

GENERAL CHARACTERS OF THE LAND LAW IN THE OTTOMAN EMPIRE

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ABBREVIATIONS

- Art. : Article of Codes.
D : Dustur (Codex of Turkish law; it has officially been publishing since more than 150 years).
TTK : Turk Tarih Kongresi (The Turkish History Congress).
TTKY :Turk Tarih Kurumu Yayını (Publication of The Turkish Society of History).

INTRODUCTION:

Mua'mala't assumes a wider scope in Islamic life pattern. Islam aims at shaping all aspects of human life including economic transactions according to its own tenets and norms. From an Islamic perspective, human life is regarded as a compact and integrated whole. No section thereof can be allowed with an approach divorced from the main stream of Islamic creed. A harmony, not a conflict can achieve human felicity in both the worlds. Muslims' prosperity and progress consist but in bringing all human affairs into conformity with Islamic values. In the present day world human society is riddled with contradictions with the resultant comprehensive crises at a global level. The world at large feels an urge to have an alternative approach to shield itself against this crisis. Islam is the only creed that has the potential to be the alternative the world scrambles for. Hence the need for research into different aspects of life and present operational models to them so that the world community come closer to Islamic approach to affairs.

With the establishment of Islamic banking and commercial undertakings operating under Islamic rules, global attention is being focussed on the functional aspects of Mua'mala't for a Muslim people. The research in question is, therefore, a humble attempt towards this end.

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Fiqh of Mua'mala't which has a wider coverage, is an important chapter in Islamic Jurisprudence. In the fields of trade and commerce diverse kinds of contracts may be worked in the society. In order to justify a particular contract, Islamic Jurisprudence lays down certain rules and stipulations to conclude a contract. Basing on these stipulations different contracts in the areas of trade and commerce can be modelled and then operationalized.

Islamic law has, therefore, regulated various forms of contract in conformity with Quran and Sunnah under different names or left a sufficient room to evolve new ones which it has not named. These designated contracts cover areas of buying, selling, hiring, partnership etc. The Majalla prepared officially as a civil code by the Ottoman Empire based on Hanafi school of thought embodies most of these contracts except loan (qard) and dealings in money (sarf).

As time goes on, human needs and problems multiply, diversify and take newer dimensions. The wisdom of Islamic law lies in it that it offers a flexibility in the scope of the law and therefore, in response to the emerging socio-economic phenomena at different times new contracts may be evolved and worked out in line with the general rules. Hiring is one of these contracts. Diverse forms of hiring have developed in accordance with these general rules.

I. Historical Background

Before discussing the characteristics of the Land Law in the Ottoman Empire, it may be instructive to note in brief, the following features of historical background in which the law developed:

1. The Ottoman Empire was a state founded by turkish tribes in Anatolia in the year 1300G. It was named after its founder Osman (arabic Uthman), later known as Sultan Osman I. The term Ottoman is a dynastic appellation derived from the Arabic Uthman and turkish Osman. This Empire continued for six centuries and came to an end in 1922 after its disastrous defeat in World War I when the turkish National Assembly under leadership of Mustafa Kemal proclaimed the Empire as abolished on November 1, 1922.

2. The Empire, centred in Anatolia, varied greatly in extent during its history. Its boundaries expanded over three continents, i.e. Asia, Europe and Africa: At its height, it included modern Albania, Greece, Bulgaria, Yugoslavia, Romania, Austria (to Vienna), the islands of the eastern Mediterranean, parts of Hungary and Russia, Iraq, Syria, Palestine, the Caucasus, and Egypt, North Africa (as far West as Algeria) and parts of Arabia, including the Gulf area.

3. The Ottoman Empire consisted of several nations and races including arab, persian, durzie, greek, bulgar, alban, serbien, pomak, boshnak. Several languages were used in the Ottoman Empire.

4. From the very beginning, most of its rulers were Turks. However, several non Turks were also appointed by the Sultan (by the central Administration) especially in the non turkish regions, as Governors, Ministers and Prime Ministers.

5. The Empire had several peculiarities, from the economical, juridical, political and demographic points of view. An attempt is made here to summarize some of these peculiarities from the legal point of view.

II. General Remarks about Ottoman Law

It is not easy to explain and to give a clear picture about Ottoman Law in general because the Ottoman Empire was a state spreading over six centuries during which it had gone through several economic, social, administrative stages of socio-economic change. During this period it had been introducing also introduced a lot of juridical regulations. Legal characteristics of the earlier centuries of the Empire were different compared to the latter periods, since the social and economic conditions were different too. Also scope of the territory were different in different periods. It may not be possible for me to give here a comprehensive presentation on all characteristics of the Ottoman Law. So, I would like to point out only some major characteristics from the point of view of their comparison with Islamic jurisprudence.

1. The Ottoman Empire was an Islamic nation and consequently the Ottoman Law was "Islamic". It was based on the rules of the Qur'an, and Sunnah. All official acts and activities of the state were based on Islamic principles, and in accordance with Islamic Law.

2. Interpretations, comments and opinion of muslim scholars available in earlier sources and books on the Islamic jurisprudence, especially of Hanafite school of thought, were a base of the legal life in Ottoman Empire at the public as well as private level. The following, however, should be kept in view in this respect:

(a) The legal relations as well as juridic conflicts, though, were tackled in accordance with the rules of Hanafite school of thought in Islamic jurisprudence. Yet these Hanafite rules, however, were not available in a codified form in a single book. Instead, they were widespread in Islamic jurisprudence books under different titles. The same is valid for rules related to land. For instance, the books on Islamic jurisprudence do not devote any separate chapter explaining Islamic land Law. They are either incorporated in chapters on taxes on occupied land or in the chapters on *awakaf*. Similarly, characteristic of the freehold land (private land) are explained in the context of contracts, especially relating to leasing. The codification of *fiqh* rules (taqnin) by muslim officially started only after 19th century in the Ottoman Empire.

The objective was to collect, coordinate and compile all fatwas, imperial edicts, decisions of local and central authorities (like, judges or Kadis, mayors etc.) as well as all the material in Islamic jurisprudence in order to facilitate a better use and practice of the legal system (It is a pity that even the codified rules are not available in any one book. They are lying in the state Archive Istanbul in an unclassified form).

(b) The need for codification was felt when the Ottoman State grew in a unique Islamic state of the time spreading over three continents.

It was therefore, deemed necessary to collect the related rules and to classify and streamline them in a code in order to regulate human relations juridically and to direct the society to its main target.

(c) Some of the popular general Codes were: (1) Code of Sultan Mohammed II, the Conqueror (15th century); (2) Code of Sultan Selim I; (3) Code of Sultan Sulaiman, the Magnificent (the Lawgiver), and (4) Introduction to book of Budin written by Ebu Sud and issued in the same decade (in 16th century) and related ten-

ancy of land. (In Ottoman usage the term “code” generally referred to a decree of the Sultan containing legal clauses on a particular topic, regulation etc.¹

3. Besides, these original sources and rules, another law system also existed which is now called “conventional law” (orfi hukuk) by modern researchers. This law also met various needs of the people and the rulers.

The features of this Orfi-Hukuk were as below:

(a) The “orfi hukuk” was composed of customs of people, and regulations of the Ottoman rulers (the Sultan and also other high ranking rulers, administrators). These rules and regulations put by the Ottoman rulers reflected peculiarities of local and national conditions in the Ottoman Empire, as well as of laws and traditions settled in the new conquered (occupied) territories (lands) etc. In other words, these were the consequences of the expanded Empire, its demographic nature etc.²

(b) Elements of the Orfi hukuk were local or national customs (traditions), existing practice among people, fatwas and, of course, the main sources of the Islamic jurisprudence. (In addition to all of them, the land registration books (arazi tahrir defterleri) had a great because they consisted specific rules for administration of land.³

4. It may be asked as to what extent the orfi hukuk were in accordance with main sources of Islamic jurisprudence.

Before answering this question, I would like to point out some peculiarities of Islamic jurisprudence:

(a) Some rules in the Islamic jurisprudence are compulsory to practice. The believers are neither allowed to change nor leave them (not to use). It will be a sin and crime if they do something against it. For example prayer, fasting, zakah etc.

(b) On the other hand, there are some other rules left by the God and his Prophet (s.a.v.) to the discretion of muslim rulers i.e. the rulers are allowed to regulate these (of course, without violating the Islamic values system).

(c) For instance, muslim rulers are allowed to regard some actions as a “crime” and to subject them for “punishment”, which were not mentioned in the Holy

1 For this see: Encyclopedia of Islam, Art. “Kanun” and “Kanunname”. Also Barkan, Ömer Lütfi, XI ve XVI asırlarda Osmanlı İmparatorluğunda Zirai Ekonominin Hukuku ve Mali Esasları, C.I. Kanunlar (The Legal and financial principles of agricultural economy in the Ottoman Empire in XV and XVIth centuries, Vol. 1: Laws), 1940, pp. XIX-XX; Barkan, Türkiyede Toprak Meselesi 1 (The Land question in Turkey, Vol. 1) İstanbul 1980, Gözlem Pub. (*References to Barkan point to that book*), 327; Cin, Halil, Miri Arazi ve Bu Arazinin Mülk Haline Dönüşümü (The state owned land and its transformation into freehold land) Ankara, 1969, Faculty of Law, University of Ankara Press, 14.

2 See: Barkan, The Legal..., pp. XVI and pp. XLIV particularly; pp. 299-300; Osmanlı İmparatorluğu Teşkilat ve Müesseselerinin Seriligi Meselesi; IHFM, Vol. CXI, Nr. 3-4, pp. 203-224, CIN, 13.

3 See: Barkan, pp. 299-300. The State Archive in İstanbul has thousands of such books (See: Uzuncarsili, Ismail Hakki, Ondört ve on beşinci asırlarda Anadolu beyliklerinde toprak ve halk idaresi (The administration of land and people in anolien tribes of XVI and XVth centuries), 2.TTK (the second (Turkish history congress), TTKY (Turkish society of history pub.) İstanbul, 1943, pp. 499-500; Sertoglu, Mithat, Osmanlı İmparatorluğu devrinde toprak dirliklerinin çeşitli şekilleri (various kinds (forms) of land units in period of the Ottoman Empire), 6TTK (6th Turkish history congress) TTKY (Turkish society of history pub.) 1967, Ankara, 281).

Qur'an and Sunnah. This right is called in the Islamic jurisprudence as tazir. (Muslim rulers, however, may not definitely intervene in rules and regulations for crimes and their punishments put by the Holy Qur'an which are called "hudud").

Another example is the heritage law where some details (new rules) were added by independent judgements and rulers in Islamic states

(d) Regarding the land law in the Islamic jurisprudence, we found different sets of rules put by muslim rulers in different countries and periods. This is so because this is another area where only a few obligatory or compulsory rules exist and the rest has been left to discretionary regulations of the muslim rulers. In other words, there is no completely defined and compiled land law system in the Islamic jurisprudence. In different countries, various practices were developed and consequently resulted into different systems. We must also admit that, in the reality, the muslim jurists (scholars) are not unanimous on the issue of Land Law. There are several schools of thoughts⁴. This was despite that for centuries, Ommiads as well as Abbassidens enacted various land laws, just as the ruler of Ottoman did in their period. A common characteristic of all these legal systems, however, was that these were based on or derived from either the main values of Islam or traditions of the Prophet.

I would like to mention here once again that though there were two sets of rules, one based on or derived from the main values of Islam and the earlier practice of Islam and the other based on traditions among the people in different periods, yet the later set of rules were not definitely against Islam in their spirit. In other words, there were no obvious violation of explicit injunctions of Islam in the second set of rules.

III. Peculiarities of the Ottoman Law regarding the Land till 1858

Some of the characteristics of the land law under Ottoman period are explained below:

1. The Ottoman Empire was expanded over three continents and faced different people and tradition, as well as local conditions in new annexed territories. Some of these traditions were not against the Islamic values. The Ottoman rulers, therefore, did not change or annule them because though their origins (roots) were not Islamic, yet they were not violating Islamic injunctions. Status quo was maintained in case of such rules. This was observed in non-muslim countries conquered by the Ottoman Sultans like Bulgaria, Greece, Yugoslavia, Albania, Hungary, Cyprus, etc. That is why the Ottoman land law and practices consisted of elements from non-Islamic (but not un-Islamic) origins.

For instance, the so-called "miri arazi" (the state owned land) system had traces of the peculiarities and consequences of conquered territories.⁵

2. The Ottoman Empire had to follow a certain demographic policy in its wide territory, which was expected. For example, the Ottoman rulers settled some

⁴ Barkan, pp. 142, 146, 249; CIN, 12.

⁵ Barkan, pp. 298-9.

people in some regions by leasing or giving them a land. And consequently this kind of land had implications for the land laws.⁶

3. Some kind of land appeared as consequence of economic conditions.⁷

4. Also the policy regarding the border areas aimed at keeping peace in these areas. That is why the land on the border was handed over by the rulers to some people who could serve their purpose in this area.

5. The official documents related to the Ottoman land law are numerous. All these are in arabic letters and have been kept and available in the State archives. Unfortunately, majority of them are not classified till yet, or are placed in different sections of the archive. Some of them are still undiscovered and unknown.

6. The law of land and its practice in the Ottoman period isa genuine labyrinth. It has never been easy to give a clear picture about the theory and practice of land law practiced in Ottoman Empire.⁸

On the basis of the data obtained from the State archives in Istanbul and from Turkish historical society in Ankara as well as on the basis of a few monographies already published on the subject, I'd like to present the following information:

1. The most eye catching characteristic regarding the land in Ottoman Empire is State owned land system. It was called as (miri arazi or arazi-i miriye, arazi-i emiriye). (The details will be given later on).

2. The Ottoman Empire had to face some new systems in the occupied territories. For example, the system of state owned land (arazi-i miriye) had been existing in these areas for long time. Also, the feudal system was a usual phenomenon in Europe during the Ottoman period. This is why Ottoman period reflects glimpses of a similar (though not the same) system.⁹ Also a system of tenancy based on continuous inheritance system was also known in that part of the world. The system in the Ottoman Empire reflected these elements too.¹⁰

3. The practice in this period was based on farmans (orders or edicts of the Ottoman Sultans), fatwas (decisions of religious authorities) and, especially, decrees of Sultans (kanunname). Consequently, a sui generis system was developed in the Ottoman Empire. In other words, some of the legal provisions of the system may not be found in classical fiqh books.¹¹ That is why we say that this system is different from the system we found in books of fiqh.¹² It, however, does not mean that the system was against the Islamic law.

⁶ Barkan, pp. 142, 145. Sertoglu, pp. 286.

⁷ Barkan, pp. 142; Sertoglu, pp. 284.

⁸ See: Barkan, pp. 153, 333. Sertoglu, pp. 283.

⁹ Barkan, pp. 132, 299-300.

¹⁰ Barkan, pp. 132, 294.

¹¹ Barkan, 300.

¹² Barkan, 139, 146, 298, 301, 316, 327; Ibid, The Legal., pp. XXXIV, Maverdi, chapters, XII, XIII and XVIII.

4. Decrees of Sultans (kanunname) had a great role in emergence of this system and its development. We can't exactly tell when the first kanunname regulating land law appeared in the Ottoman Empire.

It is, however, accepted by all that the first "comprehensive" kanunname regarding land law appeared in decade of the magnificent Solaiman (Suleyman the lawgiver).¹³

5. The system put by the land code dated 1858 had a large historical background. In other words, the land law system which was accepted in the code of 1858 and practiced by the Ottoman Empire was not developed in a day. It was, in fact, the result of a long evolutionary process and preparation and took several centuries experiences¹⁴ to come into the final shape.

IV. Special Regulations (rules) related Land in preparatory Period – until 1858

Before the compilation of the Land Code of 1858 effective, several rules were issued by the Ottoman Administration and also some regulatory measures were taken in this preparatory period.¹⁵ The practice was based on these rules. A chronology of various rules and regulations is given below:

1. Kanunname-i Mutebere: It is called also "Budin Kanunnamesi".

2. The Code dated 10 Jamad al ahar (thani) 1261H (18.4.1845): It had regulated that the State owned land (miri arazi) should be taken back if the tenant had not used the hired land three years continuously i.e. if he left it unutilized without having any excuse.

3. The official announcement dated 7 Jamad al ula 1263H (25.4.1847)¹⁶ allowing inheritance of Miri Arazi to daughters too.

4. The regulation of title deed dated 5 Jamal ul-ahar (thani) 1263 (11.5.1847).¹⁷

5. Letter of Ottoman premiership dated 23 Rabiul Evvel 1265H (24.1.1849).¹⁸

¹³ He was named by historians "kanuni" (the lawgiver) since he issued some kanuns (laws, bills, regulations). It is said, that his name was written on the main door of the U.S. Congress Hall among the famous lawgivers of human kind, like Hamurabi.

Also he is called as "the magnificent" in the West. In period of the Ottoman Empire several decrees were issued in different fields, like family, heritage, crime and punishment, as well as land.

The well known decree about Land law is called "Budin Kanunnamesi". Also Ebu Suud, the Seyhulislam of H.E. put rules substantially in accordance with the Islamic jurisprudence 'see, Sadek Bayraktar transferred it into latin letters and published in Turkey by Tercuman Pub.). There were other decrees also regulating the land law (See: Barkan, pp. 132, 327, 392-3).

And also there are several religious decisions regarding problems of land given by Ebu Suud (See: Barkan, p. 302). For previous decade see: Barkan, p. 299; CIN, pp. 13-14.

¹⁴ Barkan, pp. 293.

¹⁵ Barkan, pp. 317; Cin, pp. 13.

¹⁶ See for the text: Karakoc, pp. 124-126.

¹⁷ See for the text: Karakoc, 305.

6. Rules coming into force as a result of Imperial Edict (ahkam-i Meriye or Kanun-i Sultani) dated 23 Rabiul-Evvel 1265H (24.1.1849).¹⁹
7. Imperial Edict dated 3 Moharram 1274H (26.8.1857).²⁰
8. Imperial Edict dated end of Jamad al ula 1274H (Dezember, 1857).²¹
9. Imperial Edict dated 11 Rajab 1274H (27.2.1858).²² (This made the imperial edict quoted in No.8 complimenting over properties of Endowments (Awkaf).²³
10. Regulation dated 9 Ramadhan 1274H (25.4.1858G).²⁴
11. Others (Fatwas, decisions of local authorities etc).

Also there were other rules related to the administration, hiring and inheritance of the crown land, the legal ties between the tenant and the supervisor on it as well as between the supervisor and the central government (Istanbul).

A. Some remarks about the special rules:

- The majority (even almost all) of the rules were related to the crown lands (state owned land) (Miri Arazi). The crown land had played a great role in economic, politic and social life of the Ottoman Empire. Crown land mainly included lands occupied through war (anwatan) or through peace treaties (tatavvuan; sulhan). Also the products and taxes on these lands were a main part of the financial resources of the Ottoman empire.

It is this that signifies the importance of the rule relating to crown land separately. The main features of these rules were as below:

- All these rules were preparatory measures to the land code dated 23 Shawwal 1274H (23.5.1858) which was a famous and comprehensive law. In fact, after the Tanzimat (1839)²⁵ the Ottoman government took several measures in various scopes (legal, education, economics, etc.) and issued some bills (laws) and rules

¹⁸ See for the text: Kanunu Kalemkiye Defteri, pp. 15-18.

¹⁹ See for the text: Karakoc, pp. 130-160.

²⁰ See for the text: Karakoc, 161.

²¹ See for the text: Karakoc, 163.

²² See for the text: Karakoc, 165.

²³ See for the text: Karakoc, 165.

²⁴ See for the text: Karakoc, 166.

²⁵ "Tanzimat" means reorganization in turkish. It is name of Noble Edict (Hatt-i Sharif) issued and promulgated under the reign of the Sultan Abdulaziz (1839). This document called for the establishment of new institutions that would guarantee security of life, property and honour to all subjects of the empire regardless of their religion or race. It also authorized the development of a standardized system of taxation to eliminate abuses and fairer methods of military conscription and training.

Also Tanzimat means series of reforms promulgated in the Ottoman Empire between 1839 and 1876. These reforms, heavily influenced by European ideas, were intended to effectuate a fundamental change of the empire from the old system based on theocratic principles to that of a modern state.

in order to rescue the Ottoman Empire from disorderliness prevailing at that time. All those preparations aimed at compiling a comprehensive law of land.²⁶

- All these rules lost their validities when the land code (Kanunname-i-Arazi) dated 25.5.1858 was introduced.

- All these rules reflected characteristics (signs) of the Islamic jurisprudence as well as national traditions (which were partly different from the Islamic jurisprudence, but not totally against it).

B. A brief comparison between Islamic Jurisprudence and the special rules:

- The Islamic land laws are not explained in detailed books on the Islamic jurisprudence. In other words, excepting a small set of general dogmas (verses and Hadiths) there is no comprehensive law of land in Islamic jurisprudence with which we could make the comparison. The Islamic land law can only be seen as reflected in the traditional practice of Muslim people and Muslim rulers such as mentioned above. For example, the land law in decade of Abbassidens is more evaluated than in the Ummaids time.

Also during the Ottoman period which was expanded over three continents and faced by several kinds of people and traditions since 6 centuries, the land law got more different characteristics and dimensions than in other Islamic countries in history. Hence, the land law practiced during the Ottoman period was a law system which compared of some pure Islamic components (constituents) on one side and of several local and national peculiarities (characteristics) on the other side.

- The main reason for this amalgamation of Islamic rules and local practice is that the Holy Qur'an and Sunnah do not provide detailed rules on this topic. The rulers, (top and low ranking), therefore, were compelled to design rules which had to be in accordance with the Sharia to administer the new conquered lands and also had to take the marginal advantages from the local traditions as long as they did not violate the main Islamic principles or values.

- I suppose, it may be useful, to point briefly here the classification of lands made in Islamic jurisprudence.

Inspite of some differences among views of the muslim scholars,²⁷ generally three types of land are accepted according to the ownership:

²⁶ See: Barkan, 317. Cin, 17.

²⁷ The Islamic law does not have a set of definitive and comprehensive rules explaining the land kinds. Accordingly classifications of land made by muslim scholars differ from each other. It is, however, clear, that their classifications reflected conditions of the country and century in which they lived. They mostly looked at the kinds of land from the point of view their acquisition and from the point of view of taxation and as well as their administration. In spite of that even Abu Yusuf and Abu Ubeyd, authors of books about public finance of muslim states, are not unanimous in classification of lands. But that does not matter, because differences in views of muslim scholars on this topic, do not pose any problem for the Islamic law as the views of scholars do not consist any definitive set of rules on the classification of lands.

On the other hand it is observed obviously, that muslim scholars mostly wrote about occupied lands (by war or peace treaty) and by taxes put on them (haradj and oshr), but they did not speak about nature of freehold land separately and particularly.

1. State owned land (it has been called differently in different centuries; but the suffix “miri” has been the most used adjective by muslims. It means public or governmental).

2. Public land (it means the land which is under the public utilities like public garden, schools, etc.).

3. Private land (freehold lands).²⁸

According to taxation of land, it is, however, divided into five types:

1) The oshur land

2) The haradj land

3) The dead land

4) The public land

5) The freehold land.

V. Concluding Remarks

The land and agriculture had a great role in Islamic history. In the early period Islamic state was located in Al-Madina city and was limited within a small territory. But later on, Muslims increased in number and the Islamic state expanded and widened over three continents, i.e. Asia, Africa and Europe. Expansion of Muslim States continued till about the end of 16th century. Several territories were annexed to Muslim States, like Omaiyyads, Abbasis, etc., and also finally the Ottoman Empire. Several races and nations lived under sovereignties of various Muslim States.

It is well known historically that the Ottoman State was founded by Turkish tribes in Anatolia in the year 1300G. It expanded later on over three continents, i.e. Asia, Europe and Africa. Its territory during its golden period, including regions from Vienna to the end of the Persia and from Crimean (Russia) to Yemen including all Northern Africa to Morocco. That is why the Mediterranean Sea was called at that time as an “Ottoman lake”.

In new annexed territories, Muslims and Muslim rulers had been faced with new legal, social circumstances and conditions, as well as traditions. One consequent of this expansion was that new nationalities brought new rules and conditions, which they had been practicing before. Some rules (code, decrees, edicts, fatwas etc.) had to be issued by the Ottoman Empire regarding administration of those people and lands in their lands.

It is worth mentioning, here, that the most practiced rules of the Islamic law on leasing of land were the haradj rules.

No doubt, one of the most relevant problem of these rules was administration of lands in new annexed territories, and their leasing one side, and on the other side

See some classification of well known muslim scholars in different centuries and countries: Safak, pp. 58, Bilmen, pp. 72, Al-Husari, pp. 182.

²⁸ For example see: A.N. Poliak, op.cit.; Ebu Yahya, pp. 15 and pp. 231, Bilmen, p. 78. Compare with Guraf, pp. 138, 198, 209.

getting production and good income from lands (without to letting them split). It was a great objective of land policy of the Ottoman Empire.

This objective could be observed in the rules issued about the state owned land and in the practiced administration of these rules.

Subject of the paper is centralized in the practice of tenancy of land in the Ottoman Empire.

II

(a) At the beginning of the second chapter general peculiarities and nature of the Ottoman Law have been presented. The characteristics of the rules issued and applied to lands in the Ottoman Empire have been particularly pointed out. It is composed of following four elements:

i) General rules of the Islamic Law, as well as the rules related to leasing contract and interpretations and comments of hanafite school of thought in particular.

ii) Local and national customs (traditions). It can be traditions of Muslims and also non-Muslims who lived in the territory and under sovereignty of the Ottoman Empire.

iii) Codes, edicts, decrees issued by Ottoman Sultans in several periods and on different occasions.

iv) Fatwas.

The Ottoman Law which was composed of these elements in ii-iv was called orfi hukuk (common law – conventional law).

All rules put by the Ottoman Sultans and other rulers had juristic, politic, agricultural, demographic etc. Characteristics. On the other hand all these rules were not a duplication of rules in Islamic jurisprudence book. They were rather in the nature of orfi hukuk i.e. sign of local conditions, and traditions as well as discretional regulation power of the Ottoman rulers. Characteristics of all related rules and documents have been presented in the paper according to chronological order briefly.

Unfortunately all these rules or documents are not available easily because neither have any code consisting of traditional documents (like fatwas, fermans etc.), nor we have any codes consisting of regulations issued by Sultans about the state owned land particularly. Though the State archive in Istanbul has approximately 100 million documents, yet bulk of them still remain unclassified. Some of the codes, rules, fatwas etc. are not even available, although there is evidence in the literature that they did exist. In spite of that we made investigation in the State archive in Istanbul which is a real treasury of the historical documents related the Ottoman Empire and did get some important basic data which has been presented in this paper.

The most striking feature of Ottoman law about land is that part of it which relates to state owned land (aradh-i-miriyye). Several circumstances and conditions in the Ottoman Empire compelled the rulers, to have a stable policy on future of the State owned land, as well as to put some rules, tactics, reforms, control and finally in some cases a reorganization (like the land code of 1858) on them. On the other hand,

all these acts and rules were required to have legitimacy from Islamic Shari'ah point of view as well since the Ottoman Empire was an Islamic State.

(b) Putting rules about administration and various issues historically started in period of the Sultan Muhammad the conqueror in 15th century. It was called "Kanunname". After him, Sultan Selim the first also issued a general Kanunname (code) in 16th century. However, the code issued by Sultan Sulaiman the landgiver (Kanuni) was a special code which related to the land in general, and to the State owned land in particular. It was called later on as Budin Kanunnamesi. It was in fact not a code in its genuine meaning, but it was only a set of rules annexed to the beginning of the registration book of land.

The name of Abu Saud should also be pointed out here who had been Sheikh-Ul'İslam of the Ottoman Empire for about 26 years, and who prepared the rules relating to administration of land and leasing the state owned land particularly.

(c) Classification of land by Muslim scholars has not been homogenous. In general, they classified the land either by type of ownership or by type of taxes imposed on them. Three main groups are unanimously accepted by the scholars: (i) the state owned land, (ii) the public land, (iii) and the private land.

The kinds of lands during the Ottoman Empire was a genuine labyrinth. It is worth mentioning here that the most striking kind of land in the Ottoman Law was no doubt the State owned land (Aradi-miriyve) as already pointed out. The State owned lands were the largest kind among all kinds of land and was also main financial source of public revenue of the Ottoman treasury.

The State owned land had an interesting administrative system which was called Timar.

(d) The Timar system was implemented on the State owned land. It is not the invention of the Ottoman administration. Earlier Muslim States, like seljuks, abbasids, memluks etc. Also had experiences about timar system though under a different name 'ikta'. (It is translated into English as fife, feudal system, feudal tenure etc.). The Ottoman version of the Law, however, had some distinct peculiarities compared to what other Muslim States had.

On the other hand, there were similarities between timar system and the feudal system implemented in Europe during the same time. We can make an observation here, that during the same ages administration of land was similar in different societies in Europe and in the Ottoman Empire. Still both of them were not exactly the same. One of most important difference was that though the farmer was a tenant (lessee) in front of the Ottoman Empire, yet he was not dependent on the sipahi, the supervisor on behalf of the Ottoman Empire. The feudal system on the other hand was a serfage system. The Ottoman system was based on Islamic tradition which had a long background among Muslim states, and the Ottoman provided a "sui generis" system.²⁹

²⁹ "The Ottoman Economic mind was closely related to the basic concept of state and society in the Middle East. By developing commercial centres and routes, encouraging people to extend the area of cultivated land in the country and international trade through its dominions, the state performed basic economic functions in the Empire". (Inalcik, Halil, The Ottoman economic mind and aspects of the Ottoman economy in: studies in the

(e) The State owned land was assigned by the central administration to some people for its local administration. He was called sipahi who lent the State-owned land to some people against a recompense called as tapu senedi in addition to a rent money which was called tapu. The latter was related to the production of the leased land, while the former was given once only at the time of the transfer of land. A similar leasing contract was present in Europe as well and was called bail héréditaire in French and Erbpacht in German. In fact this system had its roots even in Roman Law, where it was called emphyteusis. In other words, Timars system was practiced in Europe though with some different peculiarities.

(f) The lessee (the farmer) who got the right of the use of land was not merely a tenant. His land could be transmitted to his successor. Also he had the right to transfer (ferag) it to others with or without recompense though with the permission of Sipahi. That transfer (ferag) was a leisure-session of property, but it was never a sale in the sense of terminus techniques. It was a transfer of the right of use of the land only.

(g) The target of this system was to obtain a good agricultural output, optimum utilization of land and better quality of production. Accordingly, in case of not planting or ploughing the land for three years, the land was taken back from the farmer.

(h) The timar system continued in Ottoman territories along centuries successfully. During last periods of the Ottoman Empire, especially in the year before the land code of 1858, Spahis however, misused their power and authority over the farmers. The land code, therefore, had to be annulled and regulations had to be introduced to appoint an officer instead of a Sipahi.

Application of the timar system was not so clear and simple, but it was a genuine labyrinth. I managed to present this humble picture by using some unpublished documents from the State Archive in Istanbul and a few published monographs on the topic. No doubt, mechanism of the timar system had a great role in Ottoman economy, in general, and in agricultural revenue and development, in particular. The Timar system had various dimensions and characteristics, i.e. political demographic, agricultural, social, juridic etc. It had deep sign and mark in the Ottoman history and development of the Ottoman Society. It had worthiness and maturity. It deserves more detailed study and I am of the opinion that some lectures must be arranged on the practice of Timar in the Ottoman Empire.

(i) Tenancy of other kinds of land i.e. the freehold land, as well as the endowment land did not have any striking Islamic law as rules were applied to their leasing in addition to other conditions put by the owner and the Endowment Board in the contract. Al-Majalla, the civil code of the Ottoman Empire issued in the years 1868-1876 was, no doubt, a milestone and important regulating code in the field of leasing of this kind of lands.