

A Zimmi: “Let my wife be divorced from me three times”: The Use of the Ottoman Kadi Courts by Zimmis for Family Law Issues

Mehmet Akman*

This essay aims to submit some examples regarding disputes arising from zimmi-zimmi marriages and solved by sharia courts. Several explanations can be put forward on why Ottoman Jews and Christians voluntarily chose to bring their family and personal legal problems before the Muslim court. This article is based primarily upon the records of the proceedings of several Istanbul courts.

Keywords: Zimmi, Ottoman law, family law, kadi, kadi sicills.

Bu çalışmanın temel amacı zimmi karı kocadan kurulu evliliklerden doğan uyuşmazlıkların şeriye mahkemesine taşınmasıdır. Osmanlı Yahudi ve Hristiyan tebaasının zorunlu olmadıkları halde iradi olarak aile hukukuna ilişkin hukuki uyuşmazlıklarını kadı mahkemesine sunmaları hususunda birkaç açıklama getirilebilir. Bu çalışma temel olarak İstanbul şeriye mahkemesi kararlarına dayanmaktadır.

Anahtar kelimeler: Zimmi, Osmanlı hukuku, aile hukuku, kadı sicilleri.

Ottoman kadi courts are also places where marriages and divorces were frequently validated and registered¹. As well known, non-Muslim Ottoman citizens had an autonomy over family matters and they could litigate at both congregation courts and kadi courts against other community members for personal matters. Understandably enough, they were not obliged to apply to the kadi courts for *statute personnelle* disputes, yet they often preferred to sue before the kadi instead of the congregation courts as seen from registers. In this article, my aim is not to examine the disputes arising from intermarriages between Muslim men and non-Muslim women. This article is based primarily upon the records of the proceedings of several Istanbul courts. The cases

* Prof. Dr. Marmara University, Faculty of Law.

1 M. Âkif Aydın, “Osmanlı Hukukunda Nikâh Akitleri”, *The Journal of Ottoman Studies*, vol. 3 (1982), pp. 1-12.

we have examined date from 16th to 18th centuries. It should be kept in mind that the registers used in this essay are very small part of the whole. However the examples, even in this state, can provide us important clues. Damascus² (18th and 19th centuries), Sofia³ (17th century) and Cyprus⁴ (1580-1640) are among examined cities from that point of view. The forty sicils studied in this article were prepared and published by ISAM (Centre for Islamic Studies) in the scope of a project called Istanbul 2010 European Capital of Culture, in which the writer got involved.

Several explanations can be put forward on why Ottoman Jews and Christians voluntarily chose to bring their family and personal legal problems before the Muslim court. Gradeva and Qattan cite some arguments for the willingness of the congregation members. In addition to them, Çiçek is one of the historians that write directly on this subject⁵.

As known, divorce in Islamic law is very simple. There is no need to a cleric to complete divorce procedure. Islamic law offers several advantages to a couple. While a wife is entitled to mahr and nafaqa, a husband has the right to divorce his wife without any legal action.

Ottoman zimmi preferred kadi courts because this choice means to escape inflexible regulations of their religious law in personal and family law matters⁶. In spite of the prohibition in Jewish law to sue in a court other than a Jewish authority, the Jews in the Holy City often took their disagreements to Islamic courts too⁷.

2 Najwa Al-Qattan, "Dhimmis in the Muslim Court: Legal Autonomy and Religious Discrimination", *International Journal of Middle East Studies*, vol. 31 (1999), pp. 429-444.

3 Rossitsa Gradeva, "Orthodox Christians in the Kadi Courts: The Practice of the Sofia Sheriat Court, Seventeenth Century", *Islamic Law and Society*, vol. 4No. 1 (1997), pp. 37-69.

4 Ronald J. Jennings, "Divorce in the Ottoman Sharia Court of Cyprus, 1580-1640", *Studia Islamica*, no. 78 (1993), p. 160.

5 Kemal Çiçek, "Cemaat Mahkemesinden Kadı Mahkemesine Zimmilerin Yargı Tercihi", in *Pax Ottomana: Studies in Memoriam Prof. Dr. Nejat Göyünç*, ed. Kemal Çiçek, Haarlem-Ankara: SOTA, Yeni Türkiye 2001, s. 31-49.

6 Halil İnalcık, "Ottoman Archival Materials on Millets", in *Christians and Jews in the Ottoman Empire*, ed. B. Braude, B. Lewis, c. I, New York: Holmes-Meier Publishers, 1982, s. 437.

7 See: Amnon Cohen, *Jewish Life under Islam, Jerusalem in the Sixteenth Century*, Cambridge: Harvard University, 1984. Also see Amnon Cohen, *A World within: Jewish Life as Reflected in Muslim Court Documents from the Sijill of Jerusalem: (XVIth Century)*, vol. I-II, Philadelphia: University of Pennsylvania, 1994.

A few amount of fees for legal proceedings in kadi courts might be a remarkable cause for community members.

On the other hand, a decision made by a kadi is binding, whereas a congregation court is legally court of arbitration. Their jurisdictional power is limited and execution of their decisions is up to the consent of plaintiff and defendant.

The relationship between kadi and congregation courts are cold and uncompanionable. Decisions relating to marriage and divorce made by kadi courts are notified to congregation courts by a man of *subaşı*. In this court order, kadi requests to register the order so that clergy has to recognise and obey this decision. Otherwise the *muhzır* arrests and puts them in prison⁸.

The following examples can add an interesting dimension to so-called millet system⁹ because they illustrate that the Ottoman courts were open to every single man in the Ottoman realm whether it be a Muslim or a zimmi as a common justice.

I-Engagement

Case 1

From the residents of Kınalı (Sürh) island, a district of Üsküdar, a zimmi named Evrano v. Andron stated in the court in the presence of Manol v. Dimitri, a zimmi from above mentioned island: A girl named Orati, who is aforesaid Manol's late brother's daughter, is my fiancée. But the said Manol denies that engagement and he doesn't make the wedding. Let this be asked about and established in accordance with the noble sharia. Manol denied so-called engagement. When the plaintiff was asked if he had proper evidence he failed to bring evidence. Then he asked for three days to submit evidence, after three days he failed again. What happened was written upon request of the aforesaid Manol¹⁰. (The case was probably recorded sometime in 25 Şaban 1000/June 6, 1592 because the previous record bears that date.)

⁸ Çiçek, 39.

⁹ See: Macit Kenanoğlu, *Osmanlı Millet Sistemi: Mit ve Gerçek*, 2nd edition, İstanbul: Klasik, 2007.

¹⁰ Court of Üsküdar, 84/42b-1, in *İstanbul Kadı Sicilleri Üsküdar Mahkemesi 84 Numaralı Sicil (H. 999-1000/M.1590-1591)*, R. Günalan, M. Canatar, M. Akman, İstanbul: İSAM 2010, p. 282.

Case 2

From the residents of Eğin in Anatolia province, an Armenian called Agop v. Onnes stated in the court in the presence of Sarkis b. Kirakoz: When I wanted to marry with the aforesaid Sarkis's daughter named Mezandane we were engaged. Hereafter I have broken off this engagement. I have no demand any more. The said Sarkis acknowledged the statement of the above mentioned Agop. What happened was written upon request. 15 Safer 1050/June 6, 1640¹¹.

Case 3

Hüseyin b. Mehmed who is an agent of Sarkis v. Ahbaron came to court, after established his agency he said that when Sarkis wanted to get married with a girl named Oskek bt. Bedros, he gave a little something as a gift. Now he gives up to marry her and releases what he donated. From now on let her marry someone she likes. What happened was written upon request. 18 Şaban 1090/September 24, 1679¹².

Case 4

A Christian called Hristo v. Dimo of Tophane in the judicial district of Galata, stated in the presence of Hristo v. Yuvan, a Christian: When I wanted to marry Veste who is aforementioned Hristo's daughter, according to our custom I gave ten golden coins, the said Hristo also gave me a turquoise ring, eight macrames and one fardel in return. As the engagement was cancelled, I have given back him what I took, but he refrains from returning ten golden coins to me. Let him be asked and taken my money. The defendant Hristo accepted this. It was recorded. 14 Cumadelphire 1102/March 15, 1691¹³.

II. Marriage

Case 1

A zimmi called Yorgi v. (.) of Çengel stated in the noble sharia court that he was appointed as a proxy (vekil) by a Christian woman named Lanirebni

11 Court of Hasköy, 5/208-3, in *İstanbul Kadı Sicilleri Hasköy Mahkemesi 5 Numaralı Sicil (H. 1020-1053/M.1612-1643)*, Baki Çakar and others, İstanbul: İSAM 2011, p. 278.

12 Court of Eyüb, 90/20a-3, in *İstanbul Kadı Sicilleri Eyüb Mahkemesi (Havass-ı Refia) 90 Numaralı Sicil (H. 1090-1091/M.1679-1680)*, Fuat Recep, Mehmet Akman, İstanbul: İSAM 2011, p. 158.

13 Court of Bâb, 54/61a-3, in *İstanbul Kadı Sicilleri Bâb Mahkemesi 54 Numaralı Sicil (H. 1102/M.1691)*, Hüseyin Kılıç, Mehmet Akman and others, İstanbul: İSAM 2011, p. 301.

bt. Nikola to marry her to a zimmi called Andon v. Kin, from the same village, on the basis of islamic tradition. When the witnesses recorded at the bottom of this sicil, verified his statement, what happened was written¹⁴. (The case was probably recorded sometime in 3 Zilkade 1000/August 11, 1592 because the next record bears that date.)

Case 2

A Jewish woman called Seltan bt. Abraham, from the residents of Maro-la quarter in Istanbul, from Edirne Jewish community, came to the noble sharia court and got married with a Jewish man named Sabatay v. Yahudi, from the aforementioned community, in return for 50.000 silver coins deferred dowry (mehr-i müeccel). When the said Sabatay accepted the marriage, what happened was written. 29 Cemaziyelevvel 1027/May 24, 1618¹⁵.

Case 3

A Christian woman called Sultana bt. Sokinos and a zimmi named Simon v. Istamo came to the noble court together. The said Sultana got married with Simon in return for 1,000 silver coins deferred dowry (mahr-i müeccel). The aforesaid zimmi Simon also got married with Sultana in the presence of witnesses whose name were registered at the bottom of this record. This marriage was registered after being complied with the requirements of the holly sharia and what happened was written. 13 Zilkade 1047/March 29, 1638¹⁶.

Case 4

A Christian woman called Kiryako bt. Yorgi, from the residents of Mustafa Pasha quarter in Istanbul, came to the holly court with a zimmi named Polo v. Todori and stated that she got married with the said Polo in return for 500 silver coins. The aforesaid zimmi got married with her. This marriage was written in the presence of the witnesses recorded below. What happened was written. 17 Zilhicce 1047/ May 2, 1638¹⁷.

14 Court of Üsküdar, 84/70a-1, in *İstanbul Kadı Sicilleri Üsküdar Mahkemesi 84 Numaralı Sicil*, p. 406.

15 Court of Istanbul, 3/40b-1, in *İstanbul Kadı Sicilleri İstanbul Mahkemesi 3 Numaralı Sicil (H. 1027/M.1618)*, Y. Karaca, M. Akman and others İstanbul: İSAM 2010, p. 265.

16 Court of Eyüb, 37/77b-1, in *İstanbul Kadı Sicilleri Eyüb Mahkemesi (Havass-ı Refia) 37 Numaralı Sicil (H. 1047-/M.1637-1638)*, S. Kahrıman, M. Akman and others, İstanbul: İSAM 2011, p. 372.

17 Court of Eyüb, 37/90a-4, in *İstanbul Kadı Sicilleri Eyüb Mahkemesi (Havass-ı Refia) 37 Numaralı Sicil (H. 1047-/M.1637-1638)*, S. Kahrıman, M. Akman and others, İstanbul: İSAM 2011, p. 435.

Case 5

Yani v. Meleş, proxy of Kasandıra bt. Yani, from the residents of so-called Avasya village in the judicial district of Eyüb, after his proxy being verified by the testimonies of Nikola v. Yorgo and Yorgi v. Yani, in the presence of a zimmi called Kostantin v. Alexi, stated that he made the said Kasandıra got married based on his proxy in return for 3.000 silver coins deferred dowry (mahr-i müeccel). When the aforesaid Kostantin said that I accepted that marriage and I got married with the said Kasandıra, what happened was registered. 20 Şevval 1650/August 23, 1655¹⁸.

Case 6

From the residents of Ali Paşa quarter in Istanbul, Eleni bt. Kuka stood before the kadi and said that she got married with Nika v. Yani in return for 200 silver coins deferred dowry (mahr-i müeccel). The said Nika accepted that and got married with Eleni in the presence of the witnesses registered below. 20 Safer 1066/December 19, 1655¹⁹.

Case 7

From the residents of Abdi Subaşı quarter of Fenerkapı in Istanbul, a Christian woman named Sahreko bt. Velko in the presence of a zimmi called Yani v. Istemad, stated in the noble sharia court that she admitted and acknowledged that she was married with the aforesaid Yani in return for 1.000 silver coins deferred dowry (mahr-i müeccel) and 500 silver coins prompt dowry (mahr-i mu'accel) in this place. When the said Yani accepted the marriage, what happened was written. 29 Receb 1077/January 25, 1667²⁰.

Case 8

A zimmi called Miho v. Yani, a proxy of a Christian woman named Irine bt. Todor of the village of Burgos in the judicial district of Eyüb, after his proxy being verified by the testimonies of Nikolaki and Alexandra, in the presence of a zimmi called Yorgo v. Yani, declared that he made the said Irine got married

18 Court of Eyüb, 61/29a-4, in *İstanbul Kadı Sicilleri Eyüb Mahkemesi (Havass-ı Refia) 61 Numaralı Sicil (H. 1065-1066/M.1655)*, Baki Çakır, Tahsin Özcan, İstanbul: İSAM 2011, p. 151.

19 Court of Eyüb, 61/62a-2, in *İstanbul Kadı Sicilleri Eyüb Mahkemesi (Havass-ı Refia) 61 Numaralı Sicil (H. 1065-1066/M.1655)*, Baki Çakır, Tahsin Özcan, İstanbul: İSAM 2011, p. 268.

20 Court of Bâb, 3/69a-3, in *İstanbul Kadı Sicilleri Bâb Mahkemesi 3 Numaralı Sicil (H. 1077/M.1666-1667)*, Rifat Günalan, Mehmet Akman, İstanbul: İSAM 2011, p. 440.

based on his proxy in return for 500 silver coins deferred dowry (mahr-i müeccel) and an amount of prompt dowry (mahr-i mu'accel) which is secret between them, then the aforesaid Yorgo accepted this marriage and got married the said Irine. What happened was written. 12 Şevval 1081/February 22, 1671²¹.

Case 9

An Armenian woman called Gül bt. Samadin of Çeraği Hamza quarter in İstanbul, came to the noble court. Then the said woman declared and acknowledged in the presence of an Armenian named Kızıl v. Kirkor that she got married with the aforesaid Kızıl in return for 6.000 silver coins deferred dowry (mahr-i müeccel). When the said Kızıl accepted the marriage, what happened was written. 1 Cemaziyelevvel 1087/July 12, 1676²².

Case 10

A Jewish woman called Dadye bt. Yasef, from the residents of Mustafa Pasha quarter near Balat in İstanbul, came to the noble sharia court and got married with a Jewish man named Hebib b. Menahem, from (...) Jewish community, in return for 100 *esedi gurus* deferred dowry (mahr-i müeccel). Then the said Hebib accepted this. What happened was written in this place. 23 Ramazan 1097/ August 13, 1686²³.

III. Divorce

Case 1

Dimitri b. İstani of Kuzguncuk village stated in the Muslim court in the presence of his wife Muşkini bt. Todora that he divorced the said Muşkini according to his religion because she betrayed him and stole his stuff. What he said was written upon his request. 29 Zilhicce 930/October 28, 1524²⁴.

21 Court of Eyüb, 82/20b-3, in *İstanbul Kadı Sicilleri Eyüb Mahkemesi (Havass-ı Refia) 82 Numaralı Sicil (H. 1081/M.1670-1671)*, T. Mert, R. Günalan, M. Akman, İstanbul: İSAM 2011, p. 102.

22 Court of İstanbul, 18/21a-1, in *İstanbul Kadı Sicilleri İstanbul Mahkemesi 18 Numaralı Sicil (H. 1086-1087/M.1675-1676)*, Salih Kahrıman, M. Akman and others, İstanbul: İSAM 2010, p. 135.

23 Court of Bâb, 46/in the back cover-3, in *İstanbul Kadı Sicilleri Bâb Mahkemesi 46 Numaralı Sicil (H. 1096-1097/M.1685-1686)*, S. Atay, M. Akman and others, İstanbul: İSAM 2011, p. 639.

24 Court of Üsküdar, 5/12a-4, in *İstanbul Kadı Sicilleri Üsküdar Mahkemesi 5 Numaralı Sicil (H. 930-936/M.1524-1530)*, Y. Dağdaş, Z. Berktaş, İstanbul: İSAM 2010, p. 86.

Case 2

Zimmi residents of Çengel village testified that Manol b. Heraklip divorced his wife Teodara bt. Yorgi according to their false assumption (zu'm-i fâsid). The divorce was established based on their testimony and written. 30 Rebiulevvel 942/ September 28, 1535²⁵.

Case 3

A zimmi called Paroş v. Niko of Islam Bey quarter in Eyüb came to the Muslim court. He stated and acknowledged before the kadi that after he had paid for and delivered to Kabaneh 300 silver coins delayed dowry (mahr-i müeccel) and maintenance allowance (iddet nafakası) which is an amount known between them, he divorced his wife Kabaneh bt. Dimo three times. The aforementioned divorcee received the money and confirmed what he said. The parties reciprocally discharged their claims and obligations. What happened was written upon request. 2 Cemaziyelevvel 1029/April 5, 1620²⁶.

Case 4

From the residents of Hasköy, an addition of Eyüb, a zimmi called Todorı v. Yani came to the noble sharia court and stated and acknowledged in the presence his Christian wife Kirana's father Nikola: I irrevocably divorced (*talâk-ı bâin*) my wife the said Kirana according to Muhammadan law. Hence let her get married with whoever she wants. What happened was written. 20 Ramazan 1029/August 19, 1620²⁷.

Case 5

A zimmi called Kanilo v. Farandilos, a legal agent of a zimmiye named Zoyi bt. Corci from the residents of a village known as Arnavudköyü, an addition of Galata, came to the noble sharia court, after his agency being established by the testimonies of two zimmi called Sivostos v. Yorgi and Panayot v. Nikola, stated in the presence of the said Zoyi's husband Pavlaki v. Manoli before the kadi that his client had made a *muhala'a* (or *hul'*: wife-initiated divorce)

²⁵ Court of Üsküdar, 9/92a-2, in *İstanbul Kadı Sicilleri Üsküdar Mahkemesi 9 Numaralı Sicil (H. 940-942/M.1534-1536)*, Kenan Yıldız, İstanbul: İSAM 2010, p. 307.

²⁶ Court of Eyüb, 19/25b-3 (Arabic), in *İstanbul Kadı Sicilleri Eyüb Mahkemesi (Havass-ı Refia) 19 Numaralı Sicil (H. 1028-1030/M.1619-1620)*, Y. Karaca, R. Erol, M. Akman, İstanbul: İSAM 2011, p. 181.

²⁷ Court of Eyüb, 19/78b-3, in *İstanbul Kadı Sicilleri Eyüb Mahkemesi (Havass-ı Refia) 19 Numaralı Sicil (H. 1028-1030/M.1619-1620)*, Y. Karaca, R. Erol, M. Akman, İstanbul: İSAM 2011, p. 355.

renouncing her claims raised from delayed dowry (*mahr-i müeccel*), its amount is known between them, her two diamond rings used by the said Pavlaki, two golden boxes, a salver, two embroidered macrames, Russian originated two concubines named Satı and Perestu. The aforesaid Pavlaki accepted the *hul'* in the court. The parties reciprocally discharged their claims and obligations. What happened was written upon request. 7 Zilkade 1047/March 23, 1638²⁸.

Case 6

A Gypsy zimmi named Yorgi v. Dorşı acknowledged and stated in the presence of his wife Vasiliki bt. Aslan, a Christian woman, in the Muslim court: The aforesaid Vasiliki is my wife according to our wrong way. Because we have not a joyous life anymore I have irrevocably divorced her. Now she is a divorcée. The aforesaid Vasiliki confirmed his statement. What happened was registered and a copy of the judicial decree was given to those who asked for upon request. 12 Rebiulahir 1054/June 18, 1644²⁹.

Case 7

A zimmi named Kosta v. Mosi of Langa in İstanbul stated and acknowledged in the noble court: Henceforth if I drink wine, raki and suchlike things, let my wife Mariha bt. Kostantin be irrevocably divorced from me. What he said was written upon the request of Dimitri v. Kostantin, proxy of the said Mariha. 25 Rebiulahir 1059/May 8, 1649³⁰.

Case 8

A zimmi named Yorgi v. Nikola, a smith in Galata, stated in the presence of his divorced wife Vitorya bt. Nikola, a *zimmiye*, in the noble court: The said Vitorya was my wife. Since I irrevocably divorced her, I renounced all my claims and legal rights relating to the marriage. What happened was written upon request. 29 Zilhicce 1073/August 4, 1663³¹.

28 Court of Eyüb, 37/76b-2, in *İstanbul Kadı Sicilleri Eyüb Mahkemesi (Havass-ı Refia) 37 Numaralı Sicil (H. 1047-/M.1637-1638)*, S. Kahrıman, M. Akman and others, İstanbul: İSAM 2011, p. 369.

29 Court of Eyüb, 49/20a-1, in *İstanbul Kadı Sicilleri Eyüb Mahkemesi (Havass-ı Refia) 49 Numaralı Sicil (H. 1054-/M.1644)*, A. S. Adıgüzel, Z. Trabzonlu, T. Özcan, İstanbul: İSAM 2011, p. 118.

30 Court of Rumeli Sadareti, 80/51a-1, in *İstanbul Kadı Sicilleri Rumeli Sadâreti Mahkemesi 80 Numaralı Sicil (H. 1057-1059/M.1647-1649)*, F. Recep, R. Erol, M. Akman, İstanbul: İSAM 2011, p. 204.

31 Court of Galata, 90/71b-3, in *İstanbul Kadı Sicilleri Galata Mahkemesi 90 Numaralı Sicil (H. 1073-1074/M.1663)*, F. Recep, S. Kahrıman, M. Akman, İstanbul: İSAM 2012, p. 363.

Case 9

From the residents of Sultan Bayezid quarter in Galata, a zimmi called Yani v. Istemad stated and acknowledged in the court, in the presence of his Christian wife called Yasmin bt. Andriye: My wife the aforesaid Yasmin complains that I often beat her without any reason, if I keep beating her she will separate from me. So, from now on, if I punch and beat her unjustly, let her be irrevocably divorced from me. What he said was registered. 17 Muharrem 1074/August 21, 1663³².

Case 10

From the residents of Abdi Subaşı quarter in Istanbul, a Christian woman called Saltane bt. Dimitri v. Manolaki acknowledged and stated in the presence of her zimmi husband Yorgaki v. Nikola in the noble sharia court: A disagreement occurred between us, so I have asked for a *muhala'a* (or *hul'*: wife-initiated divorce) and I have renounced my 20.000 silver coins delayed dowry (*mahr-i müeccel*), 30 *guruş* borrowed money and other possible legal rights in return for the divorce mentioned. Hence we have made a *muhala'a* and given up all further claims against one another. The said Yorgaki accepted *hul'* and what happened was recorded upon request. 23 Cemaziyevvel 1089/ July 13, 1678³³.

32 Court of Galata, 90/80b-2, in *İstanbul Kadı Sicilleri Galata Mahkemesi 90 Numaralı Sicil (H. 1073-1074/M.1663)*, F. Recep, S. Kahrıman, M. Akman, İstanbul: İSAM 2012, p. 401.

33 Court of Hasköy, 10/64-1, in *İstanbul Kadı Sicilleri Hasköy Mahkemesi 10 Numaralı Sicil (H. 1085-1090/M.1674-1679)*, Tahsin Özcan, İstanbul: İSAM 2011, p. 104.