

Crime, Punishment and Forensic Expertise According to the Albanian Tradition - *A Commentary on the Native Customary Law*

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Rec date: Mar 13, 2014; Acc date: Apr 28, 2014; Pub date: May 02, 2014

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Abstract

The Albanian customary law has been a source of continuous research and discussions. In the actual available printed mode, it is widely equalized with the Kanun, which represents a collection of the traditional laws and bylaws that governed northern regions of the country. Misinterpreted as a statute of blood feud, in fact, it was a collection of rules, laws and bylaws, serving as a Criminal and as a Civil Code for entire areas that referred to it as the single tool for rule of law, especially during five centuries of ottoman occupation. A detailed description of felonies, wrongdoings, misdemeanors and contraventions, with respective forms of punishment and remuneration, do suggest that the document testifies a highly sophisticated approach toward these phenomena, both in forensic and in legal terms.

Keywords: Customary law; Poena dupli; Crime against person; Crime against property

Introduction

Albanian tradition and customary law have a long history, starting probably with or prior to the medieval period. Strong patriarchal influences have beyond all doubts shaped and ruled the northern regions of the country [1]. As a mixture of different influences and a paradigm of self-sovereignty, the Albanian customary law (*droit coutumier*) has been a societal curiosity and a long-term survivor, since several elements of the same might be traced back several centuries later, and even actually [2].

The northern Albanian customary law has since long been misinterpreted as a mere promulgator of the blood feud or vendetta principle [3,4]. In fact, this customary law has served as an immense summary of all civil, penal, administrative and other codes for a tribal society that by using such self-proclaimed legal means, resisted long enough to foreign rulers (here including ottoman Turks), to remain self-sustainable, albeit only in isolated regions of the northern Albania.

There are as well several Canons, with the most famous the one of Lekë Dukagjini, a historical figure living around the fourteenth century, whose fame was probably related exactly with the first official collection and validation of these canonical rules, that previously reigned in the region through oral and transgenerational spreading mechanisms [5].

Capital Punishment and Protection of Religion

Church, clerics and ecclesiastical property are obviously considered the highest values that should be protected at all costs, and by all means. Blasphemy in all its forms has been considered a capital crime in the pre-modern societies [6]. Under this aspect, Albanian

customary law is explicit and even more categorical: not only irreverence for God, but offences against clergy might deserve exemplary punishments.

These punishments are foreseen at the Article 16, Canon of Lekë Dukagjini [7]. In order of severity, these include:

- Murder
- Forced displacement from the territorial division of the entire family, whose member has committed the felony
- Prohibiting the felon and its family to cultivate the land, with extension of the punishing to cutting down of all trees under their property
- Fines through confiscating domesticated cattle
- Fines in monetary currency

Obviously, crime against clergy or clergymen was universally condemned and duly castigated. Most important, the customary law describes the forms of carrying out a popular verdict, especially when the community of a territorial division has condemned someone to death, following the felony. Two elements are very interesting in such a description: *a-* the verdict will have to be executed by the entire community, and not from a single executioner; *b-* the so-condemned person loses all his posthumous rights, that are granting according to the blood feud regulations, so that none of his relatives will ever revenge for his execution.

Manslaughter and Ambuscades

Codifications of the crimes against the person and of revenge are carefully made in the customary law, especially in the *Kanun*, with details of:

- Perpetrators that officially have the moral right to revenge,

- Acceptable ways of revenge, consequences and rituals following the latter,

- Details from a potential crime scene, with forensic considerations.

An entire book (Book X, pages 76-92 [*Kanun*, quoted in 7]) is dedicated to 'wrongdoings', namely crimes against the person, and against property. The Chapter XXII of the Book X describes the details of an ambush, with the person leading the event (*prisi*, the Albanian word for *principal*) and his accomplices (*simahor*, the Albanian word for *accomplice*).

Forensic evaluations precede the mainstream of the Article 118, Chapter XXII of the same book. Thus, the principal person who organizes the ambush will subdue himself to the blood feud and all consequences related with the potential manslaughter. 'The principal will take over the revenge', in accord with the same Article [8]. Who will start the fire and station in an ambush will be responsible for consequences, in spite of that casualties might be from its own side.

The principal person stationing in an ambush must even secure food for his accomplices; whoever feeds them will become part of the blood revenge. Offering victuals to participants in an ambush is the same as giving them weapons [*ibid*, p. 80].

Crimes Against Property: Poena Dupli

Crimes against property are duly described and their punishment codified as well at the same Book X, Chapters XX-XXI, Articles 112-117 [9]. The characteristics of the thief (*cubi*, in Albanian) and his accomplices (*simahor*, in Albanian) are given at the beginning of the chapter. Here again, offering victuals and dwelling to a thief is punishable as the theft itself.

Some important forensic evaluations are given hereby in the following lines of the same Chapter [9].

- *Theft committed from minors*,
- *Burden of proof and compensation*,
- *Double penalty (poena dupli)*.

In fact, the customary law differs somehow substantially at the second over-mentioned point from the actual codes, since the probability of a collective guilt and responsibility is not ruled out. For example, when a stolen property is found inside a village, with no traces of the thief itself, the entire village as a community will be held responsible for the wrongdoing [*ibid*, 77]. Otherwise, the theft committed from minors will get compensated from respective parents.

The Article 116, page 79 [*ibid*] is an impressive example of the huge Roman influence in the entire process of conceiving of the *Kanun* as the main written document of the Albanian customary law. Something stolen has to be compensated with the double of its value: *poena dupli* (double punishment) of the Roman legislation.

This is how Kelly describes the double penalty according to the same: "Thus it might be imagined, that one subjected to a double penalty is thought of, first, as repairing the damage he has caused, and, second, as undergoing the like harm himself, in other words, repairing the loss twice over" [10]. The twofold penalty nevertheless is not a particularity of the Roman law; the Book of Exodus explicitly foresees this double penalty, and several scholars have emphasized this fact [11].

Conclusions

Albanian customary law has been a continuous source of discussion and research, since its first collection. Such a collection was made possible from a catholic priest (Sh. Gjeçovi, 1874-1929), who gathered thousands of verbal testimonies related to tradition and law in northern Albania, and offered a printed version of the *Kanun*, the same as actually available in several editions (Figure 1).

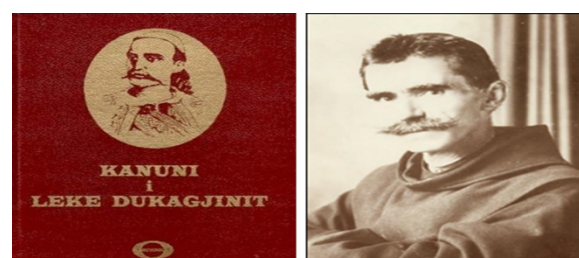


Figure 1: Right, the printed version of *Kanun*, considered synonymously as the official version of the northern Albanian customary law. Left, is given a photo of Gjeçovi, the Franciscan priest who collected and published initially the actually available version.

Misinterpreted as a statute of blood feud, in fact, it was a collection of rules, laws and bylaws, serving as a Criminal and as a Civil Code for entire areas that referred to it as the single tool for rule of law, especially during five centuries of ottoman occupation. In fact, ottoman codification and customary law, albeit very well-organized, influenced slightly, if not at all, the *Kanun* in its validity and applicability [12].

The strong Roman influences and the obvious veneration toward clergy are both elements that need to be scrutinized further; but other parallel influences cannot be underemphasized [13]. In spite of all the transversal influences it might have endured, the *Kanun* in its entirety remains a strong patriarchal institution [14]. Forensic evaluations and considerations found inside the texture illustrate how sophisticated was the approach toward litigations and with regard to crimes against the person. Ruling wide regions for centuries, and although transmitted and attested only verbally, the entire *Kanun* has been as efficient as written documents. In fact, it was Aristotle, more than two millennia from now, to suggest that customary laws (*kata ta ethē*) had more authority than written laws [15]. His excellent intuition seems by large to coincide with the value of the Albanian customary law, as described above.

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