

# Banishment Practices in Fifteenth-Century Zagreb

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## 1. Introductory Remarks

**B**ANISHMENT, THE sanction that includes the physical removal of the individual from a territory, represents one of the oldest forms of punishment, applied even in undeveloped penal systems. Until the creation of the modern penal system, banishing individuals from the community for the purpose of their punishment was present in different forms in everyday use across Europe.<sup>1</sup> The penalty of banishment had several functions. By being banished, the criminal was removed from the community, a fact that would, on the one hand, diminish the probability of further disturbance of peace by his retaliation or the retribution from the injured party. On the other hand, the removal of the individual beyond the borders of the community prevented him from repeating his misdeed, which would, for the community, signify a final and efficient way of protection from further damage, and on the symbolical level, the cleansing of society of undesirable individuals.<sup>2</sup> The omnipresence and frequency of banishment as a punitive measure reflected the widespread and deeply rooted view that belonging to a certain community depended on the behavior of individuals who had to observe the written or unwritten laws and accepted social norms.<sup>3</sup>

Banishment in its various forms was a widespread and usual practice also in the Middle Ages, whether as a form of punishment, a correction of behavior, or coercion. Although most of the research of medieval court practices dealt with banishment only sporadically,<sup>4</sup> fines and the official banishment of criminals and undesirable individuals were dominant forms of punishment by the authorities in the Middle Ages,<sup>5</sup> especially in urban milieus. Since it was impossible to rely only on coercion, city magistrates would use banishment in order to free the community of particularly problematic offenders, often also using public rituals to demonstrate their power and to confirm the city norms and limits of acceptable behavior as a condition of inclusion in the community.<sup>6</sup> As a sanction, banishment created the space for negotiation between authorities, the offender and the local population, but at the same time showed the aspiration of local authorities to punish and control offenders who attempted to destroy the medieval ideal of the orderly and disciplined community, deprived of infidels and foreigners.<sup>7</sup> When implemented with determination, exile was a terrifying punishment which pushed the offender into poverty, depriving him of contact with his loved ones and exposing him to the dangers lurking beyond the city walls.<sup>8</sup> On the other hand, since banishment was a flexible, potentially reversible and cheap way of

punishment, it represented an important middle ground between the death penalty and fines. Therefore, it is not a surprise that banishment had a central role in the enforcement of law in the medieval European urban communities.

In the present paper, we will present the cases of banishment in medieval Zagreb. It should be noted here that our investigation refers to the civil part of town, granted the privilege of free royal city. The sanction of banishment allowed the city magistrate to quickly and simply cleanse the urban territory of all kinds of lawbreakers, so it is no wonder that it was used in court practice of Zagreb in the fifteenth century, not only for third time offenders, but also for punishing a wide range of prohibited activities. However, as will be shown, these prohibited activities were actually a wide variety of offenses which differed significantly by their type and severity. The observation that both minor offenses, such as verbal abuse, and the most serious crimes could result in the same punishment—banishment—raises important questions about the consistency of judicial practice in medieval Zagreb. This particularity prompted our closer examination of whether punishments were based on written legal regulations, or if the court exercised significant discretion, choosing the type and severity of penalties on a case-by-case basis.

It is necessary to emphasize that the topic of banishment in medieval Zagreb was covered by historiography only in certain aspects. Although there are many works on the history of crime,<sup>9</sup> the practice of banishment was never considered closely and many aspects of this form of punishment were left unclear. However, court records preserved from the period of 1355 until 1526<sup>10</sup> contain numerous examples from judicial practice in which the court applied this form of sanction. Considering the large corpus of preserved documents, it was impossible to include the whole period covered by the sources, therefore the focus of this study will be the practice of using banishment as a form of sanction in the governance of fifteenth-century Zagreb. The documents from this later period were written in more detail and are preserved almost completely. They thus provide a better insight into already established mechanisms of dealing with unacceptable behavior. For this purpose, we have analyzed 116 court procedures entailing the sanction of banishment, conducted from 1412 to 1448, and from 1450 to 1500 respectively.

## **2. The Sanction of Banishment in Criminal Law in Zagreb**

**T**HE PENALTY of banishment in Zagreb was first mentioned in the urban privilege of 1242 (also known as the Golden Bull).<sup>11</sup> The norms of criminal and procedural law take up a substantial amount of the text of the privilege and contain the list of offenses for which they prescribe drastically harsh penalties. In most cases these penalties were fines, but besides them, the privilege prescribes two non-monetary penalties: “taking revenge,” that is, the death penalty in the case of a first degree murder, and the penalty of banishment from the city for the three-time repeat offenders, which was combined with the confiscation of their property.<sup>12</sup> However, with the further development of the city, the regulations in the privilege became insufficient, and the city court filled the gaps with customary law and juridical practice,<sup>13</sup> in which the penalty of banishment from the city and

the city territory played a significant role. The formation of a city community meant the emergence of urban governance and administration; the main administrative, judicial, and legislative body was the city magistrate, composed of a judge (*index civitatis*), jurors (*iurati*) and councilors (*consilarii*). Only full-fledged citizens had the right to hold these offices. Additionally, these services were not paid, thus only wealthier and more respectable citizens, with a good reputation, were taken into consideration for them.<sup>14</sup> In turn, full-fledged citizens were considered only those individuals who owned real estate in the city,<sup>15</sup> had been living in Zagreb for at least a year, and were of Catholic confession.<sup>16</sup> The city territory, however, included all city properties and the population (from full-fledged citizens and inhabitants, foreigners and nobles, to serfs on the nearby agricultural estates).<sup>17</sup>

If we compare in practice the list of offenses for which the town court prescribed the penalty of banishment from Zagreb during the fifteenth century with the list of offenses in the original privilege, it seems that most crimes punished in the later period were not included in the text of the privilege.<sup>18</sup> The town officials of Zagreb surely did not arbitrarily disregard the privilege and decided how to punish the offenses absent from it, but relied on existing norms of customary law. A substantial number of proceedings in which the perpetrators sentenced to banishment from the city received a threat that they would get an even worse and deserved penalty in the case of their return support this argument. In such cases, the texts of court sentences mention multiple times penalties (*justicia secundum consuetudinem civitatis*,<sup>19</sup> or *juxta secundum consuetudinem communis*.<sup>20</sup>

In this context, the criminal regulations in the Statute of Ilok from 1525<sup>21</sup> were of significant help, because the legal regulations collected in it were valid in tavernical towns,<sup>22</sup> which included Zagreb (Gradec).<sup>23</sup> Similar regulations on criminal law are contained in the *Ofner Stadtrecht*,<sup>24</sup> a legal book of medieval Buda, which was drawn up at the beginning of the fifteenth century.<sup>25</sup> Its regulations of criminal law largely coincide with those from the Statute of Ilok, and would have been well-known also in Zagreb, a city with many German immigrants and strong commercial ties to the Hungarian capital.<sup>26</sup> Moreover, previous research conducted by Kristina Grgić on the practice of the death penalty in Zagreb in the second half of the fifteenth century confirms that the resolutions of court procedures were mostly coinciding with the regulations of criminal law in *Stadtrecht* and the Statute of Ilok.<sup>27</sup> With regard to banishment, in the Statute of Ilok, it was prescribed in only three cases. In the first case, the Statute provides for banishment of one month for those citizens who broke the ban on the purchase of commercial goods for foreigners, and then due to poverty could not pay the fine of one mark of pure silver.<sup>28</sup> In the remaining two cases, banishment was prescribed for those who had a habit of stealing bread in the city square because of hunger and for other perpetrators of theft of the value up to one florin. In both cases, the Statute prescribes lashing along with the banishment from the city at a distance of eight miles and for the duration of one hundred years and one day.<sup>29</sup> As opposed to the Statute of Ilok, the regulations of the *Stadtrecht* do not mention the sanction of banishment at all.

However, regardless of having only partial or no mention of banishment in these legal sources, they have been proven to be useful for this research. Whereas in the judicial practice of fifteenth-century Zagreb numerous trials ended with the sanction of banishment for perpetrators against the written rules of the *Stadtrecht* or the Statute of Ilok, other elements of court procedures and sentences have shown us that the town court resorted

to existing norms of customary law that generally did not differ from those written in the *Stadtrecht* of Buda and the Statute of Ilok.

### 3. Types of Banishment in the Free Royal City of Zagreb

AS IT was mentioned previously, the penalty of banishment was deeply rooted in the criminal practice of Zagreb, and until the fifteenth century it took on a significant role also in the sense of protecting the community and as mechanism of removing undesirable and dangerous individuals. This sanction is found in sources in two situations: the so-called declarative banishment and banishment in the real sense of the word.

Declarative banishment was ruled in the procedures conducted against an accused who was already on the run, thus the contumacious sentence prohibited the person's return to the city and its territory.<sup>30</sup> Sometimes the accused were able to avoid justice by fleeing from the city, and thus the city court was not able to reach them. Throughout the fifteenth century, we have 20 of such cases from Zagreb, in which the city court would pass a sentence in the absence of the accused and threaten to give a deserved punishment in the case the fugitive should return to the city territory. However, in six of such procedures conducted against three fugitives who committed theft, two perpetrators who committed murder and one recidivist, the threat in the sentence was also followed by the declarative banishment. In other words, runaway perpetrators who committed theft and murder were convicted in their absence and were forbidden to return to the city and the city territory with the formula *ad territorium huius civitatis venire non debeant*<sup>31</sup> or *ut de cetero et per amplius in civitatem et eius territorio nullo modo intrare presumat*,<sup>32</sup> or *nullo modo nunquam debet introire*.<sup>33</sup>

In the sources, most cases mention banishment in a real sense, that is, the situation when the convicted were forced to leave the city and city territory based on the court's decision, with a ban on returning.<sup>34</sup> When we speak of banishment in the real sense, considering the privilege in which it is written, *qui si post trinam correctionem se non emendaverit, rebus omnibus in commune applicatis tamquam infamis de civitate turpiter expellatur*,<sup>35</sup> it was to be expected that the sanction of banishment would refer precisely to repeat offenders in most of the analyzed procedures. However, out of 105 procedures in which the city court sentenced 137 delinquents to banishment from the city, only 12 were for a repeat offense,<sup>36</sup> which shows that in later practice the city court would apply the penalty of banishment widely beyond the framework in the Golden Bull privilege.

### 4. Types of Crime Punished with Banishment

IN GENERAL, the researched court records of fifteenth century Zagreb always state the offense for which the offender appeared in court. Out of 95 cases, where 125 sentences punished criminals with banishment, none involved repeat offenders, and the reasons for committing the crimes were not listed.<sup>37</sup> From other records it becomes clear

that the city court resorted to banishment in three categories of cases: criminal acts against persons, criminal acts against morality, and criminal acts against property.<sup>38</sup>

In the category of crimes against persons, the city court went for banishment in 13 trials: once for verbal offense,<sup>39</sup> five times for physical violence (*verberatio*, *vulneratio*, *sanguinis effusio*),<sup>40</sup> five times for witchcraft (*maleficium*),<sup>41</sup> and twice for taking a life (*interficium*, *jugulatio*).<sup>42</sup>

In the category of crimes against morality, banishment was adjudicated in 13 cases: once for blasphemy,<sup>43</sup> twice for fraud,<sup>44</sup> prostitution and soliciting (*conduccio*, *meretricium*, *maleficium concubinatus*)<sup>45</sup> and pregnancy out of wedlock,<sup>46</sup> and six times for adultery (*adulterium*).<sup>47</sup>

In the largest number of cases, banishment was applied to perpetrators of crimes against property. Out of 66 cases, 62 were offenses connected with theft (*furticinium*, *furtum*, *subtrahio*), and the remaining four cases were due to a threat of arson (*minas incendii*),<sup>48</sup> robbery (*spoliatio*),<sup>49</sup> desecration of a church (*sacrilegium*),<sup>50</sup> and forgery of money (*falsitas*).<sup>51</sup>

Before we examine in detail the crimes from each category, it should be noted that most of the offenses in the list above were not mentioned in the Golden Bull of 1242. Furthermore, some of them were categorized in the *Stadtrecht* and the Statute of Ilok as capital crimes punishable by death.<sup>52</sup> Generally, in Zagreb these crimes would also be punished by death, and their intent can be seen also in those legal proceedings where the city court would ultimately convict the perpetrators to banishment. Since this is a specific phenomenon, for now we will set aside these examples and first try to explain the practice of punishing by banishment for the remaining cases.

#### 4.1. Banishment and Crimes Against Persons

When speaking of verbal and violent offenses against persons, which were not classified as capital crimes, previous research has shown that these offenses were indeed generally punished by a fine,<sup>53</sup> that is, in accordance with the provisions of the 1242 Golden Bull privilege. However, in the fifteenth century, instead of a fine, the city court decided in several trials to punish the delinquents by banishment. These trials were held from 1423 to 1465 and involved inhabitants and citizens of Zagreb who committed acts of physical violence. To be more precise, one trial was conducted against a female perpetrator of verbal offense, one against the perpetrator of a lashing, and the remaining four against perpetrators of severe physical violence which led to blood-shedding. Since the verdicts in these cases were exceptions to the rule of punishing these types of offenses by a fine, the explanation is likely to be found in the details of each legal process.

In the year 1423, Valentin, *inhabitor* of Zagreb, wounded and killed several citizens and did not respond to multiple summons of the court; when he finally arrived before the court, he was dissatisfied with the proceedings and hit George the juror in the face. Therefore, he was sentenced to losing his arm and banished in disgrace from the city with a ban on returning.<sup>54</sup> In 1435, Elisabeth and her daughter Jelka were beaten and banished in disgrace from the city and the city territory because they had lashed the husband of

Jelka, Dionysus, until he bled.<sup>55</sup> In 1442, a woman by the name of Elisabeth was banished because, incited by the devil, she had stabbed her husband Michael Zivalić in the chest in such a manner that he barely survived.<sup>56</sup> In 1457, Helen, the wife of the tailor Michael the Lambe, was sentenced to banishment due to a verbal offense. She had threatened the daughter of a shoemaker from the family of the late Nicolas Hervoje and wished that “a thorn would stick to her heel.” Since she was also involved in various other infractions, the court decided that Jelena could no longer enter the city and its territory, and if she was caught, the deserved punishment was forthcoming.<sup>57</sup> In 1460, Simon Sterk was banished because he had cut off the nose of his wife Helen, and the punishment was followed by the threat of losing his arm if he was ever caught on city territory.<sup>58</sup> Finally, in 1465, the servant Thomas was sentenced to losing his arm and banishment from the city because he had lashed the wife of the shoemaker Gregory during the feast of Saint Margaret.<sup>59</sup>

If we look into these cases in detail, at first, they do not have any visible common denominator which could have influenced the punishing of perpetrators of the mentioned offenses with banishment. Moreover, considering the lawsuits recorded in 1423, 1457 and 1465, we can only speculate on why the court decided on the sanction of banishment. In the first two cases, the answer may be found in the fact that the defendants had committed multiple offences, so the court punished them as they would as repeat offenders, although the defendants were *de facto* before the judges for the first time. However, there is also a possibility that in these three examples other circumstances might have prevailed on the choice of punishment, but they were not written down. On the other hand, the remaining cases which were punished by banishment have noticeable similarities. Trials from the years 1435, 1442 and 1460 started against those who caused physical wounds. Furthermore, in these three cases it was actually a matter of family violence, and the city court probably used the sanction of banishment as an alternative punishment. Besides, considering the joint household budget of victim and aggressor, the penalty of a fine would not have made much sense. After all, at a time when there was no possibility of getting a divorce, banishment as a sanction was a logical choice because by removing the violent family member from the city, the court at the same time protected the victim from repeated violence by the offender.

#### 4.2. Banishment and Crimes Against Morality

In July 1461, goldsmith and juror Benedict sued Gregory Burdić for swearing at him in his home and cursing God, and several witnesses confirmed that Gregory had cursed God and the Blessed Virgin and said that in the future he would rather worship demons than them, because since he had been worshipping God and the Blessed Virgin, he had had no luck. The jurors ruled that because of his blasphemy Gregory should walk naked to the enclosed spot of the church of Saint Mark, where his tongue would be cut off in front of the people, and afterwards he was to be escorted out of the city territory and his property confiscated for the city’s benefit. This corporal punishment is equal to the one prescribed in the *Stadtrecht*,<sup>60</sup> and it seems that the sanction of banishment was given because blasphemy was not Gregory’s only sin. Two weeks later, due to the pleas of citizens and clergymen, the city court pardoned Gregory, but with the explicit condition that he

should not in the future carry any weapon in the city, go into taverns, play illicit games or even give the slightest reason to be punished, whether by his words or his deeds.<sup>61</sup> Besides this case, it seems that in Zagreb banishment was a preferred sanction of criminal law for those who sinned against the moral rules of the community, especially for perpetrators of sexual crimes, even when these were offenses which by their nature would incur the death penalty.

In the same moral vein, at the end of March 1454, Margaret, the concubine of the late George, was sentenced to banishment from the city because she was caught multiple times while procuring girls for various fornicators, and the court threatened her with harsh punishment if she ever stepped into the city or on city territory. However, it seems that Margaret returned to the city despite the ban. Two months later she was again in court and for the same reason as before, so she was banished from the city for the second time with all her things, again with the threat of punishment which she deserved according to the content of the privilege, if she was discovered again in the city.<sup>62</sup> Since solicitation or procuring are not mentioned in the privilege, and in the *Stadtrecht* and the Statute of Ilok only the situation of mothers procuring their daughters was mentioned,<sup>63</sup> and considering that this is the only written example of procuring in Zagreb in the fifteenth century, it is not quite clear whether the threat of deserved punishment implied the death penalty or whether Margaret was to be punished with the same penalty for the third time, but this time as a three-time offender.

The court gave the sanction of banishment for prostitution as well; although in the Middle Ages it was considered a great evil in theory, in practice it was tolerated.<sup>64</sup> In August 1461, Dora Kuhinačić, the widow of the late Mathias Kranjec, was forbidden by the court to access the city with the threat of just punishment, after she was told in vain several times to abandon prostitution. Due to the pleas of many people, Dora was allowed to stay in the city,<sup>65</sup> but four years later she was again accused of prostitution. This time five more women were accused alongside her: Barbara, Elisabeth, the daughter of Matejčić, Jalšica, the daughter of Tančec, Helen Mezonosić, and Margaret, the widow of George Zvonar. By decision of the court, all accused women were to be banished.<sup>66</sup> Prostitution was mainly practiced by women in a marginalized position, but there were also cases of prostitution by married women. In the fifteenth-century court records of Zagreb, there is just one such case. In 1454, Jalšica, Majhena, Margaret, Elisabeth, all married women, and Elisabeth's daughter, Catherine, were caught prostituting themselves. They were sentenced to banishment from the city with a ban of returning, but they were allowed to take their money and moveable assets with them, while their remaining property was sold. It should be noted that in this case the city court had first intended to sentence these women to death by hanging, but they changed their decision due to the plea of numerous prominent and honest citizens. Considering that this intention cannot be seen in the remaining cases, it is possible that in this case the marital status of the defendants had affected their primary decision.

In fact, by prostituting themselves all the mentioned women were simultaneously committing adultery in a certain way; the Buda *Stadtrecht* and the Statute of Ilok had prescribed the death penalty for the latter crime.<sup>67</sup> On the other hand, in the fifteenth century, there were several recorded lawsuits against adulterers, in which the city court would, contrary to expectations, regularly sentence defendants to shameful banishment from the

city.<sup>68</sup> The court exceptionally gave a death penalty after a trial from 1482, but unlike other cases, in this one the perpetrators were related. Namely, the denizen of the city Matko and Ursula, the daughter of Stephen Belačić from Obrež, and at the same time the niece of Matko's wife, committed the grave sin of fornicating although they were related. For such a severe sin, the sentence was that they should be burned on the following Friday. However, thanks to the pleas of John, the bishop of Oradea, and of Dominic from Florence, royal *tricesimator* (customs officer), in the end their lives were spared, but they were banished from the city under the threat of execution if they were to return.<sup>69</sup> Sanctioning adultery with banishment from Zagreb should not be interpreted as a legal particularism of city law, but should be attributed to the unwillingness of the city court to enforce an existing custom that would deprive the perpetrators of their life. On the symbolic level, a permanent banishment could be considered equal to the death penalty, in the sense that it entailed the civil death of the perpetrators and the confiscation of their property.<sup>70</sup> After all, unlike the death penalty, punishing adulterous affairs by banishment would still leave room for saving broken marriages and reintegrating perpetrators into the community,<sup>71</sup> as was the case with the married couple, the Sterks. As it was mentioned, Simon was banished from the city under the threat of losing his arm if he returned, because he had cut off the nose of his wife, Helen. However, on the same day, the city court also banished Helen from the city, because it turned out that she had cheated on Simon, which was probably the reason for his attack on her. However, two years later, Count Jan Vitovec and Dorothy Toth, the widow of Henning of Susedgrad, and other prominent persons advocated on behalf of this married couple, who received a pardon under the threat of a real punishment if they would succumb to crime again.<sup>72</sup>

### 4.3. Banishment and Crimes Against Property

In the largest number of trials, the perpetrators of theft were those sentenced to banishment. Considering that these cases make almost two thirds of all convictions entailing banishment in Zagreb in the fifteenth century, they are probably the best indication that the legal system truly rested to some extent on legal foundations which were valid also in other cities operating under the tavernical law. For instance, for thefts to the value of one florin, the Statute of Ilok prescribed lashing and banishment from the city at the distance of eight miles and for a hundred years and one day. For theft to the value of two or three florins the Statute prescribed cutting off one ear, while for thefts to the value of four or more florins it prescribed death by hanging.<sup>73</sup> The same criminal law sanctions were applied also to perpetrators of theft in the fifteenth-century court records of Zagreb. For theft, 15 people in 11 cases were convicted to banishment exclusively, 10 people in 10 cases were convicted to lashing or beating alongside banishment, while 28 people in 23 trials were convicted to mutilation and banishment.<sup>74</sup> Although normative sources mention mutilation and banishment separately, in the judicial practice of Zagreb perpetrators were only exceptionally punished by cutting off their ear without it being followed by banishment.<sup>75</sup>

Generally, the pattern shows that, according to local custom, banishment was the fundamental sanction for theft. However, the sanction of banishment was strengthened in

most cases with some form of physical punishment, that is, lashing or mutilation. This suggests that the type of adjudicated sanction of criminal law was proportional to the severity of the crime: if the stolen property was more valuable, the punishment was more severe. Although the examples from the court practice rarely give out the value of the property gained by theft, there are indications that it also had an influence on the type of sanction in the criminal law of the city of Zagreb.

This is how, for example, in 1436, a certain George, *filius Marci de Goriczancz*, was caught *in minori furtu et malicia*, for which he was banished from the city and city territory under the threat of deserved punishment if he ever returned.<sup>76</sup> Several years earlier, in 1423, one Martin also known as Vinko was discovered while committing a theft of one pair of shoes from the shoemaker Stephen, to which he himself confessed. Therefore, it was adjudicated that he should be put on *eculeum*, given a lashing and banished in disgrace from the city and the city territory, under the threat of the death penalty in the case of his return.<sup>77</sup> In the year 1434, Stephen, the son of Gregory from Ciglana, was discovered while stealing a tunic from the *panni corintiani*, to which he himself confessed in front of numerous people. Since he had not caused any trouble until then, the jurors adjudicated that he be chained to the pillory (“pillar of shame”) or *eculeum* and subjected to ridicule, and then beaten and banished from the city, of course, under the threat of deserved justice if he returned.<sup>78</sup> In the year 1452, Peter, the son of Clemens from Svibovac, was caught *in bursicidium* (stealing a purse), and therefore the city court ruled that his ear should be nailed to the *eculeum* and cut off, and then for the first warning he should be banished from the city under the threat of deserved punishment if he returned.<sup>79</sup>

There were also cases where the city court would deprive the perpetrators of both of their ears. For instance, in 1461, *Janse filius Janse Zore dicti, de Boletymcz* and *Ursula Jagathychna* were convicted to banishment and both of their ears were cut off.<sup>80</sup> Janša had stolen a horse from a widow in the port on Drava, but since he had brought the animal to the city, it became the city’s problem and it fell under the authority of the city magistrate, according to the provisions of the privilege.<sup>81</sup>

Ursula, who was probably a citizen of Zagreb, stole four ells of fabric and was therefore convicted not only to banishment from the city, but also to losing both ears.<sup>82</sup> In the year 1479, Margaret Festa confessed that she had stolen 70 *pensa* from *relicte Orsole mulieris*, which is the equivalent of 14 marks, and 25 groats (*Groschen*). She was punished to the cutting off of her ears and to banishment from the city with the ban on returning to the city territory.<sup>83</sup> In the same year, *literatus* John Keleminčić confessed under torture that the parish priest Mathias had asked him to corrugate and clean the holy vestments for the Easter holidays, and that he had stolen *partam de filis aureis textam* (a girdle woven from golden thread) and gems from the sacristy, and towels from the church. Furthermore, he confessed that he had stolen money from a certain Ursula, then millet and wine from the home of Kelecza (*de domo Keleczy*) in the vicinity of the butcher’s shop, and also wine from the home of Jurga (*in domo Jurg*). He also confessed that together with his uncle Gregory he had destroyed during the night the furnace in the house of Michael Oprašnić, a man who held the office of city judge for several years.<sup>84</sup> The city court ruled that for the crime against authority John’s face should be branded with the heated key of the church of Saint Mark, and for remaining thefts he should have his ears cut off and be banished from the city and city territory with a ban on returning.<sup>85</sup> It should be noted that in the last four

cases, the value of the stolen property entered the category of grand theft, for which in general the penalty was death. In this context, it seems that banishment followed by the loss of both ears was a certain compromise between giving a maximum sanction to the perpetrator considering the damage that was incurred and sparing his life. We will see later that this type of compromise was not a rare phenomenon in Zagreb.

Despite the anomaly of these latter cases, such examples support our argument that the type of criminal punishment depended on the severity of the committed theft. Nonetheless, this was not always the case. In 1452, Helen, the widow of one Mathias, a shoemaker, was convicted to banishment from the city under the threat of deserved punishment in case of her return, because she had stolen 8 *pensa* from the shoemaker Peter,<sup>86</sup> which was a significantly larger sum than the one for which normative sources prescribed the sanction of banishment. On the other hand, in 1477, in the proceeding between the city judge John Soldinarić and a certain Helen, who was accused of stealing onions in the garden of the prominent citizen Bradač, the accused did not deny the facts and therefore the court banished her from the city. In her case the banishment was accompanied by lashing,<sup>87</sup> although it is unlikely that the value of the stolen onions exceeded the sum which Helen stole from Peter. Although rare, these examples show that the value of the stolen property in Zagreb was not necessarily crucial in selecting the type of punishment, but the decision also depended on who committed the theft and who were the victims of the crime.

## 5. Public Spectacles and Expulsion Rituals

**B**ANISHMENT WAS a visible means of liberating the community from offenders who were, with various forms of deviant behavior, threatening its prosperity; therefore, the sanction of banishment was carried out in public. Like the executions, banishment was an elaborate show which had the purpose of highlighting social norms and power relations and deterring other members of the community from breaking the rules.<sup>88</sup> Thus, the city authorities would stage the public punishment in a variety of forms, which we can see from examples of their handling the perpetrators of various forms of fraud. In 1460, a certain Marko impersonated the tailor Mathias and, hiding his married status, he nearly took a young girl in marriage. Furthermore, he also disgraced some prominent citizens by claiming that he had loaned them money and other things; to citizen Paul Lah he pawned a crate for 40 golden florins, in which there should have been 80 golden florins, but it turned out that in the crate there was only a piece of cheese wrapped in a rag. For having committed fraud, the city court had him lashed naked and banished him from the city.<sup>89</sup> In 1471, when it was discovered that the butcher George Zalarić had killed a sick cow and was selling its meat as fresh and mixed with other meat, the city court ruled that his fraud should be punished by tying the bloody meat onto him and that he should be banished from the city with beatings and lashes.<sup>90</sup> Another example of public shaming occurred in 1492, but this time towards the perpetrator of numerous thefts. Peter, the son of Thomas, also known as Burg beneath Okić (*Petrus filius Thome Burga dicti de sub Okyeh*), first stole in baths one belt with a bag containing 1 florin and 20 denars, and then one cap of marten's fur, a barber's ring and the sword of a priest. In *vico sutorum* he stole three cow hides, and very soon after in the home of Lawrence *Spaci* he stole two female

and one male tunic, caps, bags, knives, and other things. Then he tried to sell these hides to the shoemakers Clement and Andrew *Chranczu*, but they suspected something and brought Peter to justice. Since Peter confessed to all of his deeds, it was adjudicated that because of this he should be hanged on the city's gallows. However, city court ultimately decided to spare his life and banish him from the city, but ruled that he should be naked from the waist up and wear the stolen hides and horns on his head, and then that he should be lead tied by his neck around the city towards the exit.<sup>91</sup> The additional public shaming of the people convicted to banishment, through such rituals, was present in other European cities in the Middle Ages.<sup>92</sup>

Permanent banishment entailed exclusion from the community with no possibility of reconciliation and return to the milieu that had rejected them. In order to also visually distinguish those convicted from the others in the community, numerous sentences to banishment across Europe until the seventeenth century were accompanied by various forms of mutilation or branding.<sup>93</sup> The same pattern was present in Zagreb: throughout the fifteenth century, almost half of the sentences to banishment included some form of physical punishment, more than half of which were related to mutilation or branding. Thus, in 1432, Margaret, the wife of Blaise the tailor, was caught in the home of a certain Marina committing adultery with the John the barber, the son of Thomas Černčević. The city court tied Margaret and John to the *eculeum* where Margaret was branded on her face with an iron rod called *teca*. Marina was also tied to the *eculeum* as an accomplice and was held in place for the entire day, in shame and delirious; in the end, all three of them were beaten and banished from the city in disgrace, under the threat of the death penalty if they returned.<sup>94</sup>

From this example we see that physical punishment that preceded banishment was also carried out in public. Considering the preponderance of thieves among those convicted to banishment in the city of Zagreb, the most common physical punishment which accompanied their banishment was cutting off one's ear, but as we have seen, there were also examples of mutilation of other parts of the body, depending on the type of crime. Earlier we have emphasized that the city court started from the existing norms of common law, which in general did not differ from those written in the *Stadtrecht* and the Statute of Ilok. This is confirmed precisely by the physical punishment given to perpetrators, because its nature was conditioned by the type of crime committed. In some way, mutilation represented a physical compensation, the way in which criminals paid "with a part of a body." Since mutilation was performed in public, it represented a way of deterring others from crime, and, at the same time, served as a mechanism for controlling criminality. Specifically, by cutting off the tongue of the blasphemous or the hand of the author of severe physical violence, city authorities were preventing a future crime or at least reduced the chances of recidivism.<sup>95</sup>

## 6. Banishment as an Expression of Mercy

**W**E HAVE seen that banishment was frequently accompanied by a certain type of physical punishment. However, there are several examples when banishment was an alternative to physical punishment. For instance, the aforementioned

Elisabeth, who was banished in 1442 for stabbing her husband, was supposed to be punished by losing an arm according to the initial verdict, but, in the end, the court spared her of mutilation thanks to the humble requests of numerous citizens and banished her from the city under the threat of deserved punishment if she returned.<sup>96</sup> In 1451, one Michael also known as Rac committed some atrocities towards the masters of the city of the time and the bans of Slavonia, Counts Frederick and Ulrich Cilli. Because of this, he was supposed to lose his eyes. His accomplices, Blaško and Nicholas, the son of Blaise Zalat, were also supposed to receive a physical punishment. However, thanks to the humble requests of canons of *ecclesie Zagrebiensis* and the friars of the convents of Saint Mary and Saint Francis, the city court showed mercy and gave them a sanction of banishment from the city to a distance of ten miles under the threat of deserved punishment if they returned.<sup>97</sup>

Most frequently the conviction to banishment replaced the physical punishment in cases related to crimes against property. This is how, in 1452, a messenger called Michael was supposed to be mutilated as an unfaithful servant because he, due to his negligence, had allowed the escape during the night of a certain George Perin, who had been detained for theft. Nevertheless, again after requests from pious and decent people, Michael was shown mercy and the city court ruled that Michael and his wife Helen, who could not be separated from him because they were married (*que ab ipso Michaele preconone propter matrimonium separari nullo modo potuit*), were to be banished from the city.<sup>98</sup> In 1454, city court showed mercy also to Elisabeth, *filia Martini de Raboch*, who was supposed to lose an ear for having committed theft, but thanks to requests from citizens, she was only banished from the city.<sup>99</sup> Due to the advocacy of citizens, on the same day, Marko, the son of Dionysius also known as Gerse of Završje, avoided mutilation for theft. However, unlike Elisabeth, the city court decided to disgrace Mark by having him stripped and banished from the city with lashes.<sup>100</sup> Finally, in 1477, John Magyar from Pest was convicted to losing his arm because he had cut fisherman Stephen's bag with 108 schillings, stolen a horse on the city territory, and some cattle. However, at the request of dignitaries from Pest and of the local clergy, the court banished John Magyar from the city under the threat of the initial punishment if he came back.<sup>101</sup>

These examples are significant because they show how the requests of prominent members of the community had influence over the judiciary and had an impact on the outcome of a lawsuit. It is especially relevant that external pressure always met with success, given that the city court listened to the opinion of the community while making a final decision, even when the perpetrators deserved a death sentence for their deed. In 25 out of 105 cases examined, the sanction of banishment was determined as an alternative punishment to the death penalty, and in almost two thirds of these trials the softening of the sentence was a result of the expression of mercy of prominent members of the community, in the sense of pleading for the accused, and in more than third of the cases the city court itself showed mercy to the accused. Whether it was citizens pleading for the accused or by their independent decision,<sup>102</sup> the city court was more inclined to soften the sentence of the perpetrators of theft. Namely, out of 25 cases in which the court spared the life of the perpetrators, 14 were related to theft. Unlike the previous examples when the thieves were convicted to banishment or banishment accompanied by physical punishment, these cases involved thefts of high value, like the one that was committed by aforementioned Peter, the son of Thomas from Okić.<sup>103</sup>

Among the cases when prominent citizens would plead on behalf of thieves, we should emphasize the case of Janko Bole, which shows that even hardened criminals could count on the support of citizens if they came from a good family. In 1444, Janko, the son of the judge John and the brother of the judge James Bole,<sup>104</sup> was almost executed for stealing a candlestick of the confraternity, but thanks to pleas from honorable citizens, he was pardoned, but his name remained written down in the city *caterna* (registry of property affairs).<sup>105</sup> Six years later, Janko was again in court because he was caught stealing five or six times, and because he was already marked as a thief, he should have received the death penalty. However, despite being a repeat offender, prominent citizens pleaded again on his behalf and insisted before the court that Janko had repented for his wrongdoings. Therefore, the court ruled that he be banished from the city under the threat of deserved punishment if he returned.<sup>106</sup>

When speaking of other types of crimes, the attitudes of the local population seem to have coincided with the court's decisions. Only one intervention of a larger number of citizens which did not relate to perpetrators of theft was noted in 1454, when the already mentioned married women were accused of soliciting, and many prominent and honest citizens pleaded on their behalf to have their lives spared, after which they were banished under the threat of deserved punishment in the case of returning to the city territory.<sup>107</sup> It seems that while deciding on the lessening the verdict for those who deserved the death penalty, the crucial role was the perpetrator's intention of committing a crime and the extent of the damage caused, while other circumstances were only exceptionally taken into consideration. In this context, it is not surprising that for perpetrators of these types of capital acts, which imply a more detailed preparation and planning, the citizens of the free royal town of Zagreb had no mercy, and it seems that the court in such cases would also only exceptionally give up on the death penalty. This is how, in 1457, the court decided to spare the lives of female members of the family of a fugitive, a certain Mathias, who had been robbing various churches together with one Michael. His mother Agatha, his sister Elisabeth, and his wife Claire were supposed to be hanged because they were involved in this crime, but the court had mercy on them, and they were convicted of banishment in disgrace from the city under the threat of the death penalty.<sup>108</sup> This decision was probably affected by the fact that the aforementioned women had only indirectly participated in the crime, but probably the crucial aspect was that they were women. Namely, in Europe in the Middle Ages women were generally rarely hanged or executed in any way which would expose their bodies to the public,<sup>109</sup> and the same applied to Zagreb.<sup>110</sup>

In the remaining two cases in which the court independently changed their verdict, the perpetrators were women. In 1466, Helen, the stepdaughter of Fabian Veverić, killed her own child by throwing it down a well, for which she was supposed to be burned at the stake. Nevertheless, the court spared her of this punishment but, because of her crime, her skirts were trimmed, and she was lashed and banished from the city in disgrace, never to return, or she would be dealt her deserved punishment.<sup>111</sup> The court's verdict in Helen's case can be interpreted as an expression of sympathy towards the accused due to her grave circumstances. In 1475 Elisabeth Volavčić was caught practicing sorcery, as she was planning to poison her husband, which she herself admitted. The court initially decided that she should be burned in Središće on the following Tuesday. However, the court changed their decision, and unlike other female poisoners noted in the fifteenth century, who were

sentenced to death,<sup>112</sup> Elisabeth was exiled (*propter suam culpam est licenciata de territorio*) under the threat of the original punishment in case she returned.<sup>113</sup> The reason for such a verdict can partially lay in the fact that the accused did not manage to give the poison to her husband, but her life was more likely spared because, as the wife of a city messenger, she was close to the members of the city magistracy.

## 7. Banishment—A Reversible or a Permanent Sanction?

**F**INALLY, in the court practice of Zagreb in the fifteenth century, there were examples in which the delinquents convicted to banishment from the city would in the end receive forgiveness and the permission to continue their life within the urban community, despite their deeds, as was the case with the aforementioned married couple, the Sterks,<sup>114</sup> the prostitute Dora Kuhinačić,<sup>115</sup> or the blasphemer Gregory Burdić.<sup>116</sup> In the fifteenth-century court records, there were 14 such cases, and it should be emphasized that the pleas from the citizens had the greatest influence on the decision of the court.

On three occasions, forgiveness was given to perpetrators of crimes against morality. Namely, in 1413, saddle maker Martin was caught playing cards, despite an earlier ban and warning. He was supposed to be banished from the city, but due to intercession of pious citizens and members of the ecclesiastical community, the town court allowed him to stay, but he had to refrain from gambling.<sup>117</sup> In 1458, some citizens also acted on behalf of Elisabeth, the daughter of Blaise *de Zethcha*, who had abandoned her fiancée and married another man in Zagreb, and after his death, she remarried and in the course of that second marriage she committed adultery. Due to the pleas of citizens, the city court pardoned her, instead of branding her face with a heated seal and banishing her in disgrace from the town.<sup>118</sup> Several years later, in 1466, the city court showed mercy towards a maid, Helen from Črnkovac, and one Fabian from Varaždin, who were in service of an older juror, Luke the shoemaker. Fabian impregnated Helen out of wedlock and because of this both were to be banished from the city, but it turned out that Fabian had confessed to the chaplain of the parish of Saint Mark that he actually wanted to marry Helen. So, the city court decided not to punish them, on condition that they marry.<sup>119</sup>

It should be emphasized that citizens and clergy were pleading for forgiveness in cases of theft. In 1412, Dominic the tailor was sentenced to banishment in disgrace from the city, alongside of cutting of one ear, but pious citizens and members of clergy pleaded on his behalf *causa Dei*, so city court showed mercy and Dominic were spared of punishment, but with the threat of the death penalty if he would repeat the act.<sup>120</sup> In 1436, Ursula, the daughter of the late tax-collector Stephen, was caught stealing, but due to the requests of citizens and the fact she had small children, the court dropped the accusations against her.<sup>121</sup> Several other thieves were also pardoned,<sup>122</sup> but forgiveness was conditional on some sort of obligation. Thus, in 1468, Ambrose, a subject of Reginja near Pecs, confessed that while serving in Medvedgrad with the aforementioned John Magyar, he had stolen four groats (*Groschen*), because of which he was supposed to lose both ears and be banished from city. However, the local clergy and other respectable men pleaded on his

behalf because earlier on he had been on a pilgrimage and was supposed to take vows in the friary of Saint Dominic. So, the city court spared him of his punishment, under the condition that he kept his promise.<sup>123</sup> In 1470, Helen *Zatrephychlma dicta, concubine Emerici Agricole*, was caught stealing shirts, linen clothes, towels and robes; she gave the stolen goods to Emeric, an agricultural worker of Judge Anthony. Due to these acts, both were to be banished from the city in addition of losing their ear(s). However, due to the pleas of pious people, Emeric was spared of his punishment, but his forgiveness was conditioned by the obligation to cut off Helen's ear.<sup>124</sup> Finally, two years later, the merchant and *seniorus juratus* Peter Koncz bought an organ from the church of St. Mark although he knew that it was stolen. Consequently, he was sentenced to be branded on his forehead with the key of the church of St Mark and banished in disgrace from the city, but due to the pleas of numerous clergymen, he was showed mercy on condition that he repaired the pipe organ at his own expense. Moreover, because of his family situation and for having small children, he was not to be banished but imprisoned for a year. Again, respectable citizens and clergymen pleaded because of the poverty of Peter's wife and children, so he was allowed to remain free, but still had to repair the organ at his own expense. A year later, and again due to the agency of citizens, the court gave Peter an instalment deadline for giving 3 florins for boards for the renovation of the roof of the aforementioned church, provided that he did not repeat his acts.<sup>125</sup> The reason for this instalment is not recorded, but it is possible that meanwhile Peter had not been able to restore the pipe organ, so this amount of money was some sort of compensation for an earlier (unfulfilled) obligation.

Numerous examples of leniency, and even of abolishing the verdict, can lead us to conclude that the city court was relatively merciful towards delinquents. However, one must keep in mind that the court took a lenient stance only in exceptional cases in the absence of outside intervention. Of course, there are examples when the court issued only a warning and the threat of banishment for first-time offenders, but in the fifteenth century this practice was recorded in only five trials. In 1423, the city court threatened Zabka, who was caught in the wrong, that in the case of a repeat offense she would receive a humiliating punishment in accordance with the town privilege and would be banished from town.<sup>126</sup>

In three cases, the court threatened with banishment the perpetrators of slander. In 1454, Catherine, the daughter of the late tailor George, was caught slandering, and the jurors threatened her with banishment if she was to repeat the act.<sup>127</sup> Similar was the case in 1472 when *uxor Gyljan* slandered the reputation of some *ancillam Jalsy* that she was keeping company with bad men and young men.<sup>128</sup>

In the last case when a court issued only a threat of banishment, the person in question was repeat offender. In 1454 Paul, the son of the late Anthony Goničić, who had hit with a bat the head of George, a servant of Frederick the blacksmith, was sentenced to pay a fine to the injured party, but bearing in mind that he had beaten up someone already twice before, the juror threatened him with banishment if he were to repeat the similar act for the fourth time.<sup>129</sup> In this case, the city court issued Paul a fine with a third warning, stating that the fourth time he would be punished as anyone *qui si post trinam correctionem se non emendaverit*,<sup>130</sup> according to the privilege of 1242.

## 8. Epilogue on Banishment as Governing Practice

THE RANGE of examples analyzed in this study shows that the practice of banishment in late medieval Zagreb was rather diverse. While issuing the sanctions, in certain cases the judges followed the provisions of the Golden Bull privilege of 1242, and in cases of theft took guidance from the regulations of the Statute of Ilok. On the one hand, cases extracted from the court records also show that banishment was not relying on a systematic set of governing rules but was decided on a case by case basis. However, we can conclude that banishment and the threat of banishment were among the most important sanctions used by the city authorities, determined to have peace and order in the area under their jurisdiction. As a criminal sanction, banishment had two basic roles. It was often followed by physical punishment and thus served as a mechanism to instill key values, first and foremost discipline and obedience. Just like public executions, the banishment of an individual from the city was followed by a public ritual and served as means of frightening of community, to prevent further disturbances. Besides, with banishment, the local authorities could rid the community of all those who were traditionally perceived as dangerous. It also diminished the possibility that the perpetrator would repeat the act.

From the viewpoint of the convicted offenders, for all delinquents facing it, banishment represented a drastic penalty, which meant not only their physical removal from the community as unwanted individuals, but also severing all social ties with its members. The sentences given in the city court show that officials were aware of the implications of the punishment, so they developed a degree tolerance towards the offenders, which was reflected in their leniency. That tolerance nevertheless had its limits, depending not only on the type of crime and the circumstances of the case, but also on the social rank of the offenders.

In the end, it is worth noting that numerous cases feature banishment as alternative to fines. Since it was a flexible, potentially reversible, and cheap form of punishment, it is not surprising that banishment was a preferred alternative and as such represented important middle ground between fines and the death penalty. It was the “middle path” between disturbing mutilations or executions and leniency, whereby the city authorities excluded the unwanted from society but also regulated the integration in society. Therefore, while on the one hand the threat of banishment and actual banishments reflect the will of city authorities to cleanse and protect society, on the other, the conviction to banishment also reflects their mercy (although instigated by outside factors). Precisely the latter suggest that public opinion had a certain level of influence over the decisions of the court, but simultaneously a large number of examples testify that local authorities had a predetermined idea as to which crimes and offenders deserved to be deprived of the privilege of living within the protected city community.



## Notes

1. Matthew J. Gibney, "Banishment and the pre-history of legitimate expulsion power," *Citizenship Studies*, 24, no. 3 (2020): 2.
2. *Ibid.*, 3; Nella Lonza, *Pod plaštem pravde* (Dubrovnik, 1997), 152.
3. Gibney, "Banishment," 2.
4. E.g. Esther Cohen, "Patterns of crime in fourteenth-century Paris," *French Historical Studies*, 11, no. 3 (1980): 307–327; Sarah Rubin Blanshei, "Crime and law enforcement in medieval Bologna," *Journal of Social History*, 16, no. 1 (1982): 121–138; Xavier Rousseaux, "Crime, justice and society in medieval and early modern times: thirty years of crime and criminal justice history," *Crime, History & Societies*, 1, no. 1 (1997): 87–118; Trevor Dean, *Crime in Medieval Europe 1200–1550* (Harlow, 2001); Susan L'Engle: "Justice in the margins: punishment in medieval Toulouse," *Viator*, 33 (2002): 133–165; Karen Jones, *Gender and Petty Crime in Late Medieval England: The Local Courts in Kent, 1460–1560* (Woodbridge, 2006); Joanna Carraway, "Contumacy, defense strategy, and criminal law in late medieval Italy," *Law and History Review*, 29, no. 1 (2011): 99–132.
5. Dean, *Crime in Medieval Europe*, 130.
6. Jason P. Coy, *Strangers and Misfits: Banishment, Social Control, and Authority in Early Modern Germany* (Leiden – Boston, 2008), 3.
7. *Ibid.*, 15.
8. Dean, *Crime in Medieval Europe*, 129–130.
9. Marija Filipović, "Zločin u kasnom srednjem vijeku. Sudski kriminalni spisi Gradeca 1450.–1455," *Lucius*, 5, nos. 8–9 (2006): 47–88.; Martina Findrik, *Vještčarenje i čarobnjaštvo u Zagrebu od 13. do prve polovice 16. stoljeća* [MA Thesis (University of Zagreb)] (Zagreb, 2013); Petra Horvatinović, *Žene u sudskim spisima zagrebačkog Gradeca u kasnom srednjem vijeku* [MA Thesis (University of Zagreb)] (Zagreb, 2013); Kristina Judaš, *Nasilni zločini protiv osoba u sudskim spisima zagrebačkog Gradeca u kasnom srednjem vijeku* [MA Thesis (University of Zagreb)] (Zagreb, 2013).
10. *Monumenta historica liberae regiae civitatis Zagrabiae*, ed. Ivan Krstitelj Tkalčić, IV–VIII (Zagreb, 1897–1902), hereinafter MCZ.
11. MCZ, I, 15–18 (no. 18).
12. Magdalena Apostolova Maršavelski, "Kazneno i procesno," in *Zlatna bula 1242–1992*, 79; Eadem, "O običajnom pravu zagrebačkog Gradeca," *Zbornik Pravnog fakulteta Sveučilišta u Rijeci*, 3 (1983): 138.
13. Eadem, "O običajnom pravu zagrebačkog Gradeca," 136.
14. Zrinka Nikolić Jakus, "Počeci srednjovjekovnog grada," in: *Povijest grada Zagreba: od prethistorije do 1918.* (Zagreb 2012–2013), 45; Agneza Szabo, "Uređenje uprave na zagrebačkom Gradecu od sredine 13. do sredine 19. stoljeća," in: *Zlatna bula 1242–1992*, 39–40; Bruno Škreblić, "Etničke i političke skupine u srednjovjekovnom gradu: Primjer gradečkih lingui," *Povijesni prilozi*, 27 (2008): 95; Igor Vuletić, "Kazneni postupak zagrebačkog Gradeca kao primjer akuzatornog kaznenog postupka srednjovjekovne Hrvatske," *Pravni vjesnik*, 25, no. 1 (2009): 82.
15. Ivan Beuc, *Povijest institucija državne vlasti Kraljevine Hrvatske, Slavonije i Dalmacije: pravno-povijesne studije* (Zagreb 1985), 130.
16. Nada Klaić, *Zagreb u srednjem vijeku* (Zagreb 1982), 216–217.

17. Lelja Dobronić, "Gradski teritorij, njegova urbana i ruralna naselja," in *Zlatna bula 1242–1992*, 29.
18. MCZ, I, 16 (no. 18).
19. Ibid., VI, 72, 116; VII, 146, 357–358.
20. Ibid., VII, 194.
21. Rudolf Schmidt, *Statut grada Iloka iz godine 1525* (= *Monumenta historico-juridica Slavorum Meridionalium*, 12) (Zagreb, 1938); hereinafter *Iločki statut*.
22. Although Ilok did not belong nominally to cities of tavernical authority, the contents of the articles of the Statute of Ilok corresponds with the text of codex composed by master of treasury John Thúz de Laak in 1479, representing the first attempt of codification of tavernical law (Lujó Margetić, "Iločka pravna knjiga (tzv. Iločki statut)," *Zbornik Pravnog fakulteta u Zagrebu*, 44, nos. 1–2, (1994): 98–100).
23. Alongside initial seven tavernical towns, Zagreb (Gradec) is mentioned as such only in the charter of Wladislas II Jagiello from 1498 (*Corpus iuris Hungarici seu Decretum generale inclyti regni Hungariae partumque eidem annexarum*, I (Buda, 1822), 287). However, there is certain consensus in the historiography that the city belonged to tavernical cities even before (Margetić, "Iločka pravna knjiga," 97; Zvonimir Tomičić, "Kazneno i kaznenoproceno pravo slavonskih statuta: Iločki statut i njegova kaznenoprocena regulacija," *Hrvatski ljetopis za kazneno pravo i praksu*, 9, no. 1 (2002): 143; Magdalena Apostolova Maršavelski, "Tko su bili maiores civitatis (oko pitanja sudskih instancija u zagrebačkom Gradecu)," *Zbornik Pravnog fakulteta u Zagrebu*, 56, nos. 2–3 (2006): 273).
24. *Das Ofner Stadtrecht: Eine deutschsprachige Rechtssammlung des 15. Jahrhunderts aus Ungarn. Monumenta Historica Budapestinensia*, I, ed. Karl Mollay (Budapest, 1959); hereinafter *OST*.
25. Martyn C. Rady, *Medieval Buda: A Study of Municipal Government and Jurisdiction in the Kingdom of Hungary* (New York, 1985), 43–54.
26. On the Germans in Zagreb: Vladimir Bedenko, "Društvo i prostor srednjovjekovnog Gradeca," in *Zagrebački Gradec*, 37–49; Karolina Kanižaj, "Njemačka kolonija na Gradecu u drugoj polovici 14. i prvoj polovici 15. stoljeća," in *Nijemci u Hrvatskoj jučer i danas*, ed. Goran Beus Richembergh (Zagreb, 1994), 53–62; Škreblin, "Etničke i političke skupine," 91–148; Idem, "Nijemci na Gradecu sredinom i u drugoj polovini 15. stoljeća," *Godišnjak njemačke zajednice – DG Jahrbuch*, 17 (2010): 33–54.
27. Kristina Judaš, "Smrtna kazna u zagrebačkom Gradecu u drugoj polovici 15. stoljeća," *Zbornik Odsjeka za povijesne znanosti Zavoda za povijesne i društvene znanosti*, 36. (2018): 31–60.
28. *Iločki statut*, I, 45 (cap. 20).
29. Ibid., III, 79–79 (cap. 48, 51).
30. Lonza, *Pod plaštem pravde*, 153.
31. MCZ, VI, 96.
32. Ibid., 169, 171; VII, 42.
33. Ibid., VII, 62.
34. Lonza, *Pod plaštem pravde*, 153.
35. MCZ, I, 15 (no. 18).
36. Ibid., VI, 11, 154–155, 253, 268; VII, 13, 16–17, 42, 72, 73, 212, 270, 334.

37. The reason given was *nepharium* (Ibid., VII, 5, 334), and on two occasions one was not given (Ibid., 444; VIII, 80).
38. Division taken from Xavier Rousseaux, "From medieval cities to national states, 1350–1850: The historiography of crime and criminal justice in Europe," in *Crime History and Histories of Crime: Studies in the Historiography of Crime and Criminal Justice in Modern History*, eds. Clive Emsley, Clive, Louis A. Knafla (Westport, CT – London, 1996, 12); Cohen, "Patterns of crime," 316.
39. MCZ, VII, 125.
40. Ibid., VI, 116, 124, 354; VII, 192, 275.
41. Ibid., VI, 154–155, 171; VII, 443, 446; VIII, 39, 41.
42. Ibid., VI, 339–340; VII, 310–311. Infanticide was perceived as separate crime only in the medieval period; canon law extrapolated infanticide from the category of murders among kinsmen. Such a concept of infanticide was incorporated in secular law, so infanticide and deliberate abortion were treated as one form of murder (for more on infanticide: N. Lonza, "Dvije izgubljene duše: čedomorstva u Dubrovačkoj Republici (1667–1808)," *Anali Zavoda za povijesne znanosti HAZU u Dubrovniku*, 39 (2001): 262–263; Wolfgang P. Iler, *The Criminalization of Abortion in the West: Its Origins in Medieval Law* (Ithaca, NY, 2012).
43. MCZ, VII, 206, 208, 214, 216.
44. Ibid., VII, 194, 477.
45. Ibid., VII, 72, 73, 208, 212.
46. Ibid., VII, 307–308.
47. Ibid., VI, 152, 384; VII, 146, 192, 334; VIII. 14.
48. Ibid., VI, 55–56.
49. Ibid., 70.
50. Ibid., VII, 124–125.
51. Ibid., 316.
52. Witchcraft, sorcery: *Iločki statut*, III, 73–74 (cap. 36), OSt., I, 169 (cap. 331); infanticide: *Iločki statut*, III, 65 (cap. 15), OSt, I, 156 (cap. 292); adultery: *Iločki statut*, III, 66, 74 (cap. 17, 37), OSt, I, 156 (cap. 290); large theft: *Iločki statut*, III, 80 (cap. 53), OSt, I, 148 (cap. 264–265); robbery: *Iločki statut*, III. 70 (cap. 29), OSt, I, 149 (cap. 268); sacrilege: *Iločki statut*, III, 73 (cap. 35), OSt, I, 151 (cap. 275); arson: *Iločki statut*, III, 71 (cap. 31), OSt, I, 152 (cap. 276); forgery and counterfeiting: *Iločki statut*, III, 72–73 (cap. 34), OSt., I, 149 (cap. 270).
53. See more in Horvatinović, *Žene u sudskim spisima*; Judaš: *Nasilni zločini protiv osoba*.
54. MCZ, VI, 116.
55. Ibid., VI, 224.
56. Ibid., VII, 354.
57. Ibid., 125
58. Ibid., 192.
59. Ibid., 275.
60. OSt, I, 134 (cap. 219). The Statute of Ilok does not mention blasphemy.
61. MCZ, VII, 206, 208, 214, 216.
62. Ibid., 72.
63. *Iločki statut*, III, 65 (cap. 15); OSt, I, 156 (cap. 292).

64. In Buda, prostitutes were obliged to wear a yellow scarf, but they lived under the protection of the city (OSt, I, 124–125, 155–156/cap. 186, 289). Prostitutes also enjoyed protection under the Statute of Ilok, which provided for the death penalty for those who defiled a public harlot against her will (*Iločki statut*, III, 68/cap. 22).
65. MCZ, VII, 208, 212.
66. *Ibid.*, 270.
67. *Iločki statut*, III, 66, 74 (cap. 17, 37); OSt, I, 156 (cap. 290).
68. MCZ, VI, 152, 384; VII. 146, 192, 334.
69. *Ibid.*, VIII. 14.
70. Paul Friedland, *Seeing Justice Done: The Age of Spectacular Capital Punishment in France* (Oxford, 2012), 90; Gibney, *Banishment*, 10.
71. Coy, *Strangers and Misfits*, 68.
72. MCZ, VII, 12, 225.
73. *Iločki statut*, III, 50–53. The *Stadtrecht* of Buda also recognizes thefts to the value of a quarter of mark, up to one mark and more than one mark. However, in this case, the punishment is stricter: for theft up to quarter of mark cutting off an ear, and above it, death by hanging (OSt., I, 147–148/cap. 262–265).
74. Initial numbers deal with lawsuits in which the sanction of banishment was given as initial punishment. In the final 17 cases against perpetrators of theft, in 3 cases, banishment was given as an alternative to physical punishment, and in the remaining 14 cases as an alternative to the death penalty.
75. MCZ, VII, 286, 404.
76. *Ibid.*, VI, 246–247.
77. *Ibid.*, 494.
78. *Ibid.*, 318.
79. *Ibid.*, VII, 41.
80. *Ibid.*, 208.
81. *Ibid.*, I, 16 (no. 18).
82. *Ibid.*, VII, 208.
83. *Ibid.*, 486.
84. *Ibid.*, 487–488; Bruno Škreblin, *Urbana elita zagrebačkog Gradeca: od sredine 14. do početka 16. stoljeća* (Zagreb, 2018), 93.
85. MCZ, VII, 487–488.
86. *Ibid.*, 34.
87. *Ibid.*, 462.
88. Coy, *Strangers and Misfits*, 8.
89. MCZ, VII, 194.
90. *Ibid.*, 477.
91. *Ibid.*, VIII, 78–79, 234.
92. Friedland, *Seeing Justice Done*, 99.
93. Gibney, *Banishment*, 10; Friedland: *Seeing Justice Done*, 99–100.
94. MCZ, VI, 152.
95. *Ibid.*, 100.
96. *Ibid.*, 354.
97. *Ibid.*, VII, 15.
98. *Ibid.*, 45.

99. *Ibid.*, 75.
100. *Ibid.*, 76.
101. *Ibid.*, 461–462.
102. For thieves sentenced to death, the citizens pleaded 10 times, and the court independently mitigated the rule on four occasions.
103. MCZ, VIII, 78–79, 234.
104. Škreblin, *Urbana elita zagrebačkog Gradeca*, 183.
105. MCZ, VI, 401, 404.
106. *Ibid.*, VII, 13.
107. *Ibid.*, 73.
108. *Ibid.*, 124–125.
109. E. Cohen, “Symbols of culpability and the universal language of justice: The ritual of public executions in late medieval Europe,” *History of European Ideas*, 11, nos. 1–6 (1989): 412; Dean, *Crime in Medieval Europe*, 124.
110. From 1451 to 1500, death by hanging should have happened to 13 women, but finally, 11 were banished from the city (MCZ, VII, 46, 73, 82, 124–125, 128–129) and one was pardoned (*Ibid.*, 224). The only one sentenced to be hanged was the wife of tailor Martin, in 1496, after tailor Demetrius swore that she had stolen from him. However, it is not certain that she was actually hanged (*Ibid.*, VIII, 113, 251). See more in: Judaš, “Smrtna kazna u zagrebačkom Gradecu.”
111. MCZ, VII, 310–311.
112. *Ibid.*, 443, 446; VIII, 38, 39, 112, 113.
113. *Ibid.*, VII, 446.
114. *Ibid.*, 192, 225.
115. *Ibid.*, 208, 212.
116. *Ibid.*, 206, 208, 214, 216.
117. *Ibid.*, VI, 11.
118. *Ibid.*, VII, 146.
119. *Ibid.*, 307–308.
120. *Ibid.*, VI, 1.
121. *Ibid.*, VI, 246.; Ursula was again before the court the following year, because she was caught stealing. Since she had been registered as thief also in 1435 and since it was apparently her third offence, this time the court did not show any mercy, so the sentence was that her ear should be pinned with an iron nail to the *eculeum*, thus cutting it off, and then she was beaten and thrown out of the town and the city territory under the threat of death if she was to return (*Ibid.*, 268).
122. *Ibid.*, VII, 272, 326, 360–361.
123. *Ibid.*, 333.
124. *Ibid.*, 366–367.
125. *Ibid.*, 417, 418–419, 431.
126. *Ibid.*, VI, 488.
127. *Ibid.*, VII, 72.
128. *Ibid.*, I, 392.
129. *Ibid.*, I, 71–72.
130. *Ibid.*, I, 15 (no. 18).

### **Abstract**

#### **Banishment Practices in Fifteenth–Century Zagreb**

Banishment is undoubtedly an ancient method of punishment. It was widespread in the Middle Ages, not only as a punishment, but also as a form of correction of behavior or coercion. The present paper focuses on the case of the city of Zagreb, a complex city in itself. Even though numerous studies were devoted to urban life in Zagreb, the topic of banishment(s) was never actually addressed. The preserved sources reveal the existence of (at least) 120 procedures of banishment only in the course of the fifteenth century. The sanction of banishment emerges as an alternative to fines, a flexible, potentially reversible and cheap form of punishment. Unsurprisingly, banishment was in fact a “middle path” between fines and the death penalty.

### **Keywords**

banishment, medieval law, urban history, penalties, Zagreb, Buda, Ilok