

THE INSTITUTION OF *WAQF* OF MUSLIM TATARS IN HISTORICAL RETROSPECT

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The present article considers the evolution of the institution of *waqf* among the Kazan Tatars in the 19th and early 20th centuries. Basing on an analysis of different sources and secondary literature, the author tries to point out the fallacy of some approaches claiming that the institution of *waqf* had legal status for the Kazan Tatars. On the contrary, an attempt is made to demonstrate that the interior policy of the Russian authorities aimed to oust the rules of Muslim law from the legal framework. Numerous attempts on the part of the Kazan Tatars to restore the institution of *waqf* proved unsuccessful owing to the resistance of the Russian authorities.

Key words: Kazan Tatars, *waqf*, Muslim law, Russian imperial policy.

1. Introduction

Historically, the issue of *waqf*, i.e. Muslim pious foundations, has been topical for the Tatars both in the 19th and in the early 21st centuries. We addressed this issue as early as in 1998. At that time, we gave the first periodisation of the *waqfs* functioning in the Middle Volga and the Pre-Ural regions (Minnullin 1998, pp. 175–178). D. Azamatov, a Bashkir researcher from Ufa, though generally agreed to the proposed periodisation, tried to assign a special place for Bashkiria in this respect. He attempted to substantiate the emergence of *waqfs* in the territory of the present-day Bashkiria by the “soft” religious policy of tsarism in the region. However, we should not forget that the Bashkirs, just like the Tatars, were under Russian jurisdiction and had no special rights which could have played a significant role in the establishment of the institution of *waqf*. However, unlike some other researchers, Azamatov seemed to realise the weakness of his vision of the issue, that is why he put the term *European* in quotes and introduced another, super-modern term of “European” *waqf* (i.e. *eurowaqf*) (Azamatov 2000, p. 5).

2. Formulation of the Issue

A number of works on this issue have been published recently calling for critical analysis based on new sources. Thus, while some researchers write about the *waqfs* of Tatars of the Middle Volga and the Pre-Ural regions as a stable system (Salikhov–Khairutdinov 1999, Khairutdinov–Salikhov 2002, Naganava 2006, Salikhov 2006, Zagidullin 2006, Salikhov–Khairutdinov 2009), others note that “the number of *waqfs* was insignificant” (Khabutdinov 2006). There are some who state that “in the Orenburg Mohammedan Spiritual Assembly, speaking of the «non-legitimised» Muslim rules, we can mention the absence of the regulations for *waqf*, which pushed to poverty some of the «hosts of mosques»...” (Gil’mutdinov 2005, p. 16).

In our opinion, the existence of diametrically opposed viewpoints on the functioning of *waqfs* with the Tatars could be explained mainly by two reasons. Firstly, some authors obviously stick to the simple scheme: since the Tatars are Muslims, they, like the other Muslim nations, must have had the institution of *waqf*. With such formulation of the issue, it was only natural that the peculiarities of the historical fate of the Tatar people were as if “forgotten”. These attempts are intended to serve the noble cause of reviving the institution of *waqf* in modern Tatar society, because the issue of financial support of Muslim institutions in the Russian Federation is very topical, i.e. there is an obvious so-called “social mandate”. Today, when Russia is becoming a law-based state, turning also to certain achievements of Muslim legal culture, the institution of *waqf* has become a topical issue. Some historians of law (e.g. Sjukijajnen 1997, p. 3) speak of the good prospects for the application of this institution of the Muslim legal doctrine for the support of education, science, charity, and so on.

Secondly, we should note that the Muslim law is regulated by three types of gratuitous alienation of property:

1. Donation confirmed by a deed of grant (*hiba-nāma*).
2. Will confirmed by the act of will (*waṣiyyat-nāma*).
3. *Waqf* grant confirmed by the *waqf* act (*waqf-nāma*).

However, as can be seen from modern literature, these terms are frequently confused, i.e. when speaking of the *waqfs* of the Tatars in the Middle Volga and pre-Ural regions in the 19th and early 20th centuries, many authors refer to the grants, acts of will, and other official documents made on the basis of Russian law and by Russian clerks and notaries who certainly had no idea of Muslim *waqf* deeds. The *waqf* deeds simply did not exist in the nomenclature of Russian private law at all. The above-mentioned confusion derives not only from the elementary misunderstanding, but also from the uniformity of legal procedures related to gratuitous alienation of property in different legal systems. But Muslim clergy never confused those two notions. For example, on 26 September 1873, Salahoutdin Iskhakov, mullah of the Second Kazan Mosque, noted that “will and *waqf* are full brothers” (*Agrarnyj vopros* 1936, p. 313), i.e. they are not one and the same thing.

Let us make a brief excursion into historical domain to see, at least in general, the historical fate of *waqf* in the Middle Volga and pre-Ural regions. The specific rights of Muslim Tatars that outflow from their religious affiliation were not reflected in the body of legislative acts of the Russian Empire until late 18th century. First of all, it was connected to the tsarist policy towards Islam and the Tatar elite which were, as it is commonly known, quite ambiguous at their different periods of development. To a great degree, that policy was determined by the time when peoples confessing Islam became part of Russia and also by the form of that process. Academician L. V. Cherepnin wrote that the “specific conditions on which different peoples joined Russia were different at different periods of time; considering them, we should not divert from the principle of historicism” (Čerepnin 1981, p. 260). This thesis is often forgotten in specialised literature. Thus, N. Tjurjakulov in his review of the book entitled *Islam in the Tsarist Russia* written by L. Klimovič rightly pointed out, as early as in the 1930s, that “the author, fascinated with his scheme, misses the fact that the ‘tolerant attitude’ of Tsarism towards Islam was not established at once, not ‘from the very first meeting’, but was developing gradually: with the development of capitalism in Russia and the growth of need for services of Islam for the further expansion of Russian imperialism to the East” (Tjurjakulov 1936). Noteworthy in the monograph of L. Klimovič is the interpretation of the issue of the resource base of religious organisations among the peoples practising Muslim religion. Covering this issue in relation to religious organisations and the clergy of the peoples of Central Asia, Transcaucasia, and the Crimea, the author first of all refers to the existence of *waqfs* and *waqf* land-ownership. At the same time, when speaking of the Tatar clergy and religious organisations, L. Klimovič never mentions *waqfs* (Klimovič 1936, pp. 90–119). A number of scholars admit the existence of the institution of *waqf* landownership at the period of the Kazan Khanate, despite the fact that no original *waqf* deed of that period has come down to us (Mukhamedyarov 1958, pp. 23–24; *TSPU* 1967, p. 183; Dimitriev 1982, p. 99). What was the further fate of this institution?

Having seized the Kazan Khanate in the 16th century, the tsar’s government guided by its sovereign interests aimed all the might of its oppressive force first of all at its potential enemies in the region, i.e. at secular and religious feudal lords (Usmanov 1979, p. 80). The Tatar feudal class lost not only its political supremacy, but also, what is even more important, its economic supremacy which in the feudal period was manifested in large landholdings.¹ The situation of the other group having *waqf* endowment, the clergy, was not any better. In the 1920s, G. S. Gubajdullin (1925, p. 85) characterised their position as follows: “The mullahs fell down from their commanding height, lost their power, and became the most deprived element of the country. Mullahs and seids lost all their economic privileges, and that situation lasted until Catherine II, for which reason they very often were in opposition to the Tsar’s government”. Up to the last quarter of the 18th century, Russian legislation took almost no account of specific religious and legal rules of the Muslims, which was first noted by K. Urakov,

¹ For more detailed information on the fate of the Tatar feudal class after the annexation of the Middle Volga region to the Russian state, see Usmanov (1972, pp. 29–30).

a translator of the Ufa Provincial Office, in the mid-18th century. He wrote about it in his report to Empress Elizaveta Petrovna in 1746 (*MIB* 1949, pp. 559–560). Similar ideas were expressed in the petition of the *yasak* (service) Tatars (ясачные татары) of the Sviyazhsk District (Свияжский уезд) of the Kazan Province to the Legislative Commission in 1767–1768 (*SIRIO* 1903, p. 402).

The national and colonial oppression in the region directly affected mosques and madrasahs which were the main *waqf* beneficiaries. Thus, just over the period of Luka Konashevich (1744–1755) as the Kazan bishop, 418 out of 536 mosques of the Kazan Province were destroyed together with schools they housed (*PSZ*, vol. 14, No. 10597). The broad layers of the working populace subdued by double and triple burden had no means for *waqf*.

Thus, as far as the period from the mid-16th century up to the last quarter of the 18th century is concerned, any *waqf* donations, particularly land grants, were out of question. Typical of the Tatar society at that period was the complete absence of social, economic, political, and legal conditions for a relatively stable functioning of this institution.

The situation began to change gradually starting from the second half of the 18th century (especially in its last quarter) when the government, proceeding from domestic and foreign policy considerations, revised its attitude towards Islam (permission to build mosques, establishment of the Orenburg Mohammedan Spiritual Assembly, introduction of the institution of edict [licensed] mullahs, etc.) and the Tatar elite (Grigor'ev 1948). Following the above actions of the Russian government, Muslim law (*shari'ca*) was recognised as the established law governing certain aspects of life of the Tatar society (e.g. marital and family relations, inheritance). However, when legalising certain rules of Muslim law, the general trend was still unification, i.e. priority was given to Russian law.

At the turn of the 19th and 20th centuries, the Tatar bourgeoisie had completely evolved. It was only after this that a theoretical possibility appeared for gradually reviving the institution of *waqf*, in particular that related to real estate. The *waqf* deeds that certified the transfer of real estate (a plot of land, various buildings, as well as the income they generate) in favour of mosques and madrasahs are only known from the 1880s.

However, *waqfs* did not gain official recognition. The Tatar Muslim leaders were naturally dissatisfied with the situation and, as early as from the 1860s, several attempts were made to legalise *waqfs* on the basis of Russian legislation. In this respect, the project of Mufti S. Tevkelev “On the Rights of Mohammedans for Confession of Faith” (1867) was the most interesting, though it was not even brought up for discussion at the Ministry of Interior.² In 1891 a brochure which was published on the occasion of the centenary of the Orenburg Mohammedan Spiritual Assembly noted that “there is no procedure established by law” for *waqf* management (*OMDS* 1891, p. 35). As is known, registration and certification of the *waqf* deeds, as well as the management of *waqf* assets were not in the competence of the Orenburg Mohammedan

² For a more detailed description of the document, see Zagidullin (2006, pp. 65–70).

Spiritual Assembly. In 1893, the Ministry of Interior forbade the Orenburg Mohammedan Spiritual Assembly to certify any documents related to property, including wills and deeds of gift (*SC OMDs* 1905, p. 100). In the following year, the Ministry of Interior continued to prohibit the Spiritual Assembly to use the term “*waqf*” in its official correspondence (Azamatov 2000, p. 19). An interesting article was published by the newspaper “Kazanskij Telegraf” dated 15 December 1902: “Muslims of the Volga Region can envy the Crimea and the Turkestan region as there are a lot of *waqfs* there. If necessary, the *waqfs* are sold and people have something to eat until the *waqf* ceases to exist. In our country [i.e. the Middle Volga Region, Z.M.], we have no such funds. We do not eat *waqfs* because we do not have them” (*MM* 1902).

It was only natural that, as mentioned earlier, the Tatars were dissatisfied with the situation. Therefore they made numerous attempts to involve the institution of *waqf* in ensuring the economic independence of the Muslim community. For example, in 1888 three brothers, Nigmatullah, Khabibullah and Rakhmatullah Sejdukov, made a *waqf* deed in accordance with all rules of *shari‘a* and donated a library as *waqf* for the benefit of the village of Malchin in the Tjumen’ District (*NBKFU* 332T, pp. 1–10). However, already in 1908 newspapers wrote about the desolate condition of the library (Abdulov 1908). This can be explained by the fact that the institution of *waqf* had no legal base and management procedure.

The question of *waqfs* was raised at the Third All-Russian Muslim Congress (16–21 August 1906) (*VMS* 1906, p. 8) and in the Tatar periodical press of the pre-revolution period. In 1912 lawyer I. Akhtyamov wrote a special article on the issue of *waqf* for the *Yoldyz* (‘Star’) newspaper in which he came to the conclusion that making a *waqf* endowment was impossible under the then existing legislation (Akhtyamov 1912). Another lawyer, S. Maksudi, a well-known activist of the Tatar national movement, held a lecture on 13 January 1914 in the Oriental Club entitled “Organisation of the Spiritual Institutions of Muslims in Russia”. The lecture was attended by some 500 people, including mullahs and almost the whole Tatar elite of Kazan. The newspaper *Kamsko-Volžskaja Reč* noted: “The lecturer aroused special interest of the audience with the issue of *waqf*. As it appears, Muslims from the region of the Orenburg Mohammedan Spiritual Assembly cannot make *waqf* endowments in favour of the others, because there are no laws regulating such endowments, whereas in the Crimea the procedure was legitimised” (Maksudov 1914, p. 22).

The same year (1914), on 15–25 June, St. Petersburg hosted the All-Russian Muslim Congress that focused mainly on the reform of the Spiritual Assembly and developed the “Draft Regulations for Management of Spiritual Affairs of Muslims of the Russian Empire” (*PPMRI* 1914, p. 22). Article 10 of the draft document was related exclusively to *waqfs*, giving a detailed description of the mechanism of *waqf* management. However, as we know, those decisions remained on paper only.

The different statuses of Muslim peoples, annexed to the Russian Empire at different periods of development of the Russian state, were reflected in the fates of the institution of *waqf*. Thus, for example, the Crimean government sought to regulate *waqfs* (Zagidullin 2006). As to the functioning of the institution of *waqf* in Central Asia, T. S. Saidbaev noted that “for a long time after the annexation of the region, the

waqf plots of land were kept intact. It was only after 1886 that the Tsar's government dared to attack the economic power of religious organisations. All lawful *waqf* plots of land were declared the property of those who farmed them, and the uninhabited ones were exempted from land tax". "The number of *waqfs* was reduced substantially. What is more, the establishment of new *waqfs* was only permitted in exceptional cases and only with the permission of the Governor-General; also permitted was their seizure in favour of the state and the limitation of land holding" (Saidbaev 1984, p. 124). Hence, the attitude of the authorities towards the institution of *waqf* was in line with the endeavours of the "ruling elite for cultural and administrative unification of the country for the purposes of creating a «united» Russia, shifting emphasis in legislation from «confessional» towards «national» motives, etc." (Usmanova 2005, p. 81).

All this leads to the question whether it is proper to qualify various cases of giving in will or donating property mentioned by modern authors as *waqfs*. A classical *waqf* was established by Muslims in accordance with the canons of *shari'a*, certified by deeds of *waqf* written in Arabic or some other language (as a rule, based on Arabic script), and supported by subsequent certification by *qādīs*, i.e. religious judges.³ In the territory of the region of the Orenburg Mohammedan Spiritual Assembly, there was no special department to regulate the activity of the *waqf* entities and exercise control over the due maintenance of these documents. Also, there was no tradition of regular updating of the documents, unlike in the countries where Islam was the dominant religious doctrine.

If the *waqfs* had been functioning properly in the territory subordinate to the Orenburg Mohammedan Spiritual Assembly, there would have been no need to discuss that issue over and over again at the All-Russian forums of Muslim leaders.

Non-recognition of *waqfs* in the territory subordinate to the Orenburg Mohammedan Spiritual Assembly and gradual ousting of *waqfs* out of the Russian law system in Central Asia, the Crimea and Transcaucasia made representatives of the Muslim peoples search for new legal methods to satisfy the social needs of Muslim communities. One of such methods was charitable societies and mutual aid funds, which came into existence in the Tatar society in the 1870s and became more or less widely spread after the Revolution of 1905–1907.⁴ Even if we theoretically admit the donations and wills that are qualified as valid *waqfs* by some modern scholars (which would mean mistaking wish for reality), what would they be quantitatively? D. D. Azamatov describes 91 *waqfs* in his article (Azamatov 2000), R. R. Khairutdinov and R. R. Salikhov provide information on 11 *waqfs* in the late 19th and early 20th centuries (Khairutdinov–Salikhov 2002). If we take into account that there were 4254 Muslim parishes (*OMDS* 1891, p. 32) in the territory subordinate to the Orenburg Mohammedan Spiritual Assembly with a population of 3.5 million as early as 1889, the negligibility of the number of *waqfs* becomes quite obvious.

³ For an example of a classical *waqf* of the 13th century, see Arends et al. (1979).

⁴ For details on the Tatar charitable organisations, see Minnullin (2003).

3. Conclusion

We cannot corroborate the assertion of many researchers who claim that in the Middle Volga and Pre-Ural regions “the Tatars had an integral *waqf* system” before 1917. As is well known, a system is a set of interacting or interdependent components (subjects, views, phenomena, principles, facts, etc.). The Tatar *waqfs* were not of that kind, since they did not develop an integral system.

So one can conclude that the Tatars made numerous attempts to restore the institution of *waqf* endowment in the 19th and early 20th centuries, which, in general, proved unsuccessful.

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