

BLOOD FEUD IN “LEKE DUKAGJINI CODE” (KANUNI I LEKË DUKAGJINIT) AND ITS IMPACT IN THE CONTEMPORARY LAW IN ALBANIA AND KOSOVO

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Abstract: *Having spent centuries under foreign occupation, Albania and Kosovo in regulating social and tribal relations turned to the establishment of customary laws. These customary laws later on were to be known as “Kanuni i Lekë Dukagjinit”. The Kanun was vigorously implemented in Northern Albania, Kosovo and Western Macedonia. The customary rules set out by the Kanun were orally spread, from generation to generation and then later on were collected and compiled into “Kanuni i Lekë Dukagjinit” by the priest Shtjefen Gjeqovi. This paper focuses on the Albanian Customary Law system with special attention being focused towards the phenomenon of blood feud, a phenomenon which is implemented even to this day in Northern Albania and Kosovo. This paper also underlines the judicial and criminal norms in which the phenomenon of blood feud has been incorporated and treated within the criminal codes of Albania and Kosovo and the impact that the latter has had in contemporary law practices. The paper intends to highlight the fact that the lack of judicial and social norms and governing bodies in these regions in different historical periods of time has resulted in the surfacing of such customary rules which were used to regulate social, family and tribal relations. An important aspect of these rules was the phenomenon of blood feud which found application in cases of murder and dishonor. In today’s reforming states of Kosovo and Albania, blood feud has been categorized as a first-degree murder. Albania has given the phenomenon of blood feud a special legal denomination alongside intimidation and incitement of the latter. This paper has made use of scientific methods which are applied in social sciences such as the historical method, comparative, descriptive, deductive, inductive as well as the judicial-normative methods together with doctrinal methods.*

Keywords: *Kanuni i Lekë Dukagjinit; blood feud; criminal offence; customary law; Northern Albania*

1. INTRODUCTION

Taking into consideration the geographical, historical and political positioning of the Balkan Peninsula in Europe and the fact that the latter, throughout its history has served as a bridge between the western and the eastern hemispheres, the region itself has been a fervent source of numerous geopolitical and cultural confrontations. The region has been under the rule of three very powerful empires: first, of the Roman Empire from the west, then of the Roman Empire from the east (Byzantine) and lastly from the Ottoman Empire. The first empire belonged to the Roman-Catholic religious denomination, the second to the Catholic-Orthodox religion and the third to Islam. The political, historical and religious diversity encompassed by the empires mentioned reels all there is to know about the weight of the political and strategic developments of the region.

In the beginning of the 20th century, the region was faced with the challenge of self-liberation from the Ottoman Empire. The Balkan nations: Greeks, Northern Slavs (Serbia and

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Montenegro were recognized as independent states back in 1878 in the Congress of Berlin), Bulgarians, Romanians and Albanians fought for the liberation of their lands from the Ottoman Empire (1912–1913). Resulting from the carried out liberation attempts, countries such as: Serbia, Montenegro, Greece, Bulgaria and Romania were established with borders which were legitimized by the international community. About 2/3 of the lands inhabited by ethnic Albanians were left out of the newly formed Albanian state. The Balkan Slavic nations alongside Greece had looked to seize all of the Albanian territories at the time, but the Conference of London (1912–1913) had eventually decided to recognize and accept the newly established Albanian state as it stood (today's borders).

Facing occupation, up until 1913, there had not been any noted self-administration of power attempts from the Albanian population. As a result, in those territories (including the territories which were left out of Albanian rule in 1913), alongside judicial rules and norms imposed by the occupier; rules which in most cases were not embraced by the locals, and the lack of a functioning domestic law system, as an antidote to the rules and norms set out by the occupier and with the purpose of regulating the social and patriarchal predicaments evident at that time, a number of customary laws were established – The Albanian customary law system. The Albanian customary laws were established taking into account the tradition and the culture of the Albanian tribes at the time.

The Customary law system which was put in place at the time, was more widely spread in regions such as the northern Albania, Kosovo and Western Macedonia (which even today, has an Albanian majority). This system was known to Albanians as "The Kanun of Lekë Dukagjini".¹ The most important aspect of the Kanun was the phenomenon of self-justice – blood feud.

This customary law system had a great impact on Albanians more so that in some regions, the system and its laws remain potent even today. This paper focuses on the Albanian customary law system with special attention being focused towards highlighting the aspect of blood feud as a phenomenon which is quite evident and is referenced as such even today in Northern Albania and Kosovo. This paper also focused on the judicial and criminal regulation of the phenomenon of blood feud according to the Criminal Codes of the Republic of Albania and the Republic of Kosovo.

Since today we live in a society which is organized and assigned laws and regulations monitored and executed by the state, the customary law system should not have any sort of impact in regulating judicial and social relations.

This paper intends to reflect upon the idea that the lack of judicial and social rules set out by the state has resulted in the establishing of customary norms by the Albanian population living in Northern Albania, rules which were referenced when it comes to regulating family and tribal relations.² Among the rules set out by the system in hand is also the phenomenon of self-justice or 'blood feud', which has been exercised in cases of murder and bringing dishonor to one's family.

¹ Lekë Dukagjini was a medieval Albanian leader and nobleman. To read more about Lekë Dukagjini: DURHAM, E. M. *Some Tribal Origins, Laws and Customs of the Balkans*. London: George Allen and Unwin, 1928.

² Read more on Albanian tribes: ELSIE, R. *The Tribes of Albania (History, Society and Culture)*. London – New York: I. B. Tauris & Co. Ltd., 2015.

This phenomenon has been used as a mean to self-regulate social relations for centuries and has found use in today's society as well. The paper underlines the categorization as a first-degree murder of the carried out customary phenomenon by the Republic of Albania and the Republic of Kosovo. More so, the Republic of Albania (as highlighted throughout the paper) has also classified the incitement of self-retaliation and blood feud as a criminal act as well as to prevent and fight this widely-spread phenomenon.

There have been numerous authors and scholars who have written and who have given their opinion on the Kanun such as: M. Edith Durham, Franz Nopcha, Robert Elsie, Hyacinthe Hecquard, Noel Malcolm, Kazuhiko Jamamoto, Shtjefen Gjeqovi, Syrja Pupovci, etc. This paper references the abovementioned authors' works when dealing with the notion of self-retaliation and blood feud.

This paper has made use of a combined methodology of scientific methods starting from the historical method which provides the historical background of the development of the customary law system in Northern Albania, the descriptive method through which concepts laid out by scholars of the field have been analyzed as well as the comparative method which has been used to highlight the similarities and the differences between the analyzed criminal law systems. This paper has also made use of scientific, judicial methods such as the normative-judicial method as well as the doctrinal method. These methods have been used to elicit the conclusions in understanding the positive judicial norms in relation to blood feud.

In the first section of the paper we have laid out the core concepts of the Albanian customary law system such as the customary norms attributed to the 'Kanuni i Lekë Dukagjinit', its application, spread and influence in the society (chapter 2). The paper also elaborates the notion of blood feud as a main aspect of this study, its implementation, the terms and conditions in which such a phenomenon was allowed to be referenced and used (chapter 3). Chapter four is dedicated to the positive legislation in the Republic of Albania and the Republic of Kosovo when it comes to the place the phenomenon in hand takes in their respective criminal codes.

2. THE ALBANIAN CUSTOMARY LAW – THE KANUN OF LEKË DUKAGJINI

The Albanian customary law system, often identified with 'Kanuni i Lekë Dukagjinit' is not the only Kanun which the Albanian customary law system encompasses as a whole. A part of this notion is also Skanderbeg Code (*Kanuni i Skënderbeut*), Laberia Code (*Kanuni i Labërisë*) and Luma Code (*Kanuni i Lumës*) even though, 'Kanuni i Lekë Dukagjinit' still remains the most influential and prominent one out of the above mentioned.

The Kanun of Lekë Dukagjini is a centuries-old code of behavior, governing both individual and collective behavior and it has been made use of in Northern Albania, Kosovo and North Macedonia and in parts of Bosnia-Herzegovina.³ This Kanun organizes the rules upon which the culture is based, primarily focusing on the notion of honor.⁴ The British

³ ELSIE, R. *Historical dictionary of Kosovo. Second edition*. Lanham: Scarecrow Press, 2010, p. 151.

⁴ ARSOVSKA, J. Understanding a Culture of Violence and Crime: the Kanun of Lek Dukagjini and the Rise of the Albanian Sexual-Slavery Rackets. *European Journal of Crime, Criminal Law and Criminal Justice*. 2006, Vol. 14, No. 2, p. 165.

historian and political journalist Sir Noel Malcolm sums up this concept: “The foundation of it all is the principle of personal honor. The equality of persons comes next. From these flows a third principle, the freedom of each to act in accordance with its own honor, within the limits of the law, without being subject to another’s command and the fourth principle is the word of honor, the *‘besë’* (*besa*), which creates a situation of inviolable trust”.⁵

The Kanun of Lek Dukagjini is the most representative and unique characteristic of the Albanian society, mostly unknown and misunderstood outside Albania’s borders. This Kanun organizes the rules upon which the culture is based, primarily focusing on the notion of honor.⁶

The Kanun of Lekë Dukagjini has been very influential in Northern Albania, even more than religion itself and the priests and imam’s sermons. Edith Durham notes that when she asked the highlanders about a certain occurrence unfolding at the time they often told her that it was Lekë’s doing. The laws, customs and habits all were linked to Lekë. His Kanun has been passed mouth to mouth with people even adding their own twist to its norms and regulations according to different regions but nonetheless, the latter is still very much referenced throughout the Northern Albania between Muslims and Catholics alike. The saying ‘This is what Leka has said’ made people obedient more than the priests and imam’s sermons and teachings themselves.⁷ The Kanun is also known as the *‘Kanuni i malësorëve të Shqipërisë së Veriut’*. The well-known Hungarian author Franz Nopcsa says about the Kanun that the latter regulates and sets out the rules by which social and public relations must be carried out on not just outside one’s family but when it comes to internal family matters and the killings within the family, it’s the patriae potestas who is detrimental of the verdicts.⁸ A peculiarity which is reflected throughout the Kanun is its ability to regulate relations between members of different families, while within the family the verdicts were carried out by the head of the family or *‘I zoti i shtëpisë’*. This speaks volumes about the lack of basic judicial norms established by the state at the time. More so, it underlines the patriarchy-dominated society of the Albanians living in the north. The Northern Albanian customary laws were called ‘Kanuni i Lekë Dukagjinit’ in honor of the Medieval Albanian leader Lekë Dukagjini (lived in the 15th century, 1410–1481) also known as the Kanun’s most fervent executor. “Leka executed the Kanun fervidly, the law itself resembles other country’s laws and as such it is very hard to believe that he wrote it in the 15th century”. What the Kanun tried to do, specifically, was to stop crimes from happening by issuing certain punishments to the perpetrators. The fact that the Kanun not only lead people to self-retaliation but also issued a punishment for the latter is very hard to believe. It is likely Lekë Dukagjini modified and added onto an already existing law system as well as forcing its implementation to the fullest in the community. It is said that in 1464, the Pope Pal II had deemed the code unchristian as it did not comply with the rules and norms of Christianity.⁹ “Justice is served according to the laws of Lekë Dukagjini (Canounes

⁵ MALCOLM, N. *Kosovo: A Short History. First U.S. edition.* New York: NYU Press, 1998, p. 18.

⁶ ARSOVSKA, J. *Understanding a Culture of Violence and Crime: the Kanun of Lek Dukagjini and the Rise of the Albanian Sexual-Slavery Rackets.* p. 165.

⁷ DURHAM, M. E. *Some Tribal Origins, Laws and Customs of the Balkans.* London: George Allen & Unwin Ltd., 1928, p. 82.

⁸ NOPCSA, F. *Fiset e Malësisë së Shqipërisë Veriore dhe E Drejta Zakonore e tyre.* Tiranë: Eneas, 2013, p. 291.

Lechi), as passed on from one generation to another. These laws are the laws of all the mountains”.¹⁰

The ‘Kanuni i Lekë Dukagjinit’ which has been passed on from generation to generation was collected and compiled by the priest Shtjefen Gjeqovi (1873–1929). These customary norms collected and compiled by him began being published in 1913 by the “Hylli i Dritës” magazine. The full publication of the Kanun was completed in 1939,¹¹ after his death. The publication comprises of 12 separate books with a total of 1263 articles. The Kanun reflects upon family matters from civil, property and criminal rights. Structurally, Kanun comprises of the first book “Church” (the Catholic Church and its organization). The second book: “Family” which can be classified as a civil and a family law. This part highlights in detail the organization and role of the family, especially the role of the head of the family (Pater familiasit). The third book: “Marriage” underlines the norms in which a marriage shall be carried out from engagement to the wedding ceremony. This book also underlines the banning of marrying someone from your own bloodline. Therefore, the third book is related to the second book. The fourth book “House, livestock and property” underlines the way a property is bought, sold and appropriated. This part belongs in its entirety to one’s private laws. The fifth book is called “Work” which in modern-day terminology would be noted as “the labor law”. The sixth book deals with the transfer of property (borrowings and gifts). Kanun prohibits issuing loans with interest – usury. The seventh book is called “Spoken word”. This chapter deals with one’s giving of the word (promise). The eighth book is called “Honor”. When speaking of honor in the Kanun, the word itself refers to a much broader value and concept. Honor as depicted in the Kanun is both individual and collective meaning that each person must respect the other and be respected in return. The ninth book called “Damages” sets out the compensations in cases of collateral damage. The tenth book called “Law regarding crimes” has a pure judicial-criminal character. This book encompasses norms related to blood feud, self-retaliation and other norms put in place against the so called ‘bad deeds’. The eleventh book is called “The Kanun of the elderly” a book which deals with the social court called “Pleqnia” or the elderly court, a court which was called to give its verdict based on the Kanun whenever certain social issues surfaced and needed tending. The twelfth book which happens to be the last of the books is called “Exemptions and exceptions”.

When the Kanun is analyzed in today’s judicial settings and from the prism of modern law practices, the book with all of its flaws can still be considered as an unwritten constitution of the Albanian people of the north. The collecting and compiling process of these customary norms in itself constitutes for a very valuable work for the history of the Albanian law system. The assembled version of the Kanun by Shtjefen Gjeqovi has nonetheless been very controversial in its own right. For example, the author Franz Nopcsa notes that “The Gjeqovi publication is flawed as it is reflected through the way the Albanian clergy in the north wanted it to be reflected and as such one needs to be careful when referencing

⁹ DURHAM, M. E. *Some Tribal Origins, Laws and Customs of the Balkans*. p. 84.

¹⁰ HECQUARD, H. *Historia dhe përshkrimi i Shqipërisë së epërme ose i Gegërisë*. Tiranë: Plejad, 2008, p. 217.

¹¹ GJEQOVI, S. *Kanuni i Lekë Dukagjinit*. Scotts Valley: Createspace Independent Publishing Platform, 1939.

it". Because of such tendencies, in Gjeqovi's work only the parts that can be used as pre-determined principles are mentioned.¹² The Albanian scholar, Professor Pupovci, claims that in the first book "*Church*", Gjeqovi exaggerated the privileges entitled to the Catholic Church. He also underlines the harsh purism which he deems as excessive henceforth making Gjeqovi's work not entirely original.¹³ Furthermore, Pupovci claims that Gjeqovi did not differentiate between the tribal and social groups of the time by not distinguishing between brotherhoods and clans as well as by mixing the notions of tribes and houses. It is because of such shortcomings that Pupovci has difficulties understanding the core concepts of most of the customary institutions.¹⁴

Regardless of the questions raised towards the collected and compiled customary rules of the Kanun of Lekë Dukagjini, the latter still remains and is perceived as the most comprehensive document of the Albanian customary law system and it is of a great importance to judicial studies in general but also to the Albanian culture and tradition throughout centuries.

3. BLOOD VENGEANCE ACCORDING TO KANUNI I LEKË DUKAGJINI

The most important dispositions laid out in the Kanun are the ones dealing with the concept of blood feud. The concept of blood feud underlines the idea of self-retaliation. In a society with no self-governance, customary norms and laws were expected to surface, and so they did.

There are 150 directives in the Kanun mentioning the phenomenon of blood feud and blood vengeance. According to the Kanun "blood" or to kill someone is the first act leading to one's life ending whereas "blood vengeance" is the second killing of someone done in order to "avenge the blood" of the first person who was killed.¹⁵ According to the scholar Aurel Plasari, the second killing is a punishment for the first one. The second act is based on the "blood for blood" principle which underlines the punishment of a murder carried out by another murder and that killing someone must be repaid by a second killing. The Kanun also states that one must not kill more than one person to avenge one's blood. If the family of the one who was killed kills more than one person, then the second murder will only lead to a third but this time the killing shall be carried out towards the family who committed more than one murder.¹⁶

The most prominent feature in the Kanun is the right to self-retaliation. Kanun gives men the right to vengeance, an act which tends to serve as a precautionary measure in violating someone else's rights. Taking into consideration the fact that Kanun has functioned as a customary code in Northern Albania and Kosovo, giving people the opportunity to maintain social order by resolving certain disagreements within the communities

¹² NOPCSA, F. *Fiset e Malësisë së Shqipërisë Veriore dhe E Drejta Zakonore e tyre*. p. 291.

¹³ PUPOVCI, S. *Kanuni i lekë dukagjinit. (Origjina, zhvillimi dhe karakteristikat)*. Prishtinë: ETMM të KSA të Kosovës, 1972, p. 134.

¹⁴ *Ibid.*, p. 134.

¹⁵ GJEQOVI, S. *Kanuni i Lekë Dukagjinit*.

¹⁶ PLASARI, A. *Gjakmarrja midis realitetit dhe retorikës (Studim)*. Tiranë: Albanian Institute for Public Affairs, 2000, pp. 21–22.

goes to show that the people living in the abovementioned areas consider the act of self-retaliation as righteous and morally sound.¹⁷ Henceforth, when the dispositions of the Kanun are analyzed in relation to the act of self-retaliation, it is understood that the criminal law norms pertaining to the Albanian population had an underlining self-retaliation character which was carried out by the people themselves in complete disregard of the state and its governing institutions.

A highlander who has committed a murder faces the retaliation from the family of the victim, a phenomenon rooted deep in their customs. Such people are less prone to feeling any sort of guilt or empathy caused by the death of their loved one as they are to feeling shame and dishonor if such a death was not to be avenged or go unpunished. Before thinking of mourning their loved one, the family of the victim had its sights on avenging his or her family member's death.¹⁸

The word itself 'blood vengeance' comprises of two words 'blood' and 'vengeance' and it refers to avenging someone's blood. Avenging one's blood may result in a chain of hostile events as the act itself urged for the killing of the person who had done the killing first. Throughout centuries the practice of avenging one's blood no longer was confined within the bounds of close family members of the parties involved. It included male first and second cousins of the victim as well: men that had any sort of blood relation to the person who had committed the murder were deemed eligible to revenge. This way, a long line of killings within families involved in the feud unfolded.¹⁹

Revenge was carried out only towards members of tribes whereas in cases where revenge was to be exercised within the family, the matter was decided by the head of the family. Such a practice is known as the Patria Potestas case, a practice which in the Northern Albania was recognized and respected even more than the law itself.

In analyzing the gross dispositions of the Kanun, the practice of blood feud can be carried out in the following cases: Murder; murdering a houseguest under the protection of the head of the house; raping women; violating one's honor through armed robbery and public humiliation.

This law of Lek is based on personal honor, which is the honor of the tribe everywhere. A man or a tribe should punish an insult done to honor by killing the man who did it. Thus, if a member of the tribe has been unjustly killed by one of the other tribe, if a woman has been abducted, injured, insulted, if any part of the tribe's property is stolen; if a man or a tribe violates the besa (word of honor) in matters of land or war, marriage or vade (here you can find admirable irrigation systems), then the crime is punishable by death.²⁰

The most common cases in which the practice of revenging one's blood was exercised is when one murders a member of a different tribe. The Kanun explicitly states that "Blood

¹⁷ JAMAMOTO, K. *The ethical structure of the Albanian Customary Law*. Tiranë: West Print, 2008, p. 19.

¹⁸ HECQUARD, H. *Historia dhe përshkrimi i Shqipërisë së epërme ose i Gegërisë*. p. 336.

¹⁹ Operazione Colomba – Korpusi i jodhunës dhe pro paqes, i shoqatës i Komuniteti Papa Xhovani XXIII, "Dokument i përshkrimit të fenomenit "hakmarrja" e "gjakmarrja" për sensibilizimin e institucioneve shqiptare e ndër-kombëtare", Botimi III, p. 6. In: *Dokumen* [online]. [2022-09-23]. Available at: <<https://dokumen.tips/documents/-iii-edition-dokument-i-prshkrimit-t-gjakmarrja-mund-t-filloj-shprthimin.html?page=1>>.

²⁰ LANE, W. R. *Majat e Shalës, botim i dytë, botuar në gjuhën shqipe nga Argeta*. Victorville: LMG, pp. 35–36.

is never lost” (article 917). There is no distinction made whether the person carrying out the offence is good or evil. Article 886 states that “Në kanûn të Malevet të Shqypnis gjithasà djelm të lein, njehen të mirë e nuk veçohen njani prej tjetrit”. In addition, article 887 underlines that “Çmimi i jetës së nierit àsht një, si per të mirin si edhe per të keqin” reflecting upon the disposition that whether a man is good or evil is irrelevant when it comes to the eligibility one has to the concept of revenging one’s blood. The murderer in Kanun is referred to as “doras” or the perpetrator. Article 843 states that a “doras” or a perpetrator is deemed the one who kills another by his own doing. Only the person who has committed the murder becomes prone to the practice of blood revenge as stated by article 898 “Në kanûn të veter të Malevet të Shqypnis vetem dorërasi bijte në gjak, ase aj, i cilli tëhiqte, shkreppte e shprazte pushken a çdo armë kundra nierit”. A positive one can take out of the aspect of blood revenge from the Kanun (if one can even deem it a positive), is that one must take revenge only on the perpetrator and not on other members of his or her family. Article 899 specifically says that “Shpija e të, vramit nuk mujte me ndjekë as me vrà tjeterekend prej vllazensh, nipash a kushrijsh të gjaksorit, pos gishtit – dorërasit” which means that one must never seek revenge on other members of the perpetrator’s family other than the perpetrator him or herself. The disposition itself has been greatly violated in Northern Albania. Violating such a disposition has led to entire families locking up in their homes – establishing the phenomenon of self-confinement.

In cases when a guesthouse who was under the protection of the head of the house was killed, the burden of avenging his or her blood falls in the shoulders of the head of the house. “In the mountains, killing one’s son would be more easily forgiven than killing a houseguest who as such had been taken into the protection of the head of the house, and one who does not avenge his or her death would be deemed as foul”.²¹ Blood feud is also applied in cases of rape as stated in the article 922, “Mikun e prëm, armët e gruen e dhunueme, kanûja s’i perket.” Article 953 adds to the case in hand stating that “Pushka e shtëme per grue a cucë të dhunueme s’kà as gjak as giobë”. Taking someone’s firearm is also deemed eligible to blood feud. If someone takes someone’s weapon then he or she is susceptible to blood revenge. Article 954 of the Kanun states that “Pushka e shtëme per armë të marruna, bien në gjak, por jo në giobë”.

There is a group of people that are exempt from the phenomenon of blood feud such as: women, children, the priest, senior citizens, the sick and the mentally unstable.²²

Women are exempt from blood revenge. They were not susceptible to self-retaliation. In cases where there were no men in the house and the family had not avenged the death of a family member then the woman of the house was obliged to carry out the practice in hand. Women can only be killed in cases of infidelity, other than that, killing a woman with or without intent was considered as a great indignity. Even the weapon with which a woman might have been killed or wounded was deemed as ‘worthless’ to be used in combat.²³

²¹ HECQUARD, H. *Historia dhe përshkrimi i Shqipërisë së epërme ose i Gegërisë*. p. 337.

²² ZEF, A. Das Strafrecht im „Kanun von Lekë Dukagjini“ – Das albanische Gewohnheitsrecht. In: *Albanisches Institut* [online]. [2022-09-23]. Available at: <<http://albanisches-institut.ch/wp-content/uploads/2011/12/Kanun-Zef.pdf>>.

²³ *Ibid.*

There are several other circumstances listed on which avenging one's blood was not encouraged. Circumstances in which killing someone is justifiable and not punishable according to the Kanun are:

1. You can kill someone in cases of rape without having to face retaliation;
2. If the relatives of the one who has been murdered avenge his or her blood within the same day, the case is considered as closed;
3. A woman who is caught red handed can be killed alongside her mister from her husband or brother without the latter facing any consequences or punishment. But if one's husband kills his wife and not her mister then the woman's family is entitled to avenging her blood instead.²⁴

4. THE JUDICIAL-CRIMINAL TREATMENT OF THE PHENOMENON OF BLOOD REVENGE- ACCORDING TO THE ACTING LEGISLATION IN ALBANIA AND KOSOVO

Since the Kanun has been and still is a potent practice in regions such as Northern Albania and Kosovo, the legal and criminal aspects of the latter have been incorporated into the legislative systems of both countries.

Both countries have had different political and historical backgrounds, backgrounds which have also been reflected in their distinct judicial developments. Albania declared its independence back in 1912 and was recognized as a state from the London Conference of 1913. Kosovo on the other hand remained a part of the kingdom of Serbs, Croats and Slovenians (1918–1929) and then part of the Kingdom of Yugoslavia (1929–1941). From 1945–1990, Kosovo was part of the Federal Socialist Republic of Yugoslavia under the leadership of Josip Broz also known as Tito.²⁵ Even after the disintegration of the Federal Socialist Republic of Yugoslavia, Kosovo was denied its right to self-determination and secession from the latter. The Albanian population in Kosovo opposed the Milosevic regime and established their own parallel governing structures and as a result of the flagrant human rights violation of the people living in Kosovo the majority of whom were Albanian, in the early 1998 an armed conflict broke out. After the intervention from the North-Atlantic Alliance NATO in the year 1999, the security council of the UN approved the 1244 resolution which placed the “UNMIK”²⁶ mission in Kosovo to help administer the peace, rehabilitate the war damages and help set out the groundwork in order to resolve Kosovo's final status. On 17 February, 2008, the representatives of the people of Kosovo through its established parliament, declared Kosovo a free and independent Republic.

Being a part of Yugoslavia, Kosovo has inherited a judicial system quite different from Albania. The Yugoslavian legislation (1945–1990) is heavily influenced by the German-Austrian law system whereas the judicial system in Albania is influenced by the Italian law system.

Listed below are examples of how the practice of blood revenge is covered in the judicial-criminal law systems of both countries.

²⁴ DURHAM, M. E. *Some Tribal Origins, Laws and Customs of the Balkans*. p. 88.

²⁵ Tito died in 1980 but his artificial creation had lived on until the early 90s.

²⁶ UNMIK – United Nations Interim Administration Mission in Kosovo.

4.1 The criminal legislation in the Republic of Albania

The Criminal Code of the Republic of Albania has changed several times since 1991 (in 1995, 2001, 2003, 2007, 2012 and 2013), and it now addresses blood feuds and revenge, along with a number of crimes that did not occur earlier. The 2012 changes to the Criminal Code of the Republic of Albania brought three new articles covering criminal cases related to blood feuds as: "Premeditated murder for blood feuds", "Serious threat for revenge or blood feuds", and "Blood feuds solicitation".²⁷

In accordance with the Criminal Code of the Republic of Albania, blood feuds have been enlisted as a first-degree murder. Article 78/a states that "Murder committed for interests or revenge shall be punished to not less than 20 years or life imprisonment."

The elements which were taken into consideration when it comes to the sentencing of someone who has committed the crime of blood revenge are those of someone who has committed a premeditated murder.

Blood revenge killings are deemed the murders carried out to avenge the murder of a member of the family against the family of the perpetrator. Since such phenomenon is still very much potent in the Albanian society, lawmakers through changes made in the Criminal Code of the year 2013 have foreseen the gravest punishment for its perpetrators, punishments which vary from 30 years in prison to life imprisonment.

Blood revenge is a criminal offence which puts the judicial benefit at risk as it puts the victim in imminent risk to the consequences that would proceed such an act. These elements can be easily defined by the court as subjects of such a practice are only a certain group of people: father, son, uncle and nephew belonging to the family or the tribe that has avenged the blood of an entity, meaning that the latter are general subjects which have committed murder based on low motives.²⁸

When it comes to blood feud, an important element is the motive with which someone has committed a criminal offence. The practice in hand is carried out with the motive of avenging someone's blood having happened within the perpetrator's family in line with the customary principles set out of the Albanian customary law system. All of the criminal offences carried out as such are set with the intention of killing someone but they also happen for a variety of other reasons and motives whereas in avenging someone's blood, the crucial motive is that of avenging a prior killing that has happened. This is done while interpreting and implementing the rules set out by Kanuni i Lekë Dukagjinit.

The criminal offence of "Blood feud" is an offence which as such has been modified as it was set out in accordance with the criminal offence deemed as first-degree while gravely embodied according to the predicaments and the characteristics enlisted in it. The imminent risk level of the offence in hand is of such that it affects the public opinion and it heavily punishes the perpetrator. When it comes to being eligible to be sentenced in ac-

²⁷ GJIPALI (PINO), S., BERBERI, A., ÇARO, E., KAPLLANAJ, M., DANAJ, S. *Effects of blood feuds on albanian girls and women: How they can contribute to addressing the problem*. Tirana: Albanian Institute for Public Affairs, 2013, p. 28.

²⁸ ELEZI, I. *E drejta penale: pjesa e posaçme (azhornuar e plotësuar me shitesat e ndryshimet e bëra me reformën ligjore të viteve 2003, 2004 e 2007)*. Tiranë: Botimet Erik, 2008, p. 630.

cordance with the laws and norms set out for blood revenge perpetrators, one needs to approach the deed itself from two different angles: the objective and the subjective ones. This way, the compatibility and the unity between the objective and the subjective treatment of the practice defines the criminal responsibility in cases when such a practice has been carried out especially when considering the fact that the Criminal Code itself does not lay out a definite and clear notion on what a premeditated act is. In such circumstances, the existence of a weak motive such as interest, jealousy and blood revenge combined with the element of time (the passing of a certain time period from the surfacing of a motive until the carried out criminal offence) are essential in the existence of such a criminal offence.²⁹

The Criminal Law system in Albania has incriminated and classified the practice of inciting the avenging someone's blood as a serious and special offence. *“Serious threat to retaliation or blood revenge, against a person for him to be locked up at home, shall be punished up to three years imprisonment.”*³⁰

Therefore, blood revenge or having someone be susceptible to such an offence is punishable up to three years in prison. This criminal offence has been added to the Criminal Code through law nr. 8373, date 24.01.2001, taking into account the fact that having someone be susceptible to such an offence leading to self-confinement had taken enormous dimensions at the time.

In such conditions, the lawmakers through changes made in the Criminal Code, added a special disposition to the latter covering the aspect of threatening someone to the point of having them self-confine. Even the punishment foreseen when committing such an act is gravely high all with the sole purpose of helping prevent such a concerning phenomenon existing in the Albanian society.

The layout of this criminal offence consists of “serious intimidation” meaning that the carried-out acts from the criminal offence subject leave no room for interpretation whether the blood revenge will take place or the contrary. The intimidation has to be grave.

The object of the serious intimidation criminal offence, as stated by article 83/a of the Criminal Code can be the infringement of the human basic rights, infringement of movement as guaranteed by the constitution. When dealing with the practice of blood revenge, one's movement is infringed upon.³¹

In the changes made to the Criminal Code in the year 2007, the act of inciting blood revenge has also been added to the code. According to article 83/b;

*“Inciting other persons to retaliation or blood revenge, when it does not constitute other criminal offence, shall be punished up to three years imprisonment.”*³²

²⁹ ELEZI, I. *Komentari i shtesave dhe ndryshimeve në Kodin Penal*. Tiranë: Albin, 2001, p. 31.

³⁰ Neni 83/a Kanosja serioze për hakmarrje ose për gjakmarrje (Shtuar me ligjin nr.8733, datë 24.1.2001, neni 12; ndryshuar me ligjin nr.9686, datë 26.2.2007, neni 8; pjesa që parashikon edhe dënimin me gjobë, si dënim kryesor, krahas dënimit me burgim, shfuqizohet me ligjin nr.144, datë 2.5.2013, neni 48).

³¹ Fenomeni i ngujimit të familjeve në gjak ka qenë shumë i përhapur sidomos në Shqipërinë e Veriut, madje edhe sot vazhdon të jetë prezent dhe kjo është arsyeja pse ligjdhënësi miratuar si vepër penale të posaçme “kanosjen serioze për hakmarrje ose për gjakmarrje”.

³² Neni 83/b Nxitja për gjakmarrje (Shtuar me ligjin nr.9686, datë 26.2.2007, neni 9; pjesa që parashikon edhe dënimin me gjobë, si dënim kryesor, krahas dënimit me burgim, shfuqizohet me ligjin nr.144, datë 2.5.2013, neni 48).

4.2 The criminal legislation in the Republic of Kosovo

In comparison to Albania, The Republic of Kosovo has not given the practice of blood revenge a special legal status but it categorizes it as a criminal offence against one's life and body, in the category of first-degree murder.

According to the Criminal Code of the Republic of Kosovo, article 173, a first-degree murder is one which is punishable by at least 10 years in prison and up until life imprisonment;

1. Persons who are eligible to be punished from 10 years in prison to life imprisonment are as follows:

- 1.1. deprives a child of his or her life;
- 1.2. deprives a pregnant woman of her life;
- 1.3. deprives a family member of his or her life;
- 1.4. deprives another person of his or her life in a cruel or deceitful way;
- 1.5. deprives another person of his or her life and in doing so intentionally endangers the life of one or more other persons;
- 1.6. deprives another person of his or her life for the purpose of obtaining a material benefit;
- 1.7. deprives another person of his or her life for the purpose of committing or concealing another criminal offence, or preventing the person from testifying or otherwise providing information to police or in a criminal proceeding;
- 1.8. deprives another person of his or her life because of unscrupulous revenge or other base motives, including in retaliation for testifying or otherwise providing any information to police or in a criminal proceeding;
- 1.9. deprives an official person of his or her life when such person is executing his or her official or related duties;
- 1.10. deprives another person of his or her life because of a motivation, based upon the nationality, language, religious belief or lack of religious belief, color of skin, gender, gender identity, sexual orientation, or because of their affinity with persons who have one the aforementioned protected characteristics;
- 1.11. Intentionally commits two or more murders except for the offences provided for in Article 174 and 176 of this Code; or
- 1.12. deprives another person of his or her life and has previously been convicted of murder, except for the offences provided for in Articles 174 and 176 of this Code;
- 1.13. preparatory actions for whichever sub-paragraph of paragraph 1. of this Article shall be punishable.³³

As noted above, from the definitions set out by the Criminal Code, the criminal offence of blood revenge has been laid out in the sub article 1.8 of the article 173.

"Deprives another person of his or her life because of unscrupulous revenge or other base motives, including in retaliation for testifying or otherwise providing any information to police or in a criminal proceeding".

³³ Kodi Nr. 06/L-074 Penal i Republikës së Kosovës, neni 173.

The criminal offence of blood revenge is connected to other weak motives in cases of revenge. These dispositions do not only refer to avenging someone's life based on the Albanian Customary norms and principles as referenced by the Kanun of Lekë Dukagjini, but it also includes other cases of revenge.

Our criminal code just like other countries' criminal codes who tend to this kind of first-degree murder connect the notion of revenge only to the idea of cruelty. Such a concept is derived from the fact that a murder can be deemed as cruel even if it has not been carried out due to revenge but from other motives as well. In trying to fathom the idea of murdering someone due to revenge as cruel we have to define what the word 'cruel' means beforehand as well as distinguish between the two forms of revenge. The 'cruel' revenge has some common elements with blood revenge and self-retaliation but it also has some important distinctions, which are deemed to pertain to the perpetrator's own personality traits. When it comes to the character of the perpetrator, according to some authors with whose opinions we agree on, the notion of cruelty in such a case is first and foremost derived from the negative behavior of people that can be aggravated. This personal negativity and cruelty is manifested through concrete actions resulting in the perpetrator depriving someone from his or her life. Nonetheless, it must be stated that any action which leads to someone being deprived of his or her life, except in cases when the necessary protection is in place or extreme conditions, contains in itself a great dose of negativity and cruelty, personality traits which are aggravated in entities who commit blood feud murders.³⁴

A murder can be considered as a cruel blood feud murder if it meets the criteria as follows: a) if the revenge is directed towards an innocent members of the family e.g. brother, sister etc. b) if the revenge is not proportional to the bad deed previously committed c) If more than one person is killed d) if it is a revenge carried out as a revenge e) if it is directed towards someone who has already been punished or released on bail f) if in the case of revenge certain customary positive norms are overthrown such as revenge carried out during 'besa' or after a reconciliation has been achieved and f) if the revenge is directed towards someone who according to the law has committed an offence or was forced to act in such a way e.g. Killing of the judge, prosecutor, police officer, witness, moles etc.³⁵

In the table below you will find illustrated the differences between the Criminal Codes of Albania and Kosovo when it comes to the criminal offence of blood feud:

³⁴ SALIHU, I., ZHITIA, H., HASANI, F. *Komentari i Kodit Penal të Republikës së Kosovës. Botimi 1*. Bonn: Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH, 2014, pp. 480–481.

³⁵ SALIHU, I. *Vrasjet në Krahinën Autonome Socialiste të Kosovës*. Prishtinë: Rilindja, 1985, p. 227.

Republic of Albania		
Normative act	Incrimination	Punishment
Criminal Code	<i>Special offence: Intentional blood revenge murder</i>	Sentenced up to 30 years in prison or even life imprisonment.
Criminal Code	<i>Serious intimidation related to revenge or blood revenge</i>	Sentenced up to 3 years in prison.
Criminal Code	<i>Inciting revenge or blood revenge</i>	Sentenced up to 3 years in prison.
Republic of Kosovo		
Normative act	Incrimination	Punishment
Criminal Code	First-degree murder	Sentenced up to 10 years in prison or even life imprisonment.
Criminal Code	Preparatory actions	Preparatory actions as underlined on article 1 of the code will be punished.

Table nr.1: Comparative criminal law legislation in Albania and Kosovo

5. CONCLUSION

The customary law system of Northern Albania, Kosovo and Western Macedonia known as the “Kanuni i Lekë Dukagjini” was orally spread throughout the centuries and as a result of the lack of written judicial norms it had a great impact in the social life of those regions. The patriarchal way of life of the population living in those regions was regulated by these customary norms and rules which were established around the years 1400-1900. These unwritten rules were collected and compiled by the priest Shtjefen Gjeqovi and published as a single document in 1939. The Kanun constitutes for an unwritten constitution of the Albanians living in the north considering the influence it had throughout centuries. Blood feud is considered as the most important of the norms laid out in the Kanun. The practice is quite potent even to this day in the said regions inhabited by Albanians. Despite the fact that Albania as well as Kosovo are now considered to be consolidated democratic states, the customary law system especially when it comes to blood feud is still applied in specific circumstances. Taking into account the facts in hand, Albania has toughened the punishments given when it comes to the phenomenon of blood revenge and self-retaliation. The Republic of Kosovo has also categorized the phenomenon as a criminal act deeming blood feud as an incriminating criminal offence.

Therefore, the implementation of the Albanian customary law system – especially the Kanun of Lekë Dukagjini, has been determinant in approving criminal norms with grave punishments. Despite such actions taken in that regard, the phenomenon of blood feud is still a grave issue lingering over the Albanian and Kosovo societies.

Despite the measure already in place, to deem the phenomenon redundant, more educational and measures aimed at raising awareness need to be undertaken and established to isolate the negative impact that such a phenomenon has in today’s society.