

The Impact of Canon of Leke Dukagjini on the Rule of Law in Albania: A brief Overview

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Introduction

In present days, there are many discussions between academics, policy-makers and researchers related to Albania's candidacy to join EU membership. Because of the past influence of the Turks, some of them consider Albania to be a Muslim country. On the other hand, from a geographical viewpoint, Albanian people consider their country to be European country, because it is a part of European Continent.

However, experience indicates that historical, cultural, religious and geographical factors are not enough for a country to be a member of EU. According to Article 49 of the Treaty on European Union, any European country may apply for membership if it respects the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law.

In 2012 European Commission noted that: *"The rule of law in Albania remains deficient, which is notably due to weak law enforcement institutions, limited administrative capacity and widespread corruption and organized crime"*.

In Albania, the main features of weak rule of law are strongly determined by political and social components. These components are placed in a unique course with features that reflect the past and the present of the country. The laws in Albania are often not observed or are applied selectively and ineffective and inappropriate implementation of laws has also undermined the rule of law in Albania.

Although all of these problems and challenges cannot be treated in this paper, this study is focused on the rule of law, why its enforcement in Albania is a very difficult process, and how the past legacy (Canon of Leke Dukagjini) has influenced its weakness.

The methodology consists of a four-factor explanatory model which includes the following factors:

1. Geographic position and the western influence;
2. Communist period influence;
3. Choices of the elite in the early transition and;
4. Historical and social factors influence.

The hypothesis of this study is that in the above mentioned four factors, Albania has presented its unique specifics. Therefore, these specifics have influenced and determined the negative performance of institutions and rule of law in Albania. The post-communist influence, the particularly severe character of the Albanian communist regime, the choices of the elite during the transition and the external influence is thought to be important factors that explain the difficulties that Albania is experiencing in the transition period. However, there are many arguments that can explain that the historical and social influence is the most important factor in determining the trajectory of the institutional framework in Albania.

A short Overview of Present Situation

Albania is a country which shows two faces nowadays. On the one hand, the country is modernizing reasonably fast. The conclusion of the Stabilization and Association Agreement with the EU in 2006 showed that, Albania is willing to move to Brussels¹. On the other hand, the country shows many severe internal problems that are slowing down the process of democratization. Corruption is still a big problem and is damaging the country's economic potential in a serious way. The economic and financial programs of the international institutions such as World Bank, IMF, and the EU for building and consolidating democratic institutions, have not been successful in Albania.

¹ European Forum for Democracy and Solidarity, "Albania" 2010, p. 1.

<http://www.europeanforum.net/uploads/countries/pdf/albania.pdf>

As is mentioned in the Introduction, The Copenhagen criteria require that the countries wishing to join EU should first guarantee democracy through stability of institutions. How does the recent political situation in Albania perform *vis-a-vis* these criteria? The Albanian political democratization at the level of substantive democracy is progressing very slowly. The main reason for this is the unstable and verdant political environment which is characterized by political and conflict crises.

The political feasibility and credibility of reform, has a very active endogenous factor, the interplay between initial conditions, institutional structure and stabilization programs. A politically sustainable reform package can be defined, as one for which there is sufficient political support to carry out the reforms to their implementation². This political support can take various forms:

1. Number of re-elections and changes in government in a certain period;
2. Parliamentary support for reforms, especially in creating the necessary legal framework and proper institutions,
3. Large degree of social acceptability and credibility³

How do these work in the case of Albanian politics?

Political instability reflects dramatically in the consolidation of democracy. Reform programs initiated by the government ceased because of conflicts between political parties.

Pragmatic solutions imposed by different political circumstances accompanied traditional political transformation that was applied in Albania. They reflect the inevitable social adjustments applied on concepts and standard democratic programs of transition, in a small country like Albania, underdeveloped and extremely poor, just passing from a full totalitarian and

² Asilis Carlos M. and Milesi-Ferreti Gian Maria, 1994, "*On the Political sustainability of Economic Reform*", IMF Paper on Policy Analysis and Assessment, 94/3, January.

³ Muco, Marta, "*Economic Transition in Albania*", 1997, p. 57.

self-isolated economy to a liberal market one.

Historical and Social Factors Influence: A brief Summary

The most decisive historical and social influence is having been part of the Ottoman Empire for almost five hundred years. Most countries of Central Europe shared a number of historical experiences with Western European countries such as the Renaissance, the Enlightenment and 19th century Industrialization Revolution. Additionally, in these countries, private property was not totally abolished or confiscated and they were not forced to change their religion. During this entire time, they maintained their links with the Western countries. On the other hand, Albania first became part of the Byzantine Empire and then, for five hundred years, part of the Ottoman Empire with its sultanate system and legacy of ancestral rule. Albania inherited the under-developed state and society relationship, weak institutional and structures as well as a shattered society. Albania had never experienced and developed a pure democracy as well as political pluralism.

Albanian culture has been strong enough to resist assimilation by others even though Albania occupies a strategic location, historically and politically. At the southern entrance to the Adriatic, Albania was the steppingstone from which the Romans moved to the east. As the crossroads, many different peoples have passed through or maintained dominion, but the Albanian people have largely been able to maintain their unique identity. The Albanians have been recognized as indigenous peoples who, based on their unique language, and are considered among the oldest groups of peoples in Europe. There is no significant difference between Albania and its neighbors other than reliance upon the Kanun.

But what is Kanun? Kanuni i Leke Dukagjinit (The Canon of Leke Dukagjini) is the most widely known comprehensive summary of traditional Albanian law ever published in Albanian language. For centuries, the Kanuni i Leke Dukagjini has strictly ruled all important aspects of social life in Kosovo and in the Northern Albania. Customary law is however not only characteristic of Albanian culture. In general, customary law endured among all Balkan peoples, particularly in rural environments, until the present day. Kanuni had been promulgated by the real historical person Leke Dukagjini.

It is most widely known for the predominance of blood feud and vendetta as its intrinsic principles. The rules on blood feud form are only a very small part of the Cannon and not its core, as is often erroneously believed. The Kanun also allows for the possibility of the blood being redeemed. Women, however, according to these ancient rules, are considered to be of a lower social status: they do not share either the rights and privileges or the responsibilities of men. Kanuni also maintains values that are still considered unquestionable today: these include the given word or “besa”, the sacredness of promise, and the respect for guests and friends.

The basic principles of the Kanun can be summarized as follows.

The foundation of it all is the principle of personal honor. Next is the equality of persons. From these derives a third principle, the freedom of each to act in accordance with his honor, within the limits of the law, without being subject to another’s command. And the fourth principle is the word of honor, besa which creates a situation of inviolable trust.

“An offence to honor is not paid for with property, but by spilling of blood or a magnanimous pardon”⁴.

At the same time it specifies the ways of dishonoring a man, of which the most important are calling him a liar in front of other men; insulting his wife; taking his weapons; or violating his hospitality. ... This was very much a man's world. ... Women had their honor, but it existed through, and was defended by, men⁵.

Albanian nation has been overrun by all of its neighbors, occasionally importing elements of the occupying people, but essentially maintaining a unique language and cultural identity; an identity maintained in spite of dissection by modern international borders. The most important is the traditional family structure of social and clan interaction that became codified as the Kanuni i Leke Dukagjinit. It is, however, the Kanuni i Leke Dukagjinit, that is the most unique aspect of the Albanian society. It sets up the rules upon which the culture is based, focusing on the concept of honor.

⁴ Malcolm, “Kosovo: A Short History” London: Paperback, 1998, p. 18-19.

⁵ *Ibid.*

The continued existence of the Kanun these days lead us to the hypothesis that Albania's historical legacy of the Ottoman Empire has been the most important factor that is hampering its successful transition to a modern democracy.

This phenomenon is the old Albania custom of "*hakmarrja*" or the blood feud, a custom of revenge killing in northern part of the country. Its origin does back to the 15th century, during the Ottoman regime, when the north part Albanians did not accept the Ottoman rule and control, and established their own system of self-administration.

The most powerful historical and social influence is firstly that of being part of the Ottoman Empire for almost five hundred years. Most countries of Central Europe shared a number of historical experiences with the Western European countries such as the Renaissance, the Reformation the Enlightenment and 19th century industrialization revolution. Additionally, in these countries private property was not totally abolished or confiscated and they were not forced to change their religion. During this entire time, they maintained their links with the Western countries. On the other hand, Albania became first part of the Byzantine Empire and then, for five centuries, part of the Ottoman Empire with its sultanate imperial system and legacy of patrimonial rule⁶. Albania inherited the under-developed state and society relationship, weak institutional and structures as well as a shattered society. Albania had never experienced and developed a pure democracy as well as political pluralism.

The mentality of a large number of Albanians is that the law and its enforcement are not obligatory, but something that can be negotiated. Another characteristic is that in Albania, violation of the rule of law begins with the politicians and public administration officials. Experience has proved that if the state tolerates law-breaking, the individual people will understand that their own interests are in fact best served by acting illegally themselves. Therefore, in Albania the idea that all are equal before the law must be developed.

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⁶ Bogdani, Mirela and Louglin, John, "*Albanian and the European Union: The Tumultuous Journey towards Integration and Accession*", I.B. TAURIS, 2006, p. 29.

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