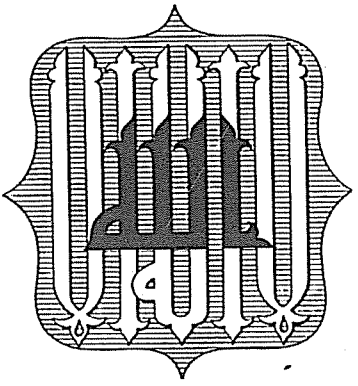
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Divorce of Non-Muslims in a Muslim Community

Ali İhsan Karataş, (Assoc. Prof. Dr.)*

Abstract

Non-Muslims living within the borders of an Islamic state and being citizens of that state were called dhimmies (*dhimmī*). Dhimmi status began in the days of the Prophet Muhammad and continued throughout Islamic history. Persisting for more than six centuries and having enormously broad borders, the Ottoman Empire was host to many dhimmies. During Ottoman times, dhimmies were entitled to settle such problems related to family law marriage, divorce, inheritance and maintenance in their own courts, which were supervised by their own religious leaders. If they wished, however, they were free to apply to Shari'ah courts headed by a *qāḍī* (judge). According to archive documents on the city of Bursa, many non-Muslims applied to Muslim courts on the matters mentioned. This article considers the matter of non-Muslim and, more particularly, Christian divorces, especially in 18th century Bursa.

Divorce

To divorce is to end a marriage by mutual agreement or the demand one party. Most religions do not endorse divorce. In general, there are three attitudes to it. First is not to allow divorce in any circumstances. Second is to allow couples to divorce freely and third is to allow divorce at the discretion of a judge.[1]

In the Ottoman Empire, Islamic law was applied to divorce. For non-Muslims, divorce matters were dealt with by their minority courts or religious authorities. A dhimmi who wanted to divorce applied to his

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* Ali İhsan Karataş, Faculty of Theology, Uludag University, Bursa, Turkey. (The author of an article entitled "*Marriages of Non-Muslims in a Muslim Community: A Case Study of the 18th Century Bursa in the Ottoman State according to the Shariah Records*", published in Islamic Quarterly [Volume 51, Issue 3.] In this article, being a continuation of the previous one, we take up the matter of *dhimmi* divorces in Muslim courts.

religious authorities or community court. Shari'ah court records indicate that some dhimmies divorced before the Metropolitan,[2] but it was alsopossible for a dhimmi to divorce in a Shari'ah court. Even though dhimmies were not allowed to be married by a district imam, they could divorce before a qadhi.[3]

Dhimmies who married in accordance with their own religious rules and procedures could divorce in accordance with the Islamic law. For example, in the year of 1208/1793, a dhimmi who lived in Bursa's Kaygan district married with certain Islamic provisions, such as mahr, and divorced in a Shari'ah court.[4]

There were also cases in which dhimmi women divorced with the help of someone who acted on their behalf in court. In a Shari'ah court case of 1138/1725, a Christian woman who lived in Yahşibey district of Bursa divorced her husband with the legal help of Nikola, who acted on her behalf. In 1167/1754, a woman from Pazar-i Mahi district divorced with the help of her father, who acted on her behalf in court.[5]

18th Century Bursa archives record 35 divorce cases. 24 (68.5%) of the couples were married in accordance with canon law and 11 (31.4%) in accordance with Islamic law in a Shari'ah court but all 35 divorced in accordance with Islamic law.

The most important reason for dhimmies preferring Shari'ah courts for divorce was that divorce was very difficult in their religions.[6] Under Islamic law, couples can mutually agree to divorce before a qadhi (divorce with mutual agreement – *muhalaa = mukhāla'ah*) or the man can divorce the woman whenever he deems it necessary (*talaq = ṭalāq).* Dhimmi women used muhalaa whilst dhimmi men used the talaq, neither method of divorce being recognised in Christianity.

Divorce was not accepted by Christianity because marriage was holy and represented the unity of Jesus and the Church.[7] The Bible states that the divorced become adulterous if they re-marry.[8] Because marriage was established by the will of God, separation could be made possible only by Him.[9] Nevertheless, different divorce rules and practices became accepted by such various Christian sects as Orthodox, Roman Catholic and Protestant. Whilst the Orthodox and Protestants allow divorce in certain circumstances, Roman Catholics make it almost impossible.[10] Orthodox divorce grounds are adultery, desertion, domestic violence and

impotence.[11] Protestants add neglect of marital responsibility to these divorce grounds.[12]

In the Ottoman Empire, any dhimmi who divorced in a Shari'ah court had to have it recorded in his community court records for validation.[13] Although this practice was not approved by the dhimmi authorities, they recorded divorce verdicts in their religious community courts' official records. The same applied to Jews. When a Jewish woman divorced in a Shari'ah court, the Haham had no choice but recognise it because the Shari'ah court was a higher authority than a religious community court.[14]

Even though recording divorce verdicts of Shari'ah courts in the religious community courts' record books legalised them, some legal problems remained unresolved. For example, forcing a Haham to certify a Jewish woman's divorce verdict obtained in a Shari'ah court was of no consequence under Jewish law.[15] Jewish law gave divorce rights to the husband only, even though Jewish divorce custom required mutual consent.[16] Hahams therefore always asked for a divorce agreement in order to legitimise the divorce.[17] A similar problem existed under canon law, which also did not also recognise the muhalaa method in divorce cases. If muhalaa was used in a divorce case, the reason was usually stated as "incompatablity". This reason was not acceptable under Christian law. If a woman was beaten by her husband and could prove it with witnesses, it would be grounds for divorce but incompatability was insufficient and a Shari'ah divorce on those grounds alone would not be entered in the church records.[18] Nevertheless, the divorce grounds of incompatability were acceptable to Christian Metropolitans. For instance, in 1240/1824, a woman named Karanko bint-i Istiraki applied to the court claiming that she was married to a man called Todos in accordance with their religion and they divorced six days previously before the Metropolitan on grounds of incompatability. Notwithstanding the divorce, Todori still claimed conjugal rights. Istiraki sought a restraining order, which was granted[19]

As seen from this example, incompatability was used in divorce before a Christian Metropolitan even though Christian divorce law did not regocnise the grounds. One might think that, because of the close cultural relations between the Islamic and non-Islamic communities in that period, Islamic marriage and divorce principles could have influenced minority courts in similar situations.

Dhimmi divorces were registered by the person concerned, usually the one who sought the divorce, in Shari'ah courts. As this study of 18th century

Bursa Shari'ah records has revealed, in all 27 muhalaa divorce cases, the wives demanded the registration of divorce in the court records. Nevertheless, of four divorce cases by talaq in this period, only one was registered by the woman concerned. Not all divorces in this time period were registered in Shari'ah courts. Court records, therefore, may not always match divorce records kept elsewhere.[20] For instance, in 1189/1755 it was understood from the nature of the dispute that the man divorced his wife by talaq, even though there was no record of it.[21]

When dhimmies divorced in Shari'ah courts, Islamic principles were applied. The three Islamic divorce methods of talaq, muhalaa and tefrik were therefore valid for dhimmies.

Talaq (*ṭalāq*)

Talaq is a form of divorce in Islamic law that results from the husband's unilateral declaration of separation from his wife. There is no need for court decision because the husband's declaration of divorce is regarded as sufficient.[22]

In talaq divorces, according to Islamic law, the husband must return the dowry and pay a period of waiting allowance (*iddah* = *'iddah*)[23] to his divorced wife.[24] This is valid only for couples who married according to Islamic law. Non-Muslims who married according to their religions did not have to pay compensation even though they divorced in Shari'ah courts in accordance with the Islamic law because there is no dowry under canon law.[25]. In 1789, a Christian woman whose name was Meryem bint-i David and lived in Hacı Iskender Mahallesi declared that she had married her husband, Bogos veled-i Eremya, with an allowance of 200 akçe. Bogos later divorced her by talaq, giving her 200 kuruş mahr and an allowance for the period of iddah.[26] A dhimmi whose name was Andorya veled-i Tanas declared that he married his wife Sofya according to their own religions principles but divorced her on grounds of incompatability.[27]

Men usually required the court to register talaq but some women who were divorced by their husbands also applied to the court to register the talaq.[28] The desire of some men to resume conjugal relations after talaq played a vital role on encouraging women to take action on this subject.[29]

Muhalaa *(mukhāla'ah)*

In principle, Islamic law gives the right of divorce to men but women also have the right to divorce in some situations. The most common divorce method initiated by women is muhalaa (divorce by agreement).[30] If the marriage were no longer bearable, the woman could demand divorce by giving up some rights under the Islamic law.[31] Research of family law reveals that muhalaa was widespread in the Ottoman Empire.[32]

Muhalaa was also used by non-Muslim women. 18th century Bursa divorce records regarding dhimmies reveal that muhalaa was used in 27 (79.4%) divorces out of 34.

Women who opted for muhalaa generally gave up some of their marriage rights such as dowry (*mahr*) and period of waiting allowance (*iddah*) when they sought the divorce. This was also valid for dhimmi women who married under Islamic law. According to a muhalaa record of 1181/1767, a Christian woman, Vasiliki binti Yani, from Demirkapı district stated in the court that she wanted to divorce her husband, Kiryako veledi Simyon, who was also present in the court, on grounds of incompatability. If she were divorced, she would give up some of her marriage rights. The divorce was granted by mutual agreement.[33]

A dhimmi who married in accordance with canon law could also divorce by muhalaa in a Shari'ah court. As stated above, the proportion of dhimmies who married in accordance with their religion but divorced under Islamic law was 68.5%. The muhalaa records of dhimmies show that the couples wanted to divorce by muhalaa even though they were married according to their religion.[34] Moreover, women who married without dowry may have given some compensation to their husbands in order to use muhalaa. For instance, a Christian women, Alankoh(?) binti Aydın(?) who lived in Veledi Kazaz district gave her husband Mihaliç a t-shirt, underwear, a cloth covering, a tobacco case and a money pouch in order to get divorced.[35] Money was sometimes also paid.[36]

In muhalaa, the divorcing women sometimes gave up her right to maintenance and child support. Child support for a boy was until seven years old and for a girl until nine. This practice was also observed in Muslim families.[37] A muhalaa record from the year 1204/1789 shows that Ezire binti Parinsam(?), a dhimmi woman from Hoca Mehmed Karamani, agreed to give up her mahr and iddah rights if her husband divorced her by muhalaa. She also agreed to look after their son Agop until the age of seven and their daughter Mariyem until nine.[38] In another case, a pregnant Christian woman from Hacibaba pledged that she would look after the

baby for seven or nine years, depending on the sex, if her husband agreed to divorce her.[39]

Even though against the logic of muhalaa, there were some cases in which women divorced without giving anything to their husbands, but they were exceptional. A record of 1207/1792 states that a dhimmi woman named Mortarivet(?) binti Yorgi divorced her husband without giving him anything, although the muhalaa method was used.[40]

Most of the time, women demanded that their muhalaa divorces be recorded in the court archives, but there were a few men who asked the same because they did not want to have any disputes afterwards with regard to financial responsibilities.[41] On the other hand, the women also requested a copy of their muhalaa records from the courts in order to remarry without problem or impediment.[42]

Tefrik *(tafrīq)*

Under Islamic law, there is a third divorce method - divorce by a judge's decision. The grounds for this sort of divorce were usually desertion, impotency, religious separation, illness that caused repulsion and the woman's rights.[43] In the event of one of these reasons' existence, the woman could seek a divorce decision from the court. Non-muslims had similar rights.

Islamic law prohibits marriage between Muslim women and non-muslim men whilst permitting marriage between Muslim men and Christian or Jewish women. There were many examples of such marriages between Muslim men and non-Muslim women in Ottoman times.

In a marriage of a non-muslim couple, if the husband converted to Islam, the marriage would continue. In the reverse situation, however, the husband was first invited to convert to Islam. If he declined, a judge would decide to divorce the couple.[44] This practice continued for years under the Ottoman Empire because there were many converts during that period.[45] In 1786, a Christian woman converted to Islam and changed her name to Emine. Her husband, Nikola, was told this and asked if he would consider converting to Islam as well. Because he did not want to embrace Islam, the court decided to divorce the couple, giving guardianship of the child to the mother by law.[46]

If the husband agreed to convert to Islam, there would be no need to have the marriage ratified in court. If there were a dispute, the couples needed the court to resolve the matter. The court cases researched therefore reflect only the disputed cases in which husbands refused to convert to Islam.[47]

On the other hand, if it were the husband who chose to convert to Islam, the marriage would still continue because there was no religious requirement for the women to convert as well. There were many examples of such marriages.[48] If, however, the woman did not want to continue the marriage, she could divorce by muhalaa. In 1168/1755, a Christian woman from Hacibaba, Meryem binti Bedros, divorced in court on grounds of incompatability.[49]

According to Islamic law, parents may marry-off their immature children[50] but those children have the right to apply to the court for divorce upon reaching adulthood.[51] In 1149/1736, Deruhi(?) binti Ayvaz, a Christian woman from Hocamehmet Karamani, stated in court that, when she was still very young, her mother married her to Hocahan veledi Esveb in accordance with canon law. When she reached adulthood, she declared her divorce from her husband in front of witnesses. Her husband did not object, so she asked the court to confirm and record this divorce, which application was granted.[52]

In 17th Century Crete, a woman applied to the court for divorce on the grounds that her husband was impotent. When the husband admitted this, the court asked the couple to wait one year to see if the condition could be corrected, after which, if the husband's condition pesisted, divorce would be decreed.[53]

Conclusion

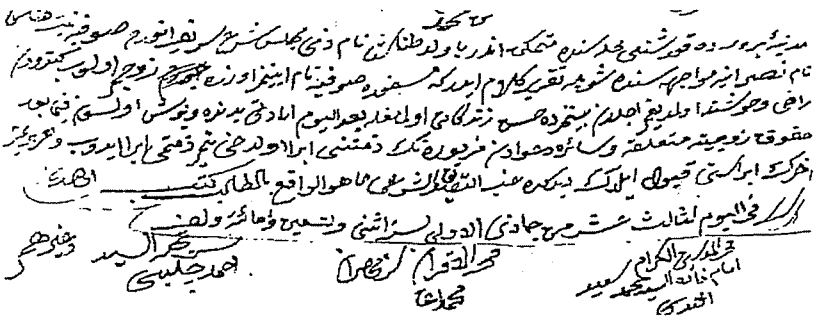
Notwithstanding the fact that non-Muslims had the right to settle such family law matters as marriage, divorce and the division of inheritance according to their own religious rules under the Ottoman Empire, many dhimmies preferred to resolve those issues at Shari'ah courts instead. Even though non-Muslim religious leaders were against this practice, dhimmies taking matters to Muslim courts stemmed from the greater possibilities provided. For example, the tax for getting married in a church was higher than the one paid at Shari'ah courts. Furthermore, non-Muslim women wanted to take advantage of the practice of dowry, which is obligatory under to Islamic law. There were many more such advantages.[54]

Similar things can be said about divorce. Owing to divorce being rare and difficult under canon law, Christians made use of such options accorded to them by Islamic law as talaq and muhalaa by applying to Shari'ah courts. In order to simplify the process of remarrying after divorce they again benefited from Muslim legal decisions.

The rights and opportunities accorded by Islamic law to both men and women relating to marriage and divorce drove non-Muslims to apply to Shari'ah courts and benefit from Islamic law. Apart from the attainment of financial benefits and protection of personal rights, one should not forget the influence of cultural exchange between Muslims and non-Muslims.

Appendix I

Document on Divorce based on Talaq



Transliteration (modern Turkish)

Medîne-i Bursa'da Kurşunlu Mahallesi'nde mütemekkin Andorya veled-i Tanaş nâm zimmî meclis-i şer'-i şerîf-i enverde Sofya bint-i Tanaş nâm nasrâniyye müvâcehesinde şöyle takrîr-i kelâm iderki mesfûre Sofya nâm âyinimiz üzere zevc olub kendüden râzı ve hoşnûd olmadığım ecilden beynimizde hüsn-i zindegânî olmamağla ba'de'l-yevm irâdeti yedinde ve boş olsun fî-mâ ba'd hukûk-ı zevciyyete müteâllika ve sâire da'vâdan mezbûrenin zimmetini ibrâ oldahi benim zimmetimi ibrâ idüp ve her birimiz âharın ibrasını kabûl eyledik dedikde gıbbu't-tasdîki'ş-şer'î mâ hüve'l-vâki' bi't-taleb ketb olundu fi'l-yevmi's-sâlisi 'aşere min Cümâde'l-ûlâ li-sene isney ve tis'îne ve mietin ve elf.

Şuhûdu'l-hâl:
Fahru'l-müderrisîni'l-kirâm İmâm-zâde es-Seyyid Mehmed Said Efendi

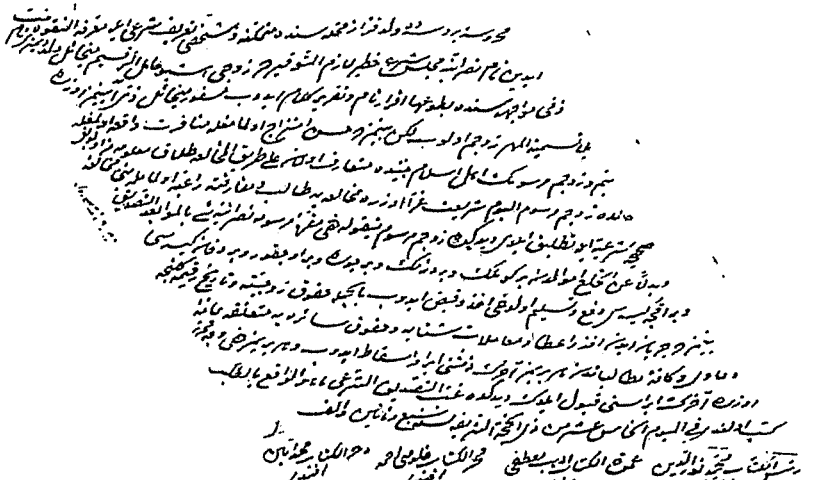
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Ser-muhzır es-Seyyid Ahmed Çelebi
Ve ğayrihim

Translation

A dhimmi called Andorya, son of Tanaş, residing in Kurşunlu neighbourhood in Bursa said the following about his wife Sofya to the qadhi at the local Shari'ah court: "Sofya and I got married according to the rules of our own Christian religion, yet now I'm not pleased and contended with her. Among us no bond of love has remained. That's why from this day on I'm leaving her. We both accept that from now we have no right over one another concerning on every kind of marriage related treatment and lawsuits." This has been recorded by the court on request of both parties. 9 June 1778.

Appendix II

Document on divorce by Muhalaa



Transliteration (modern Turkish)

Mahruse-i Bursa'da Veled-i Kazzâz Mahallesi'nde mütemekkine şahs-ı ta'rîf-i şer'î ile mu'arrefe Alankoh(?) bint-i Aydın nâm nasrâniyye meclis-i şer'i hatîr lâzimu't-tevkîrde zevci işbu hâmilu'r-rakîm Mihail veled-i Dimitri nâm zimmî müvâcehesinde bi-tav'ihâ ikrâr ve takrîr-i kelâm idüp mesfûr Mihail zimmî âyinimiz üzere bilâ tesmiyeti'l-mihr zevcim olup

lâkin beynimizde hüsn-i imtizâc olmamağla münâferet vâki'a olmağla benim ve zevcim mersûmun ehl-i İslâm beyninde müte'ârif olan 'alâ tarîki'l-muhâla'a talâk ma'lûmemiz olduğu halde zevcim mersûm el-yevm şerî'ât-ı ğarrâ üzere muhâla'aya tâlib ve müfârekata râğibe olmamla beni muhâla'a-i sahîha-i şer'iyye ile tatlîk eyledi dedikde zevcim mersûm Nikola dahi mukırra-i mersûme-i Nasrâniyyeyi bi'l-muvâ[cehe] ba'de't-tasdîk bedelen 'ani'l-hul' emvâlimden bir gömlek ve bir donluk ve bir çevre ve bir uçkur ve bir duhan kesesi ve bir akçe kesesi def' u teslîm ol dahi ahz u kabz idüp bi'l-cümle hukûk-ı zevciyyete ve târih-i rakîme gelince beynimizde cereyân eden ahz u i'tâ ve mü'âmelât-ı şettâya ve hukûk-ı sâireye müte'allik 'âmme-i de'âvî ve mutâlebâtdan her birimiz âharın zimmetini ibrâ ve iskât idüp ve her birimiz dahi vech-i muharrer üzere âharin ibrâsını kabûl eyledik dedikde gıbbu't-tasdîki'ş-şer'î mâ hüve'l-vâki' bi't-taleb ketb olundu fi'l-yevmi'l-hâmisi 'aşare min Zilhicceti'ş-şerîfe li-sene seb'in ve mieteyn ve elf.

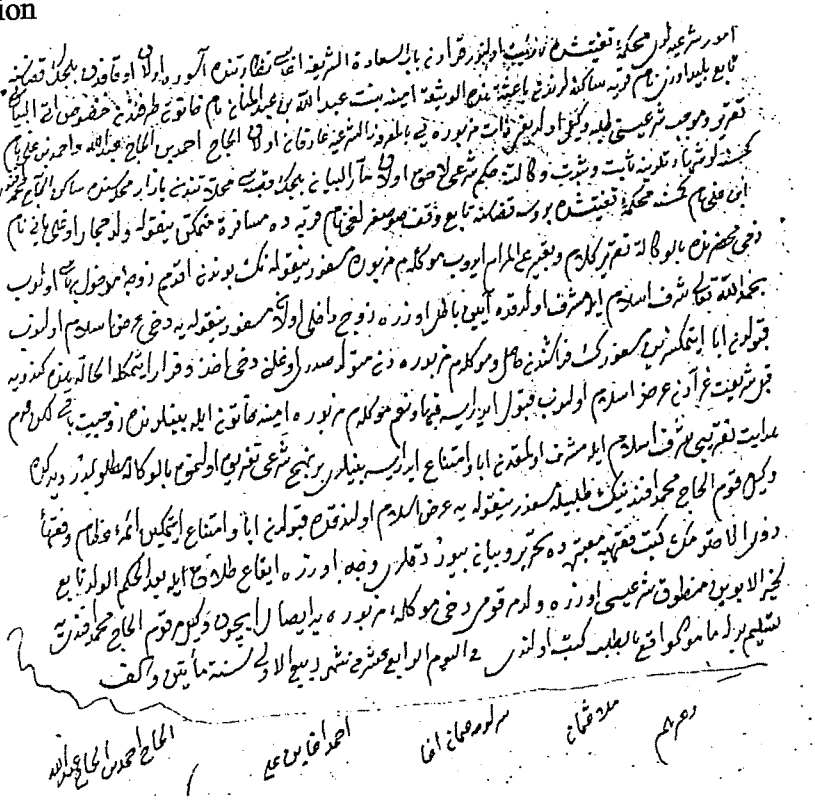
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Umdetü'l-kitâb Edib Mustafa Efendi
Fahru'l-kitâb Hulusi Ahmed Efendi
Zahru'l-kitâb Mehmed Emin Efendi

Translation

A Christian woman going by the name Alankoh(?), daughter of Aydın, residing in Bursa in the neighbourhood of Veledikazzâz said the following at court in the presence of her husband Mihail son of Dimitri: "Mihail and I got married according our own religion without mahr. However now we cannot get around. Even more, hate has come to exist between us. Both of us have information on the realisation of divorce process via muhalaa used among Muslims. I wanted to get divorced by the method of muhalaaI, and my husband Mihail accepted my offer and has repudiated me. In exchange for divorce I gave him some things such as a shirt and a pouch of money from my own property. From hereafter, no involvement concerning marriage and exchange has remained between us. Both of us accepted this state." 24 July 1793.

Appendix III

Muslim woman divorcing from her Non-Muslim husband by court decision



Transliteration (modern Turkish)

Umûr-u şer'iyyeleri mahkeme-i teftîşde ru'yet olunur kurâdan bâbu's-sa'âdeti'ş-şerîfe ağası nezâretinde âsûde olan evkâfdan Bilecik Kazası'na tâbi' Pelitözü nâm karye sâkinlerinden bâ'isetü hâzihi'l-vesîka Emine bint-i Abdullah bin Abdulmennân nâm hâtûn tarafından husûs-i âti'l-beyânı takeîr ve mûcib-i şer'îsini talebe vekîl olduğu zât-ı mezbûreyi bi'l-ma'rifeti'ş-şer'iyye 'ârifân olan el-Hâc Ahmed bin el-Hâc Abdullah ve Ahmed bin Ali nâm kimesneler şehâdetleriyle sâbit ve subût vekâletine hükm-i şer'î lâhık olan mârru'l-beyân Bilecik Ksabası mahallâtından Pazar Mahallei'nde sâkin el-Hâc Mehmed Efendi ibn Ali nâm kimesne mahkeme-i teftîşde Bursa Kazası'na tâbi' Vakf-ı Susığırlığı nâm karyede misâfireten mütemekkin Nikola veled-i Hacar(?) oğlu Yani nâm zimmî mahzârında bi'l-vekâle takrîr-i kelâm ve ta'bîr-i 'ani'l-merâm idüp

müvekkilem mezbûre mesfûr Nikola'nın bundan akdem zevce-i medhûl bahâsı olub bi-hamdillâhi te'âlâ şeref-i İslâm ile müşerref oldukda âyin-i bâtılı üzere zevc-i dâhili olan mesfûr Nikola'ya dahi 'arz-ı İslâm olunub kabulden ebâ itmeksizin mesfûrun firâşından hâsıl ve müvekkilem mezbûrden mütevellid sadrî oğlu dahi ahz u karâr itmekle el-hâletü hâzihi kendüye kıbel-i şerî'ât-ı ğarrâdan 'arz-ı İslâm olunub kabûl ederse febiha ve na'am müvekkilem mezbûre Emine hâtûn ile beynlerinde zevciyyet bâkî lâkin 'adem-i hidâyet takrîbî şeref-i İslâm ile müşerref olmakdan ebâ ve imtinâ' ederse beynleri ber-nehc-i şer'î tefrîk olunmak bi'l-vekâle matlûbumdur dedikde vekîl-i merkûm el-Hâc Mehmed Efendi'nin talebiyle mesfûr Nikola'ya 'arz-ı İslâm olundukda kabûlden ebâ ve imtinâ' itmegin eimme-i 'izam ve fukahâ-i zevi'l-ihtirâmın kütüb-i fıkhiyye-i mu'teberede tahrîr ve beyân buyurdukları vech üzere îkâ'ı talâk ile ba'de'l-hükm el-veledü tâbi'un li-hayri'l-ebeveyn mantûk-i şer'îsi üzere veled-i merkûmi müvekkile-i mezbûreye îsâl içün vekîl-i merkûm el-Hâc Mehmed Efendi'ye teslîm-i birle mâ hüve'l-vâki' bi't-taleb ketb olundu fi'l-yevmi'r-râbi'i âşere min şehri Rebî'i'l-ûlâ li-sene mieteyn ve elf.
Şuhûdu'l-hâl:
Molla Osman
Ser-levha Osman Ağa
Ahmed Ağa ibn Ali
El-Hâc Ahmed ibn el-Hâc Abdullah
Ve ğayrihim

Translation

A woman called Emine daughter of Abdullah, inhabitant of Pelitözü village at Bilecik area applied to the court through the advocacy of Mehmet Efendi son of Ali, inhabitant of Pazar neighbourhood. The spokesman Mehmet Efendi son of Ali claimed the following in the presence of the judge: "Emine, whom I'm representing, is married to a dhimmi. Emine accepted Islam and became Muslim. This is why it should be proposed that Nikolas become Muslim. I want the court to come to a decision on the continuation of their marriage if he accepts Islam, or on their divorcing of he does not accept." As per request Nikolas was asked if he were to become Muslim, however he refused. Thus by order of Islamic law the court decided Emine and Nikolas should be divorced. Again according to Islamic rule of 'giving children to those who are muslim' the children were handed over to Mehmet Efendi who in his turn was to deliver them to their mother. 15 January 1786.

References

[1] Cin, Halil, *Eski Hukukumuzda Boşanma*, Selçuk Üniversitesi Hukuk Fakültesi Yayınları, Konya 1988, p.16.

[2] B.Ş.S., (Bursa Şer'iyye Sicilleri-Bursa Sharia Court Records) (Henceforth BŞS) B.Ş.S. C29/134b.

[3] Ercan, Yavuz, *Osmanlı Yönetiminde Gayrimüslimler*, Turhan Kitabevi, Ankara 2001, p. 206.

[4] B.Ş.S. B242/10a.

[5] B.Ş.S. B79/9b.

[6] 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. 61; Masters, Bruce, *Christians and Jews in the Ottoman Arab Worl*, Cambridge University Pres, Cambridge 2001, s. 3.

[7] The Holy Book, Markos, 10/8-12.

[8] The Holy Book, Markos, 10/11-12.

[9] The Holy Book, Markos, 10/7-8.

[10] Velidedeoğlu, H. Veldet, *Ailenin Çilesi*, Çağdaş Yayınları, Istanbul, 1976, p. 146.

[11] Gradeva, op.cit., p. 58-59.

[12] Velidedeoglu, op.cit., p.146; Ünal, Asife, *Yahudilik'te, Hıristiyanlık'ta ve İslâm'da Evlilik*, Kültür Bakanlığı Yayınları, Ankara 1998, p. 130.

[13] Çiçek, Kemal, "Cemaat Mahkemesinden Kadı Mahkemesine Zimmilerin Yargı Tercihi" *Pax Ottomana*, (ed: Kemal Çiçek) Sota & Yeni Türkiye Yayınları, Ankara 2001, p. 38.

[14] Shmuelevitz, Aryeh, *The Jews of the Ottoman Empire in the Late Fifteenth and Sixteenth Centuries*, Leiden-E.J. BRİLL 1984, p. 49; Çiçek, op.cit., p. 38; Al Qattan, Nojva, "Dhimmis in the Court: Legal Autonomy and Religious Discrımınation", *International Journal of Middle East Studies*, 31(1999), p. 431.

[15] Çiçek, op.cit., p. 39.

[16] Örs, Hayrullah, *Musa ve Yahudilik*, Remzi Kitabevi, İstanbul 1966, p. 376; Kennel, op.cit., p. 381.

[17] Shmuelevitz, op.cit., p. 50; Çiçek, op.cit., p. 39.

[18] Çiçek., op.cit., p. 39.

[19] B.Ş.S. C29/134b.

[20] After *Tanzimat,* it became compulsory for imams and dhimmi religious men to report the divorces to the Population Records Office. See Cin, op.cit., p. 123.

[21] B.Ş.S. B203/81b.

[22] Aydın, M.Akif, *İslam-Osmanlı Aile Hukuku*, M.Ü.İ.F.V.Yayınları, İstanbul, 1985 p. 36; Dalgın, Nihat, *İslâm Hukukunda Boşanma Yetkisi*, Etüt Yayınları, Samsun 1999, p. 31.

[23] According to Islamic law, having divorced her husband, a woman must wait at least 3 months and 10 days to get remarried to someone else. This is to determine if the woman is pregnant or not. Within this period, the woman's maintenance expenses (*iddet nafakası*) belong to her ex-husband.

[24] Aktan, Hamza, "İslâm Aile Hukuku", *Sosyo-Kültürel Değişme Sürecinde Türk Ailesi*, B.A.A.K. Yayınları, Ankara 1992, II, 409.

[25] Düzdağ, M.Ertuğrul, *Şeyhulislâm Ebussu'ud Efendi'nin Fetvalarına Göre Kanuni Devrinde Osmanlı Hayatı*, Şule Yayınları, İstanbul 1998, p. 148.

[26] B.Ş.S. B105/13a.

[27] B.Ş.S. B216/103a.

[28] A case belonging to the year of 1727 was a clear example of this. A woman whose name was Sultane (?) binti Yorgi from Balıkpazarı Neighborhood was divorced by her husband by talaq. After that, she got a *hüccet* (confirmation of the situation) from the Court. See B.Ş.S. B158/45b.

[29] B.Ş.S. B175/110a.

[30] During the marriage act, a woman could demand divorce right to be given herself. If it is given, then she could have an absolute right divorce. See Karaman, Hayreddin, *Mukayeseli İslâm Hukuku*, Nesil Yayınları, İstanbul 1996, I, 352.

[31] Dalgın, op.cit., p. 88; Aktan op.cit., II, 412.

[32] During the *Tanzimat* period, the *muhalaa* method was used in 348 out of 428 divorce cases, recorded in Bursa Sharia Records. See Abdurrahman, Kurt, *Bursa Sicillerine Göre Osmanlı Ailesi (1839-1876)*, U.Ü. Basımevi, Bursa 1998, p 57.

[33] B.Ş.S. B196/90b.

[34] For instance, a muhalaa record belonging to 1792 reveals that a zimmi women named Mortarive binti Yorgi, from Camii Kebir district, got divorced from her husband Nikola veledi Foti with muhalaa, even though they got married according to their religion. B.Ş.S. B84/18b.

[35] B.Ş.S. B84/29a.

[36] B.Ş.S. B354/115a.

[37] Kurt, op.cit., p. 58.

[38] B.Ş.S. B100/30a.

[39] B.Ş.S. B161/40b.

[40] B.Ş.S. B84/18b.

[41] Kurt, op.cit., p. 59.

[42] Erten, op.cit., p. 116.

[43] Schacht, Joseph, *İslâm Hukukuna Giriş*, (çev. M. Dağ-A. Şener) A.Ü.İ.F.Yayınları, Ankara 1977, s. 171; Dalgın, op.cit., p. 153-177.

[44] Merginani, Ali b. Ebi Bekir, *el-Hidaye Şerhu Bidayeti'l-Mübtedi*, Mısır undated, I, 220; *Fetâvâyı Hindiyye, (Fetâvâyı Alemgiriyye)* (Terc: Mustafa Efe), Akçağ Yayınları, Ankara undated, II, 465.

[45] Çavuşzade, Mehmed Aziz, *Dürrus-Sükûk*, Daru't-Tıbaati'l-Amire, İstanbul 1860, I, 40.

[46] B.Ş.S. B228/27b.

[47] Merginani, op.cit., p. I, 219; Halebi, İbrahim, *Mevkûfat Mülteka Tercümesi*, (sad. Ahmet Davudoğlu) Saadet Yayınevi, İstanbul undated, II,169; Ali Efendi, *Şeyhulislâm Fetvaları*, (Trans: İbrahim Uysal) Fey Vakfı, Hilal Matbaası;

İstanbul 1995, op.cit., p. 27; Bilmen, Ömer Nasuhi, *Hukuk-i İslâmiyye ve Istılahat-ı Fıkhiyye Kamusu*, Bilmen Basım ve Yayınevi, İstanbul undated , op.cit., p. II, 171.

[48] Kurt, op.cit., p. 16.

[49] B.Ş.S. B79/68a.

[50] In these marriages, the husband and wife relations would start when the woman became mature.

[51] Aktan, op.cit., p. II, 414; 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, 513.

[52] B.Ş.S., B161/33b.

[53] Adıyeke, A. Nükhet, "XVII. Yüzyıl Girit (Resmo) Kadı Sicillerinde Zımmi Davaları", *Pax Ottomana*, (ed: Kemal Çiçek) Sota & Yeni Türkiye Yayınları, Ankara 2001, p. 84.

[54] For more information please see Karataş, Ali İhsan-Çetin, Osman, "Marriages Of Non-Muslims In A Muslim Community: A Case Study of the 18th Century Bursa in the Ottoman State According To the *Sharia* Records", *The Islamic Quarterly*, Volume 51, Issue 3, 2007, s. 215-236.