

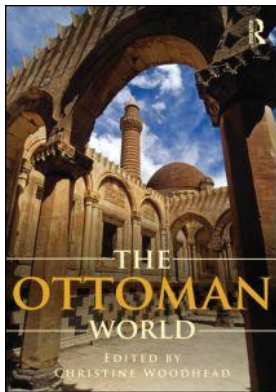
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CHAPTER FOUR

A *KADI* COURT IN THE BALKANS

Sofia in the seventeenth and early eighteenth centuries

*Rossitsa Gradeva*

It is virtually impossible to overestimate the importance of *kadı* courts in provincial life in the pre-*tanzimat* period. This was an institution with which for a variety of reasons nearly everyone in the Ottoman empire came into contact – Muslims, Jews or Christians, *reaya* or *askeri*, villagers or urbanites, tribes, visitors from abroad and individuals, as well as groups with different professional, religious or social profiles. *Kadı*s were approached either as judges or as the local administrative representative of Ottoman authority in the respective district, or both, as these functions were closely intertwined. In the past forty years, much has been written on the institution and its (mainly judicial) activities, for various parts of the empire and vis-à-vis various groups of Ottoman society.¹ However, many of its local specifics, its evolution over time, and its relation with other Ottoman institutions of authority and with local populations have yet to be studied and interpreted, and these continue to attract scholarly attention. While the number of publications on the functioning of the court in the seventeenth century increases, with regard to the Balkans, publications dedicated to the earlier centuries are practically non-existent, and those for the eighteenth century are still relatively few.

This essay provides an overview of the role, functions and structure of the *kadı* court, taking the example of Sofia during the seventeenth and early eighteenth centuries. It shows the *kadı* court as a judicial institution but also one at the heart of the administration of Rumeli, a centre of social life and public space where all types of Ottoman society met. In many respects, therefore, this study presents the principal features of *kadı* courts throughout the empire. However, it is difficult to describe the *kadı* court in Sofia during this period as entirely typical. This is due partly to the process of transformation taking place during the seventeenth century within most of the so-called classical Ottoman institutions, and for the Ottoman polity in general, and partly to the fact that Sofia was the seat of the governor of Rumeli. The latter obviously added to the usual obligations of a *kadı*, putting him in the precarious position of ranking highly in the judicial hierarchy, but at the same time being exposed to the direct effect of the *vali*'s presence. This largely explains some of the discernible specifics of the *kadı* court in Sofia.²

SEVENTEENTH-CENTURY *KADIS* OF SOFIA

By the first decade of the seventeenth century the *kadılık* of Sofia had been permanently integrated into the *mevleviyet* (higher) grade of the judicial hierarchy – indicative of its growing importance. Sofian *kadis* originated from all parts of the empire, including Baghdad, Jerusalem, Ayntab, Bursa, Crimea, Georgia, Istanbul, Edirne and Sofia itself. Some belonged to eminent *ulema* families, others had strong ties with dervish brotherhoods – sometimes both – but there are also striking exceptions to this model – men of very modest background. Most followed the established pattern of career-building. Before becoming a judge they would have normally taught at high-ranked *medreses* (colleges of Islamic law), though rarely at the Süleymaniye in Istanbul or in other major colleges of comparable importance. Others, however, had only a very brief teaching career, often in lower level *medreses*. The Sofia *mevleviyet* was somewhere in the middle to lower ranks of this judicial grade, but apparently was a lucrative position. Not a single seventeenth-century Sofia *kadı* became *kadıasker*, although one fifteenth-century *kadı* became grand vezir (Piri Mehmed Paşa, d. 1532, who was *kadı* in Sofia before 1498). The normal positions a *kadı* would attain before and after Sofia were those in Diyarbakır, Kayseri, Manisa, Belgrade, Bosna Saray (Sarajevo) and, in exceptional cases, Baghdad, Filibe (Plovdiv) and Izmir.³

The majority of seventeenth-century sharia judges in Sofia had very short terms in office, from just over two years down to two to three months, with the average about a year. Several spent more than one incumbency and hence more years in Sofia; some chose to retire there, others died while in post.⁴ In contrast to sixteenth-century *kadis*, who left a lasting trace both in the topography of the city and in the memory of their fellow citizens, few seventeenth-century judges developed any personal relationship with the city. They not only donated less to local welfare, they are also not mentioned in Christian texts surviving from the period.⁵ The latter might be due to the lack of major clashes between Muslims and non-Muslims comparable to those of the neo-martyrs in the sixteenth century in which the *kadis* played a major role.⁶ Although the seventeenth century was far from peaceful, the spectacular events in the life of Sofians – destruction of churches in the 1630s and 1660s,⁷ the banishment of local prostitutes and even, ‘by leave of the sharia and for the reform of the world’, the hanging of some of them (between December 1652 and July 1653)⁸ – were initiated not by the *kadı* but by the current governor. One *kadı* challenged the governor who in 1644 executed several people in Sofia without the legal sanction of the judge and then tried to secure the latter’s ex-post-facto approval.⁹ Despite the theoretically important role of the sharia judge in such cases, nowhere in these events, except for that of 1644, does the city *kadı* appear as a major actor. This can probably be attributed to the growing role of the governor in provincial administration and adjudication at the expense of the judge.

THE RANGE OF *KADI* COURT ACTIVITIES

Despite the prominence of the governor, in the seventeenth and early eighteenth century the *kadı* court in Sofia remained a focal public space for its citizens and for the inhabitants of the *kaza* (judicial district). The *kadı* constituted one of the pillars of Ottoman authority in the province. The scope of the work of the *kadı* court can be assessed using the surviving *sicills* (registers, record books), despite concerns about

their reliability.¹⁰ Principally, registration of documents issued by the *kadı* or reaching him was not mandatory but depended on a variety of circumstances, including the readiness of the interested party to pay the necessary fee.¹¹ Although registration in the *sicill* provided security in the case of loss of the original document or the reopening of the case, it was not always resorted to. The same applies also to documents issued by the central authorities, especially those in response to petitions of individuals or groups. One may suspect also specific areas of ‘under-representation’ such as non-Muslims and villagers, who probably approached the court less frequently than did Muslim inhabitants of the city.¹² Nor do the registers include the outgoing correspondence of the *kaza*. We only learn about (some of) this from the incoming orders registered in the *sicills*, from the records of the *divan* – the *mühimme* and the *şikâyet defter* (‘registers of important affairs’, ‘registers of complaints’) kept in the imperial council – or from single documents. Finally, it seems that many courts kept parallel registers – one for general issues, the main judicial and administrative activities of the court, and others more specialized – for example, for *vakıf* documents,¹³ for inheritances and related judicial acts (*tereke*, *muhallefat*),¹⁴ for incoming orders,¹⁵ and sometimes for marriage contracts,¹⁶ which might cover several judgeships. What survives is often just one of these parallel *sicills*. Yet, despite these recognized drawbacks, *sicills* offer a unique insight into the wide scope of *kadı* court activities and the complex negotiations and relations this implied. They continue to be the most comprehensive source available for study of these activities.

A judicial institution

The *kadı* court was first of all a judicial institution. All its other functions emanated from its primary and traditional association with adjudication on the basis of the sharia. Its early integration within the Ottoman bureaucracy, and its authorization to apply the *kanun* and other legal edicts issued by the sultans, further enhanced the court’s role. The Sofia sharia court reached the peak of its importance in the sixteenth and seventeenth centuries, but towards the end of the seventeenth century possibly began to become less significant on account of the increasing authority of the provincial governor. This trend continued until the second half of the nineteenth century, when the *kadı* court returned to being a judicial institution treating mainly the (broadly) religious problems of Muslims. Late seventeenth- and eighteenth-century records attest to the frequent appearance of the provincial governor and his staff at hearings in the Sofia court; the fact of the joint sessions of the *kadı* with the provincial *divan*; and the overwhelming presence of the *ayan-i vilayet* (‘provincial notables’) in the work of the court – as parties in a significant number of cases, as ‘witnesses to the event’ in even more, and as a forum which decided on many issues of all-*kaza* importance, which were then recorded in the *sicill*.¹⁷

In its judicial role, the *kadı* court functioned in complex interaction with several other institutions which were similarly not exclusively judicial.¹⁸ At the highest level, in the heart of the empire, was the imperial *divan* acting in the name of the sultan. Primarily a political body, it also received applications and grievance petitions from all parts of the empire – from individuals and various communities, Muslims, Christians and Jews, men and women, citizens, villagers and tribesmen – and responded to them, if only to instruct the officials concerned to review the case. Applicants

complained about the malfunctioning of local administration and oppression and taxation issues, but also about private legal cases related to inheritance, murder, debts, family conflicts, problems among trade partners, or others. Sometimes they approached the *divan* following an unsatisfactory (from their point of view) decision of the local *kadı*; on other occasions they simply petitioned the *divan*. The orders in response, issued in the sultan's name, are reflected in the *mühimme*¹⁹ and, after 1649, also in the *şikayet*²⁰ series of the *divan* or, from 1742, in the regional *ahkam defters*.²¹ Seventeenth-century *mühimme* and *şikayet* registers rarely include more than ten judicial cases per year from Sofia, which suggests that the *kadı* court remained the focal judicial institution for Sofians, and only a few approached the *divan* for private reasons.

Locally, the *kadı* court interacted in a variety of legal and administrative cases with the governor's *divan*, another institution of *mazalim* jurisdiction in the Ottoman state.²² Cases were sometimes brought first to the *vali*, where the *kadı* was also invited, and then to the *kadı* court, where members of the governor's retinue participated as 'witnesses to the event'; sometimes cases went in the opposite direction, first to the *kadı* and then to the *vali*; in yet other cases they also reached the central *divan*, from where they were transferred to the *vali*. It is not clear whether these were all the cases taken to the governor's court, and, if not, why the *kadı* was involved in these in particular or why he would record them. There are indeed many questions around the functioning of the provincial *divan* and the division of prerogatives and functions with the respective *kadı*. Surviving registers do not support the obvious hypothesis of a division between sharia and *kanun* (administrative law) cases: the governor was approached on inheritance disputes and the *kadı* with grievances about irregularities in the collection of taxes.

Much has been written on the attitudes of non-Muslims, mainly Orthodox Christians and Jews, to the *kadı* court. Scholars who have analysed these on the basis of the *kadı sicills* are unanimous that members of all non-Muslim communities turned to the *kadı* court not only for cases that were mandatory (mixed – that is, with Muslims – or criminal), but also in cases regarded as religious (such as marriage and divorce). Some see the explanation for this phenomenon in the actual absence of alternative non-Muslim courts; others indicate the awareness of non-Muslims of the possible advantages that turning to the 'Muslim' court would bring them – more favourable stipulations of the law, a higher chance to win their case, a better chance to have the verdict/decision procured, lower fees – which led them to overlook the prohibitions issued by their religious and communal authorities. Although their status was not very clearly defined, non-Muslim religious and communal courts (not necessarily overlapping) did exist and interacted with local *kadı* courts. Their importance seems to have grown from the seventeenth century onwards as part of a complex evolution of the Ottoman polity and the developing role within this of communal structures, especially concerning taxation.²³ However, only in the late eighteenth/early nineteenth century did the Ottoman authority officially and explicitly grant the Orthodox religious authorities/communities a sort of monopoly on 'religious' cases. But this was never fully enforced, perhaps partly because of the preferences of non-Muslims themselves, who continued to take advantage of more favourable prescriptions of the sharia.²⁴

Even less is known about the communal courts based on 'customary' law, which functioned among Orthodox Christians and some groups of Muslims. This is a highly

controversial issue, in the first place because, with the exception of those in the Aegean islands, they have left documentation only rarely.²⁵ Nationalistic Balkan historiographies have tried to present communal structures as a major alternative to the ‘alien’ courts, which thus contributed to the preservation of the ‘national spirit’. While this is probably an exaggeration, the role of these institutions may not be simply discarded. Their existence is apparent, even where no documents have been preserved, in explaining the relatively low percentage of Christian villagers attending the sharia courts, and probably also the ecclesiastical courts. It is yet another question what law these institutions applied. Very often one may suspect a complex interaction of the dominant sharia, tribal and pagan traditions, canon law and pre-Ottoman legal practices.²⁶

All these institutions, and several others of lesser importance not considered here, which functioned in a complex interaction and hierarchy, offered many opportunities for ‘forum shopping’ for those concerned, as long as they knew of their specifics and advantages and were prepared to go against prohibitions.²⁷ For different groups of Ottoman subjects in the *kaza* of Sofia, it is difficult at this stage to evaluate the respective weight of these judicial institutions. Some *kadı sicills* are available from the mid-sixteenth century, but mainly date from the beginning of the seventeenth century and even then with significant gaps. The contemporaneous series of *mühimme* and *şikayet defters*, which reflect activities at the imperial *divan*, also contain significant gaps. The other components of the judicial system – the governor’s *divan*, the religious courts and the customary law courts – remain an unknown variable for Sofia district in the period under consideration. At this stage we can claim only that they existed. The very low number of court records which involve Jews, Armenians and ‘Latins’ (Ragusans and Catholics) in the *kadı sicills* of Sofia, in comparison with their relative weight in the city’s population, suggests that the respective communal institutions received some of the obligatory *kadı* court cases.²⁸ However, the abiding impression is that the *kadı* court continued to function, as both a legal and an administrative body, as a focus of life for all the groups indicated.

The notarial function

What made the *kadı* court unique, as compared to other official Ottoman judicial institutions, was its notary function. No *divan* recorded documents of this type. On the other hand, there is sufficient information to show that religious and communal courts did provide these services to their co-religionists, although they were not officially assigned to do this. Notarial documents are recorded in the extant codices of metropolitanates, preserved from the seventeenth century onwards; Jewish *responsa* also refer to the recording of various agreements and transactions. Bearing in mind the limitations of these courts in serving only the respective religious group, and the undisputed higher security provided by the *kadı* court in the case of subsequent contestation and as the court for mixed cases, it is not surprising that the latter contains the bulk of the notary records. In the extant Sofia *sicills* for the period discussed here, notarial documents make up between 30 and 50 per cent of the legal entries. They include mainly records of debts, contracts for transactions of houses, (work)shops, mills, vineyards or other roofed or landed property, sometimes in places in Anatolia or other distant settlements in Rumeli; transfer of rights of usage of landed plots; loans; suretyships (*kefalet*); and proxies (*vekalet*). Only very rarely do we come across records

of transactions of moveable property, even of relatively expensive items such as slaves or cattle. However, the *kadı* did issue documents related to the manumission of slaves, conditional or unconditional.

Some transactions and agreements were contracted *in loco*, in the court, while others, probably the majority, seem to have been negotiated outside it and recorded sometimes years later, when one of the parties needed a legal document or when the due sums were fully paid. Very rarely, contracts were registered between a community or *mahalle* (city quarter) and a person hired to provide certain services. Suretyships were recorded mainly in relation to debts and collective liability, but also when an offender was being released from prison and a guarantee was needed to ensure his or her appearance in court when required. As elsewhere in the Ottoman empire, *vekalets* were usually registered when a party to a judicial case needed a representative in court or an official, as a deputy to carry out (part of) his or her obligations. The normal case was for a specific *vekalet* to serve in a strictly determined case, for a clearly specified job, such as a sale or other transaction, or in arranging divorce and post-divorce relations. Muslims and Orthodox Christians (but rarely Jews or Armenians), men and women, appear in court as both the authorizing and the authorized party.

Disputes

Contested cases comprise a significant component of the Sofian *kadı* court's judicial activities, between 17 and 29 per cent of the legal documents in extant records in this period. These include disputes over landed and other property, or over the borders of a common, between villagers and townsmen. They also include cases concerning the payment of taxes and dues, about their amount and the method of collecting, between tax collectors and taxpayers, or between taxpayers (groups and individuals) only. Closely related to the *kadı*'s broad prerogatives in the control and regulation of urban economic life is the judge's role in cases going beyond the competences of the respective guild bodies: disputes between *esnafs* (artisan guilds); disputes between an *esnaf* and individual craftsmen who were not its members – or who were, but the offence was beyond their jurisdiction or considered of high public importance; on breaches of production regulations; on provisioning with raw materials; on prices, and conflicts with market officials; and on the way *esnafs* performed their obligations to the state in peace and war.

Marriage and divorce

A significant number of documents recorded in the Sofian *sicills* concern family relations.²⁹ These range from registration of an agreement between (former) spouses and the allocation of alimony or the appointment of guardians to disputes related to inheritance or difficult divorces. The courts issued special permission (*nikah tezkere, izinname*), bearing the judge's seal, to couples intending to marry. Such a document informed neighbourhood *imams* that there were no sharia obstacles to the conclusion of the marriage.³⁰ Marriage contracts (*nikah akdi*) which fixed the size of the dowry due to the wife in the case of the husband's death or divorce (*mehr-i müeccel*), and occasionally provide details on specific issues and conditions of cohabitation, are quite

rare. Very occasionally, *kadis* also registered Christian marriages, perhaps reflecting problems regarding the Christian legalization of the marriage. Documents related to divorce crop up more often. Because of the specifics of Muslim divorce, most divorces registered in court were initiated by the wife (*hul* divorces), were conditional, or followed some agreement between the spouses. Information about divorce initiated by the husband comes mainly from documents concerning the settlement of disputes between the former spouses. Christians, particularly women, also registered divorce, either directly in the sharia court or after the dissolution of the marriage at the ecclesiastical judicial body. Many questions arise in such cases which for the time being remain speculative: how knowledgeable Christians were about the stipulations and intricacies of Islamic law; where they learned about it; whether the *mehr-i müeccel* which women demanded in court or which occasionally crop up in *tereke*s were actually pre-arranged and in what format, or were just a strategy after divorce or the death of the husband; what it cost Christian women to raise property claims that fit sharia law but were in contravention of canon law; and so forth.³¹ Issues of ‘public morality’ of both Muslims and Christians and the marital status of women in particular were under scrutiny, and the court was involved to secure this.

Inheritance

According to the Ottoman *kanun*, in cases when there were no legally recognized heirs, or when their due shares according to the sharia were insufficient to exhaust it, agents of the state treasury (*beytülmal*) were to visit the house of the deceased and decide whether the state had any interest in the estate. Many such cases would eventually reach the sharia court, at the demand of the agent or if contested by the heirs. The *kadı* court intervened when legally recognized heirs were absent, when a wife was pregnant, when there were under-age heirs – in short, when there were ‘weak’ legatees who needed protection. It could also be approached when the heirs could not agree about the division of the estate among themselves or for any other legal problem that arose in relation to it. The court also decided disputes between heirs and agents of the treasury, between heirs and other interested parties, and among heirs only, often caused by transactions effected before the death of the legator. Indeed, eventual problems with the *beytülmal* or among heirs may have been the reason for the rather frequent transactions with real property between spouses recorded in the *kadı sicills*. Disputes between manumitted slaves and the heirs of their former masters or the agent of the state treasury were not rare, and this explains the frequency of the requested issuance of relevant documents by manumitted slaves. Anticipated problems with the *beytülmal* were probably the reason for an otherwise rare practice to which Ottoman subjects resorted only in exceptional circumstances – to declare and register gifts to their potential heirs or to indicate the names of the heirs in front of a member of the court. In Sofia, this was done mostly by temporary residents in the town, mainly Armenian merchants. Except for cases of donation for pious purposes, wills were declared also within the family, in the presence of friends and neighbours and probably also religious functionaries of the respective faith, and only disagreements among the heirs or some transaction would reveal them in the sharia court.³² Although these problems were regarded as a prerogative of the religious courts of each community, we often see members of the non-Muslim communities, mostly Orthodox Christians, settling family problems according to sharia law.

Criminal cases

Only around 1 per cent of documents in the Sofia *kadı sicills* relate to criminal cases – principally manslaughter, battery, highway robbery, theft, adultery, burglary, counterfeiting and forgery. Other documents, such as suretyships and divisions of estates, reveal that many other crimes occurred in the district of the Sofia *kadı* but were not the subject of court intervention. The main reason for this is probably the fact that, in ‘offences against man’, Islamic law leaves much space for negotiation between the parties involved, including reconciliation outside the court. The court was approached usually with regard to potential problems for the territorial community where the crime had taken place, a village or urban neighbourhood whose inhabitants were bound by collective liability and who were held responsible if the culprit remained unknown.³³ In order to avoid protracted litigation and oppression from police officials and the relatives of the victim, even when the culprit was identified, the community still tried to secure a document from the *kadı* court absolving them from responsibility. This was why the inhabitants of a *mahalle* or village were often the first to inform the sharia judge about a death that was violent or had occurred in unusual circumstances, a suicide or a wounding and to demand an inquiry. Sometimes the victim or his or her relatives stated the fact of the criminal act, or simply of death, thus absolving the community from payment of compensation and occasionally also identifying the culprit. A specific but frequent case is when the inhabitants of a village or neighbourhood sued members of the community, women of easy virtue or bandits, usually demanding their eviction. In such cases the testimony of the community against them was deemed a sufficient proof even when the defendant denied the accusations. The *kadı* court tried people accused of highway robbery when (as in the cases of immoral behaviour) charges were raised by large groups of local people, whose claim usually decided the case.

A very brief overview and comparison between the early and late *sicills* does not show any significant shift in the nature of legal cases reaching the *kadı* court. What does change, however, are the court sessions (*meclis-i şer‘*) held in the presence of the *vali*, in the *divan-i Rumeli* (council of Rumeli) attended by the *kadı* of Sofia, but also by a *divan efendisi*.³⁴ At present it is only possible to say that these ‘elevated’ sessions concerned a wide range of issues and were often either preceded or followed by sessions of the *kadı* court *per se*, sometimes supported by *emr-i şerif* (imperial orders). They concerned problems with the collection of taxes, sometimes for distant villages in the province or following clashes between former *vali* and the non-Muslims of Sofia.³⁵ Other topics include the contested sale at auction of inherited property between high-ranking *askeri* in Sofia, a contested *timar* in the *sancak* of Vidin, a trial of slaves who murdered their *ağa*, and other matters which were probably taken to the *vali* because of their high ‘public importance’.³⁶ The interaction between the *kadı* court and the governor’s *divan* also awaits further investigation.

FOUNDATIONS, APPOINTMENTS AND OTHER RELIGIOUS MATTERS

As a judicial and religious authority the sharia court controlled the functioning of the pious foundations (*vakıf*), appointments or temporary replacements of Muslim

religious functionaries (*imam, duaguy, hatib* and others), and the various levels of state-defined aspects of the structures of non-Muslim communities. Thus *kadı*s oversaw the *vakıfs* – their establishment, financial situation and transactions – the appointment of trustees (*mütevelli*), and repairs to their material components.³⁷ *Mütevellis* were also replaced in or through the court, a procedure usually started by the local Muslim community, the immediate recipients of their services.³⁸ Occasionally problems related to non-Muslim *vakıfs* were also brought up in the sharia court. The usual documentation in Sofia *sicills* as far as non-Muslim religions are concerned is registration of the *berats* of metropolitans, which defined the limits and scope of their functions allowed by Ottoman authority,³⁹ and documents relating to permission for the restoration of Christian and Jewish places of worship. *Kadı*s were involved at various stages in the latter procedure. Following an application from the respective group and an order from the sultan, the court organized an inspection of the building. The exact dimensions and a description of the old structure were recorded to serve as the basis for monitoring the actual work done, also the prerogative of the *kadı*. The Sofia *sicills* contain documents reflecting both stages of the procedure,⁴⁰ as well as the increasing intervention of the governor and other high-ranking officials in control over non-Muslim structures and taxation and in the preservation of the dividing lines between Muslims and the non-Muslim communities.⁴¹

THE *KADI* AS OVERSEER

The *kadı* court was in theory ‘the eyes and ears’ of the sultan in each provincial district, in terms of control over and feedback about the functioning of the various institutions and systems constituting the local administration, the urban and district economy, the taxation system, maintenance of order and roads – everything that was broadly within the interests of the central authority. This general principle had specific dimensions in particular *kazas* on account both of location and of changing demographic and economic realities. The following summary presents the types of problem the *kadı* of Sofia oversaw as reflected in one *sicill* for 1680–81.

The *kadı* court, and the *sicill*, continued to be the place where appointments were announced and recorded: of a new *vali*, of the *kadı* himself, of the *mütesellim* (tax collector), of the *kaymakam* of the *seyyids* (local administrator for matters concerning the descendants of the Prophet) in the *kaza*, of the *kassam-i askeri* (divider of *askeri* inheritances), of the *mimarbaşı* (the city architect), and of city police officers and Janissary garrison commanders. The *kadı* registered permissions to seek and extract silver in the district; he registered the representatives *in situ* of high-ranking military officials, the metropolitan, low-ranking (Muslim) religious functionaries, and many others. *Berats* of officials as well as of the various tax collectors were not simply read in the court but were also regularly recorded in the ledger, a procedure which probably signalled the official launching of their activities in the *kaza*.

The *kadı* court continued to play an important role in overseeing the collection of taxes and state deliveries, and was instrumental in the resolution of conflicts that arose between the parties involved. The *sicill* contains *berats* for the collection of various taxes, levies and tithes payable in cash; for deliveries of carts for a military campaign, hunters for the imperial hunt, and provisions for the armoury; for the taxes of various groups, including the *kefere taifesi* (that is, the Orthodox Christians), Jews and

Armenians, gypsies, *yürüks* (nomads) and *voynuğan*,⁴² inhabitants of the city *mahalles*, or simply the whole *reaya* of the *kaza*, and sometimes even those in smaller adjacent *kazas*.

With regard to disputes over taxation, the *sicill* of 1680–81 shows a new development as compared to the first half of the seventeenth century. Several entries note that, due to changed circumstances in the *kaza* caused by the dispersal of villagers and the impoverishment of those remaining, the local *ayan-i vilayet* had gathered for the purpose of reassigning the respective tax obligations demanded in the imperial *defter*. Although no places are specified, it is clear that these gatherings were outside the court, and there is no indication that the *kadı* attended the meeting. Yet, the new *defter* was taken to the court and recorded in the *sicill*, probably in order to give it legal authority.⁴³ The same procedure – the gathering of local power-holders ‘in one place’ to carry out the distribution (*tevzi*) of the obligations – was followed also for various deliveries. The obligation to send 2,000 hunters for the imperial hunt near Edirne was allocated among the respective *ayan* and village *zabits* in the *kazas* of Sofia and Breznik.⁴⁴ In these and other cases concerning the obligations of particular communities or professional groups, it seems that the *kadı* merely registered and sanctioned a decision reached elsewhere.

Closely related problems concern the *timar* system.⁴⁵ Alongside the registrations of *berats* for *timar* holders, *sicill* entries signal already known trends and developments: the gradual incorporation of *timars* into the tax-farming system and consequent tax collection matters; the appointment of representatives; the delineation of borders between *timar* villages; and widespread attempts at cheating, such as reporting the death of or the failure to perform obligations by a titular *spahi* by a candidate for the respective *timar* or *zeamet*. Many orders urge the *kadı* to investigate and ascertain the correct situation.

Traditionally, *kadis* oversaw local mobilization for military campaigns.⁴⁶ These orders were read in court, and the *kadı* was broadly authorized to see that all concerned fulfilled their obligations. In 1680–81, local commanders and *timar* holders from the *sancak* were summoned to Isakcea on *ruz-i hızır* (St George’s day, the traditional first day of spring campaigns), while Janissaries engaged in the defence of the *serhad* (frontier) and of Babadağ were called to their place of duty.⁴⁷ Also traditional is the role of the *kadı* in fighting the omnipresent brigandage and oppression. He not only investigated specific cases but also compiled lists of the *hayduds* (brigands) and their accomplices, probably to be sent to the capital city or to the *vali*. He was expected to ensure the proper functioning of the systems for maintenance of order, placing guards in dangerous places and restraining those engaged in the maintenance of order from committing oppression themselves.⁴⁸

Interestingly, this *sicill* contains very few documents concerning the functioning of the *esnaf* and the market in Sofia, or in general. No fixed prices or changes in *esnaf* membership are recorded, although contemporary *sicills* from Ruse contain these. The reason for this is unclear, as the *kadı* was clearly involved in various orders concerning the campaign obligations of some *esnaf* and in decisions about communities, or fixing the salaries of the *tellaks* (attendants) in a local *hamam*. He was approached also with regard to monopolies in the sale of various products, including alum from Gümülcine.⁴⁹

COURT STAFF AND LOCAL ASSOCIATES

The *kadı* was assisted by a number of specialized officers, staff and other more or less informal participants in the judicial process. Among the first group, apart from the various police and military officials, were the *naib*, the *muhtesib* (market inspector), the *kassam-i askeri* and the *katib* (scribe), as an intermediate figure between the 'specialized' and the ordinary staff. *Naibs* appear in two typical roles, as deputies of *kadis* of all ranks in *kazas* and *nahiyes* and as assistants of a sharia judge.⁵⁰ In Sofia they often figure as the representatives of the court in commissions sent to investigate criminal acts, in civil and family law cases or about non-Muslim places of worship, which implies a certain level of legal qualification. Sometimes *naibs* figure among the instrumental witnesses to cases. In Sofia, as in the empire generally, the *muhtesib* was attached to the *kadı* court. His competences included in the first place ensuring the proper functioning of the market and the imposition of fines on craftsmen and tradesmen *in loco* for minor offences, while more serious transgressions of market law and discipline were taken to the *kadı*. Another obligation of the *muhtesib* was collecting due debts as well as finding sureties for insolvent debtors. *Muhtesibs* also had prisons under their administration, mainly for debtors but also for brigands.

The *kadı* was also assisted by scribes, court attendants and gate-keepers. In the Sofia court, as elsewhere in the Balkans, *katibs* were charged with a variety of tasks which exceeded the ordinary scribal work. Apart from their obvious role of compiling documents and recording them in the *sicills*, the several scribes frequently led investigating commissions, which obviously required some level of legal qualification from at least some of them. Often they are listed among the instrumental witnesses as well. *Muhzırs* were among the *kadı*'s assistants most frequently mentioned. Their primary obligation was summoning defendants who had failed to appear in court. They also accompanied *muhtesibs* when collecting debts. Very often they served as instrumental witnesses as well. Throughout the period under consideration they had a chief in Sofia, a *muhzirbaşı*, but it is not clear whether he had any specific tasks different from those of ordinary *muhzırs*. *Emins* of the court were most probably engaged in collecting court taxes. They too appear among the witnesses. Here we should probably list also the interpreter (*tercüman*) who occasionally appears in the Sofia *sicills*, usually among the instrumental witnesses, and who mediated between non-Ottoman-speaking *zimmis* and the court.⁵¹

Local inhabitants took part in the work of the court in a variety of capacities. Apart from witnesses providing evidence for specific cases, they were employed as 'experts', who gave opinions in disputes as *muslihun* (mediators) and instrumental witnesses. The institution of the *muslihun* is closely related to the Ottoman judicial system.⁵² Reconciliation was a widespread mechanism of conflict resolution throughout the empire, officially recognized and accepted by the judicial authorities, who often merely recorded an already reached agreement. Mediators intervened in disputes between individuals, between an individual and a territorial community (*mahalle* or village), between Christians, between Muslims and in mixed cases, and in a wide range of disputes, including homicide. This, and the fact that only a very few cases regarding minor offences reached the court, raises the issue of the real role of this institution in the legal system and of the law applied in it.

One of the most debated topics concerning the judicial systems of Islamic states is

that of the instrumental witnesses (*şuhud ul-hal*) whose names are listed at the end of *kadı* court documents.⁵³ Their presence presumably rendered legality to the document issued by the court, and they could serve as potential witnesses to the correctness of the procedure in case the decision was contested. They might also have advised the *kadı* about local practices. In Sofia and other parts of the Balkans the instrumental witnesses were neither a limited circle of ‘reliable people’ nor bearers of specialized legal knowledge. Very often we see outstanding townsmen and members of the court among them, including former *kadis* of Sofia and *kadis* currently of other places, *naibs*, scribes, *muhzırs*, Janissaries and other military ranks, teachers, mosque functionaries and *mahalle imams*, but also craftsmen and traders, people without any identification, and members of the entourage of the provincial governor, especially in the later *sicills*. In some cases these witnesses obviously had an interest in the outcome, as with inhabitants of the same *mahalle*, or even neighbours, in the case of property transactions or criminal investigations; or when they had similar professional or confessional affiliation with at least one of the parties. This, however, is not always the case. An important change in the membership of the ‘witnesses to the event’ during the seventeenth century is the significant presence in the latter part of the century of the Muslim leadership – people who can be identified as *ayan* and their dependants.

Finally, another group drawn from the local population who participated in the work of the *kadı* court consists of the so-called experts (*ehl-i hibre*, *ehl-i vukuf*, *ehl-i hıresi*) and the ‘commissions’ sent to establish the circumstances in a variety of cases, which occasionally included ‘specialists’. They gave opinions on *vakıf* expenditures, church reconstructions, transacted objects and construction, in criminal cases and in disputes between *esnaf*s. The opinion of these specialists usually provided the basis for the court’s decision. Despite the significance of their advice, their names and professional characteristics often remain unknown to us, hidden behind the generic term ‘experts’. Unfortunately this makes it impossible to draw systematic conclusions both as to what kind of people were called upon in different cases and as to who would initiate such an invitation – the parties concerned or the *kadı*. This body nevertheless represented a complex of local interest and knowledge working in co-operation with the local sharia court and policing functionaries.

CONCLUSION

The sharia judges and the court continued to be approached in a wide variety of judicial cases and to oversee a number of military and administrative officials, as well as many others in between. The *kadı* court served as the focal judicial institution for the local population of all groups, although it was the court primarily of Sofian Muslims and much less for other religious communities or for villagers. It issued documents which served as legal proof of property rights, legalized agreements reached outside and inside the court. It was a body of authority whose decisions were most likely to be enforced. No doubt this had made it attractive for non-Muslims when they were in a position to choose between their own and the ‘alien’ court. *Kadis* adjudicated mainly in contested cases, while in criminal cases they acted in close co-operation with officials involved in securing public order; in the field of *kanun*, especially in questions related to the *timar* system and to taxation, they co-operated with the *vali* and his *divan*. In Sofia towards the end of the seventeenth century, an even closer collaboration

developed between the governor of Rumeli and the *kadı*, with the former attending some sessions of the sharia court when it acted as an appellate institution, in cases involving important local people or deemed of public importance. On other occasions, the *kadı* of Sofia participated in the dispensation of justice at the *vali's divan* and then recorded the minutes in his *sicill*, both developments reflecting the further integration of *kadıs* in the administrative system and the growing importance of the governor as part of the judicial system. In the long run this would result, by the mid-nineteenth century, in the gradual transformation of the *kadı* court into a purely sharia one, which served primarily, but not yet exclusively, the religious needs of the Muslims in a *kaza*, and in the loss of its administrative prerogatives.

This process was paralleled by a gradual decrease of the role of sharia judges in the lives of the empire's non-Muslim subjects. It should be pointed out that, despite the overwhelming majority of the Christians in the district of Sofia, relatively few cases between Christians only are recorded in the *kadı sicills* as compared to those between Muslims. Jews and Armenians in Sofia, though an urban population, were much less attracted by the possible advantages of the sharia court and approached it mainly in mixed cases – i.e., with members of other religious groups, Muslims in particular. While Orthodox Christians approached the sharia court for a variety of family and inheritance law disputes, even to get married and divorced, or for the division of estates in cases of intra-family discord, this is not the case with Jews and Armenians. To explain the decreasing interest of non-Muslims in the *kadı* court, we should bear in mind that cases between townsmen are also more numerous than those involving villagers, and in the seventeenth century most of the towns in the Balkans, and Sofia in particular, were already inhabited by a prevalent Muslim population. In the case of villagers, major obstacles were the dangers of the journey and transport difficulties, as well as the expenditure implied by a stay in town. Very important in shaping the attitude of non-Muslims to the *kadı* court is the fact that it based its decisions on the sharia, while non-Muslims could turn to alternative institutions – Orthodox Christian, Jewish, Armenian, and Catholic religious and self-rule courts – whose importance seems to have been growing from the seventeenth century in parallel with the strengthening of communal structures. Sharia courts nevertheless remained throughout the Ottoman period, until the reforms of the nineteenth century, the major judicial institution in the provinces for Muslims in particular but also for all Ottoman subjects, and an administrative heart of any district.

NOTES

- 1 For an overview, see Agmon and Shahar 2008 for the territory of modern Turkey and the Middle East, and Gradeva 2008 for Balkan historiography.
- 2 Gradeva 2006a.
- 3 Gradeva 2004a.
- 4 E.g., Sencar Muizzeddin Mehmed Efendi, who between 1642 and 1665, when he died in the city, spent more than seven years in six appointments.
- 5 Probably the most prominent monument founded by a sixteenth-century *kadı* is Seyfi Efendi's Banebaşı/Molla Camii in the city centre, built in the 1560s by the school of the Ottoman chief architect, Mimar Sinan, and still functioning. The other components of Seyfi Efendi's *vaktif* – a *dersiye* (schoolroom), a *han* and a *kervansaray* – have long since disappeared, as have most of the other monuments of Ottoman culture in Sofia. Several sixteenth-century *kadıs* donated

- funds for the construction and maintenance of *mektebs* and *medreses*, for mosques and *tekkes*, and their names were commemorated in the names of city neighbourhoods.
- 6 Gradeva 2004b.
 - 7 Gradeva 2010: 63.
 - 8 By Melek Ahmed Paşa (Dankoff 1991: 97–9).
 - 9 Sencar Muizeddin Mehmed Efendi resisted the governor's demand, rode on horseback to Istanbul and reported the case to the sultan. The oppressive *paşa* was summoned, interrogated in front of the *kadı* and executed (Uğur 1986: 286–7). While numerous grievances against provincial *kadıs* have been found in seventeenth-century registers of complaints, these were usually against judges of lower rank or *naibs* (deputy *kadıs*), who often stayed for very long terms or were even locals. So far, I have found only one against a *kadı* of Sofia, in 1670 (AŞD 4, sira 197/doc 1613, September 1670).
 - 10 The *sicills* used here are S 1bis (1617–18), S 308 (1619), S 12 (*tereke defter*, 1671–8), S 85 (1680–81), S 149 (1683–4) and S 4 (1708–9), all housed in the Oriental Department at the Sts Cyril and Methodius National Library in Sofia. On the *sicill* collection in Sofia, see Ivanova 2001. For concerns about the reliability of such records generally, see Ze'evi 1998; Gradeva 2005: 152–63; Ergene 2003: 125–41; Agmon and Shahar 2008: 12–13.
 - 11 Despite prescriptions for the keeping of *sicills* (Akgündüz 2009: 205–6) it seems that recording very much depended on the personal wish of the parties.
 - 12 Gradeva 1997.
 - 13 See, for example, R 11, of 1805–1903. Cf. Radušev *et al.* 2003: doc. 471, 175–201. Another register from Ruse (Ruse Historical Archive, no. 2922, dated 1821) suggests that this may have been the local practice. However, in Sofia, *vakıf* documents were registered in the 'ordinary' *sicills*: S 85 contains evidence of both new and continuing *vakıfs*.
 - 14 S 12 contains exclusively divisions of estates and documents relating to inheritance problems.
 - 15 See, e.g., Dimitrov 1981; Gradeva 2004c: 187–8.
 - 16 Mujić 1987.
 - 17 For similar observations on an eighteenth-century court in Anatolia, see Ergene 2008: 29–54.
 - 18 On the theoretical framework of legal pluralism/diversity, weak and strong, and as an attempt to deduce Ottoman realities, see Shahar 2008.
 - 19 Heyd 1960: 3–6.
 - 20 Majer 1984: 17–23.
 - 21 While much remains to be discovered about the specifics of each of these series, the *ahkam* have attracted least scholarly attention. There were also various 'estate' courts – for *ulema* and for the military – which drew these groups partly out of the *kadı* jurisdiction, especially in criminal cases. There is little research on their role and functioning within the judicial system, or for the respective group.
 - 22 Ursinus 2005; Gradeva 2006a. My usage of the term *mazalim* adheres to Heyd's 'the removal of wrongs' (1973: 224–7).
 - 23 Hacker 1994; Gradeva 1997; Kermeli 2007 and her essay in this volume, chapter 24.
 - 24 İnalçık 1982: 440; Gradeva 2004c: 65.
 - 25 Slot 1982: 98–100; Kermeli 2007: 182–9.
 - 26 Pantazopoulos [1967] 1984: 91–112; Gerber 1981; Gradeva 1997: 57ff.; Kermeli 2007: 194–6.
 - 27 Shaham 2006; Shahar 2008.
 - 28 Gradeva 2004d. Elsewhere, however, the situation could be very different; cf. Veinstein 1994.
 - 29 Ivanova 1999, 2007.
 - 30 S 1 bis, p. 269, docs I–XV. These, however, are unique in the *sicills* in Sofia. They might have continued to be issued but were not registered.
 - 31 Laiou 2007: 258–9.
 - 32 S 149, f. 6v, doc. I, of 1684.
 - 33 Ivanova 1990: 33–9.
 - 34 Recorded in S 85 and S 4. The meaning of the term *divan efendisi* is uncertain here.

- 35 E.g., *nahiye* of Razlok, S 85, 1/I, 2/I; for clashes, S 4, 3/I.
36 S 85, 5/II and 7/I; S 85, 16/I; S 85, 63/II resp.
37 E.g., S 85 contains several *vakfiyes*, documents related to the running of Mehmed Sofu Paşa's foundation in the city, changes of *mütevelli*, inspection of repair work, and financial loans.
38 S 85, 179/I.
39 E.g., S 85 contains several documents relating to the dismissal of the current metropolitan; none have yet been found regarding the Jewish community.
40 Gradeva 2010.
41 S 85, 183/I, 199/I, 160/II, 156/I.
42 Non-Muslims serving in the early centuries as auxiliaries in the Ottoman army and, from the seventeenth century onwards, mainly as grooms in the sultan's stables.
43 S 85, 150/III–151, for *bedel-i celepkeşan*; 151/I, for *avariz*; and others.
44 S 85, 185/I.
45 On the *timar*, or *dirlik*, system, see the essays by Metin Kunt and Gábor Ágoston elsewhere in this volume (chapters 7 and 15 respectively).
46 Gradeva 2004c.
47 S 85, 155/I, 154/II.
48 S 85, 177/I, 181/II, 168/III.
49 S 85, 152/I, 238/I, 235/III, 167/III.
50 Veinstein 2001.
51 Veinstein 2000; Çiçek 2002.
52 Tamdoğan 2008.
53 Jennings 1978: 141–5; Canbakal 2007: 125–49.