hišo je napovedoval začetek pogajanj, zato so v praksi botre utegnile izsiliti pogajanja tako, da so v hišo vstopile na skrivaj in se priklenile na ognjišče (Bogišić, 1999, 363, 365). Ko je bila *besa* podana, so nastopila pogajanja o času in kraju arbitraže ter o izboru 12 razsodnikov, v kolikor je šlo za rano oziroma 24 razsodnikov, če je šlo za uboj,[15] ter o drugih zahtevah, ki jih je utegnil imeti *umirnik*. Ob koncu pogajanj je *umirnik* podal častno besedo (*beso*) o tem, da se od dneva soglasja do določenega dne ne bo maščeval niti sam niti drugi sorodniki, ki so po običaju imeli pravico do maščevanja[16] (Bogišić, 1999, 364, 366–367; Djuričić, 1975, 21–25; KLD § 854).

SKLEPANJE BESE (POGODBA O PREMIRJU)

Besa je po denotativni slovarski definiciji pravzaprav *častna beseda pri Albancih* (Berishaj, 1989, 58). Etimološko je samostalnik *besë*[17] izpeljan iz indoevropskih korenov samostalniških besed, ki so pomenili *prisego*, *premirje* in *zaupanje*, povezan je z indoevropskimi koreni za pridevnike *zvest* in *zaupanja vreden* oziroma je etimološko jedro albanske besede *besë* povezano z osnovami za glagole *prepričati* in *prisiliti* (prim. Orel, 1998, 59). Ker je *besa* (tudi *bésë*) definirana kot *vera in prisega* (Hysa, 1995, 40),[18] ni na-

15 Razsodniki so lahko bili sami posredniki ali člani bratstev ene in druge stranke v sporu. Da so posredniki običajno delovali kot razsodniki je vidno v nazivu, ki se je v običaju uporabljal za glavarje pri reševanju spora (srb. *posrednici i plećnari*; alb. *ndermjetës dhe pleqnarët*) (Djuričić, 1975, 21).

16 Do maščevanja so bili najprej upravičeni najbližji družinski člani, nato pripadniki bratstva in plemena. Pravica do maščevanja ni pripadala le krvnemu sorodstvu temveč tudi duhovnemu sorodstvu, botrom in pobratimom. Maščevalec je skupaj s svojim spremstvom, ki ga je bodisi izbral sam ali mu ga je na skupnem zborovanju določilo bratstvo. Skupnost pa je v skladu s kolektivno odgovornostjo maščevala uboje gostov in prišlekov v pleme, nenazadnje so maščevali tudi uboje pripadnikov etničnih skupin brez stalne naselitve, kot so Cigani (Bogišić, 1999, 353–355; KLD §§ 822–842; Berishaj, 2004, 272; Hasluck, 1954, 220–221). Po albanskih običajih je bilo veliko članov sorodstva upravičenih do maščevanja, med drugim tudi ženske (predvsem za uboj njenega moža, sinu ali brata), vendar ti ljudje niso nujno postali maščevalci. Maščevalci pa so bili lahko tudi plačanci in ne nujno krvni sorodniki ubitega (prim. Berishaj, 2004, 272; Bogišić, 1999, 351; Hasluck, 1954, 222–224).

17 *Besa* je v albanskem slovarju *Fjalor i gjuhes shqipë* (1954) obravnavana kot večpomenska beseda. Pomeni rok svobode in varnosti, ki jo hiša ubitega podeli moškim članom družine ubijalca, da se ne bo maščevala, kar je izvedeno iz Kanona Leka Dukagjina. Poleg tega je *besa* tudi dogovor med družinami v istem plemenu (alb. *fis*), barjaku ali vasi oziroma med dvema ali več plemeni, barjaki in vasmi, na osnovi sporazuma in za določeno časovno obdobje. To sovpada z Jelićevo definicijo, saj navaja, da ima sama beseda *besa* dvojni pomen pri Severnih Albancih. Po eni strani gre za častno besedo oziroma trdno vero, ki jo daje določena oseba, da so se stvari zgodile kot pravi oziroma, da se bodo zgodile na tak način, kot obljublja. Po drugi strani pa je *besa* sporazum o miru med dvema barjakoma ali plemenoma za določen čas. Poleg tega *besa* v drugem primeru pomeni tudi sam čas trajanja oziroma rok, v katerem *besa* traja (Jelić, 1926, 96). *Besa* je tudi izjava, s katero se jamči, da bo *besa* držana in zaščitena. Poleg tega je *besa* tudi varno spremstvo (alb. *shpurë i sigurti*). *Besa* je tudi zaupanje v osebo ali stvar, je kreditno zaupanje, istočasno pa dobro ime in ugled, ki ga uživa pošten človek ali trgovec. Kljub temu, da albanski slovar, ki ga je Djuričić uporabil, beso enači z vero v religijskem smislu (alb. *fe*), avtor meni, da bi bil v tem primeru boljši izraz *feja* – vera v boga (Đuričić, 1979, 7–8). Zadnja povezava med beso in vero pa kljub temu ni popolnoma napačna.

18 Na podlagi tega je albanolog Robert Elsie beso definiral kot častno besedo, prisego, zavezo ali premirje.

ključje, da je slovanski izraz za albansko *beso* ravno *vera* (srb. *vjera, tvrda vjera*) (Karan, 1985, 34). Milorad Medaković je o svetosti in božanskosti običaja vere zapisal: »*Ko poda vero, Črnogorec dojema, da je po sredi te besede sam Bog.«* (Medaković, 1860, 107). Vuk S. Karadžić je v srbskem slovarju z nemškimi in latinskimi prevodnimi ustreznicami geslo vera (*vjera)* prevedel s *fides* ter s *Treu und Glaube* (Stefanović Karadžić, 1966, 73), kar utemeljuje tudi Djuričićeve ugotovitve, da je *besa* enako koncipirana kot antična rimska institucija *fides* (Đuričić, 1979, 5). Fides je bila v rimski tradiciji tako verska kot pravna kategorija, torej, ponovno, vera in prisega (Petkov, 2003, 1–128). Medtem, ko v albanskem vokabularju obstaja poseben izraz za prisego oziroma zaprisego (srb. *zakletvo*), to je *beja* (Berishaj, 1989, 58), pa je z analizo starejše jezikovne rabe črnogorskega besedišča dokazana kontekstualna sinonimija med vero in prisego.[19]

Fides nosi tako versko kot pravno vsebino in je obljuba in prisega oziroma zaveza. Prisotna je bila v najrazličnejših vrstah civilnih pogodb, tudi v pogodbah za premirje in mirovnih pogodbah, od koder je prešla tako v politično kot v cerkveno sfero (Petkov, 2003, 9–78). Sklepanje pogodb je bilo javno pravno dejanje, za srednjeveško javno komunikacijo pa sta značilni njena demonstrativnost in ritualnost (Althoff, 2002, 73). V evropski historiografiji in pravni tradiciji je bil podrobneje analiziran obred sklepanja vazalske pogodbe med vazalom in seniorjem (Le Goff, 1985, 387–388), ki je bilo značilno tudi za umeščanje notarjev (Darovec, 2014, 473–500). Po obdobju spora (nem. *Fehde*) je neredko prišlo do (re)investiture vazalstva, vendar je bilo potrebno najprej doseči premirje in pomiritev (Brunner, 1992, 89–90). Da gre pri investiturah vazalov in notarjev ter pri sklepanju miru za enako zaporedje pravnih dejanj, je izpostavil že Darko Darovec ter poudaril, da gre pri vseh pogodbah za obred s tri-delno strukturo, ki jo sestavljajo poklon, vera in investitura. V vseh treh etapah obreda pa so bili prisotni simbolni elementi v obliki simbolnih fraz, gest in predmetov (Darovec, 2014, 481–499).

Če opazujemo celoten koncept sklepanja *bese* in premirje obravnavamo kot pogodbo in dogovor med dvema strankama, direktno ali s posredniki, najdemo v njem množico paralel s sklepanjem pogodb v evropski pravni tradiciji od antike do zgodnjega novega veka. Milutin Djuričić je na podlagi ostankov albanskih običajno-pravnih praks v 20. stoletju poudaril, da v albanskem običajnem pravu obstajajo tri vrste pravnih obvez z beso: **sklepati beso** (alb. *më banë*), **dajati beso** (alb. *më dhonë*) ter **varovati beso** (alb. *më doräzuë*), pri čemer ima ravno zadnja oblika popoln pravni in prisilni značaj (Đuričić, 1979, 30). Ko je *umirnik* dal svojo častno besedo (*beso)* in se rokoval z enim od posredni-

Besa je bila ena izmed najpomembnejših institucij v običajih Albancev in je predstavljala obliko varnosti, kot tudi določeno obdobje, ki sta ga stranki v krvnem maščevanju določili za urejanje zadev. Bila je sveta obveza in temeljila na moralnih vrednotah (Elsie, 2010, 49), kar je vidno iz drugih slovarskih definicij *bese*, ki so povezane z vero in zaupanjem (prim. Hysa, 1995. 40).

19 V slovarju vokabularja nekdanjega črnogorskega vladike Petra II. Petrovića Njegoša za samostalnik vera dobimo več razlag, ki sovpadajo z že omenjenimi. Peter II. Petrović Njegoš pa je v svojih delih in pismih uporabljal tudi besedno zvezo skleniti vero miru (*uhvatiti vjeru od mira*), kar je pomenilo potrditi, skleniti mir z dajanjem vere (častne besede), da se bo dogovorjeno spoštovalo oziroma dogovoriti in sporazumeti se, s podajanjem častne besede, da bo nekdo držal sporazuma (Stevanović, Vujanić, Odavić, Tešić, 1983, 84–85). *Besa* je torej dogovor sklenjen na podlagi častne besede in se je, kot lahko vidimo tudi iz njene definicije, odražala na več različnih ravneh, vendar v vsaki kot dogovor, zaveza in obveza.

kov, je s tem preko posrednikov sklenil dogovor s *krvnikom*. Rokovanje in geste z roko so bile posebnega pomena tudi v zahodno-evropski pravni tradiciji. Rokovanje je, tako kot še danes, predstavljalo zaključno gesto pri sklepanju pogodb, med drugim tudi vazalskih, pri katerih je prišlo do simbolnega sklepanja in prepletanja rok med vazalom in seniorjem. Objem dlani je simboliziral obljubo seniorja o varovanju vazala, hkrati pa nakazoval na vazalovo podrejenost in njegovo pokornost (Schmitt, 2000, 109, 332). Za sklepanje *bese* je albanski pravni zgodovinar Surja Pupovci dejal, da je dogovor »stisnjen«, ko se člana sklepanja sporazuma primeta za roke, vendar dodal, da se »*lahko stokrat stisneta za roke ob dogovarjanju, vendar dogovor ostane šibak če ni dorzona«* (Đuričić, 1979, 14). Tudi Milutin Djuričić je poudaril, *da »brez dorzona ni bese«* (Đuričić, 1979, 8). Slovaniziran termin dorzon (alb. *dorëzán*) predstavlja tistega, ki garantira oziroma jamči, torej poroka (ang. *guarantor*) (Mann, 1948, 81). Skenderbegov kanon pravi: »*Bese brez porokov ni. Tudi če družina ubitega da beso neposredno, je potrebno določiti poroke.*« (Berishaj, 2004, 282).

Poroštvo v pogodbi o premirju

Predstavnik posrednikov je imel po običajnem pravu pravico in dolžnost od glave družine ubitega zahtevati, da beso zavaruje. Posredniki so zahtevali, da se za garancijo dogovora določi oseba, ki bi nadzorovala *umirnika* in ga v tem časovnem obdobju opozarjala na spoštovanje dogovora. Po tem, ko je *umirnik* izjavil, da podeljuje beso, je posrednik dejal: »*Daj mi tega in tega človeka za poroka*.« Poroka so določili posredniki in izbrali nekoga, ki je v skupnosti užival čast in ugled in njegova hiša v danem trenutku ni bila v krvnem maščevanju, skratka osebo, ki so ji posredniki in *krvnik* zaupali ter je obenem dobro poznala tudi *umirnika*. Slednji je nato pristopil k imenovani osebi, ki se je najverjetneje nahajala med spremstvom samih posrednikov, in vprašal: »*Ali želiš, da vstopiš kot moj porok v to in to zadevo s tem in tem?*« Po tem je oseba, predlagana za poroka, izprašala *umirnika*: »*Ali veš, kaj je porok, on lahko oprosti svojo kri, tuje pa ne, ne vzemi me za vrat. Če ga ubiješ, imam jaz črno lice in te bom moral ubiti.*« S temi besedami je bodoči porok izpostavil, da se zaveda vseh pravnih obligacijskih, represijskih in sankcijskih pooblastil, ki mu jih je *umirnik* nameraval predati in nato nadaljeval: »*Zato dobro razmisli in pošteno reci ali naj vstopim v to zadevo zate.*« *Umirnik* je na to odgovoril z: »*Vstopi brez skrbi. V tej zadevi te ne bom posekal. Tisoč let ne bom prelomil besede. Besedo bom držal dokler sem živ, jaz in moji otroci.*« Porok je s tem odgovorom dobil privatna in javna pooblastila varovanja, represije in izvršbe. Nato je porok vprašal *umirnika* in posrednika: »*Kje je beseda?*« *Umirnik* in posrednik sta ponovila vsebino njunega dogovora. Porok je nato stopil pred javnost, zbrano pred hišo in dejal: »*Jaz sem porok. V tej zadevi glejte mene. Bodite brez skrbi. Če on prelomi besedo, je posekal mene.*« (Đuričić, 1979, 24, 33–36).

Ilija Jelić je ugotavljal, da obstajata dve obliki *bese*: »*če oseba jamči ali daje svojo častno besedo drugi osebi, da je tretja oseba v določenem časovnem obdobju ne bo ubila ali ji povzročila kakega drugega gorja, potem je taka besa imenovana dora, tisti, ki jo daje, pa je dorzan.*« (Jelić, 1926, 97). Že S. Trojanović in M. Gajić sta v delu *Krv i umir*

kod Srba i Arnauta poudarila, da se tako pri Srbih kot pri Albancih besi reče tudi *dora* (Đuričić, 1979, 13). Denotativno *dora* (*tudi dórë)* v albanščini pomeni roka (Hysa, 1995, 84; Mann, 1948, 80) in je beseda, iz katere izhaja sama beseda dorzon oziroma porok, isto osnovo pa nosi tudi poslovanjena beseda *dorzonija* (alb. *dorëzanía*), ki pomeni varščina, garancija in zagotovilo (Hysa, 1995, 85). Torej je *dorzonija* poroštvo (srb. *jemstvo*), dorzon pa porok (srb. *jemac*[20]), ki je prevzel odgovornost nase in jamčil za nekoga drugega. Poroštvo (dorzonijo) je Milutin Djuričić na podlagi ohranjenih običajev opredelil kot ***institucijo varovanja bese*** oziroma ***zaščite bese***. Sklepanje *bese* je sestavljeno iz ustnega sporazuma, ki ima svečano formo in se naslanja na pravna koncepta *me dhanë* (dati, podeliti) in *me banë* (sklepati) (Đuričić, 1979, 30). Po Djuričićevi razčlembi gre za izjavo o odgovornosti, ki nastaja skozi posebno proceduro, in je sestavljena iz dveh stipulacij. Prva je med tistim, ki daje beso (*umirnikom*) in porokom pri čemer prvi preda svoje življenje poroku kot poroštvo (garancijo), da bo izpolnil svojo obvezo, druga pa med porokom in stranko, kateri je *besa* podeljena (*krvniku* in njegovemu sorodstvu preko posrednikov). Porok se na poroštvo predaja s svojim dobrim imenom in s častjo. Funkcija dorzona je bila častna in se je kot varuh in porok pogodbe v dogovor vključil brez kakršne koli materialne koristi v relaciji do obeh strank (Đuričić, 1979, 33, 35; KLD § 687). Djuričić je v svojih delih potrdil, da *bese* ni brez poroka (*dorzona*) oziroma brez osebnega poroštva (jamstva, dorzonije). V nadaljevanju je Milutin Djuričić sicer zapisal, da sta *besa* in poroštvo isto (Đuričić, 1979, 8–9), vendar če opazujemo beso in dorzonijo natančno, opazimo, da ta trditev ni popolnoma točna. *Besa* je pravzaprav dogovor v pogodbenem smislu, dorzonija pa je poroštvo k tej pogodbi. Porok je sam dorzon, vrednost poroštva pa sta njegova osebna čast in ugled v skupnosti (Đuričić, 1979, 33). Ker sta ti dobrini neprecenljivi, sta prelomljena pogodba in oskrunjeno poroštvo smrtno kaznovana, kot je razvidno iz opomina, ki ga porok po običaju poda *umirniku* ob sklepanju *bese*. Osebno poroštvo gotovo ni albansko-črnogorska posebnost, saj je poznano že v rimski in germanski pravni tradiciji (Mauss, 1996, 104), oziroma bolje rečeno osebno poroštvo je bilo od nekdaj in je še vedno pomemben del pri sklepanju pogodb, predvsem zato, ker sama dana častna beseda (*besa* v denotativnem pomenu) ni fizično oprijemljiva kot je varščina (srb. *zalog,* lat. *sponsio*) ali kot so bili oprijemljivi investiturni predmeti pri sklepanju vazalnih ali notarskih pogodb, ki so veljali kot garancija in dokaz o sklenjeni pogodbi (Le Goff, 1985, 455–458; Darovec, 2014, 481–500). Da bi *umirnikova* beseda dejansko veljala kot pravna obveza, je moral podati prisego in garancijo ter dodeliti poroka (lat. *fideiussor*), kar je veljalo kot eno izmed splošnih pravil pri sklepanju pogodb v zgodnjesrednjeveški pravni tradiciji (Petkov, 2003, 40–41). Porok je zatorej simbolni predmet poroštva. Zanimiva je še ena povezava, namreč albanski izraz za poroka, *dorzon,* je izveden iz albanske besede za roko (alb. dorë), torej je porok simbolno roka,[21] s katero je bila sklenjena pogodba, roka, ki nadzira in kaznuje *umirnika*

20 Vuk St. Karadžić je besedo *jemac* prevedel v nemščino in latinščino kot *Bűrge oziroma sponsor,* torej kot porok, garant in pokrovitelj (Stefanović Karadžić, 1966, 285).

21 Roka (lat. *manus*) je srednjeveški pravni tradiciji pomenila moč in oblast samo. V okvirih pravnih gest pa je rokovanje ali sama upodobitev roke pomenila prenos, prevzem ali priznavanje oblasti (Schmitt, 2000, 109).

in roka, ki varuje *krvnika*. Roko pa najdemo tudi na seznamu 98 simbolnih investiturnih predmetov, ki ga je po Du Changeju dopolnil Jacques Le Goff še z dvema, *manu* in *per manu* (Le Goff, 1985, 457–459).

Skratka, *besa* kot pogodba o premirju dobi svojo pravno konotacijo vere (*fides*) šele s prisego (*alb. beja*). Iz tega kaže, da sta tako *umirnik* kot porok morala v celotni proceduri priseči na nečem, saj častna beseda sama, oziroma ustni dogovor brez prisege nista veljavna.[22] Tisti, ki je prisegal, se je moral dotakniti svetega obeležja. Poleg cerkvenih svetih obeležij, kot sta križ in evangelij, je bil kot sveto obeležje po albanskih običajih obravnavan tudi kamen[23] (KLD §§ 533, 535). *Umirnik* je z roko, torej s porokom, ne le simbolno, temveč tudi dejansko, varoval *krvnika* in njegovo družino ter se istočasno podredil roki poroka, v primeru, da bi svoj del pogodbe oziroma zaveze prekršil. Tako *umirnik* kot porok sta zaprisegla na svetem obeležju in pred pričami, da je *besa* kot pogodba dobila obvezujoč značaj.

Kršitve bese

Besa je bila torej sporazum oziroma pogodba o premirju med dvema sorodstvenima ali plemenskima skupnostma. Naloga porokov je bila varovati sklenjeno premirje, da ne bi prišlo do njegovih kršitev. O kršitvi sklenjenega dogovora o besi je Milorad Medaković zapisal: *»Prelomiti vero in storiti komu kaj na veri, se je smatralo kot prvi in največji greh na Zemlji, iz katerega se grešnik ne bo nikoli mogel izvleči«* (Medaković, 1860, 107). Prekršiti beso je bilo po običaju nedopustno.

Milutin Djuričić je izpostavil dve obliki kršitve bese in ju označil z izrazom *delikti proti poroštvu (dorzoniji)*. Prvi je »*verolomstvo*« (alb. *besëthya*), to je delikt, ki ga je stranka, ki je podala beso, storila v relaciji do porokov in se maščevala ali nadaljevala s spopadi, kljub prisegi. Stranka, ki je kršila beso, je postala »verolomec« (alb. *besëthyes*). Drugi delikt pa je »*izdaja*« (alb. *hjeksija*). To je delikt, ki so ga storili poroki, ki so dopustili, da je prišlo do kršitve *bese* (*verolomstva)* ter po tem niso primerno sankcionirali kršitelja *bese* (Đuričić, 1979, 29, 42–43). Poroki so moral v skladu s pooblastili kršitelja *bese* smrtno kaznovati. Ker je bilo sklepanje sklepanju *bese* javen pogodbeni akt, je bila naloga javnosti ali širše skupnosti, da prisili poroke v sankcioniranje prekršene *bese* (Đuričić, 1979, 29). Če so poroki uspešno sankcioniral prekršeno beso in ubili kršitelja, njegovo skupnost pa gmotno kaznovali, se s sankcijo ni ustvaril krvni dolg, ki bi zahteval

22 Zbirke albanskih pravnih običajev ponujajo veliko podatkov o poroštvu k pogodbam (KLD §§ 683–694), denimo h kupo-prodajnim (Berishaj, 2004, 201–202) ali posojilnim (Berishaj, 2004, 197–198), pa tudi k drugim vrstam dogovorov, saj sta bil porok (srb. *jemac*) obravnavan tudi kot priča na sodišču in angažiran z zaprisego (alb. *beja*). Zaprisega je bila v albanskih običajih sicer del postopka pri pričanju, vendar je bila enaka oblika zaprisege sprejemljiva tudi za dajanje in sklepanje *bese* (KLD §§ 529–530). Nadaljnje navedbe pravnih običajev pa govorijo o tem, da se navadno priseže ob medsebojnem **dajanju** *bese* v plemenu, v vasi in v barjaku. Ta prisega je lahko veljala za določen ali za nedoločen čas (Berishaj, 2004, 250).

23 Albanski običaj je prepovedoval prinašanje verskih obeležij kot sta križ in evangelij na dom, z namenom, da bi nekoga prisilili v prisego (Berishaj, 2004, 249). Zato utegne veljati, da je sklepanje *bese*, ki je potekala na domu, potekalo s polaganjem rok na kamen, kot najstarejše sakralno obeležje.

maščevanje. Skupnost osebe, ki je bila ubita na besi pa je imela pravico do maščevanja (Đuričić, 1979, 44; Jelić, 1926, 94; prim. Bogišić, 1999, 368).

Sledi mediacije in sklenjenega premirja v dokumentih o pomiritvi

Rekonstrukcija sklepanja *bese* je mogoča le s primerjavo zbirk običajev, s pomočjo antropoloških in pravno-zgodovinskih študij, v samem arhivskem gradivu namreč ni direktnih podatkov o načinu in poteku sklepanja *bese* ali kdaj je bila sklenjena. Da pa je bila besa gotovo sklenjena, sugerirajo manjši zapisani fragmenti.

Prebivalci vasi Gluhi Dol iz Crmniške nahije in prebivalci območja Paštrovići so 28. maja 1560 v Kotorju pričeli reševati ozemeljski spor. Predstavniki obeh skupnosti so pred providurjem izjavili, da sta se za to odločili po prepričevanju dobrih ljudi in skupnih prijateljev ter v želji, da bi ponovno zaživeli v miru. Pred kotorskim providurjem sklenili in podpisali kompromis ter skupno izbrali dvajset razsodnikov, ki so z osebnim imetjem (t. j. varščino) jamčili, da se bodo naslednjo nedeljo, 2. junija, zbrali na spornem zemljišču, imenovanem Preveza, ga skrbno pregledali, se posvetovali ter presodili o tem, kako naj bi potekala razmejitev. Poleg tega so se izbrani razsodniki obvezali, da se bodo 9. junija zglasili v Kotorju pred providurjem, kjer bodo razglasili svojo razsodbo s prisego na ikono sv. Matere Božje in sv. Evangelij v rokah providurja, ter s tem zagotovili, da je njihovo razsojanje potekalo pravično in po čisti vesti (Stanojević, 1959, 15–18).

Običaji mediacije in arbitraže so se v Črni gori ohranili do skozi celotno 19. stoletje. V primeru iz Grblja, evidentiranem okrog leta 1820, sta se pred 24 razsodniki, kot je bilo v običaju, sestala Djuro Rajković in Nikola Vučetić, oče ubitega Miloša Vučetića. V opisu postopka, ki ga je po Vrčeviću podal Christopher Boehm, je bežno omenjeno, da so bili razsodniki izbrani skupno.[24] Djuro je pred razsodniki povedal, da je pred petimi meseci izvedel za hčerino nosečnost ter je po tem nemudoma odšel do kneza in popa ter pred njiju pozval Miloša na razgovor. Po hudi verbalni žalitvi časti na razgovoru pred knezom in popom je Djuro dva dni zapored čakal na Miloša v zasedi, skupaj s svojim sinom in bratom (Boehm, 1987, 125). Torej je od dneva maščevanja do sestanka pred razsodniki preteklo približno pet mesecev. V tem intervalu so potekala tudi pogajanja, v katerih je bilo sklenjeno premirje, ki je privedla stranki pred zbor razsodnikov.

Drugi primer, ki ga je zabeležil Pavel A. Rovinskij ob koncu 19. stoletja, govori o sporu med Bojkovići in Zeci, ki je nastal v letu 1877, do pogajanj pa je prišlo šele po novici, da so ubijalca Iva Bojkovića nekje v Srbiji ubili razbojniki. Družina Zec je bila pobudnica pogajanj, bratstvo Bojković pa je prevzelo odgovornost za uboj in družini Zec dovolilo, da sama izbere 24 razsodnikov. Do arbitraže je prišlo spomladi 1890 in sinova ubijalca ter ubitega sta sklenila mir med seboj. Razsodniki pa so določili višino krvnine za uboj ter ostale podrobnosti, povezane z zaključnim obredjem pomiritve (Rovinskij, 1994, 256–257).

24 »*And we, the undersigned elders (kmets) are presented in the full number of twenty-four men, selected and* ***summoned by the two powerful households*** *of Rajković on one hand and Vučetić on the other, which are "in blood"*« (Boehm, 1987, 124).

POMIRITEV ALI SPRAVA TER RAZSODBA ARBITROV

Skenderbegov kanon pravi, da je sprava (srb. *umir krvi*; alb. *Pajtimi i gjakut*; lat. *Pax sanguinem*) »*dogovor ali zaveza dveh ali več ljudi zaradi vzajemnih odnosov bodisi skupne bodisi posamične koristi. Vsaka sprava ali dogovor temelji na besedi, priči in podpisanih dokumentih*.« (Berishaj, 2004, 225).

Na dogovorjeni dan sta se bratstvi *krvnika* in *umirnika* zbrali na določenem kraju pred izbranimi razsodniki. V postopku poravnave (»prebijanja« oziroma izenačevanja) so razsodniki poiskali retaliacijske pare za rane, uboje, napade in nastalo gmotno škodo. Za škode in poškodbe brez para pa so razsodniki z upoštevanjem na okoliščine in običajev določili višino odškodnin. (Bogišić, 1999, 362, 367–369, 371; Jelić, 1926, 115–116).

Obenem so razsodniki določili tudi število družinskih vezi, ki naj bi jih sprti skupnosti sklenili med seboj. Družinske vezi so bile izjemnega pomena pri utrjevanju miru oziroma mirovnega sporazuma. Predstavljale so garancijo novi mirovni pogodbi in zavezi o miru med sprtima stranema (Bogišić, 1999, 372), kar je razvidno iz zapisov mirovnih pogodb.

Po izrečeni razsodbi[25] sta se stranki ali njihovi predstavniki oziroma zastopniki s prisego na sakralnih obeležjih[26] zavezali, da bodo razsodbo spoštovali. Zaključna gesta običaja pomiritve pa je bil poljub miru (srb. *poljubac / cjelov mira*, lat. *osculo pacis*) (Bogišić, 1999, 371–372). S poljubom miru je bil med sprtima sklenjen, potrjen in garantiran dogovor o miru (Darovec, 2014, 492). Poljub najdemo tudi na slavnem Du Changevem seznamu investiturnih predmetov (Le Goff, 1985, 457). Novoveški španski *licenciado* Gregorio López je v delu *Siete Partidas* iz leta 1555, na podlagi starejših španskih zakonikov, poljub interpretiral kot znak čiste ljubezni, ki je preobrazil srca nekdanjih sovražnikov. V pravnem kontekstu je poljub prenesel spremembo čustvenega stanja v formalno pravno zavezo (Petkov, 2003, 33–34). Poljub je moč zaslediti v srednjeveških civilnih pogodbah. V luči pravnega razvoja v Evropi je se je poljub postopoma ohranil le pri sklepanju zaročnih, poročnih in mirovnih pogodb. V domenah cerkvenega mašnega obredja, ki je prevzelo simbolne geste civilnih pogodb iz antične pravne tradicije, poljub sugerira tudi mirovno pogodbo in novo zavezo med Bogom in človeštvom (Petkov, 2003, 12–78), ki se je ustvarila z žrtvovanjem oziroma s prelito krvjo Odrešenika. Torej je bil tudi sam poljub med *krvnikom* in *umirnikom* njuna nova zaveza, obljuba, s katero sta se obvezala, da bosta poravnala odškodnine in škode do določenega roka ter da bosta sklenila nove sorodstvene vezi, s katerimi je bil mir ponovno potrjen in dodatno garantiran (prim. Darovec, 2014, 492). Poljub kot simbolna gesta predstavlja zavezo o izpolnitvi izvršnega dela razsodbe, torej novo pogodbeno obligacijo o njuni vzajemni predanosti spoštovanja mirovnega dogovora (Petkov, 2003, 34, 40–41, 48).

25 V roku enega dneva, najkasneje dveh, so razsodniki razsodili v sporu po običaju, upoštevaje vse okoliščine, ki so privedle do spora, ter pri razsodbi upoštevali vso škodo, povzročene rane in smrtne žrtve. Razsodbo je v imenu celotnega zbora razsodnikov, po njihovem skupnem posvetu in enoglasni presoji izrekel eden izmed razsodnikov (Bogišić, 1999, 370).

26 Med sakralna obeležja, na katerih se prisega, spadajo križ, evangelij in kamen (KLD §§ 533, 535; IAK-SN, VI, 450–452, 31. 3. 1438; Kovijanić, 1974, 185).

Poljub miru je kot zaključna gesta pomiritve izpričan tudi v mirovnih pogodbah iz Kotorja. Prva sega v leto 1431, ko so se pred kotorskim sodnikom in avditorjem zbrali prebivalci iz vasi Luštica in predstavniki prebivalcev Župe oziroma Grblja in potrdili po običaju sklenjeni mir. Bratstvi sta se pomirili med seboj in si oprostili s poljubom miru (*osculo pacis*) (IAK-SN, V, 5–6, 9. 1. 1431). Poljub se je koz zaključni akt sklepanja miru ohranil skozi novi vek, saj je v dokumentu pomiritve med dvema paštrovskima bratstvoma iz leta 1632 zapisano: »*Ovu našu osudbinu pročitasmo na glas narodu i partama i obje biše zadovoljne* ***i pred nama se izljubiše i kumstvo obečaše i u vječnom miru ostaše,*** *a Bog dao dobar čas! Amin.«* (Jelić, 1926, 134), kar pomeni, da sta se sprta pred sodiščem poljubila in obljubila večni mir. Enaka gesta, poljub miru, pa je še v 19. stoletju v običaju priznana kot simbolna gesta sklenjenega večnega miru (Bogišić 1999, 371–372).

Zapis razsodbe

Razsodbe razsodnikov na območju Albanije in Črnogorskih Brd so bile pretežno le ustne (Bogišić, 1999, 372; Jelić, 1926, 106, 117), sistematično zapisovanje razsodb je prišlo v veljavo šele ob razvoju državnih sodnih organov, Črnogorskega senata in Vrhovnega sodišča v 19. stoletju (Jelić, 1926, 105–106). Na območju Črnogorskega Primorja, ki je bilo od 15. stoletja do konca 18. stoletja pod Beneško oblastjo oziroma zaščito, je obstajala daljša tradicija zapisovanja razsodb. Zapisovali so jih tako kotorski notarji kot pisarji in menihi oziroma popi na območju Paštrovićev (IAK-SN; Božić, Pavićević, Sindik, 1959; Šekularac, 1999).

Pravna praksa v Kotorju je v 15. stoletju narekovala kotorskim oblastnikom spoštovanje pravnih običajev mesta in distrikta. Čeprav so se spori med skupnostmi v neposredni okolici Kotorja in njegovega zaledja reševali po običajih pred zborom glavarjev, so zborovanja v distriktu nadzorovali uslužbenci občine Kotor (Milošević, 2009a, 56–57; Milošević, 2009b, 64–65.). Kljub temu, da so bili spori med bratstvi iz območja pod beneško upravo in iz zaledja rešeni po običaju, so se bratstva na obeh straneh meje posluževala tudi sklepanja in potrjevanja dogovorov in pogodb pred kotorskim sodiščem. V januarju leta 1437 so pred kotorskim sodiščem predstavniki bratstva Njeguši iz območja tedanje Zete in prebivalci Orahovca, naselja v Boki Kotorski, potrdili mirovno pogodbo sklenjeno po običaju. Predstavniki obeh skupnosti so pred kotorskim sodiščem izjavili in se (ponovno) obvezali, da bodo poleg botrstev in pobratimstev sklenili še poročne vezi. Njeguši so se obvezali, da bodo sklenili poroko s štirimi mladenkami iz Orahovca, brez dote, Orahovčani pa so se obvezali skleniti poroko s tremi mladenkami iz Njegušev, z doto po običaju (IAK-SN, VI, 286–7, 22. 12. 1437).

Naslednjega leta je bila pred kotorskim sodiščem potrjena in zapisana mirovna pogodba med prebivalci naselij Riđan, iz območja Hercegovine, ter med prebivalci naselij Risan, Morinje in Poljice, ki so ležala v Kotorskem zalivu. Omenjene stranke so že 7. januarja 1438 sklenile premirje oziroma mir po običaju in nato pred kotorskim providurjem in sodnikoma v marcu 1438 sklenile oziroma potrdile večni mir *(lat. »pacem perpetuam«*, srb. »*umir za vazda*«) (IAK-SN, VI, 450–452, 31. 3. 1438; Kovijanić, 1974, 185). Medtem ko v kotorskih notarskih knjigah pogosteje najdemo potrjevanje mirovnih

sporazumov, ki so bili sklenjeni po običaju, pa med ohranjenimi dokumenti iz območja Paštrovićev naletimo na dokumente pomiritve, ki so nastali neposredno po arbitraži in po nareku razsodnikov.

PRIMERI RAZSODB

V juniju leta 1585 so se v vinogradu pri Babinem Viru zbrali prebivalci območja Paštrovićev in prebivalci vasi Maine, med katerimi so bili sinovi Vučuća Radaljeva. Zbrali so se zaradi uboja (*zbog glave*) Raučićevega sina Stepca, ki so ga pripadniki Paštrovićev po nesreči in zaradi nekih žaljivih besed (*priće rati*) ubili pred Budvo. Vsaka stranka je izbrala 12 razsodnikov, ki so v dokumentu poimensko navedeni, ter so se razsojanja lotili z dovoljenjem in pooblastili (z vero) obeh strank. Nato so izbrani razsodniki (*vlastele*) poslušali obe stranki (*parte*) in naposled v božjem imenu in dokončno razsodili ter dosodili odškodnino za uboj, v višini 600 perper, ki jo je moral poravnati Dmitrić Radišev, ki je lastnoročno ubil Stepca, pri poravnavi odškodnine pa mu je moralo pomagati njegovo sorodstvo. Tretjina odškodnine je pripadla razsodnikom,[27] ki so poleg odškodnine določili sklenitev 24 botrstev, kot je narekoval običaj (*zakon*), na pobudo Mainjanov pa je bilo število botrstev povečano na 40. Roki za sklenitev botrstev pa so bili postavljeni ob dnevu sv. Tomaža (*o Tominu danu*) in ob božiču, ki sta bila tudi dneva za poravnavo obrokov odškodnin. Prvi obrok je znašal 10 perper, vsak naslednji letni obrok pa 25 perper. V drugi točki so razsodniki za rano Nikca iz območja Maine določili odškodnino 40 perper. Razsodbo sta podala dva predstavnika razsodnikov, Rado Markov in Đurica Mehtov, ter jo narekovala pisarju, Stepanu Nikandroviću (Božić, Pavićević, Sindik, 1959, 7–8).

Da so bile nove družinske vezi res ključnega pomena pri utrjevanju miru, dokazuje tudi to, da so bile del razsodbe tudi takrat, ko je bil s poravnavo izenačen krvni in gmotni dolg. Paštrovski razsodniki so 16. februarja 1632 poravnali uboj in maščevanje, kar pomeni, da nobena od strank ni bila dolžna poravnati nikakršne odškodnine, vendar pa sta na podlagi razsodbe morali skleniti poročno in krstno botrstvo (»*prebismo glavu za glavu i kamenom presudismo (t.j. da niko nikom ništa ne plati)* […] *i da drugi Ivaničin sin Niko kad se oženi, ima prizvati za kuma vjenčanoga Rada sina Radojeva i, prvo mu se dijete pomaši (rodi), drugo kumstvo.*«) (Jelić, 1926, 133–134).

Poleg tega so razsodniki določili še ostale podrobnosti v zvezi z običaji pomiritve, kot so pogostitev, ki jo je po običaju moralo pripraviti bratstvo *krvnika* za bratstvo *umirnika*, in darila za bratstvo umirnika (*bracko mito*[28]). Tudi v zapisu razsodbe med Paštrovići in

27 Paštrovski običaj je razsodnikom dopuščal, da so vzeli tretjino celotne vsote odškodnin (Božić, Pavićević, Sindik, 1959, 7–8, 154–155) za sodne stroške (*karate* – iz ita. *carato*, del ki pripada nekomu za opravljeno storitev (Bojović, Luketić, Šekularac, 1990, 214). Na območju Črne gore pa so v 19. stoletju sodni stroški variirali med 5 in 20 cekini (Bogišć, 1999, 374).

28 »Bracko mito« je vsota denarja, ki jo je običajno poravnala vas *krvnika* ob plačilu krvnine in je bilo namenjeno izključno najbližjim pripadnikom bratstva ubitega (Jelić, 1926, 140). Poleg tega je obstajalo tudi t. i. tajno mito, določena vsota denarja, običajno okrog 60 talirjev, ki se je pri posredovanju za umir skrivno plačala bratstvu ubitega, da je pristalo na pomiritev. Na podlagi tega »podkupovanja« je ostalo reklo »*Tajno mito bratsku krv pije*« (Jelić, 1926, 140).

Spičani iz leta 1784 je je bilo navedeno, da so razsodniki najprej poravnali tri smrtne žrtve na vsaki strani. Spičani so ubili enega paštrovskega otroka in so bili zaradi tega dolžni pripraviti pogostitev za tristo Paštrovićev ter Paštrovićem, poleg odškodnine v višini 120 dukatov, dati še poklone za pripadnike bratstva ubitega oziroma »*bracko mito po običaju zemlje*« ter skleniti z njimi 12 botrstev in 24 pobratimstev. Poleg tega so razsodniki poravnali vse medsebojne napade in ropanja med Paštrovići in Spičani, tako da za nastalo škodo ni bilo dosojene odškodnine. Ker pa je bil v spopadih nek paštrovski pastir ranjen v levo oko in je zaradi tega oslepel, so razsodniki določili odškodnino v višini 60 dukatov in plačilo stroškov zdravljenja, ki so po navedbah oškodovanca znašali 6 cekinov. Omenjeni spopadi so najverjetneje nastali zaradi spora glede meja med Paštrovići in Spičem, saj so razsodniki določili, da bo meja potekala tam, kjer določijo Paštrovići. Vsi dolgovi naj bi bili poravnani do naslednjega dne sv. Petra (*Petrovdana*), v mesecu juliju (Jelić, 1926, 117).

Običaj pomiritve je bil prisoten še v 19. stoletju, tudi po tem, ko je bilo Črni gori v času vladike Petra II. Petrovića Njegoša, v letu 1830 ustanovljeno Vrhovno sodišče (*Vrhovni sud / Senat*). V prvih desetletjih uvedbe državnih sodišč so razsojanja še potekala v skladu z običaji, predvsem zato, ker so bili sodniki Vrhovnega sodišča sprva glavarji črnogorskih plemen, ki so sodno funkcijo v svojih plemenih imeli po običaju (Andrijašević, Rastoder, 2006, 161–163). V razsodbi Vrhovnega sodišča iz novembra leta 1846 je zapisano, da so pred Senat prišli Grahovljani in Bjelice, zaradi ran, ki jih je Laketi Kostoviću prizadejal Sćepan Mitrov Vujačić. Po obravnavi so razsodniki določili krvnino v višini polovice »mrtve glave«, kar je pomeni polovico predvidene odškodnine za uboj, ki je po tedaj ustaljenem običaju na območju Črne gore znašala 60 cekinov. Poleg tega so člani Senata razsodili, da sprti stranki skleneta »*kumstva tri, a tri pobratimstva, i tako oprosti sudu i svojemu 60, talijera, a 60 talijera oprosti, i umirismo ih po ovoj setenciju bezpogovorno u vječni vijek amin*.« (Jelić, 1926, 131).

Odškodnine po običaju

Odškodnine so v 19. stoletju na območju Stare Črne gore in Črnogorskih Brd je v drugi polovici 19. stoletja še ni bila popolnoma ustaljena. V Katunski, Riješki, Crmniši in Lješanski nahiji je ponekod znašala 132 dukatov, 4 dvajsetice (*cvancike*) in eno paro, ponekod pa 133 cekinov in pol, groš in pol in paro in pol oziroma 133 cekinov in 2 groša. Med Bjelopavlići, Piperji, Bratonožići, Kuči in Rovcami, plemeni Morače in Vasojevićev je krvnina variirala med 200 in 300 talirji. Za vsako hujšo fizično poškodbo so običaji narekovali polovico celotne krvnine, kar je 66 cekinov in pol in en groš. Za nekatere manjše poškodbe je veljalo, da se je določila odškodnina v vrednosti od 20 do 50 talierjev (Bogišić, 1999, 367–368; Jelić, 1926, 89, 92). Na območju hercegovskih plemen znesek krvnine ni bil ustaljen, temveč je bil odvisen od presoje razsodnikov ter je na podlagi okoliščin variiral med 100 in 300 talierji. Krvnina je lahko znašala tudi več, če je ubiti za seboj pustil majhne otroke. Če je bil ubit pripadnik uglednega in številčno močnejšega bratstva, pa so razsodniki utegnili dosoditi tudi do 600 talierjev za krvnino. Pri odrejanju odškodnine za telesne poškodbe in rane so veljali enaki običaji kot na ob-

močju Črne gore (Bogišić, 1999, 367–368). Med albanskimi plemeni je običaj določal »ceno krvi«, ki je za moškega in dečka znašala 6 torb (turc. ćes). Ena torba je denarna enota, ki je predstavljala 500 grošev (KLD § 881; Vukčević, 2011, 170), kar pomeni, da je krvnina za moškega znašala 3000 grošev, praksa pa je dovoljevala tudi višjo krvnino, tudi 9 ali 12 torb (Jelić, 1926, 93). Odškodnina za uboj ženske je znašala »polovico krvi«, torej 3 torbe oziroma 1500 grošev. Polovica krvi je bila predvidena tudi kot odškodnina za prizadejano krvavo rano, ne glede na teže poškodbe, razen če niso razsodniki razsodili kako drugače (KLD §§ 935–937; Berishaj, 2004, 266; Bogišić, 1999, 367). Med albanskimi mirditskimi plemeni je bilo pri rani odvisno, na katerem delu telesa je bila rana povzročena. Če je bila od pasu navzgor, se je zanjo plačalo vsaj tri torbe (Jelić, 1926, 93). Če je bila rana od pasu navzdol se zanjo plačalo »četrtino krvi« oziroma ne več kot 750 grošev oziroma torbo in pol. Če je moški po poškodbi ostal doživljenjsko šepav, je bila odškodnina v praksi ustaljena na približno dveh tretjinah odškodnine za uboj. Stroške zdravljenja je moral plačati storilec, ti pa so najpogosteje variirali med 200 in 300 groši (Hasluck, 1954, 241; Jelić, 1926, 93).

Podatki o odškodninah so se za območje Črne gore v drugi polovici 19. stoletja ohranili predvsem zato, ker se je državna oblast razvijala postopoma in sistematično šele od časa vladike Petra II. Petrovića Njegoša (Andrijašević, Rastoder, 2006, 165). V času njegovega predhodnika pa je so se spori reševali po običaju, vendar je vladika imel moč, da je zaukazal pomiritev. Tak primer je zabeležen v kratki zgodbi *Umir* Sule Radova. Do pomiritve med bratstvom Bajice in Donjokranjci je prišlo s posredovanjem glavarjev tretjega bratstva in s pisnim ukazom vladike Petra I. Petroviča, ki jo je na zborovanju prebral Stanko Stijepov in dejal: »*Štirideset prvakov iz Katunske nahije, ljudi dobrega imena in dobre volje, se je zbralo, da vas pomirijo med seboj, da ocenijo, kdo in kako je začel s krvnim maščevanjem in kdo komu koliko dolguje. Glave, rane, plenjenja in požigi, da bi se od danes in za vedno ta zla prebila in pomirila.*« Jovo Gorčinov iz Bajic je rekel: »*Poglejte, bratje, kaj smo dočakali, da ne zmoremo niti sami sklicati zbora in nas morajo miriti druga bratsva, kar ni čudno, glede na to, da smo pretrgali bratske vezi.*« Razsodniki so ugotovili, da je bilo v medsebojnih spopadih ubitih 26 Bajic in 28 Dobrokrajcev, ran pa je bilo toliko, da bi se pri štetju utegnili ušteti. Zato je Sula Radov, ki je bil eden od razsodnikov, predlagal, da se po običaju prebije oziroma poravna glave, rane, plenjenja in požige in tista stran, ki je povzročila več škode, poravna razliko (»*otimačina za otimačinu, paljevina za paljevinu, i na koju stranu što pretegne, druga strana da se za razliku namiri*.«). En od razsodnikov je vprašal Sulo: »*Kaj pa bomo s solzami, žalitvami in drugimi nesrečami?*« Sula je odgovoril: »*Naredili bomo kot drugi, ko se mirijo, solze se bo obrisalo, žalitve se bo oprostilo in nesreče pozabilo!*« Nato so sprti odgovorili: »*Lahko je to reči! Prej nam bo bog oprostil, kot mi eni drugim!*« Sula je na to rekel: »*Res je! Pomiritev, ki jo izvajamo, je pomiritev krvi; pravo pomiritev ki bo zacelila rane in vaše nesreče, pa bo prinesel čas. Vendar se bo z vašo pomočjo namesto s puškami in sabljami, krstil z bratskimi rokami.*« Razsojanje je trajalo dva dni, tretji dan pa so razsodniki razglasili razsodbo, da so Donjokrajci in Bajice leta gospodovega 1830, en dan po dnevu sv. Elije poravnali šestindvajset glav Bajic in osemindvajset glav Donjokranjcev, za dve preostali glavi so Bajice plačali po 120 cekinov, znesek pa je bil namenjen materam samohranil-

kam in osirotelim otrokom. Sprti strani sta izjavili, da so vse rane in vsi napadi poravnani in da eni drugim ne bodo več prizadejali zla (Radov, 1997, 97–100).

Običaj pomiritve se je v praksi ohranil do konca 19. stoletja, kar priča naslednji primer, ki ga je zabeležil Pavel A. Rovinskij v letu 1890. V sporu med bratstvoma družin Zec in Bojkovići ki je trajal med letoma 1877 in 1890, se je na dan pomiritve, spomladi leta 1890, v vasi Višnjevo na območju bratstva Bojkovićev, zbralo štiriindvajset razsodnikov, ki so razsodili naslednje: da bo Jovo Bojković kot naslednik ubijalca (*rukostavnika*) plačal »*mito*« 30 cekinov (60 forintov) in celo krvnino v višini 133 cekinov, dveh grošev in pol pare. Poleg tega je moral Jovo Bojković pripraviti pogostitev za Jova Zeca in njegovo bratstvo tristotih ljudi. Jovo Bojković je moral poslati Zecu dva poslanca (iz izbranih *kmetov,* t. j. razsodnikov) z 12 botrstvi. V znak večnega miru in ljubezni sta morali obe strani dati ena drugi 12 velikih in 12 malih pobratimstev. Po starinskem običaju so morali Bojkovići izvršiti obred predaje *puške krvnice* (morilskega orožja) skupaj z vsemi formalnostmi pokore (oziroma poklona), za dan izvršbe je bil določen 27. avgust, leta 1890 (Rovinskij, 1994, 257–258).

ZAKLJUČNI OBIČAJI POMIRITVE – IZVRŠBA

Sklepanje botrstva

Pavel A. Rovinskij pa je kot eden izmed povabljenih na dogodek izvršbe pomiritve med bratstvom Bojkovići in bratstvom družine Zec podal svoj opis tega dogodka. Zapisal je, da se je na tisti vroč dan ob koncu avgusta 1890 v Grblju zbralo veliko ljudi in mednje se je postavilo 12 Bojkovićev, ki naj bi sklenilo 12 botrstev. Okrog sedmih zjutraj so se pojavile ženske z zibkami na glavah in pristopile k hiši Jova Zeca. Nakar je 12 moških iz Bojkovićev, ki so bili izbrani za botre pričelo z vzklikanjem pred hišo: »*Pomagaj Bog*« in »*Dobro jutro v botrovi hiši*« in »*Bog in sveti Janez*« pozdravljali dobro jutro: »*v imenu Boga in svetega Janeza, dobro jutro botru*«, dokler se niso naposled odprla vrata in so bili sprejeti v hišo, kjer so bili pogoščeni z vinom in žganjem.[29] Nato so *umirniku* predali dve s srebrom okovani pištoli (*ledenici*), zatem so v hišo vstopile ženske. V zibkah, pod glavo vsakega otroka je bil v papir zavit srebrn kovanec. Nato je prišlo do sklepanja botrstev, prvega je izvršil Jovo Zec, tako da je dvignil otroka in ga poljubil (Rovinskij, 1994, 258–259).

29 Po podatkih, ki jih je zbral Bogišić, je eden izmed članov bratstva *krvnika* vzkliknil »*Pomaga bog!*« in eden izmed članov bratstva *umirnika* odgovori »*Dobra vam sreča!*« Nato je eden izmed razsodnikov (kmetov), ki je bil izbran za govornika pohvalil obe bratstvi, ki sta se odločili pristati na pomiritev, ter poudari, kako je to koristno za skupnost ter zbrane strani blagoslovi. Nato prinesejo žganje in sprva tiho pogovarjanje dobi normalno tonaliteto (Bogišić, 1999, 371). Običaj je opisal tudi Ilija Jelić. Na podlagi običajev v črnogorskih plemenih Rovca in Vasojevići, so kmetje (razsodniki) prosili tako: »*Junaška hiša … nudi botrstvo junaški hiši …, sklepamo botrstvo med vami (orig. kumimo vas) pri Bogu in svetem Janezu, z zdravjem in napredkom vaših otrok, z goro in z vodo in z vsemi zemeljskimi dobrinami, podarite jim kri vašega brata … izstopite in sprejmite zibke in naj bo med vami mir, sloga in bratska ljubezen od danes za vedno!*«, nato so počakali, da je nekdo iz *umirnikove* družine izstopil in odgovoril: »*Hiša … sprejema Boga in svetega Janeza junaške hiše …; naprej!*« (Jelić, 1926, 102).

Sl. 1: Zaključno obredje pomiritve. Pristop bratstva krvnika k bratstvu umirnika. Botre z otroki, s katerimi bo sklenjeno botrstvo, med njimi krvnik z morilskim orožjem (nožem) okrog vratu na vseh štirih, za njimi predstavniki krvnikovega bratstva z darili in krvnino. (Pavel, Paja Jovanović: Umir krvi, 1889.; Galerija Matice srpske v Novem Sadu, fotografija Milan Rapaić, 2011, http://www.panoramio.com/photo/57094769)

Običaj, ki so ga izvedli člani obeh bratstev med seboj ni bilo dejansko botrstvo, temveč zaveza o botrstvu, saj se je obred botrstva sklepal v cerkvi ob krstu otrok oziroma pri prirezovanju las. Poljub je kot simbolna gesta pri tem obredu narekoval, da bodo izbrani pripadniki obeh bratstev ob primernem času postali krstni botri otrokom, bodisi tistim, ki so jih poljubili v samem običaju poklona bodisi onim, ki se bodo v bodoče rojevali v obeh bratstvih. V črnogorskih in albanskih običajih je obstajalo več oblik botrstva, drug naziv za botrstvo (srb. *kumstvo*) je tudi »Sveto Jovanstvo« (KLD §§ 705–734). Slednji izraz kaže na povezavo med priprošnjo, ki so jo bili posredniki izrekali pri prošnji za beso: »*Sprejmi boter botra pri Bogu in svetem Janezu*« (»*Primi kume kuma za boga i Svetoga Jovana*«). Pri tem je mišljen Sveti Janez Krstnik, ki je krstil Jezusa v njegovo novo zavezo. Milorad Medaković je naštel pet oblik botrstva in sicer poročno botrstvo (srb. *kumstvo vjenčano*), krstno botrstvo (srb. *kumstvo kršteno*), botrstvo pri prirezovanju las (srb. *šišano kumstvo*). Vsa tri omenjena botrstva so bila povezana s cerkvenim obredjem in zakramenti, med drugim se je v pravoslavni liturgiji v cerkvi izvajalo tudi obred prvega striženja las pri otroku. Pri teh obredih so bili prisotni botri. Vez, ki je pri tem

obredu sklenjena med botroma, je duhovna družinska vez, na podlagi katere so poroke med člani družin botrov prepovedane (Medaković, 1869, 61) oziroma incestne (Durham, 1909, 21–22).

Medaković omenja še botrstvo v stiski (srb. *kumstvo nevolje*), ki pravzaprav sovpada z običaji gostoljubja ter nudenja zaščite in spremstva ubijalcu na »*begu pred krvjo*« in je v albanskih običajih poznano tudi kot besa gosta oziroma v črnogorskih »sprejemanje pod streho« (*primanje pod krov*) (Medaković, 1860, 62–63, 67). Nenazadnje pa Milorad Medaković omenja še *kumstvo krvne osvete,* za katerega pravi, da se je s tem botrstvom »*mirilo mrtvo glavo*« in s tem botrstvom ostane *krvnik* za vedno varen (Medaković, 1860, 63). Pri tem je nedvomno referiral na gesto ponižnega poklona med *krvnikom* in *umirnikom*.

Poklon

Enega izmed najstarejših podatkov o poklonu ubijalca pred gospodarjem hiše ubitega je podal Alberto Fortis v delu *Viaggio in Dalmazia* (1774) (Fortis, 1984, 42). Po ohranjenih običajih iz območja, ki ga je raziskoval Valtazar Bogišić najdemo podatke o tem, da se je *krvnik* z razdalje petdesetih metrov po kolenih ali po vseh štirih, ob podpori dveh pripadnikov bratstva približal *umirniku*, ki je stal ob mizi za pogostitev. Tak običaj je značilen za hercegovska plemena, medtem ko je med albanskimi plemeni *krvnik* šel po kolenih, z rokama zvezanima na hrbtu in z nožem okrog vratu, nato pa prosil *umirnika*, da mu roke odveže in ga sprejme za botra. Po tem, ko je *krvnik* naredil dve tretjini poti, se je umirnik približal za preostalo tretjino. Krvnik je dejal *umirniku:* »*Sprejmi boter, botra pri bogu in Svetem Janezu*« ali s kakšno lepšo frazo, če jo je poznal. Zatem so vsi prisotni ponovili te besede v en glas. Ko sta bila *krvnik* in *umirnik* popolnoma en ob drugem, je *krvnik umirnika* poljubil na prsa, *umirnik* pa *krvnika* na glavo, nato sta se oba poljubila na lica in *umirnik* je dejal: »*Oprostim ga bogu in svetemu Janezu in tebi, krvniku!*« (Bogišić, 1999, 371–372).

Poklon Jova Bojkovića pred Jovom Zecem pa je Pavel A. Rovinskij, kot očividec oziroma priča, opisal takole: »*Sin morilca se je v samo enem delu spodnjega oblačila, bosonog in brez pokrivala plazil po vseh štirih. Na njegovem vratu je visela dolga puška na pasu* […]*; dva kmeta, tudi brez pokrival, sta podpirala puško na obeh koncih. Ko je to videl Zec, je takoj pritekel, da bi skrajšal ta grozovit, ponižujoč prizor. Stekel je do Bojkovića, da bi ga čimprej dvignil s tal, v tistem trenutku pa ga je Bojković poljubil na stopala, na prsi in na ramo. Pri jemanju puške z Bojkovićevega vratu je Zec rekel: »Najprej brat, nato krvnik, zatem brat za vedno. Je to puška, ki je vzela življenje mojega očeta?« In ne da bi počakal na odgovor, je izročil puško nazaj Bojkoviću in izrazil popolno odpuščanje preteklosti in oba sta se poljubila in objela kot brata.«* (Rovinskij, 1994, 259; Boehm, 1987, 136).

Kot vidimo se v celotnem sistemu reševanja spora in pomiritve ponavljajo podobne geste. Že v sistemu maščevanja samega se ponavljajo izmenjave napadov, pri čemer je vsak naslednji napad močnejši (Boehm, 1987, 54–55, 57–58). Enak sistem najdemo pri sistemu obdarovanja, kjer je dar, ki je vrnjen, večji od prejetega daru (Mauss, 1996, 83–84). V sistemu spora in v sistemu obdarovanja najdemo nujnost reciprocitete, ki je zapisana v običaju. Dar je potrebno vrniti in potrebno se je maščevati. V običaju poklona krvnika pred *umirnikom*, vidimo enak sistem pokornosti, kot je viden pri prošnji za beso, ponavljajo se podobne

simbolne fraze in geste kot so bile izrečene in izvedene pri prošnji za beso. Pri poklonu krvnik neposredno, v svojem imenu, prosi za botrstvo, za novo vez duhovnega sorodstva med njim in *umirnikom*. Pri samem poklonu se ponovi tudi poljub krvnika in *umirnika*, ki je bil s posredništvom ali brez njega izveden že pred razsodniki. Poljub pa se ponovi pri vsaki sklenitvi novega botrstva med bratstvom krvnika in bratstvom *umirnika*. Poljub je v srednjeveškem vazalskem obredju interpretiran kot darovanje samo, hkrati pa je v pravni luči oblika prisege in zaveze (Le Goff, 1985, 385–386). Ponavljanje enakih gest kot je poljub, pa le dodatno utrjuje predhodno sklenjen ustni dogovor o miru in ga vsakič znova osveži, sam običaj pa se s ponavljanjem enakih gest vsakič znova konstituira (Althoff, 2002, 72).

Plačilo krvnine

Po poklonu krvnika je po običaju sledil skupen obed, pogostitev, ki jo je za bratstvo *umirnika* pripravilo bratstvo krvnika (Bogišić, 1999, 369, 371). Pred zaužitjem skupnega obeda pa je po običaju prišlo do poravnave krvnine. Medtem, ko je bila lahko na območju Črnogorskega primorja poravnana v denarju, je bila na območju, kjer so nastali zapisi ohranjenih običajev poravnana v dobrinah. Gre predvsem za dragocene predmete kot je bilo okrašeno orožje, predvsem s srebrom okovane pištole, puške, noži in okrašene nožnice ter drugi vredni predmeti. Vrednost posameznih predmetov so ocenili glavarji bratstva, ki so predmetom običajno dodelili višjo vrednost, kot so jo predmeti dejansko imeli, tako, da bi krvnik plačal čim manj. Obstajala je tudi navada, da so *umirniki* krvnino, najsi bo v dobrinah ali denarju pogosto vrnili krvnikom, zavoljo njihovega novega sorodstvenega odnosa (Bogišić, 1999, 372–373).

Lahko pa je bil del krvnega dolga odpisan. Ko je v februarju 1705 štiriindvajset izbranih razsodnikov podalo razsodbo o uboju Stjepca Belaka in rane Nikca Laškovića. Za uboj so določili odškodnino v višini 9 krvi za rano pa 3 krvi. Ena kri je bila odškodninska enota, ki je po paštrovskih običajih znašala 60 grošev (Božić, Pavićević, Sindik, 1959, 154–155). Uboj in rano so razsodniki poravnali in za svojo storitev vzeli tretjino, tako da so Laškovići ostali dolžni Belakom štiri krvi (240 grošev), tri pobratimstva in devet botrstev. Določili so še roke plačila obrokov prvi obrok v višini ene krvi (60 grošev) ob prvem Gospodovem dnevu, nato pa vsako leto po pol krvi (30 grošev), dokler odškodnine ne poravnajo. Konec novembra 1707 so sinovi Stjepca Belaka potrdili izplačilo dveh preostalih krvi (120 grošev), eno kri (60 grošev) pa so sinovom Marka Laškovića oprostili. Leta 1712 je Nikac Bjelak izjavil, da so vsi dolgovi med obema strankama poravnani (Božić, Pavićević, Sindik, 1959, 96–98). Slednje bi pomenilo, da so bila tudi dokončno sklenjena vsa botrstva in pobratimstva.

Pogostitev in drugi običaji

Tudi pogostitev je bila eden izmed splošnih običajev pomiritve (Petkov, 2003, 9).[30] V okviru običaja pogostitve (srb. *krvna trpeza* (krvna pogostitev), *krvni sto* (krvna miza),

30 Običaji pogostitve in obedovanja so bili zabeleženi tudi v reševanju sporov med istrskimi mesti v srednjem veku (prim. Mihelič, 2015, 317–319).

hljeb krvne osvete, krvni leb / hljeb / kruh, iz alb. izraza »*büke i gjakut*« (krvni kruh) sta bratstvi *krvnika* in *umirnika* obedovali skupaj (KLD § 982). Šele po zaužitju krvnega kruha je v albanskih običajih prišlo do sklepanja pobratenja. Izvedeno je bilo tako, da se je bodočima pobratimoma povezalo mezinca na roki z nitjo in prebodlo prsta, vsak pa je kanil po nekaj kaplic krvi v čašo z vodo, vinom ali žganjem. Pobratima sta nato v treh požirkih s prepletenimi rokami izpila raztopljeno kri drugega (Jelić, 1926, 108–110; KLD§§ 988–990). Kri je telesna tekočina, ki je po običajih primarnih plemenskih skupnosti povezana tako s čistim kot z nečistim. Kri ubitega je bila smatrana kot nečista in je kontaminirala ubijalca, tako da je moral skozi proces očiščevanja, ki je utegnil vsebovati žrtvovanje živali in puščanje lastne krvi. Čista kri pa je bila prelita z namenskim urezom in z dobrim namenom, kot je bila pri sklepanju pobratimstev (prim. Evans-Pritchard; 1993, 181; Cazeneuve, 1986, 78–79). Čeprav je po nekaterih običajih primarnih skupnosti porodna kri smatrana kot nečisto (Cazeneuve, 1986, 78), kljub vsemu prinaša novo rojstvo. »*Kri je življenje, se reče po svetopisemsko*.« Kristusova kri, pomešana z dežjem, se je po nekaterih mističnih interpretacijah nabirala v Gralu in je prestavljala napitek nesmrtnosti, ki se v običaju pobratenja pomeša z vinom, pijačo spoznanja. Vino v mašnem obredju simbolično popolnoma zamenjalo kristusovo kri, ki jo mašnik pije v imenu človeštva in s tem postavlja novo zavezo z Bogom[31] (Chevalier, Gheerbrant, 1995, 267, 484; Schmitt, 2000, 384). Zatorej bi lahko rekli, da sta sprta z novo zavezo stopila v novo življenje, enako pa družinske vezi med njima predstavljajo up novemu rojstvu in novemu zarodu, ki ga bosta kot botra varovala in obenem varovala njun mir.

Zadnje simbolno dejanje pomiritve je bilo med Albanci zarisovanje ali vsekavanje križa na podboju vhodnih vrat hiše nekdanjega krvnika (Jelić, 1926, 110; KLD §§ 983–987). »*All houses are marked with many crosses*«, je zapisala Mary E. Durham pri opisu hiš v vasi Vraka v albanskem visokogorju (Durham, 1909, 17), kar ponazarja, da je bil običaj vsekavanja križa pogost. V duhu krščanske tradicije je križ simboliziral odvezo od greha (Schmitt, 2000, 357). Vsak grešnik z odvezo greha ponovno vzpostavi novo zavezo z Bogom. Praktično je bil križ jasen in viden simbol, ki ga razumejo vsi člani skupnosti in je sporočal, da je bil mir sklenjen in krvni dolg poravnan oziroma oproščen. V obredih so simboli, znaki in znamenja igrali pomembno vlogo. V zahodnoevropski tradiciji je bil sklenjeni mir garantiran bodisi pisno, v obliki pogodbe, bodisi s simbolnim predmetom (Petkov, 2003, 87) ali pa s kombinacijo obojega.

31 Ta del mašnega obredja je simbolični spomin na zadnjo večerjo, ki so apostoli in Odrešenik izvedli na predvečer sojenja in križanja in morda bi utegnilo sugerirati, da so med seboj sklenili večno zavezo o bratstvu ter so se morda na podoben način, s pitjem krvi, pobratili med seboj ter so zategadelj vsi krščanski verniki med seboj bratje in sestre. Podobna simbolika zaveze in krvi je bila pred uveljavitvijo krščanstva prisotna tudi v krvnih prisegah v antiki, ki so jo med drugim poznale druge kulture, kjer kri simbolizira spočetje in rojstvo (Chevalier, Gheerbrant, 1995, 267).

RECONCILIATION IN THE CUSTOM OF BLOOD REVENGE. MEDIATION, ARBITRATION AND THE RITUALS OF »NEW TESTAMENT« BETWEEN THE FEUDING PARTIES IN THE MONTENEGRIN AND THE ALBANIAN CUSTOMS

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SUMMARY

Blood revenge is a system of social control that regulates violence and leads towards reestablishment of social equilibrium through dispute resolution. The custom of blood revenge and peace-making within patriarchal egalitarian communities of Montenegro, Northern Albania as well as some other neighbouring areas was preserved in praxis at least until the end of the 19th century, the oral tradition regarding the customs, however, even longer. The tribal leaders who were the mediators and the arbiters in dispute resolution held the key role in dispute resolution in patriarchal egalitarian communities. With mediation of the leaders of the tribal communities the truce (besa) between the feuding parties was reached, that enabled the parties to enter the arbitration, where the assembly of arbiters deliberated on the sum of the composition and the number of the new family bonds between the parties; marriages and / or godfatherhoods and brotherhoods. The concluding symbolic gesture of peace is the kiss of peace between the parties. The peace-making consists of three phases and all phases include symbolic words, gestures and objects that indicate similar ritual structure as it was present in public contractual agreements in the Medieval Europe. The similarities indicate common origins of some European legal traditions.

Key words: blood revenge, peace, dispute resolution, mediation, arbitration, Montenegro, Albania

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LJUDOŽEREC PRED POROTNIM SODIŠČEM. RAZVPITA ZADEVA BRATUŠA Z ZAČETKA 20. STOLETJA

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IZVLEČEK

Razprava obravnava nezaslišano zadevo ljudožerstva na Spodnjem Štajerskem iz leta 1901. Viničar Franc Bratuša je priznal, da je zadavil svojo hči Ivano, nato pa s pomočjo žene Marije razkosal njeno truplo in ga sežgal v peči. S stegna naj bi si odrezal kos mesa, ga spekel in pojedel. Porotno sodišče ga je obsodilo na smrt, njegovo ženo pa na tri leta težke ječe. Avgusta 1901 je cesar Bratušo pomilostil in najvišje sodišče ga je obsodilo na dosmrtno ječo. Kriminalna zadeva je leta 1903 doživela senzacionalni preobrat, saj so v Novem mestu prijeli tatico, za katero se je izkazalo, da je Bratuševa hči. Nastal je pravi pravosodni škandal, saj se je izkazalo, da so zakonca zaradi umora in fantastičnega priznanja o zaužitju hčerinega mesa, po nedolžnem obsodili. Poleg sodne zmote bi lahko leta 1901 prišlo tudi do justičnega umora. Bratušo so izvedenci takrat razglasili za duševno normalnega, leta 1903 pa so ga izvedenci specialisti – torej psihiatri razglasili za neprištevnega, češ, da je trajno duševno moten in da si je vse namislil v svojih blodnjah, tudi zaradi prebranih knjig o ljudožercih. Zadeva Bratuša je torej, zlasti zaradi domnevnega ljudožerstva, vzbujala živahno pozornost, spodnještajerski Nemci in Slovenci pa so jo v okviru mednacionalnih napetosti ves čas izkoriščali tudi za medsebojna obračunavanja.

Ključne besede: kriminalna zadeva Bratuša, umor, ljudožerstvo, sodna zmota, prištevnost

UN CANNIBALE DI FRONTE ALLA CORTE D'ASSISE. IL FAMIGERATO CASO BRATUŠA AGLI INIZI DEL SECOLO XX

SINTESI

Il saggio tratta il sensazionale caso di cannibalismo svoltosi nella Bassa Stiria nel 1901. Il bracciante vinicolo Franc Bratuša confessò di aver strangolato e, con l'aiuto della moglie Marija, smembrato la figlia Ivana e di averla in seguito bruciata in una stufa. Bratuša avrebbe, secondo il suo racconto, anche tagliato un pezzo di carne dalla coscia della ragazza per poi cuocerlo e mangiarlo. La corte d'assise lo condanno a morte, la moglie invece ricevette la pena di tre anni di duro carcere. Nell'agosto del 1901 Bratuša venne amnistiato dall'imperatore e la corte suprema gli aggiudicò l'ergastolo. Il caso criminale subì una svolta sensazionale nel 1903 grazie all'arresto di una ladra a

Novo mesto la quale risultò essere la figlia di Bratuša. Ciò che seguì fu un vero e proprio scandalo giudiziario. Divenne, in effetti, chiaro che i due coniugi, nonostante la loro fantasiosa confessione di aver assassinato e consumato la carne della figlia, furono condannati ingiustamente. Accanto all'errore giudiziario, nel 1901 sarebbe potuto accadere anche un omicidio giudiziale. Nel 1901 Bratuša fu, infatti, dichiarato mentalmente sano dagli esperti di allora, mentre nel 1903 gli esperti specializzati – cioè gli psichiatri – lo dichiararono incapace di intendere e di volere, aggiungendo che nel suo caso si sarebbe trattato di una persona perennemente squilibrata e affetta da turbe. L'intera storia sarebbe, infatti, nata nell'immaginazione di Bratuša, stimolato dalla lettura di alcuni libri sui cannibali. Il caso Bratuša creò grande irrequietudine ed eccitazione, soprattutto a causa del presunto cannibalismo, e divenne persino un'arma nei conflitti transnazionali tra i tedeschi e gli sloveni della Bassa Stiria.

Parole chiave: caso criminale Bratuša, assassinio, cannibalismo, errore giudiziario, capacità di intendere e di volere

Bralci časopisov v habsburški monarhiji so se leta 1901 ob udarni novici o nezaslišani zadevi ljudožerstva na Spodnjem Štajerskem zgražali, kako sta mogla oče in mati tako podivjati, da sta hladnokrvno sklenila, da bosta razkosala in v peči sežgala truplo hčere, sestradani oče, ki naj bi hči zadavil, »pa naj bi si ob tem s stegna odrezal kos mesa, ga spekel in pojedel« (Marburger Zeitung, 11. 6. 1901, 3). Za takratne civilizirane Evropejce je bilo namreč ljudožerstvo nekaj nezaslišanega in strahotnega, (Samec, 1876, 144) skratka, lastnost Drugega. Sramotno antropofagijo naj bi prakticirala samo še necivilizirana divja ljudstva oddaljenih izvenevropskih kontinentov.[1]

In ravno zato je zgodba o evropskem kanibalu burila duhove. Nič čudnega tudi ni, da so njena atraktivnost, senzacionalnost in izjemnost vzpodbudile mariborskega javnega tožilca Augusta Nemanitscha, da je še istega leta o zadevi poročal v Grossovi reviji *Archiv für Kriminal-Anthropologie und Kriminalistik*, torej v enem izmed vodilnih glasil takratne kriminologije (Nemanitsch, 1901).

Glavna akterja ljudožerske zgodbe, »brezvestna in pozverinjena zakonca« Franc in Marija Bratuša, (Marburger Zeitung, 11. 6. 1901, 3) siromašna viničarja iz Preše pri Majšperku v okraju Ptuj, sta imela tri otroke, s katerimi sta nadvse okrutno ravnala. Zaradi revščine in pomanjkanja so bili nezaželeni in pogosto lačni. Najstarejša hči Ivana (Hanika), rojena 24. maja 1888, je na velikonočni ponedeljek, 16. aprila 1900, nesrečno zakurila v

1 Etnolog Ewald Volhard je npr. v svojem odmevnem delu objavil tudi 20 zemljevidov, na katerih so zastopani vsi poznani ljudožerci vseh kontinentov na zemlji – razen Evrope. Glej: Volhard, 1939. Glej tudi: Röckelein, 1996, 9.

votlem kostanju sosednje viničarke Marije Mencinger in s tem požarno ogrozila tako hišo sosede kot kajžo svojih staršev. Ker se je prestrašila morebitne kazni, je zbežala od doma in se ni več vrnila.

Oče Franc je 26. aprila 1900 pristojnemu žandarmerijskemu stražmojstru Alojzu Leskovarju na Ptujski gori prijavil, da je njegova hči izginila. Ker tudi Leskovar ni mogel izvedeti, kje se deklica potepa, je 20. maja 1900 prijavil njeno izginotje ptujskemu okrajnemu glavarstvu, ki je objavilo naznanilo z opisom izginulega otroka v uradnem listu (Marburger Zeitung, 11. 6. 1901, 3; Nemanitsch, 1901, 304).

Oblast se nato celo leto ni več zanimala za zadevo. Dejavnejši pa je bil oče. Potem ko ga je sosed opozoril na časopisno notico, da so junija 1900 v samotni viničarski kajži pri Šentilju našli truplo okrog 12 let stare deklice in jo po izvedeni obdukciji pokopali, se je s pismom obrnil na tamkajšnjega župnika in se septembra 1900 sam odpravil v Šentilj. Tu so mu opisali deklico, ki so jo našli mrtvo. Bratuša je nato izjavil, da gre nedvomno za Haniko, od tamkajšnjega grobarja pa je vzel tudi obleko, češ da je last njegove hčere. Tamkajšnji orožniki so zabeležili, da je oče prepoznal truplo hčere in da je domov odnesel njeno obleko (Golec, 1935, 3). Po vrnitvi domov je ovadil tudi sosedo Marijo Mencinger, češ, da je grozila njegovi hčeri, ki je zato pobegnila od doma in nesrečno končala pri Šentilju (Nemanitsch, 1901, 305).

Zadeva pa se je naslednje leto zagonetno zapletla. Marca 1901 je vodja žandarmerijske postaje v Sv. Trojici pri Lenartu Anton Šeško izvedel, da je neznano kam v sumljivih okoliščinah izginila desetletna Alojzija Vesenjak, nezakonska hči viničarke Terezije Holc, rojene Vesenjak. Šeško je začel s poizvedbami. Terezija je podala številne nasprotujoče si izjave in se z njimi vse bolj zapletala, tako da je nazadnje Šešku priznala, da je hči Alojzijo junija 1900 odvedla od doma v gozd grajske viničarije pri Šentilju, kjer je nekaj časa blodila, nato pa od lakote umrla. Terezijo so obtožili, da je svojega otroka zadavila. Vodja žandarmerijske postaje Šeško je izvedel, da je najdeno truplo kot svojo hči prepoznal Franc Bratuša in da je s seboj vzel tudi njeno obleko. To je sporočil tudi žandarmerijskemu stražmojstru Alojzu Leskovarju na Ptujski gori in od njega zahteval, da Bratuši obleko odvzame. Leskovar se je takoj odpravil k Bratuši, mu odvzel obleko in jo poslal na okrajno sodišče Lenart, kjer je bila zaradi preiskave tudi Terezija Holc.

Potem ko je Franc Bratuša dobil poziv, da se kot priča 16. aprila 1901 zglasi na okrožnem sodišču v Mariboru, kjer naj bi podal informacije o svoji izginuli hčeri, se je 14. aprila podal na žandarmerijsko postajo na Ptujski gori ter stražmojstra Leskovarja »razburjeno, toda presenetljivo prijazno povprašal, če se mora neogibno pojaviti kot priča. Ko so ga podučili, da mora biti brezpogojno poslušen, pa je odšel z besedami: 'Hvala Bogu, da se mi v tej zadevi nič ne more zgoditi.'« (Marburger Zeitung, 11. 6. 1901, 3).

Takšno vedenje se je Leskovarju zdelo zelo sumljivo. Ker je Franc Bratuša barbarsko pretepal svoje otroke in z njimi sploh grdo ravnal, se je tudi med ljudmi šušljalo, da naj bi imel Haniko na vesti (Golec, 1935, 4).[2] Leskovar je zato sklenil, da bo Bratušo »ostro

2 Pod drobnogled socialne kontrole je poleg moža zašla tudi njegova žena Marija Bratuša, ki »se je sprla s svojo sosedo in okrožnemu sodišču na Ptuju ovadila, da ji je ta očitala, da naj bi svojo hči umorila« (Marburger Zeitung, 27. 4. 1901, 3).

prijel«. Pri zaslišanju Bratuše v zvezi z obleko izginulega otroka so se pojavile številne pomenljive izjave, zato se je odločil za hišno preiskavo. Pri tem je našel v zaboju jopič, gornje krilo in dve beli spodnji krili pogrešane deklice, na njih pa je opazil krvave madeže. Franc Bratuša je bil ob tem tako prestrašen, da je izrekel priznanje,[3] ki ga je kasneje takole ponovil preiskovalnemu sodniku:

Moja hči Ivana Bratuša je na Velikonočni ponedeljek 1900 zbežala od doma, ker je v luknji kostanja zanetila ogenj, ki je skorajda zajel hišo Marije Mencinger, ki ji je zato grozila, da jo bo grdo pretepla. V bližnji okolici sem sicer poizvedoval, kje naj bi se zadrževala, a nisem zvedel ničesar. Nekaj dni pred sv. Pankracijem (12. maja 1900) sem šel v gozd mojega delodajalca Jakoba Predikake, da bi nabral dračja. Kakih dvesto korakov stran od moje kajže sem naletel na mojo hči Ivano, ki je bila povsem shujšana in sestradana in je vsa slabotna ležala na tleh, od sebe pa ni dala niti glasu. Kljub temu sem takoj opazil, da je še vedno živa, zaradi česar sem jo postavil na noge, klical na pomoč in hotel z njo govoriti. A ona je samo povsem potihoma nekaj šepetala, tako da je nisem mogel razumeti. Ker ni mogla stati na nogah, se je zgrudila na tla. Potem sem jo z obema rokama zgrabil za vrat in kakšne 4 minute stiskal njeno grlo in jo zadavil. Ni se branila in ko sem umaknil roke z njenega vratu, ni več dihala. Že dolgo sem bil hud na svojega otroka, ker se ni vrnila domov in ker sem si mislil, da naj bi bila tako ali tako odveč na svetu, da je doma ne rabim in da bi zanjo moral plačati stroške zdravljenja, zato sem jo pač umoril. Vse to se je primerilo ob 3. ali 4. uri popoldan. Nato sem truplo odvlekel v bližnjo luknjo in ga prekril s prstjo in listjem. Tu sem jo skril zato, ker sem moral premisliti, kako bi jo lahko najbolje in najhitreje brez sledu spravil s sveta. Končno sem se odločil, da bi bilo najbolje, da počakam do večera, jo potem odnesem domov in sežgem. Ko je ura odbila 7 zvečer, je prišla domov z dela tudi moja žena Marija Bratuša. Povedal sem ji vse, kaj sem storil in zato je bila malo razžaloščena, a me ni oštevala, ker je bilo tudi njej ljubše, da je bila deklica mrtva. Potem sem odkopal skrito truplo in ga odnesel domov. Položil sem ga pred peč, v kateri je gorel ogenj. Mrtvo telesce sem povsem slekel, vzel v roke naš krušni nož in ga razkosal na pet delov. Rezal sem jaz, moja žena pa je stala zraven in pomagala držati posamezne dele telesa. Najprej sem odrezal glavo, ker pa je nož razparal samo mesene dele, sem vzel majhno sekiro in z njo presekal hrbtenico. Potem sem odsekal obe nogi pri kolenih in rezal trup od zgoraj navzdol. Pri tem početju mi je pomagala tudi moja žena. Potem sem vseh pet delov enega za drugim vrgel v plamene in neprestano prilagal drva na ogenj. 'To je trajalo do treh zjutraj, nakar sva oba odšla k počitku. Od celega telesa so v peči preostali samo delčki kosti, ki sem jih vrgel na kup komposta.' (Marburger Zeitung, 11. 6. 1901, 3).

3 O priznanju nečloveškega umora žandarmerijskemu stražmojstru Alojzu Leskovarju v prisotnosti trgovca Straschine in majšperškega župana glej: Marburger Zeitung, 27. 4. 1901. Za nadaljnje razumevanje zadeve je pomembno, da je Bratuša že aprila zvalil sokrivdo na ženo Marijo in jo prepričeval, da naj vendarle prizna, ker ju bo s tem doletela milejša kazen. Glej tudi: Slovenski gospodar, 25. 4. 1901; Slovenec, 26. 4. 1901; Pettauer Zeitung, 28. 4. 1901, itd.

Na enem kasnejših zaslišanj je Bratuša povedal, »da je na začetku maja 1900 sanjal, da je svojega pogrešanega otroka našel v slamnati koči in da naj bi bil ta popolnoma črn v obraz, Vprašal ga je, od kod to izvira in isti odvrne: 'Skrb'. Te sanje naj bi izpovedal tudi svoji ženi in ji rekel, da bi svojo hči, če bi dejansko naletel nanjo v takšnem stanju, umoril in sežgal in da bi se njegova žena s tem strinjala.« (Marburger Zeitung, 11. 6. 1901, 3)

Franc Bratuša je 8. maja 1901 prostovoljno stopil pred preiskovalnega sodnika in dal na zapisnik naslednjo izjavo: »Sedaj bi želel omeniti še zadnjo okoliščino, zavoljo katere sem se doslej sramoval. Ko sva sežigala telo Ivane, sva imela doma za naslednji dan komajda kaj za pod zob. Ko sem videl, kako se peče meso v peči, sem se spomnil, kako sem v svoji mladosti v različnih knjigah prebiral, da Indijanci in drugi divjaki jedo človeško meso in da od tega ne umrejo. Tako se mi je zahotelo, da bi jedel meso, ki se je peklo v peči. Vzel sem lončen krožnik in si odrezal nekaj koščkov od stegna, jih položil na krožnik in jih dal peči v peč. Potem sem jih pojedel. Doslej sem o tem molčal, ker sem se svojega dejanja sramoval pred svojo ženo, čeprav je gotovo opazila, kaj sem storil. Seveda je nisem pozval, da se mi pridruži, kot tudi nisem videl, da bi jedla človeško meso.« (Marburger Zeitung, 11. 6. 1901, 3) Bratuša je čez dva dni svoje priznanje preklical, naslednji dan, torej 11. maja 1901 pa ponovno priznal, da je jedel človeško meso in pojasnil, da ga je dan prej preklical samo zaradi hudega sramu.

Bratuša naj bi bil tudi nadvse jeznorit in nasilen. Seveda naj bi tudi to razložilo motiv za umor. Svoje otroke je namreč neusmiljeno pretepal. Trgovec Straschina je na sodni obravnavi npr. povedal, »da naj bi mali Franc nekoč prišel s povsem odrgnjenim obrazom v njegovo trgovino in da naj bi mu povedal, da ga je tako s kamnom obdelal njegov oče, ker naj bi izgubil njegov klobuk. Ko je priča ob neki priložnosti srečala Bratušo, naj bi mu očitala, da bi s takšnim ravnanjem fanta zlahka tudi ubil. Potem bi pač crknil, naj bi mu zabrusil Bratuša.« (Marburger Zeitung, 13. 6. 1901, 3)

Pravilnost priznanj Bratuše naj bi pokazala tudi sama preiskava. Ob pregledovanju hiše in ponovnem kopanju okoli nje niso našli niti najmanjše sledi trupla in to naj bi bil za preiskovalnega sodnika dokaz, da se je Bratuša znebil trupla tako kot je povedal. Tudi desetletni sin naj bi na zaslišanju potrdil, »da se je v kritičnem času neke noči v peči tako intenzivno kurilo, da je moral tisto noč zaradi vročine zapustiti svoje ležišče na peči.« (Marburger Zeitung, 11. 6. 1901, 4)

Obtoženega je tožilec prikazal kot skrajno inteligentnega človeka in to naj bi dokazal tudi s svojo zvitostjo, s katero naj bi izkoristil najdbo trupla pri Šentilju. Reporter *Marburger Zeitunga* pa je še posebej izpostavil indice, ki so se nanašali na zaužitje mesa lastnega otroka. Preiskovalni sodnik je namreč pri hišni preiskavi našel tudi knjigo *Avstralija in nje otoki*, ki na nekaj mestih vsebuje tudi opise ljudožerstva.[4] V njej naj bi

4 Popularno delo Ivana Vrhovca *Avstralija in nje otoki* je izšlo leta 1899 v Celovcu. Avtor knjige dejansko piše o grozovitih kanibalih v Avstraliji in pravi, da nekateri Avstralci »po človeškem mesu kar koprne ter ne zamudijo nobene ugodne prilike, da si ga privoščijo. Matere používajo celo svoje otroke ter se smejejo pri tem. Zdi se jim to popolnoma v redu in ne prikrivajo Evropcem te stvari kar nič. Izbirljivi pri človeškem mesu Avstralci niso kar nič ter jedo oboje, svoje rojake divjake ravno s tako slastjo kakor Evropce; in tudi zato se ne brigajo, so li človeka sami ubili, ali je umrl za kako boleznijo …« (Vrhovec, 1899, 48–49) Vrhovec dalje poroča denimo še o »najgrših divjakih in ljudožercih« na otokih Fidži, ki naj bi nekoč pobili, spekli in požrli vsakega tujca, ki je stopil na njihova tla (Vrhovec, 1899, 184).

Sl. 1: Franc Bratuša je navdih za fantastično priznanje o zaužitju človeškega mesa črpal tudi iz Vrhovčevega dela Avstralija in nje otoki (1899)

Franc Bratuša med drugim prebral, kako starši divjakov ravnajo s svojimi otroki, na rob pa naj bi celo napisal »izginula Ivana Bratuša«. Prebiranje knjige naj bi nanj domnevno kvarno vplivalo in mu dalo navdih za grozno dejanje.

O zakonski ženi Mariji Bratuša je poročevalec zapisal, da naj bi žandarjem priznala, da je sodelovala pri razkosanju in sežigu trupla, potem pa je na sodišču to najprej zanikala, 7. maja pa se je dala prostovoljno privesti pred preiskovalnega sodnika in ponovila priznanje, da naj bi se z možem dogovorila, da mora hči, če jo najde, umoriti. Končno pa je ponovno zanikala vse, kar je priznala, a ta preklic priznanja naj bi bil brez pomena. Manjkal naj bi pač katerikoli razlog, da bi Franc Bratuša neupravičeno obremenil svojo ženo, saj je sama izrazila svojo zakrknjenost. Namreč, ko so žandarji aretirali njenega moža, je Mihaela Mohorka vprašala, zakaj so ga aretirali, nakar je odvrnila: »Pač ma noro pamet, pa je obstal [priznal, op. a.], jaz pa ne obstanem, če oni tu glavo proč odrežejo, saj nikdo ni videl.« (Marburger Zeitung, 11. 6. 1901, 4)

Z ozirom na malo kajžo, v kateri sta stanovala obtoženca, naj bi po mnenju preiskovalnega sodnika bilo tudi povsem nemogoče, da bi Franc brez vednosti svoje žene sežgal svojega otroka. Porajal se je celo sum, da žena kot mati ni sodelovala samo pri grozljivem razkosanju in sežigu lastnega otroka, temveč da je pomagala tudi pri umoru nadležnega otroka. K temu naj bi pritrjevalo tudi to, da je po kritični noči svojemu sinu zabičala, da naj, če ga vprašajo, kaj se je takrat dogajalo, pove, da se je pekel kruh. Poleg tega je potem, ko je mož iz Šentilja prinesel domov obleko, tudi ona trdila, da je obleka hčerina (Marburger Zeitung, 11. 6. 1901, 4).

Poročevalec je zapisal, da so za glavno porotno obravnavo izdali posebne karte in da je bil avditorij zato malce manj zaseden, a v majhni dvorani je bilo kljub temu čutiti »pasjo vročino«. Sodišču je predsedoval deželni sodni svetnik Fohn, prisednika sta bila deželni sodni svetnik Voušek in sodni sekretar Kermek, javni tožilec je bil dr. Nemanitsch, Franca Bratušo je branil dr. Haas, njegovo ženo pa dr. Pipuš. Reporter je obtoženca tudi opisal: »Franc Bratuša ima precej pravilen, koščen obraz, prednja stran glave je skorajda brez las, ohlapno viseči brki dajejo obrazu neprizadet izraz. […] Hitro, toda brez kakršnekoli ganjenosti je pripovedoval, kako je zadavil svojo hčer, jo razkosal in jedel njeno meso, pri tem pa ni trznila nobena mišica, nič ni izdajalo notranjo razburjenost. Drugačna je njegova žena. Ta se je hudo borila in zatrjevala, da je nedolžna, čeprav naj bi že vse priznala.« Dodal je še, da je bil edino mali Franc Bratuša deležen splošnega sočutja, ker je nastopil kot priča proti staršem (Marburger Zeitung, 11. 6. 1901, 4).

Tekom obravnave je sodnik Bratušo pozval, da še enkrat pove vso zgodbo. Ta se je skoraj popolnoma ujemala z obtožnico. Zakonca Bratuša sta sicer živela v slogi, a zaslišanje žene na sodišču je bilo večkrat naravnost dramatično, saj ji je mož kar nekajkrat povedal v obraz, kaj sploh taji. Marija je še enkrat poudarila, da ni kriva. Da ni bila zraven pri razkosanju, da ni držala trupla, da ga ni rezala, da ga ni kurila in da pri vsej zadevi sploh ni bila zraven, čeprav je pred preiskovalnim sodnikom izrekla priznanje. Svojemu možu je zabrusila, da je nor, če vse skupaj prizna, in da ona ne misli priznati nekaj, kar ni nihče videl, pa če ji odtrgajo glavo. Na očitek predsedujočega, da je vendarle vse priznala, je odvrnila, da vse to ni bilo res, tudi to ne, da se je strinjala s tem, kar ji je mož povedal o svojih sanjah in s tem, da ji je rekel, da bo Ivano umoril, če bo še kdaj naletel nanjo.

Marija je torej tudi ob neposrednem soočenju z možem, ob katerem ji je Franc povedal v obraz vse, kar naj bi domnevno rekla in storila, vztrajala in zanikala kakršnokoli krivdo.

Kot priča je nato nastopil še preiskovalni sodnik dr. Neupauer, ki je povedal še eno podrobnost, in sicer, da je bila Marija »takrat pri spovedi v Majšperku in da je tedaj najprej vse zanikala, nato pa priznala«. Soseda obtoženih Marija Mencinger je svojo izpoved kot priča začela, da so tako otroci kot tudi Marija Bratuša pogosto prihajali k njej, da bi si priberačili kaj za pod zob. Obtoženega je opisala kot navadnega suroveža, ki je obraz malega Franca nekoč obdelal s kamnom, da je bil ta popolnoma prekrit z ranami. Franc se je ob vprašanju predsedujočega, kaj lahko k temu pripomni, zavil v molk.

Pomembna priča je bil tudi žandarmerijski stražmojster Leskovar. Povedal je, da mu je Marija Bratuša priznala, da je pomagala pri razrezanju trupla, potem ko ji je rekel, da je njen mož vse priznal. Nato so zaslišali še več prič, katerih izpovedi pa niso bile pomembne. Po zaključku dokazovanja je javni tožilec dr. Nemanitsch opozoril na grozovitost zločina. Vedenje Marije Bratuša, ki kot mati ni našla niti besede, da bi možu preprečila grozljivo dejanje, je označil kot posebej zavrženo. Njen branilec dr. Pipuš pa jo je nasprotno prikazal kot nedolžno žrtev njenega moža in zaprosil za oprostilno sodbo (Marburger Zeitung, 13. 6. 1901, 3).

Po sklepni besedi predsedujočega, se je porota umaknila na posvet in končno soglasno odločila, da je Franc Bratuša kriv za umor, njegova žena pa naj bi mu pri tem dajala potuho. Predsedujoči sodnik je torej razglasil sodbo. Franc Bratuša je bil obsojen na smrt z obešanjem, njegova žena Marija pa na tri leta težke ječe. Franc Bratuša se je po navedbah časopisnega poročevalca z obsodbo na smrt povsem ravnodušno sprijaznil (Marburger Zeitung, 13. 6. 1901, 3).

Konec avgusta 1901 je cesar Franc Jožef Bratušo pomilostil in najvišje sodišče ga je obsodilo na dosmrtno poostreno ječo (Slovenski narod, 27. 8. 1901; Marburger Zeitung, 29. 8. 1901, 5; Novice, 30. 8. 1901; Deutsche Wacht, 1. 9. 1901). Javni tožilec Nemanitsch omenja, da so mu tudi po pomilostitvi zastavljali razna vprašanja. Sedaj ni imel več »razloga za prikrivanje resnice«. Povedal je, »da je pekel meso svojega otroka brez maščobe, da ga je posolil in pojedel brez kruha, ker ga zaradi svoje velike revščine ni imel, da je imelo meso teletini podoben okus, da je s tem sicer potešil svojo lakoto, toda da ga zaradi neke bojazni vendarle ni jedel z običajnim apetitom.« (Nemanitsch, 1901, 310)

Huda revščina in stiska naj bi gotovo vplivali na grozljivo ravnanje Bratuše, a javni tožilec Nemanitsch je menil, da je nanj vplivalo tudi kakšno vraževerje, čeprav je Bratuša »trdovratno zanikal, da bi z zaužitjem mesa povezoval kakršnokoli magično predstavo. Vztrajal je, da ga je k temu gnala samo prevelika lakota.« (Bischoff, 2011, 170) Preiskovalni organi pa so vendarle ostali skeptični in ga »z ozirom na kriminalistično prakso« večkrat vprašali, »'ali je že kje slišal ali bral o tem', da kriminalci verjamejo, da bodo ostali nekaznovani, če bi jedli 'meso nedolžne deklice', ali da njihovih tatvin ne bodo razkrinkali, potem ko bi pojedli otroka. Ali, če ve kaj o vraževerju, da zaužitje 'možganov in kostnega mozga […] prenese moč pojedenega na jedca', da 'srce, jetra, mast […] dajejo nadnaravne sposobnosti, kot zmožnost letenja, nevidnost itd.' ali da uživanje pečenega človeškega mesa […] varuje pred preganjanjem s strani sovražnikov ali oblasti'«. (Bischoff, 2011, 170)

Vidimo lahko, da so okrog leta 1900 stare vraževerne predstave povezane z uživanjem človeškega mesa še vedno vztrajale in da je tudi »kriminologija tako kot že prej kazala opazno velik interes za vraževerje. Poskušali so racionalizirati iracionalnost vraževerja in jo narediti za predmet razumne razlage.« (Bachhiesl, 2011, 415; glej tudi: Bachhiesl, 2013a; Bachhiesl, 2013b)

Toda vse to je bilo Bratuši nepoznano in njegov edini odgovor, zakaj je jedel človeško meso se je še vedno glasil: »Na nič drugega nisem mislil kot na to, da bi potešil svojo hudo lakoto.« (Nemanitsch, 1901, 311)

Že znani italijanski kulturni zgodovinar Piero Camporesi je v svojem odmevnem delu, ki sicer obravnava novoveško, predindustrijsko Evropo, opozoril na problem lakote, ki je bila stalna spremljevalka preprostih in revnih ljudi ter je neprestano vplivala na njihove predstave, strahove in fantazije, ki so kot posledica začasne ali celo stalne omamljenosti prispevale h »kuhinji imaginarnega, k prehrani, o kateri so sanjarili, k nedopustni gastronomiji«, (Camporesi, 1990, 14) h kateri je seveda spadalo tudi ljudožerstvo.

Camporesijeve ugotovitve pa se lahko deloma prenašajo tudi v čas okrog leta 1900 in še naprej v desetletja pred drugo svetovno vojno. Lakota je namreč neprestano spremljala življenje določenih regij, med drugim je bila prisotna med viničarji v okolici Ptuja, na področju Majšperka, kar obenem mnogo bolj pritrjuje tudi samim izjavam Franca Bratuše, kot pa, da je bilo posredi vraževerje. Tudi zgoraj omenjeni detomor, ki naj bi ga zagrešila Terezija Holc, z več indici kaže na hudo lakoto, ki je bila zlasti v primerih, ko viničarji niso mogli zamenjati vina za žito, nekaj povsem običajnega. Slabe letine, npr. zaradi peronospore ali neugodnih vremenskih razmer, so viničarje dobesedno pahnile v pomanjkanje in stradež, zato ni čudno, da je Terezija Holc svojo desetletno nezakonsko hči sprva skrivala pred možem, ki pri hiši ni želel videti še enih lačnih ust in ji je zato naskrivaj prinašala hrano, dokler je to sploh šlo. Močno podhranjena in slabokrvna deklica je končno dočakala tragičen konec ravno zaradi pomanjkanja hrane, zaradi lakote, in na to kaže tudi obdukcija sodnih zdravnikov: »Želodec popolnoma prazen, sluznica pobledela. Tanko črevo vsebuje plin in nekaj sluzaste tekočine; debelo črevo je v gornjem delu napolnjeno s plinom, v zadnjem delu pa je skrčeno in vsebuje nekaj češnjevih koščic. Sluznica celotnega črevesja je bleda. Sečni mehur je prazen. […] Ker so bila skoraj celotna prebavila popolnoma prazna, lahko zaključimo, da otrok dneve in dneve ni zaužil ničesar, z izjemo nekaj češenj.« (Nemanitsch, 1901, 302–303)

Ker so viničarji morali kruh kupiti, so ga le redkokdaj uživali, kar potrjuje tudi pričevanje Bratuše. Živeža je ponavadi začelo primanjkovati že pozimi, lakota pa se je zavlekla še daleč v pomlad (Pirc, Baš, 1938, 102–103). Slabi življenjski pogoji in pomanjkanje so prispevali tudi k razširjenosti alkoholizma (Ramšak, 1996, 321), katerega konsekvenca je bilo tudi nasilje, porast samomorov in tudi umorov (Pirc, 1937, 62–64).

ČUDEN NADALJNJI RAZVOJ KRIMINALNE ZADEVE BRATUŠA

Čez slabi dve leti pa je zgodba dobila senzacionalen preobrat. Pri Novem mestu so namreč konec julija 1903 prijeli potepuško deklico, osumljeno tatvine (Slovenec, 30. 7. 1903). Znani pravnik dr. Edvard Pajnič, takrat sodni pristav v Novem mestu, je v njej prepoznal Ivano Bratuša in vse skupaj sporočil na okrožno sodišče v Mariboru (Munda,

1952). Hči sta poleg sorodnikov, učitelja in duhovnika prepoznala tudi oče in mati (Slovenec, 1. 9. 1903). Časopisje je ugibalo, ali si je oče vse skupaj izmislil zaradi skrajne bede, torej, da bi bil v ječi vsaj preskrbljen, da bi dobil »zavetišče in hrano«. (Glej npr.: Slovenec, 30. 7. 1903, Rodoljub, 3. 8. 1903; Slovenski narod, 13. 8. 1903 in 1. 9. 1903) Bolj verodostojno se je zdelo, da si je Bratuša »fantastične dogodke izmislil, ker naj bi bil bolan na umu« in to mnenje naj bi podpirala tudi okoliščina, da je »preiskava dognala, da je Bratuša zaradi branja indijanskih in drugih grozepolnih povesti tako razgrel svojo fantazijo in tako razburil svoje živce, da se je vedel kot docela abnormalen«. (Slovenski narod, 3. 9. 1903) Tudi mariborsko sodišče je septembra 1903 ugotovilo, da je bila grozovita izpoved Bratuše le izrodek razgrete in bolne domišljije. Pokazala se je tudi zmota sodnih izvedencev, ki sta trdila, da je krvni madež, ki so ga ob hišni preiskavi našli na hčerinem krilu, človeški in da so tudi na kompostu najdene ožgane kosti človeške. A izkazalo se je, da je bila kri živalska in da so bile kosti svinjske. Tudi Bratuša je sedaj priznal, da ni umoril hčere. Da si je vse izmislil zaradi dolgov. Marijo Bratuša so izpustili in jo poslali na zdravljenje na kliniko v Gradcu, ker je v ženskem zaporu v Begunjah na Gorenjskem zbolela na očeh. Bratušo pa so pridržali v mariborskem preiskovalnem zaporu, saj se je moral zagovarjati zaradi obrekovanja žene, češ da je sodelovala pri umoru hčere (Slovenski narod, 22. 9. 1903 in 25. 9. 1903; Slovenec, 19. 9. 1903).

Zadeva Bratuša se je torej prelevila v tipičen primer sodne zmote, v primeru, da bi Bratušo obesili, pa bi šlo celo za justični umor. Nemški listi, ki so v kontekstu takratnih ostrih mednacionalnih napetosti med štajerskimi Nemci in Slovenci prej izkoriščali to kriminalno zadevo kanibalizma za blatenje Slovencev, so o senzacionalnem odkritju bolj ali manj molčali (Slovenski narod, 13. 8. 1903). Nemške časopise (npr. *Marburger Zeitung, Pettauer Zeitung, Deutsche Wacht, Grazer Tagblatt* in tudi glasilo štajercijanskega gibanja *Štajerc*), ki so doslej sovražno slikali ves slovenski narod kot rod divjakov in surovih kanibalov, pa je sedaj z vsemi topovi napadlo slovensko časopisje (npr. *Slovenec, Slovenski narod, Slovenski gospodar, Rodoljub, Domovina*). Časopisje je okrcalo nemškutarsko orožništvo, češ, da je že na samem začetku izsililo priznanje zakoncev Bratuša, ovadba pa da je »vsled jezikovnega neznanja podana zgolj v lapidarni nemščini« in zato premalo natančna in točna (Sovzroki, 1904, 67). Grajalo je nemčurska sodna izvedenca, Slovencem sovražna ptujska zdravnika dr. Treitla in dr. Raka, ki naj bi navkljub »nemški temeljitosti ne znala razločevati svinjskih od človeških kosti«. Komentator časopisa *Slovenski narod* s psevdonimom Kritikus je celo namigoval, da naj bi zlasti »zaslepljeni sovražnik slovenskega ljudstva« dr. Treitl imel pri justični zadevi Bratuša »hudobni namen« (Slovenski narod, 28. 9. 1903).

Slovensko politično društvo *Pozor* na Ptuju je v nedeljo 11. oktobra 1903 sklicalo tudi velik shod, katerega predmet je bil slučaj Bratuša. Odvetnik dr. Brumen je množici še enkrat kratko in jedrnato predstavil slučaj, obsodil oblasti, da niso natančno preiskale zadeve, poudaril brezbrižnost preiskovalnega sodnika, da glede krvnega madeža in najdenih kosti, ni zaprosil še za dodatno mnenje izvedencev v Gradcu. Ošvrknil je nemško časopisje, češ, da še vedno žalijo slovenski narod kot »narod ljudožercev«, da Bratušo znova obtožujejo umora, češ, »če svoje hčerke ni umoril, je pa katero drugo«. Dr. Brumen je poudaril, da je »žalostni dogodek tudi v ozki zvezi z neznanjem slovenskega jezika«, da so pravosodne

razmere na Spodnjem Štajerskem nezaslišane ravno zaradi slovenščine nezmožnih sodnikov in sploh vsega uradništva, da v poroti v dotični zadevi ni sedela niti polovica Slovencev, njen predsednik, češki fotograf Krapek, pa da sploh ne zna in ne razume slovenskega jezika. Obžaloval je tudi, »da se dosedaj noben državni poslanec ni brigal za Bratuševo kazensko zadevo«. (Slovenski gospodar, 15. 10. 1903)[5] Zbrani zborovalci so nato sprejeli resolucijo, v kateri so obsodili pisanje nemških listov in v kateri so obžalovali, da pristojne oblasti niso preprečile in preganjale sramotilnih člankov, ki so celotno spodnještajersko slovensko ljudstvo obdolžili barbarskega kanibalizma. Obsodili so tudi, da se nemški listi tudi sedaj, ko je priplavala na dan drugačna resnica, ne opravičijo Slovencem zaradi nesramnega obrekovanja, nekateri pa da še vedno molčijo o dokazani nedolžnosti zakoncev Bratuša. Slovenske poslance so pozvali, da naj »s potrebno energijo in odločnostjo zahtevajo od voditelja justičnega ministrstva potrebnih pojasnil«, da se pomiri razburjeno in ogorčeno spodnještajersko javnost. In končno. Pravosodni minister naj ustrezno ukrepa in uredi krivične razmere glede rabe slovenskega jezika na ptujskem okrajnem sodišču in mariborskem okrožnem sodišču (Slovenski gospodar, 15. 10. 1903). Časopisne polemike okrog fenomena Bratuša so se nato vlekle še vse v leto 1904, zloglasno zadevo pa so spodnještajerski Slovenci vse glasneje izpostavljali tudi pri zahtevah po izključno slovenskih sodnikih v sodnih postopkih zoper Slovence (npr. Domovina, 29. 8. 1905).

Komentatorji slovenskih časopisov so bralcem priklicali v spomin, da sta sodna izvedenca – zdravnika Bratušo razglasila za duševno zdravega že v predpreiskavi in da sta bila prisotna tudi na porotni obravnavi 11. junija 1901, »kjer sta soglasno izrekla mnenje, da je obtoženec duševno popolnoma zdrav, pri svoji vzgoji jako inteligenten in da o kaki duševni abnormiteti govora ne more biti«. (Slovenski narod, 15. 12. 1903) Spomnimo, da ga je kot skrajno inteligentnega človeka prikazal tudi javni tožilec dr. Nemanitsch. Komentatorji so zato c. kr. javnemu tožilstvu v Mariboru očitali, da ni dalo resno preiskati njegovo duševno stanje, v začetku decembra pa naletimo tudi na poročilo, da se je profesor sodne medicine na dunajski univerzi dr. Albin Haberda »v svojem predavanju dotaknil tudi slučaja Bratuša« (Slovenski narod, 4. 12. 1903; Domovina, 8. 12. 1903, 3) in bojda »zmlel v sončni prah«[6] državnega tožilca dr. Nemanitscha. Zadevo je navedel »kot vzgled, kam zapelje 'slavne' juriste nevednost in malomarnost«. Haberda je menda rekel: »Državni pravdnik ni ni malo dvomil, da bi Bratuša ne bil normalen, dasi bi bilo to na mestu tudi v slučaju, ako bi se bil tak slučaj tudi v resnici dogodil. On niti ni smatral za potrebno, da bi dal duševno stanje obtoženca natančno preiskati. Ta mož pač nima prav nikakega pojma o psihiatriji! In on se je še celo osmešil, da je o tem slučaju znanstveno razpravljal v nekem znanstvenem časopisu. Jaz sem majal z glavo, ko sem čital to razpravo, in si mislil: *'Revež, ko bi ti vedel, kaj si napravil!'*« (Slovenski narod, 4. 12. 1903)

Višje državno tožilstvo v Gradcu je 7. decembra 1903 od uredništva časopisa *Slovenski narod* sicer zahtevalo uradni popravek navedenega članka, z namenom, da bi odvrnilo

5 Na nezaslišane pravosodne razmere na Spodnjem Štajerskem je opozoril tudi Slovenski narod, 13. 10. 1903. Splošno o primerih sodnih zmot zaradi neobvladanja slovenščine na sodiščih v času Habsburške monarhije: Matić, 2004.

6 Reakcija na pisanje slovenskih časopisov v štajercijanskem Štajercu, 10. 1. 1904.

pomisleke o nepravilnem ravnanju mariborskega državnega tožilca, a vse skupaj ni nič pomagalo. Uničujoča sodba, ki naj bi jo kot »priznana kapaciteta« izrekel sodni psihiater dr. Haberda, je hudo zadela dr. Nemanitscha (Slovenski narod, 15. in 16. 12. 1903).

Že oktobra 1903 pa se je v strokovni reviji *Slovenski pravnik* v zvezi z zadevo Bratuša polemično oglasil psihiater in sodni izvedenec dr. Ivan Robida (Robida, 1903). Okrcal je malomarnost sodnih izvedencev, nato pa se je lotil bolj zanimive točke o verjetnosti samoobtožbe in lastnega priznanja. Čudil se je, da se med porotniki sploh niso pojavili pomisleki, kako bi mogel duševno zdrav človek v naših krajih jesti človeško meso. Opozoril je, da so se tudi nekateri časnikarji zgražali, da se obtoženca ni dalo psihiatrično preiskati in menil, da do tega ves čas najbrž ni prišlo, ker se resnejši dvomi glede izvršenega kanibalizma sploh niso pojavili, a tudi obtoženca se nista tako vedla, da bi izzvala sum blaznosti. Dr. Robida se je zavzel, da bi se v takih primerih kot izvedence ne pritegovalo zdravnikov nepsihiatrov, saj ti ne premorejo ustreznega znanja. Torej, ne bi se smelo dovoliti, da nespecialisti v psihiatričnih vprašanjih oddajajo mnenja pri sodiščih. Obregne se tudi ob to, da sodnik po zakonu ni vezan na mnenje izvedenca, ker se menda izvedenec lahko moti, sodnik pa ne. Ta določba se mu zdi sporna in hkrati smešna.[7] Dr. Robidi se tudi zdi, da do čudnega priznanja ni prišlo po sugestivni poti. A to je bilo zanj sekundarnega pomena. V duhu takratnega časa naj bi bila zakonca Bratuša degenerirana, psihično manjvredna, dokaz za to pa naj bi bila njuna slaboumna hči, katere obraz (videl je fotografijo) že na prvi pogled kaže t. i. »razplemenjenko« ali izrojeno osebo. Robida je na podlagi tega sklepal, da »tudi pri starših ne bo vse v redu, čeprav ni povoda govoriti naravnost o kaki psihozi«. Oba naj bi bila neomikana, omejena, živela sta čudaško in do otrok nasilno rodbinsko življenje. Na njune »slabotne duševne sile« naj bi vplival tudi alkohol (Robida, 1903, 268). Po neprestanih zasliševanjih in zatrjevanjih, da vsi dokazi govorijo proti njima in da naj končno priznata, sta to tudi storila, samo da bi imela mir, da bi bil že enkrat konec. Šele potem je prišlo na vrsto zagovornikovo prigovarjanje, sugestija, da je bolje, da prizna, če se nadeja pomilostitve. Žena je, kot smo videli, potem ponovno vse tajila, Bratuša pa po priznanju ni bil več v zadregi za snov svoje fantastične povesti. Dr. Robida zaključi, da ni bilo njuno priznanje nič drugega kot izraz onemoglosti in iz nje izvirajoče apatije. In če bi se jih v tem zmedenem stanju vprašalo, »če nista poslala desnega stegna svoje hčere sultanu«, bi izpraševalcem bržkone tudi to pritrdila. »In zakaj ne? – Saj je vseeno – bo vsaj konec – vsaj obešen ne bom!« (Robida, 1903, 269)

Februarja 1904 se je v reviji *Archiv für Kriminal-Anthropologie und Kriminalistik* končno oglasil še »vidni kriminalist dr. Hans Gross, univerzitetni profesor v Gradcu«. (Pettauer Zeitung, 21. 2. 1904) V prispevku je znova odprl vprašanje Bratuševe prištevnosti. Opozoril je sicer, da sta Bratušo v predpreiskavi razglasila za duševno normalnega zgolj sodna zdravnika (Gerichtsärtzte) in ne specialista – psihiatra (Gross, 1904, 152). Vendar je Gross to prvotno napačno oceno spričo dokazov na podlagi indicev, znane Bratuševe surovosti do njegovih otrok in pomanjkljivega specialnega znanja prvotnih izvedencev presodil relativno blago. Skratka, dodatna preiskava ekspertov – psihiatrov v

7 Dr. Robida je kot predstavnik »moderne slovenske psihiatrije« in sodni izvedenec ves čas zagovarjal takšne nazore. Podrobneje: Studen, 2014.

Gradcu naj ne bi bila potrebna, »ker je obstajalo tako veliko momentov, ki so podkrepili priznanje, da se je to moralo zdeti točno in normalno izpričano«. Potreba po specialni preiskavi naj bi se izkazala šele s pojavom njegove hčere leta 1903, torej, ko je bila ugotovljena nepravilnost priznanja in so morali preiskati razloge, zakaj je do tega sploh prišlo (Gross, 1904, 152). Specialno raziskavo sta nato »temeljito in zelo skrbno opravila« graška profesorja Kratter und Zingerle, ki sta ugotovila, da »naj bi bil Bratuša trajno duševno moten zaradi psihopatičnega nagnjenja, ki naj bi povzročalo dolgotrajne intenzivne čustvene afekte.« (Bischoff, 2011, 171) Po mnenju izvedencev, naj bi »tedanje in zdajšnje lažne izjave Bratuše stale v direktni povezavi in niso zavestne laži, temveč ponaredbe spominjanja.« (Gross, 1904, 152)

Grossa je to pripeljalo do zaključka, da si je Bratuša umor, razkosanje in zaužitje mesa lastne hčere na patološki način namislil v svojih blodnjah. Zavrnil pa je tudi ugovore, da bi morali takoj podvomiti v verjetnost nezaslišanega priznanja Bratuše. Tisti, ki dvomijo, da je kaj tako grozovitega sploh mogoče, »pač ne poznajo velike literature o modernem kanibalizmu; ta je praviloma posledica nezaslišanega vraževerja, in to je mnogo bolj razširjeno, kot običajno domnevamo.« (Gross, 1904, 154)[8]

ZAKLJUČEK

Zaključimo lahko, da je bila zadeva Bratuša »pravi pravcati pravosodni škandal« (Štajerc, 10. 1. 1904), ki je odpiral mnoga vprašanja tako iz psihološkega kot psihiatričnega stališča. Vzbujal je živahno pozornost tako zaradi nenavadnega spleta okoliščin, torej zaradi njegove povezanosti z umorom otroka Terezije Holc, kot tudi zaradi domnevne barbarske podivjanosti storilca, saj je ljudožerstvo v očeh Evropejcev »pomenilo grozoto in nerazumljivo zablodo človeka, sramoto v razvojni zgodovini človeškega rodu.« (Volhard, 1939, IX) O Bratuši in njegovi izginuli hčeri se je prelilo mnogo črnila tudi zaradi specifičnih mednacionalnih napetosti med spodnještajerskimi Slovenci in Nemci. Nekateri časopisni članki so zaradi slepega sovraštva mlatili celo prazno slamo. In končno. Razvpita zadeva si je gotovo zaslužila, da jo je Hans-Dieter Otto uvrstil v svoj leksikon sodnih zmot (Otto, 2004, 307–308). Prispeva pa tudi k razmišljanju o upravičenosti smrtne kazni in morebitnem justičnem umoru.

8 Ker Gross literature ne navaja, Eva Bischoff (2011, 171) domneva, da gre morda za takrat najbolj razširjeni deli o tej temi: Augusta Löwenstimma *Aberglaube und Strafrecht* (1897) in Richarda Andreea *Die Anthropophagie* (1887). Slednje delo omenja tudi August Nemanitsch (1901, 311).

CANNIBAL BEFORE THE ASSIZES. THE NOTORIOUS BRATUŠA CASE FROM THE BEGINNING OF THE 20th CENTURY

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SUMMARY

The paper deals with an outrageous example of cannibalism in Lower Styria in 1901. The winegrower Franc Bratuša admitted that he had strangled his daughter Ivana, and then with the help of his wife Marija dismembered her body and burnt it in a stove. He was supposed to cut off a piece of meat from the thigh, bake it and eat it. The court of assize sentenced him to death and his wife to three years of hard labour. In August 1901, the emperor pardoned Bratuša and the highest court sentenced him to life imprisonment. The criminal case experienced sensational turning-point in 1903. The thief who was identified as Bratuša's daughter was arrested in Novo mesto. The result was a true judicial scandal since it turned out that the spouses had been unjustly convicted of a murder after a fantastic confession of the ingestion of the daughter's meat. In addition, along with the miscarriage of justice, a judicial murder could also occur in 1901. Bratuša was then declared mentally normal by the experts, but in 1903 the experts specialists – psychiatrists declared him insane arguing that he was permanently mentally disturbed and that he had made it all up in his delusions, also due to reading books about cannibals. The Bratuša case therefore, in particular because of the alleged cannibalism, gave rise to a lively attention, and the Lower Styria Germans and Slovenians constantly exploited it in the context of inter-ethnic tensions for mutual charging.

Key words: Bratuša criminal case, murder, cannibalism, miscarriage of justice, sanity

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SLOVENŠČINA PRED KAZENSKIMI SODIŠČI V ZGODNJEM NOVEM VEKU

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IZVLEČEK

Prispevek obravnava vseh pet doslej odkritih besedil v slovenščini, ki so nastala pri delu kazenskih sodišč v zgodnjem novem veku. Vsa so iz 18. stoletja in so bila zapisana pri sodnih oblasteh za neprivilegirano, večinsko prebivalstvo. Tri izvirajo z območja slovenske Štajerske, dve pa s Kranjskega. Doslej je bilo objavljeno le najmlajše, dve sta se bežno omenjali v literaturi, medtem ko sta dve prvič predstavljeni strokovni javnosti. Vsako od petih besedil ima tudi lastno dodano vrednost, še zlasti obe najstarejši, saj sta to sploh edina znana zgodnjenovoveška slovenska zapisa razglasitve priznanja krivde obdolžencev in sodbe. Besedišče predstavljenih besedil pomeni dragocen prispevek k starejši slovenski sodni terminologiji.

Ključne besede: kazenska sodišča, slovenščina, Hrastovec, Kostanjevica na Krki, Poljane ob Kolpi, razglas, sodba, prisega

LA LINGUA SLOVENA DAVANTI AL TRIBUNALE PENALE AGLI INIZI DELL'ETÀ MODERNA

SINTESI

L'articolo tratta tutti i cinque testi in lingua slovena finora identificati che sono stati creati durante l'operato dei tribunali penali all'inizio dell'età moderna. Tutti risalgono al sec. XVIII e sono stati codificati dalle autorità giudiziaria in favore di coloro che erano senza privilegi – la maggioranza della popolazione. Tre provengono dalla Stiria slovena e due dalla Carniola. Finora è stato pubblicato il più recente, due sono stati brevemente menzionati nella letteratura, mentre gli altri due vengono qui presentati per la prima volta alla comunità scientifica. Ciascuno dei cinque testi ha anche un proprio valore aggiunto, in particolare i due più antichi, dal momento che si tratta dei due unici testi del periodo degli inizi dell'età moderna scritti in sloveno: si tratta dell'ammissione di colpa da parte degli imputati e della dichiarazione della sentenza. Il lessico di questi testi rappresentava un prezioso contributo all'evoluzione della terminologia giudiziaria slovena.

Parole chiave: tribunali penali, sloveno, Hrastovec, Kostanjevica na Krki, Poljane ob Kolpi, proclama, sentenza, giuramento

UVOD

Za starejša obdobja, pred veliko reformo sodstva leta 1849, je o rabi slovenščine pri kazenskih sodiščih znanega zelo malo, neprimerno manj kakor o njeni vlogi v patrimonialnem sodstvu, ki je pokrivalo lažje kazenske zadeve. Medtem ko poznamo iz poslovanja patrimonialnih sodišč okoli 300 slovenskih prisežnih besedil,[1] je namreč bera tovrstnih dokumentov kazenskih sodišč naravnost zanemarljiva in še skoraj povsem neobdelana. Čeprav gre skupaj z novoodkritimi za vsega pet znanih tekstov, je njihov nabor zvrstno bogatejši, saj nimamo opraviti samo s prisegami, ampak najdemo štiri zvrsti sodnih besedil: razglas priznanja krivde, razglas sodbe, dve prisegi o odreku maščevanju in prisežni obrazec za priče. Našteti zapisi so vsak zase zanimivi tudi po vsebinski in terminološki plati.

Prispevek obravnava vseh pet do zdaj odkritih besedil v slovenščini, ki so nastala pri delu kazenskih sodišč v zgodnjem novem veku. Vsa so šele iz 18. stoletja in so bila zapisana pri deželskih sodiščih (*Landgerichte*), sodnih oblastvih za neprivilegirano, večinsko prebivalstvo. Tri izvirajo z območja slovenske Štajerske, iz Hrastovca v Slovenskih goricah, dve pa sta s Kranjskega, iz Poljan ob Kolpi (danes Predgrad) in Kostanjevice na Krki. Doslej je bilo objavljeno le najmlajše, dve sta se bežno in večkrat netočno omenjali v literaturi, medtem ko sta bili dve odkriti šele pred slabim desetletjem in ju strokovna javnost doslej ni poznala. Razen zadnjega, prisežnega obrazca za priče, so vsa besedila nastala na t. i. krvni pravdi, sodnem procesu, ki ga je vodil krvni sodnik. Ta je bil poklican v neprivilegirano deželsko sodišče zaradi teže kaznivega dejanja, v katerem ni mogel razsojati deželski sodnik.[2]

Namen prispevka ni natančna vsebinska, pravopisna in jezikovna analiza slovenskih besedil, ampak prezentacija njihove vsebine in nastanka kot izhodišče za nadaljnja preučevanja. Besedila so transkribirana in transliterirana v sodobni slovenski črkopis, za vsakega so na kratko predstavljene okoliščine nastanka ter njegove glavne posebnosti.

V širšem smislu bi sicer smeli prištevati med slovenska besedila kazenskih sodišč še prisežna besedila tistih mestnih sodišč, ki niso imela le narave patrimonialnega sodišča, ampak so bila hkrati pristojna tudi za težje kazenske zadeve. Tako so kazensko sodstvo izrecno ali implicitno omenjali službeni prisežni obrazci za mestne sodnike in svétnike, prisežni obrazci za priče pred mestnimi sodišči pa so bili v rabi tudi v primerih, ko so ta sodišča sodila v kazenskih zadevah. Toda iz celotne obravnavane dobe in še čez, tja do začetka 19. stoletja, poznamo le dva slovenska prisežna obrazca za mestne sodnike, dva za svétnike in sedem sodnih priseg mestnih sodišč.[3] Od zadnjih se ena sama nanaša

1 Največji zbirki sodnih priseg, obe objavljeni, sta nastali pri patrimonialnem sodišču gospostva Bled (Ribnikar, 1976) in ljubljanskega škofijskega gospostva (Golec, 2005).

2 Neprivilegirana deželska sodišča so bila tista, ki krvnega sodstva niso smela izvrševati sama. Imela so sicer svoj prisedniški kolegij in morišče, zasedala so na svojem sedežu ter tudi dobivala dohodke od krvne pravde, vendar so za vodenje teh pravd morala po uvodnem postopku, ko so določeno dejanje kvalificirala kot težje (*Malefiz*), poklicati krvnega sodnika (*Bannrichter*), ki je oblikoval proces, vodil razpravo in po posvetu s prisedniki izrekel sodbo (Kambič, 1996, 7).

3 Gl. nabor mestnih priseg v: Golec, 2009, Uvod. – Izrecno govori o kazenskem sodstvu prisežni obrazec za mestne sodnike v Kranju, nastal med letoma 1531 in 1558: »to hudu štrafati, malefici oli v druzih rečeh« (Golec, 2009, Kranj (KRA-1–4)).

na primer, ki ga je mestno sodišče obravnavalo kot deželsko, torej kot kazensko, in sicer prisega iz Novega mesta, nastala poznega leta 1799. Zaradi časa nastanka, ki ne spada več v zgodnji novi vek, in ker je prisega že bila natančno obdelana, je v pričujočem prispevku ne obravnavamo.[4]

Obravnava prav tako ne bo zajela treh slovenskih besedil, nastalih v kazenskem postopku zoper tolminske kmečke upornike leta 1713 v Gorici. Razlog je ta, da sodnega procesa ni vodilo redno kazensko sodišče, temveč posebna cesarska preiskovalna komisija s pristojnostmi, širšimi od vodenja kazenskega sodnega procesa. Teža omenjenih treh besedil je zlasti v njihovi zvrstni različnosti: prvo je tiralica za ubežnimi uporniki, drugo prisežni obrazec za priče, tretje pa vdanostna prisega vodilnih upornikov (Grafenauer, 1962, 325–326; Čeč, 2013b, 55; Čeč, 2013a, 174–175, 178, 185–186).

Na redna kazenska sodišča se posredno navezujejo slovenska besedila, ki govorijo o deželskih sodiščih kot takih, ne o sodnih procesih pred njimi, vendar glede na namembnost prav tako ne sodijo v pričujočo obravnavo rabe slovenščine pred sodišči. Ne gre namreč za zapise, nastale pri sodnih obravnavah ali v zvezi z njimi, ampak predvsem za slovenske opise deželskosodnih meja, ohranjene od srede 17. stoletja dalje,[5] v enem primeru s konca 16. stoletja pa za deželnoknežji ukaz o imenovanju in umestitvi deželskega sodnika kot protirefomacijski ukrep (Rupel, 1956b, 53–54).

Pri opisih meja deželskih sodišč kaže posebej opozoriti na zanimiv pasus v opisu deželskega sodišča Višnja Gora, ki je nastal nedolgo po letu 1661 in je datiran prav po omenjenem besedilnem izseku. Ta se nanaša na sodbo domačega deželskega sodišča, očitno tako znano in odmevno, da so jo vpletli kar v oznako ene od mejnih točk. V poteku deželskosodne meje so jo opredelili zakole: »potler na Platnarjov malen vunkrej Krke, kateriga žena je tega leta, kir se je pisalo 1661, zavol kerbanja od višenske rihte za en par volov štrafana bla«. Vzrok kaznovanja je v nemški različici istega opisa meje izražen pomensko natančneje, in sicer kot zakonolom (*Ehebruch*). V tedanji slovenščini so kot še najustrežnejšega našli izraz kurbanje (*kerbanje*) (Golec, 2000, 153). Prešuštvo, zaradi katerega so ženi mlinarja na Krki naložili visoko kazen dveh volov, je po dosedanjih spoznanjih najzgodnejši slovenski opis sodbe pred kazenskim sodiščem. Sodba je bila torej izrečena v Višnji Gori leta 1661 ali 88 let pred prvo sodbo, ki jo poznamo v celoti, to pa je sodba na krvni pravdi deželskega sodišča Hrastovec v Slovenskih goricah leta 1749.

4 Zaradi teže kaznivega dejanja je združbo šestih tatic in in tatu obravnavalo deželsko sodišče – te pristojnosti je imelo mestno sodišče kot »mestno in deželsko sodišče Novo mesto« – sklepni del procesa pa je moral izvesti kranjski cesarsko-kraljevi krvni sodnik iz Ljubljane, ker je bilo novomeško deželsko sodišče neprivilegirano; med sodnim procesom je nastala slovenska prisega oškodovancev, ki je najstarejši znani izvirnik prisege v slovenskem jeziku iz sodne prakse mestnih sodišč (Golec, 2009, Novo mesto (NME-1–5)).

5 Opise deželskosodnih meja, zapisane v urbarjih ali samostojno, poznamo za deželska sodišča: Bovec (1647 – odlomek, 1738, 1740), Ortnek (1655, 1663, 1673, 1676, 1683, 1691, 1699, 1739, ok. 1750, konec 18. stol.), Višnja Gora (po 1661), Turjak (ok. 1700, 1767), Zavrh – Švarcenek (1711) in Bled (1749). Gl. objave in omembe: Rutar, 1882, 138, 233–234; Rutar 1895, 226–228; Rupel, 1956a, 313; Beran, 1959, 30–31; Umek, 1971, 11, 16, 30–31; Umek, 1982, 43, 45, 56, 75; Golec, 2000, 149–154; Golec, 2001, 94–100.

SLOVENSKA BESEDILA IN OKOLIŠČINE NJIHOVEGA NASTANKA

1) 1749 – Hrastovec – smrtna kazen zaradi homoseksualnih spolnih odnosov

Prvi dve obravnavani besedili sta se ohranili v fondu zemljiškega gospostva Hrastovec v Zgodovinskem arhivu na Ptuju. Deželsko sodišče Hrastovec v Slovenskih goricah je leta 1749 sodilo starejšima moškima, obtoženima homoseksualnih spolnih odnosov. Zaradi teže dejanja je hrastovško gospostvo poklicalo krvnega sodnika za Spodnjo Štajersko dr. Johanna Adama Menharda, ki je izpeljal t. i. krvno pravdo, na kateri so oba moža pod težo dokazov obsodili na smrt.[6] Proces je v literaturi šele nedavno kratko opisal Dejan Zadravec in upravičeno poudaril njegovo težo zaradi narave prekrška in posledično ostre izrečene kazni (Zadravec, 2014, 376). Slovenski besedili sta bili namenjeni razglasitvi, prvo priznanja krivde obdolžencev (*Vrgicht*) in drugo končne sodbe (*Endt=Vrtl*). Zapisani sta vsaka na svoji poli papirja skupaj z nemškima izvirnikoma. Razen reprodukcije priznanja krivde (Zadravec, 2014) ne prvo ne drugo doslej še ni bilo objavljeno,[7] čeprav je nanju nedoločno opozoril že leta 1926 Fran(c) Kovačič: »razsodbe graščinske sodnije v Hrastovcu v Slov. goricah iz 18. stol. (še neobjavljene, sedaj v arhivu grofa Herbersteina na gradu v Ptuju).« (Kovačič, 1926, 306). Kot »razglas smrtne obsodbe (»in crimine sodomiae«) na gradu Hrastovcu 1749« je eden od obeh dokumentov prišel v *Zgodovino slovenskega slovstva* (1956) (Rupel, 1956a, 313), nato pa so ju izmenično ali oba skupaj omenjali različni pregledi starejših slovenskih uradovalnih besedil, pri čemer ju je površno označevanje nazadnje zmotno potisnilo med prisege.[8] Kljub odkritju vrste novih slovenskih zapisov iz sodne prakse še vedno velja ugotovitev Jožeta Koruze (1973), da poznamo le eno še starejšo sodbo v slovenskem jeziku, in sicer izrečeno leta 1675 pred cerkvenim sodiščem ljubljanske škofije. Do njenega odkritja je bil edini znani primer prav sodba iz Hrastovca, za katero je Koruza, ne da bi poznal njeno vsebino, pravilno sklepal, da »najbrž ni šlo za protokoliranje, ampak za javni razglas smrtne obsodbe« (Koruza, 1972/73, 254).[9] Slovenski zapis sodbe iz Hrastovca leta 1749 je tako iz obdobja do konca zgodnjega novega veka edini, ki je nastal pred svetnim, ne pred cerkvenim sodiščem.

Hrastovški sodni proces je zelo dobro dokumentiran, vendar natančnejši opis presega okvir pričujoče obravnave. Na smrt sta bila obsojena poročena moška iz župnije sv. Petra v

6 ZAP-9/3, šk. 101, ovoj 4, Deželsko sodišče Hrastovec 1749, september 1749.

7 Zadravec v kratkem orisu sodbe obravnava le sodbo (Zadravec, 2014, 376), reprodukcija dokumenta pa prikazuje zapis o priznanju krivde (prav tam, 377).

8 Na arhivski razstavi »Slovenščina v dokumentih skozi stoletja« (Ljubljana, 1971) je bil eden od dokumentov – ni gotovo, kateri – predstavljen kot »pričevanje pod prisego Petra Wambka in Antona Gabrovca v procesu zaradi sodomije. Imenovana sta bila obsojena na smrt z obglavljenjem in sežigom.« (Umek, 1971, 13). Prav tako so kot »pričevanje pod prisego« opredelili enega ali oba razstavljena dokumenta na arhivski razstavi »Iz roda v rod« (Ljubljana, 1982) (Umek, 1982, 50). V resnici gre za razglasa dveh ločenih dejanj: priznanja krivde in smrtne obsodbe. Zaradi zavajajoče oznake na obeh razstavah – »pričevanje pod prisego« – je Matevž Košir uvrstil med slovenske prisege neobstoječo prisego »zaradi sodomije pred deželskim sodiščem v Hrastovcu iz leta 1749« (Košir, 1992, 8), ne da bi preveril citirani izvirnik (prav tam, 10, op. 71).

9 Koruza se je pri tem opiral samo na kratko Ruplovo oznako dokumenta kot »razglasa smrtne obsodbe« (Rupel, 1956a, 313).

Malečniku, 60-letni Peter Bombek (*Wambekh*, *Bambek*) in 55-letni Anton Gabrovec, ki sta priznala pet homoseksualnih spolnih odnosov. Najbolj ju je bremenilo pričevanje 70-letne Katarine Verlič iz Viničke vasi, pri kateri je Gabrovec nazadnje stanoval kot gostač (ofer) in kjer je imel z Bombekom tudi prvo dokazano spolno razmerje. Pobudnik tega naj bi bil Bombek, ki so ga zaradi istega dejanja predtem že enkrat obsodili, in sicer pred približno dvajsetimi leti, ko naj bi ga k dejanju napeljal neki hlapec. Hlapec je tedaj ušel iz zapora, Bombek pa se je izvlekel z visoko denarno kaznijo 190 goldinarjev in s 14 dnevi dela na hrastovškem gradu, potem ko je tam poldrugo leto presedel v ječi. V sodnem spisu so posebej zanimivi podrobni opisi njegovega spolnega občevanja z omenjenim hlapcem in zdaj z Antonom Gabrovcem. Ta je kot zapeljevalca krivil Bombeka, se izgovarjal na pijanost in priznal dejanja šele po soočenju s soobtoženim in z izjavami prič.[10]

Slovenski besedili iz sodnega spisa imata posebno vrednost zaradi tega, ker ju je mogoče primerjati z nemškima izvirnikoma, iz katerih sta bili prevedeni. Zakaj je nastala slovenska različica razglasov, je jasno. Priznanje in sodbo je bilo treba razglasiti v jeziku, ki so ga obsojenca in njuna okolica razumeli. Avtorja prevodov ne poznamo, lahko bi bil uslužbenec hrastovškega gospostva in deželskega sodišča ali pa pisar, ki ga je spodnještajerski krvni sodnik dr. Johann Adam Menhard pripeljal s seboj tako kakor rablja. Datum je naveden samo v obeh nemških besedilih, a je nepopoln, zgolj mesec september in prazen prostor za dan, ki ga niso nato nikoli vpisali.[11]

V nadaljevanju objavljamo transkripciji vseh štirih besedil, obeh nemških in obeh slovenskih, in prepis slovenskih tekstov v sodobnem slovenskem črkopisu. Ker pa je v obeh zelo pogost pojav zamenjava zvenečih in nezvenečih glasov, je bila zaradi lažjega razumevanja opravljena korektura, tako da so glasovi transliterirani glede na dejanski zven (npr. *personi*, ne *bersoni*).

Razglasitev priznanja obdolžencev

Vrgicht[12]
Des beÿ der Freÿen Landtgerichts Hschaft Guettenhagg in Crimine Sodomiae Proceſsirten Peter Wombekh und dessen Complicis Anton Gabrouez.

Gegenwertige Zweÿ Malefiz Persohnen der Erste nahmens Peter Wambekh Beÿ 60 Jahren seines alters, Cath: *religion*, Verehelichten Standts, auß der St: Petter Pfarr gebührtig und in der so genandten achambs gassen wonhafft, gewester Guettenhag: Vnterthan: der andere nahmens Anton Gabrouez Beÿ 55. Jahren seines alters Cath: *religion*, Verhelichten Standts, auß St: Petter Pfarr gebührtig, Leztmahlig Beÿ der Catharina Werltschin gewester Einwohner, haben in dem mit ihnen Beeden Vorge-

10 ZAP-9/3, šk. 101, ovoj 4, Deželsko sodišče Hrastovec 1749, 29. 5.–9. 6. 1749.

11 ZAP-9/3, šk. 101, ovoj 4, Deželsko sodišče Hrastovec 1749, september 1749.

12 Izraz *Urgicht* označuje priznanje kot procesni element v srednjeveškem in zgodnjenovoveškem sodstvu. V ožjem pomenu besede je šlo za obtoženčevo ponovitev oziroma potrditev priznanja, ki ga je dal najprej le v zaslišanju z mučenjem. Šele po ponovnem priznanju (*Urgicht*) je bila lahko izrečena končna sodba (*Endurteil*) (http://de.wikipedia.org/wiki/Urgicht; Köbler, 1997, 263, 807).

habten güetigen *examine* Bekhennet, das sÿe Beede das Vnkheische werkh wider die *natur* und die *Sodomi*tische Sündt 5. Mahl mit einander in der lezt Verwichenen winders Zeit alß das erste mahl Beÿ der Werlitschin in Stall Zue nachts Zeit, das andere mahl in seinen des Wombekh Keller Beÿ tag, an welichen Beeden orthen sÿe dise Vnkheischheit Volkomendlich Verüebet, mehr Vmb Jacobi Zeit Verwichenes Jahr in dem Kumbalt in der nacht und widerumb in disen Kumbalt ein anders=Mahl in Verwichenen Sommer voriges Jahr nach Sonnen Vntergang, widerumb ein Mahl in Verwichenen Jahr an den selbigen Tag, wie die grosse Finsternusß gewessen in des Brodtsizers weingarten miteinander Begangen, und dises abscheüliche Laster getriben hätten, weliche Bekhantnussen sÿe Beede auch in der *ratification* mehr Bestötiget, und hierauf Zu löben Zu sterben sich anerbotten haben. Wie alles *in actis* mit mehreren *Specifici*rter Zu Findten.
Landtgerichts Herrschaft Guettenhaag den _____7br: 1749.

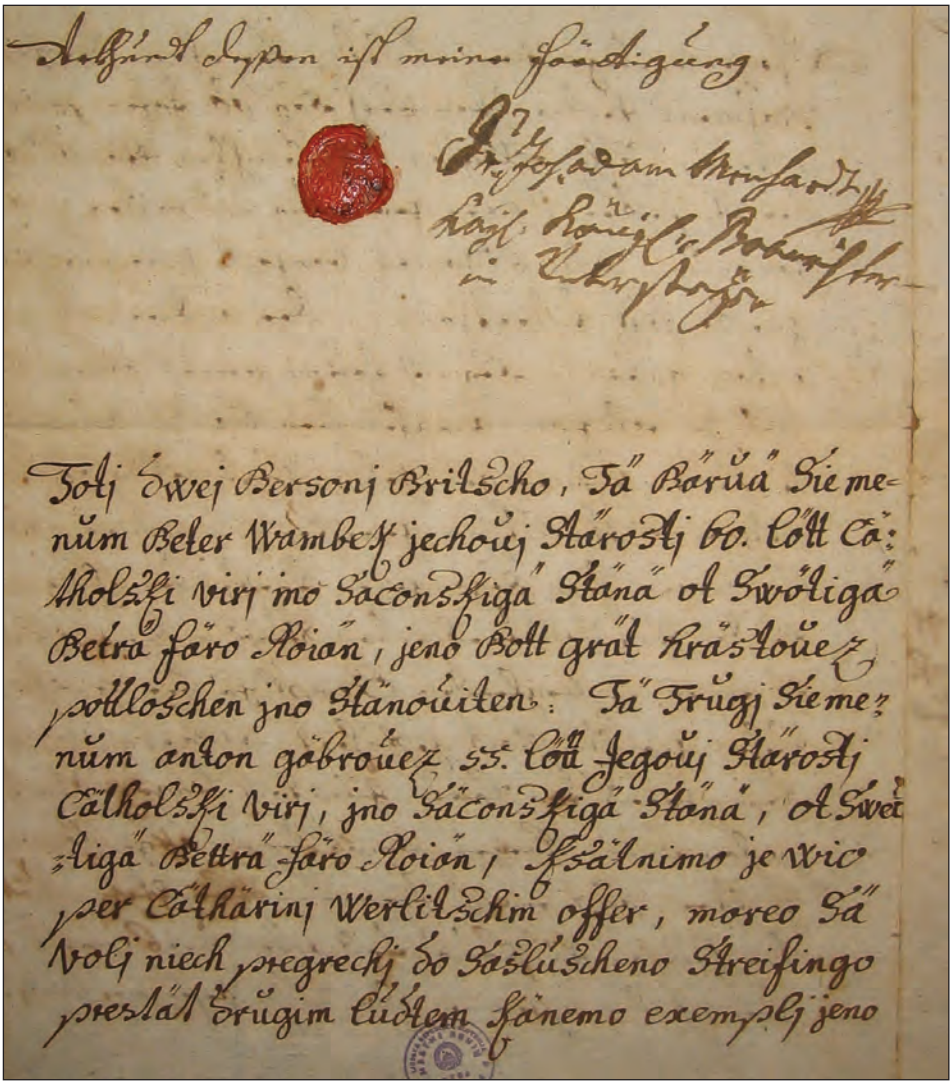
Vrkhundt dessen ist meine Förtigung

[pečat] Dr. Joh. Adam Menhardt mpria
Kaÿl. Königl. Baanrichter in Vnter Steÿer

Toti dwei Bersonj Britsho, Tä Bäruä Siemenum
Beter Wambekh jechouj Stärostj 60. lött Cätholski
Viri jno Säconskigä Stänä, ot Swötiga Beträ
Färo Roiän, jeno Bott grät Hrästouez Bottlosch=
en jno Stänouiten : Tä Trugj Siemenum An=
ton Gäbrouez 55. lött jegouj Stärostj Catholski
Virj, jno Säconskigä Stänä ot Swötigä Beträ
Färo Roiän, Ksätnimo je Wio Ber Cäthärinj Wer=
litschin offer Stä ouä Twä Keter Stä Willä gliz=
änä, jno Wäränä Sposnällä, de onä ouä Twä
Stä dunetschisto jno nespotobnu dellu 5. Crät
enem Strugim Storlä jeno dolänsco Simo Tä per=
uj grät per Werlitschen Stälj ponotshj, Tä Tru=
gi grät pott nieuj Bombekiuj gletj jeno dotj gröch
Stä onä Twä obwech Kreüch dokonzä doBre=
neslä, Schö Wetsch länsco lötto occulj Swötigä
Jäcobä noter Kumbsgim lesj en Krät po notschj,
an drugi Krät länsco lötto po Sonschnim Sächotj
Stä grech Storlä, jeno dutj en Krät länsco lötto
Ketter je Willo Sonzo Tscherno Stä dutj dajstj ten
Bratsizerem nogrätj mesäbo grech Storlä, Kitirj
Sposneiänä ouä Twä per Wäränj Stä Sposnäl=
lä jeno Tschästu otschta Schiwit jeno Mret.

Prepis priznanja obdolžencev v sodobnem slovenskem črkopisu

Toti dvej personi pričo, ta parva z jemenum Peter Bambek, jehovi starosti 60 let, katolški viri ino zakonskiga stana, od svetiga Petra



Sl. 1: Začetek razglasitve sodbe na krvni pravdi v Hrastovcu septembra 1749 (ZAP-9/3, šk. 101, ovoj 4, Deželsko sodišče Hrastovec 1749, september 1749)

faro rojan, jeno pod grad Hrastovec podložen
ino stanoviten, ta drugi z jemenum Anton
Gabrovec, 55 let jegovi starosti, katolški
viri ino zakonskiga stana, od svetiga Petra
faro rojan, k zadnimo je bio per Katarini
Verličin ofer, sta ova dva, keter sta bila
klicana ino barana, spoznala, de ona ova dva
sta tu nečisto ino nespodobnu delu 5-krat
enem z drugim storla jeno to lansko zimo ta pervi
krat per Verličen štali ponoči, ta drugi
krat podnjevi Bombekovi kleti jeno toti greh
sta onadva obeh krejih dokonca doprenesla,
še več, lansko leto okuli svetiga
Jakoba noter Kumskim lesi enkrat ponoči
an drugi krat lansko leto po sonšnim zahodi
sta greh storla, jeno tudi enkrat lansko leto,
keter je bilo sonco černo, sta tudi taisti den
Bratsicerem nogradi me sabo greh storla, kitiri
spoznejana ova dva per barani sta spoznala
jeno čaz tu óčta živit jeno mret.

Razglasitev sodbe

Endt=Vrtl.
Des beÿ der Freÿen Landtgerichts Hschafft Guettenhagg *in Crimine Sadomiae* Proceſsirter Peter Wombekh und dessen Complicis Anton Gäbrouez.

Gegenwertige Zweÿ Malefiz Persohnen, der Erste Nahmens Petter Wambekh Beÿ 60. Jahren seines alters, Cath: *religion* Verehelichten Standts, auß der St. Petter Pfarr gebührtig und in der so genandten achambs gassen wonhafft gewester Hschafft Guetenhag: Vnterthann: der andere nahmens Anton Gäbrouez beÿ 55 Jahren seines alters Cätholischer *religion*, Verehelichten Stands, auß der St: Petter Pfarr gebührtig, löztmahlig Beÿ der Cäthärina Werlitschin Gewester Einwohner, sollen wegen ihren Begangenen Verbröchen ihnen Beeden Zue wohl Verdienten Straff andern aber Zu einen erspieglenden *Exempl* Zu der gewehnlichen Gerichts Statt geführet, aldorten mit dem schwerdt Von löben zum Todt hingerichtet, so dan deren Körper sambt denen geschlagenen Haibtern auf einen darneben Errichteten scheütter Hauffen Zu staub und aschen Verbrönet, hernach der aschen in die Luft gestreüet beeden Gott seÿ gdig: und barmherzig ihren armen Sellen. Freÿ Landtgerichts Herrschaft Guetenhaag den _____ 7br: 1749.

Vrkhundt dessen ist meine Förtigung

[pečat] Dr. Joh. Adam Menhardt mpria
Kaÿl: Königl: Baanrichter
in Vntersteÿer

Totj dwej Bersonj Britscho, Tä Bäruä Sieme=
num Beter Wambek jechouj Stärostj 60. lött Ca=
tholski Virj ino Saconskigä Stänä ot Swötigä
Beträ Färo Roiän, jeno Bott grät Hrästouez
pottloschen jno Stänouiten: Tä Trugj Sieme=
num, anton Gäbrouez 55. lött Jegouj Stärostj
Cätholski Virj, jno Säconskiga Stänä, ot Swet=
=tigä Betträ Färo Roiän, Ksätnimo je Wio
per Cäthärinj Werlitschin offer, moreo Sä=
volj niech pregrechj do Sasluscheno Streifingo
prestät drugim ludten Känemo exemplj jeno
nä Richtnj Bläz Belänj Wit, jeno täm jech
leben Smetschum Richtänj Wit, po dem jech dellä
jeno gläue moreo nä gärmätj Säsganj Wit jeno
po dem dä pepeu proctimo Luftj restresän
Wit. Woch näweski Wotj niech Tuschäm
gnädlu jno Milöstu.

Prepis sodbe v sodobnem slovenskem črkopisu

Toti dvej personi pričo, ta parva z jemenum
Peter Bambek jehovi starosti 60 let
katolški viri ino zakonskiga stana od svetiga
Petra faro rojan jeno pod grad Hrastovec
podložen ino stanoviten, ta drugi z jemenum
Anton Gabrovec, 55 let jegovi starosti,
katolški viri ino zakonskiga stana, od svetiga
Petra faro rojan, k zadnimo je bio
per Katarini Verličin ofer, morejo
zavolj njeh pregrehi to zasluženo štrajfingo
prestat drugim ludem k anemo eksempli jeno
na rihtni plac pelani bit, jeno tam jeh
leben z mečum rihtani bit, potem jeh tela
jeno glave morejo na garmadi sažgani bit jeno

potem ta pepeu prok timo lufti reztresan
bit. Boh nabeški bodi njeh dušam
gnadlu ino milostu.

Črkopis obeh slovenskih besedil je skoraj povsem nemški, brez najmanjšega vpliva bohoričice. Pogosto je denimo rabljena črka *w*, vendar z dvema glasovnima vrednostma: [b] (*Wärana = barana*, *Wio = bio*) in [v] (*dwei = dvej*, *swötigä = svetiga*). Zelo veliko je diakritičnih znakov, pri čemer ni mišljen preglas, ampak poudarek: *ä* za samoglasnik [a] in *ö* za [e].[13] Za glas [k] je pisec kar nekajkrat uporabil grafem *c* (*Säconskigä*, *Crät*), sicer pa niti istih besed ni pisal vedno enako, denimo svojilni zaimek *jegovi* enkrat *jechouj*, drugič *jegouj*, priimek Bombek kot *Wambekh*, *Bombek* in *Wambek*. Pri šumevcih [č] in [š] je odstopanje od nemške pravopisne norme izjema. Glas [č] je le enkrat zapisan kot *tsh* (*Britsho*) namesto *tsch*, kar je najverjetneje pomota, tako kot je treba *Sonschnim* gotovo brati kot *sončnim*. Pri glasu [š] gre za tri variacije zapisa, odvisne od sosledja glasov (*Catholski*, *Stälj*, *Tuscham*), za [ž] pa najdemo poleg običajnega zapisa *sch* enkrat tudi *s* (*Säsganj*). Najbolj pade v oči zamenjevanje zvenečih in nezvenečih soglasnikov [p] in [b], [d] in [t], [g] in [k], ki daje občutek, kot bi bila piščeva materinščina nemščina. Navedimo samo nekaj takih primerov: *bersona* namesto *persona*, *trugi* namesto *drugi*, *du* namesto *tu* in *dobrenesla* namesto *doprenesla*, *duti* namesto *tudi*, *dela* namesto *tela*, *potložen* namesto *podložen*, *glet* namesto *klet*, *Kumbsgi* namesto *Kumbski*.

Besedili v jezikovnem pogledu nista enoviti. Ob tipičnih štajerskih oblikah, opaznih zlasti pri kazalnih zaimkih (*toti*, *ova*), najdemo tudi takšne, ki jih v Slovenskih goricah ne bi pričakovali in so značilne predvsem za Kranjsko (*okuli*, *nespodobnu delu*, *svetiga*) oziroma zvenijo sploh tuje, zlasti preteklik glagola biti (*bio*). O razlogih za takšno jezikovno podobo besedil lahko le ugibamo, saj ne poznamo prevajalca, njegovega izvora in okolij delovanja. Možna je domneva, da je svoj rodni idiom prilagodil goričanskemu narečju ali pa da se je med službovanjem drugod navzel neštajerskih oblik.

Prilaganje okolju z namenom, da bi ljudje razglasa povsem razumeli, se kaže tudi v vsebinski krnitvi oziroma poenostavitvi nemških izrazov in besednih zvez. Tako je v obeh primerih na začetku izpuščen pridevnik malefičen v pomenu hudodelski. »Gegenwertige zweÿ Malefiz Persohnen« je prevajalec poenostavil v: »Toti dvej personi pričo«. Izpuščeno je tudi Bombekovo bivališče v t. i. »achambs gassen«, čeprav ni dvoma, da je imela ulica slovensko ime. Prav tako je izostalo t. i. neboleče zaslišanje (*in* [...] *güetigen examine*), poenostavljeno v: »klícana ino bárana«. Podobno poenostavitev srečamo pri formulaciji »das Vnkheische werkh wider die natur und die Sodomitische Sündt«, kjer sta pojma *proti naravi* in *sodomitski* preprosto izpuščena, formulacija pa s tem zreducirana na: »tu nečisto ino nespodobnu delu«. In na enak način je »miteinander Begangen, und

13 Na območju Hrastovca najdemo takšno prakso zapisovanja samoglasnika [e] z grafemom *ö* še konec 18. stoletja, in sicer v slovenskem prisežnem obrazcu za nove tržane Sv. Lenarta v Slovenskih goricah, ki ga je med letoma 1788 in 1800 zapisal neznani trški pisar (Golec, 2011, Lenart v Slovenskih goricah (LEN-1)).

dises abscheüliche Laster getriben hätten« postalo v prevodu vsem razumljivo: »sta [...] med sabo greh storla«.

Od pravnih izrazov kaže posebej omeniti naslednje izvorno slovenske: glagol *spoznati* za priznati in potrditi, samostalnik *spoznejane* v pomenu priznanje, glagol *bárati* za zaslišati, samostalnik *bárane* za zaslišanje, samostalnik *pregreha* v pomenu *zločin*. Adaptirtani nemški izrazi iz sodne terminologije so samostalniki *štrajfinga* za kazen, *eksempel* za zgled, *rihtni plac* za morišče in glagol *rihtati* za usmrtiti. Zanimivo je, da naslovov obeh razglasov niso prevedli, tako da ne vemo, kako bi se glasila ključna izraza *Urgicht* (*Vrgicht*)[14] in *Endturteil* (*Endt=Vrtl*)[15] ter kako bi bila formulirana naslov sodišča in kaznivo dejanje: »Des beÿ der Freÿen Landtgerichts Hschaft Guettenhagg in Crimine Sodomiae Proceſsirten ... «.

Sodni proces zaradi »sodomije« leta 1749 je naveden tudi v protokolih hrastovškega deželskega sodišča, ki so jih vodili od začetka 70-ih let 18. stoletja in v katere so za nazaj vpisali arhivirane sodne spise od leta 1718 dalje.[16] Pozornost vzbuja podatek pri regestu krvnosodnega procesa, izpeljanega pod vodstvom istega krvnega sodnika dr. Menharda dve leti pozneje, leta 1751. Za ta arhivirani sodni spis je namreč izrecno navedeno, da je priznanje obdolženca zapisano tako v nemškem kot v slovenskem jeziku (*Bannrichter: Vrgicht, welche sowohl deutsch, als Windisch ist*).[17] Pomenljivo je, da najdemo podatek o jeziku samo pri priznanju in ne tudi pri sodbi in da ga pogrešamo v vseh drugih regestih sodnih spisov, vključno z regestom obravnavanega procesa iz leta 1749. Podatek o obstoju pisanega slovenskega priznanja (1751) se lepo dopolnjuje z ohranjenima razglasoma priznanja in sodbe (1749) in potrjuje, da je bilo zapisovanje sodnih razglasov v slovenščini utečena praksa. Prav zato se pisarju, ki je sestavljal protokole, ni zdelo vredno oziroma potrebno omenjati jezika, ampak je to storil le enkrat, prejkone po naključju.

Protokole hrastovškega deželskega sodišča bomo še srečali, saj je v njih zapisano najmlajše od obravnavanih petih besedil, prisežni obrazec za priče.

2) 1751 – Poljane ob Kolpi – izgon tatu

Drugače kot za hrastovški proces je edino, kar se je ohranilo iz dve leti mlajšega sodnega procesa v Poljanah ob Kolpi, prisega obsojenca o odreku maščevanju. To pogosto pravno sredstvo pozna nemška pravna terminologija kot *Urfehde*.[18] Izraza v sami prisegi

14 Gl. op. 12.

15 Končna sodba oziroma sodba.

16 ZAP-9/3, knj. 130, zapisnik deželskega sodišča Hrastovec 1718–1799, razdelek brez naslova s sodnimi primeri 1718–1799, pag. 4. – Od popisanih več kot 70 sodnih spisov iz obdobja 1718–1799 se samo še eden nanaša na »sodomijo«. Leta 1725 je bil Jurij Rudolf »als Sodomit« na krvni pravdi obsojen na izpostavitev na sramotilnem stebru, izšibanje in izgon s Štajerske ter z Dunaja (prav tam, pag. 2). Ker v regestu pogrešamo sostorilca, je šlo najverjetneje za spolno občevanje z živaljo.

17 Obdolženec Andrej Kaube je bil zaradi tatvin in kršitve odreka maščevanju (*Urfede*) obsojen na smrt z obešenjem in usmrčen (prav tam, pag. 6).

18 *Urfehde* je bil institut srednjeveškega prava in je pomenilo zaprisežen odrek maščevanju: *beeidete Fehdeverzicht*. Njegovo kršitev so preganjali in kaznovali kot krivo prisego (*Meineid*). Z razvojem

sicer ni, ga pa zasledimo v zvrstno enaki slovenski prisegi iz leta 1771, ki je nastala v Kostanjevici na Krki in bo predstavljena v nadaljevanju.

Poljanska prisega iz leta 1751 se je ohranila v Auerspergovem rodbinskem arhivu, shranjenem v Avstrijskem državnem arhivu na Dunaju in je bila odkrita šele leta 2006. Priložena je dopisu z dne 1. maja 1754, ki ga je upravitelj gospostva Poljane Gregor Ignac Prelavc naslovil na svojega nadrejenega, inšpektorja Auerspergovih posesti v Ljubljani.[19] V dopisu je predlagal, da bi prejšnji dan aretiranega Mihaela Žagarja (*Sager*) čimprej poslal v pripor (*in Verhafft*) v Ljubljano, in sicer iz varnostnih razlogov, zaradi bojazni pred njegovimi pajdaši. Žagarja je označil kot podložnika poljanskega gospostva, nekoč stanujočega v Predgradu in zaradi tatvin obsojenega 19. julija 1751 po cesarskem krvnem sodniku na telesno kazen ter na dosmrtni izgon iz Kranjske. Dopisu je priložil izvirnik Žagarjeve prisege z istim datumom, dane neposredno po obsodbi, ki jo je obsojeni zdaj prekršil, s tem ko se je vrnil v deželo. Prisežnik se v besedilu prisege sicer naslavlja kot Miha Šterk, vendar kljub različnemu priimku ni najmanjšega dvoma, da gre za isto osebo.

Samo iz upraviteljevih besed izvemo, da je Mihaelu Žagarju oziroma Mihu Šterku leta 1751 sodil krvni sodnik (*durch das Kays: Pangericht*), niti iz dopisa niti iz prisege pa ni mogoče razbrati, kakšne tatvine je obsojeni zagrešil, a vsekakor ne majhnih. Obljubo, da se ne bo vrnil na Kranjsko, je moral prelomiti kmalu po izgonu, saj je upravitelj zapisal, da je že nekaj let slišati, kako se oborožen s t. i. turškim kopjem (*Copia*) zadržuje na tleh poljanskega gospostva in druži s sumljivimi ljudmi, tega in onega pa da je pobil do smrti ter požigal hiše. Ko je pred dnevi nekega kočevskega podložnika v Knežji Lipi oropal za pet glav živine in pobegnil na drugo stran Kolpe, so mu sledili in mu živino vzeli. Nato je razglašal, da bo prišel po živino na gospoščinsko pristavo, da bo odpeljal še gospoščinske jezdne konje in podtaknil požar. Končno so ga v vasi Predgrad prijeli deželskosodni biriči in ga vtaknili v grajsko ječo. O njegovi nadaljnji usodi ni nobenih poročil, ne vemo niti tega, ali so ga res poslali v Ljubljano. Toda če so mu ponovno sodili, jo je težko odnesel tako poceni kot tri leta prej.[20]

Tedaj, 19. julija 1751, so ga obsodili kot tatu, mu na hrbet vtisnili znak *R: Cr:*, ga postavili pred sramotilni steber (pranger), kjer je prejel določeno mero (šiling) udarcev, in

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državnega sodstva je izraz v poznem srednjem veku dobil pomen zagotovila pod prisego, da se obsojenec ne bo maščeval organom pregona zaradi preiskave, obtožbe ali izvršitve kazni. Vseboval je zlasti obljubo izpuščene ali iz dežele izgnane osebe, da se ne bo vrnila v deželo in se maščevala. Takšna prisega je na eni strani kot dodatni instrument dopolnila kazenski pregon, na drugi pa je bila izrečena tudi kot kazen po sebi in je imela podobno vlogo kot pogojne kazni v modernem pravosodju. V poznem srednjem in zgodnjem novem veku je bilo takšno priseganje zelo pogosto. Skoraj vse priprte osebe so namreč kaznovali in izpustili le s pisno potrjenim odrekom maščevanju (*Urfehde*) (http://de.wikipedia.org/wiki/Urfehde; Köbler, 1997, 806–807). – O tem pravnem sredstvu na slovenskih tleh prim. Dolenc, 1935, 417, 434.

19 ÖStA, HHStA, FAA, VII Pölland, A–VI–32, Konv. 2, 1754, 19. 7. 1751, 1. 5. 1754. – Prisego je avtor prispevka po naključju našel julija 2006, in sicer na podlagi pripisa »Slov. Jurament« na naslovnici zajetnega snopiča s pomešanimi sodnimi spisi iz leta 1754. Drugače kot nekateri drugi slovenski dokumenti ni navedena v inventarju Auerspergovega rodbinskega arhiva.

20 Lahko bi mu sodili v Ljubljani in ga obsodili celo na smrt, vendar prav za ta leta v ljubljanskem mestnem arhivu manjkajo pobotnice o plačilih rablju (Fabjančič, 1944–1945, 104).

ga »na večne čase« izgnali s Kranjskega. Poleg kratkega opisa obsodbe je v prisegi veliko daljši del, v katerem je zajet njen namen, odrek maščevanju. Obsojenec je sprejel pravično sodbo in se odrekel maščevanju, najsi bo deželskemu sodišču Poljane najsi bo komu drugemu ter v kakršni koli obliki. Ker ni znal brati in pisati, sta se pod prisego podpisala naprošena podpisovalca, oba podpisana le s križcem.

Slovensko prisežno besedilo ima naslov samo na hrbtni strani in le v nemščini: »*Des Michl Sterkh von Vorngeschloß in Crimine reloxierten vnd Landts verwisenen Vnterthanns abgelegtes Jurament*«. V nadaljevanju sta objavljeni transkripcija in transliteracija v sodobnem slovenskem črkopisu.

Besedilo prisege

Jest Michal Sterk Sposnam Sleto Mojo Perſsego, de potem
Jest Sauolla Tatuin Sem biu ujetsho potegnen, po ordenge
Spraſshuan, inu Skus Prauizo toku deletsch obſsojen, de
Se Mene ta Zahen tega buchstoba R: Cr: na herbet Sturi,
potem Che le tem Prangeriu postaulen, de bodem tankei en
Zeu Schilling prejeu, Jeno popred dolle poloſshene Perſsege,
de imam Ste Krainche Deſselle na Vezhne Zhaſse
Vishan bite.
Toku oblubem, Jenu pregouorim Jest per Moje Shuotni Perſ-
sege, de Jest potemo prestojotshemo Zelmu Schilinko, inu
Bandishaino, preke Polanske gnadleue Richtne Gasposke,
inu Soſseske, alle Szer Drugem, bode Koker Otze, ne
eno alle drugo Visho, obene Sille, ne Skosmene, ne Skos
Drugge, ne Sa Mojo Volo le tu Sam Strite, ale Ur=
=sach date, ne Ktemo na Nobeno Visho Pomotz Strite,
ampach uſse Toku dobru per Mene, Koker per tech Mojech,
uto Vetshno Poſsabliuost ozhem postauet.
Kebe pa Jest Scusi Mene, alle Scusi enga druggiga Sa
Mojo Volla Sa Vole lete prod Mene Sterjene prauitzhne
Sodbe nar ta Mainshe preke Pollanske gnadleue Richtne
Gasposke, alle preke enimo Druggimo Se serdite, al
tude Sa Vole tega Schugat othu, toku ima potem
Smano, Koker Senem foush Perſsegauzam pre uſse Gnade
po le te Richtne ordenge Sterjeno bite.
Poterdem tedej, de Sem Jest Sleto Mojo Shuotno Perſsego
[2. stran]
Sadoste Sturu, Jeno Sa tega Vola, Ke Jest piſsat inu
brate nasnam, toku Sem Jest lete Spot postaulene
ne mest mene fertiguat na Proſsu, Ker mene Buch
pomagei, inu ta pres Madeſsa Spozeta Mate Boshia

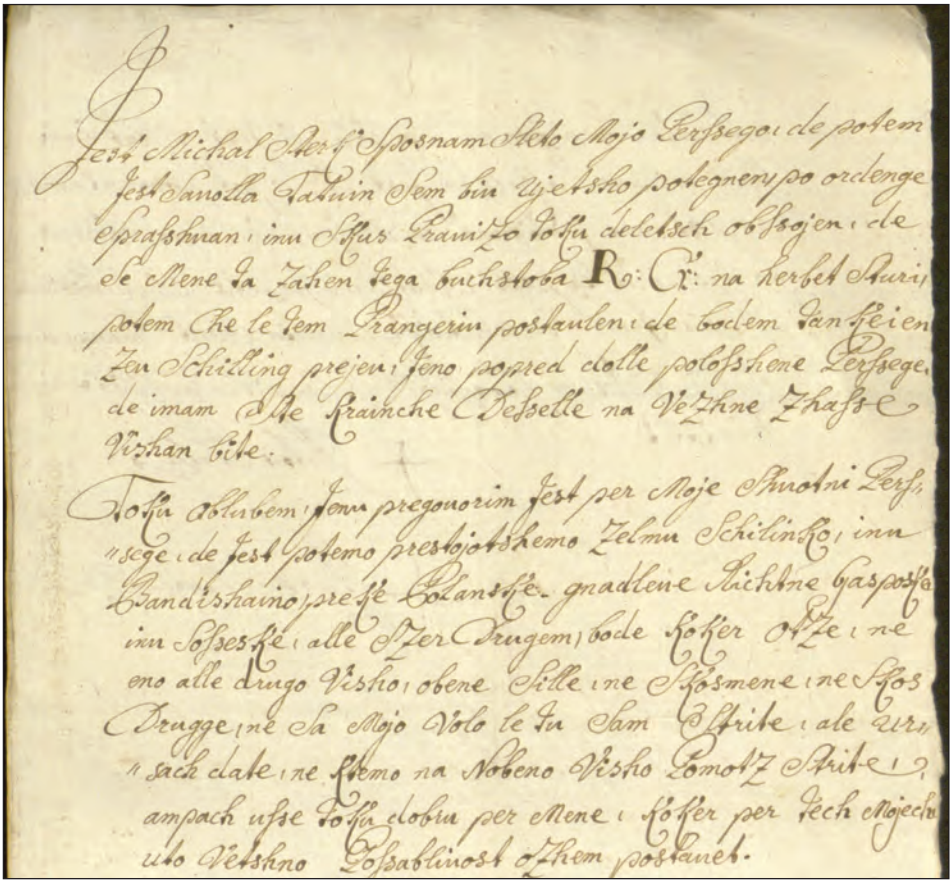
Maria, Jenu uſse Suetnike, inu ta Suet Euangelium
Amen. Actum *Herrschafft Pöllandt den 19ten*
Julÿ 1751.

\+ *Peter Rupe*
\+ *Jure Kraul.*

Prepis v sodobnem slovenskem črkopisu

Jest, Mihal Šterk, spoznam z le-to mojo persego, de potem
jest zavola tatvin sem biu v ječo potegnen, po ordenge
spraševan, inu skuz pravico toku deleč obsojen, de
se mene ta cahen tega buhštoba R: Cr: na hrbet sturi,
potem he le tem prangerju postavlen, de bodem tankej en
ceu šiling prejeu, jeno popred dole položene persege,
de imam s te krajn[s]ke dežele na večne čase
vižan bite.
Toku oblubem jenu pregovorim jest per moje žvotni persege,
de jest po temo prestojočemo celmu šilinko inu
bandižajno preke polanske gnadleve rihtne gasposke
inu soseske ale scer drugem, bode koker óče, ne
eno ale drugo vižo, obene sile, ne skoz mene, ne skoz
druge, ne za mojo volo le-tu sam strite ale urzah
date, ne k temo na nobeno vižo pomoč strite,
ampak vse toku dobru per mene koker per teh mojeh
v to večno pozablivost óčem postavet.
Ke be pa jest skuzi mene ale skuzi enga drugiga za
mojo vola, zavole le-te prot mene sterjene pravične
sodbe, nar ta majnše preke polanske gnadleve rihtne
gasposke ale preke enimo drugimo se srdite al
tude zavole tega žugat otu, toku ima potem
z mano koker z enem fouš persegavcam bre[z] vse gnade
po le te rihtne ordenge sterjeno bite.
Poterdem tedej, de sem jest z le-to mojo žvotno persego
zadoste sturu, jeno za tega vola, ke jest pisat inu
brate na znam, toku sem jest le-te spot postavlene
ne mest mene fertigvat naprosu, ker mene Buh
pomagej, inu ta brez madeža spočeta Mate Božja
Marija jenu vse svetnike inu ta svet evangelium,
amen. [Dano gospostvo Poljane, 19. julija 1751].

\+ *Peter Rupe*
\+ *Jure Kraul.*



Sl. 2: Začetek prisege Mihala Šterka pred deželskim sodiščem Poljane ob Kolpi 19. julija 1751 (ÖStA, HHStA, FAA, VII Pölland, A–VI–32, Konv. 2, 1754, 19. 7. 1751)

V zvezi z vsebino se ustavimo le pri dveh teže razumljivih mestih. Brez referenčnih virov ni mogoče vedeti, kolikšno število udarcev je mišljeno s formulacijo »cel šiling« (*en ceu šiling prejeu*, *po temo prestojočemo celmu šilinko*).[21] Kar zadeva pomen sramotilnega črkovnega znamenja *R: Cr:*, vtisnjenega na obsojenčev hrbet, pa se zdi najverje-

21 Tudi dopis poljanskega upravitelja Auerspergovemu inšpektorju v Ljubljani ne pove o kazni nič določnega: »den Schilling=Streich auszuhalten« (ÖStA, HHStA, FAA, VII Pölland, A–VI–32, Konv. 2, 1754, 1. 5. 1754). Nemški izraz Schilling se je uporabljal za udarce, kjer je šlo prvotno za določeno število, denimo 50 ali 12, pozneje pa ne glede na število, v ožjem smislu za udarce po zadnjici: »Im gemeinen Leben wird Schilling auch für Schläge, Streiche, wo es ursprünglich eine bestimmte Zahl Schläge, etwa 50 oder 12 bedeutet haben mag, jezt aber nur überhaupt davon ohne Rücksicht auf die Zahl, in erngerer Bedeutung aber von Schlägen auf den Hintern gebraucht wird.« (Campe, 1810, 142).

tnejša in najbolj logična naslednja razlaga: *R* za *relegatus* (*est*) in *Cr* za *Crain* oziroma *Carniola*, torej izgnan iz Kranjske.

Besedilo je napisal neznani sodni pisar, tako kot v hrastovškem primeru bodisi uslužbenec domačega gospostva bodisi pisar kranjskega krvnega sodnika. V pravopisnem pogledu ima tekst zelo individualne poteze. Zlasti pisanje šumevcev je na moč poljubno, kakor se je piscu tisti hip zdelo najprikladneje. Tako najdemo [č] zapisan v nič manj kot šestih različicah: po trikrat kot *tsh* in *zh*, dvakrat kot *tz* in po enkrat kot *tsch*, *tzh* in *z*. Šumevec [š] se dvakrat pojavlja kot *s* (obakrat pred črko t), *sh* in *Sch* (v adaptiranem nemškem izrazu *Schilling*), enkrat pa kot *ſsh*. Še najbolj enoten je zapisan šumevca [ž], in sicer sedemkrat kot *sh*, dvakrat kot *ſs* ter po enkrat kot *ſsh* in *sch*. Jezik ima izrazite kranjske poteze z opaznimi dolenjskimi elementi (*skuzi, gasposke, sturu, Buh*), iz skladnje in besedotvorja pa je jasno razbrati, da gre za dobesedni prevod nemške predloge.

Pravno izrazje prisege iz Poljan je drugo in bogatejše kot pri besedilih iz Hrastovca. Primerjati je mogoče samo glagola *bárati* (Hrastovec) in *spraševati* (Poljane) v pomenu zaslišati. V poljanski prisegi najdemo običajne izvorno slovenske izraze, kot so sodba (*pravična sodba*), prisega (*moja persega*, *moja položena persega*, *moja žvotna persega*), obsoditi (*obsojen*) in pravica (*skuz pravico*). Pozornost pritegne izraz *fouš persegavc* za krivoprisežnika (*z enem fouš persegavcam*), pri pravnih izrazih pa srečamo še druge adaptirane nemške besede, in sicer: v poimenovanju za sodno oblastvo deželsko sodišče (*polanska gnadleva rihtna gasposka*), za izgon (*bandižajne*), (deželsko)sodni red (*ordenga*, *rihtna ordenga*), sramotilni steber (*pranger*), telesno kazen »šiling« (*en ceu šilink*, *po temo prestojočemu celmu šilinko*), sramotilno črkovno znamenje (*ta cahen tega buhštoba R: Cr:*), milost (*gnada*), ter glagola *vižati* v pomenu izgnati (*vižan*) in *fertigvati* za podpisati oziroma potrditi (*fertigvat*).

Tisti del prisege, ki govori o obsojenčevem odreku maščevanju, je standardni obrazec in ga bomo v skoraj identični obliki srečali pri dvajset let mlajši prisegi iz Kostanjevice. Pri obravnavi te bomo glavne značilnosti obeh obrazcev tudi primerjali med seboj.

3) 1771 – Kostanjevica na Krki – zaporna kazen in izgon zaradi detomora in incesta

Prisega obsojenca iz leta 1771 se je ohranila med sodnimi spisi gospostva Kostanjevica na Krki kot del sodnega spisa v zadevi detomora novorojenca in je bila odkrita šele pred slabim desetletjem.[22] Prisežnik je bil novorojencev nezakonski oče Mihael – Miha Olovac, ki je po obsodbi podal t. i. *Urfede*, prisego o odreku maščevanju. Prisega na samostojni poli je temu ustrezno na hrbtni strani naslovljena kot: »*Urphed Michael Olauz betref.*«.

Kostanjeviški sodni proces je zelo dobro dokumentiran, in sicer vse od prijetja obeh osumljencev, preko deželskosodnih zaslišanj do sklepnega dela, ki ga je izpeljal cesarsko-kraljevi krvni sodnik na Kranjskem Franc Jožef pl. Abramsperg. Obtoženca sta bila 54-letni vdovec Miha Olovac, podložnik kostanjeviške cisterce iz podgorjanske vasi

22 ARS-746, Spisi, fasc. 26, Iustitialia, Criminalia: deželsko sodišče Kostanjevica, Sintič Ana, detomor 1771. – Na dotlej neznano slovensko prisego je naletela zgodovinarka Dragica Čeč in leta 2008 nekaj odlomkov objavila v svoji doktorski disertaciji (Čeč, 2008, 67).

Oštrc, in njegova 30-letna neporočena svakinja Ana – Anka Sintič, ki mu je pomagala gospodariti na zakupni kmetiji. Sodni spis vsebuje vrsto zanimivih detajlov, med katerimi pritegne posebno pozornost dejstvo, da je obtoženko dva tedna pred porodom zadela kap, po kateri ni mogla govoriti in ki jo je paralizirala po vsej desni strani telesa. Med zaslišanji se je Ana lahko sporazumevala le z znaki, prikimavanjem in odkimavanjem.

Miha Olovac in njegova svakinja sta spretno prikrivala nosečnost, ko pa se je otrok rodil, je novica o tem vendarle prišla na ušesa Jere Kodrič iz sosednje Črneče vasi. Ta je nato za Olovčevim hlevom našla grob telesno povsem razvitega dečka, rojenega približno dva tedna prej, v adventu 1770. Miho Olovca in Ano Sintič so obtožili krvoskrunstva in detomora, vendar jima zadnjega ni bilo mogoče dokazati – po izjavah prič namreč na izkopanem trupelcu ni bilo znamenj umora –, njuni pričevanji pa sta se razlikovali. Nema Ana je s kretnjami izpovedala, da ji je Miha vzel živorojenega otroka in da ga je moral ubiti, česar sama sicer ni videla. Miha, ki je zanikal njeno trditev, da bi bil pri porodu navzoč, je nasprotno trdil, da je otroka našel zjutraj mrtvega na slami zunaj hiše, kjer ga je Ana tudi rodila. Po njegovem bi otroka nesel h krstu in ga pokazal ljudem, če bi se rodil živ, s svakinjo pa sta njeno nosečnost prikrivala samo zaradi sramu. Krvni sodnik je pri izreku sodbe vsekakor moral upoštevati pomanjkanje dokazov za umor in izpovedi zaslišanih sosedov, ki so Olovca opisali kot pametnega moža, oba z Ano pa kot mirna, pobožna in delovna človeka, o katerih niso nikoli slišali nič slabega. Tako so od kapi zadeti Ani Sintič všteli v kazen dotedanji zapor, tj. sedem mesecev in pol, kolikor je v kostanjeviškem zaporu presedel tudi Miha Olovac. Tega je doletela neprimerno težja kazen. Bil je obsojen na dve leti zapora v kaznilnici v Ljubljani in na dosmrtni izgon iz deželskega sodišča Kostanjevica.

Na dan obsodbe je Olovac dal tudi prisego o odreku maščevanju, ki sta jo potrdili dve priči, zapisal pa – kot je pokazala primerjava pisav – Damjan Jožef Vesel, pisar kranjskega krvnega sodnika. Slovenska prisega je v nadaljevanju transkribirana in transliterirana v sodobnem slovenskem črkopisu.

Besedilo prisege

Jest Micha Olauaz Sposnam, de Sem jest Sa Volle tega gre=
shenga Dopernashajna is mojo Shuagerno tukei biu Vje=
tsho potegnen, po ordenge prashan, inu Skus Pravizo
toku delez obsojen, de bom sa Volle moje Pregrehe
Sa mojo dobro Straffengo U Lublano na due lete v´
Zuchthaus poslan, is te Zelle Kostajnoushke Richte,
na Vezne Zasse Visen, oblubem tedei, de jest po
tei Preſtoizhe poprei imenuani Straffenge U to Kos=
tainoushko Richto Nikuli Vez nezem prite, inu
tudi ne prote Kostajnoushke Richtni Gosposke,
inu Sosseske, alli Szer drugim bode Koker oze, na
eno ali drugoVisho obene Sille ne Skus mene, ne
Skusi Druge, ne sa mojo Vollo, le to Sam Strite ali

Urshach dati, ne Ktemo na nobeno Visho Pomotsh
Strite, ampak use toku dobru per mene Koker
per teh Mojeh uto Vetshno Posablivost otshem
postavet.
Ke be pa jest Skus mene, ali Skusi enga drugiga
Sa mojo Volo, Sa volle le te Prod meni Sterjene
pravizne Sodbe nar ta mainshi preke Kostaj=
noushki Richtne Gosposke, alli perke enimo
drugimo Se Serdite, alle tudi Sa Volle tega
Shugat othu, toku ima po tem Smano, Koker
de bi biu jest foush Persegu, bres use Gnade
polete Richtne ordenge Sterjeno biti.
[2. stran]
Sa tega vola pa, Ke jest piſsat na Snam, toku Sem
Jest lete Sdolei postaulene na meſte mene leto
Urphedo fertiguat, na proſsou. *Herrsch: Landt=*
straß den 22ten 9ber 771.

[pečat] Joch. Bapta Matschig manu propria
Als Erbettener Förtiger
[pečat] Mihael Kallin
Als Erbettner Förtiger

Prepis v sodobnem slovenskem črkopisu

Jest, Miha Olavac, spoznam, de sem jest zavole tega
grešenga dopernašajna iz mojo švagerno tukej biu
v ječo potegnen, po ordenge prašan, inu skuz pravico
toku deleč obsojen, de bom zavole moje pregrehe
za mojo dobro štrafengo v Lublano na dve lete v
cuhthaus poslan, iz te cele kostajnovške rihte
na večne čase vižen, oblubem tedej, de jest po
tej prestojiče poprej imenvani štrafenge v to
kostajnovško rihto nikuli več nečem prite inu
tudi ne prote kostajnovške rihtni gosposke
inu soseske ali scer drugim, bode koker óče, na
eno ali drugo vižo obene sile ne skuz mene ne
skuzi druge, ne za mojo volo, le-to sam strite ali
uržah dati, ne k temo na nobeno vižo pomoč
strite, ampak vse toku dobru per mene koker
per teh mojeh v to večno pozablivost óčem
postavet.

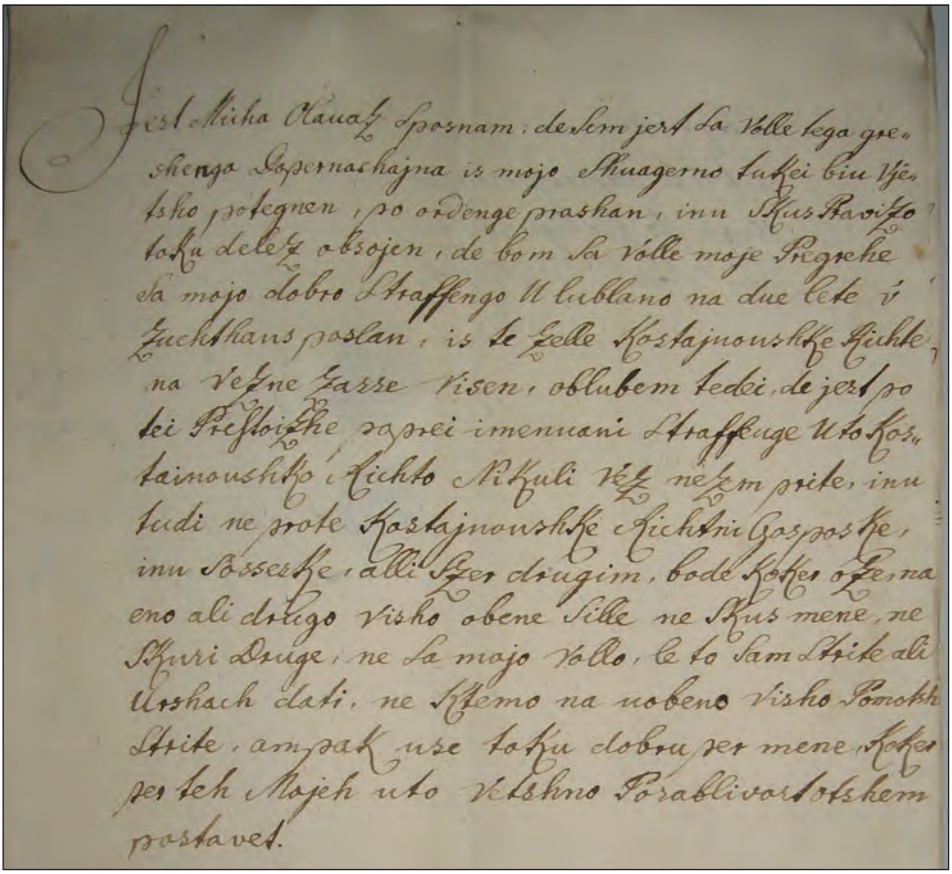
Ke be pa jest skuz mene ali skuzi enga drugiga
za mojo volo, zavole le te prot meni sterjene
pravične sodbe, nar ta majnši preke kostajnovški
rihtne gosposke ali perke enimo
drugimo se serdite, ale tudi zavole tega
žugat otu, toku ima po tem z mano koker
de bi biu jest fouš persegu, brez vse gnade
po le-te rihtne ordenge sterjeno biti.
Za tega vola pa, ke jest pisat na znam, toku sem
jest le-te zdolej postavlene na meste mene le-to
urfedo fertigvat naprosou. [Gospostvo Kostanjevica,
22. novembra 1771]

[pečat] [Janez Krstnik Maček lastnoročno
kot naprošeni podpisovalec]
[pečat] [Mihael Kalin
kot naprošeni podpisovalec]

V jezikovnem pogledu je kostanjeviška prisega zelo podobna dvajset let starejši poljanski. Že na prvi pogled je vidno, da je besedilo nastalo na Kranjskem in da ga zaznamujejo nekatere dolenjske poteze (*skuz, toku, skuzi, Buh*). Glede črkopisa pa je bil pisar Vesel nekoliko bolj dosleden od pisca poljanske prisege. Med šumevcema [š] in [ž] je sicer grafično razlikoval le izjemoma. Oba je pisal kot *sh* – ta sestavljeni grafem je 10-krat uporabil za [š] in 4-krat za [ž] –, samo enkrat se mu je za [ž] zapisalo *s* (*Visen*) ali pa je v adaptiranem nemškem izrazu dejansko hotel zapisati sičnik, torej *vizen* in ne *vižen* v pomenu izgnan. Glas [š] je dvakrat zapisan kot *s*, obakrat pred črko *t* in v isti adaptirani besedi *štrafenga*, povzeto po nemškem zgledu. Veliko manj dosleden je bil Vesel pri zapisovanju šumevca [č], saj ima zanj 7-krat grafem *z*, 4-krat sestavljeni grafem *tsh*, enkrat pa se mu je vendarle prikradel bohoričični *zh*.

Kot smo omenili že pri poljanski prisegi, sta oba pisarja v glavnem delu, ki govori o odreku maščevanju, uporabila isto predlogo.[23] Skupna predloga obrazca je razumljiva, saj je v obeh primerih sodil cesarsko-kraljevi krvni sodnik za Kranjsko. Razlike med poljansko in kostanjeviško različico so minimalne, še najpogostejše v zapisu nekaterih samoglasnikov (npr. *skoz – skuzi*, *le-to – le- tu*, *majnše – majnši*, *naprosu – naprosou*) in seveda v črkopisnem pogledu, zlasti ker sta bila pisarja navajena vsak svojega načina pisanja šumevcev. V vsebini se razlikujeta le pri lastnih imenih (poljanski oziroma kostanjeviški), pri formulaciji krive prisege (poljanska: *koker z enem fouš persegavcam*, kostanjeviška: *koker de bi biu jest fouš persegu*) in v zaključku, ki je pri poljanski prisegi daljši za uvodni del: *Poterdem tedej, de sem jest z le-to mojo žvotno persego zadoste sturu*.

23 Odrek maščevanju zasledimo tudi v podložniški prisegi pred blejskim patrimonialnim sodiščem leta 1746, vendar je formuliran drugače (Ribnikar, 1976, 66).



Sl. 3: Začetek prisege Mihe Olovca pred deželskim sodiščem Kostanjevica 22. novembra 1771 (ARS-746, Spisi, fasc. 26, Iustitialia, Criminalia: deželsko sodišče Kostanjevica, Sintič Ana, detomor 1771, 22. 11. 1771)

Za lažjo primerjavo objavljamo obe besedili vzporedno in v prečrkovani obliki.

Poljane ob Kolpi 1751	Kostanjevica na Krki 1771
Toku oblubem jenu pregovorim jest per moje žvotni persege de jest [sledi opis kazni] preke polanske gnadleve rihtne gasposke inu soseske ale scer drugem, bode koker óče, ne eno ale drugo vižo, obene sile,	... oblubem tedej, de jest [sledi opis kazni] prote kostajnovške rihtni gosposke inu soseske ali scer drugim, bode koker óče, na eno ali drugo vižo obene sile ne skuz mene ne skuzi druge, ne za mojo volo,

ne skoz mene, ne skoz druge, ne za mojo volo le-tu sam strite, ale urzah date, ne k temo na nobeno vižo pomoč strite, ampak vse toku dobru per mene koker per teh mojeh v to večno pozablivost óčem postavet. Ke be pa jest skuzi mene ale skuzi enga drugiga za mojo vola, zavole le-te prot mene sterjene pravične sodbe, nar ta majnše preke polanske gnadleve rihtne gasposke ale preke enimo drugimo se srdite al tude zavole tega žugat otu, toku ima potem z mano koker z enem fouš persegavcam bre[z] vse gnade po le te rihtne ordenge sterjeno bite. Poterdem tedej, de sem jest z le-to mojo žvotno persego zadoste sturu, jeno za tega vola, ke jest pisat inu brate na znam, toku sem jest le-te spot postavlene ne mest mene fertigvat naprosu.	le-to sam strite ali uržah dati, ne k temo na nobeno vižo pomoč strite, ampak vse toku dobru per mene koker per teh mojeh v to večno pozablivost óčem postavet. Ke be pa jest skuz mene ali skuzi enga drugiga za mojo volo, zavole le te prot meni sterjene pravične sodbe, nar ta majnši preke kostajnovški rihtne gosposke ali perke enimo drugimo se serdite, ale tudi zavole tega žugat otu, toku ima po tem z mano koker de bi biu jest fouš persegu, brez vse gnade po le-te rihtne ordenge sterjeno biti. Za tega vola pa, ke jest pisat na znam, toku sem jest le-te zdolej postavlene na meste mene le-to urfedo fertigvat naprosou.

Pravno besedišče kostanjeviške prisege je podobno bogato kot pri dvajset let starejši poljanski prisegi. Tudi tu najdemo običajne slovenske izraze prisega (*moja persega*, *dole položena persega*, *moja žvotna persega*), obsoditi (*obsojen*), sodba (*pravična sodba*) in *pravica* (*skuz pravico*), poleg teh pa še glagol priseči (*persegu*). Kaznivo dejanje, opredeljeno v sodnem spisu kot detomor in incest (*in crimine infanticidii et incestus*), je v prisegi poenostavljeno kot *grešno dopernašajne*, pojem *pregreha* pa po analogiji s hrastovško sodbo pomeni zločin (*zavole moje pregrehe*). Adaptirane nemške besede se nanašajo na deželsko sodišče (*kostajnovška rihta*, *kostajnovška rihtna gosposka*), kazen (*štrafenga*), ljubljansko kaznilnico (*cuhthaus*), (deželsko)sodni red (*ordenga*, *rihtna ordenga*), milost (*gnada*) in na odrek maščevanju (*urfeda*). Izgon je tu izražen samo z glagolom *vižeti* (*vižen*) in ne tudi v samostalniški obliki, prav tako pa najdemo glagol *fertigvati* za podpisati oziroma potrditi (*fertigvat*). Zanimivo, a nikakor presenetljivo je dejstvo, da je pisar za domači grajski zapor uporabil slovenski izraz *ječa*, medtem ko se kaznilnice v Ljubljani ni trudil razlagati slovensko, ampak je preprosto uporabil nemško besedo: *Zuchthaus*. Za zaslišati je uporabljen dovršni glagol *prašati* (*prašan*), drugače kot v poljanski prisegi, kjer najdemo nedovršnega *sprašvati* (*sprašvan*).

4) 1770–1774 – Dvojezični slovensko-nemški obrazec za priče pred deželskim sodiščem Hrastovec

Dvojezični slovensko-nemški obrazec za priče je od petih predstavljenih besedil edino, ki ni nastalo kot enkratno dejanje v sodni praksi, ampak je bilo namenjeno večkratni

rabi. Tako kot prvi dve besedili se je ohranilo v fondu zemljiškega gospostva Hrastovec v Zgodovinskem arhivu na Ptuju, in sicer v edinem sodnem protokolu hrastovškega deželskega sodišča.[24] Kot »Slovensko prisego iz Hrastovca« ga je že leta 1928 objavil Franc Kotnik in ga pospremil z zelo lapidarnim komentarjem. O času nastanka, pravopisnih in jezikovnih potezah je zapisal zgolj tole: »Po vseh znakih je soditi, da je zapis prisege iz druge polovice XVIII. stoletja. Zapisovalcu je bila bohoričica popolnoma neznana. Slov. prevod nemške prisege je slab.« (Kotnik, 1928, 147–148). Obrazec zatem ni bil deležen veliko pozornosti. Leta 1992 ga je s Kotnikovo datacijo omenil Matevž Košir v pregledu slovenskih priseg (Košir, 1992, 8), njegovo reprodukcijo pa je leta 1996 objavila Marija Hernja Masten, tudi ta brez komentarja, zgolj kot ilustracijo k prispevku o trgu Sv. Lenart v Slovenskih goricah (Hernja Masten, 1996, 35).

Nedatirani obrazec je zapisan v sodnem protokolu hrastovškega deželskega sodišča, ki pokriva obdobje od leta 1718 do 1799, in sicer na koncu, v razdelku sodnih obrazcev (*Juraments Sachen*).[25] Analiza pisave je potrdila, da je Kotnik njegov nastanek pravilno umestil v drugo polovico 18. stoletja. Protokol so dejansko začeli voditi šele v začetku sedemdesetih let 18. stoletja kot neke vrste arhivski pripomoček. Roka prvega pisarja je vanj za časovni razpon od leta 1718 do 1774 vpisala v kronološkem zaporedju kratko vsebino 24 sodnih spisov z navedbo fascikla (1–23), v katerem se nahaja posamezen sodni spis (pag. 1–24).[26] Isti neugotovljeni pisar[27] je na koncu knjige napisal poduk prisežnikom in tri prisežne obrazce, med njimi dvojezičnega za priče.[28] Ker so vpisi sodnih spisov od leta 1776 dalje delo drugih rok,[29] so morali tudi obrazci nastati pred tem. Zagotovo pa ne pred letom 1770, kajti regesti sodnih spisov so bili vsaj za spise do tega leta vpisani sočasno. Tiste za sodne spise iz let 1772–74 bi pisar – kot kažeta duktus in črnilo – utegnil vpisati pozneje, najbrž sproti po zaključenih procesih.[30] Ker se zdi zelo logično, da so bili tudi poduk prisežnikom in prisežni obrazci zapisani že ob začetku vodenja knjige, je njihov nastanek mogoče datirati kot: v prvi polovici sedemdesetih let 18. stoletja. Povedano natančneje: nikakor pred letom 1770, skoraj nedvomno do 1774 in le malo verjetno pozneje, a ne po letu 1776.

Predloge za vse štiri so lahko sicer starejše. Prvi trije so samo nemški: prvi je poduk

24 ZAP-9/3, knj. 130, zapisnik deželskega sodišča Hrastovec 1718–1799, razdelek Juraments Sachen, pag. 4–5.

25 ZAP-9/3, knj. 130, zapisnik deželskega sodišča Hrastovec 1718–1799, razdelek Juraments Sachen, pag. 4–5.

26 ZAP-9/3, Gospostvo Hrastovec – knjige 1757–1895, knj. 130, zapisnik deželskega sodišča Hrastovec 1718–1799, razdelek brez naslova s sodnimi primeri 1718–1799.

27 Ugotavljanje identitete pisarja s pomočjo drugih dokumentov gospostva Hrastovec ni dalo rezultatov.

28 ZAP-9/3, knj. 130, zapisnik deželskega sodišča Hrastovec 1718–1799, razdelek Juraments Sachen, pag. 1–5.

29 Vpis sodnega spisa z datumom 10. marec 1776 se kot pozneje dodan nahaja med vpisoma spisov z letnico 1774 in brez datumov (ZAP-9/3, knj. 130, zapisnik deželskega sodišča Hrastovec 1718–1799, razdelek brez naslova s sodnimi primeri 1718–1799, pag. 23). Pod zadnjim sodnim spisom z letnico 1774 je pripis o vizitaciji cesarsko-kraljevega krvnega sodnika 23. januarja 1777 (pag. 24), nato pa sledijo regesti sodnih spisov od 26. februarja 1777 dalje (pag. 25 sl.).

30 Nedvomno so bili sočasno vpisani spisi od leta 1718 do 1770 (pag. 1–19), pozneje pa morda regesti petih spisov iz let 1772 in 1774 (pag. 20–24).

prisežnikom o krivi prisegi (*Vnterricht*), drugi je obrazec prisege za priče (*Juramentum formale*), tretji pa prisežni obrazec za tolmača (*Dolmetsches Jurament*).[31] Zgovoren je zlasti zadnji, po katerem je tolmač prisegel, da bo vsa vprašanja krvnega sodnika zvesto prevedel v slovenski jezik (*in Windischer Sprache Verdolmetschen*) in vsebino odgovorov prav tako natančno posredoval sodniku v nemščini.

Četrti, dvojezični obrazec za priče, je naslovljen kot »Windisches Jurament«.[32] Njegova prednost je primerljivost slovenske in nemške različice, ki se po vsebini ujemata do zadnje besede. Zanimivo je, da različici nista ločeni, ampak je vsaka vrstica slovenskega prisežnega besedila v naslednji vrstici sproti navedena še nemško. S tem je obrazec služil dvojnemu namenu, saj ga je bilo mogoče uporabiti tudi za prisežnike, ki so prisegli nemško. Ti so imeli sicer na voljo še drug, samo nemški obrazec, katerega vsebina je nekoliko drugačna.

Besedilo prisežnega obrazca

Windiſches Jurament
Jast N: N: oblubim jnu perseschem Gospodi
Ich N: N: gelobe und ſchwöre dem Herr
Bogu nebeskemo vsem lubim Svetnikim jnu
Gott dem Allmächtigen, allen lieben Heiligen, und
temo tokai naprei postaulenemo Zestitimo Sodniki
dem alhier Vor= geſezten Hochgeehrten Richter,
Da jast na touto povedavaine sa Kero sem jast
daß ich Vor diese Ausſage, wegen welcher ich
Sdai naprei=poglizan otschim to pravo Zisto, no
jezt Vor= berufen, will die wahre reine, und
verno Resnizo povedat, Ko jast verno vem, ali se
klare Wahrheit ſagen,wie ich wahr weiß, oder wahr
meni vernosdi netschem jeno Libesen
zu ſeÿn Vermeine, will nicht einige Freundschaft,
Sovrastvo ali mito per tem povedavaini meti,
Feindschaft, oder gab beÿ dieser Ausſage anſehen,
ali misleti, otschem le povedat to Zisto pravo
oder denken, will nur ſagen die reine wahre
Resnizo, Kakor se enimo vernemo Kerschniggo, jnu
Wahrheit, wie es einem wahrhaften Chriſten, und
postenemo Zhloveggo spodobi, jnu jast na Sodnem
ehrbaren Menschen zustehet, und ich am jüngsten
Dni pred Gospodi Bogu Nebeskemo bom mago

31 ZAP-9/3, knj. 130, zapisnik deželskega sodišča Hrastovec 1718–1799, razdelek Juraments Sachen, pag. 1–3.

32 ZAP-9/3, knj. 130, zapisnik deželskega sodišča Hrastovec 1718–1799, pag. 4–5.

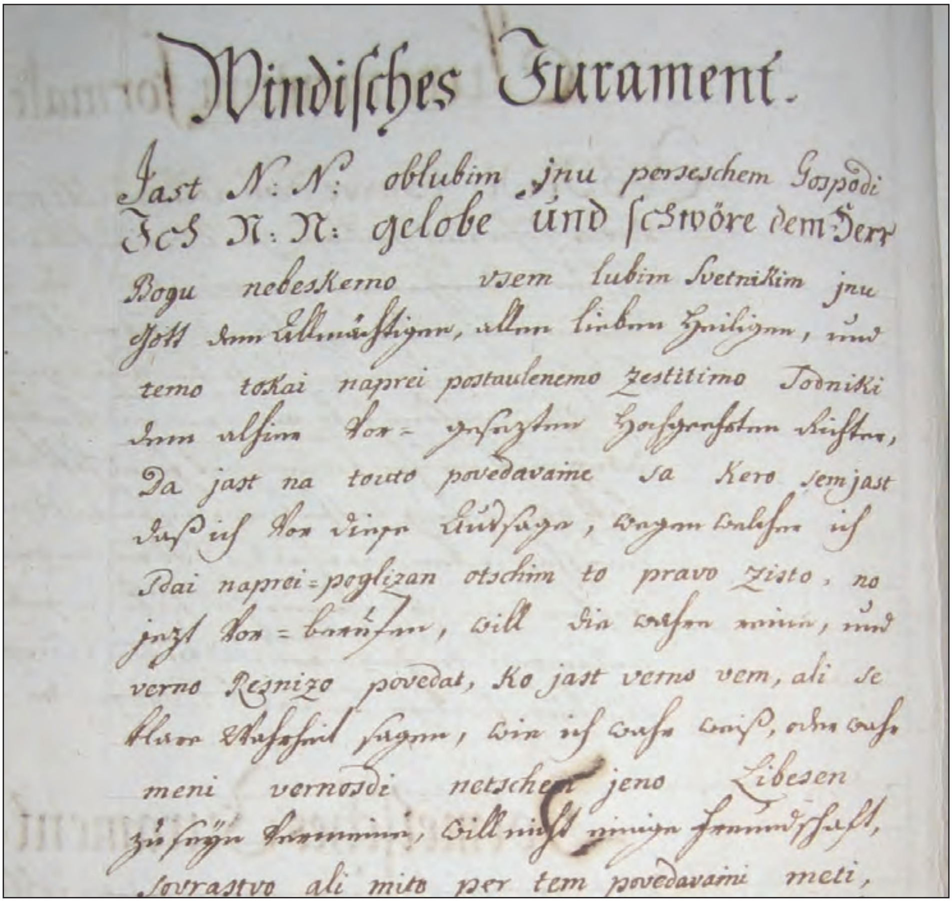
Tag Vor Herrn Gott dem allmächtigen werde müſſen
Sgovorit, se tako verno, Kako meni pomaga
Verantworten, alles ſo wahrhaft, alß mir helfe
Bogg ti Nebeski ta prezista breſs sega Madescha
Gott der Allmächtige, die reineste ohne aller Makel
[2. stran]

Spozeta Mati Boschia Maria, jnu vsi lubi
empfangene Muter Gottes Maria, und alle liebe
Svetniki. Amen.
Heilige. Amen.

Prepis v sodobnem slovenskem črkopisu

[Slovenska prisega]
Jast, N. N., oblubim inu persežem Gospodi
Bogu nebeškemo, vsem lubim svetnikim inu
temo tokaj naprej postavlenemo čestitimo sodniki,
da jast na touto povedavajne, za kero sem jast
zdaj naprej poklican, óčim to pravo, čisto no
verno resnico povedat, ko jast verno vem ali se
meni verno zdi, nečem jeno libezen,
sovraštvo ali mito per tem povedavajni meti
ali misleti, óčem le povedat to čisto pravo
resnico, kakor se enimo vernemo keršniko inu
poštenemo človeko spodobi, inu jast na sodnem
dni pred Gospodi Bogu nebeškemo bom mago
zgovorit, se tako verno, kako meni pomaga
Bog ti nebeški, ta prečista brez sega madeža
spočeta Mati Božja Marija inu vsi lubi
svetniki. Amen.

Pravopisna podoba obrazca je bliže pravopisnim značilnostim poljanske in kostanjeviške prisege kakor obeh hrastovških razglasov iz leta 1749, s katerima povezuje obrazec skupno okolje rabe, če že ne nujno tudi nastanka – grad Hrastovec. Medtem ko sta razglasa še izrazito posnemala nemško črkopisno normo, je približno četrt stoletja mlajši priseżni obrazec precej drugačen. Šumevec [č] je zdaj pogosteje zapisan z grafemom *z* (5-krat) kakor z nemškim sestavljenim grafemom *tsch* (3-krat), enkrat pa tudi z bohoričičnim *zh*. Nemški grafem *sch* vsakič ponazarja šumevec [ž] (3-krat] in samo enkrat [š]. Tega je pisec obrazca pogosteje zapisal kot *s*, in sicer zaradi glasov [k] in [t], ki sta mu sledila: *sk* (3-krat) in *st* (2-krat).


Windisches Jurament.
Jast N: N: oblubim jnu perseschem Gospodi
Ich N: N: gelobe und schwöre dem Herr
Bogu nebeskemo vsem lubim Svetnikim jnu
Gott dem allmächtigen, allen lieben Heiligen, und
temo tokai naprei postaulenemo zestitimo Sodniki
dem allhier vor-gesetzten hochgeehrten Richter,
Da jast na touto povedavajne sa Kero sem jast
daß ich der dieser Aussage, wegen welcher ich
Sdai naprei=poglizan otschim to pravo zisto, no
jetzt vor=berufen, will die wahre reine, und
verno Resnizo povedat, Ko jast verno vem, ali se
klar wahrhaft sagen, wie ich weiß, oder wahr
meni vernosdi netschem jeno Libesen
zu sagen vermeinen, will nicht einige Freundschaft,
Sovrastvo ali mito per tem povedavajni meti,

Sl. 4: Začetek dvojezičnega prisežnega obrazca deželskega sodišča Hrastovec iz prve polovice 70-ih let 18. stoletja (ZAP-9/3, knj. 130, zapisnik deželskega sodišča Hrastovec 1718–1799, razdelek Juraments Sachen, pag. 1)

Jezik ima že na prvi pogled opazne štajerske poteze. Takšne so zlasti: kazalni zaimek *touto*, dajalniške oblike s končnico *o* (*nebeškemo*, *čestitimo*), osebni zaimek *jast* in izrazi, kakor *libezen*, *verno* in *povedavajne*. Izraz *veren* se pojavi petkrat, rabljen pa je za tri nemške pridevnike oziroma prislove: *klar*, *wahr* in *wahrhaft*. Zanimiva sta tudi pojem *libezen* (ljubezen) za nemško *Freundschaft* (prijateljstvo) in tri zaporedne besede v dajalniku, vsaka z drugačno končnico: *gospodi Bogu nebeškemo*.

Pravno izrazje ni ravno bogato, a ima svojo težo. Najprej glagol *perseči* (priseči), ki ga v prejšnjih dveh prisežnih besedilih nismo srečali, ampak sta ga nadomeščala glagola *oblubiti* (Poljane in Kostanjevica) in *pregovoriti* (samo Poljane). Za *izjavo*, nemško

Aussage, je v obrazcu dvakrat rabljen pojem *povedavajne*, ki je oblikovno lahko nastal samo na Štajerskem. Omeniti kaže še dva kalka: iz nemškega glagola *vorberufen* je izpeljano *naprej poklican*, *vorgesetzter* pa je dobesedno prevedeno kot *naprej postavlen*. S sodstvom je le v posredno povezana lepa slovenska besedna zveza *sodni dan*, rabljena v pomenu poslednje sodbe pred Bogom.

Kot najbolj zanimivo ugotovitev moramo izpostaviti samostalnik *sodnik*. V tem času je bil namreč v običajni rabi adaptirani nemški izraz *rihtar*.[33] Kolikor je znano, gre pri hrastovškem priseznem obrazcu sploh za najzgodnejšo rabo slovenskega izraza v besedilih iz sodne prakse. V slovenskih prisegah patrimonialnega sodišča škofijskega gospostva v Ljubljani se denimo *sodnik* pojavi prvič leta 1787. Deset let prej je v poduku za krivopriseznike (1777) še govor o *rihtarju* in tako je v istem besedilu označen tudi Bog (Golec, 2005, 255–256, 274, 302). Če se je pred tem v slovenskih uradovalnih besedilih kdaj zasvetil izraz *sodnik*, kar je bilo zelo redko, ni šlo za »zemeljskega« sodnika, ampak vedno le za Jezusa Kristusa, kot denimo leta 1738 v priseznem obrazcu za priče patrimonialnega sodišča Bled (Ribnikar, 1976, 57).

SKLEP

Z dokumenti izpričana pisna raba slovenskega jezika pred kazenskimi sodišči dopolnjuje dosedanje védenje o rabi slovenščine v sodstvu v 18. stoletju nasploh. Predstavlja zlasti nov prispevek k poznavanju žive pravne terminologije, pa tudi razvoja uradovalne slovenščine in okoliščin, v katerih se je dogajal preskok iz ustne v pisno rabo jezika. Številčno skromni primeri potrjujejo, da se je potreba po zapisovanju v slovenščini pojavljala pri dejanjih, ki so zahtevala natančno izražanje in razumevanje, tj. pri prisegah in razglašanju sklepov sodišč. Tovrstnih zapisov je nastalo neprimerno več, kot se jih je ohranilo, zato so redki ohranjeni primerki toliko dragocenejši. Zadnje velja še posebej za besedila, nastala pri poslovanju kazenskih sodišč, o katerih je bilo doslej za razliko od patrimonialnih znanega zelo malo.

Vsako od petih predstavljenih besedil ima lastno dodano vrednost, zlasti obe najstarejši, zapisani leta 1749 v Hrastovcu. To sta namreč iz zgodnjega novega veka sploh edina znana slovenska zapisa razglasitve dveh pravnih dejanj pred kakšnim svetnim sodiščem: priznanja krivde obdolžencev in sodbe. Poleg tega je njuna vsebina specifično kaznivo dejanje – homoseksualni spolni odnos, izrečena kazen pa najhujša – smrtna. Hrastovška razglasitev sodbe predstavlja tudi najstarejši slovenski opis smrtne obsodbe in izvršitve izrečene kazni, ki nista svetopisemska, ampak izvirata iz sodne prakse na domačih tleh. Kronološko naslednji dve besedili, obe s Kranjskega, se uvrščata med sodne prisege, kakršnih poznamo precej iz delovanja patrimonialnih sodišč, ti dve pa sta prva odkrita primera priseg pred kazenskimi sodišči. Obe se nanašata na izgon obsojenca ter njegov odrek maščevanju. Starejša, prisega obsojenca pred deželskim sodiščem Poljane ob Kolpi iz leta 1751, je posebna po tem, da govori tudi o telesnem kaznovanju z vžigom sramo-

33 Prim. slovenske oznake različnih sodnikov v ljubljanski oklicni knjigi sredi 18. stoletja: *Hoffrichter, Marktrichter, Panrihtar, Stattrihter, hoffrihter, rihtar (trški), Landtrihter* (Golec, 1999, 140–141, 152, 157).

tilnega znamenja, prisega, nastala leta 1771 v Kostanjevici na Krki, pa o zaporni kazni v kaznilnici. Najmlajše, peto besedilo, se edino ne nanaša na konkreten primer iz sodne prakse, ampak je priseżni obrazec za priče iz prve polovice sedemdesetih let 18. stoletja. Njegova posebnost je slovenski izraz *sodnik*, saj gre po dosedanjih dognanjih za najzgodnejšo rabo tega termina v slovenskih uradovalnih dokumentih. Izraz *sodnik* je bil namreč »pridržan« le za Boga, za »zemeljskega« sodnika pa so dosledno uporabljali adaptirani nemški termin *rihtar*.

Ohranjena besedila in analogija z uradovalnimi besedili patrimonialnih sodišč deloma osvetljujeta tudi ustno rabo slovenščine v kazenskem sodstvu. V povsem slovenskem podeželskem okolju je moral skoraj celoten postopek teči v slovenščini oziroma dvojezično, sicer preprosto ne bi bil izvedljiv in niti ne bi mogel biti veljaven. Vsi zaslišani so namreč morali natanko razumeti vprašanja, na katera so nato odgovarjali v materinščini, javnost pa je bilo treba natančno seznaniti z vsebino sodbe. Lahko si predstavljamo, da so se samo nemško, brez tolmačenja v slovenščino, odvijali le nekateri protokolarni deli procesov. Zlasti na kranjskem podeželju je bila nemščina na deželskih sodiščih bolj kakor v ustni obliki prisotna v pisni, kot jezik celotnega protokoliranja. Tudi na krvnih pravdah na Kranjskem vprašanj krvnega sodnika pogosto ni bilo treba prevajati iz nemščine, ampak jih je slovenščine vešči sodnik lahko zastavljal zaslišancem neposredno v njihovem jeziku. Drugače je bilo na Štajerskem in Koroškem, kjer krvni sodniki niso nujno obvladali slovenščine. Glede vprašanja jezikovnega znanja je zgovoren hrastovški priseżni obrazec za tolmača, ki govori o posredovanju vprašanj in odgovorov med krvnim sodnikom in zaslišanimi osebami. Pomenljivo je, da omenja samo krvnega sodnika in ne tudi deželskega ali sodnika nasploh. Razlog je bodisi ta, da je bil obrazec namenjen samo za krvne pravde, bodisi, da je bilo tolmačenje potrebno zgolj na procesih te vrste. Ko je šlo za navadne deželskosodne procese, si le težko predstavljamo, da sodnik ne bi znal jezika podložnikov, saj je vlogo deželskega sodnika praviloma opravljal vsakokratni upravitelj deželskosodnega gospostva. Ustna raba jezikov v kazenskem sodstvu se je morala v vsakem okolju podrediti in prilagoditi imperativu razumevanja. Koliko je bila torej slovenščina kje zastopana in v kakšnih situacijah, je bilo odvisno od jezikovnega znanja tožnikov, sodnikov, obtoženih in prič, v končni fazi pa tudi prebivalstva, pred katerim so razglasili sodbo. Gledano v celoti je imela slovenščina pred kazenskimi sodišči razumljivo večjo vlogo na podeželju kakor v mestih, a tudi v tistih mestnih okoljih, ki so bila pretežno nemška, so prejkone vsaj sodbo razglasili še slovensko.

THE SLOVENIAN LANGUAGE IN FRONT OF THE EARLY MODERN CRIMINAL COURTS

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SUMMARY

The selection of Slovenian texts, deriving from early Modern criminal courts, is very insignificant and almost entirely untreated. Even though there are only five known texts, including the newly discovered, the selection is rich in genre, since we are not dealing only with oaths, but with four types of judicial texts: a proclamation of admission of guilt, an announcement of judgment, two oaths of waiving the revenge and an oath form for witnesses. All the texts are from the 18th century and were recorded by the judicial authorities for the non-privileged, the majority of the population. Three origin from the territory of the Slovenian Styria, from Hrastovec in Slovenske gorice, while two origin from Carniola, from Poljane ob Kolpi (today Predgrad) and Kostanjevica na Krki. So far, only the youngest has been published, two were briefly and often incorrectly mentioned in the literature, while two are for the first time presented at the professional public.

Each of the five discussed texts has its own added value, especially the two oldest. These are in fact the only known early modern Slovenian records of announcement of two legal actions in front of any secular court: admission of guilt by the accused and judgement. The texts are interesting for their content and terminology as well. They refer to the following offenses: homosexual intercourse (with a death sentence), infanticide and theft. The vocabulary represents a valuable contribution for the older Slovenian legal terminology.

Key words: criminal court, the Slovenian language, Hrastovec, Kostanjevica na Krki, Poljane ob Kolpi, announcement, judgment, oath

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NAVODILA AVTORJEM

1. Revija ACTA HISTRIAE objavlja **izvirne** in **pregledne** znanstvene članke s humanistično vsebino, zlasti s področja zgodovinopisja. Temeljno geografsko območje, ki ga publikacija pokriva, je Istra in mediteranska Slovenija ter vsebine, ki se na podlagi interdisciplinarnih in primerjalnih preučevanj povezujejo s sredozemskimi deželami. Uredništvo uporablja za vse članke obojestransko anonimen recenzentski postopek.

2. Sprejemamo članke v slovenskem, italijanskem, hrvaškem in angleškem jeziku. Avtorji morajo zagotoviti jezikovno neoporečnost besedil.

3. Članki naj obsegajo do 36.000 znakov brez presledkov. Članek je mogoče oddati na e-naslov ActaHistriae@gmail.com ali na elektronskem nosilcu (CD) po pošti na naslov uredništva.
Avtor ob oddaji članka zagotavlja, da članek še ni bil objavljen in se obvezuje, da ga ne bo objavil drugje.

4. Naslovna stran članka naj vsebuje naslov in podnaslov članka, ime in priimek avtorja, avtorjeve nazive in akademske naslove, ime in naslov inštitucije, kjer je zaposlen, oz. domači naslov vključno s poštno številko in naslovom elektronske pošte.

5. Članek mora vsebovati **povzetek** in **izvleček.** Izvleček je krajši (max. 100 besed) od povzetka (cca. 200 besed).
V *izvlečku* na kratko opišemo namen, metode dela in rezultate. Izvleček naj ne vsebuje komentarjev in priporočil.
Povzetek vsebuje opis namena in metod dela ter povzame analizo oziroma interpretacijo rezultatov. V povzetku ne sme biti ničesar, česar glavno besedilo ne vsebuje.

6. Avtorji naj pod izvleček članka pripišejo ustrezne **ključne besede (5–7)**. Potrebni so tudi **angleški (ali slovenski) in italijanski prevodi** izvlečka, povzetka, ključnih besed, podnapisov k slikovnemu in tabelarnemu gradivu.

7. Zaželeno je tudi (originalno) **slikovno gradivo**, ki ga avtor posreduje v ločenih datotekah (jpeg, tiff) z najmanj 300 dpi resolucije pri želeni velikosti. Največja velikost slikovnega gradiva je 12x15 cm. Vsa potrebna dovoljenja za objavo slikovnega in arhivskega gradiva (v skladu z Zakonom o avtorski in sorodnih pravicah) priskrbi avtor sam in jih predloži uredništvu pred objavo članka. Vse slike, tabele in grafične prikaze je potrebno tudi podnasloviti in zaporedno oštevilčiti.

8. **Vsebinske** *opombe*, ki besedilo še podrobneje razlagajo ali pojasnjujejo, postavimo *pod črto*.
Bibliografske opombe, s čimer mislimo na citat – torej sklicevanje na točno določeni del besedila iz neke druge publikacije, sestavljajo naslednji podatki: *avtor*, *leto izida* in – če citiramo točno določeni del besedila – tudi navedba *strani*. Bibliografske opombe vključimo v glavno besedilo. Primer: (Pirjevec, 2007, 219) ali (Pirjevec, 2007).

Celotni bibliografski podatki citiranih in uporabljenih virov so navedeni v poglavju *Viri in literatura* (najprej navedemo vse vire, nato literaturo). Pri tem avtor navede izključno dela ter izdaje, ki jih je v članku citiral.
Popolni podatki o tem delu v poglavju Literatura pa se glasijo:
Pirjevec, J. (2007): "Trst je naš!" Boj Slovencev za morje (1848–1954). Ljubljana, Nova revija.
Če citiramo *več del istega avtorja iz istega leta*, poleg priimka in kratice imena napišemo še črke po abecednem vrstnem redu, tako da se navedbe med seboj razlikujejo. Primer:
(Pirjevec, 2007a) in (Pirjevec, 2007b).
Bibliografska opomba je lahko tudi del vsebinske opombe in jo zapisujemo na enak način.
Posamezna dela v isti opombi ločimo s podpičjem. Primer:
(Pirjevec, 2007a; Verginella, 2008).

9. Pri **citiranju arhivskih virov** *med oklepaji* navajamo kratico arhiva, kratico arhivskega fonda / signaturo, številko tehnične enote in številko arhivske enote.
Primer: (ARS-1851, 67, 1808).
V primeru, da arhivska enota ni znana, se dokument citira po naslovu *v opombi pod črto*, in sicer z navedbo kratice arhiva, kratice arhivskega fonda / signature, številke tehnične enote in naslova dokumenta. Primer:
ARS-1589, 1562, Zapisnik seje Okrajnega komiteja ZKS Koper, 19. 12. 1955.
Kratice razložimo v poglavju o virih na koncu članka, kjer arhivske vire navajamo po abecednem vrstnem redu. Primer:
ARS-1589 – Arhiv republike Slovenije (ARS), Centralni komite Zveze komunistov Slovenije (fond 1589).

10. Pri citiranju **časopisnih virov** med tekstom navedemo ime časopisa, datum izdaje ter strani:
(Primorske novice, 11. 5. 2009, 26).
V primeru, da je znan tudi naslov članka, celotno bibliografsko opombo navedemo pod črto:
Primorske novice, 11. 5. 2009: Ali podjetja merijo učinkovitost?, 26.
V seznam virov in literature izpišemo ime časopisa / revije. Kraj, založnika in periodo izhajanja:
Primorske novice. Koper, Primorske novice, 1963–.

11. Poglavje o virih in literaturi je obvezno. Bibliografske podatke navajamo takole:
- Opis zaključene publikacije kot celote – knjige:
Avtor (leto izida): Naslov. Kraj, Založba. Npr.:
Šelih, A., Antić, G. M., Puhar, A., Rener, T., Šuklje, R., Verginella, M., Tavčar, L. (2007): Pozabljena polovica. Portreti žensk 19. in 20. stoletja na Slovenskem. Ljubljana, Tuma - SAZU.
V zgornjem primeru, kjer je *avtorjev več kot dva*, je korekten tudi citat:
(Šelih et al., 2007)

Če navajamo določeni del iz zaključene publikacije, zgornjemu opisu dodamo še številke strani, od koder smo navedbo prevzeli.
- Opis prispevka v **zaključeni publikaciji** – npr. prispevka v zborniku:
Avtor (leto izida): Naslov prispevka. V: Avtor knjige: Naslov knjige. Kraj, Založba, strani od-do. Primer:
Darovec, D. (2011): Moderna štetja prebivalstva in slovensko-hrvaška etnična meja v Istri. V: Darovec, D. & Strčić, P. (ur.): Slovensko-hrvaško sosedstvo / Hrvatsko-slovensko susjedstvo. Koper, Univerzitetna založba Annales, 129-142.
- Opis članka v **reviji:**
Avtor (leto izida): Naslov članka. Naslov revije, letnik, številka. Kraj, strani od-do. Primer:
Čeč, D. (2007): Nasilne detomorilke ali neprištevne žrtve? Spreminjanje podobe detomora v 18. in začetku 19. stoletja. Acta Histriae, 15, 2, 415-440.
- opis ustnega vira:
Informator (leto pričevanja): Ime in priimek informatorja, leto rojstva, vloga, funkcija ali položaj. Način pričevanja. Oblika in kraj nahajanja zapisa. Primer:
Žigante, A. (2008): Alojz Žigante, r. 1930, župnik v Vižinadi. Ustno pričevanje. Zvočni zapis pri avtorju.
- opis vira iz internetnih spletnih strani:
Če je mogoče, internetni vir zabeležimo enako kot članek in dodamo spletni naslov ter v oklepaju datum zadnjega pristopa na to stran:
Young, M. A. (2008): The victims movement: a confluence of forces. In: NOVA (National Organization for Victim Assistance). Http://www.trynova.org/ victiminfo/readings/VictimsMovement.pdf (15. 9. 2008).
Če avtor ni znan, navedemo nosilca spletne strani, leto objave, naslov in podnaslov besedila, spletni naslov in v oklepaju datum zadnjega pristopa na to stran. Če leto objave ni znano, damo v oklepaj leto pristopa na to stran:
UP ZRS (2009): Univerza na Primorskem, Znanstveno-raziskovalno središče Koper. Znanstveni sestanki in konference. Http://www.zrs-kp.si/SL/kongres.htm (2. 2. 2009).
Članki so razvrščeni po abecednem redu priimkov avtorjev ter po letu izdaje, v primeru da gre za več citatov istega / istih avtorja/-jev.

12. **Kratice** v besedilu moramo razrešiti v oklepaju, ko se prvič pojavijo. Članku lahko dodamo tudi seznam uporabljenih kratic.

13. Pri **ocenah publikacij** navedemo v naslovu prispevka avtorja publikacije, naslov, kraj, založbo, leto izida in število strani (oziroma ustrezen opis iz točke 10).

14. Prvi odtis člankov uredništvo pošlje avtorjem v **korekturo.** Avtorji so dolžni popravljeno gradivo vrniti v enem tednu. Širjenje obsega besedila ob korekturah ni dovoljeno. Druge korekture opravi uredništvo.

15. Za dodatna pojasnila v zvezi z objavo člankov je uredništvo na voljo.

UREDNIŠTVO

ISTRUZIONI PER GLI AUTORI

1. La rivista ACTA HISTRIAE pubblica **articoli scientifici originali e rassegne** relativi alla sfera degli studi umanistici, in particolare la storiografia. L'area geografica di base coperta dalla pubblicazione include l'Istria e la parte mediterranea della Slovenia, nonché tutti gli altri temi che si ricollegano al Mediterraneo in base a studi interdisciplinari e comparativi. Tutti gli articoli vengono recensiti. La recensione è completamente anonima.

2. La Redazione accetta articoli in lingua slovena, italiana, croata e inglese. Gli autori devono garantire l'ineccepibilità linguistica dei testi.

3. Gli articoli devono essere di lunghezza non superiore alle 36.000 caratteri senza spazi. Possono venir recapitati all'indirizzo di posta elettronica ActaHistriae@gmail.com oppure su supporto elettronico (CD) per posta ordinaria all'indirizzo della Redazione.
L'autore garantirà l'originalità dell'articolo e si impegnerà a non pubblicarlo altrove.

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5. I contributi devono essere corredati da un **riassunto** e da una **sintesi**. Quest'ultima sarà più breve (max. 100 parole) del riassunto (cca 200 parole).
Nella *sintesi* si descriveranno brevemente i metodi e i risultati delle ricerche e anche i motivi che le hanno determinate. La sintesi non conterrà commenti e segnalazioni.
Il *riassunto* riporterà in maniera sintetica i metodi delle ricerche, i motivi che le hanno determinate assieme all'analisi, cioè all'interpretazione, dei risultati raggiunti. Si eviterà di riportare conclusioni omesse nel testo del contributo.

6. Gli autori sono tenuti ad indicare le **(5–7) parole chiave** adeguate. Sono necessari anche le **traduzioni in inglese (o sloveno) e italiano** della sintesi, del riassunto, delle parole chiave, delle didascalie, delle fotografie e delle tabelle.

7. L'eventuale **materiale iconografico** (originale) va preparato in formato elettronico (jpeg. / tiff) e consegnato in file separati alla definizione di 300 dpi a grandezza desiderata, purché non ecceda i 12x15 cm. Prima della pubblicazione, l'autore provvederà a fornire alla Redazione tutte le autorizzazioni richieste per la riproduzione del materiale iconografico ed archivistico (in virtù della Legge sui diritti d'autore). Tutte le immagini, tabelle e grafici dovranno essere accompagnati da didascalie e numerati in successione.

8. Le **note a piè di pagina** sono destinate essenzialmente a fini esplicativi e di contenuto. I **riferimenti bibliografici** richiamano un'altra pubblicazione (articolo). La nota bibliografica, riportata nel testo, deve contenere i seguenti dati: *cognome dell'autore*, *anno di pubblicazione* e, se citiamo un determinato brano del testo, anche le *pagine*. Ad es.:
(Isotton, 2006, 25) oppure (Isoton, 2006).

I riferimenti bibliografici completi delle fonti vanno quindi inseriti nel capitolo Fonti e bibliografia (saranno prima indicate le fonti e poi la bibliografia). L'autore indicherà esclusivamente i lavori e le edizioni citati nell'articolo.
I dati completi sulle pubblicazioni nel capitolo Fonti e bibliografia verranno riportati in questa maniera:
Isotton, R. (2006): Crimen in itinere. Profili della disciplina del tentativo dal diritto comune alle codificazioni moderne. Napoli, Jovene.
Se si citano *più lavori dello stesso autore* pubblicati nello stesso anno accanto al cognome va aggiunta una lettera in ordine alfabetico progressivo per distinguere i vari lavori. Ad es.:
(Isotton, 2006a) e (Isotton, 2006b).
Il riferimento bibliografico può essere parte della nota a pié di pagina e va riportato nello stesso modo come sopra.
Singole opere o vari riferimenti bibliografici in una stessa nota vanno divisi dal punto e virgola. Per es.:
(Isotton, 2006; Massetto, 2005).

9. Le **fonti d'archivio** vengono citate nel testo, *tra parentesi*. Si indicherà: sigla dell'archivio - numero (oppure) sigla del fondo, numero della busta, numero del documento (non il suo titolo). Ad es.:
(ASMI-SLV, 273, 7r).
Nel caso in cui un documento non fosse contraddistinto da un numero, ma solo da un titolo, la fonte d'archivio verrà citata *a piè di pagina*. In questo caso si indicherà: sigla dell'archivio - numero (oppure) sigla del fondo, numero della busta, titolo del documento. Ad es.:
ACS-CPC, 3285, Milanovich Natale. Richiesta della Prefettura di Trieste spedita al Ministero degli Interni del 15 giugno 1940.
Le sigle utilizzate verranno svolte per intero, in ordine alfabetico, nella sezione "Fonti" a fine testo. Ad es.:
ASMI-SLV – Archivio di Stato di Milano (ASMI), f. Senato Lombardo-Veneto (SLV).

10. Nel citare **fonti di giornale** nel testo andranno indicati il nome del giornale, la data di edizione e le pagine:
(Il Corriere della Sera, 18. 5. 2009, 26)
Nel caso in cui è noto anche il titolo dell'articolo, l'intera indicazione bibliografica verrà indicata *a piè di pagina*:

Il Corriere della Sera, 18. 5. 2009: Da Mestre all'Archivio segreto del Vaticano, 26.
Nell'elenco Fonti e bibliografia scriviamo il nome del giornale. Il luogo di edizione, l'editore ed il periodo di pubblicazione.
Il Corriere della Sera. Milano, RCS Editoriale Quotidiani, 1876–.

11. Il capitolo **Fonti e bibliografia** è obbligatorio. I dati bibliografici vanno riportati come segue:
- Descrizione di un'opera compiuta:
autore/i (anno di edizione): Titolo. Luogo di edizione, casa editrice. Per es.:
Cozzi, G., Knapton, M., Scarabello, G. (1995): La Repubblica di Venezia nell'età moderna – dal 1517 alla fine della Repubblica. Torino, Utet.
Se *gli autori sono più di due*, la citazione è corretta anche nel modo seguente:
(Cozzi et al., 1995).
Se indichiamo una parte della pubblicazione, alla citazione vanno aggiunte le pagine di riferimento.
- Descrizione di un articolo che compare in un volume miscellaneo:
autore/i del contributo (anno di edizione): Titolo. In: autore/curatore del libro: titolo del libro. Luogo di edizione, casa editrice, pagine (da-a). Per es.:
Clemente, P. (2001): Il punto sul folklore. In: Clemente, P., Mugnaini, F. (eds.): Oltre il folklore. Roma, Carocci, 187–219.
- Descrizione di un articolo in una **pubblicazione periodica – rivista**:
autore/i (anno di edizione): Titolo del contributo. Titolo del periodico, annata, nro. del periodico. Luogo di edizione, pagine (da-a). Per es.:
Miletti, M. N. (2007): La follia nel processo. Alienisti e procedura penale nell'Italia postunitaria. Acta Histriae, 15, 1. Capodistria, 321–342.
- Descrizione di una fonte orale:
informatore (anno della testimonianza): nome e cognome dell'informatore, anno di nascita, ruolo, posizione o stato sociale. Tipo di testimonianza. Forma e luogo di trascrizione della fonte. Per es.:
Predonzan, G. (1998): Giuseppe Predonzan, a. 1923, contadino di Parenzo. Testimonianza orale. Appunti dattiloscritti dell'intervista presso l'archivio personale dell'autore.
- Descrizione di una fonte tratta da pagina internet:
Se è possibile registriamo la fonte internet come un articolo e aggiungiamo l'indirizzo della pagina web e tra parentesi la data dell'ultimo accesso:
Young, M. A. (2008): The victims movement: a confluence of forces. In: NOVA (National Organization for Victim Assistance). (15. 9. 2008). Http://www. trynova.org/victiminfo/readings/VictimsMovement.pdf
Se l'autore non è noto, si indichi il webmaster, anno della pubblicazione, titolo ed eventuale sottotitolo del testo, indirizzo web e tra parentesi la data dell'ultimo accesso. Se l'anno di edizione non è noto si indichi tra parentesi l'anno di accesso a tale indirizzo:
UP CRS (2009): Università del Litorale, Centro di ricerche scientifiche di Capodistria. Convegni. Http://www.zrs-kp.si/SL/kongres.htm (2. 2. 2009).

La bibliografia va compilata in ordine alfabetico secondo i cognomi degli autori ed anno di edizione, nel caso in cui ci siano più citazioni riferibili allo stesso autore.

12. Il significato delle **abbreviazioni** va spiegato, tra parentesi, appena queste si presentano nel testo. L'elenco delle abbreviazioni sarà riportato alla fine dell'articolo.

13. Per quanto riguarda le **recensioni**, nel titolo del contributo l'autore deve riportare i dati bibliografici come al punto 10, vale a dire autore, titolo, luogo di edizione, casa editrice, anno di edizione nonché il numero complessivo delle pagine dell'opera recensita.

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LA REDAZIONE

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2. The articles submitted can be written in the Slovene, Italian, Croatian or English language. The authors should ensure that their contributions meet acceptable standards of language.

3. The articles should be no longer than 36,000 characters (without spaces). They can be submitted via e-mail (ActaHistriae@gmail.com) or regular mail, with the electronic data carrier (CD) sent to the address of the editorial board. Submission of the article implies that it reports original unpublished work and that it will not be published elsewhere.

4. The front page should include the title and subtitle of the article, the author's name and surname, academic titles, affiliation (institutional name and address) or home address, including post code, and e-mail address.

5. The article should contain the **summary** and the **abstract,** with the former (max. 100 words) being longer than the latter (c. 200 words).
The *abstract* contains a brief description of the aim of the article, methods of work and results. It should contain no comments and recommendations.
The *summary* contains the description of the aim of the article and methods of work and a brief analysis or interpretation of results. It can contain only the information that appears in the text as well.

6. Beneath the abstract, the author should supply appropriate **(5–7) keywords**, as well as the **English (or Slovene) and italian translation** of the abstract, summary, keywords, and captions to figures and tables.

7. If possible, the author should also supply (original) **illustrative matter** submitted as separate files (in jpeg or tiff format) and saved at a minimum resolution of 300 dpi per size preferred, with the maximum possible publication size being 12x15 cm. Prior to publication, the author should obtain all necessary authorizations (as stipulated by the Copyright and Related Rights Act) for the publication of the illustrative and archival matter and submit them to the editorial board. All figures, tables and diagrams should be captioned and numbered.

8. **Footnotes** providing additional explanation to the text should be written at *the foot of the page*. **Bibliographic notes** – i.e. references to other articles or publications – sho-

uld contain the following data: *author, year of publication* and – when citing an extract from another text – *page*. Bibliographic notes appear in the text. E.g.: (Friedman, 1993, 153) or (Friedman, 1993).
The entire list of sources cited and referred to should be published in the section *Sources and Bibliography* (starting with sources and ending with bibliography).

The author should list only the works and editions cited or referred to in their article.
In the section on *bibliography*, citations or references should be listed as follows:
Friedman, L. (1993): Crime and Punishment in American History. New York, Basic Books.
If you are listing *several works published by the same author in the same year*, they should be differentiated by adding a lower case letter after the year for each item.
E.g.:
(Friedman, 1993a) and (Friedman, 1993b).
If the bibliographic note appears in the footnote, it should be written in the same way.
If listed in the same bibliografic note, individual works should be separated by a semicolon. E.g.:
(Friedman, 1993; Frost, 1997).

9. When **citing archival records** *within the parenthesis* in the text, the archive acronym should be listed first, followed by the record group acronym (or signature), number of the folder, and number of the document. E.g.:
(ASMI-SLV, 273, 7r).
If the number of the document could not be specified, the record should be cited *in the footnote*, listing the archive acronym and the record group acronym (or signature), number of the folder, and document title. E.g.:
TNA-HS 4, 31, Note on Interview between Colonel Fišera and Captain Wilkinson on December 16th 1939.
The abbreviations should be explained in the section on sources in the end of the article, with the archival records arranged in an alphabetical order. E.g.:
TNA-HS 4 – The National Archives, London-Kew (TNA), fond Special Operations Executive, series Eastern Europe (HS 4).

10. If referring to **newspaper sources** in the text, you should cite the name of the newspaper, date of publication and page:
(The New York Times, 16. 5. 2009, 3)
If the title of the article is also known, the whole reference should be stated *in the footnote*:
The New York Times, 16. 5. 2009: Two Studies tie Disaster Risk to Urban Growth, 3.
In the list of sources and bibliography the name of the newspaper. Place, publisher, years of publication.
The New York Times. New York, H.J. Raymond & Co., 1857–.

11. The list of **sources and bibliography** is a mandatory part of the article**.** Bibliographical data should be cited as follows:

- Description of a non-serial publication – a book:

Author (year of publication): Title. Place, Publisher. E.g.:

Barth, F., Gingrich, A., Parkins, R., Silverman, S. (2005): One Discipline, Four Ways. Chicago, University of Chicago Press.

If there are *more than two authors*, you can also use et al.:

(Barth et al., 2005).

If citing an excerpt from a non-serial publication, you should also add the number of page from which the citation is taken after the year.

- Description of an article published in a **non-serial publication** – e.g. an article from a collection of papers:

Author (year of publication): Title of article. In: Author of publication: Title of publication. Place, Publisher, pages from-to. E.g.:

Rocke, M. (1998): Gender and Sexual Culture in Renaissance Italy. In: Brown, I. C., Davis, R. C. (eds.): Gender and Society in Renaissance Italy. New York, Longman, 150–170.

- Description of an article from a **serial publication:**

Author (year of publication): Title of article. Title of serial publication, yearbook, number. Place, pages from-to. E.g.:

Faroqhi, S. (1986): The Venetian Presence in the Ottoman Empire (1600–1630). The Journal of European Economic History, 15, 2. Rome, 345–384.

- Description of an oral source:

Informant (year of transmission): Name and surname of informant, year of birth, role, function or position. Manner of transmission. Form and place of data storage. E.g.:

Baf, A. (1998): Alojzij Baf, born 1930, priest in Vižinada. Oral testimony. Audio recording held by the author.

- Description of an internet source:

If possible, the internet source should be cited in the same manner as an article. What you should add is the website address and date of last access (with the latter placed within the parenthesis):

Young, M. A. (2008): The victims movement: a confluence of forces. In: NOVA (National Organization for Victim Assistance). Http://www.trynova.org/ victiminfo/readings/VictimsMovement.pdf (15. 9. 2008).

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UP SRC (2009): University of Primorska, Science and Research Centre of Koper. Scientific meetings. Http://www.zrs-kp.si/konferenca/retorika_dev/index. html (2. 2. 2009).

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