THE CLOSURE OF THE SHARIA COURTS

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Introduction

Among the practitioners of Islamic law, the Ottoman Empire has a more important place in history than other states. The main reason for this is that the empire was able to sustain itself for a long period. Moreover, the importance given by the Islamic Ottoman Empire to the justice mechanism led to the development of its own legal system based on classical Islamic law. This development left important traces both in the legal system of the state and in the Islamic law which was subjected to it.

On the one hand, the fact that the Ottoman Empire was a long-standing state led the judicial system to flourish on solid foundations, while on the other hand it also forced the system to adapt to the requirements of the age. So much so that, in the historical process, the great reform movements experienced by the Ottoman Empire either brought innovations predominantly to the legal system, or led to other reforms of the judicial system which was failing to respond to the needs after these changes.

There is evidence to say that, particularly from the Tanzimat period onward, the Ottoman Empire, which was able to successfully apply Islamic law in its classical meaning in accordance with its own specific rules, was seeking to improve and revitalize through radical changes. The office of qadi (Sharia Courts), which was the basis of the judicial mechanism, was also the institution most affected by these changes and innovations. As a general overview, in the 19th century when efforts were made to keep pace with developments, the concept of the judicial unity of the state was at times broken, at times attempts were made to return to the old system, and at times, while there was a modern judicial system, it was aimed to continue the office of qadi, which had functioned perfectly in the classical period at the same time.

However, when the failures in the process of modernization combined with defeat in the First World War, the Ottoman Empire, which had lasted for about 700 years, was brought to an end. The mobilization, which began on May 19, 1919, for the liberation of Anatolia from its occupation, reached its aim with the proclamation of the republic on October 29, 1923.

In place of the state system based on governing the people through absolutism under a religious structure, the Turkish Republican era was shaped by the principle of secularism. Successfully bringing about such a sharp transformation necessitated radical changes in every field that was related to the state and the nation. The most important of these

revolutionary movements was seen in the judicial sphere. Thus, the Sharia Courts, which had existed for centuries on the basis of Islamic law, were closed and an independent judicial mechanism was established based on a European-centered secular law system.

The following chapter of this study will examined the closure of the Sharia Courts. Firstly, by providing information about the legal system of the Ottoman Empire it is aimed to address the important aspects of the structure and characteristics of the Sharia Courts, which were the most important element of this system. Subsequently, the reforms that were introduced with the proclamation of the republic will be discussed and the changes that were made to the judicial mechanism will be examined.

I. A History of the Sharia Courts

The Ottoman Empire was representative of a state whose theocratic features were in accordance with its structure. The corner stones of the state were shaped around Islamic religion and law. It is also necessary to remember that while it had a basis in the Islamic religion, the state was a traditional Turkic one in nature. In this respect, it is noted that among the states which combined the Turkic state structure with the Islamic religion, the Ottoman state was more complex and had more highly developed features (Halaçoğlu, 1986).

Some examples of how the Ottoman state system was shaped by religious principles can be seen in the classification of state subjects as Muslim and non-Muslim, the organization of the tax system, and the establishment of groups of professions based on religion in its economic structure. As in other areas of the state, it is observed that the Ottoman Empire favored Hanafi philosophy in the judicial sense (Aydın, 2003; Akman and, Patoğlu, 2016)

In Islamic Law, judges, known as *qadi*, were appointed by the head of the state to resolve disputes in certain conflicts. This practice continued in the Ottoman Empire too. Judges were appointed during the reign of Osman I and subsequently a judicial structure was formed in which qadis were appointed and a superior court structure was established (Ekinci, 2004:23-24).

The Ottoman qadi system functioned in both a judicial and administrative sense. The country was divided into administrative departments called *qaza* and a qadi was assigned to each qaza dealing in both judicial affairs in his settlement and undertaking administrative duties such as the tasks of a mayor, notary public and the municipal police (Aydin, 2003: 343). The courts in which qadis judged were called the Sharia Courts (Atalar, 1980:304).

While the Ottoman Empire adopted Islamic Law as its legal system, it practiced it within its own structure by making it suitable for the needs of specific issues. A distinction tends

to be made between Ottoman law in the period before the Tanzimat, called the "Classical Period", and the period that followed. The main reason for this distinction may be that reformist movements started as a result of the Tanzimat caused the breakdown of the Islamic law understanding that had dominated the classical period and that attempts were made to adopt the Western legal system. This is why it is appropriate to examine the Sharia Courts of the Classical Period from a general perspective and to evaluate the court structure that appeared as a result of the reformist movements that were organized during and after the Tanzimat Period.

A. General Characteristics of the Sharia Courts in the Classical Period

According to the generally accepted principle of property in the Ottoman legal system, everyone living in the Ottoman territories had the same rights and responsibilities following the same legal order, while certain issues, especially the private legal conflicts of non-Muslim subjects, were dealt with outside of the Sharia Courts (Aydın, 2012: 79-82). In this respect, it would not be wrong to say that, despite there being some exceptions, the application of Ottoman law in the Classical Period was monopolized by the Sharia Courts. Therefore, it should be noted that the Sharia Courts held a very important place in the classical Ottoman legal system.

The Sharia Courts were judicial institutions in which juridical power was wielded by the qadis at their head. For this reason, it is necessary to take into consideration the basic issues related to the office of qadi in terms of the nature and importance of the courts.

Just as with all monarchies, the authority to resolve legal disputes among persons in Islamic jurisprudence was given to the ruler. (Ekinci, 2008:368) The ruler used this jurisdiction through judges appointed by himself and called "qadi" in his name. This practice, seen widely in Islamic law, was applied in the same way in the Ottoman judicial system, however with some differences.

An Ottoman qadi acted as judiciary and proprietor and held a unique place in the Islamic states. A representative and a spokesperson of the people, as well as a central government official due to his power to apply sharia law, the Ottoman qadi was part of a more developed office than that of the qadis in other examples of Islamic law (Ortaylı, 2003:69-70; Tangulu, Karadeniz and Ateş, 2014).

As mentioned above, in the Classical Period when the monarchical style of administration was adopted, the appointment of qadis who could wield juridical power in the name of the ruler was also considered as the main symbol of state authority. Thus, the appointment of Dursun Fakih, a famous scholar of his day, to Karacahisar by Osman I made a clear statement that the Ottoman State was establishing itself officially in that area (Ekinci, 2008:369).

The Ottoman Empire followed the practice of appointing new qadis to the lands that it conquered. These settlements were called *qaza* meaning "place managed by the qadi" and this term has endured until the present. They were also called *hakimü'şşer* or "judges of the sharia law" because they had just as much of a judicial function as they did an administrative function as practitioners of the law.

In the Ottoman legal system, the appointment of a qadi was considered to be a symbol of state authority and was arranged thus. Issues such as who could be a qadi, what the functions of the qadis were, and their rights and obligations were set out in detail. Briefly, to become a qadi one had to be mentally sound, an adult, and a free Muslim man. Besides these conditions, one had to possess "fairness" (the superiority of good over evil), be a scholar and have full use of the five senses (Ekinci, 2008: 369-370; Ortaylı, 2003:71).

Selected individuals who met these conditions were appointed to the office of qadi with the decree of the padishah. As qadis were chosen from among the scholarly class they began to be classified according to their level of academic experience. These classifications led to a certain hierarchical system, taken as a basis for the profession of the qadi (Üçok et al., 2011: 242-245).

The courts in which the qadi fulfilled their judicial duties were known as the Sharia Courts. However, it should be noted that the place where the qadis passed judgements was called *meclis-işer* and the use of the term "court" corresponds more to the later periods of the Ottoman Empire (Ekinci, 2008: 369). Although the place where judicial affairs were conducted sometimes had its own name, the qadis often fulfilled their duties in their homes or in the qaza's mosques. Besides, it is said that even when somebody was walking along the road, he/she could appeal to the qadi and present his/her case (Ekinci, 2004: 24-25).

The Sharia Courts became a place of jurisdiction where all kinds of legal disputes were resolved from the beginning of the Ottoman Empire right until the Tanzimat Period (Aydın, 2012:78). It is observed that in addition to cases arising from Islamic law, disputes related to customary law were also dealt with in these courts. Furthermore, the qadis and the Sharia Courts dealt with both criminal and civil lawsuits.

The importance given by the Ottoman Empire to upholding the law had been evident since its foundation. As a matter of fact, Osman I invested great importance in the Sharia Courts in order to protect the rights of the whole of the nation without giving preferential treatment. The sultans who reigned after him also retained this reverence and took care to develop and protect the office of qadi and the Sharia Courts (Atalar, 1980; Şimşek, Küçük and Topkaya, 2012). This eminence was not limited to the Classical Period and important efforts were made to maintain the justice mechanism during times of legal reform, even during periods of stagnation, regression and disintegration. However, as

with other elements of the state structure, legal reforms, especially after the Tanzimat Period, aimed to prevent the collapse of the existing system by adapting it to the conditions of the times. The next section of the paper will explore the place of the Sharia Courts in the Ottoman legal system during and after the Tanzimat period.

B. Reforms Made in the Tanzimat Period and General Characteristics of the Sharia Courts

From the second half of the 19th century, the Ottoman Empire initiated radical reform movements in almost every area in order to keep pace with European-centered change and developments. In this period, when the running of the country came under question, the primary goal was to return to the old bright days known as the Classical Period. In the context of this basic objective, various factors, such as preventing European states from interfering in internal affairs and increasing the welfare level of subjects, are suggested as real reasons for the radical reform movements (Akça and Hülür, 2007: 304-306).

The Edict of Gülhane opened the door to state law. So much so that with this imperial decree the Ottoman state's subjects were made equal before the law regardless of their religious and sectarian differences. The principle of equality made it necessary to carry out fundamental changes in the Sharia Courts, which issued prosecutions according to the laws of the Hanafi sect. More clearly than the Edict of Gülhane, regardless of religious distinction, the principle that everyone is equal before the law was also expressed in the Imperial Reform Edict. The implementation of the principle of equality mentioned in the edicts forced the state to make radical changes in the field of legislation. Great changes were also made to the judicial mechanism whose basis was in the Sharia Courts in order to avoid the negativities that the legal system, which had functioned almost perfectly in the Classical Period, was coming up against day after day and to prevent the mistrust against the judgments brought about by these negativities.

These changes made in the judicial sense were based on the restriction of the duty and jurisdiction of the Sharia Courts by the establishment of the *Meclis-i Vâlâ-i Ahkâm-i Adliye* just before the issuing of the Edict of Gülhane. The *Meclis-i Vâlâ* (Assembly), whose main task was to preserve and maintain the system that the Tanzimat had introduced, conducted both administrative and criminal lawsuit proceedings order to fulfill this duty. Crimes such as theft, murder and brigandage, whose judgement was one of the duties and powers of the Sharia Courts under normal conditions, were now handled by the Assembly. Later, in response to the weighty and intense workload of the Assembly, such as the preparation of new legislation and the implementation of the Tanzimat, these proceedings began to be carried out in local courts again. From then on the Meclis-i Vâlâ continued to serve as an appeal authority.

In the Tanzimat Period, this assembly was equipped with important duties and powers,

such as preparing new laws and supervising the implementation of the Tanzimat, as well as some judicial duties and powers. This task and authority was mostly related to administrative jurisdiction. The Meclis-i Vâlâ would pass judgement over officers and solve disagreements between the state and its people. Thus, the judicial authority of the Sharia Courts became limited (Durhan, 2008: 70-71).

However, it is observed that there was a tendency for resolving conflicts between European traders with customary law because these merchants were not willing to solve their disputes according to Islamic law. In the assemblies gathered in this context, commercial conflicts had started to be resolved according to customary law. This situation, which did not inherently constitute a contradiction to the law, was formalized in the Tanzimat Period, when the assemblies were turned into courts (Durhan, 2008: 63).

Besides the commercial courts, the *Meclis-i Muhasebe* (Accounting Assembly), in which disputes between bankers were resolved, the *Meclis-i Tahkikat* (Inquiry Assembly), which met in Istanbul at first and then was organized in other provinces and proceeded over criminal cases, and the mixed criminal courts in which all the proceedings of non-Muslims were conducted, are accepted as innovations which led to the restriction of the Sharia Courts' duty and authority in the judicial field (Durhan, 2008: 72-78).

During the Tanzimat Period, these assemblies acquired a court identity. These newly created courts were named the Nezamiyeh Courts (Üçok et al., 2011: 362; Durhan, 2008: 78; Ekinci, 2008: 547; Aydın, 2012: 425). The Nezamiyeh Courts were modeled on the French judicial system. Serving on the basis of customary law, the creation of these courts was met by criticism that the law of sharia would not be applied and that the law would become secularized.

But while these courts were presided over by the qadi in the Ottoman legal system and had a very constitutional structure, the closure of the Sharia Courts was not preferred. The Sharia Courts continued to resolve conflicts in personal, family and inheritance law, and all matters outside the sharia issues were transferred to the newly established courts of justice. The criticism of the previously mentioned secularization of the law also played a part in this. As a result, the Ottoman judicial system was transformed into a dyadic[1] structure formed by the Nizamiye and Sharia Courts. (Durhan, 2008: 80; Ekinci, 2008: 547-548).

As can be seen, the Tanzimat Period oversaw fundamental reforms in the field of law. The main reason for these reforms was to prevent the state from interfering with the internal affairs of European nations, as well as a desire to return to the golden days of the state. However, although there had been an attempt to prevent the relapsing of

[1] Üçok suggests that the structure was a triadic structure in the form of Trade, Nezamiyeh and Sharia Courts (Üçok et al., 2011: 363-365).

the state in general by introducing innovations more radical than the Tanzimat reforms, unfortunately the expected goal had not been achieved. Efforts were made to overcome the complex and dyadic structure that emerged in the legal system after the Tanzimat Period with a series of reforms. The next section of the paper will deal with the judicial reforms carried out in the post-Tanzimat Period and the impact that these reforms had on the Sharia Courts.

C. The Sharia Courts in the Post-Tanzimat Period: The Beginning of the End

It can be seen that the powers and duties of the qadis and the Sharia Courts were restricted gradually by the regulations made after the Tanzimat (Ekinci, 2008: 550-553). On the one hand, while the Sharia Courts were restricted, there was a desire to break the influence of the ulama (scholarly) class.

With the issue of the edicts *Hükkâm-i* Şer' and *Memurîin-i* Şer'iyye *Kanun-i Muvakkat* in 1913, detailed regulations were made regarding the Sharia Courts and qadis. Among these regulations, it was agreed that qadis would be appointed according to their level of competence rather than reputation. It was decided that each province, *liva* or *qaza* would have a Sharia Court and sub-districts at least six hours away from them would have a regent who was the deputy of these qadis. Besides this, the qadis' responsibilities regarding sharia law were accepted. The Shaykh al-Islam deemed it necessary to conduct an inquiry into the office of the qadis (Ekinci, 2004: 277-286).

It can be seen that the reforms related to the law and the judiciary became more acute with the Declaration of the Second Constitutional Monarchy. It was even claimed that the Shaykh al-Islam was a spiritual personality who should be removed from the cabinet. The idea of the Shaykh al-Islam being a spiritual leader was met with suspicion, especially in conservative circles. In his article on the subject, Elmalılı Hamdi Efendi stated that the position of spiritual leader was incompatible with the religion of Islam, and that the Shaykh al-Islam was only delegated by the head of state to carry out certain affairs (Ekinci, 2004: 285-292).

Besides this, he predicted that the Sharia Courts would become subsumed under the Ministry of Justice. Finally, these predictions became true and of the two important institutions connected to the Shaykh al-Islam, the Sharia Courts was absorbed into the Ministry of Justice and the madrasas into the Ministry of Education (Ekinci, 2004: 292). This arrangement caused eyebrows to raise. It would not be wrong to say that criticisms of the secularization of the legal system were voiced for the first time under this regime. It is clear that this arrangement was not a fully adopted reform and after the fall of the Party of Union and Progress in 1920, the oversee of the Sharia Courts was predictably returned to the Shaykh al-Islam.

II. The Closure of the Sharia Courts

After the establishment of the Republic of Turkey, fundamental reforms were instigated immediately in all areas. Undoubtedly, the revolutionary reforms in the field of law had an important place among these changes. The era of sharia law was brought to a close and modern law was introduced basis on the civil law system. In this context, the closure of the Sharia Courts may also be expressed as a natural result of the revolution. This part of the study aims to give a general overview of the Republican Revolution in the context of the closure of the Sharia Courts.

A. An Overview of the Republican Revolution

After its defeat in the First World War, the Ottoman Empire was brought to its knees. With the Armistice of Mudros signed on October 30, 1918 (Erim, 1953: 519-524) and the Treaty of Sevres signed on August 10, 1920 (Erim, 1953: 525-691) the Allies, under the leadership of Britain and France, aimed to divide and share the Ottoman lands out between themselves. The state administration and the Istanbul government did not have the will to refuse to sign these agreements or to show any resistance.

Mustafa Kemal explained the attitudes and behaviors of the Istanbul government and the reigning authority after the First World War with the following words: "Enemy states have attacked the Ottoman state and country materially and spiritually, and they have decided to destroy and demolish them. The Sultan and the Caliph do not think of anything but saving their own lives and comfort. The government is also in the same situation. A nation that is unaware that it is leaderless awaits what these uncertainties will amount to (Atatürk, 2018: 6)". Thereupon, under the leadership of the General Inspector to the Ninth Army, Mustafa Kemal Pasha, the nation's patriots instigated a resistance movement from Anatolia. This resistance, which started with the departure of Mustafa Kemal Pasha and his fellow patriots to Samsun on May 19, 1919, is called the War of Independence. During this period success was achieved with a series of congresses, the establishment of Grand National Assembly of Turkey in Ankara, which would serve as a manifestation of the sovereignty of the nation, the Mudanya Armistice Treaty, signed at the end of the War of Independence, and the Treaty of Lausanne (Akşin, 2018: 127-182).

After many years of struggle both via military and political channels, the resistance was finally victorious and a new Turkish state was built on Anatolian lands. In this new state, the sovereignty of the people was taken as a basis and a republican style of administration was adopted on the basis of a secular system. The accepted new system necessitated the abolition of the authorities of the sultanate and caliphate, the two main elements of Ottoman administration.

The rule of the Sultan had actually been brought to an end with the first and second articles

of the 1921 Constitution (*Teşkilat-i Esasiye*). In these articles, it was clearly laid out that sovereignty would rest unconditionally with the nation and that this authority would be wielded by the Grand National Assembly of Turkey on behalf of the people. Following the success of the War of Independence, both the Istanbul government and the Ankara government were invited to the peace conference in Lausanne. This would damage the ability of the Ankara government to be the sole proponent of the new state formation and lead to the reigning authority and government in Istanbul being legitimized. The British also intended to use the role of caliph for their own interests by patronizing it under the Sultan. As a matter of fact, this was clearly stated in a telegram sent by Grand Vizier Tevfik Pasha to Mustafa Kemal.

The greatest problem in abolishing the sultanate was the idea that the titles of sultan and caliph could not be separated from each other and could be held by the same person. Serious discussions were made on this issue and the situation reached a deadlock in a meeting of the Constitution, Sharia and Justice Commissions due to the very idea that the sultanate and the caliphate were inseparable. This deadlock was only overcome when Mustafa Kemal took to the stand and stated that the sultanate had already been abolished and that the problem was nothing more than explaining this fait accompli (Atatürk, 2018: 464-466).

Mustafa Kemal's speech was regarded as important from an academic and historical context in that it proved that the caliphate and the sultanate were separate authorities during negotiations in parliament. In the vote made after Mustafa Kemal Pasha's statements about Turkic state tradition, the birth of Islam, and the office of caliphate after Muhammed, only one objection was heard and it was suppressed by cries of "No objections". The abolition of the sultanate was thus decreed unanimously by the Grand National Assembly on November 1, 1922 (www.tbmm.gov.tr).

With the abolition of the sultanate, it was ruled that the caliphate belonged to the Ottoman family and that the most appropriate person in terms of wisdom and character would be named caliph by the Grand National Assembly on behalf of the Turkish nation. Thus, the rule of the Sultan was officially abolished, and the caliphate was subjected to parliamentary supervision, preventing the British from using the caliphate for their own interests. Accordingly, Abdulmecit Efendi, a member of the Ottoman family, was elected Caliph by the parliament. However, in the period that followed, supporters of the sultanate and caliphate acted against the new government on the basis of the idea that "the caliphate is the state" and some statesmen who held important positions revived the idea of preserving the sultanate by expressing loyalty to the caliph, rendering the caliphate unacceptable according to the new understanding established on the axis of secular state principles. On March 1, 1924, the President of Turkey, Ghazi Mustafa Kemal, emphasized three major points in the Assembly's opening speech and touched upon the

nation's expectation that the Republic had to be protected from all future attacks and based on previously tried and tested principles. Nevertheless, Mustafa Kemal considered the unification of the education and training system, finally stated that it was essential to glorify Islam by ending the use of religion as a political means, and emphasized that the principle of secularism must be fully implemented. In the session held two days after this speech, proposals for a law regarding the dissolution of the caliphate, the expulsion of any remaining members of the Ottoman family, the abolition of the Directorship of the Sharia, the *Evkaf Vekalet* and the *Erkan-i Harbiye Vekalet*, and the unification of education and training were added to the agenda. On March 3, 1924, the caliphate was abolished and it was decided that members of the old dynasty would be exiled abroad by returning their properties to the nation and withdrawing their citizenship (www.tbmm.gov.tr).

When considered in context of the historical process, it would not be wrong to say that there had never before been such a sharp change in administration in any Turkic state. Previously, while establishing a state based on religion, the monarchy that existed in the previous state tradition was maintained, or the monarchy and religion-based management understanding was adopted, but neither of these changes occurred on this occasion. When the Republic of Turkey was established, the monarchy was transformed into a republic based on the sovereignty of the people and the Sharia administration which had lasted for centuries also gave way to the secular state model. Such a sharp change brought with it great revolutionary movements and necessitated major reforms in almost every field such as law, politics, economics, culture and education. The revolutionary movements initiated with the aim of making Turkey a modern civilization were sometimes adopted immediately, but some led to great debates among the population (Ortaylı, 2018: 300).

The Republic Revolution was generally carried out by means of secularism and the goal of elevating Turkey to a modern civilization (Turan, 2005: 161-177). Accordingly, the units of measure, length and weight were adapted to those of Europe and the calendar preferred by Europe was adopted. Besides this, some regulations in clothing were brought in, and the people were prohibited from using titles such as *Shah*, *Shish* and *Dervish* and told to adopt surnames instead.

Meanwhile, much more radical changes were made in the field of education. The Latin alphabet was used instead of the Arabic alphabet, the Turkish Historical Society and the Turkish Language Institution were established, and possibilities for conducting research and development in the fields of history and language were opened up. The merging and nationalization of education was another innovative movement considered one of the important reforms in the field of education and training.

In addition to these reforms which shaped social life, revolutions which were closely

related to the state's future were also carried out. Among the reforms made in the political scene, undoubtedly the removal of the Sultan and the caliphate constituted a far more important place than other movements. Furthermore, the establishment of the new constitution, the adoption of the principle of secularism, and the closing of the Sharia Courts were also principal revolutions in the legal system.

As can be seen, the goal of becoming a modern civilization was at the forefront of social reforms.[2] It was aimed to adapt to European conventions, more developed in terms of science and technology than other parts of the world, and in this way to develop friendly relationships with European states. It would not be wrong to say that the reforms made in the political and legal field were mainly driven by the principle of secularism. In order to separate religious and state affairs, the caliphate was abolished, the Sharia Courts that had been the judicial bodies of Islamic law were closed, and the civil legal system adopted by modern law was acquired.

B. Events in the Process of the Closure of the Sharia Courts

In the last few years of the Ottoman Empire, a dual authority emerged with the creation of the Turkish Grand National Assembly, which began to become active in Anatolia. The occupied sultanate and the Ankara government were signing decrees that were opposed to each other on most issues. In this respect, it was important for the Ankara government to invalidate any decisions made by the Istanbul government after March 16, 1920, the date of the beginning of the occupation of Istanbul. This is because it invalidated the decision to reassign the Sharia Courts to the Shaykh al-Islam.

The Republican Revolution revealed the necessity to rebuild most of the mechanisms of the Republic of Turkey, which differed greatly from the Ottoman Empire. Especially the transition from an Islamic administration to a secular state had led to the realization of great reforms in most fields. In this context, the main reason for the closure of the Sharia Courts arose from the understanding of a secular state.

In the Republican era, systems in which a dyadic approach dominated, such as law and education, were inherited from the Ottoman Empire. The need to remove this dyadic nature and to revise the country's mechanisms in accordance with the basic principles of the new state led to comprehensive and deep-rooted reforms. In this context, the European legal system, based on the principle of secularism, was taken as the reason to abolish Sharia Law in line with the goal of becoming a modern nation. In order to bring a civil legal system to the country as soon as possible, the method of incorporating foreign state laws into the Turkish legal system with the technique of appropriation was adopted (Üçok et al., 2011: 375-378). However, the Sharia Courts as direct practitioners of

[2] Although becoming a modern civilization was the main concern of the social revolution, particularly attaining the principle of secularism, the young Republic also employed other watchwords. These factors are not ignored, however, in this paper we emphasize that the idea of becoming a modern civilization was the most influential of these. Likewise, the same is true in the political and legal reforms.

Islamic law were closed by the Decree of the Abolition of Sharia Courts in 1924 and the "Amended Law on Court Organization and the Legal System", known as the foundation of today's legal structure, was adopted. A School of Law was opened in Ankara in order for practitioners to meet the requirements of the new legal system (Turan, 2005: 215-227).

Theoretically, although their influence still continues today, the Sharia Courts, which had maintained their existence for centuries, were officially brought to an end. Along with these reforms, the legal system and the judiciary were made functional in accordance with the principle of secularism, one of the basic principles of the new state model.

Conclusion

The courts of the qadis, which were the office of jurisdiction for Islamic law, in other words, the Sharia Courts, were active in almost all of the Islamic states which had adopted sharia. The Ottoman Empire, which is accepted as one of the most mature examples of traditional Turkic state organization using the Islamic state model, applied this system with a certain level of success for centuries, adding some special features of its own over the years. However, developments experienced in the understanding of law in a universal sense in particular moved the judiciary beyond the realm of religion and led to the development of a new humanist legal system. It was inevitable that these developments and changes would affect the Ottoman Empire, one of the largest powers of the age. This intellectual revolution in the law had made itself felt in the Ottoman Empire, and reforms of the legal system in the context of modern law had begun to be seen.

However, the regression of the state became evident in the legal system as well and caused the qadis, who were practitioners of the law, to move away from principles of merit and justice and to corrupt the law. Bribery and nepotism, which are now considered criminal, had become major issues in the Ottoman judicial structure. Indeed, the empire's subjects had lost confidence in the judicial system. When the judicial system is considered as one of the building blocks of the state, it is also easily understood that distrust among a state's subjects poses a serious danger in terms of survival of the state.

The period of regression had also caused European states to intervene frequently in the internal affairs of the Ottoman Empire with the pretext of protecting minorities and to take privileges from the state in their favor. The European states often acted in a manner that infringed the state's sovereignty, with the idea that the judicial body in which the Sharia legal system was dominant was illegal when it came to non-Muslims.

When all these factors are considered together, it is understood that the reform of the judicial mechanism was inevitable. Hence why the judicial mechanism saw the most reforms during the Tanzimat Period. When all these reforms are considered as a whole,

nostalgia for the empire's golden age, restoration of the confidence in the judiciary, and, most importantly, prevention of the interference of European states within internal affairs, played significant roles.

While the aim of the judicial reforms was positive, we can actually see that each reform movement further complicated the system. As a matter of fact, the old system could not be removed completely, and a new judicial mechanism was added beside it, causing the legal system to come to a deadlock. Although well-intentioned, the fact that subsequent reforms were merely reinstating the previous amendments stopped the system from functioning and even unintentionally led to regression.

Another issue to be addressed with regard to the judicial reforms carried out during the Tanzimat and post-Tanzimat periods was the aim of acting in accordance with the understanding of human rights in a universal sense. In other words, the trend of secularizing the Ottoman legal system had come into prominence. The fact that secularism was perceived in the judicial reforms carried out on a sharia-based state model can be argued as the second reason for the failure of these reforms.

When the Ottoman Empire collapsed and the Republic of Turkey was established, secularization of the law was less controversial as the state was being secularized as a whole at any rate. It would not be wrong to say that in a revolution in which there is an attempt to establish an entire secular system, the judicial secularization process is normal. Perhaps it can be said that the innovations required since the Tanzimat Period were only made possible with the complete abandonment of the idea of a religion-based state.

As a result, the office of the qadi and the Sharia courts, whose former glory the empire had attempted to restore in the Tanzimat Period, faced absolution when it was understood that these efforts were fruitless. The closure of the Sharia Courts, decreed for the first time with the Declaration of Second Constitutional Monarchy, was realized through the Republic of Turkey which replaced the Ottoman Empire, a religion-based state. Assuming that the first appointment of a qadi took place in the 13th century, these courts, which had served as a judiciary office for about six centuries, were officially erased from the Turkish legal scene in 1924. Works called "Sharia Reports" in which qadis recorded their notes and which are similar to today's court archives, containing key information on a legal system that lasted six centuries, have survived to this day. The law, however, has only changed shape and will remain forever.

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