

## Legal-property relations of the spouses in the Albanian

### Customary law

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#### Introduction

The Albanian customary law represents the set of unwritten rules, which are set ad hoc by the courts of elders, or assemblies, and aimed at the regulation of social relations in various fields of life. The implementation of these rules (norms), was provided by the force of tradition, patriarchal authority and social awareness of people's self-government bodies.

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The Albanian customary law was created by people over the centuries, not by a particular person, or a special legislative body.

The Albanian customary law was born in the late stage of the dissolution of the tribal order and the birth of private property. It was a reflection of the material conditions of life in human consciousness, and therefore had a dual character. On the one hand it preserves the characteristic of the old tribal order (joint

ownership).<sup>1</sup> while on the other hand regulates private ownership category with all the features that follow (eg property rights are not prescribed)

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Albanian customary law norms are summarized in the Canons, such as: The Canon of Lek Dukagjin Laberia Canon, Arbëria Canon (Scanderbeg), Luma Canon, Mountains Canon etc.. despite the fact that statutes have operated in different time and space, so eg Canon Laberia acted in XI century, in the southwest of the Albanian Kanun of Lek Dukagjin, and he Skanderbeg in the nineteenth century in North Highlands, however, have many identical norms, which speaks for a common ground, as integral component of joint bed of Albanian Kanun.<sup>3</sup>

In all of the aforementioned statutes, among others, contained also norms regulating property relations of spouses, which, evidently noticed the impact of religious ideology, Catholic, Orthodox, and later the Muslims.<sup>4</sup>

In provinces where operated norms of Albanian customary law, the basic unit of tribal society was patriarchal family. In this context, the

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<sup>1</sup>Gjeçovi Shtjefën, Kanuni i Lekë Dukagjinit me parathënie të Gjergj Fishtës, Shkodër, 1993, article 232-235. Hereinafter referred to as (KLD)

<sup>2</sup>Ibidem, article 221

<sup>3</sup>Elezi Ismet, Kanuni i Labërisë, Tiranë, 2006, fq.26

<sup>4</sup>Elezi Ismet, Njohuri për të drejtën zakonore mbarëshqiptare, Prishtinë, 2003, fq. 27

property relations of spouses, should be looked into the complex property relations in the patriarchal family.<sup>5</sup>

The Albanian customary law sanctioned private ownership of movable and immovable property (land, houses, livestock, working tools etc.). Private ownership forms in Albanian patriarchal family was common ownership<sup>6</sup>, although, as we shall see later this type of ownership does not correspond to the notion of truth (not legal nature and content) of joint ownership. The Albanian customary law does not recognize exclusive ownership, in addition, a form of personal property which consisted of robes of the body, and the dowry that women brought into the conjugal family, as well as weapons, watches neclaces, or any other item that belonged to one of men of the family, out of what was considered the property of the joint family.<sup>7</sup>

Members of joint ownership over movable and immovable property, which constituted the wealth of the patriarchal family were Albanian men aged 15 years and up. Adult males had the right to administer, namely, the right of use and exploitation of joint family owned items, while the exclusive right of disposition (sale, donation,

exchange, etc.) of common ownership was on the master of the house (pattern familijasi). However, if it came to the disposal of immovable property (land, buildings) comprising joint ownership, the owner of the house had to obtain the consent of the other men of the family. The right of disposal of the master of the house with items of common ownership, was limited when it came to gifts and, selemín", which women brought into the family and as such they belonged exclusively to them.<sup>8</sup>

Because of the dominance of joint ownership, the sphere of personal property was very close, and as a result the institution of inheritance was undeveloped. So, if a member died a family member the heritage property was not open and not shared, because the decedent were the heirs of a family member, in line with this KLD said: "not to swamp the nieces perseveringly of the late uncle."<sup>9</sup>

In the Albanian customary law the wife had limited capacity of action, which she got in marriage.<sup>10</sup> Capacity of women's action was limited into the sphere of the use of personal items, which in the northern part was consisted of mërqiiri, selemi, gifts, etc., while in the south of the country consisted of items that a woman brought as dowry in the husband's family.<sup>11</sup>

### **1. Property relationships of spouses**

In the Albanian customary law, property relations wives were implicated in property

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<sup>5</sup>Luarasi Aleks, Studime për të drejtën zakonore shqiptare, 1 Marrëdhëniet familjare, Tiranë, 2007, fq.146

<sup>6</sup>The notion, common ownership means ownership of two or more entities on a single item, where their parts are not defined as ideally as real, ie, the joint property owners (in our case spouses) have the idea that it is part of their common ownership, as long as it is not shared

<sup>7</sup>Ilia Frano, Kanuni i Skanderbegut, Shkodër, 1993, chapter 1354-1355

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<sup>8</sup>Ibidem, article 1354-1359

<sup>9</sup>KLD, article 91, section 1.a

<sup>10</sup>Elezi Ismet, Kanuni i Labërisë, Tiranë , 2006, article 344

<sup>11</sup>Ibidem, article 280

relations in large patriarchal family,<sup>12</sup> and were actualized as property marriage relations in case of the creation of small family (by the Crown), consisting of spouses and their offspring, which was created in certain cases with the Canon. The Laberia Canon allowed the creation of small family when the man refused to divorce his wife, even though he wanted his family, or in cases when the son of the family created problems internally or with third persons. In such situations he would divorce with his wife and children and would become a home himself.<sup>13</sup> The essential difference between the large and the small family lies not simply on the number of members, although this is a very important element, but in the nature of legal relations that arose between family members, primarily in property and legal relations.

Large family is based on joint ownership of family men, while small family on private individual owner of the house, which enjoys absolute power over his wife and children.<sup>14</sup>

In the Albanian customary law, property and legal position of spouses as well as their personal and legal position was unequal. The man was always more in favorable position in relation

to the wife. This inequality is clearly expressed in the definition of marriage in the Kanun of Lek Dukagjin: "To be married according to the Canon means to create a home, add one more slave to it, give a hand to the family and give birth to children".<sup>15</sup> From the wording of the Canon provision, it seems that marriage is primarily aimed at the creation of the family (social function), „become a home“, adding labor (economic function), and the birth of children (biological function). The Quote, slave" means that the woman would be placed under the authority of the master of the house (Pater familijasit), respectively, under the authority of her husband (Manus).

According to the Albanian customary law the marriage was preceded by the institution of engagement or promise of marriage, which also produced property and legal effects. Upon conclusion of the engagement of the bridegroom's house would send to the girl's house the „shej“. The Shej consisted of the engagement ring, tissue and money. Sheji, respectively, and scarf rings had the sense of the confirmation of the conclusion of the engagement, while money was an award given to the family of the fiancée, and usually designated by its parents. This cash meant buying price and was not included in the amount of money, which as a rule, was given to prepare parents fiancée dowry.<sup>16</sup> In case of the death of her fiancé, she fiancée parents returned to he fiancé's parents the

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<sup>12</sup>Large patriarchal family is a family that consists of many brothers with their wives and children and several generations, under the guidance of the master of the house (Pater familijas). See: Valbona Begolli, the position of women in Kosovo with a special emphasis on customary law, Pristina 1984, p. 41

<sup>13</sup>Elezi Ismet, Kanuni i Labërisë, Tiranë, 2006, article 125, al. 6:

<sup>14</sup> Valbona Begolli, The position of women in Kosovo with a special emphasis on customary law, Pristina 1984, p. 41

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<sup>15</sup>KLD, article 28

<sup>16</sup>Ilija, Frano, Kanuni i Skanderbegut, Shkodër, 1993, article 187-195

ring, scarf, half of the shej money and all the money received for dowry. In case of the death of the fiancée, her parents return the ring, scarf, dowry money, but not sheji money.<sup>17</sup>

By Albanian customary law marriage was religious coronation. Catholic religious coronation was free assertion of husband that he would take the woman's own luck, and the wife's that she would take for the man's own luck. This statement is made in the presence of two witnesses and the parsonage. Mohammedan religious coronation was a (pray) that the religious with partygoers did in the presence of the groom and the bride.<sup>18</sup> In case of death of the groom just one night after the wedding, the bride's parents were obliged to turn to parents of the groom half of the costs.<sup>19</sup> If the death occurred before he complete one year, dowry remained in the house of the bridegroom. The dowry would remain in the house of the bridegroom, even when the marriage had children. In this case the dowry would be used from the children. If death occurred after a year, and the marriage had no children dowry would belong to the widows. If the woman dies before she would enter a year in marriage, with or without giving birth to children, the dowry remained to the groom. If the woman dies after she had spent more than a year in marriage and

without children, the dowry returned to her parents.<sup>20</sup>

With separation from big family and creation of small family, the so-called family (the crown), the spouses bring and create material goods for satisfying their needs and their children. The ownership of spouses included immovable property (houses, fields, vineyards, gardens, meadows) and movable (tools, home inventory, personal items, etc.). Property regime on these goods was individual private property of the spouse.

Owned items created during the the marriage were administered and disposed exclusively by man. The woman throughout her life, had just the right of using (usufructus) jointly owned items, as her role in the family economy generally was smaller and of an assistant.<sup>21</sup>

The woman was deprived from ownership of assets owned by the family, both in her parents' family, as well as in her husband's family. Although the woman took an active part in the economic activity of the family along with her husband, she could be disposed only with items that served her personal needs, but for this she needed consent from her husband. In the Kanun of Lek Dukagjin, the ability to act as well as property and legal position of the spouses was figuratively expressed by the phrase: „ men will own weapons and their wives; women would

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<sup>17</sup>Ilija Frano, Kanuni i Skanderbegut, Shkodër, 1993, article 244, 247

<sup>18</sup>Ibidem, article 388, 395

<sup>19</sup>KLD, article 56

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<sup>20</sup>Ilija Frano, Kanuni i Skanderbegut, Shkodër, 1993, article 501, 510, 517, 520

<sup>21</sup>KLD, article 33, 61

own their mouth and their ark, and nobody could even touch them.<sup>22</sup>

According to the Kanun of Lek Dukagjin, women are seen as surplus at their parents' home, therefore, she had no right of inheritance, not even dowry.<sup>23</sup> The Canon also ruled out the possibility of the existence of separate ownership of the spouses, or even if it recognized, the concept of separate ownership was mentioned closely.

From the above mentioned words which ruled out the possibility of the existence of separate ownership, there were exceptions. Thus, in the Kanun of Skanderbeg and Luma there were recognized two institutions as exception and regulated by special provisions of the relevant statutes.<sup>24</sup> These institutes were: dowry and selem.

### 1.1. Dowry

According to the Albanian customary law, the dowry, from its content, as well as legally is not the same as dowry recognized in other rights, as institute, according to which, at marriage the wife transfers certain property values to her husband's house, in order to facilitate the common conjugal life. The dowry in the Albanian customary law does not appear as a rule, because it is contrary to the nature of the Albanian customary law, as right, "fatherly"

right, and therefore it applies only in certain special cases as determined by the Canon.<sup>25</sup>

The Institute of dowry known in Luma Canon is a moderate solution that aimed to bring down the general rule of the Albanian customary law, under which the woman could not be heir to father's house nor to her husband.<sup>26</sup> According to the Canon as first heir were the males rather than females. However, if the decedent had no sons, but daughters, they called up as heirs of the second order and compete with their cousins for the inheritance of movable and immovable property of their father .. Part of the females in the testator's was called dowry and according to the customs of the country consisted of 1/2, 1/3 or 1/5 of the land which was divided between the female children.<sup>27</sup>

Girls had the right not to take the dowry, in which case it remained to her father's cousins. The female children also had the right to sell the dowry, but, in this case the right of first buyer was reserved for relatives, then to neighbors and other villagers. If the girl would take the dowry she had the right only to use during her life, after her death, her children had no right to inherit after the land was returned to her father's cousins.<sup>28</sup>

The institute of „dowry“ known in Luma Canon was impacted from Ottoman law, which

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<sup>22</sup>Luarasi Aleks, cited. p.151

<sup>23</sup>KLD, article 45

<sup>24</sup>Ilija Frano, Kanuni i Skanderbegut, Shkodër, 1993, article 1354-1359

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<sup>25</sup>Hoxha Shefqet, Canon of Luma manuscript at the National Culture Institute of the Academy of Sciences of Albania, article 1527-1565

<sup>26</sup>KLD, article 91, al.1.a

<sup>27</sup>Hoxha Shefqet, Canon of Luma manuscript at the National Culture Institute of the Academy of Sciences of Albania Article 1529, 1563 -1565

<sup>28</sup>Ibidem, article 1562

was recognized only exceptionally in Luma Canon, and not found in other Canons.<sup>29</sup>

### 1.2. Selem

The Selem institute implies ownership of specific family members within the patriarchal family. The Selem institute was regulated by the norms of Canon of Skanderbeg.<sup>30</sup> The Skanderbeg Canon was implemented in the provinces of Kruja, Mat Dibra and Kurbin, and as a result of this geographic expansion, the definition of "selem" was different. Thus, in the province of Mat, the „Selem“ meant special property which the wife brought from parental family to help the new family. It usually consisted of movable items such as: sheep and goats, money earned from work, gifts for marriage etc.. In Kurbin province, selem meant any movable property, such as cash small livestock etc.. In earlier times, „selemi“ for women comprised only the dowry that they brought to their husband's family, while, for men it consisted weapons, pocket watch kistek. Over time the concept of „ selem“ expanded, implying all particular asset belonging to a family member outside of the common property.<sup>31</sup>

The main source of „selem“ was the the property that wife would bring to the marriage. Over time this could grow in defferent forms. To the property brought by the wife were added any

property of husband earned by inheritance, or in special cases other asset of wife from „dowry, as well as things that came from livestock that were subject of selem.<sup>32</sup>

The items that constitute the object of selem were disposed by husband. In any Canon provision there is not an exclusive right of women to dispose property that otherwise was hers. The Property that was subject to „selem“ was property which could be transferred inter vivos and mortis Kausa. Inter vivos, its owner (exclusively husband) had the right on, to enter with it in civil and legal reports, even where the family itself was part of it, eg things to rent, and to use the reward for the needs his small family. Mortis causa, the property that was subject of selem, was inheritable after the death of the owner, and would pass later as ownership to his sons, and in the absence of their daughters.<sup>33</sup>

„ Selem“ should be a relatively new institution. It is difficult to set the time when in fact it was established. But, nevertheless, it is an expression of the dissolution of the large patriarchal family in separate families according to coronation.

### REFERENCES

- [1] Elezi Ismet, Kanuni i Labërisë, Tiranë, 2006,
- [2] Elezi Ismet, Njohuri për të drejtën zakonore mbarëshqiptare, Prishtinë, 2003
- [3] Gjeçovi Shtjefën, Kanuni i Lekë Dukagjinit (KLD), me parathënie të Gjergj Fishtës,

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<sup>29</sup>Pupovci Surja, Civil legal relations in the Kanun of Lek Dukagjin, Pristina, 1971, p.

<sup>30</sup>Ilija, Frano, Kanuni i Skanderbegut, Shkodër, neni 1354-1359

<sup>31</sup>Ilija Frano, Kanuni i Skanderbegut, Shkodër, 1993, article 1354-1355

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<sup>32</sup>Ibidem, article 1354-1355

<sup>33</sup> Ibidem, article 1359

- Shkodër, 1993
- [4] Hoxha Shefqet, Kanuni i Lumës, dorëshkrim pranë institutit të Kulturës Popullore të Akademisë së Shkencave të Shqipërisë
  - [5] Ilija Frano, Kanuni i Skanderbegut, Shkodër, 1993
  - [6] Luarasi Aleks, Studime për të drejtën zakonore shqiptare, 1 Marrëdhëniet familjare, Tiranë, 2007
  - [7] Pupovci Surja, Marrëdhëniet juridike civile na kanunin e Lekë Dukagjinit, Prishtinë, 1971
  - [8] Valbona Begolli, Pozita e gruas në Kosovë me një vështrim të posaçëm në të drejtën zakonore, Prishtinë 1984