

Female position on the right of Inheritance A comparative overview between the Canon of Lekë Dukagjini and the Canon of Labëria

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Abstract

Albanian women today, apart from legal equality to men, which is guaranteed to them by laws and bylaws, strive to achieve gender equality in every sphere of life. But how has the position of women throughout centuries in Albania been inheritance-wise? What have the unwritten but applied laws by Albanians foreseen in years? The focus of this material is going to be zoomed in the Canon of Leke Dukagjini as the largest compilation of customary laws in Albania. Then, it is going to be analyzed through a comparative lens with the Canon of Labëria (Northern Albania).

By viewing at only one article it is understood how the Canon of LekwDukagjini treats the inheritance of women. Node 20 titled "The Inheritance of the Albanian Woman" foresees that:

*"The Albanian woman has no right to inherit from their parents, neither outfits, nor property. The Canon sees woman as merely an extra object at home. The parents do not have to worry for a dowry or anything else for their daughter; whoever takes her needs to take care of everything. The parents of the boy who marries the girl needs to think of everything that is needed for her marriage."*¹

The analysis of this logic is going to be thoroughly explained in the rest of this material.

Keywords: Hereditary Law, The Canon of Lekë Dukagjini, The Canon of Labëria.

Introduction

The Albanian customary law derives from antiquity and consists of one of the oldest legal systems in Europe. This right is not only a feature of the Albanian people, but it has also acted upon other populations around the world. It is an unwritten right, transmitted generation after generation through oral traditions that served as enhancers of legal relations in Albania throughout centuries. During periods of domination from various foreign powers (e.g. The Roman Empire, The Byzantine Empire, The Ottoman Empire, etc.), the customary right was not assimilated. It preserved its original peculiarities, thus surviving and continuing to be implemented and applied in practice (Elezi, 2003). Such power of law derived from the function that this right had in the community and the aim of protecting it. However, the customary rights involved in the Canon have not always been static. They have gone through changes in accordance to their historical development; change and supplied with new norms in order to fit the specific requirements of the socio-economical development.

¹ Original: Kanuni i Leke Dukagjinit, Nye I njizetet ,faqe 14, Shtepia Botuese Kuvendi, 2001.

According to historical sources, the governments of the Roman and the Byzantine Empires were obliged to give the right to various autochthonous communities of owning the customary right for local self-governing (Rushani, 1997). In this sense, the customary right acted in addition to the Roman, Byzantine, ecclesiastical, sharia and Ottoman laws.

Albanian customary law is characterized by unity and diversity. It is unique, because it belongs to an entire nation, from North to South, thus bearing the same principles and base institutions. At the same time, it is diverse because these Canons belong to different areas and contain local features, sometimes beyond distinctive (Kuri, 2004).

The word *canon* etimologically derives from the ancient Greek word *κανών*, meaning "straightedge" (a wooden tool that serves to draw straight lines), "measuring rod" or "standard". Generally, it is a word that stands for *order*. Metaphorically, the word *Kanun* identifies the entire oral, yet uncodified laws, which governed upon the lives of Albanian people in the past (Gjecovi, 2016).

In the Illyrian, Arbëresh, and Albanian territories, there have been applied various Canons, such as the Canon of Lekë Dukagjini, the Canon of Scanderbeg, the Canon of Labëria, the Canon of Lume, the Canon of Bende, or the Canon of Dibra. All these Canons have expanded their influence in various areas of the country and have had mutual, but also distinctive features from one another

1. Canon of Lekë Dukagjini

This canon has acted in the Northern area, mainly in the Malësia e Madhe, Dukagjin, Kosovo, etc. By the end of the nineteenth century-beginning of the twentieth century, it was Gjeçovi the first one who compiled and codified this canon. It was first published in the "Hylli I Dritës" magazine in the city of Shkodra. Following his death in 1929, the canon was fully published in 1933, again in the city of Shkodra, by Franciscan friars renamed as "The Canon of Lekë Dukagjini". The material has been published several times in the Albanian language, but also in other languages.

Friar Gjeçovi collected elements of this Canon through oral declarations of the Albanian people. Thus, this is the main source of the Albanian customary law, as it stands as the fullest and best preserved corpus. With minor exceptions (e.g. excluding woman from every civil role; blood feud and face scratching in case of death), all of the Canon laws resemble the old laws of the Romans, Byzantines, Slavs, Indians, etc. but not the ones of the barbarians.

2. The Right of Inheritance in the Canon of Lekë Dukagjini

This canon recognizes as inheritors only the family sons, and never daughters. Neither a son that has not been married is not recognized as an inheritor. In the Canon, the inheritance follows a linear 'masculine' path, and the inheritance also belongs to the grandson by blood trunk from the father's side. The Canon does not accept that the grandson of *tamli* (the milk) (a grandson from the wife or the daughters' side) can inherit. Also, the wife is not involved in the inheritance, neither from her parents' side nor her husband's for these reasons:

- *The wife's grandsons cannot pretend to get involved in the wealth of her husband or her son(s).*

- *The wife's parents cannot pretend to inherit the wealth of their groom.*
- *For the families of a certain bajrak not to get involved with the families of another bajrak. (bajrak = an Ottoman territorial unit, consisting of villages in mountainous frontier regions of the Balkans, from which military recruitment was based.)*

The Canon strictly claims that in case a house has a hundred daughters, they must not get involved in their parents' inheritance: neither them, neither their sons or daughters, because according to the Canon, "grandson and granddaughter cannot "depend upon the shepherd stick of their uncles." Thus, even if the father has no sons, he cannot inherit land, house, or property to their daughters.

As an exception, the Canon says that if the father is alive, he has the right to give his daughters cash money, clothes, and objects/furnitures. But, after his death, the daughters have no right to ask for money or anything else, despite anything that could have been promised to them from their father as long as he was alive.

The Canon predicts that in case a house is left only to a young orphan boy, without parents or siblings, then his cousins are obliged to raise him and preserve his land or animal belongings, with no right of selling and exchanging. When the boy turns fifteen years old, the Canon recognizes him as a man and he gets the right to his properties and wealth. But, in case there is no boy in the house, then the nearest male cousin moves in the house of the granddaughter or takes her with him in his place, and in such occasion, he also gains the right to her wealth, property, or animal belongings.

According to Prof. Ismet Elezi, The Canon of Labëria and the Canon of Lekë Dukagjini, despite having acted in different time and space share various distinctions. The first one refers to eleventh century traditions, while the second one to the fifteenth century ones; the first acted in the Southwest of Albania and the latter in Northern Highlands. Nevertheless, they share many similar norms, they share a common groundwork, and they are an integral part of the Albanian nation-wide Canon, which went through and survived the storms of foreign invasions over the centuries.

3. The Canon of Labëria

This Canon has acted in the Southern Albania and is also recognized by the citizens as the Canon of Idriz Shulli. The latter was a reformer who applied changes in the Canon's norms, in order to adapt it to the socio-economical norms of the South during the Ottoman reign in the Albanian territory. His base institutions are similar to the Northern Canon, except for the fact that this one was bolder and more authentic, which drew special interest. The Canon of Labëria was compiled and codified from Professor Elezi and published in 2006. This Canon has acted in the villages of Vlora, Himara, Kurvelesh, Rrëzoma, Kardhiq, Rrëza (Tepelena), Mallakastër, and the Lab population of Gjirokastra, Delvina, Tepelena, and Vlora. In large part, The Canon of Labëria contains the customary laws of eighteenth to the twentieth centuries, why not even earlier norms. The Canon, as a monument of the spiritual culture of the Lab community, resembles a hundred-year Southern castle, built stone-by-stone, as a monument of material culture: together unified creating a part of the Albanian population's culture (Elezi, 2002). Apart from general norms, the content of the Canon primarily introduces the main principles: freedom, equality, honor, loyalty, hospitality, as moral values of the society and legal principles.

The social order (fraternity, kinship, womb, generations, gender) and family or marital relations in the Canon mirror the evolution from gender community to patriarchal order in the family, with influences from the Roman law, which stood for patrimony and gradual development towards some kind of emancipation in family relationships. The main focus laid on the monogamous and exogamous marriage and inequality in woman, as a result of the strong Shari'ah influence. As a result of these socio-economic distinctions, the Canon of Labëria regulated the legal relationships between landowners and serfs; civil and contractor relationships of land owners and farmers; between aghas of livestock herds owners and herders. All these mirror a clear distinction between the Canon of Labëria, the Canon of Lekë Dukagjini, or the Canon of Scanderbeg which was applied in the north of Albania. Many differences can be observed in the adjustments of family and marital relations. Tribes and large patriarchal families in Labëri, from the second half of the eighteenth century until the beginnings of the nineteenth century were in the process of complete disintegrations. They would be replaced by fraternities, middle/small families which were separated from the parental trunk, having their own economy, whether it was small or medium. Oral traditions claim that a Lab family would usually consist of ten to twenty members, with a maximum of thirty, unlike the northern areas, where the Canon of Lekë or the Canon of Scanderbeg functioned, where a family would consist until a hundred members. The old patriarchal norms were enslaving to the woman. They did not attribute her rights compared to the man, except for protecting her honor (Elezi, 2002). In the second half of the nineteenth century, after reforming the old norms, the role of woman in Labëria began to gain strength within the family, but also within marital relationships that gradually were liberated in one way or another. The patriarchal-tribal relations, the absolute parental authority and the absolute domination of the man towards woman softened, but still preserving the features of the past patriarchalism. The female gender earned rights and freedom which were previously denied to her, but also adolescent children could easily separate from the parental trunk.

4. The Echo of the Albanian Canons in the Western World

Various researchers, historians, jurists and publishers from different countries in the world have studied the Albanian customary right, specifically the Lekë Dukagjini Canon. Among many, it is worth referring to some of these individuals and their opinions:

"The Canon is a code of the customary right, deeply planted in the conscience of the Albanian people" (Villarin, 1940).

"By Canon are explained the entire principles, institutions, and traditional Albanian norms that function despite the state law" (Valentini, 1954).

"The Canon of Lekë Dukagjini compiles the laws and customary laws orally transmitted in centuries, which later turned into codes when they were collected and written by Friar Gjeçovi, the true legislator of the Albanian judiciary tradition" (Resta, 1987).

“...the Canon of Lekë Dukagjini, orally transmitted throughout centuries as the only source of rights, that has regulated the social life of a martyred population without any other laws, was collected and codified in the beginnings of the twentieth century from Friar Sh. Gjeçovi. It is still present in the life of the Albanian society, especially in the ethical and moral principles that are the base of the Canon, such as *besa* (loyalty), the word of honor, the friend, fraternity, manliness, etc...” (Villari, 1940).

Conclusions

I conclude this modest material with the epilogue of prof. Fabio Berti's, who claims: “The Canon still remains a myth that evokes something mysterious and unknown, because in many hidden aspects of the Canon, wisdom and irrationality are injected. This book makes us see the Albanian people through another lens, not as a lost community without dignity, but a proud population with a long history and a community of traditions that carry value. Thus, the Canon is a monumental work, a cultural wealth of the customary Albanian laws that mirrors how Albanian tradition has been built throughout centuries.

It has been a long time since 1912 when independence was claimed, that the judicial norms (of the Ahmet Zogu era, the Communist Regime, and these thirty years of democracy) have foreseen inheritance as included in the civil and family codes of the time, which included legal equality of inheritors despite their gender.

Unfortunately, the situation in Albania, despite beautifully-written modern laws of the time, is still under the influence of the Canon. Many Albanian families, especially in the deep, lost highland areas exclude girls and women from their inheritance, thus continuing the strong tradition of inheritance only through a male path.

A clarifying, convincing, cultural and extraordinary work is needed for the legal right of inheritance despite gender to be understood and accepted, but also freely required from Albanian girls and women who are equal to Albanian men.

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