

OUTLINES OF HUMAN RIGHTS IN OTTOMAN PERIOD

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I. INTRODUCTION:

It is not an objective behaviour to prejudicedly approach the Ottoman period under the influence of the Crusaders. The subject needs to be dealt with scientifically, not ideologically.

Turkey has given up its anti-Ottomanist policy following 1980's, and declared this to other international areas. At new period, however, it began to be respectful towards its own history and human beings. It wasn't until 1980's that researchers had gained easy access to Ottoman archives. It is worth noting that only 10% of these documents have been completed and presented to researchers so far. Ninety percent of these documents have yet to be classified. Besides, there are about 20.000 volume verdicts of Ottoman Courts of "İstanbul Şeriye Sicilleri Arşivi", which are utmost importance over human rights issue for Turkey as well as 20 Arap and other Middle East countries. Nevertheless, it is rather difficult to claim that those studies carried out at the Ottoman archives are enough.

There are two major empires in the history: Roman Empire and Ottoman State. It is too difficult to rule such areas as Middle East, Balkans and Caucasus, and to rule these areas has required to be very intelligent. Ottoman realized this fact in not less than 600 years.

Ottoman State is an European country. It has tried to approach the Europe step by step from 1299 onwards. The Empire has been mainly ruled by Islamic Law (şer'i hukuk) and law of custom (örfi hukuk).

However, it is hardly likely to claim that Ottoman's Law has always been on Islamic Law.

II. THEORY

Ottoman Law have always been considerably respectful to human beings as theoretically. Prior to talking about human beings issue, we had better take up the subject in terms of "human being".

The view-point of Ottoman-Islamic Law to the concept "human being" is paradoxal with that of any westerner philosophers. It is, however, difficult to suggest that the two difficult worlds, i.e Islamic and western world, have not made any contributions to humankind in the past.

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Aristo says, "humanbeings is a speaking animal" or "humanbeing is a sociological creature". Accordind to Diderot, "Humanbeing is an animal more or less". Some western philosophers claims that "humanbeing is zoon politicon". Adam Smith says; "humanbeing is an economical animal". According to Karl Marx, "human being is an animal who produce tool". Nietzsche says; "Christian Jesus is a red-faced animal". For Freud, "a human being is under the effect of libido. Darwin puts forth, "humanbeing is out of monkey". According to Albert Camus, however, "humanbeing is an animal who does not want to be an animal".

At no period have any Islamic philosophers or thinkers spoken of humanbeing as an animal. According to them, human is man and woman, not an animal.

Ottoman Empire, during its time was the most flourished liberty country in the world. Humanbeing is not created sinfully, but without sin.

In the Ottoman-Islamic law, there are three maslahats (benefits); "Zaruri maslahats, haci maslahats and tahsini maslahats". Zaruri maslahats have five freedoms:

- (i) Protection of religion (religion and belief),
- (ii) Protection of living right,
- (iii) Protection of generation (family and children's rights),
- (iv) Protection of mind (protection from harmful substances and drug),
- (v) Protection of property (property and social rights).

These rights are "Zaruri (much more necessary) Maslahats". Beside these, there are "haci (more necessary) maslahats", which involve beneficial works for individual fulfillment and society. "Haci (more necessary) Maslahats" means less necessary needs according to the zaruri maslahats. Apart from these, there are "Tahsini (necessary) Maslahats", which comprise less beneficial works for individual and society.

Majalla-i Ahkam-i Adliye, founded in 1869-1876 during Ottoman Empire, accepted these maslahats. Article 58 of Majalla spells out that "administration on population belongs to maslahats".

Islamic Law also accepts "classical rights and freedoms", "political rights and freedoms" as partly, as well on "social and economic rights and freedoms". The right to perseverance has been accepted in Islamic Law by the name of "Huruç ala-Sultan" long before John Locke (1632-1706) who may generally considered the "the father of liberalism". Furthermore, the right to opposition was also accepted by Islamic law.² It is possible to say that John Locke and other philosophers may taken this ideology in the enlightening era. In Ottoman State, the right to opposition and Huruc ala-Sultan none accepted as partly.

There are similar things between Jonh Locke and Ibn Haldun. It can therefore, be suggested that there is Islamic thought, on the basis of universal human rights.

² For details look at, Fendođlu, H.: "Osmanlı Devletinde Muhalefet Hakkı (Opposition Right in Ottoman State)", Symposium on Human Rights, 10 December 1995, Tarık Zafer Tunaya Kültür Merkezi, İstanbul 1995 (published).

III. HUMAN RIGHTS PRACTICE IN OTTOMAN STATE

Organization of Judiciary System: The arrest of someone without trial or verdict of any court is not generally possible. The detention period by the police is three days. It is necessary that the accused be sent for trial within three days. Also, to search a residence without Kadi's verdict is almost impossible. On the Kadi's verdict the person's name, address and other individual properties such as hairs' colour, eyes' colour etc. should be written. In addition, during search of a residence, an Imam or Priest is requested to be present.

Article 50 of "Yavuz Sultan Selim Kanunnamesi" says, "It is forbidden to arrest someone without Kadi's verdict". Article 34 of "Bursa Kanunnamesi" spells out "It is contrary to the custom of Ottoman and Islamic Law to arrest someone if his crime is not proved for certain". "IV. Murad Kanunnamesi" says that "It is not possible to arrest someone when there is sponsor (or guarantor) at the court". For him, there is the possibility of running away or when a big crime is in question, he is to be arrested". As is known, Sultan Yildirim Bayezid's witness was not accepted by the Kadi of Bursa.

Ottoman judiciary system is independent in view of administration. Sultan or Saray can not dictate to Kadi to decide wrongly. As regards this matter, no evidence has been encountered in archive documents.

Kadi is from the class of *ilmiye*, and written directly to Saray. He is not responsible to Governor in writing. *Ilmiye* class or *ehl-i şeria* consists of *müderis* (professor) *muftis* and *kadis*. They are administrators of Ottoman State.

But there are conflicts between *ehl-i orf* and *ehl-i şer* striver to pull them into law. This situation has always given rise to many paradoxes over human rights issue during Ottoman Empire.

If a Kadi commits a crime, he can only be tried at *Divan-i Humayun* in Istanbul. Therefore, local authorities can not try a Kadi.

In Ottoman Kadi system, there is a group referred to as "Şühud" (whitness) or "Şühudul hal" (witness of condition). Their number varies from 5 to 10. They are chosen from retired *Kadis*, *kazaskers* and other lawyers. Under the Kadi's verdict, the signature of *muşahits* (witnesses) are essential³.

Torture. In Islamic and theoretical Ottoman Law, torture is forbidden by law. But there are some mistakes in practice. Torture, as evidence, is not accepted in Islamic schools or sects (*mezheps*). Following a war, in Islamic law, a captive may be questioned regarding the matters of identity, not the military secrets, since it is forbidden.⁴

³ For details look at, Fendođlu, H.: **Türk Anayasa Hukuku Tarihinde Yargı Bağımsızlığı (The Independence of Judiciary System in Turkish Historical Constitutional Law)**, İstanbul 1996.

⁴ ez-Zuhayli, M. Vehbi: **Asarü'l-Harb fi'l-fikhi'l-İslami, Diraseten Makarine**, Dımaşk, non-date, Dar'ul-Fikr, p. 392; Amir, Abdullatif: **Ahkamü'l-Esra ve's-Sebaya fi'l-Hurubi'l-Islamiyye**, Daru'l-Kitabi'l-Misri-Dar'ul-Kitabi'l-Lubnani, 1406/1986, p. 149.

Some mistakes may have been committed in Ottoman Rule, as in other States, for example, the murder of Sultans' brothers by Sultan himself, to be a state above the law, interference of Sultans' wives in State affairs and broken down of Army and economy.

Ottoman State was a tolerant state; therefore, a number of Jewish people have migrated from Spain to Ottoman Land in 1492.⁵ Ottoman Empire was the first state to enjoy liberty during its period.

Minorities. Minorities also were in liberty under the Ottoman Rule. They had fundamental rights such as the right to live, the right to property and the right to freedom. Sokullu M. Pasha, -who was a non-moslem originally- the Prime Minister of Fatih Sultan Mehmed, has built a church along with a mosque in his village. Also, his brother was a priest in this village.

Minorities have largely enjoyed certain rights in the laws such as civil, family and heritage. Churches had autonomous structures as regards religious organizations, judicial, educational and economic matters, and they could establish foundations, hospitals and educational institutions.

Three basic rights and freedoms were granted to all human beings by the Ottoman State: First, to speak whichever language they may like; second, the liberty for the maintenance of their culture and thirdly, to live with their own law.

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⁵ Look at, Fendoglu, H.: **Türk Kamu Hukuku Tarihinde Kölelik (Slave in Turkish Historical Public Law)**, İstanbul 1996, p. 69, foot-note 2.