Investigation of the Effect of the Judicial System on Economic Activities in the Ottoman State in Terms of Rationality

Yaşar ALKAN | 0000-0001-9553-5646 | yasar.alkan@cbu.edu.tr

Lecturer Dr. | Manisa Celal Bayar University, Kula Vocational School | Manisa, Türkiye

ROR: 053f2w588

Abstract

In the Western world of thought, the Ottoman judicial system is evaluated as irrational based on its characterization based on patrimonialism. Patrimonial forms of action correspond to an irrational position that polarizes the understanding of rationality. The arbitrary and subjective decisions of the administration in general and the sultan in particular contain a large part of these irrational claims. It is argued that the judicial system cannot objectively and fairly evaluate the parties in disputes that occur in economic life due to the arbitrary intervention of the sultan in the judges and the processes in which the trial is carried out. It is also stated that this situation, which creates many problems in economic life, hinders economic development. Therefore, it is important to evaluate the issue from various dimensions rather than only from Western thought. On the other hand, in addition to the professional difficulty faced by the members of the judiciary who were tasked with ensuring general and economic justice in the Ottoman Empire due to the pressure of the sultan in the decisions they made, the idea that the orderly functioning of this judicial system, which has been addressed since the foundation of the state, can be ensured by the effective fulfillment of the duties of the judicial institution and its members, also comes to the fore. While a large area is already being ruled, the urgent appointment of judges and administrative officers to all newly founded or conquered cities serves this purpose. These officers who carry out the orders of Islam regarding the legal system, are considered representatives on earth regarding the implementation of Allah's laws because of their responsibilities. Therefore, while carrying out the duties assigned to them, they are expected to apply the imperative provisions of the verses by the nature of the issues they are faced with and with just and rational justifications. The supervisory mechanism also evaluates the relevant members of the judiciary within this framework. Indeed, in terms of legal and economic dimensions, it is important whether fair and proportionate decisions are taken in the cases brought by non-Muslims against Muslims and in the cases brought by Muslims against non-Muslims. Islam, which forms the basis of the Ottoman legal system and its functioning, reveals that everyone should be considered equal before the law/judiciary, regardless of their duties, titles, functions and ranks. Therefore, everyone, including foreigners, should be subject to equal and fair treatment before the judge in judicial and administrative cases. Accordingly, in accordance with justice, decisions should be also given against Muslims in disputes between Muslims and non-Muslims. The main thing is to ensure a fair trial and systematic. In this context, it is argued that there was no arbitrary,

favouritist, unprincipled or unlawful trial in Ottoman law, and this argument is based on the rejection of trial methods that cannot be considered equal and fair in cases brought by the people against the ruling class or by the ruling military class against the peasants. The aim of the research is to reveal the extent to which these claims are compatible with the facts. The border of the study is the classical period. According to the results obtained, it has been revealed that the Ottoman judicial system generally operated independently of systematic and arbitrary interventions. Therefore, it has been determined that there is a generally fair mechanism for solving the problems that arose in economic life.

Keywords

Economy, Rationality, Ottoman Economic Thought, Qadi, Capitalism.

Citation

Alkan, Yaşar. "Investigation of the Effect of the Judicial System on Economic Activities in the Ottoman State in Terms of Rationality". *The Journal of Near East University Islamic Research Center* 10/2 (December 2024), 504-528. https://doi.org/10.32955/neu.istem.2024.10.2.06

Date of Submission	14.08.2024
Date of Acceptance	09.11.2024
Date of Publication	31.12.2024
Peer-Review	Double anonymized - Two External
Ethical Statement	It is declared that scientific and ethical principles have been followed while carrying out and writing this study and that all the sources used have been properly cited.
Plagiarism Checks	Yes - Turnitin
Conflicts of Interest	The author has no conflict of interest to declare.
Grant Support	The author acknowledge that they received no external funding in support of this research.
Copyright & License	Authors publishing with the journal retain the copyright to their work licensed under the CC BY-NC 4.0.

Osmanlı'da Yargı Sisteminin Ekonomik Faaliyetlere Etkisinin Rasyonalite Açısından Araştırılması

Yaşar ALKAN | 0000-0001-9553-5646 | yasar.alkan@cbu.edu.tr

Öğr. Gör. Dr. | Manisa Celal Bayar Üniversitesi, Kula Meslek Yüksekokulu | Manisa, Türkiye

ROR: 053f2w588

Öz

Batı düşünce dünyasında, Osmanlı yargı sistemi, patrimonyalizm temelinde karakterize edilmesinden hareketle irrasyonel olarak değerlendirilmektedir. Patrimonyal eylem biçimleri, rasyonellik anlayışını kutuplaştıran irrasyonel bir konuma karşılık gelmektedir. Genel olarak yönetimin ve özel olarak sultanın keyfi ve sübjektif kararları, bu irrasyonel iddiaların büyük bölümünü ihtiva etmektedir. Sultanın, kadılara ve yargılamanın icra edildiği süreçlere keyfi müdahalesine bağlı olarak ekonomik hayatta meydana gelen uyuşmazlıklarda yargı sisteminin, tarafları objektif ve adil bir şekilde değerlendiremediği ileri sürülmektedir. İktisadi hayatta pek çok problem meydana getiren bu durumun, iktisadi gelişmeyi engellediği de dile getirilmektedir. Dolayısıyla sadece Batı düşüncesinden ziyade çeşitli boyutlarıyla konuyu değerlendirmek önemlidir. Öte yandan Osmanlı'da genel ve iktisadi adaleti sağlamakla görevlendirilmiş yargı mensuplarının aldıkları kararlarda padişahın baskısını hissetmeleri nedeniyle karşı karşıya kalınan mesleki zorluk yanında devletin kuruluşundan bu yana ele alınan bu yargı sisteminin düzenli işleyişinin, yargı kurumu ve üyelerinin görevlerini etkin bir şekilde yerine getirmeleriyle sağlanabildiği düşüncesi de öne çıkmaktadır. Halihazırda geniş bir alanda hüküm sürülürken, yeni kurulan veya fethedilen tüm şehirlere ivedilikle kadı ve idari memur atanması, bu amaca hizmet etmektedir. İslam'ın hukuk sistemine yönelik emirlerini yerine getiren bu görevliler, sorumlulukları sebebiyle Allah'ın yasalarının uygulanması hususunda yeryüzündeki temsilciler olarak kabul edilmişlerdir. Dolayısıyla kendilerine tayin edilen görevleri icra ederken ayetlerin emredici hükümlerini, karşılarına gelen konuların mahiyetine uygun şekilde ele alıp adil ve rasyonel gerekçelerle tatbik etmeleri beklenmektedir. Denetleme mekanizması da ilgili yargı mensuplarına bu çerçevede değerlendirmelerde bulunmaktadır. Nitekim hukuki ve iktisadi boyutlarıyla gayrimüslimlerin, Müslümanlara açtıkları davalar ile Müslümanların gayrimüslimlere karşı açtıkları çeşitli davalarda adil ve orantılı kararlar verilip verilmediği hususu önem arz etmektedir. Osmanlı hukuk sistemine ve işleyişine temel oluşturan İslam; herkesin görev, unvan, işlev ve rütbelerine bakılmaksızın kanun/yargı önünde eşit kabul edilmesi gerektiğini ortaya koymaktadır. Dolayısıyla adli ve idari davalarda, yabancılar da dahil olmak üzere herkesin hâkim huzurunda eşit ve adil muameleye tabi tutulması gerekmektedir. Buna göre, hakkaniyete uygun olarak, Müslümanlar ile gayrimüslimler arasındaki anlaşmazlıklarda Müslümanlar aleyhine de kararlar alınabilmelidir. Nihai amaç, adil bir işleyişi ve sistematiği sağlayabilmektir. Bu çerçevede Osmanlı hukukunda keyfi, kayırmacı, ilkesiz ve hukuksuz yargılama olmadığı savı ileri sürülmekte ve bu sav; halkın,

yönetici sınıfa veya yönetici asker sınıfın köylülere karşı açtığı davalarda eşit ve adil kabul edilemeyecek yargılama yöntemlerinin reddedilmesine dayandırılmaktadır. Bu araştırmanın amacı, ele alınan iddiaların gerçeklerle ne derece bağdaştığını ortaya çıkarmaktır. Çalışmanın sınırını klasik dönem oluşturmaktadır. Elde edilen sonuca göre Osmanlı yargı sisteminin genel olarak sistematik ve keyfi müdahalelerden bağımsız bir şekilde işlediği ortaya konulmuştur. Dolayısıyla iktisadi hayatta meydana gelen problemlerin çözümünde genel olarak adil olan bir mekanizmanın mevcut olduğu tespit edilmiştir.

Anahtar Kelimeler

İktisat, Rasyonalite, Osmanlı İktisadi Düşüncesi, Kadı, Kapitalizm.

Atıf Bilgisi

Alkan, Yaşar "Osmanlı'da Yargı Sisteminin Ekonomik Faaliyetlere Etkisinin Rasyonalite Açısından Araştırılması". *Yakın Doğu Üniversitesi İslam Tetkikleri Merkezi Dergisi* 10/2 (Aralık 2024), 504-528. https://doi.org/10.32955/neu.istem.2024.10.2.06

Geliş Tarihi	14.08.2024
Kabul Tarihi	09.11.2024
Yayım Tarihi	31.12.2024
Değerlendirme	İki Dış Hakem / Çift Taraflı Körleme
Etik Beyan	Bu çalışmanın hazırlanma sürecinde bilimsel ve etik ilkelere uyulduğu ve yararlanılan tüm çalışmaların kaynakçada belirtildiği beyan olunur.
Benzerlik Taraması	Yapıldı – Turnitin
Çıkar Çatışması	Çıkar çatışması beyan edilmemiştir.
Finansman	Bu araştırmayı desteklemek için dış fon kullanılmamıştır.

Introduction

One of the effective factors in the emergence and development of modern capitalism is the rational legal system and, accordingly, consequently, the judicial system. The emergence of capitalism, especially in countries such as England, the Netherlands and France, and its subsequent influence in other European countries, developed the idea that this rational understanding was unique to the West. As Western European states have achieved unprecedented levels of economic growth and development, Western law and the judicial system are expressed with a rational character. Those who failed to make the transition to modern capitalism or to achieve economic progress were attributed with failure. This failure also led to the irrational categorization of these societies. Regardless of whether this categorization is made consciously or unconsciously, it has been accepted that Western societies pioneered the process of rationalization. Societies that have not gone through the stages that Western societies have are called irrational.

If we look at the historical process, we can see that the legal/judicial system has an impact on economic activities. It is unrealistic to consider the judicial system and economic activities independent of each other. Because there may be disagreements and disputes between merchants, entrepreneurs, capitalists engaged in economic activities and the customers they deal with. The resolution of these issues quickly, fairly and impartially was just as important yesterday as it is today. The more quickly the disputes were resolved, the more the functioning of economic life was able to continue without being negatively affected. In addition, the fact that Muslims and non-Muslims lived and acted together within the borders of the Ottoman Empire raised the question how and where disagreements between people of different religions and races would be resolved. One of the most important evidence in this regard is the court records. They are important because they reflects the content of the trial.

This study will examine the source and functioning of the Ottoman judicial system and discuss how it affected economic activities. Firstly, it will examine the claims made about the Ottoman judicial system in Western thought and then the extent to which they correspond to the facts.

1. Allegations Related to the Subject

In the Western world of thought, it is generally accepted that the Ottoman sultans acted arbitrarily. It is claimed that the sole authority in the position of authority is concentrated in the Sultan and that the Sultan uses this absolute power arbitrarily in all matters. Weber, for example, refers to the Ottoman judicial system in terms of 'judge justice'. According to this view, Ottoman judges were appointed arbitrarily to serve the personal interests of the Sultans. The Sultan chooses these people from among his servants whose loyalty he believes in. They do not have the expertise required for the profession of judge. The main

duty of the judges is to protect the authority and reputation of the Sultan. For this reason, judges do not act according to certain abstract rules during the sentencing stage. In administrative cases, they decide according to the instructions of the Sultan and his men, and in other cases, they decide arbitrarily or on the basis of similar events (analogy). In this respect, the Ottoman judicial tradition is far from principles such as systematicity, rationality, equal treatment and justice.[1] In addition, since judges were under constant pressure from the Sultan, this profession was not in demand in the Ottoman Empire.

On the other hand, according to this understanding, the Ottoman judicial system did not have a feature that provided assurance to both individuals and economic units. According to this, one of the reasons why the Ottoman Empire could not make the transition to modern capitalism was the irrational design of the judicial system.[2]

In the world of Western thought, Ottoman law or the judicial system is generally characterized by patrimonialism. Patrimonialism is in an irrational position and polarisesthe understanding of rationality. Therefore, almost every function of traditional/sacred law and the judicial system is described as irrational.[3] Accordingly, what is considered to be irrational in the Ottoman legal system needs to be explained in more detail. One of the most important sources of information on this subject is that of Weber. For reasons such as the production of law, the lack of autonomy of the law, the arbitrariness and bias of 'kadi justice', the intervention of the Sultan in the law-making and judicial process, and the Islamic-traditional legal system, the Ottoman Empire can't present a rational understanding of law in the Western sense. It is thought that the Ottoman Empire could not offer a rational understanding of law in the Western sense due to reasons such as the production of law, the lack of autonomy of law, the arbitrariness and partiality of 'kadi justice', the sultan's intervention in the law-making and judicial process, and the Islamic-traditional legal system.[4] Moreover, according to him, rational law is a driving force of capitalism. The foreignness of this law to patrimonial societies is one of the reasons why Ottoman society did not evolve into modern capitalism.[5]

---

1 Susan Croutwater, "Weber and Sultanism in the Light of Historical Data", *Theory of Liberty, Legitimacy and Power, New Directions in the Intellectual and Scientific Legacy of Max Weber,* ed. Vatro Murvar (Boston: Routledge, 2013), 170-172.

2 Ido Shahar - Karin Carmit Yefet, "Kadijustiz in the Ecclesiastical Courts: Naming, Blaming, Reclaiming", *Law & Society Review* 56/1 (Mart 2022), 60.

3 Rudolph Peters, "What Does It Mean to Be an Official Madhhab?: Hanafism and the Ottoman Empire", *Sharīʿa, Justice and Legal Order*. ed. Rudolph Peters (Leiden: Brill, 2020), 465-482.

4 Maxime Rodinson, *İslam ve Kapitalizm*, trans. Levent Fevzi Topaçoğlu (İstanbul: Spartaküs Yayınları, 1996), 119.

5 Çağlar Keyder, "The Ottoman Empire", *After Empire,* ed. Karen Barkey (New York: Routledge, 2018), 33.

According to those with an irrational understanding of Ottoman law, first of all, there was no official codification of law in the Ottoman Empire. Because the legal tradition of this society had a sacred character. Weber argues that religious law was formed in the 11th century as a result of the blending of the moral teachings of the Qur'an and the Sunnah with the personal thoughts of fiqh scholars. Therefore, although Islamic law is sacred, it is within the realm of subjective law. In addition, since Islamic law has very strict principles, it is very difficult to put it into practice. This legal system cannot keep up with the times and also lacks the ability to interpret social events. This gap is filled by the arbitrary will of the Ottoman Sultans and judges.[6]

It is said that in the patrimonial Ottoman Empire, the sultans were considered to be the only competent authority in law and justice. Accordingly, the Sultan regulates legislative matters arbitrarily. He has the authority/power to make new laws, amend and abolish laws, and appoint and promote legal officials. However, these procedures do not operate according to a particular principle. At this point, the absence of rational principles of law production and judgment principles is mentioned.[7]

On the other hand, the Ottoman law is considered to be outside the scope of the professional law. The main feature of professional legal formal law is that laws are made, implemented and supervised by professional lawyers who have studied law at universities. This legal system, unique in the West, is rational. As there was no specialized legal education in Ottoman law, this legal system was directly opposed to formal law.[8]

The lack of systematisation of the legislative power prevents the emergence of abstract legal rules. In the case of arbitrary laws, the principle of the rule of law is applied differently. That means it serves the interests of the Sultan. This is the basis of Ottoman law. The greatest duty of the judges is to protect the political authority of the Sultan. This makes it impossible for citizens to be treated equally before the law. In a case where there is a lack of justice, the judges who apply the law will pass judgment in a mystical way, giving priority to their emotions. According to Weber, who introduced the concept of 'kadi justice', arbitrary interpretations were produced based on analogy and past examples in the Ottoman Empire. The most common form of arbitrary judgement is carried out in this way. [9] However, according to research, Weber contradicts himself on this point. Because,

---

6 Peter Hardy, "Max Weber and the Patrimonial Empire in Islam: The Mughal Case", *Max Weber and Islam*, ed. Wolfgang Schluchter (New York: Routledge, 2019), 188-190.

7 Marinos Sariyannis, *A History of Ottoman Political Thought Up to the Early Nineteenth Century* (Leiden: Brill, 2018), 158.

8 Toby Huff, "Max Weber, Islam, and Rationalization: A Comparative View", *Historická Sociologie* 11/1 (2019), 118-121.

9 Julia Stephens et al., *The Subjects of Ottoman International Law* (Bloomington: Indiana University Press, 2020), 230.

according to him, the system in England was similar to Ottoman law, the first industrial revolution occurred in England.

Another issue is that the Sultan's intervention removed the autonomy of the legal profession. It can not be said there was a rational and autonomous class of lawyers in the Ottoman. Those judges also become politicised. The Sultan was the sole authority responsible in all respects for all authorities and positions related to the field of law. In this respect, in Ottoman traditionalism, law functions as a tool to serve political authority in an arbitrary and irrational way.[10]

Because of these irrational features, Ottoman law could never reach the level of the systematic and institutional law of the West. Moreover, it could not provide opportunities to economic units as in the modern West and could not perform any rational function with regard to economic activities. The Ottoman law and judicial system had a dysfunctional attitude towards many issues such as protecting the labour of producers and sellers, selling the produced products produced in a fair manner, protecting the accumulated savings on behalf of the merchant, supporting the reinvestment of capital, removing concerns/worries about the future, eliminating uncertainties in economic transactions, ensuring the producer to use his goods as he wishes, approving entrepreneurial actions, freeing the labour of the workers., accumulating money, enacting laws that encouraged economic activities and development.. This abstentionist or one-sided approach of the law naturally feudalizes the economy and leaves it to drown in the maelstrom of inertia. According to this idea, the patrimonial Ottoman State, which lacked rational law and judicial discipline, played the role of an institution that routinized human rights violations. The despotic Sultan, who deprives the people of the concept of property and the right to inheritance, also renders ineffective the institutions through which the oppressed people can defend their rights. In this case, there are no institutions such as the Supreme Court or the Court of Appeal where people can seek their rights.[11]

It is important to reveal the extent to which the above-mentioned views on the Ottoman judiciary or the expression of mystical judicial justice reflect reality.

2. Do the Allegations Match the Facts?

In the Ottoman Empire, the courts were the most important organs of the judicial system.[12] These courts were the solution centres for all kinds of legal and judicial problems

[10] Sead Bandžović, ''The Position and Competencies of Qadis in Ottoman Legal System'', *Historica Pogledi* 4 (2020), 33.

[11] Max Weber, *Economy and Society: An Outline of Interpretive Sociology*, ed. Guenther Roth ve Claus Wittich (Berkeley: University of California Press, 1978), 654- 657.

[12] Ahmet Akgündüz, *Şer'iye Sicilleri* (İstanbul: Türk Dünyası Araştırmaları Vakfı Yayınları, 1988), 11.

from the establishment of the state until the Tanzimat period.[13] The structure of the courts was governed by Islamic principles.[14] However, the Ottoman courts were much more developed than those in other Turkish-Islamic states. These institutions had also the sole authority in religious and social matters. There was no matter that didn't fall within the competence and duty of these judicial units, except in very exceptional cases. The courts had a single-judge judicial system, as in the Islamic system.[15] In practice, although multi-judge trials were not contrary to Islamic law, this method was rarely seen. The single-judge and single-level judicial system was maintained until the Tanzimat period. Apart from these courts, which operated according to religious procedures, the same system was also applied in the Divan-ı Hümayun and other courts, which were the institutions where trials were conducted. In courts where trials were conducted according to religious procedures, the judge was the sole authority. Rumelia Kadiaskeri was the sole judge of the Imperial Council. During the busy working hours, the Anatolian Kadiasker was in charge with the Rumelian Kadiasker. The Grand Vizier had the sole authority in the Grand Vizier's own Council. In the divan of the kadiasker, the chief defterdar (head of the provincial treasury) and the bey, the owner of the council acts as the sole judge.

The Courts in which religious cases are tried do not have a specific official office to which to refer. Trials are held in specific locations. Places such as the houses of judges, mosques, masjids and open spaces are places where cases are heard. The most common location is the judge's home. The judges of Istanbul and kadiaskers, who are high-ranking judges, also have no official offices. These people, like other judges, carry out judgements in their own mansions.[16] The purpose of conducting the judicial process in different locations is to ensure that justice is served in a speedy and efficient manner.

The record of decisions in courts where trials are conducted in accordance with religious procedures are called 'sharia records'. It is important to examine these documents in order to understand the Ottoman legal structure and judicial system. This is because the records of the judgements of the courts where religious procedures are used are literally 'examples of the law'. These records generally reveal the sources of Ottoman law, the extent to which Islamic law was applied, the limited legislative powers of Sultans and other rulers, and the areas of application of social law.[17] These are documents that provide information

[13] Jun Akiba, ''Sharī'a Judges in the Ottoman Nizāmiye Courts, 1864-1908'', *Osmanlı Araştırmaları* 51/51 (Nisan 2018), 228.

[14] Kınalızâde Ali Efendi, *Devlet ve Aile Ahlakı*, ed. Ahmet Kahraman (İstanbul: Tercüman 1001 Temel Eser, 1973), 132.

[15] Ahmet Akgündüz, *Osmanlı Kanunnameleri ve Hukuki Tahlilleri* (İstanbul: Fey Vakfı Yayınları, 1990), 224.

[16] Akgündüz, *Osmanlı Kanunnameleri ve Hukuki Tahlilleri*, 225.

[17] Fatma Gül Karagöz, ''17. Yüzyılda Mühimme Defterleri ve Ayntâb/Antep Şer'iye Sicilleri Örneklerinde Kahvehanelerin Kapatılması ve Tütün Yasaklarının Uygulanması'', *Hacettepe Hukuk*

on the legal, administrative, economic, religious, military and other institutions and practices of the Ottoman Empire over a period of about five centuries. These documents consist of two parts: documents received by the judge and documents sent to the judge. The records of judge include 'evidence, judgement, prosecution, dismissal' and other records. Those sent to the judge are 'edicts, certificates of appointment, orders' and others.[18] All these documents are very important as they reflect how systematically and methodically the Ottoman judicial system functioned. For example, 'evidence' refers to documents that are evidentiary in nature[19], do not contain the judge's decision, contain statements such as admissions and approvals of the parties, are like a summary of the legal situation, are prepared by the judge and bear the judge's seal and signature.[20] The content of this document consists of a testimony or an oath proving a case.[21] Another document issued by the judge is the 'decree'. This is the decision document. It contains the statements of the defendant and the plaintiff regarding the case, the judge's decision and the reasons for the decision.[22] The regular functioning of this system is carried out through kadis. Since the establishment of the state, the institution of Judiciary has actively/effectively performed its judicial functions. In all newly founded or conquered cities, a judge and administrative are immediately appointed. Except for small settlements such as towns and villages, at least one judge is appointed in all administrative centres of the Ottoman Empire, although the number varies depending on the size of the city. This practice shows the importance that is given to the judiciary. Considering that the main duty of the judge is to 'do/secure the justice', it can be understood how important this principle was given in the priority order of the Ottoman Empire.[23] In other words, the most important function of kadi was to dispense justice.

In this context, one of the most important positions in the Ottoman Empire, contrary to popular belief, was that of judge, who was the dispenser of justice. In Islamic law, the officials who perform this duty are accepted as representatives of the Creator on earth because of the duty and responsibility they assume. That's because judges take on tasks such as preventing injustice and ensuring that society remains peaceful and protected.[24]

Fakültesi Dergisi 10/2 (Aralık 2020), 494-554.

18 Akgündüz, *Şer'iye Sicilleri*, 17-20.

19 Mehmet Erdoğan, *Fıkıh ve Hukuk Terimleri* (İstanbul: Ensar Neşriyat, 5. Basım, 2013), 206.

20 Abdülaziz Bayındır, *İslam Muhakeme Hukuku* (İstanbul: Süleymaniye Vakfı Yayınları, 2015), 35-41.

21 Ömer Nasuhi Bilmen, *Hukuki İslamiyye ve Istılahatı Fıkhiyye Kamusu* (İstanbul: Bilmen Yayınevi, 1999), 118.

22 Bayındır, *İslam Muhakeme Hukuku*, 26-35.

23 Feda Şamil Arık, ''Osmanlılar'da Kadılık Müessesesi'', *OTAM Ankara Üniversitesi Osmanlı Tarihi Araştırma ve Uygulama Merkezi Dergisi 8/8 (Eylül 1997)*, 51.

24 Fahrettin Atar, *İslam Adliye Teşkilatı: Ortaya Çıkışı ve İşleyişi* (İstanbul: Diyanet İşleri Başkanlığı Yayınları, 1979), 52-53.

As it is known, in the Ottoman Empire, the judiciary was under the jurisdiction/authority of the Sultan. The Sultan is the supreme authority in matters relating to the supervision and appointment regarding the judiciary. However, the Sultan left the judicial power to his representatives, that is, the judges, whom he appoints with the advice of experts. The Grand Vizier, Kadıaskers and Sheikhulislam (shaykh al-islam) are responsible for the appointment of judges.[25] However, they did have political influence through the formalisation of their duties in the Sultan's Charter. At the same time, it prevents them from making decisions under pressure and under the direction of any group, community or individual. In the concept of the understanding of rationality, it is (only) Western lawyers who are trained experts in this field. In the irrational Ottoman East, on the other hand, lawyers are appointed arbitrarily and are loyal to the Sultan. However, the most basic requirement to become a judge in the Ottoman Empire was to be a graduate of a madrasah (university). In other words, the appointment of judges is only from the ilmiye class (organisation). So much so that a person without a madrasa education could not serve as a judge in even the smallest district of the Ottoman Empire.[26]

As can be seen, just like those who made/created law in the Ottoman Empire, those who administer justice were also experts and educated people. After a very serious and disciplined educational life, the madrasa graduates were divided into three categories. These were muderris (educators), kadis (judges) and administrative-military field, which differ from each other in terms of their functions. Those who wished to become teachers were assigned to the lowest-ranked madrasas.[27] If a person serving a muderris wanted to become a kadi (judge), he could be appointed to the position of judge from junior to senior, that is, from village to city, according to his degree.[28] A new madrasa graduate who wanted to become a judge was first appointed to the position of town judge. According to the hierarchical promotion process, after a certain periodof time, he became the judge of a settlement larger than the town. If there were more than one judge wishing to go to a city, a test was held between them and those with highest score were given preference. A town judge could rise to the position of Sheikhulislam, depending on his desire, ability and effort.[29]

---

[25] İlber Ortaylı, *Osmanlı Devleti'nde Kadı* (İstanbul: Turhan Kitabevi Yayınları, 1994), 13.

[26] Mehmet Aykanat, ''Klasik Dönemde Osmanlı Devleti'nde Hâkim Adaylığı: Mülâzemet'', *Türkiye Adalet Akademisi Dergisi* 34 (Nisan 2018), 174.

[27] Cahid Baltacı, *XV-XVI. Asırlarda Osmanlı Medreseleri* (İstanbul: M. Ü. İlahiyat Fakültesi Vakfı Yayınları, 2005), 26.

[28] İsmail Hakkı Uzunçarşılı, *Osmanlı Devleti'nin İlmiye Teşkilatı*, 2. bs. (Ankara: Türk Tarih Kurumu Yayınları, 1984), 87.

[29] Remzi Kılıç, ''Selçuklulardan Osmanlılara Medreseler ve Yönetim İlişkileri'', *Prof. Dr. Yahya Akyüz'e Armağan*, ed. C. Öztürk (Ankara: Pegem Yayınları, 2011), 870.

The judge, whose term of office had expired in the town came to the centre, registers his name in the Kadiasker Council and began to stand in line. During this period, the judges were engaged in scientific research, the deepening of their knowledge and the improvement their skills. The person whose turn came wasis sent to the judge office of the higher-ranking district.[30] The term of office of Ottoman judges lasted initially three years up to 1597[31], then two years and later 20 months. The Mevlevi (higher-ranking) judges were appointed to serve for one year (Mecelle, 1792/1793/1801It could also be seen that the term of office of some judges was extended for various reasons, such as a successful tenure.[32] The rationality in the organization and the functioning of the Ottoman judiciary was also manifested itself in the determination of the term of office. The reasons why the terms of office vary by one or two years were as follows. To give the judges the possibility of advancement, to prevent them from being close to the citizens, and to allow them to renew and improve themselves in the field of science within a rational line.

The determination of the income of the judges in the Ottoman Empire, as in many practices, was inspired by the Islamic organization of judiciary. The main source for determining the income of judges in the Ottoman Empire was the practice of Hz. Ömer. Accordingly, during the reign of Hz. Ömer, care was taken to ensure that judges were wealthy people or received high salaries.[33] Nizamülmülk, the famous vizier of the Seljuks, also believed that the income of judges should be kept high because they worked in a job that was susceptible to bribery.[34] In the Ottoman Empire, which adhered to this tradition, town judges, the lowest rank in this profession, were appointed with a daily salary of 150 silver coins.[35] The throne judges received the highest salary of five hundred akçe, while the judges at the lower level (mevleviyet judgeships) worked for a daily wage of between 300-500 akçe.[36] In this context, the income of judges in the Ottoman Empire was high enough to keep them and their families out of financial difficulties. In the late Ottoman period, the salary of a judge was 35 Ottoman gold coins.[37] It seems that judges work for very high salaries without the need for additional income.

When if we look at the requirements for people who wanted to be judges in the Ottoman and the rules that they had to follow, it is seen that they acted completely in accordance

30 Uzunçarşılı, *Osmanlı Devleti'nin İlmiye Teşkilatı*, 263.

31 Halil İnalcık, ''Kazasker Ruznamçe Defterine Göre Kadılık'', trans. Bekir Arı, *Adalet Kitabı*, ed. Serkan Aslantaş (Ankara: Adalet Bakanlığı Yayınları, 2007), 128.

32 Uzunçarşılı, *Osmanlı Devleti'nin İlmiye Teşkilatı*, 131.

33 Bilmen, *Hukuki İslamiyye ve Istılahatı Fıkhiyye Kamusu*, 17.

34 Nizamülmülk, *Siyasetname*, trans. Nizamettin Bayburtlugil (İstanbul: Dergah Yayınları, 1981), 69.

35 Akgündüz, *Osmanlı Kanunnameleri ve Hukuki Tahlilleri*, 230.

36 İsmail Hakkı Uzunçarşılı, *Osmanlı Tarihi: İstanbul'un Fethinden Kanuni Sultan Süleyman'ın Ölümüne Kadar*, 2. Cilt (Ankara: Türk Tarih Kurumu Yayınları, 1975, 3. Basım), 589.

37 Bayındır, *İslam Muhakeme Hukuku*, 114-115.

with the Islamic tradition. This is based primarily on the rules that the Prophet Muhammad wanted the judges to follow when appointing them or the qualities he sought in them[38], as well as on the practices of the period of Hz. Ömer and subsequent Turkish-Islamic states.[39] In the Ottoman Empire, a person who wanted to become a judge could not be chosen arbitrarily and by chance. Candidates must have graduated from madrassas, which were higher education institutions, that is, they must have completed the school of this profession. Not every madrasa graduate could be appointed as a judge. The Madrasa education and the subsequent internship life required a superior, long-term, methodical and systematic effort.

In addition, there are number of specific and general qualifications were required of candidates for judges. According to the common opinion of many Islamic scholars, the person who would be a judge must be a Muslim, male, of puberty, intelligent, free, just, with strong senses, healthy and knowledgeable.[40] Those who were too young, senile, blind, mute, or too deaf to hear loud speech could not be allowed to judge. Likewise, he must also be strong-minded, honest, trustworthy, have a strong personality, have a strong will, not have a cruel character, be well versed in Islamic law and fiqh, have a good grasp of the principles of judgment, and have the ability to resolve disputes accordingly and make decisions within the framework of Islamic law. Similarly, the judge should not make purchases on his own account in court (Mecelle/1795), should not joke with anyone (Mecelle/1795), should not accept gifts from any of the parties (Mecelle/1796), should avoid situations and behaviours that may create suspicion and bad opinion (Mecelle/1789), and should not give advice to the parties and should treat them equally (Mecelle/1799).

In order to prevent arbitrary behavior during the trial, judges are asked to act in a principled and systematic manner. First of all, the judges were mostly guided by the views of the Hanafi sect, even though it did not have an official character until the mid-16th century.[41] Since the middle of the 16th century, as a legal obligation, they make decisions according to the views of the Hanafi sect.[42] In addition, in resolving any legal dispute, judges would refer to fiqh books or collections of fatwas for Islamic law, and based on statutes or individual decrees issued by the centre for world law. However, he would not rule on cases such as criminal cases in which non-Muslim clerics were a party, or cases involving claims exceeding a certain amount for the property of people who died without leaving heirs, and referred them to the Supreme Council. Moreover, the judges had the authority to not

38 Atar, *İslam Adliye Teşkilatı*, 48-50.

39 Muhammed Faruk En-nebhan, *İslam Anayasa ve İdare Hukukunun Umumi Esasları*, trans. Servet Armağan (İstanbul: Sönmez Neşriyat, 1980), 564.

40 Atar, *İslam Adliye Teşkilatı*, 97- 102.

41 Bayındır, *İslam Muhakeme Hukuku*, 57-63.

42 Mehmet Akif Aydın, *Osmanlı Devleti'nde Hukuk ve Adalet* (İstanbul: Klasik Yayınları, 2. Basım, 2017), 14.

decide cases where they had doubts about the fairness of the trial and refer them to the Supreme Council. On the other hand, since the beginning, non-Muslims had the opportunity to approach to their own community courts in the fields of family and inheritance law.

In a study analysing of court records, Gerber states that the Bursa court received applications from all segments of society and that people of different religions also applied to Islamic courts. In addition, Gerber draws attention to an important issue in terms of determining that there was no arbitrary trial/judgement. Based on his research, he says that the decisions of the court generally resulted in favour of the lower classes. He notes that in cases between non-Muslims and Muslims, decisions were made in favour of both groups.[43]

According to the findings, it is obvious that there was no arbitrary, favouritism, unprincipled and unlawful trial in the cases filed by non-Muslims against Muslims and non-Muslims. Or it is obvious that there was no arbitrary, favoritism, unprincipled or unlawful trial in the cases brought by Muslims against non-Muslims. It is obvious that there was no arbitrary, favouritism, unprincipled and unlawful trial in the cases of the common people against the ruling class or the military class against the peasants. For example, a Muslim citizen named Ali filed a lawsuit against his Jewish neighbor Yahya in the Gözsüzler district of Manisa. The subject of the case was that his Jewish neighbor blocked Ali's view by building the wall between their houses too high. As a result of the case, the Jew Yahya was found to be right.[44] According to another document, Mose, a Jewish, sued Isaac, another Jewish. The Jewish Abraham said that he married his sister to the Jewish Isaac for 10,200 silver coins. However, Isaac the Jew did not give the rest of the money, claiming that they agreed on 7000 silver coins. The Jewish Abraham brought witnesses and proves to the court that he married his brother for 10,200 silver coins, and the decision was made accordingly.[45] Examples like these appear frequently in the records. In 1687, the dispute between Ahmed and the slave Imos in Bolu ended in Imos' favor. In 1687, a tax dispute between the villagers and the collector in Bolu was concluded in favor of the villagers.[46] In 1628, a dispute between a cavalryman and a shepherd in Aksaray over 10 missing sheep was resolved in favor of the shepherd. In 1629, in Aksaray, the lawsuit between the brothers Vasil and Poltaryus and

[43] Haim Gerber, ''The Islamic Law of Partnerships in Ottoman Court Records'', *Studia Islamica* 53 (1981), 109-119.

[44] Mehmet Çamlı, *H. 959' Miladi 1551 Tarihli 4 Numaralı Manisa Şer'iyye Sicili* (Ankara: Gazi Üniversitesi, Sosyal Bilimler Enstitüsü, Yüksek Lisans Tezi, 1993), 22.

[45] Çamlı, *H. 959' Miladi 1551 Tarihli 4 Numaralı Manisa Şer'iyye Sicili*, 234.

[46] Binnaz Çöpoğlu, *Bolu Şer'iye Sicili, 1687-1688 Tarihli 836 No'lu Defterin Transkripsiyonu ve Değerlendirilmesi* (Bolu: Abant İzzet Baysal Üniversitesi Bolu Halk Kültürünü Araştırma ve Uygulama Merkezi Yayınları, 2009).

their uncle Feke was concluded in favor of the children.[47] In 1551, the debt lawsuit between Yorgi and Sedre in Manisa was concluded in favor of Yorgi. In 1049-1050, the tax-extortion case between the villagers and high-ranking state administrators was concluded in favor of the villagers.[48]

When the goods of merchants were seized in Manisa in 1719, the administrators were held responsible for the capture of the bandits, according to the decision. In the case of unfair confiscation of the field between Muslim Mehmed and non-Muslim Bereşkuh in Manisa in 1808-1809, the field inherited by Muslim Mehmed was returned. In 1808-1809, in Manisa, in the case of Muslim shop owner Ömer and tenant Poli fleeing without paying the rent, the goods remaining in the shop were taken into custody by the authorized institution of the state.[49]

In Islam, which is the basis of the Ottoman judicial system, everyone is considered equal before the law/judiciary, regardless of their duties, titles, functions and ranks.[50] In this respect, in judicial and administrative cases, everyone is treated equally and fairly before the judge. Foreigners also get their share of this equality.[51] As mentioned above, there was evidence of decisions being taken against Muslims in disputes between Muslims and non-Muslims.[52] It is possible to express a thought that there was no discrimination in the Ottoman law. One of the examples is that Osman Gazi found the Christian civil right and defended his rights against a Turkish citizen from the Germiyanoğlu Principality, who bought goods from a local Christian without paying for them.[53] As explained before, the tolerant and egalitarian approach in the conquered lands was a common behaviour in Ottoman law.[54] As Sheikh al-Islam Zenbilli Ali Efendi said, the life, property and chastity of the people (communities) who accepted the Ottoman rule would be absolutely protected. To force them on this path was against the orders/precepts of our religion.[55]

---

47 Orhan Özdil et al., *Aksaray'ın Tek Şer'iyye Sicili* (Aksaray: T.B.B. ve Aksaray Barosu Ortak Yayınları, 2014).

48 Huriye Sarıkaya, *179 Numaralı Manisa ve 717 Numaralı Balıkesir Şer'iyye Sicillerine Göre Lâle Devri'nin İlk Yıllarında Batı Anadolu'da Sosyal ve Ekonomik Hayat* (Aydın: Adnan Menderes Üniversitesi Sosyal Bilimler Enstitüsü, Yüksek Lisans Tezi, 2016).

49 Ömer Karataş, *242 Numaralı Manisa Şer'iyye Sicil Defteri Transkripsiyonu ve Değerlendirilmesi: (1223-1224/1808-1809)* (Manisa: Celal Bayar Üniversitesi, Sosyal Bilimler Enstitüsü, Yüksek Lisans Tezi, 2005).

50 Ahmet Akgündüz, *Belgeler Gerçekleri Konuşuyor 1* (İstanbul: Nil Yayınları, 1989), 14.

51 Aydın Taneri, *Türk Devlet Geleneği: Dün-Bugün* (İstanbul: Töre Devlet Yayınevi, 2. Basım, 1981), 51.

52 Akgündüz, *Belgeler Gerçekleri Konuşuyor 1*, 16.

53 Fernand Grenard, *Asya'nın Yükselişi ve Düşüşü*, trans. Osman Yüksel (Ankara: Milli Eğitim Bakanlığı Yayınları, 1992), 91.

54 Ahmet Tabakoğlu, *İslam İktisadına Giriş* (İstanbul: Dergah Yayınları, 3. Basım, 2013), 86.

55 Ahmet Akgündüz, *İslam'da İnsan Hakları Beyannamesi* (İstanbul: Timaş Yayınları, 1991), 23-24.

Another point that shows that the Ottoman legal system and judicial procedures were conducted with the principle of equality was that in Ottoman courts, the defendants and witnesses had to sit on the floor in front of the judge, as if in prayer, regardless of their position. This practice continued until the 19th century.[56] Another sign that the judge treated them equally was that, regardless of who the defendant or witness was, he addressed them only by their first and last names, not by their title.

The source of the principles of judgement was Islamic law. In addition to the laws they made themselves, the Ottoman state officials also filtered the previous rational laws of the countries that they had conquered. They did not make the mistake of directly quoting foreign laws, but ensured that they came into force by correcting those aspects that did not comply with the Sharia rules. The legitimacy of this practice went back to Hz. Prophet and Hz. Ömer period. In this context, it can be seen that the Ottoman Empire fully implemented its classical order in the lands of Anatolia, Rumelia, Bosnia, Croatia, Macedonia, Syria and Iraq. However, in remote states, it was possible to apply rules, also known as customary law, which were based on jurisprudence and the reorganization of Sharia provisions. In accordance with the policy of conquest and tolerance, these laws were modified and applied according to the wishes of the people of the region, the needs of the local administrators and the conditions of the time.[57]

There were people from various religions among the Ottoman subjects. These people with different faiths always had the opportunity to appeal to their own courts in disputes between themselves. However, this situation is considered by some groups as the principle of multi-jurisdictionalism.[58] However, the Ottoman legal system had no relation with the 'multi-jurisdictional principle'.[59] In the Ottoman Empire, the 'principle of freedom of religion and conscience' adopted by Islam applied to communities belonging to different religions and cultures. Respect for freedom of religion and conscience was one of the indicators that Islam is not oppressive and rigid, but rather a religion of tolerance.

In this regard, in Islamic law, it is clear that non-Muslims can be subject to the provisions of their own beliefs in exceptional branches of law such as personal, family and inheritance. With regard to property, debt and commercial law, all citizens must comply with the provisions of the Sharia, except in exceptional cases.[60] Alternatively, transactions can be conducted entirely within the framework of Sharia law.[61] As a matter of fact, it is a

56 Bayındır, *İslam Muhakeme Hukuku*, 111.

57 Aydın, *Osmanlı Devleti'nde Hukuk ve Adalet*, 67.

58 Timur Kuran, *Yollar Ayrılırken*, trans. Nazlı Elhüseyni (İstanbul: Yapı Kredi Yayınları, 2. Basım, 2018), 231.

59 Akgündüz, *İslam'da İnsan Hakları Beyannamesi*, 37-48.

60 Akgündüz, *İslam'da İnsan Hakları Beyannamesi*, 54-57.

61 Akgündüz, *İslam'da İnsan Hakları Beyannamesi*, 108.

historical fact that foreigners mostly resort to sharia courts even in cases between themselves.[62]

According to Ottoman legal logic, utilitarianism and practicality were the most fundamental principles. The interests of both individuals and society as a whole were taken into account in legislation and in practices. However, in matters that were subject to the social issues, it was seen that the social interest was prioritized. For example, in approximately 80% of the land in Anatolian and Rumelia was under the timar system, and less space was given to individual ownership/property rights. The principle of regular cultivation of lands for public and social interests was strictly/sensitively followed. This was a feature that was directly related to economic justice. Again, the expansion of the system of foundations, the introduction of tax exemptions and small privileges for some individuals and families in order to make the transport systems to work, as well as the meticulous operation of mosques, places of worship, fountains, bridges, madrasas, caravanserais and other various social institutions were indicators of this social utilitarian thought.

The fact that citizens could apply for their rights to the judge, then to the sancakbeyi and the Sancak Council, to the beylerbeyi and his council, to all ministers and the Council of each ministry, to the Grand Vizier and his council, from the Divan-I Hümayun and the Sultan, explains how carefully human rights were protected. In addition, in the Ottomans and most other Islamic states, the 'atrocities council' (persecuation council) was set up specifically for this purpose, an authority to which those who had suffered injustice could appeal.[63] In addition, the court records show how sensitive the ihtisab institution, ihtisab aghas, the ahi trade unions and the leaders of the sects were to the protection of human rights regard to the complaints of traders and consumers. The edicts and law books issued by the Sultans are also very important in emphasizing the attention paid to human rights.[64]

Apart from this, the steps taken towards the full canalization of the judicial system with the economy continued after the classical period. In the 19th century, Commercial and Civil Courts were established as new judicial institutions. In the understanding of rationality, these organizations were considered as the primary source of institutional change, as well as being the actors of change in the economy. Today, all relationships in an economy are established through contracts. However, contracts may be incomplete or inaccurate for reasons such as transaction costs, property rights, asymmetric information and opportunism. The courts had the power to resolve disputes arising from these contracts. The courts, which constitute the largest part of the judicial organization in the classical period and afterwards, on the one hand, ensured the acceptance of the laws that came into

62 Aydın, *Osmanlı Devleti'nde Hukuk ve Adalet*, 58.

63 Süleyman Kaya, ''XVIII. Yüzyıl Osmanlı Toplumunda Kredi ilişkilerinin Hukuki Boyutu'', *Türk Hukuk Tarihi Araştırmaları*, 3 (2007), 40-41.

64 Halil İnalcık, *Osmanlı İdare ve Ekonomi Tarihi* (İstanbul: İSAM Yayınları, 2011), 16.

force by the public, and on the other hand, they played an important role in the legalization activities by issuing jurisprudence on any subject.[65]

In this direction, new institutions were added to the judicial institutions in the Ottoman Empire from the beginning of the nineteenth century. The first of these was the Special Council, which was formed to hear cases between foreign merchants and Ottoman merchants in parallel with the increasing relations with Europe since the beginning of the period in question. These councils, formalized as 'commercial councils' in 1840, were transformed into mixed commercial courts in 1847.[66] Mixed commercial courts resolved disputes in accordance with European commercial practices. Although the heads of mixed courts were judges/kadis, seven of the members were locals and seven were foreigners. With the addition of the Commercial Code in 1861, the commercial councils officially became the commercial courts. At the same time, it was decided to establish new commercial courts in commercial centres. The commercial courts were authorized to hear all cases relating to commercial cases. In places where there was no commercial court, commercial cases would be resolved in accordance with the provisions of the Commercial Code in the assemblies where ordinary civil cases were heard. The commercial courts would also heard civil cases involving foreigners and Ottoman subjects. With the regulation made in 1864, the commercial courts were divided into two levels throughout the country: the courts of first instance in Istanbul and the provinces, and the Court of Appeals in Istanbul.

In addition to the commercial courts established earlier in the Ottoman Empire, the nizamiye court system, began to be established in the mid-1860s. The nizamiye courts were established in 1864 with the Provincial Regulations, which were first issued for the Danube Province and later spread throughout the country. They were divided into two levels: the civil courts and the criminal courts. The nizamiye courts, set up to hear the cases of both Muslims and non-Muslims, were presided over by judges/kadis, and the courts consisted of three Muslim and three non-Muslim members. The civil courts, organized throughout the country in 1872, were responsible for hearing matter governed by religious law, such as family, inheritance and succession, as well as civil and criminal cases outside the jurisdiction of the commercial courts. The jurisdiction of nizamiye courts had been gradually extended over time.

In 1877, a regulation was issued to clarify the duties of sharia courts and nizamiye courts. Accordingly, disputes over matters such as inheritance, wills, marriage, divorce, alimony, retribution, compensation, emancipation of slave, and absenteeism were to be resolved in sharia courts. Disputes on issues such as commercial, loss and damage receivables, tax farming, and penalties should be heard by civil courts. In 1887, concordat

[65] Metin Ziya Köse, ''Galata'da Müslüman Osmanlı Tüccarı ve İç Ticaret (1600-1650)'', *Journal of History School* XLIX (Aralık 2020), 3884.

[66] Ahmet Çaparlar, ''Osmanlı Taşra Teşkilatındaki İdari Düzenlemeler (1864-1868)'', *Bengi Dünya Yörük-Türkmen Araştırmaları Dergisi* 5/1 (Şubat 2022), 105.

cases were also included in the jurisdiction of nizamiye courts. The Tazkirah of 1888 further restricted the jurisdiction of the sharia courts and it was once again emphasized that the commercial disputes were to be resolved by the civil courts. In addition, it was also announced that commercial cases between foreigners and Ottoman subjects would be heard in nizamiye courts, in the presence of an interpreter.

It can be said that the Ottoman judicial system changed its character in the 19th century. For example, the jurisdiction of the Sharia courts was transferred to commercial courts for the first time and partially. Courts dealing with general cases were also established, but Sharia courts continued to have priority in this area. However, this system turned into a dual structure that offered more than one option for the parties.[67]

There have been concerns about the decision-making process in commercial courts. The laws adopted by Europe should be applied in these courts. Written documents should be accepted as evidence. Western merchants should be able to freely choose the court. Foreign merchants should also be among the members. The decisions taken should be considered at a high level. The lack of clear organization of the system has been viewed with prejudice by Muslims and non-Muslims. In cities where Muslims live heavily, the fact that most of the members are Muslims and the head of the court is a judge has been interpreted as meaning that the decisions are made in favor of Muslims. However, the testimonies of non-Muslims were accepted. In places where the non-Muslim population is dense, the equal treatment of Muslims and non-Muslims has been seen as a problem. It has been determined that these prejudices harm economic interaction with non-Muslims.[68] In this context, it is important to identify the sources of bias against Muslims and non-Muslims that had emerged as a result of different types and structures of court, in order to determine the extent to which these claims correspond the facts.

Morever, as it is known, within the scope of modernization during the Tanzimat period, tax judicial institutions were tried to be established. In a development that can be described as a kind of power sharing, sharia courts are given to the Sheikh al-Islam, Civil and commercial courts served under the Ministry of Justice, community courts served under spiritual organizations, and those related to the consulate served under the consulates. However, when evaluated from the perspective of Western rationality, some shortcomings or failures stand out. In the new judicial institutions that are being tried to be established, foreign judges are also employed and the state has an institution other than madrasahs to train judges. It has features such as not being present. These features have led to the

[67] Halime Alkan, ''19. Yüzyıl Osmanlısında Ticaret Hukukundaki Değişimin İktisadi İlişkilere Yansıması: Ceride-i Mehâkim'deki Mahkeme Kayıtları Üzerine Bir İnceleme'', *Osmanlı Medeniyeti Araştırmaları Dergisi* 17 (Haziran 2023), 57.

[68] Halime Alkan - Kemal Pekçoşkun, ''On Dokuzuncu Yüzyıl Osmanlısında Hukuki Düzenlemeler: Ticaret ve Nizamiye Mahkemesi Kararlarının Yanlılığı Üzerine Lojistik Regresyon Analizi'', *Sosyoekonomi* 31/58 (Ekim 2023), 343.

damage to the principle of independence of the judiciary. The decrease in trust in this principle and the existence of a dual structure in the judiciary are negativities that seem parallel to each other. Because these innovation efforts could not lead to a change in the basic structure of the state or the targeted point could not be reached. This failure naturally affected both the economy of the state and the activities in economic life.[69] Capitulations could not be lifted, consular courts continued, Muslims were accepted as the addressees of sharia legislation and non-Muslims were subject to this legislation. They were not forced to submit. It is obvious to what extent the capitulations hindered local traders in particular.[70] Perhaps the most important development that can be mentioned in this regard is that the foundations of the tax judiciary organization were strengthened with the establishment of the ''Council of State'' in 1868.[71]

Conclusion

In Western thought, the Ottoman economy failed to evolve into a capitalist development, and the irrational characteristics of the judicial system are cited as the main reasons for this. In this study, the extent to which the claims in question coincide with the facts will be investigated. In this context, the claims regarding the Ottoman judicial system and judges and the findings obtained contradict each other. Accordingly, the concept of judge justice put forward in the Western world of thought has no equivalent in Ottoman practice. There was no subjective situation indicating judge law or judge justice in the Ottoman Empire. Judges made their decisions in a certain order due to the very narrow discretionary power granted to them during the trial. This is a feature that existed in the classical period, as well as in the 19th century and even in modern law. For example, in the Turkish Legal System, according to Article 3/1 of the Turkish Penal Code No. 5237 titled 'the principle of equality and justice before the law', determining the penalty belongs to the judge and its minimum and maximum limits are determined by law. When the findings obtained in the study are examined, it can be said that all the procedures and operations of the Ottoman court system show that the Ottoman judicial process was organized rationally. The trial system was not arbitrary and uncontrolled. It can be said that a disciplined, systematic, methodical, transparent and rapid operation was carried out for the implementation of justice.

Another powerful arm of the Ottoman system was the judiciary. Contrary to what is claimed, the Ottoman judiciary had a rational feature in itself. Each stage of the judicial process was rationally predetermined. In line with this, the judges/kadis must first of all be

[69] Derya Yayman, ''Osmanlı Devleti Vergi Yargılaması'', *International Journal of Social and Humanities Sciences Research* 11/108 (Haziran 2024), 1102.

[70] Şevket Pamuk, ''Institutional Change and the Longevity of the Ottoman Empire, 1500–1800'', *Journal of Interdisciplinary History* 35/2 (Ekim 2004), 231-232.

[71] Yayman, ''Osmanlı Devleti Vergi Yargılaması'', 1102-1103.

graduates of higher education, that is, they should have received a highly disciplined specialist training in their respective field. The appointment of judges was based on merit and competence. Their powers and duties were determined by law. The judges acted according to a large number of rules, both in everyday life and during judgements. In the Ottoman tradition, trials were held openly, in public and in many places. It was important to be quick and practical in judgements. The principles of fairness and equality of treatment were constantly reminded to officials in this profession. Today, the system known as the assembly of witnesses was in valid. In modern law, the principle of Beraat-i Zimmet, called the Presumption of Innocence, was followed. To ensure that decisions were not made arbitrarily or under pressure, many preventive and controlling factors were put in place. In other words, it can be said that the independence of the judiciary was essential for the period under discussion in the Ottoman State.

When we look at the trade policies that reflect the mentality of the classical period, it is understood that they are completely 'people-centered'. Thanks to principled and rational policies and superior virtues such as justice and morality, the Ottoman administration managed to hold together the different segments of society for centuries. In this respect, Ottoman trade policies served to establish and protect a system that embraced sharing, solidarity, cooperation, balance, social benefit and welfare, away from hedonism, self-centeredness, self-interest and conflict.

In the Ottoman court records, everything was decided down to the finest detail: from the rights of the unborn child in the womb to the rights of existing children, the rights of women, what a non-Muslim got from a Muslim, who owned the wall between two houses and who benefited more from it, how to divide the inheritance of the deceased in the most detailed way, how to provide foundation and cash foundation services' to individuals in the most humane way.[7273] Many registry records, such as the Manisa sharia registry book number 4 dated 1551[74], support the defended view. Manisa sharia registry book dated 1050 and numbered 79[75], dated 1037/1038 Aksaray sharia registry book[76] and Bolu number 836 dated 1687-1688 sharia registry book[77], Manisa sharia registry number 179[78], Bolu sharia

---

72 Tahsin Özcan, ''Sofyalı Bâlî Efendi'nin Para Vakıflarıyla İlgili Mektupları'', *İslam Araştırmaları Dergisi* 3 (Temmuz 1999), 125-155.

73 Mehmet Bulut - Cem Korkut, ''The Impact of the Elite (Ulema) Class on the Ottoman Economy: The Case Study of the Cash Waqfs'', *International Journal of Economics, Management and Accounting* 30/1 (2022), 27–54.

74 Çamlı, *H. 959' Miladi 1551 Tarihli 4 Numaralı Manisa Şer'iyye Sicili*.

75 Hüseyin Atabey, *Manisa'nın 79 Numaralı Şer'iyye Sicil Defteri (H. 1049-1050) Transkripsiyonu ve Değerlendirilmesi* (Ankara: Ankara Üniversitesi, Sosyal Bilimler Enstitüsü, Yüksek Lisans Tezi, 2014).

76 Özdil et al., *Aksaray'ın Tek Şer'iyye Sicili*.

77 Çöpoğlu, *Bolu Şer'iye Sicili*.

78 Sarıkaya, *179 Numaralı Manisa ve 717 Numaralı Balıkesir Şer'iyye Sicillerine Göre Lâle Devri'nin İlk*

registry book dated 1878-1879 and numbered 979, Manisa sharia registry book dated 1808-1809 and numbered 242[79] are among the examples that can be cited. According to these records, non-Muslims and Muslims against non-Muslims or Muslims against non-Muslims, as well as the rulers of the reaya arbitrary, nepotistic, unprincipled, and and it is obvious that an unlawful trial was not carried out. The decisions were made by going into the smallest details, including how they would benefit from it, and how much tax would be collected from crops grown by irrigation with their own means, and how much tax would be collected from crops grown with natural irrigation, etc. Such detailed decisions on human rights are not common in many civilisations and even in the modern world.

Yıllarında Batı Anadolu'da Sosyal ve Ekonomik Hayat.

[79] Karataş, *242 Numaralı Manisa Şer'iyye Sicil Defteri Transkripsiyonu ve Değerlendirilmesi: (1223-1224/1808-1809).*

Kaynakça | References

Akgündüz, Ahmet. *Belgeler Gerçekleri Konuşuyor 1*. İstanbul: Nil Yayınları, 1989.

Akgündüz, Ahmet. *İslam'da İnsan Hakları Beyannamesi*. İstanbul: Timaş Yayınları, 1991.

Akgündüz, Ahmet. *Osmanlı Kanunnameleri ve Hukuki Tahlilleri*. İstanbul: Fey Vakfı Yayınları, 1990.

Akgündüz, Ahmet. *Şer'iye Sicilleri*. İstanbul: Türk Dünyası Araştırmaları Vakfı Yayınları, 1988.

Akiba, Jun. "Sharī'a Judges in the Ottoman Nizāmiye Courts, 1864-1908". *Osmanlı Araştırmaları* 51/51 (Nisan 2018), 209-237.

Alkan, Halime. ''19. Yüzyıl Osmanlısında Ticaret Hukukundaki Değişimin İktisadi İlişkilere Yansıması: Ceride-i Mehâkim'deki Mahkeme Kayıtları Üzerine Bir İnceleme". *Osmanlı Medeniyeti Araştırmaları Dergisi* 17 (Haziran 2023), 38-76.

Alkan, Halime - Pekçoşkun, Kemal. ''On Dokuzuncu Yüzyıl Osmanlısında Hukuki Düzenlemeler: Ticaret ve Nizamiye Mahkemesi Kararlarının Yanlılığı Üzerine Lojistik Regresyon Analizi". *Sosyoekonomi* 31/58 (Ekim 2023), 333-363.

Arık, Feda Şamil. "Osmanlılarda Kadılık Müessesesi 1". *OTAM Ankara Üniversitesi Osmanlı Tarihi Araştırma ve Uygulama Merkezi Dergisi* 8/8 (Eylül 1997). 2-71. https://doi.org/10.1501/OTAM_0000000145.

Atar, Fahrettin. *İslam Adliye Teşkilatı: Ortaya Çıkışı ve İşleyişi*. İstanbul: Diyanet İşleri Başkanlığı Yayınları, 1979.

Aykanat, Mehmet. ''Klasik Dönemde Osmanlı Devleti'nde Hâkim Adaylığı: Mülâzemet". Türkiye Adalet Akademisi Dergisi 34 (Nisan 2018), 165-188.

Aydın, Mehmet Akif. *Osmanlı Devleti'nde Hukuk ve Adalet*. İstanbul: Klasik Yayınları, 2. Basım, 2017.

Baltacı, Cahid. *XV-XVI. Asırlarda Osmanlı Medreseleri*. İstanbul: M. Ü. İlahiyat Fakültesi Vakfı Yayınları, 2005.

Bandžović, Sead. ''The Position and Competencies of Qadis in Ottoman Legal System". *Historica Pogledi* 4 (2020), 28-46.

Bayındır, Abdülaziz. *İslam Muhakeme Hukuku*. İstanbul: Süleymaniye Vakfı Yayınları, 2015.

Bilmen, Ömer Nasuhi. *Hukuki İslamiyye ve Istılahatı Fıkhiyye Kamusu*. İstanbul: Bilmen Yayınevi, 1999.

Bulut, Mehmet - Korkut, Cem, ''The Impact of the Elite (Ulema) Class on the Ottoman Economy: The Case Study of the Cash Waqfs". *International Journal of Economics, Management and Accounting* 30/1 (2022), 27–54. https://doi.org/10.31436/ijema.v30i1.879.

Croutwater, Susan. ''Weber and Sultanism in the Light of Historical Data". *Theory of Liberty, Legitimacy and Power, New Directions in the Intellectual and Scientific Legacy of Max Weber*. ed. Vatro Murvar. 168-184. Boston: Routledge, 2013.

Çamlı, Mehmet. *H. 959' Miladi 1551 Tarihli 4 Numaralı Manisa Şer'iyye Sicili*. Ankara: Gazi Üniversitesi, Sosyal Bilimler Enstitüsü, Yüksek Lisans Tezi, 1993.

Çaparlar, Aydın. ''Osmanlı Taşra Teşkilatındaki İdari Düzenlemeler (1864-1868)". *Bengi Dünya Yörük-Türkmen Araştırmaları Dergisi* 5/1 (Şubat 2022). 76-120.

Çöpoğlu, Binnaz. *Bolu Şer'iye Sicili, 1687-1688 Tarihli 836 No'lu Defterin Transkripsiyonu ve Değerlendirilmesi*. Bolu: Abant İzzet Baysal Üniversitesi Bolu Halk Kültürünü Araştırma ve Uygulama Merkezi Yayınları, 2009.

Ekinci, Ekrem Buğra. *Osmanlı Hukuku*. 5. bs. İstanbul: Arı Sanat Yayınları, 2017.

En-nebhan, Muhammed Faruk. *İslam Anayasa ve İdare Hukukunun Umumi Esasları*. trans. Servet Armağan. İstanbul: Sönmez Neşriyat, 1980.

Erdoğan, Mehmet. *Fıkıh ve Hukuk Terimleri*. İstanbul: Ensar Neşriyat, 5. Basım, 2013.

Gerber, Haim. ''The Islamic Law of Partnerships in Ottoman Court Records''. *Studia Islamica* 53 (1981), 109-119. https://doi.org/10.2307/1595542

Grenard, Fernand. *Asya'nın Yükselişi ve Düşüşü*. trans. Osman Yüksel. Ankara: Milli Eğitim Bakanlığı Yayınları, 1992.

Hardy, Peter. ''Max Weber and the Patrimonial Empire in Islam: The Mughal Case''. In ed. Wolfgang Schluchter *Max Weber and Islam*, 183-204. New York: Routledge, 2019.

Huff, Toby. ''Max Weber, Islam, and Rationalization: A Comparative View''. *Historická Sociologie* 11/1 (2019): 117-128. https://doi.org/10.14712/23363525.2019.7

Atabey, Hüseyin. *Manisa'nın 79 Numaralı Şer'iyye Sicil Defteri (H. 1049-1050) Transkripsiyonu ve Değerlendirilmesi*. Ankara: Ankara Üniversitesi, Sosyal Bilimler Enstitüsü, Yüksek Lisans Tezi, 2014.

İnalcık, Halil. *Kazasker Ruznamçe Defterine Göre Kadılık*. çev. Bekir Arı, *Adalet Kitabı*, ed. Serkan Aslantaş Ankara: Adalet Bakanlığı Yayınları, 2007.

İnalcık, Halil. *Osmanlı İdare ve Ekonomi Tarihi*. İstanbul: İSAM Yayınları, 2011.

Karagöz, Fatma Gül. ''17. Yüzyılda Mühimme Defterleri ve Ayntâb/Antep Şer'iye Sicilleri Örneklerinde Kahvehanelerin Kapatılması ve Tütün Yasaklarının Uygulanması''. *Hacettepe Hukuk Fakültesi Dergisi* 10/2 (Aralık 2020): 494-554.

Karataş, Ömer. *242 Numaralı Manisa Şer'iyye Sicil Defteri Transkripsiyonu ve Değerlendirilmesi: (1223-1224/1808-1809)*. Manisa: Celal Bayar Üniversitesi, Sosyal Bilimler Enstitüsü, Yüksek Lisans Tezi, 2005.

Kaya, Süleyman. ''XVIII. Yüzyıl Osmanlı Toplumunda Kredi ilişkilerinin Hukuki Boyutu''. *Türk Hukuk Tarihi Araştırmaları*, 3 (2007), 13-41.

Keyder, Çağlar. ''The Ottoman Empire''. *After Empire*, ed. Karen Barkey. 30-44. New York: Routledge, 2018.

Kılıç, Remzi. ''Selçuklulardan Osmanlılara Medreseler ve Yönetim İlişkileri''. In *Prof. Dr. Yahya Akyüz'e Armağan*, ed. C. Öztürk, 857-871. Ankara: Pegem Yayınları, 2011.

Kınalızâde Ali Efendi. *Devlet ve Aile Ahlakı*. haz. Ahmet Kahraman. İstanbul: Tercüman 1001 Temel Eser, 1973.

Köse, Metin Ziya. ''Galata'da Müslüman Osmanlı Tüccarı ve İç Ticaret (1600-1650)''. *Journal of History School* XLIX (Aralık 2020), 3871-3907. https://doi.org/10.29228/joh.42790

Kuran, Timur. *Yollar Ayrılırken*. trans. Nazlı Elhüseyni. İstanbul: Yapı Kredi Yayınları, Yollar Ayrılırken, 2018.

Nizamülmülk. *Siyasetname*. trans. Nizamettin Bayburtlugil. İstanbul: Dergah Yayınları, 1981.

Ortaylı, İlber. *Osmanlı Devleti'nde Kadı*. İstanbul: Turhan Kitabevi Yayınları, 1994.

Özcan, Tahsin. "Sofyalı Bâlî Efendi'nin Para Vakıflarıyla İlgili Mektupları". *İslam Araştırmaları Dergisi* 3 (Temmuz 1999), 125-155.

Özdil, Orhan et al., *Aksaray'ın Tek Şer'iyye Sicili*. Aksaray: T.B.B. ve Aksaray Barosu Ortak Yayınları, 2014.

Pamuk, Şevket. "Institutional Change and the Longevity of the Ottoman Empire, 1500–1800". *Journal of Interdisciplinary History* 35/2 (Ekim 2004), 225-247.

Peters, Rudolph. ''What Does It Mean to Be an Official Madhhab?: Hanafism and the Ottoman Empire''. *Shariʿa, Justice and Legal Order*. ed. Rudolph Peters. 465-482. Leiden: Brill, 2020. https://doi.org/10.1163/9789004420625_032

Rodinson, Maxime. *İslam ve Kapitalizm*. trans. Levent Fevzi Topaçoğlu. İstanbul: Spartaküs Yayınları, 1996.

Sarıkaya, Huriye. *179 Numaralı Manisa ve 717 Numaralı Balıkesir Şer'iyye Sicillerine Göre Lâle Devri'nin İlk Yıllarında Batı Anadolu'da Sosyal ve Ekonomik Hayat*. Aydın: Adnan Menderes Üniversitesi Sosyal Bilimler Enstitüsü, Yüksek Lisans Tezi, 2016.

Sariyannis, Marinos. *A History of Ottoman Political Thought Up to the Early Nineteenth Century*. Leiden: Brill, 2018.

Shahar, Ido - Yefet, Karin Carmit. ''Kadijustiz in the Ecclesiastical Courts: Naming, Blaming, Reclaiming". *Law & Society Review* 56/1 (March 2022): 53-77.

Stephens, Julia. et al. *The Subjects of Ottoman International Law*. Bloomington: Indiana University Press, 2020.

Tabakoğlu, Ahmet. *İslam İktisadına Giriş*. İstanbul: Dergah Yayınları, 3. Basım, 2013.

Taneri, Aydın. *Türk Devlet Geleneği: Dün-Bugün*. İstanbul: Töre Devlet Yayınevi, 2. Basım, 1981.

Uzunçarşılı, İsmail Hakkı. *Osmanlı Devleti'nin İlmiye Teşkilatı*. 2. bs. Ankara: Türk Tarih Kurumu Yayınları, 1984.

Uzunçarşılı, İsmail Hakkı. *Osmanlı Tarihi: İstanbul'un Fethinden Kanuni Sultan Süleyman'ın Ölümüne Kadar*. 2. Cilt. Ankara: Türk Tarih Kurumu Yayınları, 3. Basım, 1975.

Weber, Max. *Economy and Society: An Outline of Interpretive Sociology*. ed. Guenther Roth ve Claus Wittich. Berkeley: University of California Press, 1978.

Yayman, Derya. "Osmanlı Devleti Vergi Yargılaması". *International Journal of Social and Humanities Sciences Research* 11/108 (Haziran 2024), 1088-1103. https://doi.org/10.5281/zenodo.12603081