PROCEDURE IN THE OTTOMAN COURT AND THE DUTIES OF *KADIS*

BY
ABDURRAHMAN ATÇIL

THE INSTITUTE OF ECONOMICS ANS SOCIAL SCIENCES
OF BİLKENT UNIVERSITY

IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE DEGREE
OF MASTER OF ARTS IN HISTORY

BİLKENT UNIVERSITY
DEPARTMENT OF HISTORY
ANKARA, SEPTEMBER 2002

I certify that I have read this thesis and have found that it is fully adequate, in scope and in quality, as a thesis for the degree of Master in History

Dr. Eugenia Kermeli
Thesis supervisor

I certify that I have read this thesis and have found that it is fully adequate, in scope and in quality, as a thesis for the degree of Master in History

Dr. Oktay Özel
Examining Committee Member

I certify that I have read this thesis and have found that it is fully adequate, in scope and in quality, as a thesis for the degree of Master in History

Dr. Mehmet Öz
Examining Committee Member

Approval of the Institute of Economics and Social Sciences

Prof. Dr. Kürşat Aydoğan
Director

ABSTRACT

Kadıs were heads of civil administration in the Ottoman provinces. In addition to judicial duties, they carried out administrative duties. With the passage of time from the fifteenth to the seventeenth centuries, the importance of the *kadıs* serving in the proximity of the center gradually increased, and they undertook more responsibility in administration of justice and of other governmental duties.

In this thesis, duties of *kadıs* were generally discussed, and their duties in court procedure were examined in detail in the light of court records and the *Şeyhulislams*' *fetvas* of mainly seventeenth century. Stages in hearing of legal cases, transfer of cases and annulment of judgment are specific subjects examined in this thesis. It can be suggested that Ottoman court procedure had pre-determined rules, which were designed to prevent partiality in court.

Key Words: Ottoman *kadı*, court procedure, *fetva*.

ÖZET

Osmanlı İmparatorluğu'nda sivil idarenin başı olan kadılar adlî ve idarî görevler üstlenmişlerdi. İmparatorluğun merkezî bölgelerinde 15. y.y.'dan 17. y.y.'a kadar kadıların önemleri sürekli olarak arttı, adlî yönetimde daha fazla görevler üstlenmeye başladılar.

Bu tezde 17. y.y.'a ait şeriyye sicilleri ve Şeyhulislam fetvaları ışığında kadıların görevleri genel olarak ve mahkeme prosedüründe kadıların görevleri daha detaylı bir şekilde incelenmektedir. Hukukî davaların görülmesindeki aşamalar, davaların nakli ve hükmün bozulması tezde detaylı olarak incelenen konulardır. Tezde incelenen davalar ışığında, Osmanlı mahkeme prosedürünün taraflı hükmü engelleyecek önceden belirlenmiş kurallara göre işlediği savunulabilir.

Anahtar Kelimeler: Osmanlı kadısı, mahkeme prosedürü, fetva.

ACKNOWLEDGEMENTS

I am indebted to many people, from whom I got help during the preparation of this thesis. I wish to thank all, but name few of them.

I owe most to Dr. Eugenia Kermeli, who proposed me this subject and contributed to my thesis with invaluable comments. Without her encouragement and guidance, I would have never been able to finish my thesis.

I have to express my gratitude to Prof. Halil İnalcık, who taught me how to interpret the Ottoman documents. I must acknowledge Dr. Necdet Gök. Without his instructions, the *fetvas* I used in this thesis would have never become comprehensible to me. My special thanks are due to Dr. Akşin Somel, Dr. C. D. A. Leighton, Dr. David Thornton, Dr. Mehmet Kalpaklı, Dr. Oktay Özel, Dr. Paul Latimer, Dr. Russell L. Johnson, Dr. Slobodan Ilic and Prof. Stanford Shaw, who helped me to reconstruct my vision of history.

I would like to express my gratitude to my parents and my brother, who shared my distresses during the preparation of this thesis. Especially, I am grateful to my friends, Olcay Olmuşçelik, Murat Kınacı, Tolga Gümüş, Edip Öncü, Şakir Yılmaz, Ahmet Akyüz and Osman Baş, for their support.

TABLE OF CONTENTS

CHAPTER 1: INTRODUCTION

1.1. Development of the Hierarchy of *Kadıs*

The appointment of *kadıs* for administration of justice and other administrative duties is not an Ottoman innovation.[1] From an early stage, appointments were made to address the complexities of social regulation. Beginning in the earlier periods, the Ottomans appointed *kadıs* to administer justice and some other tasks. According to certain sources, Osman appointed Dursun Faki as *kadı* of Karacahisar in 1300.[2] Afterwards, *kadıs* were appointed to other districts as well. In 1363, Murad I appointed a *kadıasker* in Bursa to hear cases and supervise the affairs of all *kadıs*.[3] Although the sultans' desire to place *kadıs* and other bureaucrats in an hierarchy can be traced back to earlier Ottoman history, it was in the reign of Mehmet II that efforts were made in a more systematic way. In a general *kanunname*,[4] he drew up the place of state officials in the protocol and established some rules for promotion.

The *kanunname*, which dates from about 1476,[5] includes certain rules about the status of *kadıs* in the hierarchy and their promotion, as well as rules about the status of other officials. All officials were treated as members of a single hierarchy. Though the

[1] For historical background, Emile Tyan, 'Kâdî', *Encyclopeadia of Islam*, 2nd edn (Leiden: E. J. Brill), IV, pp. 373-375.
[2] Atsız, *Âşık Paşaoğlu Tarihi* (Istanbul: Milli Eğitim Basımevi, 1992), p. 25.
[3] Gy. Kaldy Nagy, 'Kâdî'asker', *Encyclopeadia of Islam*, 2nd edn (Leiden: E. J. Brill), IV, p. 375.
[4] *Kanunname*'s definition is 'a decree of the sultan containing legal clauses on a particular topic.' For general information on the Ottoman *kanunnames*, see İnalcık, 'Kanunname' *Encyclopeadia of Islam*, second edition (Leiden: E. J. Brill), IV, pp. 562-566.
[5] Halil İnalcık, *The Ottoman Empire, the Classical Age, 1300-1600*, trans. by Norman Itzkowitz and Colin Imber (London: Weidenfeld and Nicholson, 1973), p. 72. No manuscript copy of the *kanunname* from the fifteen century has been discovered so far. This aroused some doubts about the authenticity of the *kanunname*. For the discussion of anachronistic elements in the *kanunname*, see Konrad Dilger, *Untersuchen zur Geschichte des Osmanischen Hofzeremonilles* (Munich: Trofenik, 1967). For the

kanunname's regulations were subject to further elaborations and changes in later periods, the *kanunname* includes the nucleus of principles governing the hierarchy of *kadıs* until the last century of the empire.

The statute of the *kanunname* that deals with prospective *kadıs* reads out as such: 'he first becomes *danişmend* and then becomes *mulazım*'.[6] *Danişmend* was used to denote the students of the Sahn or any student in higher education.[7] *Mulazım* was the scholar, who just completed his education and become candidate for the office.[8] The conclusion to be drawn is that only those who studied in the *Sahn* or any other higher *medrese* were assigned to office, or rather that was the preferred path.

After a scholar became a *mulazım*, he taught at *medreses* or chose to become *kadı*. If a *mulazım* chose a teaching career and reached the top posts in teaching career, he could then attain the *mevleviyet* posts,[9] which were judicial districts, *kadılıks*, of 300 *akçes*[10] and 500 *akçes*[11] and the office of *kadıasker*.[12]

---

discussion of statues concerning *ilmiyye*, see Richard C. Repp, *The Müfti of Istanbul* (London: Ithaca Press, 1986), pp. 33-41.

[6] 'Fatih'in Teşkilat Kanunnamesi' in Ahmet Akgündüz, *Osmanlı Kanunnâmeleri* (İstanbul: Fey Vakfı, 1990), vol.1, p. 324.

[7] Repp, *The Müfti of Istanbul*, p. 37. He refers, in the footnote, to the both uses in the Ottoman documents.

[8] A general information about *mulazemet* can be found in these sources: İsmail Hakkı Uzunçarşılı, *Osmanlı Devleti'nin İlmiye Teşkilatı* (Ankara: Türk Tarih Kurumu Basımevi, 1988), pp.45-53; Mehmet İpşirli, 'Osmanli İlmiye Teşkilatında Mülazemet Sisteminin Önemi ve Rumeli Kadıaskeri Mehmet Efendi Zamanına Ait Mülazemet Kayıtları' in *Güney Doğu Avrupa Araştırmaları Dergisi*, 10-11 (1983), and Halil İnalcık, 'The Rûznamçe Registers of the Kadıasker of Rumeli as preserved in the Istanbul Müftülük Archives' *Essays in Ottoman History* (Istanbul: Eren Yayınları, 1988).

[9] The term *mevleviyet* was used in the *kanunname* to denote the offices of *haric*, *dahil müderrises* and the *kadılık* of 300 *akçes*. It can be assumed that the term *mevleviyet* signified higher offices than the *haric* level. The reason for not using the term *mevleviyet* for the offices of the Sahn and Ayasofya teachers and the *kadılık* of 500 *akçes* and the office of *kadıasker* is because their status as mevleviyet was well established and known. This can be illustrated by the fact that these provisions of the *kanunname* were laid down only to make clear the *mevleviyet* status of these offices not to arrange something for them. Therefore, it can be presumably said that *haric*, *dahil*, Sahn and Ayasofya *müderrises* and *kadıs* with the salary of 300 *akçes* and 500 *akçes* and the *kadıasker* occupied the highest offices that were called *mevleviyets*.

[10] 'Fatih'in Teşkilat Kanunnamesi', p. 324. The *kanunname* does not show which *kadılıks* were *kadılıks* of 300 *akçes*. However *kadılıks* of three capitals, Istanbul, Edirne and Bursa, could have been among the *kadılıks* of 300 *akçes*. This will be more comprehensible, if we consider that the salaries of *kadıs* were

However, if the *mulazım* chose to become a *kadı*, he obtained a post in the hierarchy of town *kadılıks*[13] that formed a distinct career path. The *medrese* graduate, who chose to acquire a town *kadılık*, was better paid at the beginning, but he lost the chance to reach top positions in the hierarchy.[14] A provision of the *kanunname* arranges the status of a *medrese* graduate who started to teach in an *içel medrese*[15] of 20 *akçes* and then turned to the *kadılık* career. He would be given a *kadılık* of 45 *akçes*.[16] Another provision of the *kanunname* mentions that the *kadı* with the salary of 150 *akçes* was above the *defter kethüdaları* and the *alay beyleri* in the protocol.[17] A *kadılık* of 150 *akçes* must have been a rank within the hierarchy of town *kadılıks*, since the holders of *mevleviyet kadılıks* were paid higher salaries.

The question of whether the *kanunname* was prescriptive or descriptive needs further research to be answered confidently. However, it can be assumed that it reflected the practice of the fifteenth century and set the model for the following centuries. It did not include all minute details in respect to the hierarchy of *kadıs*. Thus, it needs to be supplemented by other sources to create a full-picture of the *hierarchy* in the fifteenth century.

---

accounted according to the number of the houses in their domain. On the salaries of *kadıs*, see İnalcık, 'The Rûznamçe Registers of the Kadıasker of Rumeli as preserved in the Istanbul Müftülük Archives', p. 129.

[11] The existence of a *kadılık* worth of 500 *akçes* at that time is denied as anachronistic. For Repp's statements on the subject, see Repp, *The Müfti of Istanbul*, pp. 33-36. However, combination of all statutes about *kadılık* with the salary of 500 *akçes* implies that the term was used to denote the *kadı* of Istanbul. For the statutes related to *kadılık* of 500 *akçes*, see 'Fatih'in Teşkilat Kanunnamesi', p. 320 and p. 324.

[12] 'Fatih'in Teşkilat Kanunnamesi', p. 319.

[13] Town *kadılıks* were divided into three groups according to their regions, Anadolu, Rumeli and Mısır. For more information on the town *kadılıks* and their grading system, see Uzunçarşılı, *Osmanlı Devleti'nin İlmiye Teşkilatı*, pp. 91-95.

[14] According to Âli's statement, while the beginner town *kadı* was paid 25 *akçes*, the beginner *müderris* was paid 20 *akçes*. For further discussion of Âli's statement and other accounts on the subject, see Repp, *The Müfti of Istanbul*, pp. 55-56.

[15] *İçel medreses* were the *medreses* in Istanbul, Edirne, Bursa and the adjacent areas. On the subject see Uzunçarşılı, *Osmanlı Devleti'nin İlmiye Teşkilatı*, p. 57. Uzunçarşılı provides a documental evidence for this meaning of *içel* from *Künhü'l-Ahbâr*.

In the sixteenth century, the Ottomans extended their territories in the East and the West. They needed qualified people to employ in the administration of the newly conquered lands and hence, more *medrese* graduates were taken into state service to be employed as *kadıs* and new ranks in the hierarchy of *kadıs* were created. In contradiction to the fifteenth century development, the *kadıs* and *medrese* teachers shaped their own hierarchy independent from that of other state officials in the sixteenth century.

Some of the lands conquered in the sixteenth century were organized as *mevleviyet kadılıks*. The eastern conquests seem to have had more significance. After the Selim I's conquest of Syria, Egypt and Arabia in 1516-1517 and Süleyman's capture of Iraq in 1534,[18]the *kadılıks* of the big cities in the area, Mecca, Aleppo, Damascus, Cairo, Medina and Baghdad would join among the highest level *kadılıks*. Inferring from the careers of the *ilmiyye* members, it can be suggested that the *kadılıks* of Mecca, Cairo, Damascus, Jerusalem and Aleppo were at a rank between the highest level *medreses* and the top level *kadılıks*, like the *kadılıks* of Istanbul, Edirne and Bursa.[19] The *kadılık* of Medina was promoted to the rank of Mecca, Cairo, Aleppo and Damascus in 1555.[20] The *kadılık* of Baghdad was at the level of these *kadılıks* in 1550s, but it seems to have lost its position in the 1560s.[21] The *kadılık* of Jerusalem seems to have been positioned in the

---

[16] 'Fatih'in Teşkilat Kanunnamesi', p. 324.
[17] *Ibid.*, p. 324
[18] İnalcık, *The Ottoman Empire, the Classical Age, 1300-1600*, pp. 213-214.
[19] To mention some examples, in 1545, Abdülbaki, who was a *müderris* at Bayezit with 60 *akçes*, was appointed to the *kadılık* of Aleppo and in 1547, to the *kadılık* of Mecca. In 1551, Mehmet was promoted from the *medrese* of Selim I to the *kadılık* of Cairo. In 1547, Salih ascended to the *kadılık* of Damascus from Bayezıt II's *medrese*. For the biographies of Abdülbaki, Mehmet and Salih, see Nev'izade Ataî, *Hadaiku'l-Hakaik fî Tekmileti'ş-Şekaik*, published by Abdülkadir Özcan (Istanbul: Çağrı Yayınları,1989), p. 39, p. 52, p. 48.
[20] Abdurrahman b. Ali was the first *kadı*, who held Medina as *mevleviyet*. For his biography, see Ataî, *Hadaiku'l-Hakaik fî Tekmileti'ş-Şekaik*, p. 129.
[21] For the biographies of some Baghdad *kadıs*, see Ataî, *Hadaiku'l-Hakaik fî Tekmileti'ş-Şekaik*, p. 113, p. 270, p. 275, p. 296, p. 301, p. 414.

same rank with that of Baghdad after 1570s.[22] It can be discerned from the biographies in the Atayi's book that in the second half of the sixteenth century, a number of *kadılıks* were arranged to set up a rank below the rank of the *kadılıks* of Mecca, Medina, Damascus, Aleppo and Cairo. In this rank, apart from Baghdad and Jerusalem, there were the *kadılıks* of Filibe, Manisa, Kütahya, Yenişehir and some other cities.[23] All these *kadılıks* had *mevleviyet* status. If a candidate failed to become eligible for these *kadılıks*, he should have been employed in the town *kadılıks*.

Though new ranks were created, the administration could not meet the demand of candidates for office. Hence, a new system for the employment of the *ilmiyye* officials, namely, the rotation, *nevbet* system, was introduced to provide job opportunities for more people in the hierarchy. According to this system, a *kadı*'s tenure period was followed by a waiting period. When he left the office, another *kadı*, who completed the waiting period, took office. In this way, it became possible to employ more people. The waiting period was considered for the members of the hierarchy as a chance to increase their knowledge and thus to be eligible for a higher post.[24] A waiting official was supposed to attend the court of the *kadıasker* regularly on predetermined days in order to acquire a new post. The attendance on the *kadıasker* was called *mulazemet*.[25]

---

[22] I have not encountered a reference to the *kadılık* of Jerusalem that belongs to an earlier date than 1577 in Atayi's book. For the biographies of the some *kadıs* of Jerusalem after this date, see Ataî, *Hadaiku'l-Hakaik fî Tekmileti'ş-Şekaik*, p. 246, p. 289, p. 290, p. 312, p. 321, p. 330, p. 414 and p. 445.

[23] Ataî, *Hadaiku'l-Hakaik fî Tekmileti'ş-Şekaik*, for Filibe, p. 414, p. 494 and p. 536, for Manisa, p. 471, p. 497 and p. 501, for Kütahya, p. 293, p. 311and p. 314, for Yenişehir, p. 444, p. 447 and p. 536. The special attribute of the *kadıs*, who were employed in this group of *kadılıks*, is that they advanced in the teaching career up to the Sahn level.

[24] On the terms about the appointments, dismissals, separation etc. in the *ilmiyye* hierarchy, as shown in the book of *kadıaskers*, see İnalcık, 'The Rûznamçe Registers of the Kadıasker of Rumeli as preserved in the Istanbul Müftülük Archives', pp. 125-152.

[25] For the use of the term *mulazemet* in this meaning, '*...mazul olub tûl-ı tıraz mulazemet*', see Halil İnalcık, 'A report on the Corrupt Kadis under Bayezıt II', p. 78.

It is difficult to date exactly the introduction of the rotation system. The biographer Atayi ascribes to Ebussuud the rearrangement of this practice and the introduction of separate registers for *medrese* graduates waiting for a post, when he was *kadıasker* of Rumeli in 1537-1545.[26] The fact that the oldest *kadıasker* register that has been discovered so far was dated from 1545[27]can possibly support the Atayi's account. Upon the increase of the complaints about the unequal treatment of *kadıaskers*,[28] the need to handle the affairs of *medrese* graduates in a more organized way and to apply a more effective rotation system became apparent. Hence, registers were introduced.

At the end of the sixteenth century, the number of *kadıs* had increased and highly elaborated rules for their promotion had been designed. In the seventeenth century, the rules were refined and pre-determined paths for every office were set forward. A part of the Abdurrahman Paşa *kanunnamesi* that was prepared in 1667 deals with the hierarchy of *kadıs*. In this document, one can find the list of the *kadılık* ranks, which were put in the hierarchy. Actually, information in this document goes parallel with information in the biographies of the *medrese* graduates and reflects the main order of their hierarchy in the seventeenth century.

In the *kanunname*, the *kadıaskers* of Rumeli and Anatolia were depicted as the administrators of *kadıs*. The *kadıasker* of Rumeli was responsible for the affairs of the *kadıs* in Rumeli and the Aegean islands, and the *kadıasker* of Anatolia was responsible for the affairs of the *kadıs* in Anatolia.[29] Both were expected to attend regularly to the

[26] Ataî, *Hadaiku'l-Hakaik fi Tekmileti'ş-Şekaik*, p. 184.
[27] İnalcık, 'The Rûznamçe Registers of the Kadıasker of Rumeli as preserved in the Istanbul Müftülük Archives', p. 126.
[28] Ataî, *Hadaiku'l-Hakaik fi Tekmileti'ş-Şekaik*, p. 184.
[29] These *kadıs* must have been town *kadıs*, since the other high grade *kadıs* were under the responsibility of the *Şeyhulislam*.

meetings of the Imperial Council.[30] It has been largely accepted that the *kadıasker* of Rumeli was above the *kadıasker* of Anatolia. The provision in the *kanunname* that the *kadıasker* of Rumeli heard cases in the Imperial Council, and the *kadıasker* of Anatolia could not, without the permission of Grand Vizier, can be used as evidence of the precedence of the *kadıasker* of Rumeli. Besides, the fact that in the seventeenth century, almost all *Şeyhulislams*' last office before ascending to office was that of the *kadıasker* of Rumeli[31] is another indication of the position of the *kadıasker* of Rumeli.

The *kanunname* proceeds listing of the next highest ranks to that of the *kadılıks* of Mecca, Edirne, Bursa, Egypt, Medina, Damascus, Jerusalem and Aleppo.[32] From the evidence of the biographical sources, the *kadılık* of Istanbul would have ranked above all these *kadılıks*. It was almost a rule to hold the *kadılık* of Istanbul in order to be promoted to the *kadıaskerliks*.[33] Abdurrahman Paşa or the person, who copied the text must have missed to place the *kadılık* of Istanbul above these *kadılıks*, since there is no other mention in the *kanunname* to the *kadılık* of Istanbul. The *kanunname* cites Mecca before Edirne and Bursa. However, it is difficult to speak of a precedence of the *kadılık* of Mecca in the first half of the seventeenth century. At the time, instead of obtaining the *kadılık* of Mecca after serving as *kadıs* of Edirne and Bursa, the *medrese* graduates ascended to the *kadılıks* of Bursa and Edirne from the *kadılık* of Mecca.[34] In the second

[30] 'Osmanlı Kanunları', *Milli Tetebbular Mecmuası*, I (1331/1915), pp. 539-540.
[31] Of the five *Şeyhulislams* of the seventeenth century, who did not hold the *kadıaskerlik* of Rumeli as the last office before the office of *Şeyhulislam*, two were the teachers of the sultan; one was enthroned by victorious rebels, and one attained the *kadıaskerlik* of Rumeli before holding the *kadıaskerlik* of Anatolia. For the biographies of the *Şeyhulislams* of the seventeenth century, see Nev'izade Ataî, *Hadaiku'l-Hakaik fî Tekmileti'ş-Şekaik*, and Şeyhi Mehmet Efendi, *Vekayiu'l-Fudalâ*, published by Abdülkadir Özcan, 2 vols. (Istanbul: Çağrı Yayınları, 1989).
[32] 'Osmanlı Kanunları', pp. 539.
[33] All of the *Şeyhulislams* ın the seventeenth century, except seven *Şeyhulislams*, held the *kadılık* of Istanbul, before getting a *kadıaskerlik*.
[34] For some examples, see Şeyhi, *Vekayiu'l-Fudalâ*, vol. 1, p. 28, p. 31, p. 44, p. 208, p. 228 and p. 334.

half of the seventeenth century, the prestige of the *kadılık* of Mecca was increased, and in 1667, the *Şeyhulislam* Minkarizade Yahya Efendi made it a rule that before becoming the *kadı* of Istanbul, one was supposed to have been appointed as the *kadı* of Mecca.[35] From then onwards, the *kadılık* of Mecca seems to have held the next rank down to the *kadılık* of Istanbul.[36] Among the *kadılıks* of Edirne, Bursa, Egypt, Medina, Damascus, Jerusalem and Aleppo, the first two seem to have been more prestigious. After a *medrese* teacher of the highest level started his *kadılık* career, he was appointed to two or three *kadılıks*, before reaching the *kadılık* of Istanbul or after 1667, the *kadılık* of Mecca. The last of these *kadılıks* were generally either the *kadılık* of Edirne or Bursa.[37] Therefore, it is fair to assume that *the kadılıks* of Edirne and Bursa formed a rank above the other *kadılıks*.

The *kanunname* articulates that the *kadıaskerliks* and the *kadılıks* of Mecca, Edirne, Bursa, Egypt, Medina, Damascus, Jerusalem and Aleppo were the honorary title, *paye* offices.[38] Besides the actual holders of these offices, there were the holders of their *payes*. When the government could not provide an official with promotion, it invested him with the *paye* of a higher rank. The official was usually appointed to the office that he held its *paye*.[39] Apart from this, the government sometimes gave the *kadıs*, whom it failed to employ, some lower grade *kadılıks* as sinecure *arpalık*. These *kadıs* were

[35] *Ibid.*, p. 342.
[36] After 1667, the *kadıs* who held the *kadılıks* of Egypt, Bursa and Edirne, were appointed to the *kadılık* of Mecca. For some examples, see Şeyhi, *Vekayiu'l-Fudalâ*, vol. 1, p. 342, p. 353, p. 363, p. 392, p. 408, p. 412; vol. 2, p. 10, p. 24, p. 73, p. 76, p. 142.
[37] For some examples, see Şeyhi, *Vekayiu'l-Fudalâ*, vol. 1, pp. 110-114, pp. 214-217, p. 408, pp. 421-423, pp. 478-479; vol. 2, p. 24, p. 73, p. 76, p. 142.
[38] 'Osmanlı Kanunları', pp. 539.
[39] For example, Ebu Saidzade Feyzullah was given the *paye* of Istanbul in 1653, but he was appointed to the *kadılık* of Galata in 1654. For his biography, see Şeyhi, *Vekayiu'l-Fudalâ*, vol. 2, pp.148-152.

sending substitute *kadıs*, *naibs* to these *arpalık kadılıks* to administer justice and were taking part of the latter's income as subsistence for their living.[40]

According to the *kanunname*, the *kadılıks* of Selanik, Galata, Yenişehir, Filibe, Havass-ı Kostantiniyye, Üsküdar, İzmir, Baghdad, Diyarbakır, Manisa, and Sofya followed the previous group of *kadılıks*. Some of these *kadılıks* like the *kadılıks* of Yenişehir, Selanik and Galata become the first *kadılık* office of the top level *müderrises*.[41]In other instances, these *kadılıks* were assigned to *medrese* teachers, who could not reach the top level *medreses*. Then, the holders of these *kadılıks* wandered from one position to another, and if they were lucky, they reached one of the *kadılıks* of Egypt, Medina, Damascus, Jerusalem and Aleppo towards the end of their lives.

Below this level, the *kanunname* cites a number of *kadılıks* that were equal in the rank.[42] The *kadılıks* should have been assigned to *müderrises*, who could not reach the level of the Sahn, before holding a *kadılık*. After holding a number of *kadılıks* of this class, the holders of these *kadılıks* had the chance to be appointed to a *kadılık*, which was one class higher.[43]

At the bottom of the hierarchy of *kadıs* were the town *kadıs*. According to the *kanunname*, *müderrises* of the *haric* level were above town *kadıs*.[44] From this provision, it can be possibly inferred that if a *müderris* turned to the *kadılık* career, before arriving

[40] Uzunçarşılı, *Osmanlı Devleti'nin İlmiye Teşkilatı*, p. 118.
[41] For the *kadılık* of Yenişehir as the first *kadılık* office of the top level *müderrises*, see Şeyhi, *Vekayiu'l-Fudalâ*, vol. 1, p. 16, p. 41, p. 42, p. 44, p. 100, p. 252, p. 381, p. 384 and p. 390; for the *kadılık* of Selanik, see p. 68, p. 215 and vol. 2, p. 68; for the *kadılık* of Galata, see vol. 1, p. 390 and vol. 2, p. 149.
[42] 'Osmanlı Kanunları', pp. 539. These *kadılıks* are the *kadılıks* of Belgrad, Ankara, Gelibolu, Mihalic, Bosna, Sakız, Trablus, Kayseri, Maraş, Tire, Birgi, Balıkesir, Menemen, Erzurum, Tokat, Sinop, Mudurnu, Boyabad, Lefkoşa, Kandiye and Kamaniçe.
[43] For this study, biographies of some of the *kadıs* of Kayseri in the seventeenth century was looked. Most of the *kadıs* came from another *kadılık* of the same level and moved to a *kadılık* of the same level. However, there are some coming from a *medrese* of 50 *akçes* and some moved to a higher grade *kadılık*. For the biographies of some *kadıs* of Kayseri, see Şeyhi, *Vekayiu'l-Fudalâ*, vol. 1, p. 9, p. 11, p. 13, pç 16, p. 25, p. 47, p. 199, p. 249, p. 251, p. 286, p.350, p. 351, p. 444, p. 461, p. 503, p. 522, p. 524.

to the *haric* level, he was employed in one of the town *kadılıks* and lost the right to reach a *mevleviyet kadılık*.

In the seventeenth century, the hierarchy of *kadıs* had more definite rules making it possible to draw some promotion patterns. In other words, in the seventeenth century, there were more pre-determined rules allowing us to trace the background of the holder of a specific post and his potential promotion paths. In terms of having rules, the *hierarchy* advanced a long way from the fifteenth century to the seventeenth century. However, this did not necessarily lead to a more fair system of promotion based mainly on merit.

1.2. The Early Development of *Fetva*

The Prophet Muhammad preached not only uniqueness of God, reward, punishment and the last judgment but also rules on political, social, economic and ritual matters. He established a series of rules and practices in every aspect of life. His disciples listened to him and tried to learn about the precepts of the new religion. When they were not sure about the order for a specific matter, they were returning to Muhammad and were asking him for clarification about it. The occurrences of asking were repeatedly reflected in Quran: 'When they ask you (*yesteftuneke*) concerning … Say…' It is clear that the Quranic representations affected the terminology related to *fetva* and the form of *fetva* documents. It was only a short step to produce the terms *fetva*, *müfti*, *müstefti* from

[44] 'Osmanlı Kanunları', pp. 539.

yesteftuneke.[45] The question-answer format continued throughout the centuries as the basic format of *fetva* giving.

Until his death, the Prophet continued to respond to the questions of the Muslims. After his death, Muslims had to solve their problems on their own. When the Muslim conquests reached Syria, Iran, Iraq and Egypt, the Muslim community increased in size and became heterogeneous in ethnic composition. Hence, many new problems arose and the need for religio-legal advice from the learned men was felt. In this period, the Companions that had personally met the Prophet took initiative to respond to questions on the basis of what they remembered from his words. During this period, *fetva* giving became a widespread activity. The Companions spread over to all parts of the Muslim country and issued their *fetvas*, religious opinions, on questions presented. Their *fetvas* provided the basis for theoretical works, *fiqh*, which started to appear in the second/eighth century. After the generation of Companions, a new class that undertook this task came about. Beginning in the second/eighth century, those Muslims who devoted themselves to the study of Quran and *hadith*, the tradition of the Prophet, and had Islamic knowledge were accepted as religious authorities and issued *fetvas*. These learned men were designated as '*ulema*.'[46]

The *fetva* giving activity began as a private activity independent of any state control. Any person equipped with the necessary knowledge was entitled to issue *fetvas*, and no official appointment was required.[47] However, when *fetva* issuing proved to be an effective instrument in directing people and expressing political criticism, the Muslim

[45] Muhammad Kahlid Masud, Brinkley Messick, David S. Powers, 'Muftis, Fetvas, and Islamic Legal Interpretation' in *Islamic Legal Interpretation. Muftis and Their Fatwas*, ed. by M. Khalid Masud, Brinkley Messick, David S. Powers (Cambridge: Harvard University Press, 1996), pp. 5-6.
[46] *Ibid.*, p. 7.

administrators sought to establish control over the activity. It attempted to designate who were qualified to issue *fetva*.[48] Besides, some *müftis* were employed as officials. In Spain and North Africa, judicial advisors chosen by individual *kadıs* served as the professional members of courts. They were responsible for assuring that the proceedings occurred according to Islamic principles and for issuing their opinion in cases of judicial review.[49] It seems that the judicial advisors in Spain gained highly important status and affected the judicial process.[50] Apart from this, in the *mezalim* courts of Mamluk Egypt, special courts established by the sultan and governors, some *müftis* did serve.[51]

Either private or under state control, *fetva* issuing was a widespread activity. By the beginning of the second half of the tenth century, *fetva* collections had been produced. These collections constitute the fundamental source of information on the activities of *müftis*. A number of *fetva* collections can be found in the different parts of Muslim world covering different periods.[52] As a matter of fact, the surfacing of *fetva* collections after the tenth century can be assumed as the indication of the increasing importance of *fetvas*. The use of *fetvas* in the judicial process can explain the popularity of *fetva* collections. The parties brought to courts *fetvas* of leading scholars as supplementary material to their arguments, or the *kadı* himself solicited them.[53]

---

[47] Fahrettin Atar, 'Fetva' *İslam Ansiklopedisi*, (Istanbul: *Türkiye Diyanet Vakfı*).
[48] E. Tyan, 'Fatwa', *Encyclopeadia of Islam*, 2nd edn (Leiden: E. J. Brill), II,
[49] Muhammad Kahlid Masud, Brinkley Messick, David S. Powers, 'Muftis, Fetvas, and Islamic Legal Interpretation', p. 11.
[50] For the biography of four of these advisors, Manuela Marin, 'Learning at Mosques in al-Andalus', in *Islamic Legal Interpretation. Muftis and Their Fatwas*, ed. by M. Khalid Masud, Brinkley Messick, David S. Powers (Cambridge: Harvard University Press, 1996), pp. 50-52.
[51] *Ibid.*, p. 11.
[52] For some modern scholarly works on some of these *fetva* collections, see *Islamic Legal Interpretation. Muftis and Their Fatwas*, ed. by M. Khalid Masud, Brinkley Messick, David S. Powers (Cambridge: Harvard University Press, 1996).
[53] For the examples of the use of *fetvas* in the court procedure, David S. Powers, 'The Art of the Legal Opinion: al-Wansharisi on *Tawlîc*', Manuela Marin, 'Learning at Mosques in al-Andalus', and Nissreen Haram, 'Use and Abuse of the Law: A Mufti's Response' in *Islamic Legal Interpretation. Muftis and Their*

Another information about *fetva* giving activity is theoretical works, namely, *fiqh* literature. These works provide information especially about the intellectual qualities of *müftis*. They deal with the principals and precepts that govern the procedure of *fetva* issuing. The theoreticians of first centuries, al-Shafi'i (d.820), Abu al-Husayn al-Basri (d. 1044), al-Juveyni (d. 1085) and al-Ghazzali (d. 1111), required all embracing knowledge of the Quran, of the Prophet's tradition, the Arabic language and the art of reasoning to be qualified as a *müfti*. However, in the works of the theoreticians after the thirteenth century, the position of a *müfti*, who could not offer religious interpretation independently, but only by following the methodology of another *müfti*, was legitimized. Al-Amidi (d. 1234), Ibn Hacib (d.1248) and Ibn al-Salah (d. 1245) all deal with the legitimacy of the position of non-independent *müfti*. Furthermore, after the thirteenth century, the *muqallid*, who did not offer religious interpretation, but only conveyed the opinions of previous great *müftis* to the point of question, were gradually allowed to occupy the post of *müfti*. Al-Mahalli (d. 1459), Taj al-Din al-Subki (d.1369) and al-Bannani (d. 1784) laid the ground for the *muqallid* to become *müfti*.[54]

What this evolution in the theory tells us is that theoreticians tried to secure a balance between the reality of their time and idealism. In the first centuries, *müftis*, who had necessary knowledge for religious interpretation, were carrying on their task in an open field and had to determine their own way, but the *müftis* of the later centuries inherited a tradition of previous centuries that represented almost a fully-developed system. Therefore, the *müftis* of later centuries had to assess the tradition and go beyond

---

Fatwas, ed. by M. Khalid Masud, Brinkley Messick, David S. Powers (Cambridge: Harvard University Press, 1996)

it in order to make religious interpretation independently. Not to mention the fact that, they had to persuade the Muslims, of the legality of their independent opinions, at the time when there was an implicit consensus on the illegality of new methodologies.[55] This may well have had a share in the paucity of independent *müftis* and in the sanctioning of the position of non-independent *müftis*. Besides, the geographic expansion of the Muslim world could have affected the theory in the direction that the *muqallid* was recognized as legitimate *müfti*, since it may well have been difficult to find the *müftis*, who could make independent religious interpretation, especially in the newly conquered lands.

Finally, *fetva* can be defined as an answer to questions of religious matters, embracing 'religious' civil and legal matters. A comparison of *fetva* with other ways of conveying the religio-legal opinion may help understand the *fetva*. The *fiqh* works addressed the learned men. They were too professional to be understood by the uneducated public. *Fetva* transmits the religious knowledge from the realm of profound profession of theoretical works down to the public in the form of general solutions. The expressions of *fetvas* are so clear that every people can understand them and learn the religious order on the subject. Judgment produces solutions to individual problems by applying general statements of the *fetva* to individual cases.

---

[54] Wael B.. Hallaq, 'Ifta' and Ijtihad in Sunni Legal Theory: A Developmental Account', in *Islamic Legal Interpretation. Muftis and Their Fatwas*, ed. by M. Khalid Masud, Brinkley Messick, David S. Powers (Cambridge: Harvard University Press, 1996), pp. 33-39.

[55] Wael B. Hallaq, 'Was the Gate of Ictihad Closed?', *International Journal of Middle East Studies*, 16,1 (1984), p. 11. This is closely related to the subject of 'closing of the door of *ictihad*' that aroused a lot of heated discussion in the western scholarship. Joseph Schacht proposed that by the beginning of the fourth century, the door of *ictihad* was closed and the era of *mukallid müftis* began. Joseph Schacht, *An Introduction to Islamic Law* (Oxford: Clarendon Press, 1964), pp. 70-71. Wael B. Hallaq, in his precursory article mentioned above, argued that *ictihad* never stopped throughout the Islamic legal history, and through *ictihad*, Islamic law developed. Haim Gerber in *Islamic Law and Culture, 1600-1840* (Leiden: Brill, 1999) shows a number of examples of *ictihad* of *müftis* to find solutions to newly appeared events.

While the orders of judgment were legally binding, the orders of the *fetva* did not have such enforcement. It was a matter of piety to follow the instructions of *fetva*,[56] since the *müfti* did not hear the evidence, and he took what the questioner provided for granted. However, since the body of law and the tools used to proclaim a *sharia* judgment and to issue a *fetva* is the same, the *fetvas* on legal matters might have an effect on judgment. The relation between *fetva* and judgment is clear in the Muslim Spain, where judicial advisors were attached to courts.[57] In the cases of other Islamic lands, the relation between *fetva* and judgment was not institutionalized like in Spain, but *fetvas* of leading scholars had generally important in the judicial process.[58]

1.3. *Fetva* Issuing under the Ottomans

The *fetva* issuing under the Ottomans shows the basic characteristics of the earlier centuries. The *fetvas* maintained the question-answer format.[59] All matters of life could become subject of *fetvas*, and all people, regardless of their social status, could seek religious clarification. A departure from the tradition may have been the institutionalization of the *fetva* giving activity under the Ottomans. The Ottoman authorities attempted and succeeded in creating offices for *müftis* and assigning salaries to them. Thus, it can be said that the *fetva* issuing became part of the state function rather than voluntary action of individuals at least in the central lands of the empire.

---

[56] Atar, 'Fetva'. For the discussion of the differences between *fetva* and judgment in detail, see Frank E. Vogel, *Islamic Law and Legal System* (Leiden, Brill, 2000), pp. 17-23.
[57] Marin, 'Learning at Mosques in al-Andalus', pp. 50-52.
[58] For some modern works on *fetvas* and their relation to process in the courts, see *Islamic Legal Interpretation. Muftis and Their Fatwas*, ed. by M. Khalid Masud, Brinkley Messick, David S. Powers (Cambridge: Harvard University Press, 1996).
[59] For the structure of the Ottoman *fetvas*, see Uriel Heyd, 'Some Aspects of the Ottoman Fetva', *Bulletin of the School of Oriental and African Studies*, XXXII (1969), pp. 37-43, and J. R. Walsh, 'Fetva', *Encyclopeadia of Islam*, II, 2nd edn (Leiden: E. J. Brill), II, p. 867.

A seventeenth century historian, Hezarfen Hüseyin divides the *müftis* into two groups: the *Şeyhulislam* and the *kenar müftis*.[60] The *Şeyhulislam* was clearly the *müfti* in Istanbul and the head of the *ilmiyye* hierarchy. However, to establish the identity of the *kenar müftis* presents some problems. Relying on the indexes of *Şakaik-i Numaniye*, one can cite *müftis* in Amasya, Ankara, Bosna, Filibe, Rodos, Haleb, Kefe, Kütahya, Lefkoşa, Manisa, Maraş, İzmir, Selanik, Trabzon, Üsküb, Vize, Kudüs, Sofya and Şam as examples of the *kenar* müftis.[61]Apparently, these *müftis* were members of the Ottoman learned hierarchy, the *ilmiyye*, since almost all of the biographies included in the *Şakaik* were the biographies of members of the *ilmiyye*. However, it is possible to come across references to *müftis* in other areas, whose biographies have not appeared in the index of *Şakaik*.[62] Therefore, it is possible to assume that the *müftis* in these areas, mostly smaller towns, were not members of the *ilmiyye*.

Although the Ottomans could not organize the *fetva* issuing as effectively as they did with the *kadılık* offices, most of the areas under the Ottoman dominion had possibly a *müfti* of *ilmiyye* or non-*ilmiyye* background. This does not mean that there was a *müfti* in every city alongside with the *kadı*. For example, Bursa, Edirne and possibly the adjacent areas were under the jurisdiction of the *Şeyhulislam*. It is possible that the *müftis* in the other cities also served the neighboring cities. However, the subject of the organization of the *fetva* giving function throughout the empire needs more research before definitive conclusions can be reached.

---

[60] Hezarfen Hüseyin Efendi, *Telhîsü'l-Beyân fî Kavânîn-i Âl-i Osmân*, trans. by Sevim İlgürel (Ankara: Türk Tarih Kurumu, 1998), p. 197.
[61] *Şakaik-ı Numaniye ve Zeyilleri*, ed. by Abdülkadir Özcan, 4 vols. (Istanbul: Çağrı Yayınları, 1989).
[62] For the references to the *müftis* of Güzelhisar and Adala, see *Mühimme Defteri 90*, ed. by Mertol Tulum, (Istanbul: Türk Dünyası Araştırmaları Vakfı, 1993), No: 116 and No: 455.

In addition, *müftis*, not occupying a state office, seem to have maintained the right to issue *fetvas*. For example, Kahyr al-Din al-Ramli, who lived in the second half of the sixteenth century, was not occupying any governmental office, and he was one of the most famous *müftis* of the Middle East.[63] It is possible to see some other non-official *müftis* in the other areas and other periods. However, the questions, like in which areas the Ottoman government allowed voluntary *müftis* to issue *fetvas*; or whether any requirements were needed from these *müftis*; or was their authority equal to the appointed ones, need further research to be answered.

For the purpose of this study, the *Şeyhulislam* and his *fetvas* deserve closer examination. It has been widely accepted that the office of the *Şeyhulislam* was introduced in the first half of the fifteenth century.[64] In the motives behind the creation of such an office, the imitation of the Patriarchate and the Abbasid caliph has been suggested.[65] Besides, the need to provide religious sanction by an authority to a secular administration 'having no judicial powers but representing, so to speak, the religious conscience of the people' was put as an explanation for the introduction of the office.[66] Even if there was an imitation, this should have come forth in order to meet a need. Until the sixteenth century, *Şeyhulislams* were not part of the state and were seemingly free of the contamination of 'worldly affairs'. It is possible that they were seen as independent representatives of true faith rather than as state officials.

Beginning of the sixteenth century, the office of the *Şeyhulislam* seemed to be in closer cooperation with the administration. The office of the *Şeyhulislam* became the top

[63] Gerber, *Islamic Law and Culture, 1600-1840*, pp. 19-20.
[64] For the discussion of dating of introduction of the office, see Repp, *The Müfti of Istanbul*, pp. 10-13 and pp. 91-93.
[65] J. H. Kramers, 'Shaikh al-Islâm' in *Encyclopeadia of Islam*, 1st edn (Leiden: E. J. Brill).

office in the *ilmiyye* hierarchy, and the incumbent *Şeyhulislam* was recognized as the head of this hierarchy. It has been generally accepted that the absorption of the office of the *Şeyhulislam* into the *ilmiyye* hierarchy was completed in the tenure of Ebussuud.[67] When the office became a part of the hierarchy, it has been assumed that it became more liable to state intervention and lost its previous independent position. In compromise, Ebussuud attempted to bring the *kanun*, the secular law, into conformity with the *sharia*, the religious law.[68] It seems that after this period, the central administration and the office of *Şeyhulislam* were seen as integral parts of one body rather than two distinct bodies.

As for the functions of the *Şeyhulislams* in the Ottoman Empire, some of them taught in the *medreses*, while holding the office of *Şeyhulislam*. Some of them performed the duty of personal and religious advisory to the sultans. Beginning from the mid-sixteenth century, they became administrators of the *ilmiyye* hierarchy and organized the appointments to the higher offices in the *ilmiyye* career.[69] However, none of these functions were commonly administered by all *Şeyhulislams*. The only function performed by all *the Şeyhulislams* was the issuing of *fetvas*. The 'extra' duties assigned to certain *Şeyhulislams* became in time part of their 'job description'.[70]

---

[66] *Ibid.* p. 123.
[67] Repp, *The Müfti of Istanbul*, pp. 302-303.
[68] For the interpretations of the Ebussuud's attempts in sphere of land law, see Halil İnalcık, 'Islamization of Ottoman Laws on Land and Land Taw', in *Essays in Ottoman History* (Istanbul, 1988), pp. 155-169, and Colin Imber, *Ebu's-su'ud, The Islamic Legal Tradition* (Edinburgh: Edinburgh University Press, 1997), pp. 115-138. Both writers come to the conclusion that Ebussuud's endeavor did not bring any changes in practice other than changes in terminology. On the other hand, according to Gerber, Ebussuud issued *fetvas* opposing the Ottoman penal *kanun*. Gerber, *State Society and Law in Islam* (Albany: State University of New York Press, 1994), pp. 63-64.
[69] Richard Repp, 'Shaykh al-Islâm', *Encyclopeadia of Islam*, 2nd edn (Leiden: E. J. Brill), IX, pp. 400-402.
[70] Even the duty of the appointment of the higher *ilmiyye* officials was questioned in the seventeenth century that whether it belonged to the *Şeyhulislam*. For the related anecdote, see Hezarfen Hüseyin Efendi, *Telhîsü'l-Beyân fi Kavânîn-i Âl-i Osmân*, p. 200.

In the earlier periods of the office, the *Şeyhulislams* wrote and delivered their *fetvas* in person mainly in the mosque after the Friday prayers.[71] However, when the demand for *fetvas* increased, the *Şeyhulislams* needed a more organized environment. Therefore, by the middle of the sixteenth century, a department in the *Şeyhulislam*'s office, the so-called *Fetvahane* was established. The *Fetvahane* was responsible for arranging the *fetva* issuing procedure.[72] In this department, officers, like *müsveddeci*, *mübeyyiz*, *mukabeleci* and *müvezzi* worked under the supervision of the *fetva emini*. According to this new organization, a private questioner would come to the *müsveddeci*, who wrote his query in a draft form. Then, the *fetva emini* examined the draft. After his approval, the *mübeyyiz* produced a fair copy, which was submitted to the *Şeyhulislam*. After the *Şeyhulislam* wrote his answer and signed the document, the *mukabeleci* took the document and passed it onto the *müvezzi*, who delivered it to the questioner.[73] This bureaucratization of the *fetva* issuing could perhaps allow a bigger number of *fetvas* to be issued by the *Şeyhulislam* in a day, although the numbers given for Ebussuud's *fetva* issuing might be exaggerated.[74] To meet the increased demand, the proper and clear formulation of the question by the *fetva emini* became imperative. The *Şeyhulislam* was only to add a yes or a no, *olur* or *olmaz* sentence as an answer without explaining his legal reasoning, although there were occasions whereupon Ebussuud, for example, provided longer answer, especially when the question was controversial.[75]

[71] Heyd, 'Some Aspects of the Ottoman Fetvâ', p. 46.
[72] Ferhat Koca, 'Fetvahane, *İslam Ansiklopedisi* (Istanbul: Türkiye Diyanet Vakfı)
[73] *Ibid.*
[74] It is reported that Ebussuud issued 1,412 *fetvas* between the morning and afternoon prayers and in another day, 1,413 *fetvas*. Hezarfen Hüseyin Efendi, *Telhîsü'l-Beyân fî Kavânîn-i Âl-i Osmân*, p. 200.
[75] For some examples of Ebussuud's longer answers, see Imber, *Ebu's-su'ud, The Islamic Legal Tradition*, p. 128.

It seems that the *fetvas* of the *Şeyhulislams* had a widespread popularity in the Ottoman empire. Like the numbers given for Ebussuud's *fetva* issuing in a day, the abundance of *fetva* collections in the libraries is proof of their popularity. Because of the prestigious status of the *fetvas*, the sultans and other statesmen had recourse to the *fetvas* in time of need as a legitimizing power. For example, when Selim I intended to wage war against Egypt, he felt the need to take a *fetva* to justify his campaign.[76] If he had not taken such a *fetva*, some people would have most probably questioned the legitimacy of a campaign against a Muslim country. However, the use of *fetvas* as a device to facilitate state policies does not explain the high volume of the *fetva* giving activity. The fact that the questioners had to pay seven *akçe* to take a *fetva* [77] leads us to believe that they did carry some value in courts and were not sought after only to address theoretical cases.

In the court records, it is possible to see that *fetvas* were presented to the *kadı* in hope of better result.[78] The litigant took a *fetva* in accordance with his claim, and if he/she proves the facts that constitute the basis of his claim, then the *kadı* passed judgment in accordance with the *fetva*. For example, in one entry in the Üsküdar court record, the guardian of two minors went to court to take permission for the sale of their house, which was about to fall down, and presented *a fetva* from the *Şeyhulislam*, permitting this sale. The audience testified that the house was about to collapse, and the *kadı* authorized the sale.[79]Apart from this, in the Bursa court records of the seventeenth century, there are references to *fetvas* of *Şeyhulislam*, which was used to support a

[76] Repp, *The Müfti of Istanbul*, p. 212.
[77] Hezarfen Hüseyin Efendi, *Telhîsü'l-Beyân fî Kavânîn-i Âl-i Osmân*, p. 200.
[78] The fact that the majority of the *fetvas* in most of the *fetva* collections belongs to the legal sphere rather than religious sphere may provide support for the use of the *fetvas* for legal purposes, assuming that the compilers of these collections inserted all the materials at their hand into their compilation.
[79] Hacı Haldun Şahin, 'Üsküdar Kadılığı 6/281 Numaralı Şer'iyye Sicili', unpublished M.A. thesis, Istanbul University (1992), p. 50.

claim.[80]These examples suggest that the *Şeyhulislam* was the *müfti* of the central areas, since in the records of the other areas, the references are mostly of the local *müftis*.[81]

Another source to check the legal authority of the *Şeyhulislam fetvas* in practice is the *Mühimme* registers. These registers include copies of the imperial decrees sealed by the sultan's cipher. In these decrees, it is possible to see references to *fetvas* that the petitioner took to support his/her claim. *Fetvas* were generally used in two ways. In the first pattern, the petitioner took the *fetva* from the *Şeyhulislam* and went to the Imperial Council, the *Divan-ı Humayun*, to get his/her case heard. The case was heard, and probably since there was not evidence supporting the claim of the petitioner and the other side of the lawsuit was not present, the petitioner was asked to bring the case to the local *kadı* and was given an order, addressing the *kadı* instructing him to hear the case and look at the *fetva*, and if the *fetva* befits the case, its order must be passed as judgment. For example, in one imperial order sent to the *kadı* of Sakız, it is made clear that a certain Mehmet complained about the illegal acts of some people on the *waqf* land, and he informed that he had a *fetva* befitting his claim. The order reads out: 'if the *fetva* befits his claim, do not let anyone do something, which is against the *fetva*.'[82] In this case, it is clear that the *fetva* designated some acts as illegal. In the case that the plaintiff proved that his/her claim fitted the subject of *fetva*, the answer of the *fetva* became the judgment. In the second pattern, the petitioner complained about the illegality of the procedure of trial and asked the case to be heard again, and he presents a *fetva* on the illegality of the procedure. For example, the guardian of the two orphans complained that without the

[80] Gerber, *State Society and Law in Islam*, pp. 81-82.
[81] Mustafa Süslü, '20/2 Numaralı Kayseri Şer'iyye Sicili, H. 1027-1028 (M. 1617-1618)', unpublished M. A. Thesis, Erciyes University (1995), p. 125. Bekir Koçlar, '362 Numaralı Harput Şer'iyye Sicili, H. 1082-1083 (M. 1671-1673)', unpublished M. A. Thesis, Firat University (1990), p. 127.

presence of a guardian, a case of these two orphans was heard in court. He proved this by presenting court documents. He also presented a *fetva* on the illegality of that procedure and asked the re-hearing of the case. The decree ordered to the governor and *kadı* of Diyarbekir to rehear the case.[83] The *fetva* designated the legal order on the subject. Since the petitioner persuaded the Imperial Council that he had a case identical to the *fetva*, he was able to take an imperial order for re-hearing. In these examples, the *Şeyhulislam* issued *fetvas* to address problems of subjects living away from the centre and his immediate jurisdiction.

Another example of practical use of *fetva* is when the question touches upon subjects treated by the Ottoman *kanun*. The *kanuns* covered military and governmental organization, taxation, land law and penal law.[84] However, there are a number of *fetvas* on taxation, land law and penal law in the *fetva* collections.[85] The *nişancı*, the official responsible for the *kanun*, was renowned for his expertise in the *kanun* matters, and he was given the nickname the '*müfti* of *kanun*'[86]. The existence of such questions presented to the *Şeyhulislams* on *kanun* matters can be explained by the fact that they were held in high esteem as jurists.

Although the orders of *fetvas* were not binding and to obey its commands was a matter of piety, the Ottoman *Şeyhulislams*'s *fetvas* ruled that the *kadı* cannot disregard a *fetva* befitting a case.

---

[82] *Mühimme Defteri 90*, No: 9. For the similar references for *fetvas*, see the same source, No: 80, No: 86, No: 116, No: 188, No: 196, No: 278, No: 291.
[83] *Ibid.*, No: 212. For similar references to *fetvas*, see the same source, No: 19, No: 276.
[84] Halil İnalcık, 'Kanun', *Encyclopeadia of Islam*, 2nd edn (Leiden: E. J. Brill).
[85] For an example, see Çatalcalı Ali Efendi, *Feteva-yı Ali Efendi*, 2 vols. (İstanbul: 1283/1867), pp. 288-300 and pp. 367-369 (hereafter: *Çatalcalı*).
[86] 'Osmanlı Kanunları', p. 516.

> Question: Zeyd has a *Şeyhulislam*'s *fetva* befitting to his case. He shows it to the *kadı* Bekr. Whereas the case is not a matter of doubt, Bekr passes judgment to the contrary of the *fetva*. What is befitting for Zeyd?
> Answer: Dismissal, and severe warning.[87]

The legal reasoning behind this *fetva* must have been an innate conviction that since the tools used and the legal reasoning applied to the issuing of a *fetva* and proclamation of a judgment are the same. Thus, disregarding the *fetva* would be like objecting the ability of one of the most learned person, the *Şeyhulislam*, to interpret law.

This is not to say that the *fetva* was a means of verifying a claim. Rather, the *fetva* was looked at, after evidence was heard. Only if the *fetva* was befitting to the facts established by evidence, it gained value. Otherwise, if the *fetvas* have been accepted as evidence, they would have caused much controversy in the court procedure, since either side could take a favorable *fetva* according to their own statement of the case.[88] The *Şeyhulislam* Yahya answered a question related to a *kadı*, who did not take the relevant *fetva* into account in his judgment that 'if the case is not a matter of doubt, he is dismissed from the office, *mesele mahall-i şüphe değilse azl olunur*'.[89] If, however, there was a matter of doubt, the *kadı* was not liable to any punishment. In that case, if the facts were not established by evidence, the *fetvas* had nothing to do with the judgment, and the *kadı* may not take the *fetva* into account for his judgment.

If we admit that the *fetvas* were presented to courts and the Imperial Council and were considered as prestigious legal opinions, it becomes apparent that *fetvas* are one of the basic sources on the prevailing legal system and can be utilized to reconstruct

[87] Abdurrahim Efendi, *Feteva-yı Abdurrahim*, 2 vols. (İstanbul: 1243/1827), p. 417 (hereafter: *Abdurrahim*). There are identical *fetvas* in İbn Kemal, *Fetava* (Ankara: Milli Kütüphane YZ A 5607), p. 69a (hereafter: *Ibn Kemal*) and Yahya B. Zekeriyya, *Fetava* (İstanbul: Süleymaniye Kütüphanesi, Fatih 2413), p. 208b (hereafter: *Yahya*).
[88] For an example of taking a favorable *fetva* by making wrong statement, see *Mühimme Defteri 90*, p. 256.
[89] *Yahya*, p. 208b.

Ottoman law. Nevertheless, a modern researcher of the Ottoman *fetva* is not lucky in terms of *fetva* originals, since the *Şeyhulislam* office, in which a considerable number of *fetva* originals were preserved, burnt in 1927, and all the *fetva* documents there were lost.[90] Thus, one has to recourse to the *fetva* collections, consisting of the copies of the *fetva* originals and all the consequent problems of the compilers' choosing their material.

In this thesis, the *fetvas* in Ebussuud's 'Maruzat' and in the *fetva* collections of the *Şeyhulislams* Ibn Kemal, Yahya B. Zekeriyya, Minkarizade Yahya, Çatalcalı Ali, Feyzullah and Menteşizade Abdurrahim are used. Since the *fetvas* in Ebussuud's *Maruzat* was sanctioned by the approval of the sultan, they were statutes of law rather than opinions of the jurisconsult.[91] However, the *fetvas* of other *Şeyhulislams* used in this study are *fetvas* in the ordinary sense, and all said about *fetvas* in this chapter applies to their case.

1.4. Objective of the Thesis

This thesis is intending to discuss the duties and powers of *kadıs* in general and their handling of affairs related to the adjudication process in particular. The main sources of the thesis are court records, *sicills*, and the *Şeyhulislams*' *fetvas*. The fact that court records came into life as the outcome of real cases is beyond question. However, they cannot provide us with a full picture of procedural affairs in court, because they are only summaries. In this case, the importance of the *Şeyhulislams*' *fetvas* to supplement information from court records comes forth. The *Şeyhulislams*' *fetvas* also came out as

[90] For a list of the extant original *fetva* documents, see Heyd, 'Some Aspects of the Ottoman Fetva', pp. 35-37.
[91] For the discussions of the position of 'Maruzat' in the Ottoman system, see Uriel Heyd, *Studies in Old Ottoman Criminal Law*, ed. by V. L. Menage (Oxford: Clarendon Press, 1973), pp. 183-185, and Gerber, *State Society and Law in Islam*, pp. 88-92

the product of a real practice. The litigants sought *fetvas* to support their cases. Thus, they can shed light to some procedural affairs, at least, to the nature of loopholes used by litigants to have the result they wished. Since most of the sources used in this thesis belong to the period before the eighteenth century, and especially to the seventeenth century, the conclusions drawn primarily concern this period. Whenever it is seen necessary though, comparison between the different periods will be made.

In the light of the sources used in this thesis, it is possible to suggest that court procedure in the Ottoman empire had some objective rules existing above the discretion of *kadıs*, and that unless they were observed, parties in the litigation could attempt a rehearing by taking *fetvas* and imperial decrees.

The second chapter explores the qualities of the *kadıs* and the status of the substitute *kadıs*, *naibs*, discusses the duties of *kadıs* and endeavors to show some differences in their functions. The third chapter deals with the rules about which *kadı* was entitled to hear the case. The procedure in hearing of legal cases constitutes the content of the fourth chapter. In the fifth chapter, the transfer of cases by transfer, *nakl*, documents and related matters are investigated. Finally, in the sixth chapter, the conditions for annulment of the judgment of *kadı* are dealt.

CHAPTER 2: *KADIS* and THEIR DUTIES

2.1. Qualifications of *Kadıs*

The qualifications a *kadı* should possess were dealt with in *Şeyhulislams*' *fetvas*. One of the questions the *Şeyhulislams* were asked was whether a man with certain traits or a man devoid of certain attributes was befitting to become *kadı*. Hence, the *fetvas* dealing with the physical, intellectual and moral qualities of *kadıs* are found.

> Question: Can a person, who is not suitable to become a witness, become *kadı*?
> Answer: No.[92]

Witnesses were expected to fulfill certain physical and moral qualities. They should not have been blind or dumb,[93] and they should have been *adil*, whose good qualities or acts were more than his bad qualities or acts.[94] The *kadıs* were also expected to have these qualities. For example, a deaf person was not permitted to become a *kadı*.[95] Apart from these *fetvas* related to the physical qualities of *kadıs*, there are some fetvas on their moral qualities.

> Question: Is it valid according to the sharia to appoint Zeyd, who is a sinner, *fasık*, as *kadı*?
> Answer: He should not be appointed.[96]

> Question: If Zeyd, who is a *kadı* in a town, drinks wine and hears the cases of the Muslims, what is suitable to be done for him according to the *sharia*?
> Answer: He is dismissed from office, and he should not be appointed again, unless he becomes righteous.[97]

---

[92] Minkarizade Yahya Efendi, *Feteva-yı Minkarizade* (Ankara: Milli Kütüphane YZ A 3242) ,341b (hereafter: *Minkarizade*). The same *fetva* in verbatim has taken place in *Abdurrahim*, p. 414.
[93] *Mecelle*, ed. by Osman Öztürk (Istanbul: İslâmî İlimler Araştırma Vakfı, 1973), p. 398. There are *fetvas* on the illegality of the blind as *kadı* in *Minkarizade*, p. 338b, *Çatalcalı*, p. 365, *Abdurrahim*, p. 414 and Feyzullah Efendi, *Feteva-yı Feyziyye* (Istanbul: Daru't-Tibabeti'l-Amire, 1266/1850), p. 288 (hereafter: *Feyzullah*).
[94] *Ibid.* p. 401.
[95] *Yahya*, p. 208a. For a similar *fetva*, see *Abdurrahim*, p. 414.
[96] *Yahya*, p. 208b.

> Question: If Zeyd, who is a *kadı* in a town, has *tanbur* played in his court and get the little boys wearing skirts to dance, what should be done to him according to the *sharia*?
> Answer: He is dismissed from office, and he should not be appointed again, unless he becomes righteous.[98]

These *fetvas* suggest that *kadıs* were expected to be physically sound and morally upright. Drinking wine and organizing dancing parties were not considered attitudes to be observed by anybody, needless to say a *kadı*. It is also interesting to notice that apart from dismissal, no other punishment is suggested. In comparison to other culprits of similar offences, who would have been given severe chastisement, *kadıs* seem to escape rather lightly.

Besides, *kadıs* were supposed to be equipped with the knowledge to fulfill their duties. They were supposed to know how to spell words in order to avoid confusion[99] and how to write a proper court document.[100] Moreover, most of the *kadıs* were ordered to pass judgment according to the most generally accepted opinions of the great jurists, and hence, they were expected to know at least these opinions.[101]

Some *fetvas* deal with cases of *kadıs* that are either knowingly hostile to one of the parties[102] or had committed murder. [103] In both cases, the *kadıs*' eligibility was not

---

[97] *Minkarizade*, p. 338a, the identical *fetva* is in *Abdurrahim*, p. 417.
[98] *Abdurrahim*, p. 428.
[99] *Yahya*, p.208b. '…if the *kadı* Zeyd writes the word *ziraat* with lisping *z*, what is suitable for him? Answer: He is dismissed.'
[100] *Ibid.* , p. 208b. '…If the *kadı* Zeyd miswrites his signature and gives contradictory documents to the sides, what is suitable for him? Answer: He is dismissed and advised to go on studying…'
[101] Ebussuud, 'Maruzat', in Ahmet Akgündüz, *Osmanlı Kanunnameleri*, vol. 4 (Istanbul: Fey Vakfı, 1992), p. 50. For a *kadı* diploma mentioning the responsibility of the *kadı* to follow the soundest opinion of the Hanafite jurists, see İsmail Hakkı Uzunçarşılı, *Osmanlı Devleti'nin İlmiye Teşkilatı*, p. 113.
[102] *Ibid.*, p. 414. 'Question: If Bekr is appointed to hear a case involving Zeyd and Amr; he has hostility against Zeyd, and he judges against Zeyd, is his judgment obeyed? Answer: Yes, if it is according to the *sharia*.' For a similar *fetva*, see *Yahya*, p. 211b.
[103] *Abdurrahim*, p. 414. 'Question: Is the judgment of *kadı* Zeyd, who is a murderer, valid? Answer: Yes, if it is according to *sharia*.'

questioned. This attitude must have been stemming from the strong conviction that all shortcomings of a *kadı* were forgotten, if he passed judgment according to the *sharia*.

It can be assumed that most of these *fetvas* came into life as a result of the efforts of one of the sides in a case to discredit, the *kadı*, who heard the case, and thus, to succeed perhaps to have the case reheard. If a *fetva* questioning the quality of the *kadı* was produced, the likely steps to follow would be to go to the Imperial Council in order to have the *kadı* dismissed from office or to ask for a rehearing. Whether the accusations against a *kadı* resulted in his dismissal cannot be answered on the basis of the material in hand, since most of the time, the causes of the dismissal were not mentioned. The complaints of the people were sometimes cited as the cause for removal.[104]

Apart from these qualities mentioned, the *kadıs* should also have been able to fulfill other duties. In 1634, Mehmet Bahayi was dismissed from the *kadılık* of Halep with the excuse that he did not carry out the instructions of the imperial order.[105]

2.2. The Substitute *Kadı, Naib*

Some of the *kadıs* were invested with the right to appoint *naibs*, who served as their agents and had the same rights. These *naibs* were responsible before the *kadıs*; the *kadıs* determined their responsibilities and restricted their powers. Unless the *kadıs* were consigned to another *kadılık* or were dismissed and the subsequent *kadı* dismissed them, they went on to serve and carried out all duties. No other governmental official could interfere in the operation of their tasks. It seems that the *kadıs* were in need of the services of *naibs*. A number of *naibs* were appointed in every part of the empire.

[104] There is a reference to the dismissal of a *kadı* because of the complaints of the people for his actions in *Mühimme Defteri 90*, No: 42. A *kadı* diploma mentions the removal of ex-*kadı* as a result of the complaints of the people. For diploma, see Uzunçarşılı, *Osmanlı Devleti'nin İlmiye Teşkilatı*, pp. 113-114.

However, the sides were presumably at times reluctant to recognize the authority of the *naibs*, and some questions on their authority were brought before the *Şeyhulislam*.

> Question: If Zeyd claims that the garden in the hands of Amr belongs to him and wants to bring the case before the *naib* Bekr, Amr rejects this with the excuse that he wants to submit the case to the *kadı* and Bekr takes him to the court by force and passes judgment against him, is this judgment valid according to *sharia*?
> Answer: Yes, if it is in accordance with the *sharia*.[106]

> Question: If the wife of *kadı* Zeyd, Hind, brings her case against Amr to the *naib* Bekr and Bekr passed judgment in favor of Hind, is this judgment valid?
> Answer: Yes.[107]

> Question: The *kadı* of a town Zeyd has the right to appoint the *naib*. If Zeyd appoints Amr as the *naib* and Zeyd leaves the town, before his tenancy in the *kadılık* ends, can the governor of the town Bekr dismiss Amr and replace him by Bişr?
> Answer: No.[108]

The first of the *fetvas* above indicates that the defendant had no right to refuse to be litigated before a *naib*. The second *fetva* and other similar *fetvas* in the *Abdurrahim* collection suggests that once the *naib* was appointed by the *kadı*, he was treated like a *kadı*; this was imperative to be observed, even if a case of a relative of the *kadı* came to court. The *kadı* could not hear a case in which he or one of his close relatives was involved.[109] The third *fetva* makes it clear that governors could not interfere with appointments and removal of *naibs*, provided that the *kadı*, who appointed them still held the office. In these fetvas, the *naibs* emerge as powerful as the *kadıs*. Apart from this, if the *kadı* invested the *naib* with the right to appoint another *naib*, the *naib* could nominate the second, who would serve with the same rights.

---

[105] For the biography of Mehmet Bahayi, see Şeyhi, *Vekayiu'l-Fudalâ*, vol. 1, pp. 214-217.
[106] *Yahya*, p. 211a.
[107] *Minkarizade*, p. 339b. There are two similar *fetvas* in the *Abdurrahim*, p. 419; in one of them, the *kadı* brings his case before the *naib*, and the answer is again affirmative.
[108] *Çatalcalı*, pp. 365-366.
[109] *Mecelle*, p. 420.

> Question: The *kadı* of a town Zeyd was allowed to appoint a *naib*. He sets Amr as his *naib* and allows him to appoint a *naib*. If Amr appoints Bekr as *naib*, and Bekr hears some cases, are his judgments obeyed?
> Answer: Yes.[110]

Even if the *naibs* were treated like the *kadıs* in most of the cases, some of their acts could be sometimes restricted by the *kadı* or by an imperial order.

> Question: The *kadı* Zeyd prohibited his *naib* Amr to hear a case. Despite this, if Amr hears the case and passes judgment, is his verdict valid?
> Answer: No.[111]

> Question: An imperial order was sent to the *kadı* Zeyd saying 'Hear the case in person!' If Zeyd cannot go in person, because of his other duties and sends his reliable *naib* to hear the case, is the judgment of the *naib* obeyed?
> Answer: It is null and void, not obeyed, since there is a clear prohibition. Even if there is an important duty, it is not permissible to send the *naib*.[112]

In these *fetvas*, we encounter cases in which the performance of the *naib* was hampered partially. The line of authority was clearly set. An imperial order came before everything, and then the *kadı* retains the discretion to decide as to whether a *naib* is to hear a case or not. In the background of the second *fetva*, it seems that there was a long enduring controversy or a big problem. One of the sides or both sides came to Istanbul and brought the case to the Imperial Council and was able to take an order sent to the *kadı* to the effect that he must hear the case in person,[113] but the *kadı* transferred the case to the *naib* to hear it. After that, one of the sides, most probably the one who lost the suit, asked the *Şeyhulislam* of the legality of the *naib* in this lawsuit. Expectedly, he turned to the Imperial Council with the *fetva* at hand.

---

[110] *Ibid.*, p. 366. For a *fetva* to the same point, *Abdurrahim*, p. 418. In the *fetva* in *Çatalcalı*, p. 365, it is made clear that if the *kadı* did not permit the *naib* to appoint another *naib*, he could not appoint.
[111] *Yahya*, p. 211a. For a similar *fetva*, see *Minkarizade*, p. 340a.
[112] Ebussuud, 'Maruzat', p. 51. For a similar *fetva*, see , *Yahya*, p. 211a.
[113] It is possible to see examples of such orders in the *Mühimme* registers consisting of the copies of imperial orders. For some examples, see *Mühimme Defteri 90*, No: 196, No: 267 and No: 327.

In another case, a certain *naib* was dismissed from office and was refused from becoming *naib* again.

> Question: Zeyd was customarily becoming *naib*, and an order of the sultan prohibiting him from becoming the *naib* was issued. If the *kadı* of the town appoints Zeyd as *naib*, before an order nullifying the first order comes, and Zeyd hears some cases and passes judgment, is his judgment obeyed?
> Answer: No.[114]

The *naibs* were not members of the learned hierarchy, the *ilmiyye*, even if they had knowledge in religious matters. They were coming mostly from among the local people, who graduated from the local *medreses*. It seems that some of them served as *naibs* during the tenure of many different *kadıs*, until they began to disturb the people in the area.[115] In such cases, these *naibs* were dismissed from the office and blocked out from becoming *naibs*. If they became *naibs* without an imperial permission, their judgments were null and void.

The organization of the Ottoman judicial administration made the employment of *naibs* inevitable, since some judicial districts were too large to be administered by one *kadı*. For example, the *kadı* of Eyüp appointed twenty six *naibs* and the *kadı* of Üsküdar appointed five *naibs*.[116] Most of the *naibs* were given the right to hear cases and fulfill other legal duties of *kadıs*. Unless they were restricted, they behaved like a *kadı*. They had different courts inside the district and different registers.[117]

---

[114] *Çatalcalı*, p. 366. There are similar *fetvas* in *Yahya*, p. 211a and *Abdurrahim*, p. 417.
[115] There is a reference to such a *naib* in *Mühimme Defteri 90*, p. 358.
[116] Osman Nuri Ergin, *Mecelle-i Umûr-ı Belediyye* (Istanbul: İstanbul Büyükşehir Belediyesi Kültür İşleri Daire Başkanlığı, 1995), pp. 287-288.
[117] Halil Inalcık published some examples from the registers of *naibs* appointed by the *kadı* of Bursa. Halil Inalcık, 'Osmanlı İdare, Sosyal ve Ekonomik Tarihi ile İlgili Belgeler: Bursa Kadı Sicillerinden Seçmeler: III. Köy Sicil ve Terekeleri', *Belgeler*, XV, 19 (1993) pp. 23-169. The *naibs* in Girne and Mesariye appointed by the *kadı* of Lefkoşa must have been the *naibs* having different courts. For the references for

The *kadıs* sometimes farmed out the court fees to *naibs* with an *iltizam* contract.[118] This practice led the *kadıs* to increase the numbers of *naibs* in order to increase their income. As a consequence, since more and more people became liable to the whims of *naibs*, they increasingly complained to the central administration, which attempted to put a stop to these abuses by issuing the *Adâletnâmes*.[119] Apart from the *naibs*, who had separate courts, there were *naibs*, who did not have their own court but were allowed to hear cases. These *naibs* performed their duties in the centre of the office of *kadı*, and they were called *bâb naibi*.[120] Another type of *naibs* was the *naibs* sent to offices granted to the higher grade *ilmiyye* members as *arpalıks*, sinecures.[121] Finally, the *ayak naibs* did not have the right to hear cases. The *ayak naibs* were entrusted with the duty of controlling the affairs of the artisans.[122]

As mentioned before, *naibs* functioned similarly to *kadıs*. The records of *naibs* can show their authority in practice. Records belonging to the *naibs* appointed by the *kadı* of Bursa include every type of legal documents, certificates, *huccets*, notes of court, *ilams*, inheritance documents, *tereke* registers,.[123] However, it seems that the order of the sultan should be observed by *kadıs* themselves and not their deputy, unless

---

the *naibs* in Girne and Mesariye, see Mehmet Ali Durmuş, 'Hicri 1120-1121 Tarihli Lefkoşa'nın 7 Numaralı Şer'iyye Sicili', unpublished M. A. thesis, Ege University (1997).

[118] Halil Inalcık, 'Mahkame', *Encyclopeadia of Islam*, 2nd edn (Leiden: E. J. Brill), VI, pp. 3-5.

[119] Halil Inalcık, 'Adaletnameler', *Belgeler*, II, 3-4 (1965), pp. 75-77.

[120] For example, Ali Efendi was the *bab naibi* in the office of Minkarizade Yahya Efendi, the *kadılık* of Egypt. For the career of Ali Efendi, see Şeyhi, *Vekayiu'l-Fudalâ*, vol. 2, pp. 67-69.

[121] For example, the *naib* in Gelibolu in 1646 should have been a *naib* sent by a high grade *ilmiyye* member, whom the *kadılık* of Gelibolu was given as *arpalık*, since the *kadılık* of Gelibolu did not depend on any other *kadılık*. For some references to the *naib* in Gelibolu, see *Mühimme Defteri 90*, No: 24, No: 40 and No: 63.

[122] Uzunçarşılı, *Osmanlı Devleti'nin İlmiye Teşkilatı*, p. 117. There is a reference to the *ayak naibis* in *Mühimme Defteri 90*, p. 67.

[123] Halil Inalcık, 'Osmanlı İdare, Sosyal ve Ekonomik Tarihi ile İlgili Belgeler: Bursa Kadı Sicillerinden Seçmeler: III. Köy Sicil ve Terekeleri', *Belgeler*, XV, 19 (1993) pp. 23-169.

there was an emergency.[124] This was not however a steadfast rule. For example, the *naibs* dealt with the affairs of *menzilhanes*, resting points.[125]

It is apparent though that for the central government, the responsibility of carrying out orders lie with the *kadı*. Thus, few orders were sent to *naibs*.

2.3. Duties of *Kadıs*

The primary duty of *kadıs* was to administer justice. They heard cases and passed judgments according to the soundest opinions of the Hanefite jurists.[126] As a matter of fact, the Ottoman *kadıs* were eager to pass their judgments according to the soundest opinions of the Hanefite jurists. In case of uncertainties, the opinion of the *müfti* was sought. Even if the opinions of the other schools were more suited to the public well-being, the *kadıs* were reluctant to go beyond the limits of the *Hanefî* school.[127] Thus, we can assume that there were more or less defined rules for *kadıs* to follow, while giving judgment.

In addition to judgeship, *kadıs* validated marriage contracts, divided heritage of the deceased, protected the properties of orphans, and the lost, the *gâib*, appointed guardians, *vasis*, for children,[128] determined alimonies and supervised the affairs of the *waqfs*, pious foundations. Since the performance of these duties required the knowledge of law, other officials could not carry out these duties.

---

[124] Inalcık, 'Adaletnameler', p. 76.
[125] *Mühimme Defteri 90*, No: 59
[126] 'Osmanlı Kanunları', pp. 541. Some *kadıs* may have given the right to choose among the opinions; see Ebussuud, 'Maruzat', p. 50.
[127] For an anecdote showing the insistence of the *kadı* of Beyrut on the opinion of the *Hanefî* school, though the opinion of the *Maliki* school more suitable, see Saleh, *The Qadi and the Fortune Teller*, pp. 34-36.
[128] 'Osmanlı Kanunları', pp. 541.

One can turn to the court records to see the performance of their duties. For example, in the records of the Manisa court belonging to the year 1551, a summary of a lawsuit is recorded as such: Hüseyin b. Ahmet sued Üzeyir b. Murat and claimed 500 *akçe* from him. Üzeyir rejected the claim, and Hüseyin was asked to bring his witnesses. Since he could not provide witnesses, Üzeyir was offered to take an oath. Üzeyir avoided taking an oath, *nukul*, and was ordered to pay.[129]There are many similar entries in the same record and others.

The *kadıs* also served as notaries in the modern sense. People completed their transaction on their own, and the *kadı* drew a contract and made the registration in the court records. The *kadı* also controlled whether the transactions were made according to the law. There are plenty of the entries showing sales transactions and rental transactions in the court records.[130] In these transactions, the sides were careful to formulate them within the boundaries of law. For example, usurious transactions were aligned to the *sharia* by use of legal tricks. The *istiğlal* type sale[131] or the *devr-i şar'i* term were the legal devices covering a usurious dealings. Apart from commercial transactions, people asked the *kadı* to register their deeds, for example, the acceptance of a debt, the payment of a sum or the resignation from a debt.[132]

As for the administrative duties of *kadıs*, they served as the essential guarantor of the Ottoman system. Whenever the rules were violated, the *kadıs* were supposed to take action and prevent illegal acts. Whenever a controversy arose about what should be

[129] Mehmet Çamlı, 'H. 959/M. 1551 Tarihli 4 Numarali Manisa Şeri'yye Sicili', unpublished M. A. Thesis, Gazi University (1993), pp. 11-12.
[130] For some examples, see Süslü, '20/2 Numaralı Kayseri Şer'iyye Sicili, H. 1027-1028 (M. 1617-1618)', p. 78 and p. 83.
[131] For a record of the *istiğlal* type sale, Muhammet b. Ubeydullah, 'Tuhfetu'l-Küttab', p. 40b.
[132] For some examples, see Halil İnalcık, 'Osmanlı İdare, Sosyal ve Ekonomik Tarihi ile İlgili Belgeler: Bursa Kadı Sicillerinden Seçmeler', *Belgeler*, X, 14 (1981) pp. 11-13.

done according to Ottoman law or tradition, the *kadıs* were expected to clarify the point and put the rules into force. Besides, the *kadıs* meditated between the central administration and the people. On the one hand, they received orders from the government and implemented them, and on the other, they informed the central government of people's requests and complaints. Thus, with all these responsibilities, the *kadıs* appear to have been civil administrators in the provinces as well as the judges.

The central administration was expecting the *kadı* to play the role of supervisor of the behavior of other local officials. These were to be prevented from causing injustice or disturbing the public peace. When the military officials levied illegal taxes on people,[133] or they made other types of injustice, the *kadıs* were ordered to act against them. For example, the military officials compelled the people to take the tithes to the furthest market so that they would realize more profit. The *kadı* was asked to prevent these officials from doing it.[134] In case that people abstained from fulfilling their duties to the military officials, the *kadı* was expected to persuade people to observe their duties.[135]Apart from this, the officials attempted to levy taxes, and the people rejected to give them with the excuse that they had paid this tax to the previous official or that the time of the tax had not come yet. In these cases, *kadıs* were responsible to solve the problem with the help of the tax registers, and if the people had to pay tax at the time, they persuaded them to do so.[136] Since the *kadıs* were men of law, they would determine what the appropriate rule was, and their arbitration would be respected by all.

---

[133] For some orders enjoining the *kadı* to prevent illegal taxation, see *Mühimme Defteri 90*, No: 30, No: 50, No: 120 and No: 504.
[134]*Ibid.*, No: 476. *Adaletnames* mentioned to all of the injustices made by the military officials, see Inalcık, 'Adaletnameler', esp. pp. 63-85.
[135] The people of Çorum resisted giving their taxes due to the military official. For the order sent to *kadı*, see *Mühimme Defteri 90*, No: 39.
[136] For some orders dealing with the tax problems, see *ibid.*, p. 194, p. 210 and p. 223.

When the central government levied *avarız* taxes, extra-ordinary taxes, in times of emergency, the *kadı* made a register of the taxes,[137]collected them and took the collected sum to the prescribed place.[138] Besides, the *kadıs* undertook the responsibility to find oarsmen for the imperial fleet. Most of the time, the *kadıs* afforded the cost of the oarsmen from the *avarız* taxes.[139] The *kadıs* could also be assigned to all duties other than the security of the district, which was assumed under the responsibility of the military officials.[140] The central government could ask the *kadıs* to make investigations about a case;[141] ask them to arrest the criminals in their districts;[142] to monitor trade and preventing the contraband trade;[143] or to determine the *narh*, fixed prices[144] especially for foodstuff. All in all, if there was not a special official in the district for a task, the *kadıs* were nominated to carry out the duty.

The *kadıs* were seen as being among the leaders of the community. They heard complaints and requests of the people and presented them to the central government as petitions. When the people were distracted by the misconduct of the military officials or the misdemeanors of bandits, again the *kadı* conveyed all this to the central

[137] The *kadı* of Harput put his *avarız* registers as an entry in his court records. Erdinç Gülcü, '1691-1720 M. (1103-1133) Tarih ve 391 Numaralı Harput Şer'iyye Sicili', unpublished M. A. Thesis, Fırat University (1993), pp. 452-460.
[138] In 1583, the *kadı* of Murtazabad collected the taxes in kind and took them to Erzurum. Özer Ergenç, *XVI. Yüzyılda Ankara ve Konya* (Ankara: Ankara Enstitüsü Vakfı, 1995), p. 87.
[139] For the references to the abuses of the *kadıs*, while collecting taxes for oarsmen, see *Mühimme Defteri 90*, p. 22, p. 26 and p. 330.
[140] 'Osmanlı Kanunları', pp. 541.
[141] For decrees ordering the investigations of the bandits, see *Mühimme Defteri 90*, No: 96, No: 426 and No: 474.
[142] The *kadı* of Iznikmid was ordered to catch the criminals with the help of military official. See *ibid.*, No: 453.
[143] The *kadı* of İzmir was ordered to prevent the export of the prohibited materials. See *ibid.*, p. 115.
[144] 'Osmanlı Kanunları', pp. 505. For some imperial decrees ordering to determine *narh*, see Ergin, *Mecelle-i Umûr-ı Belediyye*, p. 379.

government.[145] When people requested anything, then the *kadıs* would put it into writing and sent it to the government. For example, people could ask someone to be appointed as *müfti*,[146]or they could ask someone to be maintained in the office of *martolosbaşı*, village policeman.[147]

If one attempts to define the *kadı* through the functions he performed, the *kadı* is the official, who was regarded as the head of the community solving legal problems according to established rules, implementing the law and order and meditating between the community and the administration.

2.4. Changes in the Functions of *Kadıs*

All of the Ottoman *kadıs* did not have the same powers and the same responsibilities. Their power and responsibilities differed in different periods and in different regions. It has been proposed that the importance of the *kadıs* increased in the seventeenth century.[148] Besides, it is possible to observe differences in the status of *kadıs* vis-à-vis the military governors in core lands of empire and in the remote areas. It can be argued that in chronological terms, from the late fifteenth to the seventeenth century, the importance of the *kadıs* increased, whereas in geographical ones, their importance decreased, when removing oneself from the center.

Before the seventeenth century, the *kadıs* appear to have had a more trivial status than the military governors in the provinces. It is true that the *kadıs* had always the right to hear cases and pass judgments, but before the seventeenth century, they had this right

[145] For the references to the petitions of the *kadıs*, see *Mühimme Defteri 90*, No: 57, No: 79, No: 89 and No: 447.
[146] Muhammet b. Ubeydullah, 'Tuhfetu'l-Küttab', p. 241b.
[147] *Mühimme Defteri 90*, p. 187.

with some restrictions. From the evidence of the records of imperial registers and court records, it is apparent that before the seventeenth century, in criminal cases and whenever some kind of uprising against law was taking place, the *kadı* lost the initiative. However, after the seventeenth century, we see *kadıs* more active in all legal matters.

In 1484, an imperial order was sent to the *kadıs* and the policemen, the *subaşıs*, of the Hudavendigar Sancak saying 'whoever caught the thieves in their district must deliver them to the *sancakbeyi*, the military governor, Ahmet Paşa'.[149] This order implies that the *kadıs* were kept out from criminal cases. The fact that the compilation that includes this order does not contain any criminal cases can support the assumption that criminal cases were outside the jurisdiction of the *kadıs* in the fifteenth century.

In the sixteenth century, the *kadıs* must have been present in the hearing of these cases, since in the court registers and the *Mühimme* registers of the sixteenth century, there are the records of the hearing of criminal cases without a judgment being passed.[150] In that case, one can come up with the assumption that the *kadı* established the facts and delivered the case to the governor to pass judgment and inflict punishment.

On the other hand, in remote areas, the *kadıs* of the district seem to have been kept out from hearing some cases. In the records of imperial orders in 1558-1559, one

---

[148] Gerber, *State, Society and Law in Islam, Ottoman Law in Comparative Perspective*, pp. 67-71. Gerber mainly deals with the status of *kadı* in criminal cases.

[149] Halil İnalcık, Osmanlı İdare, Sosyal ve Ekonomik Tarihiyle İlgili Belgeler: Bursa Kadı Sicillerinden Seçmeler', p. 7.

[150] Haim Gerber, *State, Society and Law in Islam, Ottoman Law in Comparative Perspective*, p. 67. Gerber mentions the court records of Sofya, Trabzon and Bursa. For the hearing of the *kadı* of Manisa of the criminal cases, see Çamlı, 'H. 959/M. 1551 Tarihli 4 Numaralı Manisa Şer'iyye Sicili', p. 25 and p. 30. For the investigation of *kadıs* of Yalakabad and Izmit a criminal case, see *3 Numaralı Mühimme Defteri*, transcribed by a commision (Ankara: Osmanlı Arşivi Daire Başkanlığı, 1993), No: 314.

can come across orders entrusting the military governors with the responsibility to deal with cases of murder[151], the cases banditry[152] and the cases of forfeiting.[153] In some of these cases, the governor was ordered to recruit the help of the *toprak kadısı* to conclude the case. Uzunçarşılı defines the *toprak kadısı* as the wandering kadıs responsible for making investigations in the provinces according to orders sent to them.[154] However, in these orders, it seems that the *toprak kadısı* was more powerful or more specialized a *kadı* in criminal cases than the incumbent *kadı* in the area. Thus, although there was a *kadı* in the area, the governor was ordered to ask the help from the *toprak kadısı*.[155] In the other cases, in which there is no mention to the *toprak kadısı*, the governor should have been allowed to apply his discretionary justice.

As for the other duties of the *kadıs*, it is possible to observe the local governors' intervention in some remote areas. For example, the governor of Gazze was entrusted with the task of selling the commodities of the pious foundation in the area.[156] In regard to some administrative duties, in some areas, the governors were preferred to the *kadıs*. For example, the governors of Rodos and Selanik were ordered to watch out the contraband trade.[157]

In the seventeenth century, the importance of the *kadıs* increased, and it became possible at least in the central lands to observe *kadıs* practicing all duties discussed

[151] *3 Numaralı Mühimme Defteri*, No: 141. The governor of Şam was ordered to turture a man who drove his men to murder his father. For some related order, see *Ibid.*, p. 497.
[152] ibid, No: 295. The ex-governor of Prizrin was ordered to catch the brigands and hear the cases of the people against them. Some other related orders, see *Ibid.*, No: 457, No: 483, No: 485 and No: 493
[153] *Ibid.*, No: 247. The governor of Kilis was entitled to deal with the case of criminal who prepared a fake document to collect money from the people.
[154] Uzunçarşılı, *Osmanlı Devletinin İlmiye Teşkilatı*, p. 126.
[155] For example, Şam had a *kadı* of mevleviyet status in 1558-9; the order in *Ibid.*, No: 316, enjoins the governor to hear the case with the help of the *toprak kadısı* without any mention to the *kadı* of Şam.
[156] *3 Numaralı Mühimme Defteri*, No: 12.
[157] *Ibid.*, No: 13 and No: 437.

earlier. The *kadıs* can be seen hearing criminal cases independently and passed judgments on them. The Bursa *kadıs* passed the death penalty on murderers.[158]The records of the Kayseri *kadıs* include entries which are about the criminal cases, and there are no references to the intervention of the military governors.[159] Besides, in the *Mühimme* registers of 1646-1647, orders were sent to the *kadı* entrusting him with all legal and non-legal matters other than the armed rebellious movements.[160]In armed rebellions, the military governors were always ordered to ask for the *kadı*'s help.[161] By examining the imperial orders, the *kadıs* seem to have had an increasingly powerful role in the administration of the provinces than before. This should have been connected to the decline in the organization of the provincial armies in the seventeenth century. When the traditional cavalrymen lost their importance in war, their prebends were taken by the treasury and sold to tax farmers.[162] The economic difficulties of the time added to the calamity of the military men. In the provinces, the military governors, corrupt tax farmers and other military officials attempted to alleviate their economic disaster by levying extra-taxes on the ordinary subjects. Therefore, the *kadıs* may well have gained importance and must have been expected to be the 'right' person to put an end to all injustices.

However, it can be seen that the *kadıs* in remote areas, for example, in Harput, Egypt, Halep, Bagdat and Tımışvar, had a lower status vis-à-vis the military governors than their counterparts in the central areas in the seventeenth century. It is hard to see

[158] Gerber, *State, Society and Law in Islam, Ottoman Law in Comparative Perspective*, p. 68.
[159] Süslü, '20/2 Numaralı Kayseri Şer'iyye Sicili, H. 1027-1028 (M. 1617-1618)', p. 81, p. 96 and pp. 126-127.
[160] *Mühimme Defteri 90*, No: 95, No: 98, No: 99, No: 110, No: 116, No: 120, No: 121, No: 123, No: 127, No: 128, No: 129, No: 133, No: 134, No: 135, No: 149, No: 152, No: 164.
[161] *Ibid.*, No: 106, No: 111, No: 174 and No: 209.

an imperial order solely sent to the *kadı*. Even the cases of pure legal nature were transferred to the military governor and to the *kadı* together.[163] As a matter of fact, this illustrates the close connection of the military governors to the administration of justice in remote areas and the diminished status of the *kadıs*. The lack of any order, in the *Mühimme* register of 1646-1647, sent to *kadıs* of the remote areas entrusting them with the protection of the subjects from the military governors can provide further evidence to the status of the *kadıs* of these areas. For the intervention of military governors in the administration of justice, the court records can provide some evidence. For example, the military governor of Diyarbekir, Hasan Paşa appointed an official other than the *kadı* to investigate a criminal case. From the wording of the record, it can be inferred that the *kadı*'s sole function in this case was to register the facts that the official established.[164] It seems that the litigants did not bring the case to the *kadı*, or he transferred them to the governor. In either case, the *kadı* was seen as insufficient to solve problems like criminal cases.

[162] For an account of this change, see Halil İnalcık, 'Military and Fiscal Transformation in the Ottoman Empire, 1600-1700', *Archivum Ottomanicum*, VI (1980), 283-337.
[163] For an order sent to the governor and the *kadı* of Halep, see *Mühimme Defteri 90*, No: 47, for an order sent to the governor and the *kadı* of Bagdat, see No: 109, for an order sent to the governor and the *kadı* of Egypt, see No: 323 and for an order sent to the governor and the *kadı* of Tımışvar, see No: 340.
[164] Koçlar, '362 Numaralı Harput Şer'iyye Sicili, H. 1082-1083 (M. 1671-1673)', p. 193. For some other example in the same records, p. 196.

CHAPTER 3: THE SELECTION OF PROPER *KADI* TO HEAR THE CASE

As we have seen, there is a number of *fetvas* dealing with the suitability of a *kadı* to judge a case. Apart from general qualifications, like piety and intellectual competence, to be observed, the *kadı* should not judge cases, where one of the litigants is a member of their family, and preferably they should refrain from cases, whereupon he is ill disposed against one of the parties. In addition to these restrictions, other factors like the class of parties or their town determined the suitability of a *kadı* to hear a case.

If the sides were from the same town, the same class, military or *reaya* class, and brought the case to the *kadı* of their own town, there does not seem to be a problem in accepting the *kadı*'s judgment. If there were more than one *kadıs* in the town, then the *kadı*, whom the defendant preferred, heard the case.

> Question: There are more than one *kadıs* in town. If Zeyd proposes to Amr to bring a case against him before the *kadı* Bekr, can Amr say that he has the right to bring his case before the *kadı* of his choice?
> Answer: Yes.[165]

The *fetva*, although answers the question of whether the defendant had the right to choose a *kadı* of his liking, creates new questions. How did more than one *kadıs* co-exist in a town? We know that metropolitan cities like Istanbul had a number of *kadıs* appointed. The defendant arguably had a right to choose among these *kadıs*. Besides, in addition to the *Hanefi kadı*, a town might have representatives of other legal schools too administering justice.[166] The defendant should have had the right to bring the case to the

[165] *Abdurrahim*, p. 416. For a similar *fetva*, see *Minkarizade*, p. 339a.
[166] For the representatives of *Maliki*, *Şafii* and *Hanbeli* schools in Jerusalem, see Amy Singer, *Kadılar, Kullar, Kudüslü Köylüler* (Istanbul: Tarih Vakfı Yurt Yayınları, 1996), p. 37. For the representative of

kadı of his school. A *fetva* of Ebussuud dealing with the case that the litigants were following different schools can support this proposition. The *fetva* prescribes the priority of the *mezheb* of the defendant for judgment.[167] It seems that the defendant not only chooses the judge, but also he could show preference to a school, perhaps an effort, from the part of jurisconsult, to guarantee a more impartial hearing.

However, the defendant could not take the case to a *kadı*, who was in another town, without the consent of the plaintiff.

> Question: Zeyd and Amr are from the same town. If Zeyd has a claim against Amr and wants to bring the case before the *kadı* of their town Amr, can Amr reject to go before Bekr, and propose to take the lawsuit to Bişr the *kadı* of another town?
> Answer: No.[168]

The plaintiff could not take the case to the *kadı* of another town without the consent of the defendant either. A *fetva* in *Yahya* makes it clear that if the plaintiff took the defendant to the *kadı* of another town by force, the judgment of the *kadı* was not valid.[169] Even if the *kadı* of another town came to their town to hear the case, the rule was the same. If one of the sides went before him unwillingly, his judgment was null and void.[170] But, if both sides were willing to take the case to the *kadı* of another town, this was allowed.

---

these schools in Jerusalem, see Muhammad Adnan Bakhit, *The Ottoman Province of Damascus in the Sixteenth Century* (Beirut: Librairie Du Liban, 1982), p. 121.

[167] For the *fetva* on the point see, Ebussuud, 'Maruzat', p. 51. '…the *kadıs* are forbidden to judge against the precepts of the school of the defendant.'

[168] *Abdurrahim*, p. 316.

[169] *Yahya*, p. 212a. '…if Zeyd [the plaintiff] takes Amr [the defendant] by force before Bekr the *kadı* of another town, and Bekr passes judgment in favor of Zeyd, is this judgment valid? Answer: No, if Amr was brought before the *kadı* against his will.'

[170] *Çatalcalı*, p. 365. 'Question: Zeyd comes to a town without any appointment. He hears the case of Amr against Bekr, who is unwilling to bring the case before Zeyd and passes judgment. Is this judgment valid? Answer: No.' There is on more *fetva* on the same point in *Çatalcalı*, p. 367.

> Question: Zeyd and Amr are from the same town. If they take their case to the *kadı* of another town Bekr, and Bekr passes judgment in favor of Zeyd, is his judgment valid?
> Answer: Yes.[171]

To sum up, if the sides were from the same town, and there were more than one *kadı* in the town, the defendant had the right to choose the *kadı* who would hear the case. If there was one *kadı* in the town, the *kadı* was to hear the case; none of the sides had the right to force the other to go to the *kadı* of another town. If they decided together to go to the *kadı* of another town, this was permissible. It is clear that these rules were designed to prevent any of the sides from making arrangements beforehand in order to win the case.

Problems of different nature arise, when both sides were from the different towns. It seems that the defendant had the right to choose the *kadı* to hear the case.

> Question: Zeyd and Amr are from different towns. If Zeyd has a claim against Amr, and Amr wants to take the case to the *kadı* of his town, can Zeyd force him to bring the case to the *kadı* of his town against the precepts of *sharia*?
> Answer: No.[172]

The *fetva* makes it clear that the plaintiff did not have the right to force the defendant to bring the case to the *kadı* of his town. Presumably, the defendant had this right to bring the case to the *kadı* of his choice according to 'the precepts of *sharia*'. However, once the defendant accepted to bring the case to the *kadı* of the plaintiff's town, he had no other right.

> Question: Zeyd goes to another town to arrange his business. Amr claims that Zeyd owes him money. If Amr proves his claim legally before Bekr the *kadı* of his town, and Bekr passes judgment in favor of Amr, can Zeyd say that 'I will not yield to this judgment, since Bekr is not the *kadı* of my town?'
> Answer: No.[173]

---

[171] *Minkarizade*, p. 338b.
[172] *Çatalcalı*, p. 367. There is the same *fetva* almost in verbatim in *Yahya*, p. 210a.
[173] *Ibid.*, p. 367.

The defendant seems to have consented to bring the case to the *kadı* of the plaintiff's town in the first instance. However, when the judgment turned against him, he attempted to invalidate it on the pretext that the *kadı*, who proclaimed judgment, was not the *kadı* of his town.

In the case that the plaintiff found the defendant outside his town, the rule was to bring the case to the *kadı* of the nearest town. A *fetva* in *Yahya*, which deny the defendant the right to take the case to the *kadı* of his town, illustrate the point.

> Question: If Zeyd finds Amr in a town other than his own town and calls him to court, can Amr reject this on the pretext that he would have the case heard before the *kadı* of his town? Answer: No.[174]

However, if the defendant proposed a valid excuse, he retained his right to choose the *kadı* to hear the case.

> Question: Zeyd has a claim against Amr about a revenue producing property. Zeyd finds Amr in Istanbul and wants to sue him in Istanbul. If Amr rejects to come to court using as an excuse that his witnesses are in the town of the property, and he wants to be sued in this town, can the *kadı* bring him to the court by force?
> Answer: No.[175]

Perhaps, it was considered more practical to be hear this case in the town, where the revenue producing property was, because the defendant claimed that his witnesses were there.

One of the rights every subject in the Ottoman empire had was to bring his case before the Imperial Council. If the case was complicated, and there was a need to hear the defendant, the case was not concluded out of hand in the Imperial Council, but one or two or more officials were assigned to hear the case. These people were generally

[174] *Yahya*, p. 210a. There is a similar *fetva* in *Abdurrahim*, p. 419.
[175] *Yahya*, p. 210a.

learned men in the area, *kadı* of the district, *mütevelli* of a *waqf*, a retired *kadı*, a *müderris*. The petitioner was given an imperial order, which designated, who would hear the case.[176] However, the imperial order could not always end the dispute. The sides sometimes went to the *Şeyhulislam* to inquire about the legality of process.

> Question: Zeyd has a claim against Amr, and an imperial order assigning Bekr and Bişr to hear the case together. If Bekr hears the case alone, is his judgment obeyed?
> Answer: No.[177]

> Question: Zeyd has a claim against Amr, and an imperial order assigning Bekr to hear the case in person. If Bekr appoints Bişr as the substitute *kadı*, and Bişr hears the case, is his judgment obeyed?
> Answer: No.[178]

> Question: Some people of town have a controversy on property. An imperial order makes it clear that the case should be brought to the imperial council and the *kadı* of the town cannot hear their case. If the *kadı* of the town hears the case, passes judgment and gives a certificate, are his judgment obeyed and his certificate valid?
> Answer: No.[179]

From the aforementioned *fetvas*, it becomes apparent that an imperial order assigned one or more people to hear the case, all rules about which *kadı* was to be chosen to hear the case, were rendered invalid. The ruling of the imperial order determined the *kadı*, who would hear the case. The *Şeyhulislams* recognized the authority of the imperial order, and they invalidated the judgments of the other *kadıs* than the one assigned by the order.

It is interesting to note that after an imperial order has been issued putting in detail the conditions, under which a case was to be heard, and if the directives put forward

[176] It is possible to see copies of these orders in the *Mühimme* registers. For some examples, see *Mühimme Defteri 90*, No: 116, No: 112 and No: 490.
[177] *Yahya*, p. 211b. There are two other *fetvas* in *Yahya*, p. 211b and one *fetva* in *Çatalcalı*, p. 367, on the same point.
[178] *Yahya*, p. 211a. There are similar *fetvas* in *Minkarizade*, p. 336b and *Çatalcalı*, pp. 366-367.
[179] *Çatalcalı*, p. 367. For another *fetva* on the point, see *Yahya*, p. 212a.

by the imperial order were not followed, it was the *Şeyhulislam*'s *fetva* to put things right, and thus, the litigants resorted to *fetvas* from the *Şeyhulislams*. This illustrates once more the established position of *fetvas* in legal matters.

Whether one of the litigants belonged to the military class was another factor to determine who would hear the case. When one of the sides was from the military class, the rules differed. If the defendant was from the military class, and he wanted to bring his case before the *kadıasker*, he had right to do so. However, if there was not a military judge in town, they had to bring their case before the *kadı* of the town. If the defendant, an inhabitant of the town, did not belong to the military class, he had the right to reject bringing the case before the *kadıasker*, yet another attempt to keep impartiality in proclaiming judgment.

> Question: The plaintiff Zeyd is from the town, and the defendant Amr is from the military class. When Zeyd proposes to bring the suit before the *kadı* of Edirne, can Amr reject it, saying that he wants to bring the case before the *kadıasker*?
> Answer: Yes.[180]

The *kadıaskers* heard the cases in their own houses every day except Tuesday and Wednesday. They were responsible to hear the cases of the military class.[181] If the defendant was from the military, he/she had the right to take the case before the *kadıasker*. In addition, a *fetva* in *Yahya* recognizes this right to the defendant from the military class, even in the case that an imperial order assigned *kadı* to hear the case.

> Question: Zeyd, the inhabitant of the town, asks Amr, from the military class, to come before Bekr, who was appointed by an imperial order to hear the case. Can Amr reject this, saying that he would bring the case before the *kadıasker*?
> Answer: Yes.'[182]

[180] *Çatalcalı*, p. 367. There are similar *fetvas* in *Minkarizade*, p. 341b and *Abdurrahim*, p. 316.
[181] Uzunçarşılı, *Osmanlı Devleti'nin İlmiye Teşkilatı*, p. 152 and p. 154.
[182] *Yahya*, p. 212a.

The fact that the defendant is member of the military class allowed him to retain his rights in choosing the judge.

> Question: Zeyd has a claim of debt on Amr the *kadı*, and there is no military judge in town. When Zeyd attempted to take Amr before Bekr, the *kadı* of the town, can Amr reject to come, saying that since he is from the military class, he will not come before the *kadı* of the town?
> Answer: No.[183]

The military did not have the right to delay hearing of the case with the excuse that they would not bring the case before the *kadı* of the town, if there was not military judge in the town.

The plaintiff from the military did not have the right to take the case before *kadıaskers*, if the defendant was from the townspeople.

> Question: The plaintiff Zeyd is from the military class, and the defendant Amr is inhabitant of the town. When Zeyd proposes to bring the case before the *kadıasker*, can Zeyd reject this and propose to take the case before the *kadı* of the town?
> Answer: Yes.[184]

The aforementioned *fetvas* implies that there were other military judges other than the *kadıaskers* in the towns. In a *fetva* in Abdurrahim, the military want to postpone hearing of case, until the *kassam-ı askeri*[185] arrives.[186] From the expression of the *fetva* in *Abdurrahim*, it can possibly be inferred that the *kassam-ı askeris* had the right to hear the cases of military class.

It is curious why the military class had the right to take their case to special judges. This cannot be explained as an arrangement to maintain their privileged

---

[183] *Yahya*, p. 212a.
[184] *Feyzullah*, p. 286.
[185] *Kassam-ı askeri* was the official appointed by *kadıaskers* to hear the inheritance cases of the *askeri* class. For more information about *Kassam-ı askeri*, see Uzunçarşılı, *Osmanlı Devletinin İlmiye Teşkilatı*, pp. 121-123.
[186] *Abdurrahim*, p. 416. 'Question: Can the military reject to come before the *kadı* of town, saying that they would wait the *kassam-ı askeri* or take the case to Istanbul? Answer: No.'

position in court, because if the defendant was from the commoners, he had the right to reject the military judge.[187] It may be suggested that this right was given to the defendants from the military to protect them from the opposition of townspeople with malicious intents, since they came from outside the town.

The *Şeyhulislams* were asked a number of questions about which *kadı* was entitled to hear the case in certain conditions. Their answers to the questions were so consistent that some rules on the subject can be detected. The answer to the question of whether these rules were put into practice should be affirmative, since most of these *fetvas* on the subject came into life as a result of asking of one of the sides after hearing of the case. If the *fetva* undermined the legality of the hearing by a certain *kadı*, and it was what the questioner needed, he went to the Imperial Council with *fetva* at hand to take an order to have his case reheard.

[187] Haim Gerber insists that in the *kadı* courts, the military class did not have an advantageous position over commoners. See Gerber, *State, Society and Law in Islam, Ottoman Law in Comparative Perspective*, pp. 55-57.

CHAPTER 4: THE HEARING OF LEGAL CASES

After the *kadı* to proclaim judgment was agreed upon, other procedural details had to be followed, when the case eventually came to court. A claim by a legally accepted person[188] was the starting point of the judicial procedure in the *kadı*'s court. Virtue was accepted by the community as one of the most important assets. However, in a *fetva* in *Yahya*, the *Şeyhulislam* was asked whether a *kadı* could deny a person of making a claim against another person, since he was famous for his deceitfulness and telling lies. The *Şeyhulislam* responded negatively.[189] It seems that every legally accepted person had right to make recourse to the *kadı* in order to claim a right on others.

Entries in the court records from different parts of the empire covering various periods provide evidence that civil and land cases were under the responsibility of the *kadıs*. In criminal cases, the *kadıs* were not always as 'powerful' as they were in civil cases. As we have seen in the previous chapters, by the seventeenth century, *kadıs* were allowed to proclaim final judgment in criminal cases.

Another potential hurdle in hearing a case was the time elapsing from the occurrence of the events related. If a period of ten years in the land cases and fifteen years in the other cases elapsed after the event occurred, the litigation on this event was not heard.[190] This rule was commanded in the 'Maruzat'. It is more probable that after

[188] Every person and artificial person could be side in the litigation. However, minors, mentally insane persons and the restricted persons could not represent themselves; instead, guardians, deputies represented them in the court. For more information, see Cevdet Yavuz, 'Dava', *İslam Ansiklopedisi*, (Istanbul: *Türkiye Diyanet Vakfı*).
[189] *Yahya*, p. 210a. It has not been encountered in the court records that the *kadı* refused to hear the case of a person. However, the existence of the *fetva* can be evidence to the fact that *kadıs* refused the claims of the some people.
[190] Ebussuud, 'Maruzat', p. 56.

Ebussuud's ruling, the limitation law, *murur-i zaman*, was established.[191] Before, there were some different orders related to the limitation. For example, in the fifteenth century, the limitation period was twenty years.[192] However, the sultan had always the right to make exceptions to the rule by issuing an order.[193]

In addition, if a case was heard by a *kadı*, another *kadı* could not hear the case again without an imperial order to such an effect.[194] Whenever it was proven that the case was heard before, the *kadı* refused to hear the same case again. Therefore, the winning side was eager to prove that the case was heard, if the case was brought to court again. Thus, they took, from the *kadı*, a certificate, *huccet*, proving the conclusion of the trial. If the losing side attempted to open the case for rehearing, they presented this certificate to the court. When they proved that the certificate was genuine, the case was not heard.[195] Or if he/she did not have such a certificate, he/she resorted to the way of proving the hearing by providing two witnesses.[196]

The plaintiff could be either present in person or appoint a deputy. Instead of pleading for themselves, men and women sometimes appointed men and women as deputies to represent them in court.[197] In the case of minors, litigant was the guardian of

[191] For the references to the rule in the imperial orders, see *Mühimme Defteri 90*, No: 53, No: 100, No: 111, No: 112, No: 381 and No: 418. For the refusal of a claim for the sake of the limitation law, Koçlar, '362 Numaralı Harput Şer'iyye Sicili, H. 1082-1083 (M. 1671-1673)', p. 208.
[192] Heyd, *Studies in Old Ottoman Criminal Law*, p. 240.
[193] *Ibid.*, p. 240.
[194] *Feyzullah*, pp. 286-287. For the references to the rule in the imperial orders, see *Mühimme Defteri 90*, No: 53, No: 100, No: 111, No: 112, No: 381 and No: 418.
[195] For two examples of the use of these certificates, see Halil İnalcık,'Osmanlı İdare, Sosyal ve Ekonomik Tarihi ile İlgili Belgeler: Bursa Kadı Sicillerinden Seçmeler, II. Sicil', *Belgeler*, XIII, 17 (1988), p. 9 and p. 26. For the refusal of a claim on a land after ten years, see Süslü, '20/2 Numaralı Kayseri Şer'iyye Sicili, H. 1027-1028 (M. 1617-1618)', p. 79
[196] Halil İnalcık, 'Osmanlı İdare, Sosyal ve Ekonomik Tarihi ile İlgili Belgeler: Bursa Kadı Sicillerinden Seçmeler: III. Köy Sicil ve Terekeleri', *Belgeler*, XV, 19 (1993), p. 44.
[197] For the appointment of deputy by woman, see Koçlar, '362 Numaralı Harput Şer'iyye Sicili, H. 1082-1083 (M. 1671-1673)', p. 107 and p. 139. For the appointment of a woman as deputy by a man, Şahin, 'Üsküdar Kadılığı 6/281 Numaralı Şer'iyye Sicili', p. 8

minors.[198] Whenever the interests of the pious foundations were offended, plaintiff was the manager of the pious foundation.[199]

In some cases, plaintiff could also be the inhabitants of town. In these cases, the issue was related to disturbance of public order.[200] In other cases, plaintiff was the *subaşı*. Some of the cases that the *subaşıs* brought to court were those of sexual offences,[201] drinking of wine, nonattendance of the Friday prayer.[202]The procedure in these cases may well have been different from the procedure in the cases of individual plaintiffs. The people of the town or the *subaşı* informed the *kadı* of a situation that harmed public peace. Then, the *kadı* ordered an investigation to either reach a verdict on his own or refer the case to the authorities. It seems that in these cases, the *kadı* did not need to hear the accused person.

In order to initiate the trial, the defendant had to be present before the *kadı*. If the defendant was not present in the court, the hearing could not start, and if despite that, the *kadı* proceeded, then his judgment was null and void.

> Question: Zeyd has a claim against Amr. He brings the case before the *kadı* and provides evidence without the presence of Amr or his deputy. If the *kadı* passes judgment in favor of Zeyd and gives a *huccet*, are his judgment valid and his *huccet* legal?
> Answer: No.[203]

In addition, if one acts on behalf of a plaintiff without being legally appointed as the latter's deputy, then the judgment is invalid.

> Question: Zeyd has a claim related to a piece of land against Hind. Amr is Hind's husband, but not her deputy. If Zeyd brings Amr before *kadı* since he is Hind's

[198] For a plaintiff guardian, Çamlı, 'H. 959/M. 1551 Tarihli 4 Numaralı Manisa Şer'iyye Sicili', pp. 30-31.
[199] For a reference for the plaintiff manager, *Mühimme Defteri 90*, No: 28.
[200] Şahin, 'Üsküdar Kadılığı 6/281 Numaralı Şer'iyye Sicili', p. 43.
[201] Şahin, 'Üsküdar Kadılığı 6/281 Numaralı Şer'iyye Sicili', p. 38.
[202] Heyd, *Studies in Old Ottoman Criminal Law*, p. 242.
[203] *Çatalcalı*, p 368. There are other four *fetvas* on this subject, pp. 369-370.

husband, and proves his claim against Hind in his presence, can the *kadı* pass judgment in favor of Zeyd and give Zeyd a *huccet*, to this effect?
Answer: No.[204]

Being a husband did not mean automatically that he could act as a legal deputy to the wife. In another *fetva* in *Yahya*, the *kadı* heard a claim against a boy, 11 years old, and his judgment was rendered invalid,[205]since the boy was not accepted legally as the litigant. In this case, the presence of the guardian was required.[206]

Although some *Hanefi* jurists allowed the hearing of the case in the absence of the defendant,[207]the Ottoman *Şeyhulislams* in the seventeenth century produced *fetvas* consistently to the effect that if the *kadı* passed judgment without the presence of the legal defendant, his judgment was invalid. However, there are some exceptions:

> Question: Zeyd has a claim against Amr about a female slave. They take their case before the *kadı* Halid. Bekr and Bişr testify in favor of Zeyd in the presence of Amr. Before Halid passes judgment, Amr runs away from the court. If Halid passes judgment in favor of Zeyd and gives him a *huccet*, are his judgment valid and his *huccet* legal?
> Answer: It should be.[208]

It is clear that the defendant tried to use court procedure to his advantage by escaping from the court, before the verdict was given. The careful answer of the *Şeyhulislam* suggests uneasiness, since normally absence of the defendant invalidates the verdict. However, the *Şeyhulislam* seems practical in his effort to curb cases of procedural abuse.

---

[204] *Çatalcalı*, p. 369. There is a similar *fetva* in *Minkarizade*, p. 341a.
[205] *Yahya*, p. 209b.
[206] In a similar case, the guardian complained to the central government that the case was heard without the minors being properly represented by a guardian and asked the rehearing. His request was approved. *Mühimme Defteri 90*, No: 212.
[207] Ömer Nasuhi Bilmen, *Hukukı İslâmiyye ve Istılahatı Fıkhiyye Kamusu* (Istanbul: Bilmen Yayinevi), p. 231.
[208] *Abdurrahim*, p. 419.

Ebussuud had already issued a *fetva* on the legality of hearing evidence by officials, *ehl-i örf*, against the offender of public well-being, even in his absence.[209] In the court records, there is hearing of evidence by the *naib* against absent criminals.[210] However, Ebussuud's *fetva* and the entry are related to the compilation of evidence in a criminal case, not to proclamation of judgment. It is possible that when the criminal was brought to court, evidence that had been collected was again heard, and then, judgment was passed.

If the defendant resisted coming to court, then an officer was sent to summon him. The wage of this officer was paid by the defendant.[211] The *fetvas* use the same term, *mübaşir* for this officer.[212] The imperial orders call this officer *mübaşir* as well.[213] However, two more terms, *muhzır* and *çukadar* were used.[214] It is difficult to determine when each term was used, however, from the context it becomes clear that the *mübaşir* was any person that the plaintiff employed to take the accused to court, and the *muhzır* was the officer in court serving to bring the accused to court and to imprison criminals. If the accused refused to come to the court, a second officer was sent. Even a third one was sometimes sent. At the end, the accused was brought to court by force.[215]

[209] Heyd, *Studies in Old Ottoman Criminal Law*, p. 243.
[210] Koçlar, '362 Numaralı Harput Şer'iyye Sicili, H. 1082-1083 (M. 1671-1673)'p. 172.
[211] *Yahya*, p. 212b, *Minkarizade*, p. 338b, *Çatalcalı*, pp. 375-376.
[212] All *fetvas* in the previous footnote.
[213] *Mühimme Defteri 90*, No: 276, No: 394 and No: 502.
[214] Ronald C. Jennings, 'Kadı, Court, and Legal Procedure in 17th Century Ottoman Kayseri' *Studies on Ottoman Social History in the Sixteenth and Seventeenth Centuries* (Istanbul: the ISIS Press, 1999), p. 324. Özer Ergenç mentions that the head of *muhzırs* was appointed by the central government. Ergenç, *XVII. Yüzyılda Ankara ve Konya*, p. 85.
[215] Jennings, 'Kadı, Court, and Legal Procedure in 17th Century Ottoman Kayseri', p. 323.

Another way to have the case heard in court in the absence of the defendant was to appoint a deputy for him. This deputy was called *musahhar*.[216] However, the Ottoman *Şeyhulislams* in the seventeenth century, *Yahya* and *Minkarizade*, nullified this practice.[217] We do not know whether the appointment of *musahhar* was forbidden in the sixteenth and fifteenth century, but in the nineteenth century, the *kadıs* had the right to appoint *musahhar*.[218]

When the legal sides were present before the *kadı*, the plaintiff made his claim against the defendant. When the defendant acknowledged the claim, the case was concluded by passing judgment in favor of the plaintiff.[219] If the defendant rejected the claim, the plaintiff was supposed to provide evidence for his/her claim. These sequences of events in hearing of the case can be detected in the lines of many entries in court records and *fetvas*. In some cases, the defendant made a claim that would cause the plaintiff's claim to be invalid, and then, the defendant was supposed to provide evidence for his/her claim. For example, the deputy of a plaintiff, called Mustafa, claimed a debt from Vartan; Vartan replied that he had paid his debt. The *kadı* placed the burden of proof on Vartan.[220]

It is possible to assume that lawsuits did not proceed in such a formal way. The sides may have exchanged statements before the *kadı*, who listened to them and possibly asked some questions. To judge from the court records, witnesses to the

---

[216] *Mecelle*, p. 418.
[217] *Minkarizade*, p. 341a. For two *fetvas* mentioning *musahhar*, see *Yahya*, pp. 209a-209b, 'the judges of the time cannot appoint *musahhar*'.
[218] *Mecelle*, p. 418. For the appointment of *musahhar* by the *kadı* of Beirut and the *fetva* by *müfti* of Beirut on the legality of that practice, see Saleh, *The Qadi and the Fortune Teller*, pp. 54-55.
[219] For some examples, Çamlı, 'H. 959/M. 1551 Tarihli 4 Numarali Manisa Şeri'yye Sicili', p. 11, p. 24 and p. 35. Süslü, '20/2 Numaralı Kayseri Şer'iyye Sicili, H. 1027-1028 (M. 1617-1618)', p. 126. Şahin, 'Üsküdar Kadılığı 6/281 Numaralı Şer'iyye Sicili', p. 31 and p. 64.
[220] Şahin, 'Üsküdar Kadılığı 6/281 Numaralı Şer'iyye Sicili', p. 31 and p. 66.

proceeding, *şuhudu'l-hal*, were present at the hearing. After the first exchange of statements, the *kadı* and the *şuhudu'l-hal*[221] may have sometimes intervened in favor of a settlement, *sulh*. In the court records, we can see many entries involving settlement. These settlements may have been agreed outside court,[222] and the sides just came to court to register it. Otherwise, the sides were driven to settlement in court. After the claim of the plaintiff was not accepted, the mediators intervened and arranged the settlement .[223] However, not all of the cases concluded with a settlement, and then, the *kadı* evaluated the words of the sides and asked proof to be produced.

The side making the claim was responsible to provide evidence explaining his/her position. The main way of providing evidence was to bring witnesses. The testimony of two men[224] and the testimony of one man and two women[225] were accepted as evidence. In one *fetva*, the legality of two women's testimony was asked:

> Question: Zeyd buys a robe from the imperial market. Afterwards, Amr claims that this robe belongs to him, and two women testify in favor of his claim. If Bekr, the *naib*, accepts their attestation as evidence and passes judgment, is his judgment valid according to *sharia*?
> Answer: No.[226]

The attestation of two women only apparently was not admitted as evidence. It is possible that the rule in *Mecelle* that the attestation of women only, was not regarded

[221] The qualities and powers of *şuhudu'l-hal* have not been subject of a decisive research.
[222] The expression of some entries suggests that the *sulh* was arranged outside the court. See Şahin, 'Üsküdar Kadılığı 6/281 Numaralı Şer'iyye Sicili', p. 18, and p. 39.
[223] Süslü, '20/2 Numaralı Kayseri Şer'iyye Sicili, H. 1027-1028 (M. 1617-1618)', p. 87 and p. 88. Koçlar, '362 Numaralı Harput Şer'iyye Sicili, H. 1082-1083 (M. 1671-1673)', p. 122 and p. 127. Şahin, 'Üsküdar Kadılığı 6/281 Numaralı Şer'iyye Sicili', p. 15.
[224] For the some examples of the testimony of two men, see Halil İnalcık, 'Osmanlı İdare, Sosyal ve Ekonomik Tarihi ile İlgili Belgeler: Bursa Kadı Sicillerinden Seçmeler: III. Köy Sicil ve Terekeleri', p. 25, p. 24 and p. 45. Koçlar, '362 Numaralı Harput Şer'iyye Sicili, H. 1082-1083 (M. 1671-1673)', p. 115, p. 121 and p. 149.
[225] For an example of the testimony of one man and two women, see Şahin, 'Üsküdar Kadılığı 6/281 Numaralı Şer'iyye Sicili', p. 18.
[226] *Yahya*, p. 211b.

as evidence, unless the subject of the case was related to women affairs[227] must have been in practice in the sixteenth to the seventeenth century. The lack of much *fetvas* related to witnessing of women may be an indication of the society's familiarity to this rule.

After the plaintiff supplied witnesses, the defendant could ask the questioning of the uprightness of the witnesses, *ta'dil ve tezkiye*. In most of the entries in court records, there are mentions to questioning without any explanation, on how it occurred.[228] The *kadı* may have asked the witnesses some questions. If he was content with their uprightness,[229] he could accept their attestation without questioning their honesty.[230] Or, the *kadı* could ask some other people to establish the truthfulness of the witnesses. In one case, the *kadı* sent Mustafa Efendi to the neighborhood where the witnesses, Mehmet and Ahmet lived, in order to question their honesty. Those, who testified to their honesty, were registered as *şuhudu'l-hal*.[231] It can be concluded thus, that establishing the honesty of witnesses could occasionally earn them a more active role within the court, like that of the *şuhudu'l-hal*. Sometimes, the other side in the lawsuit could make a claim against the honesty of witnesses provided, and undertake the task of proving their reprobation. In one other case, the defendant claimed that the

[227] *Mecelle*, p. 398.
[228] For some examples, see Çamlı, 'H. 959/M. 1551 Tarihli 4 Numaralı Manisa Şer'iyye Sicili', p. 36, p. 38 and p. 39.
[229] The refusal of attestation after some questions of *kadı* on the subject of the attestation to the witnesses, see Halil İnalcık, 'Osmanlı İdare, Sosyal ve Ekonomik Tarihi ile İlgili Belgeler: Bursa Kadı Sicillerinden Seçmeler: III. Köy Sicil ve Terekeleri', p. 33.
[230] For some examples of the acceptance of testimony without questioning, see Çamlı, 'H. 959/M. 1551 Tarihli 4 Numaralı Manisa Şer'iyye Sicili', p. 25. Süslü, '20/2 Numaralı Kayseri Şer'iyye Sicili, H. 1027-1028 (M. 1617-1618)', p. 78 and p. 135. Koçlar, '362 Numaralı Harput Şer'iyye Sicili, H. 1082-1083 (M. 1671-1673)' pp. 114-115.
[231] Şahin, 'Üsküdar Kadılığı 6/281 Numaralı Şer'iyye Sicili', p. 44.

witnesses testifying against him were not qualified to testify, *cerh*, and the *kadı* provided him with three days to prove the inability of the witnesses.[232]

In the *fetvas*, there is some information to supplement our knowledge from the court records.

> Question: Amr and Bekr come to the court to testify against Zeyd. Zeyd informs the *kadı* Bişr of their fame for lying and asks that they should be questioned for the honesty. If Bişr accepts their attestation without questioning them and passes judgment, is the judgment valid?
> Answer: No, the judges are not allowed to make judgments like this.
> Another Answer: It is valid, if he becomes satisfied by their apparent uprightness.[233]

In this case, the questioning seems to have been the *kadı*'s choice. If he thought questioning the witnesses as unnecessary, he could reject the demand for it.

> Question: Amr and Bekr have hostility against Zeyd. The *kadı* knows their animosity against Zeyd. If the *kadı* accepts their attestation against Zeyd and passes judgment, is his judgment obeyed?
> Answer: No.[234]

In this case, animosity toward the plaintiff was a valid reason for denying the attestation.

> Question: Zeyd and Amr have a lawsuit. Bekr and Bişr are witnesses. Some people testify to their honesty and some testify to their reprobation. If *kadı* accepts their honesty and their attestation, is his judgment obeyed?
> Answer: No.[235]

In case of dichotomy of opinions about the witnesses, the attestation was denied.

It is clear that the witnesses were supposed to be morally solid, not to be famous for perjury and not to be hostile against the defendant. This process of questioning the witnesses seems to have been the choice of the *kadı* as in the first *fetva* above, even if

[232] Çamlı, 'H. 959/M. 1551 Tarihli 4 Numaralı Manisa Şer'iyye Sicili', p. 15.
[233] *Yahya*, p. 209a. In *Abdurrahim*, pp. 416-417, there is the same *fetva*, except the part 'another answer'.
[234] *Minkarizade*, p. 339b. There is an identical *fetva* in *Abdurrahim*, p. 417.
[235] *Minkarizade*, pp. 341b-342a.

the defendant insisted on it. However, in this case, the defendant had the right to take his/her case to some other *kadı* and make the judgment invalid by proving the dishonesty of witnesses.

> Question: Hind has a case against Zeyd. Some people testified against Hind. Although Hind asks the *kadı* to interrogate the veracity of the witnesses, the *kadı* does not question their truthfulness and accepts their attestation, passes judgment and gives a *huccet*. Are his judgment valid and the *huccet* legal?
> Answer: No.
> Afterwards, Hind brings the case before the next incumbent *kadı* and Zeyd presents the *huccet*. Then Hind asks the interrogation of the witnesses and proves their reprobation. In this way, do the judgment and the *huccet* become null and void?
> Answer: Yes.[236]

By proving incompetence of the witnesses, the defendant was able to repeal the judgment, since the *kadı* accepted their attestation without questioning.

Another method of establishing the quality of the witnesses was to offer the witnesses to take an oath that they were not lying. Taking an oath was following the questioning, not replacing it. We can see this practice in the records of the sixteenth and also of the seventeenth century.[237] After the questioning and oath, once the *kadı* established the honesty of the witnesses, the defendant could not have any further claim against the witnesses.[238]

In actual fact, asking the witnesses to take an oath is not a prescription of the *sharia*.[239] The *Şeyhulislam Minkarizade* was asked whether the *kadı* could ask the witnesses to take an oath, and the answer was 'he could do in our time'.[240] It seems that

---

[236] *Abdurrahim*, p. 421.
[237] For the mentions to taking oath by the witnesses in the sixteenth century, İnalcık, 'Osmanlı İdare, Sosyal ve Ekonomik Tarihi ile İlgili Belgeler: Bursa Kadı Sicillerinden Seçmeler: III. Köy Sicil ve Terekeleri', p. 33 and p. 40. Çamlı, 'H. 959/M. 1551 Tarihli 4 Numaralı Manisa Şer'iyye Sicili', p. 41 For the seventeenth century, see Heyd, *Studies in Old Ottoman Criminal Law*, p. 246.
[238] *Minkarizade*, p. 337a.
[239] Heyd, *Studies in Old Ottoman Criminal Law*, p. 246.
[240] *Minkarizade*, p. 339b. A *fetva* on the same point is in *Abdurrahim*, pp. 401-402.

requiring the witnesses to take an oath was practiced in court and approved by the *Şeyhulislams*.

Once the veracity of the witnesses was established, their attestation was admitted as evidence. However, in some cases, the attestation of the witnesses did not prove to be evidence.

> Question: If the *kadı* hears the witnesses of a claim, arguing contrary to what is generally accepted, *mütevatir*, and passes judgment based on their testimony, is his judgment valid according to *sharia*?
> Answer: No.[241]

If a piece of information was accepted as *mütevatir*, then its authenticity became established. Any other testimony could not challenge its authenticity.

The testimony of any veracious two witnesses did not prove to be evidence in some of the inheritance cases. After a person died, the heirs, whose relation to the dead person was known by many people, acquired the heritage without any controversy. If someone, who was outside the town and was not known as the relative of the dead person, claimed to be heir to him, he was supposed to prove his claim. According to two *fetvas* in 'Maruzat', the plaintiff had to support his claim by the testimony of the people from the place he was born in. The testimony of people from other towns was not accepted.[242] In such a case, the *kadı* of Üsküdar accepted the attestation of the witnesses from the place the plaintiff was born, and passed judgment.[243] It may have been considered that only witnesses from his/her birth place, who knew of his origins and

[241] *Yahya*, p. 209a. *Mütevatir* is an adjective and describes 'news that was informed by group of people, whose uniting on lying is something illogical.' For this definition, see *Mecelle*, p. 397.
[242] Ebussuud, 'Maruzat', p. 53.
[243] Şahin, 'Üsküdar Kadılığı 6/281 Numaralı Şer'iyye Sicili', p. 25. For a similar case in the same record, p. 28.

relatives would be reliable to testify as to whether the plaintiff had inheritance rights or not.

Providing the accepted witnesses, could not have been an easy task. Thus, a period of time was given by *kadı* to facilitate the search. In the court records, there are references to both three and seven days given to plaintiff in order to find the witnesses.[244] In some *fetvas* related to this matter, the deadline elapses after three days,[245] and in some others, litigant was permitted to bring his witnesses within seven days.[246] It can be assumed that the *kadı* had the discretion to determine how much time he should give to the plaintiff.

In some cases, the investigation to determine the facts of the case was ordered by the *kadı*, and the results were accepted as evidence. In a criminal case, the *subaşı* informed the *kadı* of a warning he received about fornication in a certain place and wanted investigation to be ordered. A *naib* and some other people were sent on the spot; they become witnesses of the truth of the claim. The accompanying people were recorded as *şuhudu'l-hal*.[247]

Apart from fornication, there are other cases requiring investigation on the spot. In one case, the plaintiff made a claim that his neighbor prevented the operation of his mill by building an extra canal. A *naib* was sent to investigate the situation. The *naib* established the compensation due, and accordingly the case was concluded.[248] In some

[244] For the reference to three days, see Mehmet Çamlı, 'H. 959/M. 1551 Tarihli 4 Numaralı Manisa Şer'iyye Sicili', p. 15. For the reference to the seven days, see Süslü, '20/2 Numaralı Kayseri Şer'iyye Sicili, H. 1027-1028 (M. 1617-1618)', p. 83.
[245] *Feyzullah*, p. 287. '… If Zeyd asks a period of time to find his witnesses, can *kadı* provide him with the time of three days? Answer: Yes.' There is a similar *fetva* in *Abdurrahim*, p. 419.
[246] *Yahya*, p. 209b. '…Zeyd was permitted seven days, but he …'
[247] Şahin, 'Üsküdar Kadılığı 6/281 Numaralı Şer'iyye Sicili', p. 38.
[248] Koçlar, '362 Numaralı Harput Şer'iyye Sicili, H. 1082-1083 (M. 1671-1673)', p. 161. For a similar case and investigation, Durmuş, 'Hicri 1120-1121 Tarihli Lefkoşa'nın 7 Numaralı Şer'iye Sicili', p. 35.

cases, investigation extended to animated objects as well. In an entry in the court records, a committee was sent to examine a horse and estimate the damage.[249] In all these investigations, at least two men participated. Thus, this can be considered as the testimony of two men.

Another way of providing evidence was to supply written documents. *Huccets*, the certificates documenting the judgment was used as evidence in court procedure, in the case of an attempt to rehear the case. If the defendant accepted that the document is authentic, it was admitted as evidence.[250] If the defendant rejected the authenticity of the document, the plaintiff was required to prove the genuineness of the document. When witnesses testified that the *huccet* was a product of the hearing, then it was accepted.[251] In some other case, when the defendant rejected the *huccet*, the plaintiff turned to the witnesses to prove his claim.[252] In addition to *huccets*, documents, such as diplomas, *berats*, the tax registers, *tahrirs*,[253] were also used in the Ottoman courts as evidence. The use of documents in court has not given rise to any questioning that was reflected in the *fetvas*. That could be an indication of the acceptability, the practice had acquired, in a system, where oral disposition seems to have carried more weight.

There are, of course, occasional slips from the well-established rules of witnesses and statements. Some extraordinary procedure occurred in the litigation of an ex-*kadı* on issues related to his tenure time. The word of the ex-kadı was accepted as true, and the lawsuit was concluded without calling for evidence.

---

[249] Süslü, '20/2 Numaralı Kayseri Şer'iyye Sicili, H. 1027-1028 (M. 1617-1618)', p. 125.
[250] Şahin, 'Üsküdar Kadılığı 6/281 Numaralı Şer'iyye Sicili', p. 22.
[251] Süslü, '20/2 Numaralı Kayseri Şer'iyye Sicili, H. 1027-1028 (M. 1617-1618)', p. 97.
[252] Halil İnalcık, 'Osmanlı İdare, Sosyal ve Ekonomik Tarihi ile İlgili Belgeler: Bursa Kadı Sicillerinden Seçmeler: III. Köy Sicil ve Terekeleri', p.38.
[253] For some references to the *tahrirs* as the evidence for a claim, *Mühimme Defteri 90*, No: 117 and No: 261.

> Question: When the *kadı* Zeyd became dismissed from office, Amr makes a claim that Zeyd took 92 *guruş* from him unlawfully, while he was in office. Then, Zeyd says that he took 92 *guruş* from Amr and gave it to Bekr against Amr's debt to him. Are Zeyd's words confirmed, and does he became free from Amr's litigation against him?
> Answer: Yes.[254]

This *fetva* seems to protect ex-*kadıs* from the resentment caused by their judgments. The plaintiff made a claim against the ex-*kadı*, and the subject of the case was the ex-*kadı*'s judgment. Ex-*kadı*'s words were taken for granted and caused the lawsuit to drop.

In a *fetva* in *Yahya*, the question is whether taking oath as evidence is valid, and the *Şeyhulislam*'s response is negative.[255] Oath, no matter how important for the final decision, was not admitted as evidence.

The main function of oath in court was to prove the exoneration from a debt or obligation, in the case that there was no evidence provided by the plaintiff. If the plaintiff wants the defendant to take oath, the *kadı* forced him to take an oath in order to exculpate himself/herself. The defendant took an oath that the claim of the plaintiff was not genuine. If he/she rejected to take oath, *nukul*, he lost the suit. In the court records, one can see the cases that the defendant exculpated himself by taking oath[256]and the cases that the defendant rejected to take oath and lost the suit. [257]

The offering of oath owed its efficacy to religious sanctions in the next world. If the defendant perjured, he would be responsible before God. Thus, an agent could not

---

[254] *Yahya*, p. 210a
[255] *Yahya*, p. 209b. '[Bekr and Bişr have a claim against Amr.] They cannot prove the claim. Can *kadı* offer them to take an oath and pass judgment in favor of them? Answer: No'
[256] Çamlı, 'H. 959/M. 1551 Tarihli 4 Numaralı Manisa Şer'iyye Sicili', p. 22. Süslü, '20/2 Numaralı Kayseri Şer'iyye Sicili, H. 1027-1028 (M. 1617-1618)', p. 106. Şahin, 'Üsküdar Kadılığı 6/281 Numaralı Şer'iyye Sicili', p. 28.

take an oath instead of the defendant. In one case, an agent represented himself in the court, but when the oath was administered, a *naib* was sent to take the oath of the defendant.[258] To the modern eyes, taking oath can be seen as the easy way to escape the unfavorable judgment; however, the records on the rejection of taking oath at the expense of losing the suit can be subtle evidence on its importance at that time.[259]

Some questions related to taking oath in court were reflected in the *fetvas*:

> Question: When Zeyd died, he left his daughter Hind as the sole heir. Hind seized the heritage. Amr came out with a claim, that he was the cousin of Zeyd and had a right on his heritage. Hind rejected the claim, and Amr could not provide evidence on his claim. Can Hind be forced to take oath? *Hind'e yemin verdirmeğe kadir olur mu?*
> Answer: Yes.[260]

This case is straightforward, since the defendant rejected the claim, and the plaintiff could not prove it, and then asked the defendant to take an oath.

The following *fetva* though, is somehow departing from the reasoning we are accustomed.

> Question: Hind makes a claim against Zeyd that he committed fornication with her forcefully. Zeyd rejects this claim. If Hind cannot prove her claim, can she force Zeyd to take an oath?
> Answer: No.[261]

The fact that the defendant cannot be asked to take an oath puts forward the question that whether there was a different procedure in the criminal cases. If one looks

---

[257] Çamlı, 'H. 959/M. 1551 Tarihli 4 Numaralı Manisa Şer'iyye Sicili', p. 5. İnalcık, 'Osmanlı İdare, Sosyal ve Ekonomik Tarihi ile İlgili Belgeler: Bursa Kadı Sicillerinden Seçmeler: III. Köy Sicil ve Terekeleri', p.34. Şahin, 'Üsküdar Kadılığı 6/281 Numaralı Şer'iyye Sicili', p. 11.
[258] Şahin, 'Üsküdar Kadılığı 6/281 Numaralı Şer'iyye Sicili', p. 66.
[259] Çamlı, 'H. 959/M. 1551 Tarihli 4 Numaralı Manisa Şer'iyye Sicili', p. 5. İnalcık, 'Osmanlı İdare, Sosyal ve Ekonomik Tarihi ile İlgili Belgeler: Bursa Kadı Sicillerinden Seçmeler: III. Köy Sicil ve Terekeleri', p.34. Şahin, 'Üsküdar Kadılığı 6/281 Numaralı Şer'iyye Sicili', p. 11.
[260] *Abdurrahim*, p. 399.
[261] *Abdurrahim*, p. 399.

at this *fetva* and another one in *Abdurrahim*[262] related to verbal insult, it is apparent that the plaintiff could not get the *kadı* to offer the defendant to take oath. This can confirm the proposition that there was a different procedure in criminal cases.

However, in the court records, we encountered the offering of oath to the defendant in a similar case. Selcik, the daughter of Duralı, sued Mehmet, the son of Bayram, on raping; Mehmet rejected; Selcik failed proving her claim, and Mehmet acquitted himself by taking oath.[263] These cases can be seen as deviation from the rule, but the Süleyman's *kanunname* has a proposition, which is in accordance with this procedure. According to the *kanunname*, if a woman sued a man with the crime of fornication against her and could not prove her claim the witnesses, the man was offered to take an oath.[264] Thus, the prescription of the *kanunname* can be seen as an addition to the *sharia* law, and thus, the procedure in the case above, as the practice of the *kanunname*'s proposition.

Fetvas discussed some other problematic points related to swearing. In some *fetvas*, the *Şeyhulislam* was asked whether a person could be forced to take an oath on the same claim twice, his answer was negative.[265] Even if the plaintiff differed, the defendant was not supposed to take an oath on the same claim again.[266] The registration

---

[262] *Abdurrahim*, p. 400. According to *fiqh* rules, if the accused denied the claim, he/she cannot be required to take oath in crimes violating public well-being. For an excerpt on this subject from Al-Mawardî's *el-Ahkâm el-Sultâniyye*, see Vogel, *Islamic Law and Legal System*, pp. 233-235.

[263] Çamlı, 'H. 959/M. 1551 Tarihli 4 Numaralı Manisa Şer'iyye Sicili', p. 25. For a similar case, see Süslü, '20/2 Numaralı Kayseri Şer'iyye Sicili, H. 1027-1028 (M. 1617-1618)', pp. 126-127. Ronald Jennings cites a pederasty case and a murder case, in which the defendant was forced to take an oath. Ronald C. Jennings, 'The Use of Oaths of Denials at an Ottoman Sharia Court Lefkoşa (Nicosia), 1580-1640' *Studies on Ottoman Social History in the Sixteenth and Seventeenth Centuries* (Istanbul: the ISIS Press, 1999), p. 542 and p. 546.

[264] Heyd, *Studies in Old Ottoman Criminal Law*, p. 62.

[265] For two *fetvas* on the point, see *Abdurrahim*, p. 401. '…Zeyd takes an oath that …Can another *kadı* force him to take an oath on the same claim? Answer: No.'

[266] The *fetvas* in the last footnote.

of the oaths in the *sicills* served as evidence of whether the defendant swore on this point or not.

On the occasion of a refusal to swear, the plaintiff's claim became established. After that, the defendant did not have the right to come back and take an oath and to acquit himself.[267]

The precedence of evidence to oath is clearly illustrated in the following *fetva*. Even if an oath was taken, if it is proven that the case is not as supported by the oath, then the verdict can change.

> Question: Zeyd has a claim against Amr that he has a debt on him. Against this claim, Amr claims that he has paid back this debt, but cannot prove it. Zeyd takes an oath that he has not taken money back and receives the sum from Amr. If Amr provides evidence [for his claim], can he take his money back from Zeyd?
> Answer: Yes.[268]

When the procedure was complete, the *kadı* was supposed to pass judgment according to the facts established. In the *fetvas*, delaying to deliver a judgment is mentioned as a cause for the *kadı*'s dismissal. The *kadı* had to pass judgment as soon as possible.

> Question: Hind has a claim against Zeyd. [After the case is heard], it becomes clear that Hind has the right. If *kadı* delays to deliver a verdict, what is apt for the *kadı*?
> Answer: He becomes a sinner and deserves dismissal.[269]

On the question of which rules established the base of their judgment, Ebussuud's *fetva* in 'Maruzat' is illuminating. It mentions that some *kadıs* were ordered in their diplomas, *berats*, to pass judgments according to the soundest opinions of the

[267] For two *fetvas* related to the subject, see *Abdurrahim* pp. 400-401. '…Zeyd rejects to take an oath and the *kadı* passes judgment against him. After that, if Zeyd takes an oath, is his oath taken into consideration? Answer: No.'
[268] *Abdurrahim*, p. 402. There is one more *fetva* on this point in the same page.

great jurists, *esahh-ı akval*.[270] As a matter of fact, if the case was a *sharia* matter, the *kadı* passed judgment according to the opinions of the great jurists. If the case was related to issues covered by the *kanun*, then the *kanun was* the basis of the judgment.

As discussed in the introduction, the Ottoman *fetva* institution was closely related to the judicial administration. In the case that an uncertainty arose about legal ruling, the parties attempted to take *fetva* on the issue, and a large number of *fetvas* on the legal matters were produced. Therefore, the *fetvas* helped to clarify Ottoman law by showing the preference of the Ottoman state among the opinions of the jurists of the first Islamic centuries. The *kadı* was not expected to turn to the basic sources, Koran, the tradition of the Prophet, or the books including the opinions of the jurists. They knew the opinion, which was in use in the Ottoman realm, or they looked at the *fetvas* to find out the ruling on the issue at hand.[271] Apart from this, the strict control of the government over the institutions, which trained the *kadıs*, could have helped the shaping of Ottoman law into one consistent body. All in all, the Ottoman *kadıs* had not much discretion in determining the ruling, which would be applied.

From the evidence of the *fetvas* about their own authority in the court procedure, it comes out that if one of the sides had a *fetva*, the *kadı* had to look at it, and if the *fetva* befits the case, the *kadı* was supposed to pass judgment according to the *fetva*.

> Question: Zeyd has a *Şeyhulislam*'s *fetva* befitting to his case. He shows it to the *kadı* Bekr. Whereas the case is not a matter of doubt, Bekr passes judgment to the contrary of the *fetva*. What is befitting for Zeyd?
> Answer: Dismissal, and severe warning.[272]

---

[269] *Çatalcalı*, pp. 371-372. There is one *fetva* on this point in *Abdurrahim*, pp. 414-415.
[270] Ebussuud, 'Maruzat', p. 50. For the terms denoting the quality of the opinions of the jurists, see Wael B. Hallaq, 'From Fetwas to Furû': Growth and Change in Islamic Substantive Law', *Islamic Law and Society*, vol. 1, No: 1 (Leiden: Brill, 1994).
[271] The large number of *fetva* collections can provide evidence that *fetvas* were promoted among the educated people.
[272] *Abdurrahim*, p. 417.

It seems that the sides sometimes took *fetvas* indicating what the judgment should be in certain conditions. If they considered that the *fetva* fits the conditions and that the answer was what they wanted, they presented the *fetva* to the *kadı*. If the *kadı* also found the *fetva* suitable to the conditions of the sides, he put the answer of the *fetva* into use as judgment. The *kadı* was to hear the sides, scrutinize the case, and if he thought the ruling of the *fetva* was suitable to the facts that were established after the hearing of the evidence, he was to apply the prescription of *fetva*.[273] The *fetva*'s role was only to assist the ascertainment of the rules in certain circumstances.

The Ottoman court procedure as revealed from the court records and the *fetvas* insist on a speedy proclamation of verdict. The only permitted delay was at the stage of hearing the witnesses. If the witnesses were not present in the town, the *kadı* could set aside some time for the summoning of the witnesses. Otherwise, the hearing of the case was not interrupted, and in one meeting, the case was concluded. However, neither *fetvas* nor the court records are the exact reproduction of the court proceedings, and it is possible that a process scattering over a long period could have been recorded as if it was done in a single session.

[273] For the references to the *fetvas* in the court records, see Süslü, '20/2 Numaralı Kayseri Şer'iyye Sicili, H. 1027-1028 (M. 1617-1618)', p. 141. Şahin, 'Üsküdar Kadılığı 6/281 Numaralı Şer'iyye Sicili', p. 50.

CHAPTER 5: THE TRANSFER OF THE CASES

Another procedural matter related to hearing of cases, was the transfer of cases. In the case that the sides were living in different towns, the *kadıs* of these two towns participated in the hearing. The plaintiff made his claim before the *kadı* of his/her town. He/she brought his witnesses before the *kadı* and took a document *nakl* or *nakl-i şehade* showing the witnesses' testimony. He/she or his/her deputy took the *nakl* to the *kadı* of the defendant's town together with witnesses, who would attest to the genuineness of the document, *yol şahits*. After that, the lawsuit proceeded before the second *kadı*. As a matter of fact, this procedure was rather the transfer of the attestation of the witnesses as one of the names of the document, *nakl-i şehade* illustrates.

In the court records, although the *nakl* was not mentioned, the existence of the *nakl* in the proceedings can be sensed in some cases. For example, in an inheritance case, the plaintiff was from outside the town, the defendant was the *beytülmal emini*, the treasury officer, the witnesses were outside the town, the attestation of the witnesses was accepted, but there is no reference to the questioning of the witnesses.[274] This can be explained by the existence of the *nakl*. For the sake of the classical format of the court records, the *kadı* formulated the summary as though all the parties and witnesses were present, and the *nakl* was not mentioned. Although *sicill* entries are ambivalent as to the use of *nakl*, in the *Mühimme* registers, it is possible to see references to *nakls*. In one case, an inhabitant of Van took a *nakl* explaining her relation to her husband, who died

[274] Şahin, 'Üsküdar Kadılığı 6/281 Numaralı Şer'iyye Sicili', p. 25.

in Bitlis. However, she was prevented from seizing his heritage. She complained to the central government and took an order.[275]

It seems that the defendant's side, most of the time, was not contended with the validity of this procedure and directed many questions to the *Şeyhulislams* on the legality of the *nakls*. The *fetvas* related to the transfer of the cases suggests that some rules had to be observed in arranging the *nakls*, so that they retain validity in court. First of all, there should exist a certain distance between the towns of the plaintiff and defendant, for *kadıs* to accept a *nakl* document.

> Question: It is not known exactly what the imperial order on the subject is. If one makes claim against another, who lives in a different town, provides evidence before the *kadı* without the presence of the other side and takes a *nakl-i şehade*, this is valid according to *sharia*. However, how far must the distance be between these two towns? The great jurists' opinions differ. The preferred opinion is that the distance should be the distance of the three days, but some jurists permitted lesser distance. In this subject, it is found useful to prevent *kadıs* from admitting a *nakl-i şehade* from a distance lesser than that of three days. This is submitted to the sultan.
> Answer: It is ordered that the *nakl-i şahade* from lesser distance than that of three days would not be heard. However, in cases related to the treasury *beytülmal*, the claim of the outsider cannot be heard without the *nakl*; *kadıs* were informed of this, time and time again.[276]

Even if this issue was proposed in *fetva* format in 'Maruzat', Ebussuud's real intent was to arrange a practice rather than to answer a question. Ebussuud's proposition of the distance of three days was confirmed by the sultan, and after that, became the rule. The distance of three days was a distance that one can travel in three days on foot. This distance was also called the *sefer* distance and was basis for some religious

[275] *Mühimme Defteri 90*, No: 266. For some other reference to the *nakl* in the same register, see No: 323.
[276] Ebussuud, 'Maruzat', p. 52.

obligations.[277] For this reason, in the *fetvas* of other *Şeyhulislams*, the distance was mentioned as *sefer* distance, and the same rule was followed.[278] If the distance between the towns was lesser than the *sefer* distance, the witnesses were probably required to come to the town, where the case was heard, in order to testify. The rationale of the *nakl* was to make possible the realization of justice. If the witnesses were far from the town, through the *nakl* procedure plaintiffs could substantiate their cases.

In the answer part of Ebussuud's *fetva*, the *beytülmal* cases are the exception to the rule established and the *nakl* was required in these cases. Most frequent cases of dispute between the *beytulmal* and individuals were inheritance cases. When the dead person did not leave any known heir behind him/her, the official of the *beytulmal* seized the heritage. In such a case, if someone from outside the town came out with a claim that he/she was the heir of the dead person, he/she was supposed to prove his claim by the attestation of the people from the town, where he/she was born.

> Question: Zeyd died and left no known heir. The official of *beytulmal*, Bekr seized Zeyd's heritage. After that, Bişr, who lives in another town, comes with the claim that he is Zeyd's brother, and brings *a nakl* from the *kadı* of his town. Can the official ask Bişr to bring a *nakl* from the town, where he was born?
> Answer: Yes.[279]

The following *fetva* in the 'Maruzat' also deals with this issue, and requires the outsiders to bring a *nakl* from the town, where he/she was born.[280] In some of the court records, we can come across references to witnesses from the town, the plaintiff was born. However, there are no mentions to *nakl*.[281] It is possible that the summary was

[277] For example, if a person is in *sefer* distance from his/her home, he can break fasting in Ramazan. For this order, see *Abdurrahim*, p. 64.
[278] For the *fetvas* on the distance necessary for the admittance of the *nakls*, see *Yahya*, p. 215a, *Çatalcalı*, p. 378, and *Abdurrahim*, p. 427.
[279] *Abdurrahim*, p. 426.
[280] Ebussuud, 'Maruzat', p. 53.
[281] Şahin, 'Üsküdar Kadılığı 6/281 Numaralı Şer'iyye Sicili', p. 25.

constructed in such a way that the procedure involving the acquisition of a *nakl* was not considered necessary to mention. We can also guess that such a document was produced, since there is no questioning of witnesses, an essential procedural requirement, if a *nakl* was not used and they were present.

Apart from establishing the distance, there were other rules governing the format of *nakl*. First of all, the identity of the *kadı* or *naib* must be written in the *nakl*. If the *kadı* or *naib* was not well known, he must write his name, the names of his father and his grand father in the *nakl*.[282] In addition, the identity of the defendant and the witnesses must be declared in the same way.[283] Besides, the name of the witnesses, who would testify to the authenticity of the *nakl* before the second *kadı*, the *yol şahits* or *şuhud-i tarik*, must also be written.[284] Clearly, these rules have been designed to prevent abuses, resulting from inaccuracies in drawing the *nakl*. In the records, the *nakl* documents seem to have been written down in an abridged version. The names of *kadı* and the *yol şahits* were not entered in the summaries of the court records.[285]

In case that the *kadı*, who wrote the *nakl*, was dismissed from the office, before the *nakl* reached the second *kadı*, then it became invalid,[286] since until it reached its destination, the authority supporting the document was of the first *kadı*.

---

[282] *Abdurrahim*, p. 426. 'Question: If the *kadı* Zeyd, who is not well known, writes his name and his father's but does not write his grandfather's name in a *nakl* document, is this document valid? Answer: No.' There are similar *fetvas* in *Minkarizade*, p. 336b and *Çatalcalı*, p. 379,

[283] *Çatalcalı*, p. 379. 'Question: Is it necessary to write the names of witnesses in a *nakl* document? Answer: Yes.', 'Question: If the *kadı* Zeyd writes the defendant's name and name of the defendant' father but does not write his grandfather's name in a *nakl* document, is this document valid? Answer: No.'

[284] *Çatalcalı*, p. 379. 'Question: Is it necessary to write the names of *yol şahits*? Answer: Yes.'

[285] For some examples, see İnalcık, 'Osmanlı İdare, Sosyal ve Ekonomik Tarihiyle İlgili Belgeler: Bursa Kadı Sicillerinden Seçmeler', p. 25, pp. 33-34, p. 36 and p. 106.

[286] *Abdurrahim*, p. 427. 'Question: The *kadı* Zeyd writes a *nakl* and gives it to Amr. Before Amr brings the *nakl* to the *kadı* Bekr, Zeyd becomes dismissed. Can Bekr pass judgment according to the *nakl*? Answer: No.' There are similar *fetvas* in *Minkarizade*, p. 340a and *Çatalcalı*, p. 379,

If a *nakl* fulfilled all requirements, then the *kadı*, who received it and the defendant could not challenge its legality and had no right to ask the witnesses to present themselves in court.

> Question: Zeyd is from the inhabitants of Istanbul. He has a claim of debt on Amr, who lives in a town, which is in a *sefer* distance from Istanbul. Zeyd takes a *nakl* from Bekr, a substitute *kadı* in Istanbul, who is allowed to give it. When he comes to Amr's town, can the *kadı* reject the *nakl* on the pretext that it is from a substitute *kadı*?
> Answer: No.[287]

> Question: Zeyd takes a *nakl* for his case against Amr who lives in a town, in a *sefer* distance from Istanbul. When he comes to Amr's town and presents the *nakl*, can Amr reject it and demand the witnesses to come there personally?
> Answer: No.[288]

> Question: Zeyd takes a *nakl* for his case against Amr who lives in a town, in a *sefer* distance from Istanbul. When he comes to Amr's town and presents the *nakl*, can Amr reject it on the pretext that he will take the case before the *kadı* of Zeyd's town?
> Answer: No.[289]

By issuing the *nakl*, the procedure of hearing had started. The defendant then had no choice other than participating in the hearing. When the claimant proved the authenticity of the *nakl* before the second *kadı*, the stages of the claim and of providing evidence became completed. After that, the defendant could make a counter claim that would cause the plaintiff's claim to become invalid. For example, if the plaintiff requires a debt by *nakl*, then the defendant could make a counter-claim that he paid the debt and prove his claim.[290] He could also attempt to diminish the quality of the witnesses to

---

[287] *Yahya*, p. 215a. There are similar *fetvas* in *Feyzullah*, p. 291 and *Abdurrahim*, p. 427.
[288] *Çatalcalı*, pp. 378-379; there are three more *fetvas* to the same point in page 379.
[289] *Çatalcalı*, p. 379. There is a similar *fetva* in *Yahya*, p. 215b.
[290] *Abdurrahim*, p. 427. 'Question: Zeyd claims 170 *guruş* against Amr, who lives in Edirne. Zeyd proves his claim before the *kadı* of Istanbul and takes a *nakl*. The deputy of Zeyd, Bekr asks 170 *guruş* from Amr. If Amr claims that he paid the money and proves this, can he reject Bekr? Answer: Yes.' There is one more example in *Çatalcalı*, p. 380.

testify, or to prove the hostility of the witnesses in the *nakl* to him.[291] Presumably, the hearing continued in the same way as if the witnesses were present.

[291] *Yahya*, p. 216a. '…if Amr proves their [the witnesses in the nakl] hostility to him, can the *kadı* pass judgment according to the *nakl*? Answer: If he knows the hostility, he should not do.'

CHAPTER 6: ANNULMENT OF THE JUDGMENT OF *KADI*

After the case was concluded, sometimes, the sides attempted to have the case reheard. The most common way to achieve this was by taking an imperial command ordering the case to be heard again.

> Question: If a case, which was heard before by a *kadı*, is heard again, is this legal? Answer: It is not legal, if there is not an imperial order. Even if there is an imperial order, the judgment according to *sharia* cannot be changed.[292]

The *Şeyhulislam* Feyzullah's answer to the question reflects his uncertainty. On the one hand, an imperial order carries certain weight and on the other, he had to stress that since judgment was based on *sharia*, not even an imperial order could annul it.

As a matter of fact, every subject in the Ottoman empire had the right to bring his case before the Imperial Council, which until the second half of the seventeenth century, used to meet four times a week. The plaintiff presented his case in the form of a petition. After the petition was read out in the council, the grand vizier passed his judgment on the case; when the petitions were too numerous, then the *kadıaskers* were allowed to judge on the cases.[293] If the case was complicated, and there was a need to hear the defendant, the case was not concluded out of hand in the Imperial Council, but it was transferred to the *kadı* of the district. Imperial orders prohibited the hearing of the cases, which had been heard before.[294] However, in some instances, the petitioner came to the

[292] *Feyzullah*, pp. 286-287.
[293] Heyd, *Studies in Old Ottoman Criminal Law*, pp. 224-226. Heyd mentions the similarity between the grand vizier and the *mezalim* judge of the classical Islamic state in the sense that both carried out similar function, like hearing the cases, infliction of the fixed penalties, removal of the wrongs.
[294] *Mühimme Defteri 3*, No: 116, No: 249, No: 298 and No: 348. *Mühimme Defteri 90*, No: 53, No: 100, No: 381 and No: 418. For the decline of the lawsuit because of the ex-hearing, see İnalcık, 'Osmanlı İdare,

Imperial Council to ask for rehearing of his/her case. If an illegality was sensed in the hearing, the rehearing of the case before the *kadı* of the town was ordered.[295] Since the *kadı* was the judge to hear the evidence, he was entitled to pass the final judgment.

The rehearing of the cases was not approved, unless there was a legal excuse. The *fetvas* present us some common excuses of the attempts to make the judgment null and void. Some of these excuses were confirmed as valid, and some were not. For example, if, after the conclusion of the case, the quality of the witnesses testifying before the *kadı* was questioned, this did not make the judgment invalid.

> Question: Zeyd makes a claim against Amr. Amr rejects this claim. Zeyd provides the attestation of Bekr and Bişr as evidence. *Kadı* interrogates the veracity of Bekr and Bişr, accepts their testimony and passes judgment. Afterwards, if the reprobation of Bekr and Bişr become established, is the judgment becoming nullified?
> Answer: No.[296]

> Question: Hind has a case with Zeyd. Some people testified against Hind. Although Hind asks the *kadı* to interrogate the veracity of the witnesses, the *kadı* does not question their truthfulness and accepts their attestation, passes judgment and gives a *huccet*. Are his judgment valid and the *huccet* legal?
> Answer: No.
> Afterwards, Hind brings the case before the next incumbent *kadı* and Zeyd presents the *huccet*. Then Hind asks the interrogation of the witnesses and proves their reprobation. In this way, do the judgment and the *huccet* become null and void?
> Answer: Yes.[297]

From the first *fetva*, it is obvious that after the case was concluded, the judgment could not be changed based on the argument that the witnesses were not qualified to

---

Sosyal ve Ekonomik Tarihi ile İlgili Belgeler: Bursa Kadı Sicillerinden Seçmeler: III. Köy Sicil ve Terekeleri', p. 9, p. 26 and p. 44.

[295] *Mühimme Defteri 90*, No: 19, No: 212 and No: 393.

[296] *Minkarizade*, p. 337a. There are similar *fetvas* in *Minkarizade*, p. 342a, *Yahya*, p. 210b and *Abdurrahim*, p. 420.

[297] *Abdurrahim*, p. 421.

testify, if the kadı interrogated the truthfulness of the witnesses. Furthermore, even if the witnesses relegated their testimony, the judgment could not be repealed.[298]

However, if the *kadı* did not interrogate the honesty of the witnesses, the sides had the right to make a claim questioning it. If they proved their claim, they could nullify the judgment. In addition, when the plaintiff, who won the case, confessed that his claim was not genuine, and the witnesses were liars, the judgment became nullified.

> Question: Zeyd makes a claim of debt on Amr. Amr rejects this claim. Zeyd provides the attestation of Bekr and Bişr as evidence. *Kadı* interrogates the veracity of Bekr and Bişr, accepts their testimony and passes judgment. Afterwards, if Zeyd confesses that he made a false claim and provided liars as witnesses, does the judgment become null and void?
> Answer: Yes.[299]

If the annulment of the judgment of the *kadı* had depended upon the relegation of the witnesses of their previous assertion or the diminution of their qualification to testify, the judgments of the *kadıs* would have become vulnerable to change. Even if the witnesses consigned their attestation or their insincerity was proved, this did not prove the injustice in the judgment, since the second assertion of the witnesses may well have been insincere or their reprobation could have been established by their deeds after their attestation. However, the assertion of the plaintiff for his/her insincerity[300] and the dishonesty of his/her witnesses were seen as evidence of the injustice in the judgment, and thus, the judgment was nullified.

Apart form these, as mentioned above, in the case that the defendant exonerated himself by taking an oath and the *kadı* passed judgment according to his/her oath, the

---

[298] *Abdurrahim*, p. 420. '… [After judgment] if Bekr and Bişr [the witnesses] accept that they perjured, does judgment become invalid? Answer: No.' There are similar *fetvas* in *Yahya*, p. 216a and *Minkarizade*, p. 340b.
[299] *Minkarizade*, p. 342a. There are similar *fetvas* in *Çatalcalı*, pp. 370-371 and in Abdurrahim, pp. 420-421.

plaintiff had the right to make the judgment nullified by supplying evidence to support his/her claim.[301] Since taking an oath was just exculpatory evidence, whenever there was evidence, the oath was rendered null and void.

It can be said that the rehearing of the cases and the annulment of the judgment were generally disapproved by the administration and the *Şeyhulislams*. However, the opportunity to take *fetvas* and to present the case to the Imperial Council provided the litigant with a judicial review. If they proved the illegality in the procedure or in the judgment, they could make the case heard again

[300] For the confession of the insincere claim, see Çamlı, 'H. 959/M. 1551 Tarihli 4 Numaralı Manisa Şer'iyye Sicili', p. 19.
[301] *Abdurrahim*, p. 402. 'Zeyd claims so and so *akçe* against Amr. Amr claims that he paid the money to Zeyd. Amr cannot prove his claim. Zeyd takes an oath, and Amr pays the money. If Amr proves his claim by evidence, can he take the money back from Zeyd? Answer: Yes.' There is one more *fetva* on the same point in *Abdurrahim*, p. 402.

CONCLUSION

The role the *kadı* was asked to play in the Ottoman system is undeniably important. Ottoman political theory placed justice as the basis of a system aiming at guaranteeing social peace. Perhaps, it is ironic to see the functions and responsibilities of the main actor in the law-giving process, i.e. the *kadı*'s, were increasing over time, while the power of the central administration was being transformed to a more decentralized one. Or, maybe the former is a natural consequence of the latter.

This thesis examined the developments in procedural affairs in the Ottoman court as well as the responsibilities of the *kadı* reflected in the *fetvas* of Ottoman *Şeyhulislams* of mainly the seventeenth century. *Fetvas* issued by the most renowned jurisconsult in the empire, the *Şeyhulislam*, carried special weight, since we now know that they were not a game of the mind, but rather they were addressing 'real' questions put forward by 'real' people. *Sicill* registers and *mühimme* regısters were also consulted in an effort to create a more complete picture. A series of *fetvas* shapes the qualifications a *kadı* should have, and the same rules apply to his deputies, the *naibs*. Another group of *fetvas* determines the duties and limitations a *naib* was bestowed upon, by his appointing *kadı*. It was also made clear though, that despite any rules designed to guarantee the autonomous administration of justice by *kadıs* and *naibs* alike, ultimately an imperial order comes before any decision by them and should be respected as such. Dismissal is the lightest punishment for disobedience to the imperial order. The fact that that such an approach accepted by the highest religious authority in

the empire, the *Şeyhulislams*, as reflected in their *fetvas*, makes apparent the success of the Ottoman sultans to be viewed as more authoritative than even the most eloquent of legal interpreters.

Kadıs administered justice and also performed some administrative duties. Their duties did vary according to periods and geographical areas. It can be asserted that with the passage of time from the fifteenth to the seventeenth centuries, the importance of *kadıs* increased, and they undertook more and more responsibility in administration. This is evident in central lands. However, in areas far from the center, the *kadıs* did not undertake some of the duties that their equivalents in the central lands performed. The military authorities remained more important in the administration of justice.

We know very little about the procedure in the Ottoman court. Even the court records cannot illuminate fine points, since they were only summaries of the procedure. The set-up of the investigating comities; the criteria for the acceptance of the witnesses, the complications arising from the litigants living in different towns, or witnesses needed to be present in court; the use and role of oath for both litigants and witnesses; the process of settlement inside or outside the court as some problems, this thesis touches upon.

Court proceedings mainly, but not exclusively, composed of the five stages: claim, denial, providing evidence, taking oath, final judgment. In every stage, the *kadı* was expected to take an active role or at least to supervise the proceeding in order to ensure that it followed the rules. In case of a long distance, *sefer* distance, between the towns of plaintiff and defendant, two *kadı* could

participate in the hearing of the case. One listened to the witnesses and recorded their attestation in the transfer document, *nakl*, and another passed judgment.

Even the social status of litigants or school of law they followed could influence the selection of the *kadı* to judge their case. Behind all the rules though, one can discern the effort to guarantee a more or less fair trial to the parties. Looking at procedural rules in court, one cannot fail to notice the way the Ottoman law as a body, departed for some, or expanded for others, the *sharia*. Although judgment, when made according to the *sharia*, is final, the *Şeyhulislam* recognizes cases, where amendments can be made. In the case of the man, who was accused of owing money to another, and although he paid the sum, later he proved he had previously paid his debt, the *Şeyhulislam* allows him to ignore the finality of the judgment and claim back the money he paid. A second departure is rather a collegial one. An ex-*kadı* cannot be held responsible for decisions made while in office and be persecuted for that. The acceptance of documents, of all sorts, including *fetvas*, is another Ottoman novelty, determined by necessity. It was difficult to keep track of things in such a vast empire without changing the inherent Islamic procedure that was mainly based on oral disposition. Finally, although in Islamic law, there is no judicial revision, *fetvas* reflect ways to overcome this hurdle. The acquisition of a *fetva* showing procedural flaws could result into an imperial order asking for a re-trial. As we have seen, even the annulment of judgment could be accomplished in this fashion.

Thus, from the cases examined in this thesis, the flexibility of Ottoman law to accommodate what would guarantee social peace is once more obvious.

BIBLIOGRAPHY

1. Primary Sources

'Fatih'in Teşkilat Kanunnamesi' in Ahmet Akgündüz, *Osmanlı Kanunnâmeleri*, vol.1 (Istanbul: Fey Vakfı, 1990)

'Osmanlı Kanunları', *Milli Tetebbular Mecmuası*, I (1331/1915)

3 Numaralı Mühimme Defteri, transcribed by a commision (Ankara: Osmanlı Arşivi Daire Başkanlığı, 1993)

Abdurrahim Efendi, *Feteva-yı Abdurrahim*, 2 vols. (İstanbul: 1243/1827)

Atsız, *Âşık Paşaoğlu Tarihi* (Istanbul: Milli Eğitim Basımevi, 1992)

Çamlı, Mehmet, 'H. 959/M. 1551 Tarihli 4 Numarali Manisa Şeri'yye Sicili', unpublished M. A. Thesis, Gazi University (1993)

Çatalcalı Ali Efendi, *Feteva-yı Ali Efendi*, 2 vols. (İstanbul: 1283/1867)

Durmuş, Mehmet Ali, 'Hicri 1120-1121 Tarihli Lefkoşa'nın 7 Numaralı Şer'iyye Sicili', unpublished M. A. thesis, Ege University (1997)

Ebussuud, 'Maruzat', in Ahmet Akgündüz, *Osmanlı Kanunnameleri*, vol. 4 (Istanbul: Fey Vakfı, 1992)

Feyzullah Efendi, *Feteva-yı Feyziyye* (Istanbul: Daru't-Tibabeti'l-Amire, 1266/1850)

Gülcü, Erdinç, '1691-1720 M. (1103-1133) Tarih ve 391 Numaralı Harput Şer'iyye Sicili', unpublished M. A. Thesis, Fırat University (1993)

Hezarfen Hüseyin Efendi, *Telhîsü'l-Beyân fî Kavânîn-i Âl-i Osmân*, trans. by Sevim İlgürel (Ankara: Türk Tarih Kurumu,1998)

İbn Kemal, *Fetava* (Ankara: Milli Kütüphane YZ A 5607)

İnalcık, Halil, 'Osmanlı İdare, Sosyal ve Ekonomik Tarihi ile İlgili Belgeler: Bursa Kadı Sicillerinden Seçmeler: III. Köy Sicil ve Terekeleri', *Belgeler*, XV, 19 (1993)

İnalcık, Halil, 'Osmanlı İdare, Sosyal ve Ekonomik Tarihi ile İlgili Belgeler: Bursa Kadı Sicillerinden Seçmeler, II. Sicil', *Belgeler*, XIII, 17 (1988)

İnalcık, Halil, ‘Osmanlı İdare, Sosyal ve Ekonomik Tarihiyle İlgili Belgeler: Bursa Kadı Sicillerinden Seçmeler’, *Belgeler*, X, 14 (1980-1981)

Koçlar Bekir, ‘362 Numaralı Harput Şer’iyye Sicili, H. 1082-1083 (M. 1671-1673)’, unpublished M. A. Thesis, Firat University (1990)

Minkarizade Yahya Efendi, *Feteva-yı Minkarizade* (Ankara: Milli Kütüphane YZ A 3242)

Muhammet b. Ubeydullah, “Tuhfetu’l-Küttab” (Ankara: Bilkent University Library, Halil İnalcık Collection)

Nev’izade Ataî, *Hadaiku’l-Hakaik fî Tekmileti’ş-Şekaik*, published by Abdülkadir Özcan (Istanbul: Çağrı Yayınları, 1989)

Öztürk, Osman, ed., *Mecelle* (Istanbul: İslâmî İlimler Araştırma Vakfı, 1973)

Saleh, Nabil, *The Qadi and the Fortune Teller* (London: Quartet Books, 1996)

Süslü, Mustafa, ‘20/2 Numaralı Kayseri Şer‘iyye Sicili, H. 1027-1028 (M. 1617-1618)’, unpublished M. A. Thesis, Erciyes University (1995)

Şahin, Hacı Haldun, ‘Üsküdar Kadılığı 6/281 Numaralı Şer‘iyye Sicili’, unpublished M.A. thesis, Istanbul University (1992)

Şeyhi Mehmet Efendi, *Vekayiu’l-Fudalâ*, published by Abdülkadir Özcan, 2 vols. (Istanbul: Çağrı Yayınları,1989)

Tulum, Mertol, ed., *Mühimme Defteri 90* (Istanbul: Türk Dünyası Araştırmaları Vakfı, 1993)

Yahya B. Zekeriyya, *Fetava* (İstanbul: Süleymaniye Kütüphanesi, Fatih 2413)

2. Secondary Sources

Atar, Fahrettin, ‘Fetva’, *İslam Ansiklopedisi* (Istanbul: *Türkiye Diyanet Vakfı*), 12, 486-496.

Bakhit, Muhammad Adnan, *The Ottoman Province of Damascus in the Sixteenth Century* (Beirut: Librairie Du Liban, 1982)

Bilmen, Ömer Nasuhi, *Hukuk-ı İslâmiyye ve Istılahatı Fıkhiyye Kamusu* (Istanbul: Bilmen Yayınevi)

Dilger, Konrad, *Untersuchen zur Geschichte des Osmanischen Hofzeremonilles* (Munich: Trofenik, 1967)

Ergenç, Özer, *XVI. Yüzyılda Ankara ve Konya* (Ankara: Ankara Enstitüsü Vakfı, 1995)

Ergin, Osman Nuri, *Mecelle-i Umûr-ı Belediyye* (Istanbul: İstanbul Büyükşehir Belediyesi Kültür İşleri Daire Başkanlığı, 1995)

Gerber, Haim, *Islamic Law and Culture, 1600-1840* (Leiden: Brill, 1999)

Gerber, Haim, *State Society and Law in Islam* (Albany: State University of New York Press, 1994)

Hallaq, Wael B., 'From Fetwas to Furû': Growth and Change in Islamic Substantive Law', *Islamic Law and Society*, vol. 1, No: 1 (1994)

Hallaq, Wael B., 'Ifta' and Ijtihad in Sunni Legal Theory: A Developmental Account', in *Islamic Legal Interpretation. Muftis and Their Fatwas*, ed. by M. Khalid Masud, Brinkley Messick, David S. Powers (Cambridge: Harvard University Press, 1996)

Hallaq, Wael B., 'Was the Gate of Ictihad Closed?', *International Journal of Middle East Studies*, vol. 16, Issue 1 (1984)

Haram, Nissreen, 'Use and Abuse of the Law: A Mufti's Response' in *Islamic Legal Interpretation. Muftis and Their Fatwas*, ed. by M. Khalid Masud, Brinkley Messick, David S. Powers (Cambridge: Harvard University Press, 1996)

Heyd, Uriel, 'Some Aspects of the Ottoman Fetva', *Bulletin of the School of Oriental and African Studies*, XXXII (1969)

Heyd, Uriel, *Studies in Old Ottoman Criminal Law*, ed. by V. L. Menage (Oxford: Clarendon Press, 1973)

Imber, Colin, *Ebu"s-su'ud, The Islamic Legal Tradition* (Edinburgh: Edinburgh University Press, 1997)

İnalcık, Halil, 'A report on the Corrupt Kadis under Bayezıt II.'

İnalcık, Halil, 'Adaletnameler', *Belgeler*, II, 3-4 (1965)

İnalcık, Halil, 'Islamization of Ottoman Laws on Land and Land Taw', in *Essays in Ottoman History* (Istanbul: Eren Yayınları, 1988)

İnalcık, Halil, 'Kanun', *Encyclopeadia of Islam*, 2nd edn (Leiden: E. J. Brill), IV, 562.

İnalcık, Halil, 'Kanunname' in *Encyclopeadia of Islam*, 2nd edn (Leiden: E. J. Brill), IV, 562-566.

İnalcık, Halil, 'Mahkame', *Encyclopeadia of Islam*, 2nd edn (Leiden: E. J. Brill), VI, 3-5.

İnalcık, Halil, 'Military and Fiscal Transformation in the Ottoman Empire, 1600-1700', *Archivum Ottomanicum*, VI (1980)

İnalcık, Halil, 'The Rûznamçe Registers of the Kadıasker of Rumeli as preserved in the Istanbul Müftülük Archives' *Essays in Ottoman History* (Istanbul: Eren Yayınları, 1988)

İnalcık, Halil, *The Ottoman Empire, the Classical Age, 1300-1600*, trans. by Norman Itzkowitz and Colin Imber (London: Weidenfeld and Nicholson, 1973)

İpşirli, Mehmet, 'Osmanli İlmiye Teşkilatında Mülazemet Sisteminin Önemi ve Rumeli Kadıaskeri Mehmet Efendi Zamanına Ait Mülazemet Kayıtları' in *Güney Doğu Avrupa Araştırmaları Dergisi*, 10-11 (1983)

Jennings, Ronald C., 'Kadı, Court, and Legal Procedure in 17th Century Ottoman Kayseri' *Studies on Ottoman Social History in the Sixteenth and Seventeenth Centuries* (Istanbul: The ISIS Press, 1999)

Jennings, Ronald C., 'The Use of Oaths of Denials at an Ottoman Sharia Court Lefkoşa (Nicosia), 1580-1640' *Studies on Ottoman Social History in the Sixteenth and Seventeenth Centuries* (Istanbul: The ISIS Press, 1999)

Koca, Ferhat, 'Fetvahane', *İslam Ansiklopedisi* (Istanbul: *Türkiye Diyanet Vakfı*), 9, 496-500.

Kramers, J. H., 'Shaikh al-Islâm' in *Encyclopeadia of Islam*, first edition (Leiden: E. J. Brill)

Marin, Manuela, 'Learning at Mosques in al-Andalus', in *Islamic Legal Interpretation. Muftis and Their Fatwas*, ed. by M. Khalid Masud, Brinkley Messick, David S. Powers (Cambridge: Harvard University Press, 1996)

Masud, Muhammad Kahlid, Brinkley Messick, David S. Powers, 'Muftis, Fetvas, and Islamic Legal Interpretation' in *Islamic Legal Interpretation. Muftis and Their Fatwas*, ed. by M. Khalid Masud, Brinkley Messick, David S. Powers (Cambridge: Harvard University Press, 1996)

Nagy, Gy. Kaldy, 'Kâdî'asker', *Encyclopeadia of Islam*, 2nd edn (Leiden: E. J. Brill), IV, 375.

Powers, David S., 'The Art of the Legal Opinion: al-Wansharisi on *Tawlîc*' in *Islamic Legal Interpretation. Muftis and Their Fatwas*, ed. by M. Khalid Masud, Brinkley Messick, David S. Powers (Cambridge: Harvard University Press, 1996)

Repp,Richard C., *The Müfti of Istanbul* (London: Ithaca Press, 1986)

Richard Repp, 'Shaykh al-Islâm', *Encyclopeadia of Islam*, 2nd edn (Leiden: E. J. Brill), IX, 400-402.

Schacht, Joseph, *An Introduction to Islamic Law* (Oxford: Clarendon Press, 1964)

Singer, Amy, *Kadılar, Kullar, Kudüslü Köylüler* (Istanbul: Tarih Vakfı Yurt Yayinları, 1996)

Tyan, Emile, 'Fatwa', *Encyclopeadia of Islam*, 2nd edn (Leiden: E. J. Brill), II, 866.

Tyan, Emile, 'Kâdî', *Encyclopeadia of Islam*, 2nd edn (Leiden: E. J. Brill), IV, 373-375.

Uzunçarşılı, İsmail Hakkı, *Osmanlı Devleti'nin İlmiye Teşkilatı* (Ankara: Türk Tarih Kurumu Basımevi, 1988)

Vogel, Frank E., *Islamic Law and Legal System* (Leiden: Brill, 2000)

Walsh , J. R., 'Fatwa', *Encyclopeadia of Islam*, 2nd edn (Leiden: E. J. Brill), II, 866-867.

Yavuz, Cevdet, 'Dava', *İslam Ansiklopedisi* (Istanbul: *Türkiye Diyanet Vakfı*), 9, 12-16.