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THE QADI ESTABLISHMENT IN THE HISTORY OF TURKISH LAW

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ABSTRACT

The qadi establishment, not only as an administrative and judicial office, but also as one of the most fundamental establishment of the state, has an important place in the rooting and strengthening of the bureaucracy of the Ottoman Empire. In the legal system of the Ottoman Empire, where the shariah law was at least as decisive as the customary law and the qadi establishment was always the highest priority public service. Qadis have been accepted as the cornerstone of the class of ulama throughout the entire Ottoman history. So much so that qadis had a political charisma with their superior authority, serious responsibilities and deterrence on both state officials and the people. Political charisma was followed by social prestige, the influence of which extends to the present day. What really strengthens the power of the qadis is the sensitive tasks they undertake. The judges, who played the most important role in the realization of the understanding of "justice is the foundation of state", left behind many documents that shed light on the history of law and politics. Thanks to the qadi records, qadi registers and all other documents related to the qadi that have survived to the present day, detailed information about the Ottoman history, Ottoman culture and Ottoman civilization can be obtained. Importance, effects and results of the qadi establishment, especially the aforementioned documents, will be examined with a comparative approach in this article.

Key words: Qadi, Qadi establishment, Cadilesker, Ottoman law, Law history.

TÜRK HUKUK TARİHİNDE KADILIK KURUMU

ÖZET

Kadılık, sadece bir yönetsel ve yargısal makam olarak değil, başlı başına devletin en temel kurumlarından biri olarak Osmanlı İmparatorluğu bürokrasisinin köklenip güçlenmesinde önemli bir yere sahiptir. Şer'i hukukun en az örfi hukuk kadar belirleyici olduğu Osmanlı İmparatorluğu hukuk sisteminde kadılık kurumu daima en ön planda yer almış; kadılar, tüm Osmanlı tarihi boyunca ilmiye sınıfının temel taşı kabul edilmiştir. Öyle ki kadılar sahip oldukları üstün yetkiler, yüklendikleri ciddi sorumluluklar ve hem devlet erkânı ve hem de halk üzerindeki caydırıcılıkları ile siyasal bir karizmaya sahip olmuşlardır. Siyasal karizmayı, etkisi günümüze kadar uzanan toplumsal itibar izlemiştir. Kadılarının güçlerini asıl pekiştirense üstlendikleri hassas görevlerdir. "Adalet mülkün temelidir" anlayışının gerçekleşmesinde en önemli rolü oynayan kadılar, hukuk ve siyaset tarihine ışık tutan çok sayıda belgeyi geride bırakmıştır. Günümüze ulaşan kadı defterleri, kadı sicilleri ve kadılığa ilişkin diğer her türlü belge sayesinde Osmanlı tarihine, Osmanlı kültürüne ve Osmanlı medeniyetine ilişkin ayrıntılı bilgiler edinilebilmektedir. Söz konusu belgeler başta olmak üzere bu makalede kadılık kurumunun önemi, etkileri ve sonuçları, karşılaştırmalı bir yaklaşımla irdelenecektir.

Anahtar kelimeler: Kadı, Kadılık, Kazasker, Osmanlı hukuku, Hukuk tarihi.

INTRODUCTION

The army under the command of Sa'd b. Ebi Vakkas sent by Caliph Omar against the Iranian ruler Yazdegerd, who was also at war with the Western Göktürk State, sent the valuable treasures they had captured after the Sassanids captured the city of Medayin and Nehrevan in 637. Caliph

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Omar, in the sermon he delivered in the context of the subject right after the delivery of the Iranian treasures, said: "*Although Allah loved the Prophet Muhammad and Abu Bakr more than me, gave me the ornaments that did not given them. I seek refuge in Allah from them. Undoubtedly, Kisra lost her hereafter because of the worldly goods given to her. He collected property for himself and his son-in-law, but did not do anything that would be beneficial for him in the hereafter. He said 'justice is the foundation of state (el-adlü esasü'l mülk) absolutely*" (Ibn Kesir, 2017:VII/68). Justice came to the fore so much during the reign of the Four Great Caliphs, especially in the time of Omar, the first core of the institution of qadi was laid. During the time of Caliph Omar, qadis were appointed to various administrative regions in Egypt, Iraq and Syria, especially in Medina. This practice continued during the reign of caliph Osman and Ali (Turkish Religious Foundation, XXIV/69). During the period of the Four Great Caliphs, the qadis were not only the authority to issue fatwas and make judgments, but also looked after the administrative affairs in the region they were authorized. While the caliph in Medina and the governors in the provinces handled border and murder cases, the judges were authorized to try only civil cases and cases requiring *ta'zir* punishment. Caliph Muawiya, the first ruler of the Umayyads, transferred her jurisdiction in the capital city of Jerusalem to the judge he appointed, and never engaged in judicial affairs. Likewise, governors in cities other than the capital have transferred their jurisdiction to the qadis they appointed. While these qadis, who were appointed with jurisdiction, dealt with civil and criminal cases, the caliphs and governors only dealt with very important cases that were referred to the *mezalim courts* (Turkish Religious Foundation, XXIV/70). In the time of the Umayyads, in addition to the aforementioned powers, qadis were also given some administrative and financial duties as well as the duties of protecting orphans and foundation properties (Turkish Religious Foundation, XXIV/70).

In the first Islamic states, it is seen that the state organization began to take shape and institutionalization in parallel with the expansion of the state and the proliferation and diversification of its subjects. As a natural consequence of this inevitable process, the qadi establishment and the position of qadis have come to a more prominent line in terms of duty and authority.

The mighty vizier of the Great Seljuk Empire, Nizamü'l-Mülk, published his work, also known as Siyerü'l-Mûluk, says in the 6th Chapter titled About the Qadi, the Orators, the Muhtesibles and the Importance of Their Jobs and Activities; "in order for the qadis of the country to know their job situation at the best level and not to be confused by whoever is a scholar, religious and contented person, each of them should be given a salary according to their merits; because this is a big, important and delicate job" (2018:35). In the story told in the continuation of the aforementioned chapter, it is stated that the Sassanid ruler named Yazdegerd, who is mentioned in the first sentence of this study, made his people vomit blood and sighed with his injustice. Emphasis is placed on the importance of qadis. Similarly, in another story in the aforementioned chapter of the same work, it is stated that all qadis are the sultan's regents, that the sultan must support the qadis, and that the respect and trust in the qadis among the public should be ensured (Nizamü'l-Mülk, 2018:37).

In the Anatolian Seljuk State, qadis took care of the religious and legal affairs of the state. Rulings (*fatwas*) were given according to the Sunni school (Hanafi fiqh). A separate institution of qadi was established in the state for the public and the military class. All kinds of military cases and inheritance (*ferâiz*) affairs were handled by the army judge called Kadıleşker, and these showed significant similarities with the Kadıaskers in the Mamluks and Ottomans (Uzunçarşılı, 1988:122). The number one of the class of ulama in the Anatolian Seljuks was the Governor of Konya, called Kadılkuzat; kadılkuzats were chosen especially among kadıleşkers (Uzunçarşılı, 1988:122).

The institution of qadi-judgment was established in the Ilkhanate according to the Shari'a law. after the acceptance of Islam, Within the legal system of the state, Kadılkuzat and provincial judges appointed by Kadılkuzat and regents were appointed to assist their various affairs. Kadılkuzat's judicial duty; hearing of the opposing parties, keeping court records and minutes, researching evidence, controlling contracts and zakat expenditures, administering marriage proceedings, resolving inheritance disputes, preserving the property of orphans and similar shari'a works (Uzunçarşılı, 1988:246). Those sentenced to prison or arrested were not released without the approval of Kadılkuzat.

Undoubtedly, the Ottomans took the legacy of the qadi, which was shaped through various stages from the period of the Four Great Caliphs to the Anatolian Seljuk State, and took it further and developed it.

CHAPTER I

LITERATURE AND TERMINOLOGY

I.1. Judgment (Kazâ)

In order to fully understand the judicial meaning of the word ‘qadi’ and the terms related to qadi, first of all, it is necessary to know the meaning of the word 'kaza' very well. In a broad meaning (administration of justice), kaza aims to ensure the continuation of the social order by not allowing individuals to seek rights on their own. This protection is provided by the state authority. In the narrow meaning (jurisdiction), kaza is to examine whether an act, situation or defect that comes into contact with the legal order has taken place upon the claim of a party, to determine the most accurate legal norm to be applied to the concrete event, and as a result, to take reasonable measures to ensure compliance with the legal order (Turkish History Association, 1998:194). The main duties and activities of the judicial (kazâi) authorities can be summarized in this way. Kazâ is divided into three parts as judgment of estimation (kazâ-i istihkak), judgment of hearing (kazâ-i ilzam) and judgment of ensure (kazâ-i terk) (Ziyaeddin Efendi, 2017:134).

I.2. Qadi (Kadı)

In the most succinct definition, qadis are judges who were tasked with resolving disputes in the past (Yılmaz, 1996:429). According to the definition in the Legal Dictionary of the Turkish Law Institution (Türk Hukuk Kurumu); they are public officials who are given authority and duty by the state authority to resolve lawsuits and disputes (1998:182). The elders of the class of ulama in Ottomans, who came after the sheikh al-Islam, chief teacher of sultan (*hâce-i sultani*), the cadilesker of Rumelia, the cadilesker of Anatolia, the chief of the prophet's descendants (*nakibüleşraf*), the fatwa responsible (*fetwa emini*), the science trustee (ders vekili), the judge of Istanbul, the judge of Mecca, the judge of Medina, the judge of Edirne and the judge of Bursa (Öztuna, 1996: II/ 989-990).

I.3. The Qadi Establishment (Kadılık)

The qadi establishment, although it is defined in the Turkish Dictionary of the Turkish Language Institution (Türk Dil Kurumu) as “the region within the borders of the province where a qadi handles his cases” (2011:1258), it is a rather inadequate definition. The term qadi has more or less the same meaning as the term judgeship today. The provisions regarding the jurisdiction of the courts in the Turkish Code of Civil Procedure No. 6100 determine the geographical boundaries of the jurisdiction of the relevant court judgeship. The qadi is also very important in terms of reflecting the power of the Ottoman state organization. For example, kadı registers provide us with

historically important information about marriage and Ottoman family structure (Kaya & Şahin, 2017:19).

1.4. Qadi Decisions (Kadı Biti, Kadı Hücceti, Kadı Beratı, Kadı Nâibi)

Qadi biti is the is the decisions made by the cadilesker or orher qadis (Yılmaz, 1996:429). It has also been used in wider meanings such as the Sultan's edict. In a document dated 1358 given by Orhan Ghazi, it is written that "those who see this decision should trust the decision and know that this decision is the truth" (Uzunçarşılı, 2014:269). *Kadı hücceti* is the name given to the verdict or document issued by the qadi (Yılmaz, 1996:429). *Kadı beratı* is a document showing that someone has been awarded a judgeship (Yılmaz, 1996:429). *Kadı nâibi* is the deputy qadi sent to places where the qadis cannot go and is a state official who makes judicial proceedings instead of the qadi (Yılmaz, 1996:429). Niyabet is an important institution in today's law as it was in the past. It is the appointment of one of the members of the court to listen to witnesses, to make discovery and similar transactions, within the jurisdiction of the collective courts, but outside the court building, as regency. This appointed member is called the regent member.

1.5. Cadilesker (Kazasker)

Cadilesker, also known as kadıleşker or kadı-sker in the pre-Ottoman states, is a state official whose main duties belong to the military class in Ottomans, who carry out litigation, inheritance and other religious and legal transactions (Yılmaz, 1996:458). In the Ottomans, he was the head of only the military judiciary and later the entire judiciary organization. According to the Legal Dictionary of the Turkish Historical Society (Türk Hukuk Kurumu), it has two different meanings, the first of which is; It means the qadi who is committed among the soldiers and who deals with the cases brought against the members of the army. According to the second meaning; it means kadılkudat/kadılkuzat, and it is the authority that appoints the judges attached to it (1998:196). It was a title given to Çandarlı Kara Halil for the first time in the Ottoman Empire during the reign of Sultan Murad Hüdavendigar, and he was the judge of the Army. The second periof od cadileskery was established during the reign of Sultan Mehmet the Conqueror. qadis in Rumeli were appointed the cadileskery of Rumeli and qadis in Anatlia were appointed the cadileskery of Anatolia (Turkish History Association, 1998:196).

CHAPTER II

QADI ESTABLISHMENT IN THE OTTOMANS

II.1. Qadi Establishment in General

It is emphasized in the Holy Qur'an that trusts and responsibilities should be given to competent and virtuous people, and that people should rule with justice (an-Nisa 4/58; al-Maida 5/42-50, 95; Sâd 38/26). In the Ottoman Empire, where the principles of administration and law were based on the religion of Islam (Akbulut, 2018:249), maximum attention was paid to competence and merit, especially in the eyes of qadis. The general purpose in the Ottoman legal system is to provide divine order and order with the aim of complying with religious obligations. In addition, the criteria of 'human' and 'human dignity' have always been observed. According to Münif Pasha, who wrote the first legal philosophy book in the history of Turkish law, “human is the purpose and aim of all kinds of law” (2016:62). Indeed, law is an indispensable discipline to establish the orderly social life that every human being needs. If he wanted to ensure this discipline, it was the duty of the qadis in the first place.

First of all, the qadi establishment has made an important contribution to the strengthening of justice and the public's trust in the state. Undoubtedly, there have been other effects and benefits as well. Especially the qadi establishment has made important contributions to the science of fiqh. When there was no shar'i source available, the qadis decided according to the principles of fiqh and these decisions led to the development of the fiqh acquis (Kaya - Şahin, 2017:110).

II.2. Duties and Qualifications of Qadis

In the Ottoman Empire, a judge was a notary public, foundation inspector and mayor, as well as a court judge. He also inspected officers, sub-chiefs and served as their chief (Ortaylı, 2016:11). The officers named *muhtesip*, who controlled the bazaar and the shopkeepers, were also working under the qadi (Ortaylı, 2016:11).

Combining various duties under their jurisdiction, the main activity of the qadis was judicial acts (trial) undoubtedly. It is one of the characteristics that qadis should have in the chapters from article 1792 to article 1814 of the Mecelle-i Ahkâm-ı Adliye, which Ahmet Cevdet Pasha, who had a great effort in the preparation of the Ottoman Civil Code, the Commercial Code and the Code of Civil Procedure, compared with Iustitiones (the codex, which was written in Istanbul in the 6th century by a scientific commission similar to Mecelle, and which sheds light on Roman law and modern Western law afterwards) (Ekinci, 2016:560). and the duties and responsibilities of the judges are mentioned. For these reasons, the most important information that should be shown in quotation marks about the institution of qadi is recorded in the provisions of this article. The provisions of the said article (with respect to the original texts) are as follows:

• According to the provision of Article 1792: The qadi; must be wise, insightful, accurate and reliable, stable and reliable. (Sancak - Kıyak, 2014:55)

• According to the provision of Article 1793: The qadi should know the legal issues and the procedure of reasoning well and be able to apply and apply this knowledge to the cases of various events and to conclude and decide on these cases. (Sancak - Kıyak, 2014:57)

• According to the provision of Article 1794: The qadi must be fully competent in law. Therefore, the judgment of Qadi, who is small, senile, blind and deaf enough to hear the loud voices of the parties, is not valid. (Sancak - Kıyak, 2014:58)

• According to the provision of Article 1795: The qadi should refrain from doing business and behavior that will destroy the dignity and reputation of the trial, such as shopping and joking during the trial. (Sancak - Kıyak, 2014:59)

• According to the provision of Article 1796: The qadi does not accept gifts from either of the two opponents. (Sancak - Kıyak, 2014:59)

• According to the provision of Article 1797: The qadi does not go to the banquet of either side. (Sancak - Kıyak, 2014:59)

• According to the provision of Article 1798: During the trial, the qadi should not accept only one of the parties to his court. At the time of the decision, one of the parties should not be alone. It should not point to one of the parties with hands, eyes or head. Should not talk to one of the parties secretly or avoid suspicious behavior such as speaking in a language that the other party does not know. (Akgündüz, 2013:374)

• According to the provision of Article 1799: The qadi is obliged to be fair between the parties to the dispute (*beyne'l-hasmeyn*). Therefore, even if one of the parties is from the notables or the other is from the common people (*ahad-i nas*), he must fully comply with the justice and the

equation in judgment, such as to put the side to the side and to appeal to them with the evil eye and the point of view. (Akgündüz, 2013:374)

• According to the provision of Article 1800: The qadi is the representative of the state to conduct the trial and give a verdict. (Akgündüz, 2013:375)

• According to the provision of Article 1801: Jurisdiction can be limited by the only state and only with the exception of time, place and certain issues. (Akgündüz, 2013:375)

• According to the provision of Article 1802: Only one of the two qadis appointed to adjudicate on a case together cannot conduct and adjudicate that case; if it does, the ruling will not be valid. (Akgündüz, 2013:375)

• According to the provision of Article 1803: In a region with more than one qadi, if one of the parties to the dispute wants to be tried in the presence of a qadi and the other in the presence of another qadi, and there is a conflict between them in this way, the qadi chosen by the defendant party is preferred. (Akgündüz, 2013:375)

• According to the provision of Article 1804: If a qadi needs to be dismissed, but he does not receive the news of his dismissal for a while, it is valid if some lawsuits are brought and a decision is made within that period. However, the decisions taken after the dismissal decision is invalid. (Akgündüz, 2013:375)

• According to the provision of Article 1805: If the qadi is authorized to appoint or dismiss a regent, he may appoint a competent person to assist him and dismiss him; otherwise, he cannot get it and his deputy will not be dismissed with his dismissal or death. Therefore, when the qadi of a region dies, the deputy of the deceased qadi can listen to the case that arose in that region and give a verdict until the other qadi takes his place. (Akgündüz, 2013:375)

• According to the provision of Article 1806: The qadi can make a judgment based on the evidence evaluated by the qadi and his assistant and the evidence evaluated by the assistant. That is, if the qadi evaluates the evidence about a case and informs the assistant, the assistant can make a decision without asking for evidence again, with the notification of this qadi, and when the assistant authorized to make the decision evaluates the evidence on a matter and informs the qadi, the qadi can make a judgment with this information without asking for evidence again. However, with the notification of the person who is not authorized to give a verdict, but who is only assigned to evaluate the evidence in order to examine, the qadi should not make a judgment and only evaluate the evidence. (Akgündüz, 2013:375)

• According to the provision of Article 1807: The qadi of a region may conduct the case of real estate in another region. However, as explained in the Kitab-ı Dava, the legal boundaries of that region must be declared (not ambiguous). (Akgündüz, 2013:376)

• According to the provision of Article 1808: The person in favor of whom the judgment has been given; the qadi must not be his kinship in the direct line, his wife or a partner in the property to be judged, or a wage worker, or a man who lives on the wages given by the qadi (someone who lives with his help). Therefore, the qadi cannot evaluate the case of one of them and give a verdict in his favor. (Akgündüz, 2013:376)

• According to the provision of Article 1809: In the event that a local qadi or one of his relatives mentioned above has a case with a person from that locality, if there is another qadi in that region, they will be tried before him. If there is no other qadi in that region, the parties shall try in the presence of an arbitrator they will voluntarily determine, or if that qadi is authorized to appoint an assistant, the assistant he has appointed or another judge in the vicinity. If the parties do not

accept one of these ways, they request a temporary official (*müvella*) from the State. (Sancak - Kıyak, 2014:99)

• According to the provision of Article 1810: The qadi must abide by the "first come first served" rule in the hearing of cases. However, if there is an important need or benefit in bringing forward a case that comes later, the qadi decides by bringing the next case forward. (Sancak - Kıyak, 2014:99)

• According to the provision of Article 1811: The qadi may benefit from someone else (such as an expert) when needed. (Sancak - Kıyak, 2014:99)

• According to the provision of Article 1812: The qadi should not attempt to make a judgment if his mind is confused because of a situation that may prevent healthy thinking, such as sadness, distress, hunger and sleepiness. (Sancak - Kıyak, 2014:99)

• According to the provision of Article 1813: The qadi should pay attention to the principle of trial within a reasonable time, although he will conduct investigations at the hearing. (Sancak - Kıyak, 2014:99)

• According to the provision of Article 1814: The qadi will keep the court record book and record the writs and bills he will give to the court in a regular way that can be protected from fraud and mischief, and takes care to protect it. And when he is dismissed, he transfers and delivers these records to his successor qadi, either in person or through a court official. (Sancak - Kıyak, 2014:99)

II.3. Working Procedure of Qadis

There are three types of courts in the Ottoman Empire until the 20th century: Sharia Courts, community courts and consular courts (Küçüktiryaki, 2017:35). The Sharia Courts, in which qadis are in charge, are also called qadi courts. The most striking aspect of qadis in both Islamic and Ottoman law is their independence; according to this principle called "autonomy of qadis", no one, including the Sultan, could interfere in the judicial activities and rulings of the qadis. (Aslan, 2014:149).

The real founder of the Ottoman administration and legal system, Fatih Sultan Mehmed, stated that the laws could be revised after him (İnalcık, 2016: 46). This flexibility; It shows that qadis can interpret according to concrete facts, provided that they adhere to the Shari'ah and current legislation, legal system and Ottoman Law Codification (*adâletnâme*) and that they can make legal dispositions in terms of the order of the world.

The qadis would perform their qadai activities in places called qadi courts, where there were enough officials in charge. The establishment of these courts and the appointment of qadis would be directly from Istanbul (at the discretion of the Sultan) (Ortaylı, 2016:11). While the places where the accident activities were first carried out were the madrasahs and large mosques, even the qadi's own house, in time, buildings dedicated to accidental activities began to be built. Qadi Şemseddin Efendi, who was appointed to Ankara in March 1605, rented Mercan Bey's house and made it a courthouse (Ortaylı, 2016: 69). In 1836, the detached building of the Istanbul's Qadi was put into service in Edirnekapı (Ortaylı, 2016: 69).

The qadi establishment was not divided into periods such as before the Tanzimat and after the Tanzimat period; because there has been no change in the mission of the qadis courts or the qadis, and the importance of the qadis has never changed. Although the qadis were mentioned as "judges" in the enactment studies that increased with the Tanzimat period, the use of the term qadi was not abandoned both in the State bureaucracy and in the eyes of the public. This shows that the qadi establishment has an important and unchanging place in the consciousness of the people.

The working method of qadis gained a legal basis and certainty especially since 1876, when Mecelle-i Ahkam-ı Adliye came into force. The basic provisions that make up the first chapter of the Mecelle have always been the principles that every woman should consider (Özalp, 2017:6). For this reason, legislative studies such as the 1917 Law of the Family Decree, which was considered as a deviation from the basic provisions of Islamic law, were harshly criticized by the leading fukehas of the period (Küçüktiryaki, 2017:43-47).

CHAPTER III

COMPARISONS and EVALUATIONS

III.1. Comparison with the Roman Empire and Byzantium

The first judges of Rome were members of the priests committee called pontificies (Karakocalı, 2011:40). They dealt with all kinds of cases without any discrimination, but did not look at the main administrative affairs. Qadis, on the other hand, had various administrative duties such as collecting avarız taxes and paying attention to the price of money (Ortaylı, 2016:56). Special judges called *iudex* took charge in the courts of ministers. Magistras were established as a higher judicial authority of the iudex in the Republican period (Karakocalı, 2011:42).Two-level trial is a great innovation that did not exist in the Ottoman qadi system. In the Romans, the judges were not paid because they were judges. Qadis, on the other hand, started to work in small administrative units with 25 akçe (*Ottoman money*) for a long time, and all qadis set aside income for themselves from the fees they received from the plaintiffs and the defendants, in addition to their salaries (Ortaylı, 2016:13). General judgment called *formula* while seeing in places activities were carried out in closed areas during the imperial period. In proceedings requiring technical knowledge, an arbitrator has been appointed instead of a judge (Karakocalı, 2011:61). This is an important innovation that has affected the Romanist legal system for ages and has no counterpart in the Ottoman qadi system. Judges were appointed by *magistrates* from among Roman citizens who were not previously convicted, slaves, women or people younger than twenty-five, not older than sixty, and deaf (surdi), mute (muti) and mentally ill (furiosi) (Karakocalı, 2011:62). However they did not have to be lawyers (Karakocalı, 2011:75). In the Byzantine period, the influence of church law in the judiciary increased and a period was entered in which judges tried Byzantine citizens according to Christian law and most of the time in the church (Magno, 2016:45). Therefore, it can be said that the judges of the Byzantine period of Rome were similar to the Ottoman qadis.

III.2. Comparison with Huns, Gokturks and Uyghurs

There are not enough resources regarding the legal order of this period. In Huns and Göktürks, where the motto "even if the state is destroyed, customs are permanent" is valid, the head of the judicial system was Han (Kağan), and they could make all kinds of judgments, especially regarding important crimes such as betrayal and murder (Ögel, 2019:I/223). The judicial duty was mostly transferred to the army and company commanders. Therefore, in the period of the Huns and Göktürks, there were no state officials such as qadi who practiced the profession of judging. The most important judicial authority of this period was the congresses. In the conventions, not only administrative matters were discussed and decided, but also important judicial matters were held.

In the Uighurs, due to the first settled life and the vitality of commercial life, legal affairs became important. In the period of the Uighurs, when a written legal system was introduced for the first time, the highest judicial authority was called the *Yargu*, headed by the monarch; the supreme judge is therefore the ruler. Courts with judges called *Yargan* were also established but they mostly dealt with private law cases. For this reason, it can be said that the first legal developments similar

to the Ottoman qadi were in the Uyghurs period but there is still a lot of difference. In the Ottoman Empire, the class of political administration (*mülkiye*) could never interfere with the accident affairs carried out by the class of ulama *(ilmiye),* but the reverse was possible.

III.3. Comparison with the Mongols

Among the Mongols, state officials called yargucı or emir-yargı carried out the trial (Akbulut, 2018: 67). The judges, who ruled according to the Cegiz Khan Law, also decided on the disputes between the two opponents apart from political crimes. In the Mongolian state and social order, which was under the influence of Turkish customs, violations of custom were considered crimes, as in the old Turks, and the criminals were given offensive punishments in the society. For this reason, it was not sought for the judges to have legal knowledge, and those who were deemed appropriate by the Khan and who had a certain charisma were chosen as judges. The Ottoman judges, on the other hand, were extremely well-educated and well-equipped law and administration men. For example, in an edict written to the Qadi of Istanbul in 1577, it was ordered that the imams and preachers of the mosques in the city were tested in terms of their knowledge and qualifications, and a report was prepared for the dismissal of those who were inadequate in terms of knowledge and qualifications and presented to the Grand Vizier (Ortaylı, 2016:42).

III.4. Comparison with the Sassanids

In the Sassanids, the judges were clergy and these clergy were called *dazveran* (Altungök, 2014:449). The person at the top of the judiciary is the *dazveran-ı dazver,* who is selected from among the dazverans (Altungök, 2014:449). The Sassanid judicial organization was divided into two parts, civil and military. At the head of the civil judiciary is a religious man named *shahrdazur*. The correspondence of the civil judiciary in the palace and the divan affairs were carried out by bureaucrats named *debir*. The chief judge at the head of the military judiciary was called *sepahdazur,* which means army judge. Persons appointed to the duty of military judges were chosen from among the clergy named *hirbad* (Altungök, 2014:449). This judge is the same as the *kadıyü'l-cünun* in the post-Islamic period (Altungök, 2014:449). For the first time in the post-Islamic period, the appointment of a military judge (qadi) was carried out by Hazrat-i Omar and Ebu'd-Derda, one of the companions of the Prophet, was appointed to serve as a military judge in the Syrian army (Altungök, 2014:449). During his lifetime, the Prophet took care of the judicial affairs himself. However, after the Prophet, Muslims appointed judges to take care of the judicial affairs. The Sassanid State-style judicial system was established for the first time in the period of Hazrat-i Omar and a judge was appointed to Damascus, Homs and Kinnesrin (Altungök, 2014:449).

There are weak records of those who served in the army with the title of *yolak* and *yargu* in pre-Islamic Turks as well as serving as military judges (Altungök, 2014:449). This duty, which was also called *kadıyu'l-asakir, kadıy-ı leşker* in the post-Islamic period, was called cadilesker (kazasker) in the Ottoman period (Altungök, 2014:450). During the Sassanid period, all the judges who handled the trial affairs were subordinate to the chief of the clergy, called *mobedân-ı mobâd,* which means the judge of the judges. Mobedân-ı mobads are the equivalent of *kadıulkudat* in Islamic states.

III.5. Comparison with the First Islamic States

The qadi establishment emerged exactly in the Islamic Middle Ages (Ortaylı, 2016:19). Although the influence of the qadis on the administration was great in the first Islamic states, the judicial and administrative activities were not gathered in one hand as in the Ottoman Empire. In order to be a qadi in the first Islamic states, it was necessary to know fiqh (Islamic law) perfectly and importance was given to merit. In this respect, there are similarities with the Ottoman qadis.

During the Mamluk period, qadis were chosen from among other state officials rather than Islamic jurists (Ortaylı, 2016:23).

As in the Ottoman qadi and even in other states up to that time, the obligation to choose the judges from men was preserved. Appointment letters called *tawki* were given to the qadi appointed in the Mamluks. In the same way, the appointed judges were given a certificate (berat) in the Ottomans.

In the first Islamic states, qadis were in a very respectable and untouchable position because they did not interfere in administrative affairs. In the Ottomans, on the other hand, this prestige was eroded due to administrative affairs. For example, when the Sultan IV. Murad went on the Baghdad Expedition, when he saw that the snow on the city roads was not plowed, he had the Izmit's Qadi hanged (Ortaylı, 2016:14).

III.6. Comparison with Ghaznavids and Seljuks

In the Ghaznavids, the Sultan has the title of chief judge, having gathered the legislative, executive and judicial powers under his responsibility. In addition to the Sultan, the vizier (*hâce-i bozorg*) and local administrators were also authorized to establish atrocities councils and acted like qadi in matters related to their own organizations or that did not require deep legal knowledge.

The system that the qadi establishment of the Ottomans was most affected by is the Seljuk judicial system. Another qadi named kadıyülkudat, who was in Baghdad, handled the shar'i cases. The chief qadi would inspect the other qadis. During the Ottoman period, the cadilesker had a supervisory mission, but the supervision of the qadis was mainly carried out by other assigned qadis (Ortaylı, 2016:61). At the head of the customary courts, an order called *emir-i dad* was found. Emir-i dads looked into the cases of those who disobeyed the state, laws and orders, and the trial of political crimes. Emir-i dads presided over the *Dîvan-ı Mezalim*, which is an extraordinary judicial authority. The cadileskers, as in the first period of the Ottoman Empire, only tried the cases of the soldiers. The qadis were independent and were not affiliated with the Great Divan and the provincial councils.

The establishment of "*ahilik*", which emerged during the Anatolian Seljuk State, mediated the disputes between the tradesmen and did not leave the need for some disputes to come before the qadi. The mediators, called *muslihûn* in the Ottomans, operated separately from the judges (Kaya - Şahin, 2017:19).

CONCLUSION

The Ottomans, an offspring of the Seljukids empire, appears to have gone farther than any previous Islamic state in asserting the independence of state affairs and public law vis-a-vis the religious law. Mehmed the Conqueror, the true founder of the Ottoman empire and promotor of a cenralized and absolutist imperial system, further strengthened the principle of the ruler's legislative authority. Apparently he was the first ruler is İslamic history to promulgate codes of law based exclusively on Sultanic authority. A comtemporary Ottoman historian named Tursun Beg, interpreted the "good order" (nizam) of this world as necessarily requiring the absolute compelling authority of the Sultan and particularly the Sultan's right to promulgate decrees of his own single will. But the early years of his successor Sultan Bayezid II saw a strong reaction by the upholders of the sharia'a against the Mehmed the Conqueror's untrammeled legislative activity. (İnalcık, 2021:276). In this period, the role played by the kadis was very important in terms of the institutionalization of the Ottoman legal system. The kadis played a very critical role in balancing

the power struggle between the various centers and regulating the relations between the state and the people.

The qadi establishment has shown us that historical legal institutions have an important role in the formation of today's modern legal system. Modern courts and a modern judicial system have been established with historical knowledge and experience.

Qadis have always been in a critical position as state officials with very important powers and responsibilities. The qadis, who operate on the basis of the shari'a law that "justice is the foundation of state", have almost undertaken the service of providing justice on their own. For this reason, they had a respectable place in the eyes of the public in general, but some times they had to deal with great difficulties.

The qadis fulfilled their judicial duties independently of the administrators in their regions, and there was essentially no question of the administrators' intervention or the execution of the judicial task themselves. As a result of the independence of the judiciary from the executive, the relationship between the qadis and the civil administrators (*ehl-i örf*) -such as the governol general (beylerbeyi) or the governor (*sancak beyi*), is not a subordinate-superior relationship. Therefore, the qadi does not work dependent on them while performing his duties. Each is a public official who cooperates with the other but works independently of each other.

Knowing the historical background of law is as important as knowing the philosophy of law for the development of law. In this study, it has been tried to contribute to this development.

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