Documenting Justice: 
*New Recording Practices and the Establishment of an Activist Criminal Court System in the Ottoman Provinces (1840-late 1860s)*

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Introduction

On 4 August 1840, two farmers, İsmail bin Mehmet bin İsmail and Hasan bin Mahmud, residents of Seydigazi, near Eskişehir, in the district of Kütahya, went to work their adjacent fields. At around 1 p.m., İsmail mocked Hasan for the way he tended his horse. Offended, Hasan picked up a scythe and struck İsmail on his left shoulder. The cut was deep, and İsmail soon died.

The next day, İsmail’s heirs – his mother and siblings – submitted a lawsuit against Hasan at the Small Council (*Küçük Meclis*) of Seydigazi. The heirs accused Hasan of intentionally (*amden*) killing İsmail. Four members of the Council convened to hear the case: the judge (*naib*), a representative of the tax collector (*muhassil*), and two representatives of the community. Hasan confessed to the charges of his own free will (*bi’t-tav*), describing the incident in detail. Based on his confession, İsmail’s heirs demanded retaliation (*kısas*), i.e., *lex talionis*. At the end of the Council’s report (*mazbata*), the judge wrote that according to the new penal code (i.e., the first *Tanzimat* penal code of 1840), the accused must stand trial before the Grand Council (*Büyük Meclis*) of Eskişehir.

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1 The time indicated in the court records was 07:00 *alaturka*. On *alaturka* and *alafranga* clock systems, see Avner Wishnitzer, “The Transformation of Ottoman Temporal Culture during the Long Nineteenth Century” (Ph.D. dissertation, Tel Aviv University, 2009), 43-5.

2 This case is taken from the Prime Ministry’s Archive in Istanbul – Başbakanlık Osmanlı Arşivi (BOA), İrade Meclis-i Vala (İ.MVL), 16/260, 29 Zilhicce (Ar. Dhu al-Hijjah) 1256 (21 Feb. 1841).

3 On retaliation, see *EP*, s.v. *KİŞAŞ* (Joseph Schacht).
the seat of the tax collector, irrespective of whether the plaintiffs were demanding retaliation or compensation (diyet).\(^4\) All four Small Council members signed the report. The judge then ordered the police to escort Hasan to the Grand Council at Eskişehir.

Two days later, ten members of Eskişehir’s Grand Council convened to hear the case. After the killing had been declared intentional murder, İsmail’s heirs, who were present at this hearing, demanded retaliation. As required by the 1840 penal code, the Grand Council of Eskişehir referred the case, along with the relevant paperwork from both Councils, to the Supreme Council of Judicial Ordinances (Meclis-i Vâlâ-\(y\)n Ahkâm-\(i\) Adliye; hereinafter, the Supreme Council), which served as a Supreme Court, for review. Meanwhile, Hasan was kept in prison. Almost six months later, on 10 February 1841, the General Council (Meclis-i Umumi), composed of ministers and high state dignitaries, accepted İsmail’s heirs’ request for retaliation.\(^5\) The decision then had to be approved by the fetvahane (the office of the Şeyhülislam).\(^6\)

Following the fetvahane’s approval, the office of the Grand Vizierate (Sadaret) sent a report (arz teszi\(k\)iresi) to the Sultan, along with the names of three other convicted persons, to secure his approval of the execution. The Palace secretary (Mabeyn \(B\)aşkatibi) replied to the report; thus the sentence became an imperial order (irade-i seniye). Whether or not Hasan was executed remains unknown. It had taken nearly seven months, from 5 August to 21 February, to complete the criminal proceedings.

From 1840 through the late 1860s, a new criminal court system was created by the Supreme Council and the Ottoman provincial administration. This system was no longer part of the Şeriat courts nor would it be part of the Nizamiye court system that would follow it in the late 1860s. This short-lived criminal court system applied new penal codes and developed new criminal proceedings that were crucial to the operation of the Ottoman state. This criminal court system, which has been little studied, forms the crux of this article. Hasan’s trial will serve as an example of a typical court proceeding.

The present study seeks to contribute to the growing number of studies devoted to Ottoman law and order, criminal history, and legal history in a

\(^{4}\) Diyet (Ar. \(d\)iya) is financial compensation for the legal heirs after they have pardoned the defendant. On blood-money compensation, see EI\(^2\), s.v. Diya (E. Tyan). On diyet in Ottoman legal practice, see Uriel Heyd, *Studies in Old Ottoman Criminal Law* (Oxford: Clarendon Press, 1973), 249-50 and 308-11.

\(^{5}\) During the early stages of the reforms, some important cases were reviewed by the General Council after the Supreme Council had reached a decision.