

Alternative Dispute Resolutions In Turkish Law

Law in Ottoman Empire

Ottoman legal system accepted the Religious law over its subjects. The Ottoman Empire was always organized around a system of local jurisprudence. Legal administration in the Ottoman Empire was part of a larger scheme of balancing central and local authority. The jurisdictional complexity of the Ottoman Empire was aimed to permit the integration of culturally and religiously different groups. The Ottoman system had three court systems: one for Muslims, one for non-Muslims, involving appointed Jews and Christians ruling over their respective religious communities, and the "trade court".

The entire system was regulated from above by means of the administrative *Kanun*, i.e. laws, a system based upon the Turkic *Yasa* and *Töre* which were developed in the pre-Islamic era. The *kanun* law system, on the other hand, was the secular law of the sultan, and dealt with issues not clearly addressed by the *sharia* system.

Alternative Dispute Resolutions - Ottoman Period

Law Sources for Alternative Dispute Resolutions

Legitimacy for settlement consists of Koran, Behaviours of Mohammed and interpretations of Islamic schools. According to court records, settlements are defined as "Allah's great expectation from the people" referring to the verse of the Koran which states "settlement is the best award among the other awards.

Methods of Settlements

To the Islamic law books, in case of parties have dispute, there are 2 ways for settlement to resort. The first one is to settle the dispute without resorting to the court. It's always possible for the parties to resort this way which does not require any procedure or any guidance. Bear in the mind that these settlements are generally referring to acknowledgements.

The second one is the way of the settlement which can be implemented by Ottoman lawyers in accordance to a particular form and system. As compared to the first way, negotiations between parties initially take place at the court and thereafter resume outside the court. According to this procedure, parties participate in the hearings which are governed by judge. In case that parties don't bring any final evidences judge may call them to settle the dispute by themselves. Thereafter, the settlement procedure commences.

Call for the settlement must be made in advance of the court decision. Because after the decision, it would constitute complexity to reach a settlement again. Call for the settlement must be done for twice and it can't exceed more than 2 times in order to prevent abeyance of the case. If the parties don't approach for the settlement, judge may conclude the proceeding.

Subject Matters of Settlements

Subject matters of settlements are in connection with the obligations, the claims, compensations and blood money which emanates from murder. Criminal cases such as adultery and drinking alcohol can't be settled by any instrument of resolution. This clear distinction in regard to subject matters of settlements can be inferred from the records of Ottoman Courts. Generally judge calls both parties to the court in case that defendant rejects the personal actions against him. Inheritance law also falls in the scope of settlement.

Mediators for the settlement in Ottoman State

The second stage of settlement may commence in case of acceptance of judge's proposal by both parties. In this stage, independent mediators (*Muslihun Muslimuns*) comes up in order to reach a consensus with respect to the dispute. *Muslihun Muslimuns* consist of three adult males, but considering the records of the period there is no detailed information indicating their qualifications. It's assumed that those mediators were selected from among the people who are well respected and also confidential in the society. The mediators hold meetings with the parties and seek for a settlement. Participation of the mediators such as witnesses to the meetings prevents the claims in respect of non-existence of the settlement.

Conclusions of the Settlement

Settlements can be concluded in several ways. Firstly, the debt in concerned with the dispute can be paid cash. But, generally paid off money amounts to less than the demand of applicant from the defendant. The other way of conclusion is to pay the debt in exchange of assets. Moreover, some of the settlements can be concluded by the means of abdication. In this case, the applicant must abdicate from his/her claims over the defendant and this abdication must be recorded in the form of a concrete document. Generally, the cases related to inheritance epitomizes to this way of conclusion. According to Ottoman Law, the only method to settle the dispute which arises from the criminal actions such as battery, hurting, theft is abdication.

Conclusion in the Alternative Dispute Resolution in Ottoman State

There is no definite information indicates us how many cases had been resolved by the method in the foregoing mentioned. Despite of this fact, there is an elaborated court record in Balikesir city of Turkey. According to this record, 12 of 61 cases had been concluded by the method of settlement in pais which amounts to 20 percent of the cases.

As a conclusion, during 17th and 18th century of Ottoman Empire, settlements in pais had been played an important role to facilitate and reduce the workload of the courts. At intervals, Ottoman intellectuals and thinkers encouraged the people to resort amicable settlements. After the establishment of modern "*Nizamiye Courts*" in 1870, law-maker preserved the concerning procedures by codifying them under the terms of "amicable settlement" and "release of debt".

Alternative Dispute Resolutions in Modern Turkey

ADR In the Terms of Private Law

In Civil Code

Considering the actual legislation, article 213 of code of civil procedure states that "in every instance of the case, judge may call the parties or their attorneys to hear their declarations and he/she may encourage settle a dispute in case that there is an obvious hope for the settlement between the parties.

In Consumer Rights Law

Article 22 of the law on the protection of consumers' rights law had been amended in 2003 in accordance to concerning EU directive. According to this article, concerning ministry must establish arbitration committees to settle the disputes which arise from the complaints of the consumers. Citizens should apply to these committees if the amount of consumer dispute is below 500 Turkish Liras. The decisions of the committees are binding for the parties. The decisions of the committees can be carried out under the law of enforcement and bankruptcy. Within the 15 days of the decision's announcement, parties may object to the court but they can't cease the execution of the judgment. In the case of an objection, consumer rights courts will examine the issue.

ADR In the Terms of Penal Law

According to Turkish Penal Law, parties of the settlement can be either real person or legal entity and it exists for the crimes which require civil claim. There are 27 particular crimes under this category. Moreover, the law on protection of the children lays down the particular crimes committing by the children.

ADR in Penal Procedure

According to Code of Penal Procedure, the dispute can be settled during the investigation section of the case and also prosecution section of the case. Considering the features of the crime if the conditions for the settlement are fulfilled, the prosecutor must try to settle the dispute.

To commence the settlement procedure firstly, the perpetrator must accept the crime and its liability and the damages must be compensated by him/her. Finally, the convicted should accept the settlement proposal. Besides, prosecutor or judge may appoint lawyers among from the bar association for the parties if they can't reach to an accord with the selection of their lawyers who will settle the dispute.

There is no definite provision in the Code of Penal Procedure indicates the role of the mediator. But it can be inferred from the spirit of article 253 of the code that the role of mediators must be active and responsible for striking balance among the parties of the dispute.

