

Reducing blood feud/ revenge and social conflicts in Albania through restorative practices and the restoring of justice system

In 1623 Shakespeare in his play “All's Well That Ends Well” wrote: “Love all, trust a few, do wrong to none”. Unfortunately, in some cases in our societies, love, trust and goodness are replaced by hate, mistrust, and revenge.

In contemporary societies, where the state and the justice system, regulate the functioning of the society, building a trusted relationship between citizens and institutions is of a crucial importance for ensuring social peace.

Unlike traditional societies, based on unwritten rules or customary laws, contemporary societies operate under the well sanctioned rules of written laws. Albanian customary law contains a system of unwritten traditional norms, values and customs, which have been inherited by word of mouth from one generation to another. In Albanian context the codified traditional laws are known as Kanun, usually identified with their regions such as Kanun of Labëria, Kanun of Mirdita etc, but the most influencing one, especially in the northern part of Albania, is known as Kanun of Lekë Dukagjini because it has been formalized by Lekë Dukagjini. It influenced the social life of northern part of Albania since the medieval period. One of the most important role of the Kanun of Lekë Dukagjini was to codify the rules of blood feud phenomenon.

During the communist regime in Albania (1945-1990), the customary law act became too weak. If someone committed a murder, he was punished by criminal law of that time and nobody could do the revenge. As a matter of fact, the communist regime tried to suppress and even undermine the influence of customary law in Albania, but immediately after the fall of that regime, the customary law was reactivated again, especially in the northern part of Albania. The mechanism of revenge and self-claim was reactivated, mainly because the role of institutions in the fight against criminality was weakened and the mistrust of the people on these institutions and the justice system was decreased.

Generally the revenge or blood feud in Albania, reactivated after the fall of communist regime, is not played in accordance to the old rules, and do not respect the Kanun rules, but use it as an excuse.

As mentioned above, the lack of the trust in the institutions, contributed to the spread of the practice of private justice. The main elements that make many citizens untrustable are:

- the high level of corruption in justice system;
- the lack of security of punishment against those who have killed for blood feud;
- lack of appropriate police intervention;
- the existence of a mentality that feeds the blood feud practice;
- insufficiency of the state apparatus in guaranteeing the security of citizens, that endanger life for motives related to blood feuds.

With the aim of fighting corruption and restoring the citizens' trust in the justice system, in June 21, 2016, Albanian parliament voted the constitutional reform. As many as 45 articles of the Albanian Constitution have been amended.

Reform in justice is a complex process. It includes the creation of new institutions such as: the establishment of a special anti-corruption and organized crime prosecutor known to the acronym SPAK; the establishment of a new anti-corruption court; the establishment of the Supreme Judicial Council and the Supreme Prosecution Council, two structures that aim to ensure the effectiveness and independence of justice and prosecution systems, etc.

Also an important pillar of Justice Reform is the vetting process of judges and prosecutors, which constitutes a transitional qualification assessment. These professionals are studied under three pillars: the integrity of the assets accumulated during their career, possible ties to organized crime and professional misconduct.

The implementation of this reform is considered very important, so that Albanian people are served by a judicial system based on European standards.

The reform process requires the drafting of new laws as well, related to the judicial system.

Among others, the law nr. 37/2017 “Code of criminal justice for juveniles”, is one of the most important laws, that ensure a legal framework on juvenile justice that is consistent with Albanian Constitution, Convention of the Organization of United Nations (UN) about Children Rights and other international organizations standards and norms that aim to protect the juveniles and effectively protect the most high interest of juveniles. The application of the restorative practices provided in the Code will also have a positive impact on situations where juveniles and minors are involved in blood feuds and revenge.

Restorative programs can help, complement or even substitute the penal justice, helping the restoring of the juridical system and its effectiveness.

In Albania ‘mediation’ and ‘reconciliation’ were frequently used in the customary law, but the new laws aim to formalize the mediation process and the restorative practices in accordance to the contemporary European standards.

It is necessary to mention that the law of mediation was firstly approved by Albanian parliament in 1999 (law nr 8465 “On mediation in dispute resolution”). After that a new law on mediation was approved in 2003 (law nr. 9090 “On mediation in dispute resolution”), and later in 2011 the new law nr 10385, which was amended in 2018.

It clearly establishes a legal definition of mediation, the basic principles, the role of mediator as an accredited professional, the clear procedures of mediation as well as the legal importance of the dispute agreement signed by the parties and the mediator. In the law is emphasized the neutral role of the mediator as a third party who facilitate the communication between the parties, involved in conflict, the free will of the parties to take decision about the resolution of their conflict. According to the Law no.10385, 24.02.2011 “Mediation is an out-of-court activity, through which the parties seek to settle a dispute with the assistance of a third neutral person (the mediator) in order to come to an acceptable solution for the parties, and which does not contradict the law”.

Projects on victim-offender mediation, restorative justice, community conferencing and peacemaking circles have been implemented in many areas of Albania through the cooperation and experience exchange with Albanian NGO-s, other international partners and state

institutions. It is important to emphasize the role that Foundation for Conflict Resolution and Reconciliation of Disputes has given in this field, especially on:

- Improvement of the legislation for the implementation of victim-offender mediation through concrete proposals for changes in the legislation (procedural codes, the mediation law, the juvenile's code, etc).
- Increase the institutions' awareness on the relevant international instruments, as well as promotion of the most advanced experiences in the area of restorative justice and victim-offender mediation.
- Implementing of restorative practices, thus helping the parties involved in conflicts, avoiding the costly court procedures, reducing the caseload of courts, etc.
- Monitoring the process of efficiency of the mediation agreement, etc.

Regarding the blood feud and revenge cases the disputes were handling through group conferencing. The restorative practice of group conferencing that was applied was a combination of tradition (the role of different supporters like the elderly, persons with reputation in their community, the oath, etc.) with the modern approaches of conflict management (such as the role of the professional mediators and skilled facilitators). In such participatory process, the victim, offender and their family members and/or supporters, who could help to resolve the conflict, like relatives of both parties, known for their reputation and friends of both parties are involved in the group conferencing model.

It is important to mention that in traditional mediation the perspective is focused mostly on the past rather than the future, but in the contemporary mediation and restorative practices the parties are future-oriented. Using this philosophy, let's hope that restoring justice system in Albania will serve as an important tool to restore the culture of trust, of peace and tolerance in Albania. As Mother Teresa quoted: "*We fear the future because we are wasting today*", the restorative practices, which aim at harmonizing the relationship between the people, remind us to not waste today in order to construct a better future.