U.Ü. FEN-EDEBİYAT FAKÜLTESİ
SOSYAL BİLİMLER DERGİSİ
Yıl: 10, Sayı: 17, 2009/2

"HIBE" AS AN INSTRUMENT OF TRANSGENERATION COMMODITY TRANSFER IN THE OTTOMAN SOCIETY

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ABSTRACT

'Donation as a means for intergenerational capital transfer' has not become a separate research subject in the Ottoman studies so far today. The aim of the present article is to put forward the subject as a research problem. Data were collected from randomly selected court records of such cities as Bursa, Kayseri, Kastamonu and Mardin. More comprehensive study of the present research subject will also contribute to our understanding of the matter of age groups about which we almost have no idea in addition to many other titles.

Key Words: *Donation, capital formation, intergenerational transfer, qadi registers, Bursa.*

ÖZET

Osmanlı çalışmalarında kuşaklararası sermaye transferi olarak hibe bugüne kadar ayrı bir çalışma konusu olmamıştır. Makalenin amacı konuyu bir araştırma problemi olarak ortaya koymaktır. Kaynak olarak Bursa, Kayseri, Kastamonu ve Mardin gibi farklı şehirlerin rastgele seçilen mahkeme kayıtlarından yararlanılmıştır. Konunun daha geniş olarak araştırılması, pek çok başka başlıkla beraber henüz neredeyse hiç bir fikrimiz olmayan yaş grupları meselesini de anlamaya katkı sağlayacaktır.

Anahtar Kelimeler: *Hibe, sermaye birikimi, nesiller arası mal aktarımı, kadı sicilleri, Bursa.*

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Introduction

An important part of government policies (at least in theory) aim to compensate interpersonal income disparity. Another important but ignored factor affecting income disparity positively or negatively is the family institution, particularly the system of goods transfer that the family carries out. Although no comprehensive study has been made on capital transfer through inheritance, it is accepted as known. However, benefits made by family elders when they are alive to their children are an ignored matter. The aim of the present research is to examine donation as a means for capital transfer in the Ottoman family and to drive attention to it as a research problem.

The study evaluates donation as an economic activity achieving intergenerational goods transfer and uses shariyya registers as a basic resource group. The records other than the qadi registers of Bursa were selected from among the post graduate theses made in various universities and based on book transcriptions and evaluations (such as those of Kastamonu, Mardin and Kayseri).

Donation can be studied from social, economic and legal perspectives. This title has not become a separate research subject within the frame of Ottoman studies but evaluated theoretically generally within the frame of Islamic law studies. However, inheritance as a means for capital transfer have been studied, though few in number (Ergene and Berker, 2009, p. 25-47).

Some studies, however, refer to donations that were made with a sense of benevolence to generally religious institutions (For instance, see Faroqhi 1976; Ginio, 2006). Donations made to the charitable foundations with the aim of benefaction are out of examination (For a study that investigates a similar subject, see Layish, 1990).

Family is regarded as the key stone of social structure by all the social sciences. Nevertheless, this agreement on the importance differs slightly when it comes to definition. On the grounds that different geographic zones and time periods produced various family structures. However, regardless of its type, this institution is also a means that provides intergenerational capital transfer.

Intergenerational capital transfer is important for two reasons. The first one is economic and the second and of concern to us is sociological. This is related with the distribution of family resources and the good conduct of the family members. Family resources refer to the total of time, place and economic entities. Place means the living together of family members and time refers to the amount of time that family members spend to help while

doing one another's deed (Aykan and Wolf, 2000, p. 395). Time starts with taking care of the children and stretches till helping in sickness. Economic entities are in the form of transference of cash or other goods. Here what we are basically concerned is related with the last item (Remle, 2008 p.1-3). In addition to all of this, it is necessary to examine the role of intergenerational transfer in order to understand capital accumulation (Kotlikoff and Summers, 1980 p. 1-3). This subject is also related with how intergenerational relationship changed in time. However, from the point of Ottoman history, age, age groups and generation terms are a very recent field of study.

It is beyond the limits of the present study to evaluate the variety and depth of the studies conducted on the socio-economic status of the "western" world family. However, it is not inaccurate to indicate that they appear quite "primitive" when the number and quality of the studies conducted on the Ottoman family is compared with those of the western world. For instance, almost all of the studies conducted on the Ottoman family including the present study regard the members as "ageless". The only exception that we were able to locate is Minna Rozen's study (Rozen, 1996). Yet, today we know that age groups have some behaviors peculiar to themselves (Glass Jennifer et al., 1986). For instance, as the children grow older it is expected that they have some of the privileges that appear peculiar only to their mothers or fathers. However, the resources at hand are unable to present this situation for the present.

The Question of "Why Were the People Donating Their Assets?" and Its Possible Answers

As with many other subjects, the matter of donation also occupies Islamic jurists. Many possible problems such as how donation should be realized, which entities were to be subjected to donation were answered by different sects (madhab). Yet, these responses are "hypothetical". Because, those who were curious about the views of the sects (madhabs) on this issue consulted only the fiqh (Muslim canonical jurisprudence) books (Yanagihashi, 1998 p. 326-358, Esen, 2005). However, this situation, that is, the necessity that theoretical approach and practice should be implemented together was pointed out yet in 1970s (Udovitch, 1970 introduction section).

Those who thought that some of the regulations brought by the Islamic Law in intergenerational flow of goods, specifically in inheritance matters, either with an expectation of compensation or due to completely different reasons, donated or sold some of their assets in agreement (For a similar comment, see Ergene and Berker, 2009 p. 28).

Gerber indicates in a study based on court records of 17th century Bursa that specifically sons left home and continued their lives on their own while their fathers were still alive. However, this situation is insufficient in explaining the donations made to daughters and between spouses (Gerber, 1989, p. 414).

Theoretically, it is expected that the persons who have donated their assets should consider equality among their children. Yet, plethora of evidence at hand indicates that this expectation was regarded not as an order but as advice (Powers, 1990, p. 29).

The reason why donations were made is a subject that is not dwelled upon by the Islamic jurists or Ottoman historians. The transaction made is regarded merely as charity and the fact that the matter has an economic dimension is overlooked. Three separate theories limited with European history are developed regarding this matter. The first one is that the persons donate their cumulated assets as they cannot estimate their time of death. According to the second theory the persons demand the services that they cannot buy from the market from their offspring and in return they make donations. Yet, according to the third theory the reason behind the donations is solely charity (McGranahan, 2000, p. 1271; For a similar article, see Diefendorf, 1982). Halil İnalcık is the exception in this matter. In his article, he pointed out the effect of the donations made with the aim of charitable foundation or with other reasons on capital accumulation (İnalcık, 1969).

Donation to family members could have been made with various expectations. The most important ones among these are improving the behaviors of donee towards the donator, in order to secure their old age care in a system without social security or merely with charitable senses. In addition to this (though it is difficult to prove within the frame of the present study) we think that strengthening the condition of the family members with poor economic status may be an alternative in the Ottoman example (Perozek, 1998, p. 243). Sometimes, the elders donated all or some of their assets in return for being taken care of (Layish, 1997, p.12).

The Differences between Theory and Practice: Donation Records in Ottoman Qadi Registers

When Ottoman family is the case, perhaps due to the general quality of the laws applied in Qadi courts, this matter is usually regarded within the frame of Islamic Law. It is not possible to claim that this is inaccurate. However, this economic activity which takes place with personal wishes and expectations (either as sale of goods or as a donation) is a method used by non-Muslims as well as Muslims. Donation is an economic activity that

operates almost always from family elders to either the persons with whom they have a blood bond relationship (such as their sons or daughters) or to the ones with whom they have a social bond (such as emancipated servants or servants appointed for emancipation). Generally no remuneration is expected; however in some cases there may be an equivalent very little in amount which cannot be compared with the value of the donated asset. Sale of goods also follows the same pattern. Namely, the elders "sell" their assets (generally real estate) to younger ones. We claim that the sales transaction here is arranged by agreement in most of the cases and that due to the aforementioned reasons a moral rather than a material compensation is expected. What, then, do the numbers in trade scripts mean? It is our estimation that this is a precaution thought to prevent other inheritors from claiming a right during the sharing of the inheritance after death. This method is still used in Anatolia today. The son (in some cases the daughter) who is committed to take care of the elders of the household "buys" some of his father's fields or goods with similar economic value. In daily language this transaction is named as "to take on oneself", "to take over" or "to take the title deed upon oneself". In legal contemplation, the transaction made is completely legal. However, the value stated as the sale value is not paid in fact. The sales documents are excluded within the frame of the present study.

The donations or sales of goods between spouses are also matters that should be investigated. We estimate that this situation is a method referred mostly to persuade for polygamy. Today, in Anatolia, the persons who generally make their second marriage still demand movable or immovable properties as a condition for marriage in order to guarantee their own future or the future of their children from their previous marriage. Yet, this situation also stands still as a problem to be investigated.

Due to lack of in-depth investigations the fact that in Ottoman Empire men had the absolute power as the head of the household was an unquestionable truth till near future. This belief brought along the assumption that they also controlled all the economic resources. The recently conducted studies revealed that contrary to what was expected Ottoman women were economically and socially far more ahead than their fellow sisters living in other countries. A general evaluation of the studies conducted in this field can be found in Klaus Kreiser's article (Kreiser, 2002).

The women we exemplified in our study are from both Muslim and Non-Muslim group. The donees do not necessarily have to be a blood relative. For instance, Hacı's daughter Halime donated her house surrounded by Abdulgaffar's estate in the south, by the road in the east and north and İbrahim's estate in the west in Sevindik District to her sibling's son, İbrahim

(*Mardin Shariyyah Record numbered 252*, 84/221). Here the uncertain point is whether Halime had her own child or children or not. Yet, due to the limitations of the documents present it is not possible for us to know real case.

It is clear that there were unregistered donations as well as registered ones. For instance, upon request Mevlana Said Efendi from the court goes to Ayşe Hatun's son's (Mehmed) house in Makramevi District and erects a tribunal in the presence of the persons whose names were written on the document. Ayşe Hatun declares that she donated a pair of gold coins, a pair of ear-rings, a silver belt and a golden hair ribbon of hers to Saliha ten years ago. This is recorded and the court is informed. The fact that court register was recorded not in the courtroom as usual but in the woman's house gives a clue about the age of the person in question. The party that requested the issuance of this document should be the donee who was afraid of a possible lawsuit (*Bursa Shariyyah Record*, B 90-295, 405) because in the following document we see that the caldron donated by the same woman five years ago was registered (*Bursa Shariyyah Record* B 90-295, 406). In another example, Şerife Amine's son, Şerefeddin, from Hoca Ali District declares that he donated the assets consisting of quilt, pillows, mattress and rug to Ivaz's son, Kurd, five years ago (*Bursa Shariyyah Record*, B 90-295, 708). Nevertheless, it should be remembered that even the registered donations were subject to an appeal. For instance, the estate assets of Şerife Ümmühani's son, es-Seyyid Abdülkerim, were left to his daughter, Şerife Saime, and her brother, Mustafa bin Nurullah. Mustafa brings a suit against Şerife on the account of the fact that she hid some assets which he claims should be included in the estate assets. The defendant indicates that the house which is claimed as not included in the estate assets, a pot, a shallow frying-pan and a metal bowl (used for dousing oneself with water while washing oneself) were donated to her by their mother. She presents the supporting document given to her by the court. However, the plaintiff does not accept the donation. When the defendant was asked to prove the donation, from among the persons mentioned in the document, Mehmet Efendi's son Dede and Hasan Efendi's son Mehmet bore testimony to her and verify the donation. The plaintiff was asked to offer proof for the assets he claimed as hidden aside from this document. He couldn't produce proof and when the defendant swore about not concealing any assets the case was dismissed (*Bursa Shariyyah Record*, B 90-295, 528).

There are emancipated servants among the donees as well (For donating servants see Akyılmaz, 2005, p. 223). It may be thought that these persons cannot be considered as members of the family (from the research problem point of the present study). However, we have included them in the

study due to their relationship with the family both during their service and after their emancipation. Mustafa Efendi's daughter Ayşe Hatun from Veled-i Hırat District by means of her representative, el-Hac Osman Efendi İbn-i Müsli, says at the court: I donated a quilt and a pillow to Abdülvehhab's daughter Kahraman, my former servant that I emancipated. Apart from these, pair of golden bracelets, a silver belt with gold printings and a caftan etc. and four shirts are the goods bought by the aforementioned person. Ayşe Hatun does not have any connection. May she use them as she wishes. The reason behind this register record is not to prove that quilt and pillow were donated. She is registering the assets given her by her mistress as she hesitated that what she earned by working could be subjected to an appeal by the inheritors with the possible death of the former mistress (*Bursa Shariyyah Record*, B 90-295, 52). Not registering the assets results in losing them. We see how important the register records are in another example. Guardian of Halil (Hızır bin Şerif's son) files charges against Abdullah's daughter Timurhan who was the emancipated handmaiden of the aforementioned person. He claims that the handmaiden hid properties such as pillowcases, mattress, quilt, rug, trunk etc. from the assets of the deceased. When the defendant is questioned about this claim, she states that these properties were donated to her by the deceased when he was still alive. As she proves her words with witnesses, the case is dismissed (*Bursa Shariyyah Record*, B90-295, 576). The fact that family relations of the emancipated servants somehow still stand can be seen in the following example. Osman's daughter Fatma Hatun from Namazgah District says at the court: My mother declared that Abdülvehhab's daughter Nevcihan, who is of Russian origin, of middle height and is blonde and has hazel eyes, would be emancipated forty days before her death. She is free. Additionally, I donated her mattress, two pillows, a pan and two shallow cooking pans and a quilt of mine (*Bursa Shariyyah Record*, B 90-295, 612).

Among the inter-family donations of the womenfolk, a very interesting point which can be the subject matter of a separate study is the donations they made to their husbands (For the study about the enrichment methods of women see Maydaer, 2006). This case though seems meaningless at first sometimes takes a new meaning due to the attempts for filing a lawsuit related with the marriage even after twenty years. If there is not a special case, here the husband is trying to prevent the asset demanding lawsuits that can be filed by the wife against him in a possible case of divorce. For instance, Mehmed's daughter Ayşe from Şahzade District donates one thousand five hundred lucres of the mehr money mehr (the assets or money that a Muslim man gives or promises to give his bride during the religious wedding ceremony) and kitchenware including pots and

pans, jewelry including a pair of golden bracelets, three mattresses and six pillows to her husband Mustafa. All of the properties in the list are her husbands's now. He may use them as he wishes. She has only five hundred lucres to get from her husband as mehr. Her husband confirms this situation (*Bursa Shariyyah Record*, B 90-295, 100).

In some cases, women may disclaim their mehr, which they will get after divorce, by way of donation (Maydaer, 2007, p.303). For instance, Hüseyin's daughter Fatma from İbrahim Paşa District talks about her former husband Ahmed bin Hasan as follows: Ahmed was my husband and he divorced me with three words (In Islamic Law husband divorces the wife by saying "boş ol" three times) and I sued him on my mehr. Now I donated my merh to him (*Bursa Shariyyah Record,* B 90-295, 145). Though very rare, it is seen that men donated to their former wives after the divorce. Ahmed's son Aşur from Şehreküstü District of Kütahya donated his house in the same street to Osman's daughter Atiyye, his former wife (*Kütahya Shariyyah Record numbered 1,* K2/81/418).

Leslie Pierce indicates that specifically women gained social capital by donating their properties they either earned or possessed by way of heritage in the section about ownership relations in his book written by using Antep registry records. Men specifically did not renounce their rights they gained by way of heritage and with the help of their sisters they tried to gain and maintain the feature of being a safe harbor in time of need. This is a comment that we agree upon. However, we should not be too naïve in this matter. Although the right to renounce the heritage belongs to the entitled party, social realities do not let the women to decide all by themselves all the time. It should be remembered that today the main reason behind domestic troubles is the heritage problems. Additionally, fathers almost always donate their assets to their sons. Here, what we disagree is the effect rate of the Islamic Law. The examples in the registry records either in Bursa or in other cities indicates that Muslim or Non-Muslim all parts of the society share this partial attitude about donation. This exhibits the need to think about how social dynamics work in pre-industrial eastern society (Pierce, 2005).

It is seen that women still donated to their husbands in the period when they are still bound with the marriage. For instance, Mustafa's daughter Ümmühan from Meydan District in Kütahya donated her house in the same street, two quilts, a mattress and two pillows, two pans and four shallow frying pans and her cow with the calf to her husband İbrahim. In return she got a Koran, a golden ring and ear-rings (*Kütahya Shariyyah Record numbered 1*, K2/76/397). In another example, Ali's daughter Neslihan from Kirişçikızı District donated her house in the same street to her

son-in-law es-Seyyid Ivaz Çelebi (es-Seyyid Mehmed's son) and in return she got a Holly Koran (*Bursa Shariyyah Record,* B90-295, 9).

In some cases, post-mortum heritage lawsuits indicate that domestic donations (specifically mehr) were not always registered. For instance, İsmail and Ayşe, parents of Fatma from Veled-i Enbiya District sue their daughter's husband Mehmet bin Recep. They claim that seven thousand lucres of their daughter's mehr (a total of fifteen thousand) remained in the aforementioned person. In his reply, Mehmed claimed that the amount of mehr that he owed to his wife was two thousand lucres (she donated some of it to her husband at their wedding night) and that only one thousand lucres of this amount belonged to the plaintiffs and that they (the plaintiffs) donated this amount to him within the frame of the assets that were not included in heritage. When he was asked to prove his claims he could not succeed. This time İsmail and Ayşe were offered to take an oath about the fact that they were unaware of their daughter's donating her mehr to her husband at their wedding night but they declined this offer. Then Mehmed was asked one more time to prove the fact that the plaintiffs donated him one thousand lucres they were supposed to take. Serdarzade Hacı İbrahim bin Mustafa and Hacı Ebubekir gave testimony in the same direction as the defendant's explanations and the case was dismissed (*Bursa Shariyyah Record,* B90-295, 513).

In rare cases, sons or daughters may also donate to their parents. For instance, Hacı İbrahim bin Abdullah from Şahzade District dies. His heritage descends to his spouse Ayşe (Mehmed's daughter), his son Ivaz and his daughters Fatma and Hadice. Fatma donated her share of three thousand lucres from the house descended from her father in the same neighborhood to her mother (*Bursa Shariyyah Record,* B 90-295, 101). However, as we are unaware of what kind of arrangement was made for the rest of the heritage in such cases it is not clear whether such a donation is simply a charitable act or not. Yet, in some examples (if we believe in the content of the document), daughters donate domestic properties. For instance, Hiyeyin's daughter Ümmügülsüm from Timurtaş District donated three mattresses, three quilts, eight pillows, three cushions, etc. and domestic properties, clothes and jewelry of hers to her mother Hacı Nasuh's daughter Fatma Hatun. She declared that the listed items were the belongings of her mother thereafter (*Bursa Shariyyah Record,* B 90-295, 357). However, the donations made to the parents aren't always free of problems. For instance, Mustafa bin Hasan from Üçkoz District sues Bali bin Yusuf. He claims that the last named person unfairly took the possession of the plaintiff's house in the same neighborhood. When the defendant was asked about the situation he says: The plaintiff donated the aforementioned house to his mother two years ago.

I bought this house from Ayşe and her husband Hüseyin bin Ali (who are present at the court) for fifty qurush. I handed in twenty-six qurush of this amount to Ayşe and twenty-four qurush to Hüseyin. When the plaintiff was asked about it he denied donating the aforementioned house to his mother. When the defendant was asked for the proof of this donation, he called Üstad Emrullah Ahmed and Hasan bin Üveys from Mecnun Dede District as witnesses. When these persons confirmed the donation the case was dismissed. As far as we understand from the surname of the plaintiff, his mother remarried and sold the given house together with his stepfather (*Bursa Shariyyah Record,* B 90-295, 519).

The mothers and daughters are not always on good terms with each other. In such a donation example, Abdülbaki's daughter Ayşe from Babu's-Sicn District sues her own daughter Neslihan (her and İbrahim's daughter). She claims that her daughter donated her assets listed in the document at her hand. After donation she had lodged the assets to her daughter. Now though she demanded the assets her daughter denies and refuses to return them. When she was asked about it the accused confirmed the situation in her reply through her representative. However, she claims that her mother later donated her assets in question. When she was asked to prove the donation, Hüseyin bin Himmet from Tekye Mescid District and Ömer bin el-Hac Mehmed from Alaca Hırka District gave testimony and confirmed that the plaintiff had donated the assets in question to her daughter. The case was dismissed due to this testimony (*Bursa Shariyyah Record,* B 90-295, 407).

In women's and men's donations, in some cases, it is observed that they made donations to their grandchildren by bypassing their sons and daughters. We see that Halîme binti Ahmed from Çerçi district of Kütahya donates the house which she still lives in to her granddaughter, daughter of her deceased daughter, Kerîme Hâtûn and her husband, Oruc. It seems interesting that the donator donates the house not only to her granddaughter but also to her grandson-in-law (*Kütahya Shariyyah Record numbered 1*, K2/68/356). Moreover, Salaman binti Merat from Küçükorta district of Kütahya donates her house and goods in it to her grandson, Arton veledi Ohannes (*Kütahya Shariyyah Record numbered 1*, K2/72/375). Donation made to a son-in-law should perhaps be interpreted as self-devotion of women thinking of their daughters' future. Another case is interesting in that it both indicates this case and is indicative of kin marriage. Ümmü Gülsüm bint-i Ali Ağa living in Alaca Mescid district of Kastamonu donated her share in the house left to her from her husband to her son-in-law, Hüseyin beşe İbn-i Mehmed. The point here indicating kin marriage is that a part of the house already belonged to the aforementioned son-in-law through inheritance (*Kastamonu Shariyyah Record numbered 69/1,* 33/73).

Due to security characteristics of the period, it is a problem to keep valuable goods especially for people who intend to set out. This problem is generally solved through the method of entrustment. However, this situation sometimes leads to irregularity. For example, Saliha hanım from the people of Mardin claims that she has trusted some of her goods with her step son, Şeyh Musa Bin Mustafa from the people of Mardin, and reclaims these now, but Şeyh Musa proves that these goods were donated by Saliha four months ago with the testimony of Hamdo bin Şemso and Ahmed bin Abdullah and Saliha is disqualified from sueing (*Mardin Shariyyah Record numbered 252*, 79/205).

In women's or men's donations, there are those not indicating family tie. We think the reason why these donations are made is benevolence. However, we do not know yet about the ways of selecting people to be donated (such as neighbourhood relations, being distant relatives, etc.). In such a case, Râziye bint-i Bayram from Elmalı District donates utensils such as pans, bowls, etc. and five hundred akçes to Mustafa bin Hacı Mehmed, and he accepts this donation. In return for these, she gets a holy koran. After that, she admits that the goods she donates belongs to the mentioned person (*Bursa Shariyyah Record*, B 90- 295, 346). A christian named Mükerrem binti Petros from Büyükorta district of Kütahya donates, at the court, some goods *"otuz zirâ' malaz bezi ve on zirâ' penbe bezi ve bir münakkaş çarşeb ve bir münakkaş boğça ve on zirâ' ketan bezi ve... dokuz miskal altın ve iki miskal kırık altun ve bir altın yüzüğünü"* valuing thirty-five kurush to the daughter of her sister, Basbiyet binti Agop (*Kütahya Shariyyah Record numbered 1,* 64/64). It would be interesting to know about the age of the donator and if she had any children. However, we are deprived of such imformation for present.

Some donation documents are interesting in that they provide insight into life-styles of the Ottoman family. For example, Saliha bint-i Mehmed from Alaca Mescid District of Kastomonu donates her share in the house in the same district to her daughter, where she both lives and owns with her daughter. And the person who accepts Saliha hanım's donation at the court and makes it to be put under record is her son-in-law *(Kastamonu Shariyyah Record numbered 69/1,* 46/103).

We predict that donation is related to agedness. In some cases, this is valid for people setting out on journeys from which the possibility of returning is weak. For example, Hacı İbrâhim from Arab Mehmed District dies on the pilgrimage to Mecca. He leaves behind his daughters, Şerîfe Ahsen and Şerîfe Hânım, and her wife, Şerîfe Ümmügülsûm hâtûn ibnet-i Fethullah. Şerîfe Ümmügülsûm is appointed as guardian over her daughters and sues the father of the mentioned person, Mehmed Çelebi. According to

her claim, her husband apportions the house and the kitchen in the yard located in the same district to his little daughters before he goes on the pilgrimage to Mecca and donates the places to them. Besides these, he gives the same person in four thousand akces for each of her daughters. The woman asks the houses and the money given in for her daughters to be given in to her. When Mehmed Çelebi is asked about the case, he completely denies everything. When the claimant is asked to show evidence, she shows Hasan Ağa İbn-i Ali from Mîhâliç and Hacı Ebîbekir İbn-i Ömer from Hacı Sevinc District as witnesses. The witnesses testify the claimant. It is decided that Mehmed Çelebi is due to pay the mentioned eight thousand akces (*Bursa Shariyyah Record*, B 90- 295/42).

Nalbur (hardware dealer) elhac Ali bin İsmail living in Alaca Mescid district of Bursa donates his garden house located in the same district to his daughter named Rahmiye. Contrary to what is expected, Rahmiye is not present before the court but instead represented by Musa bin Hasan Efendi, about the degree of whom we have no information (*Bursa Shariyyah Record*, B 179-4/4).

We consider that not only the matter of slavery but also that of servitude should be examined under the title of donation. For contrary to the examples in the west servants become members of a family a while after. For example, the following example indicates the elaborateness of this relationship. Halil living in Emir hostelry is the ex-servant of Hacı Ahmed. Hacı Ahmet donates thirteen kurush to him. This person gives in this amount together with his own savings back to that person in return for interest. The document is kept in order to show the ex-servant's getting the annual interest of his money (*Bursa Shariyyah Record,* B 90-295/191).

Donations not put under record later become legal problems that have to be solved. For exaple, Çerağ Mehmed bin Ahmed living in İsa Bey village of Bursa dies. As far as understood, he leaves behind only his wife and sister. For this reason, all of his heritage is expected to belong to them. However, as we learn from a filed lawsuit, the mentioned person donates his garden with mulberry trees in it located in the same village to Halil bin Musa a week before his death. In the hearing conducted, since İbrahim bin Ali and Fatma binti Süleyman and Durdu binti Ahmed who are called as witnesses give testimony in favor of the complainant, it is decided the garden to be given in. The interesting point related to the lawsuit is the two women's being called as witnesses (*Bursa Shariyyah Record*, B 226- 2/2). Islamic jurists disagree on the possession time of donated goods. According to the majority, since donation is an endowment, it does not leave the possession of the donator until it is collected, and for this reason, it is possible to break a donation. However, according to others, in donation the collection is a must.

Before collection, it is not possible to transfer property with an abstract donation contract. The opinions are as follows in case the donator dies before s/he gives in the goods s/he donates: 1-According to Hanafis and some Malikîs, if the donator dies before s/he gives in, the contract of donation becomes invalid. For the goods not yet taken by the opposite side are inherited by successors with the death. 2-According to the majority of Shafis and Hanbelis, the contract of donation does not become invalid with the death of the donator. The successors of the donator can complete the contract by giving in the mentioned goods if they like. Also the person in favor of whom the donation is made has the right to collect or not to collect the mentioned goods (Esen, 2005, p.79). However, as seen clearly in the above case, transaction was accepted as valid despite the death of the donator before giving in the goods.

Result

It is possible to draw the following conclusions from the examples we have encountered in the randomly selected court records. When considered from the point of the donator it is possible to say that women stand more in the forefront. These are mostly women with titles such as mother or grandmother. The women who donate in the capacity of spouse, however, generally renounce a part of their mehr (the assets or money that a Muslim man gives or promises to give his bride during the religious wedding ceremony). In rare cases it is possible to see that the offspring donate to their mothers. The male donators are generally in the father group. However, in the present study there was not an example for donation in father group.

The donated goods ranged in a wide span from daily clothes to kitchenware, the house and the jewelry. There is the need for a wider study limited with time and place for the ratio of donators and donee.

The donee are also as various as the assets that are donated. In the first place, there are immediate relatives (son, daughter, sibling, grandchildren and former servant); yet sometimes it is seen that donations were made to the persons who did not appear to have any blood relationship in the documents.

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