



The Criminal Offense of Aggravated theft under Albanian Customary Law

Fatmire KRASNIQI¹

Abstract: Based on the particular characteristics of the criminal offense of aggravated theft, it is correctly established that the criminal offense in question falls within the framework of so-called classical criminality, and that such unlawful behavior in terms of social development has undoubtedly been following not only our society. While, although the criminal offense of aggravated theft as a notion but also as a content has undergone gradual transformation, however, its defense object has always been property value, respectfully the property. In this regard, given that the presence and the consequences deriving from committing the criminal offense of aggravated theft continue to be present even today, and often the existing situation is also regarded as a worrying situation, we will approach the treatment of the criminal offense in question only in the angle of passing of data on how the Albanian customary law specifically foresaw and regulated the criminal matter in question. The purpose of the analytical research will be focused on elaborating the notion of the criminal offense of aggravated theft as well as its perpetrators, in order to proceed further with the information regarding the punitive policy, always according to the customary Albanian law, followed through the rules of the Code of Lekë Dukagjini, the Code of Skanderbeg as well as the Code of Labëria. The research will be realized with special emphasis on the application of the historical-legal method.

Keywords: The Aggravated Theft; the Code of Lekë Dukagjini; the Code of Skanderbeg; the Code of Labëria

1. Introduction

Incrimination of anti-social behaviors, including behaviors directly affecting the lawful exercise of the property rights of the rightful owners over the possessed property values, viewed in comparative aspect (in particular in the sense of the gradual development of social relationships) is an early socio-legal process. In this

¹ PhD Candidate, Law Faculty of the University of Pristina Hasan Prishtina, Pristina, Republic of Kosovo, Teaching Assistant for a group of criminal courses at University Kadri Zeka, Gjilan/Gnjilane, Adress: Rr. George Bush, Nr.31, 10 000 Prishtinë, Republic of Kosovo, Tel.: +381 38 244 183 /244 186, Fax: +381 38 244 187, E-mail: fatmireshaipkrasniqi@gmail.com.

regard, the criminal offense of aggravated theft, which as a defense object has the property values, though often named in different notions, however, in special way it turns out to be determined also through the Albanian customary law.

We point out that, even if the notion of property or property value today has much wider meaning, particularly compared with property or property values of the society period in which the norms of customary law had influence, the criminal offense of aggravated theft always and in all periods was existent not only in our society. Consequently, even the attempt to incriminate, prevent and fight it in the most effective way, it has never been stagnant, especially when the criminal offense of aggravated theft is a negative act of man and detrimental to society. (Petrovic, 2006, p. 30) Nevertheless, a state on the path of self-development starting from primitive community, through the slavery era to the contemporary modern state is developed in accordance with certain stage of development of the productive forces and on the basis of the social work division, (Xhelmo, 2006, p. 6), which also the reaction towards the criminal behavior at different time periods has been a different reaction.

Generally, noting that the criminal offense of aggravated theft has always preoccupied our society and is still present with its consequences, we will initially elaborate the criminal offense in question by disclosing some of the fundamental elements of the customary law and its report on the criminal offense of aggravated theft, to continue gradually with the treatments of the respective criminal offense that were made by the most popular codes in the field of Albanian customary law. The analytical review will be gradually expanded by exploring the characteristics and stances towards the criminal offense of aggravated theft according to the *Code of Lekë Dukagjini*, the *Code of Skanderbeg* as well as the *Code of Labëria*.

2. The Criminal Offense of Aggravated Theft and the Albanian Customary Law

The customary law, namely customs have played a primary role in the early pre-state social formations, to regulate relations within a social group (Elezi, 2006, p. 12). Realistically, many customary norms, in addition to the state's positive law, are kept in the consciousness of people thus they act parallelly with them. Dualization, or legal pluralism is a historical reality, despite the fact that the state has adopted and issued laws for the protection of private property (Elezi, 2002, p. 5). Even at present, where law and the rule of law basically is applied, customary law, in particular through the law provided by codes, still has effects on the consciousness and the

actions of persons, and in certain cases it can become an important source of regulation of social relations.

In general terms, Albanian customary law can be qualified as a relatively rich right. Given the time at which it was presented as a source of right, yet, in comparison to other sources of right, customary law held the central place. This is due to the existence of numerous rules of conduct, which precisely and concisely regulated the most important social relationships. Even such rules of the right, which once were of great importance in the determination and division of the right, especially among the disputed parties, as such, defined many issues which, even in the present period, when referring to the legal provisions, we can observe similarities not only in their definition but also in regulating of the relevant issues.

In this regard, we will gradually approach the Albanian customary law in the sense of an analytical review with a special emphasis on how this law has defined and regulated the anti-social phenomena of theft in society. But we must first point out that although theft has been widespread in the past, the codes do not give its definition. From the content of their norms it turns out that by stealing it was meant the unrightfully, secretly or openly acquisition of another's property to obtain material benefits (Elezi, 2002, p. 17). Nevertheless, even the sanction as a repressive measure imposed on someone who violates any behavioral, moral, legal, customary norm, etc., to the norms of conduct (Abazovic, Muratbegovic, Halilovic, Budimlic & Becirevic, 2006, p. 15) was expressly defined even through Albanian customary law.

However, treating the aggravated theft in our society as well as all the accompanying characteristics from the general aspect of Albanian customary law will initially be approached according to the *Code of Lekë Dukagjini*, to verify the way of determining and regulating such problems in society, just to continue with the *Code of Skanderbeg* as well as the *Code of Labëria*.

3. The Criminal Offense of Aggravated Theft According to the Code of Lekë Dukagjini

As for the *Code of Lekë Dukagjini*, the laws of the Code have served for a long time as social norms and as a self-governing system that prevailed in areas of northern Albania at the time when the region was ruled by the Ottoman Empire. The Code is of fundamental importance in the history of the Albanian people as it is an ancient document. Moreover, its rules and norms continue to exert a significant impact on

the Albanians living in Albania and Kosovo, as well as in other places where Albanians have migrated (<https://libri-shqip.blogspot.com/2016/09/kanuni-i-leke-dukagjinit.html>).

The Code of Lekë Dukagjini consists of twelve books. Within these books, each of them determines and regulates a certain area of life. Consequently, the first treatment, namely the first book, refers to the regulation of *church*-related matters. Subsequently, the following books regulate matters relating to: *family, marriage, house, livestock and property, work, given property, word of mouth, honor, damages*, and afterward comes *the code against the crimes, the elder code* and finally is the book entitled *exemptions and exceptions*. In its entirety, this code has 1263 articles and numerous paragraphs. Actually, through such provisions is regulated a large number of social relationships. The *Code of Lekë Dukagjini*, as a whole of rules, is summarized by Father Shtjefën Gjeçovi, a summary which many scholars described as Gjeçovi's most important work. The first edition summed up by this parish priest and teacher came out in a special book just after his death, i.e. in 1933.

The theft as a criminal offense has been foreseen and defined expressly by the *Code of Lekë Dukagjini*. Even in the *Tenth Book*, Chapter Twenty-one, Article one hundred and twelve, there are altogether nine articles, followed by several paragraphs, in which the theft is determined as a forbidden act. According to the rules in question in the criminal offense of theft are included, a) Cubi (the thief); is the one, who steals with his hand someone else's animal; b) the Simahors (the accomplices that aid the thief) are those who aid and support Cubi (the thief) in a theft or in every perversity, and the last day, if the theft is discovered, will compensate the stolen item according to the code and the part that they took; c) The bread is the good, where the Cubs (thieves) with a stolen item eat bread, or they take bread with themselves, and are escorted with a stolen item. "Cubi (the thief) and the Feeder are one"; d) Kjori (the supporter-shelterer); is the one who hides the stolen item. "Kjori is equally guilty as Cubi"; e) Even though Kjori did not partake in the theft, he is equally guilty as Cubi, because he becomes a shelter for Cubis and thefts; f) The trace is the footprint, left by the livestock, behind which travels the owner of the stolen livestock, by leaving traces: within the boundary of a village or a neighborhood, or within the circle of a house, a yard or a fold. "Placed traces, found livestock"; (g) Children and Pick pocketers; h) Robber, is the one, who openly and by using force takes another's property for any task (benefit). (The Code of Lekë Dukagjini, Article one hundred and twelve, Article 768, paras. a, b, c, d, e, f, g and h)

Observing from the comparative aspect, the above-mentioned provision in the *Code of Lekë Dukagjini* also determines *co-operation* in committing the criminal offense of theft. While, today, in the cases when two or more persons are involved in the criminal offense, this in the criminal law is called co-operation. While the persons whose actions are committed the offenses with are called accomplices, (Salihu, 2015, p. 373), in the *Code of Lekë Dukagjini* we find other notions with meaningful determination where in some cases approximately the same.

According to the rules of the *Code of Lekë Dukagjini*, it is clearly noted that the determination of theft refers to the property of the period in which the notion and the property itself had a *closer* meaning. Therefore, what the *Code of Lekë Dukagjini* protected against the anti-social offense of theft is nowadays called property, but property as a notion and value today is dealt with in a much wider dimension. However, the *Code of Lekë Dukagjini* regulated social relationships in the period in which such relations were known, and not of other types. Consequently, the Cubi (the thief) is the one, who steals with his hand someone else's animal. By this definition is given the notion of the perpetrator of the crime in today's view of the criminal law theory and criminal legislation. The Simahors (the accomplices that aid the thief) are those who aid and support the thief. The Kjer (the supporter-shelterer) is the one who hides (shelters) the stolen thing "Equally guilty Kjer (the supporter-shelterer) of the stolen thing" (paragraph 768). All accomplices in the theft were equally liable (Elezi, 2002, p. 31).

Meanwhile, the *Code of Lekë Dukagjini* excluded children from liability for the damage caused, even in cases when children were caught with stolen things in their hands. In this regard, it was stipulated that every damage, theft and stolen item committed by children and young thieves, if found which house they belong to, will be compensated, (The Code of Lekë Dukagjini, Chapter one hundred and twelve, Article 774) such determination is due to the fact that the principle of the code is: whatsoever your kindship does, the man of the family will compensate. (The Code of Lekë Dukagjini, Chapter one hundred and twelve, Article 775) Also, the children and young thieves, even if caught with stolen items in their hands, no hand of others can't touch them (to beat them) but the parents will be informed, whom will be responsible for them. (The Code of Lekë Dukagjini, Chapter one hundred and twelve, Article 776) However, beyond such definitions, within the *Code of Lekë Dukagjini* there can be found also a considerable number of rules, which deal with the way of finding the perpetrator of anti-social behavior, mainly through traces/evidences.

However, taken entirely from the contents of criminal norms of the codes, theft can be divided into simple theft and qualified theft. This division is based on a scientific-character of social relations that were affected by the crime of theft. The degree of social risk of theft was also determined from the importance of these relations. The simple theft consisted in the acquisition of another's property and was directed against important social relationships that ensured the inviolability of private property, specifically protected by the criminal norms of the codes. Theft of property outside the home and its environment, livestock, agricultural tools, poultry, etc., according to codes was called a simple theft. The hive's theft on the mountain in another place, outside the stock fold, was also called a simple theft. For simple theft the codes provided sanctions according to the principle set two to one (Elezi, 2002, p. 21). While the qualified theft according to codes was referred to as being directed against two objects, i.e. social relationships that ensured the inviolability of private property and against social relationships that ensured the honor and dignity of a certain person or a certain collective. The codes attributed a great importance to the protection of honor and personal dignity. In the *Code of Lekë Dukagjini* it was stated explicitly that "Thy whose honor was taken, by the code is considered dead" (paragraph 600). (Elezi, 2002, p. 22) Thus, in the *Code of Lekë Dukagjini* in such form was determined the simple theft and the qualified theft, namely the criminal offense of theft as well as the criminal offense of aggravated theft.

4. The Criminal Offense of Aggravated Theft According to the Code of Skanderbeg

The other important Code in regulating social relations was also the *Code of Skanderbeg*. This Code extended to Central Albania amongst the provinces of the Princedom of Kastriots and their influence: Krujë, Mat, Dibër, Valm (Elbasan) from the Mat-Fand Rivers on the north down to the Shkumbin River (Librazhd) on the south and from the Adriatic Sea in the west up to the eastern borders of Dibra and Ohrid in the east. (Illia, 1993, p. 15) It may also be noted that this code has the common foundation with the codes of the Albanian mountains. This code is called the Code of Skanderbeg, as he has made some special canonical laws for his own provinces and the areas he had influenced. It can also be called the code of Arbën. (Illia, 1993, p. 15).

Observing from the analytical aspect, the *Code of Skanderbeg* is divided into seven parts, each with a special content and with a total of 3534 paragraphs. In terms of

regulating social relations, we can emphasize that through this code are regulated a large number of such relationships, moreover they are regulated quite accurately. The *first part* of this code is entitled *the Family*. Within this section are regulated many issues and are therefore divided and named as follows: Tribe, Gender, Other Social Relations, Engagement and Marriage, Friendship, Friend, Feasts with Friends, Honor, Mortgages and Inheritance. The *second part* of this code is entitled *the House*. Within it are also divided and regulated: The House and its Property, the Partitions of the House, Livestock, the Necessity, the Deadline, the Speaking and the Forgiveness. The *third part* of this code is entitled *the Obligations*. Within it are listed: Trade and Livestock. The *fourth part* of this code is entitled *the Governance*. Within it are listed: Flag and its bodies, Children, House in the village and the flag, having a brother in the village, Messengers, Harbingers, Assembly, Reconciliation or Agreement, The Guarantor and the Witness. The *fifth part* of this code is called *the Punishments* and includes the chapters named: The Enforcement of Penalties, the Penitents, the Elders, the Foreswear. Meanwhile, the *sixth part*, which is really the most important part in our study, is called Guilts and Damages. In this part there are the chapters named as: Guilts and Damages against the life, Damages against the property and Damages against the honor. The last part, that is, the *seventh part* is attributed entirely to matters pertaining to the church, moreover this part is entirely denominated by the title Church.

As noted above, stealing as a forbidden act is explicitly defined within the second chapter, namely the sixth part of the *Code of Skanderbeg*. In this section, not only the theft but also aggravated theft, is defined, where aggravated theft is named with another term, therefore it is qualified and named as *ominous theft*. Meanwhile, the definition of the forbidden act of theft is firstly followed by the elaboration of its meaning. According to the determination made in the *Code of Skanderbeg*, to steal means to take from someone an item that belongs to him. (The Code of Skanderbeg, par 3181) Also in this code is determined cooperation in the execution of the theft. Furthermore, it is said that stealing can only be done with accomplices. The accomplices are: 1) Simahors (the accomplices that aid the thief); 2) Feeder; 3) Kjori (the supporter-shelterer). (The Code of Skanderbeg par, 3183) However, the aid in the capacity of accomplices, feeder and supporter-shelterer, in terms of their meaning and in terms of their function in relation to the thief, are similar as we have emphasized above, namely in the *Code of Lekë Dukagjini*.

Meanwhile, aggravated theft, qualified as ominous theft, is defined in this way, when the theft apart from the livestock and damage, has violated the honor of someone is

called «The Ominous Theft». Such a thief will be held liable according to the code and will pay a heavy fine, (The Code of Skanderbeg, par. 3205) but also it is emphasized that the ominous theft has a black face and for two, the stolen or damaged goods: one for the goods or caused damage, the other for the violation of the honor, such as: 1) When an item is stolen from a friend or some other person, that is within the honor and protection of the house; 2) When an item is stolen or damaged in the Church that is under the protection of the village; 3) When an item is discovered after covenant, which is “the Water which everyone washes with” (The Code of Skanderbeg, par. 3206).

Even in the Code of Skanderbeg, special protection is enjoyed by children for the fact that their parents will be held responsible for their anti-social actions. So, for their actions, they are out of the sphere of responsibility for the damage caused, but it is determined that if you were a child or a halfwit one who committed the ominous theft, for the first time the parents or the house will compensate or return the item and the fine will be forgiven (The Code of Skanderbeg, par. 3207).

Even the *Code of Skanderbeg* offers some information on the possibility of finding a perpetrator based on the traces found at the scene. Also, within twenty-seven paragraphs regulating the issue of anti-social behavior related to theft, numerous data are provided about the punitive aspect of perpetrators of these forbidden actions.

Still, in terms of dealing with theft and aggravated theft, qualified as ominous theft, we can conclude that even the *Code of Skanderbeg* has defined such issue in all its dimensions. Moreover, for the time at which it has its effects, this code is rightly termed a code of very high value, especially in terms of proper regulation of socially disadvantaged relations.

5. The Criminal Offense of Aggravated Theft According to the Code of Labëria

Social relations of importance to the Albanian people were also regulated with the *Code of Labëria*. Regarding the geographic extent, in terms of its territorial aspect, it can be said that it was probably implemented in the villages of Vlora, Himara, the Coast as a whole, in Kurvelesh, in Rrëzomë, in Kardhiq, in Rrëzë te Tepelena, elsewhere where Lab communities reside, as well as in Mallakstra and on a more limited scale to the cities of Gjirokastra, Delvina, Tepelena and Vlor (Elezi, 2006, p. 7).

The *Code of Labëria*, in its content, is divided into ten parts, each of which is divided into respective chapters and articles, which influence the affected areas of social life to be regulated with adequate precision. The *first part* of this code includes general norms that specifically deal with: the meaning, object, tasks, goals of the code, etc., while the *second part* includes the main principles where with particular emphasis are addressed issues that deal with: the freedom, equality, honor, trust and hospitality. The *third part* of the *Code of Labëria* refers to the issue of temporal organization of social parastatal self-governing units, in order to continue with the *fourth part* of the code entitled *social order* which includes issues referred to as: the belly and the family, the brotherhood, relatives, generations and gender. The *fifth part* is also very important because it concerns the economic order and the regulation of civil-legal relations. Meanwhile, the *sixth part* is the point of interest for our study since it includes and regulates issues related to the guilt and punishment. The *seventh part* is the so-called special part and closely regulates the types of criminal offenses. In the *eighth part* of the *Code of Labëria*, the issue of investigations and trials of guilty is determined, while the penultimate part, respectively the *ninth part*, defines the trials of civil disputes. In the *tenth part* is determined violation of the rules set up in the local community unit.

In the *seventh part* of the *Code of Labëria*, respectively in Article 722, is defined the meaning of the theft where it is explicitly stated that, by theft, is understood taking unjustly, by the thief covertly or openly, knowingly and intentionally of another's property, for his own benefit, in order to acquire it for himself or for another (The Code of Labëria, Article 722). While the *Code of Labëria* also defines the object of theft, citing that objects of thefts are: cattle (livestock), animals (cows, oxen, horse, mules, donkeys), agricultural and livestock products, bees, household items, personal belongings, money and any other property of economic value (The Code of Labëria, Article 723). The *Code of Labëria* goes even further to the defining of the subjects in theft. In this regard, according to Article 724 of this Code it is noted that: there are these types of subjects in theft: pick pocket, pirate (thief), thief, mugger, robber. 1. Pick pocket - is a pirate (thief) of chickens, unarmed, despised and despicable - shameless. 2. Pirate (thief) - is the one who steals alone, covertly, a lamb, goat, and loses traces. 3. Thief (one who steals) alone or in co-operation with others. 4. Mugger - is called the one who creates and leads the gang of muggers to openly carry out theft of property. The leader of the gang is the "bellwether" who is the craftiest to "loosen the needle of the plow". 5. A robber - the one who goes out on the street and robs the property of travelers (caravans) by using force (weapon) as well as the one who grabs a woman, girl or other person. 6. Robbers - are called those who steal

collectively, what they can, in common places without using force. 7. For any theft committed by the family members, the man of the house will be held responsible (The Code of Labëria, Article 724). Undoubtedly, according to the rules clearly defined in the *Code of Labëria*, exactly this code knows some types of thefts. Among them, determined by special articles are: home theft, stealing inside the village, stealing the saddle horse, stealing in the bee's fold, stealing the rifle, stealing the ram and the goat, stealing by the gang of thieves, etc.

Though, since the *Code of Labëria* has made a gradual treatment of criminal offenses against property, namely, it has started from the definition of the theft as a notion, then the definition of theft object, subjects in theft, the responsibility of the perpetrator of such offenses etc., nonetheless, this code has not left without treating and defining the anti-social act related to the aggravated theft. Consequently, in Article 728 of this code, it becomes clear that theft is aggravated when it is committed with taking women's underwear, since this is called an insult of women's honor. Similarly, the theft by a family friend is sentenced by expulsion from the village. The house theft committed by a friend from another village is punished with a boycott and a black face (The Code of Labëria, Article 728, par. 1 and 2).

Conceptually, by such regulation of the aggravated theft, we can freely say that the meaning and content of aggravated theft in parallel context with the criminal offense of aggravated theft incriminated today is quite different. But again, we reiterate that the code has adjusted and adapted to the social relations of the time in which its provisions have had effect.

From treating the criminal offense of aggravated theft, according to customary Albanian law, we can say that *the Code of Labëria*, *the Code of Lekë Dukagjini* and *the Code of Skanderbeg*, despite having acted in different time and space, the first refers to the oral information of XI century, while the second of XV century; the first has acted in the Southwest of Albania and the second in North Mountains. They have many similar norms, have a common subbed, are integral part of the Albanian nationwide Code, which survived and sustained the storms of foreign conquests during centuries. These similarities have in their foundation the ethics, the system of high moral values and the main legal principles of its customary law, the cultural and spiritual ties of the Albanian people. There are likewise similarities in the domestic social organization, parastatal based on relational kinship in the big and small brotherhoods, in the institution of elders and assemblies of men, as bodies of local self-government, in the regulation of ownership, inheritance, obligations, up to the rules of investigation and adjudication of cases (Elezi, 2006, p. 26).

Nonetheless, the emphasized codes have been the core in the determination and in regulation of many social relationships, by setting an order, peace and respect among people. However, the gradual development of society had its impact on the emergence of new social relationships, changes in living conditions and circumstances, and in that sense, the customary law gradually became faded in terms of respecting and applying it in practice. Thus, the regulation of social relations is already entrusted to certain legal provisions and sanctioned by the state, nevertheless in the memory and in certain cases in the actions of the people are still seen the footprints of customary law, with reason as Albanian customary law followed with all its major values, first of all was the right of our people and will continue to be such. Consequently, the concepts of combating and preventing criminality have changed during the course of historical development, therefore, depending on this development, in different societies and different stages of their development, various means and measures have been presented to fight these phenomena (Latifi, 2003, p. 7). However, such perceptions include the tendency to prevent and fight the criminal offense of aggravated theft in our society, regardless of its developmental phases.

6. Conclusion

From the presented data we can emphasize that the criminal offense of aggravated theft has been and continues to be a preoccupation of our society. Nevertheless, the defensive object of the criminal offense in question has gradually changed, but always and in all situations, the defensive object of the criminal offense of aggravated theft remains property, namely the property values.

Meanwhile, important fact is the determination of theoretical and practical aspects in the field of prevention and combating of the respective offense. In this sense, according to Albanian customary law, but also according to today's legal-criminal provisions, concrete terms continue to be defined such as: criminal offense, its perpetrator (including juvenile offenders as the perpetrator of the criminal offense of aggravated theft), defensive object, criminal liability, co-operation in committing the respective criminal offense and criminal sanction.

However, in line with changes in the overall social development, the actualization of unlawful behaviors through norms of law has been increasingly changing. Such a fact is quite positive, especially when it is known that norms of law must always possess conformability in accordance with the society in which they find applicability. Throughout this process of determinations from the customary law and

positive criminal law, the intentions are clear, and they consist in the most effective prevention and combat of the criminal offense of aggravated theft, specifically when it is known that recidivism in property delinquency is very emphasized i.e. that the same persons after serving the sentence again commit the same delinquency (Adžajlić-Dedović, 2007, par. 57).

7. Bibliography

Abazović, M.; Muratbegović, E.; Halilović, H.; Budimliq, M. & Beqireviq, E. (2006). *Crime Fighting Policy*. Sarajevo/Pristina.

Adžajlić-Dedović, A. (2007). *Restorative justice*. Sarajevo/Pristina.

Elezi, I. (2002). *Criminal legal protection of property*. Tirana.

Elezi, I. (2006). *The Code of Labëria*. Tirana.

<https://libri-shqip.blogspot.com/2016/09/kanuni-i-leke-dukagjinit.html>

Illia, F. (1993). *The Code of Skanderbeg*. Shkoder.

Latifi, V. (2003). *Criminal policy*. Prishtinë.

Petroviq, B. (2006). *Criminal law*. Sarajevo/Pristina.

Salihu, I. (2015). *Criminal law – general part*. Pristina.

Xhelmo, Z. (2006). *Access to justice*. Sarajevo/Pristina.