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## **REBELLION CRIME IN THE İSLAMIC AND OTTOMAN LAW**

### **Abstract:**

Rebellion in the Islamic state, also known as bağy is a matter not outdated. Likewise in the legal system, "State of rebellion" and disobedience is a crime punished. In our study, in Islamic and Ottoman law, "Rebellion" by another name "bağy" crimes were investigated. What are the terms of the rebellion crime in Islamic law. According to Islamic law, in case of a justified revolt against the president, these people are not considered rebels. Such an action undertaken against the illegitimate president is always right, it is legitimate. Rebellion, described in the place of Islamic law and the required information is provided.

### **Keywords:**

Rebellion in İslamic Law; Rebellion in Ottoman Law; State of Rebellion

**JEL Classification:** K14, K39

## Introduction

The word rebellion is expressed as "Bağy" (*baghy*) In Arabic and Turkish old legal system. In the dictionary meaning it means to look for something. It is used this meaning in Surat al-Kahf of the sixty-seventh verse.

"[Moses] said, "That is what we were seeking." So they returned, following their footprints." (AL-KAHF 18/64) In this verse "Bağy" word, used the meaning what we see that desired and sought.<sup>1</sup>

In the same time "Bağy" (*baghy*) word means to exceed the limit, to leave the truth. In Arabic, " "Bağy" (*baghy*) word root is "Bega" verb. It means that because of excessive arrogance, unfair and unlawful behavior against others in.<sup>2</sup>

However, it should be noted that, no matter whether this word (*Baghy*) is performed on the basis of a right of action. This shows itself in the thirteenth verse of the Qur'an.

Say, "My Lord has only forbidden immoralities - what is apparent of them and what is concealed - and sin, and oppression without right, and that you associate with Allah that for which He has not sent down authority, and that you say about Allah that which you do not know." (AL- A'RAF 7/33)

There are also Islamic scholars (*Fıkıh*) use the term "Bağy" (*baghy*) for political riot.<sup>3</sup>

Hanafi have identified this word in two different ways. According to the first definition: Illegitimate uprising against the legitimate head of state. (*el-Hurûc an tâtil inîamil hakk bigayri hakk*). Brief description of the Hanefis criticized by some of today's jurists.<sup>4</sup> If the government or president is tyrannical or despots, action against the government is not rebellion. Because head of state have lost their legitimacy. Uprising against no

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<sup>1</sup> UDEH, Abdulkadir, Mukayeseli İslâm Ceza Hukuku (Translator: Prof. Dr. Ali Şafak) , İstanbul, 2012, Vol. 2, p. 755-756.

<sup>2</sup> ECE, Hüseyin K., İslam'ın Temel Kavramları, Ankara, 2013, p. 55; YAMAN, Ahmet/ÇALIŞ, Halit, İslam Hukukuna Giriş, İstanbul, 2014, p. 171.

<sup>3</sup> ÖZEL, Ahmed, İslam Hukukunda Ülke Kavramı, Darül-İslam Darül-Harb, İstanbul, 1991, p. 203; YAMAN/ÇALIŞ, p. 171.

<sup>4</sup>"Hamidullah says that if opposition to government is directed against certain acts of government officials it is insurrection, the punishment for which belongs to the law of the land. He further asserts that if the insurrection is intended to overthrow the legally established government on unjustifiable ground, it is mutiny, while if it is directed against a tyrannical regime on just ground, it is called a war of deliverance. In our opinion, the distinction between mutiny and war of deliverance is based on subjective assessment, as one and the same instance of insurrection may be deemed mutiny by some and a war of deliverance by others." TABASSUM, Sadia, Combatants, not bandits: the status of rebels in Islamic law, International Review of The Red Cross, 2011, VOL. 93, N. 881.

legitimate state or president is always right, it is legitimate. It is considered the liberation war.<sup>5</sup>

According to the second definition: Muslims have the power and strength of a community, basing some provisions to their own justification, interpret different format, It is to revolt by force against lawful president.<sup>6</sup>

According to Malikis, Umar b. Abdulaziz time like the Kharijites, people who have high tension or anger, by themselves, on the basis of a review deemed justified, uprising against head of state or avoid coming under his obedience or refuse to give the zakat, and refuse fulfill other tax obligations.<sup>7</sup>

According to the Hanbali sect, the definition of rebellion crime: With a suitable *Ta'wil*,<sup>8</sup> A powerful group who were not present among them obedience, are opposed to the president as unfair. This description of the Hanbalis is similar to the rebellion definition of Shafii.<sup>9</sup>

According to rebellion crime description of Zahiriya, "Defying for Religion or by requesting the benefit of the world," is defined as.

Shafii sect put forward a definition that incorporates largely the ideas put forward in the Hanafi and Maliki sects definition about rebellion.

According to the Shafii sect, the definition of rebellion crime: With the leader of an armed organization, as though they have a legitimate purpose<sup>10</sup> (Namely head of state came to work with illegal ways or tyrannize over people), deposing to the legitimate head of state.<sup>11</sup>

Elements in the definition of rebellion made by the Shafi, mutiny against legitimate authority, supposedly legitimate interpretation (*Ta'wil*), organization, leadership.<sup>12</sup>

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<sup>5</sup> "Hanafis have made the definition of the rebels. They determine the revolt crime from this definition.", UDEH, Vol. 2, p. 756; ŞAFK, Ali, Mezheplerarası Mukayeseli İslam Ceza Hukuku, Erzurum, 1977, p. 178; CİN Halil-AKYILMAZ Gül, Türk hukuk Tarihi, Konya, 2003, p.229; AVCI, Mustafa, Türk Hukuk Tarihi Dersleri, (Editör: AYKANAT, Mehmet-ÜLKER, İbrahim-ZORLU, S. Emre), Konya, 2012, p. 216; HAVVA, Said, İslam Cezai Müeyyideler, (Translator: Salih Uçan), İstanbul, 1989, p. 56.

<sup>6</sup> BİLMEN, Ömer Nasuhi, Hukukî İslaiyye ve İstılahatı Fıkhiyye, İstanbul, 1976, Vol. III, p. 333; AVCI, Mustafa, Osmanlı Hukukunda Suçlar ve Cezalar, İstanbul, 2004, p. 344; DEMİR, Abdullah, Türk Hukuk Tarihi, İstanbul, 2011, p. 101.

<sup>7</sup> UDEH, Vol. 2, p. 756.

<sup>8</sup> Basing some provisions to their own justification, interpret different format.

<sup>9</sup> UDEH, Vol.2, p. 756-757.

<sup>10</sup> These claims must not be true, If these claim true, This action is not a Rebellion Crime.

<sup>11</sup> AVCI, Osmanlı Hukukunda Suçlar ve Cezalar, p. 344.

<sup>12</sup> AVCI, Osmanlı Hukukunda Suçlar ve Cezalar, p. 344.

## §1. REBELLION (BAĞY) CRIME

### I- Legal Elements of Rebellion Crime in Qur'an and Sunnah

*“Hence, if two groups of believers fall to fighting, make peace between them; but then, if one of the two [groups] goes on acting wrongfully towards the other, fight against the one that acts wrongfully until it reverts to Gods commandment; and if they revert, make peace between them with justice, and deal equitably [with them]: for verily, God loves those who act equitably!”* (AL-HUJURAT 49/9)(Hucurat, 49/9)

*“The believers are but brothers, so make settlement between your brothers. And fear Allah that you may receive mercy.”* (AL-HUJURAT 49/10)(Hucurat, 49/10)

Islamic thinker Sayyid Qutb has been commented the statements in this verse following way: Without succumbing to feelings of desire and excitement, brought to prevent harm to each other, It is a rule which is characteristic of both legal and actions. It came after from this verse: When miscreants and troublemakers bring false news, muslims must not effervesce without investigating the truth and reality. It is a important rule for protect to İslamic world from breaking up. It is not only aim to protect islamic world but also provide justice and trusting God in all matters, waiting for the mercy of God. It is to provide justice and kindness. Although both sides fight each other, they not lost their faith.<sup>13</sup>

*“O ye who believe! Obey Allah, and obey the Messenger, and those charged with authority among you. If ye differ in anything among yourselves, refer it to Allah and His Messenger, if ye do believe in Allah and the Last Day: That is best, and most suitable for final determination.”* (An-Nisa (Women), 4/59)

This Qur'anic verse say that the head of state will be elected from among the muslim people and everyone has the right to be elected. Every Muslim with the necessary conditions has the right to be caliph.<sup>14</sup> This right corresponds to a multi-party political life which is one of the basic elements of a democratic state today. Freedom of choice depends on citizens to choose from several alternatives.<sup>15</sup>

Hudhaifa bin al-Yaman narrated a hadith in which he said, *“The Prophet (saws) said, ‘there will be after me leaders who do not follow my guidance and do not follow my sunna, and there will be among them men whose hearts are like those of satan in the body of a human being.’ And I asked the Prophet (saws), ‘What I should do at that time if I reach it?’ He said, ‘listen and obey the ruler, even if he lashed your back and took your money, listen and obey.”*<sup>16</sup>

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<sup>13</sup> KUTUB, Seyyid Fi Zılali'l-Kur'an (Çeviren: Bekir Karlığa, M. Emin Saraç, İ. Hakkı Şengüler), İstanbul, 1998, Vol. XIII, p. 497.

<sup>14</sup> ATEŞ, Süleyman, Kur'an Ansiklopedisi, İstanbul, 1997, Vol. VII, p. 236.

<sup>15</sup> ATAR, Yavuz, Türk Anayasa Hukuku, Konya, 2007, p. 69.

<sup>16</sup> Muslim, İmarat, 52; Tac, III/44-45.

Bukhari and Muslim narrated from Abdullah ibn al-Abbas, “if someone see in his ruler something disgusting thing, he must be patient, because if he comes against the ruler in a rebellious or destructive manner by only a handspan and dies, he dies in a state of pre-Islamic ignorance (jahiliyyah) and sin.”<sup>17</sup>

### III- Legal Interest Protected of Rebellion Crime

Legal Interest Protected of Rebellion (Baghy) Crime is political government order, It is referred to as government.<sup>18</sup> It will be to attack state order, due to the managerial title may be related to the president.<sup>19</sup>

### IV- Perpetrator

For the existence of political crimes are necessary firstly political motives (Siyasi Saik), Secondly The existence of mass political movement. Political Motives: Criminals do not act to ensure personal interests, act for the community interests.<sup>20</sup> Personal defying the current government or political system not to considered as rebellion, should the existence of collective action.

For political acts that take place without depending on a specific crowd of people shall not be considered a crime. Indeed, in order to considered an actual as rebellion, it is necessary the existence of the existence of collective action.

Indeed Hz. Ali ibn Abi Talib from Rashidun Caliphs did not swear allegiance to Abu Bakr first. Months later he was swear allegiance. Also Sad Ibn Ubeyde has avoided from swear allegiance Abu Bakr until his death. Hz. Ali did not evaluate assassination to himself as a rebellion crime, When he was Caliph. He evaluated this event as a ordinary crime. İbn Mülcem who is the perpetrator of the assassination crime judged as killer, not Rebel.<sup>21</sup>

According to Şafii sect if rebels hasn't got a leadership it will not consider rebellion crime. There is no consensus regarding the number of members of the rebels in order to consist of the rebellion Crimes. According to an opinion Rebellion Crime formes at least four person, according to another opinion it must be ten person.<sup>22</sup>

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<sup>17</sup> Müslim; K. İmara Bab 13 H. No: 1849/56.

<sup>18</sup> UDEH, Vol. 2, p. 757, AVCI, Osmanlı Hukukunda Suçlar ve Cezalar, p. 345; “Among Sunni Muslims, an effective execution of power and the ability to maintain public order are sufficient in order to legitimise authority.” AL AWABDEH Mohamed, History and prospect of Islamic Criminal Law with respect to the Human Rights , Master Thesis, Berlin, 16 March 2005, 80.

<sup>19</sup> “In such a crime violation is carried out against the public order or focuses on the president or officers because of their title. Muhammed Ebu Zehra, İslam Hukukunda Suç ve Ceza, (Translator:İbrahim Tüfekçi), İstanbul, 1994, p. 135.

<sup>20</sup> Ebu Zehra, p. 135-136; AVCI, Osmanlı Hukukunda Suçlar ve Cezalar, p. 345.

<sup>21</sup> UDEH, Vol. 2, p. 770.

<sup>22</sup> BİLMEN, Vol. III, p. 412.

According to the Hanbali sect, unless a group of five to ten people create an organization, they don't consider as rebel (*Bağ'i*) even if they have weapon or martial arts.<sup>23</sup>

In Ottoman Empire Generally that crime commit by prince (*Şehzade*) or officers who appoint by Ottoman Empire. Because of this, this proviso was not problem.<sup>24</sup>

A powerful group who have leader or leadership establishes its authority over a piece of land in defiance of the government, It should be the division and solidarity of labor between the rebels. (*Mana'ah*) (Menea)<sup>25</sup>

If Zimmi or Müstemen revolt, their status will change. After this, they are an enemies of the state. Zimmet contracts will be terminated because of absent Loyalty. <sup>26</sup>

Any group after identify their leader, If they with their leader order avoid fulfilling their financial responsibilities of the government's load or accept leader order as a legal principle, it is also considered rebellion crime. But they haven't got a leadership. If they only deny to give taxes, merely taxes taken by force. <sup>27</sup>

#### **V- Prerequisites of crime**

In order to be the crime of rebellion, there must be a state. There must be a lawful president or government. The actions of the president or government is required to be fair. If the government or president is tyran or despots, action against the government is not rebellion. It is considered the liberation war.<sup>28</sup>

The qualifications required to carry of legitimate president is closely related to our topic. Indeed, a majority of riots in the Islamic state has been occurred in consequence of the lack of qualifications should carry the caliph.

The Kalifah is chosen by the selection committee "*Ehlul Hall ve'l Akd*" and the requirements of the Kalifah are the following:

Must be Muslim, Must be mature, Must be sane, Must be a freeman and not a slave, Must be knowledgeable, Must be righteous, Must be a male/man<sup>29</sup>, Have prudence in

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<sup>23</sup> UDEH, Vol. 2, p. 766; AKMAN, Mehmet, Hukuk Araştırmaları, İstanbul, 1996, Vol. IX. V. 1-3, p. 215.

<sup>24</sup> AVCI, Osmanlı Hukukunda Suçlar ve Cezalar, p. 345.

<sup>25</sup> BİLMEN, Vol.III, p. 412, AKMAN, Hukuk Araştırmaları, p. 214.

<sup>26</sup> AVCI, Osmanlı Hukukunda Suçlar ve Cezalar, p. 346.

<sup>27</sup> MAVERDİ, Ebu'l-Hasan Habib, Ahkamü's-Sultaniye (Translator: Ali Şafak), İstanbul, 1994, p. 120.

<sup>28</sup> HAMİDULLAH, Muhammed, İslamda Devlet İdaresi, (Translator: Hamdi Aktaş), İstanbul, 1998, p. 280; AVCI, Suçlar ve Cezalar, p. 347.

<sup>29</sup> Turkish High religious affairs committee has decided that the woman can be president. <http://www2.diyenet.gov.tr/dinisleryuksekkurulu/Sayfalar/KadinlarinIsHayati.aspx>; 30.09.2015.

opinion/ Wisdom, Must have firm qualities, like bravery and fairness, Must have a healthy body and strength, Must not have extreme care or want for the position.<sup>30</sup>

As stated above the head of state is required to have many features. Of these generally allied with the justice qualifications, competence, is full of the sense organs and other body parts. Other qualifications understood or interpreted in different ways by Islamic scholars.<sup>31</sup>

## **§2. ELEMENTS OF THE OFFENCE**

### **I- Legal Elements**

Legal elements of the crime of rebellion define the Qur'an and sunnah.

Hence, if two groups of believers fall to fighting, make peace between them; but then, if one of the two [groups] goes on acting wrongfully towards the other, fight against the one that acts wrongfully until it reverts to Gods commandment; and if they revert, make peace between them with justice, and deal equitably [with them]: for verily, God loves those who act equitably! (AL-HUJURAT 49/9)(Hucurat, 49/9)

The Qur'an is the primary source of Islamic law. It provides fundamental principles not only to regulate warfare in general but also to deal with rebellion.<sup>32</sup> It is also available in many of the rebellion crime evidence in Hadiths.<sup>33</sup>

Hudhaifa bin al-Yaman narrated a hadith in which he said, "The Prophet (saws) said, 'there will be after me leaders who do not follow my guidance and do not follow my sunna, and there will be among them men whose hearts are like those of satan in the body of a human being.' And I asked the Prophet (saws), 'What I should do at that time if I reach it?' He said, 'listen and obey the ruler, even if he lashed your back and took your money, listen and obey.'<sup>34</sup>

Bukhari and Muslim narrated from Abdullah ibn al-Abbas, "if someone see in his ruler something disgusting thing, he must be patient, because if he comes against the ruler in a rebellious or destructive manner by only a handspan and dies, he dies in a state of pre-Islamic ignorance (jahiliyyah) and sin."<sup>35</sup>

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<sup>30</sup> Maverdi indicated seven qualifications should carry the caliph in El Ahkamu's Sultaniye. MAVERDİ, p. 31-32; İmam-ı Gazali indicated similar qualifications should carry the caliph in et-Tibrü'l-Mesbuk fi Nasihatü'l-Müluk; GAZALİ, Ebu Hamid Muhammed b. Muhammed, Nasihatü'l – Müluk, (Translator: Osman Şekerci) İstanbul, 1969, p. 86. As well İbn Haldun focused on this issue in the same way.; İbn HALDUN, Mukaddime (Translator: Turan Dursun) Ankara, 1977, p. 368; Mevdudî has been grouped qualifications should carry the caliph under four title, MEVDUDİ, p. 36-41.

<sup>31</sup> AYDIN, Türk Hukuk Tarihi, İstanbul, 1999, p. 114.

<sup>32</sup> TABASSUM, p. 1.

<sup>33</sup> Some of these, Müslim b. Haccaci'l Kuseyri, Sahihul Müslim, İstanbul 1329, İmarat, 46; Müslim, İmarat, 60; Müslim, İmarat, 56.

<sup>34</sup> Tac, III/44-45

<sup>35</sup> Müslim; K. İmara Bab 13 H. No: 1849/56

As for ijma, on this issue could indicate Hz. Ebu Bakr and Hz. Ali's struggle against rebels. The important point here, the companions of the Prophet Muhammad are having agreed to fight the rebels. Hz. Ebu Bakr fought against Museyleme and not to give zakat. Hz. Ali fought against Muaviye<sup>36</sup> and Damascenes and Khawarij in Nehcevan.<sup>37</sup>

## II- Objective Elements of The Offence

Objective element of the crime of rebellion is revolt against the government and trying to capturing power by force. To consider an act as rebellion crime, rebels should use force against Sultan or his official governor. As a result rebels aim superiority against officials. If there is no use of force or aim for superiority , this action can not be described as a rebellion crime.

The most obvious example of this Hz. Ali did'nt attempt to punish Khawarij because of merely propaganda against him. Than Khawarij began to use power, after this Hz. Ali walked on them by the armies of Islam.<sup>38</sup>

A question that points to an element of the crime rebellion in Ottoman fatwa is as follows: "*A number of people come out from the sultan's fair obedience, invading some of the castles, gathering solgier, forcing the people to seize theirs goods....*"<sup>39</sup>

Kill the Sultan was a political crime in ottoman Empire, fort his reason was given Siyaseten Katl Punishment<sup>40</sup> to Perpetrators of this crime.

## III- Subjective Elements of The Offence

It is necessary specific Private intention for the formation of rebellion crimes.<sup>41</sup>

Namely, it is necessary to gather to take power. For the formation of rebellion crime, political motives (Siyasi Saik) are needed.<sup>42</sup>

## IV- Unlawfulness

Unlawfulness of the crime of rebellion crime is clearly defined.

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<sup>36</sup> DEMİRCAN, Adnan, Ali-Muaviye Kavgası, İstanbul, 2002, p. 135-136; ÜÇÖK, Bahriye, İslam Tarihi Emeviler-Abbasiler, Ankara, 1979, p. 24; ÜNLÜ, Nuri, Anahatlarıyla İslam Tarihi Başlangıcından 1918'e, İstanbul, 1984, p. 80; ŞEHBENDERZADE, Filibeli Ahmet Hilmi, İslam Tarihi, (Translator: Ziya Nur), İstanbul, 1982, p. 257.

<sup>37</sup> KAPAR, p. 57-58.

<sup>38</sup> ŞAFAK, p. 183.

<sup>39</sup> Ebusuud Efendi Fetvaları, transmitting, Düzdağ, p. 191; AVCI, Mustafa, Osmanlı Hukuku Suçlar ve Cezalar, p. 349

<sup>40</sup> Siyaseten Katl depend on Sultans right of giving ta'zir Punishment; MUMCU, Ahmet, Osmanlı Devletin'de Siyaseten Katl, Ankara, 2007, p. 43.

<sup>41</sup> UDEH, Vol. 2, p. 785.

<sup>42</sup> UDEH, Vol. 2, p. 786.



Say: the things that my Lord hath indeed forbidden are:.....to bağy unjustly... (Araf 7/33) If the rebels revolt against the Sultans or Governments tyranny and despotism, Rebels will not consider as a Baği.<sup>43</sup>

### §3. Particular Aspects of the Rebellion Crime

#### I- Attempt to commit a Rebellion Crime

Movement preparation phase of Rebellion Crime, as a rule, not be penalized. But if it creates a separate crime, it can be penalized. With the Allies Sure 60. and 61. Verses, preparatory act of rebellion has also become criminal offenses.<sup>44</sup>

Truly, if the Hypocrites, and those in whose hearts is a disease, and those who stir up sedition in the City, desist not, We shall certainly stir thee up against them: then will they not be able to stay in it as thy neighbors for any length of time: They shall have a curse on them: whenever they are found, they shall be seized and slain. (The Allies 33/60-61) (Ahzab, 33/60-61)

Dated 1256 Ottoman Criminal Code adopted attempt among ta'zir Crimes, Dated 1858 Criminal Code (*Ceza Kanunname-i Hümayunu*) has extended this principle.<sup>45</sup> Crime of rebellion was interpreted as too broad by Ottoman jurists.<sup>46</sup>

In the Ottoman implementation, attempt to commit a Rebellion Crime, was given kalebentlik penalty.<sup>47</sup>

#### II- Affiliate

##### A. Solicitation and Stimulation

In the Ottoman implementation, inciting and encouraging the people to revolt and rebellion against the state, was given kalebentlik penalty.<sup>48</sup>

Kalebentlik: It is mixed with a imprisonment and exile sentence. The offender is obliged living in the castle. This could be called slight imprisonment.

##### B. Aiding the Crime

The punishment of the crime of rebellion and who help abetting the perpetrators are in prison. These people must not have actually joined the action of the organization.<sup>49</sup>

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<sup>43</sup> HAMİDULLAH, İslamda Devlet İdaresi, p. 280; AVCI, Osmanlı Hukuku Suçlar ve Cezalar, p. 351.

<sup>44</sup> UDEH, Vol. 2, p. 786; AVCI, Osmanlı Hukuku Suçlar ve Cezalar, p. 354.

<sup>45</sup> AKMAN, Vol. IX. V. 1-3, p. 208.

<sup>46</sup> AKGÜNDÜZ, Ahmed, Osmanlı Kanunnameleri, İstanbul, 1990, Vol. I, p. 287.

<sup>47</sup> Transmitting, AVCI, Mustafa, Osmanlı Hukukunda Suçlar ve Cezalar, p. 356.

<sup>48</sup> AVCI, Mustafa, Osmanlı Hukukunda Suçlar ve Cezalar, p. 356.

<sup>49</sup> Old Rumeli Kazaskeri Hamid and Abdurrahman Çelebis Fatwas, transmitting, AKMAN, Kardeş katli, p. 143-144; AVCI, Mustafa, Osmanlı Hukukunda Suçlar ve Cezalar, p. 356.

Aiding and abetting, as may be in the form of provide aid or de facto to accommodate them. Also this offense is committed in making propaganda.<sup>50</sup>

## §5. REBELS SEIZED AND PROSECUTION

If it is able to end the rebellion without killing rebels, It is not permissible to kill rebels. (Proportionality Principle) The aim is not to kill them, is to prevent harm and rebellion.<sup>51</sup> The wounded can not be left to die, those caught can be given death penalty or prison.<sup>52</sup>

## §6. SANCTION

### I- Actual Punishment

According to Islamic law, the rebels may be killed to suppress the rebellion while the conflict, in fact, this situation is also the necessary of the right to self-defense. However, while the killing of the rebel in conflict, It can not be regarded as the death penalty among criminal penalties.<sup>53</sup>

If the rebels organization is dispersed, captives can not be killed. After the suppression of rebellion, there is disagreement about punishment will be given to the offender. According to Abu Hanifa, if rebels have an organization center where they can regroup, Captives can be sentenced the death penalty.<sup>54</sup>

According to other İmams, Captives can be sentenced a suitable ta'zir sentence. (Determined by officier.) Because of absent a Ha'd sentence. (Determined by God) In Ottomans, as a rule, was given to rebels (*baghi*) the "*siyaseten katl*" penalties, "*had*" penalty was not given.<sup>55</sup>

### II- Subsidiary Punishment

Subsidiary punishment of crime rebellion (*Baghy*) is deprivation of heritage. According to Ebu Hanifa and İmam Mohammad If rebel kill his parents or another relative by believing rightness to killing, rebel becomes heir to victim. If this is not present situation, not to becomes heir to victim. According to Ebu Yusuf whatever rebel ideas are, he or she don't became heir to his or her victim. Shafi and Ahmad b. Hanbali also think so.<sup>56</sup>

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<sup>50</sup> Ebusuud Efendi Fetvaları, transmitting, DÜZDAĞ, M. Ertuğrul, Ebusuud Efendi Fetvaları Işığında 16. Asır Türk Hayatı, İstanbul, 1983, p. 191; AVCI, Mustafa, Osmanlı Hukukunda Suçlar ve Cezalar, p. 356.

<sup>51</sup> According to İmam Şafii'i and Hanbali, the rebels can not be killed altogether. However, in case of necessity apply to this path. UDEH, Vol. 2, p. 781; HAMİDULLAH, İslamda Devlet İdaresi, p. 282; DEMİR, p. 102.

<sup>52</sup> AVCI, Mustafa, Osmanlı Hukukunda Suçlar ve Cezalar, p. 358.

<sup>53</sup> UDEH, Vol. 2, p. 779.

<sup>54</sup> HAMİDULLAH, İslamda Devlet İdaresi, p. 282.

<sup>55</sup> CİN /AKGÜNDÜZ, Vol. I, p. 324.

<sup>56</sup> AKMAN, İsyân, p. 218.

## CONCLUSION

Baghy literally means disturbing the peace and causing transgression. Legal elements of the crime of rebellion define the Qur'an and sunnah. Muslims have the power and strength of a community, basing some provisions to their own justification, interpret different format, It is to revolt by force against lawful president. The early Muslim jurists also gave detailed descriptions of the rulings of Islamic law regarding violent opposition to government. They used the term for this purpose: baghy. (Bağy)

In order to be the crime of rebellion, there must be a state. There must be a lawful president or government. The actions of the president or government is required to be fair. If head of state (Sultan or Caliph) is tyrant or despots, action against the government can not evaluate rebellion. It is considered the liberation war.

Legal Interest Protected of Rebellion Crime is political government order, it is referred to as government. For the existence of Rebellion Crime (*Baghy*) are necessary firstly political motives (*Siyasi Saik*), Secondly the existence of mass political movement. Passive non-compliance to those in power is not rebellion crime.

If Rebels have got a leadership it will not consider rebellion crime. There is no consensus regarding the number of members of the rebels in order to consist of the rebellion Crimes. According to an opinion Rebellion Crime forms at least 4 person, Another according to another opinion it must be 10 person. In Ottoman Empire Generally that crime commit by prince (Şehzade) or officers who appoint by Ottoman Empire. Because of this, this proviso was not problem.

Objective element of the crime of rebellion (*Baghy*) is revolt against the government and trying to capturing power by force. To consider an act as rebellion crime, rebels should use force against Sultan or his official governor. As a result rebels aim superiority against officials. If there is no use of force or aim for superiority, this action can not be described as a rebellion crime. It is necessary specific Private intention for the formation of rebellion crimes. Namely, it is necessary to gather to take power. For the formation of rebellion crime, political motives are needed.

Unlawfulness of the crime of rebellion crime is clearly defined. Say: the things that my Lord hath indeed forbidden are:.....to bağy unjustly... (Araf 7/33) If the rebels revolt against the Sultans or Governments tyranny and despotism, Rebels will not consider as a guilty. Movement preparation phase of Rebellion Crime, as a rule, not be penalized. But if it creates a separate crime, it can be penalized. According to Islamic law, the rebels may be killed to suppress the rebellion while the conflict, in fact, this situation is also the necessary of the right to self-defense. If the rebels organization is dispersed, captives can not be killed.

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