

GIFTING IN THE COURT OF THE QADI: AN OVERVIEW ON JUDICIAL ETHICS IN ISLAMIC- OTTOMAN LAW

Doç. Dr. Melikşah AYDIN*

Abstract

Regulations were made in Islamic law and Ottoman Empire so that judges could decide independently, impartially and fairly. In this article, the limits of the judge's giving and receiving gifts from the parties or potential parties of the case will be examined. The boundaries of gift-giving and receiving, which are among the most significant manifestations of the integrity qualities of judges, constitute one of the main topics of the article in this regard. The differences between the concepts of gift and bribe will be tried to be stated. It will be seen that Ottoman practice was not different from Islamic law. In the codes enacted in the Tanzimat period, it was tried to prevent judicial bribery by counting which gifts the judges could receive one by one. From this perspective, the aim of the article is to convey the boundaries of gift-giving and receiving by judges, which even today do not have definite limits, as found in Islamic and Ottoman law, in order to shed light on possible regulations that could be made in this regard.

Key Words

- Islamic-Ottoman Law • Judicial Ethic • Gift • Judge • Court

* Doç. Dr., Selçuk Üniversitesi Hukuk Fakültesi Kamu Hukuku Anabilim Dalı, Konya, Türkiye | Assoc. Prof., Selçuk University Faculty of Law, Department of State Law, Konya, Türkiye.

✉ aydinmeliksah@gmail.com • ORCID 0000-0002-4077-5025.

✎ **Atıf Şekli** | Cite As: AYDIN Melikşah, "Gifting In The Court Of The Qadi: An Overview On Judicial Ethics In Islamic- Ottoman Law," *SÜHFD.*, C. 32, S.1 , 2024, s. 439-455.

✎ **İntihal** | **Plagiarism**: Bu makale intihal programında taranmış ve en az iki hakem incelemesinden geçmiştir. | This article has been scanned via a plagiarism software and reviewed by at least two referees.

✎ Bu eser Creative Commons Atıf-GayriTicari 4.0 Uluslararası Lisansı ile lisanslanmıştır | This work is licensed under Creative Commons Attribution-NonCommercial 4.0 International License.

KADI MAHKEMESİNDE HEDİYELEŞME:

İSLAM-OSMANLI HUKUKUNDA YARGI ETİĞİNE BİR BAKIŞ

Öz

İslam hukukunda ve Osmanlı uygulamasında hâkimlerin bağımsız, tarafsız ve adil bir şekilde karar verebilmeleri için düzenlemeler yapılmıştır. Bu makalede hâkimlerin davanın taraflardan veya taraf olması muhtemel olan kişilerden hediye alıp vermelerinin sınırları incelenecektir. Hakimlerin dürüstlük vasıflarının en önemli tezahürlerinden olan hediye alıp-vermedeki sınırlar bu anlamda makalenin esas konularından birini oluşturmaktadır. Hediye ile rüşvet kavramlarının farkları belirtmeye çalışılacaktır. Osmanlı uygulamasının da İslam hukukundan farklı olmadığı görülecektir. Tanzimat döneminde çıkarılan kanunlarda hâkimlerin hangi hediyeleri alabilecekleri tek tek sayılarak yargısal rüşvetin önüne geçilmeye çalışılmıştır. Makalenin bu açıdan amacı, günümüzde bile kesin sınırları olmayan hakimlerin hediyeleşmesi sınırlarının İslam ve Osmanlı hukukunda bulunan sınırlarını aktarmak, bu açıdan yapılabilecek olası düzenlemelere ışık tutabilmektir.

Anahtar Kelimeler

• İslam • Osmanlı Hukuku • Yargı Etiği • Hediye • Hâkim • Mahkeme

INTRODUCTION

Judicial ethics is one of the most carefully observed subjects in Islamic law. In this regard, it is essential for judges to develop high standards and be subjected to restrictions not applied to others in order to be able to render fair, independent, and impartial judgments in court. One of these restrictions concerns the giving and receiving of gifts and attending invitations by judges. In this study, which will address the limitations on judges receiving and giving gifts in Islamic law, the Ottoman state's practices will also be examined. In a system where the existence of bribery cannot be entirely denied, this study will explore which gifts are given and received, the types of sanctions imposed on judges who accept undesirable gifts, with examples from archival documents. Given the occasional difficulty in distinguishing between bribery and gifts in this system, this study will provide an interpretation based on examples. During the Tanzimat period, regulations were enacted to primarily specify which gifts qadis could and could not accept through a framework law. Subsequently, when it was observed that general provisions were insufficient, items that could or could not be accepted as gifts were enumerated one by one. While benefiting from Islamic legal principles in this study, hadith

and Fiqh sources were consulted, and in the case of Ottoman practice, archival documents and relevant studies were reviewed.

I. THE EXCHANGE OF GIFTS BY JUDGES IN ISLAMIC LAW

The term "hedayeh" (in the meaning of gift) derived from the root *hedy*, meaning "to guide, to lead the right path" in Arabic.¹

In Mecelle, gift is defined as "goods brought or sent to someone as a treat".² Giving a gift for illegitimate purposes is referred to as bribery. Throughout history, bribery has been viewed as a wrongful act, even prohibited in the Tanakh.³

In ancient Greece and Rome, the exchange of gifts was a common custom. However, the exchange of gifts for illicit purposes, resembling bribery, was strictly forbidden. For instance, the law known as "Lex Cincia de donis ac muneribus" regulated the prohibition of bribery.⁴ This study, instead of examining bribery given to judges, will elucidate gifts given to judges and the gifts judges can give.

In Islam, Prophet Muhammad recommended exchanging gifts and advised not rejecting a gift given without a just cause. The Prophet himself received and reciprocated gifts from his companions.⁵ In a hadith, it is said, "*It is gulul (to steal state property)*⁶ for public officials to receive gifts."⁷ This sets limits on gift-giving and receiving. Abdullah b. Lutbiye, who was sent by the Prophet Muhammed as a zakat collector, said while giving the zakat he collected, "These are zakat, these are the goods given to me as a gift". Thereupon, the Prophet Muhammed said, "Would they still

¹ **BARDAKOĞLU**, Ali, "Hediye" *Türkiye Diyanet Vakfı İslam Ansiklopedisi (DİA)*, vol. XVII, 1998, pp. 151.

² Mecelle, article no: 834.

³ Exodus, 23/8; Deuteronomy, 10/17; 27/25 etc.

⁴ **BARDAKOĞLU**, pp. 151.

⁵ **ROSENTHAL**, Franz, "Gifts and Bribes: The Muslim View", in *Man versus Society in Medieval Islam*, ed. Dimitri Gutas, Leiden 2015, pp. 730.

⁶ The word *gulul* in the hadith also means conviction. From here we can also deduce the following result. Public official's receiving a gift may cause him to feel indebted to the person gives the gift. In this sense, the official may come under the dominance of the person gives the gift. **ASLAN**, Nasi, *İslam Hukukunda Yargılama Etiği ve İlkeleri*, Adana 2014, pp. 51.

⁷ **AHMED B. HANBEL** (Translator: Oral, Rifat): *Müsned*, vol. V, Konya 2014, pp. 424.

come to you if you stayed in your father's and mother's house?" and did not approve of receiving these gifts.⁸

Omar b. Hattab appointed Qadı Şureyh as a judge under the condition that he wouldn't engage in personal transactions, accept bribes, or issue judgments when angry.⁹ Omar b. Hattab refused gifts from state officials, sending received gifts to the state treasury without personal use.¹⁰

Omar b. Abdulaziz observed a shift in the nature of gifts over time. He noted that gifts during the time of Prophet Muhammad and the first four caliphs were genuine, while those in his era had turned into bribes. Over time, he said that people give gifts with the intention of gaining benefit rather than doing good or as a sunnah.¹¹ Also, he urged public officials to send gifts received in the line of duty to the state treasury.¹²

Since the early days of Islam, debates have ensued on distinguishing between gifts and bribes given to judges.¹³ Judges are appointed with the condition not to accept gifts related to their duties. Accepting bribes is prohibited, and receiving gifts is also considered inappropriate. This situation is specifically indicated in their appointment.¹⁴ It is haram (forbidden by religion) for judges to take bribes. Accepting bribes is prohibited, and receiving gifts is also considered inappropriate.¹⁵ Mecelle's

⁸ Müslim, *İmare*, 26-30; Ebu Davud, *Harac*, 10.

⁹ **ARI**, Abdüsselam, "Hz. Ömer'in Ebu Musa el-Eşari'ye Gönderdiği Mektubun Yargılama Hukuku Açısından Analizi", *Journal of Islamic Law Studies*, vol. II, 2003, pp. 88; **KILINÇ**, Ahmet "Osmanlı Devleti'nde Hakimlerin Uyması Gereken Etik İlkeleri: Hâkimin Adabı", *Uluslararası Yargı Etiği Sempozyumu Bildiri Kitabı*, 2017, pp. 487-488.

¹⁰ **Ali Haydar**, Hocaeminefendizade, (Translator: Gündoğdu, Raşit/ Erdem, Osman): *Dürerü'l-Hükkâm Şerhu Mecelleti'l-Ahkâm*, vol. IV, İstanbul 2017, pp. 3244.

¹¹ **BARDAKOĞLU**, pp. 152; AYDIN, Ahmet, *Klasik Dönemde Kadı (Hâkim) Maaşlarında İzlenen Politika ve Uygulamalar*, Master's dissertation, Marmara University Institute of Social Sciences, İstanbul 2004, pp. 52.

¹² **BARDAKOĞLU**, pp. 152.

¹³ **ROSENTHAL**, pp. 730.

¹⁴ **GAUDEFROY-DEMOMBYNES**, Maurice, *Muslim Institutions*, London, 1950, pp. 150.

¹⁵ **SERAHSİ**, Ebu Sehl Ebu Bekir Muhammed b. Ahmed (Translator: Akşit, Cevat): *Mebcut*, vol. XVI, İstanbul 2008, pp. 82; **ROSENTHAL**, pp. 730.

1792nd article lists the qualities a judge should possess. Being righteous of these qualities also includes not receiving gifts from people.¹⁶

Presenting gifts to judges solely due to their judicial status raises ethical concerns, as the acceptance of such gifts may be equated to bribery.¹⁷ Dede Cöngi Efendi, in his treatise titled "Siyasetü'ş-Şeriyye," acknowledges the positive nature of gift exchange based on the guidance of Prophet Muhammad. However, he explicitly cautions against judges receiving gifts, characterizing them as akin to bribes.¹⁸ Consequently, Efendi contends that judges should abstain from accepting even seemingly inconsequential or trivial gifts, emphasizing a reciprocal avoidance of participating in any gift-giving exchange.¹⁹

The prohibition of judges accepting gifts stems from the fact that humans naturally feel gratitude towards those who do them good. This sentiment may compromise a judge's impartiality when dealing with someone they appreciate.²⁰ Judges are forbidden from accepting gifts from unknown individuals or strangers to prevent potential conflicts of interest.²¹ If a judge accepts gifts, their reputation may be tarnished, affecting the credibility of the judicial office.²² Instead of a complete ban, Islam allows judges to accept and give gifts under certain conditions and circumstances, aiming to prevent judges from becoming socially isolated.

¹⁶ **ALİ HAYDAR**, vol. IV, pp. 3237.

¹⁷ **MEVSİLİ**, Abdullah b. Mahmud b. Mevdud (Traslator: Keskin, Mehmet): el-İhtiyar li- Ta'lîf'l Muhtar, vol. II, İstanbul 1998, pp. 106. Some scholars have said that gift is the key to bribery. **AMRAVİ**, Omar Garamé (Translator: Durgun, Rıfki): İslam'da Yargı ve Yargıçlar, Ankara 2004, pp. 99.

¹⁸ **AKGÜNDÜZ**, Ahmet, *Osmanlı Kanunnameleri ve Hukuki Tahlilleri*, vol. IV, İstanbul 1992, pp. 171.

¹⁹ **ŞEYHİZADE**, Abdurrahman b. Şeyh Muhammaed b. Süleyman (Translator: Çelik, Mehmet): Mecmau'l-Enhur, vol. IV, İstanbul 2011, pp. 409; **BİLMEN**, Ömer Nasuhi, *Hukuk-ı İslâmiyye ve İstılahat-ı Fıkhiyye Kamusu*, vol. VIII, İstanbul 1970, pp. 215,220.

²⁰ *ibid*, pp. 220.

²¹ **HALEBİ**, İbrahim b. Muhammed b. İbrahim (Translator: Uysal, Mustafa): Mülteka'l-ebhur, vol. III, İstanbul 1972, pp. 196; **ZUHAYLİ**, Vehbe (Saraç, Mehmet Emin): *İslam Fıkhu Ansiklopedisi*, vol. VIII, İstanbul 1994, pp.255; **ATAR**, Fahred-din, "Kadı.", *Türkiye Diyanet Vakfı İslam Ansiklopedisi*, vol. XIV, 2001, pp.69.

²² **BARDAKOĞLU**, pp. 153. Regarding this, Serahsi said: "When the gift comes through the door, the awareness of duty and responsibility goes out the window." **SERAHSİ**, vol. XVI, pp. 82.

When considering under which circumstances judges can give and receive gifts, according to the Hanafi school of thought, a judge may accept gifts from individuals and relatives with whom they have engaged in gift exchanges before becoming a judge. It is prohibited for them to accept gifts from anyone else.²³ According to scholars, these individuals include the judge's immediate family members, namely parents, grandparents, children, grandchildren, siblings, nieces, nephews, uncles, aunts, and cousins. If the judge receives a gift from any of these individuals, they should accept it, as otherwise it may negatively impact family relations.²⁴ According to the Shafi'i school of thought, a judge cannot accept gifts from individuals within their jurisdiction under any circumstances.²⁵

Some scholars argue that a judge may only accept gifts from individuals who hold a higher rank or position than themselves, meaning those who are hierarchically superior to the judge. This higher-ranking individual could be the one directly responsible for appointing the judge.²⁶ For example, in the Ottoman Empire, a qadi (judge) could accept a gift from the kazasker (chief judge) or the Shaykh al-Islam (chief religious' authority) who have the authority to appoint them.²⁷

There is a divergence of opinion among scholars regarding what should happen to a gift that a judge accepts but is prohibited from accepting. According to some scholars, the judge should deposit the received gift into the state treasury. Others suggest that if the judge knows the giver, they should return the gift directly to them. If the judge has accepted the gift and it hasn't mingled with the judge's personal belongings, the state treasury takes possession of it. If returning the gift to the giver is

²³ **SERAHSİ**, vol. XVI, pp. 82; **MERĠİNANİ**, Burhanüddin Ebu'l-Hasan Ali b. Ebu Bekir (Translator: Meylani, Ahmed): *el-Hidâye*, vol. III, İstanbul 2004, pp. 179; **NEVEVİ**, Ebû Zekeriyya Yakub b. Şeref (Translator: Acat, Mithat): Minhac (Açıklamalı Şafii İlmihali), İstanbul 2013, pp. 531; **ŞEYH BEDREDDİN** (Translator: Apaydın, Hacı Yunus): *Letaifu'l-İşarat fi Beyani'l-Mesaili'l-Hilafiyyat*, Ankara 2012, pp. 600.

²⁴ **ŞEYHİZADE**, vol. IV, pp. 410; **ALİ HAYDAR**, vol. IV, pp. 3246; **BAYINDIR**, Abdülaziz, İslam Muhakeme Hukuku Osmanlı Devri Uygulaması, İstanbul 1986, pp. 84.

²⁵ **ŞİRBİNİ**, Şemsüddîn Muhammed b. Ahmed el-Hafîb (Translator: Duman, Soner): *Muğni'l-Muhtac*, vol. XVIII, İstanbul 2017, pp. 418; **MUMCU**, Ahmet, Osmanlı Devletinde Rüşvet, İstanbul 2005, pp. 189.

²⁶ **ASLAN**, pp. 52.

²⁷ **ALİ HAYDAR**, vol. IV, pp. 3245; **BAYINDIR**, pp. 84.

not feasible, it is considered preferable for the gift to remain in the treasury.²⁸ According to some scholars, if the identity of the gift giver is unknown or if returning the gift poses difficulties, the gift is treated as unclaimed property and is handed over to the state treasury.²⁹ However, some scholars believe that if returning the gift or the giver reclaiming it presents challenges, the judge should compensate by giving something of equal value in return for the gift.³⁰

If a person with whom the judge had engaged in gift exchanges before becoming a judge presents more expensive gifts after the judge assumes office, the judge cannot accept the excess amount.³¹ However, some scholars have argued that if the judge also increases the amount of gifts they give, they can accept this excess.³² However, some scholars have argued that if the judge also increases the amount of gifts they give, they can accept this excess.³³

II. THE EXCHANGE OF GIFTS BY JUDGES IN OTTOMAN PRACTICE

In the Ottoman Empire, even if judges did not have the intention of accepting bribes, they were prohibited by law from accepting gifts in any form for matters outside their judicial duties.³⁴ However, it is known that kazaskers (chief judges) and Shaykh al-Islams (chief religious authorities) obtained significant income under the guise of gifts (under the name of *caize*) and gratuities during the appointment of judges.³⁵

In the classical period, judges did not have a fixed salary. They relied on fees collected from cases to sustain themselves financially. In places where the number of cases was low, judges often faced financial

²⁸ MAVERDÎ, Ebu'l Hasen Ali b. Muhammed (Translator: Şafak, Ali): *el-Ahkamu's-Sultaniyye*, İstanbul 1976, pp.84; *Fetâvâ-yı Hindiyye*, *Fetava-yı Alemgiriyye* (Translator: Efe, Mustafa): vol. VI, İstanbul 2004, pp. 269.

²⁹ *Fetâvâ-yı Hindiyye*, vol. VI, pp. 269; ALİ HAYDAR, vol. IV, pp. 3245.

³⁰ ŞEYHİZADE, vol. IV, p. 409.

³¹ ASLAN, pp. 52.

³² *Fetâvâ-yı Hindiyye*, vol. VI, pp. 268-269; İBN ABİDİN, Muhammed Emin (Translator: Savaş, Mehmet): *Reddü'l-Muhtar Ale'd-Dürri'l-Muhtar*, vol. XII, İstanbul 1985, pp. 162.

³³ İBN ABİDİN, vol. XII, pp. 158; ASLAN, pp. 51.

³⁴ MUMCU, pp. 190; KILINÇ, pp. 494-495.

³⁵ İNANIR, Ahmet, *İbn Kemal'in Fetvaları Işığında Osmanlı'da İslam*, PhD dissertation, İstanbul University Institute of Social Sciences, İstanbul 2008, pp. 123.

difficulties. Due to the prevalent custom of presenting gifts to government officials in society, financially struggling judges attempted to alleviate their hardships by accepting gifts. Consequently, there was no distinction between gifts and bribery during this time, as gifts served as a means to address their financial constraints.³⁶

According to an archival document from the year 1668, it is observed that a certain amount of fabric was given as a gift to the deputy judge. It can be understood that this gift was considered permissible during that period.³⁷ According to another example from the year 1675, it is documented that the Shaykh al-Islam of the period, Çatalcalı Ali Efendi, and the previous Shaykh al-Islam, Yahya Efendi, gifted valuable Chinese vases during the circumcision ceremony of Sultan Mehmed IV's princes. The occurrence of such valuable gifts given during wedding ceremonies of this nature is also noteworthy.³⁸ In the Ottoman Empire, during the weddings of the sultan's sisters and the circumcision ceremonies of the princes, it is observed that in addition to all state officials, the Shaykh al-Islam, the Kazasker, and the Qadis also sent gifts, and these gifts varied according to the status of the officials.³⁹

In the Ottoman Empire, while instances of judges being dismissed for accepting bribes were relatively common, occurrences of judges being found accepting gifts were less frequent. There are very few examples of judges being punished for accepting gifts due to their entitlement to receive gifts as part of their position. This situation indicates that judges

³⁶ **DAVISON**, Roderic H. (Translator: Akınhay, Osman): *Osmanlı İmparatorluğunda Reform (1856-1876)*, vol. I, İstanbul 1997, pp. 45; **EKİNCİ**, Ekrem Buğra, *Osmanlı Mahkemeleri (Tanzimat ve Sonrası)* İstanbul 2017, pp. 52. The reason for receiving gifts and bribes is that officials have financial difficulties. In this respect, the following words of the governor of Diyarbakir during the reign of Mahmut II are remarkable: "...if I do not take bribes, I will become so poor that I cannot get anything." **DAVISON** vol. I, pp. 45.

³⁷ **REINDL-KIEL**, Hedda, "Luxury, Power Strategies and the Question of Corruption: Gifting in the Ottoman Elite (16th-18th Centuries)", in: Şehrayin. ed. Yavuz Köse, Wiesbaden, 2012, pp. 108.

³⁸ **REINDL-KIEL**, Hedda, "Osmanlı Yöneticileri, Lüks Tüketimi ve Hediyeleşme", in: İSAM Konuşmaları (Osmanlı Düşüncesi-Ahlak-Hukuk-Felsefe-Kelam), haz. Seyfi Kenan, İstanbul 2013, pp.144.

³⁹ **ÜNİYAY AÇIKGÖZ**, Fatma, "XVII. Yüzyılda Osmanlı Devleti'nde Hediye ve Hediyeleşme (Padişahlara Sunulan Ve Padişahların Verdiği Hediyeler Üzerine Bir Araştırma)", PhD dissertation, Gazi University Institute of Social Sciences, Ankara 2012, pp. 149-159.

were aware that they would be dismissed if they accepted gifts from the public. In one of the records in the Mühimme registers, a qadi who received goods from the public and oppressed the populace was dismissed from office.

“Kazâ-i Ürgüb keferesinden cumhûr-ı re’âyâ Südde-i Sa’âdetüm’e gelüp hâlen kâdılarını olan Mevlânâ Bâlî için; “Harâca ve âdet-i aġnâm cem’ine gelen kullar ile biriküp hadden bîrûn bizden celb-i mâl idüp zulm ü te’addîsinden âciz olduk.” diyü şikâyet idüp arz-ı hâl ref’ itdükleri ecilden sundukları arz-ı hâlün sûreti aynı ile ihrâc olunup sizün kemâl-i emânet ve hüsn-i diyânetinüze i’timâd-ı hümâyûnum olduġu ecilden kâdî-i mezbûrun teftîşin size emridüp buyurdum ki:

Hükm-i şerîfüm varıcak, bi’z-zât kazâ-i mezbûreye varup re’âyâ husûsın kâdînün da’vâsından takdîm idüp hasımlarıyla berâber idüp bi-hasebî’ş-şer’ kemâl-i dikkat ü ihtimâmıla teftîş ü tetebbu’ idüp göresiz; zikrolunan arz-ı hâlde mastûr olduġu üzre re’âyâyâ zulm ü te’addîsi şer’le sâbit ü zâhir ola, mezbûrdan müteveccih olan hukûkî ashâbına bî-kusûr alvirdükden sonra zulm ü hayfına müte’allik sübût u zuhûr bulan mevâddı ve ne mikdâr kimesnenün hakkı alvirdüġün ale’t-tafsîl yazup defter idüp arzeyeleyesiz. Şöyle ki; kâdî-i mezbûrun zulm ü te’addîsi olmaya, hılâf-ı vâkı’ şikâyet iden şerrîrlerden bir kaçın habsidüp şirret ü şekâvetlerin sübût u zuhûr bulduġu üzre sicillât idüp sûret-i sicilleri ile küreġe gönderesiz. Hîn-i teftîşde tamâm hak üzre olup tezvîr ü telbîsden ve şühûd-ı zûrdan ve hılâf-ı vâkı’ kimesnenün kazıyyesi arz olunmaktan hazer idesiz. Bu bâbda Dergâh-ı Mu’allâm çavuşlarından Ma’âdin Nâzırı olan Mustafâ bile mübâşir olup emri şer’den tecâvüz eylemeye; şöyle bilesiz.”⁴⁰

The intention behind the term "mal almak" (acquiring goods) in this record, whether it refers to a gift or a bribe, cannot be discerned. However, as previously mentioned, gifts received by judges are deemed to possess the nature of bribery. Consequently, considering gifts obtained from the public are classified as bribery, it is conceivable that such transactions would be recorded as bribery in the records.

Examples of qadis being punished for accepting bribes are quite common in the Mühimme registers. In one instance, a qadi who oppressed the public and took money was dismissed from office.

“Araç kazası ahâlisi, kadıları Mevlânâ İsmail hakkında, kendilerine baskı yaptıġı ve akçelerini aldıġı yolunda şikâyette bulduklarından, adı geçenin kadılıktan azlolunduġu ve kendilerinin bu hususa müfettiş tayin olunduıkları; adı geçenin teftîş olunması ve suçları sâbit olduġu takdirde üzerine sâbit olan hakların alınıp sahiplerine verilmesi ve sicilinün Dergâh-ı muallâ’ya gönderilmesi; iddiaların asılsız olduġu ortaya

⁴⁰ Mühimme Registers Number 6, Verdict Number: 511. Date: 26 December 1564.

çikarsa o takdirde de iddia sahiplerinin küreğe konulmak üzere sancakbeyinin adamına teslim edilerek Südde-i saâdet'e gönderilmesi."⁴¹

In another example, a qadi involved in corruption was dismissed from office.

"Sâbık Kudüs-i Şerif Kadısı Carullah'ın üç yüz yıldır kullanılan sebili yıkıp yerine kahvehâne yaptırdığı, kaza gelirlerini mukâtaa olarak nâiblere, Halilü'r-Rahman Ev-kâfi'ni da kendi adamlarına verdiği, ayrıca daha birçok yolsuzluklarının olduğu; bunun dışında Kudüs-i Şerif Mahkemesi'nin muhırbaşısının da halka zulmettiği yolunda reâyâdan bazıları şikâyetle bulduklarından, adı geçen Carullah'ın şimdiki görevi olan Menzile Kadılığı'ndan azlolunduğu; kendisi oraya geldiğinde yukarıdaki iddia ve şikâyetlerden dolayı teftiş olunması ve üzerine sâbit olan suçların yazılıp bildirilmesi."⁴²

In another example, a qadi who collected grain from the public was inspected. "İpsala kâdîsına hüküm ki: Hâlâ Karasu Yenicesi kazâsından ba'zı fukarâ Dergâh-ı Mu'allâm'a gelüp; "Karasu Yenicesi Kâdîsı olan Mustafâ, Mehmed nâm nâyibi ile ittifâk idüp emrolunan Edirne zahîresi mukâbelesinde ba'zı [fu]karâdan akça alup ve ba'zılardan zahîreyi ziyâde alup ve kendü haylî zahîre saklayup kendünün (?) ve iltizâmla niyâbet iden mezbûr nâyibün ve gayri nâyiblerinin fukarâya küllî te'addîleri olduğum" bildirmeğin husûs-ı mezbûrun görülmesine Dergâh-ı Mu'allâm çavuşlarından Evren mübâşir ta'yîn olunmuşdur. Buyurdum ki: Hüküm-i şerîfümle vusûl buldukda, bi'z-zât kazâ-i mezbûra varup husûs-ı mezbûrî kâdî-i mezbûrun ve mübâşeret iden nâyiblerinin muvâcehesinde hakk üzre teftiş idüp göresin; vâkı' ise zahîreden ne mikdâr nesne saklayup ve fukarâdan ne mikdâr akça alup ve kimden almışdur; mufassal ü meşrûh yazup arzyleyesin; hakk üzre olup hılâf-ı vâkı' nesne arzitmekden hazer idesin"⁴³

In an edict dated 1815, it was understood that judges were engaging in corruption in the tax distribution registers and illicitly benefiting themselves from these, adding significant amounts of money unlawfully to these registers under names such as "gift" or "tip", and collecting taxes accordingly.⁴⁴ The Criminal Code of 1838 on Tarik-i İlmiyye also made significant regulations. According to this law, "If a person appointed as a judge gives bribes under the name of 'gift' to governors, tax collectors, voivodes, village heads, and prominent individuals, and then proceeds to collect the

⁴¹ Mühimme Registers Number 5, Verdict Number: 1173. Date: 7 March 1566.

⁴² Mühimme Registers Number 5, Verdict Number: 1248. Date: 17 March 1566.

⁴³ Mühimme Registers Number 7, Verdict Number: 480. Date: 15 November 1567.

⁴⁴ ÇADIRCI, Musa, "Tanzimat'ın İlanı Sıralarında Osmanlı İmparatorluğunda Kadılık Kurumu ve 1838 tarihli (Tarik-i İlmiyye'ye Dair Ceza Kanunnamesi)", *Tarih Araştırmaları Dergisi*, vol. XIV, Issue 25, 1982, pp. 141; FEYZİOĞLU, Hamiyet Sezer/ KILIÇ, Selda, "Tanzimat Arifesinde Kadılık-Naiplik Kurumu", *Tarih Araştırmaları Dergisi*, vol. 24, Issue 38, 2005, pp. 42.

equivalent from the people involved in cases brought before the court, they shall be punished."⁴⁵ This provision regulated that judges cannot give gifts. Therefore, it indicates that corrupt judges in the Ottoman State were not always the recipients of gifts, but rather gave gifts in anticipation of benefit. In the articles of the law arranged in accordance with complaints from the people and reports from relevant individuals, prohibition was imposed taking this situation into account. In this law, it was regulated that small gifts and tips that do not harm public order could be accepted.⁴⁶ In the annex of the law, criteria were established within which gifts should be considered as bribes or gifts. Accordingly, the acceptance of money, jewelry, and valuable goods as gifts was strictly prohibited, while goods such as oil, honey, slaves, concubines, horses, sheep, and lambs, which were considered appropriate among relatives, could be given and received as gifts.⁴⁷

The provision found in Article 1 of Chapter 5 of the Penal Code, which came into effect in 1840, states, "*Any individual holding a position in any office from the position of viziership to that of clerkship, regardless of their class or nationality, should not dare to accept bribes or gifts considered as bribes, as they receive sufficient salary from the state.*"⁴⁸ According to Article 6 of the same law, even official and public gifts that have become customary to give and receive can only be accepted after obtaining the irade-i seniyye, meaning the permission of the sultan. Article 7 specifies that the types and amounts of gifts customary to be given at weddings and similar occasions will be regulated by another law.⁴⁹ A decree dated January 1, 1849, also stipulates that legal fees will be collected in legal cases, and apart from these fees, it is prohibited to accept bribes, gifts, or any form of money or goods contrary to the law, with the responsibility for such actions falling upon the governor.⁵⁰ For instance, Niğde District Governor Zeki Efendi

⁴⁵ ÇADIRCI, pp. 145-146.

⁴⁶ KELEŞ, Erdoğan, "Tanzimat Döneminde Rüşvetin Önlenmesi İçin Yapılan Düzenlemeler (1839-1858)", Tarih Araştırmaları Dergisi, vol. 24, Issue 38, Ankara 2005, pp. 261.

⁴⁷ ibid, pp. 262.

⁴⁸ AKGÜNDÜZ, Ahmet, İslam ve Osmanlı Hukuku Külliyyatı, vol. I, İstanbul 2011, pp. 607.

⁴⁹ ibid, pp. 608; KELEŞ, pp. 265.

⁵⁰ KELEŞ, pp. 265.

was dismissed from his duty due to his poor administration and corruption involving accepting gifts.⁵¹

With a decree dated 1850, detailed regulations were established regarding which gifts would be considered as bribery and which would not. According to this decree, the exchange of jewelry, precious items such as gold, fur, shawls, fabrics, concubines, and animals such as horses was prohibited. However, goods such as grapes, melons, watermelons, sugar, halva, yogurt, butter, milk, lamb, fish, chicken, birds, and eggs, which are customary to be exchanged among friends, were allowed as long as they were not in excessive amounts. In fact, the decree even detailed the specific quantities in which these goods could be exchanged.⁵² This detailed regulation indicates that gift-giving did not decrease between the period from the law of 1838 to 1850, and public officials did not pay much attention to this issue. Therefore, in 1850, more detailed provisions were introduced to regulate which goods could be exchanged as gifts.

In 18th-century Ottoman society, gifts were viewed as a form of payment, service fee, or tax, and it was observed that gifts varied only according to individuals' different positions or statuses.⁵³ However, considering that gifts given to judges could be considered as bribery, gifts given to judges were subject to separate provisions from those given to other officials.

According to Article 1796 of the Mecelle, a judge does not accept any gifts from either party. The Mecelle has only made this clear and limited regulation. However, in the commentaries of the Mecelle, Islamic jurists have elaborated on the subject as done by their predecessors in Islamic jurisprudence.⁵⁴

CONCLUSION

In conclusion, it can be said that especially during the Tanzimat period and thereafter, due to the impoverishment of the population and widespread corruption among officials, various bribes were exchanged

⁵¹ ÇADIRCI, Musa, *Tanzimat Döneminde Anadolu Kentlerinin Sosyal ve Ekonomik Durumu*, Ankara 1991, pp. 239.

⁵² KELEŞ, pp. 271-272.

⁵³ MUSTAK, Aykut, "A Study On The Gift Log, Mad 1279: Making Sense Of Gift-Giving In The Eighteenth Century Ottoman Society", Master's dissertation, Boğaziçi University, İstanbul 2007, pp. iv.

⁵⁴ ALİ HAYDAR, vol. IV, pp. 3244-3249.

under the guise of gifts. Laws were enacted to prevent this situation, and even as a final measure, detailed regulations were established regarding which gifts could or could not be accepted. Despite the fact that gift-giving is praised in a religion like Islam, where benefiting others is encouraged, it is observed that Muslims have resorted to giving bribes under the guise of gifts to government officials for personal gain. Islamic law has shown no tolerance for judges, who are among the most important government officials, accepting bribes under the guise of gifts. While Islamic jurists have acknowledged gift-giving as a morally commendable behavior among Muslims, they have made exceptions for judges in this regard. This is because the acceptance of gifts by judges could undermine public trust in the judicial system. Even being under suspicion of accepting gifts could be considered a betrayal of the judicial system. Therefore, the acceptance of gifts by judges has been restricted, allowing them to receive gifts only from certain individuals and within certain limits. Completely banning judges from giving and receiving gifts was not deemed appropriate to maintain their status as good Muslims who are part of the community but also independent from it. When the initial framework regulations in the Ottoman state failed to prevent judges from accepting gifts resembling bribes, subsequent laws detailed which gifts could be accepted, one by one, to clarify the matter.

BIBLIOGRAPHY

- AHMED B. HANBEL** (Translator: Oral, Rıfat): Müsned, vol. V, Konya 2014.
- AKGÜNDÜZ**, Ahmet: İslam ve Osmanlı Hukuku Külliyatı, vol. I, İstanbul 2011.
- AKGÜNDÜZ**, Ahmet: Osmanlı Kanunnameleri ve Hukuki Tahlilleri İstanbul 1992.
- ALİ HAYDAR**, Hocaeminefendizade: (Translator: Gündoğdu, Raşit/ Erdem, Osman): Dürerü'l-Hükkâm Şerhu Mecelleti'l-Ahkâm, vol. IV, İstanbul 2017.
- AMRAVİ**, Omar Garama (Translator: Durgun, Rıfki): İslam'da Yargı ve Yargıçlar, Ankara 2004.
- ARI**, Abdüsselam: "Hz. Ömer'in Ebu Musa el-Eşari'ye Gönderdiği Mektubun Yargılama Hukuku Açısından Analizi", Journal of Islamic Law Studies, vol. II, 2003, pp.85-99.
- ASLAN**, Nasi: İslam Hukukunda Yargılama Etiği ve İlkeleri, Adana 2014.
- ATAR**, Fahreddin: "Kadı.", Türkiye Diyanet Vakfı İslam Ansiklopedisi, vol. XIV, 2001, pp.69-73.
- AYDIN**, Ahmet: Klasik Dönemde Kadı (Hâkim) Maaşlarında İzlenen Politika ve Uygulamalar, Master's dissertation, Marmara University Institute of Social Sciences, İstanbul 2004.
- BARDAKOĞLU**, Ali: "Hediye" Türkiye Diyanet Vakfı İslam Ansiklopedisi (DİA), vol. XVII, 1998, pp151-5.
- BAYINDIR**, Abdülaziz: İslam Muhakeme Hukuku Osmanlı Devri Uygulaması, İstanbul 1986.
- BİLMEN**, Ömer Nasuhi: Hukuk-ı İslâmiyye ve Istılahat-ı Fıkhiyye Kamusu, vol. VIII, İstanbul 1970.
- ÇADIRCI**, Musa: "Tanzimat'ın İlanı Sıralarında Osmanlı İmparatorluğunda Kadılık Kurumu ve 1838 tarihli (Tarik-i İlmiyye'ye Dair Ceza Kanunnamesi)", Tarih Araştırmaları Dergisi, vol. XIV, Issue 25, 1982, 139-161.
- ÇADIRCI**, Musa: Tanzimat Döneminde Anadolu Kentlerinin Sosyal ve Ekonomik Durumu, Ankara 1991.
- DAVISON**, Roderic H. (Translator: Akınhay, Osman): Osmanlı İmparatorluğunda Reform (1856-1876), vol. I, İstanbul 1997.

- Ebu Davud**, Süleyman b. Eşar (Translator: Parlayan, Abdullah): Sünen-i Ebu Davud, Konya 2007.
- EKİNCİ**, Ekrem Buğra: Osmanlı Mahkemeleri (Tanzimat ve Sonrası) İstanbul 2017.
- Fetâvâ-yı Hindiyye, Fetava-yı Alemgiriyye (Translator: Efe, Mustafa): vol. VI, İstanbul 2004,
- FEYZİOĞLU**, Hamiyet Sezer/ **KILIÇ**, Selda: "Tanzimat Arifesinde Kadılık-Naiplik Kurumu," Tarih Araştırmaları Dergisi, vol. 24, Issue 38, 2005, 31-53.
- GAUDEFROY-DEMOMBYNES**, Maurice: Muslim Institutions, London, 1950.
- HALEBİ**, İbrahim b. Muhammed b. İbrahim (Translator: Uysal, Mustafa): Mülteka'l-ebhur, vol. III, İstanbul 1972.
- İBN ABİDİN**, Muhammed Emin (Translator: Savaş, Mehmet): Reddü'l-Muhtar Ale'd-Dürri'l-Muhtar, vol. XII, İstanbul 1985.
- İNANIR**, Ahmet: İbn Kemal'in Fetvaları Işığında Osmanlı'da İslam, PhD dissertation, İstanbul University Institute of Social Sciences, İstanbul 2008.
- KELEŞ**, Erdoğan: "Tanzimat Döneminde Rüşvetin Önlenmesi İçin Yapılan Düzenlemeler (1839-1858)", Tarih Araştırmaları Dergisi, vol. 24, Issue 38, Ankara 2005, pp. 259-80.
- KILINÇ**, Ahmet: "Ethical Principles of Judges in the Ottoman State: The Convenance of Judge", International Symposium On Judicial Ethics, 2017, 463-534.
- MAVERDİ**, Ebu'l Hasen Ali b. Muhammed (Translator: Şafak, Ali): el-Ahkamu's-Sultaniyye, İstanbul 1976.
- MERĞİNANİ**, Burhanüddin Ebu'l-Hasan Ali b. Ebu Bekir (Translator: Meylani, Ahmed): el-Hidâye, vol. III, İstanbul 2004.
- MEVSİLİ**, Abdullah b. Mahmud b. Mevdud (Translator: Keskin, Mehmet): el-İhtiyar li- Ta'lîf'l Muhtar, vol. II, İstanbul 1998.
- Mühimme Registers Number 5. Verdict Number: 1173. Date: 7 March 1566.
- Mühimme Registers Number 5. Verdict Number: 1248. Date: 17 March 1566.
- Mühimme Registers Number 6. Verdict Number: 511. Date: 26 December 1564.

Mühimme Registers Number 7. Verdict Number: 480. Date: 15 November 1567.

MUMCU, Ahmet: Osmanlı Devletinde Rüşvet, İstanbul 2005.

MÜSLİM, (Translator: Davudođlu, Ahmed): Sahih-i Müslim, İstanbul 1977.

MUSTAK, Aykut: "A Study On The Gift Log, Mad 1279: Making Sense Of Gift-Giving In The Eighteenth Century Ottoman Society", Master's dissertation, Boğaziçi University, İstanbul 2007.

NEVEVİ, Ebû Zekerriyya Yakub b. Şeref (Translator: Acat, Mithat): Minhac (Açıkla-malı Şafii İlmihali), İstanbul 2013.

REINDL-KIEL, Hedda: "Luxury, Power Strategies and the Question of Corruption: Gifting in the Ottoman Elite (16th-18th Centuries)", in: Şehrayin. ed. Yavuz Köse, Wiesbaden, 2012, 107-120.

REINDL-KIEL, Hedda: "Osmanlı Yöneticileri, Lüks Tüketimi ve Hediyeleşme," in: İSAM Konuşmaları (Osmanlı Düşüncesi-Ahlak-Hukuk-Felsefe-Kelam), ed. Seyfi Kenan, İstanbul 2013, 137-151.

ROSENTHAL, Franz: "Gifts and Bribes: The Muslim View," in Man versus Society in Medieval Islam, ed. Dimitri Gutas, Leiden 2015.

SERAHSİ, Ebu Sehl Ebu Bekir Muhammed b. Ahmed (Translator: Akşit, Cevat): Mebsut, vol. XVI, İstanbul 2008.

ŞEYH BEDREDDİN (Translator: Apaydın, Hacı Yunus): Letaifu'l-İşarat fi Beyani'l-Mesaili'l-Hilafiyat, Ankara 2012.

ŞEYHİZADE, Abdurrahman b. Şeyh Muhammaed b. Süleyman (Translator: Çelik, Mehmet): Mecmau'l-Enhur, vol. IV, İstanbul 2011.

ŞİRBİNİ, Şemsüddin Muhammed b. Ahmed el-Hatîb (Translator: Duman, Soner): Muğni'l-Muhtac, vol. XVIII, İstanbul 2017.

ÜNYAY AÇIKGÖZ, Fatma: "XVII. Yüzyılda Osmanlı Devleti'nde Hediyeler ve Hediyeleşme (Padişahlara Sunulan Ve Padişahların Verdiđi Hediyeler Üzerine Bir Araştırma)," PhD dissertation, Gazi University Institute of Social Sciences, Ankara 2012.

ZUHAYLİ, Vehbe (Saraç, Mehmet Emin): İslam Fıkhu Ansiklopedisi, vol. VIII, İstanbul 1994.