Medicina Historica 2024; Vol. 8, N. 3: e2024028 DOI: 10.69124/mh.v8i3.16669

Original article: History of medicine

The personal injury in the customary law of Northern Albania: Historical and literary considerations

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Abstract. *Background:* The Kanun of Lekë Dukagjini, the customary legal system of Northern Albania, governed the social and legal life of local communities for centuries, regulating every aspect of life, including compensation and the management of personal injury. One of the least studied aspects of the Kanun concerns personal injury and how it was to be compensated. *Methodology:* This study is based on the analysis of existing literature on the Kanun, with particular attention to historical documents and literary interpretations. *Objectives:* The analysis aims to explore the pragmatic approach of the Kanun to managing personal injury, highlighting the economic and symbolic logic underlying compensation. *Results:* In the absence of a centralized judicial system, conflict resolution occurred through arbitrators ("senior arbiters"), chosen for their wisdom and impartiality, often involving Kanun doctors to assess injuries. Compensation followed predefined criteria. *Conclusion:* Contemporary reflection on compensation and punishment can draw inspiration from this tradition, suggesting an evolution of modern systems towards greater integration between repair and prevention of harm, in line with the idea of a more holistic approach to justice.

Key words: Kanun by Leke Dukagjini, personal injury, albanian customary law, customary law, social relationship, legal tradition.

Introduction

The Kanun of Lekë Dukagjini, the customary law that governed the social and legal life of Northern Albania for centuries, represents a unique pillar deeply rooted in Albanian cultural tradition (1-3). The term "Kanun" originates from the Greek word κανών (kanón), but it most likely arrived in Albania during the Ottoman occupation. In Islamic law, jurists used this term to denote an administrative regulation, distinguishing it from Divine Law, Shari'a (the body of law developed by Muslim jurists) (4, 5). Originating in the medieval period and attributed to Lekë Dukagjini, a 15th-century noble, the Kanun was not a written code but was passed down orally from generation to generation (6, 7). It served as an unofficial constitution, organized into different areas that regulated every aspect of daily life: from family relations to interactions between individuals, property rights, justice, and codes of honor (8). One of the most distinctive features of the Kanun is the concept of "Besa" (sworn word), meaning a vow of loyalty and trust, considered sacred (9). Another central element is the concept of revenge (gjakmarrja), a practice that governed conflicts within the community but often led to bloody feuds (10, 11). Despite the apparent rigidity of these rules, the Kanun aimed to maintain balance within mountain tribal societies, in the absence of a central state power. The Kanun remained in force in many rural areas until 1912, the year of Albania's independence, and in some isolated contexts, it continued to exert its influence into the 20th century. Its written codification dates to the 19th century, thanks to the work of Archbishop Shtjefën Gjeçovi, who collected and organized

the norms into an official text, preserving its historical memory. This legal system not only represents a legal code but also a document reflecting the values, culture, and identity of a community that managed to resist the pressures of foreign dominations and modernity (12, 13). Tradition traces its origins back to the time of the Illyrian Roman emperors such as Diocletian, Constantine, and Justinian, and it is said to have been known to the legendary King of the medieval Serbian state, Stefan Dušan. Historically, we have a text written by the Franciscan friar Shtjefën Gjeçovi, published in Shkodra in 1933, which is considered a transcription of the rules dictated in 1444 by Lekë Dukagjini, prince of the northern Albanian regions (14-16). It is important to note that, while the traditional rules shared common values, they varied depending on the specificities of different regions. Initially, there were seven regions, later reduced to four, which constituted the administrative divisions of Albania during its time as part of the Ottoman Empire (17-18). In the version reconstructed by Father Gjeçovi, the Kanun of Lekë Dukagjini consists of 12 books and 1,262 articles (19).

Personal injury

The concept of personal injury is a central and complex issue in law, closely linked to the principle of protecting the psyco-physical integrity of the individual (20, 21). This principle, recognized in numerous modern legal systems, is enshrined in both national and international legal instruments. Over time, the concept of personal injury has evolved, leading to the development of increasingly specific criteria for its assessment and compensation, which consider not only the material extent of the harm but also its psychological, moral and social repercussions on the victim. The current multidimensional approach to personal injury reflects growing attention to the recognition of the individual's centrality and the protection of their dignity. However, the parameters used in modern legal contexts are based on written laws and an institutionalized judicial system, sharply contrasting with the practices adopted in customary legal systems of the past. An emblematic example of this difference can be found in Northern Albania, where for centuries customary law was the main source of legislation. However, one of the least studied aspects of the customary law of Northern Albania concerns personal injury and how it was to be compensated. This gap in studies is due to several factors, including the lack of systematic sources and the absence of a centralized and formalized judicial system. In a context where legal decisions did not stem from mandatory actions, as in modern legal systems, but rather from a party-driven process, the management of personal injury was often handled arbitrarily. There was no equivalent to the public prosecutor, and recourse to arbitration to resolve conflicts related to physical or moral damage was entirely voluntary. The arbiters, known as "senior arbiters"**,** played a central role in the conflict resolution process. These individuals were chosen by the parties involved, not only for their expertise but especially for their reputation for wisdom and impartiality. Often, the role of the "senior arbiter" was passed down from generation to generation, with children following in the footsteps of their fathers, thus perpetuating a sort of family tradition in the administration of justice. Paid by the party that had selected them, the arbiters could not be replaced, as doing so would offend their honor. If one of the parties felt unsatisfied with the judgment, the arbiter who issued it could ask another arbiter to review their decision. If the second arbiter confirmed the judgment, the party who filed the complaint had to pay both judges. However, if the judgment was considered unjust, the arbiter who made the error would have to compensate the second arbiter (22).

A contribution from literature

A novel set in the first half of the 20th century offers a valuable testimony on the practical functioning of the Albanian customary legal system, illustrating how the Kanun maintained a crucial role in Northern Albania even during those years (23). The novel, titled *Broken April* and written by Ismail Kadare, was first published in 1978 and serves as an important literary source for understanding the persistent influence of this legal tradition in Albanian society at the time (24). The story intertwines two narratives: on one hand, the tale of a young man forced by his father to continue a blood feud; on the other, that of a writer

from Tirana who, during his honeymoon, ventures into the mountains with the intention of exploring a world entirely unfamiliar to him. On page 53, we read:

> "*At the end of October, finally shot Zef Kryeqyqi, but he failed to kill him, only wounding him on the jaw. The Kanun doctors arrived to assess the compensation to be imposed on the one who caused the injury; in this case, because it was to the head, they set the price at three bags of groshe, half the amount for a full blood ransom. This meant that the Berisha family had two options: either pay the compensation or consider the wound as half of the blood ransom. In the latter case, they would lose the right to kill other members of the Kryeqyqi family because half of the blood would already have been ransomed. They could only inflict a wound upon them*".

From this narrative, we can infer: 1) the assessment of personal injury was carried out by doctors collectively; 2) the consequences of a gunshot wound to the jaw were valued as 50% of the total injury; 3) compensation was not paid in money but through natural goods; 4) alternatively, the principle of "an eye for an eye" could apply, meaning inflicting an equal injury on the perpetrator of a personal injury. Therefore, the punishment was marked by preventive and afflictive purposes, rather than purely compensatory ones. The punitive function was exercised directly by the private individual, not by public authorities. It seems, therefore, that there existed legal physicians (Kanun doctors) and that the assessment of personal injury was based on the severity of the wound according to pre-established criteria. From the reading of the Kanun, we also know that another factor considered was the gender of the victim, as the blood of a woman was valued at half that of a man (25).

On the role and formation of Kanun doctors

Pages 196-197 of Ismail Kadare's work provide interesting details regarding the formation and role of Kanun doctors:

> "*I studied surgery in Austria, the other man continued. I was part of the first and last group of scholarship students sent there under the monarchy. Perhaps you have heard what happened to most of those students once they returned from abroad. Well, I am one of them. Total disappointment, no clinic, no opportunity to practice my profession. For a while, I was unemployed, then by chance, in a café in Tirana, I met him, he said, nodding toward the surveyor, who offered me this strange job.*
>
> *Portrait of a group with a bloodstain, repeated the surveyor, who had approached and was following the conversation.*
>
> *He will always meet us where there is blood.*
>
> *The doctor seemed to ignore his words.*
>
> *And is it in your capacity as a doctor that you collaborate with Ali Binak? asked Besian.*
>
> *Naturally. Otherwise, he wouldn't have brought me along.*
>
> *Besian looked at him in surprise.*
>
> *There's nothing strange about it, continued the doctor. In the judgments based on the Kanun, when it concerns matters of blood, especially wounds, the presence of a person who possesses basic medical knowledge is always necessary. Of course, here they don't need a surgeon... I would say that the most ironic aspect of my situation is that I am involved in a job that even the humblest nurse could do, not to mention anyone with rudimentary knowledge of human anatomy.*
>
> *Rudimentary? Is that enough? Besian asked.*
>
> *The doctor smiled bitterly again.*
>
> *You probably think I'm here to treat wounds, right?*
>
> *Yes, of course. I understand that, for the reasons you explained, you gave up your career as a surgeon, but in any case, you can treat the wounds, right?*
>
> *No, the doctor said. That would be fine. But I don't deal with that. Not at all, understand? The mountain*

people have always treated their wounds themselves and continue to do so, with raki, with tobacco, following the most barbaric methods, such as extracting a bullet with the help of another, and so on. They never call on the expertise of a doctor. And I am here for a completely different role. Understand? I am not here as a doctor, but as an assistant to a jurist. Does that seem strange to you?

Not so much, replied Besian. I also know a bit about the Kanun, and I can imagine what you might be doing. Counting the wounds, classifying them, and nothing else, said the doctor bluntly".

The Kanun doctor described here has a specialized surgical training and performs medical examinations, not aimed at treating the injuries found but solely and exclusively for assessing the existing damage. His role is to bridge the gap between medicine and law, which is why he considers himself "an assistant to a jurist". His function centers on the relationship between medicine and law, and for this reason, he is considered to be working under the guidance of a legal expert.

It is interesting to note how, in the first half of the 20th century in Northern Albania, the intervention of a doctor was not considered strictly necessary for treating even serious wounds, with the belief that it was sufficient for someone with purely practical knowledge in the matter to take care of them. On the other hand, a well-qualified doctor was called upon to assess and quantify the extent of the injuries sustained in order to determine appropriate compensation.

From the continuation of the story, we learn that for the evaluation of the consequences, something very similar to modern barème existed, a standardized system for assessing injuries:

"Perhaps you know that, according to the Kanun, injuries inflicted are paid with a fine. Each injury is paid separately, and its price depends on the part of the body where it is located. The compensation for injuries to the head, for example, is twice as high as those for injuries to the body, which are further divided into two categories, depending on whether they are above or below the waist; there are also other distinctions. My job is only this: determining the number of wounds and their placement".

Indeed, the perception attributed to the Kanun doctor is not unfamiliar to us, namely, that it is often more difficult to assess the damage caused by major injuries than that caused by death itself, and how such injuries can lead to harm greater than death itself. On page 198, it reads:

"*Perhaps injuries make judgments more difficult than murders do, the doctor resumed. You must know that, according to the Kanun, an injury, if it is not compensated by the payment of a fine, is considered equivalent to half of a life. A wounded man is therefore considered half-dead. In short, if someone injures two people from the same family, or injures the same person twice, and does not separately compensate each injury, he is still indebted for an entire life, meaning a human life.*

The doctor paused for a moment to allow them time to absorb his words.

This situation, he continued, creates very complicated problems, particularly of an economic nature. Are you surprised? There are families that cannot afford to pay the compensation for two injuries and thus prefer to settle with a human life. Others are ready to ruin themselves, compensating for as many as twenty injuries, just to preserve the right to kill the victim once they recover. Strange, isn't it?".

There were even opportunistic behaviors:

"*I know a guy from the Black Valleys who has been supporting his family for years with the compensation he receives for the injuries inflicted by his enemies. He has survived multiple times and has convinced himself, thanks to the experience gained, that he can avoid any fatal bullet attack, thus inventing, for the first time in the world, this new profession: living off his own wounds*".

Extreme cases that challenge the wisdom of the judge/arbitrator are also described, on page 199:

> *"...according to the Kanun, when two men shoot at each other point-blank and one dies while the other is merely wounded, the latter must pay the difference, in a sense the surplus of blood? In other words, as I told you before, behind the mythical aspect, one must often look for the economic one. Perhaps you will accuse me of cynicism, but by now blood, like everything else, has been turned into a commodity*".

One might hypothesize an exclusion of responsibility based on necessity or self-defense, but would this also exclude potential civil consequences? Certainly, the customary law of Northern Albania did not distinguish between criminal and civil liability, a distinction that modern legal systems make between two very distinct types of liability, both in terms of characteristics and prerequisites. This approach could offer food for thought for those who advocate an evolution of the compensatory system, steering it toward a more punitive function rather than the traditionally reparative one, as occurs in some contemporary contexts. The bitter observation by the Kanun doctor that "blood, like everything else, has been transformed into a commodity" evokes the fundamental dilemma between compensation or punishment. It is a dilemma that remains highly relevant today, as the way we conceive of civil and criminal liability is constantly evolving. Nowadays, there is an increasing focus on the situation of victims, aiming to ensure that they receive the maximum compensation for the damages suffered. At the same time, there is growing awareness that punishment for crimes could serve as a bridge between the two domains of civil and criminal responsibility, which often proceed separately and sometimes even seem to conflict. On one hand, the focus on the rights of victims broadens the situations in which compensation can be sought, striving to restore the economic status quo ante the damage. On the other hand, the punitive aspect of civil liability underscores the importance of solidarity in society, not only to prevent future crimes but also to promote respect for the fundamental values enshrined in the constitutions of modern Western states.

Conclusion

The analysis of personal injury within the context of Northern Albanian customary law provides a profound and complex insight into a legal system intrinsically linked to local traditions and culture.

Through the lens of the Kanun and its countless articles, a framework emerges in which the consequences of personal injuries are not only subject to compensation but also serve as a mechanism for social control and the maintenance of honor. The figure of the "elder" and the "Kanun doctors" highlight the importance of traditional knowledge, which, in the absence of a formally codified legal structure, creates a web of shifting and often intricate relationships and responsibilities. Ismail Kadare's novel, with its compelling narrative and ethical challenges, brings us even closer to the lived experience of those involved in this system. The tension between compensation and punishment, which runs through the literary work, still resonates today in contemporary debates about forms of justice and accountability, raising questions that challenge modern legal structures. The implications of the Kanun and its approach to personal injury provoke a fundamental reflection on how society values human life and how this value has evolved over time. On a practical level, the legitimacy of arbitration solutions and the economic influence in determining compensation highlight the intersection of law, culture, and economy, suggesting that every legal system is shaped by the needs and values of those who live under it. This leads to a critical reassessment of contemporary conceptions of civil and criminal liability, drawing attention to the need for a balance between victim protection and social responsibility. In a globalized context, where challenges to social justice continue to evolve, the comparison between traditional and modern legal systems provides valuable insights for reflecting on justice, equity, and the value of human life in the contemporary world.

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