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**THE ALBANIAN CUSTOMARY LAW AND THE CANON OF
LEKË DUKAGJINI: A CLASH OR SYNERGY WITH MODERN
LAW**

Introduction

Kanuni i Lekë Dukagjinit (The Canon of Lekë Dukagjini) is the most widely known comprehensive summary of traditional Albanian law ever published in Albanian language. For centuries, the Canon of Lekë Dukagjini has strictly governed all important aspects of social life in Kosova and in the secluded and sometimes practically *ex-lex* regions of Northern Albania. Customary law is however not only characteristic of Albanian culture. In general, customary law endured among all Balkan peoples, particularly in rural environments, until the present day.

The Franciscan, Shtiefën Gjeçovi from Janjevo of Kosova (1874 - 1929), carefully collected and formulated Kanuni. This compilation was later scientifically explored and studied as literature and, in particular, as a work relating to oral literature. Scientists now mostly agree that this ancient unwritten law formed through centuries and that it can not be scientifically (empirically) ascertained that it had been promulgated by the real historical person Lekë Dukagjini.

This Canon is most widely known for the predominance of blood feud and vendetta as its intrinsic principles. As it will be demonstrated in this paper, the rules on blood feud form only a very small part of the Cannon and not its core, as is often erroneously believed. The Kanun also allows for the possibility of the blood being redeemed. Women, however, according to these ancient rules, are considered to be of a lower social status: they do not share either the rights and privileges or the responsibilities of men. Kanuni also maintains values that are still considered unquestionable today: these include the given word or “*besa*,” the sacredness of promise, and the respect for guests and friends.

The Albanian customary law was formed in the Canon of Lekë Dukagjini over the centuries. The latter is important not only for the study of modern Albanian civil law, but also for research in many other scientific disciplines.¹ In some areas of Albania and especially in Kosova, it precedes formal, state enacted, written law.² However, this is not a characteristic of Albanians only, but of other ethnicities on Balkans and cultures all over the World as well. For example, customary law was implemented along with Roman law in Western Europe until the end of the 19th century.³ Nonetheless, it has survived amongst Albanians the longest due to the fact that they have lived longer than any other Balkan people in a patriarchal society for which customary law is well suited.⁴ The Albanian expression for the customary law of Albanians is Kanun. This word was taken over out of Sumerian (gi, Rohr) over Acadian (qanu, Rohr) to the Hebrew (qane, Rohr) and from there to the Greek (kanna, Rohr) and to canons, where it was developed further and meant “rule, standard”. The main meaning of the Kanun on Albanian Language is the customary law.⁵

Although Albania and Albanians living on Balkans have gone through thorough historical, social, economic and political changes on their way of

¹ Surja Pupovci, *Građanskopravni odnosi u zakoniku Leke Dukadžinija*, Zajednica naučnih ustanova kosova i Metohije, Studije, knj. 5, Priština, 1968.

² Law of inheritance is governed by Canun in the rural parts of Kosova and Northern Albania. Modern law and institutions of land register are completely neglected.

³ S. Pupovci, *ibidem*, pp 9. See about this in general in: Harold Berman, *Law and Revolution: The Formation of the Western Legal Tradition*, Harvard University Press, Cambridge Massachusetts, and London England, pp 8, 11, 85 etc.

⁴ Miloš Mladenović, *Zakonik Leke Dukadžinija*, Prilog postavljanju problema uporedne istorije balkanskih prava, Beograd, 1938, pp 3.

⁵ See about this in general: Zef Ahmeti, *The Criminal Law in the "Kanun of Lekë Dukagjini - The Albanian Customary Law* - Univ. St. Gallen, Switzerland, 2004.

modernization and development in the last century,⁶ norms of the Albanian customary law, or the Canon of Lekë Dukagjini, still have a strong impact among Albanians nowadays, besides contemporary constitutional and other legal rules.⁷ Although to some extent this law seems severe and unforgiving, as a source of conflicts, and the main reason for blood feud and revenge⁸ in various Albanian communities in Balkans, especially in Northern Albania and Kosova,⁹ we would consider this perspective

⁶ Albanians originate from Illyrians, one of the indigenous peoples of the Balkan Peninsula. They are the descendants of the Illyrian tribes that, living in isolated mountain areas, although to some extent Romanized under the rule of the ancient Rome, avoided assimilation to the Slavs invading the area sometime during the seventh century. Their language is of Indo-European origin. The two largest groups among Albanians show some difference both in their dialects and some customs. In the northern areas of Albania Gheg dialect is spoken (this is the principal dialect of Kosovar Albanians), while Albanians living in the south speak Tosk. The religious diversity of Albanians is readily seen from the following figures: about two thirds of the population – including most Kosovar Albanians is Sunnite Muslims, 10% are Roman Catholics, and 15% - mostly living in the south - are Albanian Orthodox Christians. In the Middle Ages, Albanians lived under the rule of Byzantium and the Serbian state. In later centuries, most Albanians adopted the Muslim faith, and the elite of the Albanian society became an integral part of the power structure Ottoman Empire as soldiers, officials, and landlords. The rise of nationalism reached Albanians as late as the end of the 19th century. One of the centers of the national movement was Kosova. Established in 1878 in Prizren, the Albanian League was the first organization representing Albanian national movement. The mission of the League was no less than to achieve the unification and autonomy of the four Albanian-populated vilayets (vilayet – a Turkish administrative unit) of Shkodra, Kosova, Monastir, and Janina. However, the same regions were also claimed by those nations living in area that had started their national development and risen to national statehood somewhat before the Albanians. The vilayets of Shkodra (part of present Albania) and Kosovo (presently under UN administration) were claimed by Serbs and Montenegrins, Monastir by the Serbs and Bulgarians, and Janina by the Greek. Of course each of the young nations based their claims on historical and ethnic reasoning. See: Xhevat Lloshi, *Origin of Albanian and Albanians*, <http://www.al.undp.org/download/pdf/albanian.pdf> (last visited on January 24th, 2008); <http://en.wikipedia.org/wiki/Albanians> (last visited on January 24th, 2008).

⁷ While 3.5 million of Albanians live within the national borders of Albania, another 2 million inhabit Kosova, 445 thousand live in Tetovo and Kumanovo region of northwest Macedonia, 70 thousand in the Presevo valley and 61 thousand in Montenegro's border region with Albania and Kosova. See: Xhevat Lloshi, *Denomination of Albanian and Albanians*, <http://www.al.undp.org/download/pdf/albanian.pdf> (last visited on January 24th, 2008).

⁸ See about this in: Tomo Oraovac, *Arbanaško pitanje i srpsko pravo*, Beograd, 1913, str 22.

⁹ In the early 1990s, media reports on Albania often featured blood feuds, identifying revenge as something that lies at the very heart of Kanun, the unwritten Albanian customary law of the region. While for some time Albanian officials rejected allegations that blood feuds had become as rampant as ever before, the international press has frequently tried to present the criminal wrongdoings of Albanian Kosovar bands of outlaws as a continuation of the practice of Albania's traditional unwritten laws. At the same time, the Albanian press has also printed

narrow and negative, since these rules form a very small part of the Cannon and not its core, as is often erroneously believed. The Kanun also allows for the possibility of the blood being redeemed.¹⁰

KANUN AS A PART OF WIDER, BALKAN'S CULTURE

When speaking of Balkans, it can be easily forgotten that, in historical, geopolitical and linguistic sense, it constitutes a unique, although multilingual environment. Indeed, Balkans is very difficult to draw on ethnic and linguistic borders. The symbiosis and interpenetration (interaction) of various Balkan peoples, their languages and legal tradition, have played a major role in shaping the historical, cultural and legal profile of Balkans itself. This interaction was conditioned by unstable state affairs, frequent wars and constant movement of borders in the Middle Ages. The unity of Balkan peoples, as the matter of fact, had existed long time ago within the boundaries of the Byzantine Empire and was strongly influenced by its

more than one article reporting the killing of men right on the streets of Albanian towns and villages for the sole reason that their fathers or grandfathers had killed someone else before (See in BBC. 5 May 2002. Mike Donkin. "Eyewitness: Albania's Blood Feuds." <http://news.bbc.co.uk/1/hi/world/europe/1964397.stm> [Accessed 24 Nov. 2003]; *New York Times Magazine*. 26 December 1999. Scott Anderson. "The Curse of Blood and Vengeance." (Albanian Students Association (ALBSA) List Serve 11 Oct. 2001) <<http://www.alb-net.com/pipermail/albsa-info/2001-October/002361.html>> [Accessed 23 Oct. 2003]; *The Observer* [London]. 21 September 2003. Sophie Arie Puke. "Blood Feuds Trap Albania in the Past: Thousands Forced to Take Refuge As Medieval Code Targets Fathers and Sons." (NEXIS Feuds-Forgotten Rules Imperil Everyone (Part 3)); (see in: <http://www.rferl.org/nca/features/2001/10/12102001125212.asp> [Accessed 24 Nov. 2003]).

¹⁰ Compare: A. Buda/ Gjeçovi-Kryeziu: 22, "contribution in the treasure of world culture;" C. Von Scherwin/Hylli i Dritës 1929: 502 and its author, Lekë Dukagjini is qualified an "imposing personality;" Edith Durham: 116 and "National Hero" of its people; J. Hahn: 114. Numerous writers and artists dedicated their works to the Kanun; among them the novelist and poet Ditëro Agolli ("Wife, for you I fought with Lekë Dukagjini", poetry), the Arbëresh dramatist Anton Santori ("Alessio Ducagini", melodrama, written between 1855-1860, published in 1983), the painter Naxhi Bakalli ("Kuvendi i Dukagjinit", tablo on the wall 4x3,2m in Burrel Historicaly Museum), the painter of Kosovo Engjëll Berisha ("Rrënjët e Dukagjinit", vizatime 1950-1956), the painter Simon Rrota (Lekë Dukagjini, portrait-Art Gallery, Shkodër), the sculptor Sotir Kosta ("Lekë Dukagjini", portrait in bronze in National Museum of Scanderbeg, Kruja, 1982) etc.

culture. Later, this unity found its full expression at the time when the Crescent replaced the Cross on Hagia Sofia.¹¹

Resisting the invader, the Balkan peoples got even closer to one another, forming a society that, in the absence of their own state, found a counterpoise in the patriarchal life. Customary law was perfectly suited to the patriarchal conceptions of a Balkan man. It became the main regulator of social relations, especially among peasants.¹² In a tribal society, it was also a form of internal judicial self-government and, as such, it embodied a large number of patriarchal elements.

The customary law is not only a peculiarity of Albanians.¹³ In general, customary law endured among all Balkan peoples, particularly in rural environments, until the present day. It endured the longest among Albanians and Montenegrins.¹⁴ It is no wonder, therefore, that there is a great similarity between the customary law of the Canon of Lekë Dukagjini and customary law of Monte Negro and Herzegovina as the result of mutual influence and permeation.

¹¹ In 1453, Constantinople was conquered by the Ottoman Turks and Sultan Mehmed II ordered the building to be converted into a mosque. See about this in: http://en.wikipedia.org/wiki/Fall_of_Constantinople (last visited on January 23rd, 2007).

¹² Lloyd Bonfield in his masterpiece 'Nature of Customary Law', 520-1 (*The Nature of Customary Law in the Manor Courts of Medieval England; Comparative Studies in Society and History*, Vol. 31, No. 3 (Jul., 1989), pp. 514-534), writes: 'It must be remembered that inter-peasant disputes arose within a community in which the decision-making body possessed a wide array of knowledge about the character of the litigants and perhaps even the issue in controversy.'

¹³ H. Berman, op. cit., pp.

¹⁴ See about this in more depth: Andrija Jovičević, *Malesija*, Srpski etnografski zbornik SKA, knj. 27, Beobrade, 1923.

THE ORIGIN AND NAME OF THE KANUN (CANON)

In as early as 19th century, ethnological literature dealing with Albania often mentioned the unwritten laws of the land.¹⁵ In an entirely traditional society, any unwritten legal code may only be preserved in oral culture by a handful of wise men living among the people, familiar with its mentality, and speaking its language. Among the tribes of Northern Albania, these wise men were mostly priests. The Franciscan Shtiefën Gjeçovi of Kosova (1874 - 1929) played a special role in collecting rules of the Albanian customary law.¹⁶ He left as his legacy a very important work, “Kanuni i Lekë Dukagjinit” (the Canon of Lekë Dukagjini).¹⁷ Gjeçovi began to publish the collected sources of law in the magazine of the Albanian Franciscan order “Hylli i Dritës” in the year of 1913.¹⁸ After Serbian gendarmerie (police) murdered him on October 14th, 1929,¹⁹ other Franciscans systematized the remaining materials and published them under Gjeçovi’s name in Shkodra in 1933.²⁰

Kanuni i Lekë Dukagjinit is the most widely known comprehensive summary of traditional Albanian law ever published in Albanian language. The customary law of “Kanuni” was divided in 1263 paragraphs (§§) and into twelve books. Kanuni regulated both civil and criminal issues. This Codex was at the same time the ruling

¹⁵ J. G. Hahn, *Albanesischen Studien*, Helf II, Jena – Wien, 1853 – 1854.

¹⁶ According to the famous German scientist, Karl Steinmetz, Shtiefën Gjeçovi was a poet and writer, a translator, and a folklorist. See about it in more depth in his monograph: *Od Adrije do Crnog Drima*, Skopje, 1911, pp 88.

¹⁷ Shtiefën Gjeçovi, *Kanuni i Lekë Dukagjinit*, (vepër postume), Përmblythë e kodifikue prej A. Shtiefën Gjeçov, me parathanë t' A.Gjergj Fishtës, e biografi tëA. Pashk Barthit, Shkodër, 1933; Faik Konitza, *Ca kujtime mi At Gjechovin*, «Dielli», 18 marc 1930, no. 5156, pp2.

¹⁸ Ibid.

¹⁹ Owen Peterson, *Albania in the Twentieth Century, Albania and King Zog*, Volume One, The Centre for Albanian Studies in association with I. B. Tauris Publishers, pp 311-312.

²⁰ *Kanuni i Lekë Dukagjinit*, vepër postume, përmblyedhje e kodifikue prej Shtiefën Konst Gjeçovit, me parathane fAt Gjergj Fishtës e biografi fAt Pask Barhit, Shkoder, 1933. (translation: *The Canon of Lekë Dukagjini*, posthumous volume, collected and codified by Shtiefën Konst Gjeçovi with the preface of the reverent Gjergj Fishtë and biography of the reverent Pask Barhi, Shkoder, 1933).

Albanian body of law for many centuries up to the Second World War.²¹ Besides this, Gjeçovi's collection includes the Appendix "*Shembuj në Kanun të veçanta* (The Examples from the Canon of Lekë Dukagjini).²² It clearly shows that, due to the socioeconomic development in different parts of Kosova and Northern Albania, many Kanun's provisions evolved and adapted to changing social needs.²³

Numerous Albanian customs have been carefully collected and recorded in this collection. With certain changes, these customs have survived until modern time.²⁴ Although Gjeçovi recorded Northern Albanian traditional law in its fairly late stage of development, some of the text locations actually make reference to preexisting stages and conditions as well. Those are the customs on the occasion of the birth of a child,²⁵ blood brotherhood,²⁶ wedding customs,²⁷ death and burial custom,²⁸ customs in extended family groups²⁹ etc. The stratification of this unwritten body of law across the various historical ages can be easily observed through the mixing of powerful pre-Christian motifs with motifs from Christian era.³⁰ Likewise, it embodies customs which can be connected with manism, animism and totemism.³¹

²¹ Zef Ahmeti, *The Criminal Law in the "Kanun of Lekë Dukagjini - The Albanian Customary Law* - Univ. St. Gallen, Switzerland, 2004.

²² *Kanuni i Lekë Dukagjinit*, op. cit, pp 113-129.

²³ Syrja Pupovci, *Kanuni i Lekë Dukagjinit*, përmbledhur dhe kodifikuar nga Shtiefën Gjeçovi, me bigrafë të parathënje të prof. Syrja Pupovcit, Enti i teksteve dhe i mjeteve mësimore të Krahinës Socialiste Autonome të Kosovës, Prishtinë, 1972, pp 27.

²⁴ E.g., those are the rules devoted to tribal society, flag and flag carriers, military commanders etc.). See: S. Pupovci, *ibidem*, pp 38-39.

²⁵ § 28.

²⁶ § 101-108.

²⁷ § 11-33.

²⁸ Ch. 24, § 130-1263.

²⁹ § 9-10.

³⁰ Those are the following strata: 1. pre-Indo-European; 2. Indo-European; 3. Antic-Greek; Roman, generally Balkan and Osmanli (Turkish). See about this in: Ekrem Čabej, *Život i obličaji Arbanasa, Porpdica i društveni poredak*, knjiga o Balkanu I, Beograd, 1936, pp 313.

³¹ The Kanun functions well as a customary code in a society which has following cultural features that: 1) there's no functioning state power, 2) a kinship system is of great importance, 3) a kin group is deemed a transcendental commune consisting of the living and the dead, 4) the kin group has an ethical obligation to keep its existence in the community, 5) animism and ancestor worship are prevalent, 6) the ethos of warriors is highly regarded, 7) spoken words are appreciated more highly than written words. On similarities between the Kanun and Bushido, the Japanese Code of Warriors, see in: K. Yamamoto, *Study on the Ethical Concepts of the Japanese Writer Yukio Mishima, Ultra-nationalist*, Kyushu Institute of Design, Fukuoka, Japan, 2000, pp 2, 6, 7. See also: K. Yamamoto, *The Tribal Customary Code in High Albania; a Structural Analysis of the Ethics*. In: *The Proceedings of Second*

For centuries, this ancient unwritten law has strictly governed all important aspects of social behavior in Kosova and in the secluded regions of Northern Albania that were sometimes practically autonomous from central government. Due to the inaccessible and rugged terrain as well as warring mentality of its inhabitants, Northern Albania was for a long time out of reach for the many foreign invaders. Thus for centuries Albanians in Northern Albania existed as a society without state power, which regards spoken words more highly than written words, may be regarded to be a society of the mythological world.³²

The tribes of the northern areas preserved and respected the Kanun as having priority over any other legal system, despite the fact that over time both national law and Church legislation made attempts to gain foothold in the highlands. The Kanun lived on as an alternative or supplementary body of law to Albania's national law. This is how the mountain tribes have been able to preserve their identity, neutrality, and way of life over the past 500 years.³³ The negative side of this is in that, even now, in rural areas, positive law of inheritance is often neglected to the detriment of women heirs. Modern property law and land registers are ignored in the same token.

Until recently, Gjeçovi's collection, the Canon of Lekë Dukagjini, has been scientifically explored and studied as literature and, in particular, as a work relating to oral literature.³⁴ However, this work is also important for legal research.

International Congress on Physiological Anthropology. (Kiel, 1994). — 4. YAMAMOTO, K., Coll. Antrop. 23, 1999, pp. 221.

³² Ibidem.

³³ "For at least four centuries, the Kanun has de facto been an internationalised form of Albanians' social consciousness. It has been a symbolic framework within which the ethnic and cultural substratum of the Albanians of that period has been identified, and its regulations are also an expression of an organised mode of social response to the external factors, as well as a strategic programme for preserving their own identity irrespective of all such external factors" See in: Ferad Muhić, Канонот на Лек Дукагини. Тетово. ФИ & ГА. 1994, с. 15.; according to: Tanya Mangalakova, *THE KANUN IN PRESENT-DAY ALBANIA, KOSOVO, AND MONTENEGRO*, International Centre for Minority Studies and Intercultural Relations (IMIR), Sofia, 2004, pp 14 (available at: http://www.imir-bg.org/imir/reports/The_Kanun.pdf, last visited on february 5, 2008).

³⁴ J. G. Hahn, *Albanesischen Studien*, Helf II, Jena – Wien, 1853 – 1854; Marin Sirdani, *Skanderbegu mbas gojëdhanash*, Shtypshkroja Franciskane, Shkodër, 1926; M. E. Durham, *Some Tribal Origins and Customs of the Balkans*, George Allen and Unwid LTD, London, 1928; Salvatore Villari, *Le consuetudini giuridiche dell' Albania (Il Kanun di Lek Dukagjini)* Roma, 1940; P. Stefano, *Const. Gjeqov, Codice di Lek Dukagjini ossia diritto consuetudinario delle Montagne d' Albania*, Tradotto dal P. Paolo Dodaj. Introduzione di Federico Patteta, Roma, 1941; U *Studine e tekste*, Dega I, Juridike, no. 1, Instituti i studimeve shqiptare (Redaktor Zef Valentini) Roma, 1944; P. Stefano, *Const. Gjeqov, Codice di Lek*

Consequently, Sh. Gjeçovi was one of the first Albanian historians of law and collectors of rules of Albanian customary law. His collection is a lasting memento of oral tradition in the sphere of the Albanian customary law. Gjeçovi collected these important materials at the end of the XIX and the beginning of the XX century in Kosova and Northern Albania where he served as a Catholic priest.

There is no doubt that Gjeçovi was familiar with the legal literature and legal documents and legal tradition of other Balkan nations, especially Yugoslav one, as he was educated in Bosnia and was, according to those who knew him well, an extraordinary well informed and educated person.³⁵ It is not by chance, therefore, that he uses such terms as “jury” and “juror.” Taken from Slav legal terminology found in the Emperor Dušan’s Code (medieval Serbia), the Vinodol State (medieval Croatia) etc.³⁶ On the other hand, Gjeçovi often used definitions of legal relations and notions that he could not find in spoken (colloquial) language, but took them from various legal treatises, particularly classical ones.³⁷

Since the World War II, ethnographers in Albania have set to recording and studying the norms of Albanian Customary Law.³⁸ Scientific research has found

Dukagjini ossia diritto consuetudinario delle Montagne d' Albania, Tradotto dal P. Paolo Dodaj. Introduzione di Federico Patteta, Roma, 1941; Rr. Zojzi, *Mbi të drejtën kanunore të populli shqiptar*, Buletin për shkencat shoqërore, no. 2, Tiranë, 1956; Kahreman Ulqini, *Gjurmime etnografice në trojet e Skanderbegut*, Buletin i Univerzitetit Shtetëror të Tiranës, Seria Shkencat shoqërore, no. 2, 1961.

³⁵ Isto.

³⁶ S Pupovci, ibidem, pp 75. See also in: Julia Ivanova, *Kanuni i Lekë Dukagjinit (Sprove e karakteristikave historike)*, Buletin i Univerzitetit Shtetror të Tiranës, Seria e Shkencave Shoqërore, numër 2, Tiranë, 1960, pp 114.

³⁷ J. Ivanova, ibidem, pp 114.

³⁸ Salvatore Villari, *Le consuetudini giuridiche dell' Albania (Il Kanun di Lek Dukagjini)* Roma, 1940; P. Stefano, *Const. Gjeqov, Codice di Lek Dukagjini ossia diritto consuetudinario delle Montagne d' Albania*, Tradotto dal P. Paolo Dodaj. Introduzione di Federico Patteta, Roma, 1941, pp 7-8. *U Studine e tekste*, Dega I, Juridike, no. 1, Instituti i studimeve shqiptare (Redaktor Zef Valentini) Roma, 1944, pp 270-278; P. Stefano, *Const. Gjeqov, Codice di Lek Dukagjini ossia diritto consuetudinario delle Montagne d' Albania*, Tradotto dal P. Paolo Dodaj. Introduzione di Federico Patteta, Roma, 1941, pp 7-8; Rr. Zojzi, *Mbi të drejtën kanunore të populli shqiptar*, Buletin për shkencat shoqërore, no. 2, Tiranë,

traces of customary law throughout Albania and established the existence of several local canons used in various periods in different parts of the country.³⁹ These canons were separate bodies of customary law. They were not the products of individuals, but of the people. In many cases, those rules were adjusted to specific needs of ruling dynasties and feudal lords.⁴⁰

KANUN AND ITS LINK WITH LEKË DUKAGJINI

In the folk tradition of the North Albania, the name of the Canon is linked with the person of Lekë.⁴¹ However, the historical description and characteristics of the person is rather vague, while the time when Lekë had arrived and, supposedly, promulgated his Canon is unknown. According to the folk tradition, people respected the Canon because – “*As Lekë said, so it remained among the people*”.⁴² Therefore, the people linked the Canon of Lekë Dukagjini with Lekë Dukagjini, while historiography can not firmly establish among several personalities which one was the real Lekë.⁴³

Historiographers disagree over the origin of the Canon of Lekë Dukagjini.⁴⁴

On the basis of scant historical data, the majority of them believe that the Canon was

1956, pp 144-148; Kahreman Ulqini, *Gjurmime etnografice në trojet e Skanderbegut*, Buletin i Univerzitetit Shtetëror të Tiranës, Seria Shkencat shoqërore, no. 2, 1961, pp. 175-186.

³⁹ J. G. Hahn, *Albanesischen Studien*, Helf II, Jena – Wien, 1853 – 1854; Marin Sirdani, *Skanderbegu mbas gojëdhanash*, Shtypshkroja Franciskane, Shkodër, 1926; Rr. Zojzi, *ibid.*

⁴⁰ S. Pupovci, *op. cit.*, pp 32.

⁴¹ K. Ulqini, *op. cit.*, pp. 175-186.

⁴² M. E. Durham, *Some Tribal Origins and Customs of the Balkans*, George Allen and Unwid LTD, London, 1928, pp 65.

⁴³ J. Ivanova, *op. cit.*, pp. 97; K. Ulqini, *ibid.*

⁴⁴ Lekë Dukagjini was a quite curious historical figure. Furthermore, his figure has also taken the dimension of a myth comparable to the Albanian national hero Gjergj Kastrioti – Scanderbeg. Through the work of his first biographer, Marin Barleti, he is remembered for his struggle against the Ottoman Empire, whose armies he successfully ousted from his native land for two decades. (See: Marin Barleti, 1508, *Historia de vita et gestis Scanderbegi*

promulgated by Lekë Dukagjini the III (1410-1481).⁴⁵ This view is based, on the whole, on the popular tradition. There is no sound historical evidence that this Lekë actually promulgated Canon or in any other way codified Albanian Customary Law.⁴⁶

Scientists now mostly agree that the Albanian customary law - the Canon of Lekë Dukagjini – was formed through centuries and that it can not be scientifically (empirically) ascertained that it had been enacted by the real historical person Lekë

Epirotarum principis; Edward Gibbon, 1788, *History of the Decline and Fall of the Roman Empire*, Volume 6, Scanderbeg section; Camille Paganel, 1855, "*Histoire de Scanderbeg, ou Turcs et Chrétiens du XVe siècle*"; Hodgkinson, Harry. *Scanderbeg: From Ottoman Captive to Albanian Hero*. I. B. Tauris; Noli, Fan S.: George Castrioti Scanderbeg, New York, 1947) Actually, Lekë Dukagjini (1410-1481) was contemporary with Gjergj Kastrioti (1405-1468). Historiography knows both of them as hereditary princes reigning over their respective homonymous princedoms. Leka had become the Prince of Dukagjinini when his father, Pal Dukagjini died, (1446), while Gjergj had become the Prince of Kastrioti eight years after his father's, Gjon Kastrioti, death (1443). Dukagjini's Princedom, with Lezha as its own capital city, included Zadrima, the areas in north and northeast of Shkodra and was extended in remote areas of present Serbia, having Ulpiana, near Priština, as a second capital city. On the other hand, Kastrioti's Princedom, with Kruja as its capital, included Mat and Dibra region, reaching Rodon Castle on the Adriatic coast. Lekë Dukagjini had gained a comprehensive education under the spirit of European Renaissance in cities like Venice, Ragusa (Dubrovnik) and Shkodra. Meanwhile, Scanderbeg had achieved a fast and splendid military career in the Sultan's court of Istanbul. Leading the Lezha League (founded in Lezha in 1444) Scanderbeg considered Leka (initially his father Pal Dukagjini) the most trusted ally. They fought side by side until Scanderbeg died (1468). Lekë Dukagjini continued his marvelous deed leading Albanians in most difficult period of their anti-Ottoman resistance, until the end of his life (1481). Chroniclers and historians, such as Tivarasi/ Biemi, Frëngu, Barleti e Muzaka, Gegaj and Noli, enlightened the deeds of Gjergj Kastrioti, Lekë Dukagjini and other princes of that time. However, Lekë Dukagjini was shadowed in their works by the main figure in Albanian history, Scanderbeg. Albanian mythology identifies Scanderbeg with a dragon-prince daring to fight and always win against the monster, while Lekë Dukagjini is depicted as an angel-prince, who, with courage and wisdom, safeguards the continuity of Albanian cause (about this topic, see in more depth: Tonin Çobani, *The history of Lekë Dukagjini, History of Shkodra*, www.shkoder.net, 1998-2004).

⁴⁵ For example: Hyacinthe Hecquard, *Historie et description de la haute Albanie ou Guëgoric*, Paris, 1858, pp 218; A. Degrand, *Souvenirs de la Haute - Albanie*, Paris, 1901, pp 151; *Sal - i vilayet-i Kosova* for 1214 (1896/7), Prizren, n. 10 and 11, 1971; A Jovičević, *Malesija, Naselja i poreklo stanovništva*, knj. 15, Beograd, 1923, pp 96; M. E. Durham, *Some Tribal Origins and Laws and Customs of the Balkans*, pp 65-66; S. Villari, *Le consuetudini giuridiche dell' Albania (Il Kanun di Lek Dukadjin)*, Rome, 1940, pp 14; M. Hasluck, *The Unwritten Law in Albania*, (Edited by J. H. Hutton), Cambridge, 1954, pp 13; M. Krasnići, *Šiptarska porodična zadruga u Kosovsko-Metohijskoj oblasti*, Glasnik Muzeja Kosova i Metohije, IV-V, Priština, 1959-1960, pp 139, etc.

⁴⁶ Ludwig Thalloczy, *Kanuni i Lekës, Illyrisch – albanische forschungen, I*, Munchen und Leipzig, 1916, pp 411; Stojan Novaković, *Tursko Carstvo pred srpski ustanak*, Beograd, 1906, str. 197; B. Nedeljković, *KLD*, pp 434, 437 and 438; J. Ivanova, *KLD*, pp 114; Rr. Zojzi, *Mbi të drejtën kanunore të popullit shqiptar*, pp 146-147; S. Pupovci, *ibidem*, pp 38, etc.

Dukagjini.⁴⁷ Therefore, the Canon of Lekë Dukagjini is, in its nature, the customary law.⁴⁸ Lekë Dukagjini did not promulgate the Canon, but the latter was the product of unwritten popular customary law; it was a component of Albanian traditional law as a whole. It was named after Lekë Dukagjini, because Lekë had distinguished himself as a leader in the struggle against Ottoman Empire. The Canon of Lekë Dukagjini contains rules that, by their origin, are much older than Lekë Dukagjini himself.

According to other views (primarily Serbian authors),⁴⁹ the Canon of Lekë Dukagjini and even the whole Albanian Customary Law is a remnant of the Dušan's Code (1349 A.D.).⁵⁰ However, the majority of scientists agree that, although there are some similarities between these two bodies of law, that conclusion is far-fetched. Soon after the adoption of the Dušan's Code, the Turkish invaders conquered the medieval Serbian state and the major part of the Balkan Peninsula. Instead of that Code, customary law and many other patriarchal forms of social life were then revived, particularly among Albanians.⁵¹

Actually, the Byzantine Empire ruled over Albanians for a longer period of time than the Serbian medieval State.⁵² Therefore, due to the mere duration of Byzantine rule over the territories populated by Albanian tribes, Byzantine law must have exercised greater influence on the Albanian customary law than the Dušan's Code. Nevertheless, certain influences of this Code on the Albanian customary law,

⁴⁷ Dr. Ludwig Thalloczy, *Kanuni i Lekës*, Ilzrisch - albanische forschungen, I Munchen und Leipcyig, 1916, pp. 411; S. Pupovci, pp 36-38, S. Novaković, *op. cit.*, pp. 197

⁴⁸ Ibid.

⁴⁹ T. O. Oraovac, *Albansko pitanje i srpsko pravo*, Beograd, 1913, pp 22.

⁵⁰ Dušan's Code (Modern Serbian: Душанов законик, *Dušanov zakonik*) is a legal code, one of two the most significant cultural-historical monuments of medieval Serbia, accompanying St. Sava's Nomokanon. It was presented by Tsar Dušan in two state congresses: in 1349 in Skopje and in 1354 in Serres. See about this in:

http://en.wikipedia.org/wiki/Du%C5%A1an's_Code (last visited on February 28, 2008).

⁵¹ S. Pupovci, *ibid.*, pp 38.

⁵² The Byzantine rule over Albanians lasted intermittently from 330 to 1453. See in: Anastos, Milton V., *The History of Bysantine Science*, *Dumbarton Oaks Papers* 16, 1962, pp 409-411.

including the Canon of Lekë Dukagjini, might have penetrated into it through Montenegrin, Serbian and Macedonian customary law. For instance, there are some similarities in expressions such as “jury”, “fine”, and rules on soc and socage). According to one of Valtazar Bogišić’s surveys, there are traces of Serbian medieval law in Montenegro and Herzegovina. Therefore, some influences on the Northern Albania customary law might have come from there.⁵³ Mutual influences and permeations, not only in terms of customary law, but also in terms of spiritual heritage, have been very strong between Albanians and Montenegrins, and to lesser degree among Albanians, Serbs and Macedonians.⁵⁴ Living for many centuries as neighbors and constantly fighting against the Byzantine Empire, Ottoman Empire and other invaders, Balkan ethnicities exerted influence on each other in forming customary law.⁵⁵ For example, on the one hand, there are notable similarities between legal terms *dorëzonia*, *dorëzanija* (meaning: guarantee, security, warranty) and *dorzon*, *dorzanët* (guarantor, guarantors) that are used in Kanuni (§693-694) as well as *bestar* (§851-853) with the same meaning and, on the other hand, the legal terms *jemstvo* and *jemci* within the customary law of Monte Negro.⁵⁶ Another factor influencing similarities on customary of Balkans is the common Indo-European heritage of Balkan peoples. However, most of the rules of the Albanian customary

⁵³ Valtazar Bogišić, *O značaju pravnih običaja*, Pravni članici i rasprave, knj. I, Beograd, 1927, pp 40;

⁵⁴ Jašar Redžepagić, *Razvoj prosvete i školstva albanske narodnosti na teritoriji današnje Jugoslavije do 1918. godine*, Zajednica naučnih ustanova Kosova i Metohije, Studije, knj. 7, Priština, 1968, pp 245.

⁵⁵ V. Bogišić sad once a good neighbor, lends to the neighbor some of his own and also borrows from him. See in: *ibid.*

⁵⁶ Ilija M. Jelić, *Krvna osveta i umir Crnoj Gori i Sjevernoj Arbaniji* (translation: *Blood Revenge and Reconciliation in Monte Negro and North Albania*), Istorijско-pravna studija, Beograd 1926, pp 85 and 95. Rad Kosmajac, *Leka – Kanun*, Godišnjica Nikole Čupića XXI, Beograd 1901, pp 315-216. *Zakon Leke Dukađinija – Izveštaj podgoričkog okružnog kapetana Jovana Lazovića dostavljen dr. Valtazaru Bogišiću 4. decembra 1894. godine*, I, 13, 25, 50-501. (published in: *Anali Pravnog fakulteta u Beogradu*, oktobar, novembar 1956 godine).

law are autochthonous. The reasons for similarities lie in the similar socioeconomic relations and levels of development.⁵⁷

Leading Albanologist of the 20th century, Eqrem Cabej, writing about Albanian customs in general terms, noted that these customs form a sum of local customs differing very much among themselves.⁵⁸ It is known that empires, armies and ethnicities met and clashed in Kosova and Albania in the past.⁵⁹ This accounts for different influences in the way of life and customs of Albanians. *Vice versa*, Albanians have influenced, for their part, other peoples as well.⁶⁰ Therefore, the Albanian customary law mirrors the genesis and structure of the Albanian language.⁶¹ In Albanian customs, one can discern a series of influences: a) pre Indo-European; b) Indo-European; c) Ancient Greek; d) Roman; e) general Balkan; and f) Osmanli.⁶²

The rules of customary law, known under the name of the Canon of Lekë Dukagjini, actually reflect many foreign influences. However, most of them were the result of contemporary socioeconomic and other conditions. The Canon of Lekë Dukagjini was undergoing continuous changes parallel with socioeconomic and cultural changes. For example, the customary law in Northern Albania rural community, as a variant of Albanian customary law, embodies--as it is easy to note--numerous rules and institutions that came into being after Lekë Dukagjini's time,

⁵⁷ For example, the aforementioned terms *dorzon* (*dorëzonia*, *dorëzanija*, *dorzanët*) is a noun of masculine gender. Etymologically, this term is rooted the word *dorë*, meaning hand. That is comparative to Greek *xeup* and Armenian *jern*. All of this associates inevitably to the legal notion of Roman Law *manus – capere*. About the etymology of these words see in: Gustav Meyer, *Etymologisches Wörterbuch der albanesischen Sprache*, Strassburg, 1891, pp 77.

⁵⁸ Eqrem Çabej, *Život i obiçaji Arbanasa, Porodica i društveni poredak*, Knjiga o Balkanu I, Beograd, 1936, pp313.

⁵⁹ Eqrem Çabej, *ibid*.

⁶⁰ About the mutual linguistic influences between Balkan peopies and wider see in: Harvey E. Mayer, *REFLEXES OF INDO-EUROPEAN SYLLABIC RESONANTS IN BALTIC, SLAVIC, AND ALBANIAN*, LITHUANIAN QUARTERLY JOURNAL OF ARTS AND SCIENCES, Volume 37, No.4 - Winter 1991 (http://www.lituanus.org/1991_4/91_4_05.htm - last visited on March 5, 2008)

⁶¹ Eqrem Çabej, *ibid*.

⁶² Eqrem Çabej, *ibid*.

during Turkish rule. Those are the rules on the tribal society, on the banner and flag bearers, company commanders etc.

KANUN AND OTHER BODIES OF ALBANIAN CUSTOMARY LAW

Kanuni i Lekë Dukagjinit is not the only collection of traditional Albanian law. Besides the Canon of Lekë Dukagjini, there are other sources of Albanian Customary Law such as: Kanuni i Skënderbeut (Canon of Scanderbeg),⁶³ Kanuni i Malsisë së Madhe (Canon of Highlands), Kanuni i Labërisë.⁶⁴ As opposed to these, the Canon of Lekë Dukagjini has been more flexible and enriched with new elements as the consequence of historical changes.⁶⁵ Scientists mostly agree that these Canons are more or less similar, and that in fact present different variants of the same customary law.⁶⁶

Kanuni i Malsisë së Madhe is implemented by the Kastrati, Hoti, Gruda, Kelmendi, Kuç, Krasniqi, Gashi, and Bytyçi tribes living in the west of the country near the lake Shkodra and on the eastern highlands of Gjakova, just north of the region living by Kanuni i Lekë Dukagjinit.⁶⁷ These two codes are fairly similar. The so-called Kanuni i Skenderbeut, also known as “the Canon of Arbëria” is mainly followed in the regions of Dibra, Kruja, Kurbin, Benda, and Martanesh, the former province of the Castriotas, south of the region of Kanuni i Lekë Dukagjinit.⁶⁸ The Southern Albanian Kanun of Labëria is upheld in Vlora, Kurveljesh, Himara, and

⁶³ J. G. Hann, *ibid.*.

⁶⁴ S Pupovci, *ibid.*, pp 38.39.

⁶⁵ Rr. Zojzi, *Mbi të drejtën kanunore të popullit shqiptar*, Buletin për shkencat shoqërore, n. 2, Tiranë, 1956, pp 144 – 148.

⁶⁶ Kahreman Ulqini, *Gjurmime etnografice në trojet e Skanderbegut*, Buletin i Univerzitetit Shtetëror të Tiranës, Seria Shkencat shoqërore, no. 2, 1961, pp. 175-186.

⁶⁷ Rr. Zojzi, *ibidem*.

⁶⁸ J. G. Hahn, *ibidem*; K. Ulqini, *ibid.*

Tepelena, and most of all in the region commonly known as “the region of the three bridges” (Drashovica, Tepelena, and Kalasa).⁶⁹ This latter is a Southern Albanian code preserved in the oral tradition and traditionally linked to “Papa Zhuli”. Papa Zhuli was the founder of the village of Zhulat nearby Gjirokastra.

THE MOST SALIENT FEATURES OF THE CANON OF LEKË DUKAGJINI

The underlying philosophy of the Kanun is difficult to grasp for anyone who has not grown up in the cultural environment of Northern Albania and Kosova. The terminology of the German and Albanian/English versions available in Priština (the capital of Kosova) may actually be even misleading.⁷⁰ Nevertheless, the study is worth an effort as the Kanun offers a truly intriguing insight into a unique culture based on honor and chivalry.

The code was divided into several books, chapters, headings, articles and paragraphs. Those are devoted to: Church, Family, Marriage, House, Livestock and Property, Work, Transfer of Property, Spoken Word, Honor, Damages, Law Regarding Crimes, Judicial Law, and Exemptions and Exceptions.

Kanuni and Blood Revenge

⁶⁹ See in: [http://de.wikipedia.org/wiki/Kanun_\(Albanien\)](http://de.wikipedia.org/wiki/Kanun_(Albanien)), last visited on March 5, 2008.

⁷⁰ The recent German and English translations of Kanuni i Lekë Dukagjinit help international peace-keeping soldiers serving in the region understand the traditional culture of the people of the Northern Albania and Kosova as they maintain the daily contact with the local population. (*Kanuni I Lekë Dukagjinit* (KLD). 1989. Albanian Text Collected and Arranged by Shtjefën Gjeçov, Translated by Leonard Fox. Gjonlekaj Publishing Company: New York)

It is interesting that the Canon of Lekë Dukagjini is mentioned most often in connection with blood feud.⁷¹ It says: "*The father of family (pater familias) is responsible for the evil or the one who stands behind it*"; "*he who fires a shot draws blood on himself*"; or "*the gun brings blood home*"; "*the gun stains you with blood*".⁷² Blood revenge (gjak, gjakmarrje) is exercised by the victim's family in accordance with the Kanun. The Kanun strictly stipulates the preconditions under which blood revenge must take place: the person to fall victim of the revenge must be shot during the daytime, right on a main street, face to face, after being addressed by his name.⁷³ Every family has the right to avenge the death of its members. Blood feuds have always involved only men.⁷⁴

The killer is expected to notify the victim's family and arrange for the transportation of the corpse back to his home.⁷⁵ Taking victim's weapon is absolutely forbidden.⁷⁶ A proof of the murder must be sent to the victim's family and 24-hour ceasefire must be requested through a mediator.⁷⁷ If the victim's family kills the perpetrator during the 24-hour ceasefire, the revenge is considered accomplished. Killing the perpetrator against the rules of Kanun may be expected to lead to yet another blood revenge.

⁷¹ BBC. 5 May 2002. Mike Donkin. "Eyewitness: Albania's Blood Feuds." <http://news.bbc.co.uk/1/hi/world/europe/1964397.stm> [Accessed 24 Nov. 2003]; *New York Times Magazine*. 26 December 1999. Scott Anderson. "The Curse of Blood and Vengeance." (Albanian Students Association (ALBSA) List Serve 11 Oct. 2001) <<http://www.albnet.com/pipermail/albsa-info/2001-October/002361.html>> [Accessed 23 Oct. 2003]; *The Observer* [London]. 21 September 2003. Sophie Arie Puke. "Blood Feuds Trap Albania in the Past: Thousands Forced to Take Refuge As Medieval Code Targets Fathers and Sons." (NEXIS); Feuds-Forgotten Rules Imperil Everyone (Part 3)." <<http://www.rferl.org/nca/features/2001/10/12102001125212.asp>> [Accessed 24 Nov. 2003].

⁷² Book X, Ch. XXII, Art. 124., §886-897.

⁷³ Ch. XXI, Art. 122.

⁷⁴ Ch. XXI, Art. 124, §897.

⁷⁵ Ch. XXI, Art. 119, §844-845.

⁷⁶ Ch. XXI, Art. 119, §847.

⁷⁷ Ch. XXI, Art. 121-122, §851-856.

It should be added, however, that the rules on blood feud form only a very small part of the Canon and not its core, as is often erroneously believed. As regards blood feud, the Canon is regressive indeed. But, it also allows for the possibility of the blood being redeemed. There is a wide spread practice of settling the blood feud thorough the efforts of friends (mediators, conciliators, warrantors) and other good-willed persons as well as through general amnesty.⁷⁸ Whenever avoiding the blood feud is desirable, the village, the tribe or the clan may authorize the execution.⁷⁹ There are many Kanun specialists in Kosova and Northern Albania who have been working for decades to put an end to the blood feuds plaguing the country.⁸⁰

However, these infamous rules, specifying how murder was supposed to be handled, often led to blood feuds that lasted until all the men of the two involved families were killed.⁸¹ The party offended must take revenge in order to fulfill the law and maintain proper respect for men.⁸² Over the ages, this mentality has led to endless blood feuds.⁸³ Practically, it was one of the main causes for the decimation of Northern Albanian tribesmen by the beginning of the 20th century.⁸⁴ These rules resurfaced in late 90's in Northern Albania, since people have lost faith in the

⁷⁸ Ch. XXI, Art. 135-140.

⁷⁹ Book 11 Art. 141.

⁸⁰ During the 90's, one of the most renowned reconciliators was a famous albanologist Anton Çetta (http://en.wikipedia.org/wiki/Anton_%C3%87etta (last visited 13. mart 2008. godine); Jeta Xharra, Comment: *Time to End Destructive Kosovo Clan Warfare*, Balkan Crisis Report, (http://iwpr.net/?apc_state=hsrfbcr242282&l=en&s=f&o=242281 - last visited on March 7, 2008).

⁸¹ See in BBC. 5 May 2002. Mike Donkin. "Eyewitness: Albania's Blood Feuds." <http://news.bbc.co.uk/1/hi/world/europe/1964397.stm> [last visited 24 November 2003]; *New York Times Magazine*. 26 December 1999. Scott Anderson. "The Curse of Blood and Vengeance." (Albanian Students Association (ALBSA) List Serve 11 Oct. 2001) <<http://www.alb-net.com/pipermail/albsa-info/2001-October/002361.html>> [Accessed 23 Oct. 2003]; *The Observer* [London]. 21 September 2003. Sophie Arie Puke. "Blood Feuds Trap Albania in the Past: Thousands Forced to Take Refuge As Medieval Code Targets Fathers and Sons." (NEXIS); Feuds-Forgotten Rules Imperil Everyone (Part 3)." <<http://www.rferl.org/nca/features/2001/10/12102001125212.asp>> [Accessed 24 Nov. 2003].

⁸² Book X, Ch. XXII, Art. 124.

⁸³ See media accounts, op. cit., ibid.

⁸⁴ Ibid.

powerless local government and police.⁸⁵ Many organizations have tried to mediate between feuding families and try to get them to “pardon the blood” (in Albanian: *me e fal gjakun*), but often the only resort is for men of age to stay in their homes, which are considered a safe refuge by Kanuni,⁸⁶ or flee the village or even country.⁸⁷

Kanuni and Family

Albanian society is based on the extended family. Up until now, several generations have lived together even in the more advanced areas. The young generations consider it is their duty to take care of the elderly.⁸⁸ The oldest man in the family (household) is an almost omnipotent *paterfamilias*. The Roman influence on the Albanian customary law can be easily observed through the similarity of the role of *pater familias* in early Roman law and that of in Kanun. In the absence of organized state structure, *pater familias* is a sort of local state-like authority empowered to punish, adopt, and banish members of the family.⁸⁹ Under Kanun, *father of family* is not to be self-imposed, but rather chosen among the elder members of the family. If his rule is not beneficial to the family (household) or leads it to poverty, family members (adults) have the right to dismiss this *pater familias* and appoint another one.⁹⁰

⁸⁵ Ibid.

⁸⁶ Book X, Ch. XXII, Art. 124, § 896.

⁸⁷ Jeta Xharra, op. cit., ibid.

⁸⁸ Book II, Ch. II, Art. 9-10, §18-27.

⁸⁹ See in more depth about this in: Obrad Stanojević, *Rimsko pravo*, Službeni list SFRJ, 1989, pp 34. This similarity of father's authority over life and death of his sons in Roman Law of XII Tables and Kanun was noted by Gjecovi himself in the footnote 32 of Art. 33, §59.

⁹⁰ Book II, Ch. II, Art. 9, §24.

Before the head of family dies, he usually makes his will known to all pending family matters. His will is always respected by all members of the family.⁹¹ Should the head of the family die without the will, the elders convene to discuss the matters of community life. In this case, the family heritage is handed out by the oldest man of the village.⁹² There are also strict rules for killing a family member.⁹³

No relationship is allowed between man and woman outside marriage.⁹⁴ This relationship is considered as the most serious crime: A perpetrator faces banishment, his house is to be burnt and land deserted.⁹⁵ When a young man announces his engagement, the parents of the bride may force their daughter to enter wedlock and, if she refuses, actually authorize the bridegroom to kill the bride with the ammunition given to him as part of their daughter dowry.⁹⁶ If the bride's parents disapprove of their daughter's refusal of the bridegroom, she will not be allowed to marry anyone else, even if the man originally requesting her hand has married someone else in the meantime.⁹⁷

Children born out of wedlock are excommunicated from the family and may not inherit the wealth of their parents.⁹⁸ A wife and his lover may only be killed if found *in flagranti* (caught during the sexual intercourse). Not more than a single shot may be used.⁹⁹

⁹¹ Book III, Ch. I,X Art. 39, §105.

⁹² Book II; Ch. VIII, Art. 36-43.

⁹³ These rules are contained within the Article under the title: Blood (Book, 10, Ch. XXII, Art. 124).

⁹⁴ Book II, Ch. V, Art. 32.

⁹⁵ Ibid.

⁹⁶ Book II, Ch. III, Art. 17, §43.

⁹⁷ Ibid.

⁹⁸ Book II, Ch. V, Art. 32.

⁹⁹ Book X, Ch. XXII, Art. 129., §920.

Kanuni and Besa

Kanuni also maintains values that are still considered unquestionable today: these include the given word or “*besa*”, the sacredness of promise, and the respect for guests and friends. “*Besa*” (solemn oath) is something that is the most sacred to an Albanian. It is the given word, promise, guarantee. In the Albanian customary law, this word stands for guarantee that an injured party will not resort to revenge against an assassin during a certain period of time (duration of “*besa*”), in the course of which the assassin, protected by “*besa*”, as well as members of his family, can move around freely.¹⁰⁰ For an Albanian “*besa*” is a sacred thing, meaning loyalty and keeping the given word. It transcends the frameworks of life and death, so that he who has given the word or promise feels--according to the legend--an obligation to fulfill it even after his death. The word “*besa*” is used in other Balkan languages as well. There is a borrowed term in Bosnian, Serbian and Croatian. For instance, both “*besa*” and “*vjera*” (given word in South-Slavic languages) are used in the same sense in Montenegro and other parts of West Balkan.

The legal concept of besa and solemn oath in Kanun is notably similar to the concept of *stipulatio* of Roman law and *promissory oath* from canonical (ecclesiastical) law of the Catholic Church. These legal concepts are characterized with formalism and sacral nature coupled with intrinsic religious and emotional effect. The influence of religion on positive law was usual within legal systems of nations in the "stage of childhood."¹⁰¹ Insufficient development of state apparatus in these young nations prompted them to rely upon customary law and religious sanctioning.

¹⁰⁰ Book X, Ch. XXII, Art. 129., §851.

¹⁰¹ R. Ihering, *L'esprit du droit romain*, t. III, Paris, 1987, pp 225, 210.

The respect for guests is one of the highest tenets for this body of law. The status of the guest is covered by the rules devoted to honor.¹⁰² It is stipulated in the paragraph 602: “*The house belongs to God and guest.*” The guest is under host’s protection. Murder of the guest inflicts gravest disrespect to the host, and hence obliges him to avenge this murder.¹⁰³

Kanun is a body of law well suited for regulating all aspects of social life of a tribal society. Development and evolution of this customary law is in negative proportion with the rise and development of the modern state. The process of rise of the modern state and hence diminishment of relevance of customary law and its transition towards fully fledged legal system is still ongoing on Balkan Peninsula. This customary law, tribal and local by nature, although based on blood feud and composition of blood feud, may well serve as a necessary moral foundation for secular and modern legal systems in Albania and Kosovo to replace it inevitably in almost all aspects. The necessary moral foundation of positive law ought to be, once again, the communitarian character of the society which Kanun helped to maintain for centuries. Modern law, in contrast to the old law, is learned, sophisticated, systematized; but it could not have come into being, and could not have continued to exist, without the foundation of structured, close-knit tribal communities, with their strong emphasis on good faith, chivalry, interdependence, comradeship, mutual responsibility, and other communitarian values.

¹⁰² Book VIII, Ch. XVII, Art. 97-98.

¹⁰³ Ibid., Art. 97, §640-652.

Finally, the question emerges: why is blood revenge necessary, especially knowing that the original murder will not be undone by the continuation of killing? The answer lies in religious belief: blood revenge is more than just meeting out justice. In other words: the soul of the murdered relative will only rest in peace if his murder has been properly avenged.¹⁰⁴

No matter how brutal may be in some respects and discriminating to women and other non-adult members of tribal society, Kanuni i Lekë Dukagjinit reaches almost all aspects of society--there is no societal, economic or moral sphere that is not covered by its norms. Despite its perennial conflict and tension with modern written legislature, procedures and judiciary, there is hardly anyone denying the effectiveness and moral value of the Kanun in regulating the social life of the Albanian people over centuries. Certainly, under the impact of the secular states, and the rationalization and systematization of modern law, Kanun is to and should die out leaving the necessary foundation of communitarianism, good faith (*besa*) and morality to positive law.

¹⁰⁴ Anton Çetta, *Tregime populore, Drenicë, Bleni I, Prishtinë, 1962.*