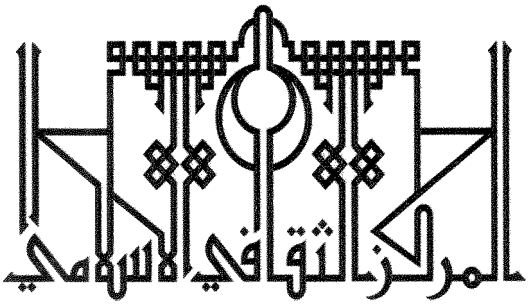
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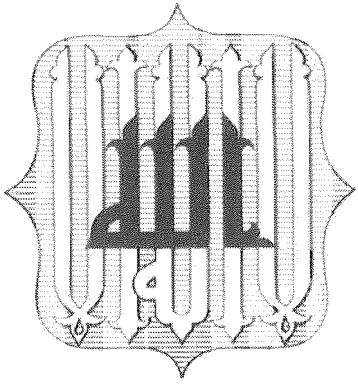
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The Editor wishes to emphasise that views expressed in this journal are those of the contributors and do not necessarily reflect the position of the Editor.

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Marriages Of Non-Muslims In A Muslim Community
A Case Study of 18th Century Bursa in the Ottoman State According to the Sharī'ah Records

Ali İhsan Karataş (PhD)*
Osman Çetin (PhD, Professor)**

Abstract

Non-Muslims had many opportunities to be able to resolve their problems, such as marriage, divorce, maintenance and inheritance according to the rules of their religions. They also had a right to apply to Ottoman courts, which they did. In the Sharī'ah records there are many examples of these cases. This article considers non-Muslim marriages and their problems and how the Sharī'ah courts and churches solved them in Bursa in the 18th century. It particularly focuses on why these *dhimmis* preferred to go to the Sharī'ah courts when they could have gone to the their own religious leaders to solve their problems and the approach of the courts and church to this matter.

Keywords: Ottoman; Bursa; Non-Muslims; Marriage; Sharī'ah Records

Introduction

Bursa was the first capital city of the Ottoman State. Before the Ottoman conquest of the city, the main population mainly consisted of Grecks, but, following the Ottoman conquest, the size of the Muslim population increased very rapidly and became the majority. In addition to the Greek minority in the city, there were Armenians and Jews.

In the city, the Sharī'ah courts dealt with the people's legal matters. A judge called *qāḍī*,[1] was the head of this court. Muslims and non-Muslims

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had the right to go to this court in case of any dispute, even though non-Muslims were entitled to solve their legal problems regarding marriage, divorce and heritage in accordance with their own religious rules. Therefore, matters regarding the personal statutes of the *dhimmis*[2] were usually dealt with by their own religious clergy. Nevertheless, the records of the Sharīʿah courts demonstrate that thousands of non-Muslims still preferred the Sharīʿah courts to solve their legal problems, including marriage, divorce and heritage.

This article will examine the marriage matters of non-Muslims, especially the Christians, who lived in Bursa in the 18th Century. The article will particularly focus on the question of why these *dhimmis* preferred to go to the Sharīʿah courts, whilst they could go to the their own religious clergy to solve their problems and the approach of the courts and church to this matter. In this research, Bursa Sharīʿah Court records are used as the main source[3]

Marriage

a- Engagement

Before marriage, it would be useful to look at the pre-marital period and betrothal matters. The process of betrothal is a custom in many communities as a preparation to marriage. Like Ottomans, many non-Muslims were used to getting betrothed before marriage. Therefore, many cases of non-Muslims betrothals are found in the Sharīʿah records.

In Islamic law, betrothed couples, unilaterally or by mutual agreement, have a right to change their minds before marriage.[4] This means, neither of the betrotheds can force the other into marriage if he or she changes his or her mind. Therefore, the engagement process does not always result in a marriage. In 1236/1821, when a *dhimmi* called *Ohanes veled-i Serkiz* from Ankara was engaged to *Takuhi bint-i Serkız* from Bursa, her brother influenced her decision not to marry him. Then Ohanes applied to the court to get a marriage decision, but the *qāḍī* of the court rejected his application, stating that she is free to change her mind.[5]

During the betrothal ceremony, it was custom that the man gave some money and/or gifts to the woman, which is called *çeyiz (cihaz).*[6] If the betrothal was broken for any reason, these gifts or the money were returned. However, consumable gifts like food were not subject to return.[7]

Sometimes there were conflicts amongst the dhimmis about what to return. According to a document dated 1257/1841, *Hıristo Veled-i Manol* filed a lawsuit against *Agabet bint-i Nikola* (father of the fiancée) in order to have betrothal presents and the money returned or compensated. The court decided that Agabet did not have to compensate for the food given as a present, nor for some articles used, but ordered the money to be returned because Agabet himself admitted that the money was given to him by Hıristo as a betrothal present. [8]

Some non-Muslims used to register the breach of their betrothals with the court when they broke the betrothal. Moreover, they also used to get a court record of the situation that they mutually ended the betrothal and the gifts were exchanged with no problem remaining behind to be solved between them. This was done to avoid any potential future disagreements or claims that might occur later.[9] In 1140/1727, a Christian woman, *Sima bint-i Karabet* from the district of *Hacıiskender Mahallesi*, in court session in the presence of her former fiancée, who was *Anton veled-i Hürmüz*, asked the court to record that they broke the betrothal by mutual agreement and all gifts were returned accordingly.[10] In a similar situation, *Bali veled-i Manol* admitted to the court that all the betrothal presents that were given to his former fiancée were returned to him after they broke the betrothal.[11]

According to the Bursa Sharī'ah records, breaking the betrothal was not commonly practised amongst the Muslim population.[12] This statement also applied to the non-Muslims who lived in Bursa. It is seen that the examples given above belong to a different period. There is no evidence in the records that people, Muslim or not, used to break their betrothals very often.

b- Marriage between non-Muslims

Dhimmis who lived in the Ottoman State were free to implement their own religious laws on family matters. For this reason, their religious authorities exercised power to decide in legal matters and problems concerning marriage, divorce, heritage and the like.[13] The religious authorities were used to ruling freely in accordance with their religious rules without any pressure or intervention from the Ottoman authorities.[14] The marriage procedures and ceremonies took place consistent with their own customs and religious rules, with the involvement of their own religious men.[15]

The court records in regard to the divorce of non-Muslims contain the

following statement: "We got married in accordance with our religious procedures". This meant that the man or woman married someone who was also a non-Muslim and the marriage ceremony was conducted in their religious place, like a church or synagogue, under the supervision of their own clergy.[16]

However, the *dhimmis* were equally free to apply to the Sharīʿah courts to register their marriages. In this case, the rules of Islamic law were applied to the marriage.

Islamic law requires that a man who wants to marry shall give the bride some money or other asset. This money or capital is called *mehir* (dowry). However the *mehir* requirement of Islamic law did not exist in the Christian or Jewish religions. Therefore, in non-Muslim marriage ceremonies taking place in the Sharīʿah courts, *mehir* was not compulsory and this was stated in the records as "…according to our religious rules, we got married without the mehir".[17] Contrary to the *mehir* requirement of Islamic law, in the Christian and the Jewish religions, the woman who wanted to get married had to give something to the man and this was called "*drahoma*".[18] The *drahoma* was not returned if the couples got divorced. Occasionally, the families of young girls had difficulties in obtaining the *drahoma* because of very high amounts required by men. Sometimes, they even left nothing for the second daughter after the marriage of their first daughter.[19] Nevertheless, the man who wanted to get married also was asked to give some articles, called *ceyiz*, (bride's trousseau) to the woman before marriage.[20] The *ceyiz* was to be returned if the marriage did not take place. Because of high *drahoma* and *ceyiz* amounts, the church sometimes tried to limit them. For instance, in 1701, Patrick Kallinikos II determined the *çeyiz* types as bracelets, earrings or rings only[21] and in 1767, Patrick Samuel I demolished the *drahoma* practice and decreased the amount of the *çeyiz*.[22]

In the Ottoman State, a qadhi had power to marry couples, however imams could also exercise that right, but only with the permission of a *qāḍī*. In order to get married in front of an imam, written permission from the qadhi was needed and the *qāḍī*'s permission had to show the name of the imam who was authorised to perform the marriage act.[23] The marriages were recorded in a book maintained by qaddis and imams.[24] The non-Muslim marriages performed before *qāḍīs* and imams were also recorded in the same books. Nonetheless, the marriages performed in front of *dhimmi* clergymen were recorded in the record books maintained by these

communities. In the event of disagreements regarding the marriage acts, the courts used to see the records of the marriage to solve the problem. The marriages that were not recorded in these books were not recognised as valid. An unrecorded marriage was regarded invalid by a court in Konya in 970/1562.[25] However, it is difficult to claim that all marriages taking place in that period were recorded properly by the authorities, since there were still many examples of unrecorded marriages.[26]

The *dhimmi* marriages took place in *Qāḍī* courts, performed in accordance with the requirements of the Islamic Law, such as the presence of two witnesses. An example can be seen in the following records belonging to the year of 1172/1758: In a court session, in the presence of Muslim witnesses, the virgin girl named *Zahirye bint-i Esbandoli* who is from Timurtaş, Bursa, stated: "I am an adult and old enough to make a marriage decision. The man named Yanaki would like to marry me, so I am accepting his proposal provided that he pays me 1000 *akçe* in front of the witnesses who are present here". This marriage was recorded in the book on their demand.[27]

The above record demonstrates that *dhimmi* women were free to go to the court to have their marriage recorded in the court records. This was usually done by adult women who were old enough legally to make a marriage decision by themselves. Their statements were recorded in the books, as "I am an adult who is able to decide to make a marriage decision".[28]

The records regarding the *dhimmi* marriages took place before a *qāḍī,* indicating clearly that they were done in accordance with the rules of Islamic law. For instance, in 1791, a Christian woman, Dadefeliye, declared in the court that she got married with Yorgi according to the rules of Muhammad's religion.[29]

Nevertheless, non-Muslim weddings performed in Sharīʿah courts were not tolerated by the church. For this reason, the church courts tried to stop the Christians going to the Sharīʿah courts for wedding ceremonies.[30] The church thought that this situation was weakening its authority and causing the loss of revenue because the church was taking money from people who were getting married there. The amount of money differed depending on whether it was the person's first, second or third marriage.[31] For example, a record of 1633 indicated that the church got 80 *akçe* if it was one's first marriage, 160 *akçe* if it was the second one and 240 *akçe* if it was one's third marriage.[32]

The Ottoman State also used to charge an administration fee from the people who wanted to get married. This fee was called "*resm-i arus* or *resm-i gerdek*".[33] The amount of this fee would vary in accordance with one's religion, but usually non-Muslims would pay half of what the Muslims paid.[34] However, in some periods, non-Muslims were charged higher amounts.[35]

One of the problems detected from the Sharī'ah court records regarding *dhimmi* marriages in the Ottoman State is that some wedding ceremonies were performed by unauthorised people without following their religious rules. Many court cases were related to this problem.

It is also understood from the authorisation warrants of some religious men (berat) that there were some unlawful marriages such as polygamy, which was prohibited in Christianity. Moreover, an Orthodox Christian was only allowed to get married and divorced a maximum of three times[36] but some people exceeded this limit by getting married discreetly more than three times.[37]

Some *dhimmi*s clergymen married couples for money without the church's authorisation or they validated some illegal marriages, or vice versa. For instance, in 1172/1758 a *dhimmi*, named *Karabet*, went to court to get back his 120 *kurus* that Armenian Deputy Karabashı Karabet took from him in order to authorise his marriage to a girl but the *Deputy Karabashı* claimed that it was actually unlawful him to marry her.[38]

From time to time, the imams also married the *dhimmi* couples, but, this was disliked by the *dhimmi* clergymen, just as they disliked *dhimmi* marriages that occurred in Sharī'ah courts. However, they could not do much to prevent these practices, except taking the matter to the *Divan-ı Hümayun* to seek a ban for imams to marry *dhimmi* couples. In 1206/1791, as a result of a complaint by an Armenian Patrick, the ruling Sultan issued a ferman that prohibited imams from marring *dhimmi* couples without permission from the qaḍī courts.[39]

One of the problems regarding *dhimmi* marriages reflected in Sharī'ah records was that some *dhimmi* men wanted to carry on living with their ex-wives after the divorce. *Serkız veled-i Karabet* who lived in the Bedrettin district went to the qaḍī court claiming that his wife *Marta bint-i Karabet* refused to act as a wife despite a marriage contract between them.

However, Marta defended herself in the court arguing that they were actually divorced. The court denied the man's claim after hearing from two Christian witnesses of the same district that Marta was telling the truth.[40]

c- Marriage between Muslims and non-Muslims

Under Islamic law, Muslim men are allowed to marry non-Muslim women, but Muslim women are not allowed to marry non-Muslim men.[41] This rule is the result of the Islamic concept of *kefaet* (equivalency). According to Islamic Law, *kefaet* means that a woman should marry a man who is considered her equal.[42] In other words, Muslim women can only marry Muslim men because only a Muslim man is equal to a Muslim woman.[43] If a Muslim woman got married to a non-Muslim, the court outlawed the marriage.[44]

This ban is not valid for Muslim men. They can marry non-Muslim women provided that they are Christian or Jewish. Therefore, Muslim men are not allowed to marry Buddhist women or idolaters. Islamic law allows Christian or Jewish women who marry Muslim men to worship in accordance with their religious rules and the Muslim husbands cannot force them to convert or ban their religious activities.[45]

The marriage ban between people from different religions existed in Christianity and this was valid for both men and women.[46] Church law allowed Christians to marry only Christians.[47] If a Christian woman married a Muslim man, she was excommunicated.[48] According to the Cyprus Sharī'ah records of the year of 1040/1630, revealed by Jennings, a Christian women married a Muslim was not allowed to a church ceremony because she was married to a Muslim man, even though she was still a Christian and did not convert to Islam. She asked the court to give her a confirmation document declaring the fact that she was still a Christian, not a convert.[49]

Similarly, Roman Empire laws prohibited marriages between Christians and a Jews.[50] However, the Catholic Church permitted inter-religions marriages on some conditions such as baptising the children[51]

> The Jewish religion was also not tolerant of inter-religions marriages.[52] In this religion, marriage with followers of other religions was regarded as spoiling the race, language, religious

principles and customs.[53] Nevertheless, some reformist rabbis authorised inter-religions marriages on the condition that the children be brought up as Jewish.[54]

In the Ottoman State, there were marriages between Muslim men and dhimmi women, but marriages between dhimmi men and Muslim women did not exist. Marriages between Muslim men and Christian women were especially common in the early years of conquest.[55] Some converts also continued their marriages with Christian wives.[56] Jennings' study of Cyprus Sharī'ah records revealed that in Cyprus there were a considerable number of marriages between Muslim men and Christian women.[57]

Sharī'ah records show that many *dhimmis* women converted to Islam and married Muslim men. It is presumed that most of these women converted to Islam before marriage. In some records, it is clearly shown whether they were converted before or after the marriage. It is understood from a record that, in 1213/1798, in the village of Susığırlık in Bursa, a 16 year-old Greek girl converted to Islam 5 days before marrying a Muslim man named *Mustafa b. es-Seyyid* from the same village.[58]

One of the problems that might arise from a marriage between a Muslim and a non-Muslim is the children's upbringing. In Islamic law, the children should be brought up by their parents as Muslims, since Islam is the dominant religion[59]. However, the dominant religion might be different if a pagan and a Christian or a Jew are married. In this case, the dominant religion would be Christianity or Judaism.[60], for they are the People of the Book (a term used in the Qur'an to refer to Jews and Christians).

In a marriage between a Muslim man and a non-Muslim woman, the women could look after the child until he or she becomes old enough to understand what is right or wrong. Then, the mother's rights on the child might be limited to prevent her from influencing the child in favour of her religion. The child might even be taken away from the mother.[61]

Sharī'ah records also show that, in case of divorce, the children were given to the Muslim father or mother. The obvious reason for this practice was to ensure that the children were brought up in accordance with Islam. In 1032/1623, the wife of *Istirati*, who was a *dhimmi*, converted to Islam but Istiradi did not want to change his religion. For this reason the couple were divorced and their children were given to the Muslim mother by the court.[62] In a similar case, in 1200/1786, the court chose the Muslim mother as the guardian of the children.[63]

d- Marriage between the Ottoman dhimmis and non-Ottoman dhimmis.

Ottoman citizen non-Muslim women were not allowed to marry foreigners.[64] The Ottoman State tried to regulate the relationships of the Ottoman dhimmis and Europeans, who were called the *Efrenç* Community, by way of fermans. In these fermans, there were special sections regulating family law and special rules regarding marriages. The prohibition of marriage with non-citizens was applicable for Muslims as well. For instance, an Ottoman Muslim woman could not marry an Iranian Muslim man. A ferman issued in 1874 renewed this ban.[65] The root of this ban was political, not religious.[66]

The non-Muslim leaders were also against marriages between members of their communities and foreigners, so they supported the Ottoman ban. They even punished their people who married foreigners by such methods as not allowing them in the church, not giving funeral service,[67] exile[68] and penal labour.[69] For instance, the Greek Patriarch Bedros applied to the *Divan-ı Hümayun* complaining about a dhimmi *Nikol*a who married her daughter to an Englishman. As a result of this complaint, *Nikola* was exiled from Istanbul to Bursa.[70]

Similarly, in 1238/1822, the Armenian Patriarch Bogos, applied to the *Divan-ı Hümayun* to prevent Nikofos getting married to a girl from Europe – *Efrenç Taifesi* -since this might cause problems in the community. Bogos' application was accepted with a ferman.[71]

e- Polygamy

Islamic Law permits polygamy, but this was not a widespread practice within Ottoman society.[72] Studies of Sharī'ah records reveal that the number of polygamous marriages was low amongst the Muslims who lived in Bursa. For instance, in the 16th Century only 24 men amongst 939 (2.5%) were polygamists.[73] Another study conducted in the same period reveals that only 20 men amongst more than 2000 were polygamists (only 1%).[74] In the 17th Century, 51 men amongst 1092 (4.6%)[75] and in the 19th Century, 8 men amongst 361 (2.2%)[76] were polygamists. Examination of four *tereke* books that were randomly chosen revealed that only 20 out of 337 Muslim men (5.9%) were married to two women at the same time.

The investigation of the *tereke* records from 18th century Bursa suggests that no polygamy case amongst the dhimmi population was recorded. However, the records may not reflect the absolute picture. The complaint of the Armenian Patrick Zakariya to *Divan* actually suggests that there were some polygamist dhimmis who tried to hide their second marriages from the religious authorities.[77]

Conclusion

In the Ottoman State, the non-Muslims had privileges to resolve their family law matters such as marriage, divorce and inheritance in accordance with their religious rules. However, they were also free to go to the Sharīʿah courts to resolve their disputes regarding family law matters in accordance with Islamic principles, even though this was not approved by their community leaders and authorities. Despite this opposition, the proportion of dhimmi cases in Bursa Sharīʿah Court records was quite high. The main reason for dhimmi preferences of the Sharīʿah courts was probably to resolve matters in favour of their own interests, rather than cultural interaction. For instance, *dhimmis* who got married in a Sharīʿah court used to pay less marriage duty compared to marriages in churches. On the other hand, dhimmi women also wanted to benefit from the mehir (dowry) practices of Muslim custom by marrying in accordance with Islamic law. Moreover, sometimes, it took a long time to get marriage permission from the *Metropolitiks,* because they were not found in every region.[78]

One of the reasons the dhimmis preferred the Sharīʿah courts was that the Orthodox citizens had difficulty getting permission from the church for a second or third marriage. Furthermore, the church's marriage ban with some relatives forced to dhimmis to get married in accordance with Islamic law.

In summary, the rights and advantages of Islamic family law encouraged dhimmis to make best use of the privileges of the Sharīʿah courts. Even though protection of personal rights and obtaining some financial benefit were dominant elements in preferring the Sharīʿah courts, the impact of cultural interface should also be taken into account.

Appendix I

Because of some problems about non-Muslim marriage, Armenian patriarch *Zakarya* submitted a petition to *Ottoman Sultan Selim III* in 1792. After appreciating this petition, the Sultan sent an order (firman) to qāḍīs in several cities. The original text, the transliteration of the order and its summary in English are below:(B.Ş.S., B80/102a)



Transliteration:

Akdâ kudâti'l-müslimîne evlâ vulâti'l-muvahhidîne ma'denü'l-fazli ve'l-yakîn râfi'u i'lâmi'ş-şerîfe ve'd-dîn vârisu 'ulûmi'l-enbiyâ-i ve'l-mürselîn el-muhtassu bi-mezîd-i 'inâyet'l-meliki'l-mu'în İslâmbol ve Üsküdâr ve Galata ve hâslar kâdıları zîdet fezâiluhum ve mefâhiru'-kudât ve'l-hükkâm me'âdinü'l-fezâil ve'l-kelâm ve ... ve kadıları ve nâibleri zîdet fezâiluhum tevkî'u rafî'i hümâyun vâsıl olıcak ma'lûm olaki İstanbul ve tevâbi'i Ermeniyan Patriği Zakarya nâm râhib rikâb-ı humâyunuma mühürlü arz-ıhâl edüb patrikliğine dâhil İstanbul ve Galata ve Üsküdar ve haslar ve sâir kazâ ve nevâhide sâkin ve mütemekkin ehl-i zimmet Ermeniyan re'âyâlarının âyinleri üzere nikâhlarına patrîk-i mesfûr veyâhut tarafından ta'yîn eylediği vekillerinden gayri kimesne karışmamak üzere berât-ı 'âlişânım şurûtu mûcibince mukaddemâ Hudâvendigâr-ı sâbık zamanında tecdîden emr-i şerîf verilmişken bu def'a devlet-i ikbâl ve sa'âdet-i iclâl birle vâki' olan cülûs-ı humâyun-ı meymenet-makrûnum içün tecdîdi muktezî olduğunu bildirub mukaddemâ verilen emr-i 'âlişân kaydı mûcibince tecdîd olunmasını istid'âyı 'inâyet eylediği ecilden hazîne-i âmiremde mahfûz piskopos mukâta'ası defterlerine nazar olundukda İslâmbol ve tevâbi'i Ermeniyân patrikliğine dâhil zikrolunân kazâ ve nevâhide sâkin ve mütemekkin ehl-i zimmet Ermeniyân re'âyâsının âyinleri üzere nikâhlarına patrik-i mesfûr veyâhut tarafından ta'yin eylediği vekillerinden gayri kimesne karışmamak üzere berât-ı 'âlişân şurûtu mûcibince mukaddemâ verilen emr-i 'âlişân tecdîd olunmadığından âharden ba'zı kimesneler müdâhaleden hâli olmamalarıyla kaydı mûcibince müceddeden emr-i şerîfim verilmek bâbında istid'âyı 'inâyet eyledikde patrikliğine dâhil mahallelerde sâkin Ermeniyân re'âyâsının teehhül ve tezevvüc murâd edenlerin âyinleri üzere nikâhları husûsunda aralarına kimesne girmeye ve karışmaya ve âyinlerine mugâyir nikâh câiz olmayan kefereye nikâh eylemeyeler deyu yedine verilen berât-ı âlişân şurûtunda musarrah ve mukaddemâ bu husus içün emr-i âlişân verilmişken bu esnâda o makûle âyinlerine rağbet etmeyüb tarîk-i âyin müfsidlerden zikrolunân mahallerde ve gerek sâir taraflarda dahi mahalle imamlarını iğfâl ve itmâ' ile henüz teehhül ve tezevvüc eden er ve avratların zevce ve zevce-i âharleri olduğu ma'lumları değil iken kendü takrîrleri üzere nikâh eylediklerinde milletleri derûnunda nice dürlü ihtilâl-ı nizâm-ı hallerini mûcib ve nicelerine dahi sirâyet ederek ekseri âyin-i kadîmelerini terk ve fesâdları yevmen-fe-yevmen müzâyid ve zabt u rabtları bir vecihle mümkün olmadığından mukaddemâ sâdır olân fermân-ı âlişanım mûcibince o makûle âyinlerine mugâyir nikâh câiz olmayan Ermeniyân re'âyâsının ricâl ve nisvânlarına Ermeniyân reâyâsı bulunan mahallelerin

imamlarına hilâf-ı şurût-i berât-ı 'âlişân ve mugâyir-i emr-i hümâyûn müdâhale ve nikâh eylememeleri içün ma'rifet-i şer'le tenbîh olunmak içün emr-i şerîf verilmesi istid'â olundukda bir dhimmiye avrat erinden kaçsa veya bir dhimmi avrat boşamalu veyahud almalu olsa aralarına râhib-i mesfûr veyâhud vekillerinden ğayri kimesne girmeye ve karışmaya deyu hatt-ı humâyun-ı şevket-makrûnla masnûn yedine verilen berât-ı şurûtunda musarrah olduğu ve Ermeni tâifesine nikâh vâki' oldukda âyin-i bâtılaları üzere nikâh câiz olmayan kefereye nikâh eylememek üzere verilen berât-ı şerif-i âlişânda tasrîh olunmuşken müselmânân mahallesi imamlarının kefere nikâhında 'alâkası yok iken nikâh câiz olmayan kefereye nikâh edüb âyinlerine halel vermeleriyle mahallât imâmlarına taraf-ı şer'den tenbih olunmak âyinlerine muhâlif nikâh câiz olmayan kefereye nikâh ettirilmemek içün bin yüz yetmiş iki senesinde verilen emr-i şerîfin tecdîdini hâlâ İstanbul Ermeniyân Patriği Zakarya nâm râhibin istid'âsıyla bin yüz doksan bir senesi Receb-i şerifinin dokuzuncu tecdîden emr-i şerif verildiği der-kenâr olunmakla imdi der-kenâr ve şurutu mûcibince 'amel olunmak bâbında fermân-ı âlişânım sâdır olmuştur. Buyurdumki hükm-i şerîfim vardıkda bu bâbda sâdır olan emrim üzere 'amel edüb dahi mesfûrun patrikliğine dâhil mahallelerde sâkin Ermeniyân tâifesinin teehhül ve tezevvüc murâd edenlerin âyinleri üzere nikâhları husûsunda girmeyüb ve karışmayub ve âyinlerine mugâyir nikâh câiz olmayan kefereye nikâh olunmamak hatt-ı humâyûn-ı şevket-makrûnumla masnûn yedlerine verilen berât-ı âlişânım şurûtunda olub ber-mûcibi şurût tevârih-i muhtalife ile evâmir-i şerîfim verildiği hazîne-i âmirem defterlerinde mukayyed olmakla hılâf-ı şurût-i berât-ı âlişân ve mukaddem ve hâlâ şeref-yafte-i sudûr eden evâmir-i âlişânıma mugâyir mahalle imamlarının ol vecihle vâki' olân vaz' u hareketlerine rızâ ve cevâz göstermeyesiz şöyle bilesiz 'alâmet-i şerîfe i'timâd kılasız. 3 Cemâziyelâhir 1206.

Translation (Summary of the order):

Qadhis and other rulers of İstanbul, Üsküdar, Galata and other cities must know that, submitting a petition to my *Divân-ı Hümâyûn,* Armenian patriarch Zakarya expressed that their religious communities faced some marriage problems and wanted to solve them. "Beforehand (before) Ottoman Sultan Murad I granted a patent on Armenian patriarchs or their representatives for making marriage contracts of Armenians who live (living) in cities, towns and villages including the administration of my patriarchy and outsiders do not have any right of intervention. As a result of this patent not being renewed, some problems of non-Muslims' marriage

contracts have begun to come out. Among the problems those are mentioned: In spite of the others not having the right of marriage contract of non-Muslims, except the patriarch and his representatives, some outsiders make it. Therefore, some marriage contracts, which are illicit according to Christianity, have been made. Although it is contrary to our religious rules, some married dhimmis who want to have a second or third marriage persuade some imams to make their marriage contracts. Because of not having dhimmis' marriage records, the imams do not know whether they are married, and make their marriage contracts. From day to day this situation affects other non-Muslims. As a consequence many non-Muslims neglect their religion and uneasiness increases amongst them. In addition, keeping them under control is getting harder.

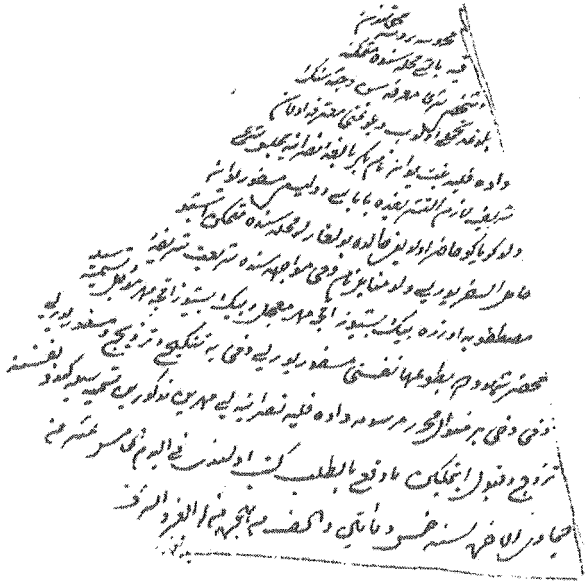
After examining the archives, it was seen in the patent of Sultan Murad I that marriage contracts of Armenians living in the cities and towns had to be made by Armenian patriarchs or their representatives. According to this patent it was understood that Zakarya was right in his demand and complaint, and decided that the patent needed to be renewed as well.

Qadhis of the above-mentioned cities, towns and villages must know that in accordance with my patent, after this, attention must be paid to following points: Nobody can interfere in marriage and divorce of non-Muslims except Armenian patriarchs or their representatives. It is not permitted for the married dhimmis to get married again illicitly. The imams must be more careful with this case and not make their marriage contracts.

Date 28 January 1792.

Appendix II

A marriage contract of a non-Muslim couple who got married in the Sharī'ah court according to Islamic law: (B.Ş.S., B247/5a)



Transliteration:

Mahrûse-i Bursa mahallâtından Kayabaşı Mahallesi'nde mütemekkine şahsı şer'an mu'arrefe sinn-i vechesinin bülûğa tahmîli olub ve bulûgunu mutasarrife olan Dadefeliye bint-i Yuvan nâm bikr-i bâliğa-i nasrâniyye meclis-i şer'-i şerîf-i lâzimü't-teşrîfde babası ve velisi mesfûr Yuvan veled-i Kiryako hâzır olduğu hâlde Bulgarlar Mahallesi'nde mütemekkin işbu hâmilu's-sifr Yori veled-i Manayil nâm dhimmi muvâcehesinde şerî'at-ı şerîfe-i Mustafaviyye üzere bin yüz akçe mehr-i mu'accel ve bin beş yüz akçe mehr-i müeccel tesmiyesiyle mahzar-ı şuhûdda bi-tav'ihâ nefsini mesfûr Yori dhimmiye tenkîh ve tezvîc ve mesfûr Yori dhimmi dahi ber-minvâl-i muharrer mersûme Dadefeliye nasraniyyeyi mihreyn-i mezkûreyn tesmiyesiyle kendi nefsine tezvîc ve kabul itmegin mâ vaka'a bi't-taleb ketb olundu. Fi'l-yevmi'l-hâmisi 'aşere min Cumâde'l-âhira li-sene hamsin ve mieteyn ve elf min hicretin men lehü'l-'izzu ve'ş-şerafu.

Translation:

In the Sharī'ah court, a Christian girl, Dadefeliye, a daughter of Yuvan, who reached to the deciding age of marriage and lived in Kayabaşı neighbourhood of Bursa, stated in the presence of her father: "According to the rules of Islamic Law I accept to get married with Yori, a son of Manayıl, living in Bulgarlar neighbourhood, in return for 1100 *akçe* (coin) of the *mehr-i müeccel* (delayed portion of the wife's dowry paid by the husband in case of divorce or widowhood) and 1500 akçe of the *mehr-i mu'accel* (the portion of wife's dowry paid by the husband in cash) in the presence of the witnesses." After Yori's statement of accepting the marriage with Dadefeliye, the marriage contract was registered.

Date 19 February 1791

Notes and References:

1 *Qadı* is the name given for a judge in the Ottoman State.

2 In Islamic Law, non-Muslims who accepted to live as citizens of a Muslim State with acceptance of some conditions are called "dhimmi".

3 Sharia Records consist of circulars of central Government, records of trade, promotion records, every type of court decisions and other related files. Because of their originality, they are very valuable in research.

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6 This practice is not related to Islamic Law. See İlber Ortaylı, *Osmanlı Toplumunda Aile,* Pan Yayıncılık, İstanbul 2001, p. 62.

7 Merginani, Ali b. Ebi Bekir, *el-Hidaye Şerhu Bidayeti'l-Mübtedi*, Mısır ts., III, 227; Bilmen, op.cit, III, 227.

8 B.Ş.S., B349/126a.

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10 B.Ş.S., B158/16a

11 Maydaer, Saadet, *Şcr'iyye Sicillerine Göre Bursa'da Kadın(1575-1600)*, U.Ü.S.B.E. (Unpublished Master Dissertation) Bursa 2000, p.6.

12 Kurt. Abdurrahman, *Bursa Sicillerine Göre Osmanlı Ailesi (1839-1876)*, U.Ü. Basımevi, Bursa 1998, p. 24; Maydaer, op.cit., p.5.

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15 Frenchman Jean Thereunto who visited Istanbul, Bursa and İzmir between 1655 and 1656 gave comprehensive information about the marriage ceremonies of Greeks in his book. See. Thevenot, Jean, *1655-1656'da Türkiye*, (Trans: Nuray Yıldız) Tercüman 1001 Temel Eser, İstanbul 1978, p. 196; Thevenot also is married with a Greek girl. See. Gülgün Üçel Aybet, *Avrupalı Seyyahların Gözünden Osmanlı Dünyası ve İnsanları (1530-1699)*, İletişim Yayınları, İstanbul 2003, p. 195

16 Ercan, Yavuz, *Osmanlı Yönetiminde Gayrimüslimler*, Turhan Kitabevi, Ankara 2001, p. 204.

17 B.Ş.S., C19/68b.

[18] Pantazopoulos, N. J., *Church and Law in the Balkan Peninsula During the Ottoman Rule*, Institute for Balkan Studies, Thessaloniki 1967, p. 57; Alalu, S.-Arediti, K-Asayas and others, *Yahudilikte Kavram ve Değerler*, Gözlem Gazetecilik Basın ve Yayın A.Ş., İstanbul 1996, p. 117.

[19] Pantazopoulos, op.cit., p. 58.

[20] Ibid, p. 57.

[21] Abacı, Nurcan, *Bursa Şehri'nde Osmanlı Hukuku'nun Uygulanması (17. Yüzyıl)*, Kültür Bakanlığı Yayınları, Ankara 2001, p.144.

[22] Pantazopoulos, op.cit., s. 60.

[23] Aydın, M.Akif, "Osmanlılarda Aile Hukukunun Tarihi Tekamülü" *Sosyo-Kültürel Değişme Sürecinde Türk Ailesi*, B.A.A.K. Yayınları, Ankara 1992, II, 162; Kurt, op.cit., p.24; Savaş, Saim, "Fetva ve Şer'iyye Sicillerine Göre Ailenin Teşekkülü ve Dağılması" *Sosyo-Kültürel Değişme Sürecinde Türk Ailesi*, B.A.A.K. Yayınları, Ankara 1992, II, 510.

[24] In order to prevent possible disagreements and conflicts that might arise after the marriage, a sultan's order dated 1543 made it compulsory to record all marriages in an official book. See Kepecioglu, Kamil, *Bursa Kütüğü*, III, 453.

[25] Ortaylı, op.cit., p. 69.

[26] Ibid, p. 69.

[27] B.Ş.S., B193/6a

[28] B.Ş.S., B193/6a

[29] B.Ş.S., B247/5a.

[30] Gradeva, Rossitsa, "Orthodox Christians in the Kadı Courts: The Practice of the Sofia Sheriat Court, Seventeenth Century", *Islamic Law and Society*, E.J. Brill, Leiden 1997, vol. 4, no. 1, p. 57.

[31] Ercan, op.cit., p. 206.

[32] Gradeva, op.cit., p. 58.

[33] Pakalın, M. Zeki, *Osmanlı Tarih Deyimleri ve Terimleri Sözlüğü*, M.E.B.Yayınları, İstanbul 1993, III, 29; Sertoğlu Mithat, *Osmanlı Tarih Lügatı*, Enderun Kitabevi, İstanbul 1986, p. 19.

[34] İnalcık, Halil, *Osmanlı'da Devlet Hukuk Adalet*, Eren yayınları, İstanbul 2000, s. 118; Ercan, op.cit., p.270.

[35] Ibid, p. 270.

[36] According to the Orthodox Faith, marriage and divorce should not be more than three times in one's life. For more information please see *Canon of Turullo* http://www.ccel.org/fathers/NPNF2-14/7appndx/basil.htm; *Encyclopedia Britannica*, "Marriage, Law Of", XIV,932; Günay Tümer, "Günümüzde Doğu Hıristiyanlığı", *Asrımızda Hıristiyan-Müslüman Münasebetleri*, İlmi Neşriyat, İstanbul 1993, p. 133.

[37] B.Ş.S., B79/95a.

[38] B.Ş.S., B193/5a.

[39] B.Ş.S., B80/102a

40 B.Ş.S., B175/110a.

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54 Örs, op.cit., p. 376.

55 B.Ş.S., C32/50.

56 Kurt, op.cit., p.16.

57 Jennings, op.cit., p. 29.

58 B.Ş.S., B260/38a.

59 Zuhayli, op.cit., VIII,192.

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61 Ibid, II,38; Ali Efendi, *Şeyhulislâm Fetvaları*, (Trans: İbrahim Uysal) Fey Vakfı, Hilal Matbaası; İstanbul 1995, p. 89.

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63 B.Ş.S., B228/27b.

64 Ortaylı, İlber, "Osmanlı Aile Hukukunda Gelenek, Şeriat ve Örf', *Sosyo-Kültürel Değişme Sürecinde Türk Ailesi*, B.A.A.K. Yayınları, Ankara 1992, II, 466.

65 See: Düstur, Birinci Tertib, IV, 614.

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67 "Since it is banned for illicitly married non-Muslims to enter churches, local authorities should not pressurise religious men for holding their funeral in churches." B.Ş.S., B79/65a.

68 "Henceforth, as required by the former order, Armenians are not to live with Europeans in the same house and get married to each other. Who acts on the contrary will be exiled." B.Ş.S., B358/61a.

69 "Henceforth, Ottoman non-Muslims are not to get married to Europeans. Who acts on the contrary will be exiled or be punished as a galley slave. " B.Ş.S., B358/61a.

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77 See: Appendix I.

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