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TAʿZĪR PROVISIONS APPLIED TO MURDER AND THEFT CRIMES IN OTTOMAN CRIMINAL LAW DURING THE *TANZIMAT* PERIOD (Example of the Murder and Theft Book No. 471)

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Abstract

In Ottoman criminal law, intentional homicide and theft were classified under the category of "hudud" (fixed punishments), and their penalties were predetermined and unchangeable. On the other hand, ta'zir punishments may be applied in cases where the elements of the crime were not fully established to warrant hudud punishments or where the offense had no fixed penalty under the law. This study aims to examine the discretionary punishments (ta'zir) that were applied instead of the prescribed penalties (hudud and qisas) for crimes that have established rulings under the fundamental principles of Islamic criminal law as documented in the 'Katl ve Sirkat Defteri' (Murder and Theft Book). The research will explore how these punishments were implemented in practice, and under what conditions and circumstances discretionary punishments were applied for crimes with fixed penalties. The study will explore the procedures for bringing such cases to court, the investigative and decision-making stages, and whether the sentences maintained a balance between the crime and punishment. Additionally, it will seek to identify the factors that either mitigated or aggravated the severity of the imposed punishments. This article, enriched with documents from various classifications in the Ottoman archives, examines both the 1256 Penal Code and the scope of the 1267 reforms. It aims to analyze how the processes of change and adaptation in Ottoman criminal law during the Tanzimat era influenced the application of crime and punishment.

Keywords: Ottoman Law, Intentional Homicide, Theft, Hadd, Tazir

Öz

Tanzimat Dönemi Osmanlı Ceza Hukukunda Katil Ve Sirkat Suçlarına Uygulanan Tazir Hükümleri (471 numaralı Katil ve Sirkat Defteri Örneği)

Osmanlı ceza hukukunda kasten öldürme ve hırsızlık suçlarının cezası hadler kapsamında değerlendirilmiştir ve cezaları sabittir. Tazir cezaları ise, suçun unsurlarının tam oluşmadığı durumlarda had cezaları yerine uygulanabileceği gibi, cezası belirlenmemiş suçlar için de hükme

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konu olur. Bu çalışma İslam ceza hukukunun temel prensiplerine göre hükmü belli olan had ve kısas suçlarına verilen cezaların yerine uygulanan tazir hükümlerini "Katl ve Sirkat Defteri" üzerinden incelemeyi hedeflemektedir. Söz konusu cezaların uygulamaya nasıl yansıdığı, cezaları sabit suçlar için tazir cezasının hangi şart ve durumlarda uygulamaya konulduğu sorusuna cevap aranacaktır. Bu davaların mahkemeye taşınma, tahkikat ve karar alma süreçleri, verilen cezalarda suç-ceza dengesinin gözetilip gözetilmediği, cezayı hafifleten veya ağırlaştıran etkenlerin neler olduğu açığa çıkarılmaya çalışılacaktır. Osmanlı arşivindeki farklı tasniflerde yer alan belgelerle zenginleştirilecek makalede, 1256 tarihli ceza kanunnamesinin yanında 1267 tarihli yeni düzenlemenin uygulama alanlarına da yer verilmiştir. Tanzimat dönemi Osmanlı ceza hukukunun değişim ve adaptasyon süreçlerinin suç ve ceza uygulamalarında nasıl bir etki yarattığı analiz edilmeye çalışılmıştır.

Anahtar Kelimeler: Osmanlı Hukuku, Kasten Öldürme, Hırsızlık, Had, Tazir.

INTRODUCTION

The application of Ottoman criminal law is essentially based on Islamic criminal law. As it is commonly acknowledged, crimes in Islamic criminal law are examined in three categories: *ḥudūd*, *qıṣāṣ*, and *taʿzīr*. Crimes referred to as *ḥadd* punishments refer to the violations of public rights, while crimes categorized as *qıṣāṣ* mostly refer to violations of individual rights. *Taʿzīr* offenses, on the other hand, pertain to the crimes committed against both individuals and the public. In Ottoman criminal law, siyaset-i şeriyye punishments are classified as ta'zir under customary law to ensure that crimes are punished and social corruption is addressed[1]. In the kanunnames that contain the provisions of customary law, a more flexible framework was established for ta'zir punishments in accordance with the needs of the period[2]. Based on this, ta'zir can be defined as punitive sanctions imposed by the judge (kadi) for crimes whose punishments are not specified in the Quran and Sunnah.

In Ottoman criminal law, if there were uncertainties about the material elements of a crime, the hadd or qisas penalties could be replaced with a ta'zir punishment. In other words, if the conditions for implementing a hadd punishment were not met, a judge would impose a ta'zir punishment at their discretion. These penalties were categorized based on the nature of the crime and the benefits to be achieved. They were classified as principal (aslî), substitutional (bedelî), accessory (tâbî), and supplementary (tekmîlî). Principal punishments directly corresponded to the crime committed. When the main punishment could not be carried out, substitutional penalties were applied. Tâbî punishments' refer to additional penalties imposed for a crime without the need for further explanation, while 'tekmîlî punishments' are supplementary rulings that complement the main punishment[3].

During the period being studied, Ottoman legal practice frequently employed substitutional penalties such as rowing penalty (known as kürek), imprisonment, or exile when the primary punishment was not applicable. The most commonly preferred among these punishments was the sentence of rowing (kürek). However, in addition to this punishment, it is possible to see decisions such as exile and expulsion (tard), which isolate

[1] Apaydın, 2009, p. 299-304.
[2] Akgündüz, 1990, V. 5, p. 58; İnalcık, 1993, p. 337-338.
[3] Udeh, 1998, p. 633-635.

the individual from the public and restrict their freedom, as well as public humiliation punishments like exposure (teşhir) and reprimand (tenbih). The execution of discretionary punishments, including imprisonment, exile, flogging, execution, or shaving of the beard, was under the authority of the Grand Vizier, following the Sultan's approval. These powers were not solely exercised by the Sultan and the Grand Vizier; without a judicial decree ('i'lâm or hüccet') from the judge (kadi), no punishment was carried out[4]. Thus, the discretionary punishment was executed following a hierarchical process involving the Sultan, the Grand Vizier, and the judge. Factors such as whom the crime was committed against, the criminal's prior record, and the degree of fault in the crime influenced the severity of the punishment. This situation demonstrates that both the trial and sentencing, as well as the execution of the punishment, were carried out based on the principle of legality, rather than arbitrariness.

In Ottoman criminal law, ta'zir punishments were imposed for three main reasons. The first category included punishments for actions explicitly prohibited as haram (prohibited) under Islamic law. The second category covered actions that, while not directly haram, were prohibited due to their nature and penalized for public interest. Lastly, there were actions that were not forbidden by Islamic law but were subject to ta'zir penalties by legal statute[5]. In Ottoman practice, it was evident that, alongside the punishment of actions prohibited by Sharia, ta'zir punishments were also administered in line with public interest. Furthermore, actions such as resisting state officials or inciting the public against the state and its laws were also legally punishable by ta'zir.

The Ottoman Kanunnames (Legal Codes) contained general articles covering all subjects within the empire[6]. For instance, the Kanunnames from the reigns of Sultan Bayezid II, Sultan Selim I, and Sultan Suleiman the Magnificent included provisions regarding the amount of blood money (diyah) for cases of intentional homicide. Additionally, fines under the ta'zir category were set for breaches of public order[7]. The 1256 Penal Code demonstrated the variability of ta'zir punishments and allowed for additional penalties to be imposed when necessary[8]. The amounts specified in the law were generally written in the form of minimum and maximum limits, granting the judge (kadi) discretion based on the severity of the crime[9]. In practice, it is understood that aggravating or mitigating factors influenced the decision based on the offender's circumstances and the extent to which the crime threatened public order. For example, it is known that harsher ta'zir was given to repeat offenders and those with previous convictions compared to first-time offenders[10]. On the other hand, it has been observed

4 Cin and Akgündüz, 1990, p. 337.
5 Behnesi, 1988, p. 30-35; Udeh, 1976, p. 202-203; Yakut, 2006, p. 26-27.
6 İnalcık, 1993, p. 336.
7 Aydın, 2020, p. 102-103.
8 Cin and Akgündüz, 1990, p. 326.
9 Akgündüz, 1990, V. 1, p. 128; 349; V. 3, 88-89.
10 Tekin, 2020, p. 115.

that punishments referred to in the texts as 'severe ta'zir' (tazir-i şedîd) or 'heavy ta'zir' were mostly imposed on highway robbers (kuttâ-i tarik)[11].

It is understood that ta'zir fines were also determined based on the economic status of the victim. In fact, in a Kanunname from the reign of Sultan Mehmed the Conqueror, it is mentioned that "*If a cow is taken and slaughtered, it's (thief's hand) not to be cuff off. If he (the thief) is wealthy enough to afford more than one thousand akçe, the fine is one hundred akçe. If he is of average means, the fine is fifty akçe, and if the is poor, the fine is either forty or thirty akçe. If a horse is taken and slaughtered, his (the thief's) hand is to be cut off. If not, then the fine is two hundred akçe.*" This phrase explains the situation in detail[12].

The main source for this study is register number 471, titled "the Murder and Theft Book/29.04.1264," which is cataloged under the Ayniyat Registers in the Presidential Ottoman Archives. The Ayniyat Registers contain copies of memoranda sent from the Grand Vizier's office to various ministries, departments, and provinces.

They include numerous correspondences related to cases transferred to the Nizamiye Courts, covering the years 1812-1922[13]. Following the Tanzimat reforms, the 1849 Provincial Councils Regulation mandated that cases involving crimes such as murder, injury/assault, and theft, which required punishments like execution, rowing penalty, or imprisonment, be referred to the Meclis-i Vâlâ (the Supreme Council**)**. The final decisions, whether upheld or overturned, in these cases were recorded in the Ayniyat Registers[14]. In this way, the registers reveal how legal processes flow from the provinces to the center, both for society and its administrators. Through the specific register examined, it is also possible to observe whether the cases were private or public, the approaches of official authorities towards the cases, and, at times, differing opinions regarding the decision made[15]. For this reason, the Ayniyat Registers not only help to understand the dynamic and systematic structure of Ottoman law in terms of ta'zir authority but also shed light on the balance between crime and punishment in Ottoman law and the contribution of Penal Codes to this balance.

A total of 305 criminal records were identified in the register. In 2 of these cases, qisas (retaliation) was ruled, while ta'zir (discretionary punishment) was prescribed as the penalty in the remaining cases. It is understood that the majority of the ta'zir punishments given were rowing (kürek), shackling (prangabent), and exile (sürgün). Among the 305 records, in 20 out of 68 cases where rowing sentences were issued, the offenders were ordered to be sent into exile after completing their sentence. In practice, it has been observed that the minimum duration for rowing (kürek) was one month, the maximum was ten years. It is understood that shackling (pranga) as a type of ta'zir punishment was the basis of the ruling in 58 cases. In five of these cases, similar to the sentences of rowing

11 BOA, BEO, AYN. d, 471, 10; 28.
12 Akgündüz, 1990, V.1, p. 349-350; Şentop, 2004, p. 14.
13 Aktaş, 1991, p. 277-278; Prime Ministry Ottoman Archives Guide, 2010, p. 183; 197; Kütükoğlu, 2013, p. 233; 274.
14 Mutaf, 1996, p. 386-388.
15 BOA, BEO, AYN, d, 471, 35; 50.

punishments, it has been decided that the criminals will be exiled to their hometowns after serving their shackling sentences. The minimum term for shackling was three months, the maximum was five years. Furthermore, imprisonment as another form of ta'zir punishment was observed in 13 cases, with terms ranging from a minimum of 40 days to a maximum of 5 years. In 8 cases, the offenders were sentenced solely to exile, and in 3 cases, they were ordered to serve as laborers on ships. On the other hand, there are also various instances where ta'zir punishments in the form of cane punishment (değnek) were administered[16].

In the records examined, there are instances where multiple crimes were committed at the same time. This situation, known as "concurrence of crimes" in the literature[17], is most noticeable in cases of banditry under Ottoman law. Indeed, in cases of banditry, where at least two or three crimes, such as highway robbery, theft, abduction, murder, or injury, were committed together, it is observed that the punishment was applied in an aggravated form. According to the records, individuals who committed highway robbery were also charged with other crimes they had committed. A total of 18 such records have been found in this category.

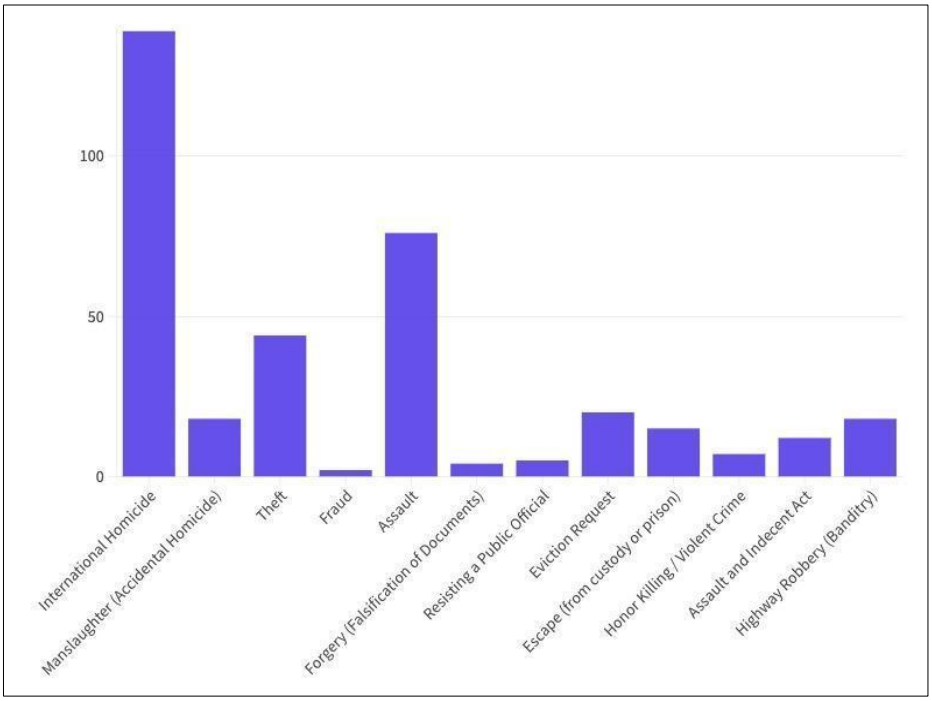

Chart: Types and rates of crimes included in the book

[16] BOA, BEO, AYN, d, 471, 71.
[17] Zöhrap, 1325, p. 205.

The 305 recorded crimes in the register show a variety of regions where the offenses took place. Although most of the cases lack location information, the text suggests that some of the relevant regions point to the Black Sea and Eastern Anatolia. Erzurum (15), Trabzon (10) and Kastamonu (8) provinces and Istanbul (16) in the Marmara Region have the highest crime rate. The following cities were Edirne (11), Balıkesir (11), İzmir (10), Sayda (8), Mersin (5), Konya (4), and Bilecik (4). In the Balkans, the province of Nis (10) has the highest crime rate. Following Niš are Silistra (6), Bosnia (5), Plovdiv (4), Ioannina (3), and Thessaloniki (2). Among the regions with the highest crime rates are Istanbul, Erzurum, Trabzon, Kastamonu, and Balıkesir, where murder and injury cases are particularly prominent[18].

As is well known, the reform movements in the Ottoman central and provincial administrations continued throughout the century with the advent of the Tanzimat. In this article, a specific period has been examined, and the functioning of the newly established system has been observed. In the following sections, the judicial processes for intentional and accidental homicide, injury, and theft during this period will be discussed based on registry records.

Intentional Homicide and Injury in Ottoman Society

Murder and Theft Book, which is the focus of this study, was written in 1264/1848 and covers the period between the 1256 Tanzimat Penal Code and the 1267 Kanun-ı Cedid (New Code). The rulings in the register refer to the 1256 law, but notably, this code does not include provisions regarding hudud crimes. The primary reason for this omission is that the law, especially in the articles introduced alongside the Tanzimat reforms, was crafted based on the principle of equality between Muslims and non-Muslims. This is reflected in the statement: *"...it is a natural matter that all individuals, whether Muslim or non-Muslim, are equal in the presence of the law and legal provisions..."*[19].

On the other hand, there is no reference to hudud punishments in the Kanunname, but it includes a specific provision regarding highway robbers (kuttâ-i tarik), one of the hudud offenses. According to the relevant article "*in some cases, if those blocking the way have dared to commit the disgrace of robbing people without causing loss of human life, they shall be sentenced to rowing for a period of seven years. If it is certain and confirmed that these offenders have caused loss of life, they shall be sentenced to rowing for ten years. However, if it is definitively proven that they have caused a person's death, the matter of retribution (qisas) shall be carried out*" as expressed in the relevant article[20]. The shackling punishment, which we consider within the scope of ta'zir penalties, found extensive application in the rulings recorded in the register. Indeed, it can be observed that this punishment was incorporated into the 1256 Penal Code through amendments and continued to be included in the articles of the 1267 law as well[21].

[18] BOA, BEO, AYN, d, 471, 3; 4; 15; 23; 37.
[19] Taş, ty, p. 157.
[20] Section Eleven, Articles 1-2-3, Ahmet Lütfi, 1304, p. 144.
[21] Şentop, 2004, p. 34; Taş, ty, p. 167-174; Akyıldız, 1993, p. 194.

In Ottoman law, the punishment for the crime of intentional homicide (katl) was established as qisas (retaliation). Examining the laws from the periods of Sultan Bayezid II and Sultan Suleiman the Magnificent, it is clear that, according to provisions such as "*and whoever kills a person shall be killed in place of the person they have killed*" the intentional homicide was to be subjected to qisas under appropriate conditions[22]. In cases where all the elements of the crime were not met, the offender was instead ordered to pay blood money. In fact, in the 12th, 13th, and 14th articles of the second chapter of Sultan Bayezid II's Umumî Osmanlı Kanunnâmesi (General Ottoman Law), it is specified that in certain cases, the punishment for this crime could be determined as a diyah rather than qisas. This provision "*And if two people grab and tear each other's collars, the judge shall punish them with discretionary punishment (tazir), there is no crime. ...And if a person dies and they do not perform retribution (qisas) in his place, if they have the means to pay more than one thousand akçe, the blood money is two hundred akçe; if they have the means up to six hundred akçe, it is one hundred akçe; if they are extremely poor, fifty akçe is taken*", is expressed in the form[23].

In the Ottoman Empire, the judicial process for homicide (katl) began with filing a complaint with the court, followed by the investigation of the incident and, if applicable, the hearing of witnesses. The crime revealed as a result of the court's investigation was adjudicated based on the provisions of Ottoman criminal law. If the victim's relatives requested the punishment of the offender, the perpetrator was subjected to qisas (retaliation)[24]. However, if they opted for forgiveness and reconciliation, the court would demand the offender to pay blood money. If the offender was unable to pay the amount, it was decided that they would either pay in installments or, in some cases, be sentenced to forced labor (often rowing on galleys) to cover the payment physically[25].

With the 1840 Penal Code, it became evident that the administrative reforms also had an impact on the legal system. Notably, the Muhassıllık Meclisi (Tax Collection Assembly), established in 1840, operated as a provincial branch of the Meclis-i Vâlâ (Supreme Council)[26]. All criminal cases heard in these assemblies were required to be sent to the Meclis-i Vâlâ for review. Once the report reached the council, it was deliberated, and a final verdict was issued. The approved ruling was then sent back to the local court or administrative authority for execution[27].

In cases where hudud and qisas crimes required the application of ta'zir, the state acted as the representative of the victim. Even if the perpetrator of intentional homicide was pardoned by the heirs, they were still subjected to ta'zir punishment in addition to paying the blood money. One of the significant changes in the Penal Codes between 1840 and 1851 was the state's ability to impose ta'zir punishments on offenders, even when the

[22] Akgündüz, 1990, V. 5, p. 58.
[23] Akgündüz, 1990, V.2, p. 41; V.1, p. 128, 349; V. 3, p. 88-89.
[24] BOA, İ.MSM, 2/34, 17.03.1844.
[25] BOA, BEO, AYN, d, 471, 3; 26; 28.
[26] Kenanoğlu, 2007, p. 185; Çadırcı, 2013, p. 212; İnalcık, 1964, p. 627.
[27] Karakoç, 2006, p. 323; Bingöl, 2004, p. 62-63.

case was dismissed due to pardon or payment of blood money[28]. Thus, ta'zir, which was applied during the Classical Ottoman Period in cases where qisas were converted into blood money, became formalized in the Penal Codes issued after the Tanzimat reforms[29].

When making the final decision regarding punishment within Ottoman law, not only were the elements of the crime, the deterrence of the sentence, and the benefits to be gained considered but also the needs in the military and economic fields were taken into account. For example, when the labor force voluntarily recruited for defense and the army needs proved insufficient, it was observed that convicts were used to fill this gap[30]. This observation is undoubtedly relevant considering the Ottoman Empire's increasing naval activities. As seen in the register, the most commonly preferred ta'zir punishment, the rowing sentence (kürek), appears as a military and economic necessity during the period in question[31]. Ultimately, the state fulfilled the public's expectation of justice while ensuring the continuity of military and economic operations by employing necessary labor in areas of public interest.

Intentional Homicide

In Islamic-Ottoman criminal law, intentional homicide is defined as deliberately and willfully ending a person's life, according to the Hanafi school, by using a sharp or piercing object. The punishment for this crime falls under qisas, where the perpetrator is sentenced to death. However, if the victim's relatives choose to forgive, the perpetrator is instead required to pay blood money. Regardless of reconciliation or forgiveness, the court retains the right to impose a ta'zir punishment on the offender. Additionally, if the murderer has a familial relationship with the victim, the penalty of disinheritance from the victim's estate is also discussed in the literature[32]. The absence of any legal incapacity in the offender is a prerequisite for punishment. For this reason, mental soundness and maturity (buluğ) are mentioned first. However, there are differing opinions in the literature regarding the criminal responsibility of a person who uses mind-altering substances. According to the Hanafi school, an individual is held responsible for crimes committed while intoxicated[33].

It is required that the state of intoxication of a person who commits a crime necessitating hudud or qisas punishment be thoroughly investigated during the judicial process. In Ottoman practice, there are examples where individuals who committed crimes such as murder, injury, or causing disturbances while intoxicated were given ta'zir punishments[34].

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[28] Üçok, et alii, 2016, p. 343.
[29] Aydın, 2020, p. 152.
[30] Göktepe, 2022, p. 179.
[31] Bostan, 1992, p. 218.
[32] Serahsi, ty, p. 59-68; Cin and Akgündüz, 1990, p. 326-327.
[33] Merginani, 1440, p. 3-58.
[34] BOA, BEO, AYN, d, 471, 43; 49; Tophane Court Register No. 2, C.43, 225/702; Deal, 2017, p. 70-71.

In the examples from a book number 471, it is observed that the crime of murder was mostly confirmed by the defendants confessing to the crime. Out of 139 murder cases, 110 were intentional homicides, 16 were accidental homicides, and four remain unsolved. Most homicides involved the use of sharp or piercing weapons such as knives or firearms, including rifles and pistols. Other methods of killing included injury, poisoning, and strangulation. Additionally, one case involved the murder of a child[35] and 9 cases were classified as domestic homicides.

In cases of intentional homicide, the majority of murders (83) occurred between Muslims. There were 19 recorded murder cases among non-Muslims. Out of these cases, a Muslim killed a non-Muslim in 17 instances, and a non-Muslim killed a Muslim in 11 instances. Additionally, there were 4 unsolved cases and 16 cases of joint murder, which are not included in the aforementioned figures.

Cases involving the crime of intentional homicide are those where evidence or the confession of the murderer confirms the crime. In these trials, witnesses were heard, the scene of the murder was investigated by the judge (kadı) or their deputies (naibs), and a verdict was reached based on the investigation. In cases where the defendant denied the act, no witnesses were available, and no other evidence could be obtained, it is observed that the defendant was offered to take an oath. If the defendant accepted the oath, they were released unless there was another element of doubt in the case[36]. However, if the defendant refused the oath, this raised suspicion that they had committed the act, and the trial was continued[37]. In some cases, it is understood that the file was forwarded to the higher court, Meclis-i Vâlâ, for further investigation[38].

In some cases, defendants were held in custody during their trials. For example, Esad, a resident of Damascus, claimed that he accidentally killed a man named Farisi during a fight. He stated that he did not intend to kill, but the man died as a result of the blows. The investigation found no sufficient evidence to prove that the killing was intentional. However, the defendant was considered suspicious and was ordered to remain in custody until "*zuhur-ı irade-i seniyyeye değin (the appearance of the Sultan's decree)*"[39]. In another case, on January 2, 1848, on the island of Rhodes, a Muslim man killed a non-Muslim citizen. Although the perpetrator claimed to have killed the victim unintentionally during a fight, the evidence in the case, along with the defendant's criminal record, resulted in their being held in custody throughout the trial process[40].

In homicide cases, the defendant's prior criminal record was taken into consideration during the trial. Descriptions such as *"Sabıkalu olup olmadığı (whether the person has a criminal record or not)"*, *"mazanne-i su-i olmadığı/su-i zan olunur makuleden olmadığı (whether the person is not considered among those who are suspected of ill intentions)"* or *"uygunsuz makulesinden olup olmadığı (whether the*

[35] BOA, BEO, AYN, d, 471, 48.
[36] BOA, BEO, AYN, d, 471, 37; 43.
[37] BOA, MVL, 1076/11, 20.05.1866
[38] BOA, BEO, AYN, d, 471, 44.
[39] BOA, BEO, AYN. d., 471, 6;33.
[40] BOA, BEO, AYN, d, 471, 16.

person is not part of an inappropriate group)" were used to evaluate the individual[41]. Additionally, the punishment was increased when the defendant had committed multiple crimes. For example, under Ottoman law, when both murder and robbery were committed together, aggravated ta'zir punishments were applied. In a case from the Kayseri region, individuals who committed both murder and theft, causing public disturbance through banditry, were initially sentenced to five years of rowing penalty. Upon referral to the Meclis-i Vâlâ, the council increased the sentence by two years, resulting in a seven-year punishment[42].

In most cases of homicide, the punishment for the offender was reduced from qisas (retaliation) to blood money due to reasons such as a pardon or insufficient evidence and witnesses. Cases lacking evidence were often referred to the Meclis-i Vâlâ for further investigation. As per the Penal Code, the final approval for verdicts involving intentional homicide and theft was provided by the council[43]. The records also indicate that in cases where the offender faced economic difficulties in paying the diyah, the court allowed the payment to be made in installments[44]. Also, *"...since the murder perpetrator of the murder is unable to pay the required blood money, in order not to deprive the minor heirs of the blood money, the perpetrator shall be employed for six years as a rower, with the wages earned during this period being allocated towards the settlement of the blood above money"* it is clear from the record that offenders who had difficulty paying the diyah were required to work as paid laborers on galleys, with the corresponding amount being deducted from their earnings[45]. On the other hand, even if the case resulted in the payment of blood money (diyah), the right to impose a ta'zir penalty was still reserved. In the 139 homicide cases examined, most of the defendants were sentenced to ta'zir. In 68 of these cases, the punishment was determined to be forced labor on galleys. Even if a settlement is reached between the convicted individual and the heirs, it is understood that the defendant was sentenced to rowing (kürek) or another ta'zir punishment in addition to the payment of blood money (diyah)[46].

In Ottoman criminal law, for offenses classified under hudud, such as highway robbery, sexual assault, and robbery, if the victim dies during the commission of these crimes, the perpetrator is sentenced to qisas (retaliation). In cases involving group crimes, determining who committed which crime is crucial for the accuracy of the trial. If witnesses are available, their testimonies are heard; if not, the observations of the local population are recorded in court. An example of this can be found in an incident in the Vize district, where individuals named Salim, Hüseyin, and Mehmet raided a Muslim village and assaulted and injured a couple, Yorgi and Anastasia, who were dhimmis (non-Muslim subjects). During the raid, they also caused the death of another dhimmi citizen on the road. Due to the victims being dhimmis, the Greek Patriarch was involved in the

[41] BOA, BEO, AYN, d, 471, 16;6.
[42] BOA, BEO, AYN, d, 471, 35.
[43] BOA, BEO, AYN, d, 471, 2;18;24;25;40;47.
[44] BOA, BEO, AYN, d, 471, 12.
[45] BOA, BEO, AYN, d, 471, 28.
[46] BOA, BEO, AYN, d, 471, 4; 39.

case. The defendants denied the accusations, and there was insufficient evidence against them, so the court consulted the local residents for testimony. The villagers provided a favorable testimony for the accused, which was then sent to the Meclis-i Vâlâ for review. However, the Meclis-i Vâlâ requested a thorough reexamination of the case and urged a swift resolution[47]. The follow-up of this document was noted in the Meclis-i Vâlâ registers, but no further detailed information was found.

In Ottoman society, non-Muslims were considered members of a community (millet) under the responsibility of their religious leader. Legally, they sought justice within the framework set by Islamic law[48]. For instance, kocabaşı's (community leaders defending non-Muslim rights) had the authority to appeal penalties in court. In one case noted in the register, a kocabaşı requested a retrial, claiming that several non-Muslims involved in an intentional homicide had been coerced into giving their statements[49]. There are also records documenting the murder of non-Muslims. In 1845, in a village within the jurisdiction of Bigadiç, a Christian was murdered, and it was found that the perpetrators were two individuals from the same village, named Musa and Hasan. After confessing to the crime, they were ordered to pay a diyah of six thousand kuruş. If unable to pay, they were sentenced to labor on galleys with their earnings used to cover the payment[50]. The defendant's status as Muslim or non-Muslim did not result in any differences in the ta'zir punishments imposed. This aligns with the fatwa of Ebussuud Efendi, which states: "*is everyone, whether Muslim or dhimmi, equal regarding discretionary punishment? The answer: Whether free or slave, whether they are Muslim or not, everyone is equal in terms of discretionary punishment.*"[51].

In Ottoman society, periods of social unrest and rebellion were often accompanied by an increase in crime rates. The 19th-century register frequently documents incidents of banditry[52]. Among hudud crimes, the most severe punishment was undoubtedly for highway robbery and banditry. However, in the records examined, no rulings were found indicating the application of hudud punishment for banditry. This crime, referred to as *'kuttâ-i tarik' (highway robbery),* was mostly punished with aggravated ta'zir penalties. As is well known, banditry typically involves multiple illegal acts, and according to the 1840 Penal **C**ode, when this crime is combined with other offenses, the penalties are increased. The relevant article: "*those who are highwaymen, if they have not committed homicide but have dared to engage in the disgrace of robbing people, shall be sentenced to rowing for a period of seven years. And if it is conclusively proven that these same individuals have caused a person's death, they shall be executed in accordance with the requirements of the law…"*[53]. Crimes such as robbery, injury, and sexual assault were the most common offenses. For example, in a case from Izmir, it was found that a group of

[47] BOA, BEO, AYN, d, 471, 14.
[48] Kenanoğlu, 2004, p. 48-58.
[49] BOA, BEO, AYN, d, 471, 72-73.
[50] BOA, BEO, AYN, d, 471, 17; 4; 26; 28; 41; 42; 45; 47.
[51] Demirtaş, 2012, p. 601.
[52] BOA, BEO, AYN, d, 471, 6; 11; 18; 19.
[53] Ahmet Lütfi, 1304, p. 144; Taş, ty, p. 169.

eight non-Muslims had committed home invasion, murder, and robbery. After the trial, those involved in the murder were identified and sentenced to qisas (retaliation). However, if the victim's relatives chose to forgive, the punishment would be reduced to blood money, and the perpetrators would be sentenced to five years of forced labor on galleys[54]. In similar cases of banditry, individuals with a criminal record were noted to receive longer terms of forced labor[55].

In most of the records in the register, cases of intentional homicide or injury ended with the victim's heirs pardoning the killer, leading the authorities to impose a ta'zir punishment instead[56]. In cases where the material element of the crime is not fully realized, the hudud punishment is waived, and ta'zir and blood money (diyah) are imposed[57]. However, in two rare instances, qisas (retaliation) was carried out. In one of these cases, in a district under the İzmir Sanjak, a non-Muslim killed another non-Muslim. Although there are limited details about the nature of the murder, the perpetrator was found guilty, and the qisas sentence was approved by the irade-i seniyye (royal decree) and subsequently executed[58]. The second case involving the execution of a qisas sentence occurred in the district of Çermik, where a local official named Ejder was held responsible for the deaths of five people. After the trial, the district official was executed through qisas at the scene of the crime. It was also requested that anyone who might have assisted him be identified, considering that he could not have committed the murders alone. As a result, nine individuals were arrested for aiding and abetting. Three were sentenced to six years' rowing and the remaining seven to five years' rowing penalty[59].

As is well known, in cases of intentional homicide, the execution of the qisas sentence, as ruled by the court, takes place only after the approval of the Sultan. This command is expressed in the relevant record as follows: "*…without the imperial decree that is issued with a tugra by the will of the sublime sovereign, expressly upon request, no individual shall be subjected to retribution or execution, as required by the provisions of the imperial penal code…"* [60]. In a homicide case dated January 25, 1848, the court ruled for a qisas sentence, which was approved by the Sultan. However, during the trial, the victim's relatives, who had initially sought qisas for the offender, withdrew their request after the Sultan's approval. As a result, the sentence was converted to blood money[61].

Accidental Homicide and Injury

Accidental homicide, known as "hatâen öldürme," occurs when a person unintentionally causes someone's death. This differs from intentional homicide because the death is not the result of deliberate intent, but rather a mistake. For example, accidental

[54] BOA, BEO, AYN, d, 471, 6-7.
[55] BOA, BEO, AYN, d, 471, 10.
[56] BOA, BEO, AYN, d, 471, 13; 23; 25; 28; 36; 37; 41 et al.
[57] Heyd, 1973, p. 67; Akgündüz, 1990, V. 9/I, p. 497.
[58] BOA, BEO, AYN, d, 471, 63.
[59] BOA, BEO, AYN, d, 471, 72.
[60] BOA, BEO, AYN, d, 471, 29.
[61] BOA, BEO, AYN, d, 471, 4; 28.

homicide could happen when someone mistakenly shoots and kills a person while hunting, thinking they were targeting an animal. Another scenario is when someone unintentionally kills another person, believing them to be an enemy soldier in battle[62]. In cases of hatâen öldürme, the typical penalty is the payment of blood money, which is paid by the offender's akile (the collective responsibility group, usually family or tribe)[63]. However, in some Islamic schools of thought, due to the religious and spiritual responsibility of this act, it is also required that the offender pays kefaret (atonement) in addition to the blood money[64].

The definition of hatâen öldürme (accidental homicide) is very important because whether the act was committed intentionally or due to an accident/mistake plays a crucial role in determining the type of punishment. Local courts placed emphasis on uncovering every detail that would leave no room for doubt in cases of accidental homicide. Evidence, witness testimony, and, if necessary, the criminal record of the suspect were decisive factors in this determination[65]. In the reviewed records, it is observed that blood money was typically imposed in cases of accidental homicide. The law regulating this offense was included in the 1851 Penal Code[66].

In Islamic law, it is generally stated that in cases of accidental homicide (hatâen öldürme), the blood money should be paid by the offender's extended family or tribe (akile). However, in Ottoman practice, it is notable that the blood money was often imposed on the offender rather than the extended family or tribe. Examples of this can be found in the records under review. Furthermore, in the fatwas of Ebussuud Efendi, it is stated that neither qisas (retaliation) nor blood money can be applied in cases of accidental homicide[67]. Instead, the perpetrator would be subject to ta'zir, as determined by the judge. In the 1858 Penal Code, if accidental homicide was committed in a manner that disturbed public order, the punishment was set as imprisonment for a period ranging from 6 months to 2 years[68].

In Islamic criminal law, severe penalties are imposed for acts of injury resulting in death. In cases where the victim dies from injuries, both an aggravated blood money and a ta'zir punishment for disturbing public order are imposed[69]. In Ottoman criminal law, for non-fatal injuries or cases of serious injury, the primary punishment was typically blood money. In addition to the blood money penalty[70], the offender was required to cover the victim's medical expenses. For instance, in a case from January 12, 1848, in Trabzon, a man named Ali intentionally shot and injured another man named Ahmed with a rifle. During the court proceedings, Ali was ordered to pay 500 kuruş to cover Ahmed's medical expenses. It was also ruled that if Ahmed's condition worsened or he died as a result of

62 Aydın, 2017, p. 194.
63 Cin and Akyılmaz, 2003, p. 312; Artuk, et alii 2007, p. 75.
64 Udeh, 1998, p. 253.
65 Taş, ty, p. 169.
66 Ahmet Lütfi, 1304, p. 157.
67 Düzdağ, 1983, p. 152.
68 Akgündüz, 2017, p. 216.
69 Udeh, 1998, p. 242-245.
70 Akgündüz, 1990, V. 9/I, p. 497.

the injuries, the case would be revisited at the Fetvahane (the office for issuing Islamic legal opinions). Given the circumstances, Ali was sentenced to six months of shackling[71]. In some rulings, the offender was also exiled following the ta'zir punishment[72].

The penalties for habitual offenders of injury were significantly increased. During the reign of Sultan Suleiman the Magnificent, a political treatise stated, "*if it is habitual for the person who slashes and stabs others, their hand shall be cut off*" equating the punishment for habitual theft with that for habitual injury[73]. An amendment to the 1840 Penal Code specified that a person who injures someone with a weapon should be imprisoned for a period ranging from fifteen days to three months, depending on the severity of the crime. Furthermore, the offender could receive between three and seventy-nine cane punishments based on the seriousness of the offense[74].

In the examples from the book registered under number 471, out of a total of 76 assault and injury cases, 58 resulted in death. Additionally, 18 of the injury incidents were recorded as having been committed accidentally. It was found that most of the accidental crimes occurred due to the unintentional discharge of a firearm[75]. As in all criminal cases, the investigation process for injury cases emphasized the importance of the defendant's criminal record[76]. In addition to the criminal record, the testimony of trustworthy individuals who could vouch for the suspect or positive statements from the community where the suspect resided were also critical in determining the verdict. For example, in the Karacık district of Edirne, a man named İbrahim was shot in the chest while walking, hit by a bullet discharged a man called İsmail's pistol. İbrahim died as a result, and the case was brought to court. The suspect claimed that the death was accidental. Due to insufficient evidence to prove the killing was intentional, along with the lack of a criminal record or any personal enmity between the parties, further investigation into the suspect's background was requested. It has been emphasized that the punishment must be imposed in accordance with the law following the necessary investigation[77].

In cases of accidental homicide, it is important to conduct a fair trial to ensure the proper determination of punishment. During the trial, witness statements, the defendant's criminal record, and the suspect's behavior or contradictory statements in court play a crucial role in the verdict. For example, in a village in the Radovişte district of the Köstendil sanjak, it was alleged that a child named Ali was killed by Hüseyin. The defendant claimed that the axe he was holding slipped from his hand and accidentally struck the child. In this case, where the evidence was insufficient, the defendant's eagerness to settle with the victim's heirs and his willingness to pay blood money was

[71] BOA, BEO, AYN, d, 471, 19.
[72] BOA, BEO, AYN, d, 471, 9.
[73] Akgündüz, 1990, V. 5, p. 58.
[74] Taş, ty, p. 169.
[75] BOA, BEO, AYN, d, 471, 4; 40.
[76] Akgündüz, V. 9/I, p. 497; BOA, BEO, AYN, d, 471, 23; 30; 39; 44; 45; 50.
[77] BOA, BEO, AYN, d, 471, 38.

viewed as a suspicious factor by the court. Based on this suspicion, the court decided to continue the defendant's detention, citing his behavior and actions as justification[78].

In cases of accidental death and injury, a thorough investigation was conducted to determine how they occurred. The injured person's condition, recovery process, and potential for fatality were carefully documented in court proceedings. Offenders were responsible for covering the victim's medical expenses. If the injury resulted in death, the case was treated as a homicide, and blood money was imposed.

Domestic Homicide Cases and Victim Women

During the Tanzimat-era Ottoman Empire, female offenders were usually given ta'zir punishments instead of hudud or qisas. Records from this time show that these punishments often involved exile and imprisonment. For instance, the 1851 Penal Code stipulated that women convicted of intentional homicide were sentenced to 5 to 15 years in prison, while those guilty of accidental homicide received 2 to 5 years. Women involved in a homicide were sentenced to 5 to 7 years of imprisonment. Women who were found to have participated in a homicide were sentenced to 5 to 7 years in prison[79]. Similar judgments can be observed in the fatwas of the period, such as the following: "*if Hind adds poison to the food intended for Zeynep and subsequently, if Zeynep unknowingly eats that food with her own hand and dies as a result, what is required of Hind? The answer: Severe disciplinary punishment and prolonged imprisonment"*[80]. Women who were sentenced to prison were held in jail specifically for females. The decision to imprison women instead of imposing hudud or qisas punishments for their crimes was influenced by various factors, such as pregnancy, postpartum recovery, or the need to care for an infant[81].

In the records from a book number 471, there are 19 cases involving female victims and 1 case involving a female perpetrator. Out of the cases with female victims, 7 were related to family incidents such as domestic violence or honor killings, while the remaining 12 were murders resulting from assault and rape. One of these cases was classified as accidental homicide. Six of the women killed within the family were murdered by their husbands or brothers due to honor-based reasons. The remaining murder, although the motive was not explicitly mentioned, was committed by the daughter-in-law of the household.

The records show a significant case in Kastamonu on April 2, 1848, where a woman poisoned and killed her husband and mother-in-law. In her defense, the defendant claimed that a man named Mahmut incited her to commit the murders, but further investigation couldn't prove this during the trial. The defendant, Emine, confessed, and she was sentenced to 5 years in a women's prison[82]. Apart from this case, there is another document from the same period in the Meclis-i Vâlâ archive, which describes a case where a woman accidentally killed a man who had entered her home with the intent to

[78] BOA, BEO, AYN, d, 471, 13; 29.
[79] Gökcen, 1987, p. 157-158; Akgündüz, 1986, p. 831.
[80] Demirtaş, 2012, p. 460.
[81] Osmanağaoğlu and Karahasanoğlu, 2016, p. 688.
[82] BOA, BEO, AYN, d, 471, 68; 73-74.

assault her. The court ruled that she must pay blood money for the accidental homicide[83]. In other records, Havva Hatun, known for engaging in banditry with her companions, repeatedly committed crimes despite receiving multiple warnings and punishments. Her persistent criminal behavior led to her being sentenced to death. This case, which occurred in the 18th century, resulted in the execution of the female bandit [84].

In cases where women were the victims, the crimes primarily involved rape and honor killings[85]. In instances where women were murdered as a result of rape, the perpetrators were generally punished with ta'zir. In one of these cases, the offender was sentenced to one year of shackling, which was one of the longer sentences of this type recorded in the examined register[86].

In Ottoman law, the proof of adultery (zina) was bound by very strict conditions. Four reliable male witnesses, who are of sound mind, mature, and without any legal incapacities, had to testify in front of a judge that they had witnessed the act with their own eyes. Additionally, these witnesses had to maintain their testimony until the day of execution and not retract their statements. Otherwise, the hudud punishment is nullified. The stringent conditions required to establish the crime make it practically difficult to implement. Consequently, the punishment of adultery has been very rarely enforced throughout Islamic and Ottoman history. In cases where hudud cannot be applied, "*if someone commits adultery and it is proven according to the law, and if the adulterer is married and wealthy, capable of affording one thousand akçe or more, then in the absence of [governmental] intervention, a fine of four hundred akçe is imposed. If the person is of average means, a fine of two hundred akçe is imposed. For those who are very poor, a fine of forty akçe is imposed. If the person is extremely poor, a fine of thirty akçe is imposed*" in accordance with the relevant provision, fines were imposed based on the offender's financial status[87]. In Ottoman practice, when allegations of adultery could not be proven, the crime of act of rape (fi'l-i şen'i) was reclassified from the hudud category and addressed under ta'zir punishments[88]. Notably, in the Hanafi school, records indicate that monetary fines were often the preferred punishment for offenses categorized under adultery[89].

In the Ottoman court process for adultery, it was crucial for witnesses to support their claims when a case was brought forward. If a man or woman was accused or complained of adultery in court but the accuser failed to provide sufficient witness testimony, the accused would be given the opportunity to swear an oath denying the act. If the accused took this oath and the accuser was unable to prove their claim, the accuser would be punished for slander. Under Ottoman criminal law, the punishment for slander

[83] BOA, A. MKT. MVL, 27/18, 01.05.1850.
[84] Açık, 2015, p. 79; Su, 1937, p. 107-109.
[85] BOA, BEO, AYN, d, 471, 8; 9; 43; 48; 49.
[86] BOA, BEO, AYN, d, 471, 49.
[87] Akgündüz, 1990, V. 3, p. 88-89.
[88] Tuğ, 2023, p. 202-203; Semerdjian, 2008, p. 94-99.
[89] Akgündüz, 1990, V. 11, p. 23; Heyd, 1973, p. 95-100.

was eighty lashes[90]. For instance, in a case recorded in the Üsküdar court register, a suspect accused of rape was offered the oath but, upon refusing to swear, was sentenced to a ta'zir punishment[91]. In contrast, there is another case where the suspect swore an oath denying the alleged crime and was acquitted[92]. On the other hand, in an incident that took place in Üsküdar, the local residents reported a man named Seyyid Hacı Bey to the court on the grounds of inappropriate behavior. Following the accusations, the defendant was found guilty, and it was ordered that he be exiled from the Üsküdar region[93]. Additionally, there are instances where cases were dismissed due to insufficient evidence and the absence of witnesses[94].

In Islamic law, the death penalty by stoning (recm) for a married person committing adultery has very few examples in Ottoman practice. Historical records indicate that in 1680, a woman caught for adultery was stoned to death in Sultanahmet Square. In the same incident, the man involved was executed by beheading[95]. Additionally, there are cases in Ottoman history where the stoned sentence was issued but not carried out[96]. Moreover, in the Kanunname of Sultan Suleiman's Era *"Whoever commits adultery, if it is proven according to Islamic law and customary practices, if the person is unmarried, they shall be fined twelve gold coins; if married, and stoning is not applicable, they shall be fined fifteen gold coins."* it is stated that if stoned is not carried out, a fine would be imposed instead[97].

The historical records reveal cases of women being killed, some of which occurred within the family. In one instance, a woman named Emine Hatun was intentionally killed by her brother, Veliyüddin, in Baghdad. Veliyüddin admitted to killing Emine due to rumors of her having an illicit relationship with a man named Ahmet. Although the accusation of adultery was not proven against the victim, Veliyüddin confessed to intentional murder and was sentenced to pay blood money and serve five years of forced labor as punishment. No further prosecution was pursued against Ahmet[98].

Some of the cases involving the killing of women occurred as a result of assault. In another case from the district of Edremit, a man named Yunus beat his wife to death with firewood. Upon a complaint filed by the victim's children, Yunus confessed to the assault, and a verdict was reached. The court sentenced the defendant to pay blood money and serve five years of forced labor on galleys[99]. The exact amount of blood money is not specified in these two cases, but another record from the same period mentions that in the

[90] Avcı, 2014, p. 271-272; Imber, 1983, p. 65.
[91] Üsküdar Court Registry No.2, 141/211.
[92] Üsküdar Court Registry No.1, 410/760.
[93] Üsküdar Court Registry No. 531, 917/1566.
[94] İstanbul Court Registry No.172, 217/170.
[95] Fındıklılı Mehmet Ağa, 1928, p. 731-732.
[96] Menekşe, 2003, p. 14-17.
[97] Akgündüz, 1990, V. 6, p. 227.
[98] BOA, BEO, AYN, d, 471, 42.
[99] BOA, BEO, AYN, d, 471, 13;15;4.

case of Ünzile Hanım, who was killed as a result of assault, the blood money amount was set at five thousand dirhams[100].

Some of the rape cases involving women were treated under the category of *"kız kaçırma (abduction)"* For instance, in an incident that took place in Konya, a local villager named İsmail abducted Fatma, also from the same village, and admitted in court to having *"bekrini izale ettiği"* in court, which means depriving of her virginity. To properly investigate the matter, the governor of Konya was requested to send the suspect to Dersaâdet (Istanbul) for further examination. During the trial at the Meclis-i Vâlâ, İsmail changed his statement, confessing to the abduction but denying the act of rape, claiming instead that he intended to marry the victim. The court ruled that the crime of "abduction" had been committed and sentenced İsmail to one year of shackling[101].

According to the records, crimes of assault and rape committed against women were adjudicated under ta'zir punishments. Similarly, cases of intentional homicide were resolved with a combination of blood money and ta'zir penalties. This reflects the legal approach of the time, where punishments were tailored to the specific circumstances of each case, with ta'zir allowing for discretionary punishments when hudud or qisas could not be applied.

Thıeves and Theft Cases in Ottoman Society

The term "sirkat" in Arabic and archival documents refers to theft, which is defined as the act of secretly taking property belonging to another person from a protected place without the owner's consent or knowledge[102]. When all elements of the theft crime are present, the punishment is classified under hudud. However, any deficiency in the elements of the crime, or any incapacity of the perpetrator, can reduce the punishment. For hudud punishment to be applied, the perpetrator must be mature, act voluntarily, and the stolen property must belong to someone else and hold a certain value. Additionally, the property must be taken secretly from a protected place. Although theft is a crime against public rights, its prosecution depends on the victim's complaint. In addition to the requirement of filing a complaint, it is also stated that, for the implementation of a hudud punishment, the identity of the property owner must be confirmed, and the victim must not disappear before the execution of the verdict[103]. In Islamic law, the punishment prescribed for this crime is the amputation of the right hand at the wrist[104]. The Hanafi school of thought dictates that for a first-time offender, the right hand should be amputated. If the crime is committed a second time, the left foot is to be amputated, and if the offense is repeated more than twice, the perpetrator is to be imprisoned until they

[100] BOA, BEO, AYN, d, 471, 49.
[101] BOA, BEO, AYN, d, 471, s. 9; BOA, A. MKT. MVL., 20/16, 08.10.1849.
[102] Bardakoğlu, 1998, p. 385.
[103] Bilmen, 1968, p.281, 297.
[104] Surah Al-Ma'idah, 38.

repent[105]. In cases of repeated theft, amputation of a hand and foot is enforced, and ultimately, the individual may be sentenced to death[106].

In traditional fatwas, it was stated that the punishment for stealing property that has reached the nisab (minimum value threshold) and is located in a secure place is hand amputation. Ebussuud Efendi emphasized that for first-time offenders, it is not permissible to amputate both the hand and foot simultaneously; only the hand should be cut off[107]. Prominent Ottoman Sheikh al-Islams like Feyzullah Efendi and Yahya Efendi issued similar fatwas[108]. If the stolen property did not meet the nisab value, it was deemed that the offender should receive aggravated ta'zir punishment. In cases where the thief was also part of a highway robbery (kuttâ-i tarik) and had committed intentional murder or assault, the death penalty was prescribed[109]. While these fatwas were not legally binding for the judges of the time, they were significant in reflecting the principles of the Hanafi school of thought. Despite these fatwas, the punishment of hand amputation was rarely enforced in the Ottoman Empire[110].

In Ottoman Kanunnames hand amputation was prescribed as the punishment for theft when the value of the stolen property reached the nisab threshold[111]. However, aside from the hand-cutting punishment, it is evident that fines were also a significant alternative penalty. For instance, in the Kanunname's from the reign of Sultan Mehmed the Conqueror, it is stated: "*if cattle are stolen, the (thief's) hand is not to be cut off and if the perpetrator is wealthy enough to afford more than one thousand akçe, the fine is one hundred akçe. If the person is of average means, the fine is fifty akçe. If the person is poor, the fine is either forty or thirty akçe. If a horse is stolen, the (thief's) hand is to be cut off; if not, a fine of two hundred akçe is imposed.*" This shows that the economic status of the offender was taken into consideration when determining fines in lieu of physical punishment[112]. In the Kanunname from the reign of Yavuz Sultan Selim, it is stated: "*if someone steals a beehive, sheep, or lamb and it does not reach the nisab (minimum amount under Islamic law), they are still punished with discretionary punishment and fined one akçe. If someone steals a horse, mule, or donkey, their hand is cut off, or a fine of two hundred akçe is imposed.*" This emphasizes that even if the stolen property does not meet the nisab value, both ta'zir punishment and a monetary fine are to be imposed[113]. Monetary fines for theft required the approval of the judge, and it was prohibited to collect any fines from the thief without consulting the judge[114]. During the reign of Bayezid II, it was ordered that a convict be hanged in cases of repeated theft[115].

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105 Karaman, 2001, p. 179-182.
106 Ebu Zehra, ty, p. 263.
107 Düzdağ, 1983, p. 150-151; 238.
108 Kaya, 2009, p. 119.
109 Demirtaş, 2012, p. 665, 667.
110 Menekşe, 1998, p. 114.
111 Akgündüz, 1990, V. 3, p. 92; V. 6/2, p. 468.
112 Akgündüz, 1990, V. 1, p. 349-350; V. 6/2, p. 240, 468.
113 Akgündüz, 1990, V. 3, p. 92.
114 Akgündüz, 1990, V. 2, p. 75.
115 Akgündüz, 1990, V. 2, p. 43.

In the register from a book number 471, containing 305 crime records, 44 cases were identified as theft. In addition to the theft cases, 2 instances of fraud were also recorded. Furthermore, 18 instances of the crime of kuttâ-i tarik (banditry), which involves harming both life and property by waylaying, were mentioned. Among the theft cases, 19 were committed by Muslims, while 25 were committed by non-Muslims. In most of the 44 theft cases recorded in the register, hudud punishment was not applied. Instead, the crimes were treated under ta'zir, with sentences of shackling being imposed.

In the theft records, it is noted that the court required the offender to compensate for the stolen goods. Even when the stolen goods were compensated in full, the offender was still subjected to a ta'zir punishment by the court. For example, in the district of Çatalca, a man named Kıpti Ali confessed in court to stealing wheat and a cart from his neighbor, Asonikov (?). Ali declared that he would compensate for the stolen goods by providing Ibrahim as his guarantor. However, despite the compensation, the court sentenced him to three months of shackling as punishment for the theft[116]. In the majority of the 44 theft cases examined, the punishment of shackling (pranga) was imposed. In cases of recidivism, exile was recorded as the punishment. Indeed, in one instance of repeated theft, the defendant was exiled to Cyprus but escaped from the area before completing the sentence. It was discovered that the convict committed theft again during the period of escape, and the individual was re-exiled to Cyprus. The governor of Cyprus was instructed to ensure that the convict remained in custody[117].

It is understood that the punishment of hand amputation for theft was rarely applied. For this punishment to be imposed, a lengthy judicial process was required, and the execution of the sentence had to be approved by both the Meclis-i Vâlâ and the Sultan. Those who carried out the punishment without the necessary approval were subject to ta'zir penalties. For example, in a theft case in a district under the Trablusşam sanjak, an individual found guilty of theft had their hand amputated by a local official named Abdurrezzak without waiting for the approval of the judge and the Meclis-i Vâlâ. The punishment was carried out without authorization from the central government. As a result of this unauthorized act, the official was subjected to a long legal process, and it was requested that he be sentenced to between three to six years of shackling[118].

In Ottoman law, pickpocketing and fraud were considered ta'zir offenses if they were not repeated. However, if these crimes were repeated, the offender was deemed a habitual criminal, and if other necessary elements were present, the death penalty could be imposed[119]. Even if part or all of the stolen property was compensated, the judge retained the right to impose a ta'zir punishment. According to the records, all theft cases were sentenced with ta'zir penalties.

One of the fraud cases recorded in the register involved two women. A woman named Fatıma, along with her daughter Hatice, posed as innkeepers and rented out rooms, thereby defrauding the inn's actual owner. They were found guilty of defrauding

[116] BOA, BEO, AYN, d, 471, 8; 15.
[117] BOA, BEO, AYN, d, 471, 30; 51.
[118] BOA, BEO, AYN, d, 471, 50.
[119] Akgündüz, 1990, V. 3, p. 192; Üçok, 1946, p. 140.

customers out of 540 guruş. Both women had prior criminal records, so they were ordered to compensate for the stolen amount, sentenced to exile, and imprisoned in a women's prison for three months[120]. Another crime categorized under theft was looting, which was also documented in the register. This involved two individuals who looted the Filibe Post Office. Following discussions with the Postal Inspector, it was established that the offenders had misappropriated 56,000 kuruş, which was fully recovered. The remaining amount was to be reported to Dersaâdet. The text does not provide any details regarding the punishment imposed on those who committed the looting[121].

In conclusion, it can be stated that the punishment of hand amputation was very rarely applied in Ottoman legal practice. The main reason for this is that the material elements of the crime were not fully realized in the specific case. On the other hand, the opinion of some scholars advocating for the application of hudud punishments in cases of repeated offenses is also present in the literature. In the examined Katl ve Sirkat Defteri (Murder and Theft Book), no instances of hand amputation were found. Punishments were generally applied in the form of shackling (pranga) and exile within the scope of ta'zir.

CONCLUSION

Successfully governing diverse ethnic and religious groups with justice for an extended period, the Ottoman Empire took necessary precautions and issued Kanunnames to regulate the appropriate sanctions for various crimes that disrupted public order and societal peace. This study examines the punishments applied for intentional homicide and theft in the Ottoman Empire, governed by Islamic legal principles, particularly in the post-Tanzimat period, within the framework of the penal codes of the time. In this context, the study aims to analyze how much emphasis was placed on crimes evaluated under hudud and qisas in the Kanunnames and how these were approached in practice. Additionally, it explores the application of the 1256 Penal Code during this period and the newly added provisions in the 1267 Penal Code, which were introduced to address emerging needs.

In cases where hudud punishments could not be applied for crimes violating both individual and public rights, the Kanunnames introduced ta'zir punishments to enforce necessary sanctions. The penalties given as ta'zir were often in the form of forced labor on galleys, exile, shackling or simple imprisonment. If the offense involved multiple crimes, the ta'zir punishments were also subject to more severe penalties.

The Meclis-i Vâlâ register on Murder and Theft, dated 1264/1848, which forms the basis of this article, contains 305 registers. Of these, 139 records pertain to homicide cases, 44 to theft, and 2 to fraud. Additionally, there are 76 records of injury cases. Outside the crimes above, the register also includes 4 cases of forgery, 5 cases of obstruction to military conscription, 20 requests for release, and 15 cases of desertion. In some records, multiple offenses appear together; for example, theft is sometimes accompanied by assault, or in cases of highway robbery, both murder and rape were

[120] BOA, BEO, AYN, d, 471, 10.
[121] BOA, BEO, AYN, d, 471, 11.

committed simultaneously. Since murder was frequently part of highway robbery offenses, these records have been classified under the homicide category.

The records examined provide information on the religious identity, gender, and, in some cases, the official roles of the plaintiffs and defendants. However, it is not clear from the texts how the courts determined the types or amounts of punishments, as the criteria for these decisions are not explicitly mentioned. This makes it challenging to identify the factors influencing sentencing decisions during trial and judgment. Nevertheless, in this particular register, the most significant factor leading to harsher penalties appears to be the presence of the offender's prior criminal record. Recidivism and the concurrence of multiple offenses are among the other factors. Imposing the maximum penalty, along with additional punishments such as imprisonment or exile, are examples reflected in practice.

It is a well-known fact that, in practice, hudud and qisas punishments were rarely applied due to the stringent conditions required for their implementation. In the records examined from the register, no instances of hand amputation were found, except one case where a local official carried out an unlawful execution. Qisas punishment, however, was applied in only two cases, both with the approval of the Sultan. The primary reason for the infrequent application of qisas was the reconciliation (sulh) reached between the parties. When qisas was replaced with blood money, offenders who could not afford to pay the full amount were given the option to pay in installments. Moreover, offenders who were sentenced to both blood money and forced labor on galleys but faced financial difficulties were allowed to work off their labor sentence for wages, enabling them to pay the blood money debt.

The most frequently imposed ta'zir punishment was forced labor on galleys, which was predominantly given to individuals convicted of intentional homicide or highway robbery. On the other hand, the shackling was mainly applied to cases involving theft, assault, and injury. Both sentences were time-limited, with forced labor often set at five years, as stipulated by law. However, in cases involving multiple crimes such as robbery, rape (hetk-i ırz), assault, and murder, sentences of up to seven years of forced labor were imposed, which can be considered the upper limit. In one notable case, a member of a bandit group who had a prior criminal record was sentenced to the most extended term of ten years of forced labor. For crimes like theft, assault, and injury, shackling sentences typically ranged from three to six months. An exception to this was a one-year shackling sentence given to two individuals accused of act of rape, where the crime was not fully proven.

It has been noted that qisas punishment was not applied to female defendants who were found to have committed the act of killing during the trial. The punishments imposed on female convicts were mainly in the form of imprisonment. Whether for crimes such as intentional homicide, assault, theft, or fraud, sentences were typically carried out by detaining women in prisons explicitly designated for women. As mentioned earlier, this practice was not limited to the period covered by the examined register but was a general approach in Ottoman criminal law. The reason behind favoring imprisonment for female offenders was mainly due to the physically demanding nature of forced labor on galleys, which was deemed unsuitable for women, as well as other factors related to women's conditions, such as pregnancy and postpartum recovery. In terms of imprisonment

duration, sentences ranged from a minimum of 3 months to a maximum of 6 years, depending on the severity of the crime.

The Ottoman criminal law was comprehensive and meticulous in both theory and practice. The 1264/1848 Register provides valuable insights into the application of crime and punishment during the Ottoman period, shedding light on the functioning of the judicial system of the time. For a crime to be brought to court, the incident must either be reported by the victim or denounced by another party.

It has been observed that a thorough investigation process was conducted during the trial to uncover the facts of the case. As stated in the Penal Code of the period, the execution of punishments for crimes falling under the scope of hudud and qisas could not proceed without the approval of the Meclis-i Vâlâ and the Sultan. The records reveal that crimes falling under the categories of hudud and qisas were often addressed through ta'zir punishments. The balance between crime and punishment was maintained, with ta'zir penalties being preferred in consideration of the socio-economic needs of the era. The influence of the 1256 law on legal practices of the period is also evident in the register. Factors such as the nature of the crime, the offender's past, and their behavior during the trial process played a significant role in determining the severity of the punishment.

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