Chapter 3

Umera and Judiciary in the Ottoman Province: Representation and Trial of the Executive Power at Konya Court (1701-1702)

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Abstract

The executive power was represented by the beylerbeyi and the sanjak-bey, that is, umera (ehl-i örf) in the Ottoman provincial administration. In the provinces, there were qadis to represent the judiciary. The relations between these two powers were very important in the maintenance of the local administration. So, how was the representation of the executive in legal matters in the Ottoman provinces? What was the attitude of the judiciary in cases where the executive was a party? The aim of this study is to reveal how the cases that were heard in the Konya court at the beginning of the 18th century and that concern the executive power worked. To discuss the role of the governor of Konya in the judicial processes through the mutesellims and mubasirs. In order to achieve these goals, the book number 39 belonging to the Konya court, which was transcribed beforehand, will be used. This study, which aims to reveal the legal relations between the executive and the judiciary in the Ottoman provinces, will make an analysis on a micro scale. Two different litigation process, which gives the impression that it is more of a political case, will be discussed in terms of reflecting the relations between the executive and the judiciary with the case analysis method.

Introduction

This study emerged as a result of a detailed examination of a *defter* of the Konya court in the Ottoman provinces from the early 18th century (1701-1702).[2] Based on the court records, representation and trial of the executive,

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2 İ. Solak-İ. Sak, *Konya Kadı Sicili 39 (1113-1113/1701-1702)*, Konya Büyükşehir Belediyesi Yayınları, Konya 2016.

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it will reveal the interaction of the executive and the judiciary in the judicial processes. The characteristics of the intersection of duties will be discussed when the executive, the interpreter of the customary law (*örfî hukuk)*, and the judiciary, the decision-maker of the shari'a law (*şer'i hukuk*), act together for various reasons, make decisions or come face to face. The importance of the role of these two powers in the establishment of the state order will be emphasized.

There are studies that approach this issue from different angles. In a study, the issue was evaluated more theoretically through provincial law codes (*kanunnames)*, one of the most striking sources of the Ottoman legal system.[3] In another, the judicial connection established by the Uskudar judge in the center in the 18th century with the grand vizier on the occasion of the Wednesday Assembly *(Çarşamba Divanı),* and the essence of the communication between the Adana qadi and the Adana governor (*beylerbeyi*) in the provinces on legal processes, and the limits of pluralism in the trial stages were emphasized.[4]

Despite the existence of these valuable studies, it is necessary to focus more on the importance of the subject. The formation of the relations between the executive power and the judicial power in the field of practice, both in the Provincial Assembly (*Eyalet Divanı*) and in the qadi court, depended on many reasons. As a state official acting on behalf of the sultan, beylerbeyi had the right to hold case hearings in the provincial council. The cases in which the reaya sought their right against the executive were carefully followed in the court. It pointed to more rigorous legal processes as it was expected that the provincial administration would be tried in court for various reasons. Thus, the representation of the executive in the judicial authority, which occurs in different forms, deserves a detailed study in terms of focusing the mutual relations. Again, evaluating from the same perspective how the cases in which the executive power is tried directly in the court are carried out and concluded provides a holistic perspective on the subject.

The court records, also known as the *şer'iyye sicilleri* in which all kinds of works in the Ottoman court were recorded, also had the feature of an archive where public documents were kept. These status books made the city the memory of the relevant city. [5] Thanks to these *defters*, which are remarkable

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3 Muharrem Midilli, "Osmanlı Taşrasında Ehl-i Örfe Karşı Kadılar Yahut Kânûn-i Kadîmin Ehl-i Şer' Bekçileri (1453-1586)", *Marmara Üniversitesi İlâhiyat Fakültesi Dergisi,* 59, İstanbul 2020, pp.75-103.

4 Işık Tamdoğan, "Qadi, Governor and Grand Vizier Sharing of Legal Authority in 18th Century Ottoman Society", *AJAMES,* 27/1, 2011, pp.237-257.

5 Leslie Pierce, *Ahlak Oyunları 1540-1541 Osmanlı'da Ayntab Mahkemesi ve Toplumsal Cinsiyet ve*

in terms of containing rich information content as well as information about the powers and responsibilities of the executive and judicial powers in the provinces against each other, the places of the executive and the judiciary in the legal process in the provinces can be followed on a micro and macro scale.

Karaman province was one of the five beylerbeyliks in the Anatolian lands of the Ottoman Empire. Karamanoglu principality entered the Ottoman administration definitively in 1501 after long struggles.[6] However, turning it into a beylerbeylik goes back to 1476.[7] Although the other sanjaks of the province were also important, the political administration was carried out especially from Konya. The city was also in the status of a pasha sanjak (*paşa sancağı)*, since it was the sanjak of which the governor ruled the province.[8]

In the middle of 1701, Ali Pasha, the governor of Karaman, represented the executive in Konya. There is not enough information about Ali Pasha's life and career. Before he became the governor of Konya, he was the sanjak governor of Birecik in terms of *arpalık*. Later he became Karaman Beylerbeyi. On December 2, 1701, the governorship was extended.[9] Ali Pasha remained in his position until the beginning of 1703, and upon his death of natural causes, Ömer Pasha was appointed as the governor of Konya.[10]

In the Ottoman judicial system, qadis were organized in various groups. In this regulation, an adjustment was made according to the daily wage paid to qadis. The district centers with a daily income of 300-500 *akces* were considered as *mevleviyet*. Since they were seen as the most important qadi centers of the empire, the appointment of qadi was made directly by the sheikh al-Islam. In other words, their appointments were outside the general qadi appointment system.[11] The qadis appointed here could come to

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Mahkeme, İstanbul 2005, Tarih Vakfı Yayınları, p.116.

6 Orhan Kılıç, "Karaman Eyaleti ve Paşa Sancağı Konya'nın Paşaları: 15. Yüzyıldan 19. Yüzyıla Sistematik Bir Analiz", *İslâm Medeniyeti'nde Konya Uluslararası Sempozyumu Tebliğleri Aralık 2016, Konya*, IRCICA, İstanbul 2018, p.305.

7 Mehmet Akif Erdoğru, "Karaman Vilayeti'nin İdari Taksimatı", *Osmanlı Araştırmaları*, XII, İstanbul 1992, p.426.

8 Yusuf Oğuzoğlu, " XVII. Yüzyılda Karaman Beylerbeyi ve Mütesellimine İlişkin Bazı Bilgiler", *Selçuk Üniversitesi Edebiyat Fakültesi Dergisi,* 1, Konya 1981, p.93.

9 Kılıç, *op. cit.*, p.346.

10 *Konya Court Records (*hereafter *KCR)*, no.40, p.7-8.

11 Bilgin Aydın-Rıfat Günalan, "XVI. Yüzyılda Osmanlı Devleti'nde Mevleviyet Kadıları", *Prof. Dr. Şevki Nezihi Aykut Armağanı,* Etkin Kitaplar, İstanbul 2011, p.21.

this position by being chosen from among the most distinguished qadis of the empire. The Konya qadi was elevated to the rank of *mevleviyet* in 1582.[12]

In the book belonging to the Konya court and classified with number 39, a total of 595 case reports were recorded between 18 July 1701 and 28 March 1702 in a period of approximately eight and a half months. 27 of these are cases where provincial administrators in Konya were represented or to be judged on various occasions. In fact, this number is not very high considering the cases that the court deals with. Therefore, the visibility of the umera in court is relatively limited. The same situation was also valid for Bursa umera. According to Gerber, in Bursa, which is the center of Hüdavendigar Province, the visibility of the *mutesellim* in court as the representative of the beylerbey is quite limited. One of the cases he is involved in is about tax and the other is about banditry.[13]

It is understood from the records written in the relevant book that two qadis and three regents (*naib)* were on duty at the aforementioned dates. According to the first record, on September 19, 1701, the judge of Konya was Mehmed Efendi, and the regent was al-Hac Yusuf Efendi.[14] In another record dated September 27, it was announced that Yahya Efendi was appointed as the judge and Saraczâde Abdülkerim Efendi was appointed as the regent.[15] So, during this period, five lawmen represented the law in Konya, together with Sheikh Mehmet Efendi, who was appointed regent in January 1702.[16]

In this study, the representation of the public in the legal order within the provincial bureaucracy and administrative mechanism in Konya, and their attitudes and trial processes in public or personal lawsuits filed directly against them will be revealed. Again, the reflections of the power that qadis gained in the Ottoman center and provincial bureaucracy will be discussed. In the 17th and 18th centuries, the Ottoman qadi was elevated to the position of the most important cornerstone symbolizing the rule of law in the administrative-bureaucracy network.[17] Based on this importance, it will be underlined that the qadi, rather than just an Islamic court administrator, holds the power of law that oversees, monitors and decides when necessary.

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12 Aydın-Günalan, *op.cit.,* p.22-23.

13 Haim Gerber, *State, Society, and Law in Islam Ottoman Law in Comparative Perspective,* State University Press, New York 1994, p.137.

14 Solak-Sak, *ibid.*, p.435.

15 Solak-Sak, *ibid.,* p.99.

16 Solak-Sak, *ibid.,* p.282.

17 Gerber, *op. cit.,* p.16.

Finally, two court hearings, which have a political content, will be analyzed as an example of executive-judicial reconciliation in the countryside.

Theoretical Framework

In the Ottoman classical period, the administrative organization of the cities was under the responsibility of the beylerbeyi (sanjakbeyi) in terms of execution and the responsibility of the qadi in terms of judiciary. The fact that qadis are independent and directly subordinate to the sultan in their decisions shows that the principle of separation of powers is working in the provinces.[18] Apart from these two powers, there were other institutions or officials that could influence the provincial administration. From *ayan* (notables) and *eshraf* (elites) to *pazarbası* (bazaarmanager), from guilds to neighborhood organization, there were civil formations that were decision-makers. These were usually people who were consulted by provincial decision makers, sought opinions and had the qualifications to cooperate for the benefit of society.[19] However, if the issues that occurred in the administrative field of the local administration were based on political, criminal and legal reasons, there were only two authorities to have a say: Beylerbeyi and qadi.

The reason why the customary administration in the province was a party in legal cases and had representatives in the court when necessary was because the sanjak or state laws included sections on criminal law. Indeed, customary law codes, strengthened by Mehmet the Conqueror, had reached their most perfect state by undergoing a perfect transformation during the reign of Suleiman the Lawgiver.[20] Not only administrative provisions, but also articles related to the penal code were included in the laws. Thus, as the administrators of the local administration, the beylerbeys and sanjakbeys were able to establish courts in matters that were sometimes within the scope of criminal law, using the right given to them by the law. However, it should be noted right away that this did not cause a double-headedness. The limits on which subjects could be involved in the judiciary were well defined. Even the executive power knew that qadis had the right to have a say in this matter. Their role in this regard is related to the determination and diagnosis of the punishment and mostly referral to the qadi. It was entirely up to the

18 Yaşar Yücel, "XVI-XVII. Yüzyıllarda Osmanlı İdari Yapısında Taşra Ümerasının Yerine Dair Düşünceler", *Belleten*, XLI/163, Ankara 1977, p.495.

19 Özer Ergenç, "Osmanlı Şehirlerindeki Yönetim Kurumlarının Niteliği Üzerinde Bazı Düşünceler", *VIII. Türk Tarih Kongresi Ankara: 11- 15 Ekim 1976 Kongreye Sunulan Bildiriler*, II, Ankara 1981, pp.1265-1274.

20 Uriel Heyd, *Studies in Old Ottoman Criminal Law*, Oxford University Press, London 1973, pp.7-8.

qadi to decide which penal decision would be made after the application of the laws and the finalization of the crime according to the criminal law.

Besides being a law man, the qadis were also a civil administrator. They were as knowledgeable as possible in matters of public interest. They were sufficiently equipped to deal with the treatment and execution decisions of the *ehl-i örf*. In one place they represented an authority that complemented their jurisdiction.[21] While counting the duties of qadis in a code of laws, the fact that the expressions: *"… the order of the country, the protection of the people and the conduct of political affairs"* [22] are included indicates that qadis have the right to have a say in matters based on the customary law and practices directly undertaken by the executive power. This article of law is essentially a reflection of an understanding that has determined the boundaries of the relationship between the executive and the judiciary. The beylerbeyi (sanjakbeyi) would take a watchful and supervisory role when necessary in the field of qadi's work, and the qadi against the practices of the executive power.

Everyone in the countryside had the right to apply to both the qadi and the beylerbey. The fact that the beylerbey made a decision as a result of an application did not mean infringement of the judicial right of the qadi. Since the party who is not satisfied with this decision reserves the right to bring the verdict to the judge or even to the Imperial Council (*Divan-ı Hümayun*), although it seems that there was an intervention in the judiciary at the beginning, this does not fully reflect the truth. As a matter of fact, the judiciary was not dissatisfied with this situation. Those who were not satisfied with the decisions made by the executive power openly expressed this in the court and recorded it in the registry. The same was true for the qadi. The party who thought that the decision of the court was wrong was either in the provincial administrative mechanism or in Istanbul. This time, the qadi's decision was questioned and a fair decision was made. Mutual control mechanisms came into play, and right and wrong could be clearly distinguished.

In the Ottoman criminal law texts, the situations in which both the qadi and the umera could be involved are listed in articles. Duties of both are explained in detail. Although there are many articles explaining this situation

21 Amy Singer, *Kadılar, Kullar, Kudüslü Köylüler, T*ürkiye İş Bankası Kültür Yayınları, İstanbul 2008, p.37.

22 "*…nizâm-ı memleket ve hıfz ve hırâset-i raiyyet ve siyâsete müteallik umûr…".* See, Tayyib Gökbilgin, "XVI. Asırda Mukataa ve İltizam İşlerinde Kadılık Müessesesinin Rolü", *IV. Türk Tarih Kongresi: Ankara 10-14 Kasım 1948 Kongreye Sunulan Tebliğler*, Ankara 1952, p.433.

in a criminal law code of the reign of Suleiman the Magnificent published by Uriel Heyd, one is remarkable. This article is stated as follows: *"…If a person is a people of mischief and always does naughty things, if Muslims say to his face that we do not know this, the qadi and subaşı will come out of the way, and anyone who has the right to do politics will be dealt with…".*[23] This article is very valuable in terms of the subject of the study. Because it is quite clear that people who are described as people of mischief mean rather those who act against public order. The duty of prosecution for such people was taken from the qadi and transferred to the people of politics, that is, to the common people. Thus, the question of why provincial administrators could have the right to speak in criminal law cases can be partially answered. The laws drew the boundaries of both powers. However, these limits could be exceeded when necessary and as determined by law.

Towards the end of the 17th century, due to the gaining power of the *ulema,* including the qadis, the criminal law articles in the code of laws were not implemented, and the local administrators were surprised. However, the Heyd's idea that laws have lost their effect does not reflect the truth.[24] This development, which meant that the *ehl-i örf* lost a power in their duty, actually depended on other reasons. The *timar* system had lost its effect. *Tahrirs* were abandoned. Due to the constant depreciation of the Ottoman currency, the fines collected due to the crime specified in the code of laws began to remain quite low. Partly due to the updating of this, fines began to be imposed, not according to the laws, but re-determined but transformed into the form required by the sharia rules.[25] In fact, it is not correct to consider the laws as only customary and to assume that they are completely separate from the sharia. Because the reference of at least some of its parts and articles was sharia law.[26] Just as the qadi and beylerbeyi were tackling the custom or sharia rules in a way that exceeded each other's limits of authority, the content of the two laws, which seemed to be different, fed from each other.

It is not clear for now to what extent this change in understanding reflected on the functioning of the administration and judiciary in Konya in the 1700s. However, since it corresponds to a transition period, it can be assumed that the old practices were applied, albeit partially. Again,

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23 "*Eğer bir kişi ehl-i fesad olsa daima yaramaz işlerde bulunsa Müslümanlar yüzüne karşı biz bunu hırlu bilmeziz deseler kadı ve subaşı aradan çıkalar, elinde siyaset ve yasak konulan kimesne hakkından gele*". (Heyd, *op. cit.,* p.92).

24 Gerber, *op. cit.,* p.66.

25 Heyd, *op. cit.,* p.152 at. al.

26 Gerber, *op. cit.,* p.61 at. al.

they had to act according to the orders coming from both the beylerbeyi and the qadi from center and in accordance with the frequently updated laws. The Ottoman Empire was changing. Laws and practices were shaped accordingly. Representatives of the executive and the judiciary met in some form, though not often, at the court or at the governor's palace. Perhaps they were negotiating among themselves the qualities of the ongoing change in these encounters.

Boundaries of Execution and Judiciary in the Provincial

Although the beylerbeyi was essentially a civil administrator, he could also be a lawman when appropriate. He was especially knowledgeable in *timar* and land management laws. Issues related to this were often discussed in his divan. So, it can be easily stated that the beylerbey has some judicial knowledge, albeit to a certain extent. On the other hand, the qadi was in a position to interpret the affairs in these fields within the scope of the law, as well as being responsible for civil and financial matters apart from his judicial duty.[27]According to the result, the judges had the power and knowledge to follow and supervise the decisions and practices taken by the heads of the executive in the provinces.[28]

Although it was declared that the qadis were subject to the beylerbey according to the *Tevkii Abdurrahman Paşa Kanunname*,[29] it was interpreted differently in this process. Because the chief of the qadi was not the beylerbeyi or the sanjakbeyi. It was directly the *kazaskerlik* authority.[30] The most obvious right that made the qadi different from the umera was that he could act independently of them. This should be considered very valuable in terms of the subject of the study and it should be envisioned. Because, first of all, the qadi determined the limits of his legal independence in the decisions he would take, even if the umera was involved. Secondly, although the people of custom had the power to intervene with the qadi as the interpreter of the law, this was valid only in special circumstances.[31] On the other hand, qadis were able to carry out the processes of communication with the central administration, giving information and secret inspection about umera when necessary.[32]

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27 İlber Ortaylı, "Osmanlı Kadısı'nın Taşra Yönetimindeki Rolü Üzerine", *Amme İdaresi Dergisi*, 9(1), Ankara 1976, p.95.

28 Özer Ergenç, *XVI. Yüzyılda Ankara ve Konya,* Tarih Vakfı Yurt Yayınları, İstanbul 2012, p.108.

29 "Tevkiî Abdurrahman Paşa Kanunnamesi", *Milli Tetebbular Mecmuası,* I/3, 1331, pp.527-528.

30 Ortaylı, *op. cit.,* p.97.

31 Ortaylı, *ibid.,* p.95.

32 F. Ş. Arık, "Osmanlılar'da Kadılık Müessesesi", *OTAM,* 8, Ankara 1997, p. 56.

The executive and jurisdiction authorities in the provinces were nevertheless inextricably linked. Although the fact that a qadi has the right to inspect the *ehl-i örf* gives him an advantage, it is obvious that these two powers need each other. Because the executive would implement the decisions taken by the qadi, that is, ensure the execution. The executive, on the other hand, needed the judiciary because of its legal right to express its opinion. This current situation made two powers two halves of an apple.[33] But friction was also very likely.[34] Although there was a possibility that the beylerbey, as the representative of the supreme Sultan, could rule or interfere with the qadi, the court was the only institution of the Ottoman judicial order. In addition, it was not possible for a beylerbey, as the representative and right hand of the sultan's political power, to usurp the judicial right of the qadi on his behalf.[35] As a matter of fact, in the two trials that will be analyzed below, a state of alliance and reconciliation rather than friction is quite evident.

Representation of the Executive Power in Court

The representation of the executive power in court should be evaluated in two categories: The first concerned the involvement of the executive in cases aimed at maintaining public order. The other was directly related to their involvement in cases involving the executive.

The representation of the executive in court in the cases related to the functioning of public order was in various ways. These can be evaluated in five different categories: sending *mubasirs* (bailiffs) to certain cases by the beylerbeyi, representing *mutesellim* at court on behalf of the beylerbeyi; qadi's trial at the Provincial Assembly (*Eyâlet Divânı*) and finally, the simultaneous hearing of some cases both the beylerbeyi and the qadi. In order for these to become operational, the seekers of rights had to apply to the governor. In the Konya court book number 39, there are examples of three cases other than the last category, which will be examined below.

A fifth way was for the beylerbey to attend the court in person. The executive power could be present in court, especially when criminal cases such as rape, murder and theft were being discussed. He could even review the decision made by the qadi, intervene and change the decision when necessary.[36] However, Ergene states that there is no explanation in the court

33 Midilli, *op. cit.,* p.93.

34 Ortaylı, *op. cit.,* pp.105-106.

35 Linda Darling, "Innovations in Document Study", *MESA Bulletin,* 38/1, 2004, p.64.

36 İsmail Hakkı Uzunçarşılı, *Osmanlı Devletinin İlmiye Teşkilatı,* Türk Tarih Kurumu Basımevi, Ankara 1988, p.110.

records about how this process works, and in a quote from Mouradgea D'Ohsson, he explains that the umera who was present in the cases intervened by finding mitigating reasons when they thought the decision was heavy, or by finding aggravating reasons if they thought it was light.[37]

In the cases where umera was judged directly, either a mubasir or a mutesellim was present. As a matter of fact, there is no record of his being present at the court in various cases involving Konya Beylerbeyi Ali Pasha. But Huseyin Agha, mutesellim of the governor, represented him many times in the court of the qadi.

The provincial government, which was obliged to follow the legal process to the end when a dispute was referred to it, would thus have acquired the right of representation in the operation of the law. As it is known, the reaya had the right to make their complaint directly to the Imperial Council at the capital of the state.[38] As a matter of fact, a hearing in the Konya court indicates this. A case that was previously thought to have been wrongly decided due to the ferman received by the plaintiff from the sultan, had to be re-negotiated.[39] When appropriate, they were at a distance of an *arzuhal* or *a mahzar* (petition) from the beylerbey, who represented the sultan and the public order, without going to the Istanbul. If there was an administrative issue or disagreement, it was already discussed in the beylerbeyi council.[40] If the problem developed around an issue that needed to be resolved legally, the qadi stepped in. An application was made to the court with a document prepared by the beylerbey regarding the content of the issue.[41]

Representation of the Executive in the Konya Court

Representation Through Bailiffs (Mubasirs)

The representation of the governor in the court was carried out by many officials under his command.[42] However, the most visible ones in the office of qadi were the bailiffs. Who were the bailiffs and what were they doing in court? In most courts, it was the *kapı halkı* who represented the governor,

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37 B.A Ergene, *Local Court, Provincial Society and Justice in the Ottoman Empire: Legal Practice and Dispute Resolution in Çankiri and Kastamonu (1652–1744),* E. J. Brill, Leiden/Boston 2003, p.173.

38 Halil İnalcık, "Şikâyet Hakkı: 'Arz-ı Hal ve 'Arz-ı Mahzar'lar", *Osmanlı Araştırmaları,* VII-VIII, İstanbul 1988, p.35.

39 Solak-Sak, *op. cit.,* p.14.

40 Ergenç, *op. cit.,* p.79 ve Mehmet İpşirli, "Beylerbeyi", *Diyanet İslam Ansiklopedisi,* 6, Diyanet Vakfı Yayınları, İstanbul 1992, pp.71-72.

41 Ergenç, *op. cit.,* p.79.

42 Tamdoğan, *op. cit.,* s.247.

and they spoke in court about matters or explanations that he appreciated. These duties were recorded in the court records *as "…Ali Pasha, may his luck be permanent, appointed by him as bailiff to* ***the subject to be mentioned****…".*[43] In other words, mubasir had the right to speak on behalf of the beylerbeyi, as can be understood from the part written in bold. Apart from this, the duty of the mubasir at the court was sometimes explained with the word "*müzaheret*".[44] Although it is not clear what this word means in court processes, the dictionary meaning of which is to help and protect, it was probably used in the sense of notifying the case to the court and summoning the plaintiffs.[45] Again, the expression *mübaşeret* that the person who would follow the case as mubasir was also used.[46] It is understood that mubasir, which means the person who is responsible for notifying the judge's order in the dictionary, is thus the person who conveys the opinion of the beylerbeyi in the relevant case to the qadi.

Mubasirs were sometimes appointed directly by the beylerbeyi. In an example of this, Ali Agha, who was appointed as the mubasir at the trial in which the parties involved disagreed on the collection of Horse Breeders *(Esbkeşan*) Mukataa *öşür* tax, was assigned by the governor Ali Pasha.[47] Since the subject of the lawsuit revolves around a property (*has*) belonging to Mother Sultana (*Valide Sultan)*, it can be thought that the beylerbey was careful in the selection of mubasirs and took responsibility for this issue. However, he would have sent mubasir for the follow-up of more ordinary cases. For example, in a battering trial, Ali Pasha sent a mubasir named Chief Sergeant (*Başçavuş)* al-Hac Halil this time.[48]

Abdi Agha was appointed as mubasir by the beylerbeyi for the discussion of a slave ownership case.[49] In another lawsuit dated March 7, 1702, the subject of which was debt and pledge, al-Hac Halil Agha was present as mubasir once again.[50] On March 22, 1702, this time mubasir al-Hac Mustafa

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43 "... *Ali Paşa dâme ikbaluhu hazretlerinin taraf-ı âlilerinden* ***husus-ı âtiyyü'l-beyâna*** *mübâşir ta'yîn buyurulan...*" (Solak-Sak, *op. cit.,* pp.99-101).

44 Solak-Sak, *ibid.,* p.172.

45 M.Z. Pakalın, *Osmanlı Tarih Deyimleri ve Terimleri Sözlüğü,* II, Milli Eğitim Basımevi, İstanbul 1983, p.592.

46 Solak-Sak, *op. cit.,* p.293.

47 Solak-Sak, *ibid.,* pp.99-100.

48 Solak-Sak, *ibid.,* p.130.

49 Solak-Sak, *ibid.,* p.172.

50 Solak-Sak, *ibid.,* pp.363-364.

Bey was assigned to act on behalf of the pasha in the Konya court in order to settle the dispute over the border of the a *zeamet* betweeen two cavalry.[51]

Some cases in which the governor's office was involved through mubasirs were related to public morals and illegitimate relations. Beylerbey's interest in such cases was mostly related to the behaviors and actions of women contrary to social norms. For example, the subject of a lawsuit caused by a woman should be evaluated from this perspective. The governor, who had an illegitimate relationship with the levends in the city, was involved in the lawsuit, which was opened upon the complaint of his brother, who was injured by a woman named Sultan, who was accused of drinking and wandering open on the roof, and appointed a mubasir named al-Hac Huseyin Agha.[52] As a result of this lawsuit, it was decided that the woman should be politically murdered. In another case due to the rape of a woman named Fatima by the slave named Yusuf of the Konya *Nakibüleshraf kaymakam*, the governor once again sent el-Hac Huseyin Agha to the court as a mubasir.[53]

The mubasirs probably had legal knowledge. It can be argued that they were also trained in the ability to represent and the careful selection of statements to be recorded in court records. Therefore, it is clear that certain people working under the command of the beylerbey were chosen to act as mubasir. The fact that some of the mubasirs attending the court are the same person explains this. For example, Ali Agha went to court more than once for separate cases as a mubasir.[54] However, the fact that some of the mubasirs are chief sergeants reveals that they are preferred as mubasir not only because of their legal knowledge but also for other reasons.[55]

Sometimes the mutesellim who acted on behalf of the beylerbeyi also appointed a mubasir. In this example, in a case of assault and blasphemy, mutesellim Huseyin Agha sent a mubasir named Huseyin Bey to the Konya court on behalf of the governor Ali Pasha.[56] Again, the same mutesellim sent a mubasir named Musa Agha for the discovery of the death of a murdered person named Deli Hasan.[57] Likewise, İbrahim Bey was appointed as mubasir at the discretion of the judge for a theft case to be heard.[58] Since

51 Solak-Sak, *ibid.,* p.394.

52 Solak-Sak, *ibid.,* pp.174-175.

53 Solak-Sak, *ibid.,* pp.232-233.

54 Solak-Sak, *ibid.,* pp.99-100 and 101.

55 Solak-Sak, *ibid.,* p.130, 135.

56 Solak-Sak, *ibid.,* p.28.

57 Solak-Sak, *ibid.,* pp.45-46.

58 Solak-Sak, *ibid.,* p.47.

the theft cases were followed carefully, sometimes the beylerbey himself appointed bailiffs without waiting for a joint decision. Mubasir Abdullah Agha had participated in a theft case on the orders of Ali Pasha.[59]

Representation Through Mutesellim

Mutesellims were in the position of deputy of the beylerbeyi and sanjakbeys.[60] They had the authority and right to take care of everything they would do financially and administratively. Since their appointments were made directly by the beylerbey[61], the harmony between the two had to be perfect in all respects. Mutesellims would rather take part in the sanjaks of *arpalık* status. However, as umera was often on a campaign, they had to leave a proxy. Since they had to understand all the executive works undertaken by the executive in the provinces, their election was generally among the *kapı halkı* of the beylerbey (sanjakbey).[62] However, due to their effectiveness in financial matters, they were mostly chosen from local notables and dynasties, especially after the 1700s. At the end of the century, appointments were made among experienced state officials from the center.[63]

Apart from their many duties, the mutesellims took a role in the relations of the executive authority with the judicial power.[64] Mutesellims could directly conduct judicial proceedings on behalf of the governor.[65] That's why he could come straight to court. Sometimes the qadi could come to the mutesellim's office and see a relevant case here. He could be present at the district authority on behalf of the beylerbeyi, representing the executive in the cases of those who have committed both ordinary crimes and political crimes.[66] Finally, when they acted illegally in their sanjaks, they could be tried by the judge in the court, as can be seen in the case study.[67] Sometimes, in line with the complaints made about their illegal practices, the central government would step in directly before the qadi and could apply the

59 Solak-Sak, *ibid.,* p.293.

60 Yücel Özkaya, "Mütesellim", *DİA,* 32, İstanbul 2006, p.203.

61 Oğuzoğlu, *ibid.,* p.97.

62 Ergene, *op. cit.,* p.13 ve Oğuzoğlu, *op. cit.,* p.97.

63 T.M. Yaman, "Osmanlı İmparatorluğu Teşkilatında Mütesellimlik Müessesesine Dair", *Türk Hukuk Tarihi Dergisi,* 1, 1941-42, pp.75-105 ve Yücel Özkaya, "XVIII. Yüzyılda Mütesellimlik Müessesesi", *Ankara Dil Tarih Coğrafya Fakültesi Dergisi,* 28/3-4, 1970, pp.369-390.

64 For the duties and responsibilities of the mutesellims, see Fatma Şimşek, *Anadolu Sancaklarında Mütesellimlik Kurumu (XVIII. Yüzyıl),* Akdeniz Üniversitesi Sosyal Bilimler Enstitüsü Yayımlanmamış Doktora Tezi, Antalya 2010, p.74 at al.

65 See Şimşek, *ibid.,* pp.107-108.

66 Yaman, *op. cit.,* p.84 ve Oğuzoğlu, *op. cit.,* p.98.

67 Yaman, *ibid.,* p.85.

relevant law.[68] In summary, mutesellim was brought to the position of a deputy who performed this duty instead of *ehl-i örf*, who did not want to appear in court frequently due to the public stance of the power and authority he represented.

Huseyin Agha, the mutesellim of Konya, actively participated in various lawsuits and trials, representing the executive. Examples of this are given in the cases mentioned on the following pages. Apart from that, Huseyin Agha's representation in court was not only due to various lawsuits. He came to the court of the qadi as a *şuhudül-hal*, who follows the legality of the litigation processes and the legality of the decisions taken and acts as a kind of jury. For example, Huseyin Agha, who was responsible for the case regarding the breaking of a pre-nuptial (engagement) agreement, was present together with Mehmed Agha, the *kethüdayeri* of the city, as a şuhudül-hal.[69]

Representation in the Beylerbeyi Court

The representation of the executive in the Provincial Assembly (*Eyalet Divanı*)[70] due to legal proceedings was in two ways. Accordingly, in the first case, a court official appointed by the qadi was present at the Beylerbeyi divan. In the second case, the qadi himself or his *naip* (regent) would attend the governor's council to see or follow the relevant case. Such cases were mostly due to the involvement of the central government in some way, and sometimes due to issues concerning the administrative apparatuses in the provinces.[71]

In certain cases where the political power is involved, it is sometimes seen that a court employee appointed by the qadi goes to the residence of the governor. According to a court record regarding this, Mevlana Mahmud Efendi, who was assigned by the judge of Konya for a murder case, went to the palace of the governor. Mutesellim Huseyin Agha was present at the hearing between the parties.[72] Again, at the discretion of the qadi, Mevlana Mahmud Efendi organized the relevant hearing once again, as stated in the court report, *"…almighty Ali Pasha, may his luck be permanent, come to his the*

68 Gerber, *op. cit.,* p.170.

69 Solak-Sak, *op. cit.,* p.329.

70 For eyalet divanı, see Nil Tekgül, "Some Comments on the Role of the Ottoman "Eyalet Divanı" in the Classical Period", *Forms and Institutions of Justice Legal Action in Ottoman Context* (ed.Yavuz Aykan-Işık Tamdoğan), OpenEdition Books, İstanbul 2018, pp.19-35.

71 In addition to its provincial administrative function, the provincial council also assumed the duty of the highest court. (Tekgül, *ibid.,* p.20)

72 Solak-Sak, *ibid.,* pp.69-70.

supreme council…". The case was opened because a sipahi was beaten and detained by three stray *levend* soldiers.[73]

Beylerbeyis had the right to invite the qadi to their office (divan) when necessary. So, qadis follow the relevant case from there.[74] The qadi would record the decisions taken on the issues he participated in the beylerbeyi divan in the court *sicil*.[75] Oğuzoğlu gives information that the deputy (*naib*) assigned by the qadi in his place also occasionally attends the governor's council.[76]

During the eight-and-a-half-month period in 1701-1702, the court session in which the Konya qadi was present at the governor's council took place twice. In the first example pointing to the involvement of the qadi or the *naib*, the judiciary followed a case of theft in the office of the governor Ali Pasha, and this situation was reflected in the court report. In the document, he explained this with the following words: *"…This humble person went to the supreme office of Ali Pasha, may his luck be permanent, who was the de facto governor of the city of Konya, to represent the court…".* According to the record dated November 22, 1701, Sergiz veled-i Toton, a dhimmi merchant from Urfa, claimed that another dhimmi named Bogos had stolen the fabric of five ball bulls that belonged to him. In the hearing, the witnesses were heard first, and then the thief was punished with *tazir*.[77]

On 28 December 1701, the qadi went to the governor's office once again for a divorce case.[78] The issue was much more than a simple divorce case. The dispute involving the central administration, the provincial administration in Konya, the *naib* of a town and the Konya qadi was almost an example of the functioning of the Ottoman legal order. The fact that beylerbeyi directly participated in this case was somewhat related to the course of the case. The case was no longer a divorce case, but turned into a public legal process of seeking legal rights. The plaintiff Sinan b. Yusuf filed this lawsuit with the allegation that he sent his wife Marziye to her father's house for some reason, but that he could not divorce. Sinan

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73 "*…Ali Paşa dâme ikbâluhu hazretlerinin meclis-i âlilerine varup…".* (Solak-Sak, *ibid.,* pp.181-182).

74 Ekinci, "Osmanlı Hukukunda Mahkeme Kararlarının Kontrolü (Klasik Devir)", *Belleten*, LXV/244, Ankara 2001, p.959-1005.

75 Feridun Emecen, "Osmanlı Taşrasında Saray Bürokrasisi: Şehzade Selim'in Kazayâ Defteri", *Osmanlı Araştırmaları=The Journal of Ottoman Studies*, 46, 2015, p.214.

76 Oğuzoğlu, *op. cit*., p.96.

77 *"…savb-ı şer'den bu fakir mahmiye-i-Konya'da bilfiil Eyalet-i Karaman'a mutasarrıf olan…Ali Paşa dame ikbaluhu hazretlerinin meclis-i alilerine varup…".* (Solak-Sak, *op. cit.,* p.194).

78 Solak-Sak, *ibid.,* pp.274-275.

complained that the *naib* of the town, es-Seyyid Yahya Efendi, had issued a certificate of registration stating that he had divorced with three *talaqs* upon Marziye's application, and that he had given permission for the woman to marry a man named İbrahim without waiting for the period of *iddah*. According to him, there was neither a divorce nor this permit was valid. Thinking that he was treated unfairly, he applied to the Divan-ı Hümayun and was able to obtain a decree for the reconsideration of the case. The judge, who listened to the parties, was convinced that the divorce was valid based on the testimonies of the witnesses and that the *naib* had made the right decision.

Simultaneous Representation in Court and Beylerbeyi Court

Some cases involving criminal law gradually took place in the offices of both the qadi and the beylerbeyi. In this type of judicial process, which can be defined as an alliance or cooperation between the executive and the judiciary, cases that concern public morality and that the society could never accept were subject to double-sided legal review as a reflection of the sensitivity shown. Unfortunately, there is no example of this in the Konya court book, which is the main source of this study. However, a case in the Çankiri court in 1713 is an excellent example for this legal process. Accordingly, the rape case against a young man by an unlawful group of five people was initially heard in the presence of the qadi, and then a follow-up hearing was held in the office of the governor of Çankiri.[79]

The presence of both the ulema and the *suleha* (non-sinners) in the second session, as well as the request for an opinion from the *mufti* of the city in accordance with shari'a law, is a reflection of the importance given to the case. Although it is not clear what role the sanjakbey, who is the representative of the executive, played during the trial in terms of law, it is noteworthy that he is the follower, watcher and controller of the sensitivity shown for the public interest. It was not recorded whether the qadi was present in the second session. The qadi may have attended this session. Even if the opposite happened, the qadi's publicizing this case under his authority and bringing the judiciary together with the executive is an example of the understanding of acting together. In addition, it is a proof of the functionality of the general legal order, which allows the public to be involved in the decision-making processes of the legal power, albeit to a certain extent.

79 Ergene, *op. cit.,* pp.172-173.

Reasons for Representation of the Executive in Court

The representation of the executive in court was in matters concerning individual cases of public interest and provincial or central government. In individual crimes such as theft, murder, assault, and compensation, if the application is made to the governor, it seems like a necessity for the governor to be directly involved in the cases. As mentioned, he used to follow up the cases, sometimes through mutesellimship and sometimes by sending a representative to the court. It seems plausible to have an office in the governor's office for the follow-up of such cases. Presumably, those in this office were appointed bailiffs to the court.

Another determinant factor in the involvement of the provincial administrators in the legal processes was related to the central administration's following the litigation processes, as mentioned. If Istanbul had information about any case that took place in the provinces, had an opinion that the judiciary had made a wrong decision, and had issued documents such as firmans proving this, the executive would step in. The above-mentioned divorce case is a good example of this. When the ex-husband, who claimed that he had been wronged and that the naib had made a wrong decision, applied to the Imperial Council and succeeded in obtaining an firman, the issue was no longer in the domain of the state, but of the general public law. It was at this moment that the state's executive power had to step in. As the representative of the ordering authority, the case had to be conducted under his supervision.

The lawsuits that the beylerbey sent a representative or had him see in his office were based on two reasons. The first was due to the fact that the application was not made directly to the court, but to the beylerbey. The second was due to the involvement of the central government as mentioned above. Sometimes, in various cases, the intervention of the beylerbey took place due to the fact that one of the parties was a state official. For example, in a slave ownership case in which the beylerbey was represented, one of the parties to the dispute was the *janissary serdengeçtiler aghas*, and the other was *divan-ı hümayun çavuşu.*[80]

Again, as it is known, taxes and their collection were among the priority issues in both general and sanjak laws. It was the qadi's duty to supervise whether the taxes to be collected by the people of custom were in the amount or proportion that should be collected by law.[81] During the

80 Solak-Sak, *op. cit.,* p.172.

81 Midilli, *op. cit.,* p.96 at al.

discussion of such tax collection problems, the beylerbeyi was sending a mubasir. The beylerbeys, who knew very well that tax collection was among the most important issues of the central government, therefore felt the need to intervene in the problems between the tax collectors and the reaya. Since the income of the dynasty family members directly belonged to the related dynasty member, it was necessary to be very careful in the court processes.

In some of the personal cases that seemed insignificant, the beylerbeyis were directly involved. As a matter of fact, a mubasir, directly assigned by the governor, was present to take the case of slaughtering a sheep and throwing it into a well.[82] Probably the complainant should have applied directly to the executive power. However, the administrative power did not send any representative, although cases related to other individual offenses were filed in the court records.[83] In such cases, the complaint should have been made to the qadi.

Beylerbey's involvement was also sometimes due to his involvement with local notables or elites. For example, Ali Pasha had sent al-Hac Huseyin Agha as a bailiff to the lawsuit filed for the rape of a woman named Fatima by Yusuf b. Abdullah, the slave of Konya *Nakibuleshraf Kaymakamı* Mesnevihanzâde es-Seyyid Abdulhay Efendi. First of all, adultery cases were among the types of cases in which the governor was involved in the name of maintaining the public moral order. Mesnevihanzade was one of the leading elites of the city and was one of its important rulers. For this reason, it was a necessity for the governor to follow this case, in which the *nakibuleshraf*, who is considered one of the spiritual leaders of the city, was somehow involved. The fact that the person acting as the deputy of the slave named Yusuf, who was punished by tazir for raping and impregnating the woman, was es-Seyyid Ali Efendi, the son of the Mesnevihanzâde, brought the case to a different point. That is, the owner was taking care of the guilty slave. It is also noteworthy that another Yusuf, who was the slave of a *sayyid* named Sinan Çelebi, was mentioned in the trial, which was completed in two hearings. In this case involving the slave of a prominent representative of the respected sayyid class of the city, the slave of the *nakibuleshraf* was found guilty. [84]

Cases Against the Executive and the Functioning of the Court

The cases in which the executive power was tried were due to various issues in different parts of the empire. These lawsuits could be related to

82 Solak-Sak, *op. cit.,* p.135.

83 Solak-Sak, *ibid.,* p.147, 152.

84 Solak-Sak, *ibid.,* pp. 232-234.

taxation[85], or they could also be filed due to the fact that the mutesellim acting on behalf of the beylerbeyi was out of law in some cases. In an example related to this, the villager named Salih Beşe, who applied to the qadi with the allegation that he had been wronged as a result of the misdirection of the Kastamonu mutesellim, was found to be right and it was decided to return the money taken by force.[86] Again in Çankırı, a complaint was made about a mutesellim who extorted money from the surrounding villages together with *kapı halkı*[87]. According to Barkey, in such cases, the qadi was always on the side of the reaya and the decision was mostly in favor of the reaya.[88]

As in the case of Kastamonu and Çankiri, Ottoman subjects often tended to bring their complaints about local administrators to the provincial or central court instead of the local courts.[89] As a matter of fact, there are examples of cases in which the local authority was judged directly in Konya in about eight and a half months.

The trial of the provincial administrators was not carried out by the qadis in the places where they were, but by the *kazasker* himself or by a committee assigned by him.[90] Therefore, as can be seen in the examples below, the beylerbeyi did not go before the judge of Konya in the cases he was a party to. A case record in which Ali Pasha was a direct party summarizes this situation. In Konya, the residents of İçkale district complained that it was their responsibility to furnish one room of the mansions reserved for the governors and mutesellims, and that they were offended even though they fulfilled it properly. When İsmail Çelebi, who was the bazaar manager(*pazarbaşı)* of Konya, made a statement that the residents of the neighborhood were right, the qadi decided to follow the usual procedure.[91]

In the above case, it is not a coincidence that the person(s) or the officials complained of by the locals were not recorded in the court book. It was a procedure to record the parties with their known names and qualifications in the cases heard in the Ottoman courts. Did these people, who acted on behalf of the Konya administrators but were complained about, wanted to take advantage of the authority of the pasha and his deputy? It is perceived

85 Gerber, *op.cit.,* p.163.

86 Ergene, *op.cit.,* p.174.

87 Gerber, *op.cit.,* p.164.

88 Karen Barkey, *Eşkıyalar ve Devlet Osmanlı Tarzı Devlet Merkezileşmesi,* Tarih Vakfı Yurt Yayınları, İstanbul 1999, p.107.

89 Ergene, *op.cit.,* p.104.

90 Mehmet İpşirli, "Ehl-i Örf", *Diyanet İslam Ansiklopedisi,* 10, Diyanet Vakfı Yayınları, İstanbul 1994, p.519-520.

91 Solak-Sak, *op.cit.,* p.205.

that the qadi's approach is to keep the names of the complainants confidential by not recording them. The fact that the subject in question is a beylerbeyi and mutesellim has led to such an approach. This record, which should be evaluated in terms of showing the relationship between the executive and the judiciary in the province, is a good example of the judiciary acting very carefully in such cases. Although the qadi was in favor of the continuation of the judicial-executive cooperation, which worked to a certain extent, he found the plaintiffs justified by staying within the framework of the law.

In another case, in which the executive power was a party, mubasir al-Hac Huseyin Agha, appointed by the governor, attended a hearing on the barn tax.[92] Those who brought the case to court were brothers named İbrahim and Süleyman. In the statement they gave, the farm and barn at a distance from Konya, which belonged to them, were essentially built by the II. Selim and declared that built in the village of Karapınar was exempt from taxes because it was dependent on the *imaret*. They submitted the document (*temessük*) proving this exemption to the qadi. However, the mubasir wanted to collect taxes by claiming that the income of the two places mentioned belonged to the Buzluk Hass, one of the Konya *hass*es left to the beylerbey. The investigation and the fact that the plaintiffs showed witnesses in court were enough to justify them. The statement of the mubasir, who did not insist on this issue for the places mentioned: *"…I heard that the farms and barns of the people mentioned belong to the Buzluk Estate, which has been under the rule of Karaman governors for a long time. I requested a stock tax. I did not know that (these two places) belonged to the mentioned foundation…"* [93]. He had made the decision not to demand it. This case, which is a good example that the ruling class and elites cannot be superior or right in the Ottoman court, is proof that the impartiality of the Konya court was not compromised in terms of its decision.

As it can be understood, the case was concluded by finding the *reaya* justified, not the governing power. The court process proceeded normally, and the fact that one of the parties was the highest level administrator of the state did not prevent a fair decision. The beylerbeyi, as the representative of the administrative power, who could interfere with the Konya court and the qadi through legitimate ways when appropriate, had to comply with the law in the case in which he was involved.

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92 Solak-Sak, *ibid.,* p.250.

93 "*…mezbûrların çiftlikleri ve ağıl mîr-mîrân-ı Karaman olanların kadimî hassı olan Buzluk Hassından olmak üzere mesmûm olmağla resm-i ağıl talep eyledim evkâf-ı mezbûreden olduğu malûmum değildir…*".

In another example, the case was brought against mutesellim Huseyin Agha, this time. A slave and a Turkmen group were held responsible for the extortion and looting that happened to a group of pilgrim candidates, who were on the road from Corum for the pilgrimage, in Konya. Huseyin Agha had the slave named Hasan and his owners Omer Bey and Halil imprisoned. Speaking to the judge, the mutesellim declared that the slave confessed to his crime at the hearing held in his office. He also testified that they were imprisoned during the preliminary investigation process, since the place where the crime was committed belonged to these two brothers, who were the owners of the slave, and there was a possibility of involvement in the incident. However, the qadi might not have considered this statement enough, because after listening to the statements of a group of people who knew the imprisoned brothers and were their guarantors, he made a decision about their release from the dungeon in the castle.[94] In the next hearing, the qadi who listened to the victim named Çorumlu Ali and recorded his statement in the court book. Ali only complained about slave and Turkmens. Other people had nothing to do with this event.[95] In the last session of the case, Huseyin Agha was present again, and the qadi had solved the case. The two brothers (Omer Bey and Halil), who were thrown into the dungeon for nothing, were innocent. The Turkmen chief Bekir and the slave Hasan were found guilty only of plundering the belongings of Ali and his friends from Çorum. They had already admitted this in their statements. The testimonies of the victims that they did not receive their money were also accepted.[96]

Understandably, it was the law itself that prevailed once again. The fact that mutesellim was the second man of the eyalet in the administrative device after the governor was not very decisive for the functioning of the law. This arrest, which took place with the intention of doing a thorough research on a subject that falls under the responsibility of a administrator, was not approved by the qadi, and the real criminals were identified. It is important that the decision of the mutesellim to resolve the case and its practice are brought to the court, that the mutesellim comes to the court and the verdict of the qadi reveals the position of the administrative mechanism before the law. As the people who were wronged were taken into account in the process of claiming rights, the qadi could decide against the representatives of the executive power in the eyalet when appropriate. Therefore, no intervention was possible.

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94 Solak-Sak, *ibid.,* p.313.

95 Solak-Sak, *ibid.,* pp.313-314.

96 Solak-Sak, *ibid.,* p.359.

Although there is some truth to the observations that qadis go out of law and take bribes[97], it is not correct to reflect this as a general problem that has spread to the entire legal system. The fair approach in such cases in the general functioning of the Ottoman court is remarkable. In addition, complaints to the center about the *mevleviyet* qadis in big cities are very rare.[98] As seen in the case examples above, the qadi of Konya chose the right side, not the executive power, and implemented and interpreted the law accordingly.

Two Case Studies: Executive and Judicial Consensus

The equitable qadi approach set out above does not seem to be very valid for the two cases that will be discussed in the next section. This is due to the fact that the two case hearings in question are related to a very serious problem. In a case of an uprising committed against state representatives, the faulty dispositions of the executive power, which ended in death in prison, were corrected by the judiciary and they were prevented from being considered guilty.

Case 1

The trial on March 1, 1702, which caused mutesellim Huseyin Agha to come to the court, was based on a political reason, unlike the other hearings. Twelve people from different villages of the Boz (kır?) district were caught by the beylerbeyi and imprisoned by mutesellim. Two of them died while in custody. The qadi's mission of managing the trial was more difficult this time. It would be useful to examine the hearing details of this case in terms of the results of the court proceedings of the ruling class.

Huseyin Agha, the mutesellim to whom the qadi had promised at the beginning, did not directly explain why the twelve people were arrested. His statement, *"…I caught the people mentioned for a reason…"*,[99] seemed to stem from the villagers' unwillingness to explain the reason for their imprisonment. According to him, Ali Pasha had delegated the task of imprisoning the villagers to himself. It is not clear how many days the villagers stayed in the dungeon, since the expression *"… I imprisoned for a few days…"*[100] in the dungeon of the palace of beylerbeyi is also unclear. The statement that he used later in his speech, "*…they need to be released now…"*

97 Ergene, *op. cit.,* p.99 at al.

98 Gerber, *op. cit.,* p.55 at al. and 157 at al.

99 *"…bir husus için mezbûrları ahz edip..."*

100 *"…birkaç gün habs etmiş idim…"*

[101] clearly reveals that there is a suspicious/unjust situation. Because, in the background of the expression, there is a secret acceptance that the villagers are accepted as innocent.

In the continuation of the trial, the imprisoned villagers took the word. However, their expressions are also implicit. In addition, their statements seem to have been spoken collectively and recorded after necessary corrections were made. As a matter of fact, what was told in the Ottoman court was not recorded at first and as it was. The court books, which contained the proceedings, were later summarized and cleared by the clerks.[102]At this stage, the judges sometimes behaved like covering up the statements in the hearing minutes and hiding the facts.[103]

Returning to the statements of the villagers again, the villagers especially emphasized that they were not beaten. They also did not give an explanation as to why they were imprisoned. They simply glossed over it by saying, *"…for this matter…". [104]* Although they stated that their two friends died, they did not give an explanation as to why they died. Finally, they added to their statements that they were not litigants from both the mutesellim and the beylerbey.[105]

Two villagers died in the dungeon, most likely because they were beaten. According to the legal practice, it was not possible for the local administrators to punish any person without the decision of a qadi. In addition, the execution could not have taken place without the opinion of the qadi.[106] Although *siyaseten katl* was an authority used only by the sultan and sometimes the grand vizier, the beylerbeyis did not hesitate to use it when necessary. But, this time it was necessary to obtain the approval of the sultan.[107] There was neither a sultan's order nor a judicial decision. It was an illegal act that mutesellim did with the order of the beylerbey.

The judges were in constant dialogue with the plaintiffs and defendants at the hearings.[108] Most likely, the qadi had asked all the questions he needed

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101 "*…hâlâ ıtlâk olunmaları lâzım gelmekte…"*

102 Ergene, *op. cit.,* p.125 at al. and R. C. Jennings, , "17. Yüzyıl Osmanlı Kayseri'sinde Kadının Yargısal Yetkisinin Sınırları" (çev. Muharrem Midilli), *İslam Hukuku Araştırmaları Dergisi*, 34, 2019, p.163.

103 Pierce, *op.cit.,* p.133 and Ergene, *op. cit.,* p.109.

104 *"…bu husus için…".*

105 Solak-Sak, *op. cit.,* p.360.

106 Halil İnalcık, *Osmanlı İmparatorluğu Klasik Çağ (1300-1600),* Yapı Kredi Yayınları, İstanbul 2008, p. 81.

107 Heyd, *op. cit.,* p.192.

108 Jennings, *op. cit.,* p.180.

to ask at both hearings, and got the answers. However, since the Ottoman court was organized not according to the qadi's plan, but according to the statements of the plaintiff and the defendants[109], perhaps he did not feel the need to just listen to what was told and ask questions. The recorded expressions were exactly what he wanted. Thus, the decision he made after this hearing was in a way that would ensure the continuity of the public order and ensure that the executive power remained strong, and the Ali Pasha and Huseyin Agha were not punished.

Mentioning Huseyin Ağa as *"…ex-mutesellim…"* [110] in a court record twelve days after the hearing of this trial reveals that he was dismissed from office.[111] First of all, the attitude of the central government was clear in such cases. The mutesellim were responsible for the mismanagement of the unfolding events and their consequences.[112] It is understood from the fact that Huseyin Agha left his duty that he was essentially considered guilty. Of course, it would not be right for a pasha who represented the Ottoman Empire to be investigated or dismissed by the qadi. Despite the fact that Huseyin Agha disclosed Ali Pasha's contribution to the incident, this situation was not taken into account by the judge.

Case 2

Another case record in the Konya court, which directly affects the security of the province and is about four people who died while in prison, is also about the prosecution of the executive.[113] Huseyin Agha, now a former mutesellim, had to testify once again before the judge. According to him, all the developments had taken place because of another umera bey. İbrahim Pasha who is Beysehir sanjakbey was attacked by the villagers for an unknown reason when he came to the village of Sırıstad in the Bozkır district. The governor of Konya, Ali Pasha, went to the district upon a firman and captured eight villagers involved in the incident and handed them over to Huseyin Agha for their imprisonment. Four of the villagers had died while in custody in prison. The others were then released. While they were in prison, they were not beaten, nor were they tortured.

This time it was the turn of the villagers who were imprisoned and released. In their statements, they declared that Ali Pasha and Recep Agha,

109 Jennings, *ibid.,* p.180.

110 *"… mutesellim-i sâbık…"*

111 Solak-Sak, *op. cit.,* pp.368-369.

112 Oğuzoğlu, *op. cit.,* p.99.

113 Solak-Sak, *op. cit.,* pp.368-369.

one of the *dergah-ı ali kapıcıbaşı*, came to their village with him. They also stated that their aim was to defend themselves in court in Konya due to the incident. However, although Ali Pasha saw this as appropriate at first, he acted misleading while on the road. Accordingly, Pasha, who came to Bozkır, declared that the villagers involved in the incident should come to Konya to discuss their situation in court, but he had them caught while they were on the way. They had lost four of their friends while in prison. However, these deaths took place by the command of God. He was definitely not tortured. They were not plaintiffs from Ali Pasha and the former mutesellim.

The qadi had organized all stages of these two hearings in the way that he was required by law. The hearings were concluded in a way that would find Ali Pasha and Huseyin Agha innocent and clear them. Pasha was not found guilty for any reason. Huseyin Agha, who was dismissed from his duty of trusteeship, was also acquitted. Thus, in these two hearings in which the executive power was tried for murder even if it was due to a political reason, the governor and his representative, the mutesellim, were neither charged nor punished.

Evaluation of Two Cases

Although the way in which the events narrated by the executive power and the villagers took place in the first case depicted an illegal act committed against the state, the death or murder of the imprisoned villagers left Ali Pasha and Huseyin Agha in a difficult position. The ambiguity in the trial minutes brings to mind that it was organized by the judiciary to acquit the executive representatives. As a matter of fact, the dismissal of Huseyin Agha from his post should be interpreted as a compensation for his mistake in the events. Since the administrative and judicial cooperation between the qadi and the deputy governor was very important in terms of the state's order [114], the court did not rule against her. In any case, the fact that villagers were killed before any investigation was made and most likely by torture left *umera* in a difficult situation. However, the statements of other villagers who were released from prison had somehow acquitted the governor and her deputy, and the case was dismissed.

In the minutes of the second case, the hearing took place in a different course. Because there was an uprising that seemed to have been committed directly against the state. However, the fact that there were people who died unjustly and that this would be questioned by the court should have prompted the eyalet administrators to take such an firman. Making it visible

114 See Şimşek, *ibid.,* p.113.

in the court that a central order was issued for the arrest and investigation of those involved in the incident should have greatly facilitated the position of Ali Pasha and Huseyin Agha. Again, the fact that a *kapıcıbaşı,* that is, an observer, was sent from Istanbul to inspect the events indicates that the event had a remarkable effect in the center of the state.

It can be concluded that the firman and the observer sent for inspection at first made the patrimonial relationship established between the sultan/central government and the administrative power in Konya a mainstay. As a matter of fact, Ali Pasha's erroneous decision and later the fault of the mutesellim were settled by the center-country connection. In the classical period, it was customary to give such firmans, which somehow protected the provincial administrator. The provincial administrators, who had various connections with the central administration, had no difficulty in obtaining the edicts that would justify them. However, this practice, which was explained by Max Weber as creating a structure in which the sultan only spoke by connecting all the administrative devices to himself, and conceptualized as sultanism[115], was not exactly like this in reality. In addition, it is necessary to understand this correctly in terms of center-provincial relations.[116] Just as there was a certain balance and control element in the administrative mechanism in the provinces, a law-based structure was created in the center that would prevent the arbitrary decisions of the administrators when necessary. In the provinces, the qadi held this power, or the so-called patrimonial state had unexpectedly handed over this right to the qadi.[117]

Considering that since the 17th century, most of the sultans remained in the sultanate rather than governing, the sultan's servants rose to a more important position in shaping the center-periphery relations. Therefore, when necessary, it will not take much effort to prepare an edict for the military in the center and in the countryside, who are members of the same social stratum. Despite this, the decision of the qadi who could interpret the case before his with the guidance of the law was very valuable. However, as in these two cases that took place in Konya, the qadi decided to evaluate the discretion as an indicator of a certain administrative consensus, according to the perspectives of the governor and the mutesellim. In the Ottoman penal code, the penalty for deliberate murder is retaliation if the blood money

115 M. Weber, *Economy and Society,* Harvard University Press, Cambridge-Massachusetts 2019, p.361, 421.

116 Gerber, *op. cit.,* p.2-3 ve Emecen, *op. cit.,* p.226.

117 Gerber, *ibid.,* p.20, 25 at al. and 127 at al.

is not paid.[118] On the other hand, there is an article in the Mehmed the Conqueror Code (*Kanunnâme-i Âl-i Osman)* that states that the customary administrators (*subaşı*) in the provinces will impose a fine of 3,000 akce in case of murder.[119] Again, Ebussuud Efendi has a similar fatwa. Accordingly, if a sanjakbeyi was responsible for the death of a suspect as a result of torture, he had to pay a blood money.[120] In addition, the heirs of the murdered person had the right to choose either retaliation or blood money.[121] The main reason why both decisions were not implemented is the statements given by the villagers who were imprisoned. According to them, the deaths were accidental. Therefore, it was neither retaliation nor blood money needed.

Conclusion

Huseyin Agha, ex-mutesellim, came to the court once again on March 18, 1702. This time, a lawsuit was filed against Ali Pasha because of another issue. Mutesellim took part in the *şuhudül-hâl* commission at the hearing.[122] Those who were *şuhudül-hâl* were included in this commission for various reasons.[123] Probably because of his past involvement with the seizure of the bandits that were reported at the trial, the judge invited Huseyin Agha and wanted to benefit from his testimony to the events. As a matter of fact, Huseyin Agha must have been present at the court because the mutesellims took an active role in suppressing the banditry movements and the revolutions that broke out.[124] These two hearings are his last appearance in court records.

Although Huseyin Agha was dismissed of the duty of mutesellim, Ali Pasha continued his post for about one more year and died naturally and by the order of God. One year later, Omer Pasha was appointed to the governorship of Konya instead of Ali Pasha. According to an edict sent to the qadi of Konya and a copy of which was recorded in the registry, the new pasha was going to take office in the province of Karaman as of March 27, 1703.[125] The first attempt of Omer Pasha was to appoint a new mutesellim.

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118 M. Yazıcı, *XVI. Yüzyılın İkinci Yarısında Anadolu'da Kamu Düzeni ve Subaşılık Kurumu,* Ankara Üniversitesi Sosyal Bilimler Enstitüsü Doktora Tezi, Ankara 2009, p.23.

119 Ahmet Akgündüz, *Osmanlı Kanunnameleri ve Hukuki Tahlilleri: Osmanlı Hukukuna Giriş ve Fatih Devri Kanunnameleri,* Fey Vakfı Yayınları, I, İstanbul 1990, p.328.

120 Gerber, *op. cit.,* p.64-65.

121 Gerber, *ibid.,* p.33.

122 Solak-Sak, *op. cit.,* pp.384-385.

123 Jennings, *op. cit.,* p.164.

124 Yaman, *op. cit.,* p.86.

125 *KCR*, no.40, p.7.

In a decree dated April 20, 1703, which he sent to the judge of Konya, he chose Omer Agha as his mutesellim and asked that this be respected in the affairs related to him.[126] In an edict that Sultan Mustafa II sent to the qadi of Konya, the approval given for the appointment of this mutesellim was announced.[127]

This study, which focuses on the legal representation level of the executive power in the court processes that took place in Konya in a period of eight and a half months, reached clear but inconclusive results in terms of the legal boundaries and working conditions of the two powers.

First of all, the representation of the executive power in the court when necessary was inevitable. In criminal cases that mostly concern the public, bailiffs appointed either by the mutesellim or by the beylerbeyi represented the executive power in court. In this process, there is no record that the beylerbey personally came to the court. In the eight and a half months period, the qadi of Konya, on the other hand, was in his office twice upon the invitation of the governor, in criminal cases that mostly concern the public, and presided over the relevant hearings.

The representation of the umera in the court did not mean an intervention or weakening of the qadi. The intervention of the executive in the judiciary in the provinces, which is mentioned in some sources, is not entirely correct. At most, it is a follow-up and monitoring process, as permitted by law, of cases in which the executive is somehow involved. Ultimately, it is the qadi who makes the decision.

A certain categorical approach can be applied to the decisions taken in cases where the executive power is directly involved. Qadi has made the right decisions, as shown in the relevant examples, by maintaining the fairness and impartiality of qadis in cases concerning reaya. The fact that one of the parties is the highest executive authority in Konya did not change this approach. When necessary, decisions were made to expose the injustice of the executive representatives. This situation, which is a good example that the judiciary is not interfered with and decides freely within itself, has also created a certain area of freedom in terms of the immunity of the powers.

However, there has been an impression that, in lawsuits filed due to administrative or more political reasons, the qadi, as a member of the judiciary,

126 *KCR*, no.40, p.7.

127 *KCR*, no.40, p.8. For mutesellim's berat, see Yılmaz Kurt, "Çukurova'da Mütesellimlik Uygulaması", *XVIII. Türk Tarih Kongresi Kongreye Sunulan Bildiriler,* c.III, Ankara 2022, p.1488.

takes decisions that will not question the legitimacy of the executive power. This situation, which can be described as the alliance or reconciliation of the powers, is also compatible with the administrative management methods that the central government expects from both powers. Since pursuing a politics of conflict would not be good for both, the continuation of public service in a defined field of action would thus be guaranteed. Exhibiting such an approach is also a reflection of the administrative flexibility that is often seen in the Ottoman provincial organization.

The effective method that the Ottoman central government found in order not to legally bring the executive and the judiciary against each other was carried out through the mutesellim, who was the main assistant of the governor. According to this, the mutesellim would act on behalf of the beylerbey in cases where he would be tried, and would take the responsibility when necessary. The two hearing texts, which were indeed examined and analyzed, suggest that this may be a planned central government envision. Thus, the judge of Konya would have made the right decisions by not directly facing the executive, but by fulfilling the requirements of the law.

As a result, if we look at the course of the cases and the trials, the representation of the executive has taken place in a usual way. In the cases where the administration was tried, it was always the reaya that the qadi found right. In two cases where case studies were conducted, the judge used his discretion in favor of the execution despite the death events. This was partly due to the statements given by the imprisoned villagers. Even the way these two cases, which directly concern the administration and point to the executive-judicial reconciliation, are recorded in the minutes is remarkable. Thus, an environment of mutual reconciliation was established between the qadi and the beylerbeyi, as shaped by the law.

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