

## OTTOMAN HUMAN RIGHTS PRACTICE: A MODEL OF LEGAL PLURALISM

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### ABSTRACT

The Ottoman Empire was founded on a strategic area that conjunct Europe and Asia. Multicultural and multinational folk of Ottoman had ruled by Ottoman dynasty in tranquility for a long time. Tolerance and justice was main supporting determinants of state under the guidance of Islamic law. This paper explores whether or not Millet system was a successful idea to cohere different cultures. Millets were instituted by Sultan Mehmet II (Fatih) after he had conquered Istanbul (Constantinople) in 1453 and began to lose its importance with Tanzimat reforms through 1839. Ottoman citizens who related with different Millets had the rights like freedom of faith and religion. They were free to follow their traditions in their education system, marriage and other areas of indigenous life. Minorities of Ottoman had the chance to have their own minority courts and judges in their cases related to civil law, like heritage and family law as an early sample of legal pluralism.

**Keywords:** Legal Pluralism, Ottoman Administrative Regime, Millet System, Human Rights in Ottoman Empire

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## BİR ÇOK HUKUKLULUK MODELİ: OSMANLI İNSAN HAKLARI UYGULAMASI

### ÖZET

Osmanlı İmparatorluğu Asya ve Avrupayı birbirine bağlayan stratejik bir bölge üzerinde kurulmuştur. Osmanlı Hanedanı, çok kültürlü ve çok uluslu Osmanlı halkını uzun bir süre huzur içerisinde yönetmiştir. İslam hukuku rehberliğindeki devletin temel destekleyici bileşenleri hoşgörü ve adalete dayanmaktaydı. Bu çalışma, farklı kültürlerin bir araya gelebilmeleri adına Millet sisteminin başarılı bir fikir olup olmadığını araştırmaktadır. Milletlerin kurumsallaşmaları Sultan II. Mehmet'in İstanbul'u fethetmesinden sonra başlamış ve 1839 Tanzimat reformları ile önemini kaybetmeye başlamıştır. Çeşitli milletlerle ilişkilendirilen Osmanlı vatandaşları inanç ve din özgürlüklerine sahipti. Bu milletler geleneklerinin gereklerini eğitim sistemlerinde, evliliklerinde ve yerel hayatın diğer alanlarında takip etme imkanına sahipti. Çok hukukluluğun saf bir görünümü olarak Osmanlı azınlıkları, miras ve aile hukuku gibi özel hukuka dair davalarında kendi mahkeme ve hakimlerine başvurma imkanına sahipti.

**Anahtar Kelimeler:** Çok hukukluluk, Osmanlı İdari Rejimi, Millet Sistemi, Osmanlı'da İnsan Hakları

## INTRODUCTION

What are the main mysterious words and ideas that governments establish on? These words mention the basic agents of state. Even if the government has multinational citizens and borders cover three continents, what should the clue words be? What was the key factor in Ottoman Empire that existed six centuries based on justice and tolerance?

This paper strongly suggests as an answer of the questions above that the miracle was related with the Ottoman administration regime called “Millet System”. This system created a peaceful atmosphere where both Muslims and non-Muslims lived together. Also millet system took its roots from justice which meant giving rights to whom qualifies them. This mentality of justice was the first appearance of legal pluralism in Ottoman empire. The people of Ottoman had a plural structure and consisted from different nations, religions and ideas. According to Griffiths, “a legal system is pluralistic when the ruler (monarch or sultan) commands or administration permits different bodies of law for different groups”<sup>1</sup>. Within this plural context, Ottoman justice system effected from plurality. In this permissive plural court system some religious groups had their religious courts where they were allowed to apply their own religious law on their people.

This paper is going to clarify millet system from perspective of law in three parts. First part argues assortment of people through religion via millet system in Ottoman Empire. The Ottoman administration regime and rights for minorities is going to be examined in second part. Finally, the third part of this study analyzes the minority courts in Ottoman and their principles of choosing the right rule.

## I. CLASSIFICATION THROUGH RELIGION

The Ottoman community was consisted from two groups as Muslims and non-Muslims. Religion was the main factor for defining the statute of people in the whole Ottoman community. However this place of people was absolutely neither a segregation<sup>2</sup> nor racism, it was only a kind of classification

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- 1 Griffiths, John (1986) “What is Legal Pluralism”, *Journal of Legal Pluralism and Unofficial Law*, No:24, p.5.
  - 2 Masters, Bruce (2001) *Christians and Jews in the Ottoman Arab World*, 1. Edition, Cambridge, Cambridge University Press, p.16.

method. As a result of this idea, common religious groups were organized into millet. Millet is an arabic word and its meaning in Quran refers to religious community. Millet represents that the Ottomans assumed themselves the guardians of multiple nations. These religious groups were considered its own millet, with plural millets existing in the empire.

In the Quran, millet frequently refers to the “millet Ibrahim”, meaning the religion of Abraham and rarely as millet for only Judaism or Christianity<sup>3</sup>. The term Millet was never used for describing a race or a society that using the same language; it was used as an administrative and cultural term for the people of a belief or sect<sup>4</sup>. Millet system acknowledges a non-Muslim community, based primarily on its religion, and not by “ethnicity”, living in the Ottoman Empire under the orientation of their religious leaders. Ottoman citizens who belonged to these millets were free to exercise their religion and follow their own traditions in their schools, marriage acts and other areas of domestic life. They were free to practice all these rights while being absolutely loyal to the state<sup>5</sup>.

## A. RIGHTS AND FREEDOMS OF NON MUSLIMS

The way to understand the position of Jews and Christians during Ottoman Empire era is to describe their official legal statutes. These two groups were a part of non-Muslim community and considered ahl al-kitab (people of the book). As such, their treatment may have differed from that of polytheistic believers (non ahl al-kitab) under Ottoman rule, since Muslims accepted the prophets of Christianity and Judaism. Both ahl al-kitab and non ahl al-kitab community were called “teb’a”, or “subject of ottoman”<sup>6</sup>.

According to Islamic law, non-Muslims were separated into two main groups for the perspective of relations between Muslims and non-Muslims. The non-Muslims that do not have a treaty of nonaggression or peace with

3 Quran; 2/120, 2/130, 2/135, 3/95 (English Translation: Saheeh International, Jaddah, 2004)

4 Eryılmaz, Bilal (1992) Osmanlı Devletinde Millet Sistemi, 1. Edition, Istanbul, Ağaç, p.11.

5 Tas, Latif (2014) “The Myth of the Ottoman Millet System: Its Treatment of Kurds and a Discussion of Territorial and Non-Territorial Autonomy”, International Journal on Minority and Group Rights, Vol.21, p.498.

6 Faroqhi, Suraiya (2007) Subjects of the Sultan, 1. Edition, London, I.B. Tauris, p.12; Eryılmaz, p.14.

Muslims called ahl al-harb, or “inhabitants of house of war”. On the other hand; those that do have treaty of peace are called ahl al-ahd, or “inhabitants of house of peace”. Finally, ahl al-ahd were composed from three groups; ahl al-dhimma, ahl al-mu’ahad and ahl al musta’min (the people of dhimma, mu’ahad and musta’min).

Ahl al-dhimma was referring non-Muslim citizens of an Islamic state and they were protected by Ottoman administration. Dhimma allows rights of residence in return for taxes<sup>7</sup>. Ahl al-mu’ahad was non-Muslims who had treaty of peace with Muslims. Lastly, ahl al-musta’min was legal aliens who had temporary permit of residence less than one year. Both ahl al-dhimma’s and ahl al-musta’min’s freedoms have to be protected by the Islamic government as Muslim rights.

### 1. Right to Life and Personal Security

As a result of being under shield of Islamic state, these two groups (ahl al-dhimma and ahl al-musta’min) were seen “guests” and their rights were regulated according to their responsibilities. Quran mentions right to life for all people in a verse; “...whoever kills a soul unless for a soul or for corruption in the land - it is as if he had slain mankind entirely. And whoever saves one - it is as if he had saved mankind entirely...»<sup>8</sup>.

Another verse is related to personal security; “...you who have believed, do not enter houses other than your own houses until you ascertain welcome and greet their inhabitants. That is best for you; perhaps you will be reminded”<sup>9</sup>. It is deducible that both Muslims and non-Muslims have the right to life, security of person and property, also their life and commodity was protected by Islamic government as Muslims<sup>10</sup>.

7 Glenn, H. Patrick (2007) *Legal Traditions of the World*, 3. Edition, New York, Oxford University Press, p.174.

8 Quran; 5/32.

9 Quran; 24/27.

10 Hacımuftüoğlu, Nasrullah (2007) “Kur’an Toplumunda Gayrimüslimlerin Hak ve Yükümlülükleri”, *Kur’anın Farklı İnanç Mensuplarına Yaklaşımı*, 1. Edition, Konya, Konya İlahiyat Derneği Yayınları, p.104.

## 2. Freedom of Religion, Conscience and Worship

The most important freedom for Muslims and non-Muslims was freedom of religion, worship and conscience. According to Quran, Prophet Muhammad's mission was only warning; "...so remind, [O Muhammad]; you are only a reminder"<sup>11</sup> and "...there shall be no compulsion in [acceptance of] the religion"<sup>12</sup>. Mawdudi, who is a Muslim scholar, states that "all non-Muslims have the freedom of conscience, opinion, expression, and association as the one enjoyed by Muslims themselves, subject to the same limitations as are imposed by law on Muslims. In their own towns and cities, they are allowed to practice their religion with the fullest freedom. However Islamic State has full discretion to put such restrictions on their practices as it deems necessary"<sup>13</sup>.

In addition to two freedom categories above, military service was mandatory for Muslims but was not for non-Muslims. However, some non-Muslims served in military against to fiqh.<sup>14</sup> They also can work in public offices as an interpreter or diplomat and get equal salary as Muslims<sup>15</sup>. Non-Muslims had their own courts and judges in their cases related to family law, like personal matters of marriages and divorces, as an early sample of legal pluralism. They were free to make an application to their own religious courts and Christian sects have the right to determine the outcome of each case<sup>16</sup>.

## B. RESPONSIBILITIES OF NON MUSLIMS

In return of rights and freedoms that given to non-Muslims most important responsibility of them was paying jizyah. Jizyah was a kind of annual security tax, to be charged on strong and healthy adult males of military age and affording power with some specific exemptions. It was not mandatory for women, slaves, children, religious officers, poor and disabled people.

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11 Quran; 88/21.

12 Quran; 2/256.

13 Mawdudi, S. Abul 'Ala' (1941) *Islamic Law and Constitution*, Lahore, cited in Saeed, Abdullah (1999) "Rethinking Citizenship Rights of Non-Muslims in an Islamic State: Rashid al-Ghannushi's contribution to the evolving debate", *Islam and Christian-Muslim Relations*, Vol.10, p.316.

14 Ercan, Yavuz (2001) *Osmanlı Yönetiminde Gayrimüslimler*, 1. Edition, Ankara, Turhan, p.202.

15 Eryılmaz, p.15; Ercan, p.203.

16 Shahid, Samuel "Rights of non-Muslims in an Islamic State", <<http://www.answering-islam.org>>, l.a.d. 02/13/2016.

Non-Muslims do not pay jizyah while they are serving for military with their own requests<sup>17</sup>.

Jizyah also was a result of dhimma contract which is an integral part of traditional Islamic sharia law. Some scholars<sup>18</sup> believe that, jizyah is sanctioned by Qur'an, based on the verse which came after the conquest of Makkah: "Fight those who believe not in Allah nor the Last Day, nor hold that forbidden which hath been forbidden by Allah and His Messenger, nor acknowledge the religion of Truth, (even if they are) of the People of the Book, until they pay the jizyah with willing submission, and feel themselves subdued"<sup>19</sup>. Since the verse does not describe what jizyah means, hadith texts (words of Prophet Muhammad) that are needed to provide the definition. Jizyah is mentioned a number of times in the hadith, as Sahih Muslim state that "Muhammad commanded his military leaders to demand jizyah from non-Muslims if they refused to accept Islam and to fight them if they refused to pay"<sup>20</sup>. Non-Muslims end paying jizyah when they become Muslim,<sup>21</sup> also religious staff of non-Muslims do not pay jizyah.<sup>22</sup>

The other responsibility for non-Muslims was to pay a tax of income and a tax on agricultural land called "kharaj". Tax of income was only for rich non-Muslims and the amount was 5 percent of their income. Kharaj was derived from prophet Muhammad's and his caliphate's (successor to Prophet Muhammad) practice and was differing people to people in relation to their land's size and productivity<sup>23</sup>.

The last obligation for non-Muslims was to respect faith and symbols of Muslims. This responsibility was also recommended to Muslims in a verse of Quran; "And do not insult those they invoke other than Allah, lest they insult Allah in enmity without knowledge"<sup>24</sup>. In this way being respectful is a result of living together in a community. It was a reason for termination of dhim-

17 Eryılmaz, p.16.

18 Hacımüftüoğlu, p.101; Cin, Halil&Akgündüz, Ahmet (1995) Türk Hukuk Tarihi-Özel Hükümler, Konya, Selçuk Üniversitesi Yayınları, p.312.

19 Quran 9:29.

20 Muslim bin Haccac, Sahih Muslim, Book 19, Number 4294. <<http://hadithcollection.com/sahihmuslim/147>>, l.a.d. 3/1/2016.

21 Ercan, p.253.

22 Kenanoğlu, M.Macit (2012) Osmanlı Millet Sistemi: Mit ve Gerçek, 3. Edition, Istanbul, Klasik, p.387.

23 Hacımüftüoğlu, p.103.

24 Quran; 6:108.

ma contract if non-Muslims insult to Allah, Prophet Muhammad and Quran in public or violate their responsibilities. However they were free to eat pork meat and drink alcoholic beverages like wine that are forbidden in Islam<sup>25</sup>. On the other hand, the Ottoman administration did not want Muslims hear their prayers and non-Muslims are not allowed to pray or read their holy books loudly at home or in churches. Printing religious books or selling them in public places and markets was also prohibited, but they were allowed to publish and sell them among their own people, in their religious places like churches and temples. Non-Muslims are not authorized to put the cross on their houses or churches since it is a symbol of infidelity<sup>26</sup>, also they were not allowed to build new churches and live near mosques<sup>27</sup>.

There is no consensus on restriction of dress code for non-Muslim community. Some scholars believe that it is not a regulation in Sharia law and that was an administrative rule for non-Muslims in early period of Islam and in Ottoman Empire until Tanzimat reforms. On the other hand, some scholars argue that non-Muslims have freedom of costume providing not to look like Muslims, their names and haircuts had to be different, their buildings had to be lower than Muslims<sup>28</sup>.

## II. OTTOMAN ADMINISTRATION REGIME AND MILLET SYSTEM

Millet system has been used to identify for the administrative and legal status of non-Muslims from the Ottoman Empire 15th through 20th century. Before the conquest of Istanbul (Constantinople) as capital in 1453, basic rights that given to non-Muslims were framed by Islamic law. Sultan Mehmed II (Fatih-Conqueror of Istanbul) restored, repopulated the city and established a gradual system based on religious tenets. The millet system has been used by scholars to clarify for the Ottoman administration of this diversity. At the head of each group (millet) there was a religious leader (kethuda-administrator), chosen by his community, nominated spiritual, legal, and political authority over own community<sup>29</sup>.

25 Eryılmaz, p.17.

26 Ercan, p.241; Hacımüftüoğlu, p.111.

27 Findley, Carter V. (1980) *Bureaucratic Reform in the Ottoman Empire*, Princeton, cited in Faroqhi, p.25.

28 Ercan, p.179-181; Akyılmaz, Gül (2002) "Osmanlı Devletinde Gayrimüslimlerin Hukuki Statüsü", *Ermeni Araştırmaları Türkiye Kongresi*, 20 Nisan 2002, Tebliğ, <<http://www.sadikcan.com/osmanli-devletinde-gayrimuslimlerin-hukuki-statusu.html>>, I.a.d. 3/18/2016.

29 Eryılmaz, p.20.



After conquest of Istanbul, Sultan Fatih declared an edict for all residents, especially for non-Muslims that; “Let nobody bother or disturb those who are mentioned, not their churches. Let them dwell in peace in my empire. And let those who have become refugees be and safe. Let them return and let them settle down their monasteries without fear in all the countries of my empire”<sup>30</sup>. The view in this edict shows that there is no segregation or any kind of disjunctive action under Ottoman regime.

While the Muslim society composed from single Millet, -religious minorities-the non-Muslims grouped into three. These main groups were the Orthodox Greeks, the Armenians and the Jews. These three recognized and legally protected groups, in which they were granted had an extended internal autonomy in financial, judicial and cultural issues. Leaders of religious groups were the sole agents of their communities to the Ottoman empire<sup>31</sup>. This internal autonomy was not a sign of lack of power in state administration, in contrast it was a sign of strength.

#### A. RIGHTS FOR ORTHODOX CHURCH

Sultan Fatih started to configure the non-Muslim Ottoman community, supporting the Orthodox Church first of all. This strategy was toning East Church up (Orthodox) more than (against) Roman Catholic Church. Patriarch of Orthodox Church was chosen representative of Orthodox millet and accepted as an Ottoman pasha (officer). He had given a higher degree and right to attend Divan-ı Humayun (Imperial Council) in Ottoman hierarchy. Ottoman administration was responsible to provide safety for Patriarch and guards was assigned for this reason<sup>32</sup>.

Same rights and freedoms were given to non-Muslims which live in the other regions of empire by Sultan Fatih as non-Muslims in Istanbul. From this aspect, the edict is well-known that issued for Bosnian Christians including the rights of protection of life and property.

30 Inalcık, Halil (1998) “Ottoman Galata 1453-1553”, *Essays in Ottoman History*, 1. Edition, İstanbul, Eren, p.276.

31 Şeker, Nesim (2005) “Identity Formation and The Political Power In the Late Ottoman Empire and Early Turkish Republic”, *HAOL*, No. 8, p.60.

32 Eryılmaz, p.21.

## B. RIGHTS FOR ARMENIANS

Armenians that live in Istanbul were dealing with trade and recognized as millet after the conquest of Istanbul. They were given as same rights and freedoms as Orthodox church, but in Ottoman hierarchy they were in the second ranking after Orthodox. Armenian Patriarchate in Istanbul became center of religion and administration of Armenians. For this indulgent atmosphere, one hundred and fifty thousand Armenian people were living in Istanbul in 19th century<sup>33</sup>. Patriarch of Armenians had the right to attend Divan-ı Humayun as Patriarch of Orthodox Church.

## C. RIGHTS FOR THE JEWS

The religious representative for Jewish community is called Hakham Bashi (Chief Rabbi) in Ottoman Empire. The institution of the Hakham Bashi was established by Sultan Fatih, as part of his policy of governing his exceedingly diverse subjects according to their own laws and authorities like Orthodox and Armenians. European Jews under persecution had migrated to Ottoman Empire because of the autonomy that given to Jewish community. Human rights based Ottoman policies for non-Muslims made possible the significant economic and social improvement of the Jewish communities in the empire. These groups were preserved by Ottoman administration against popular hatred, and particularly from blood libels<sup>34</sup>. Jewish Hakham Bashi also had the right to attend Divan-ı Humayun like the other religious leaders.

## D. ALTERATION IN MILLET SYSTEM AND TANZIMAT

The Tanzimat (literally means reorganization) of the Ottoman State was a term of reformation activity which started in 1839 and ended with the First Constitution of Ottoman in 1876. The Imperial Edict of Gulhane (Tanzimat), stated that Sultan wished “to bring the benefits of a good administration to the provinces of the Ottoman Empire through new institutions”, and that these institutions would principally refer to; guarantees to provide the minorities

33 McCarthy, Justin (2001) “The Population of The Ottoman Armenians, The population of the Ottoman Armenians” *The Armenians in The Late Ottoman Period*, (ed. Türkkiye Ataöv), Ankara, TBMM Kültür Sanat ve Yayın Kurulu Başkanlığı, p.67.

34 Hacker, Joseph (1982) “Ottoman Policy Toward the Jews and Jewish Attitudes toward the Ottomans during the Fifteenth Century”, *Christians and Jews in the Ottoman Empire*, (ed:Benjamin Braude&Bernard Lewis, 1. Edition, New York, Holmes & Meier Publishers, p.117.

perfect safety for their lives, dignity, and property. The reforms reached highest level of privileges for minorities in 1876 with the enactment of new constitution limiting the authority of the Sultan<sup>35</sup>.

Between these thirty-seven years reform period, main Ottoman institutions were reorganized; some laws were codified; western type education, dress style, architecture and lifestyle were supported. This reorganization and increase of public institutions resulted in a big lack of qualified person and the number of bureaucrats excessively rose in the Ottoman Empire. By the Tanzimat period, Ottomans wanted to establish a centralized state in order to boost their direct control on citizens and to improve the legitimacy of Ottoman rule<sup>36</sup>.

A new court system was mounted to Ottoman legal system after Tanzimat called Nizamiye courts. Because of the French impression during this period, these courts were inspired by French legal system. Nizamiye courts were designed to solve criminal, civil and commercial disputes. According to Rubin, “the introduction of the new courts required a new division of labor in the judicial area and signified the end of the Islamic courts, which had been the fundamental institutions of the Ottoman judicial system for centuries”<sup>37</sup>.

## E. CONSTITUTION OF 1876 AND HUMAN RIGHTS

After a huge reform period, the first constitutional document of Ottoman Empire, Constitution of 1876 (Ottoman Basic Law of 1876-Kanun-u Esasi) was announced by an edict of Sultan Abdülhamid II. Constitutionality of this edict is questionable yet there is no social contract between citizens and Ottoman administration. However it is clear that, this document is a big step towards democratic constitutional state which limits the power of Sultan.<sup>38</sup>

The significance of Kanun-u Esasi in terms of legal pluralism is hidden through its articles. Basic human rights are regulated between articles 8 and 26. As mentioned above Ottoman administration regime is based on Millet

35 Cleveland, William L.&Bunton, Martin (2009) A History of The Modern Middle East, 4. Edition, Philadelphia, p.82.

36 Eryılmaz, p.57.

37 Rubin, Avi (2007) “Legal Borrowing and Its Impact on Ottoman Legal Culture in The Late Nineteenth Century”, Continuity and Change, Vol.22, p.279; Ekinci, Ekrem Buğra (2000) “Tanzimat Devri Osmanlı Mahkemeleri”, Yeni Türkiye, S.31, p.769.

38 Tanör, Bülent (2015) Osmanlı-Türk Anayasal Gelişmeleri (1789-1980), 27. Edition, Istanbul, Yapı Kredi Yayınları, p.111.

system and most of rights and freedoms of citizens and other millets were recognized formerly. But legal pluralism practice of Ottoman weakened with the articles 17 and 89 which are related to equality before the law and extraordinary courts.<sup>39</sup> Because by its very nature legal pluralism offers not equality but justice and principle of equality before law requires one legal and one court system. Additionally, the article that prohibits extraordinary courts also blocks the way to plural legal orders and quasi legal organizations.

From the human rights perspective, Ottoman constitution of 1876 contains many fundamental rights and freedoms. Constitutional citizenship was one of these rights. According to article 8, all subjects of Ottoman are Ottoman citizens, regardless of their ethnic, linguistic and religious belonging.<sup>40</sup> Personal liberty and security is recognized with articles 9 and 10 of the constitution while articles 11 and 12 regulated freedom of worship and press.<sup>41</sup> The other rights in this part constitution were; right to petition, freedom of teaching, taxing in proportion to financial power, immunity of residence, legal judicial process, right to vote and stand for election, right to legal remedies and principle of public hearing.<sup>42</sup>

Ottoman administration made several amendments to constitution of 1876 in 1908. Basic rights and freedoms in Ottoman Empire were guaranteed after these vital amendments. Also freedom of assembly and right to form association were added to constitution.<sup>43</sup> One can easily express that, basic rights and freedoms were protected by Ottoman constitution of 1876 after 1908 amendments comparing with other contemporary constitutions around world.

### III. MINORITY COURTS AND CHOOSING THE RIGHT RULE

The reflection of legal pluralism in Ottoman Empire was seen in minority (non-Muslim) religious courts, which is a great opportunity to reach fair judgment. This pluralistic frame in Ottoman was in weak sense. For being

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39 Tanör, p.122.

40 Konan, Belkis (2011) "İnsan Hakları ve Temel Özgürlükler Açısından Osmanlı Devletine Bakış", *Gazi Üniversitesi Hukuk Fakültesi Dergisi*, Vol.XV/4, p.264.

41 Konan, p.277.

42 Bozkurt, Gülnihal (1996) *Gayrimüslim Osmanlı Vatandaşlarının Hukuki Durumu*, 2. Edition, Ankara, Türk Tarih Kurumu Yayınları, p.18.

43 Mumcu, Ahmet&Küzeci, Elif (2011) *İnsan Hakları ve Kamu Özgürlükleri*, 5. Edition, Ankara, Turhan, p.174.

only recognized by the state administration leads weak legal pluralism. Also legal pluralism was justified as a method of governance on pragmatic Ottoman government.<sup>44</sup> This method also can be called simple legal pluralism because non-Muslims have a chance to choose their own religious courts or Islamic courts for their cases.<sup>45</sup> Despite this freedom, most of the non-Muslim community members were preferring Islamic courts and the reason of this choice is unclear. According to Schick, sharia law was the only main and officially recognized law in Ottoman empire. Non-Muslims were free to choose their religious courts, however they were not autonomous,<sup>46</sup> exclusively their own rules have to be applied if they choose their courts. Likewise, judgment with fairness was ordered by Quran; "...so if they come to you, [O Muhammad], judge between them or turn away from them. And if you turn away from them-never will they harm you at all. And if you judge, judge between them with justice. Indeed, Allah loves those who act justly"<sup>47</sup>. Islamic courts may enforce both religious laws of minorities and Islamic law. Under this status the judges in religious courts were like an arbitrator.<sup>48</sup>

It is hard to decide the law to apply when there is a conflict of laws between Muslims and non-Muslims. According to Hanafi Jurists, Shariah law is mandatory to be applied both Muslims and non-Muslims in fields of property law, contract law and commercial law. On the other hand there are two options for non-Muslims to prefer their own rules or Shariah rules for judgment in family law<sup>49</sup>.

The importance of choice of law is observed when parties of the case are Muslim and non-Muslim. There are four conjunction points that guide judges in Islamic law. First point is religion that most of scholars recommend choosing Islamic law for Muslims regardless where he or she resides. However, religion has importance for non-Muslims if the case is related with family law, their own rules of religion is applied at this time. Second point is nationality, such as Islamic law is completely applied in proceedings of ahl al-dhimma because of being subjects of Ottoman. Third conjunction base in conflict of

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44 Griffiths, p.5.

45 Ercan, p.247.

46 Schick, Irvin Cemil (1987) "Osmanlı İmparatorluğunda Yahudiler", Tarih ve Toplum, Vol. 43 cited in Kenanoğlu, p.55.

47 Quran; 5/42.

48 Kenanoğlu, p.397.

49 Cin-Akgündüz, p.324; Ercan, p.248.

law is the place of transaction or action, because according to some Islamic jurists, crimes which act in dar-al harb (house of war) subject to prosecute in dar-al Islam (house of peace). Fourth and the last point is place of property, for landed property which belongs to non-Muslim in dar-al harb is transferred to treasure of Islamic state after conquest<sup>50</sup>. Law of personality is correlated with family law, law of inheritance and law of individuals. Choosing the right rule and deciding with justice is important in dispute resolution between Muslims and non-Muslims.

### **A. CONTRACT OF MARRIAGE**

Marriage between a Muslim man and a non-Muslim woman who belongs to ahl-al kitab (both ahl-al dhimma and ahl al-musta'min) is permitted by Islamic law. However, it is not appropriate to Islamic law that a Muslim man can not marry with a woman who is non-Muslim and non-ahl al kitab. A baby who born from a marriage of Muslim man and non-Muslim woman, is identified as Muslim attached to father. On the other hand, a Muslim woman's marriage with a non-Muslim man absolutely forbidden by Shariah law.

Marriage between non-Muslims can be examined in three groups depending on their validity. In first category, there is no controversy in a marriage which is admissible for both Islamic and non-Muslim religious law. In second group, a valid marriage according to Islamic law is acceptable even if it is not valid for non-Muslim religious law. In third and more complicated group, there is two additional possibilities in a marriage that is valid only for non-Muslim religious law. In first possibility, marriage is valid unless couples do not make an application to Islamic court or they do not accept Islam as a religion. In second possibility, according to Ebu Hanifa, previous marriage is valid for Islamic law, if they become Muslim or make an application to Islamic court. On the contrary, the other jurists propose that married couples have to be separated and a new marriage have to be established in this last possibility<sup>51</sup>.

### **B. MAHR IN MARRIAGE**

Mahr is the amount of gift which to be paid by the groom to the bride at the time of marriage. There are two types of mahr and some of which may

50 Karaman, Hayrettin (2003) *Mukayeseli İslam Hukuku*, 3. Edition, İstanbul, İz, Vol.3, p.367-370.

51 Cin-Akgündüz, p.325.

be suspended by the agreement of spouses. According to Prophet Mohammad; “The mahr is for her to spend as she wishes. It can be cash, jewellery or any other valuable gift, even an iron ring can be mahr”<sup>52</sup>. Mahr does not have to be money however the amount of mahr often determined by gold or silver. This property belongs to the wife, so it is not a bride price, and according to Freeland “comparisons with western ideas of contractual consideration should be avoided”<sup>53</sup>.

Non-Muslims in Ottoman empire may determine an amount or valuable thing similar to mahr. There is no conflict between Muslim and non-Muslim laws if the determination is appropriate to Islamic law. However, even if mahr is a banned object like pork or wine and it is delivered to bride, it is accepted as a valid mahr but if it is not delivered yet, there is dissidence between Muslim jurists. Ebu Hanifa suggests that Islamic court has to enforce non-Muslim religious law to this case and accept the determination between couples, even though this kind of mahr is banned in Islamic law. The other Muslim jurists recommend that forbidden mahr has to be transformed to another equivalent object or amount<sup>54</sup>.

### C. END OF MARRIAGE

Ending a marriage has not perceived appropriate by Islamic community and the reasons for ending marriage act is limited. First type for ending marriage is initiating divorce procedure by man called talaq. The Muslim husband may launch the divorce process by pronouncing the words of talaq three times. The first two times the talaq is pronounced, it may be withdrawn. But the third time it is pronounced, the divorce is irrevocable. The other type of divorce is launched by woman and when a woman has initiated a divorce it is called khula. Khula is the right of a woman in Islam to seek a divorce or separation from her husband. A Muslim woman may consult to a muslim judge (qadi courts) or out of Islamic areas an Islamic community court, to confirm her divorce if the husband refuses<sup>55</sup>. This kind of divorce procedure has been applied by Islamic Sharia Council to Muslim community in Britain since 1982.<sup>56</sup>

52 Sahih Bukhari, Hadith 7.62.72, <[http://www.sahih-bukhari.com/Pages/Bukhari\\_7](http://www.sahih-bukhari.com/Pages/Bukhari_7)>, l.a.d. 3/25/2016.

53 Freeland, Richard (2006) “The Islamic Institution of Mahr and American Law”, *Gonzaga Journal of International Law*, Vol.4, p.2.

54 Cin-Akgündüz, p.326.

55 Karaman, Hayrettin (2006) *Hayatımızdaki İslam*, Vol.2, <<http://www.hayrettinkaraman.net/yazi/hayat2>>, l.a.d. 3/28/2016.

56 <[www.islamic-sharia.org](http://www.islamic-sharia.org)>, l.a.d. 4/2/2016.

Most of Islamic jurists argue that talaq is acceptable when initiated from both dhimmas and musta'mins. Conversion is another reason for ending a marriage in Judaism and Christianity, therefore couples have been judged according to their religious law in Islamic courts of Ottoman. There is no need to make a new contract of marriage if both husband and wife become Muslim. However, it depends on who changes religion if one of them switches to Islam. In first possibility, previous marriage continues if only husband becomes Muslim and wife belongs to ahl al-kitab. In second possibility, continuation of marriage depends on husband's choice if only wife becomes Muslim. In this situation, husband will be offered to accept Islam and previous marriage continues if he agrees this proposal or previous marriage annuls with judge's decision if he denies<sup>57</sup>.

#### **D. PERIOD OF WAITING (IDDAH), ALIMONY (NAFAQA) AND GUARDIANSHIP**

Iddah is the period of women has to observe after the death of her spouse or after a divorce, during which she may not marry another man. This period is referred in a verse; "And those who are taken in death among you and leave wives behind-they, [the wives, shall] wait four months and ten [days]. And when they have fulfilled their term, then there is no blame upon you for what they do with themselves in an acceptable manner"<sup>58</sup>. Non-Muslim woman who divorce from Muslim man, has to wait as Muslim women. However, she should be judged according to her religious rules (there is different waiting periods in Judaism and Christianity) if non-Muslim woman divorce from a Musta'min or Dhimma man<sup>59</sup>.

The paternity rules of non-Muslims had applied to both ahl-al Musta'min and Dhimma. They have the same guardianship rights as Muslims except two situations. In first situation, juvenile has to be separated from non-Muslim relative and placed next to Muslim relative if non-Muslim relatives suggest against Islam. In second, child has to be transferred next to Muslim relative after he or she reaches age of seven as well.

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57 Cin-Akgündüz, p.327.

58 Quran, 2; 234.

59 Cin-Akgündüz, p.328.



According to Muslim Jurists, there is no difference between Muslim and non-Muslims in dept of nafaqa to wife. On the other hand, the dept ends if non-Muslim wife does not belong to ahl al-kitab. The marriage has to be valid, if non-Muslim couples apply to Islamic court for decision of alimony. Most of the Muslim jurist also suggests that;<sup>60</sup> Muslim man or woman have to support their children, grandson, parents and grandparents (relative support) after end of marriage, even if these people are poor. There is no difference between Muslims and non-Muslim ahl al-kitab qualifying relative support, nevertheless except close relatives like parents, grandparents, children and grandson, Muslim man or woman do not have to pay nafaqa to other relatives like siblings, cousins, uncles and aunts if they are non-Muslim.

### E. TESTAMENT AND HERITAGE

Testaments of ahl al-dhimma which intended to worship or charity are valid even if they have written in favor of Muslims or non-Muslims. Testaments of ahl al-musta'min had same status as testaments of ahl al-dhimma, which have written in favor of their relatives who live in Islamic country.

Heritage between ahl al-dhimma is valid if they are members of same religion. Most of Muslim jurist notes that heritage also valid if people in ahl al-dhimma belongs different religion. On the other hand, heritage is possible between ahl al-dhimma and ahl-al musta'min according to some Muslim jurist except Hanafi. For belonging different religion, heritage is impossible between Muslims and non-Muslims<sup>61</sup>. Decisions of Islamic courts were guided from these principles above.

### CONCLUSION

The idea of legal pluralism is formed in multinational and multicultural societies. As an early sample of plural legal order, Ottoman millet system was an equilibration of rights and responsibilities for non-Muslims. The separation of Muslims and non-Muslims meant neither discrimination nor inequality. Ottoman administration was always fair-minded to minorities as seen in the right to be judged according to their religious laws. All non-Muslims have

60 Cin-Akgündüz, p.329.

61 Karaman (2003) p.404.

the freedom of conscience, opinion, expression and association, subject to the same limitations as are imposed by law on Muslims.

The Ottoman experience was a good model for multinational states that in force between 15th and 20th centuries. Ottoman subjects who belonged to millets were free to exercise their religion and follow their own traditions in their education, marriage, method of sharing inheritance and other areas of domestic life. To give freedom and chance to live together in peace is a smart way to gain loyalty of minorities to the state. Otherwise it should never be possible to control a huge land for a long time without oppression and persecution. This regime is considered to be derived from an extension of the Islamic notion of dhimma; classification of Muslims and non-Muslims is a result for this situation.

Some scholars in the opposing may argue that the non-Muslim communities had to accept a second class, inferior status in millet system. However, I insist that there is social stratification neither in law system nor in practice in Ottoman community. Non-Muslims have most of the basic rights like; right to life and personal security, they also can work in public offices and get equal salary as Muslims.

This paper concludes that, millet system and dhimma system was successfully applied to minority groups in Ottoman Empire. The control of system was in hands of Ottoman administration until Tanzimat reforms and stream of nationalism. As a simple kind of legal pluralism, millet system was approved for being alternative cure for multicultural and multinational states.

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