The Kanun as a self-governance code in Italian-Albanian criminal contexts: A research conducted in the Republic of Albania

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Abstract

The Kanun is an important manifestation of Albanian consuetudinary law in force at a given historical moment. It is characterized by the absence of institutions or bodies set up to design and impose rules, norms or precepts that could maintain order and ensure that within the community, the associates can live and carry out their activities in observance of and compliance with the rules and precepts imposed by the State authorities. Active operation according to the Kanun rules is not only common among the populations settled in the mountains of Albania but also, and above all, in the context of Albanian criminality which, as is well known, has also spread to Italy, creating partnerships and cross-contaminations with Italian crime. The research was carried out mainly in Albania at the bodies and institutions responsible for dealing with and controlling crime in the nation, but also focuses on the issue of connections with, and influences on, Italian crime. Clin Ter 2019; 170(6):e435-447. doi:10.7417/CT.2019.2173

Key words: Kanun, revenge, self-governance, crime, tradition

Introduction

The Kanun di Lekë Dukagjini is a monumental work belonging to the historical and cultural heritage of consuetudinary Albanian law, that has been transmitted orally through the centuries (1).

The work is closely linked to the history of Albania and has, in fact, had a remarkable conditioning effect on research into traditional law owing to the fact that many of the values contained in it fostered the construction of the Albanian people’s identity, that in many aspects still survives today.

In particular, under the rule of the Ottomans, Albania was politically divided and there were strong conflicts between the aristocracy in the cities, and the feudal lords outside. Indeed, it was in the years around the middle of the 15th century, under the command of Lekë Dukagjini, that the best known warlords of the time got together and integrated the Albanian traditions and customs, dealing with all fields of social life and converging them within the same law, that became known as the Kanun (2).

Bearing in mind the peculiar territorial conformation of the highlands and the difficulties in communication existing at the time, various versions of the Kanun spread among the mountain peoples: in the oral memories of the inhabitants of the Puka region can be found the Kanun di Puka, later transcribed and published by Xhemal Meci. Towards the northern part of Tirana, there was the Kanun i Skenderbeut, that became well known thanks to Villari and Padre Valentini, one of the best researchers in the field of Albanian consuetudinary law. Finally, in the Laberia region, on the border with Greece, there is the Kanun i Lab e ris that has recently been transcribed by Ismet Elezi, an illustrious jurist at the University of Tirana (3).

An in-depth analysis of some terms and concepts, that often coincide with the ethical and philosophical values of Albanian psychology, makes it evident that all the variants of the Kanun have some preliminary tracts or institutiones iuris in common, focused on certain moral values that lie at the core of Albanian psychology (4).

Living far away in the mountains to the north, the first witnesses to this code were a people who thereby preserved their own traditions and transmitted them down the generations by word of mouth and in popular folklore. In fact, the Kanun represented the spirit of the mountain men, their code of honour and hospitality, their mentality, duties and vendettas, as well as internal and foreign policies. In this context, those called upon to make judgements had to run through a series of important proverbs in order to establish what was the correct decision. Knowledge was considered very precious, and sages and the elder members of the community were much revered. Everything hinged on local groups of males, the Fis (tribal communities), that upheld the sense of belonging to the community, and for whom public law and private interest were commingled.

The Albanian people preserved the Kanun with great care and dedication, using it as the basis of law for establishing the organization, administration and self-governance of life in the mountains. It was active in the Principality of Dukagini, in Kosovo, in the Nove Mountains of Ghegheria, in Dibra, in Toscheria, in Laberia and in Çameria.
Historical points

In written form the Kanun became known thanks to the reconstruction operated by Padre Shjtëfën Kostantin Gjeçov, a Franciscan friar who came from Kosovo. During his life he devoted much study to the Albanian culture, writing articles on various themes including history, archeology, ethnography and linguistics.

Padre Gjeçov also carried out intense patriotic activities; he was an adviser to the fighters in Malaysia and Madhe during the popular insurrection for Turkish independence and the guerrilla warfare in defence of the territory during the First World War. While he preached in various zones of Albania, and taught the local populations to read and write, he came to know about the oral tradition of consuetudinary law.

He attempted to attribute to his ethnographic interest a patriotic function in the late Romantic Age perspective, collecting information about the local traditions seen as useful for building a deeply rooted national identity. The habits discovered by the friar in the different mountain areas of Albania varied from place to place. The laws were learned by constantly hearing them recited and repeating them. In fact, as pointed out above, most of the Kanun norms were expressed according to maxims and set formulas, together with proverbs. The language used was that of the listeners in northern Albania, ghego, that was very different from the dialect used in the southern part of the nation, tosco. This further complicates the understanding of the different dictums unless the cases are known in some detail, as well as the customs from which they derive. These latter, in turn, underwent major changes over time, since they depended on the memory and wisdom of the older members of the communities. For this reason, Gjeçov often needed to interpret the form of law in order to make it easier to understand.

In 1913 he started to publish the first results of his research on the journal Hylli i Drites, and he continued until 1929, the year when he was killed by Serbian chauvinists. His unexpected death interrupted the publication of the Kanun, that was later completed by Franciscan friars, after three years of study, and published in a single volume in 1933. The foreword was written by His Excellency Padre Gjergj Fishta, nominated Accademico d'Italia, who also presented to the Albanian Studies Center the Italian translation made by Paolo Dodaj. He proposed that it should be revised and published, and the proposal was approved by unanimous vote.

The work is divided into two main parts: the first part, that is fundamental and immutable, contains, in code form, the moral and theoretical principles. These are subdivided into 12 chapters, or books, that include 1263 articles. Among these, six deal with topics that offer major points for reflection, namely the second and third, seventh and eighth, tenth and eleventh. Moreover, Padre Gjeçov included in the collection some examples and dictums provided by the Kuvendi in the assemblies of the Elders; these constitute the second part of the Kanun, the mutable part, in which it is clear that some arrangements have evolved in order to adapt to social needs subject to constant changes over time.

All those who had to do with the work were struck by the nature of the norms it contains, and made comparisons with other laws. Padre Dodaj often underlined analogies between Albanian consuetudinary law and the Bible, The Manù Code (Mínava Dharmasāstra), the XII Tables of Greek and Latin writers.

Kazuhito Yamamoto, studying the ethical structure of the Kanun, stressed seven principles that formed the basis of Albanian psychology: Betimi or beja (the oath), Besa (faith, the given word), Gjaku (blood, ius sanguinis), Nderi (honour), Miku (the friend, guest), Buka (bread and food), Gjakmarrja (blood revenge). He points out that in primitive societies, given that these concepts are linked to bodily sensations, emotions and ancient customs, they represent the very nature of human beings.

In particular, the moral and ethical values that include the oath, besa and vendetta have always been the object of the greatest discussion, since in fact the code rigorously asserts the right to revenge murder, of a relative in particular, that must be observed by the surviving male relatives up to the third degree.

The ethical structure of the Albanian consuetudinary code is considered to reflect the moral values system of a society that at that time did not possess any state powers. It is thought to be the first system embodying such principles that man has ever evolved, since we know for certain that before 3000 B.C. there are no traces of a state power such that it could antagonize the ethical deontology of a powerless society.

According to the anthropologist Patrizia Resta (9) the Kanun should be considered as a circular point of reference for the inflow of social experiences and then their outflow, enriched with meaning.

On one hand it stresses positive attitudes and, in fact, it exalts actions revealing courage and keeping faith with the given word. This principle is also underlined in the splendid lyrical work by Ismail Kadare “Chi ha riportato Doruntina?” inspired by popular Balkanic tales. The myth concentrates on the sublime force of the given word, that can even overcome the laws of death; the besa gives rise to eternal structures that are more stable than external laws and institutions. They are eternal and universal, inviolable and invisible and hence indestructible.

On the other hand, and with equal force, the Kanun also prescribes negative attitudes, such as responding to an offence with an equal or greater one, and seeking revenge by vendetta.

3The myth narrates the story of Doruntina, the only daughter of a widow, who is sent by her brother Constance to marry in a country far away from her clan. In fact, he convinces the mother by giving her his Besa promising the elderly woman that whenever she felt like seeing her daughter he would go and get her. Then the war took away her nine sons, who died on the battle field, including Constance. Weeping away from her clan. In fact, he convinces the mother by giving her his Besa promising the elderly woman that whenever she felt like seeing her daughter he would go and get her. Then the war took away her nine sons, who died on the battle field, including Constance. Weeping on their tombs, the mother cursed him for not keeping faith with his Besa. Then Constance emerged from the tomb to carry his beloved sister back to her mother. The meeting between the two women ends with the death of both, the mother of grief and Doruntina of fear, after hearing that the brother who brought her back had been dead
An analysis of these rules shows the major influence of the code in the construction of the identity of the members of the community, that gave rise to the Albanian way of being. This traditional system is based on two principles: it exalts the male subject, his code of honour and virility (burmişja), and secondly it stresses the importance of the collectivity celebrated in the fis, of solidarity among the group of blood brothers, that then translated to a sense of belonging to the community or nation (9).

Another important aspect to be stressed is the lay character of the Kanun that, in the form of a universal legal, ethical and moral code of Albanian society, was fundamental to ensure cohabitation and tolerance of the various religions among the Albanian people. All this is clearly evident also among the Albanians that were forced to become Moslems, who nevertheless tried with great honesty to preserve the lay character of the Kanun, protecting it with dignity from any impact with Islamic ideology and the Shari’a laws.

The Kanun has always stressed the sense of personal freedom, albeit to different degrees. Padre Valentini linked this personal freedom to equality, claiming that in the civil society of the Kanun, outside the family and under the State, the governing principles par excellence were brotherhood, and so also equality and freedom (11).

Analyzing the work by Padre Gjeçov, we can find confirmation of this in article 124, devoted to blood, where it is declared that before the law each male individual is regarded as good and not distinguished from any other. In fact, the price of life is the same for healthy and defective males.

An essential fulcrum for community cohesion according to the Kanun is solidarity, starting from the family and extending out to brotherhood, the village, the banner and the tribe. This is owed to the common heritage of shared ideals, focused on the care and defense of interests, mostly of a practical nature; the preeminent interest that drives the community to solidarity is honour.

Each community had its chief (conti or bajraktar) that implemented the decisions made at the Assembly called Kuvend, that was convoked in exceptional circumstances, calling on “a man for each home”, meaning one from each family including plebeians (11).

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The Kuvend was an institution that represented three forms of government: the monarchic power of the nobles (bairaktar, elder chiefs), the oligarchic power of the Elders (old men) and the democratic power of the people, the plebeians.

The management of business and the judgments of the tribe were entrusted to the council of Elders, which means that members of the senate were of noble families but could also be members who had entered thanks to their personal gifts of prudence, and their experience of political and judicial matters. The Senate determined how the Kanun should be interpreted, also taking into account the collective wishes of the people.

During the Turkish occupation, from the 15th century onward until the Zogu Civil Code came into being in 1929, in Albania two legal systems operated in parallel: in the cities and nearby provinces, the Ottoman law prevailed, whereas in the autonomous provinces of the north, Albanian consuetudinary law was applied.

On the 1st September 1928, with the support of Italy, Zog was crowned king, Albania became a constitutional monarchy and legislative power was entrusted to a single Chamber. The Executive was directly responsible to the King. The Zogu Civil Code was extremely important because, for the first time, Albania was subject to a single set of provisions that regulated family relations on legal bases all over the country. In fact, during Ahmet Zogu’s reign, the new laws established that the populations of the highlands should disarm, and strongly condemned premeditated murder.

Subsequently, with the advent of Enver Hoxha’s communist regime, an important change in the way of thinking and conceiving of social relationships took place.

One of the fundamental tasks of the regime was to emancipate society, by changing some of the behavioral norms and models to ensure the collective good, overcoming old mentalities, especially those regulated by the Kanun.

When the new people’s power institution (Pushhteti Popullor) was created, the Kanun laws took on a profoundly negative connotation. The work, together with all its cultural riches, was listed among forbidden books and condemned as primitive and reactionary.

When Enver Hoxha launched his plan to modernize the foundations of Albanian social structure, he imposed the elimination of ancient self-governance institutions like the Council of Elders, despite the fact that this belonged to the tradition of the northern peoples. By centralizing his power, he aimed to create the “new man” (12).

After his death the nation underwent a wave of changes, in which the religious communities also began to emerge from clandestinity. At the 1992 elections the communists were defeated by Sali Berisha, who set up the new democratic State.

However, these were also the years of mass emigration, when the people, overwhelmed by pessimism, abandoned their lands, the economy of the new democratic state was in very precarious conditions and foreign aid could not offset the heavy deficit.

Moreover, the process of land system reform, legitimated by a land register that formally delineated the borders of properties that no longer belonged to the State but to private landlords, triggered strong conflicts. The exodus from the land and emigration abroad dictated the loss of importance of the clans. Nevertheless, the combination of the old regime with the new chaotic system caused the Kanun law to reemerge, especially in the north, but rearranged and exploited to serve individual interests (13).

Supporting these hypotheses, we may quote McKay and Shaw’s “Ecological theory” according to which the environment is directly proportional to the spread of criminality. They point to the role of social disorganization as the main criminogenic factor, while economic expansion, the inefficiency of organizational structures, widespread emigration and the crisis of the family and its values create conflict among norms, fostering discord and delinquency (14-15-16-17).

Hence, to understand the importance of vendetta in some cultures like that of Albania, it is necessary to analyze the cultural context that it stemmed from, since even the most brutal actions are never just the product of a “wicked mind” but have some personal underlying logic that develops on the basis of accepted practice inside particular subgroups.
The Albanians of the north consider the Kanun as a work that permitted the conservation of a secular clan structure. Nevertheless, over the years many of them took part in its re-interpretation as a means of exploiting it for political purposes (13).

**Data collected in Albania**

In fact, counting from 1990 to 2000, 8229 families “fell into a blood feud” because of the Kanun; fortunately, by the period from 2001 to 2016 the number had drastically declined, to 1098.

In the Albanian language the term “falling into blood” is used to refer to those who commit homicide for vendetta, while the families that have an offended and offender relationship are “in blood”; this state persists until the vendetta is accomplished on the offender or one of his family members, unless peace is made. If forgiveness is denied then the murderer is “nailed”, in other words he has to hide away at home for fear of suffering vendetta by the family he is in a blood feud with. In 2016, the National Reconciliation Committee counted 398 people who were isolated at home due to feuds, while about 700 had emigrated abroad to escape the blood vendetta.

Information obtained from Mr. Pjetër Gjoka, President of the Lezha district and general vicepresident of the National Reconciliation Committee reveals that the districts that suffered the greatest number of conflicts and with the heaviest total of feuding families and members hiding out were, in decreasing order:

- Tirana 26%;
- Shkodra 20%;
- Fieri 7%;
- Vlora 6%;
- Berati 5%;
- Durrës 5%;
- Elbasan 4%;

As regards the number of conflicts, feuding families and people hiding out, the table below shows the data on the various districts in the Albanian Republic in 2008 (Table 1).

The data in Table 1 point out some important elements concerning the modern reinterpretation of the Kanun: it is evident that despite the existence of a legal system the practice of “gjakmarrja” is far from having been eradicated. Moreover, it is particularly frequent in the highlands, although migrations of the inhabitants of the northern regions toward the cities in central Albania have carried the phenomenon even as far away as the capital city, Tirana. Nevertheless, most of the killings occurred in suburban and mountain areas where the population’s living conditions are very precarious and associated with high levels of poverty. In addition, the local populations are very conservative and prefer to resort to old deep-rooted habits rather than apply to governing bodies.

Many studies conducted in the 1990s in America showed that subjects who grew up in disadvantaged social, economic, scholastic and occupational conditions are more prone to violence. In particular, in our case one of the causal variables correlated to the vendetta phenomenon that has been taken into account is the level of schooling of the perpetrators. In fact, no schooling or failure at school makes people more likely to commit criminal acts; as demonstrated by statistical data collected by the reconciliation expedition of 28 December 2016 nearly half the subjects prone to resort to vendetta have only an elementary school leaving certificate or are illiterate. The graph below illustrates the distribution of educational levels (Fig. 1).

The consequences of blood feuds are extremely serious also for those hiding out, since men are the first to be targeted for vendetta and so it is they who have to stop working and live segregated at home. Therefore, the women have to seek work to keep the family in a society that certainly does not guarantee equal opportunities.

This situation drives men to become alcoholics, thus increasing the levels of domestic violence. In fact, we know that from 2014 to 2016, 39 women were killed, 26 only in 2015, reaching the record for the last 10 years.

Confirming this, we can refer to a study conducted by Kellerman and Mercy in the United States between 1976 and 1987, analyzing UCR data on the victims of homicide over the age of 15: on a total of 215273 cases, 23% were female. Although the percentage of deaths was lower in women than in men, the risk of being killed by a spouse or friend was much higher in women, being double the risk of being killed by a stranger. Moreover, when the man killed the victim using a weapon, the female victim was five-fold more likely to be the spouse, a member of the family or a close acquaintance (19). The homicide rates for the male sex are generally twice to five times higher than the rates in the female sex, in particular in the age group from 25 to

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1 Report on statistical data obtained by the reconciliation expedition 2014-2016 of the “Committee of Nationwide Reconciliation”.

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Fig. 1. Distribution of Educational Level
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34 years; this is true except for the period from infancy to pre-adolescence, when the rates for males and females are comparable (1999).

As regards the ages of people who died because of the Kanun from the post-communist transition period until 2016, the age range most affected was that from 20 to 37 years, as shown in the table below (Table 2).

Statistics supplied by the National Albanian Reconciliation Committee from the Lezha district show that the main causes linked to “gjakmarrja” all over the Albanian territory are attributable in 45% of cases to questions of property, mostly land, followed by questions of honor in 24%, especially as a result of physical provocation, jealousy or disputes for futile reasons like verbal insults, while 9% of the conflicts were due to old vendettas often handed down from forebears, and 15% were due to trafficking in human beings especially linked to prostitution; in 7% of cases the reason was unknown. The Committee has been mobilized to fight the phenomenon for many years, contributing to seek out and restore trafficked girls who were often the object of feuds to their families, and to convince the parties to forgive without bloodletting.

The percentages (Fig. 2) demonstrate that in the current context the reasons adduced for homicide are no longer linked to the simple function of settling accounts but have rather undergone major alterations, partly influenced by
political, social and cultural changes. The degeneration of the institutions and legal system after the end of communism undermined citizens’ faith in the State, as illustrated by the fact that more than half the population refrains from voting at elections because they are convinced that the State and the political parties only represent the interest of the few wealthy families who hold a monopoly on the economy. This further underlines the huge gap between the small number of very rich people and the rest of the population, who live on the edge of poverty. The National Reconciliation Committee has collaborated continually with the UNO, with the governments and immigration centers in the various western countries in order to guarantee and defend the right to life, a fundamental right that is often endangered in many Albanian families due to the endless feuds and conflicts. Protection and reconciliation operations have been possible also thanks to the co-participation of the new government created after the 2013 elections, that has offered protection and asylum to many vulnerable families and citizens, thus preventing hundreds of blood feud killings. The NRC expedition succeeded in reaching and reconciling thousands of families, thus interrupting many conflicts that would otherwise very likely have developed into feuds. The following graph shows the figures for the operations (Fig. 3).

One of the most successful expeditions for the resolution of conflicts and reconciliation of families operates in the Lezha county, where the missionaries state that apart from the State bodies, the main contribution has been from the Catholic Church. In 2017 up to the month of August, in the Lezha districts the missionaries’ hard work managed to achieve the reconciliation of 50 families who had a blood feud and 143 who were feuding about property and lands; however, there are still 17 families feuding and 25 people confined to the home to evade a vendetta sworn against them. Therefore, the phenomenon is still fairly widespread and continuous and, as stated in the ‘Avokati i popullit’ report of 2016, the State measures are insufficient to combat the problem. This is supported by the fact that the police force lacks precise statistics on the true number of people killed for “gjakmarrje” or confined within the home (20).

Indeed, the European Parliament has expressed alarm about the continued existence of feuds in Albania triggering violence and homicide, and invited the Albanian authorities to respond to the United Nation’s request to set up a statistics database on the phenomenon, and to activate the Coordination Council intended to combat blood feuds instituted in 2005 (21).

The estimates we obtained on the numerical distribution of homicides for vendetta and of sentences passed for this crime have been posted by Open Data Albania, an agency that analyzes the tendencies and dynamics of the crimes due to feuds discovered and prosecuted by the Albanian law forces. The analysis we took into account is based on the data for the decade 2005-2015 on legal proceedings and sentences passed for “killings for vendetta and feuds”.

Initially, with law n. 8733 of 21/01/2001, the Albanian law code included homicide for blood feuds in art.78 as
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premeditated homicide, punishable by incarceration for a period of not less than 20 years, or a life sentence. Then, owing to the increasing number of feuds, in 2013 legislation was passed to increase the sentence for this type of crime, modifying law n. 144/2013 by adding art. 78/a that raises the period of incarceration for homicide due to feuds to not less than 30 years or a life sentence (22).

According to the Albanian Statistics Institute data published on 18 October 2017, in the decade from 2005 to 2015, 129 official penal prosecutions were held, and 135 sentences passed (Table 3) (Fig. 4).

Despite the changes introduced in the Albanian penal code and the insertion of two new crimes, namely “severe threats such as to compel segregation within the home” (art. 83/a of the penal code) and “incitement to feud” (art. 83/b of the penal code) which dictates up to three years of incarceration, such measures do not seem to be sufficient to fight the phenomenon. This is also attributable to the fast track, that envisages a reduced sentence. In fact, as can be seen (Table 4) from 2005 to 2015 there were only 7 life

### Table 3. Prosecutions and sentences for homicide due to blood feuds in 2005-2015

<table>
<thead>
<tr>
<th>Year</th>
<th>Prosecutions</th>
<th>Sentences</th>
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<tbody>
<tr>
<td>2005</td>
<td>21</td>
<td>17</td>
</tr>
<tr>
<td>2006</td>
<td>18</td>
<td>19</td>
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<tr>
<td>2015</td>
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<td>13</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>129</strong></td>
<td><strong>135</strong></td>
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### Table 4.

<table>
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<tr>
<th>Duration of sentence</th>
<th>2005</th>
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<th>2007</th>
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<th>2010</th>
<th>2011</th>
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<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>Total</th>
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<tr>
<td>10-25 years</td>
<td>15</td>
<td>16</td>
<td>8</td>
<td>13</td>
<td>10</td>
<td>6</td>
<td>5</td>
<td>5</td>
<td>7</td>
<td>9</td>
<td>6</td>
<td>100</td>
</tr>
<tr>
<td>25-35 years</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>2</td>
<td>4</td>
<td></td>
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<tr>
<td>Life sentence</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>7</td>
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sentences, 4 sentences to 25-35 years of incarceration and 100 to 10-25 years.

The data on the blood feuds phenomenon versus the actual sentences passed for these crimes raise various points for reflection about the Kanun in the current society. Despite the huge progress in the political, economic and social relations of the Albanian state in the last twenty years, the processes of vendetta and blood feuds have continued to hold sway. In fact, we must acknowledge that in the present day, this process has remained substantially the same as in the pre-war period. Starting from this assumption, we have examined the causes of the persistence of the phenomenon. According to Dr. Pajazit Nushi, President of the KMDLNJ in Kosovo, it all revolves around the concepts of dignity and personal and family honor. These values occupy a primary position in the hierarchy of Albanian ideals. Any decrial of these principles was an attack against the moral and social feelings of the Albanian people, that triggered excessive aggression, directly proportional to the blood feuds and vendettas that were carried out in social or political situations considered to warrant them (23). As to the other indicators that influenced the uncontrolled diffusion of blood feuds strictly linked to the spread of crime, they include first of all the vacuum created by the lack of sufficient law forces due to the economic difficulties. The maintenance of order was weak and the operative force geographically limited, almost entirely excluding the northern part of the nation. Secondly, the negative influence of public opinion on politics, especially after the collapse of the pyramidal schemes that had brought about huge financial losses. Last but not least, the widespread possession of weapons by civilians, that greatly facilitated their employment to threaten, maim and kill.

At the present time there is a clash between two different legal systems: on the one hand the constitutional system and on the other Albanian consuetudinary law, that was created and implemented in a very different political and social climate to that of today. The consequence of this clash is that the State and institutions are very weak, thus justifying the recourse to self-governance, failure to comply with the law and the violation of human rights.

Concurrently, in this social climate, after the fall of the communist dictatorship and start of the political transition period, the first links between State bodies and organized crime began to emerge and strengthen. Firstly, the international embargo imposed on ex Yugoslavia in 1992 offered organized crime a golden opportunity to run contraband cigarettes, oil and coffee across the northern border of the Albanian Republic. This outlet to the west, apart from being exploited for contraband activities, was accompanied by a huge wave of migration toward Italy and of trafficking in girls for sexual activities. This reached a peak at the end of the 1990s, when it is estimated that about 30,000 Albanian women were being exploited for prostitution abroad by the criminal bands that had grown up in that period (24).

According to the criminologist Xavier Raufer (25), the base of the Albanian crime pyramid was composed of men coming from the same villages or tribes, and often the same families. In support of this claim, the DIA compared the Albanian mafia structure to the ‘ndrangheta, in view of the hierarchical structure based on the family. In particular, the bands in northern Albania were not only very violent clans but also characterized by a hierarchical order within which the members were united by blood ties. The head of the organization was generally the pater familias, who was replaced at his death by the oldest brother. The hierarchy declined with the blood tie distance from the head of the organization, who dictated the roles and extremely rigid relations, regulated by rigorous rules of conduct actually based on the ancestral norms of the Kanun (26). In fact, we know that the Kanun code is currently adhered to above all by criminal families, and has become a shield in their hands justifying the resolution of discord among rival groups, often by recourse to “gjakmarrja” as the form of punishment. The blood feud system according to the Kanun is not the only behavioral code still in force in Europe, since a very
similar system is to be found in Sardinia, where the Codice Barbaricino features a behavioral regulation model that is active particularly in the Barbagia region. The region’s main working activity is agricultural-pastoral, and banditism is rife. This consuetudinary law was passed down by word of mouth by the shepherds, and then thanks to a detailed analysis of the legal structures and Sardinian law made by A. Pigliaru, it was transcribed and published in 1959 (27).

Just like the situation for the Kanun, in given historical periods in Barbagia this collection of rules and principles constituted a true legal system that allowed the pastoral community to regulate social relations. In fact, Barbagia was one of the most violent territories in Italy, where the homicide rate was strikingly high, accounting for the highest percentage in Sardinia.

The Barbaricino code represented the Sardinians’ idea of justice (28) and the people’s concept of the world, of violence and hospitality, feuds and gifts, massacres and marriage, predation and generosity, in the constant interweave of social and ethical extremes that governed the community.

The literary contribution offered by the jurist Antonio Pigliaru (29), in fact, consisted in having transformed the oral tradition into a written code of norms composed of 23 articles subdivided into three sections: general principles, offences and the degree of vendetta. In his work, Pigliaru provides a detailed description of the general norms and lists the offences that demand and legitimate the practice of vendetta, employing a juridical vocabulary as closely adherent as possible to the Barbaricino spirit.

Pigliaru’s research demonstrated that the practice of vendetta was imposed within the community on a series of different levels: it was not simply regarded as an obligation imposed by law, but rather as an ethical imperative. “For a Barbaricino man, to evade this obligation […] meant running the gauntlet of disdain and moral condemnation […] by his own social group.” (29) Through this behavioral code the shepherds could control the behavior of their members and supervise the various forms of vendetta in order to make it act as a form of defence and a deterrent more than as a vehicle of aggression and subjection (27).

To gain a full understanding of Barbaricino vendetta it needs to be compared to a system of honor and justice, since the underlying principle in both, apart from honour, is respect for the given word. The oath of a Sardinian man of honour, like that of an Albanian highlander, should never be confuted and was worth more than any legal act. When a man was dishonoured the community believed he had the right to retaliate the offence with vendetta, seen as a tool of justice supported by the entire community. It was the only possible solution in a society where public institutions were entirely lacking, as they were in Albania. This aspect is crucial to an understanding of the genesis of this method of justice, that was so profoundly rooted in these societies.

Another fundamental principle underlying the two codes is that of loyalty, that is owed not only to friends but also to enemies. For example, in the Barbaricino code denunciation for whatever reasons, justified or not, is a deplorable act violating the rule of silence. The infraction of the rules is even greater if the denunciation is made to the Law Forces or a magistrate, because it deviates from or discretches the code (30).

By contrast, one aspect that was different in the two codes was the existence of a reconciliation ritual. In the Kanun penal system this contributed to prevent the spread of conflicts. In the Barbaricino code there was no comparable practice but in any case it was possible to placate the vendetta if the culprit acknowledged his fault and agreed to make the reparation demanded, or if the culprit had acted by mistake or because he was obliged by the use of violence and force to perform the act.

Finally, another substantial difference between the two codes was the way vendetta was accomplished against the victim. In the Barbaricino code, in the case of violence between rival families, it was common practice to kidnap one of the members, and then murder him and mutilate a part of his body to indicate the crime the hostage and his family had committed. Kidnapping, that apparently had a financial motive, was deliberately made to appear so in order to mask the main aim, that was vendetta to vindicate the offence suffered.

Kidnapping to extort money is a crime against personal freedom and property, according to the Italian penal code, art. 630, that states: “Whoever kidnaps a person to gain, for himself or others, an unjust profit as the price of release, is punishable by imprisonment for twenty-five to thirty years. If the kidnap results in the death of the victim, as an accidental consequence unintended by the guilty party, the latter is punishable by imprisonment for thirty years. If the guilty party causes the death of the kidnapped person a life sentence is applied.”

Historically, the years most affected by kidnapping were between 1944 and 1949, when there were 92 kidnappings and the “great wave” between 1966 and 1968 when an average of 12 kidnappings per year occurred (31).

The phenomenon spread rapidly in a segregated environment that had its own laws and traditions did not die or decline since social frustrations grew ever stronger. In fact, from the psychological standpoint, it has been shown that within the Sardinian family upbringing there are tracts in common with the high percentage of kidnappings, such as the authoritarian parental style that tended to amplify aggressive impulses by repressing emotions and encouraging audaciousness and the sense of honor and respect for the community code of origin (32).

The need for revenge in these two communities, so different but in some ways very similar, was a public duty, as stated by Succhi and Mastronardi, that people regarded as a necessary task and relentless fate from which there was no escape.

However, it is important to stress that the Albanian criminal organizations in particular, referred to the ancient code not so much because they felt the link with its close association to Albanian society as because the use of the norms allowed the mafia to control their members’ behavior and guarantee their loyalty, thus enhancing the power of the organization.

As pointed out by the anthropologist Patrizia Resta, the mafia clans are temporary aggregations created to achieve particular aims, so in that context blood feuds such as recourse to vendetta and violence are adopted to demonstrate the degree of cohesion and vindicate their power in a given group or territory. In turn, the group responds to violence
with violence; nevertheless, once the aim has been achieved the aggregation is concluded.

After the 1990s, with the widening of the market and mass migrations, Albanian criminal organizations found a fertile terrain in Italy, which was a potential business market. In fact, the Albanian mafia was the most ubiquitous and ramified foreign organization in Italy (33).

One of the main characteristics of these criminal clans is that they are simultaneously involved in myriad criminal activities such as: narcotraffic, contraband of weapons, extortion, robbery, trafficking in human beings including children, but above they are specialized in smuggling in girls for prostitution. There is a true traffic of young girls exploited in conditions of slavery. In fact, the organizations are notorious for their extreme cruelty and violence, and use intimidation to guarantee that their victims do not talk and continue to practice the illicit activities as ordered.

An example of the contorted, self-interested interpretation of the Kanun and the concepts of honor and hospitality can be observed in the cases of extortion; in particular, in the city Scutari and surrounding villages the bands often congregate in bars to extort the “gjoba” (that could be translated as the Italian mafia “pizzo” or take), these criminals claim they are “guests” as written in the Kanun, because those who refuse to pay commit an offence against “guests”, thus risking death. These cases of racketeering are not only typical of Albanian criminals operating in Albania, but there are also documented cases among Albanians who live in Macedonia, in Kosovo and in western Europe (18).

The same violent attitude is reserved to girls taken in the eastern nations to put to work as prostitutes. They are forcibly carried off by the mafia or else deceived with promises of a better life and a job in Italy, made by acquaintances or the fiancé. The sociological key to this behavior is the role assigned to women in the Albanian social and familial system, as regulated by the Kanun. In particular, in the second and third books, devoted to the family and marriage, a state of absolute submission of the female sex emerges. It should be remembered that the value of a woman is accounted half that of a man, thus authorizing men to consider women inferior beings, favored by a strongly depressed socioeconomic context, marked by widespread domestic violence, as well as to keep to the idea that women can be used to gain a profit (34). This aspect is in strong contrast with other pure values inspired by the Kanun, like the sacred nature of the family, and respect for others. Thus, we can say that this new idea of vendetta has lost an essential attribute that had to do with ensuring a balance among people, and the philosophy of equality that supported the code as a form of justice (9).

According to Amnesty International, today one woman in three in Albania has been beaten or subjected to other physical violence inside the family, as stated in the report issued in April 2006, where the main culprit of most acts of violence was the husband or ex-husband.

Save the Children Italia, thanks to the study made by Sisto Capre and the aid of PARSEC (Research and social Intervention) has published an investigation of trafficking of minors from Albania to Italy by the shqipetare mafia as from the year 2000.

Accounts made by women victims of the traffic, family members, social operators and the police force reveal an overall panorama in which kidnapping occurs outside schools, on the streets, as well as of false promises and deceitful statements made to ingenuous parents who handed over their daughters to people who appeared generous but were actually conscienceless human traffickers (35). We report below the story of a seventeen-year old kidnapped and forced into prostitution, documented by Save the Children Italia:

“How old are you? «nineteen». How did you come to Italy? «I had been in Lushnja for two days with my fiancé. We were walking when suddenly three boys appeared. They sat by us and watched while I talked to my fiancé. Later they followed […] by taxi and beat up my fiancé, kidnapped me, put a black hood over my head, and carried me to an old warehouse in Durazzo. For one month I was kept hidden there with another girl. Then, they took me to Italy in a rubber dinghy. […] We left from Durazzo and arrived in Bari […] and then went by train to Milan. There they took us to their friends’ house, in the dark, to prevent us seeing the place where we were». Where was the other girl from? «Albania». During the stay in the warehouse, how did the boys behave with you? «I was seventeen and a virgin, that is the thing that makes me feel most sad. The first time they beat me, bound my hands and feet and then raped me […] The terrible violence lasted two or three hours while they beat me and terrorized me. If you tell, they said, we will kill your whole family […]». Where were you kept? «In Milan, I and the other girl, for two days. Later they took me to a hotel where there was a third girl. Then we went to Brescia, and the next day we were ordered to go on the streets, the older girl taught me how I should behave with clients […] ». How much money did they ask you to get a night? «As much as possible». Did they rape you if you didn’t reach the sum they demanded? «Yes, it was terrible. I remember the first day, when I had no experience. They pushed me into a cold bath, and beat me. I stayed behind the door of the hotel from 3 in the morning till 7 in the evening on one leg. They wanted to convince me to walk the streets but I said it was better to leave me to die, […] my whole body was covered in bruises […] ». How long did this story last? «Thank God, it ended early for me, after one month, but it was enough to ruin my whole life. […] The sisters Daniela and Maurina, and the whole group of volunteers that worked with them found me by chance, and asked me if I wanted to leave the streets. I don’t know why, but I believed them, despite the fear and violence I suffered every day […]». Did you tell the clients something about your story? «I spoke to many clients but I didn’t trust them […] firstly because they too treated me as a prostitute […] ». Did you receive other threats from the boys […] after you went away? «It was terrible. I was so afraid but the people who helped me were very honest. For many girls who leave the streets, the boys phone again and threaten their families». Now that you are better, what would you say to girls who are in danger? «To find the strength to live differently. To have hope and trust people and their life will change. I would like to say to all Albanians and all the girls on the streets to listen to my message: don’t forget the girls on the streets in Italy, Albanian boys don’t want to work and so they exploit girls this way. You cannot imagine how the knives glitter and the whips crack at night. […] I will never forget how afraid I was to telephone my father, when I left the streets, and
say: “Dad, I’m alive”. Does your family know you are all right now? «Yes. I went back to Lushnja to tell them I am not afraid to walk with my head high.» (35)

In the report by Dr. Cataldo Motta, prosecuting attorney for the Italian Republic at the Court of Lecce, in a meeting to study foreign mafia organization in Italy it was stated that:

“at the start of illegal immigrant landings along the Apulian coasts, carried on fast rubber dinghies […] at the prosecuting attorney offices in Lecce a work group of three magistrates was set up […] and the judicial police received instructions to investigate with the intervention […] of an inter-forces nucleus manned by staff from the interprovinces judicial police services, organized in collaboration with their commanders and directors, assigned the management of the related investigations, data collection, analysis and monitoring […]. Then a standardized investigation protocol was defined […] that dictated norms for the identification of the illegal immigrants […] using the AFIS and SPAID systems and linked up with the central identities files. […] The need to prevent those foreigners who had made declarations relevant to the investigations from leaving the area was also indicated […] and the need to detain people or grant permits to stay for reasons of justice or social protection according to art. 18 of the law decree dated 25 July 1998, n.286 disciplining immigration.” (33)

Currently, the shqipetari clans operate in all the Italian regions, carrying out diversified criminal activities according to the geographic context. In the northern regions they mainly deal with the drugs market and robberies, while in the south there is still a rigid control of criminal activities by the traditional mafia organizations (Cosa Nostra, Camorra and ‘Ndrangheta), so alliances are set up, in particular in Calabria and Sicily, for trafficking in drugs and young girls for sexual exploitation (36).

Operating in collaboration with the Italians, the Albanian clans have gained ever greater spaces on Italian territory, creating a new commercial platform for transnational drugs trafficking, even if most of the main illegal activities are managed by Italian organized crime. These include crimes directly connected to financial gain and those that serve to preserve or enhance the influence of the organization, or else to fight the repression efforts of the legal authorities.

“It seems necessary, therefore, to institute more incisive and efficacious norms at an international level: on one hand it is essential to harmonize […] the substantial penal law dictates and investigation tools; on the other hand it is equally necessary to promote strong cooperation among the different Nations involved […]” (33)

In particular, in our case, the rivalries among criminal bands and groups for drugs traffic and the exploitation of young girls for prostitution, accompanied by fights and murders disguised behind the name of the Kanun, pose a daily threat to the social order with grave economic and psychological consequences.

Naturally, any attempt to explain blood feuds simply as an irrational behavior linked to individual emotions would be too superficial a view, even if it cannot be denied that they play a fundamental role in the life of every one of us. However, the gjakmarria is a more complex phenomenon, strictly dependent also on economic, social and historical factors, and so demands a holistic approach in order to achieve a real change within the community.

Conclusions

The Illyrian consuetudinary law code (Kanun) is one of the most ancient European legal systems, and is a monumental work of law. It recounts popular wisdom and philosophy but despite its historical value, it remains a monument to archaic law, created and implemented in a reality that is completely different from the modern age. The work has such importance that it is worthy of a place in the Museum of Law.

Interpretation of the Kanun is highly complex owing to the paradoxical characteristics observed when considering positive and negative aspects of blood feuds. Originally it had the function of guaranteeing cohesion within the clans and debarring conflicts by reaffirming the humanity of the offended party, when political organization was lacking.

Nowadays, instead, the application of the principles of the Kanun in some Albanian regions today is entirely out of place, and demands a stronger application of State laws in some of the rural zones where even now the laws of the State still go unrecognized.

Nevertheless, owing to their complexity, it is difficult to implement these laws due to the paucity of available resources, so the State is unable to eradicate the phenomenon and safeguard all the national territories. Moreover, there is the concurrent problem of corruption and decay in many of the counties. These generate myriad socioeconomic problems that have had a relevant role in the creation and power of criminal groups, that in turn exploit the Kanun norms, as described above.

In January 2014, Albania presented the national report on the human rights situation in the nation, during the second cycle of the Universal Periodic Review (UPR). The Review was held during the 19th session of the Council of Human Rights, on 28 April 2014. During the Congress the Albanian government declared that it intended to revise the action plan to fight criminal activities and homicides arising due to vendettas and feuds, as well as to cooperate all over the territory with the regional and local school departments, in order to provide educational and psychosocial services for children living in isolated areas (37).

The Associazione Papa Giovanni XIII, that has been working for many years in the Albanian regions, emphasizes that feuds are a complex phenomenon that violates fundamental human rights, in particular the right to life, to freedom, and to personal safety. The promotion of non-violence and the practice of reconciliation among families that are victims of feuds lies at the heart of a culture of peace, and of collective reconciliation processes.

In conclusion, we can state that mapping and monitoring families that are victims of feuds is a fundamental step, involving the creation of a national register and institution of non-violence awareness campaigns run by public institutions. This could promote dialogue and reconciliation, allowing families to choose forgiveness rather than vendetta. Certainly, the fight against blood feuds demands concerted efforts by many elements of society, but a redefinition from a new sociocultural and anthropological perspective of the significance and system of vendetta, disclaiming feuds and the prestige previously attributed to families perpetuating vendettas, could encourage families to have more faith in
the current values of the community and the State, forging a new sense of a form of justice that is not personal and individual but collective and fair to all.

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