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WHEN BORDERS BLURRED: A SAMPLE OF DEMARCATION PROCESS OF THE COMMON FORESTS IN THE LATE OTTOMAN EMPIRE

Zeynep AKAN YETİŞİR*

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ABSTRACT

In 16 January 1905 the village headman of the Kaymarofça (Priştine) and two members of the village councile wrote a petition to Inspectorship of Rumeli Province on behalf of village people, and lodged a complaint with neighbouring villagers of Kraçiçe (Prezrin) along of their encroachment to the village coppice. This was an usual plaint at first blush, however the actual situation was more complex for the case was intervened two different offices: the courts and local councils. In such a context, I propose that to whom belongs village forests and how their borders define in case of controversy constituted main tensions between neighbouring villages. In this paper, on the basis of a conflict story, I will first discuss the problem of jurisdictional question in the Ottoman Empire concerning village forests. Secondly, I will scrutinize the process of trial and demarcation, by focusing on their actors, methods and potential outcomes.

Key Words: *Ottoman Empire, common lands, village coppices, local councils, nizamiye courts*

Sınırlar Karıştığında: Geç Osmanlı İmparatorluğu'nda Köy Ortak Ormanlarının Tahdidi

ÖZET

16 Ocak 1905'te Priştine'ye bağlı Kaymarofça Köyü'nün muhtarı, köy ihtiyar heyetinden iki üye ile birlikte Rumeli Müfettişliği'ne hitaben bir şikâyet mektubu yazdılar. Şikâyetlerinin nedeni Prizren'e bağlı Kraçiçe Köyü ahalisinin köy

* Research Assistant, Bursa Uludağ University Faculty of Arts and Sciences Department of History, Bursa / TÜRKİYE, zeynepakan@uludag.edu.tr

baltalıklarını "fuzûlî zapt" etmiş olmasıydı. Aslında şikâyet ilk bakışta klasik bir ortak arazi anlaşmazlığıydı. Ancak anlaşmazlığa bölge nizamiye mahkemesi ve yerel meclisler gibi farklı kurumların müdahale etmesi durumu karmaşık bir hale getirmişti. Bu çalışma köy baltalıklarının tahsisi ve tahdîdi meselesini iki köy arasında yaşanan bir baltalık anlaşmazlığı üzerinden tahlil etmeyi amaçlamaktadır. Çalışma erken yirminci yüzyıla tarihlenen ilgili anlaşmazlık üzerinden kurumlar arası yetki uyuşmazlığı başta olmak üzere çözüm süreçlerinin yöntemlerine, aktörlerine ve potansiyel sonuçlarına odaklanacaktır.

Anahtar Kelimeler: *Osmanlı İmparatorluğu, ortak araziler, baltalık, idarî meclisler, nizamiye mahkemeleri*

Introduction

In recent years, the problem of governing and exploitation of common resources began to arouse interest of Turkish historians as a result of the rise of environmental history in the academic milieu. This fresh area of research increased in importance as in the various part of the country the natural resources' protection had been postponed at the expense of economic and infrastructural development. The contemporary historians, thus, more and more engaged the questions of "How these resources were governed and exploited in the past?", "Were there various forms of the management and usage?", "Can the historical examples guide us to succeed in the contemporary problems of the natural resources?" and so on. The questions may be increased, but the focal point in here, I think, is the search for sustainability of these resources.

Aside from its pragmatic stimulus it is the fact that the struggling with historical commons as the subsection of environmental history is promising area for the Ottoman historians.[1] In the Ottoman archives

[1] In Turkish historiography there are some subsidiary researches approaching to the problem of common resources: Barkan, 1940; Aytekin, 2006; Terzibaşoğlu, 2004: 153-180; Dursun, 2007. This problem also aroused interest of some academicians who occupied the chairs of law and forestry departments in the Turkish universities: Onar,

abundance of relevant documents offers researchers to explore one of the specific way of the governing and exploitation of the commons. Considering its huge time span and territorial extent the administrative policies of the Ottoman State, needless to say that, had drastically influenced on not a few of these resources from Balkans to eastern part of the empire. This is not to say that it was the only state policies that made a mark on the common resources, but, the beneficiaries of these resources continuously affected them with their ways of exploitation.[2]

This paper, setting out a conflict story, aims to track the Ottoman way of governing a certain type of these resources: the common forests. In the Ottoman Empire the term of common forests did not correspond to a single type of forest, but there were variety of commonly used forest such us *cibal-i mübaha*, village woodlands or even state forests.[3] Before the development of scientific forestry Ottoman state managed forests with aim of satisfying financial and military needs (Dursun, 2007: 373). These means that until the last quarter of the nineteenth century these resources were not governed by strict rules as long as encroachments did not threaten the forests reserved for the dynasty and imperial shipyard. In

1944: 479-535; Köprülü, 1949: 703-726; Cin, 1981: 311-379; Surlu & Cin, 2000; Koç, 2005: 231-257; Birben & Güneş, 2014: 26-32.

[2] In the last ten years the researches focusing on the Ottoman commons began to increase. As a pioneering works of the fields, these researches tried to uncover the governance and usage practices of Ottoman commons from water resources to the forests and pastures: Dursun, 2013; 2017; 2019: 260-284; Öncel, 2014; Akyalçın Kaya, 2014; Birben & Güneş, 2014: 26-32.

[3] In theory the state forests could not be included to the common lands, however, in practice these forests were open to common usage in some instances. For example, according to 5th article of 1870 Forest Regulation villagers who were devoid of a village coppice could supply their essential needs from these forests (*Düstur*, 1. Tertib, Vol. 2, p. 404). In a similar way the villagers who were devoid of a village pasture could graze their animals in the nearest state forests (BOA, ŞD, 1739-1, p. 22). The state forests were also open to strictly-regulated but free usage to whom deprived of a village coppice and made their living from the forests (*Düstur*, 1. Tertib, Vol. 3, p. 286-287).

the 1858 the first modern Land Code of the Empire regulated the usage practises of village woodlands and *cibâl-i mübâha*s, however, in conformity with the general mood of the Code, these regulations consisted of the affirmations of ancient practices.[4] The Foresty Regulation of 1870, on the other hand, with its first outline of a forest categorization, was detailed and strictly regulated usage practices on the coppices and state forests. The Regulation of 1870, furthermore, had drastically changed the usage practices of forests by including *cibâl-i mübâha*s to the state forests category.

Until the 1870 the *cibâl-i mübâha* forests were the nearest one to the term of open-access commons owing to the fact that it was open to every single person in the empire, and as the term of *cibal-i mübaha* suggests, its historical roots extended to the Islamic law.[5] Before the Regulation of 1870 there were very few rules and regulations for these forests. The usage practices were regulated through customary rules and the state did not intervene local affairs related to these forests, unless there was dispute among claimants (Dursun, 2007: 65) or an encroaching to the trees suitable for the imperial shipyard.[6] In doctrine there are five fundamental criteria that describe usage practices. Firstly, these forests could not be subject for private property. Secondly anyone had to right to benefit. Thirdly utilization was free as long as had been performed for non-commercial purposes. Fourthly utilization was protected from interference, and lastly anciently was the characteristic feature of these forests (Birben & Güneş, 2014: 30-31).

[4] For the works that emphasized the conservative tone of the Code: Barkan, 1980: 372, İnalcık & Quataert, 1997: 856-861; Gerber, 1987: 69; Kenanoğlu, 2002: 116.
[5] In the Islamic law, based on the Prophet's expression, the water, fire and grass cannot be taken possession, even by the State. The products of self-growing forests were also interpreted as one of these categories (Köprülü, 1949: 708-709).
[6] BOA, Rumeli Ahkâm Defteri, nr. 84, page no/document no: 11/48; 49/220.

The second type of commonly used forests, village coppices (*baltalık*), were the woodlands which were appropriated one or a few villages. Coppices comprised of the small groves or of a small and determined part of a vastly forest. These resources were appropriated to the villagers for their essential needs from supply for building material and agricultural tools to the fuel, hunting and gathering (Koç, 2005: 239; 2006: 278) The utilization from coppices was free but the product was subject to tithe if it sold (Dursun, 2007: 258). Unlike from *cibal-i mübaha*, the exploiters of these common resources could exclude outsiders from the resources.

State forests, the third and latest one, were not literally common forest, however, in terms of various exploitation practices they were resembling to commonly used resources. The state allowed villagers to furnish their domestic necessities in these forests, such as purveyance of timber for house construction and renovation, of fuel, woodcutting for the production of agricultural tools and carriage, and gathering fruit. The villagers also had pasture rights on these resources within certain limits.[7]

The existence of these three types of commonly-used forests in the Ottoman Empire cannot be understood without uncovering the term of "common resources". Ostrom, in her brilliant work, defined common pool resources (CPR) as "a natural or man-made resource system that is sufficiently large as to make is costly to exclude potential beneficiaries from obtaining benefits from its use" (Ostrom, 1990: 30). As it appears Ostrom defines common not as a resource type but as a "system" in which the governing and usage practices are organized. In this system users and using practices are clearly defined by a regulatory agency. This agency varies from state to autonomous corporations and groups. The commons,

[7] These usufruct rights were clearly defined in the 1870 Forest Regulation. This regulation asserted that any kind of exploitation of state's forests products for commercial purpose will be fiscalized by the State. *Düstur*, I. Tertib, Vol. 2, p. 404; Dursun, 2007: 243, 281.

secondly, is associated with the term of property. When one refers a common it compulsorily penetrates the area of property. What make common a property are the rights and duties of participants and nonparticipants in resource extraction, and the absence of rights and duties means that institution of property does not exist (Stevenson, 1991: 49).

In the common debates the other problematic issue is the making a distinction between commonly used resources according to their participants and extraction types. It is admitted that if a resource is exploited by a certain group under the fixed extraction rules the resource then be called as "common property". This is a type of property, and in here there are well-defined members who have exclusion right to non-members. The absence of these conditions refers a different situation: open-access. These resources can be called as public goods and, in this particular case, consumption of the good is nonrival and, exclusion from benefits cannot be enforced (Stevenson, 1991: 54). The commonly-used resources, alternatively, can be treated as a single category, but in here, too, there is an essential ramification as regard access types. From this perspective, common resources split into two main branch, the limited-access common resources and open-access common resources. In the first condition the resource is exploited by well-defined group members and extraction is regulated. The open-access common resources, on the other hand, is not subject to such regulations (Ostrom, 1990: 48; Stevenson, 1991: 3).

As a property type the common property, on the other hand, are discussed in regards to its efficiency. From Hardin's article, the accepted opinion was that the common is destined to collapse owng to fact that the exploitation of the users are mainly motivated by self-interest (Hardin, 1968). This stance, to avert overuse, stipulates one of the recipes of nationalization or privatization (Hardin, 1968; Demsetz, 1967; Welch, 1983). However, notably Ostrom's pioneering works, researchers began

to remark that it is bootless to seek a single solution by reason of the diversities of the problem. These researchers offer a whole range of path, which varied from autonomous mechanism consist in voluntary participation of users to hybrid or poly-centric systems which comprises local attendance, public institutions and state's supervision, for the sustainable and efficacious management of the commons (Lewis & Cowens, 1983; Blomquist & Ostrom, 1985; Gibson et al., 2000).

Going back to the Ottoman common forests, among the aforementioned three categories -*cibâl-i mübâha*, village woodlands and state forests- it is the village woodlands that is literally correspond to common property. In the Ottoman Empire this type of forests was appropriated to one or several villages in return for certain conditions. The appropriators could supply their necessities in these woodlands, and it was expected them to conserve these resources. In the classical period, in case of controversy the matter of allocation was resolved by the *kadi* and he drew up a *hüccet* which indicates entitled party (Koç, 1999: 145). From the nineteenth century onwards this responsibility was consigned to the local councils, and then *nizamiye* courts.

This paper deals with a conflict story in which these two institutions were simultaneously involved. The story dates back to the early years of the twentieth century and involved two neighbouring Rumelian *kaza*s. The object of the conflict was the woodlands of two villages, Kraçiçe village of Prezrin and Kaymarofça village of Priştine. The two sides of the conflict were accused each other to infringed upon woodland's boundaries. The borders, actually, was previously determined by the provincial councils of Priştine and Prezrin, however, this arrangement did not satisfy one of the parties.

Reordering a Village Woodland: Who is the Authority?

Before coming on the curious conflict story of these two neighbouring villages it must be stated that resolving the conflicts of the common lands, in these decades, was a troublesome issue for the

authorities. From the second half of the nineteenth century onwards disputes on the common property, such as village woodlands, *cibal-i mübaha*s and meadows, began to increase due to the dissolution of the traditional usage practices. The increase in land value and the emergence of the new economic opportunities transformed land use practices in the region (Palairet, 1997: 43-46). In addition to this, the juridical regulations of the central government escalated the quantity and the dose of the quarrels.

Concerned to land disputes, the first rupture from the classical praxis was the empowerment of the local councils. Until the second half of the nineteenth century matters related to landed property, as were all other disputes, were under the jurisdiction of the sharia courts. However, from the 1840s onwards, these councils started accumulate power relating to local activity, and as interpreters and implementers of the central government's rules and regulations, they became to impact upon urban and rural property. The 1864 Provincial Law complicated the state of affairs by felling the land disputes under the jurisdiction of *nizamiye* courts (Terzibaşoğlu, 2013: 28). The clash of jurisdiction between newly-formed *nizamiye* courts and local councils faded in more and more in the following decades.

The dispute between Kraçiçe and Kaymarofça villagers over the village woodland is one of the perfect reverbation of this jurisdictional confusion. The case firstly was on trial by the local councils of Prezrin and Priştine and later on by the lower court of Prezrin. This alignment, essentially, was an unusual situation for the incapability of these courts on common property disputes was reported to the *Sadaret* just nearly a year ago. In 8 February 1903 the Inspectorship of *Rumeli* Province wrote a telegraph and asked for an administrative solution for the disputes on common woodlands and pastures. The justification of this demand was the longevity of the cases in the *nizamiye* courts and the dissatisfaction of the parties after the judgement. Disputes on these land, according to

statement of the Inspector, was reached a serious levels in the region.[8] The decision of the *Sadaret* was reached exactly two months later to the Inspectorship, and in this two-months period various offices such as ministries of Justice, Interior and Forestry, and the Council of Ministers have partaken the process.[9] After a series of correspondence between various offices, the Council of Ministers introduced a solution that comprised the collaboration of local and central officers. According to new order, matters related to common woodlands and meadows in Rumeli Province would be resolved by the collaboration of a civil servant and the officers of imperial register and forestry. The officers would made an exploration in the disputed area and determine the borders in accordance with information of neighbouring villagers, custom and *hakk-ı karar*[10]. The pending cases in the nizamiye courts would be transferred to the local councils, and these courts, from now on, would only deal privately owned lands.[11]

The details of the decision were expressed a month later. The document dated 4 May explained the process pace for pace. Above all, the central government advised the local authorities of being unbiased for fear of the escalation of events. Then it was elucidated how the disputes would be dissolved. Firstly, it was required to locate the disputed common woodlands and meadows in Rumeli Province, and then a persevering and confidential civil servant, accompanied with the officers of imperial registry and forestry, would be sent to the disputed regions.

[8] TFR.I.A 4-399, p. 3

[9] BEO,1996-149700, BEO, 2040-152931.

[10] The usage of this term for a common land is quite interesting. This term, originally, refers the acquisition of permanent rights in state (mîrî) lands after a period of ten years cultivation. In the common lands this kind of time-dependent right acquisition was not valid. In the documents related to common lands the most frequent statement is "from time immemorial", and this phrase refers a very old times that was remembered by anybody. I think the term of "hakk-ı karar", in here, was used for the following situation that if the disputed land appeared as mîrî.

[11] TFR.I.A 4-399, p. 1.

If the parties were dissatisfied with the solution, the case, then, could be transferred to the local councils of the related provinces. The allocation of the disputed common lands would be vested in these councils and, when the councils reach a decision, a copies of judgement would be given to the parties.[12]

Two Exploration, Two Different Borders: Who Belongs the Village Woodland?

Going back to the conflict story, we see that that this order was partially implemented in this case. According to the petition of Kaymarofça villagers, the conflict was dissolved under the supervision of the officers which appointed by Prezrin and Priştine councils. In the document it is not expressed who these officers were, but the context of the document indicates that the case was resolved only by local councile without the intervention of imperial registry and forestry. However, the local council keep on the right side of the central government's order regarding the exploration of the disputed land and the granting to parties the copies of final decision.[13]

The intervention of the administrative councils of the two *kaza*s to the case is quite interesting. According to the order of central government it was the *provincial* council which had judicial power on such cases. However, in the following parts of the document there was no objection related to this intervention, rather we see an implicit approval of the local officials such as the governor scribe of Kosova. In his report which send to *Rumeli* Inspectorship, he defined the case as *administratively resolved*.[14]

The basis of this approval, in this case is, even, opaque it is clear that the jurisdictional confusion on common property disputes presented

[12] TFR.I.UM 2-136.
[13] TFR.I.KV 88-8709, p. 7.
[14] TFR.I.KV 88-8709, p. 11.

a serious problem in the other regions of the *Rumeli* Province. In the document dated 4 April 1907 the governor of the Manastır reported to Inspectorship that in some districts disputes on common property were judged in the local councils of the related districts and this intervention engendered some difficulties. According to the governor's report most of these council's decision did not satisfy the parties and, therefore it was required to rehear the case in the provincial council. The governor inserted also that some of the local officials was perceived the order as granted right to their districts.[15]

In the conflict between Kraçiçe and Kaymarofça villages, the most interesting part of the case, however, neither the absence of the central government's officials nor the interference of the *kaza* councils. In this case the application of Kraçiçean people to the Prezrin lower court after the decision of the *kaza* councils was more problematic, forwhy, as mentioned above, the jurisdictional authority of these courts related to common property disputes had been transferred to the administrative council of the province. However, in the document, debates on the validity of this application indicates that there was no clarity concerning application. This jurisdictional conflict was clearly seen in the correspondence of the various offices. For instance in a telegraph which sent to Kosova provincial office in 29 January it has been stressed that the interference of the *nizamiye* courts to the common property disputes was an illicit act and the court heads would be responsible for this interference.[16] On the other hand, just four days before this admonition, *naib efendi* has defended the court members when he summoned to the Inspectorship to the explanation of the situation. His statement was reasonable. For him the court's acceptance of the case was logical forasmuch as the court had to respond to the appeal of the people.[17] In

[15] TFR.I.MN 119-11897.
[16] TFR.I.KV 88-8709, p. 3.
[17] TFR.I.KV 88-8709, p. 6.

the another document which sent to the Kosova lower court attorney ship again in 29 January, the order of the *müfettişlik* was more rigid. In this document it was demanded from the court that the annulment of the decision.[18]

The implementation of this demand, to be fair, was not all that simple for it took nearly three months to reach a final decision. It was five session trial which included an exploration process. In the all session the claimants, the representatives of the Kraçiçe, was present, yet the defendants, the villagers of Kaymarofça, was represented by an appointed officer because of their absence in the trial. The basis for the extension of the court was various. The first trial was postponed on grounds of the investigation of the claimants' village population. In the first trial, the village headman of the Kraçiçe, the representative of the villagers with two other persons, claimed that their village consisted of one hundred people. However, in the second session, it appeared that this information was problematic. The population of the Kraçiçe village, according to registers of the census bureau, consisted of only twenty-five men. The disparity of two information was asked to the village headman. The headman presented to the court a document taken from Priştine Census Bureau. In this document it was written that the village population was eighty five, and this report was sufficient to convince the court members.[19]

At this point it is required to call attention to the court emphasis on the village population. This information was crucial for the court because, in case of a controversy, the village's population determines how the parties would apply to the court. As indicated by the 1644th and 1645th articles of Mecelle, in the common property disputes the villages with a population of less than one hundred have two options: fully

[18] TFR.I.KV 88-8709, p. 4.
[19] TFR.I.KV 88-8709, p. 2/2.

standing in the court or to appoint a representative (Berki, 1959: 251; Ali Haydar, 1321: 431).

As a *kavm-i mahsur* – the term used for the villages with a population of less than one hundred- the application of the Kraçiçean villagers to the court through their representatives, seems proper. On the other hand, it is unclear why the village headman tried to mislead the court members about village population despite there was no problem related to their application. This question remains vague because there is no other referral to the village population in the following parts of the document. However, it is reasonable to think that the silence of the courts indicates that the problem was leaped over.[20]

Putting the population matter of the village aside, in the second trial it was the investigation of the actual possession that took the court member's time. According to claimants they had the possession of the disputed area, however their statement was not enough to prove it, and trial was postponed to twenty-one days later, 30 November 1904. In the third trial the representatives of Kraçiçe village was prepared to convince the court members. They, to prove their claims, showed two persons as witnesses from the Yadur village. According to testimony of these two person the claim of the Kraçiçean people was true, but, now, there was another matter had to be proven: the reliability of the witnesses. The trial, again, postponed to 21 December 1904 for this reason.

The fourth trial started with the comment of Mehmed Niyazi Efendi, the deputy of public prosecutor. In his comment it was stated that the court had to act according to official record if the disputed area had been registered in the imperial registry. And in case of the absence of the record, or if the record was uncertain in terms of the borders the court had to consult the testimony of neighbouring villagers who has no interest with the disputed area. Mehmed Niyazi Efendi added that it was required

[20] TFR.I.KV.88-8709, p.2/2.

to make an exploration for the determination of the borders. As for the two witnesses of Kraçiçe side, their trustiness was confirmed by two other witnesses from the district of Hacı Ramazan.

The deputy of public prosecutor's opinion on exploration might please the claimants for it was exactly what they wanted. They seem to expect this decision, moreover, were well-prepared. The disputed area, according to claimants, was their village woodland since the immemorial times and nineteenth person from the neighbouring villages were willing to testify their claims. The appointed representer of the Kaymarofça villagers, however, refused the claims of the headman. In fact, he had to do it because in accordance with the 143th article of the 1879 Judicial Code an appointed surrogate could not confirm the assertion of the claimant (Düstur, 1-4: 287-288). However, he did not oppose the court's decision of exploration. After the agreement of the two parties, the court determined the details of the exploration. According to decision exploration committee would gather at disputed area in 30 December 1904, and the cost of the exploration would firstly take from Kraçiçe village council, in accordance with the 63th article of the same code.[21]

We are, fortunately, lucky for we have an elaborate report of the exploration. The report which drawn up by the Mahmud Ramiz Efendi, the appointed *naib* from the court, was read at the fifth and the last trial. As seen it the report, the committee, which composed of the clerk of land registry and the court clerk and two cavaliers, was faced with a series of difficulties throughout the exploration. After a half day long travel the committee reached to Kraçiçe village at the Thursday night, 29 December. In the following day the committee summoned the witnesses, however by reason of the bad-weather conditions they could partly appear. In Saturday the witnesses were present, but this time, the

[21] According to this article this cost was firstly taken from whom demands the exploration and after the final decision the cost was imposed to the losing party. *Düstur*, 1. Tertib, Vol. 4, p. 271-272.

exploration was again cancelled owing to the fact that the day almost ended and, more importantly the villagers of Kaymarofça had started to shooting fire.

The following day the committee, finally, succeeded to fulfil the exploration. The villagers of the Kaymarofça were again absent, as was the case in the trial. In the document there was no information to their absence. In fact, the witnesses reminded the committee on Saturday that it was required to inform Kaymarofça villagers according to Albanian custom, and if the villagers would not attend them, they had to promise not shooting fire. However, as we understand from the document the committee neither summoned nor forewarned Kaymarofçan people. In the report the villagers of the Kraçiçe were not mentioned, too. The exploration was performed with only the guidance of the witnesses, and, as indicated in the report, took six hours. After this toilsome survey the borders of the woodland were determined. They were most, if not all, natural borders such as a specific tree group, a stream or a rock. Only the last border was human-made: the grave of a gipsy.

The content of the report was detailed related to borders, however, it did not touch on the size of the woodland. However, there was a tiny hint related to its vastness. For instance, according to *naib*, the borders which demarcated the Kraçiçe and Kaymarofça village woodlands would take one hour with a trouble-free travel. A statement related to the location of the woodland was also noteworthy. In the beginning of the report the *naib* emphasized that it took a quarter hour to arrive to woodland from the *tetimme*[22] of the village.

Going back to the last trial, to ten days after the exploration, the court finally reached a final judgement. The court approved the borders

[22] The term used to indicate the supplementary parts of a village. These lands, as indicated by Halis Eşref, could be private or can be appropriated by the state for the common usage (Halis Eşref, 1315: 62).

demarcated by exploration committee, and decided in absentia that the villagers of the Kaymarofça had no usage right on the other side of the border. They had, also, to defray the cost of the trial that reached to 680 *kuruş*. In the end of the document the cost of the trial was detailed one by one. The cost of the exploration, 480 *kuruş*, constituted the bulk of the total sum.[23]

Table: The Cost of the Trial

The judgement fee:	100 kuruş
Copy (of the document/s):	80 kuruş
Registration fee:	10 kuruş
Writ of summons:	40 kuruş
Fee of certificate:	25 kuruş
Appointment of surrogate:	10 kuruş
Cost of exploration:	480 kuruş
Mübaşiriye:	18 kuruş
Hicaz document:	30 kuruş
Stamp fee:	65,20 kuruş
Postage:	4 kuruş
TOTAL	860,20 kuruş

Three months trial finally ended. We do not know where Kaymarofça villagers were in this long period or what they were doing. However, it is apparent that they were entirely not ignorant of happenings, at least, in the last days of trial. Their application to the Inspectorship of Rumeli Province, just after six days from the last trial, indicates that they were cognizant of the process. They, nevermore,

[23] TFR.I.KV 88-8709, p. 2.

overlooked the most important part of the event. As seen from the content of their petition they were unaware that the case was closed. In their petition they asked from the Inspectorship of sending an order to the Prizren court for the annulment of the court's decision. They justified their demand by saying that if the villagers of Kraçiçe were not contented with the administratively determined borders they had to apply to the provincial council.

Conclusion

The conflict between Kraçiçe and Kaymarofça villages on common woodlands is not a big-scale or complete story which enables us to make big generalization on Ottoman way of the governing of common lands. The document ceases without giving any information about how the conflict ended up. We do not know, in the end of story, which borders were approved by local or central government - if the conflict was carried to central government offices.

Still, this is a remarkable conflict case for, at least, it gives us a hint about in a problematic region and period, how local and central authorities tried to solve common land problems. The conflict between Kraçiçe and Kaymarofça villages indicates that in this period the central government's policies related to common property disputes made things even more complicated and arised jurisdictional conflict between local councils and *nizamiye* courts.

This case, additionally, noteworthy owing to fact that it gives a detailed information about juridical process on common land disputes. As mentioned above, in the Rumeli Province there were considerable complaints because of the longevity of the trials in the *nizamiye* courts. The three-month trial, in this case, evidenced the propriety of these complaints. The central government, considering this dissatisfaction, tried to include local government to the resolution process.

Finally, this is an extraordinary case for it provide us a detailed information about how an exploration was carried out related to common property disputes. The actors and components of an exploration, and its determining role on the resolution was clearly seen in this case.

Information Note

The article has been prepared in accordance with research and publication ethics. This study does not require ethics committee approval.

References

Archive Resources

BOA, BEO, 1996/149700

BOA, BEO, 2040/152931.

BOA, ŞD, 1739-1, p. 22.

BOA, TFR.I.A., 4/399

BOA, TFR.I.KV, 88/8709

BOA, TFR.I.MN, 119/11897

BOA, TFR.I.UM., 2/136.

BOA, Rumeli Ahkâm Defteri, nr. 84,11/48; 49/220.

Düstur. 1. Tertib, Vol. 2, 3, 4, 5.

Other Publications

Akyalçın Kaya, D. (2014). Question of property rights over commons: Marshlands of lapsista in the late nineteenth century. *21th CIEPO Symposium*, Budapest, 7-11 October 2014.

Ali Haydar (1321). *Şerh-i cedîd li-kanun'il-arazî*. Şirket-i Mürettibiye Printing Press.

Aytekin, E. A. (2006). *Land, rural classes and law: Agrarian conflict and state regulation in the Ottoman Empire, 1830s-1860s.* (Unpublished doctoral thesis). New York: Binghamton University State University.

Barkan, Ö. L. (1940). *Türk toprak hukuku tarihinde Tanzimat ve 1274 tarihli arazi kanunnamesi*. Maarif Printing Press.

Barkan, Ö. L. (1980). *Türkiye'de toprak meselesi*. Gözlem Press.

Berki, A. H. (1959). *Mecelle*. Güzel İstanbul Printing Press.

Birben, Ü. & Güneş Y. (2014). The cibal-i mübaha: A special type of forest available for public use in the Ottoman Empire period. H. Kola, P. Herbst, R. Sulek (Ed.), In *15th International Symposium on Legal Aspects of European Sustainable Development,* (pp. 26-32), Technical University in Zvolen.

Blomquist, W. & Ostrom, E. (1985). Institutional capacity and the resolution of a commons dilemma. *Policy Studies Review*, *5*(2), 383-393.

Cin, H. (1981). Tanzimat'tan sonra Türkiye'de ormanların hukuki rejimi. *Ankara Üniversitesi Hukuk Fakültesi Dergisi*, (35), 311-379.

Demsetz, H. (1967). Toward a theory of property rights. *American Economic Review*, *57*(2), 347-359.

Dursun, S. (2007). *Forests and the state: History of forestry and forest administration in the Ottoman Empire*. (Unpublished doctoral thesis). İstanbul: Sabancı University Institute of Social Science.

Dursun, S. (2013). The fisheries management in the Ottoman Empire in the 19th century. *The Seventh Biennial Conference of the European Society for Environmental History (ESEH)*, 20-24 Agust, Munich.

Dursun, S. (2017). Forest commons and property right in the Late Empire and Early Turkish Republic. *International Conference on the Environmental History of the Ottoman Empire and Turkey*, 27-28 October, Hamburg.

Dursun, S. (2019). Dispossession by concession: Forests commons in The Ottoman Empire and Early Turkish Republic. O. İnal, Y. Köse (Ed.), In *Seeds of Power: Explorations in Ottoman Environmental History*, (pp. 260-284) The White Horse Press.

Gerber, H. (1987). *The social origins of the modern middle east*. Lynee Rienner Publishers.

Gibson, C. C., Ostrom, E., Ahn, A. K. (2000). The concept of scale and the human dimension of global change: A survey. *Ecological Economics, 32*(2), 217-239.

Halis Eşref (1315). *Külliyat-ı şerh-i kanun-i arazi*. Yovanaki Panayoditis Printing Press.

Hardin, G. (1968). The tragedy of the commons. *Science, 162*(3895), 1243-1248.

İnalcık, H. & Quataert D. (1997). *An economic and social history of the Ottoman Empire: 1300-1600. 1*, Cambridge University Press.

Kenanoğlu, M. (2002). *1858 arazi kanunnâmesi'nin Osmanlı siyasal ve toplumsal yapısı üzerindeki etkileri.* (Unpublished doctoral thesis). Ankara: Ankara University Institute of Social Science.

Koç, B. (1999). Osmanlı Devleti'ndeki orman ve koruların tasarruf yöntemleri ve idarelerine ilişkin bir araştırma. *Osmanlı Tarihi Araştırma ve Uygulama Merkezi Dergisi (OTAM)*, (10), 139-158.

Koç, B. (2005). 1970 Orman Nizamnâmesi'nin Osmanlı ormancılığına katkısı üzerine bazı notlar. *Tarih Araştırmaları Dergisi*, (24), 231-257.

Köprülü, M. B. (1949). Cibal-i mübaha ve sahih vakıflara ait ormanlarla baltalıkların H. 1274 tarihli arazi kanunnamesine nazaran hukuki durumları. *İstanbul Üniversitesi Hukuk Fakültesi Mecmuası*, (2-3), 705-726.

Lewis, T. R. & Cowens, J. (1983). *Cooperation in the commons: An application of repetitious rivalry*. University of British Columbia.

Onar, S. S. (1944). *Türk hukukunda âmme emlâki teorisi, Ebül'ula Mardin'e armağan.* Kenan Printing Press.

Ostrom, E. (1990). *Governing to commons*. Cambridge University Press.

Öncel, F. (2014). Legal and social contestations over pastures in the Late Ottoman Empire. *21th CIEPO Symposium*, Budapest, 7-11 October.

Stevenson, G. G. (1991). *Common property economics: A general theory and land use application*. Cambridge University Press.

Surlu, M. H. & Cin, H. (2000). *Türk hukukunda mera yaylak kışlaklar ve mera kanunu şerhi*. Seçkin Press.

Terzibaşoğlu, Y. (2004). Land disputes and ethno-politics: Northwestern Anatolia, 1877-1912. S. Engerman, J. Metzer (Ed.), In *Ethno-Nationality, Property Rights in Land and Territorial Sovereignity in Historical Perspective*, (pp. 152-180), Routledge.

Terzibaşoğlu, Y. (2013). A very important requirement of social life: Privatization of land, criminalisation of custom, and land disputes in the nineteenth-century Anatolia. V. Guignard (Ed.), In *Les Acteurs des Transformations Foncieres Autour de la Mediterranee au XIXe Siecle*, (pp. 25-48), Karthala and the Maison Mediterraneenne des Sciences de l'Homme.

Welch, W. P. (1983). The political feasibilty of full ownership property rights: The cases of pollution and fisheries. *Policy Sciences*, (16), 165-180.