A COMPARATIVE STUDY 
OF THE CUSTOMARY LAWS OF 
MOUNTAIN COMMUNITIES IN 
ALBANIA AND DAGESTAN

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Foreword

After working for a couple of years in Albania on a land registration and land market program, I visited Dagestan in April 1996 as participant in a conference on Conflict Resolution, under the auspices of International Alert. To prepare for that conference I read some histories and ethnographies of the region. That review turned up several interesting ideas. Around the end of the first millennium B.C., several tribes of Dagestan helped form a large state in the eastern Transcaucasus known as Caucasian Albania, followed by 2000 years of invasion and conquest by powerful neighbors. There appears to be no connection with Albania in the Balkans, although Justinian, an Ilirian (the precursor culture to the Balkan Albania), was emperor of Constantinople 527-565 a.d. about the time that the Christian Caucasian Albania was at its peak (Jacques 1995:151-152)

Then I read in the English translation of the Kanuni i Leke Dukagjinit (a compendium of customary laws from Northern Albania—“kanun” means “code”) a comment in the introduction about “an astonishing resemblance between the customary law of the northern Albanians and that of the peoples of the North Caucasus” (Gjeçovi,1989:xix).

My curiosity was awakened again while at the conference in Dagestan, when one of the participants in the conference, who was from a mountain village, mentioned that the day of the meeting was the 3,000th anniversary of the founding of the village where he was born and still had a home. I asked him about customary rules of life in mountain villages like his, and his words recalled terms used in the Kanun of Albania. Eminent anthropologists and other social scientists at the conference (especially Mamaikhan Aglarov, Enver Kisriev, Robert Mirzoev, and Tatyana Barannikova) were kind enough to humor me in my inquiry into possible links between the Caucasus and Albania, and very generously gave me several books in Russian concerning the cultures and customary laws of mountain villages in the Caucasus.

Upon returning to Albania, I met with Professor Dragovaja, the retired founder of the Department of Geodesy at the Politechnical University of Tirana, who had studied in Russia and is fluent in Russian, and is a well known expert of the Kanun of Lek Dukagjini, the best known kanuns of the Albanians. We discussed my experiences in Dagestan and what I had read about the region’s history, and he agreed to read the Russian texts that I had brought with me from Dagestan. He also agreed to compare the ideas expressed in these texts about customary law with those of the Kanun of Lek Dukagjini pertaining to property, boundaries, family, marriage, inheritance, land markets, honor, and murder.

His comments and comparisons follow, leaving to the reader to decide whether to dig deeper into the curious common elements that have evolved in customary rules of behavior and beliefs in some mountain communities from as distant places as the Balkans and the Caucasus.

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Executive Summary

The Kanun (Code) of Leke Dugagjini of Albania (KLD), compiled and published by Father Shtjefen Gjeçov, was first published in Shkoder in 1933. The Academy of Sciences in Tirana published a reviewed version of this Kanun in 1989.

In this study, for the purpose of comparing the KLD with the Kanuns of Dagestan (KD), we used the above-listed literature. We also used the Omarov work, which is considered the best source, even though it consists of a summary of scientific articles written by different authors at different times and places in Dagestan. Therefore, for the purpose of comparing it with the KLD, the general characteristics of the customary laws of Dagestan were considered.

In general, the Islam Shariat did not have an impact on the KLD during the Turkish occupation period, because the KLD was established and applied mostly in the north-eastern Albania, which consisted of Christian population prior to and during that occupation. The authority of Leke Dugagjini was indisputable and the Islamic religion had not consolidated in that region. As a result, the minority Muslim population also adapted their values to the Kanun, or perhaps never changed these basic values following conversion. Thus, the KLD was used as a guide for customary laws in the northern part of Albania (including Kosovo and the Albanian communities of Macedonia and Montenegro).

The KD may have been more influenced by the Islam Shariat, although the isolation of mountain villages has provided serious barriers to the notions of invaders who come and go in the plains.

Some of the essential differences that were first noticed between the KLD and the KD are as follows:

- **There is less of an impact of the Islamic Shariat** on the KLD compared to the KD; this could be the basis for the differences between these two kanun, which go up to 30-35%.

- In the KD, different approaches in resolving problems were used even for adjacent villages, whereas the KLD has a larger geographical extent in northern Albania and in other surrounding countries where Albanians live.

- **The individual rights** within the family or village are equal in the KLD, while the KD takes into consideration the social-economic status of the family and the individual.

- The KLD gives the full authority to the head of the family; the head of the family has an only advisory status in the KD.

- Women do not have inheritance rights and minimal authority in the KLD; women have inheritance rights in a 1:2 ratio to men in the KD.

- In the KLD the individual private property rights do not exist within the family; KD: individual private property is allowed.
• KLD: the following are illegal - the abduction of women, polygamy and marriages with their kin or within the extended family; KD: marriages are allowed between second cousins.

• In the KLD violating honor, and especially violating the trust of a friend (or guest) are never forgiven; in the KD fines, rewards in nature or money can balance out such violations.

• In the KD measures to be taken when beating occurs are mentioned; in the KLD beating of men, not women, is categorically prohibited.

• In the KLD, a man can kill his wife without launching a blood feud in cases when the wife jeopardizes her honor or when violating the trust of a friend (or guest). In the KD, killing a wife under these circumstances is usually not allowed, but when a man does kill his wife, the children remain with him.

• The KLD restricts blood feuds during the first hours after a violation the village negotiates for a short truce of 24 hours, in order to ease the tension. The one-month long truce is negotiated immediately afterwards, for the reconciliation of the families involved in the conflict. In the KD the house of the murderer is violated and robbed for three days, increasing the tension.

• In the KLD property is to be sold to extended family members (brotherhood) at a low price, in order to keep it in the family; in the KD this is not considered important.

These differences may be significant in their details, but it is interesting that the two kanuns are so similar. A comparison of some aspects of the customary laws contained in the Kanun of Leke Dugagjini and Kanuns of Dagestan is presented in the following sections.
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**FAMILY**

**The Kanun of Leke Dugagjini (KLD)**

The family consists of members who have blood connections and live under the same roof (house). All of the family members are entitled to equal rights. The family aims at increasing the number of its members and physically and mentally educating the new generation. In northern Albania, families have as many as 200 members. As the number of members increases, the family divides into brotherhoods (vllazni), clans (fis), and together they constitute a nation with common roots, a common language, and common customs.

The head of family is usually the eldest man, who has full control of the household and who leads the family and preserves its honor.

*The head of the family* controls the men; his wife (the eldest woman, usually), who is under his authority, controls the women and minor children. If the family goes toward destruction while under the control of the head of the family (man or woman), members of the family have the right to replace him/her with other people who are distinguished as leaders, as well as intelligent and generous.

Regardless of their size and economical situation, all families have *equal rights and obligations to the village and the fis*. The family participates in village meetings, pays village fees, gets involved with the common property, and has other obligations towards the village. Thus, in the case of war or any collective work, each family is obliged to send a man to the army, except for those families that have single men.

When the village punishes a family member, the family is the first to implement the *decision*, regardless of the kind of punishment.

The members of the family include the *probotimi* (the relation of two men who drink blood from each other), and the Godfather (the person who does the first haircut of a newborn).

A son should obey his father, should not talk back or hit the father, and should take no action without asking his father’s permission. The son cannot leave home to live alone without his father’s consent and the son is obligated to take care of his father until he dies.

**The Kanuns of Dagestan**

The family consists mainly of those close relatives who have blood relations up to the third generation. The family tree (blood relation) is considered as closer than the milk tree (birth relation, female descendents), because only the former have inheritance rights. Family members communicate by calling each other based on blood relations, not by name.

As a rule, the eldest man in the family performs the function of head of the family, but he does not have a full control to implement given orders; his role is more of advisor. Husbands direct all
wives, but the wife who has many children (especially when they are males) is more respected. *Polygamy is allowed.* When a wife is not fertile, the husband marries another woman, while the first wife either stays at home as a housewife or goes back to her parents. Men are the first to eat, then women and children eat.

Men do not have full control over their children, because mothers mainly control their daughters. Wives are mainly housewives and support their children. In households with multiple married couples, there can be many differences in the way members of the family are treated. As differences become difficult to harmonize within the household, couples with their children will attempt to form their own household.

Since marriages are allowed between second cousins, families are of a small size because they are divided and the reciprocal relations within the family (brotherhood) are weakened. Families within a clan who become economically weak lose the respect of the clan. The importance of families within the village depends mainly on their size and property.

**MARRIAGE**

The KLD

The types of marital relationships in the KLD are: the legal marriage, concubinage (outside of marriage), abduction of a woman or a girl, and trial marriage; the Kanun recognizes as legal only the legal marriage.

Marriage is not allowed within the family or the clan, even if they are not of a close rank, up to 400 generations. Neither are marriages within the same village considered advisable.

Nobility of the families is taken into consideration in a marriage, associated with the saying: "*druja fisit dhe gruaja fisit*" (this means that the tree produces the branch and the family produces the people, and the woman’s reputation will be the same as that of her family).

A matchmaker arranges the betrothal with the consent of the fathers of both the groom and the bride and without the consent of their children.

A man has the right to arrange his own marriage only when he is an orphan, while the brothers or other relatives arrange the marriage for an orphan young woman. The family arranges marriage for a widower, while the widow does it herself.

A woman who is abducted or who runs away to marry someone is not adorned as a bride.

The person who arranges a betrothal must be a man chosen by the family of the groom. He is financially rewarded and is responsible for all the disagreements of the new couple. If the wife leaves her husband, blood feud arises between the parents of the bride and the matchmaker.

The family of the groom covers the bride’s dowry; it pays the money agreed upon and sends a
token in the form of a ring.

If an engaged woman is revealed to have had a previous relationship or if she leaves with another man, blood feud occurs between the two families.

The bride’s parents place a bullet inside her dowry. Her husband has the right to kill her with that bullet without starting a blood feud if she does not preserve her honor or does not preserve the trust of a friend (or guest).

If someone beats or kills a man’s wife, the husband transfers the violation of honor to her family, and her parents start the blood feud.

An engaged man has the right to leave his fiancée, but he loses the money paid for her; whereas a woman who is engaged does not have the right to leave her fiancée.

The husband has the right to give advice, to beat and leave the wife if she does not obey, but he does not have the right to kill her.

The Kanun states that the husband is the owner of his gun and his wife.

The husband is responsible for providing clothing and living conditions for his wife, while the wife has the obligation to preserve the honor of her husband, to work, clean, and cook.

**The KD**

The purpose of the marriage is to establish independent families. Marriage is allowed even between second cousins and preferably within the village.

Marriages mainly occur through a matchmaker (legal) or by abducting the bride without the permission of the parents. The matching of a couple is mainly done by old women that exercise this profession for a payment that is covered by the family of the groom.

The man of mature age expresses his intent to marry, while women do not have this right.

A man usually chooses his future bride with the approval of his father, while the woman needs her mother’s consent. His father mainly influences a man, while her mother influences a woman.

The economical situation of the family is considered in a marriage. The family of the groom prepares the dowry of the bride for free. The wedding usually takes place throughout the year, but fall is more preferable.

During the engagement ceremony, the man and the woman have the right to communicate with each other, but only in the presence of other people. If the engaged woman becomes pregnant, the man takes her to his home and pays a fee to the family of the woman. It is illegal to break up while engaged. The children of a family are engaged in a sequential age order. When a younger sibling gets engaged, the older one is considered as “less valuable”. A ceremony takes place with
betrothals and weddings, except for widowers or widows.

The husband has full control over his wife because he provides protection, clothing and food for her. The wife must be submissive and respect the relatives of her husband. The husband has the right divorce his wife, while the wife does not. Divorces usually occur for morality motives. In most cases, polygamy is allowed.

Husband and wife do not call each other by name, but use words like: "hey", "you", or "do you hear me".

INHERITANCE

The KLD

Inheritance goes by the family tree (father’s side). All the males of the family, regardless of their age or physical and mental capability enjoy equal inheritance rights. Daughters do not have inheritance rights, and a married woman does not have inheritance rights from her parents or her husband. This is made to prevent the clan of one Banner (fis) from mixing with the clan of another Banner (fis). The phrase is, the sons of daughters can not settle in the tree of blood.

Property is very rarely subdivided while the head of the family is still alive.

Prior to the subdivision of property, obligations towards the family are considered, and then the remaining part is divided.

The head of the family divides the property in the presence of the males who will inherit and of their representatives (chosen to protect their rights).

The unmarried girl or the widow (who does not intend to remarry) enjoys the right to live with their parents.

The person who makes a living will must be in a sound state of mind and free to decide without being threatened by anybody. One can not make a will without the consent of his relatives. An unconditional will is considered a gift. The will must be documented and should be witnessed by the relatives, witnesses, and the elders of the clan. In the case of a will that donates property, the debts are first deducted and then the property goes to the church or the mosque. When a person who lives alone does not make a written will, his relatives divide the property and give part of it away.

The KD

Both sons and daughters have the right to inherit, but the ratio is 2 to 1 in favor of the son. Children from the mother’s side also inherit (illegal children whose fathers are identified and foster).
A woman and her relatives have the right to inherit within their family tree.

A father has the right to divide the property while he is alive, and to favor those children who behave well. For example, in his will he may give his daughter equal inheritance rights to the son.

Only married children have the right to leave the family. If the parents do not have the property that belongs to them, their children should take care of them until they die.

A stepmother living with her husband’s children is entitled to $\frac{1}{8}$ of her husband’s property. When the husband dies, the property remains with the wife. When children marry she can live on her own and receive $\frac{1}{8}$ of the property, with the remaining divided among the children.

A mother-in-law without her son who lives with her daughter-in-law inherits $\frac{1}{6}$ of the property, the daughter-in-law $\frac{1}{8}$ and the daughter $\frac{2}{3}$.

When the heir is a daughter, she receives $\frac{2}{3}$ of the property and the rest is divided among the relatives of the father.

Also, the parents of a wife have the right to inherit from their daughter under certain circumstances; e.g., when a wife without children dies, $\frac{1}{2}$ of the property goes to her husband and $\frac{1}{6}$ to her parents.

When a woman who has children dies, her property is divided as it follows:
$\frac{1}{4}$ of the property goes to her husband,
$\frac{1}{6}$ of the property goes to the mother of her husband,
the remaining part goes to the children.

When a woman does not have children, $\frac{1}{2}$ of her property goes to her husband and $\frac{1}{2}$ of the property to her parents.

The will made while living regarding inheritance is documented in writing in the presence of the closest people and witnesses.

In some cases children should pay taxes to their father, depending on the inherited property.

**PROPERTY**

**The KLD**

Property is sacred. It is both private and common, movable and immovable.

The house could be: one floor, more than one floor, or a barrack but it must have a fireplace, which generates smoke. Any building located in the courtyard is part of the house; violating them is the same as violating the house.
Immovable property includes the building site, the house, the courtyard, gardens, vineyards, land parcels, meadows, roads and paths, and the surroundings within designated boundaries.

Private property also includes property inherited from relatives who do not have heirs.

Common property belongs to the village or is used by all the villagers as pasture, for construction, firewood, hunting, dairy huts, etc. Common property cannot be divided among villagers because all of them have the right to use the common property of the village. No one is permitted to sell the common property or its products, or to develop vineyards or gardens on the common property without the approval of the entire village.

Each household has the right to own an area of land within the radius of a stone thrown with the left hand in a sitting position.

A canal developed in the village can pass through private property, whereas a road or path cannot as long as it serves the purpose of helping people move from place to place.

The tree planted on the boundary of two properties belongs to the owner of the root, while the fruit that fall into the other property belong to the neighbor.

In order to prevent conflicts, the village has to approve any changes or deviations of canals, roads, and paths.

**The KD**

Property is classified as private or common, movable or immovable.

The Kanun protects the house and its surrounding objects; any violation is considered as breaking into the house and to be punished.

Immovable property may be given as a gift prior to the distribution of property within the family, even when the family has heirs.

A *Tapi* (deed) secures rights to immovable property.

Whoever uses another person’s property without the consent of the owner pays a fine that is twice the damage cost, according to the owner’s appraisal.

If any claims or complaints arise during the division of property, they should be addressed within a year; otherwise they will not be considered.

Land may be made available for temporary use with these conditions: the person who uses the land and the owner use it 50-50; the straw and other remaining of production belong to the person who uses the land.
If one has the responsibility to protect someone’s movable property and it is lost, the owner can demand the return of the lost property. The accused is not held responsible if he/she takes the following oath on the Kuran or Torak: "If I have taken it, the harmony between me and my wife should be destroyed". There is no question about this oath.

Every family has the right to use the common property of the village for its own needs, but no family has the right to sell it. All the families of a village have the duty to maintain and improve its common property by developing roads, canals, and other infrastructure. The common property of a village can be used only with the consent of the village.

**BOUNDARIES**

**The KLD**

The boundaries in nature define all the immovable properties.

A boundary defines the limits between house and village. A large rock half-above/half underground serves as a boundary point; six to twelve small rocks (witnesses) are placed around the boundary point stone.

The following persons participate in defining boundaries: the households involved; the elders of the village; the villagers; and, children from that and other neighboring villages.

An old man, who will set a new boundary or reset an old one, carries a stone and some soil on his shoulder. Then making his way to the front of the crowd, he swears “If I do not work with justice, this weight will fall on me in the next life”.

A straight line usually defines the new boundaries between boundary points. The boundary stone cannot be moved and is as sacred as the grave.

If someone moves the boundary for purposes of making a profit or causing tensions between persons, the village will punish him and may even execute him. If someone moves the boundary without any purpose he will be fined.

If a murder follows a boundary conflict, the new boundary is moved to the location where the victim died.

When two people kill each other from a distance, the area between that distance will not belong to anyone and will be used by both parties in the conflict.

In the old times, disputed boundaries were defined in the presence of witnesses by competing in games like: "weight lifting", "throwing rocks" or "cutting with an ax". These boundaries were called boundaries of the giants because of the strength needed to win.
The KD

The Tapi (deed) specifies the boundaries, the size of the property, and the adjacent property owners. This document serves as a basis for identifying the boundaries that cannot be determined in the field.

Changing the boundaries of properties is done in the presence of the owners and witnesses.

The boundary stones and the characteristic points on the terrain serve as boundaries.

Changing boundaries is illegal and whoever does so will face the consequences.

LAND MARKET

The KLD

Land is first offered for sale to brothers, relatives, and clan, the neighboring owner, and last to others in the village.

A brother who lives on his own (not with the family) and other close relatives buy the land for a lower price.

When land, mills or water works are sold, the buyer should throw a party for as many people as possible.

When a land parcel offered for sale is not purchased, the village attempts to not let persons from other villages buy that land.

A land sale is considered illegal if the owner does not follow the above-mentioned rules. In such cases, the buyer is given his money back and his complaints about the invalidity of the sale are not considered.

Conditional sale of land is allowed and it requires that if the buyer later decides to sell the land, it should be first offered to its previous owner. If the latter is not interested, then it can be offered to others.

Buying and selling of land occurs in the presence of witnesses, and should be appropriately documented.

The KD

The owner sells the land to the buyer who makes the best offer; brothers, relatives and the clan are treated as strangers. The property can be sold to anybody within or outside the village.
When the buyer is from another village, he should respect the customs of the village where the land is located.

When the family sells a property, the head of the family either buys another property or splits the money among the family members according to inheritance rules.

Land located in vicinity of the house cannot be put for sale as long as family members live together.

Buying and selling of land occurs in the presence of witnesses, and is properly documented in the *Tapi* (deed).

When a buyer has put some money down, the seller cannot consider other offers even if they are better ones.

**HONOR**

**The KLD**

Honor is personal; it can be recovered only with blood but not with money or mediation by village elders.

A man protects his own honor without assistance from others.

A man without honor is considered dead by family and society.

A man is dishonored when:
- accused of lying in a village meeting,
- threatened or beaten,
- he does not keep a promise to a friend (or guest),
- his guns are taken from him,
- the bread given to others is not respected,
- his guest (friend) has been betrayed,
- his wife is harassed or raped, and
- his house is violated.

Members of the family must protect their own honor and their family’s under any circumstance, despite the consequences that he/she or the family may suffer.

The family does everything to protect its honor; the Kanun says: “better destroyed than dishonored”.

The wife is the honor of the family; the family and the clan protect her but honor-related punishment is very firm. Their woman distinguishes a good house from a bad house.
The Kanun attributes the greatest honor to the guest: “The Albanian house belongs to God and the guest”. Anything can be forgiven and settled with fines or mediations, but: "The soul, the guest and the honor are never forgiven".

**The KD**

Each man has the responsibility to protect his and his family’s honor, to provide food and clothing for his wife and children, to keep his word and promises, and not to lie.

The wife preserves her morality and honor, is submissive to her husband, respects his relatives, maintains the house, and educates the children.

**MURDER**

**The KLD**

To prevent murders, Albanians first try to resolve problems through fines or mediation by the elders. For example, one should not respond with murder to offenses, threats, beatings, thefts, or damages, etc. because a murder is responded with another murder.

When two people kill each other during an argument, this does not start a blood feud. If one is killed and the other is wounded, the family of the dead requests the rest of the blood because one death is equivalent to two woundings.

Involuntary murders that are proven as such are forgiven.

Suicide does not require a fine or blood feud.

Every murder, regardless of gender, is considered the same. Blood feud does not apply to women and children.

Murders among brothers or relatives over inheritance disputes are heavily punished.

If a brother kills his sister who is married, he then is subject to blood feud with the husband or the sons of his sister.

If a husband kills his wife for minor motives, he then is subject to blood feud with the parents of his wife; if a wife kills her husband, her parents are subject to blood feud.

The blood of a man is not equivalent to the blood of a woman.

When a pregnant woman aborts the child because others provoke her, the authors are subject to blood feud. Her parents assess the situation regarding her blood and her husband assesses the blood for the pregnancy.
If the servant of a family commits a murder authorized by the head of the family, the servant is then subject to blood feud, while the family where the servant works pays a fine. If a servant is murdered, his family and the family where he works seek revenge (blood feud) because this is considered a violation of the trust of a guest (friend).

Wounding a male is the same as wounding a female. A physician and the elders of the village evaluate the damage.

Theft is assessed based on the damage done, and the thief is subject to fines twice the assessed value.

Almost all murderers declare the murders they have committed; if the murderer is unknown, persons swear in front of the elders of the village and 24 witnesses.

Upon committing a murder, the murderer, his family and his clan stay at home. Upon request from the family of the murderer, a short truce of 24 hours is approved for the funeral ceremony where the murderer participates, as well.

The village mediates for a long truce of one month, which is used by the mediators to reconcile the families involved in the conflict and to negotiate that a fine be paid for the murder (blood).

Murders for weak motives do not require reconciliation, although Kanun states that "A man is the one who forgives."

The KD

Murder for minor reasons are punished with execution; while murders for major reasons and involuntary murders are mediated by paying fines.

When a murder is committed, the relatives of the victim pillage the house of the murderer for three days; sometimes they burn it and do not allow them to build another house in the village (either temporarily or permanently).

When the murderer has confessed, he leaves the village and goes into hiding. The relatives of the victim may accept him as the murderer if he holds the same status as the victim.

The village sets fines for all murders. If during an argument where several people participate someone dies, the suspect is the one that the family of the victim blames; but if he takes an oath of denial in front of 50 witnesses from the village, someone else becomes the suspect.

All kinds of wounding, regardless of the weapons that are used, are subject to fines determined by the village (that assesses the damage).

Suicide is also condemned by the religion.

A murder within the family is a shame and is not subject to blood feud. Only murders for weak
motives of the husband or wife are subject to blood feud.

If a husband murders his wife, he is subject to blood feud with her parents; if the wife murders her husband, she is expelled from the house and loses the custody of the children and inheritance.

Beatings are subject to fines based on the extent of the damage; thefts are usually fined twice as much, based on the estimation made by the damaged party.
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