LEGAL REFORM IN THE OTTOMAN EMPIRE IN THE NINETEENTH CENTURY

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1. Introduction

Codification of modern Turkey began in the first half of 19th Century, actually after a turning point called the Tanzīmāt (Legislation) Era dated 1839 and completed its first step before the foundation of the Turkish Republic in Ankara in 1923. This era has two dimensions of codification. One dimension is to translate and adapt some French statues into Turkish and gave them the power of statue. These statues are both relating to the organization of justice and some legal acts.

The second dimension of this era was the establishment of native codes dependant upon sharia law and fermans of Ottoman sultans. The second dimension produced three important codes: The first is Kānūnāme-i Arāzī means Ottoman Land Law. The second is short title Mecelle (Majalla), its full title is Mecelle-i Ahkām-ı Adliye which literally means Code of Rules of Justice. It is a compilation of old sharia rules. The third is the Hukūk-ı Aile Karārnāmesi which is the Code of Family Law.[1]

There was another change in the field of the judicial organization. During the 19th Century, the Ottoman administration created new courts called *Nizāmiye Mahkemeleri*, in Turkish; these words literally mean regular courts which implied that traditional sharia courts were not regular courts. Most of the powers of the sharia courts were transferred to the newly founded nizāmiyye courts. These nizāmiyye courts organizations were transferred from France and these new courts became essential courts of the Empire. The sharia courts lost their power and were empowered only to solve religious affairs or heritage, foundation, family law, will, alimony affairs. In the traditional Islamic juridical system there were no notary and advocacy institutions but now they were included in the new system. Judges also carried out notary services before, but there was no notary as an independent institution. Advocacy was not a profession, it was only possible to act as a free agent.

There were also new developments in the field of legal education. Until Tanzīmāt Era a judge (in Turkish hākim, qādī, nāib) would graduate from madrasa but now a new law school was established in Istanbul, then in Selanik (Thessaloniki), Konya, Baghdad and Beirut. In the legal education also the example of France was followed. With these developments, new law books and law dictionaries were also prepared.

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[1] For more information on these indigenous laws, see: Fethi Gedikli: *The voyage of civil code of Turkey from Majalla to the Present day, in Le Code Civil, Quarante Ans Apres!* Colloque international, Alger 24&25 Octobre 2016, No: 05/2016, Univesité d'Alger 1 Benyoucef Benkhedda Les Annales, 217–229.

2. What were reasons for the need for new codes?

The 19th century was very *long* for the Turks. Many political, social, economic and legal changes went down in this century. The Turks lost many territories and populations of their empire. In 1838, the treaty of Customs with Great Britain made Ottoman Empire an excellent bazaar with tiny custom fees. So artisans of Ottoman lost their work-places. Contacts with France and Britain developed. Many Turkish students and intellectuals went to the West to study and many as political migrants as well. These brought new opinions. In 1839, as before mentioned, the Ottoman sultan proclaimed a ferman called Tanzīmāt i.e. Legislation Edict simply saying that they need new codes. From now on, Muslim and non-Muslim citizens of the empire are equal to each other. Before that time, there were some differences between them. Also this ferman means that the sultan accepts the transfer of some power to the Meclis-i Vālā, an upper consul. No one can be sentenced to capital punishment without the court's decision and no one can be accused of another person's crime. Crime is personal. This ferman made some regulations related to the collection of taxes and also being recruited to the army.

One of the reasons for the demand for new laws was that Ottoman statesmen wanted to achieve the status of *civilization*. For example, in the Ottoman Reform Edict (Islāhāt Fermanı) of 1856, betting from civilization is "reforms required by time and civilization and knowledge" ("Ol bābda vaktin ve gerek āsār-ı medeniyet ve ma'lumāt-ı müktesibenin īcāb ettirdiği ıslāhātı"). At the same time, Sultan Abdülaziz (reign 1861-1876), in his speech read by the grand vizier at the official opening ceremony of the Şūrā-yı Devlet (Conseil d'État) in 1868, explicitly said, "If the adequacy of the pre-established procedure and law was at the level of the needs of our country and our people, we should have been at the moment of Europe's most advanced and uniform governments.". So, to reach the European civilised nations, Ottoman statesmen accepted that new regulations should be performed.

During this time, French ambassador Bourée in Istanbul also gave some advises and encouragement for bringing the Ottoman law closer to the French law, the ambassador especially was working to adopt the Napoleon Code by the Ottomans. In fact, Ottoman grand vizier Ali Pasha supporting this opinion sent a letter from the island of Crete to the foreign minister and acting *sadrazam* i.e. prime minister Fuad Pasha, when he was visiting to soothe the revolt against the sultan.[2] European prominent states such as France, Britain and Austria were economically, politically and culturally ahead of the Ottoman. Therefore, Ottoman statesmen saw that reform was necessary for their administration. For a long time, the Ottoman army had been losing wars, reform was already launched in the army, and then it was time for other areas. The non-Muslim population in the Ottoman state also wanted new rights, even those requests extended to achieving independence. The French Revolution had begun to awaken nationalist feelings in them. Meanwhile, Russia was advocating orthodox people in the Ottoman country after the 1774 Küçük Kaynarca Agreement which contracted with Ottomans. With the Industrial Revolution, mass production in Europe increased and struggles to find markets gained importance. Vast Ottoman lands were a lucrative market for these mass products. All of these reasons

[2] For the letter sent by Ali Pasha to Fuad Pasha, see. BOA., Y. EE., 91 / 29, 3 Şaban 1284 / 30 November 1867. See for this information Hayrettin Pinar: Diplomasi ile Siyasetin Birlikteliği: Girit İsyanı ve Âlî Paşa, *SDÜ Fen Edebiyat Fakültesi Sosyal Bilimler Dergisi*, December 2008, No:18, 3, note 7.

triggered a series of innovation activities in the Ottoman state; reforms in the legal field were also amongst them.

3. Codes received from France during the Tanzīmāt Era

The intensive legislative activity started during the Tanzīmāt Era due to domestic needs and the European influence, which created new institutions. Even mentioning again the laws taken from France is enough to show the extent of the enactment made in this period.

Firstly, I will mention those concerning penal affairs: Military Criminal Law of 1838 (in the original Turkish Askerī Cezā Kānūnu), Penal Code of 1858 translated and amended from the French one dated 1810, Law on Prohibition of Extortion of 1855 (in the original Turkish Men'-i İrtikāb Kānūnnāmesi), The Criminal Procedure Act of 1879 (in the original Turkish Usūl-i Muhākemāt-i Cezāiyye Kānūnu) is a reception of the French Criminal Procedure Law of 1808. Secondly, the Commercial Act of 1850, Maritime Commercial Act of 1863, Regulation of Commercial Procedure of 1861, Ottoman Citizenship Act of 1869, Code of Civil Procedure of 1879 which was based on the French model of 1807, Regular Courts Organization Act of 1879 which were all taken with minor changes from the French legal system.

In the second half of the 19th century there were two kinds of courts, two kinds of schools and two kinds of legislation trends in the Ottoman territories. For example, the new courts, Nizāmiye Mahkemeleri, were established and it caused a duality in this area. For example, there were also qādīs who were continuing their judicial activities.

In the last quarter of the 19th century, another development was the adoption a Constitution (Kānūn-i Esāsī) by the Ottomans. The sultan accepted the establishment of a parliament, and relinquished some of his powers to the new parliament and in order to regulate general election conditions in 1876. Both Muslim and non-Muslim representatives of the people were members of this parliament. This was called the first constitutional monarchy in Turkish political history. Shortly thereafter, the parliament was vacated due to the 1877-1878 Ottoman-Russian war. The Parliament was reopened in 1908 and continued to work until the Republican era. During this period the powers of the sultan were limited and the powers of the parliament increased.

At the beginning of the 20th Century, when the Ottoman Empire was collapsing, a new Turkish state was born in Ankara. It was the present day's Turkish Republic. In 1926, founders of the new Turkish state chose a radical path to make Turkey a part of Europe. The discussions of those days stated that Turkey should change its civilization from Islamic to a European one. I do not know if this is possible or not, but Turkey amongst other things, changed its legal system completely in the first quarter of 20th Century. Turkey took a very brave decision to install the civil code of Switzerland. The politicians of the young Turkish Republic abolished the Ottoman civil code briefly called the Majalla, and took a very European code. The ongoing battle between liberal (westernized) and conservative politicians since Tanzīmāt Era, now ended with a big triumph on behalf of the liberal politicians. When the First World War was over and the Ottoman Empire was on the side of the looser the Turks' politicians, I may say, also lost their self-reliance. This context also helps us to understand how Turkish politicians and intellectuals rejected the legal system that they applied approximately one thousand years and this law system was a part of their

religion. I think, it was a syndrome of fatigue on the one hand and it was a wish of being a part of European nations on the other.

4. Conclusion

Declarition of the Tanzīmāt Ferman is one of the turning points in Turish history as well as its Turkish Legal History. With the Tanzīmāt, the Ottoman Empire admitted that the current legal system did not meet the needs of the age and accepted and declared that new laws should be made. Thus, after applying *fiqh* for centuries by accepting the religion of Islam, the state started to take laws from the foreign legal system (Europe) during the Tanzīmāt Era. Attention was paid to ensure that the reception in this period were compatible with their own legal system, and the reception were understood within the limited legislative power that the Ottoman sultan was appointed by the Islamic law. It was also a principle accepted that the law and customs, which constitute a source of Islamic law, would change with the changing of time. ("With the change of time, the change of provisions cannot be denied.", Majalla, art. 39). It must also be mentioned that the Ottoman statesmen protected the areas of law which are firmly linked to sharia. Here the issue of reception was not considered. They preferred to meet new problems and needs by staying within the Islamic law. However there was a move to not only stay in the Hanafi School but also to accept some norms from other law schools if necessary. Again, when needed, European laws could also be taken into consideration. It is correct to characterize these jurisdictions, both in the judicial organization and in the fields of law, as reform or *islāhāt*. This definition takes into account the radical legal changes made after the Republic. Thus, the reforms during the Republic of Turkey made in the 1920s, aside from seeking to comply with the existing legal system, saw it as a burden to be thrown entirely.[3] With the foundation of the Turkish Republic, hard changes were viewed in family and inheritance law. Before these two spheres of law stemmed from *fiqh* i.e. Islamic law. Because of these two radical amendments, Turkish people showed some signs of resistance to the application of new family and inheritance law. Ninety-four years later it can be said that the transition period ended and that modern civil law was broadly accepted in Turkey.

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[3] Turkey's legal reforms on a broader assessment are at my following article. There, I tried to state the views of both theorist and practitioner lawyers, the views of politicians and the views of sociologists. See Fethi Gedikli, "Hukuki Düşünce yahut Cumhuriyetin Hukuk Devrimi 'Bedevilikten Medeniliğe Geçiş'" (Legal Thought or Legal Revolution of the Republic: 'From Bedouin to Civilization), in *Cumhuriyetten Günümüze Türk Düşüncesi,* Nobel Yayınları, Ankara 2015, ed. Süleyman Hayri Bolay, Volume 2, 889-945.

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