# Conditional Divorce in Ottoman Society: A Case from Seventeenth-Century Erzurum

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***Abstract:*** The family, which occupied a significant place within the socio-cultural structures of the Ottoman State, was of great importance to governmental authorities because it played a vital role in preserving social peace. Therefore, the status of the family was determined in accordance with certain laws. The lack of an official and complete family law in the Ottoman State until 1917 is the reason why official documents on the legal position of the family within the society can be found only in the records of the *Divân-ı Hümayun* (Imperial Council) and the *Sharia Sijills*. As the highest court in the state, the *Divân-ı Hümayun* decided most commonly on important state affairs and rarely on other matters. Yet the divorce case examined in this study was handled by the *Divân-ı Hümayun*, which makes this an important case for an evaluation of the place of women within Ottoman society. This study, then, not only illustrates the legal status of the family unit in the seventeenth century as reflected in the records of the *Divân-ı Hümayun* but also exemplifies women's right to go to the court of appeal and to divorce.

***Key Words:*** Family, *Shar'i* Laws, Social Life, Divorce, Erzurum

## Introduction[**]

The family is the social 'building block' of all societies. Established by a male and a female on the basis of mutual rights, the family is an inevitable factor in the arrangement of social life and it plays an important role in the possession of social identity. Governments have always been deeply concerned with the continuity and integrity of the family, since they usually consider that healthy families are necessary for the maintenance of a healthy society. In other words, the operation of the socio-cultural structures of societies is dependent on family. Often welfare is a characteristic of societies with a well arranged and orderly family system, whereas degeneration is the

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characteristic of societies in which the family and family ties are not protected by a well-established system.

The administrations in the Ottoman State usually took the necessary measures to maintain the existence of the family. The status of the Ottoman family was determined on the basis of *shar'î* or Islamic law. However, as some regulations, Ortaylı points out, were not in accordance with Islamic laws, because they were usually prepared in accordance with traditions (Ortaylı 2000: 62-3). To better understand the subject, many researchers have studied the *Sharia sijills* (Religious Court Records), *Mühimme* (Important Affairs*)*, *Ahkâm* and *Shikâyet* (Decisions and Complaint) registers and books of *Fıkıh* (law) which are important in the interpretation of religious matters (Jennings 1975: 53-114; Jennings 1993: 155-67; Gerber 1980: 231-44; Baer 1983: 9-27; Aydın 1982: 1-12; Ortaylı 1980: 33-40; Yüksel 1992: 489-95; Yuvalı 1997: 367-74; Demirel 1990: 945-61; Kurt 1998, Kankal 2000: 31-69; Tucker 1998; Zarine-Shahr 2000: 241-50; Zilfi 1996: 164-297).

## 1. Family Law:

There are false perceptions of the judicial status of the Ottoman family and women. Today there is a common belief that women were second class citizens in the Ottoman State and they had no rights within family, whereas men could do whatever they wanted. Also it is often argued that women had no say in either marriage or divorce. However, some studies disagree with these ideas (Cin 1976; Aydın 1985; Kazıcı 1996; Cebeci 1993; Aydın 1992: 434-55; Ortaylı 1992: 456-67; Oztürk 1999: 407-11; Doğan 1999: 371-406; Kurt 1999: 434-49; Akyılmaz 2002: 365-74; Jennings 1975: 53-114; Jennings 1993: 155-67; Imber 2000: 81-2). Besides, Ronald Jennings in his study on the status of women within the Ottoman society also points out that western approach towards the Muslim women was often a degrading one which aimed to deny their important status in the Muslim society (Jennings 1975: 53-114; Jennings 1980: 559-582). Jennings also disagrees on the claims that women in Ottoman society were married without their free will and as a result had no right to divorce (Jennings 1975: 53-114; Jennings 1993: 155-67; Gerber 1980: 231-44).

Islam supports marriage to ensure biological reproduction and to prevent illicit sexual tendencies in the society. The Ottoman administration had regulations relating to both marriage and divorce. Marriage would gain validity only after a religious ceremony called *Nikah* (Marriage) (Aydın 1989: 199). Judicial rules or laws played an important role in the realization of these objectives. First of all, the approval of both families was required for a legal marriage, and there were also some marriage conditions which had to

be fulfilled by both parties. Permission for marriage was not granted by the authorities in cases that both parties were reluctant to marry and necessary conditions were not 'qualified' enough for marriage because of the physical, mental or financial situations of both sides (Savas 1992: 514; Dogan 1999: 388; Akyılmaz 2002: 365).

Divorce was also regulated by law. As it was strongly believed that an unhappy and troubled family relationship would also harm the family and society at large, official authorities permitted divorce even if reluctantly (Aydın 1985: 36). Other points to be taken into consideration in making a final decision by officials were the social status of the women and the difficulties she faced.

In Islamic law, the right to divorce rests with the husband, and the wife can obtain a divorce only if there is a *tefrik*[1](court decision). The end of the marriage on behalf of the wife would be possible if a mutual agreement between the parties was made and the wife renounced some of her rights *khul'- muhâlaa*[2] (Zilfi 2000: 258-61). But if the husband met all essential duties, the *Kādı* (Judge) would not interfere even if the wife wanted a divorce. However, to prevent the female from being victimized, the decision of the *Kādı* was needed when woman wanted to be divorced under certain circumstances (Aydın 1985: 43; Imber 2000: 81).

The Ottoman Family Laws based on the *shar'î* laws was officially issued in 1917 in a act entitled *Hukuk-ı Aile Kararnâmesi* (Family Law Decree) (Aydın 1985: 245-81). Until 1917 family laws could only be found in the *Sharia Sijill* registers in courts. Although there were regional differences in the decisions of various cases, these *Sharia sijills* provided important data on Ottoman family structure and law. Similar information can also be founded in other sources such as *Mühimme*, and *Ahkâm* and *Shikâyet* registers written in the *Divân-ı Hümayun*. The *Sultan's Divân* generally discussed administrative and political matters but this institution sometimes took decisions on judicial matters (Mumcu 1994: 431). The absence of the court of appeal in Islamic law required that cases which could not be solved by local authorities had to be taken to the *Divân-ı Hümayun*. If one party was not satisfied with the decision, he or she had the right to apply for the judgment of the *Divân-ı Hümayun*. Indeed, the *Divân* records from the beginning of the seventeenth century give information about the family laws applied at the *Divân (*MM. 76, 78, 79, 80, 81, 82, 84; KKA. 70, 71; A. DVN. MHM. 937, 938, 939, 940; A. DVN. ŞKT. 980).

## 2. Application of Family Law:

In some contemporary Muslim societies, women are, with differing degrees, forbidden to have social relations with strangers or men without blood ties but this does not mean that women are treated as second class citizens. As for the Ottoman State, there are signs that demonstrate the extent to which women were able to pursue their rights at Sharia courts. However, there were still practices throughout the Ottoman lands in different periods. Although women had the right to divorce their husbands according to the Ottoman law, it was difficult for them to practice it in daily life (Raphael 1963: 107; Ozturk 2002: 375-384). Despite its difficulty, a marriage in the city of Erzurum that ended in divorce provides a good example of the attitudes of both local and central adminis towards family matters and family law. In the seventeenth century, a man nicknamed Bulgarian Ahmed, who was a *Gönüllü Agha* (leader of the voluntary guards) of the Erzurum castle, wanted to marry Raziye, the daughter of *Müteferrika* Ilyas. However, Ilyas was not pleased with Ahmed's proposal because of his unfair behaviours in the city.[3] When Ilyas opposed his daughter's marriage with Ahmed, some well-known persons of the city tried to persuade Ilyas to approve this marriage.[4] In the meantime, Raziye announced that she would marry Ahmed only if he accepted a specific condition before *Kadı* and witnesses. Her condition was: "Ahmed will be not allowed to go to the house of either his *cariyes* (concubines) or *ümm-i veleds* (children from the concubines) or to bring them to his own house".[5] According to this agreement made in the presence of the *Shayhk al-* Islam and the *Müfti,* the marriage would become invalid if Ahmed violated the condition set by her, whereupon so she would get the right of *talâk-ı selâse.* Here a husband divorces his wife by saying three times, *enti talikun* (you are free). These words have the force to divorce the couple. Even if both parties regret afterwards, it is not possible for them to re-marry until the woman must first marry someone else and is divorced by him. In other words, a marriage is only possible after the woman's marriage with another man, which in known as a practice called *Hulle* (MM. 80: 364, 429; KKA. 71: 526; Bilmen 1950: 107-11, 204-10).

After their wedding, Ahmed violated the contract by bringing his *cariyes* to his house. Raziye did not tolerate this and went to the court with the *fatwā* which she had obtained from the *Shayhk al-* Islam and *Müfti*. The *Kādı* of Erzurum *Mavlana* Hayreddin, taking the *fatwā* into consideration, decided that the marriage became invalid.[6] In addition to the divorce, Ahmed was fined to pay 200.000 *akca* as *mehir*[7] and 18.000 *akca* as the cost of dowry. Ahmed did not take into consideration this decision. In such cases in which the female party like Raziye was not satisfied with decision, the case could be

taken to the court of appeal (Zarine-Shahr 2000: 241-50). As the final decision was not made in Erzurum and the *Kādı* referred the case to the *Divân-ı Hümayun*, where it was discussed on 19-20 January 1615. After discussing the letter written by the *Kādı* of Erzurum, the *Divan* decided that the decision of the *Kādı* was correct. The *Divân's* judgment that the marriage was already ended and Ahmed, the husband, had to pay the fine was sent to the *Beylerbeyi* (governor) of Erzurum and to the *Kādı*.

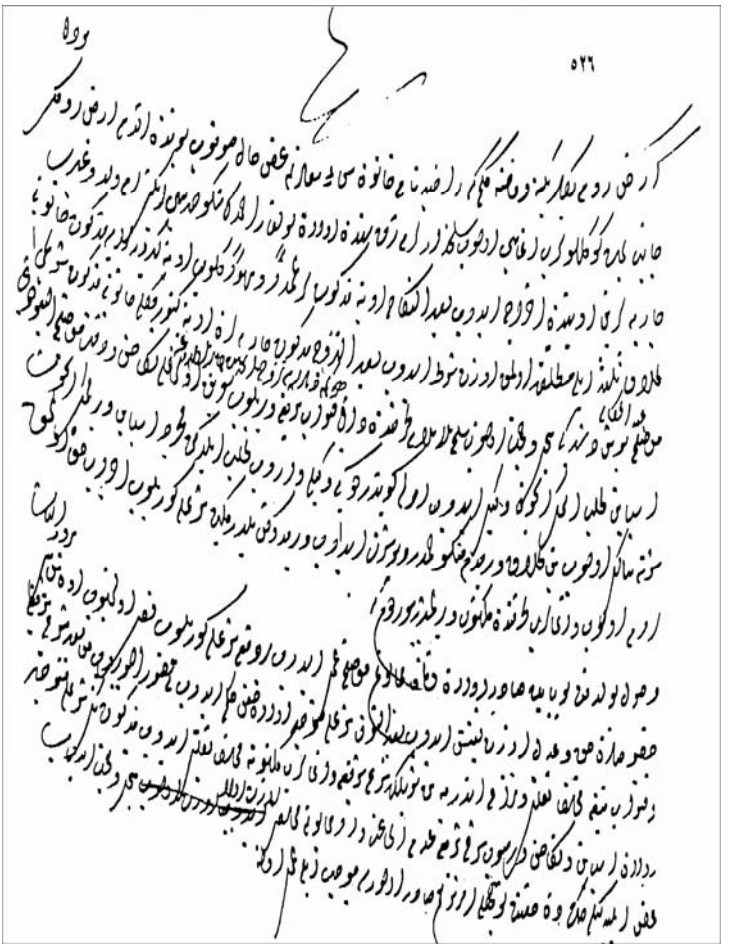
According to the decision taken in 1615, representatives of the Sultan informed *Beylerbeyi* and *Kādı* of Erzurum that Raziye and Ahmed's marriage had come to an end and that Raziye's assets had to be given to her. This decision may indicate that, despite the judicial disadvantages of the female in *shar'i* law; she was granted the right to divorce her husband (Marcus 1989: 203-7). However, the records of the *Divân,* dated 20 April 1615, indicate that the decision was not put into effect. Three months later, Ahmed insisted that he and Raziye were still married and he therefore refused to pay.[8] Raziye again applied to the *Sultan's Divân* with a letter of complaint because she realised that the issue could not be solved in Erzurum.

The *Divân-ı Hümayun* re-evaluated Raziye's application on April 20, 1615 and decided in favour of Raziye. In accordance with the decision, the authorities in Erzurum were reported by the Sultan to make Ahmed pay the *mehir* and assets of Raziye. Ahmed was also dismissed from his post of *Gönüllü Agha* of Erzurum castle. Besides, some other people also made complaints against Ahmed for some other reasons. For instance, *Müteferrika* Mustafa applied to the *Divân-ı Hümayun* with the complaint that Ahmed had stolen something from his house. In that case the *Divân* decided in Ahmed's favour and found him not guilty.[9] It is also worth noting that the complaints of Raziye and *Müteferrika* Mustafa against Ahmed were submitted to the *Divân* on the same day, April 20, 1615 (21 Rabiulavval 1024).

## Conclusion

There is no statement about conditional divorce in both the *Qur'an* and *Prophet Muhammed's hadithes*. As a result, a conditional divorce can only be executed thanks to the permission of the official and religious authorities. Nevertheless, the *Hanafî* and *Malikî* schools of Islamic law maintain that if some conditions are set before, and these conditions are violated afterwards, divorce is possible (Cin 1976: 45, 58). Most of the people in the Ottoman State believed in the *Hanafî School of Islamic law* and so it was the *Hanafî* doctrine that was applied to Raziye and Ahmed's case. When Raziye's husband violated the agreement, she used the legal and religious right to get divorced from her husband. M. Akif Aydın, in his work entitled *Osmanlı Aile Hukuku*, claims that such a divorce was possible only for the daughters of

*Sultans* (Aydın 1985: 110-1). He argues that there are no examples of a conditional divorce in the *Sharia sijills*, but this does not mean that there had never been such applications. Jennings who worked on the Kayseri *Sharia sijills* registers of early seventeenth century, notes that there were eleven divorces of that kind in Kayseri. (Jennings: 87-8). Thus, the case of Ahmed and Raziye in Erzurum could hardly be acceptance as an exception and its discussion at the *Divan* underlines the importance and validity of such decisions in the Ottoman State.



**Appendix 1: (KKA. 71: 526)**

## Notes

1. *Tefrik:* Since a woman could not divorce only according to her decision, the decision of a judge was necessary. Due to the fact that divorce was done by a judicial decision, it is termed as *tefrik*. For the validity of a *tefrik*, one of these situations must occur: an incurable illness of the husband; the husband is unable to support the living of the family; the husband is not findable for a long time, the husband treats his wife badly, impotence, Li'an and İla (Aydın 1985: 43-8).
2. Due to the fact that divorce by *Khul'* or *Muhâlaa* demanded by a woman: here women abdicated from their *mehir* and *iddet*, even sometimes they dispensed from their children's *nafaka* and *kisve baha* and took on the children's care (Kankal 2000: 59).
3. "*…. mezbûr Ahmed zevce-yi sâbıkası Safiye nâm hatunu ve kendü hidmetkârlarını ve nice 'ademleri bi-gayr-i hakk katl eyledikden mâ'adâ silahdârı olan Tanburî Hüseyin nâm sipahînin dahi hâtûnı Zahidenin evin almak isteyüb hidmetkârların gönderüb gece içinde boğdurub ve mukaddemâ Haleb ve Maraş eyâletlerin tahrîre beled ve ta'zib 'inâd eyleyen eşkıya ile gezüb ….*", (MM. 80: 364).
4. "*…. fesâd ve ta'addiden hâli olmadığın ma'lûm olmağla mezkûr kızın mezbûr Ahmede virilmekde asârü'l-şekk iken üzerine 'ayân ve eşrâfdan nice kimesneyi havâle itmekle ….*", (MM. 80: 429).
5. " *… Ahmed câriyelerin ve 'ümm-i veledlerin evine getirmemek onlar dahi evine gelmemek ….*", (MM. 80: 364).
6. "*…. mezkûr Ahmed … mûrur itdükden sonra şartına vefâ itmeyüb zikr olınan câriyeleri ve 'ümm-i veledleri evine gelüb ve getürüb mezbûr Ahmed şer'ile görüldikde şart ve yemin üzre mezbûr Raziye talâk-ı selâse ile mutalikesi olduğı bâis ve zâhir olmağla sicill ve hüccet olınub ….*", (MM. 80: 364).
7. *Mehir*: The money that a man has to pay to her wife in Islamic Law. According to the *Shar'i* Law this money belongs to the woman and neither her husband nor someone else can use it, only the woman can spend it however she wants (Bilmen 1950: 115-6).
8. "*…. hatûn-ı mezkûre şer' mucibince yemin itmekle boş düştüğü sicill ve hüccet olub şeyhülislâm tarafından dahi fetvâ-yı şerife virülüb ma'rifet olmağla nikâhın ve defter mucibince alıkoyduğu esbâbını taleb itmek içün vekil idüb evvela gönderdiği vekil varub taleb itdikde mücerred esbâbın vermemek içün sözine sakit olub ben talâk virmedim menkûhamdadır deyü ….*", (KKA. 71: 526).
9. "*…. mezbûr müteferrika Mustafayı ol-vechle mezbûr Bulgar Ahmede rencide ve remide itdürmeyüb men' ve def'eyleyesin*", (KKA. 71: 526).

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# Osmanlı Toplumunda Şartlı Boşanma Hadisesi: XVII. Yüzyıl Erzurum'undan Bir Vaka

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***Özet:*** Osmanlıların sosyal-kültürel yapısı içerisinde aile, önemli bir yere sahipti. Kadın ile erkeğin oluşturduğu ve toplumun çekirdeğini teşkil eden aileye dönemin idarecilerince özen gösterilmiştir. Düzenli ailelerin, toplumsal barışın oluşmasındaki rolleri göz önüne alındığında, aile kurumunun işleyişine özellikle dikkat edilmiştir. Bu yaklaşım içerisinde, ailenin statüsü belirli birtakım hukukî kurallar doğrultusunda belirlenmiştir. Ancak, Osmanlılarda 1917 yılına kadar resmi mahiyette bir aile kanunnamesi ve kararnamesi olmadığından, ailenin hukukî durumu dönemin kaynaklarından istifade edilerek ortaya konulabilmiştir. Nitekim XVII. yüzyıl başlarında Divan-ı Hümayun kayıtlarındaki şartlı boşanma hadisesi üzerinde durularak, ailenin statüsü, hukukî durumu ve kadının sahip olduğu haklar belirlenmeye çalışılmıştır.

***Anahtar Kelimeler****:* Aile, Şer'i Hukuk, Sosyal Hayat, Boşanma, Erzurum

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# Условный Развод в Оттоманском Обществе: Случай в Эрзуруме в 17 столетии

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***Резюме:*** Семья занимала существенное место в пределах социокультурных структур Оттоманского государства. Правительство того периода уделяло большое значение семье как ячейке общества. Особенное значение уделялось функциям семейного уклада в связи с тем, что гармоничный семейный уклад играет жизненную роль в сохранении социального мира. Поэтому, статус семьи был определен в соответствии с определенными законами. Однако вследствие того, что в Оттоманском обществе не было законов и актов о семье о правовом положении семьи можно узнать только по источникам того периода. В данном исследовании рассматриваются бракоразводные процессы, статус семьи и права женщины в начале 17 столетия, упоминаемые в источниках диван-и Хюмаюн.

***Ключевые Слова:*** Семья, Законы Шер-и, Социальная Жизнь, Развод, Эрзурум

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