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Some observations on the Ottoman judicial system and *ilmiye* group in the 18th century

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Abstract:

In this study, debates on the Ottoman judicial system and some changes which seen among the Ottoman learned (*ilmiye*) group in the 18th will be examined. Taxes which taken by *kadi*s in courts rearranged in 18th century. In addition, there were seen slightly increase in *arpalık* (a living paid) and *maişet kaza*s (magistrates) thus led to some completion among *kadi*s. Moreover, discussions on the dual character of the Ottoman judicial system will be checked in this study.

Key words: Judge, magistrature , kazasker, şeyhülislam, taxes, religious law, state law.

18. yüzyılda Osmanlı yargı sistemi ve ilmiye zümresi üzerine bazı gözlemler

İsmail Gündoğdu

Özet:

Bu çalışmada Osmanlı devletinin hukuku üzerine yapılan tartışmalar ve 18. yüzyılda Osmanlı ilmiye zümresinde görülen bazı değişimler konu edinilmiştir. 18. Yüzyılda kadıların mahkemelerden aldıkları rüsumlarda yeniden düzenleme yapılmıştır. İlâveten, arpalık ve maişet kazalarda artışlar görülmüş bu durumda kadılar arasında şikâyetlere konu olmuştur. Ayrıca çalışmada, Osmanlı hukukunun örfi ve şer'liği tartışmalarına da değinilmiştir.

Anahtar kelimeler: kadı, kaza, kazasker, şeyhülislam, rüsum, şer'î, örfî.

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Introduction

It is acknowledged that in history of Islam, Mohammad the Prophet acted as the first judge and handled the social cases. The same practice continued during the reign of the first four caliphs. Caliph Omar appointed *Ebu'd-Derda* as the judge of the army in *Yermuk* War (634). Thus originated the first term, army judge (*Kadiü'l-cünd*)[1]. It was observed that during the period of *Emevis* (661–750) army judges were still appointed. Abbasids (750–1257) developed this practice even more; they introduced *Kadiü'l-Kudat* institution which meant *judge of all judges* and resembled to, in practice, chief justiceship institution of Ottoman Empire. It is evident that *Kadiü'l-Kudats* represented the highest authority on behalf of Caliph. Moreover *Kadiü'l-Kudats* presided the highest court *Dîvân-ı mezâlim*[2].

In history of Islam, the first chief justice was appointed in 750 by governor of Egypt, Salih b. Ali (Ali's son Salih). This position was then named as *Kadı-Leşker* by *Salahadin Eyyubi* (1138–1193). It is known that the same institution existed under the same title during the reign of Anatolian Seljuk Empire as well[3]. In Ottoman Empire, it is stated that the first chief justiceship's institution was established during the reign of Murat I (1362–1389) Hüdavendigar in Bursa, 1363. In Ottoman Empire, Chief Justiceship was the highest authority which not only dealt with all the legal cases in army but also the official procedures like appointment or dismissal of the other *judges*. The first chief justice in Ottoman Empire was *Çandarlı Kara Halil Hayreddin Efendi* who was in the beginning judge of Bilecik, then İznik and finally Bursa[4]. In Ottoman Empire, there were two branches of chief justicehip: Rumelia and Anatolia and in protocol, Rumelia chief justice preceded Anatolia chief justice. In reality, until the year 1480, there was only one chief justice in Ottoman Empire. Afterwards, a second judge was needed thus during the reign of Mehmet the Conqueror (1451–81) a new chief justiceship position was introduced. In that age, *Muslihiddin-i Kastalani*, the chief justice, was appointed as Rumelia chief justice while Istanbul judge *Hacı Hasanzade Mehmet b. Mustafa Efendi* was brought to Anatolia chief justice position

[1] Fahrettin Atar, *İslam Adliye Teşkilatı* (Ankara: Diyanet İşleri Başkanlığı Yayınları, 1991), 182.
[2] Mustafa Şentop, *Osmanlı Yargı Sistemi ve Kazâskerlik* (İstanbul: Kalasik, 2005), 14.
[3] Kaldy Nagy, "Kadi Aksar," *Encyclopedia of Islam*, vol. 4, 2nd. ed., (1978): 373-374.
[4] Halil İnalcık, "*The Rûznâmçe Registers of The Kadıasker of Rumeli as Preserved in the İstanbul Müftülük Archives,*" Turcica XX (1988), 151.

which had recently been established[5]. As Ottoman Empire extended its borders, establishment of a new chief justiceship position took place in agenda; thus in 1516, Selim I (1508–1520) founded the third chief justiceship position named *Arabian and Persian Chief Justiceship* and appointed *İdris-i Bitlisi* to this new chair. Following the seizure of Syria and Egypt, third chief justiceship was abolished and authority of this region was transferred to Anatolia chief justiceship. Following this date till 1914, there remained two chief justiceship positions in Ottoman Empire. In that year however, both of the two chief justiceship positions were united as one single chief justiceship position and remained so till the abolishment of Religious Courts on April 8, 1924[6].

Chief justices were the members of *Dîvân-ı Hümâyûn*, the Imperial Council in Ottoman Empire and in protocol they preceded *Şeyhülislam* (Shaykh al-Islam). Although in Fatih's (1451-1481) code of secular laws of state, it was indicated that Shaykh al-Islam was the head of learned men (*ilmiye*) of religious sciences, in state protocol he would come after chief justices and moreover in particular occasions, sultan's hodja (religious teacher) would precede[7].

This practice changed during the reign of Sultan Süleyman the Magnificent (1520–1566) and Shaykh al-Islam position gained the highest authority in Ottoman religious institution. Chief Justices became the followers of Mufti Efendi or in other words, Shaykh al-Islam. Later Shaykh al-Islam too started to participate in *Dîvân* (the Imperial Council) meetings and took a position before chief justices. In the 17th century well-known Ottoman historian and scholar *Hezarfen Hüseyin Efendi*, in his prominent work, noted that "Grand Vizier is the head of state, Shaykh al-Islam is the head of religion and Sultan is the head of both"[8] and continued that Rumelia chief justice had a lower degree of rank than mufti (Shaykh al-Islam) yet higher than Anatolia chief justice and *Nakib* (*Nakibü'l-Eşraf*).

Anatolia chief justices were below Rumelia chief justices in terms of degree of rank and position. The Rumelia chief justice handled cases in *Dîvân-ı Hümâyûn* (the Imperial

[5] İnalcık. *The Rûznâmçe Registers*, 155, and Atsız, *Aşıkpaşaoğlu Tarihi*, (İstanbul: M.E. B. Press), 49.
[6] Ebül'ula Mardin, "Kadı'," *İslam Ansiklopedisi*, vol., 6, (1967), 42-45.
[7] Ahmet Akgündüz, *Osmanlı Kânunnâmeleri ve Hukûkî Tahlilleri,* (İstanbul: FEY Vakfı, 1990), 318.
[8] Hezarfen Hüseyin Efendi, *Telhisü'l- Beyan fi Kavanin-i Âl-i Osman*, Ed., Sevim İlgürel (Ankara: Türk tarih Kurumu, 1998), 197

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Council) and *Sadr-ı Azam* (Grand Vizier) Council as well. Anatolia chief justice was only an attendant in court yet given that the number of cases was high, it was only then could Anatolia chief justice handle the cases upon the request of Rumelia Chief Justice[9].

It was noted that daily wages of chief justices were five hundred *akçe*s and in addition to these daily wages there were also other incomes. It was also stated in sources that the Anatolian chief justice had external revenue[10]. Primary profit of chief justices was namely *kısmet-i kassam*. Accordingly, chief justices shared the heritage of a dead *askeri* (military person-tax exempted groups in the Ottoman Empire) person among his heirs and in return for this service, as stated in law; they used to receive fifteen percent of the whole heritage[11].

Another revenue source of two chief justices was the money "*müjde*" (good news) they received from judges when they offered them to a *mansıp* (judge's office), that is when they appointed them to their duty location, district[12]. It is possible to find out the amount in the code of secular laws. According to that, a judge's *cihet* (allowance) is calculated by finding his daily wage, half of it is left as tax for the treasury office, and one fifth of remaining amount is left to chief justice as *müjde* money. *Rusum*, money that would be paid to other officials, were also included in money chief justice received[13].

Hazerfen Hüseyin Efendi, in his same work, ordered the duties of chief justice this way, identifying the ranks of judge's offices within the limits of his authority. For these judge's offices recording the clerks in daybook. Appointing religious professors to Moslem religious schools with up to forty *akçe*s of daily wages and appointing judges to magistratures having

[9] İsmail Hakkı Uzunçarşılı, *Osmanlı Devletinin Merkez ve Bahriye Teşkilatı*, (Ankara: Turk Tarih Kurumu, 1988), 232.
[10] Uzunçarşılı, *Merkez ve Bahriye Teşkilatı*, 232.
[11] Kaldy Nagy, "Kadi Askar," *Encyclopaedia of Islam*, vol. 4, 2nd. ed., (1978), 373-374.
[12] Hazerfen, *Telhisü'l- Beyan*, 202.
[13] Ahmet Akgündüz, *Osmanlı Kanunnâmeleri*, vol.iv, (İstanbul: FEY Vakfı. 1992), 673-674: "*Sâbıka Anadolu'da ve Rueli'nde kazâskerler Ma'rifetiyle bir kimesneye kadı'lık verilüb anun için berât yazılub resm alınmalu olıcak, ol kadı'lığın yevmiyesi defterde her ne yazılursa kalîl ve kesîr bir aylık ciheti hesab olunub nısfı hâssa benim için resm-i nişan alınub ve nısfı kazâsker için alına. Amma resm-i kitâbet ve resm-i muhzır ve muhzırbaşı ve devâtdâr, ol alınan hisse-i âherde dâhil olub kazâskerler için ayru ve kâtib ve muhzırlar için ayru resm alınmaya deyü emr olunmuş idi. Sonra merhûm ve mağfûrun-leh kazâskerler aldığı rüsûmı dahi hâssa-i humâyun-ı padişahî için zabt olunmak emr etdükde şunun üzerine mukarrer olmuş ki; kazâskerler aldığı nısf hissesinin humsı ki, fi'l-hakîka bir aylık hâsların öşri olur, kazâskerler alalar. Şol şartla ki, rüsûm-ı kitâbet ve muhzırân anun içinde dahil ola.*"

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less than one hundred fifty *akçe*s of daily wages. Dividing the heritage of military group existing within the limits of his territory, following legal cases in the Imperial Court or Chief Justiceship were taken[14].

Ottoman Courts

In Ottomans, the court where religious or civil cases are handled was named meclis-*i şer'* (*the Ottoman Courts*). A court could have been established only if there had been a judge available appointed after Sultan's *berât* (diploma). In Ottoman courts, judges gave decisions in line with the code of laws designated by sultan and religion. Laws became effective only after their proclamation by the sultan. Code of laws did not cover religious topics, it only dealt with fields such as public law, state body, administration, tax, criminal law and *hisba*[15] (regulative control of state over buy and sell in markets)[16].

In courts, judges applied codes assigned by both religion (*şer'*) and state (*örfî*). Judges had codes of law journals and they recorded them to official registry books and showed the occurring changes on these books[17].

Basically there are two different views concerning Ottoman law practice. This conflict arises from the dispute if in Ottoman law religious law or civil law which had a secular character was dominant[18]. According to Halil İnalcık the code of laws was "*On the whole, the judgment of Sultan which revealed legal points concerning a specific topic in Ottoman period* [19]". "*Occasionally it is possible to come across with terms 'act' or 'ban' instead of law and 'code of bans' in place of code of laws*[20]."

[14] Hazerfen, *Telhisü'l- Beyan*, 202.
[15] Ergenç, *Ankara ve Konya*, 103. "state's regulatory control over art and trade; executed by the official namely *muhtesip*".
[16] Halil İnalcık, "Kanunnâme" *DİA*, 24, (İstanbul: DİA, 2001), 334.
[17] İnalcık, *The Classical Age*, 75.
[18] For further information, see Ömer Lütfi Barkan, *XV. ve XVI. Asırlarda Osmanlı İmparatorluğunda Zirai Ekonominin Hukuki ve Mali Esasları*, v.I, Kanunlar, (İstanbul: İÜ, 1943); Ahmet Akgündüz, Osmanlı Kanûnnâmeleri ve Hukuki Tahlilleri, I-IX, (İstanbul: OSAV, 1991-1996); Halil İnalcık, "Osmanlı Hukukuna Giriş, Örfî-Sultanî Hukuk ve Fatihin Kanunları," AÜSBFD, v.XIII. i.,2 (1958); Uriel Heyd, *Studies in Old Criminal Otoman Law*, (Oxford: The Clarendon Pres, 1973);
[19] Halil İnalcık, "Osmanlı Hukukuna Giriş, Örfî-Sultanî Hukuk ve Fatihin Kanunları," *AÜSBFD*, v.XIII. i.,2 (1958).
[20] Ömer Lütfi Barkan, "Kanûnnâme", *İA*, 6, (İstanbul: MEB, 1988), 185.

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As stated by Ömer Lütfî Barkan, in Ottoman Empire, next to religious law, there existed a secular law or *national, civil law* which emerged as codes of law which did not take place in religious law codes in Islamic law books[21]. Barkan notes that civil law took place against religious law yet in time it lost its authority. Zeki Velidi Togan, on the other hand, states that the law practiced during the early years of Ottomans was civil law passed from İlhanlıs[22]. According to Togan, during the reign of Sultan Orhan, as a repetition of İlhanlı state tradition, law-bans tradition was practiced. Indeed, 1,152 grams silver coin released by Sultan Orhan was the replica of İlhanlı coin. Togan continues: "*State order and law practiced by Sultan Orhan was merely 'tradition' and "yasak". So it was made clear that the essence of state was not religion but rather tradition and yasaks*[23]". In Togan's view, since the land was not large during the rule of Sultan Orhan, he was not yet trapped into the influence of ambitious religious class. Thus he faced no difficulty in exercising laws of military and civil administration[24]. Halil İnalcık's views show parallelism with Barkan's opinions. According to İnalcık, Ottoman Empire cultivated a law order extending beyond religion. That was possible through *custom*, which gave the Sultan the right to legislate in issues which did not have direct connection with religion. Custom authority enabled the Sultan to act directly in a way that was completely advantageous for state. This principle had existed in pre-Ottoman Muslim Turkish states as well and passed to Ottomans. Researchers such as Barthold, Becker, Gibb and Köprülü accept that with the establishment of Muslim-Turkish states, serious changes occurred in Islamic state approach and state law[25]. State obtained an absolute and dominant authority in politics and execution during the rules of Turkish, Muslim and then Mongolian states. Civil law which gave priority only the needs and profits of state became prevalent in use. Early Ottoman Sultans asked council from Islamic canonist while enacting and for the very same objective, they founded the chair of Shaykh al-Islam.

In Ottoman Empire, the practice of civil law was common starting from the early years. Sultan Osman (ruled in 1324-1362) at first opposed to taxes in markets but later when he was reminded that this tax was said traditional, he agreed. Sultan Orhan (1324-1362)

[21] Barkan, *Kanûnnâme*, 186.
[22] Zeki Velidî Togan, *Umumi Türk Tarihine Giriş*, (İstanbul: Enderun Kitabevi, 1981), 339-340.
[23] Togan, *Umumi Türk Tarihine Giriş*, 339-340.
[24] Togan, *Umumi Türk Tarihine Giriş*, 341.
[25] İnalcık, *Osmanlı Hukukuna Giriş*, 321.

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followed the custom and bans practiced by İlhanlıs since his estate was a frontier tribe that paid tax to İlhanlı Mongolian state in Iran. Beyazıt I (1389-1402) introduced new custom taxes to enrich central treasury and started book and registry methods. During the rule of Murat II (1421-1451) civil law was incomplete in use. In 1431 dated Arvanid-city manorial book, military class and *reâyâ* (taxpaying subjects as distinct from askeriye –military) status of civil taxes were clearly determined. The reign of Mehmet II (1451-1481) was a complete turning point for Ottoman law. Upon the seizure of İstanbul, Mehmet the Conqueror gained absolute authority and established the central, absolute empire on certain terms. He adopted the practice of enacting law in administrative issues[26]. For that purpose he raised civil law to a dominant level. Mehmet the Conqueror had two codes of law: the first one, just after the conquest of Istanbul, was related to taxpaying subjects. It regulated criminal law that would be valid for all the taxpaying subjects, taxes that would be taken from Muslim and Christian subjects and finally market taxes. The second code of law by Mehmet II was related to state body. It determined the authorities of statesmen, their promotions, degrees and salaries and also the protocol system that would be followed[27]. Tradition of codes continued and developed after Mehmet the Conqueror. When needed, the Sultans enacted criminal laws or state laws.

Amongst the first Ottoman researchers, Uriel Heyd can be listed as well. Heyd's most significant work is *Studies in Old Ottoman Criminal Law*[28]. After his death, this unfinished work of Heyd was completed by V.L. Menage. The work was basically related to Ottoman criminal law. Heyd examined Mehmet II's criminal and fiscal law as well as Dulkadir criminal law and criminal laws in cities. The author stated that "*religion was rather ineffective in fiscal law, identified crimes were limited and many crimes were not mentioned at all and besides since evidence and proof bases were quite limited, a lot of crimes were not punished in full terms*"[29]. Therefore, he stated that during the first years of Islam, criminal law was practiced by jurisdiction authority of judges and later Islam administrators filled this gap with secular laws.

[26] İnalcık, *Osmanlı Hukukuna Giriş*, 326.
[27] İnalcık, *The Classical Age*, 72-73.
[28] Uriel Heyd, *Studies in Old Otoman Criminal Law*, Ed., by, V.L. Menage (Oxford: The Clarendon Pres, 1971)
[29] Uriel Heyd, "Eski Osmanlı Ceza Hukukunda Kanun ve Şeriat" AÜİFD, XXVI, (1983):633.

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Another researcher on Ottoman law's final period is Ahmet Akgündüz. Akgündüz, in his nine-volume work namely *Osmanlı Kanunnâmeleri ve Hukukî Tahlilleri* (Ottoman Codes of Law and Legal Analysis) compiled Ottoman Codes. In the first volume, there is a section under the title *Religious analysis of criminal law provisions of Ottoman codes of law.* In this section, Akgündüz analyzes Ottoman law and denies the thesis which asserts that Ottoman Codes of Law contain provisions conflicting with Islam. He continues that the origin of Ottoman criminal law is religion yet since sultan was authorized with *ta'zir* (*punishment*) punishments, this space was filled with codes of law by Ottoman Sultans. Aside from brother murder for the sake of state, he states that all the provisions are compatible with Islamic law[30].

Ottoman courts in the 18th century

In Ottoman Empire, society was classified into two groups namely *askerî* (military class) and *reâyâ* (*taxpaying subjects*). Military class covered all the military groups, men of religion, civilian administrators, their families, relatives, subjects and slaves who were directly under the service of sultan. Non-Muslims who gained such status by sultan's diploma were also included in military class[31]. Military men were exempt from all types of production and tax. Subjects on the other hand constituted the greater sect in society. They were Muslim and Non-Muslims who made all the production and thus paid taxes. Apart from them, there was another class namely *muaf* and *müsellem* (*privileged and apodictic*) who were, in return for their service to state, exempt from particular taxes[32].

Members of İlmiye (*Ottoman religious institution*) were also included into military class and they had duties in three different areas: teaching (*tedris*), fatwa (*iftâ*) and judgment (kazâ). Teaching (*tedrîs*) was carried out by müderris (*religious professors*) in medrese (*college of religious sciences*) and they taught religious and rational sciences. Fatwa (*iftâ*) duty was executed by muftis who reinterpreted social problems according to religion of Islam. Judgment (*kazâ*) meant solving the legal conflicts in society according to religion and

[30] For Akgündüz's view concerning this issue please see, Akgündüz, *Osmanlı Kanûnnâmeleri*, 105-106.
[31] Halil İnalcık, *Klasik Çağ* (Ankara: YKY, 2003): 75
[32] İbid., 245.

codes of law in court and it was executed by judges who had successfully completed their training[33].

In Ottoman Empire legal cases were handled by *kadı*s (judges). The term as an adjective means executing, enforcing and performing person. As a noun it means the person who judges public according to religious laws[34]. Judge's decisions were absolute. Those who opposed to judge's decision could only complain about him to sultan which meant *Divan* (*the Council*). Council, in a way, acted like a Court of Appeal. A case dissolved in Council would be transferred to the same judge and occasionally a different judge would be appointed for the same case[35]. Next to their mission as decision givers (*judgment*) judges had various administrative, financial and municipal duties. Within their own judgment borders, judges were not dependent on military and administrative positions such as head of police organization, governor of *sanjak* and municipality. These authorities were only in charge of practicing the decisions of judge. Without judge's approval none of the religious or civil laws could be enforced[36].

Under the administration of Anatolia or Rumelia Chief Justiceship, judges were commissioned in kazas, denoting an administrative district could be named as magistratures, their judgment boundaries. Formerly, magistratures were organized differently from political areas but in time they became the principle of sanjaks' administrative division. Judges were directly under the authority of two chief justiceships in the center. One of them was in charge of judicial affairs in Anatolia and the other one was responsible for Rumelia. Appointment, dismissal, relocation and all the other personal procedures of judges and other men of religious institution were all together under the control of this office. Yet, chief justices too submitted these decisions to sultan and only after taking his approval could they enforce them. Up until the 16th century, chief justices represented the highest position in Ottoman religious institution. However l Shaykh al-Islam Ebusuud Efendi and other Shaykhs al-Islam became members of council and preceded even chief justices.

[33] Ergenç, *Ankara ve Konya*, 80.
[34] Şemsettin Sami, *Kâmûs-ı Türki* (İstanbul: Çağrı Yayınları, 1989) 1029.
[35] Halil İnalcık, "Mahkeme", *İA*, 7, MEB, İstanbul, (1988): 149.
[36] İbid., 149-150.

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Ottoman *kadi*s (judges) and their incomes in the 18th Century

There are some clues the wages of the *kadi*s that they were paid by the state during the reign of Orhan. Bayezid I, as a result of Vizier Ali Pasha's intervention, *kadi*s incomes were increased, and the first mahkama *rusum* code were declared. Aşıkpaşazade, in his work, narrates this incident dramatically[37]. Income of judges came from the tribute they received from all types of court cases. Additionally they charged marriage agreement, heritage share and all kinds of contracts. The sum of all these charges constituted the income of judges[38]. Particularly in newly conquered places, judges were also given manor income considering that their income in these places could be insufficient[39]. This practice continued until the beginning of the 16th century. In the following years, judges were not paid manor income.

Ottoman land was divided into specific (*kaza*s) magistratures and these magistratures were also divided into sub-districts (*nahiye*s). Each magistrature was classified according to its daily income. In the 18th century it was observed that at the bottom, magistrature with 150 *akçe*s daily income and at the top, 500 *akçe*s daily income magistrature ranked. Income of a magistrature center was arranged according to the system which considered that in every thousand house within the borders, ten *akçe*s of revenue would be given[40]. Accordingly, if daily wage of a chief justiceship was registered as one hundred fifty *akçe*s, it could be assumed that within the borders of particular magistrature, approximately fifteen thousand houses existed. Taking into account the fact that in the 18th century the lowest magistrature daily income was one hundred fifty *akçe*s, it is quite obvious that historically speaking a magistrature with the lowest daily wage would not have that number of house. Accordingly,

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[37] Atsız, *Aşıkpaşaoğlu Tarihi* (İstanbul: M.E.B., Yayınevi, 1991)
[38] Ergenç, *Ankara ve Konya*, 83.
[39] Halil İnalcık, *Hicri 835 Tarihli Süret-i Dfeter-i Sancak-ı Arvanid*, (Ankara: T.T.K., 1954): 13-19; Ömer Lütfü Barkan, "Osmanlı İmparatorluğunda Bir İskan ve Kolonizasyon Metodu Olarak Sürgünler," *İÜİFM*, c.XV, (1950), 590. "*Fetihten 25 sene kadar birr zaman sonra, Trabzon livasında mevcut 207 kadar tımardan 5'i bu bölgeye mahsus hususiyetlerden biri olarak kadıların, ikisi de dervişlerin elindedir. Umumiyetle kadıların mahkeme harçları ile geçinmesilazım gelmekte isede, Arvanid ili sancağında olduğu gibi, Trabzon livasında da kadıların sipahiler gibi tımara sahip oldukları görülmektedir. Bu keyfiyeti, kesif Hıristiyan kalabalıkları arasında ve henüz harp ahası ve hudud bölgesi durumunda bulunan bir memlekette kadılara daha sağlam bir gelir kaynağı sağlamak düşüncesi ile izah etmek mümkündür.*" (About 25 years after the conquest, of the 207 manors in Trabzon, 5 belong to the judges of the specific region while 2 of them are in the hands of dervishes. Although common practice asserts that judges are supposed to live on court tributes, just like Arvanid city sanjak, in Trabzon as well judges possess manors like sultan's knights. This condition can only be explained in a way that this country which is surrendered with Christian masses and simply a frontier yet wants to provide a better income source to its judges."
[40] Uzunçarşılı, *İlmiye Teşkilatı*, 91; İnalcık, *The Rûznâmçe registers*, 129; Ergenç, *Ankara ve Konya*, 82.

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daily wages of magistratures do not symbolize actual daily wages but rather the rank of particular magistrature. As stated by Özer Ergenç *"Daily wages of judges were nominal yields manifesting their ranks therefore the size and significance of the magistratures they were appointed to"*[41].

Each judge could be commissioned only within the borders of his own magistrature and demand charge from the procedures occurring in this location. Handling the cases outside his borders was against the law. The judges acting illegally were complained. For instance judge of *Konur* complained about judge of Kırşehri who violated his own borders: "*bî-vech dahl idüb mahsül-i kazâma gadr ider*"[42].

The laws determined the amount judges could charge. The first code concerning this application is believed to be during the reign of Bayezid I; however there is not a copy available. The first written code that is available today belongs to Mehmet II. In his code, Mehmet the Conqueror regulated the position and incomes of religious class. Other sultans following Mehmet too rearranged judges' incomes in codes when necessary.

In *Meclis-i Şer* (mahkeme) there were also *nâibs* (deputy judges) who co-worked with judges. Deputy Judges were assistants of judges and belonged to men of religion class. In some investigations, deputy judges personally worked in crime scene. Deputy judges also handled the cases which were brought to court at night thus Ottoman courts could be on duty non-stop[43]. The possibility of more than one deputy judges in a magistrature was related to the size of judge's duty territory and number of cases passing to court. According to their mission, deputy judges were named as *mevali* (senior ulema), bâb (door), *ayak* (low class) and *arpalık* (a living paid to *ulema* not holding office) deputy judges.

Through *iltizam*[44] (taxation) some judges appointed to magistrature, judges from religious class to handle religious cases within the territory of their own sub-districts. In sub-

[41] Özer Ergenç, Ankara ve Konya, 82.
[42] Egenç, "Ankara ve Konya" 83.
[43] Mehmet Akman, *Osmanlı Devleti'nde Ceza Yargılaması*, (İstanbul: Eren, 2004), 45.
[44] İltizam: "XVII. Yüzyldan itibaren devlete gelir getiren kaynaklar, yavaş yavaş muayyen bedel mukabilinde şahıslara verilmeye başlandı. Bu usule iltizam, alan kişiyede mültezim denir." See, Midhat Sertoğlu, *Osmanlı tarih Lügatı* s.160. (Starting from the 17th century, state sources which brought income started to be given to people in return for a fixed price. This practice was named iltizam and the receiver person was named

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districts they were responsible for executing all judicial affairs[45]. Up until the 18th century, judges sold sub-districts within their magistratures according to *iltizam* method and charged its cost as monthly wage (*şehriye*). Yet magistrature (*kaza*) judges demanded even more from the local people. There were numerous complaint petitions about that malpractice. To give an example, in 1146/1733 dated petition submitted by Karahisar-ı Naibli people to Anatolia Chief Justiceship, İbrahim Effendi who resided in Beypazarı and was the administrative judge of *Karahisar-ı Naibli* magistrature, gave his location to three judges in line with taxation method. The people complained that their magistrature paid fifteen *qurush* for previous judges but now they demanded thirty five *qurush* and that they all were fed up with the tyranny of judge and demanded his dismissal[46]. Besides in order to quicken his dismissal they also stated that the said judge was a lunatic thus unfit to perform his judge duty any longer.

Another deputy judge class was Mevali. Next to *Mevalis* (senior ulema) there were *bâb naibs* (door deputy judges) assisting them. Moreover there were also mobile low class deputy judges who were in charge of checking the tradesmen in magistrature (*kaza*). In the 18th century *mevali*s did not go to their own magistrature territory but rather sold this duty through taxation method. The person who bought deputy judgeship this way would go to his territory after receiving the approval of chief justice.

Another type of deputy judge was religious income of a magistrature namely *arpalık* paid to senior judges who were also called Shaykh al-Islam, chief justice and senior ulema upon their dismissal. They did not go to their magistratures either and through *iltizam* (taxation) they sent their deputy judges instead who were called *arpalık* judges[47]. Deputy Judges in turn would demand even more money from people to compensate for the money they paid and this inevitably caused disturbance amongst local people.

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mültezim."
[45] Uzunçarşılı, *İlmiye*, 117.
[46] NOK. 5193/36-6
[47] Uzunçarşılı, *İlmiye*, 118.

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Conclusion

In the Ottoman Empire, all judicial affairs accomplished by *kadi*s (judges) and they functioned and acted and found a solution in law for the name of the Sultan in *kaza*s. In courts, *kadi*s (judges) applied codes assigned by both religion (*şer'*) and state (*örf*). For this reason, some scholar discussed how the Islamic character of the Ottoman judicial system was. The number of *kadi*s increased in 18th century and this led to emerge some problems in the judicial system. The Sultan banned extra unlawful taxes which taken from citizen in courts and rearranged tariffs by law. Moreover, Sultan ordered to *kadi*s to go to their *kaza*s themselves and wanted them to avoid sending a deputy to there.

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