

Kovačević Danijela*

<https://orcid.org/0009-0001-4008-5497>

Rajaković Jovčić Vesna**

<https://orcid.org/0000-0002-9900-6853>

UDK: 340.141:343.254

Review article

DOI: 10.5937/ptp2501093K

Received on: December 8, 2024

Approved for publication on:

January 15, 2025

Pages: 93–111

COMMON LAW AND THE INSTITUTE OF BLOOD VENGEANCE

ABSTRACT: Common law is one of the oldest forms of legal regulations that developed through unwritten rules and norms of behaviour that were established in the earliest communities. This law was based on customs adopted by the members of social community and passed down from generation to generation. In the absence of codified laws, customs made it possible to maintain social order and resolve conflicts within the community. One of the most well-known norms of common law was the institute of blood vengeance. It represented a way of maintaining balance and it could be said to embody ‘justice’ within the community, reflected in the practice where murder or injury was reciprocated with the same measure towards the perpetrator or his family. In the earliest periods, this rule was deeply rooted in the belief that only revenge could restore lost honor and establish balance within the community. Given the importance of the institute of blood vengeance, this paper will analyze when and in which documents blood vengeance was first mentioned, its characteristics, as well as its two institutions – oath and conciliation. These institutions, by their origin and purpose, can be said to oppose this custom, and within them, certain elements for its suppression can be found.

Keywords: *common law, custom, blood vengeance, oath, conciliation.*

*LLD, Assistant Professor, University Business Academy in Novi Sad, Faculty of Law for Commerce and Judiciary in Novi Sad, Novi Sad, Serbia, e-mail: kovacevicdanijela74@gmail.com

**LLD, Assistant Professor, University Business Academy in Novi Sad, Faculty of Law for Commerce and Judiciary in Novi Sad, Novi Sad, Serbia, e-mail: vesnarajakovic@yahoo.com



© 2025 by the authors. This article is an open access article distributed under the terms and conditions of the Creative Commons Attribution (CC BY) license (<https://creativecommons.org/licenses/by/4.0/>).

1. Introduction

Unwritten norms contained in customs and oral tradition regulated life in a certain period of time and were formed over a long time period. A customary-legal norm contained in a particular custom is not shaped by a definition, but is determined by behaviour and sanction of a social group as a whole and represents its developmental stage as well as experiences and awareness of the need of such a relationship. With the development of society, the customs gradually changed, expressing social maturity of a certain traditional profile and a certain time period. Customs are in each such level temporarily and spatially determined, that is, they have certain specific contents and forms (Čulinović-Konstantinović, 1984, p. 53). The same is the case with the blood vengeance which changed its form over time. It is obvious that the blood vengeance is part of the customary law, known to all ancient people. It was created in the original community within the clan-tribal society. In that time period, the blood vengeance was an extra-state pattern of behaviour, that is, self-judgement, as it was usually called. Also, it represented an unequivocal warning to the attacker, that his family, fraternity and tribe are behind the attacked, as well as that the revenge threatens each male member of the family, fraternity and tribe. With such characteristics the blood vengeance presented a full expression of solidarity of the early society 'one for all, all for one'. (Karan, 1985, pp. 10–11). 'Blood revenge is a very rigid, brutal and drastic customary law, anathematized, condemned and rejected in the civilized world as such' (Ramljak & Simović, 2006, p. 389). Contrary to the 'state law' blood revenge had established rules which turned the custom itself into some kind of a legal order (Karan, 1971, p. 616).

It is relevant to mention that in the former Yugoslavia blood revenge took roots in some parts of Kosovo, South Serbia, Macedonia and Montenegro, and sporadically in some other areas as well. Explanations for its occurrence are scientifically unfounded, and thus unacceptable, and are based on the presence of 'boiling blood', 'innate aggressiveness together with destruction' etc. (Ramljak & Simović, 2006, p. 390).

2. Customary law

Customary law refers to legal rules whose formal source is not found in a regulation passed by legislative body, but in the customs of social environment, which were created gradually and spontaneously (Blagojević, 1985, p. 958). A custom is an unwritten general rule, which was created by long-term adherence to the same way of behaviour and which is accepted by members of a particular

social group. On the other hand, law is an expression of concentrated will, while the creators of customs act spontaneously, they are anonymous and there is no consciously coordinated action among them with the aim of creating customs. Therefore, Stanković and Vodinelić state that certain theorists say that “law is closer to man’s will and custom to his instincts” (1996, p. 42). Stanimirović and Divac (2023) point out that the customary law, during the last two centuries, can be understood as a set of norms of a certain content that are adhered to and that with their understanding and a value system they protect an organized society such as a tribe, a clan, a brotherhood, a certain environment or a social class and an ethnic minority (p. 57).

From a historical point of view, until the establishment of written sources of law, customs were the exclusive rules of behaviour that regulated life in a social community. They were created spontaneously as an expression of religion, culture, moral and tradition within people. Also, they are adapted to social reality, they are different, bearing in mind different social groups that apply them (Popov, 2001, p. 29).

“A custom is a social norm that is the result of a long and spontaneous construction by the social mass acting diffusely without a special organization for that purpose. Certain ways of people’s behaviour in specific situations are repeated many times so that it becomes a habit through a long repetition and it starts to be considered obligatory to act this way in the future in given occasions. A custom, therefore, represents a norm created by a long repetition and which derives its binding force from this repetition” (Lukić, 1995, p. 30). From the mentioned above, the condition for creation, that is emergence of customs, is the maintenance of relative stability of social relations (Krstić, 2010, p. 11). A custom is formed through a long period of time by “repeating adequate behaviour for a social community” and on the basis of repeated practice it becomes a social obligation (Čulinović-Konstantinović, 1984, p. 53). Ancient customs come from the time of the original community. Customs are resistant to changes because they are deeply rooted in the social, collective and individual consciousness of people. They are passed down ‘from generation to generation’, so by repeating the same way of behaviour they have become a habit, which comes naturally (Blagojević, 1994, p. 38). On the other hand, Jering (1998) emphasizes that it is necessary to distinguish a custom from a habit, because a habit is a certain behaviour that has been permanently retained and established in a certain community, but does not contain a normative element, since nobody will be reprimanded due to, for example, having different habits than the majority. According to the same author, “a habit adheres to what is purely external, it is an expression of

continuous action, and it does not judge the content of an action. However, a custom simultaneously expresses a judgement about the content of an action, a judgement that this content is good. A custom as such is a good custom. Failure to act according to a custom is considered a 'sin', as a violation of a custom, and there lies the reproach that something happened that should not have happened. When it comes to a habit, these terms are not used, which indicates it is completely different from a custom" (p. 270). In a system where a custom has become a social norm, an individual cannot commit an offense and avoid responsibility, because the consequences will surely come, which the community will take care of. One of the sanctions, i.e. norms of customary law is a blood revenge. Where the first written traces of blood revenge can be found, when did it originate, what are the specifics of its execution and which are its main institutions are questions that will be answered in this paper.

3. The first mentions of a blood vengeance

The oldest legal monuments, which are often said to be mostly codes of customary law of their time, are based on tradition. From the preserved legal – historical records, it is found out that all the peoples of the ancient East : Egypt, Babylonia, Assyria, India as well as those of the later slave – owning states, Rome, Greece etc., have visible remains of blood revenge and composition (more in : Jelić, 1927). The written record of blood revenge can be found in Hammurabi's Code, which sanctions the system of talion, 'eye for an eye' (article 196), 'bone for a bone' (article 197).¹ The Babylonians made a distinction between a slave and a free man , so the talion was applied only in cases of injury to free people, while the compensation was given to other citizens for the caused injuries.² A trace of talion system was also found in Law of XII Tables.³ So, for example, it is prescribed that in the case of a serious body injury ('the case of breaking limbs') the principle of talion will be applied (Šarkić & Popović, 1996. p. 43).

¹ It is assumed that the well-known slogan 'an eye for an eye, a tooth for a tooth' originates from this article.

² This compensation is determined by article 198 of Hammurabi's Code that says: ' If he destroys a man's eye or breaks a man's bone, he must pay one mina of silver.' [Code of Hammurabi – translation of Čedomilj Marković]

³ According to the common law that had ruled in Rome before the Law of the XII Tables, the heir could not inherit his ancestor who 'fell by the executioner's hand' until he had first revenged him, on the basis of which it can be concluded that the blood revenge was part of customary law among the Romans (Jelić, 1927, p. 75).

According to the Bible, the Jews were also familiar with the blood revenge and the system of composition, as all the ancient nations at the beginning of their development. Although the blood revenge was retained in the Old Testament, it did not remain in its original form because it was precisely prescribed when and how it would be carried out. The content of the second and the fifth books of Moses is primarily taken into account here. "According to those regulations, the avenger was authorized to pursue his executioner and return the evil done to him with the same measure, i.e. 'life for life, an eye for an eye, a tooth for a tooth, an arm for an arm, a foot for a foot, a rope for a rope, a wound for a wound, a bruise for a bruise. However, a distinction was made whether the injury was caused negligently or intentionally, so in the first case the culprit could save himself by fleeing to some kind of asylum, in which case the avenger lost the right for revenge" (Jelić, 1927, p. 73). It is important to mention that in terms of revenge there was no difference between a man and a woman, as well as between a full-blooded Jew and a settler, while those who injured slaves were only responsible for their murders and not for the injuries they inflicted on them. Sharia law also had within it ancient forms of repression. More precisely, blood revenge is the only form of revenge retained in the Koran, and only for a murder with intention. At the same time, it is individualized according to the talion system. The composition is prescribed in the Koran only in the case of involuntary murder, and it is paid to the family of the murdered. (Kuran, p. 49).

Ruska pravda, the most complete collection of Old Slavic customary law from the 11th and 12th century contains three basic forms of the original social repression: exile from the community, blood revenge and ransom (composition). The first article of the oldest edition of Russian justice said: "If a man kills a man, then a brother takes revenge for a brother, or a son for a father, or a nephew or a sister's son. If there is no one to take revenge, then 40 hryvnias for the head." As mentioned in the article above, it can be concluded that the law imposed reconciliation as an obligation, and replaced revenge with the precisely determined amount of a ransom, and later this ransom turned into a fine (Šćepanović, 2003, p. 59).

In our region legal monuments from the era of Nemanjić appear in the 12th century and contain the institution of composition for blood crimes which was called "vražda (money compensation)".⁴ So for example, in the charter of king Milutin (1299/1300. year) which was addressed to the monastery of

⁴ 'Vražda (money compensation)' existed the whole time in the medieval Serbia and one half of it was always paid to the state, and on privileged church estates to the church, and the other half to the family.

Saint George on Serava near Skopje, prescribed that money compensation is not taken from the town and village, but from the murderer, and on that basis it can be concluded that personal responsibility had already been introduced. "It is believed that our medieval states destroyed the tribal society as well as the blood vengeance, but that the arrival of the Turks, in a yet unexplained way renewed the tribal way of life and also the blood vengeance" (Karan, 1973, p. 25). According to the same author, many scientists consider that the tribal way of life had never been completely destroyed but continued to exist with certain changes after the arrival of the Turks. Documents about it can be found in the Turkish and Dubrovnik archives, in different sources such as texts on stacks, French authorities' orders, various statutes and laws, travel writers' records and of course, in people's memory.

The customary law of Albanian tribes was recorded no sooner than in the 19th century as Law of Leka Dukadin (Duričić, 1998). It is assumed that this law was named like this because of the reputation Leka had as a warrior in his community and because he was a fair judge and knew the customs of his people. (Karan, 1985, p. 20). His law was passed down orally, from generation to generation for years in this community. These rules were collected and systematized in 75 points by Jovan Lazović and called 'Law of Leka Dukadin' (Stojković, 2020). Law of Leka Dukadin⁵ precisely describes the occasions that obligate revenge, the ways it should be done and the limitations that had to be followed unconditionally.

4. Blood vengeance – origin and causes

It can be said that the blood vengeance is a legitimate behaviour on a certain level of the development of society. In the original community when the intergroup contacts and relations became more frequent and more complicated, the issue of protecting the members of a clan community from injuries and murders by members of other clans arose. Taking into account the protection of blood relatives who were obliged to protect and help each other, Samardžić (1967) states that it was normal that the institution of collective responsibility of the entire genus arose from this collective concern. The purpose of blood revenge was reflected in the fact that the members of one community, that was considered injured, took revenge on the members of other community, which the perpetrator belonged to.

⁵ See for more details: Zakon Leka Dukadin [Law of Leka Dukadin]

On the injury or the murder was responded with the blood revenge which was directed not only to the person who committed the injury but to all members of the group. This is the first, primary phase in the development of the blood revenge. This form of the blood revenge is called the total revenge (Šarkić, 2011, p. 26), because it is done by kindred against kindred, group against group. When it comes to this unlimited revenge, both the perpetrator and any member of his group can be killed (Garson, 1926, p. 22). The blood vengeance in this period often turned into a war of extermination because one revenge due to its disproportion provoked and imposed another revenge, so the multiple revenges turned into a war that could end with the total destruction of a group that was numerically smaller and which therefore did not have the possibility to retaliate in the same measure. The consequences that were caused by the unlimited blood vengeance were very often disastrous for the feuding communities, so even their survival was questioned. The things mentioned as well as the development of the social consciousness had the effect of abandoning the original type of unlimited total revenge and reducing it to a narrower circle of people, that is, to the delinquent's family and his closer relatives. Over time, the blood vengeance transformed into the revenge aimed at the delinquent himself, that is, the perpetrator of the crime. In this period, an individual exclusively becomes responsible for his actions (Vidović, 1990, p. 167).

In a class society, representatives of social communities, i.e. the holders of power opposed the blood revenge and restrained it, defending in that way general interests, but also their positions in the society. In this way, execution of the blood revenge was limited, as mentioned before, by reducing it to the closest relatives, then on the individual, which led to the proportion between committed and retaliated evil by applying the so-called principles of talion (Šćepanović, 2003, p. 35). The principle of talion was adopted in the slave system. In this period, in the case of the injury of a free man, full proportion was applied in retaliation towards the person who caused the injury. So the talion became the means of official protection in the slave society, but with limited application. More precisely, the talion could be applied only in cases of protection of physical integrity of free people, which meant that the legislator considered that only free persons, i.e. people of higher social status deserved such protection, which he openly emphasized and wrote down in the legal norm, i.e. in the Hammurabi's code (Vidović, 1990, p. 169). "The talion system in its evolutionary development went through three phases: *the primitive talion* according to which the injured person himself, that is, his relatives evaluated and returned to the offender the appropriate degree

of harm inflicted ; the *private court talion* according to which the judge as a disinterested person determined the injured party's right to revenge and determined the proportion between the injury inflicted and the retaliation that should have been done against the injured person, and after doing all that, the execution was given to the injured, i.e. his relatives; and finally, a *purely judicial talion* according to which the judge not only determined the right to revenge and estimated appropriate degree of retaliation, but also carried it out through a special expert – operator, in the presence and under the supervision of the injured party” (Jeličić, 1927, p. 79).

When it comes to actions, that is, the causes that obligate revenge, they are accurately and extensively stated in the Law of Leka Dukadin. Revenge always occurred if someone was killed as a guest, and it was almost always obligatory if the victim of the crime was a child, a woman or an old man. Also, the revenge could and had to be done for many other actions ,especially those regarding the insult of honour and reputation, as it was at the same time the insult of the whole family of the one to whom it was inflicted. So, for example, honour could have been taken away from the man if someone spoils his mediation or an oath, if he takes his wife away from the house by force, if his house, barn, warehouse and other rooms in his yard were broken into, etc. (Karan, 1985, p. 22).

5. Blood vengeance – specifics of execution

Blood vengeance, as any other behaviour has its rules that determine precisely when it can be carried out, and when it cannot be carried out. These rules obligate revenge, but at the same time limit it and even prohibit. The right to blood revenge, according to the rule , is given by the committed murder or some action, which with its consequences is equated with these acts. In this case, the motive of the murder for which the revenge is carried out, as well as the way in which it was carried out, is of little importance. It can be said that the revenge was a duty , because if a person (a man) does not carry it out, he completely loses reputation and honour in the community, to which people were always very sensitive to. For that reason, the one who did not carry out a revenge in the community was considered a second class citizen. That is why blood revenge was not only a law, but duty as well.

Blood revenge is public. The avenger was obliged to publicly announce his action i.e. the murder so that the family of the murdered would not be mistaken who the perpetrator was, but also that it would be known who carried out the revenge. Revenge was announced with gunshots, after which

the avenger surrendered peacefully to the authorities and its proceedings. The duty of the avenger is to announce himself to his executioner and to warn him about the revenge so he would know who is attacking him and why, so that he has the opportunity to defend himself. The weapon of the murdered was not allowed to be taken, and especially not to be robbed, since such action was considered shameful.

As a rule, revenge could be carried out in any place with certain exceptions. So, for instance, revenge could not be carried out in places of worship or where believers would gather. Also, it could not be done when the executioner was in the company of a woman or under *oath* (Karan, 1985, p. 29). Customs require that at the moment of carrying out the revenge it is *penam sanguinis* paid by the victim, so in that way the community is warned that the revenge is taking place (Čučković, 1971, p. 259).

The rule is that the revenge is the right and duty of a man. Excluding a woman from a revenge is not a good gesture but rather a consequence of understanding that the woman is not capable of taking part in revenge or making serious decisions in the tribal community.⁶ (Karan, 1985, p. 29). However, it does not mean that women had no role in blood revenge. They incited revenge, by keeping the objects of the murdered one and showed them occasionally, they would marry a man who took a revenge on himself. The woman was also a conciliator, because as a 'godmother' with a child in her arms, she would go and mediate for the quarreling parties to reconcile. In addition, if it was completely necessary, a woman was also an indirect participant, if there was no one to carry out a revenge (Vlahović & Dančetošević, 1998).

Vengeance could not be carried out on the priest because he was unconditionally exempt from it, as well as the church was protected. On the other hand, revenge could be carried out on any male member of the family, brotherhood or tribe which owes blood regardless of their age, which means it could be a child in a cradle. However, there were very rare cases when vengeance was carried out on children or the elderly, since such an act was considered unheroic and shameful, because in both cases the victim was weak (Karan, 1985, pp. 29–32). On the other hand, the most honest people, those who enjoyed the greatest respect, the heads of the family, who were at the top of the family hierarchy were in the greatest danger.

⁶ Zurl claims that a woman in the patriarchal Albanian society "did not owe blood if she killed somebody, her relatives were responsible for a murder i.e. father and brothers. When a woman as a mediator enters between the quarreling parties, the quarrel must stop. If a woman takes someone for protection, even a murderer, no one may kill him" (Zurl, 1978, p. 94).

It is important to emphasize that the revenge had to be carried out and every debt had to be 'paid', even after a long period of time when even members of family could not remember any wrongdoings. So, an important feature of revenge is its timelessness. Namely, according to the customary law revenge can be carried out any time and it is completely unimportant when the event that was a cause for revenge happened. The sources do not give a complete answer to the question whether revenge was carried out only during the life of a 'blood debtor' or the family was exposed even after his death (Čučković, 1971, p. 259). Yet, Karadžić described the custom of keeping a bloody shirt or some other piece of clothing, so as to remind of the unsettled debt. This custom was especially prevalent among women, if they were left widowed or with small children (Herco, 2012, p. 245).

6. Blood revenge institutions

The main institutions of customary-law rules of behaviour, and blood revenge as well are oath and conciliation. In spite of the fact that blood revenge was considered sacred duty of a clan and a tribe, there was a search for conciliation between the warring parties. Search for the reconciliation would start by giving an oath by the damaged party. At the same time it is important to emphasize that the granting of an oath and conciliation always depended on the degree of guilt of both parties involved in the conflict, as well as other relevant circumstances (Šćepanović, 2003, p. 61). From a psychological point of view, blood forgiveness has very valuable consequences, which are reflected in the fact that 'it provides the person in question with social respect (because reasons for the boycott cease), while the person's sentiment of self-respect remains intact, which closes new possibilities of revenge since the main motive is satisfied in the best possible way for both parties (Karan, 1971, p. 62).

6.1. Oath

An oath is in many aspects an exceptional institution of blood revenge. It is actually a truce that can end in two ways, by a conciliation or a revenge. A conciliation ends a conflict, revenge continues it and an oath is somewhere between.

Đuričić (1979) states that in Albanian dictionary an oath is defined 'as a term of freedom and security given by the house of the murdered to the male members of the killer's family- that they will not take revenge as an end to

blood feuds and other disputes between families in the same tribe (alb. *fis*)' (p. 8). According to the same author, an oath represents confidence in the guarantor's personality that he will force the debtor to respect his rights, which means that without a personal guarantee there is no oath (Đuričić, 1979, p. 8). Oath is never given directly to the murderer or members of his household, which means it is always given through mediators, who are impartial in the conflicts they solve and who are good at reconciliation. The obligation to seek an oath immediately after the committed murder is of great psychological importance. Without it, the injured family would immediately take revenge that would surely be cruel and disproportionate. The period of 24 hours, the time an oath usually lasted seems short, but it is enough for emotions to 'cool down' to some extent. With an oath the immediate conflict is postponed and time is gained to prepare other actions regarding the settlement or possible reconciliation. Also, this truce is necessary so that the murdered would be buried with respect, which would be impossible if the injured family took revenge immediately. After the funeral the mediators do everything so as to prolong the oath. In doing so, they refer to the village's right to ask for and receive an oath, which lasts for 30 days. A village's oath has the purpose to find a peaceful solution to the conflict. It is important to emphasize that mediators ('bestari') did not receive any compensation for their services. For him, mediation on the one hand is a confession, and on the other hand it is a risk, because 'in case that family of the murdered killed the executioner during an oath, it would fall into hands of those who asked for an oath and his duty would be to take revenge on the murdered. For that reason the one who gave an oath had to be in good relations with the injured family, because only in that case he could be given an oath' (Karan, 1985, p. 39).

According to the rule, an oath must not have been broken. Whoever broke the oath brought upon himself general contempt and boycott of the whole community. Persons who violated the oath were deprived of military honour, their weapons were confiscated and publicly broken. Murderer who was given an oath for a certain period of time could walk freely and carry out his duties, but was not allowed to stand out too much in the community. The members of his clan guaranteed that he would live modestly and not misuse the given freedom (Šćepanović, 2003, p. 52). Oath is usually given by the host, that is, the head of the family, and it can also be given by other older man. In any case, it must be a person who knows his family well and the situation in it. If it is possible, all male members of the family are present at giving the oath, so that everyone knows about it and so that no one of them can, if he commits revenge under the oath, justify that he did not know about

it (Karan, 1985, p. 40). In fact, an oath is not an ordinary truce, but wisely considered preparation for reconciliation.

6.2. Conciliation

As a means of curbing blood feuds, reconciliation between the blooded parties appears, known as composition (lat. *componere*, which means to reconcile), and for which in our customary law the term reconciliation is used. Jelić states that blood revenge and reconciliation are two completely different institutest that are fundamentally 'sharply' different. He further explains that the essence of blood revenge consists of returning evil to evil in proportion that according to the understanding of the avenger corresponds to the inflicted evil, and the purpose of the reconciliation consists of proportionate material compensation that the offenders give to the injured for the injure of damage caused. In other words, revenge is obtaining satisfaction by spilling blood of its offenders and the reconciliation is settlement through material compensation⁷ (Jelić, 1927, p. 78). Reconciliation occurred more often and more easily if the family of the murdered person was poor and weak, so the excecution of revenge was more difficult or could call into question further survival of the family. According to the customary law reconciliation and settlement could occur in the following cases:

- if the murdered person deserved death by his work and incorrect behaviour towards the killer or members of his family,
- if the murder happened in the same brotherhood,
- if accidental inadvertent or mistaken murder happened,
- if two people argued and in that argument they mutually wounded each other, so one of them died as a result of the wounds received
- On the other hand, reconciliation could not occur:
- if the murder was committed out of jealousy or envy, or from an ambush, or by deception ,

⁷ Material compensation that the offenders gave to the injured for the injury or damage caused was called blood fee. "Albanians call it 'poare e djakut' ('the price of blood'). Initially, it was not immediately paid in money because according to concepts of time a person's life was priceless and irreplaceable. Therefore, instead of money, weapons or a riding horse with all the equipmnt were usually accepted. Much was gained by this settlement; the injured family was satisfied because its deceased member was shown respect (as a hero), and the compensation (in this case material) did not offend its dignity, as it did not contain small things but objects that marked the external signs of the validity of that house. That is why the injured family demanded at all costs that the killer, as a condition for his death, hands over the rifle he used to revenge his family member. That rifle was called 'blood rifle' and it was sacred to that family" (Karan, 1985, p. 51).

- if the murderer was bribed,
- if someone's guest was killed,
- if someone hits somebody else intentionally and humiliates him in the public place,
- if someone raped someone else's wife or took her away from her husband, or when a woman becomes pregnant with a man who is not her husband,
- if a husband found adulterer with his wife,
- if someone 'makes a mistake' with a girl and will not take her for his wife,
- if someone maliciously hurts someone else's wife and as a result she gives birth to a dead child,
- if someone proposed to someone else's fiancée or her parents 'give' her to another man and
- if someone hit somebody else intentionally and belittled him in a public place (Šćepanović, 2003, pp. 61–62).

Pavković (1977) states the presence of bloody reconciliation and the substitution of a dead man with alive one, which contain elements of revenge and reconciliation, but it is not about revenge nor material compensation, but above all about returning into the original state of social and economic balance. As an example, he says that among the Eskimos, when a man is killed, his family can force the killer to take place of the murdered man in his group. And among some African and black people, as well as among the North American Iroquois, father adopts the murderer of his son and treats him like his own son. A very special custom of blood atonement is giving a wife for the murdered man. Among the Bedouins of Syria and Jordan, the price of the blood of the murdered man is called *diya* and it consisted long of fifty camels, one milking and one racing camel and one *ghora*, that is a young free girl, who is a daughter, sister or aunt of the murderer. She was married to the son, brother or a father of the murdered man without any gifts. If the murdered person was a sheik or belonged to a respectable and strong brotherhood, two or three girls were given. A girl married in this way did not have a full status of a wife, and she stayed in marriage until she gave birth to a male child (female children were not taken into account), and until he grew up and was able to carry weapons. During all that time it was considered that she was 'borrowed' to the relatives of the murdered in order to 'provide' a replacement for the lost member of the family by giving birth to a male child. When she fulfilled her 'duty' *ghora* was free, and her current husband did not have any rights over her (Pavković, 1977, p. 630).

Our oldest sources, from the Middle Age indicate that after the murder peace could be established by godfatherism and fraternity, and also by marriage between the parties making peace. Blood reconciliation is not done right after the murder, because the injured party would not agree to it, but later, usually after one year. The most important act of reconciliation is ritual and public acceptance of godfatherism and fraternity.⁸ Reconciliation was not offered to the brotherhood of the murdered man by the killer, but by the close and distant relatives. In all cases of blood reconciliation starting from the Middle Age new fraternities were in fact a certain type of social adoptive kinship. It preserved a clear symbolism of a man killer alive and not just anyone but the one who committed a murder. However, Pavković (1977) emphasizes that there is no known case that a new 'brother', 'son' or 'father' really moved into the home of the murdered one and replaced him in everything. Also, it is not known if and to what extent they replaced the murdered person in a social and ordinary life.

When it comes to reconciliation, it was carried out through serfs called 'blood court'. It was formed by friends and close relatives of the murdered person headed by the priest as the president of the court. There were usually 24 members in the composition of this court and 12 members for the inflicted wounds, and all of them were appointed by the family of the murdered or injured person. The trial was public, in an open field or in church. The task of the court was to listen to the witnesses, evaluate the evidence based on free belief and to rule on the amount of compensation, i.e. the blood fine, the way and deadline for its payment. The verdict was not in the written form, but guarantors were appointed on both sides who remembered and 'told' how the verdict was decided. Blood fee was more like a consent for reconciliation and a sign of attention from the killer, than a compensation or price of the life of the murdered. For that reason it consisted of giving things that are worn as an ornament and a visible sign that the blood of the murdered person was

⁸ "At Arbanas in the area of Plava and Gusinja a brother or a father of the deceased, untying the bound murderer, addressed with these words: You are responsible to God for the evil you did, and from now on be my brother (father,son) instead of my deceased (father,son). In Malesia in northern Albania during the most solemn act of blood reconciliation, the injured party speaks solemnly and loudly so that all the present could hear: Now, and from now on we are brothers and may my brother's blood be pure t you. With these ords reconciliatins was over so everuone present reconciled and kissed each other. In Montenegro, the injured party would way these words to the executioner: ' You are healthy my dear brother, my dear friend and from today my godfather'. (...) The rest of you brothers and friends are healthy, welcome and be happy.' All this is transmitted as a promise to posterity, to preserve and nurture this friendship" (Pavković, 1977, p. 634).

repented of. In the beginning the amount of the blood fine was determined by an elected court (serfs), and later by a custom and then it was paid in money. The amount of blood fee determined in this way was different in various regions (Šćepanović, 2003, p. 63). After the appearance of reconciliation, that is the composition, it was left on the will of the injured party to choose the method of satisfaction – blood revenge or composition. So, in this phase there was the existence of both institutes, with the fact that evolution went in the direction of strengthening the composition and suppressing blood revenge. At the end of this process it remained that the murder was the only crime allowed to be sanctified by blood revenge, so that finally blood revenge as a criminal blood institution was abolished (Srzentić & Stajić, 1954, p. 10).

7. Conclusion

Blood revenge appeared at a time when the original community was at a lower level of development and its application was conditioned by underdevelopment. At first, total blood revenge was applied, with the fact that in the further development of social communities it evolved so it was narrowed down to the circle of close blood relatives and finally exclusively to the person of delinquent, i.e. the perpetrator of the crime. Over time, it was mitigated by the principle of talion, in the sense of proportionality and the sameness of the execution method. The introduction of talion meant a major progress in the construction of the system of responsibility, and in general, because the revenge was aimed at the perpetrator of the offense and it was proportional, i.e. equivalent to the injury caused. Also, it is important to conclude that the punishment through the application of talion was at the same time the most elementary idea that was accepted by the state as a sanction against a legal violation.

As it has been emphasized before, blood revenge was disproportionate, because the entire brotherhood, even tribe was exterminated. Constant conflicts threatened to poison the entire community which is why it had to look for ways to somehow curb this behaviour, if it could not be removed in any way. Thanks to an oath, the agreed rules had to be respected under which revenge could not be carried out. Also, blood revenge could not be carried out on any male member of the family of the murderer's family, but as a rule on him, thus narrowing the possibility of community war over one murder, which was the rule in an early blood revenge. However, an oath did not end, but only interrupted enmity, which is why it was necessary to find some other way to curb the blood revenge, and even to abolish it if possible. It can be

concluded that it was curbed by the creation and introduction of the institute of reconciliation, i.e. composition, which symbolizes reconciliation through material compensation or symbolic acts of social bonding. Blood revenge was gradually replaced by a composition that sought to restore social and economic balance. And the role of 'blood vessels' and rituals such as godships and brotherhoods emphasize the importance and maintenance of peace. Over time reconciliation became stronger as a more acceptable solution, while blood revenge was gradually abolished.

Kovačević Danijela

Univerzitet Privredna akademija u Novom Sadu, Pravni fakultet za privredu i pravosuđe u Novom Sadu, Novi Sad, Srbija

Rajaković Jovčić Vesna

Univerzitet Privredna akademija u Novom Sadu, Pravni fakultet za privredu i pravosuđe u Novom Sadu, Novi Sad, Srbija

OBİČAJNO PRAVO I INSTITUT KRVNE OSVETE

APSTRAKT: Običajno pravo predstavlja jedan od najstarijih oblika pravne regulative koji se razvijalo kroz nepisana pravila i norme ponašanja koje su uspostavljene u najranijim zajednicama. Ovo pravo se zasnivalo na običajima koje su članovi društvene zajednice usvajali i prenosili sa generacije na generaciju. U nedostatku kodifikovanih zakona običaji su omogućavali održavanje društvenog reda i rešavanje sukoba unutar zajednice. Jedan od najpoznatijih normi običajnog prava bio je institut krvne osvete. Ona je predstavljala način održavanja ravnoteže i možemo reći „pravde“ unutar zajednice koja se ogledala u tome da se ubistvo ili povreda uzvraćala istom merom prema počiniocu ili prema njegovoj porodici. Ovo pravilo je u najranijim periodima bilo duboko ukorenjeno u verovanju da se jedino osvetom može vratiti izgubljena čast i da se može uspostaviti ravnoteža unutar zajednice. Uzimajući u obzir važnost instituta krvne osvete u okviru rada analiziraćemo iz kog perioda i u kojim dokumentima i kada se prvi put pominje krvna osveta, koja su njena obeležja, kao i njene

dve ustanove – besu i umir jer se u njima mogu pronaći određeni elementi za njeno suzbijanje, pošto su pomenute ustanove, po svom nastanku i nameni, možemo reći, protiv ovog običaja.

Ključne reči: običajno pravo, običaj, krvna osveta, besa, umir.

References

1. Blagojević, B. (red.), (1985). *Pravna enciklopedija – knj. 2* [Legal encyclopedia – book 2]. Beograd: Savremena administracija
2. Blagojević, S. (1994). *Uvod u pravo* [Introduction to the law]. Novi Sad: Visio Mundi Academic Press
3. Čučković, V. (1971). Krvna osveta u srednjovekovnom bosanskom pravu [Blood vengeance in the medieval Bosnian law]. *Godišnjak Pravnog fakulteta u Sarajevu*, 19, pp. 255–273
4. Čulinović-Konstantinović, V. (1984). Običajno pravo, njegova primjena i proučavanje do polovine 20. stoljeća. [Common law, its application and study until the middle of the 20th century]. *Etnološka tribina: Godišnjak Hrvatskog etnološkog društva*, 13(6-7), pp. 51–70
5. Đuričić, M. (1979). *Čuvari bese* [Keepers of the Besa Oath]. Beograd: Srpska akademija nauka i umetnosti
6. Đuričić, M. R. (1998). Poreklo pravnih običaja Albanaca [The origin of legal customs of Albanians]. *Analiz Pravnog fakulteta u Beogradu*, 46(4-6), pp. 441–452
7. Garson, E. (1926). *Krivično pravo: izvori, razvoj, sadašnje stanje* [Criminal law: sources, development, current state]. Beograd: G. Kon
8. Herco, M. (2012). Krvna osveta i običajno pravo u Crnoj Gori i Albaniji [Blood vengeance and common law in Montenegro and Albania]. *Rostra: Časopis studenata povijesti Sveučilišta u Zadru*, 5(5), pp. 241–250
9. Jelić, I., (1927), Krvna osveta i umir kod starih naroda [Blood revenge and death among ancient peoples]. *Glasnik Etnografskog muzeja u Beogradu*, 2, pp. 72–80
10. Jering, R. (1998). *Cilj u pravu* [An aim in law]. Beograd: JP Službeni list SRJ
11. Karan, M. (1971). Psihološka priroda krvne osvete [Psychological nature of blood vengeance]. *Jugoslovenska revija za kriminologiju i krivično pravo*, 9(4), pp. 614–625
12. Karan, M. (1973). Socijalnopsihološke pretpostavke prisustva krvne osvete u našim danima. [Social-psychological assumptions of the presence of blood vengeance in our days]. *Revija za sociologiju*, 3(3-4), pp. 24–41

13. Karan, M. (1985). *Krvna osveta* [*Blood vengeance*]. Beograd: Partizanska knjiga
14. Krstić, Đ. (2010). *Pravni običaji u Crnoj Gori* [*Legal customs in Montenegro*]. Podgorica: CID
15. Kuran sa prevodom Besima Korkuta, [Koran with translation of Besim Korkut]. Downloaded 2024, Oktobar 15 from <https://medzlis-split.org/images/pdf/prijevod-kurana-besima-korkuta.pdf>
16. Lukić, R. (1995). *Teorija države i prava – 2 Teorija prava* [*Theory of State and Law – 2 Theory of Law*]. Beograd: Zavod za udžbenike i nastavna sredstva
17. Pavković, N. (1977). Pitanje prvobitnog umira krvne osvete [The question of the original death of blood vengeance]. *Balkanica*, 8, pp. 627–632
18. Popov, D. (2001). Običajno pravo [Common law]. *Pravo – teorija i praksa*, 18(7-8), pp. 29–35
19. Ramljak, A. & Simović, M. (2006). *Viktimologija* [*Victimology*]. Banja Luka: Panevropski Univerzitet Apeiron
20. Samardžić, Đ. (1967). *Opšta istorija države i prava* [*General history of state and law*]. Sarajevo: Univerzitet
21. Stanimirović, V., & Divac, U. (2023). Običajno i pozitivno pravo u Srbiji [Common and positive law in Serbia]. *Arhiv za pravne i društvene nauke*, 118(4), pp. 27–64. <https://doi.org/10.5937/adpn2304027S>
22. Stanković, O., & Vodinelić, V. (1996). *Uvod u građansko pravo* [*Introduction to civil law*]. Beograd: Nomos
23. Stojković, S. (2020). Krvna osveta u srpskom srednjovekovnom pravu [*Blood vengeance in Serbian medieval law*]. U: Zdravković, S., Jovanović, I., & Blagojević, B. (ur.), *Nauka i studenti Studkon 3 – tematski zbornik radova sa skupa održanog 10. novembra 2017* [*Science and students Studkon 3 – thematic collection of papers from the assembly held on November 10th 2017*]. (pp. 259–268). Niš: Univerzitet u Nišu, Filozofski fakultet
24. Srzentić, N, & Stajić, A. (1954). *Krivično pravo FNRJ* [*Criminal law FNRJ*]. Beograd: Arhiv za pravne i društvene nauke
25. Šarkić, S., & Popović, D. (1996). *Veliki pravni sistemi i kodifikacije* [*Large legal systems and codifications*]. Beograd: Izdavačka kuća “Draginjić“
26. Šćepanović, M. (2003). *O krvnoj osveti – krivičnopravni prikaz* [*About blood vengeance – criminal law presentation*]. Podgorica: CID
27. Vlahović, P., & Dančetočić, V. (1998). Prilog proučavanju žena u krvnoj osveti [An annex to the study of women in blood vengeance]. *Glasnik*

- Etnografskog instituta Srpske akademije nauka i umetnosti* (9/10), pp. 95–111
28. Vidović, V. (1990). Krvna osveta – primitivna reakcija arhaičnih društava [Blood vengeance – primitive reaction of archaic societies]. *Zbornik Pravnog fakulteta u Mostaru*, (9-10), pp. 163–173
 29. Hamurabijev zakonik – prevod Čedomilja Markovića, [Code of Hammurabi – translation of Čedomilj Marković]. Downloaded 2024, Oktobar 15 from <https://odknjigedoduse.com/wp-content/uploads/2015/12/hamurabi.pdf>
 30. Zakon Leke Dukadžina [Law of Leka Dukadžin]. Downloaded 2024, October 22 from https://anali.rs/xml/195-/1956c/1956-4c/Anali_1956-4c-05.pdf
 31. Zurl M. (1978). *Krvna osveta u Kosovu* [Blood vengeance on Kosovo]. Zagreb: August Cesarec
 32. Šarkić, S. (2011). *Istorija države i prava I – osnovi svetske pravne istorije* [History of the state and law I – foundations of the world legal history]. Novi Sad: Pravni fakultet