Qadi, Governor and Grand Vizier

Sharing of Legal Authority in 18th Century Ottoman Society

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Le cadi, le gouverneur et le Grand Vizir: Partage de l’autorité légale dans la société ottomane du XVIIIème siècle

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La multiplicité des institutions juridiques dans la société ottomane, ainsi que leurs fonctions respectives et l’interaction parmi eux pendant les procédures juridiques constituent le point nodal de cet article. La chéria et le kanûn (codes sultaniens) constituaient les deux piliers de la justice ottomane et le cadi administrait les deux
dans les tribunaux. Autrement dit, c'était le cadi qui selon la période et la localité, combinait et interprétait la chérie et le kanûn.

Mis à part les tribunaux des cadis, les institutions comme le divan impérial, l’assemblée du mercredi du Grand Vizir et les assemblées provinciales, présidées par les gouverneurs (valî), étaient également opératoires dans la sphère de justice. Le fonctionnement et l’interaction parmi ces institutions variaient selon les contextes et les localités. Cette étude, effectuée à partir des registres des cadis d’Üsküdar et de la ville d’Adana, vise à montrer la diversité des configurations qui affectaient le fonctionnement de ces institutions judiciaires au cours du XVIIIème siècle ottoman.

I. Introduction

As has been argued by the Ottoman sijill scholarship, central to the legal practices in the Ottoman administration of justice, the pluralism in legal space can best be observed through the juxtaposition of the sharia and the kanûn (Sultanic codes) in the activities of the Ottoman qadi during the process of conflict resolution in the courts. In other words, it was the Ottoman qadi who combined and interpreted the sharia and the kanûn in legal courts in different periods and localities of the Ottoman Empire. The multiplicity of the references on which the qadi based his judgement, as well as the impact of customary law (‘örf) on this process have been discussed by several scholars working on Ottoman Justice [Jennings 1979: 151–184; Gerber 1981: 131–147; Ergene 2003].

On the other side, in the Ottoman context, in spite of its power among the local subjects, the office of the qadi was not the only instance where the Empire’s subjects could petition for the resolution of their legal problems. A range of other legal authorities or arenas—official or non-official—such as the Imperial Divan, the Wednesday Assembly headed by Grand Vizier, the local muftis or other forms of conflict resolutions through mediation existed, and was central in constituting legality in the Ottoman society. Moreover, these legal practices and institutions also varied according to the local context of the given space.

In order to show this variability of the legal practices in the Ottoman context and the ways in which these institutions interacted, in this article, I focus on the records of the 18th century Ottoman courts of Üsküdar and Adana. Departing from
qadi-centred approach to the Ottoman legal practices, I will try to show how the variability of law turned the office of the qadi into only one of the echelons of legal arenas in the 18th century. Therefore, I will compare the interactions between the qadi court of Üsküdar and the Wednesday Assembly [charshamba divânı] headed by the Grand Vizier in the capital with the one that was taking place between the local qadi court and the provincial governor of Adana.

Together with Galata and Eyüp, Üsküdar was one of the three administrative districts called bilâd-ı selâse of the capital city. With Istanbul intra-muros, they formed the four central judicial districts of the Imperial capital. Adana was, on the other hand, a mid-sized provincial town, and was the capital of the province of the same name in the 18th century. A chief qadi headed the local court of Adana, while in Istanbul each judicial district (İstanbul, Eyüp, Galata and Üsküdar) had a legal court of its own headed by a chief qadi.

The qadi of Adana shared some administrative responsibilities with the governor [vâlî] of the province and was a member of the Provincial Assembly called Eyalet Divânı. The Provincial Assemblies were somehow the replica of the Imperial Divan [divân-ı hümâyûn], headed by the Sultan until the period of Sulayman I. From this period on, it can be observed that the Grand Vizier replaced the Sultan in heading the Assembly [Mumcu 1986: 29].

Beside their administrative tasks (such as tax collection, surveying of the organisation of the local military troops, surveying of the nominations of the military and civil servants or handling the correspondence with the central administration) in the provinces, the provincial qadis, by attending the governor’s Assemblies, cooperated with the governors. This task also had important impacts on the legal practices. As the military representative of the Sultan in the province, the governor was in general also supposed to enforce the Sultanic codes [kanûn] whereas the qadi acted as a representative of the sharia and the judicial authority at the local level [Heyd 1973: 210]. However, when looked closer at the court records, a more complex schema comes into picture. In order to grasp this complexity of the overlapping responsibilities of those two authorities—the military and the judicial one—in the legal arena, the present article focuses on the cases that came before the qadi courts and before the governor’s or the Grand Vizier’s Assemblies.
II. The relationship between the Qadi Court of Üsküdar and the Wednesday Assembly

The nature and the form of the court records were influenced by the local circumstances. Different from the provincial registers, in the qadi registers of Üsküdar different types of documents (as nominations, estate inventories, or case records/hüccet) were registered within separate volumes. Most importantly, a particular type of register, containing the documents called ma’rûz call our attention. In Ottoman administrative terms ma’rûz refers to any kind of letter sent by a subordinate to a higher authority. The documents of the ma’rûz type resemble the ʻilâm records which contain habitual case records/hüccet. However, they do not include the names of witnesses of the audience [shuhûd ul-hâl] and each document bares, at the head, a note taken by the scribe as “ma’rûz”. Apparently, the higher authority to whom those ma’rûz documents were addressed was the Grand Vizier(2).

The question which rises is to know why some cases were submitted to the Grand Vizier. From the secondary literature on the Wednesday Assembly we know that the Grand Vizier met, with the four chief qadis of the capital, once a week. This meeting was called the Wednesday Assembly [charshamba divâni]. During those weekly meetings, the Grand Vizier distributed to the district qadis, the judicial cases that were directly addressed to him or to the Imperial Assembly [Mumcu 1986: 148]. It appears that the ma’rûz we come across among the qadi registers are clues of those cases which were delegated from the Grand Vizier to the district judge. Through the ma’rûz channel the district qadi informed the Grand Vizier about the ways in which the cases were concluded. In order to get a better understanding of the interaction between those two different judicial institutions, we will now go closer into the analysis of single cases, as they were registered in the ma’rûz registers by the qadi of Üsküdar.

1. Murder cases

According to a ma’rûz dating back to 1763, the parents of a man named Hasan come to the Wednesday Assembly suiting seven men of killing their son by strangling him with a rope in the tavern of a certain Todori. The murders seem to have stolen his clothes, personal belongings and some 100 ğurûsh which Hasan was carrying with
him. As per the statement of the parents, the murderers had finally thrown the corpse into the sea. At this first trial in front of the Wednesday Assembly, the parents of Hasan asked for the blood money (*dem-ü diyyet*) of their son.

The defendants denied the allegation and asked for two weeks of time that would permit them to bring the necessary evidence about their innocence. However, two weeks later, the defendants—together with the parents of Hasan—, came to the Üsküdar qadi court declaring that they had already made an amicable settlement [*sulh*] outside of the court over 100 ğurûsh, and that they now ask this negotiation to be registered into the *sijills*. Finally, at the end of the *ma’rûz*, the qadi of Üsküdar states that the document has been issued for his Excellency, in order to inform him about what went on in the court about the case of Hasan [*UCR 474/33–3*](3).

This case shows us that an audience could be held in front of the Wednesday Assembly of the Grand Vizier, when the persons involved in the case, addressed directly to it. However, it can be also mentioned that the same case would have been brought in front of the local qadi, if the parties for some reason decided to do so. In this case, it was probably defendants’ decision to prevent the judgement of the Grand Vizier, by making an amicable settlement [*sulh*] with the parents of the victim at the qadi court of Üsküdar(4). Finally, as the case was initiated at the Wednesday Assembly, the qadi informed the Grand Vizier, through a *ma’rûz* about the outcome of the case.

Murder cases are numerous within the registers containing *ma’rûz* documents adressed to the Grand Vizier. Another example dating back to the same year was first submitted to the Wednesday Assembly by the parents of another victim called Mustafa Emin. We read in the *ma’rûz* that at one of the Wednesday Assemblies, Mustafa Emin’s parents accused two men of killing their son. According to their deposition, Abdürrahman and Süleyman had first beaten their son Mustafa Emin with a large piece of wood on his head, at night time, in the vicinity of the Candle factory [*Mûmhâne*] in Üsküdar. Later on, they had thrown his body into the sea. According to the statements of the parents, Abdürrahman had taken Mustafa’s body back from the sea and had beaten up on his head for a second time (as if he wanted to be sure that he was really dead). It is stated in the *ma’rûz* that in order to prove the allegation, the necessary evidence was asked by the Assembly to the parents. Two men from Üsküdar came in front of the Assembly for witnessing and after their declaration, the qadi of Üsküdar was asked, by the Assembly, to conduct an inquiry in their neighbourhood as to the liability and honesty of the witnesses. The final “*ma’rûz*” registered
in the Üsküdar sijill states that the inquiry had been conducted and accordingly, Abdurrahman had been charged for the payment of Mustafa’s blood money [UCR 474/81–3].

In this second case, we observe that the Grand Vizier could delegate a trial handled by him to the district qadi. The reason why the Grand Vizier addressed the case to the qadi of Üsküdar was the necessity to make an inquiry about the honesty of the eye witnesses. The inquiries upon honesty called ta’dîl or tezkiye were conducted within the neighbourhood; that is within the social circle in which the person in question was known. We also notice that the ma’rûz of the qadi of Üsküdar includes a notice about the sentence that had to be applied to the two criminals—in this case blood money. This small element helps us to get a better understanding of the aim of such ma’rûz records, that we will look at closer further below.

2. Cases related to the family law

The ma’rûz records do not contain only criminal cases. Their concern can also be other types of litigious situations as family conflicts. The first case that we will look at is about a girl named Haybetullah, who lived in Üsküdar together with her mother Ummgülsüm. As per the “ma’rûz” records, Haybetullah’s grandmother Fatma, who used to live also in Üsküdar, had died. The conflict emerged from the fact that the heirs did not accept to give Haybetullah’s share of her grandmother’s inheritance and declared that her father was not their brother. The mother Ummgülsüm communicated the case to the Wednesday Assembly and claimed that her husband was the son of the deceased woman Fatma. Before the Wednesday Assembly, the defendants denied the accusation but the mother Ummgülsüm could bring two men living in Üsküdar as witnesses, to prove that her husband was the son of the deceased woman Fatma. One of those witnesses was in fact the imam of her town quarter. At this point the case was communicated by the Wednesday Assembly to the qadi court of Üsküdar, again for demanding an inquiry in the neighbourhood as to the honesty of the witnesses. Finally in the ma’rûz, the qadi of Üsküdar states that the inquiry has proven that the witnesses were liable and that accordingly the heirs had to give Haybetullah’s share of heritage [UCR 474/68.r.2].

In Haybetullah’s case, we observe that the case was first heard by the Wednesday Assembly, as the mother directly communicated the case to this authority. However as the actors involved in the case were residents of Üsküdar, the case had to
be handled over to the qadi court of Üsküdar, so that some investigations (such as the identity of Hibetullah’s father and the honesty of the witnesses) could be conducted within its own locality.

A second case concerns a conflictual marriage. We read that following the request ['arz-ı hâl] of a man called Esirci Mustafa (a Merchant of Slaves), who lived in the Gedik Pasha neighbourhood in Istanbul and whose case was listened at the Wednesday Assembly. Mustafa complained that the woman called Zeyneb was his legal spouse. Although he married her by paying her “mehr” (dowary) and bringing her to his house in Istanbul, she escaped to her mother’s house in Üsküdar. Consequently, Mustafa asked Zeyneb to come back to his house.

Afterwards the case was transmitted to the qadi of Üsküdar in order to be resolved. The second trial took place in Üsküdar. According to the sijill, it is written that in this second trial, Zeyneb was brought in front of the qadi of Üsküdar and that the qadi warned [tenbîh] her that she should move back to her husband’s house again. In this second trial, a coffeehouse shopkeeper named Ali declared that he would guarantee that Zeyneb will behave in the future in conformity with the sharia and would go back to her husband’s house in Istanbul. This incident was submitted through the “ma’rûz” to his Excellency [UCR 474/42.1.1].

Before concluding our remarks about the ma’rûz records of Üsküdar, some observations are worth to be examined. In most of the ma’rûz records the Wednesday Assembly is not mentionned. In other words, in most of the ma’rûz documents, cases handled by the qadi of Üsküdar are simply recorded in an abbreviated form and addressed to a higher authority which gives no clue about the name of this institution. Hence, it is very difficult to understand to which ‘higher authority’ they were addressed by the qadi. However, the three cases cited above clearly document the fact that sometimes during the procedure the cases were communicated to the Wednesday Assembly. This permits us to certify that the ma’rûz records were specially addressed to the Grand Vizier. So, those cases cited above permit us to follow the ways in which the cases were tacking back and forth between the local qadi court and the Wednesday Assembly.

On the other hand when looking at the ma’rûz registers of the Üsküdar qadi court, we notice that nearly all of the cases were about bodily harm or murder cases(7). Even the cases which came directly to the qadi court were transmitted to the Grand Vizier once they had been concluded. Then, what would be the reason for the transmission of
this information to the Grand Vizier? The fact that most of the cases concerned bodily harm or murder—serious crimes that necessitated severe punishment—, and since the executive authority in the capital was the Grand Vizier, they were submitted to him. It should also be mentioned that the fines, imposed on bodily harm according to the kanûn, were also collected by the military authorities such as the governor himself or the Grand Vizier. Similarly, this must have been another reason for these two high rank officials were informed about the judgements of the local qadî in such cases.

III. The Relationship between the Provincial Qadi of Adana and the Governor’s Assembly

In the provinces the governor [vâlî] was the chief military and administrative figure, representing the authority of the Sultan. Compared to the qadî, the governor was responsible of the functioning of the imperial administration with its fiscal and military responsibilities, as well as the application of the Sultanic law [kanûn]. As we have already mentioned, the governor administrated the provinces with the members of his Assembly, called eyalet divanı. The main tasks of the provincial governors were to assure the organisation and efficiency of the provincial military troops, the safety in the province and to supervise the collection of taxes. He also had to watch the nominations of the military and civil servants or to handle the correspondence with the central administration at the provincial level.

As such, the governor was basically responsible for the application of the Sultanic codes [kanûn]. This included the equal distribution of the tax-farms and timars, and the collection of fines for criminal cases, which were fixed by the Sultanic codes. While we can assume that the qadî was responsible for the safeguard of the rights of God [hakk Allâh] and of the rights of human beings [hakk âdamî] through the equal application of the sharia, the governor was rather responsible for the safeguard of the rights of the State [hakk al-saltana] [Heyd 1973: 205].

As the representative of the military authority of the sultan, the governor had to keep the public order in the province, so he also persecuted the bandits and rebellious people. As far as his role in the sphere of justice is concerned, scholars often claim that the governor represented rather the executive power in legal arena as opposed to the judicial power of the qadîs. He was the authority which could imprison the people
or execute their sentences. It has also been argued that the executive power of the qadi gradually declined in favour of the governor who administered the penal justice and applied the execution without any judgement by the qadi [Heyd 1973: 220].

Moreover, the spectrum of the governor’s power in the field of justice went much further and made that he collaborated in different ways with the qadi. As the chief of not only the militaries but also the security forces, he was the responsible for helping the judge for bringing the accused to the court. On the other hand, the responsibility of collecting Sultanic fines [cerîme] from criminals for instance, made that he was also implicated in the pursuit of criminals. His responsibility of ensuring the public order let him follow and reprimand not only the criminality but also prostitution and fornication. Lastly, some audiences were held in the palace of the governor. Now we will see how those different responsabilities of the provincial governors made them interact with the local qadis, within the arena of justice.

1. The executive power of the Governor:

The governors had to join the imperial army with their troops in warfare, but they also had to ensure the security and the sultanic order in their province in peace time. The 18th century qadi registers of the town of Adana are full of Sultanic orders concerning the uprisings of nomadic tribes and the activities of bandits [Tamdoğan 2005]. We notice also that the governor in his turn, sent orders to his subordinates in the province on the same matters. The orders of the governors, in general, are called buyuruldu. In those buyuruldu, we see that the governor gives the order to his subordinates to pursue the “outlaws”.

In the case of rebellious nomadic tribes for instance, the governor ordered his men to repress them by force, which includes the use of unlimited violence. In other words, it was his punitive authority which he applied against the wrongdoers. This military action was surely, legitimated by the power, which was delegated to him directly by the Sultan. As far as banditisme or uprising to the Sultanic authority was concerned, those acts went into the category of crimes commited against the rights of the State [hakk al-saltana] and one of the main prerogatives of the governor was, as we see below, to protect them.

Another example, which concerns the punishment of the ‘askeri people in the case of abuse of power, shows strikingly well how the governor was given by the Sultan the task of safeguarding the Sultanic order.
The order from the Adana Register of Imperial orders (Ahkâm defteri) dates back to October 1747. In the order it is stated that the house of a minor boy called Ishak is usurped by one of the notables of Adana, named Bozzâde Mehmed agha. The order mentions that although after a court hearing, the local qadi had decided that Mehmed agha should have left the house to its legitimate owner Ishak, he opposed to the qadi’s decision. A request was then sent to the Imperial Assembly about the case against Mehmed agha. The order mentioned above is an answer upon the request. It can be observed that this order issued by the Imperial Assembly is addressed both to the qadi and the governor of Adana. According to the order they were expected to work together now in order to make it as to the way that decision of the qadi is respected by Mehmed agha [AAD n°1/206–5].

It is well known that although the qadis had the judicial power to distinguish the innocents from the wrongdoers, they did not have the authority to execute the sentences they pronounced. It was only the governor who applied the sentences. Ottoman documents on this issue are rather scarce; however we can find some evidence of this executive power of the governors while reading between the lines of the qadi records. A case of sodomy registered in the qadi records of Adana helps us to have a glimpse into this field of action of the governors.

In the year of 1753 a woman called Raziye made her way to the qadi court of Adana in order to sue five men from her neighbourhood who were responsible for wrongful execution of her son Halil and his friend Ebubekir. The accused men had denounced Halil and Ebubekir to the provincial governor of Adana of having engaged in the act of sodomy (livâta). She also stated that their denunciation resulted in the wrongful execution of Halil and Ebubekir by the governor. When the judge questioned the defendants replied:

“Yes, indeed there has been some rumour circulating around about the sinful acts of Halil and Ebubekir. Upon this, the governor arrested them and called us to the sharia court for witnessing. Accordingly we witnessed about this case with the agreement of the neighbours and we confirmed that they acted indecently and that they were not innocent. Our declarations had been registered and later on the governor executed them.” [ACR 28/1–2]

At the end of this first hearing, the five accused men were released by the qadi.
However, the next day, on the same case we find a second entry registered by the qadi. This time those five men came to the court complaining against their neighbours. Their declarations before the judge runs:

“We have spent some money for this trial, and while we asked our neighbourhood inhabitants to contribute these collective expenses they refused. We demand that it be interrogated by the qadi and that what is necessary should be done according to the sharia” [ACR 28/1.2].

However, the neighbours refused the responsibility of sharing the trial expenses by stating that the mother of Halil sued nobody but these five men from the neighbourhood. Finally, the qadi decides that the neighbours were not obliged to share the expenses of the trial with the five accused men.

This case shows us that the governor was responsible of arresting the people who were seen as morally abject. In this way he fulfilled the function of a kind of police force. Moreover, he could make a trial under his authority by calling the qadi to be present in the audience. As the case above shows, the governor brought the two young men to his Divan and in the presence of the qadi he held a court hearing. We will go further into the matter of audiences held in the palace of the governor, but for the moment we will follow his other functions related to his responsibility of ensuring public order and safeguarding the Sultanic rights.

One of his minor functions as chief of the security forces was that he also had to supervise the well going of the audiences within the qadi court. It was surely not always an easy matter to make the criminals or wrongdoers to come to the court. Following, we observe that agents were designated by the governor, in order to make sure that the guilty will be present at the audience. We can find some evidence of such rulings in the recordings of the audiences [hüccet] held by the qadi office. Those records mention the function(10) and name of the agents who are designated by the governors(11).

2. Collecting the Sultanic fines and inspections [keshf]:

As we have already mentioned above, one of the tasks of the governor was to assure the collecting of the fines for crimes [cerîme] which were fixed by the sultanic law codes. In order to fulfil this obligation, the governor had to make sure whether the
death is caused after a homicide. If the person’s death was by accident no Sultanic fine could be collected. If there was a strong suspicion that the person was the victim of a murder, then the governor had to persecute the criminal in order to collect the fine.

In the qadi records of Adana we find an order of the governor which clearly mentions the cases which will be exempt of fines. The order addressed to the qadi of Adana states:

“For those who die after falling into water, or during a fire and for those who fall off a roof or a tree, or even for those who die after the fall of a wall, no dem-u ‘öshr [blood fine] shall be imposed” [ACR 132/92](12).

In other words, for the deaths caused by accident no fine was to be collected. Interestingly, there is a case of inspection conducted for understanding the reasons of death of a woman registered in the qadi registers of Adana. According to the inspection, the woman is declared to have died, after the fall of a wall [ACR 3/85–3]. In order to distinguish the accidental deaths from the intentional ones, the governor had to send an agent for inspection for death cases. Inspections made by the agents of the qadi court were called keshf. In such cases we notice that the agents of the qadi court are accompanied by a responsible [mübâshir] nominated by the governor(13).

The keshf conducted by the agents of the qadi court were not limited to the death affairs. On the contrary they could make different kind of keshf at times. When there was a trial about properties such as land or house, a keshf would be implemented. In such cases the agents of the court had to inspect the land or building in order to determine in situ, its limits, size or location. In such cases it is possible to see that the agents of the governor would accompany the qadi’s deputy. Since the governor was considered to be the guarantor of the Sultanic law [kanûn], it is not a surprise that he was also responsible of the well distribution of tax-farms or the lands distributed as timar(14).

3. Pursuing prostitution and fornication:

As has been underlined earlier, the governor was not only concerned with executing the sentences or collecting fines that were related to the cases such as murders. The case cited above about the two boys accused of sodomy, shows us that the governor could interfere in the cases of public morality as well. Other examples of
the qadi records of Adana give us some further examples of cases, where the governor was following the prostitution or immoral conduct in the city. According to the Sultanic legislation, fornication and prostitution were behaviours to be punished; the governor had the role of pursuing the people acting against the Sultanic laws in this matter as well.

An order by the governor of Adana, addressed to certain military chiefs to arrest a woman accused of prostitution and her husband who was involved in this wrongful doing, gives us a good example. In this order the governor states that an order had already been sent to the military officers so that a man named Kilisli Dede, a public bath keeper (hammâmcı), should be expelled from his neighbourhood and his wife should be executed by being thrown into the Seyhan River. In this same order it is mentioned that the husband was already arrested. However, since the woman had escaped, the order was addressed for a second time, to the same military forces. It is worth mentioning that the governor states, that after having been arrested, the facts of the case should be established according to the sharia in order to apply her execution [ACR 28/70.1]^{15}. It should also be noted that the militaries to whom the governor addresses this order are high-ranking notables of the town^{16}. However, the governor clearly threatens them by writing that they would be punished in the same way in the case if they would fail in reaching the woman. As such this points out another important aspect of the executive power of the governors, who were responsible for warning and correcting the askerî class people in their district, in case of disobedience.

Another case is about a man named Ibrahim who is accused by some military agents and the imam of his neighbourhood mosque, of procuring. According to the document registered in the qadi records, which is in fact a ma’rûz, written by the qadi to the governor, those persons claimed that Ibrahim received always foreign people in his house and did not hide his woman and children from those men. In this way Ibrahim is accused of letting his family to frequent “nâ mahrem” people (according to Islamic Law, “nâ mahrem” means all people of the opposite sex with whom proximity and intimacy is forbidden). They claimed further, that his wife and daughter were prostitutes and that Ibrahim allowed them to do so [ACR 28/212].

In this case, the qadi of Adana sends a letter to the governor in order to inform him about what went on. We have to notice that the military agents were sent by the initiative of the governor, who visibly asked for an inspection in the residence of Ibrahim. With this final letter [ma’rûz] submitted to the governor, the qadi “informs”
him of the result of the inquiry. In other words through this letter, the wrongdoings of Ibrahim are confirmed and submitted to the governor. What would then be the aim of such a report? Indeed we find no further document concerning the case of Ibrahim. However it can be underlined that this report about Ibrahim makes it possible for the governor to pursue him and his family legitimately for committing procuration and prostitution. And most probably, after having established their wrongdoings, the governor would order to arrest them as he did in the case of the public bath keeper Kilisli Dede mentioned above.

The administrative form as well as the language applied in this letter gives us some clues to evaluate the relationship between the qadi and the governor. We noticed already that the letter is called “ma’rûz” as the same types of document found in the qadi registers of the district of Üsküdar in Istanbul, which we cited above. More interestingly, this ma’rûz is closed by the same formula (... submitted to your Excellency. [ACR 28/212]) as the ma’rûz letters found among the Üsküdar qadi records. The reason for why the qadi informed the governor from the result of the inquiry about Ibrahim is clear. As we have already seen, this inquiry was initiated by the governor because he was the one to execute the sanction that would be imposed on Ibrahim and his family.

Besides enlighting us about the interaction of power of the governor and the qadi in the sphere of justice, this document from the Adana qadi registers helps us to confirm our hypothesis about the function of the “ma’rûz” letters found in the archives of the qadi of Üsküdar as well. We have already suggested that those ma’rûz letters were addressed to the Grand Vizier, who was denoted as “your Excellency” in the ma’rûz letters of the office of the qadi from Üsküdar. As far as the diplomatic language of the ma’rûz is concerned, in the Adana qadi records we observe that they are almost a replica of those that we find in the Üsküdar court records This observation suggests that both letters served the same purpose. The qadi, in both cases, inform the executive power so that the latter would further work through the case and most probably would decide and apply the sanction.

4. When does the audience take place in the palace of the governor?

We overviewed several types of situations in which the judicial power of the governor intervened into the sphere of justice as an executive power. At this point we will go closer into the cases where the audience is held in the palace of the governor
and in his presence. The question is to get a better understanding of the types of cases which needed an audience by the governor himself.

In some cases reflected in the court records we can notice that the governor himself appears to be one of the parties involved in the trial. Such was the case for an audience which took place in 1702 not in the qadi court but in the palace of the governor. In this audience, where the qadi was also present, Mustafa Pasha, the governor of Adana, asked the mütesellim named Hazinedârzâde Mehmed agha, who was the treasurer of the former vâlî Mehmed Pasha, to render him the accounts of the taxes which were collected during the former year. At the end of this audience a hüccet was given to the mütesellim confirming that he had rendered the accounts [ACR 101/66](17).

In other audiences taking place in the palace of the governor, we notice that the parties involved are the military people of the ‘askerî status. One of them is the trial initiated by a man named Mecmu çelebi. During this audience, Mecmu çelebi claims that Kara Ali Efendi the son of Abdulgani, although formerly declared by the qadi as a spreader of corruption “fesâd”, was still insisting on his evil behaviour. Mecmu çelebi also stated that a request was sent to the Sublime Porte about the misconduct of Kara Ali. Upon this a Sultanic order was received, ordering that Kara Ali should be banned from the province of Adana and recommanding him to be expelled to Cyprus. On the other hand, during this audience Mecmu çelebi also stated that Kara Ali had left the right of his malikâne(18) to the former before the qadi court, but never gave him the right to exploit it. In order to get the usufruct of the malikâne, Mecmu çelebi asked the Assembly to make an inquiry and render justice. The witnesses who were brought to the audience confirmed the declarations of the plaintiff as real and just. Accordingly the Assembly decided that the usufruct of the malikâne had to be given to the plaintiff Mecmu çelebi. It is remarkable that a considerable number of notables attended as witness to the audience and also striking that four müderris are recorded among the shuhûd ul-hâl of the trial [ACR 101/92].

A second trial which we will analyse here and which took place in the palace of the governor dates back to the same year. This is a trial initiated by a sipahi named Ahmed. During the audience, Ahmed accuses another sipâhi named Abdi of occupying his timar although he had the timar of his own. Ahmed also claimed that he already received a hüccet from the qadi of Adana against Abdi but the latter did not stop his illegal occupation. We also observe that Ahmed received a firman, that ordered
Abdi to give up the timar in question. Finally Ahmed stated that this act was against Imperial register [defter-i hâkânî] and the hüccet that he got from the qadi. At the end of this trial it is ordered to Abdi to give the timar back to Ahmed [ACR 101/220]. Here we notice for the second time, as we have seen in the case above, that a number of high ranking militaries used to be present as circumstantial witnesses at the court.

There are several similarities which characterise this two audiences. In both of them the qadi is present at the audience. Both trials are on a litigious situation on tax-farm. Landownership and the exploitation of tax-farm were depended on the Sultanic administration and Sultanic authority. The governor was the person to assure the maintenance of those tax-farms of the military elites who were under his authority. In this way we may assume that he held audiences at his palace and under his authority for the cases on matters which came under the jurisprudence of the Sultanic codes. However, it must be kept in mind that in both cases, the plaintiffs went through several juridical procedures before this audience. In the first case of Mecmu çelebi, we notice that several orders were sent to banish Kara Ali, and even a trial was initiated by Mecmu çelebi in the qadi court. In the case of Ahmed we notice also that he got through complicated procedures by initiating a trial in the qadi court, through which he was able to get a hüccet in his favor. He mentions also that he could get a Sultanic order (probably after having addressed to the sultan’s divan in the capital) but unfortunately all these steps were not sufficient to confirm his rights. As such, this observation implies that the governor’s authority could also be taken as the last chance for those who have already tried many other institutions for the making of justice in their favour.

Scholars have already confirmed that the Ottoman governors—viziers—disposed their juridical power as a continuity of the mazâlim court tradition in Islamic societies. Those courts handled matters of abuse of power, unjust affairs of administration and cases of public order [Miura 2003 :60–61; Gradeva, 2008: 152]. As far as the Adana case is concerned, we observe that the governors of this province fulfilled the functions of a mazâlim court as well. They exercised the authority of an executive power by applying the sanctions against the criminals and by holding audiences at their residences. In some of those audiences it is even not clear whether a qadi was present at all. On the other side, being responsible for the political and public order in the province, the governor could pursue all kinds of misconduct transgressing the sphere of the right of the State [hakk al-saltânâ]. At this point we can claim that in order to get a better understanding of the
administration of justice, we can not let away the actions of the governors in this sphere by interfering into the activities of the qadi judges.

IV. Conclusion

In this paper, I tried to pose some questions as to the plurality of the administration of justice in the eighteenth century Ottoman Empire. I have also tried to show some preliminary conclusions that I have drawn from my ongoing research on the legal practices in Üsküdar and Adana. While observing the interaction of the district qadis of the capital with the Grand Vizier’s Assembly, or that of the local qadis with the governor, we notice some similarities. Even if those two authorities are distinguished as military and judicial, representing the kanûn and the sharia respectively, at the first glance, we observe that they had overlapping responsibilities in the field of the application of justice. Their function was complementary but also permitted to supervise each other.

In order to get a better understanding of the interaction between the local qadi and the governor, we looked at different types of documents, such as imperial orders coming from Istanbul [ahkâm], orders of the governor [buyuruldu], and case records [hüccet]. We noticed that the governor intervened into the judicial procedures in several ways. For example, often people who had been accused of important crimes were brought in front of the qadi court by the men of the governor, such as a mütesellim or a çavus charged by him. This indicates that the governor charged his servants with his executive authority for arresting the accused. On the other hand we notice that the provincial governor could handle a case in his divan but as the last case cited above on the prostitution shows he needed a judgement of the qadi for legitimizing his execution.

We noticed also that the provincial governors acted as a replica of the Grand Vizier in Istanbul. We noticed that the formal language employed in their orders resembled to that of the Grand Viziers’ while addressing themselves to lower authorities. On the other hand the letters adressed to the governors by the qadis, employed the same terminology as in those ma’rûz of the Üsküdar qadi courts adressed to the Grand Vizier.

Both of the authorities, the Grand Vizier and the governor were direct deputies
of the Sultan and their most important responsibility was to protect public order and to ensure that the rights of the State [hakk al-saltânâ] were not transgressed.

For a better understanding of the overlapping juridical responsibilities of the qadis and the viziers, further research must be conducted in the archives in order to follow the rulings of the Wednesday Assembly meetings. This can be possible by looking also at the records that were kept by the office of the Grand Vizier as well. Finally, under the light of all this it should be underlined that the process of making justice in the Ottoman society could not be understood only by focusing on the qadi courts.

Notes

(1) In the 18th century, the town of Adana had nearly 25,000 inhabitants.
(2) It was Haim Gerber who argued that the ma’rûz documents in the court registers reflect a practice specific to the 18th century Ottoman courts [Gerber 1994: 43].
(3) The expression in the record is as follows: “huzuru ‘alîlerine ‘ilâm olundu.”
(5) In the record we read: “sheren diyet-i kâmile lâzım gelmeğin” which means: “while the payment of blood money has to be asked according to the sharia.”
(7) For a better understanding of the difference between a ma’rûz registers and an ordinary qadi register of Üsküdar we compared two of them. Namely the register number 474 which contains exclusively ma’rûz type of recordings and the register number 473, which contains ordinary court recordings [hüccet], where the names of the witnesses of the audience are cited below. It resulted that the ma’rûz type of record contained mainly cases which enter into the domain of criminal law, as murder, corporal damage, denonciations of moral misconduct, claim to expulse somebody of misconduct from the neighborhood, cases of injury or theft. In this kind of register, there are no records of transactions for instance. In opposition to the ma’rûz registers, one can find in the ordinary qadi register number 473, numerous transaction records, divorce cases and other.
(8) For the fines applied to different crimes according to Ottoman Criminal Law cf. Heyd [1973].
(9) Some examples of such orders send by the governor of Adana can be found at: ACR 28/166 which is an order addressed to his military chiefs and the notabilities of Adana, in order that they will follow the nomadic tribes disobedient to the administration. For an other buyuruldu of the same kind see ACR [28/214–2].
Most often were a mütesellim, muhzır, subashi, chavush or a yasakcı who were delegated to this purpose.

For an example of an audience for a murder case, we notice that the accused is brought to the court by a muhzır (kind of police agent), see ACR [132/63], also: ACR [132/58]. In an other document it is stated that the accusee was brought in front of the qadi by a military designated by the governor as agent, in the text we read: “.. halîyen eyâlet-i Adana vâlisi vezir-i mükerrem devletli Mutafa pasha hazretleri tarafından tayîn buyurulan mübâshir tüfençleri ile ihzâr olanan”, ACR [28/126].

In the text it is written as follows: “bi kaza-i allah ta’alla, suya ğarken ve ihraken, ve damdan ve ağacdan düşhendende ve duvar altında kalandan ve saïreden fevt olanlardan, dem-u ‘ıshiire mutâlebe olanmâyüb.”

The following documents are recording of this kind, where the agents of the governor accompanied the deputy [naîb] of the qadi, in order to inspect death cases, ACR [48/114; 3/24–1; 85–3].

In this kind of recordings we notice that the person who had the right to exploit the land and its revenues are militaries, cf. ACR [101/9 6–2; 3/12–2].

“Deyyûs dede’nin cezasını tertib ve ba’de avratı fâhisheyi taraf üsh-sher’den evâmir alup durûn-u şehr tecessüs veche buldunup cezâsın te’dib ve tarafımıza ‘ilâm eyleyesiz.”

At least two of them, namely Hamid agha who is adressed as one of the great notables [kidvet ıly-‘ayân] of the town and Haletzade Mustafa agha adressed as “the glory of his equals” [fahr-ıly akrán].

For a case where the Governor of Adana appears as the accused party, cf. Tamdoğan [2010].

Malikâne was the term for taxfarm entitled for lifetime to someone.

M. Ursinus, stated that the governor could attempt the auditions in the qadi court and that the latter could at his turn attempt the audiences held in the governor’s palace, cf. Ursinus [2003: 149].

References

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ABSTRACT

Işık TAMDOĞAN

Qadi, Governor and Grand Vizier: Sharing of Legal Authority in 18th Century Ottoman Society

The question of the multiplicity of legal institutions and their role in making justice in the Ottoman society is the main subject that will be addressed in this study. As is well known, the sharia and kanun (Sultanic codes) constituted two main pillars of the Ottoman justice, administrated by the Muslim judge (qadi) in the Ottoman courts. In other words, it was the Ottoman qadi who combined and interpreted the sharia and the kanun in legal courts in different periods and localities of the Ottoman Empire.

However, parallel to this structure, the institutions such as Imperial Divan, Wednesday
Assembly headed by the Grand Vizier and the Assembly of the Governors that existed and headed by the provincial governors (vali) were also operative in responding to the petitions of the subjects of the Sultan. What is more, these legal institutions also varied according to the local context of each locality. This study aims to show the variability of these multiple institutions of justice in the 18th century Ottoman Empire by drawing on the court records of the districts of Üsküdar and Adana.

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