ACTA ORIENTALIA

ACADEMIAE SCIENTIARUM HUNGARICAE

ADIUVANTIBUS
K. CZEGLÉDY, L. FEKETE, G. KARA, J. NÉMETH, S. TELEGDI

REDIGIT
L. LIGETI

TOMUS XVIII FASCICULI 1—2

AKADÉMIAI KIADÓ, BUDAPEST
1965

THE TERMINOLOGY OF THE OTTOMAN-TURKISH JUDICIAL DOCUMENTS ON THE BASIS OF THE SOURCES FROM HUNGARY

BY

KLARA HEGYI

The use of written records at various levels of Mohammedan—Turkish Imperial public administration, the language and formulae of documents, as well as those of the assessments and customs records, have been dealt with extensively in the literature of the subject.

In the general raising of the question we must underline two factors. The first, which facilitates the investigation, is the considerably uniform character of written records, which was based on the uniform training of scribes and copysts. This can be pointed out not only in the types of writing or the standard compilation of the documents, but also in the uniformity of the terminology, the composition, and the stereotype formulae. The other factor, however, warns us to be moderate, seeing that this uniformity does not appear in all areas of public administration to the same extent. It is quite natural, for example, that the item-wise enumerations of the *sanǧāq*-assessments, or customs recods and cash books produced almost entirely similar documents in border areas of the Empire situated at great distances from each other.[1] That group of sources, on the other hand, which exceeds this laconism, and contains documents of narrative character, and individual cases, is in its terminology less consistent, its formulae are more diversified. To this group belong the documents of the local *dīvāns*, with special respect to the different decrees, and we must include here also the documents executed at the courts, the *hüǧǧets*.

The Turkish judicial sources from Hungary can be divided into two groups. Regarding their number they are not very significant, but in respect of their contents very interesting are those 100 to 120 *hüǧǧets*, which span the whole history of the Turkish rule in Hungary (the earliest of them originates from 1555, and the latest from 1686), and they comprise almost every town of the occupied area. The lessons to be derived from them are completed by two preserved records of evidence, *siǧills*. One of them originates from Temesvár

[1] For a basis of comparison ses the assessments published in Hungary, and S. S. Džikija, Пространный реестр гюрдюстанского вилайета. Книга 1, текст. Tbilisi 1947.

from the years 1651—53, the other contains the judicial cases of Karánsebes and Lugos from the years 1673—75. The investigation of the language of the judicial documents the *siğill*s can of course only supplement and corroborate the *hüğğet*s, they have in themselves little validity of evidence. In fact the entries of the records of evidence originate in general from the hand of one and the same clerk, and thus it is not warrantable to establish general regularities from these records.

It would be advisable to try to supplement the Hungarian sources of judicial practice with documents preserved in other countries. On account of the small number of sources, and their publication mostly in translation,[2] however, we can only carry out our investigation on the basis of the Turkish sources originating from Hungary.

*

The language of the sources is Osmanli of medium difficulty, with a fairly limited vocabulary. Although in general they consist of a few multiple sentences, their structure is clear, it does not present any difficulty to the understanding. Their vocabulary is far from the Turkish, their majority, besides auxiliary verbs, pronouns and numerals, contain hardly any words of Turkish origin. Their technical terms and formulae are *izāfet* structures composed of words of Arabic origin according to the Persian pattern.

*

With regard to their structure the documents are divided into three parts. As regards their contents, the most valuable part of the *hüğğet*s are the proceedings of the case themselves. This part contains the statements of the parties, and the evidence (or in the case of conclusion of contracts, the contents and terms of the agreement), the sentence, and the date. This narrative part is completed by the enumeration of the witnesses, the signature and certifying clause, respectively, of the judge.[3] The entries of the *siğill*s give in short the proceedings of the case, but generally they leave out the dating, the enumeration of the witnesses, and the certifying clause of the judge.

First of all let us examine those technical terms, which denoted the lawsuit and the court of justice. The lawsuit was denoted in general by the word دعوی (or دعوا), and less frequently by معارضه. Much more diverse are the technical

[2] H. W. Duda—G. D. Galabov, *Die Protokolbücher des Kadimates Sofia*, München 1960.

[3] On the analysis of the documents of the *qāḍīs* see L. Fekete, *Bevezetés a hódoltság török diplomatikájába* [= An Introduction to the Turkish Diplomacy of the Turkish Occupation in Hungary], Budapest 1926.

terms for the court of justice, the *šer'*-court. Their basic words are شرع or مجلس شرع, and محفل قضا, respectively. The most frequently occuring attributes of the word شرع are:

شرع شريق «the noble *šer'*»

شرع قويم «the firm *šer'*»

شرع غرّا «the bright *šer'*»

شرع مطهر «the pure *šer'*»

شرع خطير «the important *šer'*»

شرع معتبر «the respectable *šer'*»

The following formula is generally used:

مجلس شرع شريف لازم التوقير[4] «the obedience-demanding noble *šer'*»

and a few others are as follows:

مجلس شرع شريف و محفل دين منيف «the assembly of the noble *šer'* and the court of the exalted Religion»

مجلس شرع محمّدى و محفل قضاء احمدى «the assembly of Mohammed's *šer'* and the tribunal of the glorious *qazā*»

The documents begin with the description of a short introductory formula. This group of formulae is not only a peculiarity of the judicial documents, but it is characteristic of all documents of the نامه-type.[5] Therefore the great number of the formulae that were used we quote here only a few, which appear most frequently in the *hüğğets*, viz.:

سبب تحرير كتاب و موجب تسطير خطاب اولدركه or سبب تحرير كتاب قلم و موجب تسطير خطاب رقم اولدركه

[4] This formula was so widespread and well known that the entries of the *siğills* write down most frequently only its initial and closing parts, and indicate the missing part with a blank space, viz.:

مجلس شرع التوقيرده

[5] L. Fekete, *op. cit.*, L—LI, 1. Enumeration of the نامه-type documents and their introductory formulae.

«The reason of the execution of the document and the basis of the writing of the addressing is, that. . .»

سبب تحرير كتاب صحت نصاب بودركه «the reason of the writing of the truthful document is as follows: . . .»

سبب تحرير كتاب شرعى بودركه «the reason of the writing of the document according to the *šerʿ* is as follows: . . .»

سبب تحرير صحيفهٔ صحيحه بودركه «the reason of the writing of the true *ṣaḥīfe* is as follows: . . .»

These formulae just quoted are more or less typical cases, and their numerous variations were employed. All occurences can be traced back to the simplest basic form سبب تحرير كتاب اولدركه, the variants arise with the embedding of the word «document» into a multiple attributive structure, and from time to time with the synonymous repetition of the whole structure.

After the introductory formula the parties to the suit or the contracting parties appearing before the court are named. This can be a simple enumeration with the indication of the names, domicile, and occupation (social standing) of the parties, viz.:

محروسهٔ حطوان ساكنلرندن محمّدكتخدا بن عبد الله نام كمسنه ينه قلمهٔ مزبوره قضاسنه تابع واروش بريم بيرولرى . . .

«of the inhabitants of the well protected Ḥaṭvān Moḥammed Ketẖüdā bin ʿAbdullah, as well as the judges of the town of Berīm [Jászberény] belonging to the *qazā* of the above mentioned fort. . .»[6]

In many cases the documents mention the prevailing party already in the enumeration of the parties, besides his name stands the phrase «possessor of the present document». Variants of this are:

باعث الكتاب (رقرق) «the initiator of the document»

صاحب الكتاب (السفر) «the owner of the document»

حامل الوثيقه «the bearer of the *veṣīqa*»

حافظ الوثيقه (السفر) «the guardian of the *veṣīqa*»

رافع السفر «the presenter of the document»

[6] Turkish documents of Jászberény, No. 59.

If both parties appeared before the judge personally (حاضر بالمجلس «present at the cour of justice»), the hearing of the case was immediately started. In case of representation (if one of the parties did not appear in person — غايب عن المجلس «absent from court»), then first of all the legality of the praxy's mandate was verified (with two witnesses), and this was laid down in the document. The accepted form for this is as follows:

. . . مصطفى نام كسنه كندو طرفندن اصالة و لابوين قرنداشى احمدك حصوص اتى البيانه وكيلى اولوب وكالتى نهج شرع معتبر اوزره ثابته اولندوغى جهتدن وكالة . . .

«Mustafā in his own representation personally, as well as, in the case to be related hereafter, as delegate in the representation of his blood brother Aḥmed, verified according to the prescription of the eminent *šer*ᶜ. . .»[7]

As an introduction of the accusation or the statement of the contract there were again several formulae used. In the case of accusation, viz.:

محضرنده (مواجهه‌سنده) دعوى ايدوب «in presence of . . . instituted proceedings»

اوزرينه دعوى ايدوب «brought an action against»

If the accuser is a corporation:

باجمعهم دعوى ايدوب «instituted proceedings corporately»

and if there are several accusers:

هر برى دعوى ايدوب «separately instituted proceedings»

In the introduction of contracts the everb دعوى ايتمك never occurs, in its place the verbs, «to state, to tell, to bring forward» appear:

محضرنده (بالطوع و الاختيار) اقرار و تقرير كلام ايدوب «in presence of (on his own accord and free will) confessed and declared»

ادآء مرام ايدوب «he brought forward the following desire: . . .»

[7] Temesvár *siğill* 128, 169; Turkish documents of Debrecen, No. 42, *etc.*

شویله بسط کلام ایلدیکه «he brought forward the following: . . .»

بسط کلام و تعبیر عن المرام ایدوب «he told and expressed his desire: . . .»

These phrases do not occur in the case of an accusation, unless in connection with the verb دعوی ایتمك :

هربری اوزرینه دعوی و تقریر کلام ایدوب «they separately instituted proceedings against him and stated, . . .»

After such preliminaries there followed the statement of the facts and its hearing proper. The part of the documents recording the hearing is loose narration, and naturally differing in content in each case. We meet with definite, repeated phrases, these are, however, characteristic not only of the judicial documents, but can also be found in sources of other character in the 16th and 17th centuries, in short: they are characteristic of the style of the age, and not of a definite group of sources.

The plaintiff closed his words with a request to the court, viz.: the defendant should be heared, justice should be administered, his stolen oxen should be recovered, *etc.* He closed his request with the phrases طلب ایدرم «I request that. . .«, or, مرادمدر ; مطلوبمدر : «my desire is that. . .». In the majority of the cases the request is not concrete, but general (and this is expressed with the following formula):

سؤال اولنوب احقاق حق اولنمق مطلوبمدر[8] «my wish is that the said person should be heared and the litigation should be decided»

Upon the question of the *qāḍī* the accused either denied or confessed (for the whole or for certain details of the charge). The admission of the charge meant that the evidence was complete and so it ended the lawsuit: اعترافیله ثابت اولنوب «with his confession it has been proved». At the setting down of the confession its voluntary character is underlined, and it is stressed that it extended to every point of the charge:

[8] The *siğill*s very often refer to the whole formula only with the initial and closing parts of this phrase too viz.:

سؤال اولنوب اولنمق مطلوبمدر

طوعاً (بطوعه ، بالطوع الصاف) اقرار و اعتراف ايلدكلرنده — «voluntarily confessed and admitted, . . .»

غب السؤال مزبورون . . . فى الحقيقه حال منوال مشروح اوزره اولمشدر ديو اعتراف ايلدكلرنده — «after interrogation said persons confessed: the case took place in exactly the described way»

In the case when the accused pleaded not guilty (غبّ السؤال و عقيب الانكار «after he was asked and gave a negative answer») the producing of evidence started. It is perhaps this part of the documents containing the evidence that contains the greatest number of, and at the same time, the most generally used, technical terms, such as, *e.g.* :

مدعئ مزبوردن صدق مقالنه بينه طلب اولندقده — «when from said accuser we demanded evidence for the authenticity of his words . . .»

عدول مسلمينden ... نام كسنه‌لر لاجل الشهاده مخلس شرعه حاضرون اولوب غب الاستشهاد (غب الاستخبار) فى الحقيقه . . . ديدكلرنده — «from among true-voiced Mohammedans . . . appeared for deposition before the assembly of the *šer'*, and bearing witness (informing) they brought forward: in truth, . . .»

بز بو حصوصه شاهدلروز شهادت داخى ايده‌روز — «in this case we are witnesses and bear witness»

اداء شهادت شرعيه ايلدكلرنده شهادتلرى بعد رعايه شرائط القبول خير قبولده واقعه اولمغين موجبيله[9] — «after they have borne legal witness, and their testimony, observing the conditions of acceptance, was acceptable, . . .»

[9] The latter two are contracted and abbreviated in the Temesvár *siğill*, viz.:

بز بو حصوصه شاهدلروز خير قبولده واقعه اولدقدن صكره

The proving of his case was the right of the accuser also according to the Mohammedan law.[10] If he failed to prove his assertion (صدق مقالنه بينه طلب اولندقده اتيان بينه‌دن اظهار عجز ايتكين «when we asked for evidence of the authenticity of his words, he showed inability in proving»), the right of taking the oath belonged to the pleading not guilty.[11] In the oath of the Mohammedans Allah appears as evidence (يمين بالله , حلف بالله); the Christians swore by God (similarly يمين بالله , but here it does not denote Allah, but God), by Jesus (عيسى), or often they took their oath on the Bible (انجيل).

اول داخى حسب المسؤل يمين بالله تعالى الاعلى ايتدكندن صكره «and he, whereafter upon our demand he swore by the high and infinite Allah, . . .»

ذميون مزبورون على حده حلف بالله الذى انزل الانجيل على عيسى عليه السلام ايتدكلرندن صكره «said *zimmis* swore by God, who sent down the Gospel, and by Jesus — blessing on him —»

It is a regrettable fact that the Turkish judicial documents, and also the proceedings, set down the sentence only very infrequently. Thus definite forms were developed only for the recording generalities (warning, prohibition from lawsuit).

صوب شرعدن تنبيه اولنوب «being warned on part of the *šerʿ*»

مدعئ مزبور معارضه‌دن (دعوى‌دن) منع برله اشبو وثيقه كتب اولندى «said accuser has been prohibited from litigation, and the present *veṣīqa* has been written»

[10] Turkish documents of Jászberény, No. 128:

البينه للمدعى فهواسنجه مدعون مزبورون بينه طلب اولندقده

«in accordance with the fact, that the [right of] proving belongs to the accuser, from said accusers we asked for evidence».

[11] *Loc. cit.*

اليمين على من انكر فهواسنجه رعايائى مزبورون يمين تكليف اولندقده

«in accordance with the fact, that the oath is [the right of] the deniers, we have taken the oath from said *raʿāyā'*».

Apart from these cases instead of a verdict, the narrative part of the document is usually closed with the phrase: we have recorded the result of the investigation and have given the same in the hands of the prevailing party.

اشبو حروف على ما وقوعه كتب اولندى — «present *ḫurūf* has been written in accordance with what has happened»

غب التصديق (غب الثبوت) الشرعى ما هو الواقع بالطلب كتب اولندى — «after the legal confirmation everything, that happened, has been written upon their request»

واقع حال حفظا (ضبطا) للمقال كتب اولندى — «everything that happened has been written for the preservation of the word»

اشبو وثيقهٔ انيقه ما هو الحقيقه لاجل التمسك كتب و ترقيم اولنوب يدينه وضع و رفع اولنديكه لدى الحاجه ابراز ايدوب احتجاج ايدينه — «the present beautiful *veṣīqa* has been written in accordances with the truth, and has been delivered to his hands, in order that, presenting it in case of necessity, he may use it as evidence»

اشبو وثيقهٔ انيقه لاجل التمسك كتب و يد من له الطلبه رفع اولندى — «the present beautiful *veṣīqa* has been written as a *temessük* and upon his request has been handed over to him»

هٰذه الوثيقه كتب و املا و يد طالبه وضع و اعطا اولندى — «the present *veṣīqa* has been written and uponhis request has been handed over to him»

Up to now we have surveyed that group of the judicial documents which set down legal proceedings. The technical terms of the narrative part are naturally different, if the *qāḍī* certifies a contract.

In most cases purchase deeds were placed before the Turkish courts of justice. Here first of all the contracting parties are named, and then the

object of the purchase is precisely described. If this is land, then its borders, its size and the buildings on it are specified. Sometimes this enumeration is left out, and only a reference is made to it, viz.:

. . . محله‌سنده واقع لدی الاهالی و الجیران معلوم الحدود و الحیطان اولوب مزبور الحاج قاسمك ضبط و تصرفنده اولان باغچه

«the garden with borders and size known to the inhabitants, neighbours, which is in possession of the above mentioned Elḥāğğ Qāsim . . .»

The usual record of the sale:

. . . سیم غروشه بیع بات صحیح شرعی بیع ایدوب

«for . . . silver *ġuruš* sold with legal and true sale»

and then the seller points out that the purchase price has been received by him without deduction, and that he can demand nothing more from the purchaser:

بعد الیوم منزل مرقوم مشتریٔ مرسومك مشترا- سیدر کیفما یشاء متصرف اولسون

«as from this very day the above mentioned *menzil* shall be the purchased property of said purchaser»

ثمنی اولان مبلغ مزبوری یدلرندن بالتمام و الکمال اخذ و قبض ایدوب یدلرنده بر اچه و بر حبه حقمز باقی قالمامشدر

«its purchase price, the above mentioned amount, has been received by us without deduction and fully from their hands, there has not been left for us a penny worth to claim from them»

امثالی تصرفی کبی متصرف اولوب بر فرد تصرفنه مانع و مزاهم اولمیه دیدکده

«he shall possess it similarly to his other property, and in its possession he shall not be prevented by anybody»

The part of the documents setting down the words of the parties was closed by the dating. Naturally, the usual forms of dating cannot be regarded

as the special characteristics of the judicial documents only. The form تحريراً is more general, while the form جرا ذلك is more characteristic of the judicial documents.

تحريراً فى «written on . . .»

حرّر فى «written on . . .»

جرى ذلك و حرّر فى «it happened and was written on . . .»

and a more difficult form of this:

جرى ذلك و حرّر تحريراً فى «it happened and was written on . . .»

The second structural part of the documents is the enumeration of the assessors attesting the authenticity of the proceedings. This follows in every case after the phrase شهود الحال - «witnesses of the case», and is closed as follows:

و غيرهم «and others»

و غيرهم من الحاضرين (الحضّار) «and others among the persons present»

The examination of the third structural unit of the documents, the signature or verification of the judge, deserves special study.[12] The verifying clause, on account of its contents and the logical order of its noting down, is the last, closing section of the text, but it stands separately at the beginning of the document. Besides the corroboration it contains the name of the *qāḍī* and the seat of his office. The formula is closed with the supplication عفى عنه or غفر له «it should be forgiven him».

From the rich material — in some of the documents there are even several clauses — we shall now show a few generally used formulae:

جرى الامر حسبما يحويه حرره الفقير اليه سبحانه و تعالى على بن محمد القاضى بدار الجهاد وراث عفى عنهما

«The case took place as it is summed up here; written by ʿAli bin Moḥammed, dependent on Him *(i.e.* Allah) — the highly praised and great —, *qāḍī* of Varāt [Várad], the bulwark of religious fights; it should be forgiven both of them».[13]

[12] F. Kraelitz, *Legalisierungsformen in Abschriften osmanischer kaiserlicher Erlässe und Handschreiben:* Mitteilungen zur osm. Geschichte II. 137—146.

[13] Turkish documents of Debrecen, No. 80.

الامر فى الحقيقه كما نمق فى الوثيقه و انا الفقير محمد بن اسكندر المولى بقضاء صولنق خلافة عفى عنهما

«The case is true, as it has been written in the *veṣīqa ;* written by the poor Moḥammed bin Iskender, deputy *mevlā* of the *qaḍā* of Ṣōlnoq [Szolnok]; it should be forgiven both of them».[14]

جرى الامر حسبما رقم فيه نمقه العبد الفقير اليه سبحانه تعالى عثمان بن عبد المنان القاضى بصولنق عفى عنهما

«The case took place, as it has been written in this; written by the servant ʿOṣmān bin Abdulmennān, dependent on Him *(i.e.* Allah) — the highly praised and great —, *qāḍī* of Ṣōlnoq; it should be forgiven both of them».[15]

مافيه جرى عند افقر الورى نمقه الفقير اليه سبحانه و تعالى بهلول بن يوسف المولى بقضاء حطوان خلافة عفى عنهما

«What stands in this, has taken place before the frailest of creatures; written by Bahlūl bin Yūsuf, dependent on Him *(i.e.* Allah) — the highly praised and great —, deputy *mevlā* of the *qaẓā* of Ḥaṭvān; it should be forgiven both of them».[16]

هذه حقيقة الحال غب الطلب و السوال نمق الفقير اليه سبحانه و تعالى احمد القاضى بقضاء حطوان عفى عنه

«This is the real state of the affairs, on the basis of search and inquiry; written by Ahmed, dependent on Him *(i.e.* Allah) — the highly praised and great —, *qāḍī* of the *qaẓā* of Ḥaṭvān, it should be forgiven him».[17]

المقرر فيه مقرر على الوجه الشرعى زبره الفقير محمد بن فتح‌الله المولى بقضاء صولنق عفى عنهما

«What is being told in this, has been proved through the *šerʿ*; written by the poor Moḥammed bin Feṭḥullah, *mevlā* of the *qaẓā* of Szolnok; it should be forgiven both of them».[18]

[14] Turkish documents of Debrecen, No. 17.
[15] Turkish documents of Debrecen, No. 70.
[16] Turkish documents of Jászberény, No. 48.
[17] Turkish documents of Jászberény, No. 128.
[18] Turkish documents of Debrecen, No. 71.

جرى البيع و الشري عند افقر الورى نمقه الفقير اليه تعالى مصطفى بن خليل
القاضى بدار الجهاد قلعهٔ صونلق عفى عنهما

«The sale took place before the frailest of creatures; written by Muṣṭafā bin Ḫalīl, dependent on Him *(i.e.* Allah) — the highly praised and great —, *qāḍī* of Ṣōnloq bulwark of religious fights; it should be forgiven both of them».[19]

As signature at the end of the text:

الفقير عبد الله القاضى بحطوان عفرله

«The poor ʿAbdullah, *qāḍī* of Ḫaṭvān; it should be forgiven to him».[20]

[19] Turkish documents of Debrecen, No. 42.

[20] Turkish documents of Jászberény, No. 79 — The sources I have used have been marked only in the case of longer quotations.