

CRIMES AGAINST PERSON VIEWED UNDER THE LIGHT OF THE CANON OF LABERIA

Engjell Likmeta, PhD Candidate

Department of Criminal Law, Faculty of Law, University of Tirana

Katrin Treska, PhD Candidate

Law Drafting Department, General Directorate of Codification,
Ministry of Justice

Abstract

In evidence of such ancient legal-criminal tradition, special attention should be paid to the Albanian canons. This paper aims to analyze crimes committed against person and their importance in the Canon of Laberia. In particular, this paper will shed the well-deserved light to the criminal norms and rules against individuals, as given in the Canon of Laberia, its provisions to the offenders, their responsibility, as well as types of punitive measures taken for committing offenses against individuals and the basis for their criminal liability. Furthermore, particular attention will be given to the meaning of murder, with an analytical view that grounds on the type of murder, such as blood feud and revenge, murder for interest, murder within the family, murder of the guest, murder of the shepherd etc., as foreseen in the Canon of Laberia and the relevant punitive measures taken on each crime.

Keywords: Canon, tradition, crimes against person, blood feud, punitive measures

Introduction

Throughout the course of history, the Albanian highlands and lowlands acted according to a customary right, a folk law. Folk tradition recognized them as canon. Almost every ethnographic province had its version of Canon (Cana, 2012, p. 66).

One of the most important Canons, being also decrypted in details, by Prof. Dr. Ismet Elezi, is the Canon of Laberia, known also as the 'Rules of Idriz Suli' (Elezi, 2002, pp. 24-25). The Province of Laberia is one of the largest provinces of our country, which over time caught the attention of numerous researches from various fields such as, history, geography, ethnology, folklore etc.

The well-known researcher Rrok Zojzi determined that the region of Laberia is located Southwest of Albania, within the three bridges: bridge of Drashovica, bridge of Tepelena and the Castle's bridge near Delvina. The customary right of Laberia was active in the region of Kurvelesh, Himare, Tepelene, the river of Vlora and up to the Ionian Sea near Delvina (Elezi, 1989, pp. 14-15).

Canon of Laberia

The judicial rule for crimes against life in medieval Albanian criminal law was reflected in many local canons, including the Canon of Laberia. Moreover, such remedy is of great importance in the field of theoretical and judicial history of the Albanian criminal justice (Elezi, 2002, p. 166).

The penal customary right in Laberia included inter alia the criminal offence against individuals (Elezi, 2006, p. 212). These criminal offenses held an important place in the Canon of Laberia, as they were foreseen since the beginning of the special part of the Canon. According to the criminal law of Laberia, crimes against individuals involved offenses committed against the integrity of life and health, which were specially protected by the norms of customary law offenses (Elezi, 2002, pp. 167-168). This canon sanctioned the fact that human life was sacred (Elezi, 2006, p. 212). Canon norms enforced the obligation to protect life to a certain category of subjects, which involved the person whose life was in danger, his family, brotherhood or his kinsman. Another fact that grabs our attention in a recent analysis related to the subjects whose duty was to protect life, is the fact that human life, according to Canon of Laberia, was protected only by the family and its members in the strictest sense of the word. Family in its narrow meaning meant a family consisted of spouses and their children while family in its wide sense included even the persons connected in a natural and juridical way with the spouses (Mandro –Balili, Meçaj, Zaka & Fullani, 2006, p. 6).

In principle, it did not validate the Institutional and Communal protection of human life by the authorities/entities such as the Council of Elders of the neighborhood, the Council of Elders of village, the assembly, etc. There is only one case in which the norms of Canon of Laberia gave rise to the protection of human life at community level. This included the stranger/s, craftsperson/s, trader/s, traveler/s etc, coming to the village. In this case, the village acted as the protector (father) (Elezi, 2006, p. 223). Thus, the customary obligation to protect the life of the stranger would rise.

Crimes against life (murder)

The canon of Laberia would provide the understanding of murder. According to the canon, homicide meant the unjust ending one's life by

shooting, poisoning or by any other means, committed negligently or intentionally (Elezi, 2006, p. 223). It is worth mentioning that in order to have the image of the crime against life, for qualifying purposes of the Canon, the means by which the crime was committed was not important. The means for committing the crime according to the canon were rifle/gun, poisoning and any other means including cold weapons (Elezi, 2006, p. 223), which might threaten and end one's life. Cold weapons involved also: knives, bayonet and had the same importance for qualifying purposes in the Canon.

The main categories for murder would fall under: intentional murder, murder by negligence, revenge, murder within the neighborhood, murder within the family, premeditated murder, murder of a clergyman, murder of pregnant women, murder of the assistant in ambush, murder of the guest, murder after reconciliation of the feud, treacherous murder, murder of one person at the mercy of another, murder of the shepherd or the servant, murder of the person defending the local fellowship, murder of the worker, murder committed by the shepherd or the servant, murder for interest, murder for border issues, murder for honor/under humiliation, etc.

➤ **Intentional Homicide**

Intentional homicide was the instant murder, committed on the spot, as a result of violation of the honor and self-respect of the murderer. The main object in this crime figure was the human life. For qualifying purposes, the subject was general. So, every person that had reached mental maturity, which in the case of canon norms refers to 14-15 years old (Elezi, 2006, p. 223), was held responsible of his actions. The motives and scopes in this crime figure were irrelevant for qualifying purposes of the canon. Usually, these crimes were committed for mere motives.

➤ **Murder for revenge & blood- feud**

Murder for revenge (blood-feud) has been a big social wound inherited from the past, even in Laberia. The customary law of Laberia also devoted main part for the legal/juridical rules to the institution of blood-feud. The Canon of Laberia gives us the understanding of murder for revenge and blood-feud. Murder for revenge (Elezi, 2006, p. 223) had as its main object the murder of the person in the assassin's family, mainly by killing the best of them, as by doing so it would increase the honor and the prestige of the avenger. The murder for revenge was always a derivate of the violation of honor, dignity, and any other action taken against the person or his family members, and it was in opposition with the Canon of Laberia. Meanwhile the blood-feud murder in any case was done as a compensation form toward the murder that already happened. The performance methods of the blood-feud

murder were many but the most usual ones were the ambushes, alone or together with a group of persons.

In the customary law of Laberia was anticipated that for blood-feud the rule was “an eye for an eye and a tooth for a tooth”, while the wounding was compensated with reward. As well, the husband had responsibility from the Canon in the blood-feud case, with the argument “the man takes care of the wrongdoing “.

Regarding to the sanctions, in Laberia, the murderer’s house wasn’t burned, but he gets evicted from the local community alone or together with his family (Elezi, 2002, p. 170). The legal subjects who can perform the murder crime are males and also females when there’s no man in the victim’s family. The right for the revenge for the victim rises in a straight line the parent for the child and in the conversely, the brother for the brother, also the uncle for the nephew etc. In the Canon of Laberia, inviolability of the woman is saint despite the fact that legally the woman can take revenge (Elezi, 2006, pp. 216- 217). As well, the person who had murdered for revenge could move in secret ways but even under the protection of somebody else, but never openly, because than deals with the rule “Who does it, pays for it” (Elezi, 2006, pp. 216- 217). The Canon of Laberia anticipated even the case when the revenge can be limited in different periods of time (Elezi, 2006, pp. 216- 217).

Murder for revenge of the victim in any case was a premeditated murder. From the objective view, the subject determines the object that he’s going to kill, the means, the way he’s going to do it and he’s helpers. And that, between the criminal act of murder and the consequence a relatively long time has passed, time that was sufficient to reach the conclusion that the guilty person is acting in his free voluntary will and cold-blood. The time limit anticipated from the Canon of Laberia for the realization of the murder for blood, was 40 years. But even after this time period, the killing became “legal”, with the old canon’s reasoning that: “The blood cannot become water and even if it becomes, is undrinkable” (Elezi, 2006).

The crime of revenge was prohibited in times of war. In case of the violation of this norm anticipated by the canon of Laberia, the guilty person who performed the murder had to be killed right there, from the community, even with the participation of the members of his family (Elezi, 2006).

➤ **Murder after reconciliation**

Murder committed after conciliation between families involved in the conflict was banned/forbidden by the canon. In cases like this, the culprit underwent a drastic punishment focused on community punishment with life taking for the committed action made by him or his family. The culprit was expelled from the village.

➤ **Murder for loot**

The canon of Laberia paid attention and care to the relations regarding the murdered person. So according to the canon, it was banned to get the weapons and personal belongings from the killed person, because the crime would get another qualification. In such a case, we would have murder for loot and not murder for revenge (Elezi, 2006).

➤ **Murder for “bucjele”**

The Canon of Laberia realized the emanation/rise of collective responsibility when the revenge was committed in the name of the village, and the village latter hid the culprit. In this case, the canon sanctioned the rule that murder (vengeance) could be taken against any of its inhabitants. According to the canon, this was called the “murder for bucjele” (Elezi, 2006).

➤ **Murder of the helper in the ambush**

Another type of offense foreseen in the canon of Laberia was the murder of the assistant in the ambush by the adversary/foe. In this case, the foe was responsible for a new criminal responsibility (new enmity) toward the family of the helper (Elezi, 2006).

➤ **Murder of the guest**

Another interesting fact to be treated is the murder of the guest. The canon of Laberia sanctioned the protection principle of ancient Albanian values and customs regarding hospitality. In no case and for no reason the murder of the guest was legalized. In case the murder occurred in the host’s house or nearby/threshold of his property, the host was obligated to revenge according to the principle “guest is equal to brother and for the guest I fire the rifle” (Elezi, 2006).

If the guest was killed by the host, the latter one undertook two main sanctions, one of the punishment of deprivation of life cause of the serious committed crime and the shame plunged on him. The pile of shame focused on the moral punishment as severe as the first canonical penalty because the value of the public opinion was overwhelming. The canon of Laberia predicted that the execution of customary decisions related to murder committed by host was carried out not only by the community members but even by his family members (Elezi, 2006). For the customary qualification effect it was required that the murder of the guest occurred within the territorial boundaries of host’s house, otherwise the offense was not considered according to this legal qualification (Elezi, 2006).

➤ **Murder under tutelage**

The canon of Laberia recognized the murder of a person under protection. This customary norm had the same protective values as the murder of the guest had. This was expressively defined in the Article no. 682 in the Canon of Laberia, stated as follows “Killing of the person under protection [...] is equal to the murder of the guest” (Elezi, 2006).

➤ **The murder of the Employer**

The canon of Laberia anticipated the murder of the shepherd, the servant, and the handyman during their work. In these cases, usually the owner was obliged to take revenge; in the opposite case was the right of the victim’s house to ask for the revenge of this crime. In the case of the killing of the shepherd or the servant, if the owner wouldn’t take revenge, was obliged to pay a reward to the home of the victim according to canon’s norms. The value of the reward isn’t specified literally by canon’s norms that mean that this value would vary from case to case.

Differently from the criminal act of the killing of the shepherd or the servant in the killing of the employee, the employer wasn’t obliged to pay a reward to the family of the victim, even though in any case of not taking revenge he would remain ashamed (Elezi, 2006). Meanwhile, in case we have a criminal act from the subjects (the shepherd, the employee) the criminal responsibility would fall to the people above in person based on the norms of the canon of Laberia. As far as for the punishment, the canon wouldn’t make a difference of the collaborators in this murder, whatever their role was. The canon norms would blame the same way the murderer and the one who pushed him to do the crime (Elezi, 2006).

➤ **Murder for interest**

The Canon of Laberia anticipates murder related to interest and property matters (Elezi, 2006). In this case, we are dealing with two different objects that are violated from the criminal act. First, was the human life and second his property. It’s interesting the fact that the murder for interest and murder matters was subject to two heavy convictions like death penalty and eviction from the village forever.

➤ **Murder for matters of honor**

Murder performed in relation to honor matter was another criminal act anticipated from the canon of Laberia. The subject known by the canon for the performance of this crime was the husband. Related to this matter, were anticipated very strong sanctions like the murder of the man or the mutilation (cutting) of the face parts, more precisely his nose, and the woman was forced to show in public for the act of shame she had done. In case of

adultery, the pregnant wife was convicted to death, after the child birth (Elezi, 2006).

➤ **Murder of the religion representative.**

The Canon of Laberia categorically prohibited the murder of the cleric, despite of his religious views. Murder of the cleric while he was doing his holy job, was a serious crime with particular aggravating condition. For this crime, to the guilty person was given the death penalty which was applied from the community where he lived (Elezi, 2006).

➤ **Murder of a pregnant woman.**

The Canon of Laberia prohibited the murder of a pregnant woman only when she was in a legal marriage. In case of adultery, the woman not necessary had the same protection (Elezi, 2006).

➤ **Murder of wrongdoing (thieves)**

In the Canon of Laberia wasn't legal the killing of the authors who did criminal acts toward property, even when caught during the act. Such a norm protected the sanctity of the right to live that included anyone in the protection radius of the canon norms, and no matter what, it wasn't in the protection service of the authors of criminal acts like stealing, destruction, and the damaging of other people properties (Elezi, 2006).

➤ **Criminal acts against the family, neighborhood**

The Canon of Laberia anticipated a list of criminal acts within the family. According to the Canon, murder of the parent from his child was considered as an inhuman act and was punished by death from the village community (Elezi, 2006). In the case of the crime that included a brother murdered by his brother and a child by his parent, there was no criminal responsibility according to the canon of Laberia (Elezi, 2006). Meanwhile, in the murder of the spouses, the Canon anticipated the criminal responsibility for each of them, depending on the circumstances. Even when the husband's life was impinged and vice versa (Elezi, 2006).

Another kind of murder was the murder performed within the neighborhood and was considered a serious and extraordinary event. In this case, the responsibility within the neighborhood or family came up (Elezi, 2006).

➤ **Suicide**

According to the Canon of Laberia, suicide in no case was legal (Elezi, 2006). Such a prediction was entirely consistent with the spirit of the Canon, that protected human life as sacred.

➤ **Negligent murder**

In the customary law, the negligent murder had an important place (Elezi, 1983, p. 168). Just like this, even the Canon of Laberia anticipated the negligent murder. In this case, this criminal act was performed in two of its forms, because of being negligent or because of the exceeded self-confidence, always involuntary (Elezi, 2006, p. 229). Even for this crime figure was anticipated the institution of forgiveness and reconciliation, also the rewarding of the victims blood. (The remuneration was not a defined quota, but variable depending on the circumstances and conditions. Its minimum limit was 500 *grosh* (monetary unit of that time) e 10 sheep) (Elezi, 2006, p. 221). As the rule goes, for the criminal act of negligent murder there was no criminal responsibility. Also for this crime figure and for the killing from pets there was a liability from their owner in rewarding money or natural goods (Elezi, 2006).

➤ **Murder toward special subjects**

Laberia's Law (canon) would definitely stop in any case murder toward a certain category of subjects. This rule included children under the age of 14-15, retired people or very old people, women, pregnant women, the elders and the host in your home. Also, following this rule, murder was not allowed in particular places like in a "men's assembly", in the institutions of the cult and religion (Elezi, 2006). In this specter, the killing of the mentally or physically handicaps, wasn't recognized by the "Canon" as putting your honor in its belonging place (Elezi, 2006).

The Canon of Laberia at the same time would put sanctions toward murder at the times of natural disasters, like earthquakes, water flooding and massive fires. Also was prohibited that the murder crime would happen in religious holidays, whatever religion they belong, for example for Easter, Ramadan, etc. If a murder would happen in this day, the guilty person including his family would be subject to eviction from the local region and community, because was thought that taking actions oppositely to what canon predicted, would result in violating the honor and dignity of the local community (Elezi, 2006).

Punishments

The Canon of Laberia anticipated several of prevention measures that were applied to the doers of the criminal acts. The canon anticipated three types of punishments that were physical punishments, moral and material. So, by the criminal norms of Laberia, the guilty for the crimes toward the person was subject to punishments like isolation from the other people of the community where they lived, putting a wooden poster of shame, making

them ride a mule, eviction, the cutting of the limbs, the burning of their houses and the killing of the person (Elezi, 2006).

Conclusion

In the framework of the preventive masses to eliminate this negative occurrence of the society, the crime of murder, the Canon of Laberia sanctioned the principle of forgiveness of the subject that performs the crime of murder. According to this golden principle “The brave is not the one who takes revenge, but the one who forgives” (Elezi, 2006).

Another institution with social values and preventing effects was the institution of reconciliation that had a very important place in the canon and could be made even in special circumstances, like times of war, or natural disasters (Elezi, 2006).

In the Canon of Laberia, there are 133 provisions that predicted the genres of the criminal acts, articles 646-779. 55 criminal acts towards the person that included 6.2% of the general volume of the canon norms anticipated in it. Crimes against life are anticipated in provisions 648-703, and comparing to the other norms with criminal nature they fill 41.35% of their general volume. Meanwhile, the penal norms that protected the wealth etc, (including the norms protecting the honor, the moral, the dignity of the person etc.) fill respectively 33.83% and 24.82% of the general volume of the canon norms with criminal nature anticipated in canon.

The genres of the criminal acts toward the person were massive. The canon qualified them in different genres like intentional murder, negligent murder, murder for revenge, murder within the family, murder of the guest, murder of the cleric etc. The authors of the criminal acts toward the person were subject to the hardest physical and moral convictions anticipated in canon, fines, burning of the house, eviction etc.

Studying of Albanian Canons and preserving them, helps in strengthening of a distinguished legal tradition that strongly influenced the modeling of the legal consciousness and mentality of Albanian lawyers in years. Canon of Laberia is a precious value among other legal monuments of customary law in our country, in the light of a law that genuinely reflects the ancient legal culture of this province.

References:

- Canaj, J., Doctoral Thesis, “Institution of Parliament under Laberia canonical law”, Faculty of History and Philology, Department of History, Tirana, 2012.
- Elezi, I., “*The criminal customary law of albanians*”, “8 Nëntori” Publishing, Tirana, 1983.
- Elezi, I., “*Crimes against life*”, SHBLU Publishing, Tirana, 1989.

Elezi, I., *“The customary law of Laberia”*, TOENA Publishing, Tirana, 2002.

Elezi, I., *“Canon of Laberia”*, TOENA Publishing, Tirana, 2006.

Mandro, A., Meçaj, V., Zaka, T. & Fullani, A., *“Family law”*, Publishing house “Kristalina KH”, Tirana, 2006.