

The Algerian Judiciary in the Ottoman Era 1700-1830 AD

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Abstract:

In this research, we discuss the judicial system in Algeria during the Ottoman era, identifying the sources of legislation of the Algerian judicial system during the Ottoman era and studying the characteristics and judicial authorities of this period, including the positions and judicial men. And how to approach the various raised questions, in addition to the coexistence between the official Hanafi school of the Ottoman Empire and the Maliki doctrine of the rest of the region, and their interaction with judicial life and new calamities.

Keywords: Ottoman Algeria, judiciary, judicial system, sanctions.

Introduction

The judicial system is one of the important pillars upon which nations are built. In the Islamic world, it is intended to attain the aims and objectives of the Sharia by establishing social justice among peoples. The Islamic period has been targeted by addressing the judicial system that was applied there, especially during the Ottoman period which was rich in events, internal and external, notably as the contact with the Christian world became wider, which made it exposed to many attempts to cause prejudice against it in all aspects, including the judiciary.

So, in this research paper, we tried to understand and discover the judicial reality and its functioning, as well as the type of Algerian justice in the Ottoman era and its most important organs, to clarify the image of the type of justice that ruled the Ottoman state by exploring the contribution of the Algerian judicial system during the Ottoman era for achieving social justice. And spread it among people.

Provided that the legislative prospect was not tackled by many researchers in the history of the Ottoman Empire in general and for the Algerian state in particular, this field remains ambiguous, and some light need to be casted upon its importance and its contribution in promoting the political presence of the Ottoman Empire in the Maghreb region. This urged me to initiate this humble attempt to identify the most important facets of the judicial system in the history of Algeria during its finest moments.

1. Judicial Legislation in Algeria:

With the spread of Islam in North Africa, the legislative judiciary drew their legal decisions from the Quran and Sunnah in various areas of life, and a number of schools contributed to its clarification and explanation, including the Maliki school, which was more common and the rulers took it as a political and judicial basis. ¹

The main reference for this doctrine is the book Al-Muwatta by Imam Malik, which contains the established texts of the Sunnah and the opinions of the Companions and Followers. There is also the

"Book of the Great Compilation" by Ibn Al-Qasim as a second reference, whereas, the book "Al-Mukhtasar Al-Khalil" is considered the applied reference to the doctrine.²

Added to this is the Ibadi School that was widespread in the south, especially in the Mizab Valley and its surroundings, which had its own judicial system and maintained its distinction since the first era. The source of this doctrine in the judicial system was the Wadi Mizab Agreement and the book *Al-Idhah* and *Al-Diwan*, which constitute the pillar of this doctrine.³

With the arrival of the Ottomans, judicial and jurisprudential life was introduced to the Hanafi School as the official school adopted by Turks in Algeria, reducing the usage of the Maliki School. Both doctrines coexisted, with the Maliki School being applied to the local population, while the Hanafi School was specific to the General administrative and political affairs.

Since their entry into Algeria, the brothers Arouj and Khair al-Din wanted to win the affection and trust of the sheikhs and scholars of the region, who controlled the country's inhabitants and tribes. They were therefore assigned tasks in the new government in exchange for their political neutrality. They were given the posts of secretary of state, magistrate, imamate and minor posts, on condition that they would not concern themselves with public matters.⁴

2. Judges:

Islamic scholars are considered the guardians and protectors of religion, the lamps of darkness, the people of knowledge and wisdom, and the soldiers of justice and fairness. In order to put justice in effect, a judicial body is composed of:

A. Muftis:

The Grand Hanafi Mufti is appointed by the Sublime Porte, because his function is directly linked to the Sultan⁵, He was appointed for a period of two years to represent the authority, and this Hanafi mufti was called "Sheikh of Islam". The holder of this title had to be a graduate of the great Islamic schools such as Tunis, Cairo or Istanbul, and the privilege was always given to the Hanafi mufti over his colleague Maliki in terms of favor and opinion.

However, the appointment of Hanafi muftis soon changed to be appointed from Algeria instead of being sent from Istanbul. He was chosen from among the Ottoman notables born in Algeria, including Hassan bin Rajab Shawsh and Muhammad bin Qarman. And from the Maliki side was Ahmad al-Zarrouk ben Ammar ben Daoud.⁶

The mufti is an employee of the government and has no political authority of any kind,⁷ Especially after the deterioration of the scientific and cultural status of the scholarly class and their tendency to seek money, prestige and fame, the appointment of scholars to judicial and other positions is done through the Pasha, and we find that this position was inherited within some families, such as Ibn al-Annabi family and the Ibn Badis and Facon families in Constantine.

The Ottomans also gave priority to the Hanafi imam in issuing fatwas over the Maliki, because it was the doctrine of authority in the country, even though the majority of the population was followers of the Maliki madhab. The task of issuing fatwas was the highest rank in the judicial hierarchy, therefore, conditions must be met for the holder of this position: that he has a high degree of knowledge and depth in jurisprudence and a solid knowledge of the Qur'an and its sciences, in addition to the sciences of hadith, analogy and other sciences, the integrity, a strong personality and the courage to have a firm opinion when speaking the truth.⁸

Therefore, we find some scholars declining this position, fleeing and avoiding the rulers, as happened during the reign of Muhammad Bakdash when he asked Abu Abdullah Muhammad bin Ahmad Al-Buni to take up the position of fatwa, but he refused, so he was forced to accept it. Other scholars, their rejection led them to death, isolation or even exile.⁹

B. Judges:

The judiciary comes after the fatwa, and the judge has to implement and put into effect the decisions concerning community affairs. It is directly related to the problems of daily life, such as disputes, marriage and divorce, sale and purchase contracts, waqfs and rent. Therefore, they must¹⁰ familiarize themselves with the criminal laws and Sharia rulings in Islam in order to implement their rule when an incident occurs in the country or in the areas under their control¹¹. In addition to mastering the means of ijihad in the Arabic language and the sciences of Sharia, and having integrity, chivalry, competence and fear of God.¹²

The judge is considered the deputy of the ruler, so he is administratively subordinate to him, which makes it easier for the rulers to dismiss the judge at any time or even without cause, although the judicial function enjoys administrative independence, it falls under the function of the Imamate, which is one of the powers of the sovereign, and they are appointed by the Mufti or Al-bay, There were judges who followed military campaigns inside cities and during naval invasions abroad, and they were called military judges. Among them was Abu Hafs Omar bin Muhammad. He held this position during the reign of Muhammad Bakdash Pasha.¹³

One of the duties of the judge in daily life is to provide public services, such as demolishing pavilions that obstruct traffic, repairing fortresses, ensuring the material and moral rights of individuals, preventing injustice and harm, and taking care of the waqf affairs and the property of the weak, orphans, and minors.¹⁴

However, despite this, issuing fatwas and judiciary were not far from the influence of the rulers and senior officials, as they sometimes tried to put pressure on them to manipulate their decision, but the judges worked to confront these practices, and we find Mustafa Pasha, who worked to restore his endowments, but in vain, faced by a rigid position of the judges on the issue. He had an endowment on a water source entering the city in 1799 AD, and he wanted to take it back, so the commander of water sources disputed with him about it, later the judge ruled in favor of the commander of water sources.

The judge received a fee estimated at a single maouzouna for signing or concluding a contract, and the fee is higher when it comes to selling a property because the judge investigates the property in terms of ownership and examination fees, and by sharing the inheritances, he received a fee estimated at ten percent¹⁵. They also received their salary from the treasury or from endowments.¹⁶

C. Notaries:

Judges appoint notaries to this position who are known for their fairness, integrity, insight, knowledge of documents and a good understanding of language, religious duties and inheritance. Notaries are the only ones who have the right to testify. They act as legal witnesses and assistants to¹⁷ the judge. They document the notary's fees, including estates, wills, indemnity, rental and purchase agreements, and provide the data to the judge, on which he bases his decision, these fees only become effective or official after they have been signed by the notaries and approved by the judge.¹⁸

Considering that the majority of Notables were scholars, they used the pen to encrypt contracts and documents to prevent fraud. These notaries received salaries from their clients according to the¹⁹ importance of the acts, sales, marriages, inheritances, etc., that they gave them, on the basis of generosity. It was enough for them to live a life of subsistence and chastity.²⁰

D. Persons of experience, insight and knowledge: (Secretary)

This is a temporary body established to provide the assistance the judge requires in any matter related to an endowment, real estate or inheritance. These were persons of experience and knowledge that they have acquired from their professional activity which was led by trustworthy people,²¹ including traders, farmers, builders..., it was a temporary advisory body to the judge on matters of²² repair, assessment, demolition, evaluation...²³

3. Judicial Bodies:

Disputes on various subjects, types and degrees were decided by official judicial bodies. These bodies were represented by the Maliki and Hanafi Courts, the Scientific Council and the Pasha Council.

A. Courts:

During the Ottoman era in Algeria, the judicial system was based on two courts: the Hanafi and Maliki, each one with its own judge who participated in the Scientific Council and the difference between them was possible in specific cases. The court received trials and complaints every day except Thursday, so that the Ottomans, including employees, soldiers and koroghillis, went to the Al-Hanafai court, while the locals went to the Maliki court.²⁴

These daily courts strive to simplify administrative procedures and bring them closer to the public, as they allow everyday issues such as sales, endowments and inheritances to be dealt with. Thus, only problematic cases are submitted to the Scientific Council that cannot tolerate delays, such as serious disputes. For example, a dispute took place between two neighbors, and one of them refused to let his neighbor pass in front of the door of his house with his animals, and his excuse was that he was afraid of damaging his wall because the road was narrow and the animals were loaded, so the two argued and went to the house of administrative affairs, so the ruler directed them to the court accompanied by a Shawesh to decide their case.²⁵

But the presence of two courts has had the effect of evading the court decisions by exploiting the sectarian differences. For example, there are people from the Maliki madhab who approach the Hanafi court to get rid of the restrictions of their madhab, such as the decisions on private endowments, the Hanafi madhab allows numerous and broad formulas for real estate endowments, unlike the Maliki madhab²⁶.

The Hanafi madhab considers that it is permissible for the owner to endow his property for himself. It is also permissible to replace an endowment with another property in case of interest. It is also permissible to sell an endowment land that has been ruined with the intention of restoring it. These opinions are not permissible according to the Malikis. Regarding endowment, the Hanafi madhab gives privilege to the necessity in the management of endowments, while the Malikis restrict the terms of the endowment literally and keeps the devotional aspect of it.²⁷

Such as buying, selling, renting, marriage, divorce... etc, the Dey delegated these matters to the judges to examine, decide and put them into effect quickly. Every Muslim had the right to present his case to any court he wanted; Hanafi or Maliki, and the last word belongs to the judge, who is assisted by one of his subordinates, as well as two clerks who record the decisions and document the contracts, A Shawesh is also added to this, and his role is to provide security during the trial hearings and to supervise the execution of the decisions made by the judge. For the example of lease contracts, it is²⁸ not valid or legally recognized, until it is drawn up by two official notaries. So each judge Hanafi or Maliki had 12 notaries, who draw up all the contracts in all private transactions. The two notaries sign the document and seal it with their seals, and then the judge puts the stamp.²⁹

Considering that the judge is the official spokesperson of the law, he has often been subjected to pressure and his justice has been bought with some gifts. The litigants also have the right to appeal the judge's decision by resubmitting their summons to the Scientific Council, its word is final. Therefore, the court is considered as the first instance and the Scientific Council will be a court of appeal.

The validity period of contracts between individuals for houses, orchards and farms, legally, must not exceed three years, and any contract exceeding this period is invalid. The disputed parties plead³⁰ and defend their cases alone, without the assistance of lawyers, and immediately after the pleading, the judge renders his decision.³¹

The judge, assisted by his subordinates, is responsible for drafting various contracts in commercial and maritime matters. As for those in which one of the parties is a foreigner, he allows the intervention of consuls of foreign countries in court to consult them, as well as in disputes involving

Muslims parties; this is what allowed the consuls and the Christian clergy to intervene in the affairs of the country.³²

Criminal cases, such as murder, theft, treason and conspiracy...etc, were within the jurisdiction of the Dey or Bey, and they made decisions on them. However, in the Sultan's Dar, the Dey delegated Khoja Al-Khail to judge the Arabs, the Kikhians to judge the Andalusians and the Agha to judge the Ottomans.

The Day or Bey had a security body consisting of 11 Shawesh, dressed in green uniforms, carrying out the death sentence against non-Turkish Muslims in front of the Government House.³³

B. Scientific Council:

This legislative and judicial body was established to overcome the conflict between the two sects and to bring their visions closer together so that this disagreement does not disrupt public administration. This was exclusive to only scholars not people. The success of this body is apparent from its continuation throughout the three centuries of Ottoman rule, and this body is composed equally of scholars from both sects, It includes both the Hanafi and Maliki muftis and the Hanafi and Maliki judges, and the chairmanship of this council is held by the Hanafi mufti, because it is the doctrine of authority, so the Maliki mufti had the role of approving decisions, managing the Grand Mosque and its waqfs, as well as appointing Maliki judges in the country.

Therefore, the Grand Mosque became a place of debate and exchange of jurisprudential opinions, and sometimes these opinions reached the point of conflict, as happened between the Maliki mufti Muhammad ben Said al-Hanafi, called al-Naqqar. The Pasha would intervene to resolve the dispute between the two muftis, and sometimes the two muftis were dismissed, as was the case with Mufti Muhammad ibn al-Annabi al-Hanafi and his colleague al-Maliki, Ali ibn al-Amin, and they were replaced by Mufti Muhammad al-Hanafi and Muhammad ibn al-Haffaf al-Maliki in 1811.³⁴

The city of Algiers was not the only one to have this council, but in every large city or regional capital, there is a learned council composed of a Hanafi mufti, a Maliki, a Hanafi and a Maliki judge, and they were appointed by the Dey or the Bey.³⁵

The Scientific Council meets every Thursday at the Grand Mosque in the presence of judges, scholars and the Pasha or his representative, and fatwas are issued concerning public issues and personal disputes that arise between members of society. To decide upon cases which have escaped the courts of appeal, even the problems that arise between government agencies and state employees on the one hand, and members of society on the other, testify to the strength and influence of this council.

For example, there was a dispute that arose between the estate house and the heirs of a deceased woman. The head of the estate house annexed the estate of the deceased woman to the treasury, so that the heirs of a deceased woman argued with him before the Scientific Council of Blida, they confirmed that the property constituted a family endowment, which they proved by a deed of endowment issued by the court of Hajout. After hearing both parties, the council ruled in favor of the heirs.³⁶

As for the execution of the Council's decisions, there was a military attaché who attended the sessions and received orders directly after the contracts were drawn up and signed by the President of the Council so that he could execute them. The judge ordered his two witnesses (scribes) with the presence of the Bash Yabashi, the military representative, to draw up the contracts. His presence was to represent the central authority and give prestige to the council among the members of the community.³⁷

The Council relies on craftsmen and experts in technical matter and takes their opinion in consideration for the judge to make his decision. You will find the Secretary of Masonry Craft present at the meetings of this council, which indicates that the Secretary of Crafts were in contact with this council and the judicial authorities. They consulted experts on issues that could be limited to cases of damage between partners and real estate disputes, as well as issues of sale, rental and repair of damaged property³⁸

One of its tasks is to review major cases that have not been decided by the Sharia courts and to distribute inheritances according to Sharia, after all Muslim litigants enter the mosque.³⁹

C. The Council of Dar El-Imara:

This is the third body to which disputes and cases are submitted. This council is headed by the Pasha or the Dey, and it is considered as court of first instance before which cases are brought by litigants. The Council of Dar El-Imara is on the same level as the Scientific Council held in the Grand Mosque, and it did not have a specific day for its meeting, all week days depending on the case. Their members were not specific like the Scientific Council or the courts, besides, that depended on the availability of the Pasha or his representative to receive the complaints of individuals.⁴⁰

As for the formation of the Council of the Dar El-Imara, it varied from time to time, depending on the political circumstances of the moment, and sometimes according to the will of the Pasha who was the head, and it took place in the presence of two Maliki and Hanafi muftis and judges. It is similar to the Scientific Council in terms of composition, and sometimes the Dey directs the disputes to the Scientific Council, for examination and decision in accordance with the Sharia.⁴¹

D. Ibadi Court:

In addition to this, there is a special court for the Ibadi sect in the Mizab Valley, whose legislative bodies are composed of Mizab scholars and members of AL-Azabah Council, and which meet in the Sheikh Abdul Rahman Al-Krthi Mosque, and often in the Sheikh Ammi Said Ben Ali Mosque, to establish laws and decisions on crimes, offenses and transactions in accordance with Islamic jurisprudence. The scholars of the Ibadi madhab followed the jurisprudence of the Sharia, that is, the judicial laws.⁴²

The judicial power of the Mizab Valley is in the hands of the AL-Azabah organs to resolve disputes, deriving their law from what is called the Mizab Valley agreements. If the case has no text in these agreements, they refer to the Book of Clarification and Diwan, which are the pillar of Ibadi doctrine. As for contracts, they form a committee called Bash Adl where the conflicting parties go to register their cases for a small fee.⁴³

In addition to the courts of first instance, there are courts of appeal in Wadi Mizab, called "Council of Ami Said", and they are composed of eminent judges and scholars, headed by a distinguished scholar. The council holds its sessions every three months and examines the cases coming from the courts of first instance that are submitted to it, through its general registrar, to comment on them and rule sometimes by supporting the first judgment and sometimes by refuting it.⁴⁴

4. Judicial power in cities:

Justice is applied in the city by a stable and well-organized judicial system, composed of two parts: the executive and the legislative.⁴⁵

A. The executive apparatus:

It is supervised by the Dey and assisted by the Diwan to render judicial decisions, especially important cases, and the others are referred to the judges. The execution of decisions is ensured through:

*. **Agha of Arabs:** Responsible for carrying out death sentences in the homelands and in the areas adjacent to the cities, he attends their execution and application in the markets to be an example for others, in addition to the task of leading the judicial sessions and periodically in the homelands.⁴⁶

*. **Governor:** He is responsible for the police in order to prevent crimes and offenses committed in cities such as Blida, Koléa and Cherrhell. He is assisted by a group of agents who are subordinate to him to implement his decisions.

*. **Caid:** He has the same functions as the governor outside the cities. He received his orders directly from the Agha of the Arabs, so he instructs the police to monitor public conditions, impose fines, penalties and imprisonment like the Caid of the city of Algiers, he received orders to carry out a death sentence from the Agha of the Arabs near Bab Azoun, except for the commander of Sebao who was

the only one able to carry out the death penalty. The Caid also carries out night patrols with armed agents to ensure the security and stability of Algiers.⁴⁷

B. The legislative body:

Headed by scholars and jurists, including muftis and judges from both Hanafi and Maliki madhabs, the Scientific Council resolves disputes in various areas of the city.

In the homelands, the judge was appointed by the Agha of the Arabs after consulting the judge and the Algerian scholars concerning his competence and wisdom, and the Dey appointed him officially. The judges of the homelands and villages have Shawesh and up to two or three notaries who attend the sessions, and they serve as necessary witnesses to render judgments or draw up contracts. Among these judges is Muhammad ben Naji Omar, judge of the homelands of Mozaya in 1781.⁴⁸

In some homelands, there are judge and Caid who decide on important matters, however, less important cases are usually left to the discretion of the tribal sheikh. In the Baylek, there are Caids and tribal sheikhs who are responsible for resolving disputes between members of their tribes. The Caid, who is appointed by the Arab's Agha, resolves disputes between tribal sheikhs, where the tribal sheikhs resolve disputes between members of their tribes.⁴⁹

5. The Judiciary in the Countryside:

The esteemed position of the Sheikh gives him the power to legislate and implement, in the manner of a judge who rules in accordance with the Sharia law. In villages and remote areas, the judge trains his assistants and sends them to small villages to resolve complaints, cases and render their decisions on his behalf. They were called agents, and we see the judicial authority in the hands of the Sheikhs, marabouts and group.⁵⁰

A. Group (djama'):

It is composed of notables of the tribe, regarding lineage, leadership and knowledge. It also plays the role of moral authority, enacts laws and ensures their application. Each member of the tribe is subject to its rule. If anyone disobeys the rules, his property is confiscated as a punishment and sold.⁵¹

It appoints the sheikh of the group (djama'), who becomes the leader who ensures the application of the group's laws (laws of djama'). He decides on disputes that arise between members of the tribe and on disputes related to the division of the family domain, and they are settled solely by the group (djama'), away from any interference from outside the tribe. The family domains are considered beyond the power of the judge, who only decides on the authority's lands.⁵²

The tribal sheikh is considered the mediator between the central administration and the entire rural population, where the marabout or chief draws his authority from the influence of his Zawia and the attachment of the population to it, which makes him a key figure in the administrative and judicial organization.⁵³

If a criminal or a thief enters the area under the rule of the tribal sheikhs, they arrest him and return him to the central authority. If a crime occurs in their area, the tribe becomes responsible for the act until they discover the killer or the criminal. Failing this, they will have to pay a sum of diya according to Hamdan ben Othman Khoja estimated at 1,000 knives (2,000 francs), presented to the victim's family or to the treasury if he has no legal heir.⁵⁴

B. Al-Murabit and the sheikhs of the Zawaya:

They were granted the power to apply the rules of Islamic Sharia and preserve the customs known in popular memory. The rural judicial system is inspired from the "Nawazil" judicial texts, and the judicial documents show that the decisions of the judges in the homelands and of the sheikhs and marabouts in the groups were consistent and inspired from the book "Mukhtasar Al-Khalil" of the Malikis. In the absence of the judge, they returned to the scholar or the jurist to draft contracts and render judgments, which in some cases was influenced by local customs.⁵⁵

6. Penalties:

The penalties varied according to the degree of the act, from pardon to death sentence, which was issued from the central authority represented by the Bey and even the Bey, who in turn authorized the execution of the sentence to their assistants. Crimes of murder fell under the jurisdiction of the Pasha or his ministers, therefore, any act of theft, banditry, arson, treason and adultery are sometimes punishable by death.⁵⁶

If someone kills a Turk, the guilty will be thrown into the sea from a highland. If the killer is not identified, the residents of the neighborhood in which the body was found will be subjected to collective punishment⁵⁷. As for a Turk, if he commits a crime, he is secretly strangled in the house of the Janissary Agha so that his dignity is not insulted. If the criminal is a local, he is hanged in a public square, his head is cut off or he is thrown from the top of a wall. A sharp iron hook catches him as he falls so that he experiences the most horrific types of torture before he dies. If the executioner is given a sum of money, he strangles the guilty before throwing him over the fence⁵⁸. The judgments are carried out openly in front of the the local population after the news is announced in the markets.⁵⁹

If the criminal is Jewish, he must be beheaded, hanged or burned alive. In the second half of the 18th century, Sheikh Muhammad al-Hanafi al-Jaza'iri issued a fatwa authorizing the burning of Jews and Christians if they insulted Islam.⁶⁰

Nevertheless, small offenses like starting small fires, the guilty was punished with a fine, whipping, or forced labor in chains, especially after the abolition of Christian slavery. This punishment became more common because it provided for unpaid work, and it became a substitute for slaves to perform work related to the public interest.⁶¹

Conclusion:

Through this brief presentation of the judicial system in Algeria during the Ottoman era, we can draw a list of conclusions which are as follows:

- *. Judiciary men held high academic and religious positions in the Ottoman administrative system in Algeria, including in the judiciary. They promoted the scientific movement and contributed to the building of society, by resolving disputes and redressing oppression, in accordance with Islamic Sharia.
- *. Assuming the position of Sheikh Al-Islam, occupied by the Hanafi mufti in Ottoman Algeria, was only exclusive to those who had depth in knowledge, sobriety of mind and strength of character. These features were embodied in Hussein, and Mahmoud al-Annabi, bring an end to sending Sheikh Al-Islam from Istanbul.
- *. It becomes clear, from presenting all those cases that social justice was accessible to all individuals who defended themselves or through agents, and if they deem the decision not being fair, they submitted it to the Scientific Council for final decision or to the Council of the Dar El-Imara, which is a kind of court of arbitration at that time.
- *. Many live examples of the sense of responsibility of these judges and muftis in dealing with calamities and cases in accordance with the rules of Sharia and religious texts so that security and safety prevail for individuals, which made Western writers who visited the city of Algeria agree that it was a much safer city than the biggest cities in Europe and even America at that time.

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