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Contesting the authority of Armenian Administration at the Height of *Tanzimat*: A Case of Incest, Adultery and Abortion[1]
Tanzimat dönemi Ermeni İdaresinin Hukuki Salâhiyetleri ve Sınırları: Bir Ensest, Zina ve Kürtaj Davası

Abstract

This article discusses the limits of the Armenian juridical mechanisms within the Ottoman Empire based on a collective petition known as *arz-ı mahzar*, sent in 1856 by the Armenian local administration of Akşehir, Konya, to the Patriarchate of Constantinople. It reports to the Patriarch an unresolved court case involving an incident of incest, adultery, and abortion, asking for advice. This period of the 19th century at the height of *Tanzimat* is envisaged as the most progressive period of the Ottoman Empire. The cases discussed in this article show that the Ottoman Armenian *millet*'s juridical authority remained a limited and constantly contested one, as the millet was not always able to make judgements according to its ecclesiastic law as it was supposed to be entitled to do.

Öz

Bu makale 1856'da Konya Akşehir'den İstanbul'daki Ermeni Patrikhanesi'ne gönderilen bir arz-ı mahzar ışığında Ermeni idaresinin hukuki yetkilerini, sınırlarını ve/veya sınırlılıklarını incelemektedir. Patrikhane'den istenen, ensest, zina ve kürtaj suçlarının işlendiğine işaret eden çözülememiş davaya ilişkin bir tavsiyede bulunmalarıdır. Özellikle de Tanzimat'ın doruğu denilebilecek bu dönem Osmanlı İmparatorluğu tarihyazımında en ilerici dönem olarak tahayyül edilir. Bu makale, Patrikhane Arşivi ışığında Ermeni idaresinin kendi salâhiyetinde olan hukuki yetkilerini ancak sınırlı bir şekilde kullanabildiğini iddia etmektedir.

Keywords
Petition, Ottoman Armenians, *Tanzimat*, incest, adultery

Anahtar Kelimeler
Arz-ı mahzar, Osmanlı Ermenileri, Tanzimat, ensest, zina

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Artaratad Srp(a)z(a)n D(yar)N Hayr Hokewor, Sp(o)h karshabarats't gĕ baknemk'. a(menay)n khonarhut'eamp.

1856 S(e)bd(e)mp(e)r 7, Akşehir

Bizim *sırapazan* Efendimiz ve *Azkayin Joğovk* Amira ağalarımız, efendilerimize ricamız, Azkımızın içinde bu günlerde *Havadkımıza* muğayir bir kimse peydah olub, bu kimse Azkımızın vergü akcesini derner idi, yani millet keyhası mersumun ismi babıçcı (pabuçcu) Hacı (HCI) yeğiaynın oğlu (HCI) hagop. Mersum kimse kendi kız karındaşının kızı ile zina edip, ve dişehlinin ehli iki senedir diyar akhirde olub, bu mersum kimsenin evünden iki dişehli bu dişehlinin önüne düşüp, aylazki ebesine götürüp boyunda zinadan kalan çocuğu telef etdiriyorlar. Bu iş *Azkızıma* duyuldukdan sonra *aylazkide* de duymadık az kalıyor. ve bu günlerde bu dişehlinin ehli dakhi diyar ahirden gelib, pederiyle ikisi birlikte gelib meclisimize dava ettiler. bizler dakhi bu dişehlinin gerek validesinin gerek kendisini meclisimize getirdik. bu çocuk kimden oldu deyü sival etmemizde dayımdan oldu deyü cevap verdi. bu sözü duymamızda çok takatdi etdik dişehliye ve ikide çarpıştırıp vurduk kendisine ki bu dünyada olmuş şey deyil, bu senin dayındır buna bu iftirayı etme. bu minval çok zor etmemizde kimsenin yüzünü görmedim dayımdandır diyerek cevab verdi. ve bunun üzerine budişehlinin gerek ehli gerek gayın pederi ayak bastılar ki bu keyfiyete *SPRzN Badriark Hayrımıza* yaz ille biz bu murdarı kabul etmeyiz deyü. bizler dakhi *azkımızın* içinde bu emsal işi görmediğimiz için. bizler bir veçhile bu işin burdakapanmasının yolunu bulamadık. *aylazki* şerahatına düştüğünde beş altı gişiye küllü gadr olucak. onun için efendilerimize ricamız bu kimsenin gerek nenfiliğilen gerek ol tarafa götürtüp *prgiçe* atmağılan ne türlü icraya müsdahak ise icra etmenize rica ederiz. ki bir dakhe *Azkımızın* içinde bu türlü iş khuku (vuku) bulmasın. Gerek akhir millete gerek *aylazkiye* kepaze olduk. bu *babdehramanınıza* möhtacız. Bu murafayı etdiğimizde *Garkavorlarımızda* içimizdedir. Gerek *işkhan* gerek *garkavor* bir veçhile bu işe biz burda çare bulamadığımız içünsiz efendilerimize duy ederiz icabını siz efendilerimiz bilirsiniz….."

(İsimler ve Mühürler)

Our appeal to our *effendi* [Lord] the S(r)P(a)z(a)N, our Amira aghas, and *effendis* is about the one (*kimse*) appearing amongst our *azk* [nation] who contradicts our *Havadk* [faith - Arm.]. He used to be our *azk*'s tax collector, in other words, he was our nation's steward, and his name was Hagop, son of Yeghia the shoemaker. The person in question committed adultery with his own sister's daughter. The *ehil* of his sister's daughter [owner in Ottoman Turkish, here meaning her husband] has been away from home for two years. Two other women took the woman in question to an *aylazki* [Muslim] midwife and discarded [*telef etdiriyorlar*[2]] the child remaining on her (body),[3] the product of adultery. After the incident was heard by our azk, there was barely anyone amongst the *aylazki* (Muslims) who had not heard of the news. Even the woman's *ehil* who was elsewhere got the news and came back home, and both her ehil and his father (woman's father-in-law) approached our assembly (*meclis*) seeking justice. Then we brought the woman and her mother to our assembly and asked the woman from whom she conceived this child, and she answered 'it is from my maternal uncle.' Upon hearing this, we raged at the woman, treated her roughly, and hit [*çarpıştırıb*] her once or twice. We told her that it was something unheard of, and said, 'This is your uncle, don't you defame him!' But, despite the pressure we exerted, she said again, 'I didn't see anybody else's faces, [the child] is from my [maternal] uncle [*dayı* in Turkish].' [Then] this woman's ehil and her father-in-law came in, asking us to write to our *Hayr*[4] *SrP(a)z(a)N Badriark* [Holy Father the Patriarch] that

> they will not accept this stained soul by any means, that the local Armenian administration could not resolve this issue here, as we have never seen a comparable incident in our *azk*, that if the case is brought to *aylazki* Sharia law, five or six people will suffer at the end, and that therefore we beg our *Effendis* to either exile[5] or throw the one over there to *prgiç* [Surp Prgiç Hospital] to give a punishment the one rightly deserves, so that hereafter no similar incident takes place amongst our *Azk*. We fell into disgrace before other communities as well as *aylazki* [Muslims]. [Thus,] we need your help. We wrote this together with our *Garkavors* [clergymen], and as we could not find a way to resolve the issue here, we inform you, our *effendis* [to decide], who know the best what to do.
>
> Names and seals[6]

Introduction

This article aims to elucidate the limits of authority of the local Armenian administration both in Istanbul and in the provinces. The archival material at hand will be contextualized within the structural and administrative changes undertaken during *Tanzimat* including the practices prior to the ratification of the *Nizamname*. Furthermore, the article will analyze the language, content, and context of a collective petition (*arz-ı mahzar*) sent from Akşehir/Konya in depth. It argues that the legal and juridical authorities granted to the Armenian administration both in the capital and in the provinces reached its limits as soon as a person from another faith was involved.

This petition is originally included in my *habilitation* thesis (the second book) *Tanzimat of the Provinces* (Suciyan, 2019). I conducted my research on the nineteenth century archives of the Armenian Patriarchate of Constantinople/Istanbul (APC) at Nubar Library, Paris. Having read documents from more than 35 correspondence files, choosing them according to their date, type and physical condition, I paid special attention to having representation from as many different locales as possible, especially from the regions that are within the borders of present-day Turkey. One exception to this is the inclusion of Crete, as Crete was and remains under the jurisdiction of the Armenian Patriarchate of Istanbul. I selected different types of documents (such as *sened, arz-ı hal* (personal petitions), *arz-ı mahzar* (collective petitions), *istintak* (interrogations), medical reports, notarial attestations, reports of the Armenian local representatives, telegrams and others) in order to show the bureaucratic mechanism of the Armenian administration and its interaction with the Ottoman administration. Some of the cities, towns and villages covered in my study include: Akşehir, Antalya, Angora (Ankara), Aghtamar, Amasya, Bandırma, Belen, Beylan, Beşiktaş, Beykoz, Çarşamba, Çarsancak, Çork Marzvan (Dörtyol), Erzincan, Erzurum (Garin), Gallipoli, Giresun, Heraklion, Istanbul, Kayseri, Larende, Muş (Daron), Motkan, Niksar, Ocaklı, Payas, Pingyan (Agn/Eğin), Samatya, Samsun, Sivas, Üsküdar, Yozgat and Van.

Before starting the analysis of the archival document, I will explain the character of this surviving archive located at the Nubar Library in Paris. Then, in order to clarify the role

of the Armenian juridical system and Armenian administration within the Ottoman Empire, I will refer to its structure and institutions both in the capital and in the provinces. Thirdly, I will discuss the content of this petition based on other cases analyzed throughout my research, utilizing the work of Nerses Melik'-T'ankean on the Armenian ecclesiastic law (Melik'-T'ankean, 1903 and 1905).

Archives of the Patriarchate of Constantinople (APC) located at AGBU's Nubar Library

The archives of the Armenian Patriarchate are part of a surviving archive located at the Armenian General Benevolent Union's (AGBU) Nubar Library in Paris, having found their way there through a long and convoluted journey. Patriarch Zaven Der Yeghiayan was forced to leave Constantinople in cognito on a British ship in 1922, together with the head of the Armenian Relief Organisation and representative of the first Armenian republic Madteos Eblighatian (Der Yeghiayan, 2002, p. 247) Before leaving, Patriarch Zaven sent 22 trunks of archival documents to the Prelate of Manchester, Tokat-born Krikoris (Grigoris) Balakian (Kevorkian, 2011, p. 5). A graduate of Sanasaryan College in Erzurum, Balakian was one of the few deported to Çankırı in the days after the 24th of April 1915 who managed to survive and reach Europe.[7] After being elected the Armenian Bishop of Marseille in 1927, Balakian took the documents with him. Part of the archive was sent to Jerusalem in 1938 upon the request of Patriarch Zaven, who wanted to consult the documents to write his memoir (Ibid.). Another portion was sent to the Nubar Library in Paris. Raymond Kevorkian utilized these archival materials in his book *The Armenian Genocide: A Complete History*, particularly the ones dating to the 20th century. This article as well as my study on Tanzimat is a result of my research in this surviving archive, especially its mid-19th century files.

The archival material is categorized according to the villages, cities or administrative units (*vijags*) with which the correspondences were held, 240 different locales in all. The document in question referred to a case which had been subjected to the judicial process of the Armenian administration of Akşehir, a district of the Konya province according to the Armenian Patriarchate's administrative division.[8] Although the document does not make any mention of Konya, the presence of other files related to this city within the Akşehir file of the Patriarchal Archives confirms that Akşehir fell within the jurisdiction of Konya Province. According to Kevorkian and Paboudjian's study on Armenians in Ottoman Empire up to 1915, Akşehir was the most developed town in the Province of Konya. Apart from two churches, Saints Paul and Petrus and Holy Trinity there were four educational institutions, one of which was reknowned in the province for its educational quality (Kevorkian and Paboudjian, 2012, p. 177). The Holy Trinity (Surp Yerrortutiwn) Church has recently been restorated and turned into a cultural center.[9]

The languages used in these archival materials

Although documents in the archives of the APC are written in Armenian for the most part, a substantial number of them were written in Turkish in Ottoman script. In relatively small settlements where there were no significant Armenian monasteries, especially in the 1840s and 50s (i.e. before the start of the standardization of Western Armenian language), a considerable part of the petitions addressed to the Armenian Patriarchate were written in Turkish with Armenian script. I have also come across correspondence in Greek, as the island of Crete was also under the jurisdiction of the Patriarchate of Constantinople, and Turkish written in Greek script from the Pontus region. While there are numerous collective petitions, telegrams, documents of inheritance, and the like, some documents have Turkish in Ottoman script as marginalia on an otherwise Armenian or Armeno-Turkish document, making the document multiscript. Having also seen a series of Armeno-Turkish and Armenian documents submitted to the Ottoman administration held by the Ottoman Archives, I have come to believe that Ottoman bureaucracy was much more multilingual and multiscript than previously thought. Further, some of the documents in the APC were written in Armenian and/or Armeno-Turkish on one side and Turkish in Ottoman script on the other for use within the Ottoman bureaucracy. Thus, the Armenian administration was forwarding these documents, if necessary, to the Ottoman bureaucrats with marginalia in Ottoman script Turkish. In addition, I understood that Armeno-Turkish as well as Greek or Turkish written in Greek script were all used in the Armenian millet's administrative structures indicating that official correspondences were not only carried out in the language of the millets but in the languages and language forms they used in their everyday lives, reflecting even the local Turkish dialects they spoke.

Armenian Central and Local Administration and the Armenian Nizamname

The Armenian administration in the Ottoman Empire, especially after the ratification of the Armenian *Nizamname* of 1863 (often referred to as the Armenian Constitution in Armenian sources), was designed to function similarly in Constantinople and in the provinces. In his lengthy article on Armenian administration, Arshag Alboyajean stated that the administration's Judgment Commission was established as early as 1840 (Alboyajean, 2012, pp. 187-188). From the case at hand dated and other documents included in my research all from the 1840s, we can deduce that the Judgment Commission functioned before the *Nizamname*, confirming Arshag Alboyajean's argument. Family law issues were under the jurisdiction of Armenian ecclesiastic law even earlier. Alboyajean compared *berats*[10] given by the Sultans to Armenian Patriarchs: Krikor Basmajean in 1764, Stepannos Aghavni in 1831 and Nerses Varjabedean in 1875, all of which left matrimonial matters to the authority of the Patriarchate, reaffirming the existing practice (Alboyajean , 2012, p. 96).

More specifically, the structure and duties of the Judgment Commission within the Armenian administration, referred to as the *Muhakeme Komisyonu* in the original text of the *Nizamname*, is a commission comprised of eight members, four civil and four ecclesiastical, all jurists, married and aged forty and up. They are elected by the Mixed Assembly (*Meclis-i Muhtelit*)[11] by majority vote, and the Commission is chaired by the Patriarchal l*ocum tenens*. In many cases we read that the petitioners knew that the Patriarch participated in the hearings in person. The *Nizamname* also indicates that this judicial body heard family law cases, as well as cases referred to the Patriarchate by the Sublime Porte. Legal affairs in the provinces, according to the *Nizamname*, had to be dealt with by the regional assemblies of the churches and monasteries governing the local Armenian communities (Artinian, 2004).[12] The petition in this article dated 1856, as well as other cases in my study, provide significant evidence that those local assemblies had already been fulfilling their legal functions prior to the official ratification of the *Nizamname*. The referral of an unresolved case to the Patriarchate to seek an ultimate solution as early as this date indicates that the local Armenian administration in question was already aware of such a practice and that similar cases had already been addressed this way.

My research on the archives of the APC clearly shows that Armenian administrations both in the capital and in the provinces were involved with all matters of the Armenian populace including provincial oppressions, murders, kidnappings of women, conflicts related to land ownership and many others (Suciyan, 2019, pp. 155-221). Provincial oppressions became an especially important issue starting in the *Tanzimat* period, and they were systematically and frequently reported to Constantinople or other administrative centers such as Echmiadzin and/or presumably the Catholicosate of Cilicia.[13]

The discourse of "privileges" and entitlements of the Ottoman Armenian Administration

As Christine Philliou rightly states, questions about the agency of the Ottoman Empire's Christian populations is absent from the *Tanzimat* narrative (Philliou, 2010, p. 164). Both this article and my study in general aims to fill this gap by bringing the voices of the most vulnerable agents into the present time, such as destitute Armenian women, peasants, the exiled, the handicapped, and imprisoned, and to incorporate them into the narrative of *Tanzimat*. While the cases referred to in this article came from central Anatolia and Bandırma in the western part of Asia Minor, in the reports of clerics from the eastern provinces violence against women, including kidnapping, forcefully Islamcizing and raping Armenian women were counted among the provincial oppressions. Between mid-May and mid-July 1864, the report of Bishop Hovhannes Muradean included sixty cases pertaining to the villages of the Muş Plain. While many of the cases seem to be criminal ones, they include hints at the changing structure of family relations, especially in the numerous cases related to kidnapping, raping of women, Islamcizing and marrying them. For instance,

> "Kurds from Motkan kidnapped the bride of Kre, from the village of Musheghen. They offered her to the Sheikh and Kurdified her."

Another,

> "An Armenian woman from the village of Hunan was kidnapped by the Kurds with her valuables. Father Mkhitar found her. However, Kurds stole her heart and had her say that she was a Muslim (dajik). Father Mkhitar took the case to court and rescued her."
>
> "In the village of Ardvots, an Armenian man, after letting his wife go, took another woman together with his uncle as a common wife of both. They adopted the Kurdish tradition" (Muradean, 1915, pp. 59-64).

These are part of the same report on provincial oppressions targeting the nucleus of Armenian society, the family, in these cases by local Kurds, as a result of which Armenians were outlawed within their administration, as having a "common wife" or a second wife is not permitted according to the Armenian ecclesiastic law. Similar strategies targeting Armenian women and Armenian family structures were continously pursued throughout *Tanzimat* and much later, never actually ceasing to exist.

As the historiography of *Tanzimat* predominantly portrays a period of "reform" and of "privileges given to non–Muslims," in the light of my study on the archives of the APC, I find it necessary to reassess this framing. The principle of equality regardless of religion as well as the ratification of the *Nizamnames* of the *millets* are very often regarded as "privileges." Halil İnalcık, one of the historians who played a central role in establishing the "reform" discourse for Tanzimat, stated that the Muslims of the Empire were disturbed by the "permissions'' given to non-Muslims. He argued that the local notables, ulema and even governors provoked the Muslims against the non-Muslims (İnalcık, 2006, p. 110). One of the most unacceptable permissions for them was the relative equality granted on paper to the Muslims and the non-Muslims alike after 1856. The terminology used by İnalcık as "permissions'' is frequently reworded as "privileges." Masayuki Ueno devoted an article to clarifying the terminology of "privileges," where he showed that the word was used in the text of the Reform Edict of 1856 as "clerical privileges." (Ueno, 2016, pp. 417-418).

> "According to the edict, the sultan desired that churches, monasteries and the 'clerical privileges' that had been maintained by him and his ancestors would always be protected from violation. The included privileges were not specified, but they were expressed as '*such privileges and permissions that are inserted in and written on the appointment charters*', whereas the charters themselves did not include the term 'privilege'." (Ibid.)[14]

Hence, İnalcık's wording may have stemmed from the usage of "permission," as Ueno described. However, the interesting point is that the "clerical privileges that had been maintained by him and his ancestors" refers specifically to those related to family law, and as mentioned by Alboyajean, they were not new.[15] Ueno points out that the edict highlighted the continuity by claiming that nothing new was added (Ibid., 418). One of the earliest scholarly works in English written on *Tanzimat*, Roderic Davison's *Reform in the Ottoman Empire*, stated that "Hatt-ı Hümayun had already promised reform of the millets, while conforming the ancient privileges and freedom of worship accorded them" (Davison, 1963, p. 114).

The use of "privileges" in the secondary literature is not coincidental but serves to maintain and sustain certain historiographic constructs. Âli Pasha, known as the architect of the 1856 Reform Edict, mentioned that the privileges were religious and asked the Armenian administration to submit their requests in the form of a takrir only when the issues were related to "religious privileges" (Ueno, 2016, pp. 424-425). The petitions submitted by Armenians from the provinces were not only about religious issues but more often than not included complaints regarding issues of land confiscations, land ownerships, unjust taxation, insecurity of life and honor; kidnapping of Armenian women, murders or attacks and various other forms of oppression. The discussion of what was religious and what was not was one of the strategies of the Ottoman administration's method of governance in order to define the character of the complaint anew each time.[16] Like the ambiguity created around religious and non-religious issues, the terminology of "privileges" is also a tool which serves to create a rupture in history-writing, labeling Tanzimat as an exceptionally progressive period, diametrically opposed to the subsequent Hamidian era. İnalcık concludes his article by saying that Tanzimat nonetheless paved the way to westernization, which in turn enabled the establishment of the Turkish nation-state of Turkey (İnalcık, 2006, p. 33). According to this reading, Tanzimat and the westernization process encapsulated in it was necessary for the establishment of the nation-state of Turkey. In other words, a process that started in Tanzimat was interrupted during the Hamidian era but then was resumed by the Turkish Republic. Thus, if the discourse of "privileges" creates an extraordinary time-period of reform, at the same time it creates a necessary rupture between Tanzimat and the violent excesses for which the Hamidian era is known. By the same token, bridging the gap between the Ottoman Empire and Turkey explicitly emphasizes a continuity of modernizing efforts between the Empire's Tanzimat and the Republic. Very often this discourse is used for assigning a minority status to the non-Muslim millets in the Ottoman Empire retrospectively.[17] The fact is that there were no minorities in the Ottoman Empire and thus no privileges afforded to them as such, other than their right to execute ecclesiastic and rabbinical law in a limited area of authority, always bounded to take into consideration the socio-political as well as legal context of the majority in a given region. While the discourse of privileges can be regarded as mainstream in Ottoman historiography, the complete absence of literature when it comes to the execution of these rights based on their ecclesiastic law and their primary sources produced by the Patriarchates and/or Catholicosates

of Armenians within the Ottoman Empire in the 19th century, especially from the *Tanzimat* period, is a gap worth questioning.

The Armenian *Nizamname* and *Nizamnames* of other *millets* are part of the structural changes which took place throughout this period. Yet, more than being permissions or privileges, Nizamnames should be seen as administrative and structural tools of Ottoman governance, based on each group's individual practices prior to *Tanzimat*. Regulations were not simply granted; they were discussed, bargained over and rejected by the Ottoman administration. The Armenian *Nizamname* was only ratified after long negotiations when it was deemed acceptable and manageable by the Ottoman administration. The "privileges" that the Ottoman government received in turn through these regulations have barely been discussed in the secondary literature. By the same token, even less discussed is the subordination of these *Nizamnames* to the good will of the Ottoman administration. For instance, the Sublime Porte could suspend the Armenian *Nizamname*, as it did between 1866 and 1869 (Davidson, 1963, p. 125).

Analysis of the Petition sent from Akşehir

The petition at hand is drawn up in the *arz-ı mahzar*[18] format used in Ottoman bureaucracy. We see nineteen seals and twenty signatures at the foot of the document, in which the course of events is explained and a request is made. The first four seals and signatures belong to clergymen [*kahana*, here abbreviated as *khn*] and the fifth one is that of the *Atoragal*, i.e. the regional representative of the Armenian Apostolic Patriarchate (Sōmalean, 1843, p. 13). The four seals indicate that the owners were "*mahdesi*," i.e. pilgrims (*hajis*) who most probably had visited Jerusalem. The petition addresses the Patriarch of Constantinople as "*Artaratad Sr(a)p(a)z(a(n Hayr hokevor*", i.e. our fair holy spiritual father", followed by the words "we kiss the bottom of your holy feet and bow before you with respect." At the time of this petition, the Patriarch was Hagopos III of Constantinople (1839–1856), who died in October 1856 just one month after the date of the petition, and was replaced by Kevork II of Constantinople (1856–1860) (Ōrmanean, 2001, pp. 3987-3988). The address line of the letter is written in Armenian, while the rest is in Turkish written in Armenian script.[19]

According to the petition dated 1856, Haji Hagop, the "nation's steward" (*millet kâhyası*), son of shoemaker Haji Yeghia in Akşehir, commits adultery with his sister's daughter and impregnates her. The latter is taken by two other women to a Muslim (*aylazki*) midwife and the infant is killed. The wording used here, "discarded the child, the product of adultery," is not clear enough as to determine whether the infant was killed after delivery or before it by an abortive intervention. Her husband, who was away for the past two years, returns upon hearing the news and goes to the Armenian local administration with his father, bringing the matter to their consideration. The council interrogates the woman and her mother. The wording of the petition ("…treated her roughly and hit [*çarpıştırıb*] once or twice") implies that

the woman was also subjected to violence during the interrogation. Upon the woman's refusal to retract her initial statement that the child was from her uncle, the husband and his father ask the Armenian administration to take the case to the Patriarchate in Constantinople. The case could have been brought to the *kadi* court, but the societal impacts and consequences might have been more severe than the legal penalty foreseen for the parties involved, most importantly for the Armenian local administration. In this case the punishment might be payment of a fine.[20]

The petition refers to the woman as *dişehli* (woman) and Hagop as *kimse* (the one). While the woman's name is never cited, the perpetrator's name Hagop is mentioned once at the beginning of the text. The whole petition is based on the interrogation of the woman who was said to have committed adultery, but may also have been raped by her uncle and sought an abortion. It is underlined that the woman's mother, i.e. Hagop's sister, was interrogated as well, but her statement is not included in the petition. Further, the petition does not give a clue to indicate whether Hagop, who is the guilty party acknowledged at the beginning of the petition, was made to account for his deed or not, and there is no indication that Hagop was interrogated. At the end of the petition, the text refers to a person who it requests be exiled to the Armenian Hospital in Istanbul again as "*kimse*" (the one) which indicates the perpetrator. By defining the close kinship between the two and mentioning that "it was something unheard of," pointing out the unprecedented nature of the case, "as we have never seen a comparable incident in our *azk*," i.e. adultery within close kinship, it clearly denotes a case of incest according to the Armenian ecclesiastic law. Hagop, referred to as the one who "acts against *Havadkımıza* (our faith)," may also be an indication that the matter is not regarded as an ordinary adultery case. Armenian ecclesiastic law had clear definitions and punishments of incest and adultery respectively. Hence it was possible to penalize the crimes committed according to ecclesiastic law. However, the local Armenian administration contacted the Patriarchate suggesting an intervention outside that prescribed law, punishing *the one* by expulsion, in other words exiling *the one*.

One of the most comprehensive studies on ecclesiastical law is Melik'-T'ankean's 1099 page book, published in two-volumes in 1903 and 1905.[21] However, we do not have even a single analysis of primary and secondary sources when it comes to the juridical functions of the Patriarchate. Under these circumstances, I chose to follow Melik'-T'ankean's analysis, as it explains the evolution of Armenian ecclesiastic law starting from the fourth century to the twentieth. Melik'-T'ankean brings together all available primary sources from manuscripts, many of them in *Krapar* (Classical Armenian) with their modern Armenian equivalents and explanations, in order for the reader to understand the evolution of a certain juridical principle or law in a systematic way over the centuries.[22] The rules established by Basil the Great between 370 and 378 are especially relevant in understanding family law for the purposes of my study. Melik'-T'ankean noted that villagers still applied Basil's rules in the case of adultery. Hence, in this study I will refer to these rules as a set of rules which may have been the prin-

ciples followed by the Armenian churches under Ottoman rule, as there are not currently any other sources available to suggest otherwise.

Since early times, the regulations have laid down the prohibited degrees of kinship for marriage in great detail (Melik'-T'ankean, 1903, p. 140-165) according to which not only are relations between uncle and niece strictly forbidden, but also any relations amongst the relatives of at least of 6 degrees, kinship through marriage, as well as marriage in the case of having other family relations through becoming godmother/godfather (Melik'-T'ankean, 1905, p. 248-265). According to these laws, a case of incest between brother and sister would equate to the crime of murder (Melik'-T'ankean, 1903, p. 246). Illicit sex between uncle and niece as in this case must have been subjected to a similarly severe punishment to that of brother and sister. The punishment for the incest between brother and sister would be 20 years of penitence: consisting of 4 years of penitence outside the church crying, 4 years among the listeners, 7 years among the listeners inside the church, and 4 years with the believers. After 20 years of penitence, the person would have the right to take the sacramental bread again (Ibid., p. 245). Further, Article 75 of the Laws of Basil bans a person from entering the church altogether if he has had illicit sex with his aunt from the maternal or paternal side. If the male regrets his deed, he has to go through penitence for 10 years (Ibid., p. 247). The law implies that the criminal can only be a man, as there is no mention of penitence for women in this case. Thirdly, according to Article 49, if the woman was raped, she could not be responsible for the crime (Ibid., p. 244). The laws accepted in the fifth century at the Council of Shahabivan prohibit marriage or adultery with close kin (Ibid., p. 334).

Coming to the point of abortion, Armenian ecclesiastic law forbids and penalizes any attempt to prepare abortive medications or abortion itself. A person purposefully trying to abort is tantamount to a murderer and penalized with 10 years of penitence (Ibid., p. 237). The person who decides to kill her own child would be penalized. In this case, the woman and her two relatives would be guilty.

Although we cannot be sure to what extent these laws and regulations were applied, we still can consider the high probability of their relevance in the decision-making processes. If so, one may ask the question: if this was an issue that could be solved on the basis of Armenian ecclesiastic law, why did the Armenian administration of Akşehir write this petition to the capital?

While this petition defines the crime as one of adultery, by mentioning the close kinship between the woman and her uncle it implies incest. As mentioned above, incest was defined in the ecclesiastic law as a sin committed by close kin such as brother and sister or son and step-mother. There is no specific word or concept for incest in the law, but rather it is specified by the level of kinship between the parties. There was a clear difference in punishment for these cases compared to adultery. However, this petition does not give any clue to the existing practices in dealing with incest, but on the contrary denotes that "it was something unheard of" and that they "have never seen a comparable incident", which may mean that no such case

had ever been brought before the juridical council of Akşehir's local Armenian administration before.[23]

In another case examined in my research, the lynching or exiling of a family due to adultery was also an issue in the mid-19th century. An example of this is found in Bandırma (1848), in the western part of Asia Minor, which contained 400 Armenian households.[24] According to the *arz-ı mahzar* of Bandırma's local Armenian administration to Constantinople, the Muslim population of the area decided to raid an Armenian family's house belonging to Nazlı and her two daughters. Nazlı's husband had abandoned her and she was living with two daughters, one of which, Hripsime, was in a relationship with a Greek named Triandafilos. Adultery was regarded as an attack on public morality (Maksudyan, 2014, p. 53) and a raid was easy to legitimize, especially in the case of an Armenian family without a male guardian. Although we do not know how Triandafilos was punished, the Armenian family was exiled and they could not find shelter anywhere. The local Armenian administration took care of the situation and got them settled in Bandırma's *Nor* village. The local Greek (Rum) administration was involved from the beginning of the case as Triandafilos was a Greek from Ioanina. After the exile and resettlement of the family, the Ottoman administration got involved in the case and the *Kaymakam*, i.e. the *Beg* of Erdek, asked the Armenian administration to submit Triandafilos, who had been converted to a member of the Armenian Apostolic Church by that time, to his office. Upon this development the case was reported to the Patriarchate in Constantinople by way of a detailed *arz-ı mahzar*, with 19 stamps and three signatures, asking for validation of the steps taken by the local Armenian administration in case they were contacted by the Ottoman administration about this matter.[25] The punishment method of the locals as well as the intervention by the Ottoman administration reveal the structural and institutional superiority of one side, the Muslim inhabitants of the region as well as the Ottoman administration, and the limited authority of the local Armenian administration.

The local Armenian administration of Akşehir may have had a similar danger in mind in trying to solve their complicated issue as swiftly as possible in an attempt to prevent raids, exile or greater difficulties, as the case was already known to the town's Muslim inhabitants. Midwives, doctors, and surgeons had to take an oath not to intentionally cause miscarriage or provide abortion. A midwife found guilty of abortion could be punished with exile, and in this case, the Muslim midwife was liable for such punishment.[26]

The word used in the petition, "*aylazki*," means "of another nation"[27] in Armenian; however, in context it refers here to the Muslims. For example, mention is made of the possibility that the woman would be brought to "*Aylazki* sharia" court, i.e. the *kadi* court, obviously meaning the Islamic court. Another example is offered by the sentence "We fell into disgrace before both other communities and *Aylazki*," where there is a clear distinction between "other communities" (there was a large *Rum* community in Akşehir) and Muslims.

The petition is written or dictated by the assembly members and notables of the Akşehir Armenian community. The words "*ishkhan*" and "*garkavor*" (Sōmalean, 1843, p. 172)

mean notables and clerics (Bedrosean, 1875, p. 332) respectively. The husband and father-in-law refer to the woman as a "stained soul", *murdar* in Turkish, which has a wide variety of connotations depending on the context. In fact, more than 30 different forms of usage for the word, some in a wide variety of idioms, are cited in a Venetian-published Armenian dictionary from 1869.[28]

Another way to approach to the petitioner's request of exile, considering the taboo of incest within the Armenian *millet* and its ecclesiastic law, would be to argue that the Armenian administration first mitigated the crime of incest by defining it as adultery and interrogated only the woman and her mother, and offered as a penalty the exile of the woman to Constantinople. This interpretation is supported by the fact that the perpetrator's name, Haji Hagop, was only once mentioned in the entire petition, and there is no evidence he was even interrogated while the woman was pressured to recant her accusation against him. It seems unlikely a request would be made to determine his fate without offering any testimony from him as is given from the woman.

In this case, Hagop's impunity as perpetrator would not be something unusual. In fact, scholars working on Ottoman *kadi* registers mention the difficulty in finding verdicts and punishments for the guilty party, in other words the absence of the statement of punishment. Başak Tuğ mentioned this difficulty based on the 18th century registers from Ankara and Bursa, (Tuğ, 2017, p. 185-190)[29] as did Leslie Pierce in her study of sixteenth century court records from Aintab, which keep silent regarding the punishment of adulterers. She bases her argument on the fact that a person's moral probity was a reason to be freed from the suspicion of illicit sex if he or she denied the accusation (Pierce, 2003, s. 111). The Armenian administration may have followed a similar line of thought in this case, taking the multiple societal challenges of this case into consideration. Furthermore, Pierce has stated with regard to the sixteenth century that

> "the state's role in the prosecution of adultery was theoretically ambiguous. On the one hand the sovereign and his delegates could interpret their mandate to punish zina (adultery) offenses as being in the interest of society, allowing individuals themselves to take the initiative to prosecute zina and thereby to define its scope as a sociolegal problem." (Ibid., p. 357)

Considering that the woman's mere existence in Akşehir and her insistence upon her uncle's identity in her statement would have been regarded as a constant threat to the Armenian administration, as well as to the whole family and to the perpetrator, exiling her would create a tabula rasa for the husband paving the way for the annulment of his existing marriage with a woman whom he labeled as "murdar" (filthy). According to Melik'-T'ankean, Armenian ecclesiastic law allowed the annulment of marriage in three cases: prostitution; incurable diseases, both physical and mental (Melik'-T'ankean 1905, p. 269) and the husband's absence

for seven years (Melik'-T'ankean 1905, p. 272). Melik'-T'ankean added that the Armenian Patriarch of Constantinople had the authority to decide each case according to the results of the investigation undertaken by the religious council.

As is seen in the case of Bandırma, not only referral to the *kadi* court but also the reaction of the locals might have complicated the situation further for the Armenian administration and the parties involved. Although it is quite often argued that *millets* had their own laws and juridical practices in the realm of family law, in reality, *millet* administrations had been defined by the practices and *de facto* situations created by Ottoman governance policies.

Either way, the reason for wanting *the one* to be exiled lies in the limits of the Armenian administration's juridical authorities. The local Armenian administration wanted to close the case as soon as possible to avoid becoming a target of those outside the community. However, penalizing the perpetrator based on adultery, incest, and abortion according to the ecclesiastic law mentioned above with the prescribed punishments, or with any potential punishment, would mean the public exposure of the crimes; putting the Armenian local administration in a legally troublesome situation *vis-à-vis* the *kadi* court, which could have jurisdiction at the very least because of the involvement of the Muslim midwife, or even perhaps because the entire case could have been brought before it. Hence, the Armenian local administration, by not penalizing the perpetrator according to its ecclesiastic law and suggesting *the one* be sent to Constantinople, wanted to wipe the crime out for good. At the same time, however, by documenting it in such detail the petitioners made it part of their history.

Conclusion

The mainstream historiography on *Tanzimat* puts the emphasis on the "privileges" of non-Muslim millets and their full agency to practice their rights or legal entitlements. One of the least questioned realms is that of family law, as it was considered to remain fully under the authority of the respective *millets*. However, as the petitions sent from Akşehir and Bandırma show, no realm was immune to interventions and no decision-making processes remained outside the juridico-social and political realm of Ottoman society and law-making. Therefore, considering the juridical authorities of the Armenian *millet* as completely autonomous serves to ignore interwoven power dynamics of the societies living under a clear hierarchical order.

The knowledge of how the Armenian Patriarchate and the local Armenian administration in the provinces fulfilled their legal functions is not only crucial for gaining insight into the organizational structure of the Armenian administration, the legal norms it adhered to, and its social impact, but more importantly it provides information on the social fabric of Ottoman society as a whole. Specifically, a greater number of legal cases have to be examined in detail to identify the areas where the Armenian and Ottoman legal systems coincided, overlapped, and diverged.

The Armenian administration and its functioning in the *Tanzimat* era, both in the capital and the provinces, based on the archival materials of the hierarchically weaker groups, remains a subject scarcely researched. Examining the policies followed by Ottoman legal institutions dealing with cross-community legal cases and the role that Patriarchates, the Chief Rabbinate, and the central Ottoman government played in the resolution of conflicts between different communities will provide resourceful indications about the Ottoman state's governance practices in the 19th century, as well as the unwritten rules of the societies. The petitions sent by women or cases concerning them like the one discussed here show the crystallization of these unwritten rules, codes of conduct, consensuses of the societies and their repercussions. Therefore, women's petitions or cases directly involving women reveal the limitations of the administrative, social, and political mechanisms, as well as their marginalization and victimization through their agency.

1 Based on the same archival document, "Kimsenin Yüzünü Görmedim [Çocuk] Dayımdandır:" 1856'da Konya Akşehir'de Ermeni Kilisesi'nde Çözülememiş Bir Dava", was first published in *Aurum* Vol. 2 No. 2 Winter (2017), 33-42. This article is a revised and extended version of the same document putting it in the larger context of *Tanzimat*, the Ottoman and Armenian administrations along with similar cases from the same period based on my unpublished habilitation thesis. I thank Ayşe Günaysu for the English translation of the archival document and the blind peer reviewers and editors at *Reflektif* for their comments and valuable contributions.

2 *Telef etdirmek*, Tr., means to cause to be wasted, while the intransitive verb "*telef olmak*" means simply to vanish, often used for livestock in cases of mass losses due to a disease or natural disaster. Here, an unusual usage in modern times, it indicates that the infant was in one way or another "disposed of" or killed.

3 The word used in the original document, պօյունսաւ, is transliterated to "*boyunda*." It might mean that the infant was either "discarded" by means of abortion or killed right after delivery.

4 When transliterated "*nenfiliğilen*" in accordance with the word's Turkish spelling, it does not make any sense. However, if the second 'n' was omitted in the Armenian script, it could mean "*nefy*", i.e. a punishment by expulsion.

5 Hayr, Arm.: Father.

6 BN APC/CP1/1/005.

7 On Krikoris Balakean see Balakian, K. and Balakian, P. (2009). *Armenian Golgotha*. (Knopf Publ.).

8 Akşehir is also within the Ottoman administrative Province of Konya. However, Armenian and Ottoman administrative divisions may not always overlap as they do in this case.

9 For the restoration project and the current situation of the church see: https://archives.saltresearch.org/handle/123456789/92066 http://www.agos.com.tr/tr/yazi/25119/aksehir-ermeni-kilisesi-kultur-merkezi-oluyor, accessed on the 9th of January 2021.

10 A *berat* is a decree carrying the Sultan's signature testifying to and/or acknowledging rights and entitlements of the Armenian *millet*. For more on *berats*, see Mübahat S. Kütükoğlu, "Berat" in *Türkiye Diyanet Vakfı Islam Ansiklopedisi*. (Istanbul: TDV, 1992), 472-473.

11 Mixed Assembly: the assembly combining the Civil–Political and Religious Assemblies, the two main bodies of the Armenian General Assembly in the Ottoman Empire.

12 In connection with an analysis of the *Nizamname*, see also Koçunyan, A. (2014). Long Live Sultan Abdulaziz, Long Live the Nation, Long Live the Constitution… Grotke, K. L., and Prutsch, M. J. (ed). *Constitutionalism, Legitimacy and Power,* (Oxford University Press), 189-210. DOI: 10.1093/acprof:oso/9780198723059.003.0010

13 Having worked with the Patriarchate's archival material as well as that of the Catholicosate of Echmiadzin located at the Matenadaran in Armenia, I assume the Catholicasate of Cilicia also had similar correspondences, as it was a centre of administration in the region of Cilicia. Whether these archives were as lucky as the Patriarchate's archive in Nubar Library to survive is a question that needs further research.

14 Ueno refers to BOA, A.DVNS.GMC.d 3, 41-5, 66-71; d9, 54-55, 66, 68.

15 The first and second chapters of this study explain and discuss the structures of the Armenian administration as well as permissions given on the basis of family law before the 19th century.

16 Ueno refers to the fact that the Armenian administration used the terms "privileges" and "religion" to its own benefit, and mentions that the distinction between "religious" and "non-religious" depended on the situation. See ibid., 433.

17 There are numerous books and articles implying a minority status for the Ottoman millets. One of the most recently published books is Mahmood Mamdani's *Neither Native Nor Settler*, in which he claims a status of minority existed for non-Muslims starting from the Treaty of Berlin. For more see, Mamdani, M. (2020). *Neither Native Nor Settler: The Making and Unmaking of Permanent Minorities*. (Cambridge, MA: Belknap Press of Harvard University Press), 9.

18 *Arz-ı mahzar*, Ottoman Turkish, is a letter of complaint collectively signed and stamped by a group for submission to a higher authority. See *TDV İslam Ansiklopedisi,* 2003, V. 27, 398-401; İnalcık, H. (1988). Şikayet Hakkı: Arz-ı Hal ve Arz-ı Mahzarlar. *Osmanlı Araştırmaları VII-VIII*, 33-54.

19 Some of the words start with capital letters, such as *Havadkımıza* (to our faith), *Azkımızın* (of our nation), *Garkavorlarımızın* (of our clergymen), *Srpazan Badriark Hayrımıza* (of our Holy Father the Patriarch). All of them are Armenian words used with Turkish suffixes. To give an example, "*havadk*" means faith in Armenian, but the ending "*-ımıza*" is a Turkish suffix meaning "to our". This is a linguistic pattern we find in other documents written in Armeno-Turkish as well. Furthermore, the spelling of some words is indicative of a mixed use of archaic orthography of Ottoman Turkish in Armenian script; as is the case with, for example, "*songra*," where the stem of the word is "*sonra*," meaning "after". Its archaic orthography includes a nasal "n"(ڭ) represented with a *kef* in Ottoman Turkish. ڭ in Armenian vocalized as a ն added upon the Armenian letter "ս" combining both letters in one.

20 For more detailed analysis of the course of development for adultery punishments see Dror Zeevi, (2006). *Producing Desire: Changing Sexual Discourse in the Ottoman Middle East, 1500-1900.*(Berkeley: University of California Press), 59-70; Colin, Imber. (1996). Zina in Ottoman Law. *Studies in Ottoman History and Law*, 174–206. Isis Press.

21 In the second volume of his book, Melik'-T'ankean mentioned that he was going to write a third volume about Armenian lawmaking, especially among the Ottoman Armenians, but unfortunately this project never came to fruition.

22 Melik'-T'ankean takes into account not only the ecumenical meetings attended by the Armenian Church: Nicaea (A.D. 325), Constantinople (381) and Ephesus (431) and the decisions made at them, but also other councils which took place at Angora (Ankara, 313-315), Neo-Kesaria (Niksar, 314-315), Kankri (near Amasra, d. 340-70), Kesaria (Kayseri, date not given), Antioch (Antakya, d. 341) and Latakia (365). Melik'-T'ankean also introduced and explained the 34 apostolic rules based on tenth-century manuscripts from Echmiadzin (Melik'-T'ankean, 1903, 67-82) and the Greco-Slavonic-Russian books from which Armenian ecclesiastic law adopted a total of 85 articles over the centuries (Ibid., 82-115). The Armenian Church had numerous councils in various places, for instance, five councils at Tvin between 507 and 719. The Council of Shahabivan in 447 is mentioned in Melik'-T'ankean's book as one of the most influential ones (Ibid., 319).

23 See translation of the document: "We told her that it was something unheard of, and said, 'This is your uncle, don't you defame him!'"

24 *Hayrenasēr*, 11 June 1843, No. 3. The newspaper was published daily in Smyrna/Izmir.

25 BN APC/CP20/7/065.

26 For more see Balsoy G., (2014) "Infanticide in Nineteenth Century Ottoman Society", *Middle Eastern Studies 50* (6): 976-991 and Balsoy, G. (2012). Osmanlı Toplumunda Kürtajın Yasaklanması.*Toplumsal Tarih 223*, 22-27; Tuba Demirci and Selçuk Akşin Somel, (2008) Women's Bodies, Demography, and Public Health: Abortion Policy and Perspectives in the Ottoman Empire of the Nineteenth Century. *Journal of the History of Sexuality 17* (3), 377-420.

27 For "*aylazki*," see, Awkerean M. and Jēlalean, K. (1865). *Aṙtseṙn Paṙaran Haygaznyan Lezui*. (St.Lazarus),41. Also see Chakhchakhian, M. (1837). *Paṙkirk i Parpaṙ Hay Ew Idalagan.* (Dbaran Srpuyn Ghazaru/Publishing House of St. Lazarus),78. One of the synonyms in the first of the above dictionaries is "*akher millet*", meaning "the other *millet*/nation/community". In the second dictionary the word is defined, together with its meanings in Italian, as "non-Jewish", (…) "non-Christian", (…), "Muslim." It is quite clear that "*akher millet*" and "*aylazki*" are used in different contexts in the petition, since both words have different meanings.

28 For *mundar* or *murdar*, see, Etuart Hiwrmiwzean, (1869). *Paṙkirk' Hashkharapare i Krapaṙ*, (Venice: Surp Ghazar Dbaran), 377. Here the Armenian equivalent of the word appears as "*mndrel*" and its meaning in Turkish is "*murdarlamak*", i.e. to make something unclean, filthy, or stained. The dictionary cites six other words and terms within this context. Ibid., 373.

29 Tuğ discusses the absence of the punishment and refers to the similar results of scholars working on different regions and different periods, such as the work of Ergene, B.(2003). *Local Court, Provincial Society, and Justice in the Ottoman Empire: Legal Practice and Dispute Resolution in Çankırı and Kastamonu (1652-1744)*. (Brill Publ.); Faroqhi, S. (1995). The Life and Death of Outlaws in Çorum. *Coping with the State: Political Conflict and Crime in the Ottoman Empire, 1550–1720*. (Isis Press), 145-161. Jennings, R.C. (1999). The Society and Economy of Maquka in the Ottoman Judicial Registers of Trabzon, 1560–1640. *Studies on Ottoman Social History in the Sixteenth and Seventeenth Centuries: Women, Zimmis and Sharia Courts in Kayseri, Cyprus and Trabzon* (Isis Press), 247-276. Ginio, E. (1999). The Administration of Criminal Justice in Ottoman Selanik (Salonica) during the Eighteenth Century. *Turcica 31*, 185-209; Zarinebaf, F. (2010). *Crime and Punishment in Istanbul Crime and Punishment in Istanbul: 1700/1800*. (University of California Press).

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