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THE ALBANIAN CUSTOM'S RIGHT IN HISTORICAL- JURIDICAL ASPECT, A NOTE ABOUT LEKE DUKAGJINI AND SKANDERBEG'S CODE

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Abstract

The article aims at treating what the Albanian custom's right is, the historical and social conditions of its birth and its implementation. As well, it stops on the historical evolution of this right and on the considerations of some foreign and Albanian authors about it. The analysis is focused only on the codes of Leke Dukagjini and that of Scanderbeg, as two of the most important ones which acted in the north of the country, in Dukagjins' and Kastriots' principates. Their content and their composition as well as their basic features are described in the article. Special attention is dedicated to the originality of the Albanian custom's right, considering these codes as moral codes, ethical and juridical codes with its institution, such as: the institute of Oath, hospitality, etc.

Keywords: Custom right, Leke Dukagjini, Skanderbeg's Code

Introduction

Leke Dukagjini's and Skanderbeg's codes just as the entire Albanian's custom's right are unwritten laws and have not been declared by any legislative state organ, they have not been decreed by any monarch, as well as they have not been imposed by any occupier. These two codes reveal the custom's right born in practice, with a considerable role of elderly precedents which contain juridical, civil, penal and moral norms, born, developed and implemented in the country, as a necessity to regulate the life of villager community, in the circumstances of a legal vacuum. As custom's right, it has been an unwritten right and has existed as a reflection of the material and social life's conditions of peasantry and especially

that of mountaineers. The rules of this right are revealed in the two codes in their civil and penal aspects and in the historical, social and psychological context.

Firstly, the historical documental sources about their study demonstrate the importance they have. In an important consideration, there are shown their distinct features that label them as two special codes: the origins, the name, their territorial space implementation, as well as the economic and social circumstances where they were born. In the Albanian principates framework (XII – XV centuries) the juridical and political institutions are noted, but as well it was evident even the fact that this custom's right is fully-preserved and rich at the Albanians in the form of "Corpus Juris".

In the analysis of the civil-juridical reports, in this article I have included the family right, analyzing the juridical position of the female, the institution of brotherhood and sisterhood, as well as the moral principles of these two codes, through their basic institutions like: *Friend and Oath*.

The governing and judicial activity is treated through the function of the convention and activity of the elders, analyzing them as organisms that analyzed and solved problems of direction and administration of peasantry communities, but as well that judged and solved law and administrative cases, according to the norms and practices of the codes.

The judicial-penal relations

These codes include the penal custom's right, which incorporate: penal actions against people, penal actions against family relations, penal actions against private property as well as penal actions against self-governing organisms of the peasantry community.

Blood feud is a phenomenon of self-judging in the code and needs to be considered from the historical, juridical and social aspect. The articles of this institution treat the punishments of the guilty too, but the codes of Scanderbeg and Leke Dukagjini have got their meeting points and their non-meeting points.

Leke Dukagjini's Code

This code is an unwritten one and it is composed of 1263 articles, an entirety of rules formed in conformity to the historical development of the people in different epochs. Therefore, when we say Leke Dukagjini's Code, we mean, not the code declared in state ways, from a legislative organ, but the custom's right created in practice. The meaning of the code, as an unwritten right, defines the inside of the right, its content as a particular source.

Nevertheless, starting from the second half of the XIX-th century it is noted that the unwritten right is raised in a higher status, in fixing the behavior manners, in specific juridical acts. Reflecting a new stage, in the development of the custom's right, these acts aim at better regulating the juridical relations, complimenting the existing norms towards the main corpus of the right. This code just like the written right in general, has undergone an internal process of evolution, in accordance to the historical development of life in different epochs.

In the corpus of the right, this is noted in those dispositions of the code where the juridical material despite being reflected in the present, the norms of the right are noted, as they have lost or not their acting power, but they are evaluated as a rudiment, belonging to the past. In the summary of the code by Sh. Gjecovi, this content has the forms "Old Code" and "New Code", meaning that the rules of behavior have been transformed, lost and replaced in an assertive and denying plan in accordance to the requirements of the time, to the development of the historical development of the society. In Leke Dukagjini's code, the evolution of the norms is an expression of the movement of life. But, differently from the written legislation, it has been very slow.

For long historical periods, the general cradle of the code has remained the same, whereas the norms that have been imposed have always been new like the development of the country. This special way of the evolution of the code, has not been caused by "the lack of a powerful creative people's potential" or by the geographical environment, as a defining factor of "the modeling of life's way", but by factors of historical character, by the specificity of the code, as a special form of the social awareness. It is revealed as an entirety of special norms of juridical culture. Generally, it is characterized by a variety of basic features which in their organization entirety, define the content of the juridical rules, their qualitative side and in these features there are included even those with collective and traditional character and the anonymity of norms, folks' character and their oral transmission, showing the code as a separate juridical formation. The collective character of the code, neither excludes nor limits the individual creative initiative, which despite it, brings the weakening or the narrowing of the anonymous character, it gives the opportunity to have a bigger variety of the juridical norming. In the basic features' knowledge of Leke Dukagjini's code, it is important to stress that the oral transmission, has been the way of existence of the code and the basic mechanism of communication of the juridical information, in the vertical direction from one generation to the other, as well as in the horizontal direction at the contemporary people.

The juridical institutions are different in this code. According to the content they are divided into two groups: institutions that form the entirety of the norms, the general part of

the right and in juridical institutions that form the particular part. The norms that have to do with the penal acts meaning, the conditions of responsibility, the types of punishments and their ways of acting are classified in the field of penal right. Special figures of penal acts are included in the particular group, as well as the concrete punishments of each of them. This division is special for any branch of the right. The collector and the publisher of the code Sh. Gjecovi, in the composition of the right's norms, in general is refrained to the creation of the work according to the example of codes history knowledge and to some extent he has succeeded. However, the unification of the material's system, not always is revealed with norms belonging to special branches of the right for instance in the title "Code of the Elderly", the rules of penal procedure are grouped together with the rules of civil right. The composition of the norms according to the system of the right has got assigned juridical values. Thus, in the analysis of the noted deficiencies, different researchers undertook works for the coding of the new code, following as a criteria the classification of norms in the private rights and the classification of the norms in the public right.

Skanderbeg's Code

Skanderbeg's Code has got 225 pages and it is divided into seven parts with 378 chapters and 3435 articles. Each part is divided into several chapters: the First Part of the code is dedicated to the family, the second part is dedicated to home, the third part is dedicated to the duties, the fourth part is dedicated to governing, the fifth part is dedicated to punishments, the sixth part is concerned about faults and harms, whereas the seventh part is dedicated to the church. It was consolidated as a "corpus juris", implemented until lately in the country once ruled by the Kastriots, mainly in the regions of Mar, Dibra, Kurbin, Benda, Tamadhea and Martanesh. Its naming was widespread in the more narrow territorial space than LekëDukagjini's code. Family life's organization, the rights and the duties of family members according to the old traditions are included in this work referring to the division in chapters. Rules about house property, retails and purchases, the property's right and inheritance, the division of house, the institutes of Honor, Oath, and hospitality, social organization and cohabitation, neighborhood and region. Hierarchy and the functioning of family life's at home, clan, village, bayrak and region, the duties and the rights of individuals and collectivity are reflected in it¹.

¹XhyherCani, *KërkimembiKanunin e Skëndërbeut,(Researches on Scanderbeg's Code)*Shkodra, "Camaj – Pipa", 2000, p.14

In particular articles there are described custom norms of blood feud, self-judging, swearing, and conciliation. As well, there are included even norms that represent the position of the religious institutions in the region. It needs to be said that the composition of Scanderbeg's code, was modeled more or less from that of Leke Dukagjini, but even though there are many communalities between them in the content, the difference is deepened in the special and concrete institutional analysis and in their field of implementation.

As far as the right in the independent state of Scanderbeg is concerned, it needs to be said that it is a reflection of the economic and political development of the country and it preserves features of the feudal right. As a result of the feudal class it sanctions in its full form a privileged system for the Albanian feudal class, which is incorporated in the attributes such as: honor, immunity, exception, favoring etc, which bring differences in the field of juridical ability, not only in the social environment of time, but even in the social ruling class. This system of privileges sometimes was implemented even abroad, as in the case of Venetian Republic, where the Albanian boyars enjoyed freedom, benefits, honors the same as the Venetian citizens and noblemen.

The documentary, archival sources and the historical literature prove the existence of Scanderbeg's right, which was known and implemented in some of the main institutions of penal and civil right in Albania. The tradition of the feudal right and in the late period the Roman-Byzantine one served as a source for its creation being adapted to the concrete conditions of the country, and to the state of Scanderbeg in the XV-th century. Apart from the sanctioning and the implementing of the feudal right and the Roman-Byzantine one, Scanderbeg implemented normative acts which altogether make the substrate of the right in Albania in the period of Scanderbeg. The general military mobilization was declared via these acts; as well it was made the general registration of the population.

The penal right of Scanderbeg previewed very severe punishments about the espionage crime and betrayal. The crime of betrayal as a penal act of high scale, that affected adversely the Albanians' liberation war's interests, was condemned to death or eternal imprison. As far as this issue was concerned Scanderbeg was very determined, strict and firm, not saving even his friends or his relatives. But the penal right in Scanderbeg's state, apart from its implementing dimension recognized amnesty as well. Whereas in the civil right Scanderbeg's state recognized and implemented the important elaborated institutes form the Roman-Byzantine right's period.

Documentary sources of that period present us to acts of representation through proxy of the assigned from Skanderbeg in financial, commercial acts, etc, whose validity was recognized even in the international relations field.

The name and the memoriam of Skanderbeg, preserved in the heredity of the Albanians, have served Albanians, not only as a symbol of war for freedom but as well as the symbol of a state leader and people's law. The naming of custom's right on behalf of Scanderbeg incorporates in itself the honoring source not the authorship of the code. The real creator of this juridical monument has been the people, who have had the attribute of a lawmaker. In the historical –juridical literature, the Albanian custom's right, despite its early status, the notifications about Skanderbeg's code's existence are late, dating in the XIX-th century. The first notifications about it have been reported by the Austrian albanolog J.G.von Hahn, through his second work about Albania where he informs the reader that a people's code (Volksrecht) acted in the regions of Mat and Dibra, named Scanderbeg's Code².

This albanolog argues that Scanderbeg's code differs since the basics to the code of LekëDukagjini and that this difference makes them stand as two separate codes. Another contemporaneous of Hahn, the Russian diplomat M. Hitrov, Russian Consul in Manastir, informs his superiors that in downtown Dibra still exists an ancient code orally inherited in generations that is attributed to the Albanian leader GjergjKastrioti known as Scanderbeg's Code. From the second half of the XIX-th century, the Albanian custom's right, especially the Code of Leke Dukagjini and Scanderbeg became the focus of study for foreign authors as well.

Foreign and native authors about Albanian custom's right.

In the Byzantine epoch and in the early medieval period, in the timeframe of VII-th – XVII-th centuries in Albania apart from the written Byzantine right, it has existed the custom's right too; mostly they are elements of the institute of the Illyrian custom's right and not only those which were inherited and further enriched in approach to the level and development of the social organization of the Albanian society of that time.

In the timeframe of XII-th – XV-th century, Albania knew the process of formation of independent state structures. In symbiosis to that, political and juridical institutions were founded and consolidated, which went together with the custom's right.

² J.G.V Hahn, *Reisedurc die Gabiete des Drin und Vardar*. Wien, 1867.(Udhëtimnëpërviset e Drinit e tëVardarit.) (Travels in the Country of Drin and Vardar), Tirana, Geer, 2001, p. 52

In the end of the XIII-th century Arberia was occupied by French feudal (anjouin), who settled in Durrës in 1272. The anjouin formally preserved the state of Arber, as a separate political entity. This made it possible for the Arbër to preserve their custom's right.

We find more complete documentary information at the Albanian authors starting from the XIV-th century such as Marin Barleti, Pjeter Budi, Pjeter Bogdani, Frank Bardhi, who were good knowledgeable of the Albanian culture.

The XIX-th century was the starting point of the interest about the Albanian custom's right from foreign researchers.

There were the travelers and diplomats such as W.M. Leake, F. Pouqueville, H. Hecquard, A. Boue etc. who made evident in a genuine way the Albanian custom's right. Whereas authors like F. Nopcsa, T. Ippen, F. Gibert,

E. Durham, M. Shufflay, G. Casteleti gathered and published scientific materials; they contributed in the full enlightenment of Albanian custom's right. The interest on this issue has continued further on after the second half of the XIX-th century, but this information or data often remain fragmentary.

The beginning of the XX-th century marks the turning moment in the treatment of the Albanian custom's right. Since this period, the Albanians keep on with the full studying of this unwritten right. The first scholars were the catholic missionaries. A huge historical merit belongs to Shtjefen Gjecovi, for the collection of the Albanian custom's right in the Code of Leke Dukagjini. The first publishing of this code dates 1913 and continued till 1923. After the death of the author in 1933 the work was published in a particular volume titled: "The Code of Leke Dukagjini".

But it is of interest to stress that the unwritten Albanian right, it was often object of discussion, from different authors and scholars about its values. In the Serbian-Croatian literature, scholars of an earlier and later generation such as: R. Kostomajac³, B. Nushiq⁴, Oraovac⁵, S. Qirkovic⁶, M. Shufflay⁷, etc, think that the Albanian custom's right does not have original values, but represents a right where the norms from other countries are revealed, such as Serbia, Montenegro in the north, the Italic peninsula in the west, Greek world in the south, Macedonia, Byzantium and later on Turkey in the east.

³R. Kostomajac, *Leka Kanun* (Godisnjica Nikole Čupiga XXI) (The Code of Lekë), Belgrade, 1901, p.214

⁴B. Nushiq, *S Kosovana Sinje More u Beogradu* (From Kosovoto Belgrade in the Azure Sea), 1902, p.57

⁵T. Oraovac, *Arbanskopitanije i Srpskopravo* (Albanians by the Serbian question and the right), Belgrade, 1902, p.22

⁶S. Qirkoviç, *Pasqyrë e marrëdhënieve Serbo – Shqiptare* (A reflection of the relations Serbia-Albania), Pristina, 1956 in "Përparimi" nr.1, p.25.

⁷M. Shufflay, *Serbët dhe Shqiptarët* (Serbians and Albanians), Tirana, 2004, p.25-26

Whereas the previously mentioned authors like F.Nopcsa⁸, G.Casttelletti⁹, relate the origin of the Albanian code to the German right, putting forward as a factor the coming of the Norman invasion in Albania in the XI-th century. A group of other scholars such as R. Almagia¹⁰, S. Vilari¹¹, M. Jeliq¹² relate the origin of the code to the earlier influence of the Greek world and ancient Rome.

The expressed thoughts that the Serbian medieval right was incorporated in the code of Tsar Stephan Dushan, have given birth to the Albanian custom's right, do not reconcile with the factors that influenced the birth, development and survival of the Albanian custom's right. In different historical-juridical studies, generally it is accepted that as far as the origin of the norms is concerned, the *Zakoniku* of Tsar Stephan Dushan, reveals a merger of the Byzantine right on power in the Balkans and the Serbian right, born from life itself and revealed in the *krisobulet e kralëve* (songs of Serbian kings). This synthesis of these two rights has been reflected by some authors such as N.Novaković, N.Nikolić etc. Whereas the author Dragosllav Janković, underlines that “*Zakoniku* without any change in the content and in the edition, in around 60 formulations is totally shown with Byzantine origins from the dispositions of *Basilica*”¹³

If we would quickly gaze, comparing the Albanian custom's right to that of Tsar Stephan Dushan (1349), it results that the last has almost penal norms, but even to these norms in the field of punishments the code of Stephan Dushan implements physical mutilations, which sound to be loaned from the Byzantine right. According to it, the punishments provided for the penal acts are burning, cutting hands, blinding, cutting tongue, cutting ears. Whereas the Albanian custom's right includes norms that regulate civil relations of ownership, family, penal issues, etc. According to it, the types of punishments are: death penalty for betrayal to the village, assassination of the friend in oath for assassination within the kinship etc. but as punishments there were accorded: deportation, house burning, wealth ruin, etc. Thus, as noted, it is a system totally different from that of Byzantine and Slavic right. This unwritten right was preserved even in the period of Ottoman occupation: even

⁸ F. Nopcsa, *Die Herkunft des nordalbanischen Gewohnheitsrechts des Kanun Lek Dukagazinit. Zeitschrift für vergleichende Rechtswissenschaft* (The origins of Albanian custom's right in north Albania in the Code of Lekë Dukagjini. Magazine of the comparative custom's right), Stuttgart 40 (1923), p. 371-376

⁹ G. Casttelletti, *Costituzioni e vita sociale nelle montagne albanesi secondo il kanun di Lek Dukagjini* (The construction of social life in the mountains of Albania seen from the Code of Lekë Dukagjini) “*Studi Albanesi*”, Vol.III-IV, Rome, 1933-1934

¹⁰ R. Almagia, *L'Albania* (Albania), Rome, 1930

¹¹ S. Villari, *Le costituzioni giuridiche dell'Albania nel Kanun di Lek Dukagjini* (The juridical constitution of Albania in the Code of Lekë Dukagjini), Rome, 1940, p.12

¹² M. Jeliq, *Albanija* (Albania), Belgrade, 1933, p.4

¹³ D. Janković, *Istorija drave i prave feudal na Srbija* (History of State and made the feudal Srbija). Belgrade 1961, p.14-15

though the latter tried to assimilate it. But the Albanian custom's right could not elude the influence of Ottoman Sheri at, in the field of family right, just like it was influenced from the canonic right for the protection of church interests, despite this influence did not touch its national foundations.

The communalities and the differences between the Code of Leke Dukagjini and Scanderbeg's Code

These two codes are complexes of code norms that compose a part of the corpus of the Albanian custom's right. In both its basic variants, in the Code of Leke Dukagjini and Scanderbeg's, it has had in basis an antique common cradle, but this custom's right has been profiled according to regions in special codes.

Seen from this point of view these two codes stand in front of each other as two separate codes. After the Turkish invasion the Albanian custom's right did not survive similarly in all the regions, and it even did not have the same juridical acting power indicator. These norms started to dim and some ceased to act in central Albania. The revocation involved Scanderbeg's code as well, whereas that of Leke, survived longer being isolated. Its popularity was a result of a presentation with dignity that the publication of this norms complex from Sh. Gjecovi had, and they were published as a separate work in 1933. Scanderbeg's code publication did not have the chance to have the same rapport with the reader compared to that of Leke Dukagjini's one. It was published only in 1993, thus, 60 years later than Leke Dukagjini's Code.

The communalities and differences of these two codes can be observed in various aspects or fields:

1. In the field of economic and social structure
2. In the reflection of penal act against the person
3. In the penal acts against private property
4. In penal acts against the personality and person's dignity
5. In the juridical – civil rapports

The originality of Albanian custom's right

1. Juridical position of wife according to the code's right
2. Main rituals: Brotherhood and sisterhood institute
3. Moral Principles: Friend. Oath
4. Self-judgment according to the penal custom's right: Blood Feud

Juridical position of wife according to the code's right

The relationship between husband and wife are reflected in the reciprocal rights and duties between them. According to the code it was the wife's duty to preserve the marriage as saint, but as well she was responsible for other family problems, she was subjected to her husband and her fate was totally dependent on her husband. Based on the custom's right it is concluded that as far as the exercising of juridical ability is concerned, there are different limits in rapport to the juridical position in the family, in rapport to sex, in affinity towards the family, kinship or village. Shortly, we can say that the exercising of the juridical ownership emanated from property and family wealth. But the juridical ownership in family depended on the sex. The inferior position of the wife reflects special limits in its juridical ownership in rapport to her husband. This inequality emanated from their economic inequality in the family and it was an attribute to the patriarchal society. This inferior position of her is found in other Balkan countries as well, such as Montenegro and Herzegovina. Her subjected position is not revealed only towards her husband. The wife had an inferior juridical position in public life as well. The price of her blood was half the price of the husband's. The limitation of wife's position was reflected in the field of civil rights as well. She did not have the right to lead the family, to inherit any property or valuables. It was husband's duty to advice, scold, and even beat his wife. This inequality and this inferiority of the wife in comparison to her husband, in Scanderbeg's code are reflected in the fact that the wife had no rights of divorce, even in the motivated cases. On the contrary, the husband had absolute rights on her, considering that in this way he protected the interests and his position as the head of the family. According to the code the wife could be divorced only because of adultery, theft, etc. The virgins had a wider juridical position, in the public juridical position, and in the civil one too. In special cases she became the heiress of her father (when he had no sons). The same could happen in other Balkan countries too, such as in Montenegro and Herzegovina.

Brotherhood and sisterhood institute.

The Albanian custom's right recognized the brotherhood and sisterhood institute, which are met at the Albanians of Italy and Greece too. In accordance to this right, men became brothers and women became sisters among them "drinking from each other's blood" whereas in later periods a religious ceremony was held. People of different sexes were linked in the institute of brotherhood too, thus a girl who had no brothers became a sister of a boy who had no sisters. The caring of the "linked brother" was full, until her marriage. The

institute of brotherhood was very ancient; its origin goes back to the kinship organization society. Ruins of such an institute are encountered in other peoples of the world. The Byzantine society recognized it with a Latin term “*adaptio in fratrem*” and the Greek one recognized it with “*adelphopolia*”. In the Albanian custom’s right the institute of brotherhood created new social and juridical rapports. Through the brotherhood act each one became a member of the family of the other and influenced the family right too. This institute was not implemented in the people who were relatives up to the sixth generation.

The ethnological and anthropological literature pretends that this institute in the Albanian custom’s right has been taken from the Slavs because it was encountered in the north of Albania with the name *Probatin*(Slav – *Probatsko*).

This assertion does not stand to the arguments; first the institute of brotherhood is widely Albanian, with a geographical extent in north Albania, central Albania and southern Albania, known with the Albanian term “*vëllam*” (brother). If we follow the earlier historical way of this institute, firstly it is encountered at the Illyrians and it is possible that the Albanians have inherited it from them.

Secondly from the Roman right and concretely, in the proclamation of Diocletian Emperor, the act of brotherhood was declared prohibited not only for the Roman citizens, but for the non-Romans too, including Illyrians.

Thirdly, the Byzantine Emperor Justinian, known from the historians as of Illyrian origin, who was the founder of *Corpus Juris Civilis*, himself had practiced brotherhood, something that verifies that the institute of brotherhood in Illyria, has been known since before the arrival of the Slavs in the Balkans.

Friend’s institute (hospitality)

In the people’s mentality of the inhabitants of these regions, the ethnical-moral elements and the rituals which are connected to some institutes, have defined the ethnical-social physiognomy of the society. A special position occupies the Institute of Friend and Oath in this moral inheritance. The status of the friend is heightened even on the rapports and blood relations. The family members’ blood could even be forgiven, but the blood of a friend could no way be forgiven. It is claimed in the code that “Home is of God and friend”. In such a case, it is given more importance to moral category rather than the juridical one. The house before belonging to the owner, said differently, it first belonged to God and friend. Hospitality in this case is covered by a mid-divine cloth. The terrestrial and divinity are

parallel to the case of the friend. The opening of the door to welcome the friend is saint, because it composes an opportunity of a joy, engagement, and wedding. Whereas closing the door, or as it is specified in the code, “breaking of oath towards a friend”, could make an individual, a family or even generations disappear eternally. This relic of the Albanians was fossilized more in the regions of the mountaineers, where the presence of foreigners was rare, thus, the arrival of a friend, was an act of joy for the entire home. Some other norms, define the status and the ways of behavior of the guest at home.

Oath Institute

Oath is one of the oldest institutes of the Albanian custom’s right, with an entirely national character. According to the Albanian albanolog and well-known linguist E.Cabej, with the meaning’s load of Albanian language, the word oath has entered in many Balkan languages, such as New Greek, Romanian and Turkish¹⁴.

In the mountaineer’s psychology and mentality “oath” as a moral category expressed the right to be free the collective guarantee of this freedom, as far as the saint principles of honor and morality have not been touched, which were basic attributes for the existence of the society.

In the space where it was implemented it meant individual security, but group’s as well, public tranquility and peace, unification, engagement and stable connection with an ever defined deadline. The word *oath* meant an appeal and a call for war, against the occupier. It turned into an obligation, even into a code’s norm. The oath decided in the conventions must have been held, the individual who would break it, would undergo severe sanctions. The oath institute was honored and respected in the entire Albania. It was implemented in several ways in the places where the code ruled: *the general oath, oath towards a friend, and the special oath*. The general oath was the promise as a general engagement of the village, of the region, against the threatening interests of the foreigner. The ones approved in Lezha Convention from Scanderbeg (1444), the Albanian League in Prizren (1878) and Peja Convention from HaxhiZeka (1899) etc were of this nature. Whereas the oath towards the friend was realized in two aspects: a- in the unthreatened or guaranteed right for shelter and b-through the promise. Whoever entering the house of the other, won the status of the guest and was guaranteed the oath of home, in the hearth, and bread. Another aspect of the given word was equalized with the honor of the male, who must keep the oath

¹⁴EqeremÇabej, *Studimeetimologjikenëfushëtëshqipes* (Ethimological studies in the field of Albanian), Tirana, 1976, vol.II, p.204-206.

even though this oath was to be paid life. The French council in Shkoder H. Hecquard noticed that: “the given word, oath, was saint for the Albanian. They better die than they break that word. A foreigner who travels in the mountains in the oath of a poorer inhabitant is in full safety¹⁵. The special oath was a guarantee for the person who was followed for blood feud, in the cases when he was required a sort of freedom for the guaranteed action.

The vacuum of the state power, the necessity for solidarity in the life of the kinship conditioned the birth of oath, firstly as a moral category then as a juridical institute generally related to blood feud and the economic activity and lately as juridical - civil institute in the contracts of solidarity. The contract which was based on the oath must have been executed. This respected institute from all even on the custom’s right is turned into a cult at the Albanians.

Blood feud

Self-judgment is considered as one of the primitive acts of justice implementation from the interested individual. It was a self-personal (auto personal) mechanism to make justice and it was a product of the kinship organization, which had as a characteristic, the emptiness of the state apparatus to make justice.

This phenomenon in the custom’s right, is mainly reflected in the institute of blood feud because it is a very important segment, treated in this right. Blood feud was realized to receive the blood of a previously killed or hurt person. In this aspect, it was the answer of a previous assassination or injury. But blood feud and revenge is not the same thing. Blood feud has got its differences in comparison to revenge. There are strong reasons that exclude the relation between “blood feud” and “revenge”. Before everything blood feud did not exist within the family, especially within the members of the same blood, in the Albanian custom’s right. In today’s Albanian language dictionary, revenge means “vengeance for something bad committed to someone or the tendency or desire to take revenge”¹⁶. Revenge is based on the principle: “You offended me, I offended you”, and later on “you assassinated me, I assassinated you”. In this way the phenomenon is concluded, because both the parties are equal. Revenge in this point of view, in the cases when it was previewed in the penal code, exists in those places where the legal state rules. On the contrary the Albanian blood feud is something else. In the Albanian language dictionary blood feud is defined as: “a custom of the Albanian custom’s right according to which to take the blood of an assassinated one

¹⁵H.Hecquard,*Histoire et description de la Haute Albania* (History and description of high Albania)Paris, 1856, p.334

¹⁶Fjalori igjuhësësotmeshqipe (Dictionary of nowadays Albanian), Tirana, 1980, p.644

needs to assassinate one of the members of the family or kinship of the assassinator¹⁷. This definition as well is not considered very exact. The Albanian blood feud, firstly, is not concluded as revenge with a one to one vengeance, the Albanian blood feud opens a cycle of assassinations, because every assassination is not considered only as a vengeance but simultaneously as an act that requires vengeance¹⁸.

Consequently, “*the Albanian blood feud*” has continued during some generations in the past, where the authority of the law was missing. It have been registered in the memories of the mountaineers of the north cases when blood feud has continued up to 12 generations the cycle of blood feud is interrupted temporarily only when it was represented an external risk, that threatened both the parties. Nevertheless, “the Albanian blood feud” has not practiced everywhere and anytime similarly.

This meaning difference between blood feud and revenge is met in different peoples of Europe and wider. In Italian blood feud is named: Vendetta del Sangue, in French it is Vendetta, in German it is Blutrache and in English it is Blood Feud whereas in Russian it is Krovnejamest. Whereas revenge as a vengeance in French is known Vengeance, in German as Rocke, in English as Revenge and in Russian it is known as Mest. In the custom’s right, the acting mechanism of blood feud is based on the ancient principle of jus Talionis “blood for blood”. The custom’s right does not recognize the right to take revenge in an unlimited number, but it must be in severe accordance to the upper principle, which has influenced in the narrowing of the circle of assassinations, limiting to some extent blood feud.

Blood feud as a phenomenon has existed in a wide geographical area. Many centuries ago it was implemented in Middle East, Near East, Antique Greece and Antique Rome, in German tribes, Caucasus, Afghanistan etc. in the Balkan Peninsula, it has survived at the Albanians and Montenegrins, as a consequence of the existence of the tribal patriarchal organization ruins.

In the conditions of the tribal organization blood feud has existed as a necessity due to the lack of the legal institution of individual’s life protection. But it has been fed by psychological, emotional motives and a pagan mentality, according to which the spirit of the blood feud’s committer could find calm only after he had committed the act.

As far as the blood feud’s origins and source are concerned, in the judicial, sociological, political and anthropological sciences are concerned, different explanations and

¹⁷ Ibid. p.597

¹⁸ Kristo Frashëri, *Identiteti kombëtarshqiptardheçështjetëjtera* (National Albanian identity and other issues), Tirana, Edisud, p.174

interpretations are given from authors, researchers of various periods and special schools. Italian authors like C. Lombroso and A. Crisfulli, and the American anthropologist C. Coon relate blood feud in Albania to the biological, psychoanalytical, racial theories, etc.

Conclusion

The Albanian custom's right, in general, reflects a full juridical system in the society built in accordance to the code's norms. The process of birth, development and consolidation of the unwritten right is completed during the centuries, as a reflection of the material peasants' conditions, especially to the mountaineers' ones. Seen from the focus, it has functioned as a basic law, for the free peasantry and self-governing communities. This right has been characterized from the unity and diversity. It was unique, because it reflected the entire folk and juridical mentality in the entire Albania, but this right often used to reflect its diversity with local and regional nuances.

The Albanian custom's right is shown in several variants, but the main ones are: the code of Leke Dukagjini and that of Scanderbeg. Neither Leke Dukagjini, nor Scanderbeg are the authors of these codes, but the people are. Both these two figures interfere with their authorities in the unwritten right, improving and creating new norms in the function of the political and economic interests of the period's society.

The economic-social diversity of different regions, where these two codes have been implemented, has given birth to their well-known sub-variants with special naming. They include in itself in a synthetic way code norms with juridical-penal and juridical –civil emphasis, as well as those of judgment procedures, which have had an obliging character for the society of that time. The meeting and diverging points of these two codes, as well as the two main variants of the Albanian custom's right are the consequence of a common product of the historical-political

The regions where Scanderbeg's code was implemented lie in the previous principate of the Kastriots, in the regions of Mat, Kruja, Dibra, Kurbnesh, Benda, Tamadhea, Martanesh. Whereas the regions where the code of Leke Dukagjini was implemented lie in the principate of the Dukagjinis in an extended area of the North Highlands, mainly in the region of Dukagjini.

The juridical, civil and penal profile of these two codes include many code norms, part of which, we have analyzed in this article. But all these were born and have been developed in a specific social environment and bear as a heritage, the moral code of the

people. Even though time after time they undergo the economic-social pressure of the respective society. This custom's right is an evidence of the Albanians creative abilities in the juridical field, to put rule and social equilibrium, with national characteristics, as the practices and the circumstances of life required it. In order that the people could self-govern, they created, preserved and developed through centuries the custom's right. The complex of Albanian ethno culture in it and the Albanian custom's right must be known at their basis, in order that one can understand the way this people has survived through the hardship waves of history. The fight for the preservation of ethnic culture has as well been endurance for survival. The psychology of the free and non-subjected person with the hard feeling of equality, of the right in the free peasants' communities, have been a source of bursting energies for social and national progress. Some ruins of the code appear somewhere even nowadays, being a barrier for the social emancipation. At present time, at present Albania, the code norms have totally been replaced by a modern legislation and are unique in the entire society. The medieval code norms have already been overpassed. They served the society, in that historical period where they expressed the people's psychology and practice, its wisdom with national features and as a heritage that belongs to the precious centuries.

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