

THE OTTOMAN'S LEGAL EDUCATION SYSTEM

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March, 2018; 3 (1)

ABSTRACT

Legal education was given significant importance in older educational system. As a matter of fact, one of the most important courses in the madrasahs that constitute the backbone of this system was fiqh, namely the law course. During the classical period of the Ottoman State, law schools were held in madrasahs. In most madrasahs there was specialization in different areas. The legal and societal development and the innovations that started in the field of law after Tanzimat led to the fact that the madrasahs become inadequate to educate lawyers, and urged school organizations to provide formal legal education for the training of those who are obliged to implement the changing and renewed law. Innovations in the Ottoman judicial organization and modernization efforts in education constitute the basis for the role and developmental process in the launching of legal educational institutions.

Key words: law, education, Ottoman era, reforms



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Article type:

UDK: 342.733(560)18/19"

Date of received:
January 03, 2018

Date of acceptance:
February 15, 2018

Declaration of interest:

H.O., V.P., the authors reported no conflict of interest related to this article..

INTRODUCTION

The first law at the level of higher education is the Mekteb-i Hukuk-i Sultani, which was founded in the Mekteb-i Sultani area. In 1880, Mekteb-i Hukuk-ı Shahane was opened due to the Ministry of Justice and after a while these two schools were merged. The Law school continued for a long period of time independently from Darülfünun, and finally in 1909 bounded to Darülfünun.

The Tanzimat brought news and innovations to the Ottoman legal system including the formal legal education. (Turkish: “Reorganization”: series of reforms promulgated in the Ottoman Empire between 1839 and 1876. These reforms, heavily influenced by European ideas, were intended to effectuate a fundamental change of the empire from the old system based on theocratic principles to that of a modern state) It is possible to classify the legal reforms carried out after the Tanzimat in the form of innovations in legalization activities and judicial institutions.

In the Ottoman Empire, legal activities developed as codification of existing sharist rules and implementation of the idea of new western laws. Especially with the transfer of criminal, trade and land laws, which are the works of western integration efforts, the implementation of these new legal regulations and this area will have an active role to raise obligors appeared to be a major problem.

With the change in the Ottoman judicial organization and the establishment of the model of Western courts apart from the madrasah educated kadis and naiplers, the need for qualified personnel with formal legal education was effective and invoked the idea of establishing formal law school. The first law at university level was established in the “Mekteb-i Sultani” (Galatasaray). Later on, a separate law school was opened due to the Ministry of Justice, and after a while the school in the Mekteb-i Sultani area was transferred here. The law school, which was transferred to the Ministry of Education in 1886, continued its existence independently of Darülfünun until 1909.

A. INNOVATIONS IN LAW WITH DECLARATION FOR REFORMS

The main factors that provided the establishment of the legal school are the movements of law enforcement and the organization of the judiciary. The reform period, which started with the Tanzimat's declaration and continued until the proclamation of the Republic, was also effective in the Ottoman State's legal field (Bozkurt, 1993: 42). In the late 18th century, the Ottoman Empire headed west (Nuri, 1977: 98). In this period, it was accepted as a necessity of innovation, but different opinions emerged about which method to use.

According to the more conservative rhetoric advocated by Cevdet Pasha, the Minister of Justice, it was possible to solve the problems by ensuring that the codification of the Islamic law, ie the current law, was changed and renewed in detail and adapted to the needs of the time, so that modernization with traditions could walk together (Nuri, 1977: 108).

The Law of Arazi, dated 1858 and the Mecelle-i Ahkâm-ı Adliyye dated 1869 was prepared with the influence of this thought. The studies of systematization of Islamic law in a usable form in this period, the formation of binary structures by slowing down the westernization process, was mainly regarded as the revival of the old logic. The other current defended by the Grand Vizier Âli Pasha, was in favor of the western law being quoted. Ali Pasha especially wanted to adopt a large part of the French Civil Code. The implementation of this vision was delayed for some time, and it was understood that it was necessary to make regulations that appeal to every sect by stripping out the religious identity of the legal codification.

With the 1839 Reforms(Tanzimat) and the 1856 Islahat Fermans, some legal arrangements were made between the Ottoman subjects without religious and racial discrimination, under the influence of the principle of equality spreading to religious minorities (Hakkı, 1988: 42). More secular steps were taken in the Criminal Code of 1858 In the case of change in the economic territory from the other side, the penal code of 1840 was applied for the first time in the international commercial arena, and the adaptation process required new laws to be promulgated in this

area. The Trade Law of 1850 was prepared by these reasons.

In 1861, the Law on Trade Procedures, which shows the necessary procedures to be applied in the courts, was completed and finally the securitization process in the field of commercial law was completed by removing the Maritime Commercial Code (1864) (Subsequently, the Law on Procedural Principles of 1880 and the Law on Procedural Principles of 1881 (Yılmaz, 2006: 12) were enacted.

It is a fact that, at the beginning of Ottoman movements towards justice reforms, besides the effect of the natural law doctrine, the efforts of the state to rescue from the difficult situation are influential. In addition, the commonality of these arrangements was that they had been made by Western principles, or had been made entirely from the West. Thus the translation of Western law brought about the examination of foreign laws in order to ensure the application of the new laws quoted and the necessity of cultivating a cadre of lawyers). For this, it was understood that the “legislative courses” in the Ministry of Justice were not enough and it was necessary to carry out an instructional reform.

Civilization activities brought about the change in the judiciary. Essentially, innovation in the judiciary was necessary at that time. From the end of the Mahmud II period, increased relations, especially due to commercial contracts made in Western countries, have brought about various legal problems. Those kadis who were strangers to European procedures and practices were not equipped with professional equipment to solve these problems they did not have professional equipment to solve these problems. For this reason, commercial disputes have been settled through a special parliament, which is judged according to commercial customs and customs, except for the rules of the merchants chosen by the merchants. However, these councils were not enough and after a while they were turned into a mixed commercial court (Ergun, 1976:23).

With the Provincial Regulation of 1864, steps have been taken on the way to the establishment of the judicial courts . It was seen that external pressures were as effective as internal dynamics in the innovations in the judicial field. The equality promised to Tanzimat and Islahat and non-Muslims laid the groundwork for their interventions, both to minorities and foreign states that support them, to intense demands and

even to interfere with their internal affairs. Although the demands such as the membership of minorities to the courts and the acceptance of their witnesses were to be ignored for a while, the collective sentiments given to the foreign states in 1859 felt the necessity to start various reforms in the judicial scene of the Ottoman State. In this process, foreign states were obliged to take the Ottoman “ to prepare for the reform initiatives with the willingness to comply with the law, to prepare the laws to be applied in the courts as soon as possible, and to establish law schools that accept candidates on equal basis. There have been innovations that transcend the Ottoman classical period, such as the passage of judicial reform from a one-sided system to a collective judicial system and the acceptance of minorities in courts (Zeki, 2008: 197).

1. I. Law School

In the continuation of these innovations, a law school was opened in the Mekteb-i Sultani area where non-Muslims were also accepted. Therefore, the reform movements that were initiated by the non-Muslims in the court organization played an important role in the opening of the legal institutions. The only thing that provides the establishment of the legal school is the change in the field of law and reforms in the field of judiciary mentioned above. At the same time, the modernization efforts that began in the field of education played an important role in the establishment of the law school. The inadequacy of an educational system, which had previously been dominated by sharist basements, was felt well in the era that came with the legislative movements. In addition, the current educational institutions have not been able to meet their expectations and meet expectations in recent years. The quality of the medresahs has fallen since the 16th century. The law schools were established and the Muallimhane-i Nüvvaplarlars which was established after the law education, was also incapable of educating enough staff even in the court, and the grown-ups did not understand the language of the new laws. In the following chapter, (Zeki, 2008: 102).phases of establishment of the formal legal education organisations will be examined.

2. II. The beginning of the First Law School

“Courts and Nizamat Dershane” was established by the Ministry of Justice on 2 July 1870 in order to educate the necessary personnel for the courts of ordination and to teach them legal procedures and principles with the necessary laws. This classroom, which constitutes the first step of the establishment of the law school, was meet for the short-term solution, it was inadequate to meet the growing need. The first formation of legal education at the level of higher education is the “Mekteb-i Hukuk-ı Sultani” which was established in 1874. In 1880, “Mekteb-i Hukuk-ı Shahane” was opened under the Ministry of Justice.

The Law School of 1878 Constitution

The education was organized in the name of the school, on daily basis and the duration of the program was 3 years. It is stated that those who graduate here will have chance to be appointed into public service and judiciary. The main types of the courses are variable: “Mecelle-i Ahkam-ı Adliye, Civil Law, Procedural Law, Uhud and Nizamat and the Charter and in the French Language “.

The annual courses are determined by the educational committee, and the courses to be re-added are determined by adding this delegation to the list and announced with the approval of the Ministry of Justice. The language of education in the school was determined to be Ottoman. The School was typical formal education; schools were closed on Fridays and Sundays, on official holidays, one month after exams and during the most frenzied times of the season. According to Nizamnameye, the mechebin administration committee was consisted of a principle, a vice principal and an adequate employee and they were appointed to the Ministry of Justice and only the command of the Sultan was sought about his civil service. The duty of the principal were arranged as to ensure that the order and organization of the municipality and the regularization of the students, the keeping of the municipality property and its assets, the negotiation with the authorized teachers in the matters related to the municipal administration

and the decisions are made in writing to the Ministry of Justice, to take care of the administration. The principal was authorized to perform with the permission of the Ministry of Justice, the non-compliant and adherent students, on the warnings of lecturers of the students to repeat their courses; the authority to warn the notions of the lecturers, for the students that should be expelled from school upon decision of educational committee. The principal was also obliged to give a declaration to the Ministry of Justice at the end of each year, (Tahir, 1999:34) regarding the changes in the situation and tasks that he deemed necessary to remain within his office.

It was deemed necessary for the students to be given a document numbered and documented in the student's book with a written statement of the examiner's name and that they were authorized to proceed and this should had been sealed by the principal, if the examination of the students was completed before the examination of the teachers without any discrimination or sympathy.

It was also stated that the number of students to be taken at the school would have been announced each year before the classes begin. A student who did not attend classes for eight days without justification and uninterruptedly, had to stop education. It was made necessary for the students of the three-month program to certify their attendance records within the first 15 days of each three months according to a continuity schedule provided by the teachers. The students who were present during the lesson days were instructed to sign the book in front of their teachers.

It was stated that the students had to comply with the rules of the school, and those who were in contraventions would be treated according to the article. The students were obliged to register their names in their special books within 15 days before the beginning of the lessons. Those who did not do this within 10 days after the start of the lessons and those who did not attend the lesson three times in a row without an apology were not able to get a confirmation of continuity. Students were given one year exams in every semester and a separate graduation exam for those who completed the third year. Class examinations are carried out

by the teachers' committee and the principal, (İlhan, 1993:46) while the graduation examination is made publicly.

It was decided to add three members from the Ministry of Justice. It was imperative that the year-end examination of each class be relevant only to the lessons of that year, and that the student should submit a letter of attestation in order to enter this examination. A second-year student would not have been able to confirm continuity during the first three months of the third year, as the first-year student would not have been able to get a confirmation of continuity for the first three months of the second year, unless he gave the year-end exam.

The student who took the third year examination was entitled to enter the written examination after being subjected to the retake examination of the first and second year courses.

This written examination, was essential to graduation, and the preparation of a report on the interpretation and examination of the application of the provisions of the law and the disclosure of a legal complaint. These explanatory documents were discussed in the examination committee and interviewed by the principal for what was considered worthy of acceptance. Those who succeeded in this interview were given certificates of graduation by affirmation and signature; The Ministry of Justice, examination authorities, school municipality and teachers. The grades were graded as three levels: the top; "alüyül âla", medium; "âla", if it is bad; it is "Karibül âla". The student who was down grade 3 was forced to take classes for one more year so that he was unable to graduate. Those who did not accept the report or who did not give sufficient answer to the question about the content were given only the certificate of the year-end seal. This certificates had the signatures of the principal and the teachers, and the seal of the school. Those who had an official certificate from Ottoman subjects who were educated outside the above mentioned courses could apply for a certificate without being subject to an exam by the school.(Ugur, 2007: 43)

Those who graduated from the school, could be either members of Dersaadet and the provincial court after they were employed as members for one year in their order courts, or they could remain in court service. Those who wanted to be in the deportation profession of the applicant

who received the certificate of graduation may have been entitled to a proxy license after having worked for one year in the civil court. The student, who did not take the graduation certificate but left the school by giving only the third grade final exam, was employed in the penalty of the order of jurisdiction and respectively in the order of appellor. At the end of three years, those who did not receive a certificate of registration could not be employed in court offices and could not obtain a license for a deputy unless they graduated from there.

In accordance with Articles 80 and 81 of the General Regulations, the validity of the provisions of the Regulations was regulated by a special clause stating that the persons who graduated from the legal profession, who would temporarily continue until the establishment of the Ottoman law branch, would have benefit fully from the rights mentioned here.

The Development of Mekteb-i Hukuk-ı Shahane

Established in 1880, this day-to-day law school, is understood that the educational staff is largely Turkish, compared to the law school in the Mektebi Sultani area. Almost all of the educational staff of the school came from the upper levels of the bureaucracy.

There were many prominent lecturers of the law school, including Hasan Fehmi, Munif, Kostaki and Abraham Hakki Pasha and Great Haydar, Ali Shahbaz, Mahmut Esad, Ömer Hilmi and Ali Haydar Efendiler (Hıfzı,1993: 42). In the year it was opened, Minister of Justice Ahmed Cevdet Pasha “ Law of Civil Procedure”, Minister of Education Munif Pasha ‘The Law on Criminal Procedure’, Nafi a Nazırı Hasan Fehmi Pasha ‘The Commercial Law’, Principal Mission Kostaki Efendi ‘The Criminal Procedures’, Ismail Bey ‘criminal law’, Sait Bey ‘Roman History and French’, Ömer Hilmi Efendi ‘Mecelle’, Abdüssettar Efendi ‘Land Law’ courses . In the following years, the courses of Law-Duvel and jurisprudence(Hukuk-ı İdare) were also added (Emin, 1999: 282). In 1901, Celal Nuri Bey, a student of law school, wrote in his memories that he had written a letter called “Mecelle-i Ahkâm-ı Adliye, Ahkâm-ı Fihkiye

under the title of Civil Law-i Medeniye and Criminal Law-i Hümâyûn, Usûl-i Muhakemât-i Cezaiye a quantity criminal law course”, but that the lessons of the law-law school in the school were hardly taught. From teachers, deceased Hakkı Pasha, in his lessons even not much but he talks about the Hukuk-ı esâsiye. There is no objection in the International Law course. The law is administered only in the form of formal administration and without regard to the legal points. Celal Nuri states that they have brought lecture notes from the Paris Darülfünun to the jurist-civilian, criminal and amateur and that they have acquired the scientific acquis because they find these less important .”The content of the curriculum was determined and there were significant discussions at that time. “... the most important criticism about Great Ali Haydar Efendi, which is shown as a prosperous advocate by many because of his important contributions, because he did not want to eliminate the Roman law course in law school. Said Pasha addresses this issue in Hâtrât as follows: “Oddly enough ... we know that the supporters of the law, Ali Haydar Efendi, one day, came to the court and said: Roman law is taught in the law school; your news was under control and important interventions were made to the curriculum.

For example, the lesson of Menil-İlm-i-Ulum on Munif-pasha was banned. Especially legal education was banned during the reign of II. Abdulhamid.

After training for many years due to the Law School of the Ministry of Justice, in 1886 the property was transferred to the administration of the Ministry of Education with its assets and income. However, the connections between the law school and the Ministry of Justice have not completely been cut. For example, the correspondence between graduates of two custody schools continued to issue diplomas, procedures such as the appointment of students who completed their studies as a lawyer or in other areas and by passing a state exam were engaged in the Ministry of Justice.

The first law school was opened as a branch of the school of Darülfünun. However, Darülfünun continued to be an independent school until the Second Constitutional (Meşrutiyet) Period, due to its inability to develop normally. The connection of the law school to the Darülfünun could only be realized in 1909 and the name was changed to the law faculty.

Thus, the birth of law schools was accelerated and realized. The first law at the level of higher education was the opening of the Mekteb-i Sultani in that period. Because the education of the laws that were proclaimed from the West was started in this school where the western language was used, the evaluation of the existing sub-structure and the most important means the problem of the educator problem. Legal education started in the Hukuk-ı Sultani, was not long before the education had settled down, but only after a sufficient time had passed for the understanding and acceptance of the western law gradually, it was continued in the Mekteb-i Hukuk-ı Shahane within the Ministry of Justice. It attracts the attention In 1886 the Hukuk-ı Shahane, which was taken over supervision to Marif, the teaching staff was Turkished and also student portfolio was highlighted. It is quite interesting that the Hukuk-ı Sultani established in Darülfünun within the framework of this law could not have been opened and that legal education could have been continued for a long period independently of Darülfünun. There is no doubt that the legal schools/institutions established in the early periods of the Ottoman Empire that forms the basis of today's legal education constitute an important place in the history of Turkish law, because people who will be able to practice law and their contributions of these institutions to adopt the western law can not be ignored.

CONCLUSION

Perhaps the most felt area of influence of the Ottoman Empire's change, especially with Tanzimat, in every area is the field of law. Civilization activities and the innovations in the judicial organization felt the need for lawyers who were brought up in the western form urgently in the understanding and implementation of the rules and institutions. Is there any new training that will enable obligors to grow up so that classical education is not enough in this area? intentions and condemnation were implied. I have overcome the problem with the answer. Do not " Molla Hüsrev's eydî-i ulemâda mütedâvil Mirat and Mirkat'î Roma Usûl-i Hukuku'na mutâbakat? Even Sait Pasha states that the abolition of the Roman law course by Ali Haydar Efendi is astonishing. On the contrary, this and so on was constantly done by the period of the monumental period. It has been really surprising that one of the most important intellectuals such as Ali Haydar Efendi made such a single proposal. Because, for a more coherent understanding of Islamic law, comparative or Roman law was passed to conform to the Western legal system.

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