OUTLINES OF HUMAN RIGHTS IN OTTOMAN PERIOD

Dr. Hasan T. FENDOĞLU*

I. INTRODUCTION

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

Turkey has given up its anti-Ottomanist policy following 1980's, and declared this to other international areas. At new period, however, it began to be respectful towards its own history and human beings. It wasn't until 1980's that researchers had gained easy access to Ottoman archives. It is worth noting that only 10% or these documents have been completed and presented to researchers so far. Ninety percent of these documents have yet to be classified. Besides, there are about 20,000 volume verdicts of Ottoman Courts of "İstanbul Şer'iye Sicilleri Arşivi", which are utmost importance over human rights issue for Turkey as well as 20 Arap and other Middle East countries. Nevertheless, it is rather difficult to claim that those studies carried out at the Ottoman archives are enough.

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

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

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

II. THEORY

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

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

* University of Dicle, Faculty of Law.

258 Gazi Üniversitesi Hukuk Fakültesi Dergisi (C.1, S.2, 1991)
Aristo says, "humanbeings is a speaking animal" or "humanbeing is a
sociological creature". According to Diderot, "Humanbeing is an animal more
or less". Some western philosophers claims that "humanbeing is zoon
politicon". Adam Smith says; "humanbeing is an economical animal".
According to Karl Marx, "human being is an animal who produce tool".
Nietzsche says; "Christian Jesus is a red-faced animal". For Freud, "a human
being is under the eject of libido. Darwin puts forth, "humanbeing is out of
monkey". According to Albert Casmus, however, "humanbeing is an animal
who does not want to be an animal".

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

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

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

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

These rights are "zaruri (Much more necessary) maslahats". Beside
these, there are "haci (more necessary) maslahats", which involve beneficial
works for individual fulfillment and society.

"Haci (more necessary) Maslahats" means less necessary needs
according to the zaruri maslahats.

Apart from these, there are "tahsini (necessary) maslahats", which
comprise less beneficial works for individual and society.

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

Islamic Law also accepts "classical rights and freedoms", "political
rights and freedoms" as partly, as well on "social and economic rights and
freedoms". The right to perseverance has been accepted in Islamic Law by
the name of "Huruç ala-Sultan" lang before John Locke (1632-1706) who
may generally considered the "the father of liberalism". Furthermore, the right
to opposition was also accepted by Islamic law\(^1\). It is possible to say that

\(^1\) For details look at, Fendoğlu, H.: "Osmanlı Devletinde Muhalefet Hakki (Opposition Right in
Ottoman State)\(\)", Symposium on Human Rights, 10 December 1995, Tank Zafer Tunava Kültür
Merkezi, Istanbul 1995 (publish).
John Locke and other philosophers may taken this ideology in the enlightened era. In Ottoman State, the night to opposition and Hurucala-Sultan none accepted as partly

There are similar things between John Locke and Ibn Haldun. It can therefore, be suggested that there is Islamic thought, not Roman and Greek thought, on the basis of universal human rights.

III. HUMAN RIGHTS PRACTICE IN OTTOMAN STATE

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

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

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

KADI is from the class of ilmiye, and written directly to Saray. He is not responsible to Governor in writing. Ilmiye class or ehli-şeria consists of müderris (professor) muftis and kadi. They are administrators of Ottoman State.

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

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

In Ottoman KADI system, there is a group referred to as "Şůhud" (whimess) or "Şůhudulhul" (witness of condition). Their number varies from 5 to 10. They are chosen from retired Kadıs, kazakshers and other lawyers. Under the KADI's verdict, the signature of mugahits (witnesses) are essential2.

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

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

Ottoman State was a tolerant state; therefore, a number of Jewish people have migrated from Spain to Ottoman Land in 1492. Ottoman Empire was the first state to enjoy liberty during its period.

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

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

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

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