

Economic Regulation by Judiciary during the Ottoman Era: Sample Jurisdictions from the Istanbul Courts between 17th and 18th Centuries

Onur UCAR & Ahmet Burcin YERELI

Abstract

Recent literature makes us to believe that regulation has been in our life just for a few decades. This paper which is based on court orders of Ottoman Judiciary (between 17th and 18th centuries), aims to discuss that regulation almost has 300 years past in Turkey's economic history. It is realized that Ottoman courts' verdicts and today's regulation authority orders have some similarities though they had not given under similar circumstances. These similarities are described from past to present by the point of purpose and qualification of regulations. In this setting, judicial conception of Ottoman courts to regulate is considered in terms of today's regulation mentality.

Introduction

People face with many regulations from the moment of birth, when won the lawn *capacitas*, to the moment of death when lost juridical capacity. Because even the birth and the death can be valid juridical, some procedures which a kind of regulations should be applied.

This paper is based on Ottoman Court's register books. After the studies on register books had done it is realized that regulation has applied in social and economic life of Ottoman Empire and Turkey for over three centuries past.

The study has started by defining regulation. After that, common aspects between today's regulatory authority and the authorities in Ottoman Era which have the same results (Even though they constituted according to condition of Ottoman Era) in terms of quality like today's authorities were found out. In another part of the study, the verdicts about regulation of Ottoman Courts has been evaluated by considering today's perception. Due to the large number of recorded verdicts, the investigation has to be narrowed. So, the evaluated verdicts of this study are chosen from İstanbul Courts in 17th and 18th centuries'. However, the records of verdicts were written in Ottoman Turkish, we use Turkish Islamic Research Centre's translations: *İstanbul Court 12th Volume and 24th Volume*.

In Ottoman State, courts were not the only regulatory authority but there was an institution called *Ahilik Teşkilâtı* had also regulation power precisely on guilds. Actually it is a subject of another study but it should be stated when we talk about regulation in Ottoman Era. This paper is focused on Ottoman verdicts.

The Term of Regulation

Regulation is an action that the markets are organized, controlled, directed and led by superior authority. As it is seen in definition, a market is indispensable for regulation. Accordingly, increasing the tax rate by government is not a regulation. Because, this action is not for a market. It is for every market in the country (Oğuz, 2011: 19).

Today, regulation is made by independent administrative authorities. Independent administrative authorities are organized properly according to market that they command. They make regulation differently as degree and qualification. For example in Turkey, *Banking Regulation and Supervision Agency* makes regulation for Turkish banking market. It directs the market by checking the banking activity, keeping under control on entry and exit to banking market, and it lead the market by leading agent of the market to public welfare (Oğuz, 2011: 20).

Regulation applied by independent administrative authorities has been in literature for about quarter-century. But according to Ottoman Era court's registry, Ottoman courts' verdicts have same intent and cause same results like present day's independent administrative authorities, without calling "regulation".

Ottoman courts were regulatory institutions by their sanction power. Actually, Sultan had exclusive jurisdiction in Ottoman judicial system by himself. But Sultan had delegated his power to the overqualified persons that they called "*Kadı*". These persons were well educated and experienced in public bureaucracy. They were elected by Sultan and they represented the Sultan's authority in the district of they were attended (Ortaylı, 1968: 121-122; Şentop, 2005: 86). Besides their representation duty, they did judgement and sometimes they gave some verdicts by regulating social life and economic activities. For example, statement of prices, standardization of production processes, being struck off, putting quotas for businesses by sectors. It can be said that these implementations are so similar that those have done by present day's regulatory authorities.

Kadı had the same mission of present day's Turkey's independent regulatory authorities (Duran, 1997: 5). These authorities are organizing, monitoring and controlling both private and public activities

which have some probable risks on fundamental rights and liberties. They have also preventing duty and punitive power in order to ensure sustainability of economic order. All of these missions was taken by Kadi in Ottoman State.

Kadı (Ottoman Court) and Regulation

As mentioned above, regulation is an action that markets are organized, controlled, directed and led by a superior authority (Oğuz, 2011: 19). Sultan who was single and the most outstanding authority had exclusive owner of legislative, executive and judicial power. His authority could be delegated as a particular region or/and in a specific proportion by him or a person who was elected by him. Kadı was authorized by this way. And he was attended in a particular region. Every case was in the scope of Kadı's duty. Kadı had recorded his verdicts and he was responsible to keep register books. In the registries, it is mostly seen that Kadı had mediation function between defendants and plaintiffs for their private disagreements or conflicts. Besides, there were some specific verdicts that related directly economic activities or producers and/or consumers. Moreover, some given verdicts were about environment protection as a social regulation. According to official registries, these verdicts were belong to 17th century but they had the same quality with present day's independent regulatory authorities.

Some samples of given verdicts by Ottoman Courts are going to be evaluated from different points of view by considering the present conditions.

The registries that analysed are related to 17th and 18th centuries and closed-economy was accepted as an economic model in Ottoman State between these centuries. Under these circumstances, while domestic trade was regulating, both the supply needed to adopt to demand level and excess monopoly profits needed to be prevented in domestic market. In closed-economy model, competitive goods could not enter domestic market easily. So these market restrictions offer an opportunity to stipulate among domestic producers on monopoly profits by reducing the quality and raising the prices.

Ottoman Court's mentality about balancing out supply and demand were both supply-side and demand-side. On the supply-side, Ottoman Courts regulated the suppliers that not to produce than the amount of demand in order to keep sustainable production. On the other side, Courts supported the producers to supply in order to reach the amount of demand to satisfy the consumers' utility. As it is

seen in a verdict that¹ the suppliers who produce tail lamp (a kind of reflector) for fire department should have maximum 21 headmen and maximum 30 workbenches. Courts determined upper limits for this job. In another verdict about shammers² was restricting the number of business in Istanbul. The justification of this verdict was the number of shammer business in Istanbul had reached the sufficient level and the new businesses would had bad effects on shammer profession. Another given verdict had same reasons and same restrictions for butchers³.

There were some verdicts that protecting people from environmental pollution by punishing the producers who had violated environment. In a given verdict⁴ the shop of a shammer called Hüseyin Beşe had been forced to move because of harmful gas emission during his job process. Another verdict related environment was to retain district imams (Muslim clerics) controlling the chimney sweeps when they were doing flue cleaning⁵.

In the Ottoman State, quality of goods and services were given particular importance. So, standardization was applied for goods and services. The person who compromised quality or sold nonstandard goods, punished heavily like being sentenced to penal servitude for life. According to a verdict that given by Istanbul Court⁶, Hüseyin b. Hasan who produced nonstandard hilt had disqualified from sword profession. Besides this verdict, the one who used fake copper for his job process was sentenced to penal servitude for life⁷. Furthermore, the court took a decision to protect consumers: fake copper goods was disposed by throwing into the sea to not to use again⁸.

Closed-economy model of Ottoman State was required to regulate raw materials, semi-finished and finished products. Because of the constraints on supplying raw materials from outside markets and limited supply of raw materials in domestic market forced to implement some policies in order to protect interior market and raw materials was expended to the production of semi-finished and finished goods that had had high value added. If the raw materials had remained, they could be sold crudely. Thus some verdicts were rendered by Istanbul Court had sympathized with this regulation policy. For instance, it was forbidden that snow sellers sold snow before fulfilled Sorbet seller's needs⁹ (snow is

¹ Istanbul Court's Register Books, Istanbul Court Register Nr. 24, Verdict Nr. 121 (H. 1138–1151/M. 1726–1738).

² Istanbul Court's Register Books, Istanbul Court Register Nr. 24, Verdict Nr. 25 (H. 1138–1151/M. 1726–1738).

³ Istanbul Court's Register Books, Istanbul Court Register Nr. 24, Verdict Nr. 39 (H. 1138–1151/M. 1726–1738).

⁴ Istanbul Court's Register Books, Istanbul Court Register Nr. 24, Verdict Nr. 256 (H. 1138–1151/M. 1726–1738).

⁵ Istanbul Court's Register Books, Istanbul Court 12 Numaralı Sicil (H. 1073–1074/M. 1663–1664).

⁶ Istanbul Court's Register Books, Istanbul Court Register Nr. 24, Verdict Nr. 43 (H. 1138–1151/M. 1726–1738).

⁷ Istanbul Court's Register Books, Istanbul Court Register Nr. 24, Verdict Nr. 115 (H. 1138–1151/M. 1726–1738).

⁸ Istanbul Court's Register Books, Istanbul Court Register Nr. 24, Verdict Nr. 258 (H. 1138–1151/M. 1726–1738).

⁹ Istanbul Court's Register Books, Istanbul Court Register Nr. 24, Verdict Nr. 54 (H. 1138–1151/M. 1726–1738).

raw material for Sorbet) and tripe sellers bought and cook the abomasus that belonged to chef (because abomasus is raw material for chef to cook more value added meal from cooked abomasus)¹⁰.

Ottoman Courts gave priority to public health like today's independent regulatory authorities. This attitude was understood clearly from some given verdicts of the courts. In terms of Turkey, the courts made regulation like today's *Tobacco, Alcohol Market Regulatory Board*, besides and beyond it. For example: according to a verdict that was given by Ottoman Courts¹¹, the shops which sold moon shine (opium syrup = a kind of intoxicant), had to be closed. Besides, according to other consecutive verdicts after closing verdict, it was allowed that the closed shop could be opened again if they would sell goods apart from opium syrup¹². And in another verdicts about opium syrup, it could be sold at a stated price in only two shops¹³. In another verdict about public health, the boatmen who did public transportation from Kumkapı Pier to Samatya Pier could carry only twelve persons¹⁴. In the justification of the verdict, the boatmen had carried fifteen persons with the boats, but these boats could carry maximum twelve persons according to their seat capacity. As it is seen, this verdict was about preventing loss of life beyond public health.

Preventing of black market was another regulative reason for Ottoman Courts. The Courts' intent was to protect consumers from outrageous prices and fair suppliers from unfair competitive practices. According to a verdict related black market, storing the coffee and then selling at high prices by coffee merchants were prohibited¹⁵.

It was understood from Ottoman Courts verdicts that, business branches were separated from each other with a certain line¹⁶. Even they had used same raw material, if the good that was produced one business branch, other business branches could not produce the same good or they could produce it with permission. As it could be seen from the courts' verdicts, to have commercial activities in a business branch had required a special license. In a verdict related to this subject, it wasn't allowed to Halil Bey to open a pickle shop because of absence of licence¹⁷. In another verdict¹⁸, licence was given

¹⁰ Istanbul Court's Register Books, Istanbul Court Register Nr. 24, Verdict Nr. 214 (H. 1138–1151/M. 1726–1738).

¹¹ Istanbul Court's Register Books, Istanbul Court Register Nr. 24, Verdict Nr. 29 (H. 1138–1151/M. 1726–1738).

¹² Istanbul Court's Register Books, Istanbul Court Register Nr. 24, Verdict Nr. 65, 72 ve 132 (H. 1138–1151/M. 1726–1738).

¹³ Istanbul Court's Register Books, Istanbul Court Register Nr. 24, Verdict Nr. 68 ve 71 (H. 1138–1151/M. 1726–1738).

¹⁴ Istanbul Court's Register Books, Istanbul Court Register Nr. 24, Verdict Nr. 34 (H. 1138–1151/M. 1726–1738).

¹⁵ Istanbul Court's Register Books, Istanbul Court Register Nr. 24, Verdict Nr. 37 (H. 1138–1151/M. 1726–1738).

¹⁶ Istanbul Court's Register Books, Istanbul Court Register Nr. 24, Verdict Nr. 176 (H. 1138–1151/M. 1726–1738).

¹⁷ Istanbul Court's Register Books, Istanbul Court Register Nr. 24, Verdict Nr. 170 (H. 1138–1151/M. 1726–1738).

¹⁸ Istanbul Court's Register Books, Istanbul Court Register Nr. 24, Verdict Nr. 223 (H. 1138–1151/M. 1726–1738).

to Ebu Bekir to sell henna in front of Valide Hammam entrance. In the other verdict¹⁹, selling wax in the soap shops were not allowed because of the licence of this wax had been belong to another business branch and they were warned to sell only soap in their shops.

Nowadays, the frequent regulation instrument that we faced is statement of prices as a base price or a ceiling price. In this respect, it can be said that Ottoman Courts' verdicts had implemented more heavily. Because Ottoman jurisdiction didn't allow for flexibility to state the price by suppliers. The Ottoman Courts chose determining the price specifically instead of applying base price or ceiling price. The persons who had failure to observe a stated price by courts were punished heavily like confiscating their own shops. The main goal here was to protect consumers. For example, the courts had stated the price of 240 grams bread was 1 Akçe²⁰. According to another verdict, every food in the kebab shops was stated by court²¹. Handing over the chandleries that sold their goods over than the stated price was another verdict²² to mention about.

Concluding Remarks

Although regulative implementations that applied by independent regulatory authorities have three decades past, we can find some specific verdicts that had caused similar regulative results as today's, in Ottoman Courts' records. At least it is possible to declare that regulation has three centuries past in Turkey as a juridical inheritance from Ottoman State and it precisely determines the constitution making and law making processes. Excess regulatory power had been embedded in the new Turkey's legislative frame in the beginning of 20th century and government had turned an intervener authority.

During the period of 17th and 18th centuries there had not been specialised independent regulatory authorities and there had not been sufficient scientific discussions in order to build a regulation system in all over the European states. Actually, Ottoman Courts were very important that time by giving decisions to keep the market system alive and to support competition in Ottoman sovereignty. In the same centuries in Europe, the liberal philosophers had struggle against tyrannical regimes in order to establish a free market ideal.

However given verdicts of Ottoman Courts had similar regulatory results as today's, there had never been a real free market in Ottoman State and other European countries as well. That is to say the

¹⁹ Istanbul Court's Register Books, Istanbul Court Register Nr. 24, Verdict Nr. 12 ve 13 (H. 1138–1151/M. 1726–1738).

²⁰ Istanbul Court's Register Books, Istanbul Court Register Nr. 24, Verdict Nr. 302 (H. 1138–1151/M. 1726–1738).

²¹ Istanbul Court's Register Books, Istanbul Court Register Nr. 24, Verdict Nr. 14 (H. 1138–1151/M. 1726–1738).

²² Istanbul Court's Register Books, Istanbul Court Register Nr. 24, Verdict Nr. 288 (H. 1138–1151/M. 1726–1738).

present days' market frames and conditions are very different than three centuries past. So the verdicts of present and past time have not given under the same conditions. On the other hand, it is possible to evaluate and compare with these two different eras' verdicts in terms of reasons, purposes and methods.

The primary purpose of the Ottoman Courts was to protect the consumers. In order to achieve this goal, courts gave some verdicts to standardize of production, improve the quality of goods, destruct the low quality products, prevent or restrict of unhealthy consumption, protect consumers against excessive prices by preventing black market and statement of prices (especially consumer goods price, etc.). The courts gave also some other verdicts in favour of producers. Protecting the fair producer in order to keep fair competition, forcing the low quality producers out of market and punishing the unauthorized businesses and no licensed sellers in order to prevent unfair trade, and ensuring to channelize raw materials to high value-added goods etc. were some samples of these verdicts.

References

- Duran, L. (1997), "Türkiye'de Bağımsız İdari Otoriteler", *Amme İdaresi Dergisi*, 30(1), 3-10.
- İslam Araştırmaları Merkezi (2010), *İstanbul Kadı Sicilleri İstanbul Mahkemesi 12 Numaralı Sicil (H. 1138 – 1151 / M. 1726 – 1738)*, İstanbul: Mas Matbaacılık.
- İslam Araştırmaları Merkezi (2010), *İstanbul Kadı Sicilleri İstanbul Mahkemesi 24 Numaralı Sicil (H. 1138 – 1151 / M. 1726 – 1738)*, İstanbul: Mas Matbaacılık.
- Oğuz, F. (2011), *Devlet ve Piyasa Regülasyon Ekonomisine Giriş*, Ankara: Seçkin Kitapevi.
- Ortaylı, İ. (1968), "Osmanlı Kadısı Tarihi Temeli ve Yargı Görevi", *Ankara Üniversitesi Sosyal Bilimler Fakültesi Dergisi*, (30), 117-128.
- Şentop, M. (2005), *Osmanlı Yargı Sistemi ve Kazaskerlik*, İstanbul: Klasik Yayınları.
- Viscusi, W.K. & J.E. Harrington & J.M. Vernon (2005), *Economics of Regulation and Antitrust*, Cambridge: MIT Press.
- Türk Dil Kurumu,
<www.tdk.gov.tr/index.php?option=com_gts&arama=gts&guid=TDK.GTS.5353b57585e5fe06.46563854>, (03.07.2014).