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Women's Property Rights in Medieval Albania: Canons vs. City Statutes

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ABSTRACT

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In medieval times, social relations between Albanian peoples were mainly regulated by customary law and by city statutes. Albanian customary law represents an unwritten set of rules which were established ad hoc by courts of elders or assemblies. The implementation of these norms was provided by the force of tradition, social consciousness and the patriarchal authority of the peoples' self-government bodies.

Rates of Albanian customary law are summarized in canons such as: the Canon of Lek Dukagjini, the Canon of Laberia, the Canon of Scanderbeg and the Canon of Luma. Women, according to these ancient rules, are considered to be of a lower social status: they do not share either the rights and privileges or the responsibilities of men. Albanian customary law at any time has coexisted with state legislation.

During the second half of the 14th century, many Albanian cities gain their autonomy from the Byzantine Empire and convert into free civic communes. Many cities draft their own statute-constitutions, which govern the cities social and economic life. Among these, the most important and the only one that has survived through the ages is the Statute of Shkodra (Statuta Scodrae), which is located at the Venetian library of the Correr Museum. This paper aims to compare the level of property rights enjoyed by women under customary law and city statutes.

"Albanian customary law represents an unwritten set of norms or rules of conduct, ad hoc established by elders' courts or assemblies for regulating social relations in different areas of life, the implementation of which was provided by the force of tradition, the social opinion and by the patriarchal authority of the self-governing bodies. It has been created by people over the centuries and not by a certain person or by a special legislative body."⁵

Albanian customary law was born at the stage of disintegration of tribal order and the beginnings of private property. It was a reflection of the material conditions of life in human conscience and it had a double nature. On the one hand, it preserved the characteristic norms of the old tribal order, linked to common property, and on the other hand, it protects the private property category with all the features that follow. Rates of Albanian customary law are summarized in canons among which the most influential is the Canon of Lek Dukagjini (CLD), which was in force in the isolated and practically *ex lex* northern Albanian regions. Other important canons are the Canon of Laberia, the Canon of Skanderbeg and the Canon of Luma. Although canons have acted in different times and territories, (i.e. the beginnings of the Canon

⁵ Ismet Elezi, « Njohuri për të Drejtën Shqiptare Mbarëkombëtare », Prishtinë, 2003, p.10

of Laberia, which has acted in southwestern Albania refer to the XI century, while the Canon of Lek Dukagjini and that of Scanderbeg, which have respectively acted in the northern highlands and in central Albania, belong to the 15th century) they have many similar standards, which testify to a common ground and makes them an integral part of the nationwide Albanian canon.⁶

All the above-mentioned canons contain, among other things, norms governing property relations inside the household, where the influence of Catholic ideology (in the Canon of Lek Dukagjini), and of Orthodox and later on Islamic ideology (in the Canon of Scanderbeg) are visible. The social context in which customary norms were born and acted, in a period when the basic unit of society was patriarchal and patrilineal family, must be taken into account.⁷ The patriarchal family was a communion of people affiliated to each other by blood, through masculine line or marriage bondage. It consisted of several generations: the householder's sons with their wives and children, his grandsons with their wives and children, and so on.⁸ Such patriarchal families in some cases had more than 60 members.

According to the Canon of Lek Dukagjini, the family was led by the oldest man living under the roof or his first brother. The oldest man of the family or the one chosen by the family members was called the householder and acted as an omnipotent *paterfamilias*.⁹

On the other hand, during the dissolution of the Byzantine Empire, Albanian cities such as Durrës, Drihtë, Tivar, Ulcinj, Shkoder, in a continuous and gradual process drafted their own city statutes as civic constitutions, which were normative acts, influenced not only by the Byzantine law, but also by customary domestic law and judicial precedents, aiming to regulate the inner life of medieval cities.¹⁰ However, only the full text of the Statutes of Shkodra, consisting of 279 chapters written in Latin, survived and is located at the Venetian library of the Correr Museum.¹¹ The statutes of Shkodra contain a number of provisions regulating family relationships and also the position of women in family and society in general.

1. Women's property rights according to Albanian customary law

According to Albanian customary law, property included movable, as well as immovable possessions, such as land, houses, pasture, cattle, livestock and work tools.¹² The economic activity was carried out within the patriarchal family, thus, family as a whole had ownership over all movable and almost all immovable possessions and the profit from common work and any other activities belonged to the common family economy, while individual members generally had no special income. The householder (*paterfamilias*) administered the common property of the family and responded to the expenses of the family and the needs of its individual members.¹³ The dominant form of ownership was common property, while the concept of separate property of family members had not yet been developed, except for a form of personal property that consisted of clothing, the dowry that women brought from their paternal house, their ornaments such as earrings, rings, wedding gifts, in some cases, income

⁶ Ismet Elezi, "Kanuni i Laberise", Botimet Toena, Tirane, 2002, p.26

⁷ Aleks Luarasi, "Studime per te Drejten Zakonore Shqiptare", Luarasi University Press, Tirane, 2007, p.146

⁸ Ksenofon Krisafi, et al., « Historia e Shtetit dhe se Drejtes ne Shqiperi », University Press « Luarasi », Tirane, p.240

⁹ Margaret Hasluck, "Kanuni (ligji i Pashkuar i Shqiptareve)", Tirane, 2005

¹⁰ Ksenofon Krisafi, et al., « Historia e Shtetit dhe se Drejtes ne Shqiperi », University Press « Luarasi », Tirane, p.118-119

¹¹ Lucia Nadin, "Statutet e Shkodres ne Gjysmen e Pare te Shekullit XIV me shtesat deri me 1469", Onufri, Tirane, 2010, p.10

¹² Article 213-266 of CLD, Article 357-411 of Canon of Laberia, Article 1192, 1205 of Canon of Luma

¹³ Ksenofon Krisafi, et al., « Historia e Shtetit dhe se Drejtes ne Shqiperi », University Press « Luarasi », Tirane, p.240

secured by handcrafts, as well as weapons, timepieces, tobacco boxes, or any other item that belonged to any man of the family outside of what was considered as common property of the family.¹⁴

Given the strong patriarchal character of the family, in practice, the common property of the family belonged to men over 15 years of age with full legal capacity, while women, who were considered “*out-comers*” and daughters, who were considered as “*foreign door*”, as a rule, had no share in the common property.¹⁵ This means that women were stripped of their share in common property, both in her parents and in her husband's households. However, there are two exceptions to this rule, embodied in the institutes of miraz and selem.

The *paterfamilias* had the right to dispose of the common property, but in case of disposal of immovable property, the consent of other male members of the family was needed. His right of disposition was also limited when it came to dispensing with gifts and selem.¹⁶

Women had limited legal capacity, which was gained with marriage.¹⁷ This legal capacity was limited to only using their personal belongings, which according to the case, in north Albania consisted to ornaments, selem, gifts, income earned by handcraft¹⁸, while in south Albania, it consisted mainly of the dowry¹⁹.

Social inequality between men and women was also reflected in family relationships, where the husband always enjoyed a more favorable position in relation to the wife. Patriarchal rural families cultivated the idea of a submissive and passive woman, who first had to obey to her father and then to her spouse. “Superiority” of men was essential to the development of this tradition. Customary law conceived women as weak beings, therefore inferior to men, and assigned them secondary roles in relation to men. Spouses in marriage were in unequal positions, not only in terms of their legal-property position, but also in terms of their legal-personal position. This inequality is explicitly expressed in the definition of marriage made by the CLK, according to which, to be married, means to add another member to the household for the purpose of adding to the work force and increasing the tree of blood²⁰. By this definition the position of the woman in the family seems to be denigrating and humiliating.

The institution of engagement, according to customary law, was a kind of pre-contract that preceded marriage. The appropriate age for engagement was 12-13 years of age for girls and 15-16 years of age for boys. On the occasion of engagement, the family of the future groom gave to the family of the bride to be, a sign of the engagement or token, which consisted of a copper or silver ring, a handkerchief and a small amount of money. A special amount of money was given to the fiancée's family to prepare her dowry. The token had a binding effect on the young woman and she should fulfill her promise of getting married. On the other hand, the token did not bind the young man, who could break the engagement at any time, but by doing so he would lose the token and the money given to the girl. In case of death of the fiancé, her parents would give back the ring, handkerchief, half of the token's money and all of the money

¹⁴ Shefqet Hoxha, “E Drejta Dokesore ne Lume: Kanuni i Lumes”, Tirane, 2013, p.257-258; Ilia Frano, “Kanuni i Skanderbegut”, Shkoder, 1993; Aleks Luarasi, “Aleks Luarasi, “Studime per te Drejten Zakonore Shqiptare”, Luarasi University Press, Tirane, 2007, p.177

¹⁵ Ksenofon Krisafi, et al., « Historia e Shtetit dhe se Drejtes ne Shqiperi », University Press « Luarasi », Tirane, p.204

¹⁶ Article 1354-1355 of **Canon of Scanderbeg**

¹⁷ Article 344 of **Canon of Laberia**

¹⁸ Article 1355 of **Canon of Scanderbeg**, Article 1189 of **Canon of Luma**

¹⁹ Article 280 of **Canon of Laberia**

²⁰ Article 28 of **CLK**

received for the dowry, while in case of the fiancée's death her parents had to give back the ring, the handkerchief, the money of the dowry, but not the token's money.²¹

In addition to the engagement token, there was also a marriage reward that the boy's family gave to the girl's family in the brink of marriage. Initially, the amount of the remuneration was determined by the girl's family, but the final amount was negotiated between the two families. This amount, known with different denominations in different provinces, was a clear expression of the subordinate position of the woman in the family.²² In case of death of the bridegroom only one night after marriage, the bride's parents were obliged to return half of the price to the bridegroom parents. If death occurred before the first year of marriage was completed, $\frac{1}{4}$ of the price was returned to the groom's family, while if the groom died two years after the wedlock $\frac{1}{3}$ of the price was returned to his family. In case when he had left children, the bride's parents did not return anything with the argument, that by giving birth to the children, the bride had paid back the price.²³ The dowry remained in the groom's house, when the marriage had given birth to children and in this case the dowry would be enjoyed by the children. If the husband's death occurred during the first year of marriage, and there were no children, the dowry belonged to the widow. If the wife's death occurred during the first year of marriage, the dowry remained at the groom's house, regardless of whether there were children or not. If the wife died one year after the marriage and the couple did not have children, the dowry was returned to her parents.²⁴ Women, not only were stripped of ownership over common property of the family, both in their parents' and husbands' house, but they also could only dispose with items for personal use and even in this case husband's permission was needed.²⁵ The woman did not inherit either her parents, or her husband.²⁶

However, according to the Canon of Luma, in cases where there were no male descendants, female children would inherit as successors of the second order, dividing the inheritance with their first cousins, as successors of the same order. The share of the female children in inheritance was called *miraz* and it varied in different villages (i.e. $\frac{1}{2}$, $\frac{1}{3}$, $\frac{1}{4}$, $\frac{1}{5}$ of the land that was further divided equally among sisters).²⁷ However, in most cases, female successors would disclaim their part of inheritance in favor of their male cousins, in order to maintain good relations with them and to have their "fatherly" support after getting married. If they accepted the *miraz*, all relations with the cousins were interrupted and their support was lost.²⁸ Female successors could sell their part, but in this case the preemptive right belonged to their closest by blood cousins, to the neighbors and so on.²⁹ If they did not sell their share, they could only use during their lifetime and the children could not inherit it because they belonged to another tribe. After the female successors' death, *miraz* was returned to the male cousins³⁰, as it was not inheritable.

The institution of *selem* on the other hand, represented a certain amount of property (mainly movable) or possessions that the wife gave to her husband on the occasion of marriage, and it

²¹ Article 244, 247 of **Canon of Scanderbeg**

²² Aleks Luarasi, "**Studime per te Drejten Zakonore Shqiptare**", Luarasi University Press, Tirane, 2007, p.132-133

²³ Article 56 of **CLD**

²⁴ Articles 501, 510, 517, 520 of **Canon of Scanderbeg**

²⁵ Aleks Luarasi, "**Studime per te Drejten Zakonore Shqiptare**", Luarasi University Press, Tirane, 2007, p.151-152

²⁶ Article 91 of **CLD**

²⁷ Article 1655-1656, 1661 of **Canon of Luma**

²⁸ Article 1657 of **Canon of Luma**

²⁹ Articles 1529, 1563-1565 of **Canon of Luma**

³⁰ Article 1562 of **Canon of Luma**

was regulated by the Canon of Scanderbeg.³¹ This was considered to be separate property and the husband disposed with it, without the consent of the householder.³²

2. Women's property rights in the Statutes of Shkodra

The Statutes of Shkodra that belong to the first half of the 14th century represent a legal monument of medieval Albania with contemporary values, according to the standards of similar European acts that has just begun to be drafted. The position of women in Shkodra civic reality is regulated in some chapters. In absence of her husband, a woman could be summoned to court for issues concerning her, or her husband and she could answer through her lawyer.³³ Besides, she could testify before the court for various issues.

A woman could not be evicted from the house over dowry issues.³⁴ Also, the husband was not allowed to use possessions brought in dowry by his spouse, to pay a blood feud.³⁵

In the Statutes of Shkodra, inheritance was recognized by law (statute) and by will. Inheritance by law was applied when a layperson, man or woman had not left a will, or when the will was not valid. Every person could be an heir, regardless of age, sex, or whether he was related or not to the *de cuius*. The right to intestate was recognized to women with children. The woman could keep 1/5 of her dowry, in order to give to people with whom she felt "attached at the soul" for her spiritual salvation.³⁶ In practice this meant that women could give part of the dowry to priests and churches. Special attention was paid to protecting the personality of citizens in general and of women in particular. Harassments, beatings, attempts to force entry into houses, insults and swearing against women were punishable by high fines.³⁷

3. Conclusions

As severe and discriminating to women as it may seem, Albanian customary law has to be viewed in a historical context, given the fact that women all over Europe did not enjoy property rights or a much better legal position. Unlike women in rural areas, civic women enjoyed a more favorable position thanks to the city statutes. The Statutes of Shkodra, compiled with high professional standards as a fundamental legal act, testify to an admirable civic culture and represent the image of a civilized, secular Albanian society, governed by the rule of law and justice, equivalent to European civilizations of the time.

³¹ Article 1354-1359 of **Canon of Scanderbeg**

³² Aleks Luarasi, "**Studime per te Drejten Zakonore Shqiptare**", Luarasi University Press, Tirane, 2007, p.179-181

³³ Chapter 117 of **Statutes of Shkodra**

³⁴ Chapter 265 of **Statutes of Shkodra**

³⁵ Chapter 266 of **Statutes of Shkodra**

³⁶ Chapter 196 of **Statutes of Shkodra**

³⁷ Lucia Nadin, Lucia Nadin, "**Statutet e Shkodres ne Gjysmen e Pare te Shekullit XIV me shtesat deri me 1469**", Onufri, Tirane, 2010, p.333-374)