

## TRANSLATION/ÇEVİRİ

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# THE LAW CODE OF MKHITAR GOSH AND ANALYSIS ON THE “OTHERS” IN THE MEDIEVAL ARMENIAN COMMUNITY\*

(MİHİTAR GOŞ’UN KANUNNAMESİ VE ORTA ÇAĞ ERMENİ TOPLUMUNDA ‘ÖTEKİLER’ ÜZERİNE BİR İNCELEME)

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**Abstract:** *Armenians had compiled some church law collections until the 12th century, but they did not have any national law code (codex) regulating social life. The law code written by Mkhitar Gosh in 1184 aimed to fulfill this need and became the first national law code in Armenian history. The law code of Gosh deeply affected the Armenian community and was used by Armenians in various parts of the world for many centuries. This law code has particular importance in terms of Turkish history. Since the law code was written at a time when Turkish rule in Anatolia had been established, it provides important data in terms of understanding the socio-cultural structure of that period. Therefore, this study, on the one hand, focuses on the aim of writing the law code, its sources, implementation, and impact on the Armenian society, and on the other hand, it aims to reveal how the relations with the “others” were*

\* This is the English translation of the Turkish language article titled “Mihitar Goş’un Kanunnamesi Ve Orta Çağ Ermeni Toplumunda ‘Ötekiler’ Üzerine Bir İnceleme” that was originally published in the 68th Issue of the journal *Ermeni Araştırmaları*. See: Erdi Öztürk, “Mihitar Goş’un Kanunnamesi ve Orta Çağ Ermeni Toplumunda ‘Ötekiler’ Üzerine Bir İnceleme”, *Ermeni Araştırmaları*, no. 68 (2021): 107-128.

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*regulated in the medieval Armenian community through the articles of law code. In this regard, the articles of the law code were examined via two different Armenian editions along with its English translations. The study has also made use of secondary sources concerning the law code and the period. As a result of this study, it was seen that Mkhitar Gosh wrote the law code to prevent interactions between Armenians and the “others”, and to prevent the erosion of Armenian identity. However, by examining the articles of law code, it is revealed that Armenians had in fact interacted with “others”, and consequently, cross-cultural marriages and conversions were experienced in medieval times.*

**Keywords:** *Mkhitar Gosh, Law Code, Datastanagirk, Others, Medieval Armenian Community, Medieval Turkish-Armenian Relations*

**Öz:** *Ermeniler, 12. yüzyıla kadar birtakım kilise kanun derlemeleri hazırlasalar da sosyal hayatı düzenleyecek millî bir kanunnameye sahip değillerdi. 1184 yılında Mhitar Goş tarafından yazılan kanunname bu ihtiyacı gidermeyi amaçlamış ve Ermeni tarihinin ilk millî kanunnamesi olmuştur. Goş'un kanunnamesi Ermeni toplumunu derinden etkilemiş ve uzun yüzyıllar dünyanın çeşitli yerlerindeki Ermeniler tarafından kullanılmıştır. Eser Türk tarihi açısından ayrı bir öneme sahiptir. Kanunnamenin Anadolu'da Türk hâkimiyetinin sağlandığı zamanlarda yazılmış olması sebebiyle eser, dönemin sosyo-kültürel yapısının anlaşılması açısından önemli veriler sunar. O yüzden bu çalışma bir taraftan kanunnamenin yazılış amacı, kaynakları, uygulanması ve Ermeni toplumuna etkileri üzerinde yoğunlaşırken, diğer taraftan içeriğindeki kanun maddeleri üzerinden Orta Çağ Ermeni toplumunda “ötekilerle” ilişkilerin nasıl düzenlendiğini ortaya çıkarmayı amaçlamıştır. Bu bağlamda kanunnamenin maddeleri iki farklı Ermenice baskısından incelenmiş, yer yer İngilizce tercümesinden faydalanılmıştır. Bunun yanı sıra eser ve dönemle ilgili yapılmış ikincil kaynaklardan da yararlanılmıştır. Çalışmanın sonucunda, Mhitar Goş'un kanunnameyi Ermenilerin “ötekilerle” kuracakları etkileşimi engellemek ve kendi benliklerini kaybetmemeleri amacıyla yazdığı görülmüştür. Ancak kanun maddeleri üzerinde yapılan incelemeyle Orta Çağ Ermenilerinin “ötekilerle” karşılıklı etkileşime girdikleri ve bunun sonucunda kültürler arası evliliklerin, ihtidaların yaşandığı ortaya konmuştur.*

**Anahtar Kelimeler:** *Mhitar Goş, Kanunname, Datastanagirk, Ötekiler, Orta Çağ Ermeni Toplumu, Orta Çağ Türk-Ermeni İlişkileri*

## Introduction

Coming under Turkish rule constituted a new experience for the Armenians they had not experienced before. Although they had been under the hegemony in almost every period of great powers such as the Byzantines, Persians, and Caliphate, they generally maintained their autonomy and were at least permitted to be governed by their own leadership. However, the fact that the regions they lived together with the Turks were both directly governed by the new dominant power and that they had to share their lands with new ethnic and religious elements (especially Turks) created a completely different dimension to their social life, cultural development, and relations. The Armenian elites, especially members of the Armenian Apostolic Church, contemplated on how to take measures when the influence of these new neighbors and cultural transformations began circulating among the Armenians who had begun to live together with new ethnic and religious elements. Mkhitar Gosh's<sup>1</sup> law code (codex) was created in accordance with such a necessity. Gosh, who lived during the period of the Turkish rule's establishment in Anatolia (1120-1213), tried to regulate the relations of Armenians with “others” to protect their own identities. With his law code, it was aimed to prevent the establishing of relations with “others” as much as possible and the possibility of being influenced by these “others”. In this study, it is aimed to examine the law code (*ղլաւաւստւնւագիրք*) both in line with its stated purpose and in terms of content analysis. In this context, an attempt will be made towards revealing the sources of the law code, the Armenians' tradition of writing codes, the implementation of the code, and how the relations with “others” in the medieval Armenian society were regulated through the laws in its content.

Mkhitar Gosh's law code was first published in 1880 by Vahan Bastamyantsi. In 1975, Hosrov Torosyan critically analyzed the code and published it. In 2001, the work was once again presented to the reader by Maksim Andraniki Voskanyan. Although the code was translated into languages such as Polish, Kipchak Turkish with Armenian letters for use by Armenian communities in various parts of the world, the work was translated into two different languages for academic purposes in the modern period. In 1954, Popovyan translated it into Russian through the publication of Vahan Bastamyantsi, while in 2000, the work was translated into English by Robert W. Thomson. This study uses the Armenian edition of the law code prepared by Voskanyan. In addition, from time to time, the study uses the Armenian edition published by Torosyan in 1975 and Thomson's English translation.

1 Mkhitar Gosh. “*Մխիթար Գոշ*” [mhitār goš] in Armenian, “Mihitar Goş” in Turkish. As voice pronunciations are considered when the name *Մխիթար* is presented in Turkish, an “i” is added between the “m” and “h”, thus making it “Mihitar”.

## I. The Purpose of and Sources for the Preparation of Mkhitar Gosh's Law Code (Codex)

Mkhitar Gosh, while explaining why he wrote his work, states that there was no written Armenian law code until his time, which those who believed in other religions and the Christian people around him regarded it as odd.<sup>2</sup> It is thought that Gosh completed writing his code in 1184.<sup>3</sup> These two pieces of information raise the following questions: Who was this Mkhitar Gosh that had the competence to prepare a law code in the Armenian community? Had the Armenians truly not prepared any law codes until 1184? If there had been no serious law codes until then, what did the Armenians do to ensure and protect their social order? What were the reasons that prompted Gosh to write a law code? What sources did Gosh utilize while creating the code?

First, it is necessary to dwell on who the author of the law code, Mkhitar Gosh, was. Understanding what kind of place Gosh had in Armenian society will be useful in understanding how acceptable his code was in the eyes of the people. Gosh started his education in Ganja, the city where he was born. He obtained the title of vardapet<sup>4</sup> (*վարդապետ*) by taking lessons from Hovhannes Tavushetsu<sup>5</sup> (*Հովհաննես Տավուշեցու*) and other important people. Gosh did not find this education sufficient and went to Kara Mountain<sup>6</sup> by hiding his title. There, he received training again and received the title of vardapet for the second time.<sup>7</sup> After the education he received, he returned to his hometown, but did not stay there for a long time and moved to Haçin (now known as Saimbeyli/Adana). After his residence in Haçin, he started to reside in the Getik monastery, but when this monastery was destroyed by an earthquake, he began to reside in the new monastery nearby, which was built with the financial support of the famous Armenian-Georgian commanders of

2 Մխիթար Գոշ, *Գիրք Դատաստանի, Աշխատասիրությանը Խոսքով Թորոսյանի* (Երեվան: Հայկական Սոց Գիտությունների Ակադեմիայի Հրատարակչություն, 1975), 2; Մխիթար Գոշ, *Դատաստանագիրք, Աշխատասիրությանը Մարտիմ Անդրանիկի Ոսկանյանի* (Երեվան: 2001), 13; Mxit'ar Goš, *The Law Code [Datastanagirk'] of Mxit'ar Goš*, Trans. Robert W. Thomson (Amsterdam: Rodopi, 2000), 71.

3 Goš, *The Law Code [Datastanagirk'] of Mxit'ar Goš*, 20.

4 A scholarly title given to priests in the Armenian Apostolic Church.

5 There were two vardapets who were known by this name in history and who lived close to each other. There is not much data on the life of Hovhannes Tavushetsu, who was the teacher of Mkhitar Gosh. It is known that he lived in the 12th century. Another Vardapet, Hovhannes Tavushetsu, lived in 1181-1251 and became a student of Gosh. Since they lived close to each other and established a teacher-student relationship with Gosh, this may cause some confusion in history readings. Հ. Եղիազարյան, «Հովհաննես Տավուշեցի-Վանական վարդապետը և Ոլորուտ գյուղը որպես նրա կյանքի ու գործունեության մի կենտրոն», *Էջմիածին. Պաշտօնական ամսագիր Հայրապետական Աթոռոյ Ս. Էջմիածնի*, 17 (5), (1960): 17.

6 Today, it is known as the Nur Mountains in Osmaniye and Hatay. It is also known as the Gavur Mountains.

7 Էմ. Պիվազյան, «Մխիթար Գոշ», *Հայկական Սովետական Հանրագիտարան*, C.7, (Երևան: 1981): 630.

the time, Zakare and his sibling Ivane, and remained there until the end of his life. The fame of Gosh’s wisdom propagated so much that many people, including vardapets, would come to study with him.<sup>8</sup> When Gosh passed away in 1213, he left a large group of students behind him. After his death, the monastery in which he had stayed was named after him and became known as Goshavank (Գոշավանք).<sup>9</sup>

With the death of Mkhitar Gosh, it is seen that the Armenian community sanctified him. Kiragos of Ganja (Կիրակոս Գանձակեցի) (1200/1202-1271)<sup>10</sup> writes in his work that after his death, ill people visited his grave to be healed.<sup>11</sup> He was referred to as “the great sage” and “the great vardapet” by the people. In the Armenian encyclopedia article, he is introduced as a thinker, scholar, law writer, epic writer, teacher, and statesman.<sup>12</sup> It should not be difficult to imagine how Gosh, who was mentioned and respected in this way by Armenians, affected the Armenian society of the period when he wrote his code.

Historian Grigor Arakelyan writes that Armenians had no national law code until the 12th century.<sup>13</sup> Even though there was no law code until this century primarily containing man-made laws intended for all sections of Armenian society and geared towards providing social order, there were religiously motivated law codes that compiled and systematized church law. In the 8th century, the first law code of such nature was that of Catholicos<sup>14</sup> Hovhan Odznetsi<sup>15</sup> (Հովհան Օձնեցի) (?-728) titled *Armenian Law-Code/Codex* (Կանոնագիրք հայոց-Kanonagirk Hayots). The fact that the Armenian

8 Kirakos Gandzakets’i, *History of the Armenians*, trans. Robert Bedrosian, (New York, 1986), 181.

9 A.E. Redgate, *The Armenians* (Cornwall: Blackwell Publishers, 2000), 259.

10 Armenian historian, vardapet. His work titled *Armenian History* (Պատմություն Հայոց), which he started in 1241 and completed in 1265, is an important source for medieval Armenian history. The book consists of two parts. In the first part, the history from Gregory the Illuminator/Lusavorich, the founder of the Armenian Apostolic Church, to the 12th century is given, while the last part is devoted to the events that took place during the Mongolian Invasion. Լ. Խանչարյան, “Կիրակոս Գանձակեցի”, *Հայկական Սովետական Հանրագիտարան*, C. 5, (Երևան: 1979): 450.

11 Gandzakets’i, *History of the Armenians*, 183.

12 Պիվազյան, “Մխիթար Գոշ”, 630.

13 Գրիգոր Առաքելյան, “Մխիթար Գոշի «Դատաստանագրքի» ստեղծման իրավական նախադրյալները”, *Կանթեղ. Գիտական հոդվածների ժողովածու*, (3), (2011): 236.

14 A title used in Oriental Orthodoxy meaning the head of the church.

15 Hovhan Odznetsi, who was declared a saint by the Armenian Apostolic Church, served as the Catholicos of All Armenians between the years 717-728. Having become renowned prior to his appointment as the catholicos for his theoretical-theological knowledge, rhetorical skills, and analytical thinking, Odznetsi played an active role both in political and religious affairs. With the church codex he prepared, he determined the church’s structure and rituals. Throughout his term, he waged a struggle against the Paulicians, Chalcedonians, and pagans who rejected Armenian religious belief. Մելրյան Զարարյան, “Իմաստասիրականը Հովհան Օձնեցու Հոգևոր Ժարանգության Մեջ”, *Բանբեր Երևանի համալսարանի. Հայագիտություն*, 27 (3), (2018): 44-45.

Church continues to use this law code shows just how important it is.<sup>16</sup> Another important church law code before Gosh was written by Davit of Ganja (Դավիթ Գանձակեցի) (1070/1080-1140). It is thought that the work was completed at the beginning of the 12th century.<sup>17</sup> Simon Payaslian considers Davit of Ganja to be among the pioneers of Armenian law writing.<sup>18</sup>

When Armenian history is examined, it can be seen that they lived under Byzantine and Iranian rule for many centuries. To establish their rule in the regions where Armenians lived, these powers either appointed an Armenian *nakharar*<sup>19</sup> (*նախարար*) from that region as an administrator or sent a governor from the said powers' capitals.<sup>20</sup> These officials' duty was to maintain public order as much as possible and send the region's collected tax to the capitals. The Arabs who would later conquer the regions where Armenians lived utilized a similar administrative model.<sup>21</sup> This administrative model that was not too centralized allowed the Armenians to have partial independence with regards to their internal affairs. Along with this, Armenian scholars did law translations from Greek to Armenian. Accordingly, Byzantine church laws called *Nomocanon* were translated to Armenian in the 9th century.<sup>22</sup> During the time of the Bagratunis (885-1045), certain sections of the Byzantine law compilations *Ekloga* and *Syrio-Roman Code* were also translated into Armenian.<sup>23</sup> Based on this information, it can be seen that during the said periods, the Armenians used their own traditions and customs and also the translation they made from Byzantine to maintain order in their social life and worldly affairs.

In a system that is thought to have worked in the said manner, why did Mkhitar Gosh feel the need to write a law code? The changing social structure of his period needs to be examined to answer this question. In the period that

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16 Առաքելյան, «Մխիթար Գոշի «Դատաստանագրքի» ստեղծման իրավական նախադրյալները», 236; *The Heritage of Armenian Literature*, Volume II, ed. Agop J. Hacikyan (Detroit: Wayne University Press, 2002), 134.

17 Ազատ Բոզոյան, «Հայ միջնադարյան իրավունքի պատմության հուշարձանները», *Էջմիածին. Պաշտոնական ամսագիր Ամենայն Հայոց Կաթողիկոսության Մայր Աթոռոյ Մրբոյ Էջմիածին*, 62 (7-8) (2006): 98.

18 Simon Payaslian, *The Political Economy of Human Rights in Armenia* (New York: I.B. Tauris, 2011), 54.

19 A word that means “minister” in today’s Armenian. It was used to refer to Armenian nobles in the Middle Ages.

20 Cyril Mango, *Bizans Yeni Roma İmparatorluğu*, çev. Gül Çağalı Güven (İstanbul: Yapı Kredi Yayınları, 2011), 24; Nicholas Adontz, *Armenia in the Period of Justinian The Political Conditions Based on the Naxarar System*, trans. Nina G. Garsoian (Lisbon: Calouste Gulbenkian Foundation, 1970), 173.

21 Rene Grousset, *Başlangıcından 1071’e Ermenilerin Tarihi*, trans. Sosi Dolanoğlu (İstanbul: Aras Yayıncılık, 2005), 295.

22 Ferdinand Feldbrugge, *Law in Medieval Russia* (Leiden: Martinus Nijhoff Publishers, 2009), 298-299.

23 Feldbrugge, *Law in Medieval Russia*, 299.



Gosh lived (1120-1213), the regions where Armenians lived were largely under Turkish rule. The only place where there was Armenian rule was in Cilicia. The Turkish rule in Armenian regions was different than that of the previous Byzantine, Iranian, and Arabic rules. Unlike the others, following the 1071 Battle of Manzikert, Turks quickly reached all the way to the western edges Anatolia, and this did not remain as only a military campaign; it brought intense Turkish migration along with it. For this reason, unlike the Iranian, Byzantine, and Arabic rules, Turks did not settle for only establishing overall dominance, they directly established rule over the places where Armenians lived through their own population and institutions. As a result of this, Armenians were compelled to interact with both Turks and their institutions.

Alongside this, Mkhitar Gosh also had a career in the state governance. He served as the chief advisor of Zakare Zakaryan, the Chief Commander of that period's Kingdom of Georgia.<sup>24</sup> Zakare and his sibling Ivane Zakaryan had important duties in the Kingdom of Georgia. The Kingdom, under the leadership of Queen Tamar (1184-1213), was experiencing its golden age and the Zakaryan siblings were commanding the Georgian armies.<sup>25</sup> Even though the Zakaryans were subjects of the Georgian Kingdom, they were of Armenian heritage. In fact, while Ivane accepted Georgian religious beliefs, Zakare continued to adhere to Armenian religious beliefs.<sup>26</sup>

The Zakaryan siblings captured Ani in the year 1199 and Queen Tamar granted these lands to them.<sup>27</sup> With this, an Armenian political entity bound to the Kingdom of Georgia was established, lasting until it was captured by the Ilkhanate. The Zakaryan siblings spent the entirety of their lives engaging in activities against Turkish rule. The close relationship Mkhitar Gosh established with the Zakaryan siblings leads to the assessment that, by receiving their support, he too wanted to save the Armenians from the Turkish rule that adhered to a different religion. Gosh wrote his law code under such political conditions.

It should be immediately mentioned here that the idea of a nation with today's understanding had not developed in those centuries. In the Middle Ages, societies generally categorized themselves according to the religious belief they were a member of.<sup>28</sup> For this reason, especially the Armenian high class (religious functionaries, nobles, and scholars) looked with worry at these

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24 Gevorg Poghosyan, "History of Evolution of the Armenian Sociological Thought", *Social Sciences*, 4 (5), (2015): 120.

25 Vladimir Minorsky, *Studies in Caucasian History* (London: Taylor's Foreign Press, 1953), 102.

26 Minorsky, *Studies in Caucasian History*, 102-103.

27 Minorsky, *Studies in Caucasian History*, 103.

28 Mango, *Bizans Yeni Roma İmparatorluğu*, 37.

relations being established with societies holding religious beliefs different from that of Armenians and tried to minimize these relations, especially to prevent Armenians from losing their own beliefs. Gosh's law code was penned exactly with such a thinking. Gosh states that Armenians were applying to the courts of people believing different religions and that he wrote his work to prevent this.<sup>29</sup> In the text of the work, Gosh uses the word *aylahavatner* (*այլահավատներ*), which meant those who believed in other religions. Even though this covered all religions other than the Armenian belief, it can be understood from the general composition of Gosh's work that he meant Muslims, and that he especially pointed towards Muslim courts. It can be clearly seen throughout the work that Gosh strived to protect the identity of the Armenians.

Another example showing Mkhitar Gosh's felt need to write the law code due to the changing political situation of the Armenians can be encountered in the first section concerning the role of judges. In this section, Gosh indicates that since there was no king or prince at the leadership of Armenians due to them coming under foreign rule, it should be the patriarchate as the head of the church who should fulfill the duties of the king or prince, and argues that that religious authorities should assume society's leadership.<sup>30</sup> Basing ourselves on this idea by Gosh, it is revealed that the church had the important function of preserving the social order of Armenians by keeping them together in times when they lacked a political rule of their own.

Another important topic is the sources Mkhitar Gosh used while writing his law code. Gosh explains that he primarily used natural laws in his work, but that he benefited from the laws of Christian nations surrounding him.<sup>31</sup> While the author does not give the names of his sources, the afore-mentioned Byzantine law compilations *Nomocanon*, *Ekloga* and *Syro-Roman Code* that had been translated from Greek to Armenian are thought to be among these sources. Hosrov Torosyan indicates that Gosh made law translations from foreign law codes.<sup>32</sup>

Peter Cowe writes that Mkhitar Gosh, even though he did not indicate this, used the law book written by Davit of Ganja as a source.<sup>33</sup> Since Gosh and

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29 Գոշ, *Գիրք Դատաստանի*, 3; Մխիթար Գոշ, *Դատաստանագիրք*, 14; Goš, *The Law Code [Datastanagirk'] of Mxit'ar Goš*, 72.

30 Գոշ, *Գիրք Դատաստանի*, 26; Մխիթար Գոշ, *Դատաստանագիրք*, 34; Goš, *The Law Code [Datastanagirk'] of Mxit'ar Goš*, 109.

31 Mxit'ar Goš, *The Law Code [Datastanagirk'] of Mxit'ar Goš*, 102.

32 Խ.Ա. Թորոսյան, «Մխիթար Գոշի Դատաստանագրքի գործադրության մասին միջնադարյան Հայաստանում», *Պատմաբանասիրական հանդես*, (3), (1971): 40.

33 Peter Cowe, «Medieval Armenian Literary and Cultural Trends (Twelfth-Seventeenth Centuries)», *Armenian People From Ancient to Modern Times*, ed. Richard G. Hovannisian, (New York: St. Martin's Press, 2004), 299.



Davit of Ganja lived in similar times and in the same city, it is indeed possible that Gosh, who sought to prepare a law book, used Davit of Ganja's work as a source.

Mkhitar Gosh later writes that he utilized religious sources, which includes: the second book of the Torah *Exodus*, the fifth book of the Torah *Deuteronomy*, and the Old and New Testament.<sup>34</sup> Due to these sources used by Gosh, Avigdor (Victor) Aptowitzer, who specializes in Jewish law, indicates that Gosh also benefited from Jewish laws in his law code.<sup>35</sup> In Gosh's work, there is a section titled "the things that we have seen and heard from our kin".<sup>36</sup> Cowe sees this as the most valuable source in Gosh's work,<sup>37</sup> since through it, it is possible to see in the work the traces of Armenian culture and customs of that period.

## II. The Application of the Law Code Among the Armenians

Even though Mkhitar Gosh wrote his law code by himself, he was supported by prominent people through the writing process. Gosh was first supported greatly by Catholicos of Aghvank Stepan. He then wrote a letter to Grigor IV (1173-1193), Catholicos of all Armenians, requesting support, which was replied positively.<sup>38</sup> Also, Gosh befriended Vahtang, who was a strong Nakharar of Upper Haçin region, and enjoyed Vahtang's help throughout the writing process as well.<sup>39</sup> It did not take long for Armenians to accept Gosh's law code that was written in this way under the patronage of people with important religious and political positions.

At the same time as Mkhitar Gosh, the Archbishop of Tarsus Nerses Lambronatsi also carried out a law code study, but Lambronatsi's code remained in writing only and its influence did not go beyond the confines of the monastery. Torosyan, discussing the reasons for this, says that Gosh's work does not just have a religious value, but also serves as an instructive guide.<sup>40</sup> The laws of Gosh provided guidance for regulating social life and answered the needs of Armenian society.<sup>41</sup>

34 Goš, *The Law Code [Datastanagirk'] of Mxit'ar Goš*, 103.

35 V. Aptowitzer, "The Controversy over the Syro-Roman Code", *The Jewish Quarterly Review*, 2 (1), (1911): 69.

36 Գոշ, *Գիրք Դատաստանի*, 23; Goš, *The Law Code [Datastanagirk'] of Mxit'ar Goš*, 103.

37 Cowe, "Medieval Armenian Literary and Cultural Trends (Twelfth-Seventeenth Centuries)", 299.

38 Թորոսյան, "Մխիթար Գոշի Դատաստանագրքի գործադրության մասին միջնադարյան Հայաստանում", 44.

39 Թորոսյան, "Մխիթար Գոշի Դատաստանագրքի գործադրության մասին միջնադարյան Հայաստանում", 45.

40 Թորոսյան, "Մխիթար Գոշի Դատաստանագրքի գործադրության մասին միջնադարյան Հայաստանում", 40.

41 *The Heritage of Armenian Literature Volume II*, 433.

The fact that so many articles have been written on a law code for many centuries indicates that it has been actively used. According to Torosyan, there are approximately 40 writings in *Matenadaran*<sup>42</sup> related to Mkhitar Gosh's law code.<sup>43</sup> Furthermore, the fact that the law code of Gosh served as the main pillar for Smbat Sparapet, who compiled a law code for Cilicia Armenians, is another evidence indicating that this code was actively used.<sup>44</sup>

Fernanda Pirie indicates that Armenians under Muslim rule gained autonomy to a certain degree with this law code.<sup>45</sup> It is also an important issue what kind of response Mkhitar Gosh's law code study elicited amongst Muslim rulers. Cowe's studies on this issue serves to give us an opinion on this. It is understood that Muslim rulers did not in any way look kindly on the implementation of the said law code and conveyed their complaints to Catholicos Grigor IV through the local Armenians. The Muslim rulers, who did not accept the code, insisted that Armenians should continue to come to their own courts.<sup>46</sup>

It cannot be understood from this that Armenians completely gave up applying to Muslim courts with this law code. Even though Armenians were able to apply to their own courts to solve disputes among themselves, they had to go the Muslim courts when they got into legal disputes with Muslims. Additionally, Muslim courts came into play in when a grave crime concerning the state and disturbing public order was committed.

Beyond the Armenians, it is obvious that non-Muslims in Anatolia applied to Muslim qadis. This was narrated in the qadi record of Kutbüddîn-i Şîrâzî, who was appointed to Sivas as qadi in the year 1277;

“Judicial authority is amongst the most important affairs of religion, since the need for it by all people and things is quite clear. Eliminating hostilities and disputes between people in such a way that the winner and the loser are both satisfied is only possible through decisive religious judgements. The validity of this is so obvious that Jews and Christians, who are opponents of religion, and even those who are in error, rely on the pen and word of Islamic qadis and protect their goods

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42 The manuscript repository of Armenia.

43 Թորոսյան, “Մխիթար Գոշի Դատաստանագրքի գործադրության մասին միջնադարյան Հայաստանում”, 41.

44 Թորոսյան, “Մխիթար Գոշի Դատաստանագրքի գործադրության մասին միջնադարյան Հայաստանում”, 42.

45 Fernanda Pirie, “Law Before Government: Ideology and Aspiration”, *Oxford Journal of Legal Studies*, 30 (2), (2010): 218.

46 Cowe, “Medieval Armenian Literary and Cultural Trends (Twelfth-Seventeenth Centuries)”, 299.

and properties [through having them recorded in qadis'] books and records and thus making them official."<sup>47</sup>

An example of what was explained in the text appears in a record of 1281. A group of non-Muslims had come to the qadi of Sivas, Kutbüddin-i Şirazi, to secure their goods and properties and recorded their wealth in the official record of the qadi.<sup>48</sup> It can be suggested from this example that Armenians could have applied to the Muslim courts even after the completion of Mkhitar Gosh's law code.

In the Ottoman Empire era, there had always been courts belonging to non-Muslims. These courts could decide on simple cases as well as on marriages, divorces, inheritance, and decisions related with religion such as the appointment and dismissal of religious functionaries. If there was a case between a Muslim and a non-Muslim, non-Muslim courts could not handle the case;<sup>49</sup> but non-Muslims could go to the qadis in case they wanted to. There is much information in Ottoman archives related to this.<sup>50</sup> The information given above about non-Muslims are valid for Armenians in a narrower scope.

The law code of Mkhitar Gosh was accepted not only by Armenians in Anatolia, but also by Armenian communities in different parts of the world. In particular, it was used extensively in Armenian trade colonies in Poland. In 1519, with the demand of Armenians and order of King Sigismund I, it was translated into Latin by Armenians.<sup>51</sup> In 1528, it was translated into Polish and Kipchak Turkish with Armenian letters.<sup>52</sup> Its translation into Kipchak Turkish with Armenian letters is known as *Töre Bitiği*.<sup>53</sup> It has been traced that, in that geography, the code law of Mkhitar Gosh was implemented in Zamość<sup>54</sup> until 1780, in Lviv until 1784, and in Kamianets-Podilskyi<sup>55</sup> until 1787.<sup>56</sup>

47 Mahmut Recep Keleş, *Kutbüddin-i Şirazi Selçuklu Dönemi Anadolu'da Bilimin Güneşi* (İstanbul: Rağbet Yayınları, 2018), 84.

48 Osman Turan, *Türkiye Selçukluları Hakkında Resmi Vesikalar - Metin, Tercüme ve Araştırmalar* (Ankara: TTK, 1958), 42-43.

49 Yavuz Ercan, *Osmanlı Yönetiminde Gayrimüslimler Kuruluştan Tanzimat'a Kadar Sosyal, Ekonomik ve Hukuki Durumları* (Ankara: Turhan Kitabevi, 2001), 247.

50 Ercan, *Osmanlı Yönetiminde Gayrimüslimler Kuruluştan Tanzimat'a Kadar Sosyal, Ekonomik ve Hukuki Durumları*, 247-249.

51 Susanna Davtyan, Mikayel Khachatryan, Ara Johrian and Karen Ghazaryan, "Mkhitar Gosh's Medieval Law Code and its Implications for Armenian Communities Abroad", *Medicine and Law*, 33 (2), (2014): 43.

52 Davtyan et al., "Mkhitar Gosh's Medieval Law Code and its Implications for Armenian Communities Abroad", 43.

53 Kutluay Erk, "Ecclesiastical Terminology in Töre Bitigi: ARİ", *Acta Orientalia Vilnensia*, 13 (1), (2016): 11.

54 A city situated today in Poland.

55 A city situated today in Ukraine.

56 Davtyan et al., "Mkhitar Gosh's Medieval Law Code and its Implications for Armenian Communities Abroad", 43.

The law code of Mkhitar Gosh was applied in Georgia as well. Georgian King Vakhtang VI (1716-1724), wanting to create a law compilation, asked the Armenians in Etchmiadzin for some examples from their own laws. In response, the Armenians sent the law code of Gosh to the King. King Vakhtang utilized this law code and included it in the content of his own law compilation.<sup>57</sup> In addition to this, Torosyan states that the Armenian community in India's Calcutta city used this law code in the 1930s.<sup>58</sup>

Another striking point of the law code is Sudan. With the efforts of Sarkis İzmirliyan (1917-1949), the Sudanese government officially recognized Mkhitar Gosh's law code, which they desired to see as the laws of the Armenian minority in Sudan. Thereby, the law code of Gosh was officially recognized by a state for the first time.<sup>59</sup>

### III. Articles in the Law Code Regulating Christian-“Others” Relations

There are a total of 251 laws written for the regulation of social life in Mkhitar Gosh's law code.<sup>60</sup> These laws are related to almost every area of social life. The by law code contains laws on various issues from the positions and duties of kings and princes to the positions and duties of the clergy; from the purchase and sale of animals, sharing of inheritance, marriages, divorces, and troubles in marriage to the violence that can be experienced between individuals.<sup>61</sup>

Before starting to examine the laws, it is necessary to explain the people who are referred to as the “others”. As mentioned before, medieval societies defined their nationality mostly through religion.<sup>62</sup> While Armenian Christians

57 *The Heritage of Armenian Literature Volume II*, 434.

58 Թորոսյան, “Մխիթար Գոշի Դատաստանագրքի գործադրության մասին միջնադարյան Հայաստանում”, 47.

59 Թորոսյան, “Մխիթար Գոշի Դատաստանագրքի գործադրության մասին միջնադարյան Հայաստանում”, 47.

60 There are three different editions of the law code at the present time. The first edition consists of 251 articles. It was copied from the preliminary works of Mkhitar Gosh and the original law code. The ancient manuscript of Zimmar, a copy sent to the Catholicos, and the Venetian manuscripts numbered 1237-1238 copied from it are examples of this edition. In the second edition, which is dated 1295 and located in Matenadaran, the code is divided into secular laws and church laws. The first part consists of 124 articles, while and the second part consists of 130 articles. Although it is similar to the first edition in terms of language and style, it is seen that it is written with simpler expressions. The third edition of the work is the most common one and has many copies. Although it is defined with the first edition, it differs in its style and concise expressions. Its registered copies in Matenadaran numbered 485, 657, 2593, 2776, 3291 and other copies are among its main examples. The oldest manuscript is the one numbered 2593 and dated 1303. (Գոշ, Գիրք Դատաստանի, ԾԶ – ԾԷ). The third edition was used in this study.

61 Erdi Öztürk, *Etnik ve Dinsel Dönüşüm Çağında Anadolu: Halklar, İnanışlar ve Kültürel Etkileşim (XII-XIII. Yüzyıllar)*, Yayınlanmamış Yüksek Lisans Tezi, Hacettepe Üniversitesi, Ankara, 2018, 82.

62 Mango, *Bizans Yeni Roma İmparatorluğu*, 37.

saw those of their own religion as a part of their society; they excluded nations with a different faith from that society. Muslims, Zoroastrians, Greeks, Latins, or even Armenians with different Christian understandings such as the Paulicians were seen as the other. In accordance with this, Mkhitar Gosh called himself and the society he belonged to “Christian”, and he did not use the name “Armenian” anywhere in the code. He used different words when he was going to talk about the others. These words are: aylahavat (*այլահավատ*)<sup>63</sup>, anhavat (*անհավատ*)<sup>64</sup>, mahmedakan (*մահմեդական*)<sup>65</sup>, aylazgi (*այլազգի*)<sup>66</sup> and otarazgi (*օտարազգի*)<sup>67</sup>. Aylahavat (*այլահավատ*) literally means “of different faith”. Anhavat (*անհավատ*) gives the meanings of “irreligious, infidel” in the dictionary.<sup>68</sup> Mahmedakan (*մահմեդական*) means “followers of Muhammad, Muslims”. Aylazgi, (*այլազգի*) means “foreign or external nation” in today’s Armenian,<sup>69</sup> but is also a word used for Muslims in classical Armenian.<sup>70</sup> This word is often used in the law articles; however, since the author refers to Muslims as mahmedakan (*մահմեդական*) in various places in the text, we will evaluate these articles in a way that includes all groups seen as others by the Armenian society of the period, including Muslims. Lastly, the word otarazgi (*օտարազգի*) means “foreigner, foreign national”.

It is important to include Mkhitar Gosh’s views on Muslims for a better understanding of the situation. In the ninth part of the introduction of the code prepared by Gosh, he compares the two sides according to his own opinion to explain why a Christian should not go to the courts of other religions. Referring to the Bible’s passage that: “For what partnership can righteousness have with wickedness? Or what fellowship does light have with darkness?”<sup>71</sup>, Gosh says that believers and unbelievers are as far apart from each other as light and darkness.<sup>72</sup>

Mkhitar Gosh then states that even though Muslims accepted God as the Father, they denied the Son and the Holy Spirit, and therefore they were in great denial.<sup>73</sup> To prove that Muslims contradicted their own beliefs, Gosh

63 Գոշ, *Դատաստանագիրք*, 13.

64 Գոշ, *Դատաստանագիրք*, 31.

65 Գոշ, *Դատաստանագիրք*, 32.

66 Գոշ, *Դատաստանագիրք*, 38.

67 Գոշ, *Դատաստանագիրք*, 84.

68 Դերմենջյան Մայրանուշ Փարավոնի, “անհավատ”, *Հայերեն-Թուրքերեն Բառարան* (Երևան: Հեղինակային Հրատարակություն, 2013), 33.

69 Դերմենջյան Մայրանուշ Փարավոնի, “այլազգի”, *Հայերեն-Թուրքերեն Բառարան*, 20.

70 Ե. Բ. Աղայան, “այլազգի”, *Արդի Հայերենի Բացատրական Բառարան* (Երևան: Հայաստան Հրատարակություն, 1976), 40.

71 2. Corinthians 6/14.

72 Գոշ, *Դատաստանագիրք*, 31.

73 Գոշ, *Դատաստանագիրք*, 32.

claims that that there was not a single Muslim who was not drunk despite wine being considered haram by Muslims.<sup>74</sup> Finally, he denigrates the justice system of the Muslims. He tries to prevent Christians from going to Muslim courts by writing that Muslims used perjury in their courts, that they were deceitful, and that they had slanderous plaintiffs.<sup>75</sup> It is seen that Gosh, who had such a negative perception towards Muslims, continued this view in the laws he wrote.

Before starting to examine the laws in which judgments about others are made, it is necessary to draw attention to the word *այլազգի* (*aylazgi*), meaning foreign, used by Mkhitar Gosh to describe the “others” in the articles of the code. As mentioned above, this word was formerly used for Muslims in Armenian. For this reason, it would not be wrong to think that the items mentioned below refer specifically to the Muslims living in Anatolia of the period, even though they cover all others in general.

When we look at the laws regarding the others mentioned in the law code, we first come across Article 2 that deals with the matters related to the kings and their subjects.<sup>76</sup> This article describes what the punishment should be if someone from another nationality kills a Christian. Accordingly, the person who killed somebody must be killed immediately; however, if s/he caused the death unintentionally, his/her hands should be cut off and s/he should pay the blood price,<sup>77</sup> which is stated to be 365 dahecans (*դսհեկան*)<sup>78</sup>. The continuation of the article states what the punishment should be in the reverse situation; as in if a Christian kills someone from another nationality. In such a case, the murderer must pay the blood price; however, if s/he accidentally caused the death, s/he will only pay half of it. This money will be paid to the court, and only one-third of it will be given to the family of the deceased.<sup>79</sup> In this article, it is also stated that kings cannot collect head/poll tax from Christians, they can only collect this tax from non-Christian people, but if a person later accepts Christianity, then that person should also be exempted from the head tax.<sup>80</sup>

Marriage is considered an important transitional stage in human life. In intercultural marriages, this transition process is more arduous. In such

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74 Գոշ, *Դատաստանագիրք*, 33.

75 Գոշ, *Դատաստանագիրք*, 33.

76 I would like to thank Instructor Dr. Ercan Cihan Ulupinar for his assistance in checking the translations of the relevant law code articles in this section.

77 Գոշ, *Դատաստանագիրք*, 38.

78 Gold (sometimes silver) coin, dinar.

79 Գոշ, *Դատաստանագիրք*, 39.

80 Գոշ, *Դատաստանագիրք*, 41.



marriages, couples inevitably find themselves in a process of cultural transition. Some conflicts occur in the first stages as they are strangers to each other's traditions and customs. Over time, as couples understand and adapt to each other, their understanding and tolerance towards each other develops; and they even experience common acculturation.<sup>81</sup> In the process of acculturation, different cultures come together and change by influencing each other, creating new syntheses and formations.<sup>82</sup> Mkhitar Gosh, to protect the identity of his own people, looked down upon such marriages and included the issue of marriage with others in his laws. Gosh, disagreeing with such marriages, states that people who marry their own children to foreigners (non-Christians) will be barred from communion and hence from the church.<sup>83</sup> He states that in order for a Christian to marry a foreigner, the foreigner must be baptized and all his/her old lifestyle and habits must be erased.<sup>84</sup> For Gosh, the conversion of any partner of married Christian couples is grounds for divorce. He writes that when such a situation occurs, the couple can no longer live together.<sup>85</sup>

Another area where there are laws regarding others is the issues related to servitude. Mkhitar Gosh says that for those who buy servants from a foreign people, if the servants are baptized, a ransom amount should be determined, and the servants should set free when they have worked until the corresponding amount. But if the servants are not baptized, those who had bought the servants can sell them as they wish.<sup>86</sup> When the articles regulating the relations between the master and servant are examined, it is seen that the punishment the master will receive for his/her crimes varies according to whether the offended servants are Christian or not. If the master beats his/her servant to such an extent that they injure them, the beaten servants are freed if they are Christian, while non-Christians are sold for less than their actual value.<sup>87</sup> If the master kills his/her servants, then it is written that a blood price must be paid regardless of the religion of the murdered servant.<sup>88</sup>

Apart from concepts such as marriages and divorces and the relations between the master and the servant, there are three laws in the law code that contain provisions about others. One of them is Article 58, which is about what must

81 Celia Jaes Falicov, "Cross-Cultural Marriages", *Clinical Handbook of Couples Therapy*, ed. Neil S. Jacobson and Alan S. Gurman (New York: Guilford Publications, 1995), 234.

82 Bozkurt Güvenç, "Süreçler: Kültürleme, Kültürlenme ve Kültürleşme", *Kültürün ABC'si* (İstanbul: Yapı Kredi Yayınları, 2019), 87.

83 ԳՆԶ, *Դատաստանագիրք*, 120.

84 ԳՆԶ, *Դատաստանագիրք*, 97-98.

85 ԳՆԶ, *Դատաստանագիրք*, 54.

86 ԳՆԶ, *Դատաստանագիրք*, 71.

87 ԳՆԶ, *Դատաստանագիրք*, 74.

88 ԳՆԶ, *Դատաստանագիրք*, 72-73.

be done if a Christian kidnaps and sells another Christian child to foreigners. Accordingly, if a Christian kidnaps another Christian child and sells him/her to someone of another nationality, that person shall not be killed but imprisoned. Along with giving donations, a person must be sent to take back the child. If this is unsuccessful, the offender's eyes are cauterized and then s/he is released.<sup>89</sup> Another law, which has a provision regarding others, describes what punishment will be applied if a person blasphemes God. Blasphemy, which was considered a great crime in medieval societies, is punished according to this article as well; the perpetrator must be executed regardless of whether s/he is Christian or a foreigner.<sup>90</sup>

The last article of the law code on the others is Article 170, which seeks to answer the question of what the punishment will be if a priest kills someone to protect himself while traveling. Mkhitar Gosh says that, in defense of one's comrade, it is legitimate to kill the attackers if they are of another nationality. Since the purity of religious functionaries is important in Christianity, Gosh cannot make a definite judgment about what will happen to them and writes that the event should be examined by the vardapets and decided accordingly.<sup>91</sup>

It is seen that Mkhitar Gosh, with the motive of protecting the identity of his own people, tries to prevent the establishment of relations with others in almost any field. However, if Armenian-“other” bilateral relations had not existed in Anatolia at that time, Gosh would not have felt the need to add such articles to his law code. Based on these articles, it can easily be said that Armenians married people of other nationalities in 12-13th century Anatolia. Likewise, it can be understood from the articles on divorce that there were religious conversions among Armenians. From other articles, we can also deduce that Armenians, like other non-Muslims, sought justice in the courts of Muslims, relying on Islamic law in those centuries. Probably because of this, Gosh, wanting to prevent this, recommended in his code not to go to Muslim courts.

This law code written by Mkhitar Gosh describes his ideal Armenian society. Although it is known that the code was used in Armenian communities in various parts of the world, there is no evidence on whether its provisions regarding the others were implemented. It is not possible to imagine that the harsh judgments especially against others such as death, the cutting off of hands, and the cauterization of the eyes were applied in regions under Muslim rule, since these people could always apply to the qadis. At the same time, although Muslim political authorities allowed the establishment of courts for

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89 Չնշ, *Դատաստանագիրք*, 72.

90 Չնշ, *Դատաստանագիրք*, 84.

91 Չնշ, *Դատաստանագիրք*, 123.

the settlement of religious issues between Christians living in their lands, these courts were not allowed to adjudicate on non-Christian citizens of the state, as it would create a dichotomy and undermine the political authority of Muslim rule. In addition, during the Ottoman Empire, there were various examples in which Christians applied to the qadis to resolve the problems among themselves.<sup>92</sup> There is no reason not to think that this situation was also experienced in the 12-13th century in Anatolia.

## **Conclusion**

Although Armenians had to live under Byzantine, Iranian and Arabic rule throughout history, they did not feel the need to have a written national law code (codex) until the Turkish rule in Anatolia. The reason for this was that the Byzantine, Iranian and Arabic administrations in the regions where Armenians lived generally ruled these places by appointing a noble person from that region or by sending a governor from the capitals, and they did not expect anything from them other than to ensure public order and regular tax collection. For this reason, Armenians were able to be independent in their own domestic laws and with their own traditions and customs under such different administrations, and they benefited from the translations of the religious laws of Byzantine, which was also a Christian state. However, unlike the others, the Turks came to the regions where the Armenians lived with their own population and institutions and established a strong central administration there. The Armenians thus became acquainted with the administration of a foreign nation and inevitably had to establish relations with the members and institutions of that nation. As a result of these relations, either voluntarily or involuntarily, the Armenians went to Muslim courts and sought justice there.

This close relationship with foreigners must have prompted Armenian scholars and religious functionaries, who were afraid that Armenians would lose their identity, into action and Mkhitar Gosh felt the need to write a law code to prevent this situation. Indeed, Gosh received support from both political and religious leaders of the period while writing the code. While preparing his code, Gosh used the laws of other peoples around him and especially some translations made from Byzantine laws. As sources for this code, he also used his own religious books and Armenian traditions and customs, which he described as "the things that we have seen and heard from our kin". For this reason, the code also includes important data on Armenian culture.

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<sup>92</sup> For various examples, see: Yavuz Ercan, *Osmanlı Yönetiminde Gayrimüslimler Kuruluştan Tanzimat'a Kadar Sosyal, Ekonomik ve Hukuki Durumları*, 247-249.

The law code was widely accepted by the Armenian community not only in Anatolia, but also by the Armenian colonies in various parts of the world such as Poland, Ukraine, India, and Sudan. In this way, the code was translated firstly into Latin in the 16th century, and then into the Kipchak language with Armenian letters and Polish. It remained in use in Armenian colonies around the world until the beginning of the 20th century.

Mkhitar Gosh's work is also a source for Turkish historical research. Although the law code has a negative point of view towards Muslims, it gives valuable information about the condition of Armenian-“other” relations in 12-13th century Anatolia. From the articles about the others in the law code, it can be easily seen that close relations were established between Muslims and Armenians in 12-13th century Anatolia, that there were intermarriages, and that there were Armenians who converted to Islam.

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