İSTİMLÂK

Fıkıh

— Hima örnekleri

الاموال

ابو عبيد

٢٧٤ - ٢٧٨

İSTİMLAK

Fıkıh

معجمة الفقه المالكي

نزع الملكية — :

٢٧٢ متحول بها في مذهب مالك

وقد ورد في فتاوى ابن رشد ابي الوليد

فتوى حول (نزع الملكية لتوسيع مسجد —)

THE ENCYCLOPAEDIA OF ISLAM (New Edition), vol.. X, (Fasc. 165-166), 1998 LEIDEN, ss. 176-177.

notes on its relations with Arabia, in *Arabica*, xv (1968), 143-69 (repr. in *Studies in Jāhiliyya and early Islam*, no. III); P. Crone, *Slaves on horses*, Cambridge 1980, *passim*. (M. LECKER)

TAMĪM AL-DĀRĪ, a Christian from Palestine [see FILASṬĪN] who became a Companion of the Prophet Muḥammad. He converted to Islam at the time of the Prophet while other members of his family remained Christians and paid the poll-tax. Tamīm is said to have received from the Prophet a grant of land; a *waḳf* [*q.v.*] carrying his name still exists in Hebron [see AL-KHALĪL].

Tamīm's origin is disupted. His *nisba* al-Dārī is said to relate to a subdivision (*baṭn*) of the Lakhm [*q.v.*] called al-Dār, and his pedigree testifies to his Arab origin. However, al-Sha'bī [*q.v.*] lists him among the non-Arabs (*'adjam*) who fought at Badr [*q.v.*] (al-Balādhurī, *Futūḥ*, 455, l. 3).

After his conversion, Tamīm lived in Medina. He emigrated (or rather returned) to Syria after the murder of 'Uthmān b. 'Affān (35/656). According to a report purporting to describe a meeting between Tamīm and Rawḥ b. Zinbā' [*q.v.*], Tamīm was then the governor (*amīr*) of Bayt al-Maḳdis. However, other versions of the same report place the meeting in *Masdjid Ibrāhīm*, i.e. Hebron (see e.g. al-Musharraf b. al-Muradjdjā, *Faḍā'il Bayt al-Maḳdis* . . ., ed. O. Livne-Kafri, Shfaram 1995, 349), and it cannot be ruled out that in this context Bayt al-Maḳdis means Hebron. Tamīm's tomb is said to be located north of Bayt Djibrīn [*q.v.*]. The inscription on his tombstone reportedly stated that he died in 40 A.H. (660-1); but according to some he died before then.

The links between Tamīm and Mecca, which go back to pre-Islamic times, were probably based on trade; Tamīm and his brother used to conduct trade with Mecca and after the Prophet's Hidjra they made Medina their destination. Tamīm was a wine merchant: according to his own somewhat unorthodox testimony, he used to grant the Prophet every year a wine-bag until the drinking of wine was forbidden. This trade is also mentioned in a report about a slave of his called Sirādj; together with his master and other slaves, Sirādj carried wine to Medina, and in due course became *sādin Bayt al-Maḳdis* (cf. A. Elad, *Medieval Jerusalem and Islamic worship*, Leiden 1995, 55, l. 6).

Tamīm, possibly conceived of by Islamic tradition as representing Christian monasticism, is associated with several devotional practices. For example, he made the pilgrimage to Mecca on foot, running and resting along the way (al-Wāsiṭī, *Ta'rīkh Wāsiṭ*, ed. K. 'Awwād, Beirut 1406/1986, 150).

Tamīm reportedly introduced in Islam's public worship several innovations, the Christian-Palestinian origin of which is openly admitted. He introduced oil-lamps in the Prophet's mosque and built in it a pulpit [see MINBAR] modelled on the pulpits of Syrian churches. Some claimed that, under 'Umar b. al-Khaṭṭāb, Tamīm started story-telling in Islam [see ḲĀṢṢ]. Reportedly, he was the source of eschatological traditions on the Antichrist and the Beast [see AL-DADJDJĀL; AL-DJASSĀSA]; the *ḥadīth al-djassāsa* has a unique position since the Prophet himself "transmitted it on Tamīm's authority". Tamīm was likewise famous as an intrepid traveller, allegedly penetrating to the lands of darkness (*bilād al-ẓulma*) and the lands "behind the Byzantines" (Aḥmad b. Muḥammad al-Ḳurṭubī, *al-Ta'rīf fi 'l-ansāb*, ed. Ẓalām, Cairo 1407/1987, 252).

The letters regarding Tamīm's grant are generally considered an early forgery. It appears that between the murder of 'Uthmān and Tamīm's death several years later, the members of Tamīm's clan seized former Byzantine domains and were allowed to hold them; the letters were supposed to legitimise this situation, which won official approval.

Bibliography: C.D. Matthews, *Maqrīzī's treatise "Ḍau' as-sārī" on the Tamīmī waqf in Hebron*, in *JPOS*, xix (1939-40), 147-79; Nadjm al-Dīn Muḥammad b. Aḥmad al-Ghīṭī, *al-Djawāb al-ḳawīm 'an al-su'āl al-muta'allik bi-ikṭā' al-sayyid Tamīm*, ed. Ḥ.'A. Silwādī, Jerusalem 1986; Ibn 'Asākir, *Ta'rīkh madīnat Dimashḳ*, x, ed. A.M. Duhmān, Damascus [1383/1963], 446-82; Mizzī, *Tahdhīb al-kamāl*, ed. Ma'rūf, Beirut 1405/1985 ff., iv, 326-8; Ibn Ḥadjar, *al-Iṣāba*, ed. al-Bidjāwī, Cairo 1392/1972, *passim*; Kattānī, *al-Tarātīb al-idāriyya*, Ribāṭ 1346/1927, repr. Beirut n.d., i, 143-55; F. Krenkow, *The grant of land by Muḥammad to Tamīm al-Dārī*, in *Islamica*, i (1925), 529-32; D. Shulman, *Muslim popular literature in Tamil. The Tamīma ncāri Mālai*, in Y. Friedmann (ed.), *Islam in Asia*, Jerusalem 1984, i, 174-207; N. Al-Jubeh, *Hebron (al-Ḫalīl). Kontinuität und Integrationskraft einer islamisch-arabischen Stadt*, diss. Tübingen 1991, unpubl., 125-60. (M. LECKER)

TA'MĪM (A., Pers. *millī, kardan*, Tkish. *devletleştirme*), all neologisms for nationalisation (in Turkish, probably with *Verstaatlichung* in mind), i.e. the state's assumption of control or ownership of natural resources, services or economic enterprises, from private individuals or corporations. The explicit or implicit reasoning offered is that nationalisation conforms with social advancement and the public good. The term was employed in 19th-century Europe, together with the political and socio-economic philosophy implied. Its use in Muslim lands dates from the 20th century, after both World Wars, when several Muslim states became semi- or entirely independent, automatically receiving ownership of certain natural resources from their former colonial rulers. However, the issue became prominent chiefly after the Second World War, when the number of Muslim states rose substantially and some of their ruling élites were influenced by radical ideologies, both leftist and rightist. Nationalisation was considered a panacea for the problems of the people. Socialist and Communist writers in Arabic and Persian during the 1940s and 1950s, and in Turkish during the 1960s, pointed out what they perceived as the success of nationalisation in the Soviet Union and, later, in China, Great Britain and France. They recommended, as part of economic planning, rapid nationalisation of their countries' main resources, sc. land and oil. Not surprisingly, these were nationalised first (with others, such as foreign schools and companies, rail and sea transport, to follow) in several states. For oil, the main argument was that it belonged to the nation, which was taking it over to consolidate independence, secure social justice and ensure economic development. Its nationalisation in Iran (passed by Parliament, the law was approved by the Shāh on 2 May 1951) served as a model for other Muslim oil producers, such as Libya (1970), Algeria (1971), and 'Irāḳ (1972), together with Syria, regarding the latter's transit fees, and Indonesia. By 1976, most major operating oil companies in the Middle East and North Africa had been taken over by the governments. In some states, like Iran, Saudi Arabia, Libya and 'Irāḳ, oil revenues were used, at least partly, for public investment and industrial development. Agricultural countries with no substantial oil revenues nationalised land, together with, firstly, foreign, and then local capital. In 1952 Syria started expropriating land and

İSLÂM HUKUKUNDA İSTİMLÂK

Dursun AYGÜN

Danışman : Prof.Dr.Mustafa UZUNPOSTALCI
1998, Sayfa: 167

Konu hakkındaki ihtiyacın karşılanmasına ve İslam hukukunun anlaşılmasına katkıda bulunabilmek amacıyla seçtiğimiz "İslam Hukukunda İstimlak" konusunu bir giriş ve iki bölüm altında inceledik. Girişte mülkiyet, birinci bölümde mülkiyete müdahale, ikinci bölümde ise istimlakin tanımı, tarihi gelişimi, şartları, konusu, istimlâk hakkındaki görüşler ve istimlakte mal sahibinin hakları üzerinde durduk.

Tezimizde, bu konuda bilgi içeren ulaşabildiğimiz eski ve yeni kaynaklardan, çalışmalardan yararlandık.

İslâm hukukunda mülkiyet hakkı dokunulmaz olmakla birlikte belirli şartlar dahilinde özel mülkiyete müdahale caizdir.

Mülkiyete müdahale şekillerinden biri olan istimlak şu şekilde tanımlanabilir:

"Kamu yararını sağlamak için, zorunlu durumlarda özel mülkiyete ait taşınmaz malların peşin ve âdil bir bedel karşılığında, devlet veya kamu tüzel kişileri tarafından rızasına bakılmaksızın sahibinin elinden alınarak kamunun yararına sunulmasıdır".

İslâm hukuk tarihinde istimlâkin ilk örneklerine Hz. Ömer ve Hz. Osman dönemlerinde rastlanmaktadır. Bu alandaki ilk yasal düzenleme osmanlı döneminde yapılmıştır.

İstimlâkin meşruluğu, Hz. Peygamber'in özel mülkiyete müdahale edilebileceğini gösteren söz ve davranışlarına, sahâbe uygulamasına, kamu yararı ilkesi ile zaruret ve ihtiyaç prensiplerine dayanmaktadır.

İstimlâkte, kamu yararı, zaruret veya ihtiyaç, istimlâkin yetkili organca yapılması ve istimlâk bedelinin ödenmesi şartlarına uyulması zorunludur.

Özel kişilere ait gayri menkül mallar istimlak kapsamına girer. Ancak sahipsiz mallar, kamu malları ve olağanüstü haller dışında menkül mallar istimlâk edilmez.

Mal sahibinin, malını bedelini alma, bedel kendisine ödenmeden malını boşaltmama, dava açma geri alma hakları vardır.

Mukayeseli olarak yaptığımız bu çalışma sonucunda, istimlak konusunda, Türk hukuku ve İslam hukuku arasında büyük bir benzerlik olduğunu söyleyebileriz. Bu da, mer'i hukukumuzun, istimlak konusunda İslâm hukukundan devraldığı mirastan, önemli ölçüde yararlanmış olabileceğini göstermektedir.

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THE EXPROPRIATION IN ISLAMIC LAW

The present study examines the subject matter entitled "the istimlak (expropriation) in Islamic Jurisprudence". This topic was chosen deliberately to make a humble contribution to the efforts spent for understanding of Islamic Law. This subject is handled in one introduction and two chapters.

In Introduction, a brief information concerning the concept of ownership is given. The first chapter discusses the interference in ownership. The second chapter includes information about the definition, the historical development, the subject and the provisions of expropriation with reference to the different views about this subject.

We tried to use the classical books available as well as the contemporary studies made in this topic.

The right of ownership is regarded as inviolable in Islamic Law. But it is permitted according to certain circumstances.

Istimlak, as one way of the interference in ownership, can be defined as follows: "istimlak is to take an immovable property in the private ownership from its owner's hand regardless of his consent by state or public corporate bodies by paying the just price in advance in order to present it for public service".

The examples which can be treated as the first applications of expropriation in the history of Islamic Law, can be seen in the periods of Umar and Uthman, the second and third caliphs of Islam. The first legal regulation appears to have been made in the Ottoman period.

İstamlak takes its legality from the sayings and the deeds of the Prophet which refer to the permissibility of interference in private ownership, from the applications of the sahaba (successors of the Prophet) as well as the principles of public interest, necessity and requirements.

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15 MAYIS 1990

مجلة مجمع الفقه الاسلامي الدورة الرابعة
لمؤتمر مجمع الفقه الاسلامي،
العدد الرابع، الجزء ٢ ،١٤٠٨ه ١٩٨٨م ،
المكة المكرمة.

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