

## FREEDOM OF RELIGION AND CONSCIENCE FROM THE PERSPECTIVE OF ISLAMIC LAW

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### حرية الدين والضمير فى الفقه الإسلامى

المشاكل المتعلقة بحرية الدين والضمير قديمة قدم تاريخ الإنسانية، وما زالت فى يومنا الحاضر تسبب مشاكل متنوعة فى الدول المختلفة وقد قام اليوم البيان العالمى لحقوق الإنسان للأمم المتحدة (مادة 18) ومعاهدة اوربا لحقوق الإنسان (مادة 9) بتعديلات هامة ، ولكن مع ذلك يوجد خلل فى التطبيق .

القيم التى جاء بها القرآن الكريم فى مجال حرية الدين و معاملة الرسول صلى الله عليه وسلم لغير المسلمين بشكل متسامح والتجربة الحاصلة المبينة على هذين المصدرين فى المجتمعات الإسلامية تساعد على حل الإختلافات الموجودة فى هذا المجال. وهذا المقال يقدم تقييما فى هذا الإطار .

### İslam Hukuku Açısından Din ve Vicdan Hürriyeti

Din ve vicdan hürriyeti ile ilgili problemler insanlık tarihi kadar eskidir. Günümüzde de çeşitli ülkelere göre farklı ölçülerde problem olmaya devam etmektedir. Bu gün BM İnsan Hakları Evrensel Beyanamesi (md.18) ve Avrupa İnsan Hakları Sözleşmesi (md. 9) önemli düzenlemeler getirmektedir. Ancak yine de uygulamada aksaklıklar mevcuttur.

Kur'an-ı Kerim'in inanç özgürlüğü alanında getirmiş olduğu değerler dizisi, buna bağlı olarak Hz. Peygamberin diğer inanç sahiplerine gösterdiği hürriyetçi tavır ve bu iki kaynağa bağlı olarak İslam toplumlarında oluşmuş zengin tarihi tecrübe bu alandaki tartışmalara katkı sağlayacak niteliktedir. Bu makale bu çerçevede bir değerlendirmede bulunmaktadır.

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Religion is a natural and thus indispensable feeling in human beings which has made it a part of the actual social reality across history in all societies. Humans carry a feeling of connectedness with and need to the All-Mighty who is above them due to the reasons that vary from person to person. Scholars of history demonstrated in their works that at no time in the history of mankind there was a society without a religion<sup>1</sup>.

Before the arrival of modernity, throughout the history of mankind, people conceived everything from the interpretive framework of their religion which was shared by the majority of the member of the society. Yet the divisions and contradictions inside of this religion, for instance the disagreements between its various schools, has occasionally posed problems for the societies. Today we can see that important measures are being taken to overcome these type of problems that was caused by intolerance towards people who carry different ideas and believes.

We can see that a major problem of freedom of conscience and religion in history of the Western culture appeared in connection with Christianity. The dominant Roman religion at the time showed intolerance against the newly emerging Christianity because of its dogmatic monopoly. Three centuries after its initial rise, Christianity gained acceptance and appreciation by Rome. From its side, Christianity, nevertheless, favored neither schismatic and heretic groups originated from within itself, nor did it sympathize with other religions. According to the Gospel of Mathew, Jesus was full of love and mercy towards people. As against words of Jesus, who said "love your enemies, bless those, who curse you" (Mat. 5/54), Christianity divided world into two parts: the part, which belonged to God and the part, which belonged to Satan. All of those, who did not convert to the Christianity were ascribed to Satan and were fought against. A doctrine of salvation through Christianity alone (*extra ecclesiam nulla salus*), the faith in the eternal punishment of those who deny the teachings of the Church, and the most terrible punishment of God being for theological faults - all these promoted Christians to use force against anyone who is different from them. Christians tried to cleanse the earth from those who were considered guilty by them for their religious faults even if these people had possessed good qualities. Christian religion, at the outset, had strongly needed the tolerance of the Roman Empire, yet, ironically, when Christianity became powerful, it used its authority and power to limit religious freedoms of other sects and religions<sup>2</sup>.

Freedom of religion and conscience<sup>3</sup> occupies a key place among the universal values of modernity. It also figures prominently at the center of a number of philosophical, political and legal polemics. Freedom of religion and conscience, due to its strong

<sup>1</sup> See for instance: Günay Tümer-Abdurrahman Küçük, *Dinler Tarihi*, Ankara 1997, p.27, vol.1.

<sup>2</sup> Ömer Faruk Harman, "Din", *Türkiye Diyanet Vakfı İslam Ansiklopedisi*, İstanbul, 1994, vol., 9, p.322.

<sup>3</sup> A freedom of conscience is a wide notion, which includes in itself freedom of religion, political, economical or philosophical credo or reasoning. As for the freedom of religion, it is a specific form of freedom of conscience (Ali Fuad Bağil, "Din Hürriyeti", A. Samim Gönensay'a Armağan, İstanbul, 1955, p. 237). A reason for using these two notions together is their vagueness.

connection with personality of humans, is considered among the natural rights of him. It is a higher and a significant need of every man and rightfully holds an important place among values covered by the concept of human rights. There is an extensive literature written on the subject. In this paper, I will try to approach the subject from perspective of Islamic law, using a number of internationally published works and excerpts from the Constitution of Turkey regarding various elements of freedom of religion and conscience. I believe that this paper will contribute to the existing research in the field by introducing the perspective of Islamic law on the issue of human rights which is not known very well in the Muslim and non-Muslim world today.

### **I. Notion and Elements of Freedom of Religion and Conscience**

Defining the notion of freedom of religion and conscience and analyzing its elements requires a survey of what the classical sources say on this subject. For the first time, the freedom of religion and conscience in the modern understanding of the term was mentioned in the Virginia Declaration of Rights<sup>4</sup>:

"As the duty to our Creator we have religion or belief and how to profess them shall be determined not by compulsion or force, but rather by reason and belief we have. That is why all men shall be free to profess, and by argument to maintain, their opinions in matters of religion. "

Later, in the French Declaration of Human and Citizen Rights of the 26 August 1789 in the articles 10 and 11, the freedom of conscience and expression was also mentioned. Finally, in the Universal Declaration of Human Rights of 10 December 1948, in the article 18, it is said that:

"Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance. "

The same idea can be found in the European Convention on the Protection of Human Rights and Basic Freedoms, which was signed on 4 November 1950 in Rome. The article 9 of the Convention says:

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or the protection of the rights and freedoms of others.

According to these principles which are accepted in the leading democratic countries of the world, freedom of religion and conscience includes the following four basic elements:

1. freedom of people to choose religion of their own (îmân);

<sup>4</sup> Şeref Ünal, *Avrupa İnsan Hakları Sözleşmesi*, Ankara, 1995, p. 206.

2. freedom of people to observe rites of their religion without any intervention from outside ('amal);
3. freedom of people to study and to teach their religion;
4. freedom of people to organize social units (Jamâ'ah).  
Below I will analyze these elements:

#### A. Freedom to Choose a Religion (Îmân)

The most basic principal of the freedom of religion is that a man by his own free will believes in the holiness chosen by him, accepts religion of his choice, which he wants to profess<sup>5</sup>. Right to faith is an expression of the deep spiritual need and personal conscience. Faith is a deep spiritual state of a man who believes in his heart and is strongly connected to the Being he worships. The notion of "faith" differs very much from the notion of "belief". It is impossible to break man's connections with the holy by the external pressures because it will be disrespectful and dishonest in relation to the man's freedom and will. That is why freedom of people to choose their religion found its reflection in the field of human rights and, in particular, in the international treaties. In the Article 34 of the Turkish Constitution of 1982 we read:

"Everyone has a right to freedom of conscience, religion and thought... Nobody can be compelled to profess, to take part in any form of religious rites and ceremonies as well as to spread his religion and beliefs; nobody can be judged and blamed for his religion and beliefs".

Thus, as seen above, freedom of every citizen in the discussed field is clearly defined in the document.

#### B. Freedom to Observe Religious Rites ('Amal)

Religion is not only a matter of conscience in the relations between a man and a Holy Being he believes in. Religion demands from its followers to observe and to fulfill its values and rules. These rules demand from a believer to act responsibly and put restrictions. Even if these restrictions in some circumstances are light in the material sense, from the moral point of view they are extremely heavy. And this is one of the important characteristics that distinguishes faith from any belief.

When talking about religion one has two associative images: a worshipper (a man) and a worshipped (God)<sup>6</sup>. That is why if there is a prohibition regarding observation of the religious rites there is no freedom of religion. For this reason, the above cited international documents as well as the article 24 of the Turkish Constitution "(... confession of religion, religious rites and ceremonies are free...)" recognize this right.

#### C. Freedom to Study, to Teach and to Spread Beliefs

<sup>5</sup> Şeref Ünal, *Avrupa İnsan Hakları Sözleşmesi*, Ankara 1995, p.207; Davud Dursun, "Din ve Vicdan Hürriyetinin Siyasal Sistem Açısından Anlamı ve Uygulanması", *Doğuda ve Batıda İnsan Hakları*, Ankara, 1996, p. 96.

<sup>6</sup> Thomas Paine, *İnsan Hakları* (trans. M. Osman Dostel), İstanbul, 1998, p.84.

It is natural that freedom of religion considers necessity of the right to study, to teach and to spread beliefs in two aspects; Firstly, any religion has its own requirements from its adherents, who can fulfill them only by studying and teaching these requirements. Secondly, protection of the existence, development and growth of a given religion. Resistance against observation of the religious rites is nothing but an attempt to destroy a religion. Moreover, article 18 of the Universal Declaration of Human Rights of 1948 and article 9 of the European Convention on Protection of Basic Human Rights and Freedoms of 1950 included studying, teaching and spreading religions and beliefs as elements of freedom of religion and conscience. The same principle is mentioned in the article 24 of the Turkish Constitution of 1982:

"Religious and moral education and learning must be carried out under supervision and control of the state. The religious culture and moral education holds important place among basic subjects of schools. Besides, the religious education and learning of children depends on will of their legal representatives. "

Spreading beliefs and basic principles of religions, teaching them to others are the most important holy duties for believers of any religion. The reason for this is that in the view of a religious person, his religion represents the truth, which must be known to other people. That is why we see religious missionaries of various religions traveling around the world.<sup>7</sup>

#### D. Freedom to Organize Social Associations (Jamâ'ah)

The fact that a man is a social being gives him the possibility to feel that he belongs to a definite social group. The unity of a group of people who are gathered for the sake of a common goal must be allowed. In this regard, unification and participation of religious people in group activity, interconnected by the common goal, believing in one religion and sharing similar beliefs is a right, and a part of freedom of religion and conscience. In the article 20/1 of the Universal Declaration of Human Rights of UN it is said that everyone has the right to freedom of peaceful assembly and association without being compelled to belong to them. The same principles are reflected in the article 11 of The European Convention on Protection of Human Rights.

## II. Freedom of Religion and Conscience According to Islamic Law

By studying freedom of religion and conscience from the point of view of Islamic law, we will base our opinion on the principles mentioned in Qur'ân and Sunnah of the Prophet Muhammad (the Prophet Muhammad's sayings and deeds). We will refer also to interrelations between Muslims and non-Muslims in Islamic societies throughout the history.

### A. Theoretical Principles

Studying questions connected with freedom of religion and conscience as well as other questions related to Islam, one must refer firstly to the main source of Islamic law - the Qur'ân. Yet at the time of its revelation, Qur'ân came to denote the origi-

<sup>7</sup> See: Ali Fuad Başgil, op. cit., p. 234.

nal message which contained answers to many questions. In this regard Qur'ân defines the purpose of man's creation as "service to God"<sup>8</sup> and emphasizes the idea about people not being punished by God until the messengers are sent down with a message (to give an advance notice)<sup>9</sup>. Consequently, it is possible to assume that many prophets were sent to the earth with the purpose of forwarding to people God's orders. Thus, Islamic religion is considered to be the last message in the chain of the above-mentioned messages, and the Prophet Muhammad (s.a.w.) is the last Messenger sent to the earth<sup>10</sup>.

The Holy Qur'ân mentions the word "religion" a number of times<sup>11</sup>, but in all of these cases it means "Islam"<sup>12</sup>. In this regard, the Qur'ân, using notions of "Islam" and "religion" almost interdependently, states that all the religions brought by the previous prophets were nothing else but "Islam"<sup>13</sup>. Some verses of Qur'ân state that all religions in the past were sent to confirm each other's message<sup>14</sup>. In some sayings of the Prophet Muhammad (s.a.w.) it can be noticed that all the prophets were descendants of one father<sup>15</sup>. Other verses of the Qur'ân, however, point to the differences between religions concerning the questions of worship due to the evolution of societies during the history<sup>16</sup>, and yet outline the similarities of their common principles<sup>17</sup>. The similarities between religions were noted even by the Prophet Muhammad (s.a.w.) in his letters calling to Islam, which were addressed to the leading world rulers of his time. For example, the Prophet Muhammad (s.a.w.) in his letter to the bishop of Ellas mentioned<sup>18</sup> that he (the Prophet) was a true Messenger of God, that he believed in the only one God, in His Messengers, in His books, and that Îsâ the son of Mary (Jesus Christ) was a word<sup>19</sup> of the God and His Messenger<sup>20</sup>. Moreover, in the letter to Byzantine Emperor Heraclius (d.20/641)<sup>21</sup> the Prophet Muhammad (s.a.w.) cited the following verse from the Qur'ân:

"Say, 'O people of the Book! Come to a word equal to us and you- that we worship none but ALLAH, and that we associate no partner with HIM, and that some of us take not others for Lords beside ALLAH. But if they turn away, then say Bear

<sup>8</sup> Zâriyât (51), 56.

<sup>9</sup> Isrâ' (17), 15; Fâtır (35), 24.

<sup>10</sup> Ahzâb (33), 40.

<sup>11</sup> M. Fuâd Abdalbâqî, *al-Mu'jam al-Mufahras*, Qâhira 108/1988, pp. 340-342.

<sup>12</sup> Âl-i 'Imrân (3), 19.

<sup>13</sup> Shûrâ (42), 13; see also: Baqarah (2), 97, 131-132; Âl-i 'Imrân (3), 48, 50, 84-85; Nisâ' (4), 47, 125; Mâidah (5), 3, 46, 48; Hajj (22), 78; Fâtır (35), 31; Saff (61), 6.

<sup>14</sup> Baqarah (2), 41, 89, 91, 101; Âl-i 'Imrân (3), 3, 50; Mâidah (5), 46, 48; An'âm (6), 92; Yûnus (10), 37; Fâtır (35), 31; Ahqâf (46), 30; Saff (61), 6.

<sup>15</sup> Bukhârî, "Anbiya", 48; Muslim, "Fazâil", 145.

<sup>16</sup> Hajj (22), 67.

<sup>17</sup> Günay Tümer, "Din", Türkiye Diyanet Vakfı İslam Ansiklopedisi, İstanbul, 1994, IX, 313.

<sup>18</sup> Muhammad Hamidullah, *İslam Peygamberi* (transl. Salih Tuğ), İstanbul, 1993, I, 340.

<sup>19</sup> Âl-i 'Imrân (3), 45.

<sup>20</sup> Âl-i 'Imrân (3), 49.

<sup>21</sup> Abû Ubayd, *al-Amvâl* (ed. M. Khalil Harrâs), Beirut 1406/1986, p.28.

witness that we have submitted to God."<sup>22</sup>

From the following letter which the Prophet Muhammad sent to a Christian religious authority we can see the same approach:

"Know, that 'Îsâ Ibn Maryam is a spirit and a word of the God, sent to the pure Maryam. As for me, I believe in the God, in what was sent to Ibrâhim, Ismâil, Ishâq, Ya'qûb and to us. Not seeing any difference between these Prophets, I believe in what was sent to Musa, 'Îsâ and other Prophets. We submitted ourselves to that God..."<sup>23</sup>

When the Qur'ân mentions a notion of "the true religion" it means that all the previous religions were corrupted and this new religion (Islam) is superior to other religions and is based on the sound principles.<sup>24</sup> That is why Islam, being the last religion, contains all fundamental values of the previous religions. Moreover, Qur'ân informs us about Islam being the world religion, which was sent to all the humanity.<sup>25</sup> Among the principles of Islam, the Qur'ân also mentions the so-called the Last Day<sup>26</sup>, will mark the end of this world. From the Qur'ân we read: "Surely the true religion with ALLAH is Islam."<sup>27</sup>

"This day have I perfected your religion for you and completed MY favour upon you and have chosen for you Islam as religion."<sup>28</sup>

"And whoso seeks a religion other than Islam, it shall not be accepted of him, and in the Hereafter he shall be among the losers."<sup>29</sup>

Despite this, Qur'ân stresses the necessity of non-compulsion in religion: "And if thy Lord had enforced HIS Will, surely, all who are in the earth would have believed together. Wilt thou, then, force men to become believers?"<sup>30</sup>

"There is no compulsion in religion. Surely the right has become distinct from error; so whosoever refuses to be led by those who transgress and believes in ALLAH, has surely grasped a strong handle, which knows no breaking. And ALLAH is All-Hearing. All-Knowing."<sup>31</sup>

The event, which preceded revelation of the above mentioned verse (*sabab al-nuzûl*) could explain its meaning. During the time of "*jâhiliyya*" women, being afraid that their children could not survive, used to give their new-born babies to people of the scriptures (Christians and Jews) to be brought up and educated in their (Chris-

<sup>22</sup> Âl-i 'Imrân (3), 64.

<sup>23</sup> Muhammad Hamidullah, op. cit., 1, 334.

<sup>24</sup> Tauba (9), 33; Fath (48), 28; Saff (61) 9; Baiyina (98), 5.

<sup>25</sup> A'râf (7), 158; Saba' (34), 28; Saff (61), 6; Furqân (25), 51; The Prophet Muhammad is also reported to say that Islam was sent to all the humanity (Bukhârî "Tayammum", 1, "Salât", 56; Nasâî, "Ghusl", 26; Dârimî, "Salât", 111)

<sup>26</sup> Fatiha (1),4; Hijr (15), 35; Shuarâ' (26), 82; Sa'd (38), 78; Zâriyât (51), 12; Wâqi'a (56), 56; Maârij (70), 26; Muddessir (74), 46; Infitâr (82), 15, 17, 18; Mutaffifîn (83), 11.

<sup>27</sup> Âl-i 'Imrân (3), 19.

<sup>28</sup> Mâidah (5), 3.

<sup>29</sup> Âl-i 'Imrân (3), 85.

<sup>30</sup> Yûnus (10), 99.

<sup>31</sup> Baqarah (2), 256.

tians' and Jews') religions. The aforementioned verse was sent to condemn the practice of upbringing children at the hands of the people of the book<sup>32</sup>. It is interesting to note that after Islam came, some of newly converted Muslims demanded from their children to revert from "the corrupted religion" they were raised with to "the true religion", that is Islam.

It must be pointed out here that the Qur'ân emphasizes the importance of the right to choose religion, which is evident from the Qur'ânic context. From the point of view of Islamic legal methodology affix of the negation "lâ" in the phrase "*lâ ikrâh*" (see note 32), preceding the indefinite noun, signifies generality<sup>33</sup>. That is why this verse points to the importance of the right of choice and ignores any compulsion in religion, be it of material, legal, psychological or other nature.

Following the meaning of this verse, a man has a will and a responsibility<sup>34</sup>. When there is a compulsion, it is impossible to speak about the will or the responsibility, because everything man does under the compulsion is not done by his own choice. According to the Qur'ân it is even permissible to become an apostate in deeds when someone is subjected to do so, the main task being to preserve the faith in the heart<sup>35</sup>.

To believe or not to believe is a matter of a person's inner world<sup>36</sup>. This world (soul) is the person's freedom from the moment of his birth and nothing can change it<sup>37</sup>. The freedom allows this person to define his behavior according to the will of his conscience and soul. This is the moment when the person can be called responsible for his choice. The Holy Qur'ân emphasizes the importance of purity (*ikhlas*), sincerity<sup>38</sup> and God-fearing (*taqwâ*). The quality of God-fearing results from love and respect<sup>39</sup>. Good manners and deeds (*ihsân*) are also among the qualities of the believer

<sup>32</sup> Ibn Jarîr al-Tabarî, *Jâmi' al-bayân*, Beirut, 1412/1992, III, 15-19.

<sup>33</sup> Abdulkerim Zaidân, *al-Vecîz fî usûl al-fiqh*, Beirut, 1419/1998, p. 308.

<sup>34</sup> For more see the following verses: Âl-i 'Imrân (3), 182; Nisâ' (4), 40; A'râf (7), 6-9; Tauba (9), 70; Nahl (16), 93; Kahf (18), 29; Rûm (30), 39; Mu'min (40), 17; Shûrâ (42), 30, 34; Tahrim (66), 6; Qiyâmat (75), 36; Insân (76), 3; Zalzalâh (99), 7-8.

<sup>35</sup> Nahl (16), 106

<sup>36</sup> Baqarah (2), 139; Mâidah (5), 54; Nahl (16), 22, 106; Kahf (18), 28; Shuarâ' (26), 89; Mu'min (40), 35; Muhammad (47), 24; Hujurât (49), 7; Qâf (50), 33, 37; Mujâdele (58), 22. Qur'ân clearly says about this in the following verse: "The Desert/WanderingArabs say: "We believe." Say(unto them, O Muhammad): "You have not truly believed yet, but rather say. "We have submitted, for true faith has not yet entered into your hearts" (Hujurât 49/14).

<sup>37</sup> Moreover, Qur'ân clearly speaks that the Prophet's coercive call to Islam will not result in success (Qasas/28, 56). According to one hadith Usâma b. Zeid - the companion of the Prophet Muhammad - killed a man, which had previously declared about his acceptance of Islam. When the Prophet Muhammad learned about the fact, he wanted to condemn Usâma. To this the companion that he had thought that the victim declared about acceptance of Islam because of his fear. To this, the Prophet Muhammad replied: "And did you look into his heart?" (Muslim, "Îmân", 158; Abû Dâwûd, "Jihâd", 95; Ibn Mâja, "Fitra", 1.

<sup>38</sup> Baqarah (2), 139; Nisâ' (4), 146; Shuarâ' (26), 89; Saffât (37), 40,74, 84, 128,160, 169; Sa'd (38), 83; Zumer (39),2-3, 12, 14.

<sup>39</sup> Bukhârî, "Îmân", 37, "Tafsîr", XXI/2; Muslim, "Îmân", 1, 5, 7; Nasâî, "Îmân", 5, 6.



(*mu'min*)<sup>40</sup> All of these cannot be obtained by compulsion, because it is a quality of the soul. The main feature of the atmosphere of compulsion and pressure is increasing numbers of hypocrites and self-contained people. In Islam such people are called *munâfiqs* (*hypocrites*) because they, while declaring their faith publicly, hide their disbelief. Qur'ân states that hypocrites will inhabit the lowest parts of the Hell because of their danger to society<sup>41</sup>. In this case we can assume that if a man is not honest in his beliefs, his faith is useless, because he will not carry out values of his religion in practice and these values will not be important for him in his life.

The order of the Qur'ân about non-compulsion in religion is connected with psychological constitution of a man. Be it for any reason, but the connection of a man with the Being he worships, his unification with Him and placing Him to his heart is more likely to be called a condition of the soul rather of a faith<sup>42</sup>. That is why the faith is the highest grade of morals<sup>43</sup>, which is mentioned in the Qur'ân, and there is no sense other than faith that can reach a degree of greatness in the sight of God<sup>44</sup>. For a believer God is the highest authority. That is why the believer, putting

his trust in God, links himself with Him. Consequently, a faith is a constant and a non-changeable "intellectual concrete conviction", "submission and conformity", "hope and love"<sup>45</sup>. This perception helps to work out a power of morals, which gives to an individual an opportunity to withstand against various difficulties<sup>46</sup>. Imposing on a man of an alien religion by force, or activities meant to break him away from his religion will lead the man to hypocrisy only or will not result in anything. In other words, a physical pressure to the metaphysical world will be impossible.

From another side, faith means renunciation by a believer of his personal freedom, of his controlling himself and agreement to put his trust in God's will. This causes at a man a feeling of duty and responsibility at the same time. In this case a believing man will put aside his needs, will begin to control his inclinations and will try to establish contact with God and to unify by all his personality with Him<sup>47</sup>. This knowledge regards the outer pressure unacceptable and produces a resistance against it.

The Qur'ân stresses the point that there was no compulsion in religion even from the side of the Prophet Muhammad<sup>48</sup> (s.a.w.). Rather, the Qur'ân describes such qualities of the Prophet Muhammad's as advising<sup>49</sup>, bringing the blessed message (*bashîr*)<sup>50</sup> and admonishing (*nazîr*)<sup>51</sup>. Moreover, Qur'ân informs us that the Prophet

<sup>40</sup> M. Fuad Abdulbâqî, *ibid.*, p. 257, 925-928.

<sup>41</sup> Nisâ' (4), 145.

<sup>42</sup> Ali Fuad Başgil, "*Din Hürriyeti*", p. 231.

<sup>43</sup> Walter Hamel, *Din ve Vicdan Hürriyeti* (transl. Servet Armağan), İstanbul, 1981, p. 68.

<sup>44</sup> Başgil, *ibid.*, p. 240.

<sup>45</sup> Hayati Hökekleli, *Din Psikolojisi*, Ankara 1993, p. 159.

<sup>46</sup> Başgil, *ibid.*, pp. 239, 240.

<sup>47</sup> See: Hökekleli, *op. cit.*, p. 163-164.

<sup>48</sup> Câshiya (88), 22.

<sup>49</sup> Câshiya (88), 21.

<sup>50</sup> Baqarah (2), 119, 213; Nisâ' (4), 165; Mâidah (5), 19; A'râf (7), 188; Hûd (11), 2; Isrâ'(17), 105; Furqân (25), 56; Ahzâb (33), 45; Saba' (34), 28; Fâtir (35), 24.

Muhammad's mission was consisted of preaching (*irshâd*), propagation (*tabligh*) (bringing the God's message to the people) and religious call (*da'wa*). As for the people, they will be rewarded according to their choice. But even in this question the Qur'ân disapproves compulsion<sup>52</sup>. This kind of call to religion was common to all the prophets<sup>53</sup>. Because the values brought by the Qur'ân in comparison with other values are like the one who can see vs. blind<sup>54</sup>, the one who can hear vs. deaf<sup>55</sup>, dark vs. light<sup>56</sup>, live vs. dead<sup>57</sup>, truth vs. error / lie<sup>58</sup>, etc. Moreover, these values are compared with the light in the dark<sup>59</sup>. A man is granted with ability of cognition in order to see all of this<sup>60</sup>. The mission of the Prophet Muhammad (s.a.w.) was to call people to this kind of truth. The Qur'ân describes the methods of the calling process as follows:

"(O, Muhammad!) Call unto the way of thy Lord with wisdom and goodly exhortation and argue with them in a way that is best. Surely, thy Lord knows best who has strayed from HIS way; and HE also knows those who are rightly guided."<sup>61</sup>

That is why a call to religion must be carried out in the following way: to a scientist, who has reached a certain degree in searching proofs - "seeking the truth through science and knowledge" with the help of "proof, discovering the truth and removing doubts", by "authentic and powerful word of wisdom"<sup>62</sup>; to a stubborn debater - by a nice peaceful method<sup>63</sup>. The Qur'ân reminds us about the dialogue between Mûsâ (a. s.) and Pharaoh. Pharaoh tried to be a great man, pretending as a deity and by doing so he passed all the limits<sup>64</sup>. Afraid of loosing his throne, Pharaoh ordered killing of the all new born baby-boys - the fact that showed his cruelty<sup>65</sup>. Pharaoh pretended to be a god<sup>66</sup>. Notwithstanding this, God ordered Musa to go to Pharaoh, to forward to him His message and to speak with Pharaoh in a good manner<sup>67</sup>. The Holy Qur'ân emphasizes the same qualities at the Prophet Muhammad (s.a.w.):

"And it is by the great mercy of ALLAH that thou art kind towards them, and if  
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<sup>51</sup> Âl-i 'Imrân (3), 20; Mâidah (15), 92, 99; Ra'd (13), 40; Ibrâhim (14), 52; Nahl (16), 35, 82; Kahf (18), 29; Nûr (24), 54; Ankabût (29), 18; Yâsîn (36), 17; Shûrâ (42), 48; Ahqâf (46), 35; Tagâbun (64), 12; Jinn (72), 23; Insân (76), 3.

<sup>52</sup> Qasas (28), 56.

<sup>53</sup> Nahl (16), 35; Yâsîn (36), 17.

<sup>54</sup> An'âm (6), 50.

<sup>55</sup> Hûd (11), 24.

<sup>56</sup> Ra'd (13), 16.

<sup>57</sup> Fâtir (35), 19-22.

<sup>58</sup> Baqarah (2), 256; A'râf (7), 146-147.

<sup>59</sup> Nisâ' (4), 174; Mâidah (5), 15-16; Ibrâhim (14), 1; Hadîd (57), 9; Talâq (65), 11.

<sup>60</sup> An'âm (6), 104.

<sup>61</sup> Nahl (16), 125.

<sup>62</sup> İlhan Kutluer, "Hikmet", Türkiye Diyanet Vakfı İslam Ansiklopedisi, İstanbul, 1998, vol., 17, p.504.

<sup>63</sup> see Hökelekli, ibid., p. 162.

<sup>64</sup> Yûnus (10), 83.

<sup>65</sup> Baqarah (2), 49; A'râf (7), 127, 141; Ibrâhim (14), 6.

<sup>66</sup> Nâzi'ât (79), 24.

<sup>67</sup> Tâhâ (20), 24-44.

thou hadst been rough and hard-hearted, they would surely have dispersed from around thee" <sup>68</sup>

By giving this example, the Qur'ân stresses the importance of a peaceful way of call to Islam. A person, who saw clear signs of the Qur'ân and whose heart understood the call to Islam is responsible from this same moment to decide whether to believe or not to believe. According to his decision he will be judged in the Hereafter<sup>69</sup>. The Holy Qur'ân ordered the Prophet Muhammad to treat those, who had not accepted the call (*da'wa*) to Islam in the following way:

"But if they turn away, say, ALLAH is sufficient for me. There is no god but HE. In HIM do I put my trust, and HE is the Lord of the Mighty Throne. "<sup>70</sup>

The Qur'ân leaves those who does not accept God's message alone with their faith. Moreover, the Qur'ân calls their faith - a religion. Qur'ân instructed the Prophet Muhammad to say the following when talking to unbelievers:

"You have your religion, I have mine. "<sup>71</sup>

"And those, who seeks other religion besides Islam, it will not be accepted from him. "<sup>72</sup>

It is quite natural that the Qur'ân demands from a Muslim not to say bad words about those who worship others besides Allah:

"Do not revile the idols which they invoke besides God, least in their ignorance they revile God with rancour "<sup>73</sup>

According to the Qur'ân everything mentioned above is important in the case of free and responsible person's accepting a religion. Despite that the main aim of all religions is to build principles of monotheism, The Qur'ân marks a faith of non-Muslims as a "religion" and calls to leave alone those, who does not accept the call to Islam. Consequently, it is incorrect to say that the Qur'ân views other religions as indulgent ones, because respecting a recognized right is not more than a duty. Every right must be respected by others within the predefined boundaries. Citing Rivero, the guarantee of a right lies in the defense of this right's possessors against those who violate it."<sup>74</sup>

A person professing a religion has no right to violate the right of others by forcing them to accept his own faith. That is why the indulgence can exist only between God and his servant. Thomas Paine (d. 1809) wrote that clemency is not inverse of non-clemency, it is its falsification. They both are violation - on the one hand there is a refusal of freedom of conscience, while on the other hand there is a right to argue<sup>75</sup>.

The word "religion" in the Qur'ân carries two meanings: "divinity" and "worship". A servant has to carry out orders of his religion while the Creator has the right to

<sup>68</sup> Âl-i 'Imrân(3), 159.

<sup>69</sup> An'âm (6), 104; Yûnus (10), 43-44, 108; Isrâ' (17), 15; Naml (27), 92.

<sup>70</sup> Tauba (9), 129.

<sup>71</sup> Kâfirûn (109), 6.

<sup>72</sup> Âl-i 'Imrân (3), 85.

<sup>73</sup> An'âm (6), 108.

<sup>74</sup> Jean Rivero, "*Hukuk Bilimi ve İnsan Hakları*", *Liberal Düşünce*, vol., 3, no., 12, Ankara, 1998, pp. 17-18.

<sup>75</sup> Thomas Paine, *İnsan Hakları*, p. 83.

wait. That is why religion ascribes to God, who is the Creator and the subject of worship, the following qualities: ruling, making all creatures submit to His will, judging, rewarding and punishing. Among the typical qualities of a worshipper, the following can be mentioned: worshiping, recognizing his powerlessness in comparison with his Creator, submitting himself to God and serving the will of God. Finally, religion is a law, an order and a way, which regulates relations between Creator and a worshiper<sup>76</sup>. That is why religious belief requires carrying out religious orders in life and observing them in practice.

The most important places where religious rites and ceremonies performed are called places of worship (synagogues, churches, mosques). Consequently, every religion has its own private place of worship. Archeological excavations of the ancient places of worship preserved till our time are strong arguments for strengthening the point. That is why existence of various forms of worship places and provision of their safety are the necessary conditions of freedom of conscience. For example, the Qur'ân calls us to build and to preserve mosques.<sup>77</sup> One of the prominent modern Muslim thinkers, Fazlurrahman (d. 1988), commenting on the following verse from Qur'ân:

"If it were not for GOD's supporting of some people against others, monasteries, churches, synagogues, and mosques - where the name of GOD is commemorated frequently - would have been destroyed."<sup>78</sup>

Wrote that this verse ordered to preserve and to safe Christian and Jewish places of worship, attempts on which could be a legitimate reason to wage *jihâd* for the sake of defending these places<sup>79</sup>. We cannot notice accidents of disrespect to places of worship belonging to non-Muslims by Muslims.

The Qur'ân underlines the importance of obtaining knowledge by Muslims through the help of education and learning. For example, the following Qur'ânic verses call the leaders of society with the following words: "Oh, you who believe, preserve your souls and your family from the fire.<sup>80</sup> Order your family to withstand a prayer and be patient in it"<sup>81</sup>. The Qur'ân<sup>82</sup> and the traditions of the Prophet Muhammad<sup>83</sup> emphasize kindness and prevention of evil as the main criteria in society, demanding from every person to follow the Islamic rule of "*al-Amr Bil Ma'rûf Wa al-Nahy an al Munkar*" according to his limits. This can be seen in the following Qur'ânic verse and the prophetic tradition:

"And let there always be among you a body of men who should invite to goodness,

<sup>76</sup> M. Fuâd Abdulbâqî, *al-Mu'jam al-Mufahras*, pp. 49-96. 213-215. 229-232, 234, 235, 269-270, 327-330, 545-546, 562-565; Günay Tümer, "Din", Türkiye Diyanet Vakfı İslam Ansiklopedisi, İstanbul, 1994, vol., 9, p. 314.

<sup>77</sup> Tauba (9), 18.

<sup>78</sup> Hajj (22), 40.

<sup>79</sup> Fazlurrahman, "*İslam ve Siyasi Aksiyon: Dinin Hizmetinde Siyaset*" (Islam and Political Action: Politics in the Service of Religion), (transl. Adil Çiftçi), Türkiye Günlüğü, no., 34, Ankara, 1995, p.31

<sup>80</sup> Tahrîm (66), 6.

<sup>81</sup> Tâhâ (20), 132.

<sup>82</sup> see: M. Fuâd Abdulbâqî, *ibid.*, pp. 582-583.

<sup>83</sup> see: Wensinck, *Concordance*, İstanbul, 1988, vol., 4, pp. 193-194.

and enjoin virtue and forbid evil. And it is they who shall prosper."<sup>84</sup>

"If anyone of you will see evil let him change this evil with his hands: if he will not have enough power, then let him change it with his tongue and if he will not have power even for this, let him change it with his heart (du 'â'). But this is the lowest grade of the faith"<sup>85</sup>

*Ma'rûf* is everything accepted by human reason and religion; *Munkar* is everything refused and ignored by religion.<sup>86</sup>

The Qur'ân emphasizes the superiority of Islam above the rest of religions<sup>87</sup> and points to its mission in exposing the lies in religion.<sup>88</sup> The Qur'ân describes itself as the light, which lightened the darkness,<sup>89</sup> having nothing comparable to it,<sup>90</sup> powerful without doubts in it,<sup>91</sup> not allowing the external invasion of lie inside of it.<sup>92</sup> The Qur'ân declares all other values powerless before the Qur'ânic ones. The Qur'ân also says that man is given ability to cognition.<sup>93</sup> Qur'ân calls mankind not to be prejudiced and stubborn because only in this case the man can see the truth.<sup>94</sup> In this connection, the Qur'ân challenges unbelievers through debates, which are called by the Qur'ân "the greater Jihâd".<sup>95</sup> By this, the Qur'ân means that adherents of one religion can spread their views to others. The main idea behind this is that to spread ideas of any religion and to share these ideas with others - are among the holiest duties for a believer. The Qur'ânic verses mentioned above inform us that non-Muslims, living in Muslim societies, possess these rights. However, there is only one indispensable restriction in possessing these rights when spreading one's religious ideas that is - abstaining from using force. The debate can be won only by a stronger idea. In the environment of freedom, weak ideas cannot survive, while strong and healthy ones spread and grow. Coming back to the aforementioned verses, we can note that the Qur'ân challenges non-Muslims to find<sup>96</sup> ideas in the Qur'ân contradicting the Qur'ân itself. The main point of this challenge is to introduce the values of Islam to all the people.

During the history, Muslim scholars carried disputes on various subjects. Sometimes these disputes were devoted to negative sayings about Islam from the side of non-Muslims. Sometimes Muslim scholars debated on their personal credo and

<sup>84</sup> Âl-i 'Imrân (3), 104.

<sup>85</sup> Muslim, "Îmân", 78, "Ru'yâ", 2-6; Bukhârî, " 'Ilm", 28, "Ta'bir", 3, 10, 26, 46; Abû Dâwûd, "Malâhim", 17, "Tibb", 24; Tirmizî, "Ru'yâ", 1, 5, 7, 10; Nasâî, "Îmân", 17.

<sup>86</sup> Râghib al-Isfahânî, *al-Mufradât* (ed. Safvân Adnân Dâwûdî), Dimashk-Beirut, 1412/1992, pp. 561, 823.

<sup>87</sup> Tauba (9), 33; Fath (48), 28; Sâff (61), 9.

<sup>88</sup> Isrâ' (17), 81.

<sup>89</sup> Nisâ' (4), 174; Mâidah (5), 15-16; Ibrâhim (14), 1; Hadîd (57), 9; Talâq (65), 11.

<sup>90</sup> Baqarah (2), 23.

<sup>91</sup> Baqarah (2), 2; Sajdah (32), 2.

<sup>92</sup> Fussilet (41), 42.

<sup>93</sup> An'âm (6), 104.

<sup>94</sup> Muddaththir (74), 16.

<sup>95</sup> Furqân (25), 52.

<sup>96</sup> see: Ali-'Imrân (3), 154-182; Nahl (16), 35-40; Yâsîn (36), 47-49; Câthiyah (45), 24-26.

credo of other respected scholars. Very often these disputes were carried out publicly or in the palace in the presence of the statesmen. Since then it became a tradition in Muslim societies to have public disputes. One of the modern Muslim thinkers - al-Mawdûdî (d. 1979) wrote the following in the project of Pakistani Constitution:

"Non-Muslims inhabiting the Muslim state should have a right to carry out agitation of their religion, to tell about positive sides of their religion, to criticize Islam without transgressing limits of a fair competition (without slander and offences), to talk about reasons made them to accept their religion, etc."<sup>97</sup>

It is also natural when adherents of a particular religion create social associations (jamâ'ah). The Qur'ân states the following:

"For each of you WE prescribed a clear spiritual Law and a manifest way in secular matters. And if ALLAH had enforced HIS will HE would have made you all one people."<sup>98</sup>

"And WE have made you tribes and sub-tribes that you may know one another."<sup>99</sup>

Moreover, the Prophet Muhammad (s.a.w.) in the treaty signed with the people of Madina (the Madina Act) openly acknowledged the existence in Medina of the local groups (jamâ'ah).<sup>100</sup>

Freedom of religion and conscience among non-Muslims (Jews, Christians and pagans) living in Muslim societies was guaranteed by the Qur'ân. Muslim lawyers, expressing their thoughts on freedoms of these people in Muslim societies, used the principle of "leaving people alone with their religion".<sup>101</sup> To guarantee the above-mentioned freedoms there must be signed a pact known as "the treaty of *dhimmah*". According to the signed pact, a Muslim state is obliged to defend freedom of religions and conscience of non-Muslims, to guarantee to them security of live, property and honor of all the family. From their side non-Muslims have to pay a tax called "*jizya*".<sup>102</sup> In this regard there is no difference between people of *Dhimmah* (*ahl al-Dhimmah*) and Muslims. Even the Prophet Muhammad himself, addressing the army commanders said that non-Muslims, paying a tax of *jizya*, had the same rights as Muslims did. As their Muslim counterparts, non-Muslims should have carried a responsibility and this information had to reach them.<sup>103</sup> Scholars of Hanafi *madhhab*, agreeing with this, wrote that relatives of the *dhimmi* killed by a Muslim had a right to revenge.<sup>104</sup>

<sup>97</sup> Hayreddin Karaman, *Mukayeseli İslam Hukuku*, Istanbul 1996, I, 161-162.

<sup>98</sup> Mâidah (5), 48.

<sup>99</sup> Hujurât (49), 13.

<sup>100</sup> See article: 2-12, 16, 20, 25, 28-36, 38, 45 (for the full text see: Muhammed Hamidulah, *İslam Peygamberi*, transl. Salih Tuğ, Istanbul 1993, I, 202-210).

<sup>101</sup> Sarahsî, *al-Mabsût*, Qâhira 1324-31, vol., 11, p. 102; Kâsânî, *Badâ'i' u's-sanâi'*, Qâhira 1327-28/1910, vol., 2, p. 310, 311, 312, 313; Mawsili, *al-Ikhtiyâr*, Qâhira, N. D, vol., 3, p. 65, 67, 111; vol., 5, p. 84.

<sup>102</sup> Tauba (9), 29; Abû Yûsuf, *Kitâb al-Kharâj* (ed. Qusayy Muhibbuddîn al-Khatîb), Bulaq 1302, pp. 148-149; Qarâfî, *al-Furûq*, Beirut 1418/1998, vol., 3, p. 23.

<sup>103</sup> Kâsânî, *ibid.*, vol., 6, p. 280.

<sup>104</sup> Aynî, *Umda al-Qârî*, Qâhira 1348, vol., 2, p. 161-162.

It is reported that Ali b. Abi Tâlib (d. 40/661) said: "They (non-Muslims) accepted the treaty of *"Dhimmah"* to make their property and blood equal with ours."<sup>105</sup> The following statement of al-Qarâfî (d. 684/1285) is very significant because it reflects Muslim scholars' attitude towards this problem: "Treaty of *dhimmah* imposes on us certain obligations. They (non-Muslims) are our citizens. According to this treaty all of them are under the protection of Allah, His Prophet and Islamic religion. If somebody, by offending them (the *dhimmis*), will harm them and will assault their honor and dignity, or somehow will promote this kind of attitude, he will violate the guarantee (*emân*) given (to *ahl al-dhimmah*) by Allah, the Prophet and Islamic religion".<sup>106</sup>

A treaty of *dhimmah* is not only the treaty, which protects *ahl al-dhimmah* from all kinds of assault and attacks. It also provides them sustenance in the case of necessity. Khâlid b. Walîd (d. 21/642) in a treaty signed with the people of *Hîra*, promised a payment of necessary amount of welfare-money to those, who had been

unable to pay tax.<sup>107</sup> Caliph Umar b. al-Khattâb (d.23/644), seeing once a begging Jew, said: "When he was young we had taken tax from him. Now, when he is old, how can we allow him to beg?" Later, Umar ordered payment of a pension to the Jew from the state treasure fund.<sup>108</sup>

The following categories of persons are exempted from paying the *jizya* tax: monks, those who devoted themselves to the worship of God, religious activists, needy people and women. Persons, claiming that they are unable to pay the *jizya* tax, have to swear by Allah or as it is prescribed in their religion. They will be exempted from paying the tax until their ability to pay the tax will become evident.

It is reported that the Prophet Muhammad (s.a.w.) said: "If somebody will harass a *dhimmî*, or if he will burden him with a burden, which the *dhimmî* will not be able to get on with, I will complain to Allah against this person in the Day of Judgment."<sup>109</sup> If a state is not able to guarantee the rights of the *dhimmis* according to the treaty, the *jizya* tax will be automatically nullified.<sup>110</sup> For example, Khâlid b. Walîd has put this as a condition in the treaty with people of *Hîra* cited above. Moreover, according to the treaty with *Hims* population signed by Abû Ubayda b. Jarrâh (d. 18/639), he returned the tax of *jizya* collected earlier, when he had learned that would not be able to defend this people from Byzantine army."<sup>111</sup>

In conclusion to this chapter we would like to note that in exchange to the tax, known as the *jizya* collected from non-Muslims living in Muslim territories, a Muslim

<sup>105</sup> Kâsânî, *ibid.*, vol., 7, p. 111; see also: vol., 6, p. 281.

<sup>106</sup> Qarâfî, *ibid.*, vol., 3, p. 29.

<sup>107</sup> Abû Yûsuf, *ibid.*, pp. 155-156.

<sup>108</sup> Abû Yûsuf, *ibid.*, p. 136.

<sup>109</sup> Abû Yûsuf, *ibid.*, p. 135.

<sup>110</sup> Abû Yûsuf, *ibid.*, p. 132. For more information on these subjects see: Ibn Qayyim al-Jawziyya, *Ahkâm ahl al-Dhimme* (ed. Salahaddin al-Munejjid), Dimashk, 1381/1961; Abdulkerim Zaidân, *Ahkâm al-Dhimmiyyîn ve al-muste'menîn*, Beirut, 1402/1982; Mehmet Erkal, "Cizye", Türkiye Diyanet Vakfı İslam Ansiklopedisi, İstanbul, 1993, vol., 8, p. 42-45; Ahmet Özel, "Gayr-i Müslim", *op.cit.*, İstanbul, 1996, vol., 13, p. 418-427.

<sup>111</sup> Abû Yûsuf, *ibid.*, p. 150; Erkal, "Cizye", p. 42-43.

state takes responsibility to guarantee their freedom of religion and conscience, to defend their places of worship, to prevent their blood to be shed, to protect their lives and property, to defend them from any kind of external force. All of the responsibilities mentioned above reflect the essence of the "*dhimmi*" treaty.<sup>112</sup>

Non-Muslims possess legal and judicial autonomy in the spheres of family law, personal law, debt responsibilities, inheritance law and other spheres of law, where personal rights stands in the first place. They can execute justice in the public courts according to their legislation. This opportunity is provided to non-Muslims in conformity with freedom of religion and conscience. This can be explained by the fact that it is taken for granted by Muslims that nobody has the right to intervene to the legal system of non-Muslims, even if this legal system is considered to be invalid from the Islamic law point of view.

Umar b. Abdil-Azîz (d. 101/719) showed interest in the question about whether the Islamic state should intervene in the matters of *ahl al-Dhimmah* such as non-legal marriages, drinking alcohol, eating swine - everything prohibited in the view of Islamic law. For the answer, he applied to Hasan al-Basrî (d. 110/728) to learn the practice of the Rightly-Guided Caliphs (al-Khulafâ' al-Râshidûn) in these matters. Hasan al-Basrî gave the following answer: "They (non-Muslims) are paying us the *jizya* tax to live according to their religion and you must submit yourself (to this order of things) and do not introduce any new law."<sup>113</sup> By answering in such a manner, Hasan al-Basrî meant non-intervention to their religious life. Even scholars of Hanafî madhhab considered alcohol and pork as the property of *ahl al-dhimmah*. According to their view, every Muslim is responsible for the damage of this property.<sup>114</sup>

It should be also emphasized here that *jizya* was not a tax which was directly imposed by Islam. From the first ages onwards there had been always a tax levied from the defeated by the victorious. Islam has accepted this tax as a symbol of submission to the state by giving it humanly aspects. An amount of *jizya* per year was approximately equal to ten days income of one year. In the Islamic societies the non-muslims who were exempted of the military services because of the fact that they were paying *jizya* to the state didn't participate in the wars and that's why they proceed with their commercial activities without any negative effects out of these deadly wars. In addition, they became so rich that they could even give credits to the state. So *jizya* wasn't a being brought low but a grace and mercy for them.

The term / word of *sâghirûn* mentioned in the *jizya* verse (Tauba 9/29) can be also interpreted as an acknowledgment of submission to the sovereignty of Islamic state.

As for interrelations among non-Muslims in their private life, it is also very sensi-

<sup>112</sup> see: Abû Yûsuf, *ibid.*, pp. 148-149.

<sup>113</sup> Sarahsî, *ibid.*, vol., 5, p. 39.

<sup>114</sup> Sarahsî, *ibid.*, vol., 5, p. 38, 39, 43; Kâsânî, *ibid.*, vol., 2, p. 311, 312, 313; vol., 6 p. 113. Representatives of other madhhabs, in particular Shâfiî, considered drinking alcohol a matter of social order and consequently non-Muslims had to obey restrictions in this sphere also.



tive field of research. Even if a Muslim husband does not obey the laws of the religion of his non-Muslim wife, he does not have right to pressure her to go against her religion. Moreover, he cannot demand from his wife to take a bath because of losing her ablution (*ghusl*), menstruation or after the post-natal period passed.<sup>115</sup> A detailed commentary on this kind of questions from the side of Muslim scholars is connected with their understanding of religion. Religion is a faith, a worship and morals. Religion is a comprehensive system, in which the law regulates all aspects of life.<sup>116</sup>

### Conclusion

Religion is an eternal reality, which has been in existence since the early days of humanity. Researchers in the sphere of history of religions showed that during the history there never was a society without religion. History documents facts demonstrating us that supporters of the religious freedom prevailed in any society. The Qur'ân and the Sunnah of the Prophet Muhammad put an end to the compulsion in choosing a religion. The basic principles of freedom of conscience and religion, which just recently spread in the modern world through the declarations devoted to human rights issues, were in fact introduced by Islam about fourteen centuries ago.

<sup>115</sup> Kâsânî, *ibid.*, vol., 2, p. 311; Ahmet Özel, "Gayr-i Müslim", Türkiye Diyanet Vakfı İslam Ansiklopedisi, İstanbul, 1996, vol., 13, p. 425.

<sup>116</sup> Sarahsî, *ibid.*, vol., 5, p. 38-39, 40-41; vol., 6, p. 88; vol., 11, p. 102; Kâsânî, *ibid.*, vol., 2, p. 11; Ahmet Özel, *İslam Hukukunda Milletlerarası Münasebetler ve Ülke Kavramı*, İstanbul, 1982, p. 198; "Gayr-i Müslim", vol., 13, p. 422-423; Fahreddin Atar, *İslam Adliye Teşkilatı*, Ankara, 1999, p. 226; M. Akif Aydın, "Din", Türkiye Diyanet Vakfı İslam Ansiklopedisi, İstanbul, 1994, vol., 9, p. 327.