



## Research Article

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# The Time of the Creation of Kanun: An Historical Observation through the Terminology

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## Abstract

Different scholars are of different opinions regarding the time when the entity of the Albanian traditional law known as “Kanuni i Leke Dukagjinit” was compiled, precisely the law which reigned supreme in the highlands of Northern Albania. They offer their arguments based on historical data, mainly but also tapping other sources. In order to resolve such a mystery, we can obtain important data through the analyses of the language and terminology used by Father Shtjefen Gjecovi, when he gathered and compiled the Albanian oral tradition of Kanun. The time when Kanun began to govern the life of the inhabitants of Northern Albania is quite important as in this way we can gauge the evolution of the terminology used in the Kanun up to the point that the oral tradition was gathered, compiled and written down by Father Shtjefen Gjecovi at the beginning of the last century. Such a terminology helps us to come to the conclusion that in spite of the fact that Kanun existed many centuries ago, there are a lot of different strata in it up to the modern times ones.

**Keywords:** Kanun, Leke Dukagjini, Historical Observation, Terminology, Albania

## 1. Biblical Traces

The researcher Shaban Sinani mentions a lot of similarities between the Albanian Epos and the biblical literature such as: The Resuscitation, the santification of the sublime sacrifice, or the hero equipped with supernatural powers, who also harbors hidden vulnerabilities. What is of interest to us is the similarities between the institution of justice as it appears in the Bible and as it is displayed in “Kanuni i Leke Dukagjinit”. Going beyond the etymological unification of Goddess Diana and the Albanian fairies “zanat” discovered by Norbert Jokli (and elaborated by Eqerem Cabej), the scholar Shabani stresses the existence of the institution of the “dorezanise” and “ndorjes” similar to the present day institution of the “garanter” in the relations between the “zanas” (fairies) and the heroes of the Albanian Epos, or also the institution of “be-se” (the oath) which is considered more as borrowed from the Bible and the epoch of Christianity than inherited from the pagan times (Sinani 2012).

The researcher Sinani taking into account that “Christian Inspiration” mentioned first by the researcher Stavro Skendi, stresses the fact of the existence of a laic inspiration in the church songs (sung liturgy) describing important biblical characters, just like the conclusion drawn previously by the researcher James George Fraser that the religious literature is a reality of literature first and then a philosophical, theological and moral reality. The roots of such church songs are to be sought at the epos of pre Christian era Jews before parts of this epos were transformed into the present day Good Book (Old Testament).

The scholar Shaban Sinani considers “Besa” as a well shaped institution as it is contained in “Kanuni i Leke Dukagjinit: rather a late comer. He pretends that at the very beginning Besa was a Christian canonization possibility to connect and to secure the communication between two different worlds (life and death). At that time Besa was not a sort of guardian of the moral of the community. An ethical category or a legal notion. According to Shabani the enlargement of the semantic meaning of Besa and the new etno-legal meaning as well as the ethical category were acquires during the transformation of the inhabitants of the place from Arber into Albanians because of the religious and demographic changes taking place in that period. The scholar offers arguments for the synonymous couple “bese-fe” (besa=religion), from the time of the balad of the immurement (Lidhen bese e lidhen fe), at Budi’s book (me e madhe bes e fe) up to Albanian romanticism in the XIXth century among the Albanians of the Southern Albania. To Sinan “Besa” and “Be-ja” are inseparable. According to him these words suffered a shrinking of the semantic meaning, reaching present day Albanian in such a shrunk form (Sinani 2012).

## 2. Roman Strata

Many a scholar have reached the conclusion that Kanun contains pre Christian elements, which coexist together with Ottoman, catholic and even modern administrative ones. The researcher Terenc Toci witnessed several elements of the Roman Law incorporated in Kanuni i Leke Dukagjinit, such as the supreme role of the head of the family (Pater Potestas of the Roman Law) who commands the life and death of the family members. Toci observes: There is no doubt that Kanun demonstrates a 2000 years flash back, when it allows the father to kill his own sons (Toçi 1926).

Other traces of Roman Law are to be found at these chapters of kanun covering the family, especially the chapter on the marriage and its consequences on the bride (the married woman). In the framework of the type of “*me manus*” marriage in the Roman Law of late Antiquity, the married woman remains in the submissive position she enjoyed even in her fathers (original) family (submissive to Pater potestas), while as a married woman she is submissive to her husband (*manus*). The same position of the woman is present in the Kanun, too. In a laconic phrase, the position of women according to kanun is: “Grueja asht shakull per me e bajt” (Women are just a burden to be carried on one’s shoulders). There are also other articles in Kanun, which govern the lack of rights for the women.

Even the chapter on the engagement contains traces of the Roman Law, the oldest part of it, when the engagement was arranged by the parents of the couple, without a prior consent of the two persons to be engaged. In Kanun such a situation is expressed as one of the duties of the wife (i.e the mother of the persons to be engaged) is: “*mos me iu perzie ne fejes te te bijve e te te bijave*” (not to poke her nose in the engagement of her sons or her daughters). The boy can decide himself whom he is going to marry, in case that he is an orphan, while the girl does not enjoy even such a right. Another similarity between the two law corpuses is the concept of the engagement as a very solemn act and ceremony and also as an obligation to a future marriage. Even the concept of marriage reflects many a similarity between the Roman Law and Kanun. In the Roman Law the main function of the marriage is family multiplication (i.e. the “production” of offsprings). “Kanuni i Leke Dukagjinit” offers us this definition: “*M’u martue me kanun do me thane m’u ba shtepi, me ia shtue shpis nji rob ma teper, sa per krahe te punve, sa per tshtuem te fmive*” (According to Kanun marriage serves to add one more family member to the family of the husband in order to work as well as to give

birth to children).

*The roots of the prohibition of exogamy in Kanun are to be found in the Roman law i.e. concluding marriages within the family, within the clan. The Roman Law prohibits marriages up to the level of fourth degree cousins, while Kanun prohibits marriages up to the level of seventh degree cousins, including here also the godfather and sometime the whole clan. This was quite an exaggerated concept, which was wholeheartedly fought by the Catholic church trying to limit it. According to the evidence offered by Catholic priests at the end of XIX-th century they tried to lower the prohibition threshold in such marriages at 4th degree cousins.*

Even Latin Law used to have its roots in the oral traditional law of the Latin tribe known as “*ius non scriptum*”, which used to serve as a law governing the relations in the clan/tribal society of the time (gens). Such moral laws established by the community were obligatory to every member of the clan/tribe as they considered such laws as obligatory to them. The tribal organization of the ancient Romans was quite similar to the tribal society existing in the Highlands of the North of Albania at the time of Kanun. The assembly (kuvendi) of the male members of the tribe used to take decisions and they could also issue punitive measures for those tribe members who infringed such moral laws for instance by expelling them from the life of the community (tribe), or even by expelling them as members of the tribe. Such a punishment exists a law concept even in “*Kanuni i Leke Dukagjinit*”. There is historical evidence that in case of grave infringement of the law such punishments were issued to clansmen of the Highlands of the North Albania. The people’s assembly consisting of the gathering of all grown up males of the tribe mentioned by Tacitus as “*concilium*” is to be found in Tacitus’ description of the social order of Rome and Illyricum of the Classical Era (Nova 1965).

The institution of the pre-purchase is borrowed from the Classical Era, too. This is a typical institution for the tribal society. According to Kanun such an institution covers cousins, brotherhood (uncles, sons of the uncles and their grandsons), the tribe and also the owner of the real estate bordering the piece of real estate to be sold.

It is even more interesting the obligation to equip the bride with a dowry, such an obligation even in the Roman Law was inherited from the traditional oral law, then it evolved into normal legal obligation. The obligation to equip the bride with dowry goes hand in hand with her losing the right to inherit any property belonging to her father’s family. It is presumed that the dowry constitutes the married daughter share of the inheritance of her father’s property.

While discussing about “*fe*” (religion), the linguists observe an etymological connection to the Italian word “*fede*” (Meyer, Weigand, Helbig). They refer to the first meaning as “*religious creed*”. Such an etymological explanation was rejected by Çabej. He linked the word “*fe*” with the Latin word “*Fides*” (Çabej 1976).

Çabej takes into account also other meanings of the word such as that of engagement to be married, engagement gifts and also engagement party (festivity), while linking the meaning of the word to the Latin word “*Fides*”. According to Çabej the meaning of this word is linked to tradition, not the religious belief, thus it should be older than the religious creed itself judging from the semantic point of view. The people got engaged and married even before they formulated the notion of God, as the process of multiplication (bearing of offsprings), is a natural process serving as a foundation for such institutions as the engagement and marriage. The urge to bear offspring undoubtedly precedes the development of rational thought. Such an urge is closely related to the existence of the human beings just like such needs as eating, drinking, sleeping are related, too.

Another possible origin of this word could be the Latin word “*fas*”. In the late Classical Era Latin this word showed the whole traditional oral Roman Law. These traditional oral laws were considered as something sacred and of a certain religious component. From the semantic point of view such a Latin word like “*fe*” in Albanian contains both meanings of tradition and also religion thus being a possible source of the Albanian words “*fe*” and “*fes*”. We also encounter such words in the writings of old Albanian writers such as Buzuku in the form of “*feshim*”.

In the same “*breeding ground*” we should look for the origin of the Albanian words “*kunat*” and “*krushk*”, typical terms for the system of the Latin family. The same goes for such terms showing

property such as “prone” (latin: proprietas) and “kujri” (Latin: curia).

The similarity of terms and concepts offers us a first hand material where to search for the antic roots of the Albanian Traditional Law. Such common elements are also present in the traditional oral law of other peoples, too. In Kanun we come across the institution of “pleqesia” which reminds us of the senate of Greek Classical Era. Such an institution was entitled to judge cases and to pronounce verdicts. The Japanese scholar Kazuhiko draws parallel lines between the institution of “miku” (guest) in the Albanian Traditional Law and in the Ancient Japanese Traditional Law. One should be careful to differentiate what constitutes of borrowing from this or that culture and of borrowing from the common tradition of the universality of human nature. This difference is of essential importance in order not to adopt the position of so called scholars which discover such elements and hastily label them as “Albanian phenomena”. Citing such “scholars” could serve to argument thesis which are simply unscientific inventions.

### 3. Other Influences

Different scholars have carried out studies on the elements borrowed by Kanun, the Albanian traditional law from foreign sources. The Slav tribes penetrated the lands inhabited by the Illyrian tribes by late VI A.D. The Slavs used the river valleys and the old roads built during the Roman time to penetrate the Illyricum. The penetration of the Slavs pushed the Illyrian tribes towards the South and the West, thus shrinking the territories inhabited by the Illyrian tribes. In our study we have discussed several institutions present in Kanun, which might have been borrowed by Slavonic Traditional Oral law. We can mention here: the “vendetta” (gjakmarria-blood feud) or also “urazba” the tax paid to cover the blood (death or wound caused to the victim). Such borrowings could have been even earlier ones from the time of the invasion of the Germanic tribes which affected the lands inhabited by the Illyrian tribes for a couple of centuries, but without producing Germanic settlements in Illyricum. According to the scholar Nova the Gothic Invasion from IV to VI century in Albania influenced greatly on the formation of the Albanian Traditional Law.

The waves of the Gothic invasion came in succession and the Germanic tribes ruled the land for small periods of time, but long enough to introduce new elements in the Albanian Traditional Law.

The scholar Nova mentions as elements borrowed from the Germanic traditional law (Leges Barbarorum) the institutes of “djelmeria” (young men), the “poroniket”, the organization and the functioning of the “kuvendi” (popular assembly). We offered elements in the Albanian Traditional law, where “kuvendet” (people’s assembly) are similar to Roman people’s assembly, yet the influence of similar institution in oral traditional law among the Germanic tribes can not be excluded, too. Maybe it is a Germanic stratum on the Roman one, or a simple reinforcement of the Roman influence. Yet we believe that we should stress the importance of the idea of Nova that there is a possibility that such traditional Gothic laws could have been also in written form (Nova 1965), as the Goths applied such laws (in written form) even in other parts of Roman empire occupied, or even settled by those tribes. Anyway such elements should be studied in detail in new scientific works covering such a specific topic.

### 4. Byzantine Period

There are several common features between the Byzantine law and the Albanian Traditional Law (and also other peoples traditional oral law), They have also a common origin. We are offering further on their most important common features.

Byzantine Agrarian Law (Allelengyon), lingered in the Albanian lands til XIV Century. It consacrated the private property of free peasants (the freeholders), the private property in the countryside (arable land and vineyards), collective (group) property, and state property. This law originating in VII or VIII Century A.D. considered that the pasture land, the forests, the waterways (rivers, torrents, lakes etc), the nonarable (barren) land remained property of the community. Such a

community property gradually disappeared as such lands fell in the hands of private landowners. The lands settled by the Albanian tribes in mountainous areas unlike the lowlands and even the hilly areas which were governed by the Byzantine Law, widely enjoyed the community property i.e. the forests, the pasture land were called "kujrie" and were considered to belong to all the families of the village, and could be exploited by all of them according to the principle "te gjitha tymet kane pjese ne kyjrie" (every hearth-family has its share in the kyjrie). This law guaranteed that such lands could not become private property as per the principle: "kyjria nuk ndahet" (the kyjrie land is indivisible). The articles of The Agrarian Law were a marker of a society in transition, where the feudal property was not yet introduced. The remnants of such a law still lingered in the Albanian highlands where the feudal land property was never introduced.

Another trace of the Byzantine Law in the Albanian highlands is the principle of the inviolability of the borders of a plot of land and also the principle of the punishment of the persons infringing such borders. There was also of Byzantine origine the principle of the freedom to exchange with one another the privately owned land plots.

The tax of Tithe (one tenth) which makes its appearance in the Byzantine Agrarian Law, constituting one of the first elements of the Feudal Order, left no mark on the Albanian highlands but for the tax paid to the Catholic Church as it was expressed in Kanun "prej dhetimit te toket e te gjas se gjall" (one tenth from the land fruits-produce and one tenth of the livestock). The concept of the "gjysmatari" (the sharecropper), a tenant on the land of the landowner payin the rent by giving the land owner half of the agricultural production, as well as the concept of the land owner returning to his previous land, which has been occupied by squatters (regaining of the property rights) all originate from the Byzantine Agrarian Law (Allelengyon).

Both the Byzantine Agrarian Law and Kanun pay special attention in a very similiar way to the protection of the dog, as a domesticated animal of special importance to the economy of the Albanian highlanders. Both of them are very similiar in the way they formulate the compensations to be paid for damages caused by domesticated animals to field crops and fruit trees. They are also similiar in the way they charcteize as "unlawful" the "appropriation of something found on the public road".

Both laws contain the right of the preemption and it serves in the both laws as a legal instrument to prevent the transfer of the ownership of the land to foreign (not a member of the family, or the clan) hands. There are also other common points between Kanun and Allelengyon such as the limits in the right to enjoy the property of a plot of land in order not to harm other persons. The payment of idemnities in case of intentional harmful actions and other rights to exploit somebody's else property (servitutes).

By the end of XII century the classical land property system of "pronia" was replaced by the system called "paraspori" which consisted in the distribution of large tracks of state land to private owners. These owners administrated such tracts of land by making the peasands till (cultivate) the land under corvee (opera corrogata), providing the peasants with the seed to be sown and the food to be consumed per everyday of corvee.

We come accross traces of such a system in Kanun, too where we find that: the persons in question can bring their ironware to the blacksmith's, while having as an obligation "the daily bread" (daily food) of the blacksmith, as well as "the hand" i.e. the payement (the wage) of the hand(s) employed by the blacksmith in his shop. The obligation to provide the daily food for the hands working in community projects covers also the obligations of the Albanian highlanders towards the Church.

## 5. Late Middle Ages

The medieval Charters of the towns of Drishti (Drivastum) and Shkodra (Scodra) consitute two different "snapshots" of the same Medieval Albania. The Charta (Charter) of Shkodra contains the Urban Law with some mixed elements of Church Law and the oral Traditional Albanian Law, while the Charta (Charter) of Drishti contains the same elements the other way round i.e. the Church Law

mixed with a few elements of Urban Law and Albanian Traditional Law.

There is a high possibility that the three types of legislation used to exist side by side in the same milieu, as is the case of the Traditional Law which governed the life not only of the highlanders, but also of the townfolk. Both legislations were taken into account by the judges in the lands ruled by the Albanian feudal lords, but also in the lands ruled by The Most Serene Republic of Venice. We have many a historical proof of pleas and demands forwarded to the authorities of the Republic of Venice to respect and safeguard the local customs. Yet the law of the Republic prevailed on the local customs (Albanian Traditional law) (Valentini 2007).

We should stress the fact that the phrase “local customs” (mentioned also in the charters of several Albanian medieval towns) meant the traditional local customs in the urban area, not the Albanian Traditional Law covering the peasants communities in the countryside, or the Kanun in the Albanian Highlands.

It was meant the customs of the townfolk, inhabitants of a certain town, who were differentiated from other people, who were labelled as “foreigners”. It was a minute differentiation of the type “sclavo oy arbaneso voy scutarino” (Nadin 2010), (a Slav or an Albanian or an inhabitant of the town of Shkodra). So the inhabitants of Shkodra are differentiated not only from the Slavs, but also from the Albanians. They were differentiated not on ethnic bases, but on the rights (legislation) of being townfolks of a certain town i.e. the town of Shkodra. We have a citizen of Shkodra and also an Albanian not a citizen of Shkodra meaning that they are judged based on two different laws (the Charter of the Town of Shkodra and also the Albanian traditional law).

These two categories of persons enjoyed different legal rights. They lived in different milieu. They had different customs. They were governed by different powers, using different legislations, but they spoke the same language, in spite of multilingualism being present in the ranks of the upper stratum of the town folks.

## 6. Hypotheses

Back to our first argument we can easily declare that the origin of “Kanuni i Leke Dukagjinit” is not scientifically proved. There are only hypotheses on its origin. Different scholars pinpoint the origine of Kanun in different time periods. It stands to reason to have such different time periods as we have no convincing evidence to document the exact time of the creation of Kanun. The corpus of Kanun is developed in time by losing some of its elements and adding on new ones, just like the stones in a mosaic. Most of the scholars are convinced that the origin of Kanun much older than the time of the Albanian feudal lord Leke Dukagjini (XV century).

The wellknown English anthropologist Miss. Edith Durham was of the opinion that Kanun’s roots are to be found in Bronze Era. We quote: “It is plainly evident that the laws attributed to Leke Dukagjini were much older than XV century, the time this feudal lord used to live in. Maybe such laws governed the life of warriors armed with bronze weapons, whose remains are found in prehistorical burial grounds” (Durham 1991).

Japanese doctor Kazuhiko Yamamoto, in his Albanological essay in 2003, observes similarities between Kanun and several categories in ancient Japanese Codexes as for instance the category (the cult) of the “GUEST”. The scholar Yamamoto supports the theory of the creation / development of Kanun as a system of social values, which should have taken form “before the appearance of a state power and apparatus in the bosom of human society”. Yet he is somehow more circumspect on the time origine of Kanun.

Yamamoto essentially agrees with the scholar Alexander Lopasic conviction that “ The Highlands of Northern Albania have been governed since the Middle Ages by the traditional tribal oral law called Kanun. This law, Kanun has been transmitted by word of mouth from generation to generation among the Albanian tribes up to the moment that the Franciscan friar Shtjefen Gjecovi, finally gathered and compiled the corpus of Kanun. His compilation was published intitled as “Kanuni i Leke Dukagjinit” in 1933 after the death of Gjecovi (Yamamoto2001).

Though Yamamoto has highlighted several Classical Era elements in Kanun, he is of the opinion that the origin of Kanun belongs to the Middle Ages.

We are aware of different time strata present in Kanun through the terminology used in it. Of course there is the Classical Era stratum represented by the Latin elements of Roman Era. Then we have three elements transformed into symbols which did not even exist at the time of Prince Leka (Dukagjin). They are the rifle, tobacco and coffee.

These three items made their appearance in Europe only after the death of Prince Leka. It is supposed that they reached Albanian lands even later than that.

It is a known fact that Prince Leka died between 1479-1482-1. The first European to become aware of the existence of tobacco (a plant originating in American Continent) was Christopher Colombus and his conquistadors when he discovered America in 1492. Tobacco made its appearance in Europe after 1500.

Coffee reached Europe one century later, via Middle East, while it became present in the lands of The Ottoman Empire only during the reign of Suleiman the Magnificent.

The same holds water for the rifle. It is present in Kanun as "Grykeholla" (narrow muzzle), which is a XIX Century term, though the hand cannons and matchlocks, the "dyfek" (old Albanian word of Turkish origin for rifle) were present in Albanian even at the time of Leke Dukagjini.

Even such evidence is enough to prove that Kanun did undergo many a change during the centuries. The one gathered and compiled by Gjecovi, though containing many quite archaic elements in its terminology and in its content, is somehow modernized. Undoubtedly Gjecovi's Kanun is somehow diverse from the Kanun in its origin, in spite of the fact that the traditional oral law tends to be quite a conservative one.

At first glance one can sound the alarm: There is a contradiction between two different time periods. One can ask the question: Where can we find the origin of Kanun in the Classical Era or in the Middle Ages?

The well known scholar of legal doctrine, Hans Kelsen offers an argument to prove indirectly the Classical Era origine of some of the laws in "Kanuni i Leke Dukagjinit"

According to Kelsen, the revenge through killing is the first collective punishment in the history of mankind. This punishment is based on even a more primitive principle which governs the social life namely: the principle of "the stick and the carrot", meaning you are rewarded for your good deeds and you are punished for your wrongdoings.

According to Kelsen the primitive man managed to overcome the need to explain the way a phenomenon takes place, focusing his thought towards cause effect link. The question to be asked was not anymore "Why this happened?", but "Who is responsible for what happened?"

According to Kelsen in such a case we have a transfer from a cause-effect interpretation to a normative interpretation of nature. The Austrian scholar comes to the conclusion that as the principle of reward for good deeds and punishment for wrongdoings which defines human relations is a specific social principle, then we may call it a social-normative interpretation of nature (Kelsen 1967).

Even the theory of Kelsen which is reflected in the institution of vendetta (blood feud), is not a direct argument, but it is simply an evidence of the existence of universal social principles. It is precisely this theory which serve as basis for the similarities among Classical Era juridic normas existing in different countries, in spite of lack of communications caused by the preventive distance of one ancient people from another. Such ethical-moral normas (institutions) are: "besa" (the word of honour), vendetta (blood feud), the cult of the guest, honour and bread etc.

Such a similarity can be argued using the Classical Era Greek philosophy because of the strong ties with the neighbouring country (Greece), but the similarities with the ethical-moral normas with the ancient Japan ones can be explained only as: The human society in ancient times possessed similar ethico-moral, simple and basic notions, which were later developed according to specific economic, social, political, historical characteristics and circumstances in different countries. In order to analyze the time period of the formation of Kanun, we should bear in mind before

anything else the existence of a clear cut separation between two legal concepts: The “Traditional Law” and the “Kanuni i Leke Dukagjinit”, and other Kanuns covering other areas of Albania.

The well-known scholar of Albanian Traditional Law Prof. Dr. Ismet Elezi used to write that the problem of the origin of the traditional law and of different kanuns is a field (a target) of a joint study because of the fact that the norms (articles) of the traditional laws latter on are compiled into kanuns and their meaning is revealed and explained to us through the study of the content of different kanuns, but it is also a target of specific studies (Elezi 2010).

Different scholars argue that one can not assert that the origine of traditional oral law is the same as the origin of Kanun. The origin of the tradition oral law is much older than that of Kanun. Its origine should be searched in the wane days of the Primitive Community era. It evolved and improved through the centuries in accordance with the vital needs of such human communities. “Different Kanuns being a collection of the traditional oral law, even in case of being written ones, are a latter era product of the historical development.... It is true that such traditional law was collected, compiled into Kanuns..... yet this traditional oral law did exist before and then it was collected in the form of Kanuns. Even if we accept the theory that these Kanuns belong to Leka or Scanderbeg (XV century), yet we can not assert that the traditional oral law springs out of such Kanuns.”

What we cited above as well as other sources not cited by us show that nobody can pinpoint the exact time of the creation of Kanun, though almost any scholar agree of the fact that the origine of Kanun is very ancient, much more ancient than the historic character of Leke Dukagjini.

Different researchers observe the fact that from XV century down to the time of Civil Code of King Zog I in 1929 two parallel justice systems existed in the Albanian lands. In towns and cities and in their outskirts the Ottoman law reigned, while in the autonomous areas in the North and in the South of our country the traditional Albanian law reigned supreme (Semini-Tutulani 2006).

In these areas the traditional law functioned according to local traditions. Such laws in the lands inhabited by the Albanians “ functioned independently or in reciprocal action” (Aliu 2013), as the scholar Abdulla Aliu asserts.

It seems that the researchers focus on two historical situations: the Antiquity , while nobody can offer an approximative exact time of Kanun creation and the Middle Ages, again offering no exact point in time (the century) for the creation of Kanun, simply offering as the time of Kanun creation the period before the Ottoman occupation of the Albanian lands, or the first period of Ottoman occupation. Their thesis is based on the role of Leke Dukagjini as the compiler of Kanun or at least in his role of coding the existing rules of the traditional oral law into the Kanun bearing his name. In spite of the fact that the historical circumstances, as well as the logics of the creation and the development of the traditional oral law in every country support the first theory (creation before the Ottoman conquest of the Albanian lands), the second theory pretends that this traditional oral law suffered a process of revolutionizing at the hands of Leke Dukagjini, so deep as to affect the essence of its content at such a degree to consider Kanun a new offshoot grown on the old trunk of the traditional oral law, but with new indipendent features as well as a new organic development.

Our opinion regarding these theses in a concise manner is: The historical development of any traditional oral law has its origin in the very birth of the human society, when the state apparatus was yet to appear. The remanants of such traditional law are clearly present in what Father Shtjefen Gjecovi collected and compiled, namely “Kanuni i Leke Dukagjinit”. Yet we believe that it is somehow hazardous to pretend this Kanun reached modern times from the antiquity era only experiencing a few changes and modifications, but keeping its essence intact.

We believe that the key to unlock the “secret” of the moment in time when Kanun was created in more or less the form it had at the begining of the XX Century is much nearer in time. We should serch for this “key” decoding an importantr element: The point in time when a society having its state apparatus moves to selfregulation of the communities of Albanian highlanders (the state goes missing...)

It is worth noting what Shufraj’s idea was: “ At the point in time when the Albanian tribes of Zeta began selforganizing we witness that the local aristocracy was exterminated by Ottoman

invaders, while the Venetian rule was expelled of these lands. At that time the importance of the church in the ranks of such warlike tribe became quite important. From the mountains of Zeta to Oher (Ohrid) and down to Himara (Chimarra) we come across evidence of the dissolution of the tribes organized in hierarchical state units" (Shuflaj 2004).

The point in time offered by Shuflaj is the period of Albanian-Ottoman wars of Albanian princes led by Scanderbeg and Leke Dukagjini. In this framework of special importance is the phenomenon mentioned by Shuflaj as "dissolution of the tribes organized in hierarchial state units". Normally after such a process came the moment of tribes begining to selforganize, away from any state power but under the influence of the Catholic Church.

There is serious ground to believe that during the period of the existence of Albanian principalities, the warlike tribes submitted to the authority of Lek Dukagjini in his principality or to the authority of Scanderbeg in the Principality of Castriots. The same holds water for other tribes belonging to other Albanian principalities. Such a submission was a must for the military needs of the Albanian princes from the very beginning, even from the time when they were feudal lords on the rise but under the Byzantine rule. Their merger with warlike tribes was the best solution to create a military aristocracy in order to successfully face the continuous skirmishes with one another to enlarge their feudal dominions and later on in their anti Ottoman wars. We do not know what was the degree of such a submission but we know that these tribes conserved their warlike nature as they time and again put themselves at the service of foreign powers such as The Republic of Venice. The military titles for example that of "Princepts" (Kapiten) awarded to members of such tribes were awarded as a reward for such services alongside other reards.

## 7. Conclusions

We are dealing with a special historical situation up to the end of the XV Century. It is characterized by a "tough inner turmoil" such as Ottoman occupation, displacement of the population, changes into inter dialects differences, the begining of a new religious war not any more Catholicism against Eastern Church, but Catholicism vs. Islam. The moral of the nation has suffered a lot. The great victories under the leadership of Scanderbeg are replaced by the foreign occupation. This new occupation is felt as being the harshest of all as the occupier (Ottomans) belongs to a different religion from the occupied (Albanians).

The structure of the Roman state evolved naturally into the structure of the Byzantine Empire and the power of Byzantium was replaced by the power of Albanian feudal lords in a normal and natural manner. The Ottoman occupation (state) was quite a foreign notion to the Albanians. Wherever the structure of the warlike tribes was preserved a state of semi liberty was preserved, as well, while the rest of the country suffered a radical transformation.

Precisely in such moment accompanied by radical historic, religious and linguistic changes we should look for the origin of a state within Ottoman state, the "State" of the free communities governed by no Albanian feudal law of the principalities. Understandably such a legal gap should be filled with a new legal system.

The norms of the customary law, up to the late XV Century were more of an ethic and moral character having more the character of customs than laws. They served as a secondary set of laws vis-a-vis the political power of the Albanian princes. After the Ottoman occupation they merged with the the law system of the princes (not existing anymore) thus replacing the legal system of the small Albanian states already destroyed by the foreign occupation. These traditional customary law acquired elements of civil and criminal law, preserving up to a certain extend their former family law, which was more of a customary law character. At that time we witness a whole proces of building a corpus of traditional oral law, which inspite of changes and modifications during four centuries managed to survive up to the end of XIX Century, when Gjecovi collected and compiled it. At that time we witness the formacion of these "micro states", clans (tribal communities) based on a common territory, selfgoverned, enjoying a religious unity (being constantly eroded by the

conversion of the Albanians into Islam), with specific laws of their “states”, with their “tribunals”- “pleqesite”, their “parliaments”- “kuvendet e burrave”, having also a large executive organ called “katundisht.”

We can safely date this period as occurring during the first century of the Ottoman occupation i.e. after Leke Dukagjini and Scanderbeg, thus the two princes of the two large principalities in the North of Albania has no saying in collecting, coding or compiling of the new “law”, based on the old one.

Different scholars offer different dates of death and places of burial of the Prince of Dukagjin, so there is no official date of his death.

The Study “Byzantine Law and its traces in the tradition of the Albanian law” offers a broader outlook in a comparative plane for common points. This was a Phd Degree study by Bernina Kondi (UET University), Dec. 2016. Kondi studies the relations of the Roman-Byzantine continuation and its influence on Albanian law, focusing on elements which are similar in both laws and also differentiating the Civic Law (the law governing the life in towns and cities) in Middle Age Albania from the Traditional Oral Law and the Agrarian Law (Allelengyon). We have availed ourselves of some of her observations to use as orientation points in our study comparing the Byzantine Agrarian Law (Allelengyon) and the laws in “Kanuni i Leke Dukagjinit”.

The other offers a very interesting observation: “Decrying the mitic ideas of the Albanian oral tradition is impossible without studying how the three ancient styles of discourse in the pre written Albanian language have cooperated: Evangelical-liturgical discourse, mitic heroic epos and etno-legal style discourse, which in a chronological way cover: paelo christianity, the humanist medieval period and the beginning of the Pax Ottomana. These discourses being the most conservative ones in the history of the Albanian language can help us to explain many a semantic “disorder” present in the history of the Albanian words especially such words which manifest in present day Albanian a shrunked linguistic situation such as: “Bë, Besë e bind; Lum, Lus e lutje; Fal e nëm; gjamë, gjallë e gjellë; famulli e familje; famull e fëmijë.”

We should stress the fact that the Vth and VIth Centuries marked everywhere the reinforcement of the impact of the Goths tribes. Precisely during these two centuries we witness the compilation of several codexes of traditional law in the lands occupied by the Germanic tribes. Thus we have Salic Law (Lex Salica), Lex Ripuarua (VIth Century), Lex Burgundionum (Lex Gondubada) etc.

Generally the scholars reason that the origin of the traditional oral law is not the same as the origin of the Kanuns, as the traditional oral law is much more ancient than Kanuns, as it came into the existence during the time of the dissolution of the Primitive Community Order. It changed during the centuries in order to reflect the needs of the life of the people, “while the Kanuns as a summary of norms of the traditional oral law, even when they were in written form are a later product of the historic development.... It is true these norms were collected into the Kanuns but they were created quite a time ago. Even if we suppose that the Kanuns belong to Scanderbeg or Leka (XV Century), yet we can not even imagine that the traditional oral law was created by them.”

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