

## Is Millet System a Reality or a Myth? The Legal Position of the Non-Muslim Subjects and Their Religious Leaders in the Ottoman Empire

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The aim of this paper is to clarify the status of non-muslims and their religious leaders in the Ottoman Empire by making a comparison between the muslim and non-muslim officials regarding their authorities given by the state, as well as the nature of the Ottoman administration and its relation to non-muslims, explaining the reality of the millet system. The matter will wholly be taken into consideration from a legal point of view, and the social status of non-muslims is beyond the scope of this paper. Researches made in the last two decades have proved that the explanations about the so-called millet system are not valid. The fact of the matter is that, the Ottomans administered their non-muslim subjects under a system named *tax-farming/iltizam*. According to this system, the non-muslim subjects were not autonomous and they did not have legal autonomy in the Ottoman Empire. On the contrary, the Ottoman administration controlled and regulated the non-muslims' social and legal matters in accordance with Islamic Law. The aim of this paper is to clarify the status of non-muslims and their religious leaders in the Ottoman Empire by making a comparison between the muslim and non-muslim officials regarding their authorities given by the state, as well as the nature of the Ottoman administration and its relation to non-muslims, explaining the reality of the millet system. The matter will wholly be taken into consideration from a legal point of view, and the social status of non-muslims is beyond the scope of this paper. Researches made in the last two decades have proved that the explanations about the so-called millet system are not valid. The fact of the matter is that, the Ottomans administered their non-muslim subjects under a system named *tax-farming/iltizam*. According to this system, the non-muslim subjects were not autonomous and they did not have legal autonomy in the Ottoman Empire. On the contrary, the Ottoman administration controlled and regulated the non-muslims' social and legal matters in accordance with Islamic Law.

**Key words:** Non-muslims, zimmi, legal autonomy, Islamic Law, Ottoman Law, Ottoman Empire

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Bu makalenin amacı Osmanlı İmparatorluğu içerisinde yaşayan zimmet ehli gayrimüslimlerle onların ruhani reislerinin statülerini ve yetkilerini müslüman yetkililerle karşılaştırma yaparak ortaya koymak ve millet sistemi denen yapının gerçek mahiyetini ortaya koyarak Osmanlı idaresinin gayrimüslimlerin idaresine yönelik uygulamalarının gerçek niteliğini tespit etmektir. Konu bütünüyle hukuki bir perspektifle ele alınacaktır. Son yirmi yılda yapılan araştırmalar sözde millet sistemi denen yapı hakkında literatürde yaygın bir kanaat olarak zikredilen özelliklerinin geçerli olmadığını ortaya koymuştur. İşin aslı şudur ki Osmanlı Devleti gayrimüslim vatandaşlarını iltizam sistemi denilen yapı altında idare etmiştir. Bu yapıda hukuki bir otonomiden söz edilemeyeceği gibi aksine Osmanlı idaresinin gayrimüslimleri tek bir hakim hukuk sistemi olan İslam hukukunun kural ve prensipleri ile idare ettiği görülmektedir.

**Anahtar Kelimeler:** Gayrimüslimler, zimmiler, hukuki otonomi, İslam Hukuku, Osmanlı Hukuku, Osmanlı İmparatorluğu

## I. INTRODUCTION

The legal and social status of non-muslims is a very attractive and important issue for scholars dealing with the subject. The non-muslims in the Ottoman Empire benefited from the basic rights such as right to property, and freedoms of belief and thought. In most Christian countries, while Jews and even Christians themselves suffered in the middle ages, the non muslim subjects of the Ottoman Empire enjoyed the basic human rights. But some western scholars claim that non-muslims were second class citizens in Islamic states in the classical periods. In recent times, we come across some books that reject the Islamic tolerance towards non-muslims. (See some examples of the books written with such biases, *The Myth of Islamic Tolerance: How Islamic Law Treats Non-Muslims*, ed. Robert Spencer (New York: Prometheus Books, 2005). Bat Ye'or, *The Dhimmi, Jews and Christians under Islam* (Rutherford: Farleigh Dickinson University, 1985).

Under the Ottoman administration, there were a great number of non muslim population, especially in the Balkans, Istanbul, Anatolia, Palestine and in most of important center in the Middle East. Most important centers of christianity such as Antioch, Jerusalem, Alexandria and Istanbul were under the Ottoman administration. The Ottomans protected the existence of personality and property, and religious and cultural values as well and even in more protective manner than previous Islamic states. As a matter of fact, while regulating the legal status of non-muslims, the Ottomans depended on the basic principles of Islamic law and the traditions established by other Islamic states.

In the light of the new documents from the Ottoman Archives, it becomes evident that autonomous and semi-autonomous non muslim legal entities did not exist in the Ottoman practice. To name a social entity as autonomous necessitates stricter legal evidences than explained in the related literature. Ottoman documents clearly suggest that non-muslims brought their suit to the central state courts and that the disputes among non-muslims subjects were solved according to Islamic rulings. Even in the field of private matters, Islamic legal rules were applied in disputes between non-muslims.

It is commonly held that the Ottomans organised and administered non-muslims according to *millet system*. Generally speaking, the non-muslims in the Ottoman Empire are referred to by modern scholars as *autonomous legal entities*. According to these claims non muslims belonging to different religion or sects were administrated seperately under the authority of their religious leaders. But these claims are not supported by concrete and sufficient evidence. It is true that the matters relating to the civil status of non-muslims in the Ottoman Empire were subject to their own religious system. But this does not mean that they had their own separate courts. But reading almost any modern scholarly work about the non-muslims lived in the Ottoman Empire, one inevitably comes across the explanation that non-muslim groups in the Ottoman Empire were autonomous and using their own legal rules in their community courts. True that the Ottomans were tolerant towards their non-muslim subjects, whether non-muslims executed their legal matters according to their own religion necessitates solid evidence.

To understand and clarify the status of non-muslims in the Ottoman Empire, we have to look at their rights and obligations. These rights and obligations give an idea whether there was a discrimination towards non-muslims and whether the non-muslims were subjected to the authority of their religious leaders. In a state, exercising its authority over a large area and for a long period as in the Ottoman Empire in which different religious groups lived in peace, there should be some administrative mechanisms to set up such a peaceful system. Law was the most important mechanism in determining the legal status of non-muslims in the Ottoman Empire. The Ottoman Empire based itself on the Islamic law and this law had an effective role in shaping the social and legal status of non-muslims.

## II. GENERAL REMARKS

Theoretically, non-muslims were accepted as subjects of Islamic states in the classical periods. Despite the fact that the term *citizenship* had not been used by Islamic scholars, non-muslims were subordinate to the Islamic states through political and legal ties. The subordination of non-muslims to the Islamic states was not only political, but also legal. According to most of the Islamic jurists, the dhimmis were the people of the Islamic land like muslims and enjoyed civil rights as muslims. Islamic scholars framed some statements to denote the legal status of the non-muslims such as '*The dhimmis are the people of Darü'lislam*'. The statements of Ed-Debbusi clearly point out to that legal status: '*Dhimmis are subject to us (Islamic state) in the worldly affairs*' (Ahmet Özel, *İslam Hukukunda Milletlerarası Münasebetler ve Ülke Kavramı* (Istanbul: Marifet yayınları, 1982), 194). On the other hand Al-Sarahsi says that 'If harbis (citizens of foreign countries) apply some exemptions in taxes of wines and porks for our dhimmis (non-muslim subjects), we can also apply the same exemptions'. The *contract of dhimme* means to be bound with Islamic law. With this agreement they had the basic rights and obligations as muslims subject to Islamic state. Putting aside a few exceptions, law was not extraterritorial in Islamic states. All people, including non-muslims, were subject to Islamic law in Islamic states, because the general principle was the *territoriality of Islamic law* (M. Âkif Aydın, "Osmanlı'da Hukuk," in *Osmanlı Devleti Tarihi*: ed. Ekmeleddin İhsanoglu, vol.2 (Istanbul: Zaman,1999), 419).

According to some, there was no cruelty against non-muslims in the traditional Islamic societies, but the discrimination could be seen in some fields, and inequalities existed for unbelievers (namely non-muslims) (Bernard Lewis, *İslam Dünyasında Yahudiler*, trans. B. Şener (Ankara: İmge yayınevi,1996), 13-18). Non-muslims were described by most of the western scholars as *state within state* in the classical Islamic states. The same scholars, on the other hand, claim that non-muslims were second class citizens. (S. D. Goitein, "Minority Self Rule and Government Control in Islam", *Studia Islamica* XXXI (1970): 103-110). It is not easy to combine these two different views.

Another view claims that the aim of the status of dhimme was arabization of the non-muslims (Bat Ye'or, 1985, 53-67). This type of explanations does not make any contribution to the understanding of the matter. Clearly the aim of the contract of dhimme was not to extract money or to make them arabs. With the agreement of dhimme the lives, properties and honour of the

dhimmis earn the same value as muslims. Besides, they got exemption from the burden of military service. The Hanafi jurists accepted that non muslims were equal in exercising legal transactions such as preemption, donation, reconciliation, all kinds of trade, division, and surety. The basic principles of Islamic law of the freedom of religion are: *to provide non-muslims with a position of exercising the rituals which their religion impose them and what is for the benefit of muslims is for the benefit of non-muslims, what is against the muslims is also against non-muslims as well*. Apart a few exceptions such as witness and oath, equality before law is a general principle in Islamic law. Namely non-muslims were equal with muslims in legal transactions which did not have a religious nature. According to Abu Hanifa, all disputes belonging to non-muslims would be solved by qadis, except the matters concerning marriage and divorce. It is generally accepted that, being muslim was a necessary qualification to be qadi and the authority of jurisdiction was restricted to muslims. The Ottomans did not assign a non-muslim as a judge before the second half of the nineteenth century. Even then, non-muslim jurists were bound to comply with Ottoman legal system. In some Islamic legal books one comes across some statements such as: *the judge of the people of the book (hâkimü ehli'z-Zimme)*, or *the judges of christians (hükkâmü'n-Nasara)*, or *the judges of unbelievers (hakimü'l-kefere)* (Abdülkerim Zeydan, *Ahkamü'z Zimmiyyîn ve'l-Müstemenîn fî Darî'l-Islam* (Bagdad: Mektebetü'l-Kudüs, 1982), 600-601. Ahmet Özel, 1982, 199. Comp. Fahrettin Atar, *İslam Adliye Teşkilatı* (Ankara: Diyanet İşleri Başkanlığı, 1979), 224). But these statements point out to a position of being an arbitrator rather than being a judge. As a matter of fact, resolving the disputes according their own religion rules did not mean using a real jurisdictional power for non-muslims. Actually compliance with the rulings, given by the religious leaders, was not obligatory. Hence ineffectiveness is the main character of these decisions. The lack of executive nature of these decisions made them ineffective.

We can certainly say that, from the point of Islamic law, non-muslims were in the same legal position as muslims in applying their religions' rituals unless they disturb and gave any harm to muslims. The Quran and the words of the prophet order the protection of non-muslims and the prohibition of their disturbance. Some restrictions forbidding the carrying of guns or wearing specific clothes or riding of horses were actually customary restrictions. In some cases those restrictions applied with the aim of security reasons.

### III. THE SYSTEM OF TAX FARMING (ILTIZAM)

Contrary to the generally accepted view, instead of millet system the Ottomans used *the system of iltizam* in the administration of the non-muslim subjects. Taking into consideration the structure and institutions of churches and the authorities of clergies, the Ottoman State tried to integrate these structures with its own legal, judicial and administrative system. In the end, *the system of iltizam* was adopted.

To control the administrative, financial and legal power of non-muslim clergies, the Ottomans organized non-muslims within a structure which I called *religious iltizam system*. First of all, in this system the appointments of the religious leaders were made in exchange of some money. This was the basic condition in the *berats* given by the Ottoman authorities. They were not appointed and permitted to function unless they paid that amount of money. That payment was called *pişkeş* [sic] / *pishkehs*. On the other hand, by this method, the State controlled the administrative and financial authorities of the religious leaders. To protect the superiority of State authority and to prevent suffering of the non-muslim subjects, the taxes which the religious leaders could collect from their communities had been taken under the control of the State by this system. Apart from *pişkeş* [sic] / *pishkehs*, the churches were also under the obligation of paying some money annually to the State Treasury. The patriarchs were paying that amount of money, which is called *state taxes/miri rüsum*, from the taxes such as *tasadduk akçesi* [sic] / *alms, patriklik ve metropolitlik rüsumu* [sic] / *patriarchates and metropolitanates tax, revenues of the places founded to the churches, revenues collected from some parts of inheritances of religious persons who died*, that they collected from their own communities. The amount of tax paid by the non muslim subjects was fixed by the state. All taxes which the religious leaders could collect, were enumerated in the *berats*. Therefore, the State prevented other types of taxes to be collected under different names by the religious leaders. At the end of every year, the State settled the accounts of the churches with patriarchs and metropolitans. Looking at the balance sheet (budget) of the patriarchates, we see that the budget of the churches were always in deficit. They were always indebted to the State. This also explains why the patriarchates in the Ottoman Empire could not reach to a very powerful financial position as Catholic churches in the Western World.



The Statements used by the State to describe the position of the religious leaders are also important. The titles used to describe the official positions of qadis, were not used for the non-muslim religious leaders. The state determined the positions of the qadis with such statements: *taht-ı hükümetinizde/under your government, taht-ı idarenizde/under your administration, and taht-ı kazanızda/under your jurisdiction*. But for the non-muslim religious leaders the following type of addresses were used: *taht-ı iltizamınızda [sic] / under your iltizam, patriğin taht-ı iltizamında olan memleketler [sic] / the provinces under the iltizam of the patriarch, metropolitlerin taht-ı iltizamında [sic] / under the iltizam of the metropolitans*

(C. ADL. 2864 (1126), 2866 (1126), 991 (1140), 2150 (1170), 1762/2 (1176), 3807 (1183), 2926 (1193), 2187 (1195), 5690 (1198), 3590 (1204), 688 (1210), 4930 (1211), 4931 (1211), 3863 (1214), 3499 (1215), 2735 (1220), 101/1 (1228), 101/3 (1228), 101/8 (1228), 53 (1232), 3641 (1242), 675 (1243), 78 (1250), 551 (wd); C. ZPT. 780 (1213); Gayrimüslim Cemaat Defterleri, vol.10, p.10, (1237), vol.4, p.12, (1274), p.45, (1299) and p.56, (1326), vol. 5, p.177 (1329). Külliyyat-ı Kavanin, vol. 6, 2890 (1263). A. DVN. KLS. 1/28-2 (1180)). On the other hand, the titles of some orders in the *Gayrimüslim Cemaat Defterleri [sic] / Defters of Non-muslim Communities* show that the office of patriarchates, metropolitanates and chief rabbis were formed under the system of Iltizam. The following titles also refer that position: *Şurut-i metropolidan an iltizam-ı patriklik-i Antakya [sic], Şurut-i piskoposluk an iltizamı piskoposluk-i cezire-i Kıbrıs [sic], Şurut-i marhasalık an iltizam-ı patriklik-i Ermeniyan-ı İstanbul [sic]* (For these statements see *Gayrimüslim Cemaat Defterleri*, vol.1, p.10, 13 and 22, d.1247).

Moreover, some defters' names give us a clue about this structure. For instance, *Piskopos Mukataası Defterleri [sic] / Defters of Piskopos Mukataası* is a good example of these defters. Records concerning non-muslims were registered in these defters starting from 1641 (Halil Inalcık, "Ottoman Archival Materials on Millets," in *Christians and Jews in the Ottoman Empire*, ed. B.Braude and B. Lewis, vol.1 (New York: Holmes and Meier Publishers, 1982), 441). The statements in these defters teach us that the State accepted the patriarches and metropolitans as *tax farmers/mültezims*. The same system applied to Jewish communities (A. DVN. MHM: 6-A/90 (1265), 8/3 (1265). Külliyyât-ı Kavânîn, vol.4, 3054 (1252). *Gayrimüslim Cemaat Defteri*, vol.17, p.99-100 (1254).

İltizam system clarifies lots of matters. It points out that the religious communities were not autonomous as claimed. The religious leaders were using their authorities in accordance with the rules fixed by the state. The power of collecting taxes was under the control of the State, and religious leaders as *multezims* used this authority like other *multezims* in their districts. They could not collect any taxes different from the ones fixed in the *berats*. The power of punishment of the religious leaders was not substantial and independent, but rather dependent and immaterial in nature. These punishments had a disciplinary nature.

İltizam system also explains the relations among the central and other provincial patriarchates and metropolitanates in different districts (regions). If there had been a millet system, the whole non-muslims belonging to the same sects would have been put under the authority of a single patriarch instead of the recognition of the existence of different patriarchs. The non-muslims belonging to the same sect were structured under the authority of different patriarchs. This structure can easily be explained by regard to the iltizam system. In this system, different patriarchs within the same sect were appointed as *mültezims* in different geographical areas. Parallel to this view, beginning from the mids of the eighteenth century the central patriarchates had a general supervision authority over the other provincial patriarchates belonging to the same sects.

Of course most authorities of the patriarchs were naturally immaterial. İnalçık insisted on this point in his article. According to his explanations:

*"The sultan, as the highest and the sole source of authority in the Empire, issued such a berat to the ketkhuda upon his elections by the members of his particular guilds, to ratify that election and to empower him with authority over the members of the guild (...) In light of this we can examine the situation in 1695 when the Patriarch of Pec complained of not being able to collect alms from the reaya because his berat had not been renewed by the new Sultan (...) the patriarch was elected by a Sinod as a representative of the Church, and such his position was legally very similar to that of a ketkhuda in a craft guild (...) It must be emphasized that the basic legal status of the Patriarch and the Church did not change in the Ottoman state, not even in the eighteenth century when the decentralization policies of the government furnished them with new responsibilities towards their flocks in certain civil matters and especially in taxation' (Halil İnalçık, "The Status of Greek Patriarch under the Ottomans," *Turcica* XXI-XXIII (1991): 419-421).*



Additionally Inalcık says:

*'From a legal standpoint, the Ottoman government considered all of the taxes collected by the clergy as belonging to the state and the clergy as tax-farmers. The word iltizam, tax farm, was used for the metropolitan's authority over his diocese. Actually, the Patriarch depended for his revenue on the metropolitans'*(Halil Inalcık, *Turcica* XXI-XXIII (1991): 423).

On the other hand, there are some important principles, used by the Ottomans, which I want to draw your attention to understand the matter in full.

#### **a. The Generality of the Ottoman Laws**

First of all, I want to point out the nature of the laws in the Ottoman Empire. There was only one legislative power in the Ottoman Empire, and it was, of course, the state itself. None of the patriarchs had a legislative power. This means that the state was regulating the social life from all aspects. All stipulations, either in general kanunnames or in special kanunnames, were applied for both muslims and non-muslims without any discrimination. If there were some special regulations for non-muslims, a special section was allocated within the kanunnames. Non-muslim religious authorities did not have any independent legislative authority to regulate their own societies. The stipulations in the kanunnames covered all people both muslims and non-muslims without any discrimination in the Ottoman Empire. Some exemptions or differentiations in criminal or in taxation rules were a direct result of the Islamic law. If there was no specification in the stipulations of the kanunnames for non-muslims, these regulations would apply to all people in the Ottoman Empire. If some special regulations were necessary for non-muslims, the stipulations concerning those special topics were inserted in kanunnames in a separate section under the headings *'It declares the status of non-muslims'* or *'The section declaring the matters concerning unbelievers/Kefereye mahsus ahvali beyan eyler'* [sic] (For "Kanunname of Bayezid II" and "The General Kanunname of Suleiman the Magnificent" see Ahmet Akgündüz, *Osmanlı Kanunnameleri* vol. II (Istanbul: FEY, 1990) 70-72. and vol. IV (Istanbul: FEY, 1992), 395.

For some islands however, in which only non-muslims lived without having social relations with others, the Ottomans promulgated special kanunnames (M. D. vol. 6, 536 (972 / 1564). To those islands the Ottomans gave special status. The administration of these isolated islands can perhaps be described as semi-autonomous.

Those who claim the existence of the special millet system, are expected to state some mention of this nature. But no mention is available in the *Kanunname of Fatih*. The limitations of the religious rights and the usage of them were regulated in the berats and ahidnames given to non-muslims. The interpretation of these regulations is of great importance. Most of the misunderstandings among scholars appeared because of the misinterpretation of the statements in these documents.

#### **b. Autonomous Nature of the Non-muslim Communities**

On the other hand whether the non-muslim communities had an autonomous administrative structure within itself is another puzzling issue. Is it possible that the administration of the non-muslims affairs was called an autonomy? As a central state, to what extent would the Ottoman Empire allow to an autonomous administration within its sovereign territory? We have to take into consideration that non-muslims were living together with muslims in the same society. It is also important to think how in such a system the conflicts both between muslims and non-muslims, and between different non-muslim groups had been solved. At this point, we come across the question of the nature of the authority exercised by non-muslim religious leaders. In this respect there are some questions to be answered related to this issue.

\* What kind of duties and responsibilities did religious leaders have?

\* If the Ottoman State gave an extensive authority to non-muslim religious establishments over their communities, how could these authorities be integrated with the Ottoman legal structure?

\* How were the conflicts of authority between the Ottoman state officials (muslim authorities) and non-muslim leaders, for example a conflict of authority between a governor of province and a metropolitan or a conflict between a qadi and a bishop, resolved?

\* What measures had been taken to prevent these types of conflicts of authority?

\* Did the authorities of the religious leaders cover the whole community (the whole people living in a religious community) or were they effective only over the non-muslim clergies such as bishops, priests, monks, etc.?

In answering such questions, *berats* (orders) and *firmans* proves useful information. The interpretation of the statements in these documents from legal point of view is very important. Saying in a more concrete manner, what does the word *punish* mean in the statements such as '*ayinleri üzere tedip edeler* [sic] / *let them punish according to their rite*'? Does the statement '*Rıza-yn tarafeyn ile ıslah edeler* [sic] / *let them reconcile between two dhimmis with their consent*' point out to an obligatory judicial power of the religious leaders? Or does it point out to an authority which in fact is a power of arbitration? Do these statements point out to an independent and substantial authority of punishment?

For example the integration of the churches and sinagoges into the Ottoman administration gives clear indication. We must bear in mind that, at that time, religious rules were also legal rules. The judgements of religious leaders were very important in the conflicts between non-muslim community members. Under these circumstances, the administrative, financial, penal and legal authorities of the religious leaders have to be taken into consideration. Therefore it is important for us to make clear how the Ottomans integrated the church's administrative structure with their own administrative system. The sensitivity of the religious leaders about protecting their authority over their community can be understandable. But as a matter of fact, the approach of the Ottoman administrators to the matter is more important. Because it was the Ottoman State which determined the rights and obligations of the non-muslim communities. Looking at closely we see that the explanations of millet system are not all together supported by the Ottoman practice. Nearly all scholars accepted the claims of Engelhard that the church was an *imperium in imperio* / *a state within state*. But Barkan says that there was no church structure (establishments) in the Ottoman Empire as in Europe. Actually, the church was not an *imperium in imperio*. As is known church had a hierarchical structure. Therefore in a central state like the Ottoman Empire, this structure could cause lots of legal conflicts. Of course, the Ottoman officials knew the nature of the church structure. Especially the financial aspects of the authorities of religious leaders needs to consideration. Because a church which has financial authority would inevitably conflict with the Ottoman administrators. On the other hand, İnalcık refuses the statements of Davison such as '*the muslim millet was of course under the direct rule of its own Sultan and bureaucracy*' (Halil İnalcık, "Roderic Davison'ın 'Reform in the Ottoman Empire 1856-1876' Adh Eseri", Review of the *Reform in the Ottoman Empire*, by Roderic Davison,

*Belleten*, XXVIII/109-112, 1964, 791). Because of the opposite meaning of this statement means that non-muslims were under the direct rule of their religious leaders, which was not true, Inalcık refuses.

Joseph Hacker rightly stated that Jewish communities did not have an institutional autonomy. According to him, *'the Ottoman authorities left non-muslims to themselves in some areas. Islamic law was the only official legal system which applied all over the country. Jews could get decisions from Islamic courts against their religious (community) leaders. The autonomy of the jewish communities was restricted and valid as long as they did not conflict with the authorities of the Islamic courts'*. (For Hacker's views see Irvin Cemil Shick, "Osmanlı İmparatorluğunda Yahudiler," *Tarih ve Toplum* 8/43 (1987): 50-51). These explanations are extremely important. Therefore it is more convenient to tell that, instead of autonomy, there was a freedom which the State did not interfere.

Still, according to some claims patriarchs were a member of Divân-ı Hümayûn (Imperial Council) and they had a title as *pasha or vizier*, and a group of janissaries were in the service of the patriarchs. And the Greek Orthodox Patriarchate had its own courts and prisons. According to Abu Jaber, the Ottomans treated non-muslims as if they were foreign nations. He claims that the execution of the non-muslims' affairs by the Ministry of Foreign Affairs proved that the Ottomans accepted their own non-muslim subjects as foreign nations. (Abu Jaber Kamel S., "The Millet System in the Nineteenth Century Otoman Empire," *The Muslim World* LVII/3 (1967): 212-216). As a matter of fact, Ortaylı states that *Divân-ı Hümayûn Kalemî* [sic] (Office of Divân-ı Hümayûn) and *Mezâhib-i Gayrimüslim Dairesi* [sic] (Office of Sects of Non-Muslims) were two old offices of Sadaret (Grand Vizierate). Since Reisülküt-tab (Executive secretary to the Grand Vezir) performed these types of work, they were leaved within the Ministry of Foreign Affairs. Or Office of Sects of Non-Muslims (Mezahib-i Gayrimüslim Dairesi) did not take place within the structure of the Ministry of Foreign Affairs because of they were accepted as foreign nations (İlber Ortaylı, *İmparatorluğun En Uzun Yüzyılı* (Istanbul: Hil yayınevi, 1995), 112-113). Some of the scholars claim that, at the beginning the terms *taife* and *millet* had different meanings (For this view see Kemal Beydilli, *Recognition of the Armenian Catholic Community and the Church in the Reign of Mahmud II* (Cambridge: Harvard University, 1995), 27). Of course this was not true because these two words share the same meaning.

In the last two decades some scholars tried to refuse the existence of the millet system. For example Benjamin Braude says that millet system is a myth and he puts forward some evidences. Braude claims that the term millet refers to muslim communities not to dhimmis. According to him, in most of the official records this term was not used in a manner pointing out to the dhimmis (Benjamin Braude, "Foundation Myths of the Millet System", in the *Christians and Jews in the Otoman Empire*, edited by B.Braude and B.Lewis vol.1 (New York: Holmes and Meier Publishers, 1982), 69-71). Despite the fact that I agree with him about the non-existence of the millet system, his views and evidences are not sufficient to prove his claims. In most of the documents, the term *millet* was used in a manner pointing out to the dhimmis. According to Braude, the Ottomans did not use the word *millet* for the dhimmis because they did not want to give an equal legal position for the dhimmis with the non-muslims outside of the country. According to Braude while the Ottomans were using the term *millet* to point out themselves, and to the christians kings or to some jews, but they never used for the dhimmis within the Empire. (Benjamin Braude, 1982: 69-71).

In short, he says that since the word *millet* was not used widely to denote dhimmis, it means that there is no millet system. On the contrary, from the very beginning of the Empire, the term millet was used to denote non-muslims (dhimmis) within the state. We can see that most of the documents, in which the term *millet* was used, denote dhimmis. The statements such as *Cemaat-i millet fukaratı* [sic] / *The poors of the nation of the Community, kendilere tabi hemmilletleri* [sic] / *coreligionists subject to them*, and *kendilere tabi yamakları ve hemmilletleri olan Habeş Kıpti ve Süryani milletleri* [sic] / *the Abyssinians, the Copts and the Syriacs who are yamaks (auxiliaries) and coreligionists of themselves*, and *aher milel* [sic] / *other nations*, denotes this situation (Ali Emiri, Fatih Dönemi, 22 (862); Külliyyat-ı Kavanin, vol.1, 2599 (923). 3995 (923). 2600 (927). 3996 (933). 2601 (964). 3997 (1048). 3998 (1077). 2794 (1107). 6019 (1126). vol.2, 4002 (1166). 4317 (1158). 2602 (1166). 4318 (1192). A.DVN. 6/3 (1260)). In the Ottoman literature, the words *taife* and *millet* had the same meaning (Kilise Defteri vol.8, pp.7-9 (1044). Gayrimüslim Cemaat Defterleri, vol.3, pp.29).

Braude's claims, that the Ottomans did not use the word *millet* to denote dhimmis within the state not to make them equal with other nonmuslims outside of the country, are totally a misunderstanding. The Ottomans, in most

of the documents, used the term *millet* to denote non-muslims within the state. There are lots of examples for such usages: *Kıdvet-i'l-ümerâ-i milleti'l-mesihîyye* [sic] / *Type of good man of christian religion* (M.D. vol.6, 536 (972)). used for the christian and jewish administrators, and *Kıdvet-i muhtar-i milleti'l Mesihîyye* [sic] used for Greek and Armenian patriarchs (Külliyat-ı Kavanin, vol.1, 6019 (1126). vol.2, 2959 (1176). 6018 (1203). vol.4, 2136 (1254). vol.6, 2788 (1263). 3045 (1263). T.S.A., E. nr. 8234 (1255). C. ADL. 551), *Kıdveti'l muhtar-i'l milleti'l Museviyye* [sic] used for chief rabbis (A.DVN.MHM, 8/3 (1265)), *Kıdveti'l-ayânî'l-millet-i'l-Mesihîyye* [sic] used for dragomans of Imperial Council (Divan-ı Hümayun Tercümanı) (*Istanbul Külliyyatı VI, İstanbul Ahkâm Defterleri, İstanbul Finans Tarihi 1 (1742-1787)*, (Istanbul: İstanbul Büyükşehir Belediyesi Yayınları, 1998), p.113, (1169/1756)). Lots of these documents belong to the periods before Tanzimat era.

Unlike the claims of Braude, giving a new order (*berat*) to the patriarchs, when they were assigned to their job, did not mean that the authorities of the patriarchs were personal. On the contrary, giving such kind of *berats* meant that the patriarchs were entrusted with a duty framed by legal rules. It was necessary to be able to start their appointment, especially to earn the attribution of *iltizam* (tax-farming). After that, they were able to use their authorities over the community. Without this *berat* they could have done nothing. Looking at the contents of these *berats*, we can see that the powers given to the patriarchs can differ from each other. These differences mean the narrowing or widening of their authorities rather than having been given to the patriarchs personally.

On the other hand, Braude while criticising others for relying on statements based on second hand sources, he himself did the same thing. He accepted the claim of Rycout about the Istanbul Armenian Patriarch as being absolutely true. According to Rycout, Istanbul Armenian Patriarchate was *de facto* (Braude, 1982: 82). This approach is not sufficient to explain the true situation of the Armenian Patriarchate. On the contrary, Istanbul Armenian Patriarchate was *de jure* for the Ottoman State, because it was established by the Ottoman Empire itself. From the Ottoman point of view it was legal. The considerations of the other Armenian Patriarchates were not important for the State.



**c. The Statements about the Limitations of the Authorities of the Patriarchs**

The evidence which Kevork Bardakjian has used in his article that the administrative power of the Istanbul Armenian Patriarch was restricted to a limited area, show the opposite of his claims and point out to a situation where the administrative authorities of the Istanbul Armenian Patriarch were wider than he claimed (Kevork Bardakjian, "The Rise of the Armenian Patriarchate of Constantinople", in the *Christians and Jews in the Ottoman Empire*, edited by B. Braude and B. Lewis vol.1 (New York: Holmes and Meier Publishers, 1982), 91-95). On the other hand, the evidences which he has used to denote that the authorities of the Istanbul Armenian patriarchs widened depending on some historical events, again show the opposite of his claim and point out to a situation in which the administrative authorities of the Istanbul Armenian Patriarch were narrower than he claimed.

These explanations necessitate further clarification. Before that, let us point out to another claim of the Bardakjian which he puts forward in his article. According to his claims, the authorities of the Istanbul Armenian Patriarch were restricted only over the *altı cemaat tabir olunur ermeni taifesi* [sic]/ *Armenian classes (sects) named six community*. (Bardakjian, 1982: 91-95). His explanations relating to this subject do not make sense. The term *six community* points out to the notables of the Armenian community who could attend the elections of the patriarchs. Relying on this term, it is not possible to claim that the patriarch had only an authority over these six communities. If this approach was accepted it would be impossible to explain the attendance of the Istanbul Armenian patriarch to the elections of the catholicos of the Eçmiyazin (Ecmihadzin).

These evidences, over which Bardakjian bases his claims, create some other problems. According to him, a title such as *the patriarch of the city of Istanbul* used for the Armenian Patriarch in some documents. Could this be a criterion for explaining the area of the patriarch's authority? Glancing superficially, one can say yes. But looking in a detailed way, we see that these claims are not be acceptable.

The main argument of the Bardakjian is the way of usage of some statements in the documents for the patriarchs. It is important to clarify the meaning of the following statements: '*Istanbul ve tevabii* [sic]/ *Istanbul and its*

*dependents (surroundings)*'. Bardakjian tends to restrict the authority of the Istanbul Armenian Patriarch only to *Istanbul and its surroundings*. He claims that the statement *'Istanbul and Some Parts of Rumelia and Anatolia and Their Surroundings Armenian Patriarchate'* shows that the authority of the Istanbul Armenian Patriarch was expanded in the course of time (Bardakjian, 1982: 91-95).

As a matter of fact, these statements point out to a position that the authority of the patriarchs were reduced. The event that led Bardakjian make a mistake about the interpretation of these statements was the appointment of the same person as the Patriarch of Istanbul and Jerusalem at the beginning of the seventeenth century (A.H. 1128). When these two patriarchates separated from each other and different persons were appointed to the patriarchates, these statements were used to prevent the interference of the Istanbul Armenian Patriarch to the Patriarchate of Jerusalem.

We have to understand and explain the meaning of the statements used in the documents concerning the authorities of the patriarchs. At the beginning of the 15th and 16th centuries, the authorities of the patriarchs over their communities were weaker than the later periods. The following statements used widely in the documents: *'İstanbul patriği [sic] / the patriarch of Istanbul'*, *'mahruse-i İstanbulda patrik olan [sic] / the person who is patriarch in the city of Istanbul'* (M.D. vol.6, 1057 (972/1565)), *'mahruse-i İstanbul keferesine patrik olan [sic] / The person who is the patriarch of unbelievers of Istanbul'*, *'mahruse-i İstanbul zimmelerinin patriki olan Yeremya / Yeremya who is the patriarch of the dhimmis of Istanbul'* (M.D. vol.24, 433 (982/1574)). It is not a proper approach to make interpretations only by looking at these statements. Consequently, it should be pointed out that the statements such as *the Greek Patriarch of Istanbul* or *the Armenian Patriarch of Istanbul* can not be used in determining the limitations of the administrative powers of the patriarchs.

In some documents we see such a statement: *'Halen İstanbul Patriği / Istanbul patriarch at the present time'* (C. ADL. 769). This seal takes place on a document relating to a conflict between the metropolitan of Ankara and the Greek Patriarch of Istanbul. If the claims of Bardakjian have been accepted, the patriarch would not have any authority over the metropolitan of Ankara. Under these circumstances, the interpretations of Bardakjian can be rejected easily. The documents showed that the administrative power of the patriarchs were wider than he claimed. (C. ADL. 5356, (1154). Külliyyat-ı Kavanin, vol.3, 2956 (1249).

Moreover, Bardakjian interprets the correspondence of the other patriarchs with the State, without the mediation of the central patriarchates, as an evidence of the weaknesses of the authorities of the central patriarchates. For instance, he says that the catholicos of Eçmiyazin (Ecmihadzin) corresponded directly with the state without the mediation of the Istanbul patriarch. (Bardakjian, 1982: 91-95). This does not necessarily imply that the patriarchs did not have any administrative authority over the others or had a narrower authority. Direct correspondence with the State only means that the authority of superintendence of the central patriarchates over others was not strictly applied.

#### **d. Horizontal and Vertical Relations in the Church's Hierarchy**

It is a well known fact that the establishments of churches had a hierarchical structure. The relations within and between the churches can be classified as horizontal and vertical. Vertical relations point out to the relations within the same church itself. But horizontal relations point out to the relations among the patriarchates belonging to the same sect in different geographical areas. Therefore, for example the authorities of the Greek Orthodox Patriarchate in Istanbul over the metropolitans, bishops, priests and monks working in that church, are to be considered within the content of vertical relations; but the relations of the Greek Orthodox Patriarchate with the other Orthodox patriarchates such as Jerusalem, Antioch, Alexandria, Pec, Ohri and Cyprus are to be considered within the content of horizontal relations. The same thing is valid for the Armenian churches.

#### **e. The Central and Provincial Patriarchates**

We can also separate the patriarchates in the Ottoman Empire as *central* and *provincial* patriarchates. The criterion in this classification is whether a patriarchate resides in the capital city of the Empire. The term *central patriarchates* covers the Greek Orthodox Patriarchate of Istanbul and the Istanbul Armenian Patriarchate. In later periods, the Catholics' patriarchate and Chief Rabbi of Jews were also added to these institutions. The aim of this classification is to find out as to whether there is any differentiation about the contents of the authorities between the patriarchates.

We have to find the answer of the following questions in order to understand the true nature of the Ottoman administration over the non-muslim subjects

- 1) What were the content of the authorities which can be used within a patriarchate itself?
- 2) How strict was the nature of the relations among the patriarchates and to what extent did the degrees of the authorities of the patriarchates which can be used over each other reach?
- 3) Were the authorities of the patriarchs binding over all the persons belonging to that patriarchate or were they binding only over the religious persons?

Basically, the central patriarchates used two kinds of authorities. One of them is the authority given them through the berats directly by the state. The central patriarchates used this type of authorities only in their areas prescribed by law (orders, berats). They could use these authorities only over their authorized area. The other type of authority is a supervisional authority. This type of authority did not mean to take decisions in the name of provincial patriarchates; it means establishing order in the application of the authorities and in the administration of businesses. In the first type of authority, the religious side (nature) of the patriarch gave a higher degree of importance to his power. But in the second type of authority the patriarchs did not have any spiritual side. They used only an administrative authority without having a religious nature. The first ones existed from the beginning, but the second type of authorities arose in the later periods.

When we look at the nature of the administrative authority of the patriarchs we see that some statements in the orders (documents) were misinterpreted by most of the scholars. The administrative authority of the patriarchs was not always in the same level. In the beginning their authorities were weaker. In some documents we come across with some statements pointing out the independence of the patriarchs such as *'istiklal-i memuriyet [sic] / independence of executing his duty'* (H.H. 36471 (1250). Külliyyat-ı Kavanin, vol. 5, 4474 (1256)). But these statements imply being independence against other nonmuslims' interference to the patriarchs' duty, not being independent from the state. It means not to interfere with the tasks of patriarchs. In fact, these

type of statements point out to the general power of supervision of central patriarchates.

The conflicts about the boundaries of the administrative power of the metropolitans were solved by state authorities. (C. ADL. 1474 (1128), 29 (1171). H.H. 36504 (1245). Gayrimüslim Cemaat Defterleri, vol.3, pp.224 (1292)). The conflicts relating to disputes of boundaries between monasteries were solved by the state as well ( H.H.33109 (1237), 40336-D (1237), 58330 (1256)).

#### **f. The Legal Power of the Religious Leaders**

Non-muslims were under the jurisdiction of Islamic courts. According to Pantazopoulos, the Greek patriarchs used the criterion of '*presumption of competency*' to exercise their rights (N. Pantazopoulos, "Community Laws and Customs of Western Macedonia Under Ottoman Rule", *Balkan Studies* II/I (1961): 6). This type of interpretation is totally wrong and does not contribute to the understanding of the matter. Because, in most cases, patriarchs tended to abuse their power to obtain authority never given them in berats. They tried to get some powers that the State did not give them. They imitated some orders and put some statements which did not take place in the original documents.

The main points in determining the judicial (or legal) power of the religious leaders are the followings:

- 1) Whether their legal authorities were mandatory for all the members of the community.
- 2) Whether their decisions had a nature of court decision in the conflicts between non-muslims.
- 3) Whether their decisions were executive (binding), if so by which organs were these decisions executed.
- 4) Whether non-muslim community members had a right to apply to a superior organ (or another organ).

As I pointed out before, the main principle in Islamic law was the territoriality of legal rules. This principle was also current for non-muslim subjects. Non-muslims applied to Islamic courts because they did not have another choice. The claim that non-muslim communities had their own courts is

totally imaginary or a case of misinterpretation. Even the clergies belonging non-muslim communities applied to Islamic courts to make contracts, such as surety and agency (İstanbul Şer'iyye Sicilleri, Balat Defteri, vol.23, pp.7 (1141-1143). Ahmet Refik, *Türk İdaresinde Bulgaristan*, (İstanbul: Enderun Kitabevi, 1998), 34-35). According to Gradeva, Christians applied to Islamic courts in most cases to get precise decision in spite of the opposition of the religious leaders of their communities (Rossitsa Gradeva, "Orthodox Christians in the Kadi Courts: The Practice of the Sofia Sheriat Court, Seventeenth Century", *Islamic Law and Society* IV/1 (1997): 37-41). In the documents we see statements such as: '*tashih ve umurlarını rüyet [sic] / adjustment (to rectify) and to examine their affairs*', '*marifet-i şer ile [sic] / by means of Sharia*', '*münaziünfih olan iki zimmi mâbeynlerin rızaları ve patrik marifetiy-le ıslah olunmak [sic] / to reconcile between two dhimmis who are in conflict with their consent by means of their patriarch*'. The word 'ıslah/adjustment' in these statements is very important. Because it points out to the nature of the judicial authority of the patriarchs. Taking this into consideration, we certainly say that the judicial authority of the patriarchs and other religious leaders were not mandatory. Non-muslim community members applied to their religious leaders if two sides of the conflict agreed. More important than that, the statments used in the documents addressing the qadis and patriarchs are different. While Kadis '*solve or settle*' or '*divide or separate*' a conflict, the patriarchs can only '*reconcile or adjust*' a dispute. The difference between these terms is very important. They point out to the patriarchs' judicial power which, in nature, was not mandatory. These terms also show that the patriarchs were not in the position of a judge, but were only advisors or counsellors. They solved the problems as religious leaders, using their spiritual authorities over the members of the community before applying to the Ottoman courts. The statements used in the documents give us some clue to explain the content of this type of authority. The statements such as '*aforoz ettikte[sic] / when they excommunicate the dhimmis*', or '*ayinleri üzere kiliselerinde yemin verdikde [sic] / to offer an oath in their churches according their rites*' state openly how and by which means these reconciliations were made. Therefore, it is not a proper approach to interpret the judicial authorities of the patriarchs as a real jurisdictional authority. A good example of this is the case where an order was sent to the qadi of Salonica to solve a dispute between a dhimmi and the patriarch about a personal action (an amount of money) (M.D. vol.28, 359 (984/1576).



Non-muslims' personal actions, either against their religious leaders or against muslims, could be solved by means of muslim judges in Islamic courts. These actions were settled in Islamic courts (See some of the documents in the Ottoman Archives, C. DHL, 11603 (1190). M.D. vol.34, 188 (986/1578), vol.35, 878 (986/1578). A.DVN. 10/15 (1260), 12-A/77 (1261), 9/70 (1260), 5/29 (1260), 8/88 (1260). Finans Tarihi 1, p.87 (1164/1751). C.ADL. 214 (1214), 791 (1215). T.S.A., E. nr. 12314. A. DVN. 15/44 (1263), 14/55 (1262)). Contrary to the most commonly held explanations, the state officials were careful of not giving an opportunity of interference of the patriarchs to the judicial affairs concerning the questioning and arrest of the non-muslim religious persons (Külliyat-ı Kavanin, vol.27, 4344 (1301)).

#### **g. The Penal (Criminal) Authorities of the Religious Leaders**

It is generally accepted that there was no discrimination between muslims and non-muslims in the penal matters and non-muslims were also subject to Islamic law in the field of criminal law.

After pointing out to this fact, how can the granting of the authority of punishment to the patriarchs be explained? What is the meaning of giving such an authority to the patriarchs? If we answer these questions properly, we can easily explain the Ottoman practice.

1. Which acts or activities did the authority of punishment of the patriarchs cover?
2. Was this authority applicable to all the members of the community or is it applicable only to the religious persons?
3. Was the authority of punishment of the patriarchs a substantial power or had it a disciplinary nature to regulate the inferior relations of the community concerning the religious ceremony or worships?
4. How were the amounts of these punishments fixed? How and by whom were these punishments executed?
5. What was the source of the claims relating to the authority of the patriarchs about the arrest and imprisonment of the members of their communities?

As a matter of fact, the patriarchs did not have any substantial authority of punishment. Their powers, given to them by the state to punish, had a

disciplinary nature. For example they could not fix a certain amount for the punishment. On the other hand, their authority was subject to the approval of the state. For example, the punishment of sending into exile was given to persons who acted against the orders or instructions of their religion (Gayrimüslim Cemaat Defteri, vol.3, pp.27 (1277)). The punishment of exile were applied to clergies (M.D. vol.58, 333 (993/1585). C. ADL. 4800 (1193). C. ADL. 2687 (1188). Ahmet Refik, *Onbirinci Asr-ı Hicride İstanbul Hayatı* (İstanbul: Enderun Kitabevi, 1998), 29. Ahmet Refik, *Onikinci Asr-ı Hicride İstanbul Hayatı*, (İstanbul: Enderun Kitabevi, 1998), 44). The exiled persons were forgiven either by the state itself or by the application of muslim people (C. ADL. 241 (1194). H.H. 16372 (1234)). Some non-muslim clergies were punished by application of state officials (C. ADL. 2218 (1144). H.H. 36284 (1235)).

**h. 'Ayinleri üzere tedip etme / to punish in accordance with their rites'**

The statement '*patrikleri ayinleri üzere tedip ettikde / when the patriarchs punished in accordance with their rites*' which took place in most documents causes some confusion among scholars. Therefore, the meaning of this statement is important in determining the content of the authorities of the patriarchs. It is openly stated, in an order (berat) of patriarchate, that the statement of '*punishing in accordance with their rites*', covers only spiritual sanctions such as *excommunication, not to accept the wrong-doers to the churches, and not to bury the persons who died* (Külliyat-ı Kavanin, vol.2, 2959 (1176)). This statement does not imply to a substantial authority of punishment in nature. The patriarchs' right of chastening was limited only to scolding and reprimanding (H.H. 36328 (1240)). Especially people who got married against their religious rules were not accepted to the churches. On the other hand the hair of the bishops and priests who did not pay their *state taxes / miri rüsum* were cut as a punishment (C. ADL. 2137 (1135), 2141 (1138), 2140 (1139), 3070 (1154), 77 (1134)). The sanctions applied by the patriarchs in accordance with that term were only spiritual and did not go beyond disciplinary nature (C. ADL. 4771).

In conclusion the non-muslims were integrated with the Ottoman administrative structure by Iltizam System easily. The terms in the official documents must be construed from legal point of view. And if there was a peace in the past in the Ottoman Empire the Islamic law played a very important role in that peace.