

**Elza Chachanidze\***

## **Theft, a “Multi-faceted” Crime Against Property**

*Vakhtang Batonishvili's Law Book indicates that theft can be of various sorts and “multi-faceted”. The ancient Georgian law addresses some similar crimes against property, robbery, piracy, and theft. In all three cases, property was appropriated. Unlike robbery and piracy, theft was not an overt act of violence. Following the legal norms of the old Georgian law, different types of theft can be tentatively classified into the basic, qualified, and privileged composition of the crime. Qualified theft was usually tried in the Court of the King and the thief was sentenced to death or facial mutilation. The main component of theft was the punishment in the form of property compensation, which was determined by the value of the stolen item. The annals of law provide information about the manner of compensation of double, triple, five times, or seven times for that which the thief contributed. The payment of seven times was mostly prescribed, from which a double share of the compensation was given to the victim, and the rest to a specific official, or the state, in general. Based on the above, most of the norms on theft in the old Georgian law are aimed at protecting private and public interests. The private interest was satisfied by the transfer of two parts of the payment of seven times to the owner of the thing, while the rest belonged to the state.*

**Keywords:** *Stealing, Theft, Property Compensation, Compensation of Seven Times.*

### **1. Introduction**

In the introductory part of the monuments of ancient Georgian law, the legislators indicate the various types of crime, which resulted in the creation of specific law books. The introduction to the law of King Giorgi (1334-1335) specifies the punishment for murdering a man, breaking into the church,<sup>1</sup> and wives stealing. A separate chapter is dedicated to piracy<sup>2</sup> and the punishment of pirates<sup>3</sup>

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\* Doctor of Law, Assistant Professor at Ivane Javakhishvili Tbilisi State University faculty of Law. <https://orcid.org/0009-0009-8716-0261>.

<sup>1</sup> Mkrekheli – a robber of the church. *Sulkhan-Saba Orbeliani*, Georgian Dictionary I., prepared according to Autographic Lists, Study and the Index Part included by *Abuladze I.*, Tbilisi, 1991, 490 (in Georgian).490; Means equal. *Chubinashvili D.*, Georgian-Russian Dictionary, 2<sup>nd</sup> Edition, prepared for Printing and Foreword by *Shanidze A.*, Tbilisi, 1984, 775 (in Georgian).

<sup>2</sup> Piracy – plundering, robbing. *Chubinashvili D.*, Georgian-Russian Dictionary, and Edition, prepared for Printing and Foreword by *Shanidze A.*, Tbilisi, 1984, 645 (in Georgian).

<sup>3</sup> Pirate – an extortioner, a robber, committing violence at sea. *Chubinashvili D.*, Georgian-Russian Dictionary, 2<sup>nd</sup> ed., prepared for Printing and Foreword by *Shanidze A.*, Tbilisi, 1984, 699; A thug, *Sulkhan-Saba Orbeliani*, Georgian Dictionary I., prepared according to Autographic Lists, Study and the Index Part included by *Abuladze I.*, Tbilisi, 1991, 461 (in Georgian).

in the monument (Articles 44, 45).<sup>4</sup> In the introduction to the Book of Law (1381-1386), Agbugha Atabag-Amirspasalari mentions prescribing the payment<sup>5</sup> for “stealing horses of the armies” and the punishment for piracy.<sup>6</sup> In the law of the Catholicos (1543-1549), it is mentioned that “many immoralities and inadmissible things got rampant: killing a man, buying a man, breaking into a church,<sup>7</sup> and improper actions.”<sup>8</sup>

The listed crimes include several terms denoting the encroachment of property: robbery, piracy, and theft. “Krekhva” means robbery, piracy is attacking and extorting; burglary and theft were considered of the same meaning.<sup>9</sup>

The Minor Canon Law (Mcire Sjuliskanoni) and Great Law of God (Didi Sjuliskanoni) and Deeds of the 12th, 13th, and 16th apply the terms “stealing”, “thief”, and “stolen”. In the law of Beka-Agbugha (1295-1386), both the terms “thief”, “theft” and “stolen”<sup>10</sup> are used. The term “thief” is also applied in the Law of Catholicos (Articles 5, 6).<sup>11</sup> “Stealing” is an older term. From the 18th century, instead of “stealing” the term “theft” was established in the old Georgian law. In the Law Book of Vakhtang Batonishvili, there is a separate “Section about theft and its punishment” (Articles 150-159).<sup>12</sup> In the mentioned part of the Law Book the legislator refers to the terms “stealing” and “stolen” but the action is implied “theft”.

Vakhtang Batonishvili notes in the Law Book that theft is of “many” sorts (Article 150).<sup>13</sup> Based on the “diversity” of theft, we would like to classify the existing norms toward theft: determine the kinds of actions considered as theft following the old Georgian law, distinguish the main, privileged components of theft, and theft committed under aggravating factors, allege the punishments for theft and find out if theft should be fallen under the category of private delict or considered a crime.

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<sup>4</sup> *Dolidze I.*, Georgian Legal Monuments, Vol. 1, Vakhtang VI Law Books Collection, (X-XIX centuries), Tbilisi, 1963, 419-420 (in Georgian).

<sup>5</sup> Payment for stealing, *Chubinashvili D.*, Georgian-Russian Dictionary, 2<sup>nd</sup> Edition, prepared for Printing and Foreword by *Shanidze A.*, Tbilisi, 1984, 1005 (in Georgian).

<sup>6</sup> Punishment, compensation, fine – Ibid.

<sup>7</sup> Krekhva-robbery, stealing. *Sulkhan-Saba Orbeliani*, Georgian Dictionary I., prepared according to Autographic Lists, Study and the Index Part included by *Abuladze I.*, Tbilisi, 1991, 388 (in Georgian); *Chubinashvili D.*, Georgian-Russian Dictionary, 2<sup>nd</sup> Edition, prepared for Printing and Foreword by *Shanidze A.*, Tbilisi, 1984, 628 (in Georgian).

<sup>8</sup> Improper – inappropriate. *Chubinashvili D.*, Georgian-Russian Dictionary, 2<sup>nd</sup> Edition, Prepared for Printing and Foreword by *Shanidze A.*, Tbilisi, 1984, 1289 (in Georgian).

<sup>9</sup> Burglary, theft. *Sulkhan-Saba Orbeliani*, Georgian Dictionary I., prepared according to Autographic Lists, Study and the Index Part included by *Abuladze I.*, Tbilisi, 1991, 581 (in Georgian). *Chubinashvili D.*, Georgian-Russian Dictionary, 2<sup>nd</sup> Edition, Prepared for Printing and Foreword by *Shanidze A.*, Tbilisi, 1984, 1005 (in Georgian).

<sup>10</sup> *Dolidze I.*, Georgian Legal Monuments, Vol. 1, Vakhtang VI Law Books Collection, (X-XIX centuries), Tbilisi, 1963, 519 (in Georgian).

<sup>11</sup> Ibid, 394.

<sup>12</sup> Ibid, 519, 521.

<sup>13</sup> Ibid, 519.

## 2. The Elements of Theft by Old Georgian Law

### 2.1. The Concept of Theft in Ancient Georgian Law

To define the concept of theft we refer to the Greek law applied in the Law Book of Vakhtang VI which indicates thug and thief. A thug<sup>14</sup> robs a passenger on the road and might kill him (Articles 36, 37).<sup>15</sup>

A thief steals secretly without an open force (Article 323).<sup>16</sup>

According to the Customs Code of Georgia, the concept of theft used to include almost all crimes<sup>17</sup> against property. Following the explanation of N. Urbneli, robbery is a different action from piracy. The researcher thinks that Agbugha does not strike a line between robbery and piracy.<sup>18</sup>

The monuments of law demonstrate that the legislator distinguished a pirate from a thief. Article 164 of the Beka-Agbugha Law makes a list of the persons whose murder did not have to be paid the blood price by a murderer.<sup>19</sup> The list cites a pirate and a thief which indicates that these terms had different meanings.

Article 3 of the Law Book of Vakhtang Batonishvili prescribes the obligation of the judge to question a thief, a thug, a liar, or a false witness during the hearing of a case.<sup>20</sup> In this norm, the list also includes “thug” and “thief”, which means that the meanings of these terms do not coincide.

Robbery also differed from theft. According to the ruling of Bagrat VII [1616-1619], two honorable men appointed by the king had to find out<sup>21</sup> what was the “loot and stolen” within the areas of Teimuraz Mukhran-Batoni and Nugzar Eristavi of Aragvi. In this case, robbery and theft are not identified with each other. A defining characteristic of robbery, piracy is the apparent nature of the action, which is followed by violence and appropriation of things. For example, Article 123 of the Bagrat Kurapalati Law, prescribes the punishment for dragging and robbing a man<sup>22</sup>. Article 97 of the Beka-Agbugha Law draws attention to robbery, which is manifested in the fact of attacking and robbing a merchant for taking his goods.<sup>23</sup> In Article 166 of the Beka-Agbugha Law, robbery is related

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<sup>14</sup> Robber-burglar, thug, pirate, thief. *Chubinashvili D.*, Georgian-Russian Dictionary, 2nd Edition, prepared for Printing and Foreword by *Shanidze A.*, Tbilisi, 1984, 8. Burglar-pirate, thief. *Sulkhan-Saba Orbeliani*, Georgian Dictionary I., prepared according to Autographic Lists, Study and the Index Part included by *Abuladze I.*, Tbilisi, 1991, 40 (in Georgian).

<sup>15</sup> *Dolidze I.*, Georgian Legal Monuments, Vol. 1, Vakhtang VI Law Books Collection, (X-XIX centuries), Tbilisi, 1963, 141 (in Georgian).

<sup>16</sup> *Ibid.*, 203.

<sup>17</sup> *Davitashvili G.*, Types of crimes in Georgian Common Law, Tbilisi, 2017, 456 (in Georgian).

<sup>18</sup> *Khizanashvili N. (Urbneli)*, Selected Writings, Prepared according to Autographic Lists, Study and the Index Part included by *Dolidze I.*, Tbilisi, 1982, 496 (in Georgian).

<sup>19</sup> *Dolidze I.*, Georgian Legal Monuments, Vol. 1, Vakhtang VI Law Books Collection, 1963, 472 (in Georgian).

<sup>20</sup> *Ibid.*, 480.

<sup>21</sup> *Dolidze I.*, Georgian Legal Monuments, Vol. IV, Court Decisions (XVI-XVIII century), Tbilisi, 1972, 54 (in Georgian).

<sup>22</sup> *Dolidze I.*, Georgian Legal Monuments, Vol. I, Vakhtang VI Law Books Collection, Tbilisi, 1963, 467 (in Georgian).

<sup>23</sup> *Ibid.*, 463.

to capturing<sup>24</sup> a man. Article 44 of the Law of King George refers to piracy, which means stealing live cattle or other things, breaking into a house, and taking away some property, murdering the owner of the property, the servant, or the chaser by the pirate.<sup>25</sup> Unlike robbery and piracy in old Georgian law, theft was deemed as an appropriation of the thing. The object of theft could be livestock or any inanimate object.<sup>26</sup> It was also possible to steal a serf. The book of the donation to Bichvinta of Besarion Catholicos [1742-1769] mentions that two peasants stole a serf from Bugashvili and sold them in Akhaltsikhe.<sup>27</sup> According to the old Georgian law, land could also be the subject of theft. According to the ruling of 1642, Merab and Makharebel Sulkhaniashvili had a dispute over the former vineyard. Merab accused Makharebel of seizing the vineyard.<sup>28</sup> Another party stated that he had bought the land from Mr. Javakhishvili.<sup>29</sup>

Following the judgment of 1772, the plaintiffs complained that Shoshia Dedanashvili had misappropriated the estate and the land. None of the parties had written records or witnesses. If the defendant expressed an oath of the truth, the land would remain with Shoshia Dedanashvili.<sup>30</sup>

Iv. Javakhishvili suggested that in the period of King Tamar, as a person was obliged to deliver a found stolen item, the person who stored and appropriated it would be expected to be punished.<sup>31</sup> This idea is confirmed by Article 92 of the Beka-Agbugha Law. The legislator indicates that if the finder of the item did not locate it, he would be considered a thief.<sup>32</sup> Regarding the mentioned issue a similar norm is met in the Law of Davit Batonishvili (Article 123).<sup>33</sup>

## 2.2. Basic Components of Theft

Article 62 of the Beka-Agbugha Law can be deemed as the main component of theft.<sup>34</sup> The norm states that the prescribed punishment applies to the theft of any item. Emphasis is not placed on the offender, the circumstances of the offense, or the place where the theft was committed.

The last paragraph of Article 44 of the Law of King George defining compensation for all types of theft, can also be attributed to the main content.<sup>35</sup>

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<sup>24</sup> Ibid, 470.

<sup>25</sup> Ibid, 419.

<sup>26</sup> Ibid, 419.

<sup>27</sup> *Dolidze I.*, Georgian Legal Monuments, Vol. III, The Monuments of Ecclesiastics (XI-XIX century), Tbilisi, 1970, 880 (in Georgian).

<sup>28</sup> The ruined vineyard *Chubinashvili D.*, Georgian-Russian Dictionary, and Edition, prepared for Printing and Foreword by *Shanidze A.*, Tbilisi, 1984, 946 (in Georgian).

<sup>29</sup> *Dolidze I.*, Georgian Legal Monuments, Vol. IV, Court Decisions (XVI-XVIII century), Tbilisi, 1972, 83-84 (in Georgian).

<sup>30</sup> Ibid, 638.

<sup>31</sup> *Javakhishvili Iv.*, Works in Twelve Volumes, Vol. VII, 1984, 228 (in Georgian).

<sup>32</sup> *Dolidze I.*, Georgian Legal Monuments, Vol. I, Vakhtang VI Law Books Collection, Tbilisi, 1963, 461 (in Georgian).

<sup>33</sup> *Purttseladze D.* (David Batonishvili Law, published the text and added research), Tbilisi 1964, 71 (in Georgian).

<sup>34</sup> *Dolidze I.*, Georgian Legal Monuments, Vol. I, Vakhtang VI Law Books Collection, Tbilisi, 1963, 448 (in Georgian).

<sup>35</sup> Ibid, 419.

Article 6 of the order by Svimon I of 1590 establishes punishment for theft of land in the administration of the king.<sup>36</sup>

Article 154 of Vakhtang Batonishvili's Law Book<sup>37</sup> also refers to the basic components of theft. The norm states that the punishment is applied for any form of theft, “stealing items of big or small size, many or few of them, inside or outside”, except for the qualified compositions indicated by the legislator.

The mentioned four sources of law do not define theft. They provide a similar type of punishment and property compensation which was determined by the value of the stolen item. However, the amount of compensation was different in the above-listed cases. According to the law of Beka-Agbugha, if the thief could not return the thing, he had to pay double compensation following the law of King George, triple the amount by the Order of Svimon I and seven times the payment under the law of Vakhtang Batonishvili.

### **2.3. Qualified Compositions of Theft**

By the old Georgian law, the aggravating factor of theft was the repeated commission. The Deed of Giorgi III (1170) mentions that a man who stole several times had to be punished by “hanging or expelling”.<sup>38</sup> Under Georgian Common Law, the mentioned factor led to a more severe punishment of the offender. The thief could be stoned to death, banished, physically harmed, or restricted on the right to liberty.<sup>39</sup>

G. Nadareishvili explains the article 150 of the law book of Vakhtang Batonishvili that “persistent stealing” should mean the repeated commission of theft.<sup>40</sup> The general decree to punish appropriately for stealing suggests that a severe punishment would have been applied rather than property compensation.

An aggravating factor of theft was considered breaking into an “honorable” place. The place of honor was the ruler's cashier's box, a church, and a farm (Beka-Agbugha Law, Article 152).<sup>41</sup> Following the canonical law (Article 167) attached to the Law of Beka-Agbugha, for this crime, a culprit was prescribed branding eyes with heated pieces of iron or cutting off hands and feet.<sup>42</sup> The mentioned aggravating factor is established by the law of Vakhtang Batonishvili. The king and the

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<sup>36</sup> *Dolidze I.*, Georgian Legal Monuments, Vol. II, Secular legislative monuments (X-XIX centuries), Tbilisi, 1965, 204 (in Georgian).

<sup>37</sup> *Dolidze I.*, Georgian Legal Monuments, Vol. I, Vakhtang VI Law Books Collection, Tbilisi, 1963, 519 (in Georgian).

<sup>38</sup> *Dolidze I.*, Georgian Legal Monuments, Vol. II, Secular legislative monuments (X-XIX centuries), Tbilisi, 1965, 22, by *D. Chubinashvili* expelling is removal or dispossession by power of the law *Chubinashvili D.*, Georgian-Russian Dictionary, 2<sup>nd</sup> Edition, prepared for Printing and Foreword by *Shanidze A.*, Tbilisi, 1984, 212, 228 (in Georgian).

<sup>39</sup> *Davitashvili G.*, Types of crimes in Georgian Common Law, Tbilisi, 2017, 507-508 (in Georgian).

<sup>40</sup> *Nadareishvili G.*, Private and Public Punishments in Feudal Georgia, “Almanac” journal, 2000, No. 14, 112 (in Georgian).

<sup>41</sup> *Dolidze I.*, Georgian Legal Monuments, Vol. 1, Vakhtang VI Law Books Collection, (X-XIX centuries), Tbilisi, 1963, 469 (in Georgian).

<sup>42</sup> *Ibid*, 470.

Catholicos could prescribe punishment for the destruction of a cross and an icon, and breaking into the ruler's cashier's box, (Article 155).<sup>43</sup> The referenced provision indicates that the act was a serious crime and the punishment would be more severe than paying the compensation of seven times.

By article 3 of the Catholics Law [1543-1549], a man had to be mutilated<sup>44</sup> for taking out for taking out an item of the church which meant getting disabled.<sup>45</sup>

“Taking out” is supposed to be theft, referring to Article 2 about breaking into the church and robbing of an icon.<sup>46</sup>

Four of the nine articles of the Decree of Svimon I about piracy [1590] refer to theft. Article 3 of the Order of Simon I can be appraised as a qualified composition, based on which a thief committing the crime on the way to the war should be brought to the Court of the King.<sup>47</sup> Iv. Surguladze has explained that this type of theft meant robbing the military camp. In this case, the pirate investigators had no right to punish the thief themselves.<sup>48</sup>

According to Vakhtang Batonishvili's law, the theft committed during the military campaign was also considered a grave crime however, it did not fall under the category of crimes that were judged by the king. The legislator regarded it as a great shame to steal a horse, weapon, clothes, chain, and armor during a military campaign. The crime was prescribed the payment of seven times the value of a stolen item and half the “price of blood (Article 152)<sup>49</sup> which meant paying the amount for a murder. The legislator has established two types of property punishments for this crime.

Following the Greek law in the Low Book Collections of King Vakhtang, theft in the army was also considered a grave crime. For stealing a weapon, a thief was beaten “strongly”, and for stealing a horse or other cattle in the army, the criminal was cut off a hand (Article 316).<sup>50</sup>

Comparing the norm in the Deed of King Svimon and Vakhtang Batonishvili's Law Book about theft committed during a military campaign, in terms of the severity of the crime Greek law is more similar to the Deed of King Simon. Indeed, the type of punishment is not directly defined in the Deed of King Simon but the reference to the fact that the pirate investigators had no right to punish the offender and the case had to be discussed at the Court of the King indicates that an offender would be applied severe punishment.

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<sup>43</sup> Ibid, 520.

<sup>44</sup> Ibid,394.

<sup>45</sup> To get disabled. *Sulkhan-Saba Orbeliani*, Georgian Dictionary I., prepared according to Autographic Lists, Study and the Index Part included by *Abuladze I.*, Tbilisi, 1991, 207 (in Georgian). To get wounded- *Chubinashvili D.*, Georgian-Russian Dictionary, 2nd Edition, prepared for Printing and Foreword by Shanidze A., Tbilisi, 1984, 442 (in Georgian); A cripple-an injured man. *Chubinashvili D.*, Georgian-Russian Dictionary, 2nd Edition, prepared for Printing and Foreword by *Shanidze A.*, Tbilisi, 1984, 1781 (in Georgian).

<sup>46</sup> *Dolidze I.*, Georgian Legal Monuments, Vol. 1, Vakhtang VI Law Books Collection, (X-XIX centuries), Tbilisi, 1963, 394 (in Georgian).

<sup>47</sup> *Dolidze I.*, Georgian Legal Monuments, Vol. II, Secular legislative monuments (X-XIX centuries), Tbilisi, 1965, 204 (in Georgian).

<sup>48</sup> *Surguladze Iv.*, From the History of Georgian State and Law, Tbilisi, 1963, 51 (in Georgian).

<sup>49</sup> *Dolidze I.*, Georgian Legal Monuments, Vol. 1, Vakhtang VI Law Books Collection, (X-XIX centuries), Tbilisi, 1963, 519 (in Georgian).

<sup>50</sup> Ibid, 202.

The payment of seven times the amount of compensation and half the “blood price”, the amount for murder was prescribed for robbing a woman by removing a weapon or jewelry tied (Article 153).<sup>51</sup> Responsibility was aggravated by the fact that the crime was committed against a woman. For example, according to the Criminal Deed of Svimon I, 1592, the offender had to pay ten thousand for verbally insulting a woman, while insulting a man was valued at five thousand.<sup>52</sup>

An aggravating factor of theft was breaking into a house and robbing it while the family was at home (Article 151). In addition to paying seven times the value of the stolen item/items, the criminal had to pay half of the “blood price”. If the thief could not pay, he had to hand over his wife and children, “goods” and purchases to the victim.<sup>53</sup> According to Georgian Common Law, burglary of a house was contemplated as a more serious crime. Besides seven times the value the burglar had to pay additional compensation.<sup>54</sup>

All three Articles of Vakhtang Batonishvili's Law Book condemn two types of property punishments. Only Article 151 indicates an alternative punishment that would be inflicted if the criminal did not have the opportunity to pay the property compensation. Dissimilarly to the norms mentioned above, by Article 151 the liability for the crime committed by the thief was imposed upon his family as well. In contrast, under Greek law only the criminal accepted liability following the mentioned main composition (Article 375) where it is stated that “the children of the thief” did not have to take responsibility for the crime. (Article 310).<sup>55</sup>

Regarding the above-mentioned norms of Vakhtang Batonishvili's Law Book (Articles 151, 152, 153), we can say that the payment of seven times the property compensation and the “blood price” was made for the benefit of the victim. In the text, it is indicated that “seventh and half of the blood price shall be given to the robbed”.<sup>56</sup>

## **2.4. Privileged Components of Theft**

In addition to the qualified compositions, we can also distinguish the privileged components of theft. Articles 4 and 5 of the Order of Svimon I [1590] can be deemed as a privileged composition against the piracy investigator. Under Article 4, the theft committed before the capture of Gori Fortress was punished more lightly, by paying three times the value of the item. Iv. Surguladze explains the imposition of a lighter sanction by the fact that Gori was conquered by “foreigners” (Ottomans).<sup>57</sup> The mentioned reason is related to one specific fact, and it could not have a general deterrent value.

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<sup>51</sup> Ibid, 519.

<sup>52</sup> *Dolidze I.*, Georgian Legal Monuments, Vol. II, Secular legislative monuments (X-XIX centuries), Tbilisi, 1965, 206 (in Georgian).

<sup>53</sup> *Dolidze I.*, Georgian Legal Monuments, Vol. 1, Vakhtang VI Law Books Collection, (X-XIX centuries), Tbilisi, 1963, 519 (in Georgian).

<sup>54</sup> *Davitashvili G.*, Types of crimes in Georgian Common Law, Tbilisi, 2017, 493 (in Georgian).

<sup>55</sup> *Dolidze I.*, Georgian Legal Monuments, Vol. 1, Vakhtang VI Law Books Collection, (X-XIX centuries), Tbilisi, 1963, 201 (in Georgian).

<sup>56</sup> Ibid, 519.

<sup>57</sup> *Surguladze Iv.*, From the History of Georgian State and Law, Tbilisi, 1963, 52-53 (in Georgian). Ivane Surguladze assumes that this might be the period of Ottoman domination over Gori Castle when Svimon I took the castle around 1579 (in Georgian).

According to the 5th article, if the thief “stole something from the non-hostile community” he would have to pay five times the amount for compensation.<sup>58</sup> Thefts committed outside the country were also punished more lightly. In these cases of theft, the pirate investigators could punish the offender. Iv. Surguladze notes that the mitigation of the punishment grounded on the specified basis is also found in Dasturlamali of Vakhtang VI.<sup>59</sup> Under the Georgian Common Law, theft committed in one's community and village was negatively evaluated, while it was regarded as normal outside the location.<sup>60</sup>

Ancient Georgian law does not contain the types of theft underlined by Greek law, for example, an “obvious theft” and a “hidden robbery”<sup>61</sup> which must derive from Roman law.<sup>62</sup> Such classification of theft is mentioned by the Great Law of God (Didi Sjuliskanoni).<sup>63</sup>

### **3. Punishments Imposed for Theft**

#### **3.1. Death Penalty and Mutilation Punishments**

In the old Georgian law, repeated commission of a crime was considered an aggravating factor. The Deed of George III (1170) states that a man who stole several times had to be punished by “hanging or expelling”.<sup>64</sup>

The death penalty for theft was sentenced even in the 13th century. Referring to the mentioned issue, Iv. Javakhishvili cites chronicler's annals that during administrating Mestumre Jikur ( Mestumre, an inferior of Mandaturtukhutsesi, Chief overseer of the court) “a thief and a thug was not found in the realm of King Davit VII Ulu. If they were caught, they would be strapped to a pole.”<sup>65</sup>

Under Greek law, repeatedly committing a crime was an aggravating factor of liability, which was applied to prescribe punishment. Article 318 might be divided into two parts. Following the one part a thief having once stolen an item, would have to pay double the amount of the stolen item. In another part of the article, stealing many times, and a lot was punished by cutting off a hand.<sup>66</sup>

According to Article 3 of the Law of Catholicos [1543-1549], a thief for breaking into the church was punished with mutilation.<sup>67</sup>

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<sup>58</sup> *Dolidze I.*, Georgian Legal Monuments, Vol. II, Secular legislative monuments (X-XIX centuries), Tbilisi, 1965, 204 (in Georgian).

<sup>59</sup> *Surguladze Iv.*, From the History of Georgian State and Law, Tbilisi, 1963, 52 (in Georgian).

<sup>60</sup> *Davitashvili G.*, Types of crimes in Georgian Common Law, Tbilisi, 2017, 478 (in Georgian).

<sup>61</sup> *Dolidze I.*, Georgian Legal Monuments, Vol. 1, Vakhtang VI Law Books Collection, (X-XIX centuries), Tbilisi, 1963, 201 (in Georgian).

<sup>62</sup> *Surguladze N.*, Institutes of Justinian, 2002, 204-205 (in Georgian).

<sup>63</sup> *Gabidzashvili E., Gyunashvili E., Dalakadze M., Ninua G.*, Great Law of God (Didi Sjuliskanoni), 1975, 176 (in Georgian).

<sup>64</sup> *Dolidze I.*, Georgian Legal Monuments, Vol. II, Secular legislative monuments (X-XIX centuries), Tbilisi, 1965, 22-23 (in Georgian).

<sup>65</sup> *Javakhishvili Iv.*, Works in Twelve Volumes, Vol. VII, 1984, 227 (in Georgian).

<sup>66</sup> *Dolidze I.*, Georgian Legal Monuments, Vol. 1, Vakhtang VI Law Books Collection, (X-XIX centuries), Tbilisi, 1963, 202 (in Georgian).

<sup>67</sup> *Ibid*, 394.



All the types of theft that were to be tried at the king's court indicated that the offender would be severely punished, in particular, by applying capital punishment, or mutilation of the body.

According to Article 167 of the Beka-Agbugha Law, theft in an “honorable” place was punished by branding eyes with heated pieces of iron or cutting off hands and feet.<sup>68</sup>

Based on all the above norms, it is clear that the death penalty or mutilation of the body was imposed for theft committed under aggravating factors, while the aggravating factors were considered to be the repeated commission of the same or similar offenses in “honorable” places.

### **3.2. Property Punishments**

Based on the sources of old Georgian law, we can say that the main punishment for theft was property compensation, which depended on the value of the stolen item. N. Urbneli thought that the payment of seven times the amount of the stolen item was related to King Vakhtang because before that a thief was charged to pay double the amount of value.<sup>69</sup>

According to the Georgian Common Law, even in law, the compensation for theft was paid seven times the amount of value.<sup>70</sup> Also, several annals confirm that the above-mentioned compensation was applied even before Vakhtang Batonishvili. Following the charter of immunity by the Eristavi of Kartli, Grigol Surameli (1245-1250), the stolen item was returned to the owner, and seven times the value of the property belonging to the Eristavi was donated to the Shio-Mghvime Monastery.<sup>71</sup>

In the donating book of Eristavi Shalva Kvenifneveli to Largvis of 1470, is indicated that a thief had to pay seven times the amount to the Church.<sup>72</sup> Eristavi Shalva of Kvenifneveli, as well as Eristavi Grigol Surameli, gave their shares to the church.

Following the Order of King Svimon I about the piracy investigators [1590] a thief was asked to pay seven times the value for the theft in the territory under the jurisdiction of the king. Two shares of the payment belonged to the owner, four to the king, and one to the piracy investigator (Article 6).<sup>73</sup>

According to Vakhtang Batonishvili's Law Book, the thief had to compensate seven times the amount of the stolen item. The disposal of the compensation depended on the social status of the victim. If the victim was a nobleman, he would receive full compensation from the offender, and if the victim was a peasant, the double amount of compensation would be given to the peasant, and the rest to the state (Article 154).<sup>74</sup>

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<sup>68</sup> Ibid, 469.

<sup>69</sup> *Khizanashvili N. (Urbneli)*, Selected Writings, Prepared according to Autographic Lists, Study and the Index Part included by *Dolidze I.*, Tbilisi, 1982, 502 (in Georgian).

<sup>70</sup> *Davitashvili G.*, Types of crimes in Georgian Common Law, Tbilisi, 2017, 488 (in Georgian).

<sup>71</sup> *Dolidze I.*, Georgian Legal Monuments, Vol. II, Secular legislative monuments (X-XIX centuries), Tbilisi, 1965, 38 (in Georgian).

<sup>72</sup> Ibid, 142.

<sup>73</sup> Ibid, 204.

<sup>74</sup> *Dolidze I.*, Georgian Legal Monuments, Vol. 1, Vakhtang VI Law Books Collection, (X-XIX centuries), Tbilisi, 1963, 219 (in Georgian).

The punishment for theft is determined by the social status in Davit Batonishvili's Law. Peasants and soldiers were punished with beatings and had to pay property compensation, while “noble” people were sentenced to half a month in prison and payment of property compensation.<sup>75</sup>

Dasturamali also mentions the payment of seven times the value for theft. If the owner of the stolen was a nobleman, six shares were paid to him and one was given to Khevistavi (a ruler of Khevi). If a peasant was robbed, two shares belonged to the peasant, one to Khevistavi and four to the master (Batoni).<sup>76</sup> The same punishment was imposed by the Khevistavi of Karai.<sup>77</sup> The distribution of property compensation depending on the social status is indicated in Vakhtang Batonishvili's Law Book as in Dasturamali but with one significant difference, if a nobleman was robbed, one out of seven shares was given to Khevi. The payment of seven times the amount was inflicted on theft by the rules of Kaykuli. One share belonged to the owner, four were given to the master, and one to Mouravi (principal administrator). If a foreigner was found to have stolen an item, the owner received four shares, one belonged to the master, and two were taken by a principal administrator (Mouravi).<sup>78</sup>

Al. Vacheishvili cites a document of 1713 issued to the head of Davit Gareja Monastery as an example of paying seven times the amount for theft. Following the document two shares of the payment belonged to the owner of the item, four to the head of the church, and one to the principal administrator (Mouravi).<sup>79</sup>

The Ruling of Erekle II about the royal and principal administrator (Mouravi) shares of payment for compensation in Kyzik [1744-1762] indicates that two shares of the seven times the amount was granted to the master, one to Khevistavi, two to the master, and one-third to the Mouravi.<sup>80</sup>

According to the Ruling on compensation for murder and robbery of the servant working on the piece of land belonging to Ninotsminda and Davit Gareja Monastery Complex [1771]<sup>81</sup> if the servant of the feudal or the feudal robbed a servant of the church, he had to pay seven times the value: two shares of the payment would be given to the master of the servant, five would be taken by the ruler. If the servant of the church stole the money from the feudal or his servant he was charged to pay the same compensation: two shares would be given to the owner and five would belong to the church.<sup>82</sup>

Revaz Andronikashvili determined the shares of payment for compensation to the principal administrator (Mouravi) of Kiziki [1802] – two shares of the payment of seven times the amount for

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<sup>75</sup> *Purtseladze D.* (David Batonishvili Law, published the text and added research), Tbilisi 1964, 105-106 (in Georgian).

<sup>76</sup> *Dolidze I.*, Georgian Legal Monuments, Vol. II, Secular legislative monuments (X-XIX centuries), Tbilisi, 1965, 277 (in Georgian).

<sup>77</sup> *Ibid.*, 323.

<sup>78</sup> *Ibid.*, 311.

<sup>79</sup> *Vacheishvili Al.*, Essays from the History of Georgian Law, Vol. II, 1948, 52 (in Georgian).

<sup>80</sup> *Dolidze I.*, Georgian Legal Monuments, Vol. II, Secular legislative monuments (X-XIX centuries), Tbilisi, 1965, 411 (in Georgian).

<sup>81</sup> A piece of land that is ruled by a king., *Chubinashvili D.*, Georgian-Russian Dictionary, 2<sup>nd</sup> Edition, prepared for Printing and Foreword by *Shanidze A.*, Tbilisi, 1984, 1153 (in Georgian).

<sup>82</sup> *Dolidze I.*, Georgian Legal Monuments, Volume IV, Court Decisions (XVI-XVIII century), Tbilisi, 1972, 625 (in Georgian).

theft belonged to the owner of the stolen, one to the Khevistavi, two shares to the master, and a third to the Mouravi.<sup>83</sup>

The Book of Family Separation (1712),<sup>84</sup> also imposes the payment of seven times the value for theft but it does not specify the division of the compensation.

The discussed historical sources define the issue of distribution of seven times the amount, in which the double amount of the value of the stolen items was to be given to the owner, and the remaining share to a specific official, or the state, in general.

In addition to seven times the value, there was also a payment of five times the value of the stolen item. According to Article 5 of the Order of Svimon I [1590], five times the amount was to be paid by the offender for stealing the property of the community. Two shares belonged to the owner and the king and the one to the piracy investigator.<sup>85</sup>

The payment of five times the amount for theft is mentioned in the report of Grigol Dadiani to Solomon II [1792]<sup>86</sup> as well as in the account of Eudemon Mangleli on the development of Methrevani village [1678-1683].<sup>87</sup>

The Law Book of Vakhtang Batonishvili suggests the reduction of punishment for a thief (Article 249)<sup>88</sup> who confessed the crime and asked for forgiveness. He was forgiven for three times the amount and had to compensate four times the value of the stolen.

The social status of the victim was important in the distribution of seven times the amount for compensation but some legislators did not specify the issue of distribution of property compensation.

The ancient Georgian law also mentions a payment of three times the value of the stolen item. According to the last paragraph of Article 44 of the Law of King Giorgi, all kinds of theft were punished by paying “one share to the owner and the two for others”.<sup>89</sup> The text does not emphasize that the compensation belonged only to the owner of the item.

According to Article 4 of the Order issued by Simon I on the piracy investigation [1590], the thief who committed the crime before the capture of Gori Fortress was punished by paying three times the value of the item. One share was given to the master (Batoni), one half to the king, and a half to the pirate investigator.<sup>90</sup>

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<sup>83</sup> *Dolidze I.*, Georgian Legal Monuments, Vol. II, Secular legislative monuments (X-XIX centuries), Tbilisi, 1965, 559 (in Georgian).

<sup>84</sup> *Dolidze I.*, Georgian Legal Monuments, Volume IV, Court Decisions (XVI-XVIII century), Tbilisi, 1972, 245 (in Georgian).

<sup>85</sup> *Dolidze I.*, Georgian Legal Monuments, Vol. II, Secular legislative monuments (X-XIX centuries), Tbilisi, 1965, 204 (in Georgian).

<sup>86</sup> *Ibid.*, 204.

<sup>87</sup> *Dolidze I.*, Georgian Legal Monuments, Vol. III, The Monuments of Ecclesiastics (XI-XIX century), Tbilisi, 1970, 584 (in Georgian).

<sup>88</sup> *Dolidze I.*, Georgian Legal Monuments, Vol. 1, Vakhtang VI Law Books Collection, (X-XIX centuries), Tbilisi, 1963, 544 (in Georgian).

<sup>89</sup> *Dolidze I.*, Georgian Legal Monuments, Vol. 1, Vakhtang VI Law Books Collection, (X-XIX centuries), Tbilisi, 1963, 419 (in Georgian).

<sup>90</sup> *Dolidze I.*, Georgian Legal Monuments, Vol. II, Secular legislative monuments (X-XIX centuries), Tbilisi, 1965, 204 (in Georgian).

Following Article 62 of the Beka-Agbugha Law Book, if a thief stole a horse or other items, the owner would pay one as much the value of “the stolen item”. If the stolen item could be returned, double the value of the item would be paid to the victim.<sup>91</sup>

Under Greek law, the payment of four times the amount had to be paid for theft during the day, and a double value for the stealth theft (Article 311).<sup>92</sup> Armenian law also mentions the same type of payment for theft (Articles 223, 227).<sup>93</sup>

Iv. Javakhishvili supposes that the term “Tavni” means paying the value of the stolen item to the owner. The thief had to return the item to the owner or pay compensation,<sup>94</sup> in addition to paying seven times the amount. Information about the payment of “Tavni” is provided by the Charter of Immunity of Grigol Surameli, Eristavi of Kartli (1245-1250)<sup>95</sup>, Article 62 of the Law of Beka-Agbugha<sup>96</sup> and Article 44 of the Law of King Giorgi.<sup>97</sup>

The thief had the liability to return the stolen thing, as well as the person who found the stolen thing (Vakhtang Batonishvili's Law Book, Article 156-158).<sup>98</sup> Armenian law also compelled a thief to give the stolen thing back to the owner (Article 244, 245).<sup>99</sup> A similar norm is found in Greek law (Article 314).<sup>100</sup>

Vakhtang Batonishvili's Law Book (Articles 151, 152, 153) prescribes sanctions with the three qualified components of theft which made the thief pay the “compensation of seven times the amount” and half of the blood price to the owner of the item.

The property compensation for the theft committed on church-owned land belonged to the church. On the instructions of the Catholicos-Patriarch Joseph, Sakhlukhutsesi (lord chancellor in feudal Georgia) Giorgi was assigned [1757] to beg the inhabitants for the Church Tax in the canonical territory, which included bread, wine, meat, and silk. The instruction also refers to the fines and the taxes for family separation, holding feasts, and stolen items.<sup>101</sup>

During the reign of Erekle II, fines were imposed for theft. The principal administrator of the city [1784-1790] made a thief and a whore pay a fine. A tenth of the payment belonged to the principal administrator (Mouravi) and the rest was granted to the viceroy of the feudal.<sup>102</sup>

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<sup>91</sup> *Dolidze I.*, Georgian Legal Monuments, Vol. 1, Vakhtang VI Law Books Collection, (X-XIX centuries), Tbilisi, 1963, 448 (in Georgian).

<sup>92</sup> *Ibid.*, 201.

<sup>93</sup> *Ibid.*, 303, 303-304.

<sup>94</sup> *Javakhishvili Iv.*, Works in Twelve Volumes, Vol. VII, 1984, 232 (in Georgian).

<sup>95</sup> *Dolidze I.*, Georgian Legal Monuments, Vol. II, Secular legislative monuments (X-XIX centuries), Tbilisi, 1965, 38 (in Georgian).

<sup>96</sup> *Dolidze I.*, Georgian Legal Monuments, Vol. 1, Vakhtang VI Law Books Collection, (X-XIX centuries), Tbilisi, 1963, 448 (in Georgian).

<sup>97</sup> *Ibid.*, 419

<sup>98</sup> *Ibid.*, 520.

<sup>99</sup> *Ibid.*, 310, 310-311.

<sup>100</sup> *Ibid.*, 202.

<sup>101</sup> *Dolidze I.*, Georgian Legal Monuments, Vol. III, The Monuments Ecclesiastics (XI-XIX century), Tbilisi, 1970, 840-841 (in Georgian).

<sup>102</sup> *Dolidze I.*, Georgian Legal Monuments, Vol. II, Secular legislative monuments (X-XIX centuries), Tbilisi, 1965, 496 (in Georgian).

The Decree of Erekle II regarding his “sons” (1791) indicates that the fine prescribed for theft should be divided into three parts: two shares belonged to the master (Batoni), and a third of the fine was to princes.<sup>103</sup>

### 3.3. Other Punishments

Article 151 of the Vakhtang Batonishvili’s Law Book (burglary of a house) also defines an alternative punishment. In the case of non-payment for the blood price, the thief had to hand over his family and property to the victim.<sup>104</sup> The handover of a person due to the impossibility of payment of property compensation is confirmed by the case of Lavarsab Shioshvili [1713]. Brother of the thief, Giorgi Shioshvili claimed that his brother had stolen a horse from Durmishkhan Guramishvili. As the thief could not pay any other compensation, he had the son taken away and given to the victim instead of compensation.<sup>105</sup> Thus, paying compensation by men was an accepted norm at that time. According to the Deed of Levan Dadian on the renewal of the estates of the church [1611-1657], ten peasants had to be paid for inappropriate actions around the territory of the church in Khobi, burglary of peasants, stealing cattle, breaking into the palace, or the church.<sup>106</sup>

In all three cases, the punishment seems to be the same, handing over the person to the owner of the stolen item. Following Article 151 of the law of Vakhtang Batonishvili, handing over the thief and his family members and a child of a thief to the victim based on the above-mentioned ruling of 1713, is different from giving ten peasants for theft prescribed by the Deed of Levan Dadiani.

The transfer of peasants meant that a peasant was perceived as a thing, property, which could be the subject of compensation. In the first and second cases, handing over an offender or his family to the owner of the stolen item meant that the free person would become the belonging to the victim.

In addition to the punishments listed above, the church also imposed punishment on the thief. In the last part of the Beka-Agbugha Law (canonical law, p. 167), the church would curse the thief.<sup>107</sup> On the grounds of the decision of the Sixth Church Council, if the thief confessed to the crime, he was punished with one year of non-communion. In case of relapsed criminal behavior, he could not receive the Holy Communion for two years.<sup>108</sup> According to church law, it was possible to lighten and aggravate the punishment. Confessing the theft and returning the stolen item was punished by the sentence of 40 days in prison, and for committing the crime again, two years in prison. If the thief repented of his crime, he was prescribed the punishment of six months of non-communion. The

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<sup>103</sup> *Dolidze I.*, Georgian Legal Monuments, Vol. II, Secular legislative monuments (X-XIX centuries), Tbilisi, 1965, 524 (in Georgian).

<sup>104</sup> *Dolidze I.*, Georgian Legal Monuments, Vol. 1, Vakhtang VI Law Books Collection, (X-XIX centuries), Tbilisi, 1963, 519 (in Georgian).

<sup>105</sup> *Dolidze I.*, Georgian Legal Monuments, Volume IV, Court Decisions (XVI-XVIII century), Tbilisi, 1972, 251 (in Georgian).

<sup>106</sup> *Dolidze I.*, Georgian Legal Monuments, Vol. II, Secular legislative monuments (X-XIX centuries), Tbilisi, 1965, 251 (in Georgian).

<sup>107</sup> *Dolidze I.*, Georgian Legal Monuments, Vol. 1, Vakhtang VI Law Books Collection, (X-XIX centuries), Tbilisi, 1963, 471 (in Georgian).

<sup>108</sup> *Gyunashvili E. (publishers of the text)*, Minor Law of God (Mtsire Sjuliskanoni), 1975, 176 (in Georgian).

punishment for stealing an item belonging to the church was determined by three years of non-communication.<sup>109</sup>

#### **4. Conclusion**

The monuments of the old Georgian law prove that theft was distinguished from burglary and piracy. The main reason for this difference lies in nonviolent theft.

The diversity of theft made it possible to classify crimes into basic, privileged, and qualified components. Apart from the theft committed with an aggravating factor, the main punishment for theft was property compensation, which was determined according to the value of the stolen item.

We can single out three forms of payment for the mentioned compensation. The first is the payment of the compensation for the stolen item to the owner; the second includes the compensation given to the owner of the item and the state, master, or church, and the third is the payment of compensation for the state or church. This means that the majority of thefts committed against private individuals fall under the category of delict. It is identified by Article 62 of the Beka-Agbugha Law when the thief had to pay double the compensation to the owner if the stolen item was not returned. Also, according to the law of Vakhtang Batonishvili, seven times the amount of property compensation belonged to the owner of the item, if he was a nobleman. Thus, the type of delict was determined not by an action per se, but by the social status of the owner of the stolen thing. If the peasant got something stolen, two shares of the seven times the amount for the committed theft were given to the peasant, the rest to the state.

The three types of theft in Vakhtang Batonishvili's Law Book (Articles 151, 152, 153) can be considered as a private delict because the payment of seven times the value and half of the blood price was made for the victim. Based on the mentioned norms, Vakhtang Batonishvili expanded the scope of private delict about theft.

Following the norms and deeds of the monuments of old Georgian law, we can say that the property compensation for theft was seven times the amount of which two shares belonged to the owner of the item, and the rest to the state. Hence, both the public and private interests were fostered but most of the compensation belonged to the state, which demonstrates the priority of protecting the public interest.

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<sup>109</sup> Ibid, 120.

4. *Dolidze I. (text publisher)*, Georgian Legal Monuments, Vol. I, Vakhtang VI Law Books Collection, Tbilisi, 1963, 141, 201, 202, 203, 303, 304, 310, 394, 419, 420, 448, 449, 461, 463, 467, 469, 470, 472, 480, 519, 520, 544 (in Georgian).  
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