

LEGAL STATUS OF OTTOMAN NON-MUSLIMS IN BOSNIA (1463-1699)
A CASE STUDY

A Master's Thesis

By

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of
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by

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In Partial Fulfilment of the Requirements for the Degree of
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in

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September 2007

I certify that I have read this thesis and have found that it is fully adequate, in scope and in quality, as a thesis for the degree of Master of Arts in History.

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ABSTRACT

LEGAL STATUS OF OTTOMAN NON-MUSLIMS IN BOSNIA (1463-1699): A CASE STUDY

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Since their emergence Islamic states included great number of non-Muslim subjects. The manner in which the Islamic states regulated the position of non-Muslims is the central topic of the thesis. The Ottoman Empire was yet another Islamic state with large number of non-Muslim subjects, but its legal system was somewhat different from that of its predecessors. In addition to Islamic law, legislation of the Empire was based on the *‘örfî* law that was enacted by the sultan in order to serve pragmatic needs of the state. Correlation between the *şerî‘at* and the sultanic law, and their influence on the status of non-Muslims, will be examined on the example of the *fetvâs* as legal documents issued by the *müftîs* and *şeyhülislâms* as representatives of the Islamic law, and the *kânûns* and *kânûnnâmes* as legal acts of the administration. The legislation of the state was generally guided by political considerations, which sometimes might have been beneficial for non-Muslims, or, conversely, it might have

deteriorated their status. On the other hand, the *şerî'at* kept non-Muslims in somewhat underprivileged status, but it was guaranteeing their basic rights.

The area under study is restricted to the territory of the province of Bosnia, with occasional references to the adjacent regions. Border character of Bosnia and often wars inevitably influenced the society in general. Depending on circumstances, the position of Bosnian non-Muslims oscillated, sometimes above and other times below the prescriptions of the *şerî'at*.

Keywords: non-Muslims, *zimmîs*, Islamic law, sultanic law, Ottoman Bosnia, Roman Catholics, Orthodox Christians, churches.

ÖZET

BOSNA'DAKİ OSMANLI GAYRİMÜSLİMLERİN HUKUKÎ DURUMU (1463-1699): ÖRNEK OLAY İNCELEMESİ

Kursar, Vjeran

Yüksek Lisans, Tarih Bölümü.

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Kuruluşlarından bu yana, İslâm devletleri önemli sayıdaki gayrimüslim tebaasını ihtivâ etmiştir. İslâm devletlerinin gayrimüslimlerin durumunu düzenleme tarzları da bu tezin ana konusunu teşkil etmektedir. Bir İslâm devleti olan ve çok sayıda gayrimüslim tebaası bulunan Osmanlı İmparatorluğu'nun hukukî sistemi seleflerinden farklılık göstermekteydi. İslâm hukuku dışında, İmparatorluğu'nun hukukî mevzuatı Sultan tarafından devletin pragmatik gerekçelerine hizmet etmek üzere çıkarılan 'örfî kanunlarına da dayanmaktaydı. Şerî'at ile sultanî kanunların karşılıklı ilişkisi ve onların gayrimüslimlerin durumuna olan etkileri İslâm hukukunun temsilcileri olan müftüler ve şeyhülislâmlar tarafından çıkarılan bir hukukî belge olan fetvâlar ve hükümetin yasaları olan kânûnlar ve kânûnnâmeler örneğinde incelenecektir. Devletin hukukî mevzuatı genellikle siyasî gerekçeleri gözetmekteydi ve bu durum bazen gayrimüslimlerin lehine olabildiği gibi, tam tersine, onların durumunu

kötüleştirebiliyordu. Diğer taraftan, şerî'at, gayrimüslimlere ayrıcalıklı olmayan bir statü öngörürken, onların temel haklarını güvence altına alıyordu.

İşbu çalışmanın alanı, zaman zaman komşu bölgelere atıfta bulunmakla beraber, Bosna eyâleti ile sınırlıdır. Bosna'nın bir sınır bölgesi olması ve sıkça meydana gelen savaşlar genel olarak cemiyeti derinden etkilemiştir. Duruma bağlı olarak, Bosna'daki gayrimüslimlerin konumu değişkenlik göstermiş ve kimi zaman şerî'atın öngördüğünün üstünde, kimi zaman da altında seyretmiştir.

Anahtar Kelimeler: gayrimüslimler, *zimmîler*, İslâm hukuku, sultanî hukuk, Osmanlı Bosna'sı, Roma Katolikler, Ortodoks Hıristiyanlar, kiliseler.

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ABBREVIATIONS

BSOAS – Bulletin of School of Oriental and African Studies, London

DİA – Diyanet Vakfı İslam Ansiklopedisi, Istanbul

*EI*¹ - Encyclopaedia of Islam, 1st edition – M. Th. Houtsma, A. J. Wensinck, H.A.R. Gibb, W. Heffening and E. Lévi-Provençal, eds., *First Encyclopedia of Islam, 1913-1936* (Photomechanical Reprint; E. J. Brill, Leiden-New York-København-Köln, 1987)

*EI*² - Encyclopaedia of Islam, 2nd edition, CD ROM (Leiden: Brill)

Glas SANU – Glas Srpske akademije nauka i umetnosti, Belgrade

Godišnjak ANUBiH – Godišnjak Akademije nauka i umjetnosti Bosne i Hercegovine, Sarajevo

GZM – Glasnik Zemaljskog muzeja u Sarajevu, Sarajevo

İA – İslam Ansiklopedisi, Istanbul

Kanuni i kanun-name – Branislav Đurđev, Nedim Filipović, Hamid Hadžibegić, Muhamed Mujić, and Hazim Šabanović, *Kanuni i kanun-name za Bosanski, Hercegovački, Zvornički, Kliški, Crnogorski i Skadarski Sandžak*, (Sarajevo: Veselin Masleša, 1957)

Osmanlı Kanunnâmeleri – Ahmet Akgündüz, *Osmanlı Kanunnâmeleri ve Hukukî Tahlilleri*, Vols. 1-9 (Istanbul: Osmanlı Araştırmaları Vakfı, 1990-1996)

OTAM – Osmanlı Tarihi Araştırma ve Uygulama Merkezi Dergisi, Ankara

POF – Prilozi za orijentalnu filologiju, Sarajevo

Rad JAZU – Rad Jugoslavenske akademije znanosti i umjetnosti, Zagreb

Spomenik SKA – Spomenik Srpske kraljevske akademije, Belgrade

Spomenik SANU – Spomenik Srpske akademije nauka i umetnosti, Belgrade

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CHAPTER I

INTRODUCTION

The emergence of Islam was followed by its extraordinary success and spread over vast territories stretching from Spain in the west to India and central Asia in the east. The consequence of the conquest was incorporation of vast masses of non-Muslim peoples into the Islamic state. How the position of non-Muslim was regulated according to Islamic law, what was the character of their status in comparison with the status of Muslims as followers of the state religion, and were there any difference in rights between different non-Muslims communities, will be some of the questions we will try to answer.

In the first chapter we will discuss the position of non-Muslim in classical Islam. According to Islamic law, non-Muslims were granted personal freedom, protection of private property and basic religious rights, although with certain limitations and restraints. In practice, however, prescriptions of Islamic law were not always strictly enacted, and status of non-Muslims varied from region to region and changed in different periods. Potential discrepancies between officially proclaimed status of non-Muslims based on prescriptions of

Islamic law and legal practice of different Muslim rulers in different periods will be one of the issues under discussion.

In following chapters we will discuss legal status of non-Muslims in the Ottoman Empire. The Ottoman Empire was a state with large non-Muslim populations and its laws were based on the *şerî'at*, as was the case of Islamic states in previous period. However, legal system of the Ottoman Empire was not based exclusively on Islamic law, but partially on the *'örfî* law as well, which was enacted by the sultan and directed by pragmatic considerations. Whether it is possible to talk about predominance of one of the elements over another, or the Ottoman legal system has managed to harmonise the sultanic law with the *şerî'at* will be one of essential questions we will attempt to answer. In connection with the issue of legal “dualism” in the Ottoman Empire we will touch upon the problem of possible influence of particularities of Ottoman legal system on the status of non-Muslims.

One of common places in majority of studies on Ottoman non-Muslims is the “*Millet* system” theory. According to it, non-Muslim communities were officially recognised as separate bodies under the leadership of their religious authorities (*millet başıs*). In this manner, the Orthodox Christians were organised into the Orthodox *millet* (*Rum milleti*) under the leadership of the Patriarch of Constantinople, the Jews formed the Jewish millet (*millet-i Yahûdîyân*) under the leadership of the Chief Rabbi (*haham başı*) of Istanbul, while the members of the Armenian Church were organised into the Armenian *millet* (*Ermeni milleti*) under the leadership of the Armenian Patriarch. Hence, the theory claims, non-Muslims were organised into the *millets* under the

leadership of religious dignitaries who ruled their communities as the “Ethnarchs.” The *millets* received wide autonomies from Ottoman authorities, and, in this way, represented nearly “states within the state.” Did the non-Muslims in reality represented monolith blocks based on religious denominations, what was the character of their autonomies, and were there no other authorities among them apart from the clergy, will be one of major topics under discussion.

The position of non-Muslims, basically Christians since the Jews were barely present in the area under discussion, will be discussed on two levels. Firstly, we will examine the position of non-Muslims as believers, status of their religious institutions and regulations concerning exercising of their religion. On second level, we will discuss personal status of non-Muslims as individuals, rights they were granted, and restrictions they were subjected to, and compare them to those peculiar to Muslims.

Area of the study will be restricted to the territory of the province (*eyâlet*) of Bosnia, with occasional reference to adjacent regions. To what degree Bosnia was specific case different than the rest of the Empire and how its border character influenced the position of non-Muslims will be one of the research questions. Another peculiarity of Bosnia was the existence of two major Christian denominations – the Roman Catholicism and Orthodox Christianity. One of important aspects of the research will be, on the one hand, comparison of legislation considering each of the communities, and, on the other hand, potential differentiation in enactment of legislation in practice.

CHAPTER II

CHRISTIANS AND JEWS IN CLASSICAL ISLAM

In the beginning of the seventh century, a small religious community, based on belief in one God – Allah, revealed through His Prophet, Muhammad, emerged in remote region of central Arabia, on the fringes of two great empires of the day, the Sassanian Empire in the East, and the Byzantium in the West. Pretty soon, however, the new monotheistic community, which in its beginning did not attract anybody's attention and was considered to have temporal and exclusively local character, revealed its political ambition – global mission of spreading the true religion, Islam, all around the world. In a very short time armies of the Islamic caliphate managed to overthrow the empire of the East, and reach as far as Sind region in India; on the other side of the world, in the West, Byzantium had to surrender its richest provinces of Syria and Egypt, while Muslim conquerors proceeded further west through North Africa, crossed via Gibraltar to Europe, to be stopped at Poitiers in 732 only after the successful conquest of Spain. The best description of the extent and impact of the unprecedented success of Islam was given by Phillip K. Hitti in his classical study on Arab history:

One hundred years after the death of the founder of Islam his followers were the masters of an empire greater than that of Rome at its zenith, an empire extending from the Bay of Biscay to the Indus and the confines of China and from the Aral Sea to the lower cataracts of the Nile, and the name of the prophet – son of Arabia, joined with the name of almighty Allah, was being called five times a day from thousands of minarets scattered over south-western Europe, northern Africa and western and central Asia.¹

Although the conquest most probably would have been impossible without population pressure in Arabia that coincided with the emergence of Islam and provided needed manpower to Islamic armies, yet, vast territories recently conquered, included abundant indigenous peoples that ultimately outnumbered the conquerors. Under such circumstances any rule that would base itself solely on violence, persecution, oppression, or extermination of subjects of different religious and/or ethnic identities, which at the same time represent the majority of population, would have inevitably incited revolts and rebellions against itself that would in the long run doomed it to collapse.² However, general lack of persecution and extermination of subjected populations cannot be explained by mere pragmatism of Muslim rulers. In order to shed some light on this important issue, it is necessary to stop for a while and focus on the power that shaped and controlled (at least nominally) policies of Muslim governments, namely the *ṣerî'at*, the Islamic law.

¹ Philip K. Hitti, *History of Arabs from the Earliest Times to the Present*, 10th ed. (London: Macmillan, 1970), 215.

² Claude Cahen, "Dhimma," *EF*.

2.1. Basic Principles and Structure of Islamic Law

Ideological, as well as legal basis for the treatment of non-members of Islamic community (*umma*) are to be found in the Muslim holy scripture itself, the Qur'ân.³ However, Muhammad's primary concern was not the establishment of a new legal system, but to show believers the "right path" to the salvation, as the Qur'ân is not a code of law, but provides regulations concerning wide area of ritual, morality, and law.⁴ Majority of legal texts in the Qur'ân deal with the ritual law, while there are altogether about eighty texts which deal with legal subjects in the Western sense. On the other hand, originally non-legal texts of moralistic and ethical character have been construed by analogy to provide legal rulings, as was the case with the prohibition of usury (Qur'ân, 2:276-277) and alcohol (Qur'ân, 5:216).⁵ Regulations are not given systematically, and while some aspects of the Muslim conduct and duties are treated in detail, others are too general and vague, or even inconsistent.⁶

In such situation the need for regulations that could not be found in or extracted from the Qur'ân became obvious. In time practices of the Prophet in certain cases, as preserved and transmitted by his Companions, became a model for his adherents to follow. This Tradition or the *Sunna* of the Prophet, as reported in the *Hadîth* (records of Prophet Muhammad's sayings and deeds), was to become the second root (*asl*) of the Islamic law, as a primary source

³ Cf. T. A. Welch, "al-Kur'ân," *EF*.

⁴ Joseph Schacht, "Law and Justice," in: P. M. Holt, Ann K.S. Lambton and Bernard Lewis eds., *The Cambridge History of Islam*, Vol. 2 (Cambridge: Cambridge University Press, 1970), 541.

⁵ S. G. Vesey-Fitzgerald, "Nature and Sources of the Sharī'a," in: Majid Khadduri and Herbert J. Liebesny, eds., *Law in the Middle East*, Vol. I, (Washington: The Middle East Institute, 1955), 87-88.

⁶ Welch, "al-Kur'ân".

second only to the Qur'ân. After careful examination of their validity and originality by the method of *isnâd* (examination of the “chain” of transmitters of a *hadîth* that lead to the Prophet or some of his Companions), numerous *hadîths* were compiled into *hadîth* collections from second/eighth century onwards.⁷ On the other hand, a classical western scholar of the Islamic law, Joseph Schacht, has entirely refuted the authenticity of these traditions emphasising that “they were put into circulation for the loftiest of motives.”⁸ According to Schacht, the need for justification of the administrative and legislative practice of the first four caliphs (*khulafâ' râshidûn*), and later the Umayyads and the Abbasids led to the “Islamicisation of the law”, i.e. its impregnation with religious and ethical ideas, that was mastered by al-Shâfi'î (d. 204/820), who exalted the *Sunna* of the Prophet, invented as it was, to the same level as the Qur'ân.⁹ Muslim authors also accepted that much of the body of Tradition was fabricated, sometimes for a “good cause,” as was the case of pious men who were inventing traditions in order to hamper the laxity of their times. Abû 'Âsim al-Nabîl (d. 212/827) referred to it: “I have not seen the good man lying about anything more than about *Hadîth*.”¹⁰ However, Schacht's statement that all of the traditions were false and produced long after the Prophet's death is not correct because the antiquity and authenticity of at least some of the *hadîths* has been proven.¹¹ Be that as it may, since that time the *Sunna* of the Prophet started to be considered together with the Qur'ân as *usûl al-usûl*, “the basis of the bases,” implying that

⁷ G. H. A. Juynboll, “Sunna,” *EF*; J. Robson, “Hadîth,” *EF*; N. Calder and M. B. Hooker, “Sharî'a,” *EF*.

⁸ Joseph Schacht, *An Introduction to Islamic Law* (Oxford: Oxford University Press, 1964), 34.

⁹ Schacht, “Law and Justice,” 542, 546-549; idem, *An Introduction*, 45-48; cf. Calder and Hooker, “Sharî'a.”

¹⁰ Quoted in: Robson, “Hadîth.”

¹¹ Calder and Hooker, “Sharî'a.”

the other sources or “roots” of the classical theory of the Islamic law (*usûl al-fikh*), are in subordinated position.¹²

In the course of third/ninth century, due to Shâfi‘î’s initiative methods of *ra’y* (individual reasoning) and *istihsân* (personal choice and discretionary opinion of the lawyer) were excluded from legal thought, which from that time on was to be based on strict analogy (*kiyas*) and systematic reasoning (*idjtihâd*, Ottoman Turkish – *ictihâd* and ‘*akl* or *ma‘kûl*).¹³ Contrary to Shâfi‘î’s opinion, however, the principle of *idjmâ‘* (Ottoman - *icmâ‘*, consensus) of the scholars that was considered as infallible, based on a *hadîth* that Muhammad’s community will never agree upon an error, was accepted as one of the basis of law. As an outcome of this legal development the classical theory of *usûl al-fikh*, or “the roots of Islamic law/jurisprudence” came into being. Accordingly, Islamic law is based on four principles (*asl*, pl. *usûl*, “root,” “basis”): the Qur’ân, the *Sunna* of the Prophet, *idjmâ‘* (consensus), and *kiyâs* (analogy).¹⁴ This process led to emergence of the science of the *sharî‘at* (Ottoman – *şerî‘at*), the *fikh* (“jurisprudence”) – a formalised juristic thinking. At the same time, four schools of law (*madhab*, Ottoman – *mezheb*, - Hanafî, Shâfi‘î, Hanbalî, and Mâlikî) were founded around their great teachers, and later had a crucial role in establishment of common legal theory of Islam.¹⁵ In the fourth/tenth century the consensus among scholars of all schools was reached that all essential legal questions were thoroughly discussed and finally settled, what was, according to

¹² Vesley-Fitzgerald, 95.

¹³ Schacht, *An Introduction*, 46.

¹⁴ Ibid., 58-60.

¹⁵ Ibid., 57-68; Ignaz Goldziher and Joseph Schacht, “Fikh,” *EF*.

Schacht, “the end of formative stage of Islamic law,”¹⁶ which resulted in the “closing of the gates of *idjtihâd*, of independent reasoning in Islamic law.”¹⁷ Although his theory was brought into question by Wheal Hallaq,¹⁸ who was followed later by other scholars, Schacht himself was aware that this did not mean cessation of legal thinking in Islam:

Whatever the theory might say on the closing of the gate of *ijtihâd*, the activity of the later scholars was no less creative, within the limits set by the very nature of their work, than that of their predecessors. New sets of facts constantly arose in life, and they had to be mastered and moulded with the traditional tools provided by legal science. This activity was carried out by the *muftîs*, specialists on religious law who were qualified to give authoritative opinions on points of doctrine.¹⁹

Hallaq, on the other hand, asserts that “... all jurists from the fifth/eleventh century onwards officially follow one school or another, and in no single case did any jurist attempt to establish his own school although the activity of deriving solutions for new problems continued indefinitely.”²⁰ Nevertheless, both sides agreed that creative legal thinking continued through the work of *muftîs* (Ottoman – *müftî*), interpreters of the *şerî‘at*, who are not surprisingly sometimes dubbed *mudjtâhids*, i.e. “those who practice *idjtihâd*”. *Muftîs* were even obliged to use *idjtihâd* in cases when the answer to the certain question could not have been found in the *usûl al-fikh*.²¹ According to Hallaq’s explanation, *mudjtâhids* were trying to discover a judgement (*hukm*, Ottoman *hükm*) in an unprecedented case using *kiyâs* (analogy):

¹⁶ Schacht, “Law and Justice,” 563.

¹⁷ Ibid., 564.

¹⁸ see: Weal B. Hallaq, “Was the Gate of Ijtihad Closed?” *International Journal of Middle Eastern Studies* 16 (1984), 3-41.

¹⁹ Schacht, “Law and Justice,” 564; cf. Schacht, *An Introduction*, 73.

²⁰ Hallaq, 11.

²¹ Fahrettin Atar, “Fetva,” *DİA*, Vol. 12 (Istanbul, 1995), 487, 491; cf. E. Tyan, “Fatwa,” *EI*; Džadulhak Ali Džadulhak, “Izdavanje šerijatsko-pravnih mišljenja – fetvi,” *Islamska misao* 7, 37 (1985), 10; Mehmet Zeki Pakalın, “Fetva,” *Tarih Deyimleri ve Terimleri Sözlüğü*, Vol. 1 (Istanbul: Millî Eğitim Basımevi, 1971), 618-619.

But before embarking on this original task, he [*mudjtâhid*] must first search for the judgment in the works of renowned jurists. If he fails to find a precedent in these works he may look for a similar case in which legal acts are different but legal facts are the same. Failing this he must turn to the Quran, the Sunna, or *ijma'* (consensus) for a precedent that has a 'illa [cause] identical to that of the far' [unprecedented case]. When this is reached he is to apply the principles of *qiyas* (analogy) in order to reach the ruling of the case in question.²²

However, *mudjtâhids* could not act as independent interpreters of the revelation, but had to submit (*taklîd*) to the authority of their own *madhab* and its founder. In theory, independent *idjtihâd* was exercised only by the founders of the *madhabs*, while succeeding *müftîs* had only limited and qualified competence. In order to bypass constraints, *müftîs* were employing very sophisticated system of justification: "the process of summary and commentary, of paraphrase and citation, of preservation and re-use of prior articulations were all symbolic of loyalty and of mode of hermeneutical development which camouflaged the reality of change."²³ The activity of *müftîs* of repute played crucial role in the development of Islamic law, and compilations of their legal opinions or "responsa", *fatwâs* (Ottoman – *fetvâs*), were esteemed as most important legal manuals.²⁴ *Fetvâ* collections belong to the genre of jurisprudence called *furû al-fikh* (a literature of rules), and cover virtually all fields of the *şerî'at*, such as ritual (*'ibâdât*), family law, inheritance, slavery, mercantile law (contracts of sale, debt, hire, loan, gift, partnership), land ownership, penal law, judicial procedure, etc.²⁵ Since *fetvâ* collections tend to embrace the totality of life of Muslim community, their importance cannot be overestimated. In the Ottoman

²² Hallaq, 4-5.

²³ Hooker Calder, "Sharî'a."

²⁴ Schacht, *An Introduction*, 74-75; Tyan, "Fatwa."

²⁵ Calder, "Sharî'a."

Empire activity of the *müftîs* and their influence on the state and society reached its height, and it will be discussed in detail later on.

2.2. Theoretical Framework

2.2.1. People of the Book in the Qur'ân

According to the teaching of the Qur'ân, the main division of mankind is into believers and unbelievers.²⁶ In the Qur'ân believers are most often called the *mu'minûn* (sing. *mu'min*), a word derived from *îmân*, "faith"; the other term is *muslimûn* (sing. *muslim*; "those who are submitting, surrendering (to God)"), and has its source in the *islâm* ("submission, total surrender (to God)"). Although these terms are often conceived as synonyms, this is not exactly so, since the *îmân* has connotation of inner belief, that belongs to heart, while the *islâm* is external and expressed by deeds (see Qur'ân, 49:14).²⁷ Later tradition asserts that there can be no *îmân* without *islâm*, as well as no *islâm* without *îmân*, while the *dîn* ("religion" in widest sense) encompasses both.²⁸ Persons who outwardly profess belief (*islâm*) but are not truly committed to faith (*îmân*) are the *munâfikûn* (sing. *munâfik*; "hypocrites"), and are to be treated as genuine unbelievers (Qur'ân 9:73; 66:9; 4:89), while in afterlife their place will be "in the lowest deep of the Fire" (Qur'ân, 4:145; cf. Qur'ân, 63; 9:73-87; 4:140-

²⁶ Bernard Lewis, *Muslim Discovery of Europe*, (London: Phoenix Press, 2000), 62; all Qur'ânic quotations are from *The Glorious Qur'ân*, trans. by Marmaduke Pickthall, 3rd ed. (Istanbul: Çağrı Yayınları, 2001).

²⁷ Camilla Adang, "Belief and Unbelief," in: Jane Dammen McAuliffe ed., *Encyclopaedia of the Qur'ân*, Vol. 1 (Leiden, Boston, Köln: Brill, 2001), 218-219; L. Gardet and J. Jomier, "Islâm," *EF*²; L. Gardet, "Îmân," *EF*².

²⁸ Gardet and Jomier, "Islâm"; L. Gardet, "Dîn," *EF*².

145).²⁹ Third term for believer in the Qur'ân is the *hanîf* (pl. *hunaḡâ'*), and it refers especially to Abraham (Ibrahîm) as a genuine monotheist. *Hunaḡâ'* are contrasted with the *mushrikûn* (polytheists), as well as with Jews and Christians, who were accused for corruption of the pure monotheistic legacy of Abraham (Qur'ân, 2:135; 3:67, 95; 6:161; and *passim*). Abraham is depicted as a prototype of Muslim – *hanîf muslim*: “Abraham was not a Jew, nor yet a Christian; but he was an upright man who had surrendered (to Allah), and he was not of the idolaters.” (Qur'ân 3:67). Probably the term *hanîf* was used to denote followers of the new religion for a while, and is somewhat older than the term *muslim*.³⁰

In contrast with an approach of other great monotheistic religions, namely Judaism and Christianity, in the Qur'ân believers are not a priori and exclusively adherents of the divine message revealed in it, i.e. the Muslims.³¹ Islam has never asserted to be a new religion, but the genuine religion that has been revealed to mankind on many occasions during history through prophets of God, but was forgotten, vanished or corrupted. In this sense the revelation brought by the Prophet Muhammad has to be understood as continuity, not novelty. Muhammad is just one of prophets that God had sent to the people (Qur'ân, 3:144), however, the last one, “the seal of the prophets” (Qur'ân, 33:40), while the Qur'ân is God's final revelation to the mankind. Islam clearly adopts prophetic legacy of Judaism and Christianity:

We believe in Allah and that which is revealed unto us and that which was revealed unto Abraham and Ishmael and Isaac and Jacob and the tribes, and that which was vouchsafed unto Moses and Jesus and the prophets

²⁹ Ibid.; Adang, 221; A. Brocket, “al-Munâḡikûn,” *EP*².

³⁰ W. Montgomery Watt, “Hanîf,” *EP*².

³¹ Adang, 218.

from their Lord. We make no distinction between any of them, and unto Him we have surrendered. (Qur'ân 3:84)

Followers of these religions were given holy scriptures from God, namely *al-Tawrât* (the Torah), *al-Zabûr* (the Psalms), and *al-Indjîl* (the Gospel) (see Qur'ân 3:3, 65; 4:163; 17:55; 35:25). Being the possessors of the revealed books, in the Qur'ân they are known as *ahl al-Kitâb*, “the People of the Book.”

In some verses enigmatic *Sâbi'ûn* (Sabians; Qur'ân, 2:62; 5:69; 22:17) are mentioned in the same context together with the Christians and Jews, as well as *Madjûs* (Magians, Qur'ân, 22:17), who are mentioned once. The question whether the latter are to be included among the People of the Book is still the matter of dispute among the scholars.³² The identity of *Sâbi'ûn* was uncertain already after Muhammad's death, while Muslim commentators and modern scholars offered several explanations. One of new theories claims that they might have been Manicheans,³³ while other translates their name as “baptists,” and identifies them as the Elchasaites, one of diminutive “Judeo-Christian” sects, like Nazaraeans.³⁴ The *Sâbi'at* of Harrân, on the other hand, were pagan gnostics that adopted the name *Sâbi'a* during the third/ninth century in order to receive the status of *ahl al-kitâb* and avoid persecution as polytheists.³⁵ In any case, the Sabians are not to be confused with the “Sabeans,” i.e. *Saba'* of the South Arabia, whose ruler, the queen of “Sheba,” visited king Solomon according to the Old Testament. In the Qur'ân they are given as an example of

³² G. Vajda, “Ahl al-Kitâb,” *EP*²; Adang, 222.

³³ F. C. de Blois, “Sâbi',” *EP*².

³⁴ T. Fahd, “Sâbi'a,” *EP*².

³⁵ de Blois, “Sâbi,” *EP*²; Fahd, “Sâbi'a,” *EP*².

an ancient people whom God has punished for their worldly pride (Qur'ân, 34:15-17).³⁶

On the other hand, Magians, i.e. Zoroastrians of Persia, had a scripture (*Avesta*), but it was confined to the priestly cast and not known outside it. The religion in its official form was a conglomerate of monotheistic, dualistic and polytheistic fractions that wavered in influence depending on circumstances, while in liturgical aspect the cult of fire had central place. Since they are merely listed once along with the People of the Book and polytheists in the Qur'ân, there is no qur'ânic basis for their categorization as the People of the Book. Their elevation towards the status of the *ahl al-kitâb* was in accordance with historical developments of a later period, and will be discussed in a while.³⁷

To sum up, the Christians and Jews are genuine People of the Book since they possess authentic divine scriptures, and are obviously denoted as such. Moreover, their historical significance greatly excels that of other groups mentioned. Accordingly, in the rest of the text terms “Christians and Jews” and “the People of the Book” will be used as synonyms. Both groups are also distinctively mentioned in the Qur'ân under their personal names.

The Jews appear under three names: *hûd* and *yahûd* (sing. *yahûdî*) refer directly to the contemporary Jews, while the third term, *Banû Isrâ'îl* (“the Children of Israel”), refers to the biblical Israelites, but sometimes includes the

³⁶ A. F. L. Beeston, “Saba’,” *EI*².

³⁷ M. Morony, “Madjûs,” *EI*².

Christians as well, more precisely a part of the Children of Israel that believed in Christ's message (Qur'ân, 43:59; 61:14).³⁸

The Christians are indicated as *nasârâ* (sing. *nasrânî*, also *nasrân*, fem. *nasrâna*), probably derived from the name of the Christ's hometown, Nazareth (*al-Nâsira*).³⁹ In addition, they were mentioned once as *ahl al-Indjil* ("the People of the Gospel"; Qur'ân 5:47).⁴⁰

As beneficiaries of the Lord's revelation, the Christians and Jews are portrayed with sympathy. Together with the Muslims they will share in God's mercy in the world to come (Qur'ân, 5:69; 2:62; 22:17). The People of the Book as possessors of the previous revelation are to be consulted on uncertain matters: "And We sent not (as Our messengers) before thee other than men whom We inspired – Ask the followers of the Remembrance [i.e. the People of the Book] if ye know not!" (Qur'ân, 16:43; cf. 10:94). Interaction with the People of the Book is proclaimed lawful – their food does not come under prohibition of otherwise rigid dietary regulations, while believers are allowed to marry women from among the People of the Book (Qur'ân, 5:5). The distinction between the People of the Book and the disbelievers is unquestionably asserted, as well as their common fate with the believers:

We have appointed only angels to be wardens of the Fire, and their number have We made to be stumbling-block for those who disbelieve; that *those to whom the Scripture hath been given may have certainty*, and that believers may increase in faith; and that *those to whom the Scripture hath been given and believers may not doubt* [italics V. K.]; and that those in whose hearts there is disease, and disbelievers, may say: What meaneth

³⁸ N. A. Stillman, "Yahûd," *EP*²; Uri Rubin, "Jews and Judaism," in: Jane Dammen McAuliffe ed., *Encyclopaedia of the Qur'ân*, vol. 3, (Leiden, Boston, Köln: Brill, 2003), 21; Vajda, "Ahl al-Kitâb," *EP*².

³⁹ J. M. Fiey, "Nasârâ," *EP*²; Sydney H. Griffith, "Christians and Christianity," in: Jane Dammen McAuliffe ed., *Encyclopaedia of the Qur'ân*, vol. 1, 310-311.

⁴⁰ Cf. Griffith, 311.

Allah by this similitude? Thus Allah sendeth astray whom He will, and whom He will He guideth. None knoweth the hosts of thy Lord save Him. This is naught else than a Reminder unto mortals.

(Qur'ân, 74:31)

However, qur'ânic attitude towards the People of the Book is far from uniform.⁴¹ They are invited to come to an agreement with the Prophet's community based on strict monotheism, but in the case of the rejection of the proposal, Muhammad is instructed to say: "Bear witness that we are they who have surrendered [*muslimûn*] (unto Him)" (Qur'ân, 3:64). Elements of notion of exclusiveness and superiority of the Muslim faith are obviously present, while verses that follows are more explicit – they bring an accusation of betrayal of the pure Abrahamic monotheism, warn the Prophet to be aware of their harmfulness, and eventually impute disbelief to the People of the Book because of their disbelief in Muhammad's revelation: "O People of the Scripture! Why disbelieve ye in the revelations of Allah, when ye (yourselves) bear witness (to their truth)?" (Qur'ân, 3:70; cf. 3:65-69).

In addition, the Qur'ân warns against the People of the Book as "evil-doers," although admitting that minority among them is on the right path (Qur'ân, 3:110, 113, 199; 28:52-4; 5:66). Some commentators consider that mentioned minority represents converts to Islam,⁴² which is true at least for those who "believe in Allah and that which is revealed unto you [Muhammad]" (Qur'ân, 3:199). Apart from being accused of *kufir* ("ingratitude," "unfaithfulness," "disbelief") in a number of *sûras*, in three *sûras* the People of the Book are explicitly equated with the polytheists – unbelievers *par excellence*

⁴¹ Rubin, 22.

⁴² Adang, 223.

(Qur'ân 2:105; 3:186; 98).⁴³ In this respect *sûra* 98, known under several names, as *lam yakun*, *al-bayyina*, *ahl al-kitâb*, *al-qiyâma*, *al-qayyima*, and *al-barriya*, represents a summary of earlier criticism,⁴⁴ and deserves to be quoted in full:

- (1) Those who disbelieve among the People of the Scripture and the idolaters could not have left off (erring) till the clear proof came unto them,
 - (2) A messenger from Allah, reading purified pages
 - (3) Containing correct scriptures.
 - (4) Nor were the People of the Scripture divided until after the clear proof came unto them.
 - (5) And they are ordered naught else than to serve Allah, keeping religion pure for him, as men by nature upright [*hunaḡâ*'], and to establish worship and to pay the poor-due. That is true religion [*dîn al-qayyima*].
 - (6) Lo! those who disbelieve, among the People of the Scripture and the idolaters, will abide in fire of hell. They are the worst of created beings.
 - (7) (And) lo! those who believe and do good works are the best of created beings.
 - (8) Their reward is with their Lord: Gardens of Eden underneath which rivers flow, wherein they dwell for ever. Allah hath pleasure in them and they have pleasure in Him. This is (in store) for him who feareth his Lord.
- (Qur'ân 98)

Traditional Muslim exegesis (*tafsîr*) explains that although Muhammad is actually the Apostle as promised in the Torah and the Gospel (Qur'ân 7:157; 61:6), the People of the Book refused him, in this way separating themselves in disbelief.⁴⁵ Their rejection of Muhammad's prophecy was incomprehensible since they should have been the first to accept him. His revelation contains "purified pages" and "correct scriptures," that are meant to substitute corrupted and falsified scriptures of the People of the Book (cf. Qur'ân 2:75). Exegete al-Râzî explains the cause for mentioning the People of the Book before the polytheists by the fact that since they had knowledge of the books and capacity to recognize authenticity of Muhammad's mission, "... their persistence in *kuf*r

⁴³ Yvonne Yazbeck Haddad, "An Exegesis of Sura Ninety-Eight," *Journal of the American Oriental Society* 97, 4 (1977), 524.

⁴⁴ Ibid., 523, 529.

⁴⁵ Ibid., 525.

was more evil. Furthermore, because they had knowledge, they were an example to others, thus their *kufir* was the cause of the *kufir* of the others.”⁴⁶

Hence, eventually the People of the Book are sorted among unbelievers and doomed to fire of hell. *Kufir* is usually translated into English as “unbelief” (“disbelief,” “misbelief”), although the root *k-f-r* originally bears somewhat different meanings: to cover, to hide, to conceal (e.g. the truth), or in the qur’anic context, to ignore, to fail to acknowledge, to reject, to be ungrateful (e.g. to God), etc.⁴⁷ *Kufir* and *kâfir* (pl. *kuffâr*, *kâfirûn*, *kafara*; “unbeliever,” “infidel”) are as a rule used as antonyms of terms *îmân* and *mu’min* (“faith” and “believer”), and together they “represent the central antithesis in of the qur’anic discourse.”⁴⁸

Kufir as a concept underwent significant development dependent on change in Muhammad’s own perception of his opponents.⁴⁹ It evolved from initial meaning of “denial (of the Day of Judgement),” “lying against God,” and “opposing the Warning,” towards “ingratitude towards God,” and connection with *shirk* (“association of others to God”), to become antonym of *îmân*.

⁴⁶ Ibid., 525-526; cf. Adang, 223.

⁴⁷ Adang, 220; W. Björkmann, “Kâfir,” *EF*; see also: Marilyn Robinson Waldman, “The development of the Concept of *Kufir* in the Qur’ân,” *Journal of the American Oriental Society* 88, 3 (1968), 442-455; for modern use see: Hans Wehr, *A Dictionary of Modern Written Arabic*, ed. by J. Milton Cowan, 3rd printing (Beirut: Librairie du Liban, 1980), 832-833. In time it acquired a meaning of “curse,” eg. *kafara bi’llâhi* – “to blaspheme God, curse, swear.” Interestingly enough, *kafir* (pl. *kuffâr*), meaning “small village, hamlet” (Wehr, 833) etymologically corresponds to Latin term *pagus*, “countryside, rural area,” and *paganus*, “villager, countryman.” During the process of Christianisation of Europe in the Middle Ages, while cities and towns were Christianised successfully, the pre-Christian religions continued to resist for a long time in the countryside, which caused the shift from the original meaning of the word *paganus* as “villager” to that of “heathen,” “non-believer,” i.e. “pagan,” and entered into European languages, while the original meaning is lost. Cf: William Chester Jordan, “Pagus,” in: Joseph R. Strayer ed., *Dictionary of the Middle Ages*, Vol. 9 (New York: Charles Scribner’s Sons, 1987), 325-326. Arabic example indicates that the process of Islamisation in its beginnings had urban character, comparable to that of Christianisation of Europe.

⁴⁸ Adang, 218.

⁴⁹ Waldman, 443.

Eventually, the contrast between *kâfir* and *mu'min* was compared to that between “the blind and the deaf and the seer and the hearer”(Qur’ân, 11:24).⁵⁰

Another crucial antithesis of the Qur’ân is embodied in its central dogma of monotheism – *tawhîd*, and its antonym *shirk* (“associationism”).⁵¹ *Shirk* refers to association of other divinities with God, in other words, polytheism, and “by definition, is contrary to Islam, since the first article of faith of the Muslim is precisely the denial of all associationism, the affirmation of the single God: *lâ ilâhi illâ’llâh*.”⁵² The People of the Book are several times accused of *shirk*.

The Christians are denounced for deifying Christ as son of God and for the doctrine of Trinity (Qur’ân 4:171; 5:73; 5:17), while he, the “son of Mary,” is but a man like other prophets (Qur’ân 3:59; 5:57). By associating other persons to God, since the Qur’ân perceives the Trinity as a belief in three Gods (Jesus, Mary and God, according to Qur’ân 5:116), the Christians committed act of disbelief that is particular to the polytheists – *shirk*. Their infidelity is explicitly asserted: “They surely disbelieve who say: Lo! Allah is third of three; when there is no God save the One God. If they desist not from so saying a painful doom will fall on those of them who disbelieve” (Qur’ân 5:73).⁵³

The Jews, on the other hand, are charged with believing that Prophet Ezra was the son of God; furthermore, together with the Christians, “they have taken as lords beside Allah their rabbis and their monks...” (Qur’ân 9:30-31).⁵⁴

⁵⁰ Ibid., 447-452.

⁵¹ Mustansir Mir, “Polytheism and Atheism,” in: *Encyclopaedia of the Qur’ân*, Vol. 4, ed. Jane Dammen McAuliffe (Leiden-Boston: Brill, 2004), 159.

⁵² D. Gimaret, “Shirk,” *EP*.

⁵³ Griffith, 512-513; Mir, 160.

⁵⁴ Stillman, “Yahûd,” Rubin, 26.

Because of their disbelief and ingratitude God has cursed the People of the Book, and turned them into apes and pigs (Qur'ân, 5:60; cf. 2:65; 7:166).⁵⁵ This later became the source of traditional Muslim stereotypes that denote Jews as apes and Christians as pigs.⁵⁶

However, despite being involved in some polytheistic practices, the People of the Book are never labelled *mushrikûn* ("polytheists"). In principle their faith is monotheism as revealed through the prophets, while God himself promised Jesus that his followers will be "above those who disbelieve until the Day of Resurrection" (Qur'ân 3:55).⁵⁷ Râzî makes distinction between the People of the Book and *mushrikûn*, since former were believers at the beginning, and believed in revealed God's scriptures, but they disbelieved into Muhammad's message, while the latter were born worshipers of idols and deniers of the Day of Judgement. Unlike the People of the Book who denied only the prophethood of Muhammad but believe in other elements of faith, *mushrikûn* denied the Creator, prophethood and resurrection. Therefore the People of the Book will be placed on the upper levels of hell, while *mushirkûn* will be relegated to its bottom.⁵⁸

The Qur'ân prescribes different treatment of two groups: the polytheists are to be killed, or captured, unless they become Muslims (Qur'ân 9:5, *âyat al-sayf*, the "verse of the sword"), but the People of the Book are to be treated with more tact:

⁵⁵ Rubin, 25.

⁵⁶ Benjamin Braude and Bernard Lewis, "Introduction," in: Benjamin Braude and Bernard Lewis, eds., *Christians and Jews in the Ottoman Empire*, Vol. I, (New York, London: Holmes & Meier Publishers, 1982), 8-9.

⁵⁷ Mir, 161; Haddad, 528; Gimaret, "Shirk."

⁵⁸ Haddad, 528.

Fight against such of those who have been given the Scripture as believe not in Allah nor the Last Day, and forbid not that which Allah hath forbidden by His Messenger, and follow not the Religion of Truth, until they pay the tribute [*djizya*] readily, being brought low. (Qur'ân 9:29)

These two verses became the basis for legal treatment of non-Muslims in Islam; in short, while polytheists are doomed to disappearance whether by means of force or by accepting Islam, the People of the Book had an opportunity to avoid persecution under the condition of paying a poll tax (*djizya*, Ottoman *cizye*) to the Muslim community. However, the translation of last four words of the above cited verse – ‘*an yadin wahum sâghirûn*, that determine the position into which the People of the Book are to be put, still are the matter of discussion among the scholars. While modern Muslim scholars usually translate them as “until they ... feel themselves subdued,” or “in a state of subjection,”⁵⁹ Western scholars tend to choose term “humbled,” pointing to the humiliating status designed for the People of the Book.⁶⁰ In any case, the Muslim tradition interpreted the *cizye* not only as a fiscal duty of the People of the Book, but also as a symbol of subordination. In this sense another verse indicates that the Children of Israel were consigned to humiliation and wretchedness because of their disobedience and transgression (Qur'ân 2:61).⁶¹

The obvious and puzzling inconsistency and contradiction in Qur'ânic attitudes towards the Christians and Jews, as well as in some other matters,

⁵⁹ as in translations of the Qur'ân by Yusuf Ali and M. H. Shakir, in: USC-MSA Compendium of Muslim Texts [<http://www.usc.edu/dept/MSA/quran/009.qmt.html>]; *The Koran*, trans. by N. J. Dawood, fifth revised edition (London: Penguin Books, 1990).

⁶⁰ *The Koran Interpreted*, trans. and introduction by Arthur J. Arberry, sixth reprint (Oxford: Oxford University Press, 1990); C. E. Bosworth, “The Concept of Dhimma in Early Islam,” in: Benjamin Braude and Bernard Lewis, eds., *Christians and Jews in the Ottoman Empire*, Vol. I, (New York, London: Holmes & Meier Publishers, 1982), 41; Bernard Lewis, *The Jews of Islam*, (London, Melbourne and Henley: Routledge and Kegan Paul, 1984), 14. For further literature on the topic see: Lewis, *ibid.*, 195, note 9.

⁶¹ Lewis, *The Jews*, 14.

made some scholars to come to somewhat fatalistic conclusions, like Schacht's generalization that "Allah's law is not to be completely grasped by the intelligence, it is *ta'abbudî*, i.e. man has to accept it without criticism, with its contradictions and its incomprehensible decrees, as wisdom into which it is impossible to enquire."⁶²

However, the adoption of the Qur'ân as a primary source of the Islamic law called for rationalisation, as the Divine Book cannot contain contradictions (Qur'ân 4:82).⁶³ Since the Qur'ân was constantly responding to historical situation and commenting on current events in the life of Muhammad and the Islamic community, divine commands have been introduced gradually and in stages, what sometimes created discrepancies between some verses, indicating "that different situations call for different regulations."⁶⁴ The Qur'ân itself mentions certain changes in the revelation initiated by God: God may cause Muhammad to forget some verses, but He can reveal other verses in their place as well (Qur'ân 87:6; 2:106; 18:24); furthermore, God can substitute one verse for another (Qur'ân 13:39), and He can delete or confirm what He wants (Qur'ân 13:39). The case of abolition of famous "satanic verses" intruded in the *sûra* 53 is the example of God's intervention in the text of Qur'ân (cf. Qur'ân 22:52).⁶⁵

The key for proper understanding of qur'ânic commandments is to know the chronological order and historical settings of the passages. On this basis the exegetes and jurists established the theory of abrogation (*naskh*), arguing that

⁶² Joseph Schacht, "Sharî'a," *EI'*, 321.

⁶³ T. A. Welch, "al-Kur'ân;" J. Burton, "Naskh," *EI'*.

⁶⁴ Burton, "Naskh;" cf. Welch, "al-Kur'ân."

⁶⁵ W. Montgomery Watt, *Bell's Introduction to the Qur'an*, reprint (Edinburgh: Edinburgh University Press, 1990), 87-88.

the latest verse on certain subject “abrogated” other verses that contradicted it.⁶⁶ A classic example is the prohibition of wine. While in one verse it is praised as a sign of God’s benevolence towards mankind (Qur’ân 16:67), in another the believers were warned that its harmfulness is greater than its benefit (Qur’ân 2:219; cf. Qur’ân 4:43), until it was finally forbidden as abomination devised by Satan (Qur’ân 5:90-91).⁶⁷ Another example is the “verse of the sword” (Qur’ân 9:5), which alone is said to have replaced one hundred and twenty-four verses, abrogating verses from the earlier period that prescribe patience (Qur’ân 86:17; 73:10-11) or indifference towards the unbelievers (Qur’ân 109).⁶⁸

In order to rule out all possible inconsistencies early Muslim scholars established rigid system of dating of the qur’ânic verses, and drew up long lists of abrogating and abrogated verses.⁶⁹ However, since the abrogated verses were also part of the revelation, i.e. integral part of the Qur’ân, they continued to be recited.⁷⁰ Additionally, criticism of the theory of *naskh* insisting on equality of all qur’ânic verses occurred, but it was rejected by majority of scholars.⁷¹ Western scholars developed several systems of dating, but without reaching consensus on the common one. It should be emphasised, however, that it is impossible to determine exact chronological order of all verses, although it is possible to reconstruct the sequence of the main stages of development.⁷²

The chronological approach is necessary for understanding the context of the change of qur’ânic attitudes towards the People of the Book. In the

⁶⁶ Welch, “al-Kur’ân.”

⁶⁷ Ibid.; cf. A.J. Wensinck, “Khamr,” *EP*.

⁶⁸ Burton, “Naskh;” cf. Björkman, “Kâfir.”

⁶⁹ Welch, “al-Kur’ân.”

⁷⁰ Watt, *Bell's Introduction*, 88.

⁷¹ Burton, “Naskh.”

⁷² Welch, “al-Kur’ân;” cf. Watt, *Bell's Introduction*, 108-120.

beginning of his mission, Muhammad was confronted primarily with the polytheists of Mecca, and perceived the Jews and Christians as natural allies and potential partners in a common monotheistic faith.⁷³ However, Muhammad's perception of the People of the Book in that period seems to be based not on real encounters with concrete Christians and Jews, but theological projection based on an assumption of alleged spiritual communion.⁷⁴

Muhammad's benevolence towards the People of the Book started to change after his move from Mecca to Medina in 622 (*hidjra*). In Medina Muhammad personally encountered the People of the Book, particularly the Jews. Although tiny minority accepted his prophethood and eventually converted to Islam, the great majority of the Jews not only rejected Muhammad, but became increasingly antagonistic towards Muslims.⁷⁵

The "break with the Jews," however, did not come immediately. According to W. Montgomery Watt, it seems that Muhammad was trying to reconcile the Jews for a certain time. Muhammad adopted some Jewish practices into Islam, like facing towards Jerusalem while worshipping (*kibla*), the fast of 'Āshûrâ was instituted on the Jewish Day of Atonement, midday worship (*salât*) was introduced in accordance with Jewish practice, while *djuma'* (Ottoman – *cuma'*), communal Friday worship, seems to be modelled on the *paraskeue*, or Jewish "preparation" for the Sabbath.⁷⁶ However, despite the concessions made

⁷³ Adang, 222; Rubin, 22-23; W. Montgomery Watt, *Muhammad at Medina*, reprint (Karachi: Oxford University Press, 1981), 195.

⁷⁴ David Marshal, "Christianity in the Qur'ân," in: Lloyd Ridgeon ed., *Islamic Interpretations of Christianity* (Richmond: Curzon Press, 2001), 9.

⁷⁵ Watt, *Muhammad at Medina*, 197.

⁷⁶ Ibid., 198-199; for criticism of overemphasising the role of pre-Islamic, especially Jewish elements in the Islamic law, characteristic for Joseph Schacht and his followers, see: Ze'ev Maghen, "Dead Tradition: Joseph Schacht and the Origins of 'Popular Practice'," *Islamic Law and Society* 10, 3 (2003), 276-347.

to the Jews, their reaction was not friendlier, but became hostile and critical of his self-proclaimed prophethood. First signs of the breach between two groups became obvious soon. To begin with, the direction of worship (*qibla*) was changed from Jerusalem towards Mecca. Soon afterwards, the fast of Ramadân was instituted instead that of ‘Âshûrâ.⁷⁷ The final breach in theological sense was the proclamation that believers are neither Jews nor Christians, but follower of the “creed of Abraham” (*millat Ibrâhîm*), who was not one of the idolaters, but *hanîf* and *muslim*.⁷⁸ Jewish rejection and criticism of Muhammad’s prophethood threatened to undermine the ideological basis of his political and religious standing. Therefore his reaction had to be vigorous.

The “break with Jews” happened in 2/624, after the battle with Meccan polytheists at Badr. The first of three powerful Jewish clans of Medina, Qaynuqâ was defeated by Muslims and expelled from the town, to be followed in 4/625 by another clan, al-Nadîr. The third clan, Qurayzah, however, was doomed to extinction, while women and children were sold as slaves.⁷⁹ Nevertheless, there is no ground for assertions that Muhammad carried out the policy of extinction of the Jews, since after the main opposing groups were not posing threat no more, certain Jewish minority still continued to live in Medina.⁸⁰ Although material factors, like seizure of Jewish wealth, should not be underestimated, the fundamental cause of conflict for both sides was

⁷⁷ Ibid., 201-203.

⁷⁸ Ibid., 205.

⁷⁹ Ibid., 209-214.

⁸⁰ Ibid., 216-217.

ideological-theological,⁸¹ and, as it is usually the case when ideology or religion is at stake, none of the parties could afford a compromise.

With regard to the Christians, it should be noticed that although there is no mention of their presence in Medina, there was certainly a considerable number of them living in Arabia, while Mecca allegedly had a Christian cemetery. Furthermore, a legend says that Ka'ba, while still a polytheistic temple, had an icon of Mary with Christ along with idols, that was allegedly saved by the Prophet himself from destruction during the its "cleansing" from idols.⁸²

Even though the Christians were condemned separately for disbelief and *shirk* as mentioned above, apart from being criticised along with the Jews as the People of the Book, still their position in the Qur'ân seems to be less negative than that of the Jews. While the Jews together with the idolaters are the most vehement of mankind to the believers, the Christians are distinguished as the nearest to the Muslims (Qur'ân 5:82).⁸³ Absence of Christian hostility and opposition towards the Muslims, along with their insignificant role in the Arabian politics, may have determined more benevolent treatment in the Qur'ân.

In order to get fuller picture of the complexity of qur'ânic attitudes towards the People of the Book, it is necessary to draw attention to certain verses that indicate different approach. Whole mankind, believers as well as unbelievers, are descendents of Adam, who was placed on the Earth as a viceroy (*khalifa al-arz*) by God, taught all the names, and made superior to angels who, all except Iblîs (the Devil), prostrated before him (Qur'ân 2:30-34). Mankind

⁸¹ Ibid., 220.

⁸² Rubin, 309.

⁸³ Ibid., 311.

were given lordship over the earth and free and unhindered use of its fruits.⁸⁴ In the beginning they were one community (Qur’ân 10:19; 2:213), but Allah made them differ (Qur’ân 11:118; 16:93; 42:8). Diversity was part of God’s ordinance for mankind: “For each We have appointed a divine law and a traced-out way. Had Allah willed He could have made you one community... So vie one with another in good works” (Qur’ân 5:48). Since mankind was divided by God’s will, man should not contravene it. God warns Muhammad not to impose God’s message on people, but only to offer it: “Then whosoever will, let him believe, and whosoever will, let him disbelieve.” (Qur’ân 18:29; cf. 3:20). The right of free choice between right and wrong is absolute, and it is the criteria for God’s punishment to wrongdoers and reward to righteous at the Judgment Day (*yawm al-fasl*).⁸⁵

Therefore, any imposition of the right religion would be intervention into human right of free choice and eventually in contravention of the principle of God’s justice. Although it might be asserted that these verses were abrogated by others less permissive discussed above, basic principles of free choice in the matter of religion were respected throughout Islamic history with very few exceptions, as will be shown in following pages.

2.2.2. People of the Book in the *Hadîth*

As already mentioned, the Tradition (*Sunna*) as transmitted in its textual form – *Hadîth*, is the second source of the Islamic law, and together with the

⁸⁴ Sayed Z. Abedin, “Al-Dhimma: the Non-Believers Identity in Islam,” *Islam and Christian-Muslim Relations* 3, 1 (1992), 41.

⁸⁵ Ibid., 49.

Qur'ân constitutes *usûl al-usûl* ("the basis of the basis"). The role of the *Sunna* of the Prophet is to confirm, extend, elaborate, explain, and supplement the revelation, as the Prophet as its mediator himself is the best possible interpreter of the Qur'ân. However, Muhammad's teaching was not confined only to the explanations of qur'ânic verses. As a political leader of his community, i.e. the statesman, the Prophet took upon himself the responsibility of making decisions in issues of everyday life, establishing legal precedents by his rulings. In doing so, Muhammad was ready to adopt rulings from custom or tribal law, under the condition that they do not contradict basic Islamic principles.⁸⁶

Apart from the *Sunna* of the Prophet, the *Sunna* of his Companions had considerable influence as well. As Muhammad's contemporaries and participators in the creation and development of the early Muslim community (*umma*), the Companions were held in high esteem by subsequent generations, while their *Sunna* received authority that was second only to Muhammad's Tradition.⁸⁷

Although the question of the authenticity of the *Hadîth* was and still is a subject of discussion between non-Muslim Western and Muslim scholars, it will not be discussed here, since the issue is not relevant for this study. As the antiquity of the *Hadîth* is unquestionable, its relevance to social and religious realities of the early Islamic world makes it outstandingly valuable for historical study. Furthermore, the *Hadîth* has been incorporated into the Islamic legal

⁸⁶ Frederick Mathewson Denny, *An Introduction to Islam*, 2nd edition (New York: Macmillan, 1994), 159-160.

⁸⁷ Ibid., 167-168; cf. Vesey-Fitzgerald, 92.

system, and, as its second “root”, came to be fundamental element of the Islamic law.⁸⁸

Hadîth collections that will be briefly analysed here are the following: *Sahîh* of al-Bukhârî (Muhammad Ismâ‘îl al-Bukhârî, d. 256/870), *Sahîh* of Muslim (Muslim Ibn al-Hadjdjâdj, d. 261/875), *Kitâb al-Sunan* of Abû Dâwûd (‘Abd Allâh b. Sulaymân b. al-Ash‘ath, Abû Bakr Ibn Abû Dâwûd al-Sidjîstânî, d. 316/929), and *Kitâb al-Muwatta’* of Mâlik b. Anas (d. 179/796).⁸⁹ These collections represent major widely accepted *sunni hadîth* collections. The collections of al-Bukhârî and Muslim, known as *al-Sahîhân* (“the two sound/authentic [collections of *hadîth*]”), are considered to be the best of all *hadîth* collections.⁹⁰ Mâlik’s collection is the first substantial and carefully sifted collection of *hadîths*, as well as one of the most highly respected collections. In addition, it is important to mention that Mâlik, known also as Imâm from Medina, was a great jurist and founder of Mâlikî school of law (*madhab*).⁹¹ In consequence, *hadîths* in his collection are more concerned with legal issues than those from other collections. Abû Dâwûd’s collection is one of four *hadîth*

⁸⁸ Cf. Denny, 163.

⁸⁹ English translation of mentioned collections is available via a web page of the University of Southern California’s *USC-MSA Compendium of Muslim Texts*:
<<http://www.usc.edu/dept/MSA/>>; the exact addresses of individual *hadîth* collections are:
Sahîh of al-Bukhârî, trans. by M. Muhsin Khan,
<<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/bukhari/>>; *Sahîh* of Muslim, trans. by Abdul Hamid Siddiqui,
<<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/muslim/>>; *Kitâb al-Sunan* of Abû Dâwûd, trans. by Ahmad Hasan,
<<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/abudawud/>>; *Kitâb al-Muwatta’* of Mâlik b. Anas, trans. by ‘A’isha ‘Abdarahman at-Tarjumana and Ya‘qub Johnson,
<<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/muwatta/>>
(accessed October, 2006).

⁹⁰ Denny, 164-165; cf. J. Robson, “al-Bukhârî, Muhammad b. Ismâ‘îl,” *EF*; G. H. A. Juynboll, “Muslim b. al-Hadjdjâdj,” *EF*.

⁹¹ *Ibid.*, 164; cf. Joseph Schacht, “Mâlik b. Anas,” *EF*.

collections that are, along with al-Bukhârî's and Muslim's collections universally accepted by the Sunnîs.⁹²

The fact that the final *hadîth* collections originate from the time of exchanged socio-political circumstances of the eight and ninth centuries is often reflected in individual *hadîths*. While the Qur'ân is concerned with the Christians and Jews predominantly from theological point of view, *hadîths* are more focused on social implications of common life of Muslim, Christian and Jewish communities in the ambience of multi-religious and multi-ethnic caliphate that embraced huge non-Muslim populations.⁹³

Following the example of the Qur'ân, the *Hadîth* also asserts manifold attitudes towards the Christians and Jews. However, negative attitudes towards the People of the Book prevail in the *Hadîth*. The criticism is directed mainly towards the Jews, in reference to their inimical relations with the Prophet and Muslims.⁹⁴ The Christians are rarely present on their own, more often together with the Jews, or as the People of the Book.

Aggravation of the relations between the conquering Muslims and the conquered, i.e. Christians and Jews, is obvious: al-Bukhârî reveals a *hadîth* with Muhammad's interpretation of the first *sûra* of the Qur'ân, *Fâtiha*, equating the Jews with "those who earn Thine [Allah's] anger," and the Christians with "those who go astray."⁹⁵ This interpretation has been dominant in the qur'ânic

⁹² Ibid., 165-166; cf. A. Rippin, "al-Sidjistânî, 'Abd Allâh b. Sulaymân," *EI*².

⁹³ Marston Speight, "Christians in the Hadîth Literature," in: Lloyd Ridgeon ed., *Islamic Interpretations of Christianity*, 32.

⁹⁴ Cf. Vajda, "Ahl al-Kitâb;" Lewis, *The Jews*, 59; Stillman, "Yahûd."

⁹⁵ al-Bukhârî, *Sahîh*, Volume 1, Book 12, No. 749.

<<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/bukhari/012.sbt.html#001.012.749>>

exegesis.⁹⁶ The peak of criticism of the People of the Book is provided by Muslim in four different *hadiths* again ascribed to the Prophet: “There would come people amongst the Muslims on the Day of Resurrection with as heavy sins as a mountain, and Allah would forgive them and He would place in their stead the Jews and the Christians.”⁹⁷ Although this opinion is not widely accepted by Muslim scholars, its occurrence in at least two different collections indicates growing alienation between Muslims and the People of the Book.⁹⁸

Hadiths dealing with the Jews alone often reflect vehemence of the conflict with Muhammad. Muhammad’s offering to Jews to choose between conversion to Islam and exodus, since “... the earth belongs to Allah and His Prophet...”,⁹⁹ is testimony to clashes with the Jewish tribes of Medina. Intensity of enmity and irreconcilability between the two occasionally invokes extreme solutions: “Abdullah b. ‘Umar reported Allah’s Messenger (may peace be upon him) as saying: You and the Jews would fight against one another until a stone would say: Muslim, here is a Jew behind me; come and kill him.”¹⁰⁰ However, it seems that these *hadiths* can be better comprehended within the context of

⁹⁶ Speight, 43.

⁹⁷ Muslim, *Sahih*, Book 37, No. 6688

<<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/muslim/037.smt.html#037.6668>>.

⁹⁸ Speight, 43-44; the other collection is that of Ibn Hanbal.

⁹⁹ al-Bukhârî, Vol. 9, Book 85, No. 77

<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/bukhari/085.sbt.html#009.085.077>;

cf. Ibid., Vol. 4, Book 53, No. 392

<<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/bukhari/053.sbt.html#004.053.392>>

¹⁰⁰ Muslim, Book 41, No. 6983

<<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/muslim/041.smt.html#041.6983>>;

cf. Ibid., Book 41, No. 6981

<<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/muslim/041.smt.html#041.6981>>;

No. 6982

<<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/muslim/041.smt.html#041.6982>>;

No. 6984

<<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/muslim/041.smt.html#041.6984>>;

No. 6985

<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/muslim/041.smt.html#041.6985>>.

caliph 'Umar's policy of expulsion of non-Muslims from the Arabia, as asserted in the following *hadith*:

Malik said that Ibn Shihab said, "Umar ibn al Khattab searched for information about that until he was absolutely convinced that the Messenger of Allah, may Allah bless him and grant him peace, had said, 'Two deens [*dîns*, "religions"] shall not co-exist in the Arabian Peninsula,' and he therefore expelled the Jews of Khaybar."¹⁰¹

'Umar's hesitation to expel the Jews of Khaybar is explained by another *hadith*:

Allah's Apostle after conquering Khaibar, thought of expelling the Jews from the land which, after he conquered it belonged to Allah, Allah's Apostle and the Muslims. But the Jews requested Allah's Apostle to leave them there on the condition that they would do the labor and get half of the fruits (the land would yield). Allah's Apostle said, "We shall keep you on these terms *as long as we wish*" [italics V. K.]. Thus they stayed till the time of 'Umar's Caliphate when he expelled them to Taima and Ariha.¹⁰²

Muhammad treaty with the Jews of the oasis of Khaybar in 7/629, "... became a *locus classicus* for later legal discussions of the status of the conquered non-Muslim subjects of the Muslim state."¹⁰³ After a month and a half of hostilities the Jews asked Muhammad to offer them an agreement for capitulation. According to the terms of the agreement, the Jews were allowed to stay in the oasis under the condition to cultivate it and to hand one-half of the produce to the Muslims. In the contrast with uncompromising policy towards the Medinan Jews who represented ideological and political threat to his authority, in the case of agriculturally productive Jews of Khaybar the Prophet was concerned with practical motives. Although the agreement did not elaborate position of the Jews in detail, it established a precedent that was followed in

¹⁰¹ Mâlik, *Muwatta'*, Book 45, No. 45.4.18
<<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/muwatta/045.mmt.html#045.45.5.17>>; cf. Muslim, Book 19, No. 4366
<<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/muslim/019.smt.html#019.4366>>.

¹⁰² al-Bukhârî, Vol. 4, Book 53, No. 380
<<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/bukhari/053.sbt.html#004.053.380>>

¹⁰³ Lewis, *The Jews*, 10.

further dealings with non-Muslim conquered populations. It envisaged that goods obtained by force (*'anwatan*, Ottoman – *'anveten*) were to be divided among the soldiers, while those taken by treaty (*sulhan*) were to be left to the capitulated population.¹⁰⁴

As it was already mentioned, this did not prevent 'Umar to expel the Jews from Khaybar on the basis of the Prophet's *hadith* that there should be no other religion apart from Islam in Arabia. However, it should be noted that contrary to the accepted version of both history and tradition, the People of the Book were never banished from Yemen, while some Jews continued to live in a village in the east of the peninsula for some time. In fact, 'Umar did not expelled the People of the Book from whole Arabia, but only from Hedjaz.¹⁰⁵

Benevolent attitudes towards the People of the Book present in some Qur'anic verses cannot be found in the *Hadith* any more. However, even though the tone of some *hadiths* is very negative and inimical, the prevailing attitude is indifference, or, in other words, tolerance towards the People of the Book.

In accordance with good manners, Muslims are advised by the Prophet to stand up during Jewish funeral procession, since the deceased was also a human being.¹⁰⁶ The typical expression of the indifference with the elements of seclusion is the following *hadith*:

¹⁰⁴ L. Veccia Vaglieri, "Khaybar," *EP*.

¹⁰⁵ A. S. Tritton, *The Caliphs and their Non-Muslim Subjects. A Critical Study of the Covenant of 'Umar*, (London: Oxford University Press, 1930; reprint, London: Frank Cass and Company Limited, 1970), 175.

¹⁰⁶ Muslim, Book 4, No. 2098

<<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/muslim/004.smt.html#004.2098>>; al-Bukhârî, Vol. 2, Book 23, No. 399

<<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/bukhari/023.sbt.html#002.023.399>>; cf. Ibid., Vol. 2, Book 23, No. 398

<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/bukhari/023.sbt.html#002.023.398>>; see also: Speight, 34.

The people of the Scripture used to read the Torah in Hebrew and explain it to the Muslims in Arabic. Then Allah's Apostle said, "Do not believe the people of the Scripture, and do not disbelieve them, but say, 'We believe in Allah and whatever has been revealed...' (3.84)"¹⁰⁷

Even though the toleration was the main pattern to be followed in the interaction with the People of the Book, social superiority of the Muslims had to be indisputable. The issue of salutation, as most significant form of everyday communication, is indicative in this respect: "Do not greet the Jews and the Christians before they greet you and when you meet any of them on the roads force him to go to the narrowest part of it."¹⁰⁸ On the other hand, in other *hadîths* Muslims are merely advised to respond to greetings from the People of the Book, while one Mâlik's *hadîth* stresses that a Muslim is not obliged to apologise for greeting a Christian or a Jew.¹⁰⁹

Everyday life in multi-religious environment of the Middle East naturally caused rivalries and antagonisms between the religious groups. As conquerors, the Muslims acquired and maintained superior social position. However, there was a fear that this might be brought into question by two facts. In first place, even though gradually increasing in number via Islamisation, in the beginning Muslims were just a tiny minority in predominantly Christian

¹⁰⁷ al-Bukhârî, Vol. 9, Book 93, No. 632

<<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/bukhari/093.sbt.html#009.093.632>>

¹⁰⁸ Muslim, Book 26, No. 5389

<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/muslim/026.smt.html#026.5389>>; cf. Abû Dâwûd, Book 41, No. 5186

<<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/abudawud/041.sat.html#041.5186>>

¹⁰⁹ Malik, Book 53, No. 53.2.3

<<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/muwatta/053.mmt.html#053.53.2.3>>; cf. al-Bukhârî, Vol. 8, Book 74, No. 275

<<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/bukhari/074.sbt.html#008.074.275>>; Muslim, Book 26, No. 5380

<<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/muslim/026.smt.html#026.5380>>; Ibid., Book 26, No. 5381

<<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/muslim/026.smt.html#026.5381>>; see also: Speight, 45.

environment. Secondly, relative closeness of religious foundations that was reflected on a greater scale in practice, beliefs and customs, must have been intensified by elements introduced by new converts of Christian and Jewish origin, or through mixed marriages. In such circumstances the perspective of acculturation and loss of separate identity through syncretism must have seemed very realistic and generated great anxiety among Muslim scholars and leaders.

Accordingly, issues concerning isolation and distinctiveness of the Muslims from the Christians and Jews represent a main theme in *hadîths* under consideration.¹¹⁰ Dissociation from the People of the Book is demanded already in the Qur'ân: "Take not the Jews and Christian for friends. He among you who taketh them for friends is (one) of them" (Qur'ân 5: 51; cf. Qur'ân 5:55; 5:57; 3:118). In the *Hadîth* the believers are warned not to follow "... those before you [i.e. Christians and Jews] inch by inch and step by step so much that if they had entered into the hall of the lizard, you would follow them in this also."¹¹¹ On the other hand, Muhammad acknowledges that some customs and practices were borrowed from the People of the Book, like the fast of 'Âshûrâ,¹¹² but other practices were later abandoned, as is asserted for example in a *hadîth* concerning proper hair-style:

¹¹⁰ Cf. Speight, 32, 40-41, 45 and passim; Vajda; Ze'ev Maghen, "The Interaction between Islamic Law and non-Muslims: *lakum dînukum wa-lî dîni*," *Islamic Law and Society*, 10, 3 (2003), 274-275; for examination of similar regulations in the Muslim Spain see: Janina M. Safran, "Rules of purity and confessional boundaries: Maliki debates about the pollution of the Christians," *History of Religions* 42, 3 (2003): 197-212.

¹¹¹ Muslim, Book 34, No. 6448

<<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/muslim/034.smt.html#034.6448>>; cf. al-Bukhârî, Vol. 9, Book 92, No. 422

<<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/bukhari/092.sbt.html#009.092.422>>
¹¹² al-Bukhârî, Vol. 3, Book 31, No. 222

<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/bukhari/031.sbt.html#003.031.222>>; Ibid., Vol. 4, Book 55, No. 609

<<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/bukhari/055.sbt.html#004.055.609>>; Muslim, Book 6, No. 2528

<<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/muslim/006.smt.html#006.2528>>

The Prophet used to copy the people of the Scriptures in matters in which there was no order from Allah. The people of the Scripture used to let their hair hang down while the pagans used to part their hair. So the Prophet let his hair hang down first, but later on he parted it.¹¹³

New customs were introduced in order to differ from that of the People of the Book and establish particular identity, like a call to prayer performed by human voice (*adhân*, Ottoman - *ezân*), instead of the horn used by the Jews, or bells used by the Christians.¹¹⁴ Unlike the Jews whose holy day is Saturday, or the Christians' Sunday, the Muslims were divinely guided aright to Friday.¹¹⁵ The opposition to practices of the People of the Book sometimes is the only motive:

The Apostle of Allah (peace be upon him) used to stand up for a funeral until the corpse was placed in the grave. A learned Jew (once) passed him and said: This is how we do. The Prophet (peace be upon him) sat down and said: Sit down and act differently from them.¹¹⁶

Insistence on differing from the People of the Book is overwhelming – further prescriptions that intend to regulate everyday life in its totality were introduced, like dyeing hair and beard with henna,¹¹⁷ cutting the moustache,¹¹⁸ prohibition

¹¹³ al-Bukhârî, Vol. 7, Book 72, No. 799

<<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/bukhari/072.sbt.html#007.072.799>>

¹¹⁴ al-Bukhârî, Vol. 1, Book 11, No. 578

<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/bukhari/011.sbt.html#001.011.578>>;

Muslim, Book 4, No. 735

<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/muslim/004.smt.html#004.0735>>;

Abû Dâwûd, Book 2, No. 498

<<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/abudawud/002.sat.html#002.0448>>

¹¹⁵ al-Bukhârî, Vol. 2, Book 13, No. 1

<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/bukhari/013.sbt.html#002.013.001>>, and passim; Muslim, Book 4, No. 1858

<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/muslim/004.smt.html#004.1858>>, and passim; cf. Speight, 41.

¹¹⁶ Abû Dâwûd, Book 20, No. 3170

<<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/abudawud/020.sat.html#020.3170>>

¹¹⁷ al-Bukhârî, Vol. 4, Book 56, No. 668

<<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/bukhari/056.sbt.html#004.056.668>>

, and passim; Muslim, Book 24, No. 5254

<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/muslim/024.smt.html#024.5245>>; cf.

Abû Dâwûd, Book 33, No. 4193

<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/abudawud/033.sat.html#033.4193>>, and passim.

of the use of certain materials for clothing, as silk, gold,¹¹⁹ false hair or tattoos.¹²⁰ The prohibition of alcohol, pork,¹²¹ or images¹²² seems to serve the same function. The *Hadîth* sometimes goes in such a detail as specifying the order of putting the shoes on and taking them off: “Let the right shoe be the first to be put on and the last to be taken off.”¹²³ On the other hand, *hadîth* regulations sometimes intrude so deep into the intimacy of an individual, as to prescribe proper positions during the sexual intercourse. In this case the intention was to remove limitations established by Jewish law and accepted by the Medinans (*Ansârs*), on the grounds of qur’ânic verse: “Your women are a tilth for you (to cultivate) so go to your tilth as ye will...” (Qur’ân 2:223).¹²⁴ Even though some of these prescriptions might seem somewhat bizarre to an outsider, the proper observance of the prescriptions, or in other words, *orthopraxy*, clearly delineates border between Muslims and non-Muslims, from

¹¹⁸ al-Bukhârî, Vol. 7, Book 72, No. 780

<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/bukhari/007.072.780>>, and passim.

¹¹⁹ al-Bukhârî, Vol. 7, Book 72, No. 753

<<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/bukhari/072.sbt.html#007.072.753>>, and passim.

¹²⁰ al-Bukhârî, Vol. 7, Book 72, No. 816

<<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/bukhari/072.sbt.html#007.072.816>>, and passim.

¹²¹ al-Bukhârî, Vol. 3, Book 34, No. 438

<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/bukhari/034.sbt.html#003.034.438>>, and passim. Cf. Safran, 197

¹²² al-Bukhârî, Vol. 7, Book 72, No. 835

<<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/bukhari/072.sbt.html#007.072.835>>, and passim.

¹²³ al-Bukhârî, Vol. 7, Book 72, No. 747

<<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/bukhari/072.sbt.html#007.072.747>>

¹²⁴ Abû Dâwûd, Book 11, No. 2159

<<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/abudawud/011.sat.html#011.2159>>; cf. Muslim, Book 8, No. 3363

<<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/muslim/008.smt.html#008.3363>>, and passim; al-Bukhârî, Vol. 6, Book 60, No. 51

<<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/bukhari/060.sbt.html#006.060.051>>

external appearance to social behaviour in everyday situations, dietary habits, and the like, embracing literally all fields of life.¹²⁵

Interestingly enough, the *Hadīth* provides very few legal decisions in modern sense concerning the non-Muslims.¹²⁶ However, there are some examples that are worth to mention. The most significant for the legal position of the People of the Book are *hadīths* dealing with taxes collected from them, namely *cizye*. The *Hadīth* further elaborates general qur'ānic stipulation that the peace with the People of the Book is to be obtained on the condition that they accept to pay *cizye* (Qur'ān 9:29). In early times *cizye* was the name for dues demanded from the Christians and Jews as a collective tribute, not differentiated from others. Its root implies “compensation” for non-adoption of Islam. The payment of the *cizye*, from the conqueror's point of view, was material proof of the subjugation of payers.¹²⁷ In the beginning taxes were paid only by non-Muslims.¹²⁸ Muslims, on the other hand, were obliged to pay *zakāt* (Ottoman – *zekât*, a tax paid for the benefit of the poor), in the *Hadīth* sometimes encountered under the name *sadaka* (usually meaning “voluntary alms”).¹²⁹

¹²⁵ Cf. Safran, 197-201; see also: Denny, 112-118, and passim.

¹²⁶ Cf. Speight, 35.

¹²⁷ Cf. Claude Cahen, “Djizya.,” *EI*²; Claude Cahen, “Kharâdj. I. In Central and Western Islamic Lands,” *EI*²; Tritton, 197-227.

¹²⁸ Abū Dâwūd, Book 19, No. 3040

<<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/abudawud/019.sat.html#019.3040>>; cf. Tritton, 197-198.

¹²⁹ Abū Dâwūd, Book 19, No. 3043

<<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/abudawud/019.sat.html#019.3043>>; Mâlik, Book 17, No. 17.24.46

<<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/muwatta/017.mmt.html#017.17.24.46>>; cf. A. Zysow, “Zakât,” *EI*²; T. H. Weir and A. Zysow, “Sadaka,” *EI*².

By acceptance to pay the *cizye* non-Muslims are granted personal security of life and goods from the Muslims,¹³⁰ including defence against their enemies.¹³¹ Furthermore, the People of the Book preserved religious and communal autonomy: “They remain in the deen [*dîn*] they were in, and they continue to do what they used to do.”¹³² According to a *hadîth* transmitted by Mâlik, the *cizye* is taken only from men who have reached puberty, while women and children are exempted.¹³³ Later jurists included old men, invalid, slaves, beggars, the sick and mentally deranged into the category of the exempted.¹³⁴ Even though the purpose of the *cizye* is to humble the payers,¹³⁵ they were not to be mistreated nor tortured, for instance forced to stand in the sun, if they fail to pay it.¹³⁶

Apart from the payment of the *cizye*, caliph ‘Umar introduced an obligation of hosting the Muslims as guests up to three days.¹³⁷ The *cizye* can be abolished only if an individual converts to Islam, or, in an eschatological sense, by Jesus in the Last Days:

¹³⁰ Muslim, Book 19, No. 4294

[<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/muslim/019.smt.html#019.4294>](http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/muslim/019.smt.html#019.4294).

¹³¹ Mâlik, Book 17, No. 17.24.46

[<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/muwatta/017.mmt.html#017.17.24.46>](http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/muwatta/017.mmt.html#017.17.24.46).

¹³² Ibid.

¹³³ Ibid.

¹³⁴ Cahen, “Djizya.”

¹³⁵ Mâlik, Book 17, No. 17.24.46

[<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/muwatta/017.mmt.html#017.17.24.46>](http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/muwatta/017.mmt.html#017.17.24.46).

¹³⁶ Muslim, Book 32, No. 6328

[<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/muslim/032.smt.html#032.6328>](http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/muslim/032.smt.html#032.6328);

cf. Ibid., 32, No. 6330

[<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/muslim/032.smt.html#032.6330>](http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/muslim/032.smt.html#032.6330);

cf. Lewis, *The Jews*, 15.

¹³⁷ Mâlik, Book 17, No. 17.24.44

[<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/muwatta/017.mmt.html#017.17.24.44>](http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/muwatta/017.mmt.html#017.17.24.44).

Allah's Apostle said, "The Hour will not be established until the son of Mary (i.e. Jesus) descends amongst you as a just ruler, he will break the cross, kill the pigs, and abolish the Jizya tax. Money will be in abundance so that nobody will accept it (as charitable gifts)."¹³⁸

Supposedly, the breaking of the cross (and killing of the pigs) symbolizes the abolishment of Christianity by Christ himself, and establishment of the true religion; therefore, the *cizye* as a tax of non-believers will become redundant.

The conquest of Persia resulted in incorporation of vast number of Magians, i.e. Zoroastrians, into the Islamic state. Since the Qur'ân did not give any ruling concerning their status as mentioned above, that is, it did not include them among the People of the Book, they were to be treated as polytheists. However, Muslim governors in "polytheist" regions were guided by the sense of expediency, since extermination and/or forced Islamisation of the majority of country's inhabitants for the sake of qur'ânic prescription would inevitably bring the efficiency of the Muslim government into question.¹³⁹ Caliph 'Umar was faced with this problem, and, according to a *hadîth* transmitted by al-Bukhârî, hesitated to take the *cizye* from the Magians until he has learned a testimony that the Prophet had taken the *cizye* from the Magians of Hajar.¹⁴⁰ This example testifies the importance of the *cizye* as a guarantee of protected status of certain group. Later on similar status was granted to Buddhists and Hindus in India, as well as to other groups of "polytheists" elsewhere.¹⁴¹

¹³⁸ al-Bukhârî, Vol. 3, Book 43, No. 656

<<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/bukhari/043.sbt.html#003.043.656>>

¹³⁹ Bosworth, "The Concept of Dhimma," 42-43; Majid Khadduri, *War and Peace in the Law of Islam*, (Baltimore and London: The Johns Hopkins Press, 1955), 176; Cahen, "Dhimma."

¹⁴⁰ al-Bukhârî, Vol. 4, Book 53, No. 384

<<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/bukhari/053.sbt.html#004.053.384>>
; cf. Mâlik, Book 17, No. 17.24.42

<<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/muwatta/017.mmt.html#017.17.24.42>>.

¹⁴¹ Cahen, "Dhimma;" Lewis, *The Jews*, 20; Khadduri, 176.

Although comparable to the status of the People of the Book, the Magians' status was occasionally lowered in a few instances, e.g. the blood money (*diya*) of the Magians was lower than that of the People of the Book, while their women and the meat of animals slaughtered by them were forbidden to Muslims.¹⁴²

While the Qur'ân allows marriage of Muslim man and non-Muslims women, the *Hadîth* goes in further details and sets regulations for the relations with slaves. While the marriage with Christian or Jewish slave-girls is prohibited by the *Hadîth*, intercourse with Christian and Jewish slave-girls is allowed (*halâl*; Ottoman - *helâl*), however, not in the case of Magians.¹⁴³ A marriage between non-Muslim man and Muslim women is prohibited because it would put a believing woman and her offspring into the power of an unbeliever following rules of patriarchal society. On the other hand, one of the impediments to marriage in Islamic law is social inequality: the man should not be by birth, profession, etc. below the women.¹⁴⁴ Accordingly, as socially inferior, an unbeliever man cannot marry a believer woman.

Another important issue are regulations concerning the *djinâyât* (Ottoman – *cinâyât*), i.e. homicide and bodily harm.¹⁴⁵ The penalties for offences present in the *Hadîth* are twofold: whether blood money (*diya*)¹⁴⁶ or retaliation (*kisâs*).¹⁴⁷ According to the *şerî'at*, *kisâs* is applied in cases of killing

¹⁴² Morony, "Madjûs."

¹⁴³ Mâlik, Book 28, No. 28.28.16.38a

<<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/muwatta/028.mmt.html#028.28.16.38a>>.

¹⁴⁴ Cf. Joseph Schacht, "Nikâh," *EP*.

¹⁴⁵ See: Schacht, *An Introduction*, 177-178, 181-187.

¹⁴⁶ E. Tyan, "Diya," *EP*.

¹⁴⁷ Joseph Schacht, "Kisâs," *EP*.

and of wounding which do not prove to be fatal. In *hadīths* found in al-Bukhârî and Muslim collections, a Jew who crushed a girl's head by stones was killed in the same way by order of the Prophet.¹⁴⁸ Although in theory non-Muslims under the protection of the Islamic state (*dhimmīs*, Ottoman – *zimmīs*, and *mu'âhad*) were secured, an opinion that excludes retaliation of a Muslim guilty for a killing of a *zimmī* based on a *hadīth* that "... a Muslim is not killed for a Kâfir..."¹⁴⁹ was accepted by the majority of the jurists.¹⁵⁰

On the other hand, both Muhammad and caliph 'Umar are said to have put Muslims to death for murdering Christians, and the execution of a Muslim for murdering a non-Muslim was practiced by later rulers as well, disregarding the above mentioned rule.¹⁵¹ The full amount of *diyya* (blood money) is due only where the victim is a male, free Muslim. While the amount of blood money for a woman is half that of a man, the *diyya* of a non-Muslim of protected status varies from one-third, one-half to full amount in the opinion of the *Hanafīs*.¹⁵² Mâlik transmits a *hadīth* that settles a Christian or Jewish blood money at one-half of a free Muslim's. The amount of blood moneys in injuries is according to the injury of the Muslims in their blood moneys.¹⁵³ If, however, a Muslim slave

¹⁴⁸ al-Bukhârî, Vol. 3, Book 41, No. 596
<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/bukhari/041.sbt.html#003.041.596>;
 Ibid., Vol. 4, Book 51, No. 9
<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/bukhari/051.sbt.html#004.051.009>;
 Muslim, Book 16, No. 4138
<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/muslim/016.smt.html#016.4138>,
 and passim.

¹⁴⁹ Mâlik, Book 43, No. 43.25.8b
<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/muwatta/043.mmt.html#043.43.15.8b>.

¹⁵⁰ Tritton, 178-179; Schacht, "Kisâs."

¹⁵¹ Tritton, 179-180.

¹⁵² Tyan, "Diya;" cf. Tritton, 179-180.

¹⁵³ Mâlik, Book 43, No. 43.15.8b
<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/muwatta/043.mmt.html#043.43.15.8b>.

injures a Jew or Christian, his master has to pay for him according to the injury. Otherwise, the master has to sold him, and the Jew or Christian is given the *diyya* of the injury, or all the price of the slave if the blood-money is greater than his price. Nevertheless, a Jew or Christian is not given a Muslim slave,¹⁵⁴ due to a ruling that non-Muslims should not poses Muslim slaves.

Even though not directly connected to the topic, the issue of apostasy is of great significance for proper understanding of the legal position of the non-Muslims. Apostasy from Islam is interesting for this paper in two aspects: firstly, in a case of apostasy to Christianity or Judaism – *irtidâd*, while apostasy to non-scriptural religions is termed, according to Samuel M. Zwemer, *ridda*;¹⁵⁵ and, secondly, in a situation when an apostate is a convert of Christian or Jewish origin. According to the Qur’ân, apostates are to be punished in the world to come, they are cursed by Allah, the Angels and men (Qur’ân 3:82), while their works are fruitless in this world and the next, and they are the companions of the fire for ever (Qur’ân 2:214). In the *Hadîth*, however, the approach towards apostasy became rigid. In Islamic society, like in other societies where religion and citizenship were fused, the apostate is regarded as a traitor, an individual disloyal to the state and the society. Therefore the apostate represented a pest that had to be uprooted at any cost.¹⁵⁶ While according to the Qur’ân the punishment was in the hands of God, according to the *Hadîth* Muhammad himself ordered the execution of Bedouin apostates. However, since they were

¹⁵⁴ Ibid., Book 44, No. 44.2.2a
<<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/muwatta/044.mmt.html#044.44.2.2a>>.

¹⁵⁵ Samuel L. Zwemer, “The Law of Apostasy,” *The Moslem World* 14 (1924), 373.

¹⁵⁶ H. G. Kippenbert, “Apostasy,” in: *The Encyclopedia of Religion*, Mircea Eliade ed., Vol. 1 (New York: Macmillan, 1987), 354-355; Rudolf Peters, and Gert J. J. De Vries, “Apostasy in Islam,” *Die Welt des Islams* 17, 1-4 (1976-77), 24; cf. W. Heffening, “Murtadd,” *EIF*.

also guilty for crimes of murder and theft, apostasy was not only motive for capital punishment.¹⁵⁷ Nevertheless, there are other *hadîths* that are more explicit; according to ‘Alî, the Prophet ordered killing of apostates who will emerge in the last days: “... wherever you meet them, kill them, for he who kills them shall get a reward on the Day of Resurrection.”¹⁵⁸ On the other hand, Muhammad asserted that a Muslim can be killed only in three cases: “In Qisas [retaliation] for murder, a married person who commits illegal sexual intercourse [*zinâ*] and the one who reverts from Islam (apostate) and leaves the Muslims.”¹⁵⁹ The issue of apostasy is further elaborated in the works of *fikh*.

2.2.3. Further Developments

As already mentioned, later period brought further elaboration of rulings present in the Qur’ân and the *Sunna*, and introduced new prescriptions as a response to new situations. The role of *fâkihs* and *müftîs* of the four schools of law in the formulation of the *şerî‘at* was discussed above. The books of *fikh* were recognized as authoritative by consensus (*idjmâ‘*, Ottoman – *icmâ‘*), and practically became “law books” for the Muslims, explaining the *şerî‘at* in the way in which it is binding on them.¹⁶⁰ The Islamic legal theory does not recognize the possibility of human legislation, and only what the ruler can do is

¹⁵⁷ al-Bukhârî, Vol. 9, Book 83, No. 37

<<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/bukhari/083.sbt.html#009.083.037>>
; Muslim, Book 16, No. 4130

<<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/muslim/016.smt.html#016.4130>>;
cf. Zwemmer, 378-379.

¹⁵⁸ al-Bukhârî, Vol. 4, Book 56, No. 808

<<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/bukhari/056.sbt.html#004.056.808>>

¹⁵⁹ Ibid., Vol. 9, Book 83, No. 17

<<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/bukhari/083.sbt.html#009.083.017>>

¹⁶⁰ Schacht, “Sharî‘a,” 321.

to make regulations for carrying the *ṣerīʿat* into effect. However, as Vesey-Fitzgerald pointed out, “the border line between legislation and regulation ... is ... extremely difficult to draw.”¹⁶¹

The caliphs of the early Islamic state acted not only as administrators but also to a great extent as lawgivers as well. The administrative and legislative functions of the government were fused to such a degree that it was virtually impossible to separate them.¹⁶² Centralizing and bureaucratic tendencies of the Umayyads considerably contributed to the further formulation of the Islamic law. The most significant contribution to legal development was introduction of the office of the *kādī* (“judge”), a representative of authority invested with the power of jurisdiction.¹⁶³ According to Schacht, *kādīs* “... gave judgement according to their own discretion ... basing themselves on customary practice which in the nature of things incorporated administrative regulations, and taking the letter and the spirit of the Qur’anic regulations and other recognized Islamic religious norms into account as much as they thought fit.”¹⁶⁴

The Abbasids continued Umayyad legislative activity and reinforced Islamisation of existent regulations, until the Islamic law achieved its classical form.¹⁶⁵ The legislative activity of the ruler and his officials that they exercise outside the framework of the *ṣerīʿat* is termed *siyâsa*.¹⁶⁶ Later jurists tried to harmonise *siyâsa* with principles of the Islamic law. Great *Hanbalî* scholar Ibn Taymiyya (d. 728/1328) asserted that:

¹⁶¹ Vesey-Fitzgerald, 109.

¹⁶² Schacht, “Law and Justice,” 542.

¹⁶³ Ibid., 547; cf. E. Tyan, “Kâdî,” *EP*².

¹⁶⁴ Schacht, 548.

¹⁶⁵ Ibid., 555-561.

¹⁶⁶ C. E. Bosworth, “Siyâsa. 1. In the sense of statecraft, the management of affairs of state and, eventually, that of politics and political policy,” *EP*².

... if the divine law or *sharī'a* is duly observed, *siyâsa* of rulers (*imâm*, *sultân*, *amîr* or *wâlî*) will not conflict with *fikh* as elaborated by scholars (*fukahâ'*). Earlier authors had conceded that rulers had the need and the right to deviate from *fikh* in order to attain effective *siyâsa*, but Ibn Taymiyya claimed that such 'deviations' are imaginary. If conflict between them appears, it is either because the *fikh* is understood too narrowly, neglecting the rich resources of the *sharī'a* for attaining the public good, or because rulers disregarded the divine will and act unjustly (*siyâsa zâlima*).¹⁶⁷

This doctrine provided rulers with *şerī'at* legitimization, while 'ulamâ (scholars of the Islamic sciences, interpreters of Islamic doctrine and law) got share in power and secured greater *şerī'at* efficacy. Although Ibn Taymiyya's teaching was ignored during his lifetime, it had very important influence on *Mâlikîs* and late *Hanafîs* and hence Ottoman law and practice as the Ottomans were followers of the *Hanafî* school.¹⁶⁸

It is, however, important to emphasise that overlapping between the *şerī'at* and rulers' decisions in the form of the *kânûn* (pl. *kawânîn*, Ottoman *kavânîn*) was infrequent, since the *şerī'at* fails to regulate administrative matters, penal law, and taxation. Its hold is strongest on the family law, inheritance, and the law of pious foundations (*wakf*, Ottoman *vakf*), while the law of contracts and obligations stands in the middle.¹⁶⁹ On the other hand, governors tended to substitute some of impractical *şerī'at* decrees like seriously mutilating punishments of the Qur'ân (*hadd*, pl. *hudûd*), such as cutting off the limbs in the case of theft or stoning for adultery, with *ta'zîr* penalties as fines or flogging.¹⁷⁰

¹⁶⁷ F. E. Vogel, "Siyâsa. 3. In the sense of *siyâsa shar'îyya*," *EP*.

¹⁶⁸ *Ibid.*

¹⁶⁹ Schacht, "Law and Justice," 565; Y. Linant de Bellefonds, "Kânûn. i. Law." *EP*.

¹⁷⁰ Linant de Bellefonds.

Although the custom (‘*urf*’ or ‘*âda*’) was not recognised as a source of the Islamic law, it was actually incorporated into the *şerî‘at* as part of the *Sunna*, or through consensus of the scholars (*icmâ‘*). On the other hand, custom was largely basis for legislation of the rulers, which, in return, occasionally bears its name – ‘*urf*’ (Ottoman – ‘*örf*’). Customary law was acceptable in every case in which it was not contrary to the *şerî‘at*.¹⁷¹

Another important feature of the Islamic law is its plurality and flexibility; although in theory the *şerî‘at* represents a whole, in practice there is diversity of opinion, not only on the level of different *madhabs*, but also within the *madhabs* themselves – different scholars might have different and even conflicting opinions disregarding their affiliation to the same law school. Such state of affairs provided jurists with great liberty of choice between differing teachings. *Hanafî* doctrine goes further and admits that the legal rulings vary according to the change of the times.¹⁷²

Apart from the theological classification of non-Muslims that distinguishes between the People of the Book and polytheists, according to the political classification the non-Muslims were sorted in three legal categories.¹⁷³ It is based, according to the Muslim worldview, on the division of the mankind into the House of Islam (*Dâr al-Islâm*) and the House of War (*Dâr al-harb*). Since the Islamic law does not recognize the existence of any other polity outside Islam, it is a religious duty of Muslims to struggle until all mankind

¹⁷¹ G. Libson, “‘Urf. 1. The status of custom in Islamic law,” *EP*²; G. H. Bousquet and J. Prins, “‘Âda. i. General,” *EP*².

¹⁷² Vesey-Fitzgerald, 110.

¹⁷³ See: Lewis, *The Jews*, 20-22.

accepts Islam or submits to Islamic rule (jihad, *cihâd*).¹⁷⁴ Accordingly, non-Muslims can be whether those who had been conquered and submitted to the Muslim rule, or those who had not.¹⁷⁵

Non-Muslim subjects of Islamic state, that made a contract (*dhimma*, Ottoman – *zimma*) with Muslim authorities, according to which Muslim state will grant them protection and hospitality, while non-Muslims will acknowledge the domination of Islam and pay *cizye* tax, are called *zimmîs*, or *ahl al-zimma*.¹⁷⁶

Unlike the *zimmîs* who are granted protection and security of life and property, non-Muslim subjects of the enemy territory – *harbîs* or *ahl al-harb*, are to be fought against, killed or enslaved, while their property becomes booty of Muslim armies.

The third category is that of *musta'mins* (Ottoman, *müste'min*), non-Muslims belonging to the *dâr al-harb* who are granted safe conduct (*amân*) for a limited period, during which they are assimilated to the *zimmîs* as regarding civil law, while in respect of criminal law the doctrine varies. Diplomatic envoys and traders from *Dâr al-harb* were given *müste'min* status during their stay in Islamic lands.¹⁷⁷

For the first time relations with non-Muslim subjects, in this case the Jews, were regulated by Muhammad in a contract of political-military character, known as “the Constitution of Medina.”¹⁷⁸ The purpose of the contract was to

¹⁷⁴ Lewis, *Muslim Discovery*, 60-61; cf. A. Abel, “Dâr al-Islâm,” *EF*²; A. Abel, “Dâr al-Harb,” *EF*²; E. Tyan, “Djihâd,” *EF*².

¹⁷⁵ Lewis, *The Jews*, 21.

¹⁷⁶ Cahen, “Dhimma.”

¹⁷⁷ Joseph Schacht, “Amân,” *EF*².

¹⁷⁸ See: R. B. Serjeant, “Constitution of Medina,” in: R. B. Serjeant, *Studies in Arabian History and Civilisation* (London: Variorum Reprints, 1981), V, 3-16 (reprint); original article published in: *Islamic Quarterly* 8, 1-2 (1964), 3-16; Frederick Mathewson Denny, “Ummah in the Constitution of Medina,” *Journal of Near Eastern Studies* 36, 1 (1977), 39-47.

secure safety (also termed *zimma*) to the peoples of Medina. The Jews, as citizens of Medina, were included as a special sub-group within, or separate group alongside the community of Muslims (*umma*).¹⁷⁹ They were granted religious and legal autonomy, in accordance with a ruling: "... to the Jews their religion (*dîn*) and to the Muslims their religion" (article 25).¹⁸⁰ Furthermore, they were obliged to share in war expenses (articles 24, 37, 38), while both parts were bounded to provide military assistance in the case of the attack of the enemy (article 37). The guilt for potential acts of treason or wrongdoing is individualized: "... anyone who has done wrong or acted treacherously ... brings evil only on himself and his household" (article 25; cf. article 37).¹⁸¹ It seems that Muhammad later have extended this kind of contract to all tribes coming within Muslim system of security and alliance.¹⁸²

Muhammad's compact with the Christians of Najrân provides more details – in exchange for payment of certain sum of money, the Christians were granted protection and security:

They shall have the protection of Allah and the promise of Muhammad, the Apostle of Allah, that they shall be secured their lives, property, lands, creed, those absent and those present, their families, their churches, and all that they possess. No bishop or monk shall be displaced from his parish or monastery and no priest shall be forced to abandon his priestly life. No hardship or humiliation shall be imposed on them nor shall their land be occupied by (our) army. Those who practice usury, shall seek no protection from me. No one shall be taken as responsible for the fault of another.¹⁸³

The protection of churches and bishops or monks is a new element in the treaty, while other regulations remain quite simple. Various monasteries later

¹⁷⁹ Denny, "Ummah in the Constitution," 44.

¹⁸⁰ Quoted in: Denny, "Ummah in the Constitution," 41.

¹⁸¹ Ibid.

¹⁸² Bosworth, "The Concept of Dhimma," 41.

¹⁸³ Quoted in: Khadduri, 179-180.

claimed to possess authentic copy of this document, confirmed afterwards by following rulers. However, it seems that a patent is fabrication of a Nestorian priest or monk.¹⁸⁴

After Muhammad's death and following the expansion of the Islamic state and inclusion of numerous non-Muslim populations, the status of the *zimmîs* had to be redefined. The development of *zimmî* legislation can be followed in treaties signed between the Muslims and Christians of the occupied territories. The first such treaty was concluded between Khâlid ibn al-Walîd, caliph 'Umar I's commander-in-chief in Iraq, and the Christians of Hîra. While it generally follows the stipulations of the previous agreements, it excluded old, weak, sick and poor from the *cizye* tax. Furthermore, it prescribes support of needy *zimmîs* from the Public Treasury: "If any of their men become weak and old, or inflicted with a disease, or was rich and had became poor, the *jizya* shall be lifted from him and his family shall be supported by the Public Treasury (bayt mâl al-Muslîmîn) so long as he resided in the dâr al-Islâm."¹⁸⁵ The agreement introduces first clothing regulations concerning *zimmîs*:

They (the Scripturaries) shall have the right to wear any kind of clothes save the military uniforms, *provided their clothes shall not be similar to those of the Muslims* [italics V. K.]. If any one of them is found to wear a uniform, he is to be arrested and to give reasons for so doing; if (his answer is unsatisfactory) he is to be punished by a fine equivalent to the price of his uniform.¹⁸⁶

Although it is generally possible to agree with Khadduri's conclusion that "there is nothing in this arrangement which might be construed as

¹⁸⁴ Bosworth, "The Concept of the Dhimma," 46-47.

¹⁸⁵ Quoted in: Khadduri, 184.

¹⁸⁶ Quoted in: *ibid.*

humiliating...”,¹⁸⁷ the stipulation that *zimmîs*’ clothes should not resemble those of the Muslims might be interpreted as discriminatory. On the other hand, some authors claim that in the early period clothing regulations were in fact needless due to the fact that two communities actually did dress differently.¹⁸⁸

The classical formulation of rulings concerning the *zimmîs* is a document called “the Covenant of ‘Umar” (*shurût al-‘umariyya*), allegedly promulgated by ‘Umar I on a request of the Christians of Syria.¹⁸⁹ However, the document is obviously a product of the later period, when relations between Christians and Muslims were much closer and sophisticated than it was possible in the period immediately after the conquest. Some restrictions contradict other ‘Umar I’s stipulations, and there is no evidence that they were introduced in Syria during ‘Umar’s rule.¹⁹⁰ Apparently, “the Covenant of ‘Umar” reflects the atmosphere of high tension between religious community that resulted in intolerant and oppressive legislation, in contrast with more tolerant environment of the early period.¹⁹¹ In fact, some of its provisions were enacted for the first time by caliph ‘Umar II (99/717-101/720), whose reign is characterised by beginning of discriminatory policy towards the *zimmîs*.¹⁹²

Stipulations of the Covenant evolved on the basis of qur’ânic regulations and Muhammad’s practice, legislative practice of ‘Umar I and succeeding caliphs, concluding with disabilities introduced by ‘Umar II. The Covenant

¹⁸⁷ Ibid., 184-185.

¹⁸⁸ Tritton, 115; Bosworth, “The Concept of the Dhimma,” 45.

¹⁸⁹ Bosworth, “The Concept of the Dhimma,” 46.

¹⁹⁰ Tritton, 10-11; Khadduri, 194; Wolfgang Kallfelz, *Nichtmuslimische Untertanen im Islam. Grundlage, Ideologie und Praxis der Politik frühislamischer Herrscher gegenüber ihren nichtmuslimischen Untertanen mit besonderem Blick auf die Dynastie der Abbasiden (749-1248)*, (Wiesbaden: Harrassowitz Verlag, 1995), 77-78, 80.

¹⁹¹ Khadduri, 194.

¹⁹² Tritton, 230-231, 233; cf. P. M. Cobb, “‘Umar (II) b. ‘Abd al-‘Azîz,” *EF*².

represents a code of law created by the classical jurists and regarded by all law schools (by *icmâ'*) as final and definite set of rules regulating legal and social status of the *zimmîs*.¹⁹³ Later generation ascribed its origin to the traditional founder of almost all major political institutions of Islam, caliph 'Umar I.¹⁹⁴

The Covenant is preserved in several versions, such as a letter of Christians of unnamed Syrian town to Abû 'Ubayda, the chief commander in Syria, or 'Umar's response to them, etc.¹⁹⁵ Since the rulings of the Covenant represented juridical base for the *zimmî* affairs throughout Islamic history until the modern times, it will be quoted in full (as Abû 'Ubayda's version):

'When thou camest into our land we asked of thee safety for our lives and the people of our religion, and we imposed these terms on ourselves; not to build in Damascus and its environs church, convent, chapel, monk's hermitage, not to repair what is dilapidated of our churches nor any of them that are in Muslim quarters; not to withhold our churches from Muslims stopping there by night or day; to open their doors to the traveller and wayfarer; not to shelter there nor in our houses a spy, not to hide one who is a traitor to the Muslims; to beat the *nâkûs* only gently in our churches, not to display a cross on them, not to raise our voices in prayer or chanting in our churches, not to carry in procession a cross or our book, not to take out Easter or Palm Sunday processions; not to raise our voices over our dead, nor to show fires with them in the markets of the Muslim, nor bring our funerals near them; not to sell wine nor parade idolatry in companies of Muslims; not to entice a Muslim to our religion nor invite him to it; not to keep slaves who have been the property of Muslims; not to prevent any relative from entering Islam if he wish it; to keep our religion wherever we are; not to resemble the Muslims in wearing the *kalansuwa* (a tall cap), the turban, shoes, nor in the parting of the hair, nor in their way of riding; not to use their language nor be called by their names; to cut the hair in front and divide our forelocks; to tie the *zunnâr* round our waists; not to engrave Arabic on our seals; not to ride on saddles; not to keep arms nor put them in our houses nor wear swords; to honour Muslims in their gatherings, to guide them on the road, to stand up in public meetings when they wish it; not to make our houses higher than theirs; not to teach our children the Koran; not to be partners with a Muslim except in business; to entertain every Muslim traveller in our customary style and feed him in it

¹⁹³ Khadduri, 194-195.

¹⁹⁴ Tritton, 233; cf. G. Levi Della Vida and [M. Bonner], "'Umar (I) b. al-Khattâb," *EP*².

¹⁹⁵ Tritton, 5-8; cf. Kallfelz, 78.

three days. We will not abuse a Muslim, and he who strikes a Muslim must forfeited his rights.’¹⁹⁶

In another version some new points are introduced and others are worked out in detail. Apart from wine (*hamr*), selling of any other forbidden (*harâm*) thing to a Muslim is prohibited, like pigs, blood or carcase; the sale should be annulled, money returned to a Muslim, while the wine or blood should be poured and the carcase burned.¹⁹⁷ The protection of *zimmî* property that is granted by the covenant do not extend to forbidden things since they are illegal according to the Islamic law: “If a Muslim or other buys them we will not force him to pay, for they are forbidden and have no price; but we will not let him annoy you about them, and if he does it again we will punish him, but will not force him to pay.”¹⁹⁸ Likewise, it is forbidden to give a Muslim any forbidden thing to eat or drink.¹⁹⁹ In the case of murder or theft, the *zimmîs* are to be judged according to the Islamic law:

If you kill accidentally a Muslim or an ally, Christian or not, then the relatives (of the homicide) shall pay blood money, as among Muslims. ... A murderer shall be killed unless the heirs wish to take blood money, which shall be paid at once. ... A thief, if his victim complains, should have his hand cut off, if this is the punishment, and shall pay a fine.”²⁰⁰

On the other hand, *zimmîs* are granted a remarkable degree of juridical autonomy, which enabled functioning of the *zimmî* communities as virtually separate community: “If you or any other unbeliever asks for judgment we shall

¹⁹⁶ Quoted in: *ibid.*, 6-8.

¹⁹⁷ Tritton, 12-13.

¹⁹⁸ Quoted in: *ibid.*, 15.

¹⁹⁹ *Ibid.*, 13.

²⁰⁰ *Ibid.*

give it accordingly to Muslim law; if we are not approached we shall not interfere between you.”²⁰¹

The jurists (*fukahâ’*) singled out six stipulations the breach of which, in theory, revokes the *zimma* contract. These are: (1) the refusal of payment of the *cizye*; according to the *Hanafi* school, however, this does not breach the contract; (2) attack on Islam and disrespect of Muslim practices; (3) disrespect of Prophet Muhammad or the Qur’ân; (4) inducing a Muslim to apostatise; (5) marriage or adultery with a Muslim woman; and (6) assisting foreign enemies (*harbîs*) or harbouring spies. Failure to fulfil remaining stipulations of the covenant entails penalties.²⁰²

Some of the stipulations of the Covenant, like prohibition of erection of new churches and other sacral buildings and renovation of old ones, public exercise of faith, mourning the dead in public, dressing restrictions and prescriptions concerning hairstyle, prohibition of riding in saddles, and the like, clearly represented disabilities that reduced *zimmîs* to unenviable position of the second-class citizen.²⁰³ On the other hand, such regulations (especially those forbidding the use of Arabic language and names) bear witness to attempts of establishing differentiation between inextricably mingled communities and assertion of separate identity.²⁰⁴

Further legislative development brought new limitations; the legal testimony of a *zimmî* was not admissible in a suit where a Muslim was one of the parties, while, on the other hand, the testimony of a Muslim against a *zimmî*

²⁰¹ Ibid.

²⁰² Khadduri, 196-198.

²⁰³ Cf. Ibid., 198.

²⁰⁴ Kallfelz, 81; cf. Bosworth, “The Concept of the Dhimma,” 47.

was legally valid.²⁰⁵ A *zimmî*'s unbelief was taken as a proof of his defective morality and untrustworthiness, which *Hanafî* jurist Sarakhsî (d. 483/1090) illustrated in the following words: "the word of a dishonest Muslim is more valuable than that of an honest *zimmî*."²⁰⁶ Furthermore, a *zimmî* could not inherit from a Muslim, nor a Muslim could inherit from a *zimmî*.²⁰⁷ In the case of conversion to Islam of one of the spouses, the marriage is dissolved unless the other partner converts as well. Minor children from mixed marriages were counted Muslims. A Christian woman married to a Muslim is obliged to observe the *ṣerî'at* laws of purity and ablution (*ghusl* and *wudû'*). If a concubine of a *zimmî* converts to Islam, intercourse between them becomes illegal, and she is granted freedom upon his death.²⁰⁸

2.3. *Zimmîs* between Theory and Practice

The practice, on the other hand, very often did not fulfill demands of the legal theory, which itself was far from being monolith, differing, as said above, not only from school to school, but within the schools themselves. Lack of uniformity, however, is peculiar to the very foundations of the Islamic law. Maghen asserts that:

The eclectic attitude to infidels (if such they may fairly be called) in early Islamic literature has led to variety and uncertainty – and therefore to flexibility – in the evolution and application of the law. ... When state apparatus attempt to *carry out* such legislation in their territories, the inconstancy and confusion is compound. After all, even in those areas where Islamic legal theory was and is relatively unequivocal on paper, its historic translation into practice has generally been marked by

²⁰⁵ Bosworth, "The Concept of the Dhimma," 49; Tritton, 167-168.

²⁰⁶ Quoted in: *ibid.*

²⁰⁷ Khadduri, 198; Tritton, 136.

²⁰⁸ Tritton, 188.

desultoriness. Where the theory itself is unstable and equivocal, it is an argument *a fortiori* that its implementation will be uneven.²⁰⁹

In any case, *zimmî* regulations "... were more often disregarded than strictly enforced."²¹⁰ When implemented, the regulations were limited to great Muslim cities, and even then, they were of incomplete and sporadic character.²¹¹ To put it in the words of Braude and Lewis, "partly, no doubt, such laxness may be attributed to the limited powers which a medieval state was able to exercise over the mass of its subjects, but partly also to a genuine disinclination on the part of rulers to impose these irksome restrictions."²¹² Indeed, in general conduct of the rulers was frequently more moderate than the legal propositions.²¹³

The implementation of the law depended to a large degree on the political considerations or caprices of a sovereign. From time to time, rulers, guided by religious zeal, financial needs, or outburst of popular animosity towards the *zimmîs*, especially in cases when they were occupying places in administration or finance, imposed the *zimmî* restrictions in full and prosecuted the transgressors.²¹⁴ The fact that the laws were implemented sporadically, made some scholars, like Tritton, to conclude that "there is no constitutional growth; events move in irregular curves, not in a straight line."²¹⁵ However, after the period of relative easiness in the epoch of the early caliphs, the anti-*zimmî* restrictions increasingly severed starting from the time of 'Umar II onwards. During the Abbasid caliphate measures hardened, especially during the rule of

²⁰⁹ Maghen, "Interaction," 272-273.

²¹⁰ Braude and Lewis, 6.

²¹¹ Cahen, "Dhimma."

²¹² Braude and Lewis, 6.

²¹³ Tritton, 231.

²¹⁴ Cahen, "Dhimma;" cf. Braude and Lewis, 6-8.

²¹⁵ Tritton, 229.

Hârûn al-Rashîd (170-193/786-809) and al-Mutawakkil (232-247/847-861).²¹⁶ In periods of direct clashes with Christian *harbîs*, anti-*zimmî* feelings rose among the Muslim population, and were followed by governmental prosecution, especially on occasions when Christian *zimmîs* collaborated with the enemy, as during the Crusades or the Mongol occupation.²¹⁷ In border-regions where Christian enemies represented imminent threat, as in Spain, discriminative *zimmî* regulations were imposed more roughly.²¹⁸

Prohibition on building new churches or synagogues was confined to Islamic towns according to Hanafî interpretation; if the distance from a town was greater than one mile, it was allowed to erect the building. On the other hand, restoration or renovation of ruined churches or synagogues depended on the manner in which certain area was conquered; if it was conquered by force, it was not allowed.²¹⁹ In reality, in the early period churches were built freely, with the approval of authority. First restrictions occurred in mid-second/eight century, while the first law banning erection of new churches was issued by al-Mutawakkil. On the other hand, usually during the political upheaval, churches might have been destroyed at the whim of the ruler.²²⁰

In accordance with self-rule given to *zimmî* communities, their religious heads acquired juridical and administrative authority on inner communal level. Although religious leaders did not possess the right of inflicting corporal punishments nor dead penalties, they could impose fines or excommunicate members of their communities. At the same time, religious dignitaries came to

²¹⁶ Ibid., 230-231; Bosworth, "The Concept of the Dhimma," 47-48.

²¹⁷ Fiey, "Nasârâ."

²¹⁸ Cahen, "Dhimma;" Bosworth, "The Concept of the Dhimma," 48.

²¹⁹ Tritton, 39.

²²⁰ Ibid., 50.

represent their communities in front of the authorities. In order to achieve firm control over the *zimmî* representatives, the state used to appoint them as government officials ratified by the ruler.²²¹

Even though in general the *zimmîs* were second-class citizens of the Islamic state, occasionally *zimmî* individuals and elites dominated in trade and finance, occupations held in low esteem by military society, as was that of early Islam. Non-Muslims were over represented in vocations that were to be avoided by pious Muslims, such as dealing with unbelievers, i.e. diplomacy, commerce, or disputed occupations as banking, brokerage or business with precious metals, trades otherwise esteemed in many parts of the world.²²² Sometimes, especially in early period, but not exclusively, the Arabs had to hire non-Muslims in administration due to their experience and skills. *Zimmîs* were numerous in middle and lower ranks of administration, but a few managed to reach high positions and exercised great power. Besides their skills, rulers were prone to employ *zimmîs* in state services as more dependent on the ruler's favour and hence more loyal than the Muslims. Naturally, social competition from time to time incited outbursts of popular anger against non-Muslims occupying high ranks in the government. Often the safest way to secure or retain a high post was conversion to Islam.²²³

In contravention of the clause that prohibits the arms possession to the *zimmîs*, since the time of the Prophet Muhammad non-Muslims were often employed as military allies.²²⁴ Non-Muslim soldiers from strategically important

²²¹ Ibid., 181-182, 186; Khadduri, 198.

²²² Lewis, *The Jews*, 28; Braude and Lewis, 9.

²²³ Cahen, "Dhimma."

²²⁴ Bosworth, "The Concept of Dhimma," 41.

border regions were mobilised and joined the Muslim armies in exchange for financial concessions such as exemption from the payment of *cizye* tax.²²⁵ According to all law schools except the *Mâlikîs*, Muslims may ask unbelievers for military assistance in *cihâd* if necessary.²²⁶ The Islamic law and practice here, as in many other aspects as well, show great sense of realism and consideration for practical ends; in spite of theoretical limitations they manage to find a way to distinct "... between a man's religious affiliation, which might be disapproved, and his professional competence, which might be useful..."²²⁷

The only discriminatory regulation that had permanent character throughout the Islamic world until the nineteenth century without exception was the *cizye* tax.²²⁸ Even though the *zimmîs* did not bear the whole weight of taxation, since the Muslims were not exempted from the land tax (*harâdj*, Ottoman *harâc*), and paid *zekât*, they still had to pay higher taxes than Muslims, which, at least for the poorer classes represented heavy burden.²²⁹ In order to cease paying the *cizye*, destitute non-Muslims occasionally converted to Islam. In Iraq, for instance, the conversion of the peasants got massive proportions. Since it was followed by abandonment of the land under *harâc*, it threatened the treasury with the loss of income. Therefore, some governors, like Iraqi governor al-Hadjdjâdj, forced peasants to return to land and forbade them to convert to

²²⁵ Ibid., 45; Tritton, 185-186; Cahen, "Djizya."

²²⁶ Rudolph Peters, *Islam and Colonialism. The Doctrine of Jihad in Modern History* (The Hague-Paris-New York: Mouton Publishers, 1979), 25-26; Tyan, "Djihâd."

²²⁷ Lewis, *The Jews*, 30.

²²⁸ Braude and Lewis, 6.

²²⁹ Ibid.; Tritton, 223.

Islam. However, the policy of restricted and penalized conversion was inadmissible in the Islamic state, and was abandoned soon afterwards.²³⁰

The role of economic motivation in the high scale Islamisation of the Middle East that eventually resulted in drastic diminution of indigenous non-Muslim communities still arises controversy in scholarly circles.²³¹ In any case, apart from possible economic factors, egalitarianism and considerable social mobility peculiar to Islam might have stimulated conversion of inferior non-Muslims.²³² On the other hand, for Christians the transition from a dominant to a subordinate status must have represented a trauma. The only way to escape the doom was to join the dominant group by adopting their creed. Jewish community in contrast did not diminish, since for Jews the change of Christian with Muslim masters generally meant improvement of conditions and less prosecution.²³³

Islamic state was organised on the pattern of pluralism, providing different religious communities to coexist side by side according to their own laws within one political unit, of course under the Muslim supremacy. In the words of Majid Khadduri,

... the dhimmî was bound to owe allegiance to two social orders, his own and the superstructure within which his community existed. His rights were fully protected within his own community, but, as a subject of the Muslim state, he suffered certain disabilities which reduced him to the status of a second-class citizen.²³⁴

²³⁰ Cahen, "Djizya."

²³¹ See: Nehemia Levtzion, ed., *Conversion to Islam* (New York: Holmes and Meier, 1979); Michael Gervers and Ramzi Jibran Bikhazi, eds., *Conversion and continuity. Indigenous Christian communities in Islamic lands, eighth to eighteenth centuries* (Toronto: Pontifical Institute of Medieval Studies, 1990).

²³² Cf. Lewis, *The Jews*, 8.

²³³ Ibid., 17-18.

²³⁴ Khadduri, 198.

On the other hand, despite all of its shortcomings, Islamic pattern of the plural society allowed the coexistence of different communities by and large without atrocities, and even though it subjected non-Muslims to the position of social inferiority, still it secured elementary basis for their continued existence.²³⁵

²³⁵ Cf. Braude and Lewis, 1.

CHAPTER III

DEVELOPMENTS IN THE OTTOMAN EMPIRE

3.1. Historical Setting. A Bosnian Case

At the end of the Middle Ages, when it seemed that the Islamic world was in decay and in reality was gradually retreating before European *reconquista* in the West, a new Muslim state raised in north-western parts of Asia Minor. In a century and a half after its foundation around 1300 as a Turkish frontier *beylik* (“lordship”), the Ottoman state acquired such a power that enabled it to conquer the age-old longing of previous Muslim armies, the “golden apple” (*kızıl elma*) of Turkish tradition – Constantinople, a seat of Eastern Roman Emperors. Through further conquests, or in accordance with Ottoman official terminology – jihad, “the holy war” (*cihâd* or *gazâ*), the Ottoman Empire acquired vast territories including Hungary and the Balkans, Podolia, North Africa, Arabia, Iraq and Caucasus. It was the greatest Islamic state since the fall of the Caliphate, and one of the longest-lived empires in world history.

Like the Caliphate before it, the Ottoman Empire was embracing huge number of non-Muslim subjects. Until the second decade of the sixteenth

century and incorporation of Arabic lands, the Ottoman Empire, consisting of Anatolia and Rumelia (the Balkans), was a state with Christian majority. After the direction of Ottoman expansion turned from Europe eastwards in the time of Selim I (1512-1521), and resulted in inclusion of core Muslim lands into the Empire, previous Christian numerical predominance came to the end.¹ Through the influx of strictly orthodox Sunnî scholars from the conquered lands, in the following decades the Ottoman Empire began the process of fundamental transformation of state institutions and laws in accordance with Islamic principles. Simultaneously, the process of standardisation and centralisation carried by Empire's bureaucracy reached its peak and shaped the state, its institutions and laws in such a way that the era of Süleymân the Magnificent (known as *Kânûnî*, i.e. "Lawgiver" in Turkish tradition; 1521-1566) came to be regarded by latter generations as the zenith of the "classical age."² The seventeenth century brought many changes both in the life of the Empire in general and in the position of its *zimmî* communities in particular. Even though many modern Ottomanists do not agree with the "decline paradigm" but accept the "transformation theory" in stead, the seventeenth century with its financial crisis, corruption, rebellions, decentralisation, court factions, and exhaustive

¹ Cf. H. A. R. Gibb and Harold Bowen, *Islamic Society and the West: A Study of the Impact of Western Civilization on Moslem Culture in the Near East*, Vol. 1 (London, New York, Toronto: Oxford University Press, 1957, reprint 1965), 211, 224.

² Halil İnalcık, "State, Sovereignty and Law during the reign of Süleymân," in: Halil İnalcık and Cemal Kafadar, eds., *Süleyman the Second and His Time*, (Istanbul: ISIS Press, 1993), 76-79; Halil İnalcık, "Suleiman the Lawgiver and Ottoman Law," in: *The Ottoman Empire: Conquest, Organization and Economy. Collected Studies*. (London: Variorum Reprints, 1978): 105-138; originally published in: *Archivum Ottomanicum* 1 (1969), 105-138; Halil İnalcık's classical study *The Ottoman Empire: The Classical Age, 1300-1600* (London: Weidenfeld and Nicolson, 1973; reprint, London: Phoenix Press, 2000) is still the best survey of the period.

wars brought instability into the lives of its population disregarding religious affiliations.³

The loss of absolute military superiority over the European enemies brought into question the loyalty of Christian population in the border areas. In Bosnia, for example, during the Cretan war of 1645-69, Ottoman and Venetian forces were engaged in exhaustive fighting that included incursions of Venetian forces from Dalmatia deep into Bosnian territory. Bosnian Christian population often assisted their Venetian coreligionists, while some of their religious leaders openly headed rebellions and joined enemy forces. The same situation repeated in the war following the siege of Vienna (1683-1699). Treason of great number of Christian subjects unsurprisingly provoked Ottoman revenge, and, during the wars and afterwards population either fled to Venetian and Habsburg territories, or occasionally suffered avenge. Because of their role in the wars many members of the clergy left Bosnia with Austrian and Venetian troops, while the Ottomans sporadically executed those accused of treason. In addition, numerous Christian monasteries and churches were destroyed and ceased to exist. Some of monasteries, however, were destroyed by Habsburg and Venetian armies during their retreat, probably due to strategic considerations.

In any case, the outcome of seventeenth-century wars in Bosnian case was dramatic diminution of Christian population and relative increase of Muslims due to influx of population expelled from territories conquered by the

³ For summarized review of the seventeenth-century problems see: Suraiya Faruqi, "Crisis and Change, 1590-1699," in: Halil İnalcık and Donald Quataert, eds., *An Economic and Social History of the Ottoman Empire* (Cambridge: Cambridge University Press, 1994), 411-637.

Habsburgs in Hungary and Slavonia. The wars were followed by epidemic of plague that further worsened the situation.⁴

The gap between Christians on the one side, and Muslims and Ottoman state on the other, created by war enmities and atrocities was not to be successfully bridged in years to come, while mutual distrust became main characteristic of Christian-Muslim relations. Estrangement of Christian subjects from the state and the state's mistrust, imputation of treason to Christians and their gradual exclusion from all public services in the end resulted in inability of co-operation and cohabitation between the two.⁵

As any other province in Rumelia and Anatolia, that is, "the core provinces," excluding Arab lands, Bosnia was completely included into the Ottoman system and organization, which absorbed pre-Ottoman structures and patterns. The land was incorporated into the *tîmâr* system, and divided into Ottoman administrative and territorial units: the *sancaks*, *kazâs*, and *nâhiyes*. The Ottoman law – *kânûn-i 'Osmânî*, *kânûn ve 'örf*, and Islamic law, the *şerî'at*, were obliging for all population, and held firm control over all fields of life.

However, as any other province of the Empire, Bosnia had some specific features. Several disputed special "rights" of Bosnian Muslims, as prescription that preserved the *tîmârs* in Bosnia to indigenous people, hereditary character of the *tîmârs* (*ocaklık tîmârı*), privilege of providing sons to *kapu kulu ocakları*,

⁴ Cf. Branislav Djurdjev, "Bosna," *EF*; Julijan Jelenić, *Kultura i bosanski franjevci*, Vol. I (Sarajevo, 1912; reprint: Sarajevo: Svjetlost 1990), 156-162; Hamdija Kreševljaković, "Bosanski pašaluk u XVIII. stoljeću," in: Branislav Đurđev, et al., eds., *Historija naroda Jugoslavije*, Vol. 2, (Zagreb: Školska knjiga, 1959), 1318-1319; for mistreatment and imprisonment of Bosnian Franciscans by local Ottoman officials see the eighteenth-century chronicle of Franciscan Nikola Lašvanin, *Ljetopis*, ed. by Ignacije Gavran, 2nd edition (Sarajevo, Zagreb: Synopsis, 2003), 219-221, 223-225.

⁵ Cf. Gibb and Bowen, 233-237.

i.e. to Imperial Services via the *devşirme*, and some others,⁶ will be left aside as irrelevant for present study. Bosnia was specific in terms of diversity of its confessions, that is, on its territory three major communities were living side by side – Roman Catholics, Orthodox Christians and Muslims. In addition, in northern parts of the Bosnian *eyâlet*, in the *sancak* of Požega (Pojege), there was considerable number of Calvinist Protestants. In the Middle Ages, the majority of Bosnian population were so-called *Bogumils* (actually they labelled themselves *krstjans*), members of a Christian heterodox sect, regarded as heresy by both Roman Catholics and Orthodox Christians. However, they were either forcibly converted or expelled from the country before the Ottoman conquest, although some insignificant traces of *bogumilism* might have remained. In addition, there was Jewish community in Sarajevo since mid-16th century. Yet, all these small communities hardly left any trace in the sources in general, while legal sources are almost completely silent about their existence. For this reason they will not be taken into account in our discussion.

In comparison with other provinces, the existence of significant Catholic community, which prior to the Ottoman conquest constituted majority in most parts of Bosnia, is definitely Bosnian curiosity. While in other provinces of the Empire presence of Catholics was limited to certain narrow regions, like some islands in Greece, or certain regions of Albania, the Catholics in Bosnia were

⁶ Avdo Sućeska, "Elementi koji su utjecali na posebnost Bosne u doba osmanlijsko-turkse vladavine," *Godišnjak Pravnog fakulteta u Sarajevu*, 24 (1976), 301-315; for criticism of the theory of specific status of Bosnia see: Nenad Moačanin, "Defterology and Mythology: Ottoman Bosnia up to the *Tanzîmât*," in: Markus Koller and Kemal H. Karpat, eds., *Ottoman Bosnia. A History in Peril*, (Madison: University of Wisconsin Press, 2004), 189-197; cf. Colin Heywood, "Bosnia Under Ottoman Rule, 1463-1800," in: Mark Pinson, ed., *The Muslims of Bosnia-Herzegovina: the historic development from the middle ages to the dissolution of Yugoslavia*, (Cambridge: Harvard University Press, 1994), 22-53.

living in virtually all parts of the province, represented important part of the population, and had their own church organisation – the Province of Bosna Srebrena (*Provincia Bosnae Argentinae*) under the leadership of Bosnian Franciscans who received the authorization by the sultan immediately after the conquest of Bosnia.

Another characteristic feature of Bosnian history is mass Islamisation, which, according to population data extracted from tax-registers (*tahrir defterleri*), had the following rhythm shown in Muslim share in total population for the following years: 1489 – 13 or 14.52 % → 1530 – 46.33 or 47 % → 1542 – 35 % → 1604 – 71 %.⁷ However, data from the last *defter* of 1604 should be approached with precaution, since it registered the owners of *tapu* (“title deed”), and not households, so the real numbers were somewhat lower, and Muslim majority was most probably absolute, but not two thirds.⁸ Other examples of the mass Islamisation in the Balkans are Albania and mountainous region of Rodopi in Bulgaria. Yet, we will not discuss here causes of Islamisation, which still represent an unsolved question of Ottoman historiography, and differed from economic, political, spiritual, opportunistic, personal, and other considerations,⁹ as an issue which is not of primary concern for the topic.

⁷ Mehmet Emin Yardımcı, *15. ve 16. Yüzyılda Bir Osmanlı Livası: Bosna*, (Istanbul: Kitap Yayınevi, 2006), 40-42; Adem Handžić, “O društvenoj strukturi stanovništva u Bosni početkom XVII stoljeća,” in: Adem Handžić, *Studije o Bosni. Historijski prilozi iz osmansko-turskog perioda* (Istanbul: IRCICA, 1994), 242 and passim; Srećko M. Džaja, *Konfesionalnost i nacionalnost Bosne i Hercegovine. Predemancipacijski period 1463-1804*, (Sarajevo: Svjetlost, 1990), 60. Unfortunately, I did not have an opportunity to consult Barkan’s study on population statistics in 15th and 16th century: Ömer Lütfi Barkan, “Essai sur les données statistiques des registers de recensement dans l’empire Ottoman au XVe et XVIe siècles,” *Journal of the Economic and Social History of the Orient* 1 (1958), 9-36. However, the data given by Džaja is based on Barkan’s estimations.

⁸ Moačanin, “Defterology and Mythology,” 196.

⁹ See: Nedim Filipović, “Osvrt na pitanje islamizacije na Balkanu,” *Godišnjak ANUBiH*. Vol. 13, Centar za balkanološka ispitivanja, Vol. 11, (Sarajevo, 1976), 385-416; idem., *Islamizacija u*

A feature that thoroughly influenced Bosnian history in its totality was its border character. Ottoman Bosnia remained to be true borderland – the *uç* or *serhâd*, throughout its history, since its conquest in 1463 until occupation by Austria-Hungary in 1878. Bosnia was starting point for invasion towards the West – until the last decade of the 15th century towards Italy, when the direction changed towards Central Europe, with Vienna as final target. After the battle of Mohács (Mohaç) in 1526 and fall of Hungary and last Hungarian march in Bosnia – *banovina* of Jajce (Yayçe), Bosnian northern frontier seized to be border with *dâr al-harb*. However, Bosnia did not lose its border character. On two sides there were still important frontiers, militarised Croatia under the Habsburgs was organised into the march – *Vojna Krajina* (*Militärgrenze*) in north-west, as well as Venetian-controlled Dalmatia in south-west.

However, by the end of 16th century the nature of Bosnia as borderland has changed. The Empire was not military superior to its enemies in the West as it used to be, but started to suffer defeats as well, and, eventually, the period of conquest and expansion came to the end. The battle of Sisak in Croatia

Bosni i Hercegovini, (Tešanj: Centar za kulturu i obrazovanje, 2005); “Širenje islama i islamska kultura u bosanskom ejaletu”. (Proceedings of the conference “The expansion of Islam and Islamic culture in the *eyâlet* of Bosnia”), in: *POF*, 41(1991); Nenad Močanin, “Islamizacija seljaštva u Bosni od 15. do 17. stoljeća: demistifikacija,” in: *Zbornik Mirjane Gross*, (Zagreb: Filozofski fakultet, Zavod za hrvatsku povijest, 1999), 53-63; Alexander Lopašić, “Islamization of the Balkans with Special Reference to Bosnia”, *Journal of Islamic Studies*, 5, 2 (1994), 163-186; Antonina Zheliazkova, “The Penetration and Adaptation of Islam in Bosnia from the Fifteenth to the Nineteenth Century”, *Journal of Islamic Studies*, 5, 2 (1994), 187-208; Adem Handžić, “O širenju islama u Sjeveroistočnoj Bosni,” in: Adem Handžić, *Studije o Bosni. Historijski prilozi iz osmansko-turskog perioda* (Istanbul: IRCICA, 1994), 33-74. For criticism of traditional Balkan historiography treatise of the Islamisation topic see: Evgeni Radushev, “Meaning of the Historiographic Myths about Conversion to Islam,” forthcoming in: ISIS Press, Istanbul; Bojan Aleksov, “Poturica gori od Turčina: srpski istoričari o verskim preobraćenjima,” in: *Historijski mitovi na Balkanu*, (Sarajevo: Istorijski institut, 2003), internet edition: <http://www.iis.unsa.ba/posebna/mitovi/mitovi_aleksov.htm> (accessed July 2007). For perception of Islamisation in wider, public sense see: Bojan Aleksov, “Perceptions of Islamisation in the Serbian National Discourse,” paper read in conference “Nationalism, Society and Culture in post-Ottoman South East Europe,” St Peter’s College, Oxford, 29-30 May 2004.

(1001/1593) where the Ottoman, i.e., predominantly Bosnian, army suffered great losses, marked the beginning of new period in relations with neighbours, characterised by cessation of conquest and aggressive foreign policy. The war with the Habsburgs that started in Sisak lasted for 13 years until the peace treaty of Zsitva-Torok in 1015/1606, in which, significantly, the Habsburg emperor was for the first time accepted as equal in rank to the sultan, and the payment of annual tribute to the sultan was abolished. The 17th century was in general period that did not witness significant changes of the borders, until the great war of 1683-1699. In this period the Ottomans started systematic fortification of Bosnian borders, which indicated the turn from aggressive towards defensive military tactic. Although the borders were stable, frontier war of small intensity, accompanied with brigandage in interior, did not cease. After the Thirty Years War finished, European powers were again free to take actions against the Ottomans. While first half of the 17th century was a period of stability and peace, the second half of the century witnessed two long wars that devastated the country. Firstly, the war with Venice (1645-1669), accompanied with brief war with the Habsburgs (1663-1664), took place on the territory of Bosnia, mostly in Herzegovina. After brief period of peace, in 1683 another great war started, but this time against united front of European powers joined into the Holy Alliance. Bosnian territory was turned into the battlefield that resulted in great losses of population of all confessions.¹⁰

The border-character of Bosnia influenced the status of its inhabitants as well. Often wars resulted in high militarization of population, including

¹⁰ Cf. Branislav Djurdjev, "Bosnia," *EF*; Heywood; Nenad Moačanin, *Turska Hrvatska* (Zagreb: Matica Hrvatska, 1999), 26-36.

Christians, who constituted an important segment of Ottoman military force. Membership in armed forces, naturally, granted some privileges, and elevated Christian soldiers into the military class. On the other hand, practical considerations made government to grant certain privileges to population in border areas, like tax reductions or exemptions, religious freedom that exceeds the provisions of the *şerî'at*, and the like. In the time of wars, however, tolerance might have turned to repression, either as retaliation for true or alleged treason and collaboration with the enemy, or simply as venting anger on the people of the enemy's faith. Thus, life in borderland was rich in extremes, and filled with instability and insecurity. Inevitably, the border character of Bosnia had strong impact on the life of its inhabitants, which might have had certain effect on their legal status as well. This is, however, the topic which we will attempt to clarify in the rest of the text.

In terms of geographical definition of the territory under study, in a narrow sense, it will include all territories that entered the Bosnian *eyâlet* in the time of its establishment (1580): *sancaks* ("provinces") of Bosnia (Bosna), Herzegovina (Hersek), Klis, Krka, Čazma or Cernik (Začasna), Zvornik (İzvornik) and Požega (Pojega), as well as territories that were prior to the establishment of the *eyâlet* of Buda (*Budûn*) in 1541 within the boundaries of Bosnian *sancaks*, like territory of the *sancak* of Srijem (Sirem) and some other territories like Bačka, parts of Slavonia, etc., that later became integral parts of the *eyâlet* of Buda. This area will represent the core interest of the study (see Appendix A).

In a wider sense, additional territories will be taken into consideration when needed in order to provide further illustration for certain processes happening in the core areas. These territories are usually not chosen randomly, but due to its connection with Bosnia. In this way, some territories which were lands of origin of some Bosnian inhabitants, i.e., settlers that came in the time of Ottoman conquest or in the period after it, like the Vlachs, will be taken into consideration, e.g., the territory of the *sancak* of Smederevo (Semendire). Otherwise, territories under jurisdiction of the church organisations peculiar to Bosnia will be taken into consideration as well. For example, the jurisdiction of Catholic Franciscan Province of Bosna Srebrena was reaching deep into Hungary, including even Bulgaria, while the Serbian Orthodox Church organised into the Patriarchate of Peć had jurisdiction over the territory from today's north Macedonia and western Bulgaria to Hungary and Adriatic Sea (see Appendices B and C).

3.2. Ottoman Law: Continuity or Change

The question what was the real character of the Ottoman legal system, and whether the Ottomans created authentic legal system different from those of the previous Islamic states, i.e. system independent of and different from the *şerî'at*, became an issue that is bitterly discussed since Fuad Köprülü's article "Ortazaman Türk Hukukî Müesseseleri: İslâm Amme Hukukundan Ayrı Bir Türk Amme Hukuku Yok Mudur?" ("Medieval Turkish Legal Institutions: Is not it there any separate Turkish Public Law apart from Islamic Public Law?")

in 1938.¹¹ Köprülü's thesis was that Islamic Turkic states, like Ghaznavid, Qarakhanid, Tulunid, Seljuqid states, Mughal India, and some others, managed to retain pre-Islamic Central Asian, Kök Türk and Uygur legislation that was outside the *şerî'at*, especially in the fields of state politics, administration, army and taxation.¹² Turkic rulers, even though respectful of Islamic principles, in those fields maintained the authority of the state unquestionable.¹³

Köprülü's thesis was further elaborated by Ö. L. Barkan in his studies on Ottoman *kânûns* and *kânûnnâmes*.¹⁴ Barkan starts from the point that since the *şerî'at* does not provide explicit regulations for state administration and public law, the ruler can freely enact regulations in accordance with public interest (*maslaha*), under the condition that basic *şerî'at* principles are not explicitly violated. In this way, the secular law (*örfî hukûk*) was enabled to develop separately from the religious law.¹⁵

The Ottoman Sultans went a step further than their predecessors and, basing their personal authority in old Turkic and Mongol traditions, developed a new law system in the fields of administration and finance, a system independent and different from the *şerî'at* to such a degree that Barkan describes it as "secular or lay" (*örfî ve yahut lâik*).¹⁶ New laws (*kânûns*) on

¹¹ Fuad Köprülü, "Ortazaman Türk Hukukî Müesseseleri: İslâm Amme Hukukundan Ayrı Bir Türk Amme Hukuku Yok Mudur?" in: Fuad Köprülü, *İslâm ve Türk Hukuk Tarihi Araştırmaları ve Vakıf Müessesesi* (İstanbul: Ötüken, 1983), 3-35; originally published in: *Belleten* 5-6 (1938), 41-76.

¹² Köprülü, 21-23.

¹³ Ibid., 29.

¹⁴ Ömer Lütfi Barkan, "Kânûn-nâme," *İA*, Vol. 6 (İstanbul, Maarif Basımevi, 1955), 185-196; idem, *XV ve XVI'inci Asırlarda Osmanlı İmparatorluğunda Zirâî ve Ekonominin Hukukî ve Malî Esasları. Vol. I. Kanunlar*, (İstanbul: Bühraneddin Matbaası, 1943) (later: Barkan, *Kanunlar*); cf. idem, "Türkiye'de Din ve Devlet İlişkilerinin Tarihsel Gelişimi," in: *Cumhuriyetin 50. Yıldönümü Semineri* (Ankara: Türk Tarih Kurumu, 1975), 49-97.

¹⁵ Barkan, "Kânûn-nâme," 185.

¹⁶ Ibid., 186.

various matters were issued as sultans' decisions (*hukm*, pl. *ahkâm*) and drew up by the *nişâncı* or *defterdâr* as *fermâns* or *berâts*. This *kânûns* formed the laws of the state during the life of the sultan who promulgated them, although in practice they were usually not cancelled by following sultan. Later, *kânûns* concerning same geographical area, special groups, or those of common character were gathered into collections called *kânûnnâmes*. First such collection was collected under the reign of sultan Mehmed II (1451-1481).¹⁷

According to Barkan, this secular law (*'örfî hukûk*) originated from ruler's authority and tradition (*an'ane*) of pre-Islamic Turkic states and, here Barkan differs from Köprülü who rejects any influence apart from those of Turkic or Iranian origin, custom and tradition of the conquered lands, that is Byzantium, Balkan states and Hungary.¹⁸ Although it is usually difficult to determine the age and origin of individual *kânûns*, sometimes their source is explicitly mentioned, like "from the time of the king" (*kral zamanından*) or according to the "king's law" (*kânûn-ı kral*) as in Hungarian and Bosnian *kânûnnâmes*, or simply "according to the old custom" (*adet-i kadîme*).¹⁹ Furthermore, through the analysis of some terms that occur in *kânûns* and *kânûnnâmes* it is possible to linguistically determine their non-Ottoman origin, like *baştina* (inheritable unit of land),²⁰ *penez* ("money"),²¹ *resm-i obruçına*

¹⁷ Ibid., 186, 193; Barkan, *Kanunlar*, xx-xxi; cf. Halil İnalcık, "Kanun. iii. – Financial and Public Administration," *EP*; Halil İnalcık, "Kânûnnâme," *EP*.

¹⁸ Ibid., "Kânûnnâme," 194-195; Barkan, *Kanunlar*, xvi.

¹⁹ Barkan, *Kanunlar*, 301, 318, 320, 323 for "kral zamanından," and 304 for "adet-i kadîme;" *Kanuni i kanun-name*, 16 (Ottoman text), 17 (Serbo-Croatian translation) for *kânûn-ı kral*

²⁰ As in general *kânûnnâme* of Süleymân the Magnificent see: *Osmanlı Kanunnâmeleri* Vol. 4, 300, 302; for *baştine* in *kânûnnâme* Bosnian vilâyet of 922 (1516) see: *Kanuni i kanun-name*, 24-25, 31.

²¹ Barkan, *Kanunlar*, 301 (*Kanunnâme-i Reayây-i Budun ve Livâ-i Estergon ve Livâ-i Hatvan ve Livâ-i Novigrad*, from Süleymân II's time), 318 (*Hatvân Livâsı Kanunnâmesi*, from Mehmed

(wine production barrel tax),²² *resm-i filori* (tax of one *florin*, Venetian golden coin, paid by subjects exempted from the taxes),²³ *monopolya* (“monopoly” on selling wine),²⁴ *pulug resmi* (“bow-tax”),²⁵ etc. Otherwise, some penal regulations are obviously taken from codes of Balkan states, like Stefan Dušan’s code, as fines for letting cattle pasture in other persons field (*popaša*),²⁶ plucking of beard or hair,²⁷ or kidnapping of a girl or a boy,²⁸ and especially mining *kânûns*.²⁹

In the course of time, the law contained in the *kânûns* and *kânûnnâmes* came to form separate field of law – “administrative or state law” (*bir siyasi hukuk veya bir devlet hukuku*), independent of the *şerî’at*.³⁰ As already mentioned, the ‘*örfî*’ law originated from established practice and tradition (*‘örf ve an’ane*), and represents a law that meets practical needs of every-day life, free of religious influences.

Şeyhülislâms’ fetvas that can be found in some *kânûnnâmes* are additions of later times when the ‘*örfî*’ law lost influence on behalf of the *şerî’at*

IV’s age), 321 (*Kanunnâme-i Livâ-i Kopan ve Şamanturna*, Selim II’s time), 322 (*Kanunname-i Reayay-i Livâ-i Lipve*, from 962/1554).

²² Ibid., 284-285 (*Silistre Livası Kanunu*, from 977/1569).

²³ Ibid., 305 (*Kânun-i öşur ve harac ve sayir rüsûm ve bac-i reayay-i livâ-i Pojaga*, from 953/1545), 250 (*Kanunnâme-i Kıbtıyân-i Vilâyet-i Rumeli*), and passim; *Kanuni i kanun-name*, 12-14 (*kânûns* for *cemâ’at-i eflâkân vilâyet-i Hersek* from 1477, *vilâyet-i Pavli* from 1485, and *nâhiyet-i kal’a-i Maglay-i eflâkân* from 1489), and passim.

²⁴ *Kanuni i Kanun-name*, 158, 162, 170, 172 (*kânûnnâmes* for Montenegro from 1523).

²⁵ Barkan, *Kanunlar*, 304 (*kânûn* for Požega).

²⁶ as in *kânûnnâme* for Monte Negro from 1523, in: *Kanuni i kanun-name*, 165 (Ottoman text), 168 (Serbo-Croatian translation); for the same offence in general *kânûnnâme* of Süleymân the Magnificent see: *Osmanlı Kanunnâmeleri*, Vol. 4, 304.

²⁷ Ibid., 164, 167; cf. *Osmanlı Kanunnâmeleri*, Vol. 4, 298.

²⁸ *Osmanlı Kanunnâmeleri*, Vol. 4, 297.

²⁹ Mehmed Begović, “Tragovi našeg krivičnog prava u turskim zakonskim spomenicima,” *Istorijski časopis* 6 (1956), 1-11; Avdo Sućeska, “Neke osobenosti krivičnog prava u jugoslovenskim zemljama u vrijeme Turaka,” in: *Običajno pravo i samouprave na Balkanu i u susjednim zemljama*, Vol. I (Belgrade: Balkanološki institut, 1974), 255-268; İnalçık, “Kânûnnâme.”

³⁰ Barkan, *Kanunlar*, xvi-xvii.

law (the process that started in the 17th century), and represent a confirmation of some non-*şerî'at* principles and ambiguities found in the *kânûns* given by religious authorities.³¹ Therefore, influence of the *fetvâs* on the development of the *kânûn* is out of question. The purpose of activity of famous *şeyhülislâm* of Süleymân the Magnificent, Ebu's-Su'ûd Efendi (952-982/1545-1574), who issued many *fetvâs* on questions regarded as the domain of '*örfî* law, was to conform the *kânûn* with the *şerî'at* by the means of "*şerî'at* trick or legal fiction" (*bir şer'î hile veya hukukî bir fiksion*), and make it comprehensible to the judges of *şerî'at* courts.³² On the other hand, the *şeyhülislâms* often did not dare to openly denounce the validity of certain *kânûns* on religious grounds, and instead used advantageous formula "*şer'î maslahat değildir, nasıl emredilmiş ise, öyle hareket etmek lâzım gelir*" ("it is not the affair of *şerî'at*, it should be enforced as it was ordered").³³ In fact, the '*örfî* law was generally confined to administration, state organisation and army, and did not interfere into the sphere of civil law, that was unquestionably under the authority of the *şerî'at*. Even the sultans were avoiding interfering into the sphere of the *şerî'at* and were trying to represent themselves as the protectors of the *şerî'at*.³⁴

Barkan's studies were continued and expanded by Fuad Köprülü's student, Prof. Halil İnalcık. İnalcık further developed the thesis of legal dualism in Ottoman Empire, and emphasised the role of the sultan as decisive factor in the '*örfî* legislation. Sultan's personal authority was modelled on Turkic and Mongol traditions, and he could, on the basis of his "unlimited will," enact the

³¹ Barkan, "Kânûnnâme," 190.

³² Barkan, *Kanunlar*, xli.

³³ Barkan, "Kânûnnâme," 192.

³⁴ Barkan, *Kanunlar*, xlviii; idem, "Din ve Devlet," 55.

kânûns as ‘*örfî kânûn* (“state law”), or promote customary law (‘*örf ü âdet*) to the level of the *kânûn*.³⁵ Thus, the sultan’s “absolute patrimonial power” exalted him “...above the existing laws and established customs.”³⁶

The most obvious example of division between the ‘*örfî* law and *şerî‘at* was the institution of the *kadıasker* (*kazasker*), who took the competence of *kâdîs* over state’s servants class (‘*askerî*).³⁷ On the other hand, the *nişancı*, state secretary who was in charge of composition of the *kânûns*, had official title (*lâkab*) “the müftî of the *kânûn*” (*müftî-i kânûn*), indicating that his function was equal to the function of the *müftî* in the affairs of the *şerî‘at*.³⁸

While the ‘*örfî* law enjoyed great importance during the reign of Mehmed II, in the time of Süleymân the Magnificent Islamic principles acquired more influence on making of sultanic laws. However, the independence of the ‘*örfî* law was still preserved through the institution of the *nişancı*.³⁹ In the end of sixteenth century, the *şerî‘at* court judges (*kâdîs*) still had to administer justice in accordance with both the *şerî‘at* and *kânûn*.⁴⁰ Position of the ‘*örfî* law started to deteriorate rapidly in the 17th century, indicated by the rise of the influence of the *şeyhülislâm* and decline of the office of *nişancı*. Eventually, in 1107/1696 the use of the word *kânûn* side by side with

³⁵ Halil İnalçık, “Osmanlı Hukukuna Giriş. Örfî-Sultanî Hukuk ve Fâtih Kanûnları,” in: *Osmanlı İmparatorluğu. Toplum ve Ekonomi üzerinde arşiv çalışmaları, incelemeler* (İstanbul: Eren, 1993), 320; idem, “Kânûn;” idem, “Islam in the Ottoman Empire,” in: *Essays in Ottoman History* (İstanbul: Eren, 1998), 231; idem, *The Ottoman Empire*, 70.

³⁶ İnalçık, “State, Sovereignty and Law,” 79.

³⁷ İnalçık, “Osmanlı Hukukuna Giriş,” 323.

³⁸ Ibid., 329.

³⁹ İnalçık, “State, Sovereignty and Law,” 78; idem, “Kânûn.”

⁴⁰ Uriel Heyd, *Studies in Old Ottoman Law*, ed. by V. L. Ménage (Oxford: Clarendon Press, 1973), 155.

the word *şerî'at* was forbidden by the firman of sultan Mustafa II, and henceforth all legal matters should have been based on the *şerî'at* only.⁴¹

This conception of the Ottoman law, let us label it “secularist,” became predominant in the Ottoman studies, and many scholars, both Turkish and western (as Uriel Heyd among others), starting from this positions further advanced in the field.⁴²

Along with the rise of criticism towards the legacy of Joseph Schacht in Islamic studies in past decade or two, namely his thesis on non-Islamic origins of the Islamic law and originally “secular” character of some Islamic institutions and practices (in particular legislative activity of the ruler (*siyâsa*) that remained outside the scope of the *şerî'at*), the theory on dual character of the Ottoman law, i.e. coexistence, or more often, superiority of *örfî* law over the Islamic law, was taken into reconsideration. Since the “secularist” theory actually arouse as the Republican break-up with Ottoman Islamist traditions in Turkish historiography,⁴³ the opposite view will be labelled as “revisionist”. In reality, the “revisionists” represent quite heterogeneous group that might be roughly divided into “Western” and Turkish faction. Turkish faction can actually be better described as “traditionalist,” having in mind that their criticism of “secularist theory” corresponds more with certain conservative trends in pre-Republican Turkish thought than with post-modernist criticism of Schacht.

⁴¹ İnalçık, “Kânûn;” Heyd, *Studies in Old Ottoman Law*, 154-155.

⁴² See: Heyd, *Studies in Old Ottoman Law*; Richard C. Repp, “Qânûn and Sharî'a in the Ottoman Context,” in: Aziz al-Azmeh, ed., *Islamic Law, Social and Historical Context* (London and New York: Routledge, 1988), 124-145; more recent studies are: Boğaç A. Ergene, “On Ottoman Justice: Interpretations in Conflict (1600-1800),” *Islamic Law and Society* 8, 1 (2001), 52-87; Hakan T. Karateke, “Legitimizing the Ottoman Sultanate: A Framework for Historical Analysis,” in: Hakan T. Karateke and Maurus Reinkowski, eds., *Legitimizing the Order: The Ottoman Rhetoric of State Power* (Leiden-Boston: Brill, 2005), 13-52.

⁴³ Barkan, “Din ve Devlet,” 51-53; cf. Köprülü, 35.

The most significant representative of the “Western revisionists” is historian of the Ottoman Law Haim Gerber.⁴⁴ The main point in Gerber’s approach is criticism of the *sultanism*, i.e. of a view that the Ottoman Empire was “an extreme patrimonial state” under “... total personal rulership ... [of] the sultan, unbound by laws and rules of any kind.”⁴⁵ According to Gerber, by promoting the institution of the *kâdî*, (the “judge” in the provinces that actually had much wider competences than juridical; among other duties, he controlled state officials and served as public notaries), the Ottomans in fact agreed to share power with the *‘ulemâ*. Furthermore, *kâdî*’s authority in juridical matters was clear and undisputable as far as the central government was concerned.⁴⁶ On the other hand, the law as disclosed in the *fetva* collections proved to match with the law put in practice by the *kâdî* courts.⁴⁷ Owing to the legal interpretations of *şeyhülislâm* Ebu’s-Su’ûd Efendi, Süleymân’s *kânûnnâme* “... did not really supersede the *şeri‘at* but was merely added to it.”⁴⁸ To sum up, Gerber turns upside down the thesis of the “secularists,” and asserts that the Ottoman Empire was an Islamic state *par excellence*: “... the Ottoman period witnessed a historic rise of the *sharî‘a* and the *kadi*, who now dealt not only with wider *shari‘a* jurisdiction but also with such non-*shari‘a* matters as agrarian *kanun* among the others.”⁴⁹

⁴⁴ See: Haim Gerber, *State, Society, and Law in Islam Ottoman Law in Comparative Perspective* (Albany: State University of New York Press, 1994); see also: Madeline C. Zilfi, *The Politics of Piety: The Ottoman Ulema in the Postclassical Age (1600-1800)*, (Minneapolis: Bibliotheca Islamica, 1988).

⁴⁵ Gerber, 130.

⁴⁶ Ibid., 181.

⁴⁷ Ibid., 179.

⁴⁸ Ibid., 35.

⁴⁹ Ibid., 183.

Unlike “Western revisionists” who are solely inspired by contemporary trends in Islamic studies, their Turkish counterparts are influenced by more complex matters. Even though the influence of current trends in Islamic studies should not be neglected, the general political trends in Turkey, i.e. gradual loosening of strict dogmas of official secularism, seems to have given rise to re-questioning of some widely accepted postulates in Turkish historiography. In this respect, in a study on the law in the Ottoman Empire, M. Âkîf Aydın addresses the problem of diametrically different interpretations of the nature of the Ottoman legal system, and suggests that such disparity is more the product of different interpretations of historical and legal documents than of their different contents.⁵⁰ The most prominent Turkish “traditionalist” is Ahmet Akgündüz, author of several books on Islamic law in the Ottoman Empire and editor of invaluable collection of the Ottoman *kânûnnâmes* in nine volumes.⁵¹ Akgündüz criticises predominant view shared by some “orientalists” (*müsteşrikler*) and Turkish scholars that Ottoman law was the secular law outside the *şerî‘at*, a law uninfluenced by the Islamic legal principles. According to Akgündüz, the authors who support the “secular” theory are exclusively historians or economists unfamiliar with Islamic studies, law, or sources of that law, or scholars too dependent on teachings of “orientalists” like Goldziher and Schacht. In the case of Turkey, a view that Ottoman Empire did

⁵⁰ M. Âkîf Aydın, “Pravo kod Osmanlija,” in: Ekmeleddin İhsanoğlu, ed., *Historija Osmanske države i civilizacije* (selected texts), tr. Kerima Filan, Enes Karić, Amina Šiljak-Jesenković (Sarajevo: Orijentalni institut, 2004), 515.

⁵¹ *Osmanlı Kanunnâmeleri*, Vol. 1-9; Ahmet Akgündüz, *Şer‘iye Sicilleri* (İstanbul: Türk Dünyası Araştırmaları Vakfı, 1989), Vol. 1-2; Ahmet Akgündüz and Halil Cin, *Türk Hukuk Tarihi* (Konya: Selçuk Üniversitesi Basımevi, 1989), Vol. 1-2; and others.

not adopt nor apply the *şerî'at* was accepted as a dogma that serves needs of Republican secularist propaganda.⁵²

Akgündüz asserts that the '*örfî* law was restricted to administrative law and exceptionally some topics of constitutional, military, state-land (*mîrî arazi*), and fiscal law, and some 20 percent of penal law (*ta'zîr suç ve cezaları*), which altogether comprise 15 percent of the Ottoman legal system. On the other hand, the *şerî'at* regulated approximately 85 percent of entire legal system in the Ottoman Empire. Furthermore, the '*örfî* law was not a law outside the scope of the *şerî'at*.⁵³ The '*örfî* law is based on the secondary sources of the Islamic law, that is, on custom ('*örf-âdet*), public interest (*âmmе maslahat*) and old legal systems. By means of *ictihâd* or through limited right of legislation recognized to the ruler, various new laws were promulgated on condition that they are not contradicting the *şerî'at*. However, through incorporation into the legal corpus of the Islamic state, and with confirmation of the *müftîs* or *şeyhülislâms*, laws of non-Islamic origin acquired Islamic character.⁵⁴ In this respect, the '*örfî* law is not a law independent from the *şerî'at*, but barely its integral component.

M. Akıf Aydın starts from the same standpoint, but with more sense for particularities and complexity of the Ottoman framework. In Aydın's view, the Ottoman legal system does not represent a novelty, but continuity with legal systems of previous Islamic states. Hence, the Ottoman law is not a separate legal system with own principles and institutions like Islamic or Roman law. In the application of the *şerî'at* law the Ottomans were introducing changes and novelties according to the needs of the time through the authority of the ruler.

⁵² *Osmanlı Kanunnameleri*, Vol. 1, 41.

⁵³ *Ibid.*, 45.

⁵⁴ *Ibid.*, 49-58.

However, neither this was an Ottoman precedent, but the practice already known in the Islamic law.⁵⁵ The only novelty introduced by the Ottoman sultans was codification of the *kânûns* into the law codes or the *kânûnnâmes*.⁵⁶

The functions of the *kadıasker* and *nişancı* that represented the examples of division between the *‘örf* and the *şerî‘at* according to the “secularists,” were actually filled with members of the *‘ulemâ* who must have been concerned with harmonisation of the *‘örfî* law with the *şerî‘at* principles.⁵⁷ Sometimes, however, the principles of the *şerî‘at* law were not obeyed by the state legislators in reality, but only formally through confirmations of *fetvâs* of the *şeyhülislâms*.⁵⁸

On the other hand, according to Aydın, the *müftîs* exercised considerable influence on the implementation of the law in the Ottoman *şerî‘at* courts. The *kâdîs* used the *fetvâs* as guides for the complex legal matters occurring in trials, and indeed, they often made decisions based on the *fetvâs* as recorded in the court records (*sicils*). Although the *fetvâ* did not have obligatory power, the *kâdîs* could not easily neglect issued *fetvâs*, especially those issued by the *şeyhülislâms*. The *şeyhülislâm* had the right to present the *fetvâs* directly to the sultan and to ask for their enforcement, as was the case of Ebu’s-Su‘ûd Efendi whose *fetvâs* collected in the work called *Ma‘rûzât* were approved by the sultan and enforced in the courts of the Empire. Furthermore, the *fetvâs* were

⁵⁵ Aydın, “Pravo kod Osmanlija,” 515-516.

⁵⁶ Ibid., 519.

⁵⁷ Ibid., 528.

⁵⁸ Ibid., 530.

important in the settlement of legal disputes outside of the court since it was possible to obtain a *fetva* for a lower fee than the court one.⁵⁹

Although both approaches, the “secularist” and “revisionist/traditionalist,” have emphasised some important points concerning legal system in the Ottoman Empire, both fell short in taking into account the arguments of the other side. Moreover, while the “secularists” are tending to belittle importance of the *şerî‘at* principles focusing exclusively on the fields not regulated by the Islamic law, the “revisionists” and “traditionalists” are giving preference to research in the fields that are preserve of the *şerî‘at* whereas neglecting the area covered by the *‘örfî* law. As a result, the image of the Ottoman legal system seems to be considerably unbalanced.

Theoretically, the “revisionists” and “traditionalists” are right in assertion that the *şerî‘at* was supreme law of the Empire, and, indeed, the sultans never dared to put into question the supremacy of the Islamic law. The sultans often asked the *müftîs* for the *fetvâs* in cases which might have been regarded as controversial in the context of the Islamic law.⁶⁰ Such examples are known from the earliest period of the Ottoman history. In order to justify breaking of an agreement over booty with one of his commanders, sultan Orhan (1320-1362) asked Taceddin Kurdî for an approving *fetvâ*. Another famous case is the *fetvâ* that sanctioned the execution of rebellious Şeyh Bedreddin by Mehmed I in 1420.⁶¹ In order to cancel validity of pledge of amnesty given by

⁵⁹ Ibid., 560-561; cf. Uriel Heyd, “Some Aspects of the Ottoman Fetva,” *BSOAS* 32, 1 (1969), 52-56 and *passim*.

⁶⁰ Colin Imber, *Ebu’s-su’ud: The Islamic Legal Tradition*, (Stanford: Stanford University Press, 1997), 59.

⁶¹ Richard C. Repp, *The Müfti of Istanbul: A Study in the Development of the Ottoman Learned Hierarchy* (London: Ithaca Press, 1986), 114.

Grand Vizier Mahmud Paşa to Bosnian king Stjepan Tomašević after his surrender in 1463, Mehmed II obtained a *fetvâ* that approved the breaking of the pledge and the king's execution.⁶² Many other vital state affairs were pursued after the adequate *fetvâ* and approval of the 'ulemâ were obtained: the infamous practice of the brethren killing after the installation of a new sultan needed the *şerî'at* justification, as well as treatment of the *kızılbaşs*, Shiite soldiers or sympathisers of Iranian *shah*, as unbelievers.⁶³ From the seventeenth century onwards, the occasional depositions of the reigning sultans were almost always enacted with the sanction of the *fetvâ*.⁶⁴

However, as it might be seen in the above-mentioned cases, the *fetvâ* was often used only as a formal certification that certain controversial practices are in accordance with the *şerî'at*. In this respect, Barkan's somewhat harsh statement that counter-*şerî'at* regulations of the state that were formally justified by the members of the 'ulemâ as "permitted" (*câ'iz*) in fact were nothing more but "*şerî'at* tricks" (*hile-i şerîye*), seems to hit the point.⁶⁵ On the other hand, the whole 'ulemâ class, from professors (*müderris*) in the *medreses*, *kâdîs*, *müftîs*, to high ranked officials like *kâdîaskers* and, in the end, *şeyhülislâms*, were appointees of the sultan, and in this respect their autonomy could have been only theoretical. To preserve their positions, they had to fulfil duties entrusted to them by the sultan just like other state officials.⁶⁶ Indeed, in

⁶² Aşıkpaşoğlu Ahamd Âşıkî, *Tevârih-i Âl-i Osman*, in: *Osmanlı Tarihleri I*, Çiftçiöğlu N. Atsız, ed., (İstanbul: Türkiye Yayınevi, 1949), 213; Mehmed Neşri, *Kitâb-ı Cihan-Nüma. Neşri Tarihi*, ed. by Faik Reşit Unat, Mehmed A. Köymen, Vol. 2, 3rd ed. (Ankara: Türk Tarih Kurumu, 1995), 767; cf. Safvet-beg Bašagić, *Kratka uputa u prošlost Bosne i Hercegovine (Od g. 1463.-1850.)*, (Sarajevo, 1900), 16-17.

⁶³ Barkan, "Din ve Devlet," 65-66; İnalçık, "Osmanlı Hukukuna Giriş," 331.

⁶⁴ Imber, *Ebu's-su'ud*, 59.

⁶⁵ Barkan, *Kanunlar*, xli; Barkan, "Din ve Devlet," 65-66, 70-71.

⁶⁶ Imber, *Ebu's-su'ud*, 59.

the 17th century, which is considered to be the period when the *şerî'at* got unquestionable influence over state affairs, three highest representatives of the Islamic law – the *şeyhülislâms*, were executed while in office.⁶⁷

Since its beginning, the Ottoman Empire, as was the practice of majority of pre-modern states, proclaimed religion, that is Islam, as the central value that is to regulate all fields of life, including state affairs. Fighting for the sake of Islam – the *gâza* (a word more or less synonymous with the *cihâd*), enabled rapid rise of the Ottoman *beylik* into the world empire, giving the legitimacy of the *gâzî*, champion of Islam, to otherwise plebeian-blooded sultans.⁶⁸ When the sultans started to lose *gâzî* attribute after the era of Ottoman conquest came to the end in the 17th century and was replaced with the era of territorial contraction of the Empire, they reached for the title of the caliph that provided them with spiritual hegemony in the Islamic world.⁶⁹

Whether one considers the Ottoman relation with Islam as pragmatic way to impose fuller control over the subjects by means of religious legitimization that facilitated the sultan to portray himself as semi-sacred, “the shadow of God” (*zili'llâh*) as stands in official documents, or as sincere piety, the fact was that religion, through great support of the state, deeply influenced Ottoman realities.

⁶⁷ İsmail Hakkı Uzunçarşılı, *Osmanlı Devletinin İlmiye Teşkilâtı*, 3rd edition (Ankara: Türk Tarih Kurumu, 1988), 223-226.

⁶⁸ Zilfi, *The Politics of Piety*, 27; Karateke, 42; İnalcık, “Islam in the Ottoman Empire,” 234-235

⁶⁹ Ibid., 27; Halil İnalcık, “The Ottoman State: Economy and Society, 1300-1600,” in: Halil İnalcık and Donald Quataert, eds., *An Economic and Social History of the Ottoman Empire* (Cambridge: Cambridge University Press, 1994), 20-21; cf. Karateke, 43.

3.3. Sources

According to the dual character of the Ottoman Law, legal status of the *zimmîs* will be examined on two major levels: firstly, as it was reflected in the *fetvâs*, legal opinions of Ottoman *şeyhülislâms* as highest representatives of the *şerî'at*; and secondly, as prescribed in the *kânûns* and *kânûnnâmes*, state laws issued by the sultan as highest political authority. In this way, both fields of the Ottoman law, i.e. the *şerî'at* law in strict sense, and the *'örfî* law as formulated through sultanic regulations will be encompassed. Additionally, apart from the *şerî'at* and *kânûn* legislation, which provide more theoretical aspects of the law, the *mühimme defterleri* ("Registers of Important Affairs") that contain copies of the rescripts (*fermân*) issued by the sultan (or by the Grand Vizier, the *defterdârs* or the *kazaskers* in the sultan's name) to the provincial governors and judges (*kâdîs*) concerning specific cases, thus providing the insight into the execution of law in practice, will be taken into consideration.⁷⁰ In addition, other legal sources, like prescriptions of local authorities – the *kâdîs*, *sancakbeyis*, *beylerbeyis*, and the like, as the *hüccets*, *ilâms*, *buyuruldu*s, etc., concerning non-Muslims, and often preserved in archives of some of the monasteries, will be taken into account. Finally, the sources of Western and non-Muslim origin will be considered as well, such as travelogues of Western travellers, memoirs of captives, reports of Papal visitators and bishops, chronicles of indigenous Christian monks, and the like. Additionally, the

⁷⁰ Cf. Suraiya Faruqi, "Mühimme Defterleri," *ET*²; idem, *Approaching Ottoman History. An Introduction to the Sources* (Cambridge: Cambridge University Press, 1999), 50; Pakalın, Vol. 2, p. 605; cf. Uriel Heyd, "Farmân. ii – In the Ottoman Empire," *ET*².

narratives of Ottoman Muslim origin will be occasionally consulted as well.⁷¹ However, while the *kânûns* and *kânûnnâmes* and *fetvâs* will be analysed thoroughly as most important legal sources, others will be consulted in a more random manner in order to provide illustration for the provisions of the *fetvâs* and *kânûnnâmes*.

Since the *kânûn* legislation was discussed in detail on previous pages, and do not need further clarification, now we will discuss the *fetvâs* in detail because of their specific character.

Since the *fetvâs* usually do not provide genuine personal information like names of the sides involved, toponyms, dates, and the like,⁷² data contained in them cannot be put into specific geographical context, but is relevant for entire Empire. Therefore, conclusions eventually drawn will be general and valid for the Empire as whole. Exceptionally, some textual hints might indicate geographical and/or ethnic-cultural background, as in a *fetvâ* of Çatalcalı ‘Alî Efendi (*şeyhülislâm* 1084/1674-1686, 1692), which mentions a case of Muslims dancing in the “infidel manner” (*ayîn-i kefere üzere*) with “infidels” in a wedding.⁷³ The term for dance is *horos* (also appears as *hora*; derived from Greek χορός), a kind of round dance today still popular among Balkan peoples.⁷⁴ The term itself, as well as peculiarity of this type of dance, suggests a link with the Balkans.

⁷¹ Cf. Faroqhi, *Approaching Ottoman History*, passim.

⁷² Heyd, “Some aspects of the Ottoman *Fetva*,” 41; Imber, *Ebu’s-su’ud*, 55.

⁷³ Çatalcalı ‘Alî Efendi, *Fetâvâ-i ‘Alî Efendi* (Istanbul: Matba‘a-i Âmire, 1272/1892-1893), 167, no. 1.

⁷⁴ See: James W. Redhouse, *A Turkish and English Lexicon*, new impression (Beirut: Librairie du Liban, 1987), 871, “khorā”; Pars Tuğlacı, *Okyanus Ansiklopedik Sözlük*, Vol. 4 ([Istanbul:] Cem Yayınevi, [1983]), 1113, “hora;” İsmail Parlatir et al., *Türkçe Sözlük*, Vol. 1, 8th edition (Ankara: Türk Dil Kurumu, 1988), 1003, “hora.” Among the South Slavs the dance is known under the name *oro* or *kolo*.

In addition, the plot of some ‘Alî Efendî’s *fetvâs* is situated in a “hindmost land” (*âhir-i diyâr*),⁷⁵ which obviously designates a frontier *sancak* or *viyâlet*, as was the case of Bosnia, although it is impossible to identify the province in case with certainty.

On the other hand, individual *fetvâs* of Ebu’s-Su‘ûd and some local *müftîs* (*kenar müftileri*) from Bosnia preserved in the archive of Dubrovnik,⁷⁶ give us a rare opportunity to see how original *fetvâs* looked, since usually originals were, if preserved, cut around margins and stuck into *fetvâ* collections by later compilers so that their back cannot be examined.⁷⁷ On the back in left corner of some *fetvâs* the name or title of questioner (*müsteftî, sâ’il*) and his domicile are mentioned, as *Yeni Bâzârî* (“dweller of Yeni Pazâr/Novi Pazar”),⁷⁸ ‘*Alî Mitrovitçe* (“‘Alî from Mitrovica”),⁷⁹ *Saray’dan* (“from Sarajevo”),⁸⁰ *Fireng* (“Frank”),⁸¹ and *Nikola Firengî* (“Nikola the Frank”).⁸²

However, the *fetvâs* of this kind are very rare, and generally a statement that *fetvâs* are deliberately formulated as abstract as possible in order to obtain “... the character of a decision on a general point of law...,”⁸³ is to be accepted as a rule.

The *fetvâs* issued by local *müftîs* of Bosnia in the period under consideration are rarely preserved. The only collection of the *fetvâs* of a single Bosnian *müftî* is from the eighteenth century – collection of Ahmed al-Mostarî

⁷⁵ See: Çatalcalı ‘Alî Efendi, 145, no. 6, no. 9; 156, no. 2, 168, no. 3, and passim.

⁷⁶ *Acta Turcarum*, C-III, No. 10-11, State Archive of Dubrovnik.

⁷⁷ Heyd, “Some aspects of Ottoman *Fetva*,” 36-37.

⁷⁸ *Acta Turcarum*, C-III, no. 10, 35a, r.

⁷⁹ *Acta Turcarum*, C-III, no. 10, 41a, r.

⁸⁰ *Acta Turcarum*, C-III, no. 10, 42a, r.

⁸¹ *Acta Turcarum*, C-III, no. 10, 27 a, r; C 10, 23 a, r.

⁸² *Acta Turcarum*, C-III, no. 10, 28 a, r.

⁸³ Heyd, “Some aspects of Ottoman *fetva*,” 41.

called *Fetâvâ-i Ahmediyye*. On the other hand, it is impossible to put into precise time context a dozen of individual *fetvâs* that are preserved, not only because they do not contain dates, but also because signatures of local *müftîs* contain only their first names and occasionally locality, as is '*Alî el-memûr li iftâ bi Mostar*'.⁸⁴ However, since we can approximately date other documents in that folder (*Acta Turcarum* C-III, no. 10) – the latest dated one is from 1022/1613, while some of the youngest might be *fetvâs* issued by the *şeyhülislâm* Ebü's-Su'ud Efendi (952/1545-982/1575) – we might suppose, although somewhat loosely, that Bosnian *fetvâs* in the collection originate from the period between approximately 952/1545 and 1022/1613. In the case of these *fetvâs* it is possible to make further assumptions, since, apart from the name and domicile of the questioner, the domicile of the *kenar müftîsi* is identifiable as well, which indicates local context and legal practice.

In addition, it should be emphasised that the *fetvâs* were not confined exclusively to the traditional sphere of the *şerî'at*, but they included matters concerning public law as well, which is usually perceived as the preserve of the 'örfî law. Thus the *şeyhülislâms* were issuing the *fetvâs* concerning war and peace, taxation, and administration, legal procedure, some areas of criminal law, corporal punishments, and the like, that had been regulated by the *kânûns* and *kânûnnâmes*.⁸⁵ In the *fetvâ* collections those topics constitute separate chapters like *kitâb al-siyer* ("Book of Rules of International Law," concerning matters of war and peace), *kitâb al-şirket* ("Book of Partnership"), *kitâb al-sarîka* ("Book of Robbery"), *kitâb al-buyû'* ("Book of Purchase"), *kitâb al-kefâlet* ("Book of

⁸⁴ *Acta Turcarum*, C-III, no. 10, 11; cf. Heyd, "Some aspects of Ottoman *fetva*," 43.

⁸⁵ Heyd, "Some aspects of Ottoman *fetva*," 54-55.

Surety”), *kitâb al-kazâ* (“Book of Jurisdiction”), *kitâb al-da‘vâ* (“Book of Process”), *kitâb al-şehâdât* (“Book of Testimonies”), *kitâb al-ikrâr* (“Book of Confession”), and so on. Furthermore, within some of the chapters topics concerning agrarian law (*timâr, ârâzî*) or law of finance (*beytü’l-mâl*) are included, or sometimes form a separate chapter.⁸⁶ In these matters *şeyhüislâms* were ruling in accordance with ‘*örfî*’ law. The most famous example is a collection of the *fetvâs* of *şeyhüislâm* Ebu’s-Su‘ûd Efendi called *Ma‘rûzât*, based on the *fermâns* of Süleymân the Magnificent.⁸⁷

As was already mentioned, the *fetvâ* represents legal opinion on any point of law, including all civil or religious matters, that is based on primary sources of the Islamic law. The person who issues the *fetva* is called *müftî*, the one who asks for the *fetvâ* is *müsteftî*, the question is *istiftâ* or *su‘âl*, while the process of issuing the *fetva* is called *iftâ* or *futyâ*.⁸⁸ The task of the *müftî* is to provide the *müsteftî* with the explanation of certain legal problem on the basis of the *Qur‘ân* and *Sunna*, *ictimâ* (“consensus”) and *kiyâs* (“analogy”), while in theory, in cases in which the answer is not possible to find, the *müftî* is allowed to use the *ictihâd* and *re‘y*, i.e. personal reasoning. The *müftî* must be a person known for his knowledge of the *fikh* (in general, words *müftî* and *fakîh* are synonyms), piety, intelligence, and moderation.⁸⁹ In theory, anyone who fulfils

⁸⁶ Hilmar Krüger, *Fetwa und Siyar: Zur internationalrechtlichen Gutachtenpraxis der osmanischen Şeyh ül-Islâm vom 17. bis 19. Jahrhundert unter besonderer Berücksichtigung des “Behcet ül-Fetâvâ,”* (Wiesbaden: Otto Harrassowitz, 1978), 84-87; cf. Heyd, “Some Aspects of the Ottoman *Fetva*,” 55.

⁸⁷ Heyd, “Some Aspects of Ottoman *Fetva*,” 55; for the text of *Ma‘rûzât* see: *Osmanlı Kanunnâmeleri*, IV, 35-75.

⁸⁸ Tyan, “*Fatwâ*,” Atar, 487.

⁸⁹ Atar, 491.

above-mentioned requirements can issue a *fetva*, including even persons otherwise discriminated by the law: a woman and a slave.⁹⁰

In the Ottoman Empire, however, the *müftîs* were gradually included into state organisation, headed by the *müftî* of Istanbul – the *şeyhülislâm*, who was in charge of appointing local *müftîs* in the provinces.⁹¹ The office of the *müftî* was established in the time of Murad II (1421-1451), while the *kânûnnâme* of Mehmed II concerning state organisation proclaimed that the *şeyhülislâm* is head of ‘ulemâ (‘ulemânın re’isi).⁹² Ebu’s-Su’ûd’s efforts in achieving coordination between the spirit of Islam and practical administration of the Empire exalted the position and influence of the *şeyhülislâm*, but at the same time it led to gradual bureaucratisation of the office. In the 17th century the *şeyhülislâm* was state official deeply involved in affairs of state, and the office completely lost its former independence from the state government.⁹³

We have already mentioned that the *fetvâ* belongs to the genre of jurisprudence called *furû‘ al-fikh*. Therefore, *fetvâ* collections (*fetva mecumû‘alari*) in general follow the basic structure of *furû‘* works, although with certain modifications.⁹⁴ As followers of the *Hanafî* school of law, Ottoman *müftîs* were basing theirs *fetvâs* on the legal works of great *Hanafî fakîhs* like founder of the school Abu Hanifâ (Imâm-i Â‘zam; “the Greatest Imam”), and Imâmeyn (“Two Imâms”) – Abu Yûsuf and Imam Muhammad (Abu Abdullah

⁹⁰ Tyan, “Fatwâ”.

⁹¹ J. R. Walsh, “Fatwâ. ii – Ottoman Empire,” *EI*.

⁹² Repp, *The Müftî of Istanbul*, 121-123; Richard C. Repp, “Shaykh al-Islâm. 2. In the Ottoman Empire,” *EI*; *Osmanlı Kanunnâmeleri*, Vol. 1, 318.

⁹³ Ibid., 303-304; Repp, “Shaykh al-Islâm”.

⁹⁴ Krüger, 83-87.

Muhammad b. Idris).⁹⁵ In the cases in which the great Imâms differ, the *müftî* has the right to choose the opinion which is most suitable to the needs of time.⁹⁶ This provision gave notable flexibility to the *fetvâ*, supported by general principle that the *müftî* should take into consideration peculiarities of customs and traditions of the region of the person who asks for the *fetvâ*. In the *fetvâ* the *müftî* should tend to follow the middle way and avoid extremes, too harsh or too light solutions.⁹⁷

Due to its abstract character, the *fetvâ* is sometimes considered to consist of mere theoretical cases, with no connection with reality. However, it should be emphasised that issuance of the *fetvâs* on non-existent or purely theoretical cases was avoided as a rule.⁹⁸ Therefore, the *fetvâs* should be regarded as real cases with few exceptions. In the cases of genuine individual *fetvâs* that contain the name of the questioner on the back, the doubt should be completely dismissed, while Ebu's-Su'ûd's *fetvâs* from *Ma'rûzât* collection actually had the character of law and were enforced in courts on the authority of the sultan.

The *fetvâs* were widely used in the *şerî'at* courts, and the *kâdîs* were often making their decisions on the basis of the *fetvâs*. On the other hand, low fee of the *fetvâ* as well as its authority stimulated people to acquire *fetvâs* on various legal matters, often helping them to solve the case without going to the court.⁹⁹ According to the Registry of the Franciscan Monastery of Fojnica in

⁹⁵ Atar, 491-492.

⁹⁶ Ibid., 492; A. Vehbi Ecer, "Türk Kültürünün Tetkikinde Fetva Kitaplarının Önemi," *Türk Kültürü* 7, 90 (1970), 401, 403; cf. for Ebu's-Su'ûd's preference of Abu Yûsuf's opinion over Abû Hanîfa's see a *fetvâ* in: M. Ertuğrul Düzdağ, *Şeyhülislâm Ebussuûd Efendi Fetvaları Işığında 16. Asır Türk Hayatı* (İstanbul: Enderun Kitabevi, 1983), 156, no. 767; for similar *fetvâ* see: Çatalcalı 'Alî Efendi, 619, no. 4; cf. Ecer, 403.

⁹⁷ Atar, 493; Džadulhak, 12-13; Pakalın, Vol. I, 621.

⁹⁸ Heyd, "Some Aspects of the Ottoman *Fetva*," 53-54; Atar, 494.

⁹⁹ Heyd, "Some Aspects of the Ottoman *Fetva*," 52-54; Aydın, 560-561.

Bosnia, and the number of *fetvâs* preserved in it, it is obvious that the Franciscans were widely using the *fetvâs* in litigations. There are numerous cases in which the Franciscans won litigations and managed to obtain and secure their rights on the basis of “*fermân* and *fetvâ*,” in the period between 893-894/1488 and 1104/1693-1694.¹⁰⁰

Before proceeding further, let us briefly describe the structure of the *fetvâ*. The original *fetvâ* consists of the following elements: (1) *da‘vet* – pious invocation in Arabic written above the text, usually consisting of two to three rhymes; (2) *su‘âl* or *istiftâ* – the question; the text following the opening formula is the exposition of the case, and ends in a direct question concerning the point at issue. The names of parties involved are fictitious: Zeyd, ‘Amr, Bekr, Beşir, Hâlid, Velîd, etc. for men, and Hind, Zeyneb, Hadîce, ‘Âyşe, Râbi‘a, etc. for women. Usually the same names are given to non-Muslims,¹⁰¹ but then they are followed by designations like *zimmî*, *Yahûdî*, *kâfir*, *Nasrânî*, etc; (3) *el-cevâb* – the answer starts with the words *Allâhu a‘lem (ve ahkâm)* (“God knows the best”), indicating the fallibility of the *müftî*. The answer might vary depending on the complexity of the case, although since the seventeenth century on, it became customary to limit the reply to a single word as *olur(lar)* (“yes”), or *olmaz(lar)* (“no”). Occasionally, the supplementary question(s) might be added, in order to clarify the case; (4) *imza* – signature of the *müftî*.¹⁰²

¹⁰⁰ Cf. Josip Matasović, “Fojnička regesta,” *Spomenik SKA*, 67, drugi razred 53, (Belgrade, 1930), 105, no. 7, 112-113, no. 82, 132-133, no. 286, 146, no. 408, 178-179, no. 644, 182, no. 709, 185, no. 751, 186, no. 755.

¹⁰¹ Ibid., 38-41; cf. Mübahat S. Kütükoğlu, *Osmanlı Belgelerinin Dili (Diplomatik)*, (Istanbul: Kubbealtı Akademisi Kültür Sanat Vakfı, 1998), 341-343.

¹⁰² Ibid., 41-43; Kütükoğlu, 343 and passim.

Fetvâ collections, on the other hand, do not contain first and last part of the *fetvâ*, but only the question (often without the opening formula) and the answer (generally without the formula *Allâhu a'lam*). Compilers usually organised the *fetvâs* under headings and subheadings in order to serve as reference book for the *kâdîs*, local *müftîs*, students and others interested in the law.¹⁰³

In this study we will examine the *fetvâs* of *şeyhülislâm* Ebu's-Su'ûd Efendi as preserved in collections *Fetâvâ-i Ebu's-Su'ûd Efendi*¹⁰⁴ and *Ma'rûzât*¹⁰⁵ and individual *fetvâs* preserved in the State Archive of Dubrovnik.¹⁰⁶ First collection is a classical collection of *fetvâs* issued by Ebu's-Su'ûd as a *müftî*. *Ma'rûzât*, however, is not collection of classical *fetvâs* issued by the *müftî* to the questioners, but the *fetvâs* on questions that were causing conflict between the *şerî'at* and 'örfî law, that Ebu's-Su'ûd submitted (hence the name *ma'rûzât*) to the Sultan for confirmation and enforcement in the courts of the Empire. Ebu's-Su'ûd's intention was to harmonise and reconcile the 'örfî law with the *şerî'at* by means of the *ictihâd* and *re'y*, and achievement of this goal, at least theoretically, made Ebu's-Su'ûd probably the most renowned Ottoman *şeyhülislâm*.¹⁰⁷ As far as I know, until now the *fetvâs* from the State Archive of Dubrovnik remained unknown to the scholars, with the exception of Uriel Heyd who mentions their existence in his article "Some Aspects of the Ottoman *Fetva*." They represent questions of Dubrovnik's traders and various

¹⁰³ Imber, *Ebu's-su'ud*, 57-58.

¹⁰⁴ Düzdağ.

¹⁰⁵ *Osmanlı Kanunnâmeleri*, IV, 35-75.

¹⁰⁶ *Acta Turcica*, C-III, No. 10-11.

¹⁰⁷ Repp, *The Müftî of Istanbul*, 279-282 and passim; Imber, *Ebu's-su'ud*, 136-137; Gerber, 88-90; M. Cavid Baysun, "Ebüss'ûd Efendi," *İA*, Vol. 4, 95-96; Ahmet Akgündüz, "Ma'rûzât," *DİA*, 28 (2003), 72-73.

Ottoman Bosnian officials to the *şeyhülislâm* Ebu's-Su'ûd Efendi, often concerning relations between the traders and the state and Muslim population, as well as other more general issues.

Apart from reconciling the *'örfî* law with the *şerî'at*, Ebu's-Su'ûd Efendi further legitimised the Ottoman order through designation of the Sultan as the Caliph, that gave the sultan a power of interpretation and application of the *şerî'at* through the royal decrees, which were now brought within the scope of the *şerî'at*.¹⁰⁸ On the other hand, even though during Ebu's-Su'ûd's mandate the office of the *şeyhülislâm* gained political power and influence, the final result was gradual subordination of the office to the government, as explained by Repp: "It could be certainly agreed that the efforts of such as Ebüssuu'ûd Efendi to achieve a workable compromise between the spirit of the *şeriat* and the exigencies of the practical administration of the empire worked to the advantage of the state."¹⁰⁹

Another collection that will be examined is Çatalcalı 'Alî Efendi's collection under the title *Fetâvâ-i 'Alî Efendi*.¹¹⁰ 'Alî Efendi was the *şeyhülislâm* in time of crisis caused by the military defeats and the loss of Hungary in the war that followed the siege of Vienna in 1683.¹¹¹ The example of *şeyhülislâm* Çatalcalı Ali Efendi is indicative for the position of the *şeyhülislâms* in the seventeenth century. On the one hand, he was not hesitant to assert supremacy of the *şerî'at* over the *kânûn*, as is evident from the following *fetvâ*:

¹⁰⁸ Imber, *Ebu's-su'ud*, 269-272.

¹⁰⁹ Repp, *The Müfti of Istanbul*, 303.

¹¹⁰ Çatalcalı 'Alî Efendi.

¹¹¹ Abdülkadir Altunsu, *Osmanlı Şeyhülislâmları* (Ankara: Ayyıldız Matbaası, 1972), 94; Mehmet İpşirli, "Çatalcalı Ali Efendi," *DİA* 8 (1993), 234.

[*Question:*] Zeyd has a litigation with ‘Amr concerning certain problem. If, after he was invited to solve the problem according to the *şerî‘at*, ‘Amr replies: “I do not have anything to do with the *şerî‘at*, let’s solve it according to the *kânûn*,” what has to be done to him?

Answer: Renewal of the faith and marriage.¹¹²

On the other hand, since he opposed the Sultan and did not come to the consultations after the fall of Budim, ‘Alî Efendi was removed from the office and exiled from Istanbul. In 1690 he was allowed to return to the capital, to be installed as *şeyhülislâm* for the second time in 1103/1692.¹¹³ No matter what the personal doom of the *şeyhülislâm* was, his *Fetâvâ-i ‘Alî Efendi* is considered to be one of the four Ottoman most esteemed *fetvâ* collections.¹¹⁴

The last group of the *fetvâs* examined are individual *fetvâs* of the Bosnian *müftîs* preserved in Dubrovnik’s archive. Even though those relevant to the topic of this research are few, the fact that they provide the insight into local context and legal practice of Bosnia make them very significant curiosity.

The *kânûns* and *kânûnnâmes*, on the other hand, contain both general laws of the entire Empire and particular laws of provinces (the *sancaks* and *eyâlets*), as well as laws for particular social, ethnic, or professional groups.¹¹⁵ Hence, the research will be done on all mentioned levels, starting from common laws of Empire and then focusing towards local laws for Bosnia, as well as laws concerning social, ethnic and professional groups of non-Muslims that were present on the territory of Bosnian *eyâlet*.

The aim of the research is to determine possible changes in legal regulations concerning non-Muslim subjects in the field of the *şerî‘at* law, on

¹¹² Çatalcalı ‘Alî Efendi, 165, no. 6.

¹¹³ İpşirli, 234; Altunsu, 94-95.

¹¹⁴ Cengiz Kallek, “Fetâvâ-yi Ali Efendi,” *DİA* 12 (1995), 438; cf. Atar, 495; Aydın, 566.

¹¹⁵ Cf. Heath Lowry, “The Ottoman Liva Kanunnames Contained in the Defter-i Hakani,” *Osmanlı Araştırmaları*, 2 (1981), 49-52.

the example of the *fetvâs* through comparison with pre-Ottoman *şerî'at* regulations as reviewed in the first chapter. On the other hand, on the example of the *kânûns* and *kânûnnâmes*, we will examine legal policy towards the *zimmîs*, compare it with regulations given in the *fetvâs*, and try to determine the interrelation, if any, between the two. While the emphasis of the research will be on the legislation towards the *zimmîs*, that is the legal status of non-Muslim subjects in theory, its implementation in reality will be observed as reflected in the *mühimme defterleri*, *hüccets*, *ilâms*, *buyuruldus*, *berâts*, and other legal documents, as well as contemporaneous narratives, i.e. Ottoman and western travelogues and chronicles.

CHAPTER IV

OTTOMAN SOCIETY AND NON-MUSLIMS

4.1. Fiscal Division: 'Askerî and Re'âyâ

As in other Islamic states that acknowledged the *şerî'at* as the state law, in the Ottoman Empire the main legal classification of the people was male – female, free – slave, and Muslim – non-Muslim (*zimmî*, *müste'min*, or *harbî*). However, Ottoman 'örfî law introduced significantly different classification into tax-paying subjects (*re'âyâ*) and sultan's representatives ('*askerîs*) who were exempted from taxes in exchange for their service, disregarding religious affiliations.¹

This two-fold division was based on pre-Islamic Persian and Central Asian conception of ideal socio-political order, whose purpose was establishment of justice ('*adâlet*) as precondition of prosperous state.² This political theory divides society into four classes (*erkân-i erba'a*) – warriors, bureaucracy, peasants and merchants-artisans, brought together by means of

¹ Colin Imber, *The Ottoman Empire, 1300-1650: The Structure of Power* (Hampshire: Palgrave Macmillan, 2002), 244-245.

² İnalcık, *The Ottoman Empire*, 65-69; idem, "State and Ideology under Sultan Süleyman I," 70-74; Ergene, "On Ottoman Justice," 55; C. E. Bosworth, "Ra'yya. 1. In the medieval Islamic world," *EF*.

justice, state, and the law (*şerî'at*) into the “circle of justice” (*dâ'ire-i 'adliye*) or “ring of rulership” (*hâkâniyet çemberi*).³ Contemporary Ottoman authors saw in the distortion of the circle of justice main reason for Ottoman decline in the 17th century.⁴ According to Bosnian *fâkih* Hasan Kâfi Akhisârî (Pruščak), the ideal society should be divided into four classes:

First are (designated) for sword, second for pen, third for agriculture, fourth for craft and trade; the state was given the rule above all.

In first class are rulers, sultans, their representatives and other soldiers. Their duty is to keep discipline in all classes; to protect all with righteousness and good rule, as scholars and sages tell them; to fight and ward off enemies and to carry out all affairs that belong to duty of commanders...

In the second class are scholars, sages and other good and pious people. Their duty is to keep God's commandments and prohibitions by means of writing and teaching; to expound *şerî'at* institutions to all classes; to give opinions, advices and instructions; to teach the faith and religious rituals; to urge people to piety and tolerance; to pray for common good, and especially for the ruler to be on the right path.

In the third class are agriculturalists and gardeners, who are nowadays known as *re'âyâ*. Their duty is to work and to care for victuals by cultivating the fields, planting the gardens, and growing the cattle to meet the needs of all classes. After studying and fighting for faith (*cihâd*), this is the best occupation.

In the fourth class are traders and craftsmen.⁵

For the maintenance of the order it was necessary to keep everyone in its own position at any price:

According to opinion of Islamic sages, if one would be outside of (mentioned) classes, he should not be left alone, but forced to join one of the classes. Some philosophers think that he should be killed in order not to be a burden to human community.⁶

As already mentioned, in the Ottoman *'orfî* law the population is divided into two main groups: the ruling class – *'askerî* (literally “military class”) and

³ Bahaeddin Yediyıldız, “Osmansko društvo,” in: Ekmeleddin İhsanoğlu, ed., *Historija Osmanske države i civilizacije*, tr. Kerima Filan, Enes Karić, Amina Šiljak-Jesenković (Sarajevo: Orijentalni institut, 2004), 600; Ergene, “On Ottoman Justice,” 55.

⁴ Ergene, “On Ottoman Justice,” 55.

⁵ Hasan Čafi Pruščak, “Nizam ul alem,” tr. Safvetbeg Bašagić, in: *GZM* 31 (1919), 168.

⁶ *Ibid.*, 168.

the ruled class – *re'âyâ* (“flock”). The *'askerî* class was subdivided into royal household (*sarây halkı*), army (*seyfiye*), scholars (*'ilmiye*), and administration (*kalemiye*). They were performing some public duties for the state as sultan’s representatives, and consequently were exempted from taxes and received salaries. The *re'âyâ* class, consisting of merchants, artisans, peasants and herdsmen, was engaged in production of goods and wealth and therefore had to pay taxes. Some groups of the *re'âyâ* that received certain tax exemptions and privileges in exchange for performance of some special services for the state, formed an intermediary class between the *'askerîs* and *re'âyâ*, known as *mu'âf ve müselleme*. On the top of the social pyramid was the sultan, portrayed by the official ideology as the shepherd who is protecting his flock, the *re'âyâ*, from the external enemy and internal abuses and injustices of administration, in the accordance with ancient Middle Eastern traditions.⁷

Every member of the *'askerî*, *re'âyâ*, and *mu'âf ve müselleme* sub-class was personally recorded in special registers based on regular surveys, while social mobility between the groups in theory represented the breach of the fundamental state principle. In practice, however, a certain degree of fluctuation from one group to another was allowed. By means of the *devşirme*, the levy of Christian youths, certain amount of Christian *re'âyâ* periodically entered into state service and became members of the *'askerî* class. Otherwise, Christians were often engaged as additional military troops of the Ottoman army during the conquest of the Balkans. Muslim *re'âyâ* had an opportunity to become the *'askerî* upon a decree (*berât*) of the sultan for outstanding acts as military

⁷ İnalcık, “The Ottoman State,” 16-17; Halil İnalcık, *The Ottoman Empire*, 68-69; Yediyıldız, 597-637; Suraiya Faroqi, “Ra'îyya. 2. In the Ottoman Empire,” *EP*.

volunteers on the frontiers, or through the study of Islamic law and subsequent membership in the *'ulemâ* class.⁸

Apart from the classical division, some authors propose another classification that would include more sub-classes and layers, most notable being the intermediary class of town-dwellers, who, in general, neither pay taxes nor received salaries.⁹

In any case, it is important to emphasise that distinction between two classes was not based on religion but relationship towards the state. The *'askerî* class itself was open to non-Muslims, and included Christian *sipahîs* (members of provincial *timariot* army), soldiers in fortresses, *knezes*, and higher clergy and rabbis. The *re'âyâ* consisted of both Muslims and non-Muslims since tax-exemption was based on the service to the state, and not religious affiliation. Thus, the legal and fiscal relationship between the *'askerî* and the *re'âyâ* forms the main body of the *'örfî* law. To what degree the regulations of the *'örfî* law considering non-Muslims were influenced by the *şerî'at* conceptions will be examined later.

Members of the *'askerî* class were within the jurisdiction of the imperial council (*Dîvân*), or councils under the presidency of the head of military organisations to which they belonged. In exceptional cases that threatened public order the sultan, viziers, and other representatives of the sultan could impose sentences (*siyâseten*) and grant pardons unrestricted by the laws. The

⁸ Ibid., 16-17; idem, *The Ottoman Empire*, 68-69; Faroqhi, "Ra'yya," *EI*².

⁹ Cf. Nenad Moačanin, *Slavonija i Srijem u razdoblju osmanske vladavine*, (Slavonski Brod: Hrvatski institut za povijest, Podružnica za povijest Slavonije, Baranje i Srijema, 2001), 107-108; Adem Handžić, "Značaj muafijeta u razvitku gradskih naselja u Bosni u XVI vijeku," in: Adem Handžić, *Studije o Bosni: Historijski prilozi iz osmansko-turskog perioda* (Istanbul: IRCICA, 1994), 151-160; Branislav Đurđev, *Uloga crkve u starijoj istoriji srpskog naroda* (Sarajevo: Svjetlost, 1964), 103.

re'âyâ, on the other hand, was under the jurisdiction of the *kâdî*, who administered and executed both the *'örfî* and *şerî'at* law. No person could be punished without the *kâdî*'s written verdict, although the execution of the punishment was in the hands of the *subaşı* or *bey*. In matters that were within the sphere of the *şer'iat*, especially in civil law, even the sultan could not change the *kâdî*'s decision.¹⁰ On the other hand, in legal cases that included only non-Muslims, i.e. Christians and Jews, their religious representatives were authorised to inflict penalties on the transgressors of its own religious law, often executed by Ottoman authorities.¹¹

In the 12th/18th century, the term *re'âyâ* started to lose its original religious neutrality, until, at latest in the 13th/19th century, it became to mean Christian taxpayers only.¹²

4.2. Religious Division and “*Millet System*” Theory

The recognition of non-Muslim legal autonomy obviously represents continuity with the practice of previous Islamic states. The adoption of Islamic law as the supreme law of the state, though partially transformed through the *kânûn*, and in principal restricted to the civil law (at least according to the “secularist” historians), meant embracement of the *şerî'at* conception of *zimma*, and division of population according the religious lines.

The Ottoman Empire, like the Caliphate before it, housed numerous non-Muslims subjects. In the Ottoman case, however, the variety of different

¹⁰ İnalcık, *The Ottoman Empire*, 74-75.

¹¹ Heyd, *Studies in Old Ottoman Law*, 221-222.

¹² Faroqhi, “Ra’iyya,” *EF*.

types of *zimmîs* was even greater; additionally including various Muslim peoples and sects, the Ottoman society represented one of the greatest multi-religious and multi-ethnic societies of the world history, often termed “plural society.”¹³ According to the traditionally accepted opinion, the Ottoman government divided various *zimmîs* into different communities based on common religion, known as the *millet* system. These communities (*millets*) had certain degree of communal autonomy and self-government, representing in a way a state within a state. The *millets* were represented in front of the government by their religious leaders (*millet başıs*), who, in exchange for their services, received appointment (*berât*) as state officials. The *millet başıs* were in charge of tax-collection and had legal authority over members of their *millets*. According to the tradition, after the conquest of Constantinople, Sultan Mehmed II appointed Gennadios Scholarios, known opponent of union of the Churches and Rome, as the patriarch of Constantinople and titular head of all Orthodox Christians within the borders of the Empire. Afterwards, Mehmed II appointed in the same manner Joachim, the patriarch of the Armenians, and Moses Capsali, the chief Rabbi (*haham başı*) for the Jews. The sultan’s intention was to achieve and ensure firm control over non-Muslim communities through their representatives with the seat in Istanbul.¹⁴

¹³ cf. Braude and Lewis, “Introduction,” 1.

¹⁴ Ibid.; Gibb and Bowen, 211-220; Michael O. H. Ursinus, “Millet,” *ET*; Halil İnalcık, “The Status of Greek Orthodox Patriarch under the Ottomans,” in: Halil İnalcık, *Essays in Ottoman History*, (Istanbul, Eren, 1998), 195-223; Stanford J. Shaw, *History of the Ottoman Empire and Modern Turkey*, Vol. 1, reprint, (Cambridge: Cambridge University Press, 1995), 58-59, 61; Peter F. Sugar, *Southeastern Europe under Ottoman Rule, 1354-1804* (Seattle and London: University of Washington Press, 1977), 45-49; cf. L. S. Stavrianos, *The Balkans since 1453* (London: Hurst & Company, 2000), 89-90; İlber Ortaylı, “The Ottoman Millet System and its Social Dimensions,” in: İlber Ortaylı, *Ottoman Studies* (İstanbul: İstanbul Bilgi University Press, 2004), 15-22.

According to this view, there were three types of officially recognised *zimmîs* in the Ottoman Empire: (1) the Orthodox Christians, (2) the Armenians, and (3) the Jews.

The Orthodox *millet* (*Rum milleti*) included all Orthodox Christians in the Empire, disregarding their ethnic particularities (mainly Greeks and Balkan Slavs, i.e. Serbs and Bulgarians). However, in 1557 “monolith” Orthodox *millet* was officially divided by restoration of the Patriarchate of Peć and formal recognition of the Serbian Church. The Patriarchate of Peć had jurisdiction over Serbian Orthodox people of the Empire from north Macedonia and eastern Bulgaria, Serbia, and Monte Negro, to Bosnia, with parts of Croatia, Dalmatia, Slavonia and Hungary (see Appendix B). Apart from the Serbs, the Patriarchate of Peć included small number of other Orthodox Slavs in its territory, namely Bulgarians and Macedonians, what was reflected in the titlature of the patriarchs – “the patriarch of Serbs and Bulgarians.”¹⁵ Furthermore, it should not be overlooked that the Oecumenical Patriarchate was only *primus inter pares* in relation to the Eastern Patriarchates of Alexandria, Antioch and Jerusalem, which, in theory, did not loose their ecclesiastical autonomy. In practice, however, the Patriarchate of Constantinople was the link between the Eastern Patriarchates and the Porte, and its Oecumenical patriarch was naming new patriarchs of the East, often Greeks, to the their thrones.¹⁶

Jewish *millet* consisted of several communities. According to theological differences, Jews were Rabbanites (those who revered the Talmud),

¹⁵ Đurđev, 122-123; Laszlo Hadrovics, *Srpski narod i njegova crkva pod turskom vlašću*, tran. Marko Kovačević, (Zagreb: Nakladni zavod Globus, 2000), 88.

¹⁶ Steven Runciman, *The Great Church in Captivity. A Study of the Patriarchate of Constantinople from the Eve of the Turkish Conquest to the Greek War of Independence* (Cambridge: Cambridge University Press, 1968), 176-177.

and Karaites (those who did not revere the Talmud); in terms of geographical origin, Jews in the Ottoman Empire were either natives – former Byzantine Greek-speaking Jews (*Romaniot*) and Jews of the Middle East and North Africa, or immigrants – German speaking Jews from Central and Eastern Europe (*Ashkenazim*), and Jews from Spain and Portugal (*Sephardim*). In the course of time, the newcomers, in particular Sephardim, outnumbered the natives, and became the most significant segment of the Ottoman Jewry.¹⁷

According to Gibb and Bowen, the peculiarity of the Armenian *millet* was that besides members of the Armenian Church it included all denominations otherwise unclassified. Hence, it incorporated sects regarded as heretic by the main Churches –so called *Bogumils* of Bosnia, and genuine *Bogumils* of Bulgaria, Middle Eastern Christian sects as Nestorians, Copts, Jacobites, Maronites, and the Uniate Armenians of Cilicia, as well as Roman Catholics (*Latin tâ'ifesi*) who were not formally recognised as separate *millets*.¹⁸

The *millet* system theory was disputed by Benjamin Braude in the article “Foundation Myths of the Millet System.”¹⁹ Braude points out that the term *millet* does not appear in the Ottoman official vocabulary before *Tanzîmât* reforms in nineteenth century.²⁰ Instead, “the commonest term for a group of *dhimmîs* was *taife* (group, people, class, body of men, tribe) and less commonly

¹⁷ Avigdor Levy, “Introduction,” in: A. Levy, ed., *The Jews of the Ottoman Empire* (Princeton: The Darwin Press, 1994), 3-12; Gibb and Bowen, 218-219.

¹⁸ Gibb and Bowen, 214-231; Sugar, 49, asserts the same, except for Roman Catholics, who are included into the Orthodox *millet*.

¹⁹ Benjamin Braude, “Foundation Myths of the Millet System,” in: Benjamin Braude and Bernard Lewis, eds., *Christians and Jews in the Ottoman Empire. The Functioning of a Plural Society*, (New York, London: Holmes & Meier Publishers, 1982), 69-90; cf. idem, “The Strange History of the Millet System,” in: Kemal Çiçek, ed., *The Great Ottoman-Turkish Civilization*, vol. 2 (Ankara: Yeni Türkiye, 2000), 409-418.

²⁰ Braude, “Foundation Myths,” 73.

cemaat (congregation, religious community).”²¹ Originally, the word *millet* (Arabic *milla*) had the meaning “religion, confession, rite,” largely identical with the word *dîn*, and under this meaning it occurs in the Qur’ân.²²

Michael Ursinus, however, rejected Braude’s arguments and proved that the term *millet* in the meaning of “religious or confessional community” occurs in documents from the late 17th century *mühimme defterleri*.²³ Later, Braude had accepted Ursinus’ datation of the term, however, with a remark that “... even when a change in administrative terminology was introduced, apparently in the seventeenth century, there is no evidence that it went beyond the capital or was accompanied by any substantive administrative changes. Such a transformation did not occur until the reforms of the Tanzimat.”²⁴ Braude’s view that the “*Millet System*” is a creation of later times, namely of the 19th century, is shared by a couple of other scholars.²⁵

On the other hand, the Ottoman official documents do contain ethnically distinctive terms for Greeks (*Rûmî*), Serbs (*Sırf*), or Armenians (*Ermenî*), aside with religious designations, as mentioned by Braude himself,²⁶ which obviously implies that certain level of ethnic and communal division did exist. On the other hand, the occurrence of the term *millet* in official Ottoman documents before the 18th century is very rare, even exceptional. Apart from two cases from the *mühimme defterleri* published by Ahmed Refik and mentioned by

²¹ Ibid., 72.

²² Ursinus, “Millet,” *EF*.

²³ Ibid.

²⁴ Braude, “The Strange History,” 418, note 3.

²⁵ Gilles Veinstein, “Balkanske provincije (1606-1774),” in: Robert Mantran, ed., *Istorija Osmanskog Carstva*, tr. Ema Miljković-Bojanić, (Belgrade: Clio, 2002), 359, 399; Yavuz Ercan, “Non-Muslim Communities under the Ottoman Empire (Millet System),” in: Kemal Çiçek, ed., *The Great Ottoman-Turkish Civilization*, vol. 2 (Ankara: Yeni Türkiye, 2000), 382.

²⁶ Braude, “Foundation Myths,” 72.

Ursinus – *millet-i Ermeniyâni* (Armenian *millet*) in a document from 746/1591 and *papa milleti* (“the Pope *millet*” – Catholics), *Rum ve gerek Ermeni ve gerek sâ’ir milleti* (“Orthodox Christian, Armenian and other millets”) in 1108,²⁷ we came across only two other examples. One is a *berât* from 1036/1626, issued by sultan Murat IV (1623-1640), which invests Catholic bishop Toma as the head of the Franciscans in Bosnia. In addition the sultan granted the Franciscans the protection against the priests from “the Serbian and Vlach *millet*” (*Serf ve Eflak milletinde olan râhibler*).²⁸ Another example is found in the *sicil* (*şerî’at* register) of Sarajevo court from 1728/1729, which contains a copy of a document from 989/1580-1581 concerning the Jews in Sarajevo, referring to them in the rest of the text as *millet-i mezkûre/merkûme* (“the above-mentioned *millet*”).²⁹

On the other hand, ten published *mühimme defterleri* from the mid-15th to mid-16th century do not contain a single entry containing the term *millet* in the above mentioned meaning. In the *kânûns* and *kânûnnâmes* for the period from the 15th to 17th centuries the term cannot be found neither. The same is the case with other legal sources used in this thesis: collections of Ottoman documents like *berâts*, *buyuruldus*, *fermâns*, *hüccets*, etc., found in Bosnian monasteries and churches, or *fetvâ* collections of two *şehyüslâms* from the 16th

²⁷ Ahmed Refik, *Onikinci Asr-ı Hicri’de İstanbul Hayatı (1689-1785)*, (Istanbul: Enderun Kitabevi, 1988), 21-22; Ursinus, “Millet” *EF*.

²⁸ Vančo Boškov, “Turski dokumenti o odnosu katoličke i pravoslavne crkve u Bosni, Hercegovini i Dalmaciji (XV-XVII vek),” *Spomenik SANU* 131, Odeljenje istorijskih nauka 7 (Belgrade, 1992), 35-36, doc. 21.

²⁹ Moric Levy, *Sefardi u Bosni. Prilog historiji Jevreja na balkanskom području*, trans. by Ljiljana Masal, ([Klagenfurt:] Bosanska biblioteka, [1996]), 15; cf. Alija Bejtić, “Jevrejske nastambe u Sarajevu,” in: *Spomenica 400 godina od dolaska Jevreja u Bosnu i Hercegovinu*, (Sarajevo, 1966), 26.

and 17th century.³⁰ Instead of the term *millet*, terms like *tâ'ife* (e.g. *Latin tâ'ifesi*), *cemâ'at* (e.g. *cemâ'at-i Eflakân*) or *kefere* (e.g. *Rum ve Sırf ve Eflak keferesi*) were usually used to specify various non-Muslim communities. The term *millet* will probably be discovered in few other pre-18th century documents, but that will not change the fact that it was used exceptionally and that the other, above-mentioned terms prevailed. Furthermore, earlier occurrence of the term itself does not prove that a system named after it came into existence before the 19th century, as will be shown on several levels in the following pages.

The Armenian patriarch, instead of being in power over not only all Armenians but otherwise non-classified communities like Catholics, Bosnian *krstjans* and Bulgarian *bogumils*, Maronites, Nestorians, and others since Mehmed II's time, actually did not have influence over his own community much further than Istanbul before the 18th century, and became the head of Armenians of the Empire only in the 19th century.³¹ Before that time "... the Armenian communities were recognised as independent groups, distinguished by geographic or administrative division."³²

Unlike the Orthodox Christians who were recognised by the Ottomans as a separate religious community under the leadership of the patriarch, the Roman Catholics (*Fireng*, *Latin*) never received such an official recognition. They were treated individually, differing from one group to the other, and were

³⁰ See the list of primary sources in Bibliography.

³¹ Kevork B. Bardakjian, "The Rise of the Armenian Patriarchate of Constantinople," in: Benjamin Braude and Bernard Lewis, eds., *Christians and Jews in the Ottoman Empire. The Functioning of a Plural Society*, Vol. 1 (New York, London: Holmes & Meier Publishers, 1982), 89-100.

³² *Ibid.*, 92.

required to negotiate individual *fermâns* in order to regulate their status in the Empire. Such agreements were, for example, the *ahd-nâme* of the Catholics of Galata in 1453,³³ or the *ahd-nâmes* given to the Bosnian Catholics soon after the conquest of the country in 1463. Even though, in theory at least, the Catholics were regarded as aliens, while their religious leader – the pope – was the archenemy of the sultan and Islam, the position of Ottoman Catholics improved over time.

After a pretender to the Ottoman throne, prince Cem, ended up in Rome in the custody of pope Innocent in 1489, sultan Bayezid II was forced to accept appeasement and conclude an agreement with the pope that included payment of high annual sums and other concessions, until the death of his brother Cem in 1495.³⁴ In 1520's the Catholics of the Empire got a new advocate after the French king, Francis I, made alliance with Süleyman the Magnificent against the Habsburgs. Apart from military assistance, the alliance included trading privileges and certain religious rights for the Catholics. The Capitulations of 1569 made possible for the Church to send missions to the Ottoman Empire, while the French ambassador became the most important person in matters concerning Catholics and their Church.³⁵ In 1616 the Habsburgs were granted their own Capitulations with the provisions regarding Catholics similar to those of the French, with a special clause concerning the Habsburg's protection over the Jesuits.³⁶ Another important advocate of the Catholics in the Empire became

³³ Charles A. Frazee, *Catholics and Sultans. The Church and the Ottoman Empire 1453-1923*, (London-New York-New Rochelle-Melbourne-Sydney: Cambridge University Press, 1983), 7.

³⁴ Ibid., 18-22; Caroline Finkel, *Osman's Dream. The Story of the Ottoman Empire 1300-1923* (London: John Murray, 2005), 82-90.

³⁵ Ibid., 26-27, 67-68.

³⁶ Ibid., 79-80.

a bishop appointed by the Congregation for the Propagation of the Faith, established by the pope in 1622, with the jurisdiction over all missionary lands lacking resident bishop, that is, all Ottoman lands except Albania and the Greek islands.³⁷

In Bosnia, according to the registry of Ottoman documents of the Franciscan convent of Fojnica (Foyniçe), interests and affairs of Catholics, or, more precisely, the Franciscans, were sometimes mediated by ambassadors of 'German emperor' (*veliki elčia njemačkog cara*) (1076/1665, 1672),³⁸ a French ambassador (1104/1693),³⁹ an ambassador of Venice (1035/1625),⁴⁰ or merchants of Dubrovnik (Ragusa) (1614).⁴¹

Republic of Dubrovnik, the Sultan's Catholic vassal, was looking after not only chapels and churches in various towns in the Ottoman territory where they had their merchant settlements (Sofia, Filibe/Plovdiv, Belgrade, Edirne, Istanbul-Galata, Yeni Bâzâr/Novi Pazar, etc.), but the Catholics of Herzegovina, i.e. the Bishopric of Trebinje (Trebinjsko-mrkanska biskupija), whose bishop was the suffragan of the archbishop of Dubrovnik.⁴²

The Franciscans of Bosnia, since 1517 organised into the Franciscan Province of Bosna Srebrena (Provincia Bosnae Argentinae), were for the most of the time the only Catholic priests in Bosnia and adjacent areas. They were directly subordinated to the general minister of the Franciscan order and the

³⁷ Ibid., 88-90, 102.

³⁸ Matasović, 155, doc. 546, 155-156, doc. 551, 171, doc. 613.

³⁹ Ibid., 186, doc. 755.

⁴⁰ Ibid., 135, doc. 312.

⁴¹ Ibid., 126-127, doc. 233.

⁴² Vesna Miović, *Dubrovačka diplomacija u Istanbulu* (Zagreb-Dubrovnik: HAZU, 2003), 100-103; idem, *Dubrovačka Republika u spisima osmanskih sultana* (Dubrovnik: Državni arhiv u Dubrovniku, 2005), 110-115.

pope. In addition, the pope had testamentary right to the Bosnian Kingdom, since Bosnian queen Katarina, who died in exile in Rome in 1478, specified in the testimony that if her children, Sigismund and Katarina, who were taken by the Ottomans and converted to Islam, do not return to Christianity, Bosnian kingdom will come into the possession of the Papacy. Habsburg dynasty, on the other hand, as heir of the Hungarian crown, claimed the patronage over the Bosnian diocese, and the right to invest Bosnian bishops. Since the Papacy had to take into consideration Habsburg political influence, it was often ready to confirm Habsburg candidates as bishops.⁴³ In this way, the archduke of Austria, Ferdinand Habsburg, put forward a candidate for archbishopric of Bar in 1607,⁴⁴ a bishop of Skopje (Üskûb) in 1609,⁴⁵ while upon a proposal of “Hungarian” king Mathias II, Pope Paul V invested a bishop of Roškopolje (Duvno).⁴⁶

However, in spite of the existence of various advocates in Istanbul, the Catholics were never organised as a compact body, or an Empire-wide *millet*, but remained disconnected, secluded *Latin ta'ifës* determined by geographical or administrative factors. Catholic bishops rarely received investiture with *berâts* from the Ottoman authorities, and usually were residing outside their nominal dioceses, i.e. outside the borders of the Ottoman Empire.⁴⁷ Needs of the Catholic fold were served by lower clergy, missionaries (especially after the establishment of the Congregation for the Propagation of the Faith), or, as was the case in Bosnia, by Franciscan monks who were granted certain rights and

⁴³ Džaja, *Konfesionalnost i nacionalnost*, 167-171.

⁴⁴ Dominik Mandić, ed., *Hercegovački spomenici franjevačkog Reda iz turskog doba*, sv. 1, g. 1463-1699. (Mostar: Monumenta franciscana Iugoslavica, 1934), 52, doc. 42.

⁴⁵ Ibid., 59-60, doc. 46.

⁴⁶ Ibid., 60-61, doc. 47, 61-64, doc. 48.

⁴⁷ Hadrovics, 55.

privileges by the *ahd-nâmes* and *fermâns* issued by sultans. In contact with authorities local Catholic communities were not represented exclusively by their religious leaders – priests, Franciscan monks, etc., but also by their secular dignitaries – *knezes*, *voyvodas*, and the like.

Even though some historians accepted a tradition that Mehmed II recognised the Jews as *millet* and appointed Moses Kapsali as the *Haham Başı*, or the Chief Rabbi with powers over all Jews similar to those enjoyed by the Patriarch over Orthodox Christians,⁴⁸ modern scholars of Ottoman Jewry in general are ready to acknowledge his appointment as the *Haham Başı* of Istanbul, but question his authority over the Jews outside the capital, and the existence of the Jewish *millet* as Empire-wide organisation.⁴⁹ Instead of being one community with single organisation on the level of the Empire, the Jewry comprised independent local congregations (Hebrew *kahal*, Ottoman *cemâ'at*) that consisted of Jewish families and individuals centred around its synagogue and subjected to its own *rav* or *haham*, or rabbi. Lay leaders formed congregation's council (*ma'amad*). In towns with several congregations the Jews were united into town-wide communities (*kehillah*).⁵⁰ This organisation was in accord with Ottoman pattern of urban organisation, that is division of town's communities into *mahalles* ("quarters") generally on the basis of

⁴⁸ Gibb and Bowen, 217.

⁴⁹ Lewis, *The Jews of Islam*, 126-128; Amnon Cohen, *Jewish Life under Islam. Jerusalem in the Sixteenth Century*, (Cambridge: Harvard University Press, 1984), 3-5; idem, "On the Realities of the Millet System: Jerusalem in the Sixteenth Century," in: Benjamin Braude and Bernard Lewis, eds., *Christians and Jews in the Ottoman Empire. The Functioning of a Plural Society*, Vol. 2 (New York, London: Holmes & Meier Publishers, 1982), 8-9; A. Levy, "Introduction," 43 and passim; for a slightly different opinion see: Mark A. Epstein, "The Leadership of the Ottoman Jews in the Fifteenth and Sixteenth Century," in: Benjamin Braude and Bernard Lewis, eds., *Christians and Jews in the Ottoman Empire*, Vol. I, (New York, London: Holmes & Meier Publishers, 1982), 104-105.

⁵⁰ A. Levy, "Introduction," 46-48.

religious affiliation, and organised around the places of worship under the leadership of the religious representative.⁵¹ Even though the sense of solidarity among the Jews was strong and they often acted as one community in front of the Ottoman authorities, on internal level each group (*edah*) followed its own ritual, traditions, customs and legal practices. On the other hand, in especially complicated matters local rabbis sometimes were turning to religious authorities in the bigger cities of the Empire, like Istanbul or Thessalonica. On the whole, however, they were solving day-to-day problems on their own.⁵² To sum up, neither the Jewish community was formed as single community, the *millet*, under the leadership of one *millet başı* before the 19th century, but was divided into numerous local communities and sub-communities with certain sense of inter-Jewish solidarity.

The Orthodox Church received full official recognition by the Ottomans. Apart from being in harmony with classical Islamic policy towards non-Muslim subjects – the *zimmîs*, Ottoman policy towards the Orthodox Church and its believers went even further, following the postulates of the *istimâlet*: in order to facilitate the conquest and win over the indigenous population, the Ottomans were ready to grant wide concessions, sometimes beyond the limits of stipulations of Islamic law. In this way, members of Christian military groups and clergy were incorporated into the Ottoman administrative system, and granted *berâts* and, sometimes, *tîmârs*, as members of Ottoman ruling class – the ‘*askerîs*’.⁵³ Even though the grants to the Orthodox clergy date back to the

⁵¹ Lewis, *The Jews of Islam*, 126; cf. “Mahalle,” *EP*.

⁵² Epstein, 109-112.

⁵³ İnalcık, “The Status of Greek Orthodox Patriarch,” 196-197.

period before the conquest of the Constantinople,⁵⁴ the installation of Gennadius Scholarius as the Patriarch by Sultan Mehmed the Conqueror in 1454, meant full incorporation of the Orthodox Church into the Ottoman state. With the appointment of the leader of anti-Western, anti-unionist party in the Orthodox Church to the see of the patriarchy, Mehmed II secured the support of the Orthodox circles against Western intrigues, and represented himself as “...the defender of the Eastern Orthodox Religion against the expansive policy of the West, which was coordinated and exercised by the Pope.”⁵⁵

According to the vast majority of scholars,⁵⁶ let us repeat again, the Orthodox Church became the official representative of Orthodox people in the Empire. The question of the autonomy of the Church is another matter. In general, the Church had autonomy in ecclesiastical matters as elections of higher clergy (even though candidates needed the approval of the sultan in form of the *berât*),⁵⁷ jurisdiction over the family law, i.e., marital law and inheritance (limited to movables, since the inheritance of land was within the jurisdiction of the Ottoman laws),⁵⁸ and the collection of the church-tax.⁵⁹ Some scholars, on the other hand, went much further and exaggerated the independence and influence of the Church over the Christians. Along these lines, the Patriarchate of Peć is perceived as “... theocratic state within superior Ottoman state,”⁶⁰ the

⁵⁴ Ibid., 197; N. J. Pantazopoulos, *Church and Law in the Balkan Peninsula During the Ottoman Rule*, (Amsterdam: Adolf M. Hakkert, 1984; reprint of Thessaloniki edition from 1967), 19.

⁵⁵ Pantazopoulos, 20.

⁵⁶ Runciman, 167-172 and passim; İnalcık, “The Status of Greek Orthodox Patriarch,” 195-223; Pantazopoulos, , 5-6, 23-24; Stavrianos, 103-104; for the Serbian Orthodox Church as representative of Serbian people see: Đurđev, *Uloga crkve*, 127-128.

⁵⁷ Ibid., 178; Hadrovics, 51-55.

⁵⁸ Đurđev, *Uloga crkve*, 177; Hadrovics, 57; Đoko Slijepčević, *Istorija Srpske pravoslavne crkve*, Vol. 1 (München, 1962), 339; Pantazopoulos, 24.

⁵⁹ Hadrovics, 61-67; Runciman, 171-172; Pantazopoulos, 26.

⁶⁰ Ibid., 86; cf. Slijepčević, 340.

Church has absolute powers over all fields of life of its believers,⁶¹ while the Patriarch is, according to Runciman, "... the *Ethnarch*, the ruler of the Orthodox *millet*,"⁶² and, "...to some extent the heir of the Emperor."⁶³

4.3. Inner Structure of Non-Muslim Societies

4.3.1. *Re'âyâ* and *Sipâhîs*

Before the acceptance of a notion of the monolith Church as the only representative of the Orthodox Christians, and the patriarch as the absolute *Ethnarch* with complete control over and impact on believers' lives, some discordant facts have to be mention. According to commonly accepted opinion, after the Ottoman conquest and dissolution of medieval Balkan states, the ruling classes of Balkan societies vanished as well – they were either destroyed or had to migrate to unconquered lands. Once without the nobility, peoples of the Balkans, lacking officials to administer their civic affairs, turned to the Church as the only remaining power that was able to fulfil this duty. In this manner, the Church, alongside the spiritual authority, got civil power over the people as well.⁶⁴ However, the assertion that the Balkan ruling class as a whole disappeared by one way or another is an exaggeration; while the members of highest ranks of nobility were killed during the Ottoman conquest or fled their

⁶¹ Pantazopoulos, 23; Vasa Čubrilović, "Srpska pravoslavna crkva pod Turcima od XV do XIX veka," in: "Projekat Rastko," <<http://www.rastko.org.yu/istorija/spc/vcubrilovic-crkva-turci.html>> (accessed November 2006); originally published in: *Zbornik Filozofskog fakulteta*, Vol. V-1, Belgrade 1960; reprint: Vasa Čubrilović, *Odabrani istorijski radovi*, (Belgrade: Narodna knjiga, 1983).

⁶² Runciman, 171-172.

⁶³ Ibid., 175.

⁶⁴ cf. Runciman, 167-168, and *passim*.

countries, some representatives of middle and lower ranks of nobility eventually came to terms with the conquerors. The Ottomans were primarily concerned with their military potential, and did not hesitate to include members of defeated Christian forces into their army in order to facilitate further conquests.⁶⁵ In many cases, as was stressed by Professor İnalcık, "... former *pronoïa* holders and seigneurs in the Balkans were left on their fiefs as Ottoman *tîmâr*-holders."⁶⁶ Consequently, after the official recognition by the Ottoman regime, Christian feudal lords, now as Ottoman *sipâhîs*, in sources mentioned as *kadîmî* ("old"), which refers to their pre-Ottoman origin, continued to exercise power over the peasants on their *tîmârs*, although in somewhat narrowed capacity.

Even though the peasants were legally speaking free, while the *sipâhîs* were only the intermediaries between the state and the peasants, some of the rights of the *tîmâr*-holders, like collection of not only agricultural taxes, but also penal dues (*cürm ü cinâyet*), in reality often resulted in their interference into legal matters although the peasants were officially under the jurisdiction of the *kâdî*-court. In addition, remaining *bâd ü havâ* ("wind and air") dues, which, apart from penal dues, included taxes on inheritance when the land is not inherited from father to son (*resm-i tapu*), marriage taxes (*resm-i gerdek*, *resm-i 'arûsâne*), and taxes for construction of the house (*ev/dam yeri tapusu*), labour dues (*kulluk*) and limitation of peasants' freedom of movement from one village to another with the requirement of payment of the *çift bozan akçesi* fine, from

⁶⁵ Halil İnalcık, "Od Stefana Dušana do Osmanskog Carstva. Hrišćanske spahije u Rumeliji u XV vijeku i njihovo porijeklo," *POF* 3-4 (1952-53), 23-53, translation of: Halil İnalcık, "XV. Asırda Rumeli'de Hristiyan Sipahiler ve Menşeleri: Stefan Dušan'dan Osmanlı İmparatorluğuna," *Fuat Köprülü Armağanı*, Istanbul 1953, 207-248; cf. Halil İnalcık, "Ottoman Methods of Conquest," *Studia Islamica*, 2 (1954), 103-129.

⁶⁶ İnalcık, "The Status of Greek Orthodox Patriarch," 197; cf. Branislav Đurđev, "Hrišćani spahije u severnoj Srbiji u XV veku," *Godišnjak Društva istoričara BiH* 4 (1952), 165-169.

the 16th century onwards, gradually extended the control of the *sipâhîs* over the peasantry.⁶⁷

Christian *sipâhis* represented small but considerable group in predominantly Muslim organisation of the *tîmâr* system, with the exception of the *sancak* of Smederevo (Semendire) in north Serbia, where they were majority among all *tîmâr* holders.⁶⁸ However, at the end of the 15th and the beginning of the 16th centuries, the number of Christian *sipâhîs* started to decrease. This was caused by Mehmed the Conqueror's centralization and unification policy, and the fact that the need for additional military units in the areas far away from the border (*serhâd*) was not felt any more. Faced with decrease and division of their *tîmârs* through inheritance from one generation to another, Christian *sipâhîs* had two choices: whether the conversion to Islam that provided the way to secure property from diminishing and receive bigger estates and achieve social promotion, or emigration to the enemy's territory, where Hungarians offered the Orthodox immigrants the same or larger privileges than they enjoyed in the Ottoman Empire, including self-government and freedom of confession.⁶⁹ However, although their number had decreased, a new group of Christian *sipâhîs* have occurred. They originated from the *knez* families of colonized Vlachs.⁷⁰

⁶⁷ Suraiya Faroqhi, "Rural Society in Anatolia and the Balkans during the Sixteenth Century, II" *Turcica*, 11 (1979), 118-119, 125-126; Branislav Đurđev, "O uticaju turske vladavine na razvitak naših naroda," *Godišnjak Istoriskog društva BiH* 2 (1950), 73-76.

⁶⁸ İnalçık, "Od Stefana Dušana," 23-53.

⁶⁹ Branislav Đurđev, "Srbija," in: Branislav Đurđev et al., eds., *Historija naroda Jugoslavije*, Vol. 2, (Zagreb: Školska knjiga, 1959), 75, 77; Nedim Filipović, *Princ Musa i šejh Bedreddin*, (Sarajevo: Svjetlost, 1971), 275-278.

⁷⁰ Ibid., 77.

In general, the peasantry that was included into the *tîmâr*-system as the *re'âyâ* was subjected to same regulations, whether they were *re'âyâ-i tîmâr* – the *re'âyâ* on the *tîmâr* lands, subjected to the *sipâhî*, or *re'âyâ-i evkâf ve emlâk* – the *re'âyâ* on the *vakf* (“endowment”) and the *mülk* (“private property”) lands under the owners of the *vakf* and *mülk* lands (*ashâb-i evkâf ve emlâk*) or administrators of the *vakf* (*mütevelli*) or the *mülk*.⁷¹

The general feature of the *re'âyâ* status was the payment of the taxes. The only taxes directly originating from the *şerî'at* were the *harâc* and *'öşr* (“tithe”) as land taxes, and the *cizye* as poll tax exclusively paid by non-Muslims. Other taxes paid by the *re'âyâ* were outside the scope of the Islamic law, and termed “customary” or “state taxes” – *rûsûm-i 'örfiyye*, while the *şerî'at* taxes were labelled “rightful” – *hukûk-i şer'îye*.⁷² The *cizye* belonged to the Imperial treasury and represented the most important source of revenue of the state, amounting up to 48 % of the total budget. It was a heavy burden for Christian subjects, and its increases since the end of the 16th century, along with the increases of other *re'âyâ* taxes dependent on needs of the state, resulted in mass conversions in some parts of the Balkans, as well as the alienation of the Christians.⁷³ In Bosnian case, especially in regions with unproductive soil, conversion to Islam might have reduced tax burdens up to 45 %, which, in the terms of poverty and famine, might have been a matter of physical existence. In other regions where economic conditions were better, as was the case in

⁷¹ See: Tapu-Tahrir Kânûnu (Kânûnnâme-i kitâbet-i vilâyet) from the time of Mehmed II (1451-1481) in: *Osmanlı Kanunnameleri*, Vol. 1, 368-373, 374-377.

⁷² İnalçık, “The Ottoman State,” 70; Hamid Hadžibegić, *Glavarina u Osmanskoj Državi*, (Sarajevo: Orijentalni institut, 1966), 1.

⁷³ İnalçık, “The Ottoman State,” 55, 68-69; Hadžibegić, *Glavarina*, 43.

Slavonia, elimination of the *cizye* did not represent such an improvement, and the conversion to Islam never reached such proportions.⁷⁴

All male Christians were obliged to pay the *cizye* tax. According to the Islamic law exempted categories were the poor (*fakir fukara*), mad (*mecnûn*), old, disabled, blind, and fatally sick. As said by 17th century *şeyhülislâm* Çatalcalı ‘Alî Efendi, individuals exempted from the *cizye* should have been blind (*a‘ma*), crippled (*kötürüm*), deaf (*sağır*), or old people incapable of working and earning even if they were rich.⁷⁵ The Ottoman legislation, however, into this group included non-Muslim groups or individuals in the state service, which will be discussed later.⁷⁶ Although the payment of the *cizye* was one of the basic obligations of non-Muslims, failure to pay it does not nullify their *zimmî* status according to the *fetvâ* of *şeyhülislâm* Ebu’s-Su‘ûd Efendi:

Question: Infidels from the borderland who are not registered in the Imperial register as *harâc* payers, are sometimes paying the *harâc* and sometimes not. Is it valid (*sahîh*) to forcefully deport Zeyd, his sister Hind and other relatives of the mentioned people, and to sell them to Zeyneb the Muslim?

Answer: The choice to pay the *harâc* makes person a *zimmî*, but occasional non-payment of the *harâc* does not break the *zimmet* (*zimma* agreement), and it is not valid.⁷⁷

This “infidels from the borderland” (*uç kâfirleri*) perhaps might be identified as dual Habsburg-Ottoman subjects from some places in Hungarian borderland, which were referred to by Stephan Gerlach, who travelled through the region between 1573 and 1578, and noticed that some villages and small

⁷⁴ Moaçanin, “Islamizacija seljaštva,” 58-60; idem, *Turska Hrvatska*, 109-111.

⁷⁵ Çatalcalı ‘Alî Efendi, 155, no. 3-7.

⁷⁶ Hadžibegić, *Glavarina*, 14-16; Halil İnalçık, “Djizya. ii. Ottoman,” *EP*.

⁷⁷ Düzdağ, 100, no. 436.

towns near Buda were paying taxes to both Ottoman and Habsburg emperors.⁷⁸ Some 20 years earlier, in 1559, the bishop of Eger (Eğri), Croatian Antun Vrančić (Antonius Verantius), wrote a letter to the *sancakbeyi* of Hatvan, concerning villagers from the same region, who were subjects both of the *sancakbeyi* and bishop Vrančić. In the letter Vrančić asks the *sancakbeyi* to suspend the process in the court against 12 villagers, dual-subjects, which were not paying taxes.⁷⁹

The *cizye* was sometimes payable in three different amounts, according to the wealth of the taxpayer. In 1533, in Bosnia the *cizye* was payable in three categories: 30 *akçe* for the rich, 25 *akçe* for the middle class, and 20 *akçe* for the poor. In 1692-1693, it was ordered that in the provinces that were in war region, like Bosnia, Montenegro and Serbia, the *cizye* should be collected only in lowest category in areas close to the war activities, while in those further inland it should be paid in middle category, in order to reduce the pressure on the population.⁸⁰ While the *cizye* as the poll-tax was standardized on the level of the Empire after 1530's, in the frontier areas and among the pastoralists it was continued to be collected per household.⁸¹

The *re'âyâ* taxes (*raiyyet rüsûmu*), consisted of the *resm-i çift* in the case of the Muslims, or the *ispence* in the case of the Christians, *'öşr* ("tithe"),

⁷⁸ Stjepan Matković, "Putovanja po Balkanskom poluotoku XVI. veka. XIII. Putopisi Stj. Gerlacha i Sal. Schweigera, ili opisi putovanja carskih poslanstava u Carigrad, naime Davida Ungnada od g. 1573.-78. i Joach. Sinzendorfa od g. 1577," *Rad JAZU*, Vol. 116, Filologičko-historički i filozofičko-juridički razredi, 39 (Zagreb, 1893), 12.

⁷⁹ Darko Novaković, ed., *Hrvatski latinisti. Razdoblje humanizma*, (Zagreb: Erasmus naklada, 1997), 99-100.

⁸⁰ Hadžibegić, *Glavarina*, 59-60, 87-88.

⁸¹ Nenad Moačanin, *Town and Country on the Middle Danube, 1526-1690* (Leiden, Boston: Brill, 2006), 203.

salariye, *resm-i ganem* (only for pastoralists), and *bâd ü havâ* taxes.⁸² The main difference between the *resm-i çift* and *ispence* was that the first amounted to 22 *akçe*, while the second was 25 *akçe*. Unlike the Muslim *re'âyâ*, the Christian *re'âyâ* did not enjoy reductions for non-married men (*mücerred*), while Christian widows were obliged to pay the *bive resmî* ("widow tax") in amount of six *akçe*.⁸³

In the period of economic crisis and inflation that started in 1580's, the position of rural population deteriorated, and it was soon followed with the escape of the *re'âyâ* from the *tîmâr* lands in whole Empire, and, later, rebellions and banditry. The 17th century witnessed the process of conversion of the *tîmâr* lands into the *çifliks* in hands of private investors, that in long term resulted in incurring debts and deterioration of the peasant status.⁸⁴

4.3.2. Vlachs

Nevertheless, sedentary population – peasant majority and a very thin layer of townsmen – was not the only population inhabiting Balkan lands. Certain, predominantly mountainous areas were inhabited by nomadic and semi-nomadic cattle-raising people – the *Vlachs*. The origin of the Vlachs is still a matter of controversies in the Balkan historiographies,⁸⁵ while historians from

⁸² Halil İnalcık, "Osmanlılar'da Raiyyet Rûsûmu," in: Halil İnalcık, *Osmanlı İmparatorluğu. Toplum ve Ekonomi üzerinde Arşiv Çalışmaları, İncelemeler* (Istanbul: EREN, 1993), 31-65.

⁸³ Ibid., 31-62.

⁸⁴ Halil İnalcık, "The Ottoman Decline and its Effects upon the Reaya," in: Halil İnalcık, *The Ottoman Empire: Conquest, Organization and Economy (Collected Studies)*, (London: Variorum Reprints, 1978), 338-354; Nedim Filipović "Bosanski pašaluk," in: Branislav Đurđević et al., eds., *Historija naroda Jugoslavije*, Vol. 2, (Zagreb: Školska knjiga, 1959), 586; Faroqhi, "Rural Society," 136-140.

⁸⁵ See for example papers and discussion from an international conference on the Vlachs in 15th and 16th centuries held in Sarajevo in 1973, published in: "Simpozijum Vlasi u XV i XVI vijeku

the Slavic countries are trying to prove their Slavic origin and minimize non-Slavic elements, others, like Romanian, or, to a lesser degree Albanian scholars, are proving Romanian or Albanian origin of the Vlachs and neglecting obvious Slavic components. The word “Vlach” (South Slavic – *Vlah*) originates from old Germanic word *Walh/Walah*, or *Welsch* meaning “Italian,” “French,” or “Roman in general.” In medieval Croatian documents in Latin language the term is translated as *Latinus* – “Latin.”⁸⁶

Originally, the Vlachs were descendents of indigenous Romanised pre-Slavic Balkan population. Unlike population of Roman towns and villages of the Balkans that disappeared after the migration of the Slavs, semi-nomadic Vlachs retreated into high mountains of the Balkan Peninsula and survived the Slavic wave as an individual entity. In the course of time, however, under the influence of Slavic environment the Vlachs started to Slavicise and some became bilingual. On the other hand, Slavic population in some areas adopted semi-nomadic cattle breeding life-style of the Vlachs. In this manner, the name “Vlach,” initially an ethnonym, got a socio-economic dimension, and became a term for a semi-nomadic herdsman society organised on the basis of clan-system, different from the sedentary majority of feudal Balkan societies.⁸⁷

In medieval Balkan states, the Vlachs were engaged in certain military services, transportation, and colonization of empty lands; they had special

(Sarajevo, 13-16. XI 1973),” *Radovi ANUBiH*, Vol. 73, Odjeljenje društvenih nauka, Vol. 22 (Sarajevo, 1983), 73-177.

⁸⁶ Petar Skok, “Vlah,” *Enciklopedija Jugoslavije*, 8 (Zagreb: Jugoslavenski leksikografski zavod, 1971), 514.

⁸⁷ Branislav Đurđev, “O vojnucima sa osvrtom na razvoj turskog feudalizma i na pitanje bosanskog agaluka,” *GZM*, n.s., 2 (1947), 108-109; idem, “O uticaju turske vladavine,” 46.

position and specific legal status, different from that of other population.⁸⁸ The Balkan states kept the Vlachs isolated from sedentary population to prevent possible nomadization of peasants. On the other hand, the feudal system was gradually absorbing autonomies of Vlach herdsmen and their clan structure, in favour of sedentary way of life.

However, the Ottoman conquest and dissolution of Balkan states radically changed the situation – once the pressure of feudal structure was gone, waves of Vlach migrations submerged certain areas of the Balkans. Migrations of Vlachs were further stimulated by the Ottomans, who were well aware of benefits that Vlach military and colonising potential represent.⁸⁹ In Anatolia and southeastern Balkans the Ottomans were using Turkmen tribes – semi-nomadic herdsmen, the *Yürüks* – as auxiliary troops and colonising elements. Since the capacities of the *Yürüks* were exhausted, an adequate substitution and assistance for further conquests in the Balkans was found in the Vlachs.⁹⁰ Vlach migrations turned once sedentary regions into semi-nomadic, while agriculture was substituted with animal husbandry. The change did not happen only in deserted regions where the Vlachs replaced previous peasant population; in some regions peasants themselves turned to animal husbandry and semi-nomadic way of life, and revived patriarchal, clan, and tribal structures. This development was not limited only to the Slavs of the Balkans, but influenced

⁸⁸ Skok, 514-515; Nada Klaić, "Položaj vlahu u XIV i XV stoljeću u hrvatskim zemljama," in: "Simpozijum Vlasi u XV i XVI vijeku (Sarajevo, 13-16. XI 1973)," 107-111.

⁸⁹ Branislav Đurđev, "O knezovima pod turskom upravom," *Istoriski časopis* 1, 1-2 (1948), 17-18.

⁹⁰ Đurđev, "O uticaju turske vladavine," 38; cf. İnalcık, "Od Stefana Dušana," 34, n. 75; for *Yürüks* see: Halil İnalcık, "The *Yürüks*: Their Origins, Expansion and Economic Role," in: İnalcık, *The Middle East and the Balkans under the Ottoman Empire. Essays on Economy and Society* (Bloomington: Indiana University Turkish Studies, 1993), 97-136.

Albanians and, to a certain degree, Greeks.⁹¹ A similar process took place in the time of crisis in Anatolia as well.⁹² Exchange of agricultural production with animal husbandry, as more lucrative and easier mode of production, and return to security of clan and tribal structures, seems to be a preferred solution for a considerable part of agricultural population in both Anatolia and the Balkans.⁹³

In order to avoid confusion between Vlach and non-Vlach households (*zadrugas*), Moačanin suggests a term “Balkan family pattern,” borrowed from Karl Kaser, as more appropriate name for a model that represents a common Balkan cultural system that includes Vlachs of all religious denominations disregarding their ethnic origin, as well as Albanians, Montenegrins and some smaller groups.⁹⁴ The Ottoman chancery used the term “Vlachs” (*Eflak*, pl. *Eflakân*, *Eflakân tâ'ifesi*) as an administrative fiscal term for pastoral clan groups that were performing certain services for the state, usually ones with military character, in exchange for tax exemptions or reductions.⁹⁵ Since ethnic or religious identities of the *Eflaks* were not a matter of the chancery's concern, but the groups' military services to the state, pastoral mode of production, and taxes they were required to pay (*resm-i filuri*), the term *Eflak* in the Ottoman documents might sometimes denote population that is not in a strict sense Vlach. Hence, a number of smaller groups with a status similar or the same as that of the Vlachs were soon absorbed under the Vlach name.⁹⁶ In this way,

⁹¹ Đurđev, “O knezovima,” 17-18; idem, “O utjecaju turske vladavine,” 42-44.

⁹² Faruqi, “Rural Society,” 115.

⁹³ Cf. Đurđev, “O knezovima,” 18.

⁹⁴ Nenad Moačanin, “The Question of Vlach Autonomy Reconsidered,” in: *Essays on Ottoman Civilization. Archiv Orientalni. Supplementa VII (1998). Proceedings of the XIIIth Congress of CIEPO* (Prague, 1998), 263; idem, *Turska Hrvatska*, 76.

⁹⁵ Moačanin, *Turska Hrvatska*, 79.

⁹⁶ Moačanin, “The Question of Vlach Autonomy,” 268; idem, *Turska Hrvatska*, 84-85.

according to the *kânûnnâme* of Bosnia of 1542, a group of the *derbendcis* (pass guards) that was previously paying *derbendci* taxes, *became Vlach* and started to pay Vlach tax – *filuri*.⁹⁷ In this case, the decisive factor to determine who is “Vlach” is the payment of the *filuri* tax. Population that was subjected to the payment of the *harâc* – *harâc-güzârlar* – sometimes resorted to adoption of Vlach identity in order to reduce the amount of ordinary *re’âyâ* taxes to the level of privileged Vlach dues – *rüsûm-i Eflakiye*, as was established in the *kânûn* of the Vlachs of Herzegovina of 887-890/1482-1485.⁹⁸ The *kânûnnâme* of the *sancak* of Požega (Pojege) of 952/1545 explicitly prohibits the settlement of the *re’âyâ* on the Vlach land and their “acceptance into the Vlach-ness”:

If *re’âyâ* other than those [Vlachs] comes from outside, it should not be accepted into the Vlach-ness (*Eflaklık*) and it should be sent back to their places. Those who will not be sent back to their places, they will be charged by the *sancakbeyis*.⁹⁹

Clearly, the government’s prohibition in this case is determined by the concern over the loss of tax revenues.

On the other hand, population that was not able to pay full amount of *re’âyâ* taxes – *öşr*, *harâc*, *ispence* and other taxes due to the poverty and poor quality of the land, as was the case in the *vilâyet* of Montenegro (Karadağ) according to the *kânûnnâmes* of 929-930/1523, 935-943/1529-1536, and 977-

⁹⁷ “... sâir derbendciler ‘âdeti üzere rüsûmların ve ‘öşürların edâ iderlerdi hâliyyâ zikr olan varoşlarda sâkin olan tâ’ife-i kefere Eflak olub sâ’ir Eflaklar gibi filuri rüsûmi vaz’ olunub.” *Kanuni i kanun-name*, 62; cf. Moaçanin, *Turska Hrvatska*, 84.

⁹⁸ “Ve ba’zı harâc-güzârlar var imiş ki, harâcdan kaçub Eflaklere dâhil olub harâcların vermezlermiş.” *Osmanlı Kanunnâmeleri*, Vol. 2, 408, 410; a *berât* of 1489-1491, with instructions for the Vlach census in the *Sancak* of Smederevo contains almost the same text, see: Dušanka Bojanić, *Turski zakoni i zakonski propisi iz XV i XVI veka za smederevsku, kruševačku i vidinsku oblast*, (Belgrade: Istorijski institut, 1974), 93-96; the *kânûn* of the Smederevo Vlachs of 923-939/1517-1532 seems to be the copy of Herzegovian *kânûn* and the *berât* published by Bojanić, see: *Osmanlı Kanunnâmeleri*, Vol. 2, 491-499.

⁹⁹ “... bunların gayri hâricden re’âyâ gelürse, eflaklığa kabûl olunmayun gerü yerlerine gönderile. Şöyle ki yerlerine gönderilmeye, sancakbeyleri mücrim olalar.” *Osmanlı Kanunnâmeleri*, Vol. 5, 334, 337.

978/1570, was exempted in exchange for the payment of 55 *akçe* according to the Vlach custom (*‘âdet-i Eflakiye*).¹⁰⁰ However, the decision of the Ottoman government to substitute *re‘âyâ* taxes with *‘âdet-i Eflakiye* taxes must have been partly influenced by warlike tribal character of the Montenegrin society, that corresponded to the “Balkan family pattern” recognised by the Ottomans through *Eflakiye* privileges.

In addition, the *kânûnnâme* of Bosnian *sancak* of 972-973/1565, and the *kânûnnâme* of the *sancak* of Klis of 981-982/1574 specify that the *re‘âyâ* that was cultivating *filuri* lands in addition to their *çiftlik*s on the *sipâhî tîmârs*, was paying *filuri* tax (*resm-i filuri*) according to the Vlach custom.¹⁰¹ As was seen in the example of *derbendcis* who “turned Vlach,” or in the case of prohibition of settlement of the *re‘âyâ* on Vlach lands and their acceptance into the “Vlachness,” under certain conditions, as is the payment of Vlach taxes (*resm-i filuri*, *rûsûm-i Eflâkiye*), the administration might have recognized Vlach status to certain non-Vlach groups. For this reason, it is reasonable to assume that an undeterminable though considerable segment of Vlach population originate from non-Vlach groups that acquired Vlach status by one way or another.

While the significance of Catholic or Muslim Vlachs, or other, non-Serbian elements should not be underestimated, it seems that the greatest part of Vlachs was Orthodox Christian and Serbian, though often bilingual,¹⁰² i.e.

¹⁰⁰ “... liva-i mezbûre sa‘b ve sengistân olub re‘âyâ ‘öşr ve harâc ve ispence ve sâ‘ir rûsûm virmeğe kâdir olmadıkları ecilden her hâneye ve baştinaya ‘âdet-i Eflakiye üzere elli beşer akçe vaz‘ olunub...” *Kanuni i kanun-name*, 156-157, 160, cf. pages 169-170, 171-172 for the *kânûnnâme* of 935-943/1529-1536, and pages 173-173, 175-176 for the *kânûnnâme* of 977-978/1570.

¹⁰¹ *Kanuni i kanun-name*, 78, 89, 133-134, 137.

¹⁰² Branislav Đurđev, “Nešto o vlaškim starješinama starješinama pod turskom upravom,” *GZM* 52 (1940), 49-50; cf. Nenad Moačanin, “Croatia and Bosnia: An ‘Eternal’ Movement from Integration to Dissolution and Back,” in: Almut Bues, ed., *Zones of Fracture in Modern*

“*Vlacho-Serbian*.” Benedikt Kuripešić (Benedict Curipeschitz), a Habsburg envoy to Süleyman the Magnificent, who travelled through the Balkans in 936-936/1530-1531, as one of “the nations and religions” in “Lower Bosnia” (western part of Bosnia), mentions the Serbs (*Surffen*), also called the Vlachs (Wallachen), *Ćići* (Zitzen) and *Martoloses* (Marcholosen). They came from Smederevo and Belgrade, and belong to the religion of St. Paul.¹⁰³ In 1068-1069/1658, another traveller, Frenchman Quiclet, who travelled by coach from Bosnian town of Zvornik (İzvornik) to Istanbul, informs that all coachmen in the region were Serbs, also known as *Morlacs* (“the Black Vlach;” Italian *Morlacco*, from Byzantine Greek *Μαυροβλάχος*, South Slavic *Morlak*; etymologically same but semantically different are South Slavic *Karavlah*, Ottoman – *Kara Eflak*, “the Black Vlach”).¹⁰⁴ More reliable source than travellers’ accounts are several Ottoman documents from the 17th century Bosnia – *fermâns*, *berâts* and *hüccets* – in which the term *Eflak* is combined with terms *Sırf/Serf* (“Serb”) and *Rum* (in wider meaning – “Orthodox Christian,” not “Greek”): *Rum ve Sırf ve Eflak keferesinin ayinleri* (“customs of the Orthodox Christians, Serbian and Vlach unbelievers”) in a *fermân* from 1024/1615,¹⁰⁵ *Serf ve Eflak milletinde olan râhibler* (“priests in Serbian and Vlach millet”) in a *berât* from 1035/1626,¹⁰⁶ *Rum ve Sırf ve Eflak dînleri* (“the religion of the Orthodox Christians, Serbs and Vlachs”) in a *hüccet* from

Europe: the Baltic Countries, the Balkans, and Northern Italy, (Wiesbaden: Harrassowitz Verlag, 2005), 99-107.

¹⁰³ Benedikt Kuripešić, *Putopis kroz Bosnu, Srbiju, Bugarsku i Rumeliju 1530.*, tr. Đorđe Pejanović (Belgrade: Čigoja štampa, 2001), 26-27.

¹⁰⁴ *Priče francuskih putnika sa puta po Otomanskoj Bosni*, tr. and ed. Miroslav Karaulac (Novi Sad: Matica Srpska, 1998), 114; however, the Italian expression “Morlacco” includes all Christian Slavic pastoralists of the Dalmatian hinterland and further, Croats as well as Serbs.

¹⁰⁵ Boškov, “Turski dokumenti,” 29, doc. 17.

¹⁰⁶ *Ibid.*, 36, doc. 21.

1072/1662,¹⁰⁷ or *Rum ve Sırf ve Eflak piskoposları* (“bishops of the Orthodox Christians, Serbs and Vlachs”) in a *fermân* from 1080/1669,¹⁰⁸ etc. The use of multiple names – *Rum*, *Sırf/Serf* and *Eflak* – does not mean the existence of three distinct identities, which is most obvious from the expression *Serf ve Eflak milleti*, where the term *millet* is used in singular, indicating the oneness of the *Serfs* and *Eflaks*. This amalgamation of the names “Serb” and “Vlach” indicates that the process of sedentarization of the Orthodox Vlachs and their gradual fusion with Serbian peasant population in the first half of 17th century reached high level and was officially acknowledged by the Ottoman chancery.¹⁰⁹ The *kânûnnâme* of the *sancak* of Herzegovina of 993/1585 depicts the process in detail: Vlachs that settled on deserted lands of Serbian villages in Herzegovina apart from *filuri* tax had to pay ‘*öşr*’ to the *sipâhî* according to the Serbian custom (*Serf ‘âdeti*). However, those who did not settle on the land but only cultivated it, had to pay only the tithe (‘*öşr*’) according to the Vlach custom (*Eflâk ‘âdeti*).¹¹⁰ The submission of the Vlachs of Herzegovina to the *re‘âyâ* taxes started more than fifty years earlier according to the *kânûnnâme* of the *sancak* of Herzegovina from 935-938/1528-1532. Interestingly enough, the *kânûnnâme* states that the submission of the Vlachs to the *re‘âyâ* taxes is done

¹⁰⁷ Ibid., 41, doc. 25.

¹⁰⁸ Ibid., 48, doc. 29.

¹⁰⁹ Cf. Nedim Filipović, “Islamizacija vlaha u Bosni i Hercegovini u XV i XVI vijeku,” in: “Simpozijum Vlasi u XV i XVI vijeku (Sarajevo, 13-16. XI 1973),” *Radovi ANUBiH*, Vol. 73, Odjeljenje društvenih nauka, Vol. 22 (Sarajevo, 1983), 142. Filipović claims that joint expression “Vlachs and Serbs” is present in Ottoman documents since second half of 16th century, but we were not able to locate them.

¹¹⁰ “Ve ba‘zı Serf toprağı kurâları hâlî kalub Eflakler mütemekkin olmuşlardır, ba‘zısı Defter-i ‘Atikde mukayyed bulunub ve ba‘zıları dahi hîn-i tahrirde kayd olunub anın gibi Serf toprağında mütemekkin olan Eflakler filuriciye filuri verdikden sonar Serf ‘Âdetince sipahiye ‘öşrin verürler. Ve hâricden Serf toprağın zirâ‘at eden Eflakler ‘âdetince onda bir öşr vereler.” *Osmanlı Kanunnâmeleri*, Vol. 8, 261, 263.

“according to the Serbian custom” (*Sırf ‘âdetince*).¹¹¹ In this case, the Vlachs were subjected to the status of neighbouring *re‘âyâ* population of Serbian origin, according to the “Serbian *kânûn*” (*Sırf tâ‘ifesi kânûnı*) and registered into the “Serbian *defter*” (*Sırf defteri*).¹¹² It seems that a fiscal status of certain groups or the land they inhabited, might eventually led to the identification of these groups with their fiscal status, disregarding their origin. In this way, coexistence of the Vlachs with Serbs in same villages after the sedentarization, subjection to statuses and taxes bearing Serbian name, along with the sameness of language and religion, eventually resulted in their assimilation into Serbian ethnos.

At the same time, the process of expansion of the Serbian name over the Orthodox believers under the jurisdiction of the Serbian Orthodox Church and Patriarchate of Peć, that is, an area from present-day north Macedonia and Kosovo to south Hungary, and from western Bulgaria to Adriatic Sea, was mediated through the Church and clergy. The Serbian Orthodox Church was closely bound to the Serbian medieval state since its establishment in 1219. After Serbia lost its independence, the church continued to nurture traditions of the state. It incorporated the cult of Nemanjić dynasty into the liturgy, while one of its greatest relics – the body of St Sava (Sveti Sava, Rastko Nemanjić), the founder of the Serbian Church and son of the founder of the Serbian dynasty, was kept in the monastery of Mileševo in Bosnia. Furthermore, the see of the

¹¹¹ “Hâliyâ emr-i Pâdişâhî üzere tâ‘ife-i mezbûre mücedden tahrîr olunub Sırf ‘âdetince cizye ve sâ‘ir rûsûm vaz‘ olunub...” *Osmanlı Kanunnâmeleri*, Vol. 6, 552, 554.

¹¹² “... tâ‘ife-i mezbûre mâbeyninde dahi livâ-i mesfûrede mütemekkin olan Sırf tâ‘ifesi kânûnı icrâ olunmak emr olunub kânûnnâmesi Sırf defterinde mûnderic olmağın defter-i cedîd-i hâkânîye mufassal kayd olunmayub alâ vech’ül-icmâl tahrîr ve sebt olundu ki, kânûnnâmeye ihtiyâc oldukda Sırf defterine nazar oluna.” *Osmanlı Kanunnâmleri*, Vol. 6, 551, 554.

patriarchs carried titles like “the Serbian throne” (*prestol srbski*) or “the throne of all Serbian lands” (*prestol vse srbskye zemli*), while the patriarch was entitled as “the Serbian patriarch,” or “the patriarch of all Serbian lands.” The expression “the Serbian lands” is not confined to the historical territory of the medieval Serbian state, but includes all lands under the jurisdiction of the Patriarchate of Peć, in the above mentioned extent. Consequently, all Slavic/Slavicised Orthodox Christians under the jurisdiction of the Serbian patriarch were eventually identified as Serbs.¹¹³ However, this process was long lasting, and, especially on the level of self-identification, did not finish until the modern times and the rise of nationalism.¹¹⁴

Interestingly enough, even in the 18th century, Bosnian Franciscan chroniclers do not use ethnonym “Serb” to denote the Orthodox Christians in Bosnia, but, apart from polemical “schismatics” (*šizmatici*) or “Old Believers” (*Starovirci*), widely use the name “Vlachs” (*Vlasi*).¹¹⁵ In addition, attempts of the Orthodox patriarch to collect taxes from the Catholics, and allegedly convert them to the Orthodoxy, were depicted by a Franciscan chronicler as “Vlachization.”¹¹⁶ Why the Franciscans, as indigenous people that were usually aware of local particularities, did not use the term “Serb” in the period when it was widely in use by the Orthodox clergy and Ottoman chancery, but preferred

¹¹³ Hadrovics, 85-95; Džaja, 101-102.

¹¹⁴ Cf. Muhamed Hadžijahić, *Od tradicije do identiteta. Geneza nacionalnog pitanja bosanskih muslimana*, (Zagreb: Islamska zajednica Zagreb, 1990), 50-57.

¹¹⁵ Cf. Lašvanin, 208-209, 269-270, 274-279 and passim; Bono Benić, *Ljetopis sutješkog samostana*, ed. and tr. Ignacije Gavran, (Sarajevo, Zagreb: Synopsis, 2003), 54, 139, and passim.

¹¹⁶ “Nijednom ga virom zvaše,
nit to krivo ne rekoše,
jer krstjane progonjaše,
ter ih vlašit hotijaše.” Lašvanin, 278.

terms “Vlach” in general, or “Greek” (*Grk*)¹¹⁷ and “schismatic Greek patriarch” (*Scismaticus Patriarca Graecus*)¹¹⁸ when referring to the patriarch or higher clergy? The non-existence or unawareness of ethnic denominations in that time cannot be the reason, since chronicler Nikola Lašvanin in the description of litigation between Catholics and Orthodox Christian clergy in 1661 in Livno (İhlevne), apart from traditionally used congregational terms “Latins” (*Latini*) and “Christians” (*krstjani*), uses ethnonym “Croatian” (*Hrvaćani*) for Catholics, but “Vlach” for the Orthodox Christians.¹¹⁹ From the extremely negative and offensive tone of the texts which were created in the atmosphere of litigations and open enmities between two religious communities that often ended up in physical clashes, it can be concluded that the term “Vlach” is used in derogatory meaning, which an ethnonym could not provide. Bosnian Muslims and Catholics for Bosnian Orthodox Christians use the term “Vlachs” interchangeably with the ethnonym “Serb” even nowadays, although the Muslims might occasionally apply it to Catholics as well.¹²⁰

On the other hand, traditional use of the term “Greek” in the meaning of “Orthodox Christian” in the Western Christianity corresponds to the use of the term “*Rum*” in the Ottoman case.

Interestingly enough, Catholic Slavic/Croatian pastoralists from the Dalmatian hinterland are known under the name “Vlach” (pl. *Vlasi*, *Vlaji*) since the Middle Ages, and use it for self-identification even today. However, these groups differ from the Orthodox Vlachs that colonised Bosnia and adjacent

¹¹⁷ Lašvanin, 278.

¹¹⁸ Filip Lastrić, *Pregled starina Bosanske provincije*, tr. Ignacije Gavran and Šimun Šimić (Sarajevo, Zagreb: Synopsis, 2003), 145 (Croatian translation), 91 (facsimile, Latin).

¹¹⁹ Lašvanin, 270.

¹²⁰ Cf. Hadžijahić, 43; Moačanin, “Croatia and Bosnia,” 103.

regions after the Ottoman conquest, and represent earlier, pre-Ottoman wave of Vlach colonisation.¹²¹

As already mentioned, the Ottomans used Vlachs as military and colonising element in strategically important areas that were deserted during the conquests. Main centres from which Vlach migrations submerged certain regions in the north were Herzegovina (including parts of modern Montenegro) and south-west Serbia (Stari Vlah – İstari Eflak). In 1470's many areas in the border-*sancak* of Smederevo in north Serbia were deserted during the fights with the Hungarians. In order to resettle desolated regions and secure the border, Vlachs were colonised into entire territory of the *sancak* of Smederevo and great parts of the *sancaks* of Kruševac (Alacahisâr) and Vidin.¹²² In 1460's Vlach colonisation started in eastern Bosnia, that is, Podrinje, a strategically important mining region around river Drina. After the conquest of Herzegovina and establishment of the *sancak* of Herzegovina in 1470, large groups of Vlachs began to penetrate into northeastern Bosnia, especially towards strategically important towns of Maglaj (Maglay), Tešanj (Teşne), and Doboj (Doboy), as well as Zvornik, Teočak, and Tuzla. It seems that Ottoman conquest of Maglaj, Tešanj and Doboj was achieved with great help of Vlachs.¹²³ Vlach migrations were following the changes of the border and Ottoman advance in the north and

¹²¹ Cf. Skok; Klaić, "Položaj vlaha;" Nada Klaić, "Društvo u srednjovjekovnoj Hrvatskoj s posebnim osvrtom na njegov razvitak u Cetinskoj Krajini," in: *Cetinska krajina od prehistorije do dolaska Turaka. Znanstveni skup – Sinj, 3-6. VI. 1980*. Izdanja Hrvatskog arheološkog društva, Vol. 8 (Split: Hrvatsko arheološko društvo, 1984), 265-271; Tomislav Raukar, *Hrvatsko srednjovjekovlje. Prostor, ljudi, ideje*, (Zagreb: Školska knjiga, Zavod za hrvatsku povijest Filozofskog fakulteta, 1997), 138-139; Ivan Botica, "Prilog istraživanju najstarijeg spomena vlašskog imena u hrvatskoj historiografiji," *Radovi. Zavod za hrvatsku povijest*, 37 (2005), 35-46.

¹²² Đurdev, "Srbija," 85-86.

¹²³ Adem Handžić, "Etničke promjene u Sjeveroistočnoj Bosni i Posavini u XV i XVI vijeku," in: Adem Handžić, *Studije o Bosni*, 9-10.

west. After the fall of Hungarian marches of Srebrenik (*Srebrenička banovina*, 1512) and Jajce (Yayçe; *Jajačka banovina*, 1528) in Bosnia, and breakdown of Hungary in the battle of Mohács (Mohaç) in 1526, the Vlachs moved far westwards into newly conquered lands in the *sancak* of Bosna (Bosnia), on the borders with Habsburg Croatia and Venetian Dalmatia, and northwards across the rivers Sava and Danube into Slavonia and Hungary.

The movement of Vlachs towards border areas was directed by successive abolishment of their tax exemptions in interior regions.¹²⁴ According to the above-discussed *kânûnnâme* of the *sancak* of Herzegovina of 935-938/1528-1532, tax privileges (*resm-i Eflakiye*) granted to the Vlachs of Herzegovina by Sultan Mehmed the Conqueror were abolished by Süleymân the Magnificent, and they were obliged to pay the same taxes as other *harâç*-paying population.¹²⁵ On the other hand, Vlach elite – *knezes*, *voyvodas* and *katunars* – remained exempted from the taxes in exchange for military service in the time of campaigns, collection of taxes and control over the Vlach *re'âyâ*. In addition, some of the *knezes* obtained the *tîmârs*.¹²⁶ The *kânûnnâme* of the *sancak* of Smederevo of 1536, which lost its border character after the battle of Mohács, explains that remaining Vlachs were subjected to the *harâç* and other *re'âyâ* taxes as ordinary *re'âyâ* because their military duties ceased to exist. As in Herzegovina, the elite – the *knezes* and *premikiürs*, retained their privileged

¹²⁴ Milan Vasić, "Etnička kretanja u Bosanskoj krajini u XVI vijeku," *Godišnjak Društva istoričara BiH*, 13 (1962), 238-239; Handžić, "Etničke promjene," 12; Adem Handžić, "O društvenoj strukturi stanovništva u Bosni početkom XVII stoljeća," in: Adem Handžić, *Studije o Bosni*, 238-239.

¹²⁵ *Osmanlı Kanunnâmeleri*, Vol. 6, 549-550, 553-554; "... harâç-güzâr kefare gibi cizye ve âdet-i aġnâm ve rûsûm-i sâ'ire vaz' olunmak üzere..." p., 550.

¹²⁶ *Ibid.*, 551-552, 554.

position under the same conditions.¹²⁷ The Vlachs of the *sancak* of Zvornik suffered the same fate according to the provisions of the *kânûnnâme* of 1548.¹²⁸ In the Bosnian march in the north-west (*Serhâd, Krajina*), taxes were lower in areas closer to the border; e.g., in mid-16th century, the *filuri* tax in areas far from the border was 150 *akçes*, closer to the border 120 *akçes*, while on the border it was 100 *akçes*.¹²⁹

The Vlach colonisation radically changed ethnic and religious picture of Bosnia and adjacent regions, and the Orthodox Vlachs-Serbs became majority in certain areas, even though in some of them they were not present before the Ottoman conquest.

The role of Vlachs in the Ottoman conquest and pacification of the Balkan lands can hardly be overestimated. The Vlachs, together with related semi-military Christian groups as *martoloses*, *derbendcis*, *voynuks*, and others, enabled the Ottomans to conquer numerous towns and regions, served as guards of numerous fortifications, mountain-passes, bridges, and borders, performed police and intelligence services, resettled deserted areas and brought them to cultivation, worked in mines, transported goods, traded with products of animal husbandry indispensable for town economy – wool, milk, cheese, butter, and skins, and the like. Since the role of the Vlachs was very similar to, if not the same, as that of their Turkic counterparts, the Yürüks, conclusions of Prof. İnalçık considering the importance of the Yürüks in the Ottoman imperial policy, can be accepted as valid for Vlachs as well:

¹²⁷ *Osmanlı Kanunnâmeleri*, Vol. 5, 357-358, 366; Bojanić, *Turski zakoni*, 45-46.

¹²⁸ *Kanuni i kanan-name*, 103-104, 118; *Osmanlı Kanunnâmeleri*, Vol. 5, 300, 311; cf. Đurđev “Srbija,” 89-90.

¹²⁹ Vasić, “Etnička kretanja,” 238.

Since employment of the *re'âyâ* peasants in such enterprises meant a disruption of agriculture, hence a diminution of revenues for the state and the *sipâhî* class in the provinces, the state preferred to employ the Yürüks for such tasks. From this point of view the Yürüks can be considered *the backbone of the entire imperial organization* [italics V.K].¹³⁰

Indeed, the Vlachs or population with Vlach or *filurici* status in Bosnia and adjacent areas generally provided manpower for other paramilitary orders and groups with special duties, as the *voynuks*, *martoloses*, *derbendcis*, miners, and the like.

A genuine example of the appreciation of the Vlach role in the border organization is given in the *kânûnnâme* of the *sancak* of Požega from 952/1545:

Above mentioned Vlachs are settling desolated arable fields in the border-province, and making them inhabited and prosperous. Some Vlachs are cultivating fields, and others are pasturing goats and sheep. In other provinces they pay 83 *akçes* per household in return for cultivation of fields and cattle tax according to the Vlach custom. If this will be recorded in the register, these hearths (*ocaklar*) will become contractors for the performance of the imperial services, defence and security. Indeed, *if there were no Vlachs in the border-province, there would be no possibility for settlement and prosperity*, and infidel robbers would be coming and going regularly. The *sancakbeyi* submitted a report to the Footing of the Throne of Excellency, informing that settlers are beneficial and necessary for the prosperity of the land. It is ordered that every household should give 83 *akçe* as the Vlach tax [italics V.K.].¹³¹

In order to win over the resource of such potential, the Ottomans were ready to grant Vlachs privileges and autonomies stretching far beyond the provisions of

¹³⁰ İnalçık, "The Yürüks," 117.

¹³¹ "Mezkûr eflâkler, serhâd vilâyetinde olan harâbe mezra'alarda mütemekkin olub şenledüb ba'zın zirâ'at eyleyüb ba'zın davarlarına ve koyunlarına mer'â edinüb sâir vilâyetlerde olan eflâk âdeti üzere zirâ'atleri ve resm-i ganemleri mukâbelesinde her hâneye seksen üçer akçe ta'yîn olunub deftere kayd olunurlarsa bu ocaklar hıfz ve hirâset etmesine ve vâki' olan hidemât-i padişâhî edâsına mültezim olurlar. Fil-vâki' serhâd-i vilâyet olub bu eflâkler olmayınca şenlemek ihtimâlî yoktur ve hem kâfirin hırsuzları gelüb gidecek yollarıdır. Ol mahalde temekkünleri memleket şenelmesine nâfi' ve lâzımdır deyü Sancağı beyi i'lâm eyledüğü pâye-i serir-i a'lâya arz olundukda her hânedan seksen üçer akçe resm-i eflakiyye emr olunub..." *Osmanlı Kanunnâmeleri*, Vol. 5, 334, 337.

the *zimmi* regulations, following the lines of the *istimâlet* policy and enacted in special Vlach *kânûns* and *kânûnnâmes* of various *sancaks*.

The Vlachs were not subjected to the *şerî'at* prohibition of arms for the *zimmîs*, given that they were employed as auxiliary troops in the Ottoman army. The first *kânûns* for the Vlachs of Braničevo (Braničeva) and Vidin of 872/1467-1468, and Smederevo of 881/1476-1477 and 886/1481, specify that Vlachs were obliged to provide one *voynuk* (from South Slavic *vojnîk* – “soldier”) from five *filuri* (taxation-units), that is, households.¹³² Later *kânûns* – sections of the universal *kânûnnâme* of Sultan Beyâzîd II (1481-1512), Vlach *kânûns* for Smederevo and Braničevo and Vidin (906-907/1501, 922/1516, 934/1527), and sections of the universal *kânûnnâme* of Sultan Süleymân the Magnificent – are more extant: Vlachs are obliged to provide one *voynuk* or *gönder* (“lance”) per five households for guarding unsafe places, while in the case of the campaign all Vlachs are participating as horsemen.¹³³ Stipulations in the Vlach *kânûns* of Bosnia and Herzegovina are somewhat different – the *kânûns* of Vlachs of the district (*vilâyet*) of Hersek of 882/1477, the district of Pavlovići (Pavli) of 890/1485, the *nâhiye* of Nikšić (Nikšik, in modern Montenegro) of 890/1485, the *nâhiye* of the fortress of Maglaj, in the district of Kral (Kraljeva Zemlja) of 890/1485, and district of Kral of 894/1489. Probably in connection with lesser strategic importance of the area in comparison with the *sancaks* directly bordering Hungary, the Vlach duties were smaller as well. Instead of providing one soldier (*voynuk* or *gönder*) per household as guards, the Vlachs of Bosnia and Herzegovina had to send one horseman (*eşkünci*) per

¹³² Bojanić, *Turski zakoni*, 12-13; *Osmanlı Kanunnâmeleri*, Vol. 1, 528, 530.

¹³³ *Osmanlı Kanunnâmeleri*, Vol. 2, 73, 107, Vol. 3, , 449, 456, 459, 463, Vol. 5, 368, 370, Vol. 4, 398, 428; Bojanić, *Turski zakoni*, 15-16, 27, 30, 33.

10 households (or 15 households in the case of Nikšić Vlachs) who participated in campaigns.¹³⁴ However, while these *voynuks* and *gönders* were foot soldiers (sometimes accompanied with beasts of burden – *bârgîrs*),¹³⁵ used in auxiliary troops within the borders of their *sancaks*, the *eşküncis* were horsemen with active military duties in the campaign.¹³⁶ Groups among the Vlachs that were included in the *yoldaşlık* (“comradeship”), i.e. accompanied Ottoman army in the campaigns, were exempted from all taxes, including the *filuri*, upon the *mu‘âf-nâme* (“exemption letter”) of the *sancakbeyi*, as was laid down by the *kânûns* of Herzegovina (887-890/1482-1485) and Smederevo (1489-1491, 923-939/1517-1532).¹³⁷

By 1530’s, however, the Vlachs in these areas lost their military role due to border changes, and were subjected to the *re‘âyâ* status, while only their leaders – the *knezes*, *premikiürs*, *voyvodas*, and *katunars*, continued to serve as horsemen in the time of campaigns. On the other hand, the Vlachs in border areas – e.g. the *sancak* of Požega (952/1545), retained their military duties and privileges, obviously due to the strategic importance of Danube route.¹³⁸ Benedikt Kuripešić, who passed through Bosnia in 1530, informs that Christians, obviously Vlachs, were unsatisfied with the change of their status

¹³⁴ *Osmanlı Kanunnâmeleri*, Vol. 1, 494-495, 496, Vol. 2, 380-381, 382; *Kanuni i kanun-name*, 12-14; A. Akgündüz misread the name of the *nâhiye* of Nikşik as “Yekşinik,” see: *Osmanlı Kanunnâmeleri*, Vol. 2, 380, 382.

¹³⁵ *Osmanlı Kanunnâmeleri*, 358, 366.

¹³⁶ Later, however, in some areas the *voynuks* were occasionally used as horsemen as well. Cf. Pakalın, Vol. 1, 675 (gönder), Vol. 3, 595-597 (voynuk); Đurdev, “O vojnucima,” 83-85, 90; Yavuz Ercen, *Osmanlı İmparatorluğunda Bulgarlar ve Voynuklar*, (Ankara: Türk Tarih Kurumu Basımevi, 1989), 8-12.

¹³⁷ “Ve zikrolan Eflakler içinde ba’zı kimesneler var imiş ki, sancakbeylerinden mu‘âf – nâmeleri olub nesne vermezler imiş. Anlarun gibiler teftiş edeler. Yoldaşlık ile mu‘âf olmuş kimesneler ise mukarrer ede. Ve illâ filoriye kayd edüb resimlerin zabt edeler.” *Osmanlı Kanunnâmeleri*, Vol. 2, 409, 412, cf. *ibid.*, 494, 498; Bojanić, *Turski zakoni*, 96.

¹³⁸ Cf. Moačanin, *Town and Country*, 32.

from that year. While they were previously paying only 50 *akçe* per household, after the conquest of great part of Croatia and Hungary, the Ottomans imposed new levies: poll-tax of 30-40 *akçe*, taxes on animals and land, and house-hold tax. In addition, the population was subjected to the levy in children, that is, every year every third, forth or fifth child was taken from the Christian families.¹³⁹ Obviously, the population in question were Vlachs who lost their privileges, and were subjected to the *re'âyâ* taxes and *devşirme* (the levy of Christian youths for the service in the Janissary corps, the palace and governmental services).

Soon after the Vlachs lost their privileges, their name started disappearing from the Ottoman legislation. However, not all Vlachs were subjected to the status of ordinary *re'âyâ*, but some retained certain exemptions, like exemption from *'öşr* in exchange for some services for the state, often of semi-military character. Instead as Vlachs, they were often designated as *filurici* ("the payers of the *filuri* tax").¹⁴⁰ On the other hand, the titles of Vlach leaders, the *knezes* and *premikürs*, continued their existence in the sources, indicating probable Vlach origin of the *re'âyâ* under their authority.

Eventually, since around 1620 the Vlachs in border areas started losing their privileged status and becoming ordinary *re'âyâ* due to changes in border defence and establishment of the system of fortresses and captaincies staffed with Muslims exclusively.¹⁴¹

The social stratification of the Vlach clan-organisation started already before the Ottoman conquest. The Vlach chieftains, known as the *knezes*,

¹³⁹ Kuripešić, 27; cf. Moačanin, *Turska Hrvatska*, 82-84.

¹⁴⁰ Moačanin, *Turska Hrvatska*, 86-87.

¹⁴¹ *Ibid.*, 87-89.

premićurs (*premićur*, *primićur*, from Latin *primicerius*), *protogers* (*protuđer*), *voyvodas* (*vojvoda*), *katunars*, *lagators*, *tekliç*, and the like, in Latin documents from Dubrovnik and other Dalmatian towns known as *comes* or *comes catuni*, originated from patriarchal leaders of clans organised into *katuns* – Vlach pastoralist villages, which were not necessarily territorialized. In the course of time, these patriarchal clan leaders, in some regions earlier, in other later, under the influence of feudal economy and due to incorporation into military systems of Balkan states, gained large military and administrative powers over their clans and tribes. Naturally, the level of feudalisation of the function of the Vlach chieftain was not the same in all clans or tribes and in all regions, due to different economic, political and geographical conditions. After the conquest, Vlach *katun* organisation with their chieftains was incorporated without significant changes into the Ottoman system.¹⁴² Sometimes the *katuns* were integrated into territorial organization of the Ottoman Empire in such a manner that borders of Ottoman territorial units – *nâhiyes*, corresponded to tribal or clan divisions, as was the case with certain tribes in Herzegovina (Banjani, Riđani, Nikšići, Drobnjaci, etc.). In regions where the Vlachs passed through the process of sedentarization and adopted agriculture as the *Eflak re'âyâsı*, as was the case in the *sancak* of Požega, Vlach settlements were organised into the *knezlik* (*knežina*) corresponding to a village or a *nâhiye*.¹⁴³

¹⁴² Đurđev, "O knezovima," 15-16, 20; Gliša Elezović, *Turski spomenici*, No. 1, Vol. 1, (Belgrade, 1940), 1157-1160, note 1; Nedim Filipović, "Vlasi i uspostava timarskog sistema u Hercegovini," *Godišnjak ANUBiH*, Vol. 12, *Centar za balkanološka istraživanja*, Vol. 10, (Sarajevo, 1974), 131, 140-141; Milan Vasić, "Knežine i knezovi timarlike u Zvorničkom sandžaku u XVI vijeku," *Godišnjak Istoriskog društva BiH* 10 (1949-1959), 248; cf. Klaić, "Društvo u srednjovjekovnoj Hrvatskoj," 268-269.

¹⁴³ Đurđev, "O vojnicima," 21-23.

However, in the Ottoman legislation, the term *katun* meant a fiscal unit consisting of firstly 20, according to the *kânûn* of the Vlachs of Braničevo (1467/1468), and later 50 *filuris*, i.e. Vlach households.¹⁴⁴ Later, however, obviously in connection with sedentarization of the Vlachs and changes in taxation, this term disappeared from legislation. Nevertheless, the term *katunar* (“the head of the *katun*”), appears in the *kânûn* of the *sancak* of Herzegovina of 935-938/1528-1532, along with the *knez* and *voyvoda*, as Vlach leaders that were enjoying tax-exempted land (*baştina* - *baştina*) and some other privileges in exchange for their services.¹⁴⁵

The Vlachs were enjoying territorial, or, at the early stage preceding sedentarization and submission to the *re‘âyâ* status, social autonomies not confined to the certain territory.¹⁴⁶ They belonged to the imperial *hâses* and were subjected to the *sancakbeyi*, who was entitled to collect taxes from the Vlachs (*rûsûm-i Eflakiye*). However, they were not obliged to perform any manual duties for him or for anybody else. For cultivation of the land on the *sipâhî tîmârs* outside their villages, they had to pay only half of the ‘*öşr*’.¹⁴⁷

The Ottomans were ready to reach such a compromise with the Vlachs not only because of the importance of their military services. Their inclusion into the *tîmâr*-system in terms of their semi-nomadic pastoralist mode of production was suggesting more problems than advantages. Actually, the

¹⁴⁴ Bojanić, *Turski zakoni*, 12 (*kânûn* of the Vlachs of Braničevo 1467/1468), 16, 33 (the *kânûns* of Vlachs of Smederevo of 1501 and 1527/1528); *Osmanlı Kanunnâmeleri*, Vol. 1, 527 (transliteration), 530 – *kânûn* of the Vlachs of Smederevo of 886/1481, Vol. 2, 73 (transliteration), 107 – the universal *kânûnnâme* of Bayezid II; Vol. 4, 398, 428 – the universal *kânûnnâme* of Süleymân the Magnificent.

¹⁴⁵ *Osmanlı Kanunnâmeleri*, Vol. 6, 552, 554.

¹⁴⁶ Vasić, “Knežine,” 252.

¹⁴⁷ Bojanić, *Turski zakoni*, 12-13, 15-16, 30, 33; *Osmanlı Kanunnâmeleri*, Vol. 1, 494-495, 496, 528, 530, Vol. 2, 73, 107, 380-381, 382, Vol. 3, 449, 456, 459, 463, Vol. 5, 368, 370, Vol. 4, 398, 428; *Kanuni i kanun-name*, 12-14.

presence of the *tîmâr*-holder in this case was entirely unnecessary, as was suggested by Branislav Đurđev:

The *sipâhî* was not needed here for the sake of economy (from which he would not have benefit), neither for maintenance of the authority, nor for collection of taxes, and not even for the military service. The only person required was a *commander*, for military service and semi-military duties of the Vlachs, that is, a part of them [*italics V.K.*].¹⁴⁸

That Ottoman commander was the *sancakbeyi* or *voyvoda* as his deputy. All other matters were transferred to Vlach chieftains – the *knezes* and *premikiurs*.

According to the *kânûns* before 1530's the *knezes* and *premikiurs* had certain immunities, and received one-tenth from the fines collected by the *sancakbeyi*.¹⁴⁹ The *kânûns* for the Vlachs of Herzegovina and Smederevo (887-890/1482-1485, 894-897/1489-1491, 923-939/1517-1532) inform us that the *knezes* and *premikiurs* were not merely clan or tribal leaders that represented the Vlachs in front of the Ottoman regime, but were incorporated into the system as officials of the state, and as such were recorded into the *defters* (official tax-registers). The *knezes* and *premikiurs* that were hiding people under their authority from the census-taker, the *kânûns* stipulate, were supposed to lose their position and status: the *knezes* were loosing their *ratays* (servants of nomadic origin – *haymânedên*, working on their land as landless peasants) with their taxes, their *knezlik* (the position of the *knez*, and/or the territory under *knez*'s authority), and their *tîmârs*. The *premikiurs*, on the other hand, were loosing their *ratays* with their taxes, and were subjected to the payment of the *filuri* tax as ordinary Vlachs. The *knez* had the authority over the Vlachs in his

¹⁴⁸ Đurđev, "O vojnucima," 123.

¹⁴⁹ Bojanić, *Turski zakoni*, 13, 15, 16, 27, 30, 33-34; *Osmanlı Kanunnâmleri*, Vol. 1, 528, 530, Vol. 2, 73, 107, Vol. 3, 449, 456, 459, 463, Vol. 5, 368, 370 - the *kânûn* of the Vlachs of Smederevo of 934/1527 repeats stipulations from the previous *kânûns*: "Premikürlerin günâhsız premikürlüğü alınmaz."

nâhiye, while the *premiür* had the authority over the Vlachs in his village as the *premiürlük*. In addition, the *premiür* was entitled to the *katun* consisting of at least ten *filuris*, and possessed between one and eight *ratays*.¹⁵⁰

On the other hand, the Ottoman authorities were very resolute in preventing any kind of self-government of the Vlachs, or any other group for that matter, that might have brought into question its exclusive authority and direct control over the subjects, as is provided in the *kânûn* of the Vlachs of Smederevo of 922/1516:

Furthermore, my glorious and mighty decree is as follows: hereafter, the community of the Vlachs and others should not organise the *izbors* (*zbor*, “congress”) and assemblies (*cem’iyet*), and elect the *ikmets* (*kmet*, the prominent peasant who mediates in inter-village disputes) among themselves. Those who are *ikmets* and those who are giving prominence to them are breaching outmost limits of the law. Those who are the cause for this will be punished as is due.¹⁵¹

In the period after the battle of Mohács (1526), along with the status of the Vlachs the position of the *knezes* and *premiürs* started to change as well. Whereas in previous times only occasionally some of the *knezes* in certain areas possessed *tîmârs*, now, when the Vlach mode of production changed from semi-nomadic pastoralist towards the sedentary-agriculturalist one, and their military role lost importance, the need for large number *sipâhîs* to strictly administer and control the Vlach *re’âyâ* arose. As already mentioned, the *kânûn* of the Vlachs of Herzegovina of 935-938/1528-1532, which abolishes Vlach privileges, provided Vlach leaders – *knezes*, *voyvodas*, *katunars*, *lagators* and *tekliçs* with

¹⁵⁰ *Osmanlı Kanunnâmeleri*, Vol. 2, 408-409, 410-411; cf. Bojanić, *Turski zakoni*, 95-96; *Osmanlı Kanunnâmeleri*, Vol. 2, 492-494, 496-498.

¹⁵¹ “Ve dahi emr-i celîlû’l-kadrim şöyledir ki, min ba’d tâ’ife-i Eflak ve gayriler izbor edüb cem’iyet eylemeyeler ve kendülerden aralarına ikmet edüb ol ikmet dikenlerin ve olanların müntehâ haklarından gelüb ve bâ’is olanları dahi gereği gibi te’dib edüb hakkından gele.” *Osmanlı Kanunnâmeleri*, Vol. 3, 460, 463; Bojanić, *Turski zakoni*, 31.

tîmârs of two categories: the *tîmârs* lower than 800 *akçe*, and *tîmârs* of 800 *akçe* or more, whose holders were obliged to join the army in campaigns in addition to ordinary services.¹⁵²

According to the *kânûnnâme* of the *sancak* of Zvornik of 955/1548, after the Vlachs were subjected to *re'âyâ* status, the *knezes* and *premiüks* became responsible for the collection of their *harâc* and other taxes. The *premiüks* had the responsibility for the collection of taxes from the *re'âyâ* of their villages. Each *nâhiye* had the *knez*, who was responsible for the control of the *premiüks* on the territory of the *nâhiye*. Furthermore, the *knezes* were obliged to help state officials (*emîns* and *kuls*) in the collection of taxes. Both functions were inheritable from father to son. While the *premiüks* enjoyed tax exemptions on their persons and lands – *baştinas*, the *knezes*, in addition, received *tîmârs*. The *knezes* with *tîmârs* higher than 1000 *akçes* were obliged to participate in military campaigns in Hungary as horsemen, while those *knezes* with the *tîmârs* lower than 1000 *akçes* were allowed to send a substitution (*bedel*).¹⁵³ Similar stipulations can be found in the *kânûns* and *kânûnnâmes* for the *sancak* of

¹⁵² *Osmanlı Kanunnâmeleri*, Vol. 6, 551-552, 554.

¹⁵³ “Ve vilâyet-i mezbûre eflak tâ’ifesinden harâca kayd olunmuş *re'âyâ* olmağın kadîmden *premiüks*leri ve *knez*leri olub *premiüks* tâ’ifesi karyesinde olan *re'âyânın* harâcına ve vaz’ olunan rûsûmına ve ‘âdet-i ağnâmına mu’âvenet edüb zarar-ı malına kefil olmuşlardır. Ve her *nâhiyede* *knez* olub *knez* tâ’ifesi dahi *nâhiyesinde* olan *premiüks*lere kefil olub harâca ve ‘âdet-i ağnâm ve ‘avâriz husûsunda emînlere ve kullara mu’âvenet edüb *premiüks* tâ’ifesiinden hizmetleri mukâbelesinde harâcları ve baştinaları mahsûlunun ‘öşri ve sâlâriyyesi ve rûsûmı alınmayub kendüler mutasarrıf olub ve ‘avâriz-ı dîvâniyyeden ve tekâlîf-i ‘örfiyyeden mu’aflar olub ve oğulları ve kendüleri ile bile sâkin olan karındaşları dahi kendülerine tâbi’ olub fevt olan *premiüks*rün oğlu babası yerine *premiüks* ola deyü ellerinde olan ahkâm-i şerîfede mukayyed olub tâ’ife-i mezbûre ber karar-ı sâbık mal-ı mîrîye kefâlet ile *premiüks* olmak lâzım ve mühim olduğu hâlîyâ pây-e serîr-i a’lâya ‘arz olundukda mukarrer olunmak emr olunmağın hükm-i şerîf-i cedîd için ellerine mufassal tezkire verilüb defter-i cedîd-i hâkânîye kayd olundu. Ve *knez* olanların hâllerine göre tasarruflarında olan *tîmârları* yine tevcîh olunub ve bin akçelik *tîmârdan* ziyâde mutasarrıf olanlar Budin câniblerine sancakbeyleri sefer eyledikde sefere eşüb ve bin akçelikden eksik olanların yarar bedelleri eşmek üzere *kânûnları* olmağın ber-karar-ı sâbık kayd olundu.” *Osmanlı Kanunnâmeleri*, Vol. 5, 300, 311; *Kanuni i kanan-name*, 103-104, 118.

Smederevo (1536),¹⁵⁴ Bosnia (937/1530),¹⁵⁵ Požega (952/1545,¹⁵⁶ 987/1579-1580)¹⁵⁷, Srijem (one from the time of Selîm II - 1566-1574,¹⁵⁸ the other from 997/1588-1589¹⁵⁹), as well as in a tractate of Sofyalı ‘Alî Çavuş on the *tîmâr* organisation of the Empire (1064/1653).¹⁶⁰

Hence, the *knezes* and *premiķûrs* were filling the posts of the state offices in the villages and *nâhiyes*, as is explicitly stated in the *kânûns*: “the *kethüdâs* (“stewards”) of the *nâhiyes* are called *knezes*, and the *kethüdâs* of the villages are called *premiķûrs*.”¹⁶¹ In this manner the *knezes* and *premiķûrs* as the *kethüdâs* of the Vlach *re‘âyâ* and *filuricis* represented an alternative for the classical *tîmâr*-holders, the *sipâhîs*. Moreover, after the allotment of the *knezes* with the *tîmârs*, they officially became the members of the *sipâhî* class. From the financial point of view, however, the *knezes* did not profit from the assignment of the *tîmârs*, since they consisted of their former *baştinâs*, *çiftlik*s, and dues received from the *ratays*.¹⁶²

The number of the *knezes* was considerably high. While the *kânûnnâme* of the *sancak* of Zvornik asserts that every *nâhiye* had its *knez*, the number of the *knezes* according to the official registers were as follows: 31 *knez tîmârs* in

¹⁵⁴ *Osmanlı Kanunnâmeleri*, Vol. 5, 357-358, 366; Bojanić, *Turski zakoni*, 45-46.

¹⁵⁵ *Kanuni i kanun-name*, 41, 46; *Osmanlı Kanunnâmeleri*, Vol. 6, 428, 434.

¹⁵⁶ *Osmanlı kanunnâmeleri*, Vol. 5, 333, 336; Branislav Đurđev, “Požeška kanun-nama iz 1545 godine,” *GZM*, n. s. 1 (1946), 132, 136.

¹⁵⁷ *Osmanlı Kanunnâmeleri*, Vol. 8, 267, 275.

¹⁵⁸ *Osmanlı Kanunnâmeleri*, Vol. 7, 491, 497.

¹⁵⁹ Branislav Đurđev, “Sremska kanun-nama iz 1588-9 godine,” *GZM* n. s. 4-5 (1950), 274, 281-282.

¹⁶⁰ Hamid Hadžibegić, “Rasprava Ali Čauša iz Sofije o timarskoj organizaciji u XVII stoljeću,” *GZM* n. s. 2 (1947), 191; cf. Đurđev, “Nešto o vlaškim starješinama,” 53, 60-61.

¹⁶¹ *Osmanlı Kanunnâmeleri*, Vol. 8, 267, 275.

¹⁶² Nedim Filipović, “Bosna i Hercegovina,” in: Branislav Đurđev et al., *Historija naroda Jugoslavije*, Vol. 2, 136.

the *sancak* of Zvornik in 1530, that decreased to 11 in 1567.¹⁶³ However, it is possible that the number of the *knezes* without the *tîmâr* was higher. On the other hand, the *kânûnnâmes* of the *sancak* of Srijem provides the following numbers: in the time of the reign of Selim II (1566-1574), there were 136 *knezes* and *premikürs*,¹⁶⁴ while in 997/1588-9, their number decreased to 87.¹⁶⁵ The decrease in the number of the *knezes* was caused by the gradual dissolution of the *tîmâr* system during the 17th century. In such circumstances, the *knezes* that were not ready to accept such a fate, responded either by further assimilation with the regime through Islamisation, or, conversely, by treason – rebellion or migration to the enemy’s territory, followed by their Vlach associates.¹⁶⁶

Before we finish the discussion about the Vlachs, let us briefly evaluate the issue of the autonomy of Vlachs and their chieftains, the *knezes* and *premikürs*. Even in the early period, when according to the policy of the *isti'mâlet* the Vlachs had wider privileges, in reality their leaders were not simply representatives of the Vlachs in front of the authorities, but, vice versa, representatives of the authorities. They were helping Ottoman officials in tax collection, registration of Vlachs, and had a share in fines collected by the *sancakbeyi*. The very fact that the Vlachs had to pay penal taxes (*cürm ü cinâyet*) according to the *kânûn*, as asserted in the *kânûn* of the Vlachs of Smederevo of 922/1516,¹⁶⁷ displays that autonomy in the matters of penal law did not exist. In the case of penal offences punishable by fines and corporal or

¹⁶³ Ibid., 137.

¹⁶⁴ *Osmanlı Kanunnâmleri*, Vol. 7, 491, 497.

¹⁶⁵ Đurđev, “Sremska kanun-nama,” 274, 282.

¹⁶⁶ Đurđev, “O knezovima,” 26-28; Filipović, “Islamizacija vlaha,” 145.

¹⁶⁷ “Ve kânûn üzere cürm ü cinâyet verüler.” *Osmani Kanunnâmleri*, Vol. 3, 459, 463; Bojanić, *Turski zakoni*, 30.

capital punishments (*cürm ve siyâset*), the *kâdî* had to give authorization for the punishment of the offenders.¹⁶⁸ Hence, from the judiciary point of view, the Vlachs were completely incorporated in the legal system of the Ottoman Empire. In addition, the government achieved further control over the Vlachs through the *voyvodas*, the *sancakbeyi*'s agents, who were settled in each *nâhiye* among the Vlachs.¹⁶⁹ On the other hand, any attempt to achieve certain degree of self-government, as was the *zbor*, was harshly forestalled by the government. Later, when the Vlachs lost their privileges and exemptions, while the *knezes* were formally recognized as state officials by inclusion into the *tîmâr* system, the process of levelling of the Vlach status with that of the ordinary *re'âyâ* was accomplished.

4.3.3. *Voynuks* and *Martoloses*

Apart from the Christian elites – Christian *sipâhîs* and *knezes*, and temporarily some groups of Vlachs, there were other groups of Christian population that performed military and semi-military services for the Ottomans, namely the *voynuks* and *martoloses*. The question of their origin is still the matter of discussion. It seems that the theory according to which *voynuks* and *martoloses* originate from pre-Ottoman lower military nobility, that is, free peasant-soldiers, who enjoyed the tax-exempted land (*baština*) is right. Two things indicate this: firstly, they are registered in the early Ottoman registers as the “sons of old *sipâhîs*” (*kadîmî sipâhî oğlu*) according to the *defter* of the

¹⁶⁸ Ibid., 459, 463; Bojanić, *Turski zakoni*, 31.

¹⁶⁹ Ibid.

sancak of Arvanid (835/1431), or “of the *sipâhî* origin” (*sipâhî neslinden*) as in the defter of Braničevo (1467-1468), which supposedly indicates their origin from old Balkan nobility; and, secondly, the etymology of their names points to the services in medieval Balkan states.¹⁷⁰

On the other hand, Branislav Đurđev, who supports the theory that the *voynuks* and *martoloses* were of Vlach origin, that is, originated from those Vlachs that were employed in the military services of the medieval Balkan states,¹⁷¹ seems to have right, at least to a certain degree, in claiming that these orders were in some way connected with the Vlachs. Extension of the Ottoman border and territory required expanding of the body of the *voynuks* and *martoloses* as orders in border services. In order to meet those needs, the base of this orders was widened by inclusion of a part of members of other privileged classes and groups of Christian population. Since the Vlachs were the most numerous of these groups, it seems reasonable to suppose that certain number of members of the *voynuk* and *martolos* originate from that group.

In the *sancak* of Klis, for example, the Ottomans mobilised and militarised 2/3 of domicile population of Cetina region in Dalmatian hinterland during the fights with Venetians in early 16th century.¹⁷² This population belonged to the Balkan family pattern, presumably Vlach, whether colonised

¹⁷⁰ Milan Vasić, *Martolosi u jugoslovenskim zemljama pod turskom vladavinom*, (Sarajevo, ANUBiH, 1967), 42-43; İnalçık, “Od Stefana Dušana,” 43-44; Ercan, *Osmanlı İmparatorluğunda Bulgarlar*, 2-3; Aleksandar Stojanovski, *Raja so specijalni zadolženia vo Makedonija (vojnuci, sokolari, orizari i solari)*, (Skopje: Institut za nacionalna istorija, 1990), 8-22; on the origin of the term *martolos* see: Vasić, *Martolosi*, 19-22; Robert Anhegger, “Martoloslar Hakkında,” *Türkiyat Mecmuası*, 7-8, 1 (1940-1942), 283-286.

¹⁷¹ Đurđev, “O vojnucima, 104-108; idem, “O knezovima,” 25.

¹⁷² Vasić, *Martolosi*, 53, 82-84.

Orthodox Christians, or indigenous Catholic Vlachs, that were inhabiting the region since the Middle Ages.

Certain stipulations in some *kânûnnâmes* and *kânûns* hint at the link between these orders and the Vlachs. Vlach duty was to provide one *voynuk* per five households for guarding unsafe places, according to the *kânûns* of the *sancaks* of Braničevo and Vidin and Smederevo, as well as sections of the universal *kânûnnâmes* of the Sultans Süleymân and Beyâzid, as discussed above. The Vlachs, *voynuks* and *martoloses* were often present in the same areas, especially on borders, where they had similar duties. Consequently, Western sources often do not distinguish Vlachs from the *martoloses*¹⁷³ or *voynuks*, as was the case of Benedikt Kuripešić, for whom the Vlachs, Serbs, and *martoloses* represented a single “nation/religion”, or an Ottoman captive, Croatian Bartol Đurđević (Bartholomaeus Georgievits, 1526-1538), who described *voynuks* (*voinihlar*) as “Vlachs, ‘Greek’ followers.”¹⁷⁴ On the other hand, Ottoman chronicler Ca‘fer Iyânî (d. 1020/1611-1612) in his chronicle “*Tevârîh-i Cedîd-i Vilâyet-i Üngürüs*,” which is the history of the Ottoman – Habsburg struggle in Hungary (1585-1595), claims the same: the *martoloses* that betrayed the Ottomans during Habsburg siege of the town of Estergon, were Vlachs.¹⁷⁵ Since the author was the native from Pecs (Peçuy) and personally

¹⁷³ Vasić, *Martolosi*, 209.

¹⁷⁴ Kuripešić, 26-27; Bartolomej Georgijević, *Običaji Turaka (u XVI. vijeku)*. ‘*De Turcarum moribus*,’ tr. Ivo Badrov, (Skopje, 1922), 24.

¹⁷⁵ Câfer Iyânî, *Tevârîh-i Cedîd-i Vilâyet-i Üngürüs*, ed. Mehmet Kirişcioğlu, (Istanbul: Kitabevi, 2001), 70, 59a-59b. “... kadîmî Estergon kal’asının martoloslari nâmında olan Eflak tâ’ifesi...”

participated in the events in Hungary, we can accept his testimony as adequate.¹⁷⁶

According to Đurđev's explanation, the *voynuks*, as well as *martoloses*, were originally the military classes among the Vlachs, which started to differentiate and detach simultaneously with Vlach sedentarization and their own inclusion into the Ottoman military organization.¹⁷⁷

Disregarding the question of the origin, the status of the *voynuks* and *martoloses* was significantly different from that of the Vlachs, even though the services resembled.

One part of the *voynuks* had military duties. According to the *kânûnnâme* of the *vilâyet* of Bosna of 922/1516, in order to secure the roads the *voynuks* were settled in Priboj (Priboy) and neighbouring *varoşes*, while in the border areas – Brod and Neretva, and towns of Prusac (Akhisâr) and Sinj (Sin), the *voynuks* were settled as guards in fortresses.¹⁷⁸ Before long, however, the *voynuks* settled in Priboj, according to the Bosnian *kânûnnâme* of 937/1530, were replaced by the *derbendcis*.¹⁷⁹ The replacement of the *voynuks* as pass-guards with the *derbendci* order, which was specialised for that service, seems to be the practice in the other places of the empire as well.¹⁸⁰ The *kânûnnâme* of Požega of 925/1545, asserts that the *voynuks* were included in border services as horsemen, and in the case of the campaign they were protecting borders,

¹⁷⁶ Cf. Mehmet Kirişcioğlu, "Müellif ve Eserleri," in: Câfer İyânî, *Tevârih-i Cedîd-i Vilâyet-i Ūngürüs*, xv-xxxii.

¹⁷⁷ Đurđev, "O vojnucima," 124.

¹⁷⁸ *Osmanlı Kanunnâmeleri*, Vol. 3, 378, 380; *Kanuni i kanun-name*, 25, 32-33.

¹⁷⁹ *Osmanlı Kanunnâmeleri*, Vol. 6, 426, 432; *Kanuni i kanun-name*, 37, 43.

¹⁸⁰ Ercan, *Osmanlı İmparatorluğunda Bulgarlar*, 11.

capturing enemies, spying in the enemy territory, and accompanying the army.¹⁸¹

The other part of the *voynuks*, those who were further inland, away from the borders, did not have straight military duties, but were taking care of the imperial horses.¹⁸² Since by the end of the 16th century the military function of *voynuks* lost importance, their role as imperial stablemen was fundamental for their position in the later period.¹⁸³ In the 17th century the *voynuk* organisation started to lose on importance, until it was abolished in 1102/1691. However, it was established again in 1104/1693, but this time *voynuk* privileges were drastically reduced. The order continued to exist until its final ending in 1293-1294/1878.¹⁸⁴

The *kânûnnâme* of the *voynuks* of the Imperial Stable (*Kânûnnâme-i Voynugân-ı İstabl-ı Âmire*) of 929/1523, portrays in detail the *voynuk* organisation and its rights and duties.¹⁸⁵ The *kara voynuks* (“black *voynuks*”) were organised into a *gönder* of three, or four, in the case of *cebelü voynuks* (“mounted *voynuks*”), which were exchanging on duty in the Imperial Stable every year. They possessed *baştine* land, and were exempted from the *re‘âyâ* taxes (*harâcdan ve ispençden ve ‘öşr-i şer‘î ve rüsûm-ı örfiyeden ve tekâlif-i dîvâniyeden ve ... ‘âded-i ağnâmdan ... ve ‘avârız-ı dîvâniyeden*). In the case that they were cultivating land that had taxable status, as *harâclu baştina, tîmâr,*

¹⁸¹ *Osmanlı Kanunnâmeleri*, Vol. 5, 333, 337; Đurđev, “Požeška kanun-nama,” 132, 136.

¹⁸² *Osmanlı Kanunnâmeleri*, Vol. 4, 653-654, 655-656 (*Kânûnnâme-i Voynugân-ı İstabl-ı Âmire*, 929/1523); Hadžibegić, “Rasprava Ali Čauša,” 191; Konstantin Mihailović, *Memoirs of a Janissary*, tr. Benjamin Stolz, (Ann Arbor: The University of Michigan, 1975), 182-183; cf. Ercan, *Osmanlı İmparatorluğunda Bulgarlar*, 10-14, 38-42; Đurđev, “O vojnucima,” 88-90.

¹⁸³ Đurđev, “O vojnucima,” 90; Ercan, *Osmanlı İmparatorluğunda Bulgarlar*, 10-12.

¹⁸⁴ Ercan, *Osmanlı İmparatorluğunda Bulgarlar*, 92-94.

¹⁸⁵ *Osmanlı Kanunnâmeleri*, Vol. 4, 653-656.

vakf, *mülk*, or the like, they were obliged to pay taxes due to its status. In the case that they fail to fulfil their duties, they were loosing their tax exemptions and were obliged to pay *harâc*, ‘*öşr* and other taxes to the Imperial Treasury. Although the *voynuks* were in general tax-exempted, they had to pay some smaller taxes, like *âdet-i nîze*, or *gönder akçesi*, as is the case in the *kânûnnâme* of the *voynuks* from the period of Süleymân the Magnificent.¹⁸⁶ In 1104/1693, however, the *voynuks* lost some of their privileges and were obliged to pay the *tekâlif-i örfiyye ve şakka* taxes.¹⁸⁷

Their service had hereditary character, and their sons were able to inherit them. Even though they were outside of the *re‘âyâ* status, they were obliged to pay *bedel-i cizye* (“*cizye* substitute”) of 30 *akçe* according to the *kânûnnâme* of Bosnia of 922/1516.¹⁸⁸ The universal *kânûnnâmes* from the time of Selîm II (1566-1574) stipulate that sons and brothers and other relatives should not be registered as *re‘âyâ*, and are not paying *harâc* to the *sipâhîs*, but *ispence*, which belongs to the *sancakbeyi* of the *voynuks*.¹⁸⁹

Their fines (*cerîme*), the wedding-tax (*resm-i nikâh*), and other *bâd ü havâ* taxes were assigned to their military commanders – *ser-‘asker* and *voynuk beylerbeyi*. The *sancakbeyi* did not have the right to come among the *voynuks*, unless a *voynuk* deserved death penalty (*salb*, “crucifying, hanging”), but then he was not allowed to take *bedel-i siyâset* (fine as substitution for punishment).¹⁹⁰ According to the *voynuk kânûnnâme* from the time of Süleymân

¹⁸⁶ Ibid.; Barkan, *Kanunlar*, 264; cf. Ercan, *Osmanlı İmparatorluğunda Bulgarlar*, 74-77.

¹⁸⁷ Ercan, *Osmanlı İmparatorluğunda Bulgarlar*, 77.

¹⁸⁸ *Osmanlı Kanunnâmeleri*, Vol. 3, 378, 380; *Kanuni i kanun-name*, 25, 33; cf. *Osmanlı Kanunnâmeleri*, Vol. 4, 653, 655.

¹⁸⁹ *Osmanlı Kanunnâmeleri*, Vol. 7, 230, 258-259, 327, 362.

¹⁹⁰ *Osmanlı Kanunnâmeleri*, Vol. 4, 653, 655.

the Magnificent, the penal dues (*cürm ü cinâyet*) of the *voynuks* were assigned to their superior – *çeribaşı*, while those extracted from their sons were assigned to the Imperial Treasury in the case of those living on the *hassa* (imperial) land, or to the *tîmâr* holder in the case of those living on the *tîmâr*. If the *voynuk* commits a crime, he should be punished in the presence of the *kâdî*, the fines should be collected by the *çeribaşı*, while the *sancakbeyi* do not have the right to interfere, unless a culprit is guilty for the crimes punishable by hanging or amputation of a limb (*kat‘-ı ‘uzv*).¹⁹¹

As members of a military order, the *voynuks* were under the authority of their superior officials, lower, who were Christian – the *lagators* and *premikürs*, and higher, who were Muslim – the *çeribaşıs* and *ser-‘askers*, headed by the *voynuk sancakbeyi* or *voynuk beyi*. In terms of organisational units, the *voynuk* order was divided as follows: the lowest level was the *gönder*, that consisted of three or four *voynuks*; *gönders* were organised into *çeribaşılıks* headed by the *çeribaşıs*, which were constituting the *voynuk sancağı*, the institution of the Imperial Stable (*ıstabl-ı âmire*).¹⁹² Since the *voynuk* order was a military organisation, its members, the *voynuks*, were directly responsible to their superiors, and local administration – *sancakbeyis* or *sipâhîs* did not have jurisdiction over them. In criminal cases the process had to be solved in front of the *kâdî*, but punishment and fines were the responsibilities of the *çeribaşıs*. The only exception is the case of heavy crimes punishable by hanging or amputation of limb, when punishment was executed by the *sancakbeyi*. The instance of

¹⁹¹ “Ve bir voynuk günah işlese kâdî huzurunda te’đib olundukdan sonra çeribaşı hakkından gelüb kânûn üzere cerîmesin ala sancakbeyi dahleylemeye illâ meğer ki salbe veya kat‘-ı ‘uzva müstahak ola.” Barkan, *Kanunlar*, 264-265.

¹⁹² Ercan, 57-74.

paying taxes for the cultivation of additional land that belonged to *tîmâr*, Imperial *hâses*, *mülks* or *vakfs* to their owners, had exclusively fiscal character, and did not influence the status of *voynuks* in any way.

The ambiguity of the character of the *voynuk* status was the cause of three different theories. Firstly, some scholars concluded that the *voynuks* represent a mid-class between the '*askerî*' and *re'âyâ*, often labelled *mu'âf ve müselle*.¹⁹³ Others, on the other hand, suggest that the *voynuks* belong to the "privileged *re'âyâ*," together with specialized groups that were performing certain state services, like miners, falconers (*doğancıs*), rice-growers (*çeltükçis*), salters (*tuzcus*), *derbendcıs*, *köprücüs* (repairers and guardians of bridges), stonemasons (*taşçıs*), etc.¹⁹⁴ Finally, third view holds that the *voynuks* belonged to the '*askerî*' class.¹⁹⁵

To start with, let us take a look at the sources. The universal *kânûnnâme* of the Beyâzid II (1481-1512) in the chapter "On Campaign" (*Der Beyân-i Sefer*) provides a list of professions that were giving the right to the title of the '*askerî*'. Hence, the '*askerîs*' are *sipâhîs* that are going to the Imperial Campaigns (*sefer-i sultanîye*), the sultans servants, slaves and slave-girls, *kâdîs*, *müderrises* (instructors in *medrese* schools), *şeyhs* (religious dignitaries), *mütevellîs*, administrators, and similar professions. In addition, the '*askerîs*' are also *doğancıs* if they have received the duty by imperial *berât*, as well as "the *tâ'îfes*

¹⁹³ Đurđev, "O vojnucima," 100-101.

¹⁹⁴ Moačanin, *Slavonija i Srijem*, 109; Stojanovski, *Raja so specijalni zadolženija*, 53-65, 187-190.

¹⁹⁵ Ercan, "Osmanlı İmparatorluğunda Bulgarlar," 8-10; İnalcık, "Osmanlılar'da Raiyyet Rüsûmu," 50-51; Hadžibegić, *Glavarina*, 20-24.

of combatant *yayas*, *müsellems*, *canbaz*, *yürük*, *tatar*, and *voynuk*.¹⁹⁶ The same article is repeated in later *kânûnnâmes* – the *kânûnnâme* on the taxes for *kazasker* and *kâdîs* compiled by the *kâdî* of Bursa Mevlâna Abdü'l-vâsi Efendi in the time of Selîm I (1512-1520),¹⁹⁷ the universal *kânûnnâme* of Süleymân the Magnificent,¹⁹⁸ and mid-17th century *kânûnnâme* compilation for Bosnian *livâ*.¹⁹⁹ Hence, along with other (generally Muslim) paramilitary orders of similar character and structure, the *voynuks* in exchange for their military services received the '*askerî*' title and privileges that this title guaranteed.

The *voynuk kânûnnâmes* from the time of Süleymân the Magnificent (929/1523, 943/1536 and one undated), universal *kânûnnâmes* from the reign of Selîm II (1566-1574), that is, three *kânûnnâmes* of Nişâncı Celâlzâde, and Bosnian *kânûnnâme* compilation, provide more examples of the '*askerî*' nature of the *voynuk* order. The Chancery was paying great attention to prevent inclusion of the *re'âyâ* into the *voynuk* order through the intervention of corrupted *kâdîs* and *voynuk ser-'askers*, according to the prescriptions from the Süleymân the Magnificent time.²⁰⁰ Although sons of the *voynuks* were obliged to pay the *harâc* and *ispence* taxes before they entered their fathers' offices while waiting in the *voynuk*'s "reserve" (*voynuk zevâ'idi*, "voynuk surplus"), it was forbidden to note them into the records as *re'âyâ*. Once in the office, they had the same rights as their fathers.²⁰¹ According to Celâlzâde's *kânûnnâmes* and the Bosnian compilation, on the other hand, those from the *voynuk zevâ'idi*,

¹⁹⁶ "... ve eşer yaya ve müsellem ve canbaz ve yürük ve tatar ve voynuk tâ'ifeleri dahi '*askerîdir*.'" *Osmanlı Kanunnâmeleri*, Vol. 2, 60, 95.

¹⁹⁷ *Osmanlı Kanunnâmeleri*, Vol. 3, 144, 146.

¹⁹⁸ *Osmanlı Kanunnâmeleri*, Vol. 4, 385, 417-418.

¹⁹⁹ Ćiro Truhelka, "Stari turski agrarni zakon za Bosnu," *GZM* 28 (1916), 447, 469.

²⁰⁰ *Osmanlı Kanunnâmeleri*, Vol. 4, 654, 655-656, 658, 660; Barkan, *Kanunlar*, 266.

²⁰¹ *Osmanlı Kanunnâmeleri*, Vol. 4, 653, 655, 657, 660; Barkan, *Kanunlar*, 266.

who were registered as the *re'âyâ*, had to pay *re'âyâ* taxes to the owner of the land.²⁰²

The *voynuk* organisation had quite enclosed character, and it was forbidden to accept somebody who was originally a *harâc*-payer (*harâclu*), although the member of *voynuk zevâ'idi*, in the place of a *harâc*-exempted *voynuk* (*harâcsuz*). However, in the case that there were no candidates of the genuine *voynuk harâc*-exempted origin, other candidates were acceptable as well.²⁰³ In this case, nevertheless, the Chancery was careful not to make damage to the *tîmâr*-holders, but still wanted to find a way to attract new *voynuks*. According to the provisions of the Celâlzâde *kânûnnâmes* and the Bosnian compilation, in the case of those who were recorded both in the *re'âyâ* and in the *voynuk defters*, the *voynuk* service was defining their status. However, if they were cultivating *tîmâr*-land, they had to pay the *'öşr* and *sâlâriyye* taxes to the *tîmâr*-holder as they used to. Only their *voynukluk*, that is, *baştina* land, if they had it, was exempted from the *'öşr*-tax.²⁰⁴ In this case, however, it seems that the exemption from the *harâc* might have been a solid privilege that was attracting *re'âyâ* into the *voynuk* order.

The question of the *'askerî* status of non-Muslim paramilitary groups, the *voynuks* as well as *martoloses* or combatant Vlach units, is addressed in a *fetvâ* of a, presumably a Bosnian, *müftî* Ca'fer, preserved in Dubrovnik Archive.

²⁰² *Osmanlı Kanunnâmleri*, Vol. 7, 230, 258-259, 297-298, 313; Truhelka, "Stari turski agrarni zakon," 451-452, 473-474.

²⁰³ *Osmanlı Kanunnâmeleri*, Vol. 4, 653, 655, 657, 660; Barkan, *Kanunlar*, 266.

²⁰⁴ *Osmanlı Kanunnâmeleri*, Vol. 7, 230, 259, 327, 363; Truhelka, "Stari turski agrarni zakon," 451-452, 473-474; cf. Barkan, *Kanunlar*, 265-266; cf. Ercan, *Osmanlı İmparatorluğunda Bulgarlar*, 14-18.

As discussed above, the *fetvâ* most probably originates from the period between 952/1545 and 1022/1613.

Let us proceed with the *fetvâ*:

Question: *Harâc*-payer *zimmîs* who had become the '*askerî* had a lawsuit on a certain matter. Who has the authority to hear this case – a town's dignitaries (*efendis*), or the *şerî'at kâdî* on behalf of the *kâdî*- '*asker*'?

Answer: It is recommended to do the hearing according to their petition. It is lawful to say: "You will have the hearing in the front of the military judge against the accusations in this lawsuit."²⁰⁵ (See: Appendix H, 1. a.)

Assuming that the period given is correct, the *harâc*-paying *zimmîs* who became '*askerî* are probably not the Christian *sipâhîs* of whatever origin, nor individual *knezes* or *premikürs*, since it seems that here a group is in question. If this is the case, then the only logical assumption is that it is about a group of Christians with paramilitary services, as the *voynuks* or *martoloses*. According to the *kânûn*, the '*askerî* class was under the jurisdiction of the military judges.

The fact that this *fetvâ* on its reverse contains a name, or, more precisely, appellation of a person who put forward the question (*müsteftî*) – *Frenk* (see Appendix H, 1. b.),²⁰⁶ leads us to the conclusion that the questioner was a Catholic Christian. Since it was preserved in the archive of Dubrovnik, he must have been one of Dubrovnik's merchants, who were, as said above, intermediaries of the Bosnian Catholics in front of the Ottoman government. Hence, the '*askerîs* in question must have been Catholics as well. A certain

²⁰⁵ "Harâcguzâr zimmîler '*askerî* olub da'vâları oldukda ba'zı husûsların kasaba efendileri istimâ' itmeğe kâdir olurlar mı şer'an kâziasker cânibinden kâdî mi lâzımdır?
El-cevâb: Rızaları ile istimâ' olunacak câ'iz olur mudda'i aleyh '*askerî* olıcak berre da'vâyı kassâm-ı '*askerîye* istimâ' itduririn dimeğe kâdirdir.

Cafer el-müftî. 'Ufiye anhu." *Acta Turcarum*, C-III, C-10, 61.

²⁰⁶ *Acta Turcarum*, C-III, C-10, 61a.

numbers of the *martoloses* in Bosnia, Dalmatia and Slavonia were Catholic Christians/Croatians,²⁰⁷ as well as some of the Slavonian *voynuks*.²⁰⁸

On the other hand, the *müftî* that had issued the *fetvâ*, Ca‘fer, must have been of the *kenar müftîs* (local *müftîs*) of Bosnia, since other *müftîs* whose *fetvâs* are preserved in the archive are either local *müftîs* from the towns of the region or *şeyhülislâm* Ebü’s-Su‘ûd Efendi (since no *şeyhülislâm* had the name Ca‘fer).

Hence, according to the Ottoman legislation and recognised by the *şerî‘ât* authorities, i.e. the *müftî*, the *voynuks*, as well as some other Christians in military services, belonged to the ruling, ‘*askerî*’ class of the Ottoman society. In exchange for performance of vital services for the state, the government was ready to include certain non-Muslim groups into its ruling class disregarding their religion. The *re‘âyâ*, on the other hand, consisted of both Christians and Muslims. In some cases, Christian *sipâhîs* on their *tîmâr* lands had Muslim peasants as *re‘âyâ*, who had the same obligations as they would have towards the Muslim *sipâhîs*.²⁰⁹ The decisive division in this case was social: ‘*askerî*’ – *re‘âyâ*, and not religious: Muslim – Christian.

The *martolos* order was similar to the *voynuk*, though their character was more combatant, that is, comparable to that of the *voynuks* in active military services. The *martoloses* in border areas performed pure military services, whether as crew in fortresses, or as troops that participated in incursions and raids into the enemy’s territory, as was in the case of Slavonia, Hungary, north

²⁰⁷ Vasić, *Martolosi*, 147, 154, 157.

²⁰⁸ Moačanin, *Slavonija i Srijem*, 141.

²⁰⁹ Cf. Đurđev, “Hrišćani spahije,” 168.

Serbia, Dalmatia, Bosnia and Albania.²¹⁰ Their number must have been considerable, since in two *buyuruldus* from 975/1568, sent to the *beylerbeyi* of Buda (Budun),²¹¹ and *sancakbeyis* of Požega, Kopan (Kopanny), Mohaç, and Şimontoma,²¹² considering the observance of the peace agreement with the Habsburg emperor Maximilian, among the Ottoman military orders that were ordered to abstain from raids into the Habsburg territories, the *martoloses* were included as well.²¹³ The *kânûnnâmes* of Smederevo (934/1527 and 943/1536) stipulate that the *martoloses* who are guarding the fortress of Smederevo are exempted from taxes and receive salary for their services.²¹⁴ Konstantin Mihailović confirms that the *martoloses* were serving in the borderlands in exchange for tax-exemptions and salary.²¹⁵ The *martoloses* of the *sancak* of Srijem, according to the *kânûnnâme* from the time of Selîm II, had something different duties. They were collecting the taxes from the *re'âyâ* and protecting Fruška Gora and the *kaza* of Nijemci (Nemçe) against the bandits (*haramî ve sâ'ir ehl-i fesâd*) from the mountains. In the time of the war, they were serving on boats. In exchange for their services they were granted tax exemptions.²¹⁶ The *martoloses* in the interior far away from the borders had police duties, e.g. securing the passes (*derbendci*) and bridges (*köprücü*). Unlike the *martoloses* with active military service, they did not receive salaries, but only tax-

²¹⁰ Vasić, *Martolosi*, 55-56, 83-84; Anhegger, 286-290; E. Rossi, [W.J. Griswold], "Martolos," *ET*²; Moačanin, *Slavonija i Srijem*, 132-133, 147; idem, *Town and Country*, 156.

²¹¹ 7 *Numaralı Mühimme Defteri*, no. 1081.

²¹² 7 *Numaralı Mühimme Defteri*, no. 1080.

²¹³ Ibid., "zü'amâ ü erbâb-ı tîmâr ... ve ulûfe ü dirlik tasarruf iden neferât ... ve martolos u leyend tâ'ifesi."

²¹⁴ *Osmanlı Kanunnâmeleri*, Vol. 5, 354, 362, 374, 378; "... hem ulûfe ve hem mu'âfiyet ile hidmet eyleyüb."

²¹⁵ Mihailović, 182-183.

²¹⁶ *Osmanlı Kanunnâmeleri*, Vol. 7, 491, 496.

exemptions.²¹⁷ According to the *kânûnnâme* of the *sancak* of Zvornik of 955/1548, the *martoloses* in this area had the duties of *derbendcis*, and in exchange were exempted from the '*avâriz-i dîvânîyye* and *tekâlîf-i 'örfiyye*, and still had to pay *ispence* tax, according to the *derbendci* custom ('*aded-i derbendciyân*). Hence, they had the same status as *derbendcis*, which means that they were technically speaking the *re'âyâ* with special status. Unlike them, another group of 25 horsemen *martoloses* was hired into service that included participation in campaigns with *sancakbeyi*. They were exempted from all taxes and received salary, hence enjoying full '*askerî* status.²¹⁸

In incursions into the enemy's territory the *martoloses* were accompanying the *akıncıs*, the Muslim order specialised for incursion (*akın*).²¹⁹ This close association between the *martoloses* and *akıncıs*, made some authors to speak of another Christian group in the Ottoman military service – the Christian *akıncıs*.²²⁰ On the basis of Mehmed II's order of 877/1472 for conscription of the *akıncıs* addressed to *kâdîs* in the Balkans, which states that the *akıncıs* are to be conscripted from both Muslims and Christians, and instruction that the preference should be given to Christians, Heath Lowry made conclusion that the *akıncı* order "... was primarily comprised of non-Muslims."²²¹ However, so far no Christian *akıncıs* were discovered by the scholars working on the Ottoman registers, not even in the register of the

²¹⁷ Vasić, *Martolosi*, 95-96; Anhegger, 296-297.

²¹⁸ *Osmanlı Kanunnâmeleri*, Vol. 5, 299-300, 310; *Kanuni i kanun-name*, 102-103, 117-118.

²¹⁹ Anhegger, 286, 308-309; Vasić, *Martolosi*, 81-84; on the *akıncıs* see: A. Decei, "Akıncı," *ET*.

²²⁰ Heath W. Lowry, *The Nature of the Early Ottoman State*, (Albany: State University of New York Press), 50-54, 132; Vasić, *Martolosi*, 152; Filipović, "Islamizacija vlahi," 145. Vasić and Filipović are speaking of the *akıncıs* that during 16th century converted to Islam - "Islamised *akıncıs*". According to Filipović, they were of Vlach origin. I am indebted to Mariya Kiprovskia and Grigor Boykov for drawing my attention to the problem of the "Christian *akıncıs*."

²²¹ Lowry, *The Nature*, 52, for the text of the order see pp. 53-54.

akıncıs for which Mehmed II's order was actually the instruction.²²² The problem might stem from terminology; general term in the narrative literature of both Western and Ottoman origin for the Ottoman incursions, and attacks in general, into the enemy territory was the *akın*.²²³ In addition, the same was the case in legal documents. For instance, the *kânûn* of the Vlachs of the *sancak* of Smederevo of 934/1527 stipulates that the Vlach *voynuks* should, when the time comes, follow the *sancakbeyi* into the *akın*.²²⁴ Speaking from strictly etymological perspective and in accordance with the logic of the Ottoman Turkish language, the one who participate in the *akın*, is the *akıncı*. Leaving linguistics aside, we might speculate that the *martoloses* who participated in incursions (*akıns*) into the enemy territory together with *akıncıs*, and had similar status, upon the conversion to Islam might have had easily entered the *akıncı* order, even though there was a certain number of Muslims in the *martolos* order as well. Interestingly enough, Donaldo de Lezze noted that the *martoloses* who participated in the war against Uzun Hasan, were the same as the *akıncıs*, apart from being Christian.²²⁵ Since Christian and Muslim “*akıncıs*” from Mehmed II's order were later sent to the Eastern Anatolia against Uzun Hasan, it is possible to suppose that these Christian “*akıncıs*” from the order were in reality the *martoloses* as reported by de Lezze.

An order to the *bey* of Požega of 972/1565 to organise the *akın* against Habsburg Slavonia, instructs that apart from the *akıncıs*, the *bey* should organise

²²² Mariya Kiprovskaya, *The Military Organization of the Akıncıs in Ottoman Rumelia*, (Ankara: Bilkent University, 2004) (unpublished MA thesis), 48-50; for the 15th and 16th century Bosnia see: Yardımcı, 147.

²²³ Lowry, 47.

²²⁴ *Osmanlı Kanunnâmeleri*, 5, 368, 370.

²²⁵ Anhegger, 286, 308.

the *gönüllü yiğitler* (“volunteering heroes”) to participate in the *akın*.²²⁶ According to Moaçanın, the *gönüllü yiğitler*, or the *garîb yiğitler* (“strange/stranger heroes”) in his example, might have been volunteers of diverse origin, from “unemployed” *sipâhîs* to adventurous *re’âyâ*, who in the campaigns saw the chance for social elevation into the ‘*askerî*’ class, in reality often followed by the conversion to Islam.²²⁷ In this case, after the conversion to Islam, they might have been formally accepted into the *akıncı* order. In my opinion, even though there certainly were some Christians who participated in the *akıns*, we cannot speak of Christian *akıncıs*, that is, members of the *akıncı* order.

According to Halil İnalçık, the main criterion for the ‘*askerî* – *re’âyâ*’ division was the payment of the taxes – *raiyyet rûsûmu*.²²⁸ This difference, the exemption from the *re’âyâ* taxes, was decisive for inclusion of Christian elites – Christian *sipâhîs*, *knezes* and *premişli*s, and paramilitary orders – *voynuk* and *martoloses*, into the ‘*askerî*’ class. However, the membership in the ‘*askerî*’ class was not granted for eternity, but it was liable to mundane changes of pragmatic, *realpolitik* nature. The government lost its interest in preserving privileges granted in earlier times in exchange for certain services of state importance when they were not pressing any more. Hence, when the state reached a sufficient degree of centralisation and administralizaiton, which happened in

²²⁶ 6 Numaralı Mühimme Defteri, no. 1378. “... müşârun-ileyhe irsâl olunan kullarum akıncı tâ’îfesiyle ol tarafdan akın itdükde sen dahi sancağunda gönüllü yiğitlerle hâzır olup ale’l-gafle sancağın serhadlerinde olan küffâr-ı hâksâra akın idüb...”

²²⁷ Moaçanın, *Slavonija i Srijem*, 147-148.

²²⁸ İnalçık, “Osmanlılar’da Raiyyet Rûsûmu,” 49. “Askerî sınıf mensupları bu resimlere tâbî değildir ve bu muâfiyet, askerîyî reâyâdan ayırdeden belli başlı bir vasıf sayılmıştır.”

full extant in the time of Süleymân the Magnificent, but had started earlier, in the time of Mehmed the Conqueror, some of the services became dispensable, while the privileges granted in exchange for their performance became needless financial burden.²²⁹ Hence, in 1520's the process of gradual reduction and eventual abolition of some services performed by paramilitary and quasi-governmental bodies began. In the northwestern part of Balkans, those services were performed largely by non-Muslims. The fiscal pressure on these bodies and layers resulted partly in the rebellion against the state that was implementing it, and partly in the attempts to relieve own position by endeavour to enter the system. Since all of the higher state positions were the preserve of the Muslims, the only way to become competitive was the conversion to Islam. On the other hand, the conversion was beneficial even if a person was not ambitious, but preferred to accept its fate and become the ordinary subject – the *re'âyâ*, since the overall taxes of a Muslim subject were somewhat lower than that of a Christian. The Balkan historiographies, at least ex-Yugoslav, observing the things from this angle, concluded that this process represented an assault of the Muslim state on Christian elements in its body, based, not exclusively but significantly enough, on the religious grounds.²³⁰

Even though some of those arguments cannot be ignored, especially the exclusivity of the higher offices for the Muslims, if this process is put into wider perspective, that is, if the focus is removed from predominantly Christian

²²⁹ Cf. Ibid., 50-51.

²³⁰ Cf. Filipović, "Vlasi i uspostava timarskog sistema," 217-218; idem, "Islamizacija vlaha," 145; Vasić, *Martolosi*, 163-166; idem, "Knežine i knezovi," 249-250; Đurđev, "O knezovima," 27-28; Branislav Đurđev, "Uloga srpske crkve u borbi protiv osmanske vlasti," *Pregled*, 1 (1953), 38; idem, *Uloga crkve*, 138-140; for the description of state pressure in the 15th century see: Filipović, *Princ Musa*, 275-278.

context of the northwestern Balkans towards more Muslim environment of Anatolia, than it will be possible to notice that similar processes were not peculiarly affecting non-Muslims, but were going on in the Muslim context as well. Some of Muslim paramilitary orders like the *akıncıs*, *yayas*, *müsellems*, *yürüks*, etc., completely lost their privileges, while other groups, as *doğancıs*, *yağcıs*, *at-çekens*, etc., managed to preserve only smaller parts of previous exemptions. Only the religious dignitaries – *imâms* and *hatibs*, preserved previous status.²³¹ By the end of 16th century, the brigandage of former troops discharged from the duty, accompanied by various malcontents, such as *sipâhîs* who lost their *tîmârs*, nomads, and jobless graduates of *medreses* (*softas*), turned Anatolia in the period from 1595 to 1606 into havoc, resulting in irreparable material and human losses.

On the other hand, neither revolts of the Muslim population were confined only to Anatolia, nor uprisings in the Balkans were exclusively Christian. The abolition of privileges and introduction of new taxes in Bosnia resulted in rebellions of Muslim population starting from 1630's. In 1636 Muslim peasants devastated and plundered the court-house (*mehkeme*) in Sarajevo, the revolt in 1650 was headed by the *mula* of Sarajevo Hasan Efendi Arapoğlu, while in the upheaval of 1682 the *kâdî* and *nâ'ib* of Sarajevo were killed by the mob, and the *mahkeme* was plundered.²³²

In this light, the revolts of Christian population and their paramilitary groups, brigandage, collaboration with Christian states in the time of war, or immigration to their territories, the process which started by the end of 16th

²³¹ İnalçık, "Osmanlılar'da Raiyyet Rûsûmu," 50-51.

²³² Aydo Sućeska, "Seljačke bune u Bosni u XVII i XVIII stoljeću," *Godišnjak Istorijiskog društva BiH*, 17 (1966-1967), 163-207.

century, acquires another, socio-economic dimension, that should be taken into consideration together with previously overstressed confessional element.

4.3.4. *Re'âyâ* with Special Privileges and Duties

Apart from non-Muslim paramilitary orders and groups, there were other groups that were performing special services for the state, and therefore differed in status from ordinary *re'âyâ* subjects, but, still did not enter the *'askerî* class and gained full tax exemptions. They remained in *re'âyâ* status, although they received certain level of tax exemption – hence, their name was *mu'âf ve müselleme re'âyâ*. Some of these groups received exemptions from *'avârız* (“extraordinary tax”), others from all *re'âyâ* taxes (*re'âyâ rüsûmu*), but still had to pay the *şerî'at* taxes – the *cizye* and *harâc*. However, in the 16th century exemptions from *re'âyâ rüsûmu* were abolished, i.e. converted into the exemptions form *'avârız*.²³³

Such groups with special duties were *çeltükçis*, *derbendcis*, *pâsbâns*, *keştibâns*, *köprücüs*, *taşçıs*, *ma'dencis* (miners), *tuzcus*, *filuricis*, and the like. We will not discuss the status of each of these groups here, since the variations were not significant enough to prevent us from making generalizations. Some of them, like *filuricis*, the payers of the *filuri*-tax as substitute for the *ispence* and/or *cizye*, were partially discussed above, and had more or less the same status as Vlachs after sedentarization.²³⁴

²³³ İnalçık, “Osmanlılar'da Râiyyet Rüsûmu,” 52-53, 61-62.

²³⁴ Cf. Halil İnalçık, “Filori,” *EF*.

The *derbendcis* were already mentioned in brief while discussing the *martoloses* and *voynuks*. As was seen above, they often replaced *voynuks* and *martoloses* in their duties in the time of abolition of their privileges. Unlike the *voynuks* and *martoloses*, they were granted only the exemption from ‘*avâriz-i dîvânîyye* and *tekâlîf-i ‘örfîyye*.²³⁵

Their main duty was to secure travellers from the attacks of banditry in dangerous passes. The most significant testimony of their presence in Bosnia is a place in northern Bosnia – *Derventa*.²³⁶ Western travelogues inform that the *derbendcis*’ duty was to inform travellers of the presence of bandits in dangerous passes through mountains or woods by beating the drum. Pierre Lescalopier saw Serbian *derbendcis* in mountains around Plevne (Pljevlje) in 1574. One man was serving as the watchmen on the top of the mountain. In exchange for performance of the service, they were exempted from taxes.²³⁷ Louis Courmenin Des Hayes reported on Christian *derbendcis* in mountains near Čemerno (Çemerne), and explained that they were exempted from the “*harâc*.”²³⁸ It is probable that the traveler used name “*harâc*” in vague meaning of “a tax,” without knowing its specific meaning and nature. However, if stipulations of the 15th-century *kânûn* of the Vlachs of Herzegovina (882/1463) were still not abolished, Des Hayes might have been right. The *kânûn* specifies that Vlach *derbendcis* for their service in places between Čemerno and Sutjeska (Sutiska), were paying only *eflâkiye ‘âdedi* tax, while being exempted from

²³⁵ Cf. Cengiz Orhonlu, *Osmanlı İmparatorluğu’nda Derbend Teşkilatı*, 2nd edition (Istanbul: EREN, 1990); Pakalın, Vol. 1, 425.

²³⁶ Cf. Adem Handžić, “Postanak i razvitak Dervente u XVI stoljeću,” in: Adem Handžić, *Studije o Bosni*, (Istanbul: IRCICA, 1994), 213-234.

²³⁷ *Priče francuskih putnika*, 41.

²³⁸ *Ibid.*, 70.

harâc, *ispence*, and other '*avârız-ı dîvâniyye* taxes.²³⁹ If this was so, than this would represent an exceptional case in the time when exemptions from taxes other than '*avârız* were very rare for all groups of population.

The most important of the *mu'âf ve müselleme* groups of the *re'âyâ* were the miners (*ma'dencis*). They differed from other groups due to their non-agricultural way of life and considerable material wealth. Balkan mines were the richest in the Ottoman Empire, while those in Bosnia – like Kreševo, Fojnica, and Srebrenica among others, were, after mines in Kratovo, Novo Brdo and Kopaonik, the most important in the Balkans. The importance of these mines for Bosnia is illustrated by the fact that these towns (*varošes*) – Kreševo, Fojnica and Srebrenica, were first three towns in all Bosnia according to the number of inhabitants and level of development in period before the Ottoman conquest.²⁴⁰ The population of these towns was Catholic, and some of the most important Franciscan monasteries were situated in or near them, e.g. in Fojnica, Olovo, Kreševo, and Srebrenica. Therefore, it is not surprising that Islamisation processes in these urban centers was much slower than in other towns in Bosnia.²⁴¹

Owing to their importance for state revenues, the mines were included into imperial *hâses*. After initial setback caused by the conquest, the government adopted previous legislation – medieval Serbian mining laws based on Saxon mining law, and left the organization of mining autonomous. In the

²³⁹ *Osmanlı Kanunnâmeleri*, Vol. 1, 495-496.

²⁴⁰ Adem Handžić, "Rudnici u Bosni od druge polovine XV do početka XVII vijeka," in: Enver Redžić, ed., *Prilozi za istoriju Bosne i Hercegovine*, Vol. 2, Akademija nauka i umjetnosti Bosne i Hercegovine, no. lxxix, Odjeljenje društvenih nauka, no. 18 (Sarajevo: ANUBiH, 1987), 10, 21-23, 28-29.

²⁴¹ Cf. Filipović, "Bosna i Hercegovina," 124-125.

time of Beyâzid II (1481-1512), the government issued first *kânûns* for the mines, and the production increased. The peak in production was achieved in the time of Süleymân the Magnificent: new mines were open, and mining laws were systematically codified in 943/1536. In the period that followed, the mining industry started to decrease, while in the 17th century exploitation of precious metals gave place to iron.²⁴²

Ottoman mining codes actually represent a compilation of Saxon, medieval Serbian and Ottoman laws, which is most obvious in the case of the codes of Süleymân the Magnificent (943/1536). This fact is evident even from the terminology, which combines Serbian-Croatian and German terminology.²⁴³

Legal jurisdiction belonged to the *kâdîs*, who at the same time had the right to control business affairs in mines, as *nazir* and *müfettiş*.²⁴⁴ Miners enjoyed a certain degree of self-government. The people of the mines and surrounding villages, from priests (*papaslar*), *knezes*, and *kuyucu başıs* (“chief diggers”), to the “big and small of the community” (*cemî‘ ulusu ve kicisi*), were holding weekly meetings (*izbor, zbor*). However, the authority of *‘amîls* (“collector of revenues,” “state officer”) and their men could not have been brought into question, as stated in the *kânûns* for Srebrenica, Rudnik and Novo Brdo from the time of Mehmed II.²⁴⁵ According to the mining *kânûns* from the time of Süleymân the Magnificent, chief-miner was called *hutman* (German

²⁴² Handžić, “Rudnici u Bosni,” 12-17.

²⁴³ Fehim Spaho, “Turski rudarski zakoni,” *GZM* 25 (1913), 133-134; Handžić, “Rudnici u Bosni,” 14; cf. Branislav Đurđev, “Turski prevod rudarskog zakona za Novo Brdo despota Stefana Lazarevića,” *POF* 25 (1975), 113-131.

²⁴⁴ Handžić, “Rudnici u Bosni,” 17.

²⁴⁵ Robert Anhegger and Halil İnalcık, *Kânûnnâme-i Sultânî Ber Müceb-i ‘Örf-i ‘Osmânî. II. Mehmed Ve II. Bayezid Devirlerine Ait Yasaknâme Ve Kânûnnâmeler*, 2nd edition (Ankara: Türk Tarih Kurumu, 2000), 7, 11-12.

Hüttenmen), while lower officers were *urbarers*.²⁴⁶ The miners were obliged to give the *knez* and *tekliç* dues called *podela* on Christmas and Easter, weekly a pint on wine they were selling, and a tong of a slew animal. They were also entitled to an amount of money from every litigation in mining matters in front of the *izbor*.²⁴⁷

Interestingly enough, the miners had considerable immunity in legal matters. If a miner was imprisoned because of a debt, he had to be released in order to go to work, after leaving surety. The same was in the case of a crime: the accused miner was released in order to go to work until the verdict, in exchange for surety.²⁴⁸

In terms of fiscal burden, the status of miners tended to deteriorate over time. While miners of Kreševo, according to the *kânûn* of 1489, were exempted from *harâc* and *ispence*, as well as '*avârîz* and *tekâlif-i dîvânîyye*, in return for payment of a *filuri*-tax,²⁴⁹ miners of Fojnica lost their privileges, and had to pay all *re'âyâ* taxes.²⁵⁰ Miners of Kreševo must have lost their privileges soon as well. Miners in Podrinje region, in the mines of Srebrenica, Sase, and others, paid *filuri* instead of *harâc*, but had to pay other taxes. Hence, the only privilege Bosnian miners had was exemption from '*avârîz* and *tekâlif-i dîvânîyye*. However, due to their good material standing, the miners were not significantly struck by the loss of their privileges.²⁵¹ Indeed, bishop Nikola Olovčić who visited town of Majdan (Maydan) in 1672, noted that the inhabitants, almost all

²⁴⁶ Spaho, 167, 173.

²⁴⁷ Ibid., 194.

²⁴⁸ Ibid., 187.

²⁴⁹ *Kanuni i kanun-name*, 15.

²⁵⁰ Ibid., 17-18.

²⁵¹ Handžić, 18-19.

miners and blacksmiths, lived in abundance and had privileges, while the Church was in very good position as well.²⁵²

4.3.5. Townsmen

Townsmen are another group that is hard to classify. They differed from the *re'âyâ* in the sense that they did not pay some of agricultural taxes, or none, if they had received *mu'âfiyyet* ("exemption") from *'avârız* and *resm-i çift*. This was the case in cities of special governmental concern, with a status of *kasaba*. However, the *mu'âfiyyet* was usually granted only to central part of the town inhabited by Muslim population, while the periphery, the *varoş* (*varoš*) inhabited by Christians remained as it was.²⁵³ However, in some cases, Christian population lived in a part of town that enjoyed exemption along with Muslims, and was fully involved into economic life of the town through guilds. In Bosnia this was the case of Sarajevo, where, according to the *tahrir defter* of 1604, a part of the non-Muslim population (Christians and Jews) living in the town's center, was exempted (*cemâ'at-i gebrân der nefs-i Saray* and *cemâ'at-i yahûdîyân der nefs-i Saray*, "the congregations of infidels and Jews of Sarajevo"), while the other part (Christian) living in suburb – *varoş*, was not. Some of them registered as temporarily residents were the *re'âyâ* from *sipâhî* villages, and had to pay all *re'âyâ* taxes to their *sipâhîs*, and *resm-i duhan* in Sarajevo.²⁵⁴ Around the same time, Christians in Banja Luka received

²⁵² Julijan Jelenić, "Spomenici kulturnog rada bosanskih Franjevaca (1437.-1878.)," *Starine JAZU*, 36 (1918), 136.

²⁵³ Handžić, "Značaj muafijeta," 151-160.

²⁵⁴ Adem Handžić, ed., *Opširni popis Bosanskog Sandžaka*, Vol. I/1, (Sarajevo: Bošnjački institut, Orijentalni institut, 2000), 91-94; cf. Adem Handžić, "O gradskom stanovništvu u Bosni

mu'âfiyyet as well, due to the fact that they were poor and did not possess the land.²⁵⁵

The population of the town consisted of state officials and artisans and merchants. State officials (military, administration, judicial organs, officials of the *vakfs*, *'ulemâ*, mosque servants, *sipâhîs*, etc.) constituted considerable percentage of town population, especially in the towns of special administrative or military importance, as were the seats of *sanckbeyis*, or towns near the borders.²⁵⁶ Second group, the artisans and merchants, was responsible for the town's economic prosperity, and enjoyed significant degree of self-government and autonomy. As some other Middle Eastern groups with common interest, artisans and merchants were organised into professional corporations, the guilds – *esnâf* (sg. *sinf*). Each *esnâf* was gathering artisans and shopkeepers of specific profession, and had its own clearly specified zone in the centre of the town, consisting of one or several streets. The main idea of the *esnâf* was to include and organise all artisans and shopkeepers of a certain profession in order to increase productivity and sale, disregarding their religion. Hence, some guilds in certain towns embraced both Muslims and non-Muslims. Others, however, were exclusive in terms of religious denomination.²⁵⁷ In Sarajevo *esnâfs* with confessionally mixed members (Muslims and Orthodox Christians) were *kuyumcus* (goldsmiths) and *kürkçüs* (furriers).²⁵⁸ Apart from the reason of

u XVI stoljeću,” in: Adem Handžić, *Studije o Bosni. Historijski prilozi iz osmansko-turskog perioda* (Istanbul: IRCICA, 1994), 167.

²⁵⁵ Handžić, “O gradskom stanovništvu,” 167.

²⁵⁶ Ibid., 167.

²⁵⁷ A. Raymond, “Sinf. 1. In the Arab World,” *EI²*; Faroqhi, “Crisis and Change,” 590.

²⁵⁸ Hamdija Kreševljaković, *Esnafi i obrti u starom Sarajevu* (Sarajevo: Narodna prosvjeta, 1958), 108-110, 119-120; idem, “Gradska privreda i esnafi u Bosni i Hercegovini (od 1463 do 1851), *Godišnjak Istoriskog društva BiH*, 1 (1949), 186.

religious exclusiveness and separatism, some professions were avoided by Muslims as unappealing, not recommendable or forbidden, like banking, production and trade of goods as precious metals, pork, wine, and the like.²⁵⁹ In the case of Bosnia, such exclusively non-Muslim profession was the *meyhancı* (tavern-keeper).²⁶⁰

In addition to their economic role, the *esnâfs* were fulfilling certain administrative tasks in the town. They were representing artisans and shopkeepers in front of the authorities, and, vice versa, helping the authorities in controlling the production and sale of goods, and collecting taxes and provisions. The *esnâfs* were administering the justice in inner disputes through the *loncas* (the *esnâf* board) presided by the *kethüda*. In addition, the *esnâfs* were fulfilling some public communal services in the centre of the city, like water supply, cleaning and fire-fighting.²⁶¹

As already mentioned, the *esnâfs* had certain degree of self-government and inner autonomy respected by the government. The head of each *esnâf* was the *kethüda*, who represented the *esnâf* in front of the authorities and to the outside world in general, and at the same time directed inner affairs. His deputy was the *yiğitbaşı*, while other important offices in the *esnâf* were the *kalfabaşı*, *ustabaşı*, *çavuş* and *bayraktar*. In certain matters that demanded consensus, the *kethüda* was assisted by the *lonca*, the board of the *esnâf*, or, on special occasions, an assembly of all master-craftsmen (also called the *lonca*). Each

²⁵⁹ Cf. Braude and Lewis, 9.

²⁶⁰ Kreševljaković, *Esnafi i obrti*, 215.

²⁶¹ Raymond, "Sinf," *IE*²; İnalcık, *The Ottoman Empire*, 152-153; Kreševljaković, *Esnafi i obrti*, 50-51, 55, 59.

town had the town *kethüda*, who represented all *esnâfs* and *kethüdâs* in front of the authorities.

Although the state agreed to recognise the autonomy of the *esnâfs*, it exercised the right to confirm the election of the *kethüda* by the *berât* that secured the control over the *esnâfs*. On the other hand, even though the *esnâfs* had own regulations recorded in the *esnâf* certificates, manuals, *fermâns* or registered in *kâdî sicils*, the state imposed special *ihtisâb* regulations that were fixing prices, quality of goods, and other things connected to the market. Officer appointed for the control of the *ihtisâb* was *mühtesib*, who, along with the *kâdî*, was securing tighter state control over the *esnâfs*.²⁶²

Population of Ottoman towns lived in separate *mahalles* divided across the confessional and ethnic lines. In real life, however, private arrangements often blended the Muslims and non-Muslims, as is obvious from the court registers of the 17th century Sofia, in the documents on transactions of property between the two, as when a Muslim bought the house in non-Muslim *mahalle*, or the other way around.²⁶³ Orders that were trying to prevent confessional mixing inside the *mahales* are abundant for all parts of the Empire, as is recorded in the *mühimme defteris*. A number of the *fetvâs* of *şeyhülislâms* are concerned with the same problem. The other factor must have been the Islamisation in cases when some members of a family adopted Islam, while others remained Christian, but remained to live together, as was the case in an Orthodox Christian family in Sarajevo in 16th century, where children converted

²⁶² İnalçık, *The Ottoman Empire*, 152-160; Kreševljaković, *Esnafi i obrti*, 50-61.

²⁶³ Rossitsa Gradeva, "Orthodox Christians in the Kadi Courts: The Practice of the Sofia Sheriat Court, seventeenth century," in: Rossitsa Gradeva, *Rumeli under the Ottomans, 15th-18th Centuries: Institutions and Communities*, (Istanbul: The Isis Press, 2004), 173-177; cf. Faroqhi, "Crisis and Change," 580-581.

to Islam, while mother remained Christian, or, in another case, when one of two brothers Christians adopted Islam.²⁶⁴ In addition, segregation along the line of wealth seems to be more significant than that along the confessional lines. In cities like Cairo or Ankara, there was a tendency of creating *mahales* based on economical status, disregarding the confessional identities.²⁶⁵ This was the case in Sarajevo in 1604 as well, when Muslim dwellers of the *re'âyâ* origin were settled together with their Christian counterparts in suburban *varoş*, originally Christian *mahalle*, while those better off, exempted *mu'âf* dwellers, Jews, Christians and Muslims alike, were living in central part of the town (*der nefs-i Saray*).

Town population represented the minority of total population of the Empire. The situation was the same in Bosnia as well. Apart from mining towns where the majority remained Catholic, according to the *tahrir defters* the Christian majority in the towns of Bosnian *sancak* decreased from 61 % in 1489 to 16 % in 1530, and continued to decrease; in 1542 the Christians comprised 7 % of town population,²⁶⁶ while in 1604 the Muslims comprised more than 90 % of town population.²⁶⁷ Even though this seems to be very small number, some of Christian townsmen were wealthy, and exercised certain influence in their communities, and presumably wider, on the account of their wealth. In the 17th century, Christian townsmen in Sarajevo gained on importance, especially merchants. Economical growth of Christian townsmen improved the status of

²⁶⁴ Cf. Vladislav Skarić, *Sarajevo i njegova okolina od najstarijih vremena do austrougarske okupacije. Izabrana djela*, Vol. 1 (Sarajevo: Veselin Masleša 1985), 80.

²⁶⁵ Faroghi, "Crisis and Change," 581.

²⁶⁶ Yardımcı, 39, 40; cf. Filipović, "Bosna i Hercegovina," 125.

²⁶⁷ Handžić, "O gradskom stanovništvu," 167.

their Churches through their donations, as well as by diplomatic mediation in Istanbul and Western capitals.²⁶⁸

The inner organisation of non-Muslim communities followed the common pattern. The dwellers were responsible for performance of some of public services in their *mahalles*. Christians of the *Latinluk mahalle* in Sarajevo, inhabited mainly by Catholics, were responsible for maintenance of order and security in their neighbourhood in the 16th century; hence, they were obliged by the authorities to perform police services.²⁶⁹ Other inner communal services must have been performed by the community itself as well. The Orthodox Christian Serbs of Sarajevo from the 17th century at least, were organised into the *opština* (“parish”) based on religious grounds and closely connected to the Church. The *opština* had its legislative organ called the *sabor* (“assembly”), which consisted of prominent people of the community, or, in the case when the consensus was needed, all heads of households. The executive officials of the *opština* were the *klisars*, who were regularly the members of the *kürkçü esnâf*. Lower officials were *kmets* and *sinovi crkveni* (“sons of the Church”). As a rule, members of all offices were elected from the circle of the most affluent families. In time, the office became inheritable, and sons were inheriting their fathers in office. The *sabor*, *klisars* and *kmets* were administering the church and its property in economical affairs, as is the payment of the church taxes, repair of the church, functioning of the church school, care for the poor, negotiation with the authorities, and the like. In addition, they were collecting taxes from the

²⁶⁸ Filipović, “Bosanski pašaluk,” 589; Džaja, 144-146.

²⁶⁹ Skarić, *Sarajevo*, 75.

people and performing lower judicial functions. In performance of these tasks they were helped by the *esnâfs* with Christian Orthodox base.²⁷⁰

However, the *opština* was the organisation of lay population, and often their interests were different than the interests of the Church and its clergy. Hence, from time to time there were disputes between the Church and the *opština*. In order to secure its authority in fields under its jurisdiction, like faith, ritual and family law, the Church had to punish the believers by temporarily or permanent exclusion of an individual or a group from the Church and its rituals, called the *zadržanija* or *aforos*. In 1681 a man and a woman were punished by the *zadržanije*, while in 1686 the *kmets*, officials of the *opština*, were excluded for certain time. In 1674 the *vladika* (“metropolitan”) Hristofor excluded the whole *opština* of Sarajevo, and forbade the performance of church service in the town. In order to enforce his order, the *vladika* sought the help of the authorities.²⁷¹ Hence, it can be concluded that even though the Orthodox Christian community in Sarajevo – the *opština*, had strong and deep ties with the Church, its base was lay, and its members and elite were from time to time in opposition to the Church authorities.

4.4. Limits of Ecclesiastical Authority

As has been shown above, non-Muslims in no case represented monolith communities structured into separated *millets* under the leadership of Churches and clergy and the patriarchs as the *etnarchs*. Instead, they were organised into

²⁷⁰ Vladislav Skarić, “Srpski pravoslavni narod i crkva u Sarajevu u 17. i 18. stoljeću,” in: Vladislav Skarić, *Izabrana djela. Prilozi za istoriju Sarajeva*, Vol. 2 (Sarajevo: Veselin Masleša, 1985), 98-105.

²⁷¹ Ibid., 108-109.

numerous small groups and communities – the *tâ'ifes* and *cema'âts*, based on territorial, clan, ethnic, religious, and professional basis and interests. Rather than an empire-wide system structured around the head of each religious community, the Ottomans recognised certain level of autonomy to diverse groups with common interests settled in certain geographical area, under the leadership of sometimes lay and sometimes religious authorities.²⁷²

However, it would be wrong to neglect the importance of religion for the pre-modern men whether in the Ottoman Empire or in any other place of the world. Religion was, as emphasized by Bruce Masters who studied the position of Christians and Jews in the Ottoman Arab lands, "... at least the primary basis of identity, beyond family, clan, or gender, for members of the Muslim and non-Muslim communities alike for most of the Ottoman period."²⁷³ The Ottoman sultans, as the "leaders of the faithful" adopted Islam as state religion and the *şerî'at* as its basic law. The Islamic law gave political dimension to religion, not only Islam, but other recognised religions, i.e., Christianity and Judaism, as well. While the sultanic *örfî* law was dividing people into the *re'âyâ* and *'askerî* class disregarding confessional denominations, the Islamic law recognised only division along the religious lines, into Muslims and non-Muslims, which were either the *zimmîs* or *harbîs*.

The duality between the Islamic and sultanic law, or, more precisely, its fusion, necessarily influenced state policy towards non-Muslims. The government did recognise the Churches and granted them the authority in fields

²⁷² Cf. Ira M. Lapidus, *A History of Islamic Societies*, 2nd edition (Cambridge: Cambridge University Press, 2002), 264-265; Braude, "The Strange History," 409-410; Braude and Lewis, 13; Faruqi, "Crisis and Change," 604-605.

²⁷³ Bruce Masters, *Christians and Jews in the Ottoman Arab World*, (Cambridge: Cambridge University Press, 2001), 39.

of family law, education, religious matters and certain affairs that were not including Muslims. Even on private and individual level, the Ottomans were concerned with the religiosity of their non-Muslims subjects. Nikola Matija Iljanović (Nicolaus Matthias de Illyanovich), an Ottoman captive of Croatian origin (1636-1661), observed that the Ottomans were compelling their subjects disregarding their religion to attend temples on regular basis: “The Turks have a praiseworthy custom to compel their subjects, of whatever confession, Turkish, Christian or any other, to regularly attend their temples. Those who are failing to observe this are heavily punished by their masters.”²⁷⁴

This statement of a Western captive is confirmed in the *fetvâs*. A *fetvâ* preserved in the monastery of Fojnica, marked by Franciscans as “curious” (*fetva curiosa*), asserts that a Franciscan who hits with books, stick, belt or smacks a person from *re ‘âyâ* who went astray in order to get him or her back on the right track, i.e., “in order to come to the law,” cannot be fined.²⁷⁵

The prestige of Islam and Muslims was protected against the insulting by non-Muslims. A *fetvâ* of Ebu’s-Su‘ûd says the following:

Question: If Zeyd the *zimmî*, Allah forbid, curses ‘Amr the Muslim and his wife, what should be done according to the *şerî‘at*?

Answer: He should be severely chastised and imprisoned for a long time.²⁷⁶

²⁷⁴ Boris Nikšić, *Osmansko carstvo 17. stoljeća očima bivšeg zarobljenika. Opis osmanskog dvora i države Nikole Matije Iljanovića*, (Zagreb, Hrvatski institut za povijest, 2001), 152.

²⁷⁵ Matasović, 403, no. 1917. “Fetva curiosa: Da se nemore oglobit Fratar, ako koga stramputnika od Raje porad pristupljenja zakona udari s’ knjigam, čibukom, passom, ol priushkom.”

²⁷⁶ Düzdağ, 101, no. 440. A term *ta ‘zîr-i şedîd* (“severely chastisement”) usually implied flogging (*celd*), consisting of minimum 3, and maximum 39 strokes, without causing the death of the culprit. Another term, *haps-i medîd* (“long-time imprisonment”) consisted of at least one day of prison, but duration was not determined. See: Halil Cin and Ahmet Akgündüz, *Türk Hukuk Tarihi*, Vol. 1, 2nd edition (Konya: Selçuk Üniversitesi Yayınları, 1995), 277-280.

However, it was strictly forbidden to Muslims to curse Christians and their faith as well:

Question: If Zeyd the Muslim curses the faith and belief (*dîn ve îmân*) of ‘Amr the *zimmî*, what should be done according to the *şerî‘at*?

Answer: The one who curses revealed religion is infidel.²⁷⁷

In another *fetvâ* Ebu’s-Su‘ûd specified the punishment, which was the same as the one prescribed for the non-Muslim, the severe chastisement, although without imprisonment.²⁷⁸ In addition, according to a *fetvâ* of ‘Alî Efendi, the *şerî‘at* was protecting Christian clergy from their own flock:

[*Question:*] If Zeyd the *zimmî* curses ‘Amr the monk saying: “Hey, I’ll ‘so and so’ your faith and belief,” what should be done to Zeyd?

Answer: Chastisement.²⁷⁹

The importance of the religiosity of non-Muslims in the Islamic law is evident in Ebu’s-Su‘ûd *fetvâs* concerning testimony:

(1) *Question:* Can the testimony of the infidel who is not going to church be accepted against the infidel who is going to church?

Answer: No.²⁸⁰

(2) *Question:* Can the Christians who are not just according to their religion witness against other Christians?

Answer: No.²⁸¹ (see Appendix H, 2)

²⁷⁷ Ibid., 101-102, no. 442; “*Mes’ele:* Zeyd-i müslim, Amr-i zimmînin dînine ve îmânına cimâ’ lâfzı ile şetm eylese, şer‘an ne lâzım olur?”

El-cevâb: Dîn-i semâvîye şetm eden kâfirdir.”

²⁷⁸ Ibid., 101, no. 441.

²⁷⁹ Çatalcalı ‘Alî Efendi, 141, no. 1: “Zeyd-i zimmî ‘Amr-ı râhibe “Bre dîn ve îmânını filân itdiğim” deyü cemmâ’ lafz ile şetm eylese Zeyd’e ne lâzım olur?”

El-cevâb: Ta‘zîr.”

²⁸⁰ Düzdağ, 98, no. 419; “*Mes’ele:* Kiliseye varmayan kâfirin, kiliseye varan kâfir üzerine şehâdeti makbul olur mu?”

El-cevâb: Olmaz.”

²⁸¹ *Acta Turcarum*, C-III, C-10, 43, no. 5 “Dînlerince ‘âdil olmayan ba‘zı nasâra girü nasâra üzerine şehâdet eyleler şer‘an makbûl olur mu?”

El-cevâb: Olmaz.”

Testimony of a member of one non-Muslim religious community against the other, in the following example the Jew against the Christian, was acceptable under the condition that the Jew was “just” according to his religion:

Question: Is the testimony of a Jew against a Christian acceptable?

Answer: Yes, if he is just according to his religion.²⁸²

Not only that the testimony of an irreligious non-Muslim was not acceptable against a religious one, but it was the same in the case of a “bad” Muslim:

Question: Can the testimony of an impious and sinning Muslim be accepted against a *zimmî*?

Answer: If his impiety and immorality are commonly known, it cannot.²⁸³

Hence, the religious worldview and values were not only the matter of custom and tradition of certain community, but were officially imposed through the laws, whether a person was privately a believer or not.²⁸⁴ In conflicts between religious authorities and laymen, the church punishment of excommunication always had success, as was seen in the case of the Serbian Christian Orthodox community of Sarajevo. On the other hand, no layman ever dared to bring into question religion as a system or the Church as institution, but only complained about individuals within the Church.

However, the influence of the Church and clergy in the fields outside the “religious” realm, that is, outside the areas in which they were granted autonomy by the government – religious matters, family law, birth, marriage, death, inheritance, and education, was limited. The peasants were under the jurisdiction of the *kādî* and administration of the *sipâhî*. The Vlachs and

²⁸² Düzdağ, 98, no. 420.

²⁸³ Ibid., 98, no. 421; *Mes'ele*: Fâsık ve fâcîr olan müslimin, zimmî üzerine şehâdeti kabul olunur mu?

El-cevâb: Fısk u fücûru katı şâyi' ise olmaz.”

²⁸⁴ Cf. Masters, 5.

population with Vlach status, including the *filuri*-paying population, were under the jurisdiction of the *kâdî* as well, for the most part, and to a certain degree under the jurisdiction of the *knezes* and *premikiurs*, who also executed administrative role together with the *sancakbeyi*. The *voynuks* and *martoloses* were under the jurisdiction of *kâdî*, i.e. *kassam*, the military judge, and administrative authority of their superior officers. The *re'âyâ* with special privileges and duties (*mu'âf ve müselleme*) were as well under the jurisdiction of the *kâdî*, in minor matters under the jurisdiction of their professional superiors, who were at the same time administering them. Townsmen were included into the *esnâf* organizations and subjected to *esnâf* hierarchies, while the juridical authority for the most part was in the hands of the *kâdî*. Hence, there was no much room left for religious authorities, although there might have been some exceptional cases.

Even in its own domain, the ecclesiastical establishment was sometimes not able to exercise its authority. The main reason for the dispute between the *vladika* and the *opština* in Sarajevo in 1674 was an attempt of laymen to appoint priests in Sarajevo's church on their own, without the consent of the *vladika*. In this case, however, the *vladika* received the help of authorities.²⁸⁵ On the other hand, according to the report of bishop Olovčić of 1672-1675, the Catholic Church was not able to enforce its basic canon laws concerning marriage, since some of the Catholics did not adhere to the principle of monogamy, but preferred polygamy, as was the case in the parishes of Lišnja (Lesnia) near Prnjavor, Dragočaj (Dragociai), Majdan (Maiidan), Cosmodan, Požega,

²⁸⁵ Skarić, "Srpski pravoslavni narod," 108-109.

Čermošnica (Czeremosniza), Garcino, Gradski Potok (Gratski potok), and Tuzla (Salinis). Other examples of the breach of the canonic law were even more abundant, as are the cases of marriages within the forbidden degree of kinship, living with a partner outside the framework of Catholic marriage – “in a Turkish manner,” or practice of conduction of marriages and divorces in the *kâdî*-court, as was the case in Vrhovina (Varhovina), Rama, Vodičevo (Vodicsevo), Vareš (Varess), Maglaj, Selci near Đakovo (Szelzi seu Diacovo), Vasiljevo (Vassigliervo), Dubica, Srebrenica (Argentina), Brka near Brčko (Barka), Kornica, and Bila.²⁸⁶ According to this report, it turns out that in majority of Catholic parishes visited by bishop Ogramčić considerable share of population was living in marriages contrary to the canonic law. Christians in the Balkans often preferred to approach the *şerî‘at* courts in matters of marital law, since it provided them with possibilities that were not existent in the canonic law: marriage in the forbidden degree of kinship, polygamy, divorce, re-marriage, second and subsequent marriages, and the like. In addition, Christians were approaching the *şerî‘at* courts in cases of inheritance, in which the Islamic law provided better opportunities, especially for women.²⁸⁷ The autonomy in matters like marriage or inheritance was granted and left to the jurisdiction of communities themselves; however, non-Muslims had the right to approach the *şerî‘at* courts as well. A *fetvâ* of Ebu’s-Su‘ûd Efendi is very illustrative in this respect:

Question: After Zeyd the Jew died, according to the Jewish customs ‘Amr the Jew is heir of Zeyd, while Bekr the Jew is not. However, according to the Islamic *şerî‘at* both are heirs. If, when ‘Amr and Bekr open the case in

²⁸⁶ Jelenić, “Spomenici,” 134, 136-137, 140-147, 149, 151-152.

²⁸⁷ See: Gradeva, “Orthodox Christians,” 165-194.

front of the *kâdî*, ‘Amr says to Bekr: “If you are a Jew, according to the Jewish religion you cannot attain the inheritance,” and Bekr says: “I am the Jew,” is it permitted for the *kâdî* to say to ‘Amr and Bekr “Divide it according to your customs”?”

Answer: Yes.

In that case: Is given answer in accordance with the noble *şerî‘at*?

Answer: Maybe the deceased had predicted Bekr’s confession, deprivation of the inheritance, and acceptance of deprivation, and therefore gave such answer. However, the explicit answer is following: they will open the case in front of the judge, [and] whatever the judgment of the religion of Islam will be that has to be executed.²⁸⁸

In short, according to Ebu’s-sû‘ud decision, Jews, as well as non-Muslims in general, had the right to settle the matter of inheritance according to their own customs, but, if the question was to be solved in front of the *kâdî*, then it had to be solved in accordance with the *şerî‘at*. Hence, the *zimmîs* had the right to settle matters of civil law between themselves according to their own customs, but, if a case was brought to the *kâdî* court, then, naturally, the issue was to be judged according to the *şerî‘at*.

On the other hand, lack of firm control even over religious matters in strict sense is obvious from the great number of Christian converts to Islam, along with numerous instances of syncretism, magic and superstition.²⁸⁹

The Churches were often dependent on affluent laymen merchants, artisans and *knezes*, who were sometimes mediators between the Churches and the authorities or foreign ambassadors or rulers, as well as generous donors. In an appeal for the charity (*milostinja*) of 1656, addressed to the “*ağas, sipâhîs, odabaşıs, beşlis, martoloses, knezes* and *voyvodas*,” i.e. complete Orthodox Christian military elite, patriarch Maksim laments on the situation of the Church

²⁸⁸ Düzdağ, 99-100, no. 420.

²⁸⁹ Cf. Jelenić, *Kultura i bosanski franjevci*, Vol. 1, 99-102; Josip Buturac, *Katolička crkva u Slavoniji za turskog vladanja*, (Zagreb: Kršćanska sadašnjost: 1970), 198.

and finishes the letter in the fatalist mood: "... and we do not receive help from anybody except God and you, the Orthodox [Christians]."²⁹⁰ In the Serbian Orthodox Church, influential laymen were participating in the church assemblies, i.e. the synods (*sabor*).²⁹¹ The fact that the first patriarch of renewed Serbian Patriarchate of Peć was Makarije Sokolović, brother of Grand Vizier Mehmed Paša Sokolović (Sokollu), could not be a mere coincidence. Makarije was inherited in office by several other members of Sokolović dynasty, while the important position of the metropolitan of Herzegovina became the privilege of Sokolovićs as well.²⁹² Interestingly enough, brothers of Franciscan Fra Anđeo Zvizdović, a monk who received a *berât* called '*ahd-nâme* from Mehmed the Conqueror after the conquest of Bosnia in 1463, which secured the position of the Bosnian Catholicism, were *knezes* in Ottoman service, Domša and Milutin.²⁹³

When in the 17th century the Churches established contacts with foreign powers regarding the liberation from the Ottoman rule, it became possible to speak of the Churches as representatives of the people. However, it should be emphasized that clerics were by no means the only and exclusive leaders of insurgent people, since the real military power was in the hands of paramilitary groups of Christians, and their leaders – the *knezes* and *premikürs*. The role of the Churches in this instance was to establish connections with foreign powers

²⁹⁰ Branislav Đurđev and Milan Vasić, eds., *Jugoslavenske zemlje pod turskom vlašću (do kraja XVIII stoljeća)*, (Zagreb: Školska knjiga, 1962), 126.

²⁹¹ Đurđev, *Uloga crkve*, 142; Hadrovics, 53-54.

²⁹² Cf. Đurđev, *Uloga crkve*, 123-124.

²⁹³ See: Matasović, 104, no. 4.

through the monks who traveled abroad and knew languages, and provide wider network than territorially limited and divided *knezliks*.²⁹⁴

To sum up, the only candidate for the title of the *ethnarch*, or *millet-başı* might have been the *vladika* of Montenegro since the second half of the 17th century, who became the only representative of the people in front of the Ottoman authorities.²⁹⁵

²⁹⁴ Cf. Đurđev, “Uloga srpske crkve,” 35-42; idem, *Uloga crkve*, 142-151, 197-209.

²⁹⁵ Cf. Branislav Djurdjev, “Karadagh,” *EF*; Đurđev, *Uloga crkve*, 161-165.

CHAPTER V

CHURCHES AND CHRISTIANS

5.1. Christianity and Churches

On the territory of Ottoman Bosnia Christians were divided between two Churches – the Roman Catholic Church and the Orthodox Church. Unlike the Orthodox Church that received full recognition from the Ottoman administration, the Catholic Church did not have such an agreement with the state. Arrangements with Catholics were not settled on the level of the Empire, but individually through separate contracts with Catholic communities in different parts of the Empire. Catholic groups were granted safe-conduct, that is, the *amân*, guaranteeing them security of life and possession, and religious freedom, in the form of the '*ahd*', "agreement, covenant, treaty," i.e., the '*ahd-nâme*', the imperial grant of safe conduct.¹ The fact that Catholics were granted the '*ahd*' and *amân* ('*adh u amân*'), which were, according to Islamic Law, grant

¹ Halil İnalcık, "Ottoman Galata, 1453-1553," in: Halil İnalcık, *Essays in Ottoman History*, (Istanbul: EREN, 1998), 279-280, 286-287; Joseph Schacht, "'Ahd,'" *EF*; idem, "Amân," *EF*; Pakalın, Vol. 1, 29-30; Vančo Boškov, "Ahd-nama Murata III stanovnicima Bara iz 1557. godine," *Godišnjak Društva istoričara BiH*, 28-30 (1977-1979), 279, n. 2; Aleksandar Fotić, "Institucija amana i primanje podaništva u Osmanskom Carstvu: primer sremskih manastira," *Istorijski časopis* 52 (2005), 241-248.

of safe conduct for the *harbîs* – foreign non-Muslims coming to Islamic lands, usually merchants or diplomats, or was synonymous with the term for peace treaty between two lands, the *sulh*, indicates that Catholics were regarded as a foreign body. The “foreignness” of Catholics is further emphasised by their name – *Frenk*, *İfrenç*, and *Latin*, meaning “Frankish, French, Italian, European,” that is, denoting nations outside the Empire.² The ‘*ahd-nâme*’ as sultanic grant of safe-conduct was given to two types of beneficiaries: (1) foreign merchants and diplomats, who upon receiving of the grant obtained the status of the *müste’min*, i.e., the *harbîs* with safe-conduct in Islamic lands, and (2) domicile Catholic population, that after receiving of the ‘*ahd-nâme*’ acquired the status of the *zimmi*.³ In the latter case, the ‘*ahd-nâme*’ was identical with the *zimma*, and comparable to Prophet Muhammad’s contract with the Christians of Najrân, and later contracts based on it.

Status of Bosnian Catholics and their Church was settled by the ‘*ahd-nâme*’ given by Mehmed the Conqueror to Bosnian Franciscans in Milodraževo after the conquest of Bosnia in 1463. The authenticity of this document was thoroughly discussed.⁴ While it is proved that the document itself was a falsification from the late 16th or early 17th century made for Bosnian Franciscans in Dubrovnik or Venice, the text of the document seems to be authentic, since two other documents given to Bosnian Franciscans from the late

² Cf. Olga Zirojević, “Okolo naziva *Frenk* i *Latin*,” *POF* 28-29 (1978-1979), 375-385; Boškov, “Turski dokumenti,” 11.

³ İnalcık, 284-287; Fotić, “Institucija amana,” 244-245.

⁴ Matasović, 89-95; [Hazim Šabanović], “Turski dokumenti u Bosni iz druge polovine XV stoljeća,” *Istorisko-pravni zbornik* 2 (1949), 207-208; Vančo Boškov, “Pitanje autentičnosti Fojničke ahd-name Mehmeda II iz 1463. godine,” *Godišnjak Društva istoričara BiH* 28-30 (1977-1979), 87-105; Dominik Mandić, “Autentičnost Ahd-name Mehmeda II B.H. franjevcima,” *Radovi Hrvatskog Povijesnog Instituta u Rimu*, 3-4 (1971), 61-90.

15th century contain similar provisions, as well as the *'ahd-nâme* given to the Catholics of Galata in Istanbul ten years before.⁵

The provisions of the *'ahd-nâme* are as follows:

Nobody should create obstacles and difficulties to them [the monks] and their churches. They should live without worries in Our land. Those who are running away and leaving will be granted security and protection (*emin ve amân*) to live without fear in Our land. They should settle in their churches and no one should annoy them, neither My Excellency, nor any of my *vezîrs*, servants, *re'âyâ*, and people of Our land. No one should attack and injure them, their lives, property and churches. In addition, they should be permitted to bring man from foreign parts into the lands of my Imperial Domain.⁶

Apart from granting security of life and property and religious freedoms, which are standard elements of the *amân* contracts with non-Muslims since the time of Prophet Muhammad, there is a new element – the freedom of colonisation and immigration into the Islamic country from abroad. Resettlement and colonisation of areas devastated during the conquest and deserted by population was always a matter of prime concern for the Ottomans. The classical Ottoman policy was the *sürgün* – forced deportations of population from different parts of the Empire into deserted areas of state interest. Many parts of the Balkans were resettled and colonised in this manner, while the most impressive example is that of Istanbul. Since in the conquest of 1453 virtually all population that survived was enslaved, Mehmed the Conqueror, in order to resettle new capital

⁵ Boškov, "Pitanje autentičnosti;" [Šabanović], 207-208.

⁶ [Šabanović], 202. "... buyurdum ki: mezbûrlara ve kilisalarına kimesne mâni' ve mezâhim olmayub ihtiyâsız memleketimizde duralar ve kaçub gidenlere dahi emin ve amân ola ki gelüb bizim hâsa memleketimizde havfsız sâkin olup kilisâlarında mütemekin olalar ve yüce hazretimden ve vezîrlrimden ve kullarımdan ve re'âyâlarımdan ve cümle-i memleketimiz halkından kimesne mezbûrları rencide itmeyüb dahil ve ta'aruz idüb incitmeyeler kendülere ve cânlarına ve mâllarına ve kilisalarına ve dahi yabândan hassa memleketime adam getürürlarsa câ'iz ola..."

of his Empire, issued orders for resettlement of the city with population from Anatolia and Rumelia, Muslims, Christians and Jews alike.⁷

After the conquest Bosnian population left the country in masses and emigrated towards Croatia, Dalmatia, Austria and Hungary. In order to prevent complete desertion of the country, which would have had inevitably resulted in loss of state revenues and decrease of production, the Ottomans were ready to grant safe-conduct to those who remained, and encourage those who emigrated to return to Bosnia. In this respect the *nişân* of Beyâzid II of 1499 given to the Franciscans in the monastery of the mine of Srebrenica, which is actually the renewal of the *'ahd-nâme* given by Mehmed the Conqueror to the monks after the conquest of the town in 1462, is even more significant:

“... mentioned monks should bring and settle in this Imperial Domain of mine as much people as they can find around, and nobody should prevent and expel them...”⁸

In exchange, the monks were granted safe-conduct and security of their property and churches.⁹ In this case, the concern of the government is obvious: in order to continue with production in deserted mine of Srebrenica, it made arrangement with the Franciscans to resettle population, probably miners and their families that emigrated from the area.¹⁰ Another important aspect is that the Franciscans in both cases acted as Ottoman agents in resettlement of deserted lands. In this case the Franciscans might had certain authority over the people, due to the arrangements with the government.

⁷ Cf. Halil İncalcık, “İstanbul,” *Eİ²*.

⁸ [Šabanović], 199. “... mezkûr ruhânlar etrâfında ne kadar adam bulurlar ise ol hâs-ı hümâyûnuma götürüp şenedüp hiç âhir anlara man‘ ve def‘ olmaya...”

⁹ Ibid.

¹⁰ Cf. Mandić, “Autentičnost Ahd-name,” 77-78.

Although the *'ahd-nâme* of Milodraževo, better known as the “*'ahd-nâme* of Fojnica” (*Fojnička ahd-nama*) because it is preserved in the monastery of Fojnica, does not contain elaborated set of rules that would regulate status of the Catholics in Bosnia, in later period it became regarded as the fundamental charter of Bosnian Catholics, both by the Franciscans and the Ottomans, who issued many subsequent decrees concerning the status of the Catholics on the basis of the *'ahd-nâme*. In Franciscan terminology it was called *pactum regium*.¹¹ Since the *'ahd-nâme* was often used as one of the basic documents in the procedure in various matters in front of authorities, almost each monastery in Bosnia possessed up to several copies of it.¹² In Franciscan tradition, however, the character of the *'adh-nâme* is overemphasised, and it was even compared to the *Magna charta libertatis*.¹³ Louis Gédoyen, who travelled through Bosnia in 1624, informs that Franciscans in the monastery of Srebrenica had shown him the *'ahd-nâme* that Mehmed the Conqueror issued after the conquest of Srebrenica, as well as the table where the sultan ate, which was revered by them.¹⁴ Apart from the relic of “silver elbow” of the Conqueror in Srebrenica, the Franciscans in Fojnica possessed a cloak with star pattern presented to Franciscan Andeo Zvizdović (his surname means “star”) by the Conqueror together with *'ahd-nâme*.¹⁵ Interestingly enough, 60 years after the retreat of the Ottomans and coming under the administration of Austria-Hungary, former Provincial of the Franciscan Province of Bosna Srebrena, later

¹¹ Cf. Matasović, 62, 91; Jelenić, *Kultura i bosanski franjevci*, 140; Džaja, 153-155; Mandić, “Autentičnost Ahd-name,” 61, 74.

¹² [Šabanović], 200-201; Karlo Jurišić, *Katolička crkva na Biokovsko-neretvanskom području u doba turske vladavine*, (Zagreb: Kršćanska sadašnjost, 1972), 196.

¹³ Jelenić, *Kultura i bosanski franjevci*, 140; Mandić, “Autentičnost Ahd-name,” 61.

¹⁴ *Priče francuskih putnika*, 82.

¹⁵ Matasović, 89-91; Boškov, “Pitanje autentičnosti,” 92.

bishop of Mostar, Mišić, was received into audience of the emperor and king Franz Joseph in Sarajevo in 1910 dressed in the cloak presented by Mehmed the Conqueror.¹⁶

Later on, status and further rights of Franciscans and Catholics were regulated by the central government or local authorities through the *fermâns*, *buyuruldus*, *ilâms*, *hiiccets*, etc., which were issued upon the request of the Franciscans or their representatives and mediators in Istanbul. These decrees and documents are concerned with application of the *şerî'at* regulations regarding non-Muslims, i.e. the *zimmîs*, and include matters of religious liberties, freedom of movement of clerics, possession and repair of churches, collection of church-taxes and charity, exemption of state taxes, provision of lodging for the travellers, and the like.¹⁷

In general, there were no separate *kânûn* regulations regarding the Churches, except for taxation. This was, it seems, the preserve of the *şerî'at*, and non-Muslims in their capacity of members of a religious community, and their religious institutions were treated in accordance with the *zimma* regulations. This attitude was explicitly stated in the introduction of a *fermân* issued by Murat IV (1622-1649) to bishop Fra Matija Jovanović in order to secure freedom of liturgy and movement to the Franciscans against the opposition of the Orthodox clergy and state officials, in 1035/1626:

The faith of the Christians is indeed sacred because their Book contains sacred laws of God the Creator as well. And according to the teaching of our leader, the Prophet, who is the refuge of all God's chosen ones, the protection and defence of the Messiah's [in original probably "Mesih"] followers should be performed by all rulers of the true faith. During the

¹⁶ Jelenić, *Kultura i bosanski franjevci*, 140, n. 1.

¹⁷ Cf. Džaja, 154-155.

fortunate rule of the emperors of the true faith the protection should be granted not only to them individually, but to their property, wives and children as well, so they would rest on the threshold of calm and security.¹⁸

Basic provisions of the *zimma* status that remained the same since the time of Classical Islam were examined in the first chapter and will not be discussed here for a second time, except in cases of significant changes and transformations.

One of the issues that was often recurring in documents is the question of fiscal subjection of Catholics to the Orthodox Church. The monks of whatever denomination of Christianity were in general exempted from the taxes as the poor (*fukara*), in the case that they were not living among the people and earning for living, except for charity.¹⁹ Two *fetvâs* of Ebu's-Su'ûd are clear on this matter:

(1) *Question*: Are the poor among the monks of the church (monastery) obliged to pay the *harâc*?

Answer: Essentially no, unless they mix with people.²⁰

(2) *Question*: Are the monks exempted from the *cizye* and *ispence* or it is taken [from them]?

Answer: Essentially it cannot [be taken], unless they mix with people.²¹

17th century *şeyhülislâm* Çatalcalı 'Alî Efendi ruled a *fetvâ* on a same line:

[*Question*.] Does Zeyd the *zimmî*, a priest of a church, who is mixing with people and working and earning money, has a right to say to the *cizye* collector 'Amr when he asks for *cizye*: "I am not giving it because I am an secluded priest"?

Answer: No.²²

¹⁸ Matasović, 137, no. 318.

¹⁹ Hadžibegić, *Glavarina*, 15-17.

²⁰ Düzdağ, 103, no. 450.

²¹ Ibid., 103, no. 451.

²² Çatalcalı 'Alî Efendi, 155, no. 9. "Bir kenisenin papası olan Zeyd-i zimmî nâs ile muhâlata idüb kâr ve kesb itmekle cizyedâr olan 'Amr Zeyd'den cizye talib itdikde Zeyd mücerred papas olmagla virememe dimeğe kâdir olur mu? *El-cevâb*: Olmaz."

For example, in 1477, monks of the Orthodox Christian monastery of Mileševo were exempted from the *harâc* and *ispence*. However, since they were later, according to the *defter* of 1515, cultivating the land, the exemption was abolished and they were obliged to pay the *harâc*.²³ Catholic monks of Fojnica, Kreševo, and Sutjeska in 921/1515 were exempted from *harâc*, *ispence*, and other *şerî'at* and non-*şerî'at* taxes (*kadîmü 'l-eyyâmdan harâcdan ve ispenceden ve sâ'yir hukûk-u şerî'yeden mu'âf ve müselleme*). Monks of Fojnica retained their exemptions until the end of the 17th century.²⁴ If the monks were cultivating the land, as was seen in the case of Mileševo, they had to pay the land dues.

Although the Orthodox Church lost a great part of its land, certain part of it some monasteries managed to save, often legalised in the form of the *tîmârs*, which made the Serbian Church the greatest Christian landowner in South Slavic lands inhabited by the Serbs.²⁵ In exchange for the *tîmârs*, some monasteries were obliged to provide armed men (*cebelü* horsemen, or other types of soldiers); e.g. in the second half of the 15th century the monastery of Ravanice possessed village of Donje Senje and one field as *tîmâr* of over 4000 *akçe*, and in exchange it had to provide one horsemen (*cebelü*), that later grew to 6000 *akçe* and three *cebelüs*, before it was reduced again. Its monks enjoyed exemption from the *harâc* and *ispence*. In 1467-1468, the monastery of Resava (Manasija) possessed village of Gornje Senje and received 2785 *akçi* of income. In exchange it was obliged to provide two men for the crew of the fort of

²³ Boris Nilević, *Srpska pravoslavna crkva u Bosni i Hercegovini do obnove Pečke patrijaršije 1557. godine*, (Sarajevo: Veselin Masleša, 1990), 104-105.

²⁴ Hadžibegić, *Glavarina*, 17-18.

²⁵ Đurđević, *Uloga crkve*, 106-107, 124.

Resava. The same was the case with some other monasteries in Serbia and Bosnia.²⁶ Other monasteries enjoyed the exemptions in category of the *re'âyâ* with special duties and exemptions (*mu'âf ve müselleme*) in exchange for the service of raising the falcons (*doğancılık, şahincilik*), as was the case of the monastery of Dečani, Studenica and Lesnovo in Serbia,²⁷ and Radovašnica²⁸ and unidentified monastery in *nâhiye* of Brvenik in the *sancak* of Zvornik in 1548.²⁹

Otherwise, higher clergy of the Orthodox Church was recognised by the state and had de facto the status of state officials appointed by the *berâts*. In the early period they were exempted from taxes, but in time they started to pay the *peşkeş*, a yearly tax that originated from the practice of giving the “gifts” to state officials.³⁰ The amount of the tax steadily grew, and in the end of the 16th and beginning of the 17th century, in the case of the Patriarchate of Peć, it reached 100.000 *akçe*. In order to enable higher Orthodox clergy – the patriarchs, metropolitans and bishops, to pay the tax, the government entitled them to the right of receiving regular revenues in the *berâts*. To facilitate collection of a needed sum, the Church distributed taxes on believers and lower clergy, known as *vladičina* (“the bishops tax”), divided into *milostinja* or *kanonikon* (*sadaka*, “charity”) and marriage tax (*resm-i nikâh*) which were

²⁶ Ibid., 108-111.

²⁷ Ibid., 110; Sreten Petković, *Zidno slikarstvo na području Pečke patrijaršije 1557-1614*, (Novi Sad: Matica Srpska, 1965), 27.

²⁸ Nilević, *Srpska pravoslavna crkva*, 113.

²⁹ Olga Zirojević, *Crkve i manastiri na području Pečke patrijaršije do 1683. godine*, (Belgrade: Narodna knjiga, Istorijski institut, 1984), 68.

³⁰ İnalcık, “The Status of the Greek Orthodox Patriarch,” 208; Hadrovics, 61-62.

imposed on believers, while *popovina* or *vrhovina* or *vladičin harač*, *resm-i kenisa* and *krst akçesi*, were imposed on lower clergy.³¹

However, the government gave the Orthodox Church the permission to collect taxes from Catholics as well, as enacted in the *berâts*.³² In the *deft*er of “The metropolitanates and episcopates in Rumelia and Anatolia” (*Rumeli ve Anadolu’da Metropolitlik ve Piskoposluklar*; also titled *Piskopos Mukâta’ası*), for period 1640-1655, the Franciscan Province of Bosna Srebrena was included among the eparchies of the Patriarchate of Peć in year of 1655, under the name “The diocese of the Church of Latin monks in the *sancaks* of Bosnia, Klis, and Herzegovina,” with the obligation of payment of 50 golden coins as the *peşkeş*.³³ It seems that the subjugation of Bosnian Catholics to the Orthodox Church was only fiscal, while they retained independence in all other matters.³⁴ On the other hand, the government was granting the Franciscans independence in the *fermâns* issued on their request, and the Franciscans lost the litigation with the Orthodox clergy only twice in the period between 1498 to 1700.³⁵ What was the reason for such a contradictory policy of the Ottoman authorities that resulted in numerous litigations between two Christian communities? One of the theories offered by historiography saying that the government wanted to sew discord between Christians of two denominations on a line of *divide et impera* policy,³⁶ should be taken with a grain of salt. The other theory is more convincing: the state was receiving great revenues from the expenses of

³¹ Đurđev, *Uloga crkve*, 225; Hadrovics, 63-67; Boškov, “Turski dokumenti,” 8-9.

³² Boškov, “Turski dokumenti,” 9.

³³ Radmila Tričković, “Srpska crkva sredinom XVII veka,” *Glas SANU*, 120, no. 2 (1980), 149.

³⁴ Ibid., 136.

³⁵ Boškov, “Turski dokumenti,” 9.

³⁶ Džaja, 176-177

numerous and long-lasting litigations in front of the *kâdîs* or governors (*vâlîs*).³⁷ According to anonymous Franciscan chronicle of Fojnica (*Fojnička kronika*) from the late 17th century, in several litigations both sides had to pay a lot of money for the court expenses, while in the litigation in Sarajevo in 1669, the expenses amounted 700.000, i.e., seven loads of *akçe*.³⁸

One of the documents, a *hüccet* of the *kâdî* of Mostar of 983/1575 is very significant for the topic and it will be discussed in brief. A group of Catholic *knezes* from several *nâhiyes* of Herzegovina complained against the Orthodox metropolitan Savatije, who was forcefully collecting taxes from them:

Monk Savatije, who is now the metropolitan, was travelling in the Imperial land in company of 12 horsemen and taking from each village 15, 20 and more *guruş*. In addition, he tortured many of us and took from each of us five or ten *guruş*. Although until now the metropolitan was not taking from us even a single *akçe*, mentioned monk was taking money from the *re'âyâ*, collecting treasury and doing wrong against the noble *şerî'at* and exalted *kânûn*. Maybe until now the metropolitan was taking money from the black monks (*kara keşişler*), [but] we are of the *Frenk* faith. Mentioned monk hanged by fingers monk Fra Ivan from *nâhiye* of Imota. He keeps at his side unbelievers with Muslim names. They attack Muslim women and hit them into bellies so they lose children...³⁹

The last sentence might be an exaggeration intended to leave harder impression on the judge, and it will be left aside. The monk Savatije was the metropolitan of Herzegovina and later patriarch of Peć, Savatije Sokolović.⁴⁰ The power attained by the metropolitan with the authorisation of the government is astonishing: he rides in company of 12 Imperial horsemen, possibly *martolos* or

³⁷ Boškov, "Turski dokumenti," 11; Nilević, *Srpska pravoslavna crkva*, 208; Hadrovics, 80.

³⁸ Ćiro Truhelka, ed., "Fojnička kronika," *GZM* 21 (1909), 457, fasimile 15. "Na 1669., miseca mar. na 17. dogje pačara i čini davu u Sarajevu o fratri i s karstjani, da podloži pod svoj poslu(h). Izgubi se tu oko 700000, to jest sedam tovara jaspri." For litigations of 1661 and 1662 see: *ibid.*, 453, f. 10, 455, f. 13; descriptions of 18th century chroniclers Beniç and Lašvanin are based on *Fojnička kronika*, see: Beniç, 46; Lašvanin, 269-270, 275-279.

³⁹ Boškov, "Turski dokumenti," 20, doc. 8.

⁴⁰ Cf. Đurđev, *Uloga crkve*, 123-124.

voy nuk, since the *knezes* were complaining about the infidels who were with metropolitan, if these were not additional men. He has the power to impose fines, torture people, and even hang a monk. Definitely, such authorisation, even though only in the sphere of tax collecting, gave considerable power to higher clergy. In 1670's, for instance, Patriarch Arsenije III visited Primorje ("Coastal region") in company of 30 armed horsemen, which left dramatic effect on the people.⁴¹ In similar manner, in the last quarter of the 17th century, Bosnian Catholic bishop appointed by the pope, Nikola Ogramić-Olovčić, who imposed the tax on the clergy called *Agnus Paschale* for his personal maintenance, in public was accompanied by armed guards.⁴²

As was the case with the Serbian Orthodox Church, the Franciscan Province of Bosna Srebrena after the initial losses recovered and even extended its boundaries and spiritual activities and missions following the Ottoman conquest into Hungary and Transylvania, as well as Serbia and Bulgaria (see Appendix C). According to Bosnian bishop Fra Franjo Baličević, Franciscan Bosnia, which he calls *Il Regno di Bosnia* ("the Bosnian Kingdom"), is situated between Macedonia, Carintia and Styria (today's Slovenia and part of Austria), and Adriatic Sea.⁴³ In a letter to the Pope, minister of the Franciscan Province of Bosna Srebrena, Gabrijel Stanić from Baška, in 1693 defined the boundaries of Bosna Srebrena as stretching from the Adriatic Sea to the boundaries of "Tartaria" (*a mari Adriatico ad fines Tartariae*).⁴⁴ 18th century Franciscan chronicler Filip Lastrić laments on the present status of the Franciscan Bosnia

⁴¹ Slijepčević, 368.

⁴² Džaja, 162, n. 137.

⁴³ Jelenić, *Kultura i bosanski franjevci*, 182, cf. 150-153.

⁴⁴ *Pisma fra Luke Ibrišimovića zagrebačkim biskupima (1672.-1697.)*, ed. Josip Barbarić and Miljenko Holzleitner, (Jastrebarsko: Naklada Slap, 2000), 273.

after Dalmatia and Slavonia seceded following their liberation from the Ottoman Empire at the end of the 17th century, and revives a memory of Bosna Srebrena extending from "... the Adriatic Sea to the Tartar Empire and the Carpathian Mountains, that separate Hungary from Poland."⁴⁵ Mission of Bosnian Franciscans in Bulgaria under the leadership of Fra Petar Soljanin (Zlojutrić) achieved great success, and soon the Franciscans established four monasteries and parishes, that culminated in 1622 in establishment of a separate Franciscan custody.⁴⁶ Franciscan mission in Hungary, especially conversional activities among the Orthodox and Protestant Christians, was highly successful as well.⁴⁷ The activity of the Franciscans and their "collaboration" with the Ottomans was described in a folk saying: "Where the Turk [goes] with the sword, there the Franciscan [goes] with the bag" (*kuda Turčin s ćordom, tuda fratar s torbom*).

Even though many churches and monasteries were destroyed, deserted or converted to mosques and other public buildings during the conquest and post-war period, and occasionally in subsequent wars, especially in period from 1526 to 1566, by the end of the 16th century the Franciscan Province of Bosna Srebrena managed to recover, and, according to the report of Bosnian Bishop Baličević of 1591, Bosna Srebrena (including Slavonia) had 16 monasteries, while in 1678 the number of monasteries raised to 18.⁴⁸ The war of 1683-1699

⁴⁵ Lastrić, 66 and passim.

⁴⁶ Jelenić, *Kultura i bosanski franjevci*, 153.

⁴⁷ See: István György Tóth, "Between Islam and Catholicism: Bosnian Franciscan Missionaries in Turkish Hungary, 1584-1716," *The Catholic Historical Review*, 89, 3 (2003), 409-433; Franjo Emanuel Hoško, "Djelovanje franjevac Bosne Srebrne u Slavoniji, Srijemu, Ugarskoj i Transilvaniji tijekom XVI. i XVII. stoljeća," in: *Povijesno-teološki simpozij u povodu 500. obljetnice smrti bosanske kraljice Katarine (Sarajevo 24. i 25. listopada 1978.)*, (Sarajevo: Kršćanska sadašnjost, 1979), 103-115.

⁴⁸ Jelenić, *Kultura i bosanski franjevci*, 151-154.

resulted in near disappearance of the Franciscans from Bosnia, and the number of their monasteries decreased from 30 in pre-Ottoman medieval period to only three in the 18th century.⁴⁹ While a great number of monasteries was destroyed by the Ottomans as retaliation for Franciscan betrayal and siding with the enemy, or deserted and left to decay by the Franciscans themselves, certain number of monasteries was destroyed by Christian armies as well. The Venetian army burned the Catholic monastery of Rama in 1687, and the Orthodox monastery of Tvrdoš in 1694, while the Habsburg army burned down Catholic monasteries of Srebrenica in 1688-89 and Visoko in 1697 in Bosnia,⁵⁰ and Velika in Slavonia in 1691.⁵¹ In addition, in 1697 when the Habsburg army under Prinz Eugen de Savoy sacked and completely burned Sarajevo, the Catholic church was burned down as well, and it was not restored until mid 19th century, while the Orthodox church was thoroughly plundered by the soldiers.⁵²

In terms of internal organisation of the Franciscan Bosnia basic units were monasteries, which possessed considerable degree of autonomy, especially in economical matters, and were as such recognised by the government. The heads of the monasteries – the guardians, represented the monasteries in front of the authorities, and were responsible for the payment of taxes and other dues. The highest body in the Franciscan Province was the Provincial Chapter, that is, the assembly hold every third year, while the executive power was in the hands of the *defnitorium* (“Council”) under the provincial minister. Even though the Council and the minister controlled the Franciscans and distributed the

⁴⁹ Džaja, 186.

⁵⁰ Ibid., 140.

⁵¹ Buturac, 153.

⁵² Skarić, *Sarajevo*, 131.

Franciscan staff at will, the monasteries retained their autonomy.⁵³ While the Franciscans were granted self-government and autonomy by the government, at the same time they needed the permission from the authorities to hold the Chapter, and in the 17th century the authorities started to interfere in the elections and impose their own candidates for the provincial minister.⁵⁴

The Orthodox Church in Bosnia was organised into three episcopates: (1) the episcopate of Dabar, with the see in the monastery of Banja, since 1575 Rmanj, and eventually Sarajevo (between 1693 and 1700), (2) the episcopate of Zahumlje-Hercegovina, with the sees in the monastery of Mileševa and Tvrdoš, which was in 1611 divided into two episcopacies (Hercegovina and Lim), and (3) the episcopacy of Zvornik, with the see mainly in the monastery of Tamna near Zvornik. The episcopates were organised according to the territorial organisation of the *sancaks*, hence, the episcopate of Dabar was within the boundaries of the *sancak* of Bosna, the episcopate of Zahumlje-Hercegovina within the *sancak* of Hersek, while the episcopate of Travnik was within the *sancak* of Travnik.⁵⁵ Following the Ottoman conquest in the west, the episcopate of Dabar established its jurisdiction over the conquered territories in Lika and Dalmatia in 1540, where direct authority over the church was in the hands of the *iguman* ("prior") of the monastery of Krka.⁵⁶ After the establishment of the Patriarchate of Peć in 1557, Bosnian episcopates became a part of its organisation (see Appendix B).

⁵³ Andrija Zirdum, "Franjevački ljetopisi u Bosni i Hercegovini," *Croatica Christiana Periodica* 15, 9 (1985), 46-47.

⁵⁴ Džaja, 157.

⁵⁵ Nilević, 125-131; Džaja, 106-107.

⁵⁶ Ibid., 126-127.

Free election of the patriarchs, metropolitans and bishops in the synod was the privilege of the Orthodox Church. However, in order to be able to perform his duty and receive the privileges a candidate elected in the synod needed the confirmation from the authorities in the form of the *berât*. In this manner, the state was able to establish firm control over the higher clergy. It seems that Serbian Church enjoyed higher degree of autonomy than the Oecumenical Patriarchate in Istanbul, mainly because of geographical distance from the capital.⁵⁷ This arrangement of the Orthodox Church with the state prevented the Church to act against the state unless it felt that its own position was at risk, what happened in the end of the 16th and beginning of the 17th century. In the rest of the century, however, the Orthodox Church did not participate in rebellion against the state, and preferred to remain loyal in order not to bring into dangerous its status, until the great war of 1683-1699.⁵⁸

After discussion of the position of the Churches as institutions, let us now examine the regulations considering Church activities, that is, religious affairs. As already mentioned, these questions were supposed to be completely in the sphere of the *şerî'at* law.

After the conquest was finished, remaining non-Muslim communities were granted the safe-conduct in form of the *'ahd* and/or *amân*, and acquired the *zimmî* status. This treaty, the *'ahd-nâme*, that is, the *zimma*, granted the community and its religious leaders security of life and property, and freedom for churches. After the fighting ended, however, not all the churches and monasteries enjoyed such a privilege, but many were converted to mosques or

⁵⁷ Hadrovics, 51-55.

⁵⁸ Cf. Đurđev, *Uloga crkve*, 143-153.

other public buildings. The destiny of churches in certain area was determined by the way in which it was conquered – if it was by force – *‘anveten*, churches were converted to mosques, while if it was by agreement – *sulhan*, then they were left to Christian population.

The *‘ahd-nâme* of Milodraževo guaranteed the safe-conduct for the churches as well. The fact that Mehmed the Conqueror granted it should be put in the connection with the manner in which the region was conquered – many towns and fortresses of central Bosnia, as is well known, peacefully surrendered to the Ottomans.⁵⁹ In other places that opposed the Ottomans, like Jajce and Bihać in Bosnia, or Požega, Brod, Đakovo, etc., in Slavonia, after the conquest churches were taken from the Christians and converted into mosques or other public buildings.⁶⁰ On the other hand, the fact that many churches were destroyed during fighting should be at least partially attributed to the fact that churches and monasteries were, often walled and fortified, used as fortifications by Christians, e.g. in towns of Kordekondaz, Beslov and Leibnitz, as is described by Ibrahim Peçevi in description of the conquest of Hungary in 1530’s.⁶¹

The *şerî‘at* explanation of the principle *‘anveten – sulhan* was given by Ebu’s-Su‘ûd Efendi in a *fetvâ* concerning the churches in Istanbul:

Question: Did Sultan Mehmed Hân (Peace and Mercy be upon Him) conquer city of Istanbul and surrounding villages by force?

Answer: It is known that the conquest was by force. However, in order to preserve the status of old churches, it is indicated that it was conquered by agreement. In the year of 945 [1538] this question was inspected. One 117-year-old man and another 130-year-old man were found. They

⁵⁹ Cf. Mandić, “Autentičnost Ahd-name,” 80.

⁶⁰ Cf. Džaja, 138; Buturac, 181.

⁶¹ Ibrahim Alajbegović Pečevija, *Historija*, Vol. 1, tr. Fehim Nametak (Sarajevo: *El-Kalem*, 2000), 152-153.

testified in front of the inspector that the Jews and Christians secretly made an agreement with Sultan Mehmed. It was fixed that they will not help infidels, and Sultan Mehmed will not enslave them. The conquest happened in this manner. The status of the old churches remained [as it was] according to this testimony.⁶²

This *fetvâ* is actually justifying the existence of churches in Istanbul because since it was conquered by force no church or synagogue should have been left to the Christians or Jews. The agreement with the Conqueror was the reason that Catholics of Galata received the '*ahd-nâme*' and preserved their churches and personal freedom while the rest of Constantinople was plundered.⁶³ However, in reality the manner in which a town was conquered was not always decisive, and, when there was a need, a church might have been converted to a mosque even in places that came under the Ottomans by free will, as was the case of Smederevo.⁶⁴

On the other hand, churches were occasionally demolished or converted to mosques or other public buildings even in the period after the Conquest, when the population already obtained the *zimmî* status and the right to possess the churches. There were several reasons for conversion or demolition of the church. Firstly, there was a law that in the case that a church was not in use for more than 50 years, it could have been converted or demolished and its building material used for other buildings. In circumstances when Christian population disappeared from towns either due to emigration or enslavement during the conquest, or because of Islamisation after it, the number of churches that were

⁶² Düzdağ, 104, no. 456.

⁶³ Cf. İnalçık, "Ottoman Galata," 277-289; Frazee, 6-7.

⁶⁴ Zirojević, *Crkve i manastiri*, 24; cf. Rossitsa Gradeva, "Ottoman Policy towards Christian Church Buildings," *Études balkaniques*, 30, 4 (1994), 18.

abandoned and out of use must have been considerable.⁶⁵ A *fetvâ* of Çatalcalı

‘Alî Efendi directly relates to the issue:

[*Question:*] In a big village inhabited by infidels, whole population gradually adopts Islam. An old church in the village remains vacant and after it ruins the population seek to replace the church with a building of a mosque. Since the village is from the border dominion (*misr hükümünden*), the stipulations of the correct *Cuma* (Friday prayer) will come into existence. Is it allowed to build a mosque in place of the mentioned church with the permission of the Sultan, in order to perform the *namâz* (prayer)?

Answer: Yes.⁶⁶

Churches might have been abandoned because of debts of its clergy, as was the case during the so-called “selling of churches,” (*prodaja crkava*), that is, new classification of the church *vakfs* by *şeyhülislâm* Ebu’s-Su’ûd Efendi during the reign of Selîm II (1566-1574). In attempt to harmonize the ‘*örfî*’ law with the *şerî’at* prescriptions, Ebu’s-Su’ûd ruled that church *vakfs* are contrary to the *şerî’at*, and that the monasteries should pay the *tapu*-tax on the lands in their possession, since the land actually is the state ownership. As a result, monasteries ran into huge debts, and some of them were abandoned by monks or sold to the best bidder. Eventually, however, the majority of the monasteries managed to pay off debts due to the help of lay donors and arrangements with the state, although some of the smaller and poorer monasteries did not manage to succeed.⁶⁷ While this measure had a goal to harmonise the sultanic laws with

⁶⁵ Kiel, 177-178; Petković, 46-47; Nilević, 113.

⁶⁶ Çatalcalı ‘Alî Efendi, 158, no. 2; “Ahâlisi kefare olan karye-i kebîre ahâlisinin cümlesi tedricle İslâm’a gelmeleriyle karye-i mezbûrede olan kenîse-i kadîme mu’attala kalub harâb olduktan sonra ba’duhu ahâlî-i mezbûre kenîse-i mezbûrenin yerde câmi‘ binasına tâlib olsalar karye-i merkûme mısır hükümünden şerâ’it-i sıhhat cuma mevcuda olınacak izin-i sultânî ile kenîse-i mezbûrenin yerinde câmi‘ binâ olunub cuma namazı kılınmak câ’iz olur mu? El-cevâb: Olur.”

⁶⁷ Eugenia Kermeli, “Ebû’s Su’ûd’s Definition of Church vakfs: Theory and Practice in Ottoman Law,” in: Robert Gleave and Eugenia Kermeli, *Islamic Law: Theory and Practice*, (London, New York: I.B. Tauris, 2001), 141-156; Aleksandar Fotić, “Konfiskacija i prodaja manastira (crkava) u doba Selima II (problem crkvenih vakufa),” *Balkanica* 27 (1996), 45-77;

the *şerî'at*, financial needs of the state should be taken into consideration as well.⁶⁸ Introduction of the *cülûs*-tax in 1672 according to Franciscan sources, or in 1658 according to the documents of the Orthodox church in Sarajevo, became a heavy burden for monasteries and churches, especially after 1683 when the crisis was amplified by the war.⁶⁹ Most of the Franciscan monasteries were closed because of insolvency, and majority did not reopen after the war.⁷⁰

Another reason for demolition or conversion of the church was the breach of the *zimma* agreement by treason and cooperation with the enemy. Apart from two major periods of the conquest and the wars of the second half of the 17th century, especially that of 1683-1699, episodes of conflicts with the Christian enemies, in the case of Bosnia quite often, witnessed occasional collaboration of domicile Christian population with invader armies, and, subsequently, Ottoman retaliation. Especially critical were periods of clashes with Hungary in the first half of the reign of Süleymân the Magnificent, from 1520 to 1540,⁷¹ and the long war with the Habsburgs (1593-1606).⁷² Franciscan chroniclers inform that in 1524 the Ottomans demolished the monasteries of Konjic, Visoko, Sutiska, Kreševo and Fojnica, while the guardians of the monasteries were arrested.⁷³ The monastery of Konjic was never rebuild again, while the others were restored by 1566, “if not earlier,” as said by chronicler

idem, “The official explanations for the confiscation and sale of monasteries (churches) and their estates at the time of Selim II,” *Turcica* 26 (1994), 33-54; Andrej Andrejević, “Pretvaranje crkava u džamije,” *Zbornik za likovne umetnosti* 12 (1976), 115-116; Kiel, 157-158; Petković, 27; Đurđev, *Uloga crkve*, 129-131.

⁶⁸ Fotić, “Konfiskacija,” 62-63.

⁶⁹ Jelinić, *Kultura i bosanski franjevci*, 156-157; Džaja, 140; Skarić, “Srpski pravoslavni narod,” 76.

⁷⁰ Ibid., 156-157; Džaja, 140.

⁷¹ Andrejević, 114.

⁷² Cf. Slijepčević, 348-350.

⁷³ Truhelka, ed., *Fojnička kronika*, 449, f. 6; Lašvanin, 267.

Lastrić.⁷⁴ In 1538, the monastery of Zvornik was confiscated by authorities. Although this was obvious example of Ottoman repression towards the Franciscans on the account of suspicion for treason, the state did not completely deny the protection to the Church, and in 1532 it arrested the *harâmîs* (“robbers”) that slaughtered monks of the monastery of Rama.⁷⁵ In 1563 the Ottomans demolished monasteries of Mostar and Ljubuški in Herzegovina, because the Franciscans helped bishop of Duvno, Daniel Vocensis, suspected traitor and spy, to escape from the authorities.⁷⁶ Indeed, the intention of the authorities to prevent collaboration of monks with the enemy is evident in the *kânûnnâmes* of 1516, 1530 and 1542 for the *sancak* of Bosnia that prescribe heavy punishments for those of “the infidels and priests in churches that are inquiring into the situation and giving information to the land of infidels.”⁷⁷

While in this period the Orthodox Church was fully loyal to the Ottoman state, by the end of the 16th century it changed the course under the leadership of patriarch Jovan Kantul (1592-1614). In 1594, a year after the beginning of war with the Habsburgs, Serbs in Banat rebelled against the Ottomans, while one of the leaders of insurgents was episcope of Vršac, Teodor. The insurgents did not receive the help from Austrian army and Transylvania, and the Ottomans soon overcame the rebellion. In retaliation for the participation of the Church in rebellion, Sinan Paşa seized the most revered relic of the Serbian Orthodox Church, the body of Saint Sava, from the monastery of Mileševo and burned it publicly in Vračar in 1594. Episcope Teodor was later captured by the *paşa* of

⁷⁴ Lastrić, 122; cf. Jelenić, *Kultura i bosanski franjevci*, 150.

⁷⁵ Truhelka, ed., *Fojnička kronika*, 449, f. 6; Lašvanin, 267.

⁷⁶ Lastrić, 122; cf. Jurišić, 34-35.

⁷⁷ *Osmanlı Kanunnâmeleri*, Vol. 3, 377-378, 380; *Kanuni i kanun-name*, 24, 31, 37, 43, 60, 66.

Temišvar and skinned alive.⁷⁸ In 1595 the insurrection started in Herzegovina as well. One of the organisers was the metropolitan of Herzegovina, Visarion, who established connection with the pope and was ready to negotiate about the union with Rome in exchange for military help from Christian powers. Later, the patriarch personally joined the negotiations, however, without success. Appeals for help sent to Habsburg emperor Rudolph remained unanswered as well. In 1614, patriarch Jovan, active supporter of rebellions, died in Istanbul under mysterious circumstances.⁷⁹ Contemporary sources of the Orthodox Church inform that the land was devastated, people murdered and enslaved, and churches plundered. However, it seems that the Orthodox Church soon managed to recover, since at that time the monastery of Lomnica in Bosnia got frescos, while according to the report of apostolic visitor Marin Bizzi of 1610, the monastery of Mileševo had more than 100 monks, and the roof of its church was covered with lead.⁸⁰

During the war Catholics in Slavonia rebelled as well, often accompanied with the Franciscans. In 1600 the *paşa* of Požega imprisoned monks of the monastery of Požega, while the guardian of the monastery was impaled.⁸¹

17th century Ottoman traveller Evliya Çelebi explicitly reports that the mosques in the following towns were previously the churches: Şerklot mosque in Požega, Süleymâniyye mosques in Brod, Osijek, Bač, Senta, and Jajce, as

⁷⁸ Đurđev, *Uloga crkve*, 144-145; Slijepčević, 348-349.

⁷⁹ Ibid., 145-146; Slijepčević, 350-353.

⁸⁰ Slijepčević, 349-350, 356.

⁸¹ Jelenić, *Kultura i bosanski franjevci*, 220.

well as Gazi İsâ Bey mosque in Novi Pazar.⁸² If mosques that are described by Evliya as build in “the old style” were also originally the churches as suggested by Andrejević, then several other buildings had to be added to the list: mosques of Sultan Beyâzîd in Foča and Srebrenica, and the mosque of Sultan Mehmed in Blagaj.⁸³

In reality, on the other hand, the conversion of churches into mosques was not always following the *şerî'at* rationalization in strict sense, but on occasions, when new temples or public buildings like *hamâms*, *kervânserây*s (“caravanserai”) or *bezistâns* (“bazaar”) were needed for growing Muslim population, the authorities could simply decide to save money and time and convert already existing buildings.⁸⁴ The best known example is from Belgrade where the Grand Vizier Mehmed Paşa Sokolović used the material of three churches and a synagogue to build a *kervansarây* and a *bezistân*, according to the testimony of traveller Marcantonio Pigafetta in 1568.⁸⁵ The story was confirmed by Stephan Gerlach ten years later, who mentioned that a nice church was confiscated from the Serbs in Belgrade and Mehmed Paşa Sokolović made a *kervânsarây* and *bezistan* from it.⁸⁶

Erection of new churches was forbidden according to the Islamic law. However, in completely Christian areas without Muslim presence erection of churches was allowed. Çatalcalı ‘Alî Efendi stipulates:

⁸² Evlija Čelebi, 239, 241, 367, 533, 537, 209, 266; Andrejević, 107.

⁸³ Ibid., 404, 99, 459-460; Andrejević, 107-108.

⁸⁴ Cf. Andrejević, 116; Zirojević, *Crkve i manastiri*, 23-26.

⁸⁵ Stjepan Matković, “Putovanja po Balkanskom poluotoku XVI veka. Putopis Marka Antuna Pigafette, ili drugo putovanje Antuna Vrančića u Carigrad,” *Rad JAZU*, Vol. 100, razred filologiĉko-historiĉki i filosofiĉko-juridiĉki, no. 29, (Zagreb, 1890), 134.

⁸⁶ Matković, tr. and ed., “Putovanja,” Vol. 116, no. 39, 55; cf. Đurđev, *Uloga crkve*, 131-132.

- (1) [*Question:*] If on an island inhabited by infidels a group of infidels residing with a sultanic permission wishes to erect a church on the island, can it be forbidden by the *şerî'at*?

Answer: No.⁸⁷

- (2) [*Question:*] If in a village with completely infidel population far away from the land of Islam and with no Islamic people around it, the people of the village want to build a church, is it necessary to prevent it?

Answer: No.⁸⁸

Most probably this was the reason why the authorities did not prevent erection of four new churches and two monasteries in the region of Biokovo and Neretva which was completely Christian and situated on the border with Venetian Dalmatia.⁸⁹ In this case, however, the authorities were ready to compromise with the local population probably out of concern for their loyalty, on a line of the *istimâlet* policy.

There were, however, other cases of erection of new churches in regions that were not far away from Islamic land and Muslims. Before the conquest, central and western part of Bosnia, as well as Dalmatia and Slavonia, were not inhabited by Orthodox Christians and there are no traces of Orthodox Churches in the sources. Only eastern Bosnia and Herzegovina were regions inhabited with Orthodox population and only there Orthodox churches existed in the pre-Ottoman time.⁹⁰ The Ottoman conquest was followed by a wave of Orthodox Christian colonizers, predominantly Vlachs, who, naturally, brought their Church with them in regions that were previously non-Orthodox. The Ottoman authorities were tolerant towards their Orthodox Christian allies, and turned a blind-eye to erection of their churches. According to some estimations, there

⁸⁷ Çatalcalı 'Alî Efendi, 156, no. 3.

⁸⁸ Ibid., 157, no. 1.

⁸⁹ Cf. Jurišić, 39.

⁹⁰ Zdravko Kajmaković, *Zidno slikarstvo u Bosni i Hercegovini*, (Sarajevo: Veselin Masleša, 1971), 120-121; Nilević, 84-85, 114-115; Džaja, 105-106.

were more than 100 newly erected and renovated churches and monasteries on the territory of the Patriarchate of Peć,⁹¹ while at least several dozens were newly erected on the territory of Bosnia and Dalmatia, or, to put it differently, there is no mention of their existence prior to Ottoman time.⁹² Folk tradition that attributes erection of Bosnian Orthodox churches to Eastern Roman Emperor Constantine or medieval Serbian dynasty of Nemanjić is not acceptable.⁹³ The problem of datation of Orthodox churches erected during the Ottoman period originates from omission of datation on inscriptions and fresco-inscriptions, which was usually present in pre-Ottoman period, probably in order to hide the date of erection in front of the authorities.⁹⁴

The *kânûnnâmes* of the *sancak* of Bosnia of 1516, 1530 and 1542, as well as the *kânûnnâme* for the *sancaks* of Bosnia, Herzegovina and Zvornik of 1539, contain a decree, identical in all of them, that orders demolition of newly erected churches in some places, as well as removal of crosses from the roads, with the warning with dismissal from the service for *kâdîs* who will fail to enact the decree in their *kâdîliks*.⁹⁵ The fact that such a decree was issued in the *kânûnnâmes*, which is, according to my knowledge, a Bosnian peculiarity, and repeated four times in less than 30 years, indicates that the erection of new churches became wide-spread phenomenon to such extent that the authorities could not ignore it any more. However, the erection of new churches did not

⁹¹ Petković, 50.

⁹² Kajmaković, 132; for incomplete list of newly erected churches and monasteries see: Nilević, 144-171; Zirojević, 59-202; cf. Kiel, 193-195.

⁹³ Nilević, 143.

⁹⁴ Kajmaković, 135-136.

⁹⁵ *Osmanlı Kanunnâmeleri*, Vol. 3, 377-378, 380; *Kanuni i kanun-name*, 24, 31, 37, 43, 50, 57, 60, 66.

end; on the contrary, after the establishment of the Patriarchate of Peć in 1557 it gained new momentum.⁹⁶

Erection of new churches was not exclusively a privilege of the Orthodox Church, but there were few instances of erections of Catholic temples as well: in 1579 a church was erected in Ravno in Herzegovina,⁹⁷ as well as a monastery in Gradovrh in the mid-16th century.⁹⁸ The most interesting document concerning new Catholic temples is a letter of the Congregation for Propagation of Faith from Rome sent to the bishop of Trebinje in 1625, which orders him to stop preventing Franciscan Blaž to finish the erection of a church since "... it is very inappropriate that a follower of Christ is obstructing the erection of a church, which is officially illegal in the Mohammedan empire."⁹⁹ However, such examples are few, and in general the Orthodox Church and its believers enjoyed privileged status in comparison with the Catholics.¹⁰⁰

Erection of a new church might have been justified on the grounds that it will be built on foundations of an old church from the pre-Ottoman period, whether or not a ruin belonged to a church or any other building (and if there was any at all), and thus acquired a label of "renovation."¹⁰¹ Due to the provisions of the Islamic law which explicitly forbids erection of new churches, there is no a single written permission found so far, and most probably such permissions did not exist at all, as they would represent explicit contravention of

⁹⁶ Cf. Nilević, 114-115.

⁹⁷ Mandić, ed., *Hercegovački spomenici*, 41, no. 29.

⁹⁸ Jelenić, *Kultura i bosanski franjevci*, 150.

⁹⁹ Mandić, ed., *Hercegovački spomenici*, 48, no. 66. "Mandavit scribi eidem episcopo Tribuni et Marchanae ne dictum fratrem Blasium impediatur, aut ab aliis impedi sinat, quominus ecclesiam, quam postremo aedificandam suscepit, perficere possit, cum valde [in]congruum sit aedificationem ecclesiarum in Mahometanorum imperio legibus prohibitam Christifidelibus inhibere."

¹⁰⁰ Cf. Kajmaković, 132; Gradeva, "Ottoman Policy," 28; Kiel, 169-170.

¹⁰¹ Kiel, 201-202; Cf. Nilević, 143-144.

the *şerî'at*.¹⁰² However, Ottoman sense for realism and a worldview based on religion made them flexible enough to compromise with non-Muslim communities and, when the need was felt, grant them with a place of prayer.¹⁰³

The best illustration of the Ottoman attitude was a case of Sarajevo, the most significant town of Bosnia, and a see of the *sancakbeyi* until the mid-16th century.¹⁰⁴ In a town which was Ottoman creation and, consequently, almost completely Muslim since its foundation, in time, along with influx of non-Muslims and gradual increase of their number, non-Muslim places of worship started to appear. Presumably the first was an Orthodox church in *Varoş*, the *mahalle* inhabited predominantly by Orthodox Christians (see Appendix F). The earliest preserved direct reference to the Orthodox church is a *fermân* of 1729, which gives permission for the repair of the church. However, there is an entry in the registry of the church which mentions a *fermân* of the similar content from the year of 1616. Indirect references to its existence in earlier period, like presence of priests, date to the late 15th century, when there was already 100 Orthodox Christian households in *Varoş*.¹⁰⁵ The *fermân* of 1729 mentions as a condition for renovation of the church that it should originate from the “old times,” and since the permission was obviously obtained, it was probably concluded so. Although the existence of a pre-Ottoman church or its ruins cannot be excluded since Sarajevo was founded on a spot of a small medieval locality, it might have been a legal fiction necessary for the repair of the church

¹⁰² Ibid., 202; Rossitsa Gradeva, “On Zimmis and Church Buildings: Four Cases from Rumeli,” in: Eugenia Kermeli and Oktay Özel, eds., *The Ottoman Empire: Myths, Realities and ‘Black Holes’*, (Istanbul: ISIS Press, 2006), 228; Zirojević, *Crkve i manastiri*, 22.

¹⁰³ Kiel, 193-195; Gradeva, “On Zimmis,” 236.

¹⁰⁴ Cf. A. Popovic, “Sarajevo,” *EP*.

¹⁰⁵ Skarić, “Srpski pravoslavni narod,” 7-9; Hadžibegić, “Stara pravoslavna crkva u Sarajevu,” 145, 149; Nilević, 168.

as well.¹⁰⁶ On the other hand, there is an opinion that it definitely did not exist in 1462, because it would have had been mentioned in the *vakfnâme* of Gâzî İsâ Bey.¹⁰⁷

From the early times Catholic inhabitants were dwelling in Sarajevo in a *mahalle* called *Latinluk* (or *Frenk mahallesi*). They were initially merchants from Dubrovnik who were in time joined by local Catholics. At the latest since 1590 Catholics possessed a church that was serving the needs of 200 Catholic households, according to the report of Bishop Stefani.¹⁰⁸ The church most probably originate from a chapel of Dubrovnik merchants, who were granted a right to possess chapels or churches in their colonies in the Ottoman Empire.

While in theory for both of these churches it was possible to construct a fiction of pre-Ottoman foundations of their temples, in the case of the synagogue this was not possible, since there were no Jews in Sarajevo prior to Ottoman times.¹⁰⁹ First mention of a Jew in Sarajevo is found in the *sicil* of 1557.¹¹⁰ According to a transcript of a document from 989/1580-1581 in the *sicil* of 1728/1729, in the year of 989, Siyâvûş Paşa ‘Âtîk, the *beylerbeyi* of Rumelia, decided to build a special *hân* (a joint dwelling) for the Jews of Sarajevo and gave them a permission to build a synagogue.¹¹¹ Although the authenticity of the document was questioned,¹¹² Evliya Çelebi reports that the Jews of Sarajevo lived in two *mahalles* and had one synagogue to serve their

¹⁰⁶ Hamid Hadžibegić, “Stara pravoslavna crkva,” *Naše starine* 2 (1954), 149; Nilević, 168.

¹⁰⁷ Skarić, “Srpski pravoslavni narod,” 11.

¹⁰⁸ Skarić, *Sarajevo*, 58, 100.

¹⁰⁹ Ruth E. Gruber, “Yugoslavia,” *Encyclopaedia Judaica* CD-ROM Edition (Judaica Multimedia (Israel) Ltd. 1997); Noel Malcolm, *Bosnia. A Short History*, (London: Macmillan, 1994), 108.

¹¹⁰ Bejtić, 24.

¹¹¹ *Ibid.*, 26; M. Levy, 15.

¹¹² Bejtić, 26.

spiritual needs.¹¹³ In accordance with the effort of the authorities to attract and colonize the Jews in various places of the Empire, strict rules of the *şerî'at* were sometimes ignored, and erections of new synagogues were tolerated. In Thessalonica, for example, according to the census register of 1478 there were neither Jews nor synagogues at all, while in 1550, the city had 22 synagogues.¹¹⁴

The repair of the non-Muslim temples is another matter. According to the *şerî'at*, the renovation of the church was allowed under the condition that a church existed in the old times, or as stipulated by a *fetvâ* of Ebu's-Su'ûd:

Question: If old churches of the infidels in a town at the present time become ruined, can they be repaired?

Answer: Yes.¹¹⁵

A building under renovation, however, should have had been restored in previous dimensions and in the same building material; that is, a repaired church could not have had been larger and made of better material than it was before. Consequence of the failure to follow the rule was demolition of the church.

Ebu's-Su'ûd Efendi issued an interesting *fetvâ* on the issue:

Question: Zeyd the *zimmî* rebuilds a burned down church in a Muslim town in the infidel *mahalle* with stones and bricks (*taş ve kerpiç*) contrary to the essential arrangement (*vaz '-i aslîsine muhâlif*). If the inspector *kâdî* sends a letter via 'Amr to the local *kâdî* to demolish the church, but 'Amr keeps the letter and does not show it to the *kâdî*, while the *imams* and *hatîbs* ("preachers") of the town do not endeavour to demolish the church, what should be done to 'Amr and the *imâms* and *hatîbs* of the town?

Answer: 'Amr should be severely chastised and imprisoned for a long time. The others should be dismissed from office. After the church is demolished, it should be rebuilt as the original.¹¹⁶

¹¹³ Evliya Çelebi b. Derviş Mehmed Zillî, *Evliya Çelebi Seyahatnâmesi. Topkapı Sarayı Bağdat 307 Yazmasının Transkripsyonu – Dizini*, Vol. 5, eds. Yücel Dağlı, Seyit Ali Kahraman, İbrahim Sezgin (Istanbul: Yapı Kredi Yayınları, 2001), 224, 228; cf. Evliya Çelebi, 105-106, 118.

¹¹⁴ Kiel, 203.

¹¹⁵ Düздаğ, 106, no. 465.

¹¹⁶ Ibid., no. 468.

There are two important elements in this *fetvâ*. Firstly, a statement that use of stones and bricks as materials for repair of the church was “contrary to the essential arrangement” raises a question whether the use of solid building materials was forbidden in reconstruction of churches in general. Several documents and reports indicate that it was so. A *buyuruldu* of 1640 issued on request of the monks of the monastery of Fojnica by Bosnian *beylerbeyi* Bošnjak Šahin Paša and sent to the *kâdî* of Sarajevo and the *nâ'ib* (“representative of the *kâdî*”) of Kreševo regarding the renovation of the church stipulates that the monks can repair dilapidated parts of the church according to the old size and using wooden planks, on the basis of the *fermân*. The *kâdî* and *nâ'ib* are warned to pay attention that the church will not be enlarged or renovated with stones and sand.¹¹⁷ Two years later, in 1050/1642, a *fermân* that allows the repair of the church of Fojnica repeats the same stipulations – building material should be planks, not stone or sand.¹¹⁸ According to the *hüccet* of the Sarajevo’s court of 933/1527, the church of Fojnica was demolished six years earlier because it was made bigger than it was at the time of the conquest, while original materials – wattle and shingle, were replaced with brick and stone. The *hüccet* gives inhabitants of Fojnica the permission to rebuild the church, but in previous size and with wattle.¹¹⁹ Bartol Kašić (Bartholomaeus Cassius), a Jesuit from Dubrovnik, who travelled in 1612-1613 and 1618-1619 in Slavonia and Srijem, i.e., the Middle Danube region, reports that some churches, like recently renovated church in Morović and a church in Nijemci, which were in the past

¹¹⁷ Matasović, 145, no. 403.

¹¹⁸ Ibid., 146, no. 416.

¹¹⁹ Ibid., 106-107, no. 23.

made of stone, nowadays are made of planks.¹²⁰ Those churches that remained intact during the conquest were made of stone or bricks, but they were in poor condition, mostly abandoned and completely empty, and were used only on special occasions and holidays, when the priests would bring portable altars and other objects necessary for the liturgy, as was the case in Ljuba, Kuzminci, and Viljevo.¹²¹

On the other hand, there are documents and reports that are contradicting this prohibition, even for the church of Fojnica. Anonymous chronicle of Fojnica in an entry of 1566, reports that Bosnian churches demolished in 1524, that is, churches of Sutiska, Fojnica and Kreševo, later were rebuild in wattle, while after some time they were renovated "... in stone from below and in brick from above, and in 1594 esteemed father Fra Antun Jurišić rebuilt the church of the Holy Spirit in Fojnica in above mentioned way."¹²² The registry of the Ottoman documents in Fojnica contains two documents that permit renovation of the church in brick: a permission of Ćdriz Paša from Banja Luka in 1005/1596,¹²³ and a permission of a *vezîr* from 1600.¹²⁴ There is also a *fetvâ* of Mulla İbrahim Efendi preserved in the registry of the monastery, which says that when a stone or a brick falls out (of the church) it can be repaired.¹²⁵

In my opinion, the explanation for dichotomy in practice should be searched for in Ebu's-Su'ûd's *fetvâ* mentioned above. The letter carrier 'Amr that does not forward the letter with the order to demolish the church of the

¹²⁰ *Život Bartola Kašića*, tr. Stjepan Sršan, (Osijek: Matica Hrvatska, 1999), 63.

¹²¹ *Ibid.*, 65, 69-79, 98.

¹²² Truhelka, ed., "Fojnička kronika," 450, fasc. 7.

¹²³ Matasović, 122, no. 171.

¹²⁴ *Ibid.*, 123, no. 184.

¹²⁵ *Ibid.*, 404, no. 1935.

inspector *kâdî* to the local *kâdî* in order to protect the church, and town's *imâms* and *hatîbs* who are reluctant to enforce the order, were the people who were responsible for the church enlargements and improvements of the quality of the buildings, won over by the Christians either by the means of bribery or by some other considerations. For example, the permission for renovation of the church of Fojnica in 1527, six years after its demolition, was concession to the miners of Fojnica, who sent petition to the authorities with a warning that many people already left the town and went to other places that possess churches, while the rest will follow them soon if the old church will not be rebuild.¹²⁶ The fact that the population of Fojnica was working in the local mine must have had influenced authorities to be more flexible than it might have had been in the case of ordinary *re'âyâ*, in order to retain the strategic interests of the state intact.

The registry of the monastery of Fojnica contains more than 100 documents of different kinds issued by all ranks of authorities, from local *kâdî* to the sultan, for the period from 1502 to 1706 concerning the renovation of the church of the monastery in Fojnica and other buildings.¹²⁷ Obviously, the monastery of Fojnica was restored many times, probably due to the generally poor quality of the building material, i.e., planks and wattle. The use of bricks and stone was rare and generally forbidden. Most likely other Franciscan monasteries in Bosnia were in similar position. Their buildings were small and modest, and enlargements were exceptional; the only example is the monastery of Srebrenica, which was made larger and more luxurious than it was in pre-

¹²⁶ Ibid., 106-107, no. 23.

¹²⁷ Cf. Matasović, 105-188.

Ottoman time according to the Franciscan sources.¹²⁸ There were no new Catholic churches erected, with very few exceptions. It can be concluded that the rules of the *şerî'at* on issue of church buildings were enacted in full extant in the case of the Catholic Church, with several exceptions that do not change the general picture much.

The position of the Orthodox Church was significantly different. As already mentioned, on the territory of the Patriarchate of Peć more than 100 churches were erected or restored. On the other hand, the number of new churches in hundreds of new villages of Vlach colonizers in Bosnia is not possible to establish, since they were usually not mentioned in sources. Since they were generally dug in the ground and made of wood and mud, their buildings did not remain until today.¹²⁹

The Orthodox churches erected or renovated on Bosnian territory are from the architectural point of view in general more valuable than churches in other regions of the Patriarchate of Peć – Serbia, Montenegro, parts of Macedonia and Bulgaria. All important churches in Bosnia and Herzegovina have the dome, like Ozren, Tavna, Vozuća, Liplje, Rmanj, Gostović, Tvrdoš, Dobrićevo and Žitomislić, while the churches of Papraća in Bosnia, Piva in Herzegovina (today's Montenegro) and Hopovo in the middle Danube region, renovated in the 16th century, are three largest churches from the Ottoman period in the region, larger even than most of churches from the medieval period.¹³⁰ Due to the building activities in Bosnia, Bosnian territory, which was

¹²⁸ Džaja, 156.

¹²⁹ Cf. Kiel, 193; Kajmaković, 137; Petković, 50-51.

¹³⁰ Kajmaković, 123; Petković, 50; Kiel, 194-198.

periphery in the 13th and 14th centuries, became the centre of the Serbian orthodoxy, while Peć remained the centre only in symbolical sense.¹³¹

In comparison with Catholic churches, Orthodox churches were more numerous, larger, more luxurious, and, while Catholic churches in general did not have the dome, all significant Orthodox churches had it.¹³² Better position of the Orthodox Church should not be seen solely as Ottoman preference in political terms, but it is important to take into consideration the richness of the Orthodox Church that possessed large estates and the right to collect the taxes, as well as rich and influential donors who were at the same time members of the Ottoman establishment, like *voyvodas*, Christian *sipâhîs* and *knezes*, or affluent townsmen, like goldsmiths of Sarajevo (see Appendices D and E).¹³³

The procedure for the renovation of the church was usually very long, and included both local and central authorities of the state. According to the examination of the procedure in several cases of renovation of the Orthodox church in Sarajevo in the 17th and 18th centuries, Vladislav Skarić described the process in detail. First step was to obtain a *fetvâ* from the *müftî*, which asserts that the church in question originates from the “old times.” Then, on the basis of the *fetvâ*, the *kâdî* writes the report, *ilâm*. Afterwards, the petitioners write the *mahzar* or *‘arzuhal* with report and petition. The *ilâm*, *fetvâ* and *arzuhal* are sent to Istanbul. On the basis of these documents the sultan issues the *fermân* which allows the repair, and dispatches it to the provincial governor – *beylerbeyi* and local *kâdî*. Imperial *dîvân* sends its letter together with the *fermân*. In provincial

¹³¹ Kajmaković, 123-124.

¹³² Ibid., 130-132.

¹³³ Cf. Kiel, 57-142 and passim; Petković, 61; Kajmaković, 126; Zirojević, *Crkve i manastiri*, 34.

dīvân the *beylerbeyi* issues the *buyuruldu* that recapitulates the content of the *fermân*. Then the *kâdî* sends a commission – *keşf* (“inspection”) of an architect and several Muslim witnesses to the spot to inspect and measure the old church. The commission makes a report – *keşf defteri*, and forwards it to the *kâdî*, who then issues the *mürasele*, and sends it to the petitioners. After that the renovation can begin. Once the renovation is finished, the commission comes to the spot and again inspects and measures the building in order to compare it with the data in the *keşf defteri*. If the facts are identical, then the process of the renovation of the church is done. However, the procedure was not always necessarily the same, and for smaller interventions and repair of other auxiliary buildings it was possible to obtain permission from local instances – the *kâdîs* and *beylerbeyis*.¹³⁴ Each of the official instances in the procedure, from the *müftî*, *kâdî* and *beylerbeyi*, to the sultan and *dīvân*, as well as the *keşf* commission, charged their services, and the permissions were often more expansive than the renovation itself – the expenses for renovation of the Sarajevo church in 1658 amounted to 42.000 *akçe*, while permission expenses amounted to 64.500 *akçe*.¹³⁵ The fact that expenses for the permission were often bigger than expenses of the renovation itself must have had prevented less affluent communities to repair their churches, as was often the case of Bosnian Catholics.

¹³⁴ Skarić, “Srpski pravoslavni narod,” 74-75; cf. Zirojević, *Crkve i manastiri*, 27-28; Petković, 47-48; Kiel, 186; for several documents regarding the process of church renovations see: Matasović, 105-188 for the case of the monastery of Fojnica; and Fehim Bajraktarević, “Turski dokumenti manastira Sv. Trojice kod Plevlja,” *Spomenik SKA*, 79, Drugi razred, Filozofsko-filološke, društvene i istorijske nauke, 62, 2 (Sarajevo, 1935), 27-85, for the case of the Orthodox monastery of Holy Trinity in Pljevlje.

¹³⁵ *Ibid.*, 75.

Catholics did not possess many churches situated in towns and villages, among the people, but were in the care of the Franciscans from the monasteries. The Franciscans were temporarily settled in certain places with Catholic population, or, more often, travelled from monasteries to their believers. In the lack of churches, the religious services were held in private houses and chapels, or in the open air – on the graveyards, in front of the crosses, in woods, and the like. In 1656, Bosnian bishop Marijan Maravić reported to the Congregation for the Propagation of Faith that there were few parishes in Bosnia that have churches where the priests could say the mass and administered the sacred sacraments. In general, the mass was celebrated in cemeteries and homes of the Catholics.¹³⁶ Bishop Olovčić in his report on the situation in Bosna Srebrena in 1672-1675, lists 12 parishes where, in lack of churches, the mass was celebrated by the Franciscans in private houses, woods, or on graveyards: Livče (Livacensis parochiae), Moticha, Dragočaj (Dragociai), Bihać (Biach), Lašva (Lasva), Radugnievaz, Vasiljevo (Vassiglievo), Miavac (Miavaz), Dubočac (Dubociaz), Derventa, Cosmodan, and Zablacé (Zablatiae).¹³⁷ Bartol Kašić personally celebrated the mass on a graveyard in Srijem.¹³⁸ The authorities recognised the Franciscans the right to preach outside of churches and to live in private houses among their believers. A *hüccet* of 1563, issued by the *kâdî* of Kreševo, Yusûf Efendi, gives the Franciscans permission to “walk from village to village and carry the flag.”¹³⁹ Other documents in the registry of the monastery of Fojnica from the second half of the 16th and 17th centuries confirm

¹³⁶ Eusebius Fermendžin, ed., *Acta Bosnae potissimum ecclesiastica cum insertis editorum documentorum regestis ab anno 925 usque ad annum 1752*, (Zagreb: JAZU, 1892), 479.

¹³⁷ Jelenić, “Spomenici,” 134, 136-137, 140-141, 151.

¹³⁸ *Život Bartola Kašića*, 63.

¹³⁹ Matasović, 109, no. 49.

the right of Franciscans to travel freely to “all four sides of the world” and “teach the *Īncîl*” in villages and towns.¹⁴⁰ In addition, a *fetvâ* from the registry asserts that it is forbidden to disturb ceremony of the mass in graveyards and sacred places.¹⁴¹ Rome gave authorization to the Franciscan practice as well. According to the privilege given to the Bosnian Franciscans by pope Urban VIII in 1639, performance of spiritual service in places other than churches in the Province of Bosna Srebrena was allowed, because “... the mentioned brothers do not possess real churches but only simple oratories or chapels; some of them are portable and some are hidden...”¹⁴² The “portable oratories or chapels” from the papal privilege must have been a reference to the portable altars that have been in wide use by Catholic monks and priests and allowed by Holy See (see Appendix G).¹⁴³ Batol Kašić celebrated masses on graveyards and abandoned semi-ruined churches with the help of portable altar.¹⁴⁴ In a church in Gregorijanci, which was completely empty and had no frescos, paintings, church furniture and the like, Kašić excited gathered believers when he opened a portable altar and “spread the linen in which were paintings of Holy Mother of God and Ss. Apostles Peter and Paul, and then in the middle put the cross and other [objects] necessary for the heavenly sacrifice.”¹⁴⁵ The portable altar is a wooden box carried on a horse or donkey, which, when opens, converts into luxurious altar with triptych with pictures of saints and biblical texts, and holes

¹⁴⁰ Ibid., 110, no. 54, 111, no. 64, 124, no. 192, no. 195, 129, no. 252, no. 259, 129-130, no. 263, 140, no. 349, 148, nos. 457-458, 152, no. 510, 171, no. 615, 177, no. 624

¹⁴¹ Ibid., 403, no. 1926; “Non posse a quoquam Religiosis turbari dum in consuetis ab antiquo cemeteriis et locis sacra peragunt.”

¹⁴² Lastrić, 97.

¹⁴³ Cf. Jelenić, *Kultura i bosanski franjevci*, 177, 185-186; Džaja, 130; Buturac, 181.

¹⁴⁴ *Život Bartola Kašića*, 63, 65, 69-70, 98, 107, 130-131, and passim.

¹⁴⁵ Ibid., 107.

for the relics, while inside drawers contain candlesticks, liturgical books, chalice, and the like.¹⁴⁶

According to Islamic law, non-Muslims were granted relative religious freedom under the condition that they do not display symbols of their religion in public and exercise their faith in the presence of Muslims. For instance, while it was forbidden to build churches out of solid materials and larger than they were in the past, the interior decoration of the church was not the matter of the *şerî'at* legislation. There is no case that the Ottoman authorities interfered into matters of inner decoration of a church, e.g. concerning frescoes or al secco paintings, an art that was flourishing in Orthodox churches in that period.¹⁴⁷ A complaint of Muslim dwellers of Žitomislić sent to the *kâdî* of Blagaj against illegal enlargement of the monastery in 1613 refers its to new frescos only indirectly, in order to strengthen the arguments against the enlargement of the church.¹⁴⁸ Bishop Olovčić, who narrates that Catholics in Sarajevo, because of the malice of Muslims, Jews and Orthodox Christians, were keeping the church and celebrating masses with singing only with the help of God's trick, describes the church's altar as "... appropriately ornamented with crosses, icons and everything else for the ritual of the Holy Roman Church. There are various paintings in all colours in it as well."¹⁴⁹

Display and exercise of Christianity in public in vicinity of the Muslims was not allowed. A *fetvâ* of Ebu's-Su'ûd Efendi addresses this matter:

¹⁴⁶ Zoraida Demori Stančić and Lukrecija Pavičić Domijan, *Privremeni postav sakralne zbirke. Franjevački muzej i galerija Gorica, Livno* (Livno, 2002), 3-4; cf. *Život Bartola Kašića*, 109.

¹⁴⁷ Kiel, 192; Petković, 55.

¹⁴⁸ Petković, 55.

¹⁴⁹ Jelenić, "Spomenici," 138.

Question: If during infidel fast, in an old church on a hill bells ring and infidels gather around, priests perform sermon according to their void custom and infidels cry and shout, is it allowed to Muslims to demolish the church?

Answer: If there is no real rejoicing around, then they cannot be attacked. If there is, this amount of display of the sign of disbelief (*ṣi'ār-i küfr*) should be forbidden and restraint.¹⁵⁰

There are several important elements in this *fetvâ*. Position of the church on the hill implies that it is visually dominant in a town, and explicit display of Christian belief and symbols in public by means of bells, sermon, and chanting (“crying and shouting”) stimulated some Muslims to ask for its demolition and removal. However, Ebu’s-Su’ûd decides to avoid extreme solution and disallows demolition of the *old church*, and, in quite moderate manner, rules that Christians’ activities may be tolerated if they are not too striking, but if they go beyond the bounds and become “the display of the sign of disbelief,” then this must be prevented.

On the basis of Olovčić’s report from Sarajevo, it is possible to conclude that public religious service in the town was prohibited. The bishop’s report from Banjaluka of 1672 informs that there was no church in the town, and “... it is forbidden to celebrate festivals, celebrate masses on holidays, and that is why we are abstaining from prayer, hearing the mass, performing processions, and from our all other Christian customs.”¹⁵¹ On the other hand, Ogramić informs that the situation for Catholics in Požega was better than in other parts of the Empire, and although they had to pay for their liturgical services, the ringing of

¹⁵⁰ Düzdağ, 96, no. 411.

¹⁵¹ Jelenić, “Spomenici,” 135, “... nunc prohibendo festa observare, nunc in festis missas celebrare, nunc configendo nos ideo ieunare, orare, missas audire, processiones facere et alia cuncta nostri catholici instituti.”

bells was allowed.¹⁵² The reason for such extraordinary freedom, i.e. ringing of bells, might originate from the fact that Catholic population of Požega had privileged status and some military duties, while there was a group of very affluent merchants as well, who financed their church. The Catholics were the only officially recognised Christian denomination in the town, and Orthodox and Protestant Christians were not allowed to move to their *varoš*.¹⁵³ If Catholics of Požega lived completely isolated from Muslims in their *mahalle*, as was the case of Catholics in Mitrovica (Sirmium) according to Kašić's report,¹⁵⁴ this might have been the reason why ringing of bells was allowed, even though under any circumstances it should have had been definitely forbidden. The *fetvâs* of *şeyhülislâms* Ebu's-Su'ûd Efendi and Çatalcalı 'Alî Efendi on that matter are unanimous: in places where Muslims and Christians lived together ringing of bells or clapping of *nâkûs* as Christian method for call to prayer was strictly forbidden.¹⁵⁵

Limitations considering performance of liturgical services reflected on physical appearance of the churches. The Orthodox church in Sarajevo was fenced with high walls in order to cover Christian believers gathered in the courtyard from the eyes of Muslim public (see Appendix F). The time of prayers in Sarajevo's church were changed and they were held early in the morning in order to avoid publicity.¹⁵⁶

¹⁵² Ibid., 144-145; cf. Buturac, 30.

¹⁵³ Buturac, 29; Nenad Moačanin, "Katolici u Požeštini za turske vladavine," in: *Fra Luka Ibrišimović i njegovo doba. Zbornik radova* (Jastrebarsko: Naklada Slap, 2001), 77-83.

¹⁵⁴ *Život Bartola Kašića*, 62.

¹⁵⁵ Düzdağ, 95, nos. 406-407; Çatalcalı 'Alî Efendi, 158, no. 4.

¹⁵⁶ Skarić, "Srpski pravoslavni narod," 114, 117-118.

The limitations and bans on public display of symbols of Christian faith were actually intended not to so much to humiliate Christians, but to prevent potential blending between Christians and Muslims, many of whom in the Balkans were recent converts with Christian relatives and friends, and to retain confessional boundaries intact. Examples of this intention are found in the *fetvâs*. For example, Ebu's-Su'ûd treats Christian annual gatherings with dancing and singing without explicit display of religious symbols in a Muslim town as a "display of the signs of disbelief which are harmful to the religion," and as such they should be banned.¹⁵⁷ Muslim participation in Christian social activities, like dancing, playing, or weddings, was outlawed and sometimes equated with disbelief. According to Ebu's-Su'ûd, playing with infidels was a crime that deserved heavy punishment:

Question: If Zeyd the Muslim who is player, plays *kopuz* to infidels, what should be done to him?

Answer: He should be forbidden [to do so] and severely chastised and imprisoned for a long time.¹⁵⁸

On the other hand, saying *mübarek olsun!* ("congratulations!") to the wedding of the infidels made a person who said it infidel himself.¹⁵⁹ 'Alî Efendi, on a same line, rules the following:

[*Question:*] If several Muslims come to Zeyd's wedding and dance *horos* (*oro*, *kolo*) with infidels hand in hand according to the infidel custom, what should be done to them?

Answer: Their faith and marriage should be renewed.¹⁶⁰

¹⁵⁷ Düzdağ, 96, no. 410; "... alâ'im-i küfrü izhâr etmek dine zarardır."

¹⁵⁸ Düzdağ, 202, no. 998.

¹⁵⁹ Ibid., 114, no. 501.

¹⁶⁰ Çatalcalı 'Alî Efendi, 167, no. 1.

5.2. Personal Status of Christians as Individuals

Some regulations that concern personal sphere of life of Christians as individuals, like clothing laws, were, similarly, intended to maintain and impose boundaries between the communities, as well as inner boundaries within the communities themselves, and, more general, the order in society as a whole, with the intention of maintaining differences in social status, following the principle that “distinctions in rank should continue to be visible in dress.”¹⁶¹ Even though types and colours of cloths prescribed to non-Muslims indicated their inferior social status,¹⁶² as it is seen from two *fermâns* from 976/1568 that forbid wearing of “high quality clothes” (*â'lâ libâs*) to Christians and Jews, essential feature of these *fermâns*, aside from the list of cloths prescribed to non-Muslims, is the concern that “non-Muslims would not dress Muslim clothes.”¹⁶³ A *fermân* of 985/1577 sent to the *kâdî* of Istanbul repeats, in the same way, that non-Muslims “should not dress Muslim clothes and wrap in Muslim manner.”¹⁶⁴ Government’s concern with establishment of confessional boundaries even among non-Muslims is seen in a *fermân* of 988/1580, which bans the Jews to wear Christian headgears.¹⁶⁵ Dressing of non-Muslim clothes

¹⁶¹ Donald Quataert, “Clothing Laws, State, and Society in the Ottoman Empire, 1720-1829,” *International Journal of Middle Eastern Studies*, 29 (1997), 405-406, 419; Suraiya Faroqhi, “Introduction, or why and how one might want to study Ottoman clothes,” in: Suraiya Faroqhi and Christoph K. Neumann, eds., *Ottoman Costumes: From Textile to Identity*, (Istanbul: EREN, 2004), 22-23, and passim; Mehmet İpşirli, “Kıyafet. Osmanlı Dönemi,” *DİA*, vol. 25, 510-512; Aleksandar Fotić, “Između zakona i njegove primene,” in: Aleksandar Fotić, ed., *Privatni život u srpskim zemljama u osvit modernog doba* (Belgrade: Clio, 2005), 67.

¹⁶² Faroqhi, “Introduction, or why and how,” 22.

¹⁶³ Refik, *Onuncu Asr-i Hicrî’de İstanbul Hayatı*, 47-48.

¹⁶⁴ *Ibid.*, 51.

¹⁶⁵ *Ibid.*, 51-52; cf. Yavuz Ercan, “Osmanlı İmparatorluğu’nda Gayrimüslimlerin Giyim, Mesken ve Davranış Hukuku,” *OTAM*, 1, 1 (1990), 122.

was forbidden to Muslims as well. Çatalcalı ‘Alî Efendi issued the following *fetvâ*:

[*Question*.:] If Zeyd the Muslim plays the clown and dresses infidel hat, what should be done to him?

Answer: The renewal of the faith and marriage should be performed.¹⁶⁶

Similarly, Ebu’s-Su‘ûd ruled:

Question: If Zeyd puts a Jewish cap on his head without reason, what should be done to him according to the *şerî‘at*?

Answer: The punishment for disbelief (*küfr*) should be executed.¹⁶⁷

As it can be seen, the main purpose of the clothing laws was not discrimination of the non-Muslims, although this was one of the motives, but maintenance of strictly defined boundaries between Muslims and non-Muslims. Paradoxically, however, enforcing non-Muslims to wear low-quality clothes made them dress similarly to poor Muslims,¹⁶⁸ and thus the prime intention of the clothing laws – distinctiveness – was not achieved.

On the other hand, members of Christian elites, especially those who were in the service of the state, were dressed as members of the ruling class and were not subjected to clothing regulations. While the *fermân* of 976/1568 insists that Jews and Christians should not dress like Muslims, “*sipâhîs* and other groups,”¹⁶⁹ in the case of Christian *sipâhîs* this stipulation misses the target. Christian *sipâhîs*, *voyvodas*, *knezes*, and members of their families were donors of churches, and as such were often portrayed in *frescoes*. In these paintings they are dressed in the style of Ottoman elite, wearing embroidered *kaftans*, vivid colours, fur, and other cloths otherwise forbidden to non-Muslims (see

¹⁶⁶ Çatalcalı ‘Alî Efendi, 166-167, no. 7.

¹⁶⁷ Düzdag, 118, no. 530.

¹⁶⁸ Faroqi, “Introduction, or why and how,” 41.

¹⁶⁹ Refik, *Onuncu Asr-i Hicrî’de İstanbul Hayatı*, 47.

Appendix D).¹⁷⁰ Apart from the elite connected with the state, there were other non-Muslim groups that were allowed to wear “Muslim cloths.” One group were merchants, who were allowed to dress as Muslims on journey due to security reasons, as Çatalcalı ‘Alî Efendi explains in his *fetvâ*:

[*Question:*] If Zeyd the *zimmî* goes on the journey to trade, and, fearing of robbers, wraps white [turban] around his head, can he be attacked?

Answer: No.¹⁷¹

Second group of non-Muslims that were given privilege to dress in “Muslim clothes” on journey were the Franciscans. The registry of the monastery of Fojnica contains three documents, of 1039/1624, 1050/1651, and 1085/1674, that gave the Franciscans the right to dress in Muslim manner, wearing *dolamas* and *kalpaks*, and guaranteed protection against Muslims who might have had attack them because of this dress.¹⁷² One of the documents, a *buyuruldu* of 1651 issued by Şahin Paşa, the *beylerbeyi* of Bosnia, informs that Muslims used to object to Franciscans: “Why do you need such dress? This is only for Muslims, in particular those chosen!”¹⁷³ Hence, the clothing laws did not regulate division among the people only according to the religion, but according to social status as well, because Muslim *re‘âyâ* could not dress like *sipâhîs*, while *sipâhîs* could not dress like religious dignitaries, and the like. Lütî Paşa (d. 970/1562), Grand Vizier from the ranks of ‘ulemâ, wrote a legal treaty called *Âsâfnâme*, a manual for the Grand Viziers (*âsâf – vezîr-i azam*, “Grand Vizier”), concerned with legal and political matters.¹⁷⁴ In a chapter concerning the status of the *re‘âyâ*, Lütî Paşa cites a stipulation that *re‘âyâ*

¹⁷⁰ Cf. Kiel, 91, 137-142.

¹⁷¹ Çatalcalı ‘Alî Efendi, 161, no. 3.

¹⁷² Matasović, 135, no. 307, 149-150, no. 476, 171-172, no. 618.

¹⁷³ Ibid., 150, no. 476.

¹⁷⁴ Cf. *Osmanlı Kanunnâmeleri*, Vol. 4, 255-258.

should not dress excellent clothes like *sipâhîs* are wearing.¹⁷⁵ According to this rule, it may be concluded that the *re'âyâ* of whatever confession did not have the right to dress cloths peculiar to members of the *'askerî* class, who, again, were not exclusively Muslim, but included a portion of non-Muslims as well. Thus, the clothing laws were primarily designed to establish social boundaries between different groups in society, and main boundary was drawn between the *'askerî* and *re'âyâ* class, while division according to the religion was secondary, although it was often overlapping with the main division on subjects and rulers.

To sum up, meticulously elaborated system of robes and headgears performed a function of precise specification of the social rank of an individual, and each professional, social, religious and ethnic group possessed its own dressing code, recognisable to someone knowledgeable of the details.¹⁷⁶

According to the report of Benedikt Kuripešić from 1530-1531, however, there were almost no distinction in dress between Muslims and Catholic and Orthodox Christians in Bosnia, but the boundary between confessional communities was created by hairstyle: "... they differ only by the fact that Christians do not shave heads, while the Turks do."¹⁷⁷

Non-Muslims were prohibited to possess arms and ride horses according to the Islamic law. As was the case of clothing laws, general prohibition was neglected in certain cases. Christian elites and groups that performed military and semi-military services for the state, like Christian *sipâhîs*, *knezes*, *premikürs*, *voyvodas*, *voynuks*, *martoloses*, good share of *derbendcis*, Vlachs (at least concerning riding of horses), and similar groups, were by the nature of

¹⁷⁵ Ibid., 275, 290.

¹⁷⁶ Cf. İpşirli, "Kıyafet," 510-512; Faroqhi, "Introduction, or why and how," 23.

¹⁷⁷ Kuripešić, 29.

their profession entitled to possess arms and/or ride horses. Apart from Christian ‘*askerîs* and paramilitaries, merchants and monks on journeys were allowed to ride horses and carry arms for the sake of personal security. Çatalcalı ‘Alî Efendi issued the following *fetvâ* on the matter:

[*Question:*] If official of the state Zeyd captures ‘Amr the *zimmî* saying: “You were carrying arms during the trade-journey,” can he take anything from ‘Amr as a fine?

Answer: No.¹⁷⁸

In the same documents that were granting them the privilege to dress “Muslim cloths” (1039/1624, 1050/1651 and 1085/1674), the Franciscans of the monastery of Fojnica were given the right to carry arms and ride horses as well.¹⁷⁹ According to the registry, the Franciscans obtained a *fetvâ* of similar content.¹⁸⁰ The Franciscans of Neretva and Biokovo region enjoyed the freedom of riding of horses, and every monastery, even poor ones, possessed several horses.¹⁸¹

As was the case with clothing laws, prohibitions of arms and riding of horses were primarily designed to establish boundaries between the *re‘âyâ* and ‘*askerî* class, and since the membership in each of the classes was not determined by religion, these regulations should not be regarded as primarily discriminative in religious sense. Lütî Paşa informs that the law strictly forbade riding of horses to the *re‘âyâ*, and an individual who would have been caught while riding a horse had to pay fine to the *sipâhî*.¹⁸² On the other hand, possession of arms was a crime punishable by death penalty:

¹⁷⁸ Çatalcalı ‘Alî Efendi, 161, no. 4.

¹⁷⁹ Matasović, 135, no. 307, 149-150, no. 476, 171-172, no. 618.

¹⁸⁰ Ibid., 404, no. 1951.

¹⁸¹ Jurišić, 143.

¹⁸² *Osmanlı Kanunnâmeleri*, Vol. 4, 276, 290.

Capital punishment is the law for the *re'âyâ* found with a sword, arrow, bow, rifle and other firearms. They will be immediately killed. And all population of the village will be punished by fines. ... The *re'âyâ* should not have arms and armours. The crime is evident [even] a hundred years later.¹⁸³

The change in legislation concerning clothing, arms and riding of horses, which were some of the basic stipulations concerning non-Muslims in the period of Classical Islam is very significant. Leaving aside exceptional cases, if this can be said so, of Christians in military and paramilitary services, merchants and monks, stipulations that forbid so-called “Muslim clothes,” i.e., good-quality clothes peculiar to *sipâhîs*, arms and riding of horses to the *re'âyâ* as general category that includes both Muslim and Christian subjects, represent a breach of classical Islamic law. Islamic law in the Ottoman Empire, as represented in the *fetvâs*, recognized that rights to non-Muslims in exceptional cases, i.e. to merchants and monks on the journey for the sake of personal security. However, the *şeyhülislâms* as highest representatives of the *şerî'at* in the Ottoman Empire could never had completely accepted the category of the *re'âyâ* as non-confessional entity and give it precedence over the basic *şerî'at* categorisation of people into Muslims and non-Muslims, believers and non-believers, especially in cases that traditionally belonged to the realm of the Islamic law.

The periodical levy of Christian boys for service in *yeniçeri* troops, Sultan's palace, and the administration – the *devşirme*, was another apparent breach of the *şerî'at*, probably the most controversial, on two levels: firstly, free *zimmîs* were denied their freedom and enslaved, and, secondly, they were

¹⁸³ Ibid., 276, 290.

forcefully converted to Islam, contrary to one of the main principles of Islam that “there is no compulsion in religion.” A *fetvâ* of Bosnian *müftî* Mustafa, preserved in Dubrovnik archive, which was “submitted collectively,” as it says on its reverse side, confirms the rights of the *zimmîs* to remain free:

Question: If *harbî* infidels from one region ask for and accept the *zimmet* (*zimmâ* status), can they afterwards be enslaved and sold?

Answer: No.¹⁸⁴ (see Appendix H, 3. a-b)

However, Ottoman authorities did not adhere to that principles, while the *‘ulemâ* remained silent on the matter. In the early 16th century, historian İdrîs Bitlîsî tried to justify the institution of *devşirme* according to the *şerî‘at*, by claiming that since most of the infidels were conquered by force, they became slaves of the Sultan, and therefore the *devşirme* is not an infringement of the rights of the *zimmîs*.¹⁸⁵ Paul Wittek attempted to justify the *devşirme* on the grounds of Shâfi‘îte differentiation between the People of the Book that professed their religion before the emergence of Islam, and therefore were granted the status of the *zimmîs*, and those who had embraced the revealed religion after it, and were denied *zimmî* status. According to Wittek’s theory, since the majority of the Balkan peoples, in particular Slavs and Albanians, converted to Christianity after the emergence of Islam, they could have had been denied the status of the *zimmîs*.¹⁸⁶ Apart from the objection that this theory does not have confirmation in Ottoman sources, the fact that Greeks and Armenians, who were Christianised before the emergence of Islam, were liable

¹⁸⁴ *Acta Turcarum*, C-III, c-10 58 a-b; “Bir diyârın harbî kefereden rızâları ile zimmet kabûl itdiklerinden sonra istirkâk ve bey‘ olunurlar mı?

El-cevâb: Olmazlar.

Ketebehu Mustafa el-fâkir. ‘Ufiye ‘anhu.”

¹⁸⁵ V. L. Ménage, “Sidelights on the *devshirme* from İdrîs and Sa‘duddîn,” *BSOAS* 18, 1 (1956), 181-182; idem, “Devshirme,” *IE*.

¹⁸⁶ Paul Wittek, “Devshirme and Sharî‘a,” *BSOAS* 17, 2 (1955), 276.

to the *devşirme* as well, indicates that Ottoman authorities were not concerned with such justifications. If they would have had been searching for justification, than it might have had been found in very flexible legal notions of the *‘âda* and *zarûra*, custom and necessity. Under circumstances when the number of prisoners of war was not reaching the needs, than the state might have claimed the right to turn to other resources. Thus, such practice might have been qualified as affair of the state and ignored by the *şerî‘at*, as was initially suggested by Wittek.¹⁸⁷ However, there are no *şerî‘at* treaties concerning the *devşirme* discovered so far.

The *devşirme* was mentioned for the first time at the end of the 14th century, while by the mid-15th century it became regular levy, performed sporadically, in intervals stretching from one to several years, depending on the needs of the state. It originates from the *gulâm* system and *pencik*, that is, the practice of assigning military services to the prisoners of war. Usually one boy was taken out of 40 households, while the age of the youths was between 15-20 according to Ottoman documents, and between eight to 20 according to Western travelogues. All Christian population of the Balkans, later including some parts of Anatolia, was subjected to the *devşirme*, with the exception of town-population (although not always), craftsmen, married lads, lads with physical defects, shepherds, and the like.¹⁸⁸ The *re‘âyâ* that performed special services for the state, like the *derbendcis*, miners, and some other groups, often were exempted from the *devşirme* together with the *‘avârız* tax.¹⁸⁹ However, the

¹⁸⁷ Ibid., 274-275.

¹⁸⁸ Ménage, “Devshirme,” *EF*²; Halil İnalcık, “Ghulâm,” *EF*²; Aleksandar Matkovski, “Prilog pitanju devşirme,” *POF* 14-15 (1964-1965), 275-279.

¹⁸⁹ Matkovski, 280; Ménage, “Devshirme,” *EF*².

exemption from the *devşirme* might have been abolished. In 1530, the Orthodox Christians in Bosnia, probably Vlachs, lost the privilege of payment of the *filuri* tax and were subjected to all *re'âyâ* taxes together with the *devşirme*, according to Kuripešić's report.¹⁹⁰ Some places that submitted voluntarily to the Ottomans were granted exemptions from the *devşirme*, as was the case of Rhodes, Chios, and Galata, whose exemption was written in the *'ahd-nâme*.¹⁹¹ Levy was not imposed on some peoples designated as "unreliable," like Kurds or Arabs, and other peoples from certain regions, as Croatia and Middle Danube region, who were unsteady and often were returning to their old religion.¹⁹² The number of youths levied varied according to the needs of state and it is hard to exactly determine it. However, according to the estimation of Sa'dü'd-Dîn from the late 16th century, the *devşirme* has brought 200.000 men to Islam.¹⁹³ In the 17th century the *devşirme* became sporadic owing to the fact that positions that were until then filled by the recruits from *devşirme* started to be filled with other candidates. The last known *devşirme* was levied in 1150/1738.¹⁹⁴

The *devşirme* was perceived as particularly heavy levy by the Christians. Parents resorted to various solutions in order to save their children from the levy: boys were married in young age, hidden in front of the levy collectors, parents tried to bribe collectors, tattooed crosses on sons' heads, and the like.¹⁹⁵ Occasionally, the *devşirme* might have induced people to flee from villages or

¹⁹⁰ Kuripešić, 27; cf. Moačanin, *Turska Hrvatska*, 82-84.

¹⁹¹ Ménage, "Devshirme," *EP*; İnalçık, "Ottoman Galata," 277.

¹⁹² Matkovski, 280.

¹⁹³ Ménage, "Sidelights," 183; idem, "Devshirme," *EP*.

¹⁹⁴ Ménage, "Devshirme," *EP*; İnalçık, "Ghulâm," *EP*.

¹⁹⁵ Matkovski, 282-285.

to rebel, as was the case in Prijepolje.¹⁹⁶ According to the anonymous chronicle of Fojnica, in 1667 Catholics offered resistance against the *devşirme*, and “nobody went nor gave his child by free will. And some jumped into water.”¹⁹⁷ On the other hand, some people saw in the *devşirme* a possibility for rise in social rank. For example, Mihajlo, son of Kiro, from the village of Krstofo in the *kâdilik* of Bitola (Monastir) in Macedonia, in exchange for 3.100 *akçe* received from the villages of Milovišta and Vlahče, applied for the *devşirme*, converted to Islam and adopted name Mehmed.¹⁹⁸ Sometimes the *devşirme* was perceived as honour and some youths voluntarily submitted to the levy.¹⁹⁹ The best known example of the career of a person levied by the *devşirme* is Mehmed Paşa Sokolović, (ca. 1505-1579), one of the most famous and influential Ottoman Grand Viziers, who, by means of nepotism promoted members of his family into important governmental posts. He must have played certain role in the establishment of the Patriarchate of Peć and appointment of his nephew Makarije as the patriarch.²⁰⁰ Bosnian Muslims enjoyed privilege to give their children to the *devşirme*, in order to enter services in the palace and administration. According to the *hükm* of 1564 sent to the *kâdîs* of the *sancaks* of Bosnia, Herzegovina and Klis, on the territory of the mentioned *sancaks* the practice was that most of the boys levied were circumcised, i.e. Muslim (*oğlanların ekseri sünnetli olmağla*).²⁰¹ If this information is linked with the report from the anonymous chronicle of Fojnica of 1667 that the cause for

¹⁹⁶ Ibid., 285.

¹⁹⁷ Truhelka, ed., “Fojnička kronika,” 455, f. 14; cf. Lašvanin, 273.

¹⁹⁸ Matkovski, 306-307, doc. no.10.

¹⁹⁹ Ibid., 286.

²⁰⁰ Cf. G. Veinstein, “Sokollu Mehmed Pasha,” *EF*.

²⁰¹ Ešref Kovačević, “Jedan document o devşirmi,” *POF* 22-23 (1972-1973), 206.

Catholic revolt against the *devşirme* was the fact that “*acemi oğlan ağası* did not want to levy Turkish children but all Christian,”²⁰² than it seems possible to suppose that the *devşirme* in Bosnia was in general limited to the Muslims, who regarded it as a privilege.

On the whole, the question of the *devşirme* illustrates the quality of protection that was offered to the *zimmîs* by the Islamic law. Although some of its prescriptions might be seen as discriminatory towards non-Muslims, the *şerî‘at* guaranteed basic rights, as personal freedom, that otherwise would not be respected unconditionally by the state. The state, Ottoman as any other, was always guided by its own interests, *raison d’état*, that was changing according to the circumstances, while the divine law was, in general categories at least, unchangeable. Thus, even though the state sometimes might have had offered more than it was guaranteed by the *şerî‘at*, privileges given by the state were liable to withdrawal any time. The Islamic law within its *zimmâ* contract guaranteed basic level of security of person, wealth and religious freedom, theoretically until the Judgement Day, on condition that the stipulations of the *zimmâ* contract are not breached.

²⁰² Truhelka, ed., “Fojnička kronika,” 455, f. 14.

CHAPTER VI

CONCLUSION

According to Islamic law, mankind is basically divided into believers and non-believers, i.e. Muslims and non-Muslims. Non-Muslims are further divided into those who possess a revealed religion, called the People of the Book (*ahl al- kitâb*), and polytheists (*muşrikûn*). Polytheism is a category that is not accepted in Islamic law. In order to become a subject recognisable by the law, one has to be a believer, i.e., a Muslim, or a follower of one of the revealed religions, which are, according to the *şerî'at*, Christianity and Judaism. In further classification members of recognised religions are divided into those living in the Land of Islam (*dâr al-Islâm*) and those living outside it, in the Land of War (*dâr al-harb*). According to Islamic teaching, the Land of War is destined to be subjected to the Land of Islam, along with its people. The people of the Land of War – the *harbîs*, are after the subjugation to the Islamic rule treated according to the manner in which they were subjugated. If they were subjugated by force, then in theory they do not have any rights and could be killed or enslaved. However, if they accepted the Islamic rule peacefully by

agreement, then they are granted safe-conduct and obtain the status of protected non-Muslims – the *zimmîs*.

The status of the *zimmîs* provided the non-Muslims with personal freedom, freedom of possession and acquiring of material goods and wealth, as well as basic religious freedoms. However, the Islamic law gave privileged position to the Muslims as followers of the state religion. Non-Muslims were subjected to certain restrictions intended to secure public superiority and predominance of Islam and Muslims, as were clothing laws, restrictions on riding of horses, public exercise of faith, possession of arms, and the like. Some of these restrictions, however, had other functions as well. Clothing laws were designed with the intention to secure distinctiveness between the communities, as well as within them. Possession of arms, on the other hand, was connected with security considerations.

Legal developments in the Ottoman Empire introduced significant changes in position of the non-Muslims. The Empire's legislation was marked by duality of the *şerî'at* and sultan law, which was enacted to serve the interests of the state. According to the sultan law, society of the Empire was divided into the *re'âyâ*, who were obliged to pay the taxes, and the *askerî* class, who served the state and enjoyed tax exemptions and received salary. The space between the *re'âyâ* and *askerî* class was not completely empty, and there were many subclasses and layers, so it is possible to speak of various groups of privileged *re'âyâ* that performed different services for the state and enjoyed certain degree of tax exemption. The most important feature of this division was that it did not depend on the *şerî'at* division of people into Muslims and non-

Muslims. Hence, on the one hand, some non-Muslims were present among the state officials, others among the privileged groups of *re'âyâ*, while on the other hand, many Muslims were simple tax-paying subjects. In this system it was possible that a Christian *'askerî* receives a fief with Muslim peasants as the *re'âyâ* under his authority.

However, the principles of Islamic law were not neglected, first of all owing to the fact that state apparatus, especially judicial and higher administrative offices, was filled with graduates from Islamic educational institutions – the *'ulemâ*. Islam was the official religion of the state, while the sultan acted as the leader of the faithful. Although non-Muslims were accepted into the ruling class, higher positions in administration were preserved for Muslims. Christian *re'âyâ*, on the other hand, were subjected to higher taxes than their Muslim counterparts. Despite the fact that prescriptions of the *şerî'at* concerning public life of non-Muslims were often neglected, they were from time to time energetically enacted. On the other hand, limitations concerning public display of Christianity in any form in the areas inhabited by Muslims were strictly observed, although there were certain exceptions as well. Although the state was guided by principles of the *Realpolitik* in its actions, the primacy of Islam was never brought into question, and its basic postulates were strictly observed.

The sultan law offered non-Muslims opportunities to enter state services and achieve careers that would not have been possible according to the prescriptions of the *şerî'at*. The state was, however, guided by its own interests, and when the circumstances had changed, and the services provided by non-

Muslims were not needed any more, their privileges were abolished and they were subjected to the status of ordinary *re'âyâ*. On the other hand, the state was obviously violating basic rights of non-Muslims by forcible levy of youth for state services – the *devşirme*, which was followed by Islamisation. Islamic law was often discriminatory towards non-Muslims, but at the same time guaranteed their basic rights, on the condition of loyalty, without restraints. To sum up, specific legal system of the Ottoman Empire was a combination of the *şerî'at* and sultanic law, and was determining the position of non-Muslims following both the prescriptions of the Islamic law and sultanic law that was guided by pragmatic concerns. In such a system, non-Muslims might have risen high above the limits stipulated by the *şerî'at*, but might have been denied their basic rights as well, if that was in the interest of the state. The *şerî'at*, on the other hand, was a barrier that protected basic rights of the non-Muslims, although at the same time kept them in underprivileged position.

The position of non-Muslims in Bosnia in general did not differ from other parts of the Empire. However, specific character of Bosnia as a border province inevitably reflected on the life of its inhabitants. The society as a whole was militarized to a high degree, and substantial number of non-Muslims were included into Ottoman military and semi-military services. Naturally, their status considerably differed than that of ordinary subjects – the *re'âyâ*. On the other hand, population in regions closer to the border often enjoyed privileges and exemptions granted by the government in order to secure its loyalty. However, in the time of war, Christians as coreligionists of the enemy were often suspected as alleged or actual traitors, and, consequently, suffered

retaliation. Unlike the situation in other provinces in inner parts of the Empire, the life on the border was more dynamic and often fluctuated between extremes. Such circumstances inevitably affected whole society, probably to a greater degree non-Muslims as “outsiders” than Muslims as followers of the official religion of the state, i.e., the *Staatsvolk*.

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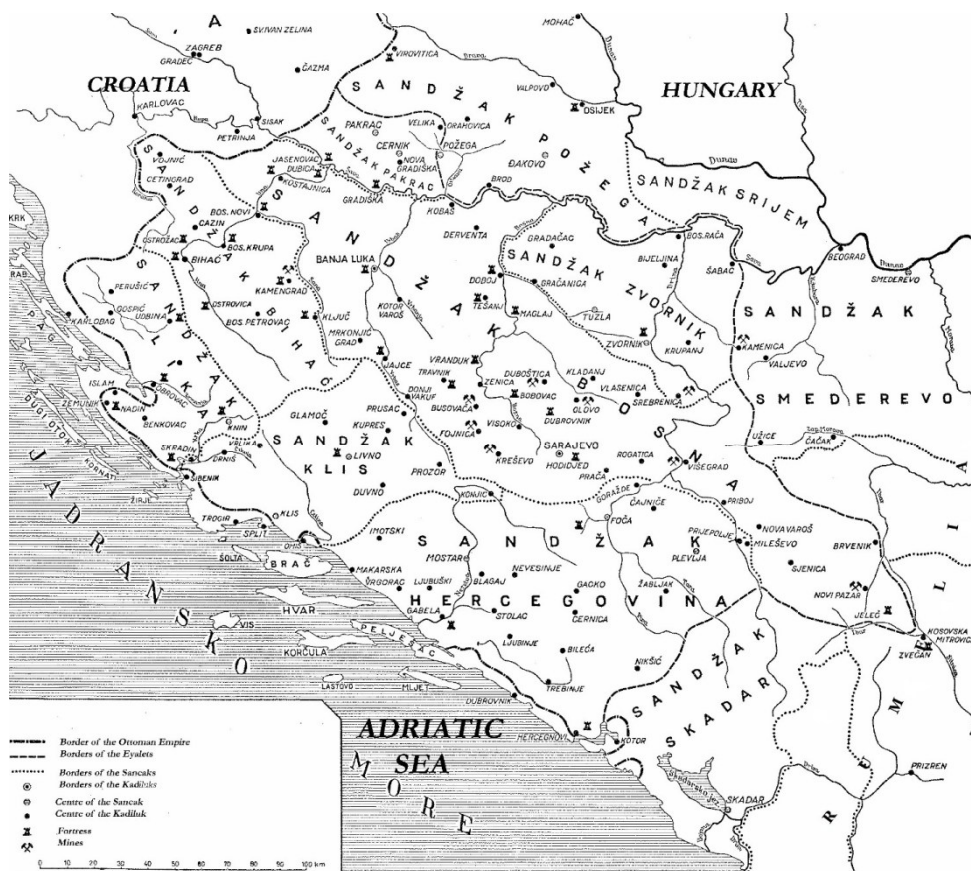
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APPENDIX A

Map 1. *Eyâlet* of Bosnia ca. 1606



Source: Branislav Đurđev et al., eds., *Historija naroda Jugoslavije*, Vol. 2 (Zagreb: Školska knjiga, 1959); adapted by V.K.

APPENDIX B

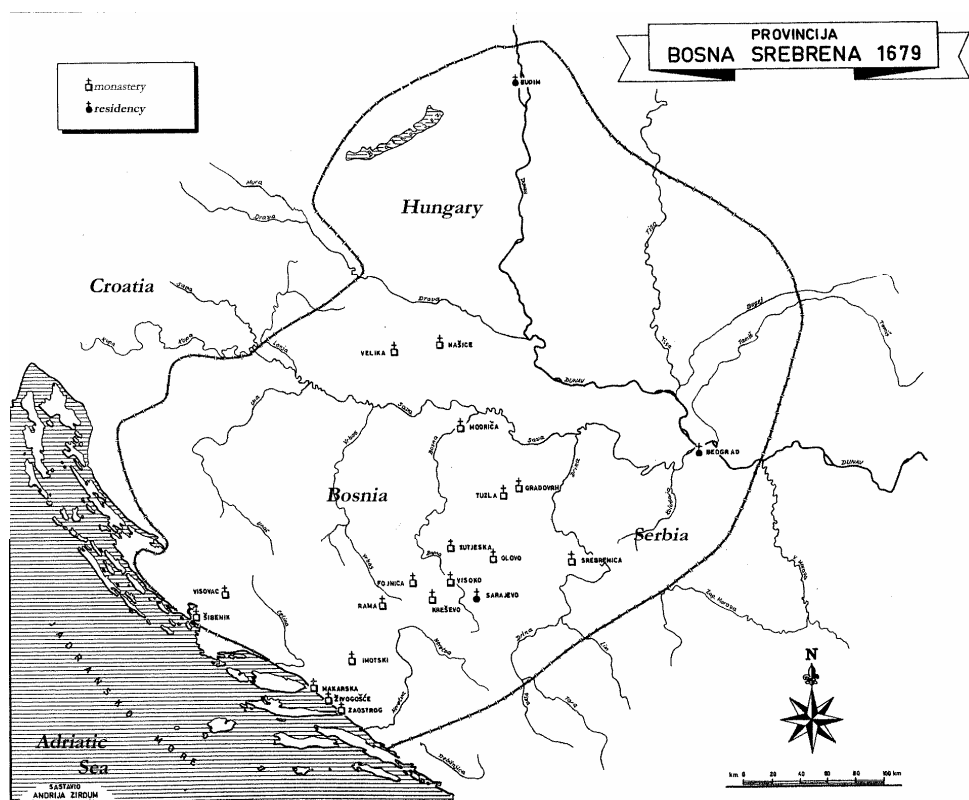
Map 2. Patriarchate of Peć ca. 1640-1655



Source: Radmila Tričković, "Srpska crkva sredinom XVII veka," *Glas SANU*, 120, no. 2 (1980), 61-164; adapted by V.K.

APPENDIX C

Map 3. Franciscan Province of Bosna Srebrena ca. 1679



Source: Filip Lastrić, *Pregled starina Bosanske provincije*, tr. by Ignacije Gavran and Šimun Šimić (Sarajevo, Zagreb: Synopsis, 2003); adapted by V.K.

APPENDIX D

Knez Vukić Vučetić, donor of the Church of Assumption, portrayed in icon, Morača, Serbia, 1574



Source: Private collection of Prof. Aleksandar Fotić

APPENDIX E

Painter Jovan, Building of the Monastery of Morača (1644-1645)

The donor of the monastery, Stefan Vukanović, is represented in right corner of the icon, sitting in throne in traditional dress of the monarch, in company of the architect and two soldiers.



Source: Private collection of Prof. Aleksandar Fotić

APPENDIX F

Old Orthodox Church in Sarajevo (in dimensions from 1730)

1. View from the street (photo V.K.)



2. View from the courtyard (photo V.K.)



APPENDIX G

Portable altar used by Catholic monks in Bosnia (18th/19th century)
Franciscan Museum and Gallery Gorica
Franciscan Monastery of Ss. Peter and Paul, Gorica, Livno
Bosnia and Herzegovina



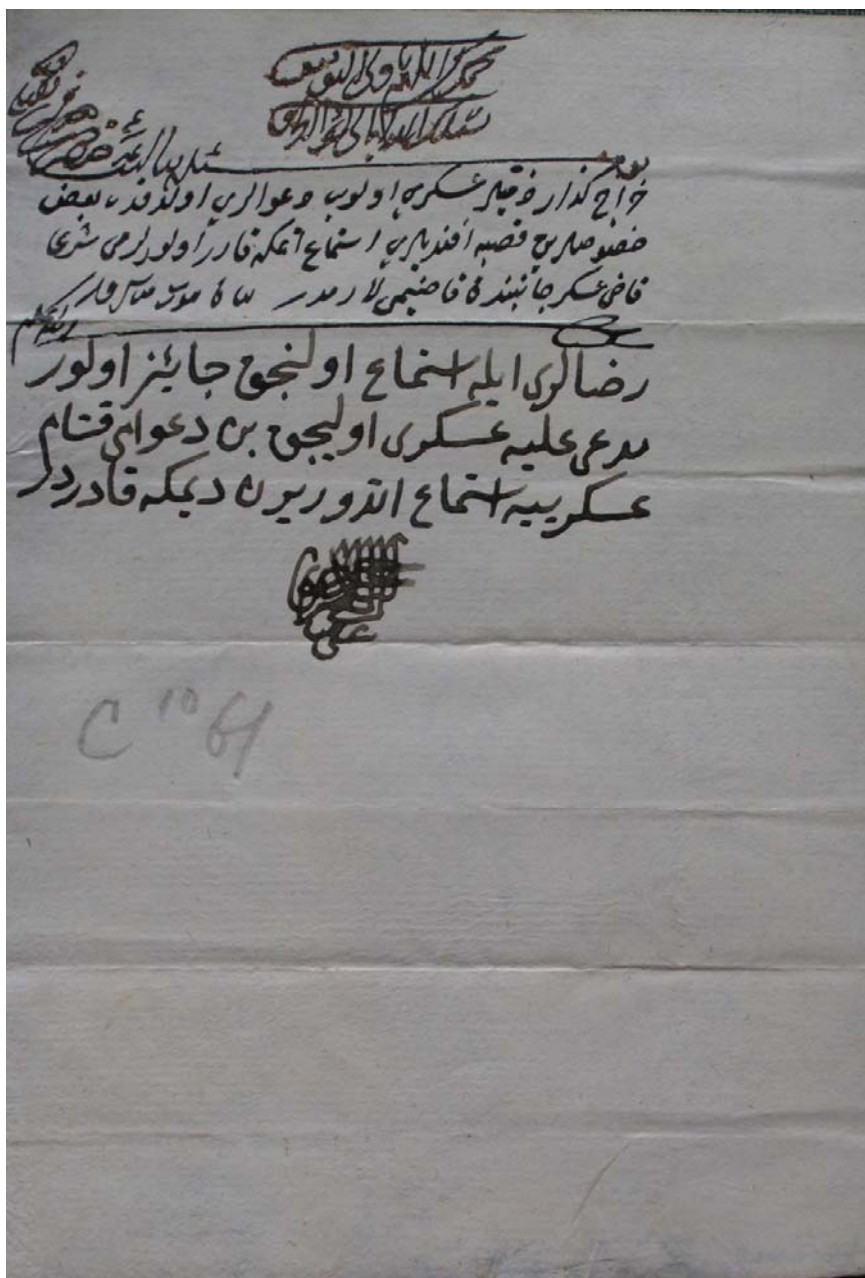
Source: Zoraida Demori Stančić and Lukrecija Pavičić Domijan, *Privremeni postav sakralne zbirke. Franjevački muzej i galerija Gorica, Livno* (Livno, 2002)

APPENDIX H

1. a. *Fetvâ* on jurisdiction over the *zimmî* 'askerîs

Müftî Ca'fer, Bosnia

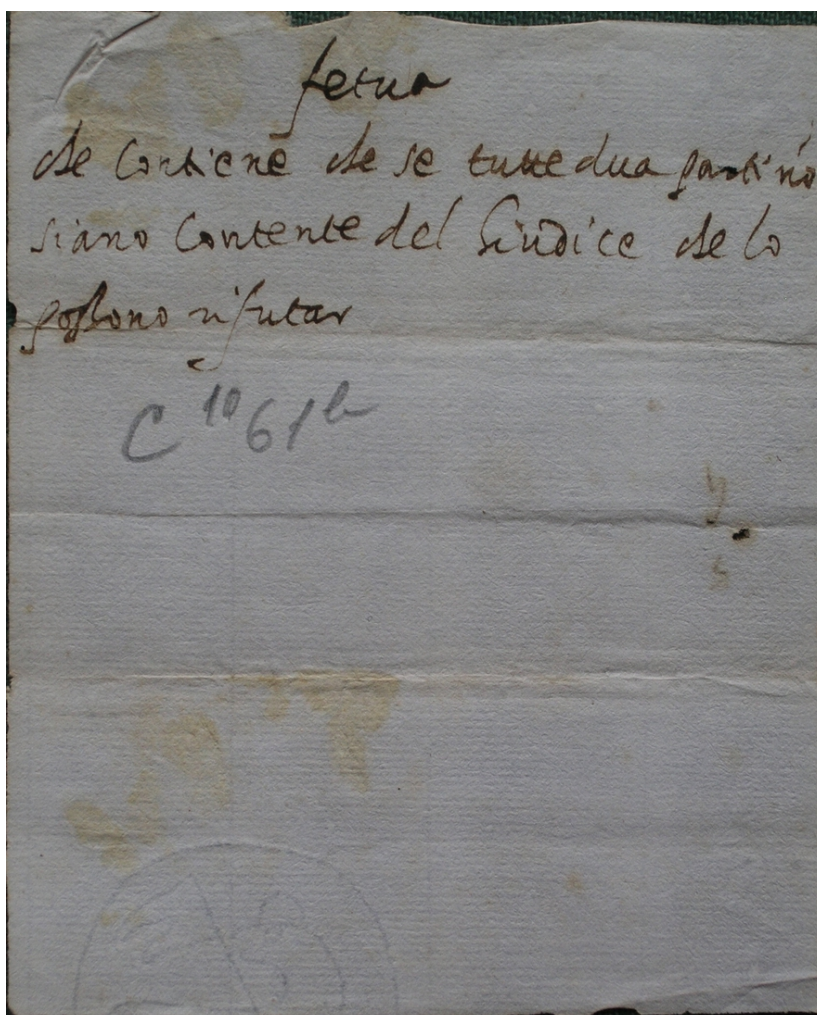
State Archive of Dubrovnik, *Acta Turcarum* C-III, C-10, 61



1. b. Reverse side of the *fetvâ* issued by Müftî Ca'fer, with the name of the petitioner in left upper corner
State Archive of Dubrovnik, *Acta Turcarum* C-III, C-10, 61 a

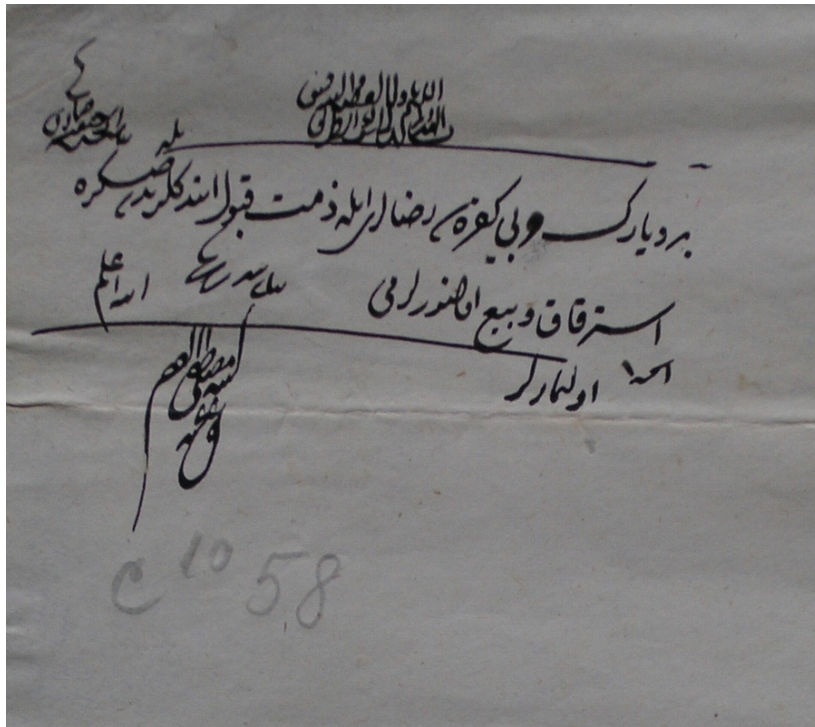


1. c. Italian summary of the *fetvâ* issued by Müftî Ca'fer
State Archive of Dubrovnik, *Acta Turcarum* C-III, C-10, 61 b



[illegible]

3. a. *Fetvâ* on enslavement of the *zimmîs*,
 Müftî Mustafa, Bosnia,
 State Archive of Dubrovnik, *Acta Turcarum* C-III, C-10, 58 a



3. b. Reverse side of the *fetvâ* issued by Müftî Mustafa, with the name of the petitioner (probably misspelled as *mârûz cemân* instead of *ma'ruz cem'an*, “submitted collectively”), and a comment in Italian.
 State Archive of Dubrovnik, *Acta Turcarum* C-III, C-10, 58 b

