

# THE PROPERTY OF SPOUSES ACCORDING TO ALBANIAN CUSTOMARY LAW DURING THE RULE OF OTTOMAN EMPIRE

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## Introduction

The territory of today's Albania was part of the Ottoman Empire from mid-15th century to 1912, when Albania declared its independence from the Ottoman Empire.

In the pre-Ottoman medieval times the administration of the provinces ruled by Arbanon nobility and the life of people in general was regulated by the so called city and church statutes. Cities with such statutes were Shkodra, Durres, Drisht. The Statutes of Durres were completed at the beginning of the 12th century. The Statutes of Shkodra were last edited at the end of the 14 century. The Statutes of Shkodra contained 279 chapters, were written in Latin and are the only statutes of the Albanian cities fully preserved (in handwriting in Moseo Correr, Venice) and published completely<sup>1</sup>. The statutes regulated the life and activity of the population of the city, the governing bodies and other components of public organization of city life as well as economic, social, political and legal activities. The existence of these statutes inspired by statutes of other cities of the Dalmatian seaside is an indicator of historical continuity of an urban culture with common inclinations with all the countries of the region. According to the Statutes woman's position in the family was less favorable than man's, however the statutes in general acknowledged

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<sup>1</sup> Shaban Sinani, "Statutes of Albanian cities during the Renaissance humanistic period", **Haemus Plus, Supplement of Haemus Review**, p. 8-9

some rights to women such as the right to inherit. In the Shkodra Statutes inheritance was recognized by law (statute) and by a will. Inheritance by law was applied in a case when a layperson, man or woman, had not left a will, as well as when the will was not valid. The girl or woman in general had the right to issue a will when she reached the age of 12. Every person could be an heir regardless of sex and age, related or not related.<sup>2</sup>

Later on, during the rule of the Ottoman Empire in Albanian highlands and rural regions customary law developed as a specific form of self-regulation, different from the written and “codified” way of regulation of public and private life in the cities. Albanian customary law is a set of unwritten rules of behavior, widely accepted and faithfully transmitted from generation to generation. The statutes of Shkodra and the Albanian customary law, called by Ismail Kadare (famous Albanian writer) as *Jus Albanicae*, summed up the entire corpus of norms, rules and folk customs, serving as a general regulator of the social organization of the Albanian people. Albanian customary law represents an unwritten set of rules, which were established ad hoc by courts of elders or assemblies and aimed to regulate social relations in various fields of life. The implementation of these norms, was provided by the force of tradition, social consciousness and the patriarchal authority of the people’s self-government bodies<sup>3</sup>. Rates of Albanian customary law are summarized in canons. One of the most influential canons was the Canon of Leke Dukagjini which was in force in the secluded and practically *ex lex* regions of northern Albania. It was collected and formulated by the Franciscan Shtjefen Gjecovi at the beginning of the 20th century<sup>4</sup>. Other important canons were the Canon of Skanderbeg and The Canon of Laberia, which was a set of traditional rules and was adhered to southern Albania district of Laberia. The word canon derives etymologically from the Greek word “canoe”, metaphori-

<sup>2</sup> Fjona Bica, “Trashegimia ne te drejten mesjetare shqiptare: instituti I trashegimise ne Kanunin e Leke Dukagjinit dhe ate te Skenderbeut”, *Tema*, nr. 2243, 25.11.2007, p. 17-19

<sup>3</sup> Ismet Elezi, *Njohuri per te drejten zakonore mbareshqiptare*, Prishtine, 2003, fq.10

<sup>4</sup> Genc Ternavci, **The Albanian Customary Law and the Canon of Lek Dukagjini: A clash or synergy with modern law**, p.1 found on <http://www.design.kyushu-u.ac.jp/~hoken/Kazuhiko/2008Customarylaw.pdf>

cally marking un-codified laws, under which once walked the flow of life and action of Albanian people.

During the rule of the Ottoman Empire, city statutes were replaced by the Empire laws and Sharia, thus customary law was not the only set of rules applied by Albanian population to regulate social life, as well as family and property relations.

The focus of this paper will be the regulation of family relations, and more specifically family property relations by Albanian customary law, represented mostly by the Canon of Leke Dukagjini, the Canon of Skanderbeg and the Canon of Laberia. The preservation of customary law was one of the most important elements in helping the Albanian people to maintain their individuality over the centuries and under different invasions.

## **Common Property According To Albanian Customary Law**

Albanian customary law was born in the time of dissolution of the old tribal order and the beginning of private property. It was a reflection of the material conditions of life in human consciousness and therefore has a double character. On one hand it preserves the characteristic rates of the old tribal order (common ownership)<sup>5</sup>, while on the other hand it regulates the category of private ownership with all its features (eg. property rights do not expire).<sup>6</sup>

The three pillars of Albanian customary law: the Canon of Leke Dukagjini, the Canon of Skanderbeg and the Canon of Laberia acted in different times and space: the Canon of Laberia acted during 11th century in southwestern Albania, the Canon of Lek Dukagjini and the Canon of Skanderbeg acted during 15th century in the northern and central highlands respectively, nonetheless they have many similarities.<sup>7</sup>

<sup>5</sup> Articles 232-235, Shtjefen Gjecovi, **Kanuni i Leke Dukagjinit**, Shkoder, 1993

<sup>6</sup> Article 221, Ibidem

<sup>7</sup> Ismet Elezi, **Kanuni i Laberise**, Tirane, 2006, p. 26

All the abovementioned canons contain norms that have governed family and property relations for centuries. These norms were visibly influenced by religious ideologies, catholic (Canon of Leke Dukagjini), orthodox and muslim (Canon of Skanderbeg). In the regions where provisions of Albanian customary right were active, the basic cell of the tribal society was the patriarchal family. In this context, the property relations of spouses should be seen as part of the complex property relations within patriarchal family. Family units typically are comprised of a couple, their sons and the sons' wives and children, and any unmarried daughters. Such patriarchal families in some cases had more than 60 members. According to the Canon of Leke Dukagjini, the control of the house belonged to the eldest living under the roof of the house or to his first brother. However, if he did not possess the qualities which were required to fulfill this office properly, then on the basis of common consent, another member of the household was chosen who was wiser, more intelligent, and more careful. The eldest man of the family (household), or another chosen family member was the "head of the house", an almost omnipotent paterfamilias.<sup>8</sup>

According to Albanian customary law property included movable and immovable property such as land, houses, pasture, cattle, livestock and work tools.<sup>9</sup> The economic activity was carried out within the patriarchal family, that is why the family as a whole had ownership over movable and immovable property and the profit from common work and any other common activities of all family members belonged to the common economy of the family, while individual members had no special income. The form of property in the Albanian patriarchal family was common property, while separate property was not developed yet. However, this does not mean that separate property did not exist. Men's separate property consisted of items such as clothes, weapons, tobacco

<sup>8</sup> Article 20, Shtjefen Gjecovi, **Kanuni i Leke Dukagjinit**, Shkoder, 1993

<sup>9</sup> Articles 213-266, Shtjefen Gjecovi, **Kanuni i Leke Dukagjinit**, Shkoder, 1993; Articles 357-411, Ismet Elezi, **Kanuni i Laberise**, Tirane, 2006

boxes. Women's separate property consisted of wooden chests, where their clothes, jewelry and wedding gifts were kept.<sup>10</sup>

The common property of the family was practically in common ownership of every male member of over 15 years of age (with full legal capacity), while the exclusive right to dispose with it belonged to the head of the house. However, in order to dispose with immovable property of the family, the head of the house, would need the consent of the other male members of the family.<sup>11</sup>

Women had no ownership over the common property of the family. In fact, women had limited legal capacity, which was gained when a woman was married.<sup>12</sup> Their legal capacity was limited to only using their separate property (clothing, jewelry and wedding gifts).

### **Betrothal, marriage and marital property**

In Albanian customary law property relations between spouses were almost inexistent and eclipsed by the property relations within the patriarchal family, which sometimes had over 60 members. Property relations between spouses were present in nuclear families, small families that include the parents and their children. These families were not a rarity in southern Albania, where married men had the right to separate from their extended patriarchal family, whenever they felt so, or in cases of disputes with other members of the extended family.<sup>13</sup> In small families the property of spouses was also administered and disposed exclusively by the husband.

According to Albanian customary law, men and women had unequal personal and legal positions in society in general and within the marriage in particular. Rural patriarchal families cultivated the ideal of a

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<sup>10</sup> Aleks Luarasi, **Studime per te drejten zakonore shqiptare 1. Marredheniet familjare**, Tirane, 2007, p 177

<sup>11</sup> Articles 1354-1355, Frano Ilia, **Kanuni i Skenderbeut**, Shkoder, 1993

<sup>12</sup> Article 344, Ismet Elezi, **Kanuni i Laberise**, Tirane, 2006

<sup>13</sup> Article 145, Ibidem

subdued and passive woman, obeying the father. Man's superiority was essential for this tradition. The Canon conceives the woman as a weak being; therefore, it sees her as inferior and assigns her a secondary role in relation to the man.

To be married according to the Canon means to form a household, adding another family to the household, for the purpose of adding to the work force and increasing the number of children.<sup>14</sup> By this definition of marriage the position of the woman seems humiliating, denigrating and only in the function of increasing the tree of the blood.

The institution of betrothal or engagement according to customary law is the pre-contract of marriage. The appropriate age to be betrothed was 12-13 years of age for girls and 15-16 and older for boys.<sup>15</sup> Girls would get engaged even while they were still in a cradle, soon after birth. When they were ten, they would usually have to stay inside the house compound. Even when they were obliged to go out, they were not allowed to communicate with any male, not even their fiancé. This would be considered a shame. In fact betrothal was an alliance contract between fathers or cousins of the future bridegroom and bride, a promise that the young man and the young woman would wed. In occasion of the engagement, the future bridegroom's side would give an engagement token to the future bride's side. The token was necessary for marriage and consisted of ring of copper or silver and a small amount of money (10 grosh). A separate amount of money was given to the future bride's side in order to prepare her dowry.<sup>16</sup> The token bound the young woman, and if faith was not to be kept, the result would be a blood feud between the parents of the young woman and the parents of the young man. On the other hand, the young man could break the engagement by rejecting the young woman to whom he was engaged but by doing so he lost the token and the money that has been given for the girl. On the other hand, the girl that was betrothed might not reject the young man, even if she

<sup>14</sup> Article 28, Shtjefen Gjecovi, **Kanuni i Leke Dukagjinit**, Shkoder, 1993

<sup>15</sup> Article 212, Ismet Elezi, **Kanuni i Laberise**, Tirane, 2006

<sup>16</sup> Articles 187-185, Frano Ilia, **Kanuni I Skenderbeut**, Shkoder, 1993

did not like him. If the girl refused to submit to her fate, and her parents supported her, she might never marry another man.<sup>17</sup>

Two main Albanian canons had an essential difference regarding the status of marriage. The Canon of Leke Dukagjini, in determining the manner of marriage, states: The woman held without a marital crown (is) against the religion and Leka's Canon, in the same way, marriage with an abducted woman or girl was not allowed, since this was in opposition to the faith and the Canon, also trial marriage was against the faith and the Canon.<sup>18</sup> While according to the Code of Scanderbeg "a Mohammedan man under the first marital crown can have one or more other women, either when he lets go or when he keeps the other one that he has with or without marital crown".<sup>19</sup> Canons were strongly influenced by religion and there were understandable differences in the definition and manner of marriage between the Canon of Leke Dukagjini, which was in force in regions with catholic population and the Canon of Scanderbeg, which rules of conduct were applied by a population adhering to Islam.

There were very specific provisions regulating the fate of the (separate) property in case of death. If the fiancé would die before being married, the bride's family would retain the token (and the ten grosh), but the rest of the money had to be returned to the fiancé's parents, to the last coin. If the husband died after being married and spending from only one night up to one year with the bride, the bride's family would have to return half of the money to the husband's parents.<sup>20</sup>

If the husband died after one year of marriage and the couple did not have children, the dowry belonged to the widow. If the wife died during the first year of marriage, the dowry remained in the husband's family. If the wife died after one year of marriage and the couple did not have children, the dowry was returned to her parents.<sup>21</sup>

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<sup>17</sup> Articles 41-43, Shtjefen Gjecovi, **Kanuni i Leke Dukagjinit**, Shkoder, 1993

<sup>18</sup> Article 29 Ibidem

<sup>19</sup> Articles 388-395 Frano Ilia, **Kanuni i Skenderbeut**, Shkoder, 1993

<sup>20</sup> Article 56, Shtjefen Gjecovi, **Kanuni i Leke Dukagjinit**, Shkoder, 1993

<sup>21</sup> Articles 501, 510, 517, 520 Frano Ilia, **Kanuni I Skenderbeut**, Shkoder, 1993

Women had no property or inheritance rights. According to the Canon of Leke Dukagjini the Albanian woman did not inherit anything from her parents – neither possessions nor house. They could only dispose with their separate property (goods for personal use, clothes, jewelry). The common property of the family, consisting of houses, land, livestock pasture and meadows was owned by men and inherited only by males. Succession was patrilineal (agnatic), nonetheless, the institute of inheritance was not quite developed in Albania. When a member of the extended patriarchal family died, the opening of the inheritance and the division of the property did not take place, because the intestate and his inheritors lived within the same family, under the same roof.<sup>22</sup> Albanian customary law does not recognize wills, though according to the Canon of Leke Dukagjini everyone was master of his own property and he who wished to bequeath goods to the church for the benefit of his soul, was free to do so<sup>23</sup>, but not without the consent of the relatives.

The Canon of Laberia as well as the Canon of Luma had a more moderate solution regarding succession and women could inherit movable properties from their father or husband. However, a woman could also inherit immovable property from her father, if there were no male inheritors.<sup>24</sup> The most controversial provisions of Albanian customary law have to be those regarding the position of women in the family and society in general. Although such provisions seem severe and unforgiving we have to see them in a historical context. The Canons were established starting from 11th to 15th century. In medieval times women everywhere across Europe were oppressed and subserviced and the situation of their property and inheritance rights started to improve only during 18th-19th century. As explained above, the concept of separate property of spouses was very limited, almost unknown to the Albanian customary law and it differs a lot from today's concept. As a rule the son was recognized as heir, but not the daughter. Nevertheless, there are two exceptions to these general provisions that are in contrast with the essence and

<sup>22</sup> Aleks Luarasi, *Studime per te drejten zakonore shqiptare 1. Marredheniet familjare*, Tirane, 2007, p 177

<sup>23</sup> Article 107, Shtjefen Gjecovi, *Kanuni i Leke Dukagjinit*, Shkoder, 1993

<sup>24</sup> Article 587, Ismet Elezi, *Kanuni i Laberise*, Tirane, 2006



the very nature of customary law, incorporated into two institutions: the institution of selem (Canon of Scanderbeg), and the institution of miraz (Canon of Luma).

## **Selem**

Selem was a certain amount of property or possessions that the wife gave to her husband on the occasion of marriage, in order to facilitate their conjugal life. Selem as a specific institution was foreseen by The Canon of Scanderbeg. The Canon acted in different regions of northern and central Albania and its norms were applied in a similar but not quite identical way. In some regions selem, represented mostly oxen, flocks, sheep or goats given to the bride by her family to help the economy of the new family. In other regions selem consisted of personal property mainly movable, such as money, flocks and herds. In more ancient times, selem was considered only the dowry brought by the bride on her marriage. The husband disposed with the property without needing the consent of the head of the house. Selem was inheritable property. Following the death of its owner it was inherited by the owner's sons.<sup>25</sup>

## **Miraz**

In Albanian customary law, miraz was not the rule, but the exception from the rule because this institution is in contrast with the essence and the very nature of customary law, thus it was applied only in certain cases foreseen by the Canon of Luma. According to this canon, male children were heirs of the first order<sup>26</sup>. In absence of male descendents, female children were heirs of the second order, dividing the inheritance with their first cousins. The part of the female children in the inheritance was called miraz and this part was different in different villages ( $\frac{1}{2}$ ,  $\frac{1}{3}$ ,  $\frac{1}{4}$ ,  $\frac{1}{5}$  of the land that was further divided equally among sisters). They could also disclaim their part of the inheritance and in this case the part belonged to their male cousins. Women could also sell their part, but in

<sup>25</sup> Aleks Luarasi, **Studime per te drejten zakonore shqiptare 1. Marredheniet familjare**, Tirane, 2007, p 180

<sup>26</sup> Article 1492-1493 Shefqet Hoxha, **Kanuni i Lumes** (manuscript at the National Cultural Institute of the Academy of Sciences of Albania)

this case the institution of preemption was applied. The opportunity of buying their part was first offered to their closest by blood cousins, then to the neighbors and so on.<sup>27</sup> In cases when women did not sell their part of the inheritance, they could only use it in their lifetime. Their children could not inherit their mothers' land because they belonged to another tribe and the land was returned to the male cousins.<sup>28</sup>

## Conclusions

For centuries in Albanian highlands, mountains and rural regions, life and activity of the population and the main components of the public and private sphere such as family, marriage, property and honor were regulated by customary law. The three pillars of Albanian customary law: the Canon of Leke Dukagjini, the Canon of Skanderbeg and the Canon of Laberia acted in different times and space, but they have many similarities.

In tribal society the economic activity was carried out within the patriarchal family, that is why the family as a whole had ownership over movable and immovable property and the common property was administered and disposed by the head of the family. The concept of separate property of spouses was very limited, almost unknown to the Albanian customary law and it differs a lot from today's concept. It consisted only to personal items such as clothes, jewelry and weapons. Women had no property or inheritance rights. Although there were few exceptions to the rule related to two institutions of customary law: *selem* and *miraz*.

As severe and discriminating to women as it may seem, customary law has to be seen in a historical context. The preservation of customary law was one of the most important elements in helping the Albanian people to maintain their individuality over the centuries and under different invasions. Although customary law is inversely proportional to the rise and development of the modern state, it shows distinguished lawmaking capacities and laid the foundations of today's positive law.

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<sup>27</sup> Articles 1529, 1563-1565, Shefqet Hoxha, **Kanuni i Lumes**

<sup>28</sup> Article 1562, Shefqet Hoxha, **Kanuni i Lumes**