

Traditional Law in Soviet Times

By Lavrenti Janiashvili, Tbilisi

Abstract

In order to fully grasp the contemporary practice of traditional law, it is necessary to discuss its practice in Soviet times and earlier. Georgian scholars of history of law consider traditional law an important part of Georgian legal history that outlived all periods of foreign domination. During Soviet times, traditional law continued to be practiced in Svaneti, because so called “private crimes” were not brought to court by the involved parties. Additionally, traditional law had many intersections with the code of “thieves in law” and other “informal traditional practices.”

A Historical Perspective

Our research project focused on the contemporary relevance of traditional law in Georgia. We selected as the main object of our study highlanders from Western Georgia (Svans) who had migrated to the lowlands (Kvemo Kartli) and who are subject to the influences of intensive economic, cultural and social-political processes in their new residence. In order to identify if today’s practice of traditional law should be seen as some “revitalization” of old traditions or the “creation” of a new post-Soviet tradition, we also had to analyze the interrelation of traditional and state legal systems from a historical perspective.

Traditional law has been a subject of interest among researchers for a long time. This is particularly the case for Georgia, where especially since the 19th century, Georgian scholars have described and highlighted traditions. “Tradition” for many Georgian scholars has always been associated with ethnic identity. This relationship between tradition and identity is well observed in the writings of the Georgian writer Ilia Chavchavadze, who underlined the connections of tradition with Georgian ethnicity. Highlanders, in particular, were believed to have conserved a pristine form of undistorted Georgianness. Having a genuine, discernible tradition meant in this sense to have also a distinct ethnic identity. Traditional law was seen in this context as a specific manifestation of Georgian tradition.

Before turning to the practice of traditional law in Soviet time, it is necessary to shortly refer to the history of Georgian law. Like ethnographers and historians, scholars of legal history carve out the role of tradition in the development of Georgian legal culture. In this logic Georgian traditional law is conceived to be one of the most important components of the Georgian legal culture throughout the centuries and is presented as a primary source for the study of the history of law. The general position is that a genuine traditional law had been the basis for the official legal frameworks in many various historical periods in Georgia. The idea behind these research projects appears to be that despite the

turbulent times and many different invaders or foreign rulers, a traditional core somehow remained vivid even in the legal domain.

The Law Book of Vakhtang VI has earned a special place in the history of Georgian legal thought. Under Vakhtang VI of Kartli (1675–1737), the legal code was revised and officially stayed in place following the introduction of the Tsarist Russian administration. This code of law was based to a large part on a compilation of already existing local legal procedures. After the establishment of the Russian Empire in Georgia, the new rulers tried to introduce Russian legislation in Georgia. But this proved to be quite difficult because the Law Book of Vakhtang VI continued to be widely used in court. The book was respected since its legal norms were not alien to the society; they even emerged out of it, which was not the case for Tsarist law. Georgian researchers think that besides the Law Book of Vakhtang VI, other legal monuments, like the Law Code of Beka and Aghbuga (14th–15th century) or the Law Code of King George (14th century), effectively used norms of traditional law from various parts of Georgia. The reverse situation also existed because some of the laws listed in the respective medieval books of laws became an integral part of traditional law.

After the Mongol domination, for example, the Georgian kingdom aimed at restructuring its traditional legal system in its provinces. This attempt to spread the law over the mountain population occurred in the 14th century during the reign of George V (called “The Brilliant”, 1286/1289–1346). An analysis of the Law Code of King George shows that the royal authorities introduced the local position of *khevisberi*, i.e. an administrative post inside of the feudal structure, whose occupant led the military troops in the region. But later, due to the weakening of the feudal authorities and the loss of administrative control of the East Georgian mountains, the *khevisberi* became something different. It changed its role from that of a state official into a spiritual leader of the community. In effect, this administrative post was locally incorporated and transformed into some-

thing else, an elder who besides religious celebrations was also important for implementing East Georgian traditional legal practice.

The Soviet Era

Defining the necessary historical perspective on Svan traditional law was a challenging task for our project. Arranging interviews with contemporaries is becoming more and more difficult and the new generation seems to glorify the practice of traditional law from earlier times. The literature is sparse and the archive material not very rich. In studying Soviet legislation in regard to the practice of traditional law it became clear that traditional law was considered a real challenge to the full power of the state. The Soviet authorities severely punished those who used traditional law: capital punishment was introduced as a penalty for murders committed in carrying out a blood feud. The perpetrator had to be executed by firing squad (§104, Criminal Code of Soviet Georgia).

During the first years of the establishment of the Soviet regime, the practice of traditional law in Svaneti was not sharply restricted. Many local conflicts (especially family disputes) were solved according to local legal traditions and people seldom addressed official authorities. The situation was different, however, when it came to incidents which fell under penal law. In these cases, the Soviet legal system tried to control the process entirely. A significant field of action, however, was left for traditional law despite the strict application of penal law, namely, the mediation of so-called “private crimes.” According to Soviet law in the 1920s, “any action or inaction threatening Soviet order or the rule of law established by the authorities of workers and peasants for the transitional period to Communist rule of order was considered a crime” (Erkomaishvili 1928). If a case did not fall under this act, it could have been considered a private affair even if theoretically speaking it fell under penal law. The state transferred the right to negotiate the problem to the offended party. Surguladze (1928) named numerous precedents which were labelled correspondingly as private crimes, treated without any interference from the state, because the offended party did not appeal to court. This practice with private crimes was justified by the courts’ case overload, but it helped to support the continuity of extra-court legal proceedings.

Traditional norms played a significant role in social relationships and everyday life in the Soviet period. They determined the rights and obligation of an individual towards his society. Despite the fact that law enforcement means for the traditional legal institutions were restricted, the attitude of the majority of society toward the violators of traditional norms remained negative.

The reasons why the Soviet system did not manage to impose fully its administrative, legal and ideological point of view—especially in the rural areas—was, according to Dragadze (1988), because the relations between Georgia and the Soviet Union were perceived as relations between two distinct nations. The Soviet Union always remained an alien concept. Dragadze writes that the Soviet Union was hostile to local traditions and wanted to transform radically the moral order. But this policy paradoxically incited the opposite. “Traditional culture” was used as a “means of counterstrategy.” Christophe (2003) states correspondingly that the socialist state did not manage to penetrate the rural society. Behind the façade of Soviet institutions, a “multitude of informal traditional practices” prevailed. In this context, we must note the continuous relevance of informal and clan-based networks in Soviet Georgia, which transgressed the usual Soviet Nomenklatura system (Mars/Altman 1983). A persistent traditional law, i.e. alternative moral frameworks and conceptions of order, were part of similar phenomena in various regions of Georgia. According to my informants, Svan traditional law in Soviet Georgia and in the 1990s had some intersections through the “thieves in law” institution in Georgia, i.e. criminal groups with a “law code” that originated from penal work camps in Russia. The “criminal romance” of this system especially attracted the youth.

Implementation

The main places where Svan traditional law was enacted were community assemblies and courts of mediation. On these occasions the conflicts that used to occur were resolved. The community assembly was headed by a *makhvshi* (elder), which was elected by the participants in the assembly. One can distinguish here two forms of conflicts that were discussed during the assembly sessions: (1) conflicts against the interests of the community (e.g. betrayal of the community, disrespect for a religious icon, violation of the rules of exogamy etc.) and (2) conflicts against individuals, i.e. murder, wounding, offence of one’s honour or damaging one’s property. The assembly could, after having negotiated the cases, expel families from the village, order the burning of one’s house, order the expulsion of a family from the region, or even impose a sentence of capital punishment. The death penalty was particularly used for the “traitors” of the village or the community. The assembly did not report to anybody and had no responsibility to anyone. It was entitled to jointly discuss and settle internal and external issues (Nizharadze 1962).

Courts of mediation had a different function. They sought not only to identify the criminal and impose a punishment, but, most importantly, to reconcile the

parties. Mediators tried to convince the injured party to accept financial indemnification, so that the cycle of violence in society would end. The courts of mediation negotiated cases addressing property disputes (landed property, violation of agreements, etc.), murder, wounding, rape, beating, theft, etc.

After the strengthening the Soviet state's authority, judging severe crimes became the privilege of the official bodies. My field material shows, however, that conflicts of relatively less importance and everyday relationships continued to be regulated independently according to traditional norms. Relationships within one clan, brotherhood or family were settled by the traditional institutions, especially for disputes around land distribution and property, arguments between family members, etc.

About the Author

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Recommended Reading

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The Resurgence of Blood Feud in the Georgian Lowlands

By Natia Jalabadze, Tbilisi

Abstract

This article discusses the problem of blood feud in the multi-ethnic region of Kvemo Kartli, where its resurgence is related to the migration of Svans since the 1980s. It seeks to explain the causes of preservation and sustainability of the custom among the Svan migrants. The results show that today blood feud practices are comparatively rare in the lowlands, while they remain alive in self-representations among Svans.

The Blood Feud in the Georgian Lowlands

Georgians have long preserved the norms of their traditional legal system and its practices. Until now, the institution of blood feud (though considerably transformed) continues to be practiced in the highlands, especially in Svaneti and Khevsureti. Scientific studies of the problem, however, are based mainly on data from the

To conclude, it could be argued that although the communist government tried to enclose the whole Georgian population into one legal system and make Soviet legislation govern all spheres of life, traditional law continued to be practiced. Different legal systems, formal (official/state) and non-formal (traditional law, religious law, and thief's law) co-existed during the socialist period in Georgia. My research results allow me to say that the traditional legal system was especially functional among the Georgian highlanders (Svans) and one can even say that representatives from the Soviet government sometimes even acted as the main actors (judge or mediator) in traditional legal processes.

highlands. Researchers have never studied this institution in the lowlands, because of the established opinion that this practice can only be traced in the highlands and not outside of them. But blood feud was not only a phenomenon in Svaneti or Khevsureti; it was a part of life in Georgia's different lowland regions during different historical periods and even exists sometimes today.