Acta Orientalia Academiae Scientiarum Hung. Volume 68 (3), 341–348 (2015) DOI: 10.1556/062.2015.68.3.9

1 THE INSTITUTION OF WAQF OF MUSLIM TATARS 2 IN HISTORICAL RETROSPECT 3 ZAVDAT SALIMOVICH MINNULLIN 4 Институт Международных отношений, истории и востоковедения 5 Казанского (Приволжского) Федерального университета 6 420008, г. Казань, Кремлевская, 18. Российская Федерация 7 e-mail: zminnullin@mail.ru

8 The present article considers the evolution of the institution of *waqf* among the Kazan Tatars in the

9 19th and early 20th centuries. Basing on an analysis of different sources and secondary literature,

10 the author tries to point out the fallacy of some approaches claiming that the institution of waqf had

11 legal status for the Kazan Tatars. On the contrary, an attempt is made to demonstrate that the interior

12 policy of the Russian authorities aimed to oust the rules of Muslim law from the legal framework.

13 Numerous attempts on the part of the Kazan Tatars to restore the institution of waqf proved unsuc-

14 cessful owing to the resistance of the Russian authorities.

16

15 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 17 Tatars both in the 19th and in the early 21st centuries. We addressed this issue as early 18 20th? as in 1998. At that time, we gave the first periodisation of the waqfs functioning in the 19 Middle Volga and the Pre-Ural regions (Minnullin 1998, pp. 175–178). D. Azamatov, 20 21 a Bashkir researcher from Ufa, though generally agreed to the proposed periodisation, 22 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" reli-23 gious policy of tsarism in the region. However, we should not forget that the Bashkirs, 24 just like the Tatars, were under Russian jurisdiction and had no special rights which 25 could have played a significant role in the establishment of the institution of waqf. 26

However, unlike some other researchers, Azamatov seemed to realise the weaknessof his vision of the issue, that is why he put the term *European* in guotes and introduced

29 another, super-modern term of "European" waqf (i.e. eurowaqf) (Azamatov 2000, p. 5).

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2. Formulation of the Issue

2 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 3 Tatars of the Middle Volga and the Pre-Ural regions as a stable system (Salixov-4 Xajrutdinov 1999, Xajrutdinov–Salixov 2002, Norihire Naganava 2006, Salixov 5 2006, Zagidullin 2006, Salixov-Xajrutdinov 2009), others note that "the number of 6 waqfs was insignificant" (Xabutdinov 2006). There are some who state that "in the 7 Orenburg Mohammeddan Spiritual Assembly, speaking of the «non-legitimised» 8 Muslim rules, we can mention the absence of the regulations for *waqf*, which pushed 9 to poverty some of the «hosts of mosques»..." (Gil'mutdinov 2005, p. 16). 10

In our opinion, the existence of diametrically opposed viewpoints on the func-11 12 tioning 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, 13 they, like the other Muslim nations, must have had the institution of waqf. With such 14 formulation of the issue, it was only natural that the peculiarities of the historical fate 15 of the Tatar people were as if "forgotten". These attempts are intended to serve the 16 noble cause of reviving the institution of *waqf* in modern Tatar society, because the 17 issue of financial support of Muslim institutions in the Russian Federation is very 18 topical, i.e. there is an obvious so-called "social mandate". Today, when Russia is be-19 coming a law-based state, turning also to certain achievements of Muslim legal cul-20 21 ture, 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 insti-22 23 tution of the Muslim legal doctrine for the support of education, science, charity, and 24 so on.

25 Secondly, we should note that the Muslim law is regulated by three types of 26 gratuitous alienation of property:

1. Donation confirmed by a deed of grant (*hiba-nāma*).

28 2. Will confirmed by the act of will (*waşiyyat-nāma*).

29 3. *Waqf* grant confirmed by the *waqf* act (*waqf-nāma*).

30

31 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-32 Ural regions in the 19th and early 20th centuries, many authors refer to the grants, acts 33 of will, and other official documents made on the basis of Russian law and by Rus-34 sian clerks and notaries who certainly had no idea of Muslim waqf deeds. The waqf 35 deeds simply did not exist in the nomenclature of Russian private law at all. The 36 above-mentioned confusion derives not only from the elementary misunderstanding, 37 but also from the uniformity of legal procedures related to gratuitous alienation of 38 39 property in different legal systems. But Muslim clergy never confused those two notions. For example, on 26 September 1873, Salahoutdin Iskhakov, mullah of the Sec-40 41 ond 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. 42

Acta Orient. Hung. 68, 2015

Which is the family name?

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Let us make a brief excursion into historical domain to see, at least in general, 1 the historical fate of *waqf* in the Middle Volga and pre-Ural regions. The specific 2 rights of Muslim Tatars that outflow from their religious affiliation were not reflected 3 in the body of legislative acts of the Russian Empire until late 18th century. First of 4 5 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. 6 To a great degree, that policy was determined by the time when peoples confessing 7 Islam became part of Russia and also by the form of that process. Academician L. V. 8 Cherephin wrote that the "specific conditions on which different peoples joined Russia 9 were different at different periods of time; considering them, we should not divert 10 from the principle of historism" (Čerepnin 1981, p. 260). This thesis is often forgotten 11 in specialised literature. Thus, N. Tjurjakulov in his review of the book entitled Islam 12 in the Tsarist Russia written by L. Klimovič rightly pointed out, as early as in the 13 1930s, that "the author, fascinated with his scheme, misses the fact that the 'tolerant 14 15 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 Rus-16 sia and the growth of need for services of Islam for the further expansion of Russian 17 imperialism to the East" (Tjurjakulov 1936). Noteworthy in the monograph of L. Kli-18 movič is the interpretation of the issue of the resource base of religious organisations 19 20 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 21 the Crimea, the author first of all refers to the existence of waqfs and waqf land-22 ownership. At the same time, when speaking of the Tatar clergy and religious organi-23 sations, L. Klimovič never mentions waqfs (Klimovič 1936, pp. 90-119). A number 24 25 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 26 come down to us (Muxamed'jarov 1958, pp. 23-24; TSPU 1967, p. 183; Dimitriev 27 1982, p. 99). What was the further fate of this institution? 28

29 Having seized the Kazan Khanate in the 16th century, the tsar's government 30 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 (Usma-31 nov 1979, p. 80). The Tatar feudal class lost not only its political supremacy, but also, 32 what is even more important, its economic supremacy which in the feudal period was 33 manifested in large landholdings.¹ The situation of the other group having waqf endow-34 ment, the clergy, was not any better. In the 1920s, G. S. Gubajdullin (1925, p. 85) char-35 acterised their position as follows: "The mullahs fell down from their commanding 36 height, lost their power, and became the most deprived element of the country. Mullahs 37 and seids lost all their economic privileges, and that situation lasted until Catherine II, 38 for which reason they very often were in opposition to the Tsar's government". Up to 39 the last quarter of the 18th century, Russian legislation took almost no account of spe-40 cific religious and legal rules of the Muslims, which was first noted by K. Urakov, 41

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).

6 The national and colonial oppression in the region directly affected mosques 7 and madrasahs which were the main *waqf* beneficiaries. Thus, at the time of Luka 8 Konashevich (1744–1755) as the Kazan bishop taken alone, 418 out of 536 mosques 9 of the Kazan Province were destroyed together with schools they housed (*PSZ*, vol. 10 14, No. 10597). The broad layers of the working populace subdued by double and 11 triple burden had no time 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 17 18th century (especially in its last quarter) when the government, proceeding from do-18 mestic and foreign policy considerations, revised its attitude towards Islam (permis-19 sion to build mosques, establishment of the Orenburg Mohammedan Spiritual As-20 sembly, introduction of the institution of edict mullahs, etc.) and the Tatar elite (Gri-21 gor'ev 1948). Following the above actions of the Russian government, Muslim law 22 $(shart^{c}a)$ was recognised as the established law governing certain aspects of life of the 23 Tatar society (e.g. marital and family relations, inheritance). However, when legalis-24 25 ing certain rules of Muslim law, the general trend was still unification, i.e. priority 26 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 33 34 were, naturally, dissatisfied with the situation and, as early as from the 1860s, several 35 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 Confes-36 sion of Faith" (1867) was the most interesting, though it was not even brought up for 37 discussion at the Ministry of Interior.² In 1891 a brochure which was published on the 38 occasion of the centenary of the Orenburg Mohammedan Spiritual Assembly noted 39 that "there is no procedure established by law" for waqf management (OMDS 1891, 40 p. 35). As is known, registration and certification of the *waqf* deeds, as well as the 41 management of waqf assets were not in the competence of the Orenburg Mohammedan 42

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

Acta Orient. Hung. 68, 2015

Please explain.

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344

Spiritual Assembly. In 1893, the Ministry of Interior forbade the Orenburg Moham-1 medan Spiritual Assembly to certify any documents related to property, including 2 wills and deeds of gift (SC OMDS 1905, p. 100). In the following year, the Ministry 3 of Interior continued to prohibit the Spiritual Assembly to use the term "waqf" in its 4 5 official correspondence (Azamatov 2000, p. 19). An interesting article was published by the newspaper "Kazanskij Telegraf" dated 15 December 1902: "Muslims of the 6 Volga Region can envy the Crimea and the Turkestan region as there are a lot of waqfs 7 there. If necessary, the *waqfs* are sold and people have something to eat until the *waqf* 8 ceases to exist. In our country [i.e. the Middle Volga Region, Z.M.], we have no such 9 10 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 11 the situation. Therefore they made numerous attempts to involve the institution of 12 *waqf* in ensuring the economic independence of the Muslim community. For exam-13 ple, in 1888 three brothers, Nigmatullah, Khabibullah and Rakhmatullah Sejdukov, 14 15 made a *waqf* deed in accordance with all rules of *sharī*^c a and donated a library as *waqf* for the benefit of the village of Malchin in the Tjumen' District (*NBKFU* 19xx), 16 **II.** pp. 1–10). However, already in 1908 newspapers wrote about the desolate condi-17 tion of the library (Abdulov 1908). This can be explained by the fact that the institu-18 tion of *waqf* had no legal base and management procedure. 19

20 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-21 revolution period. In 1912 lawyer I. Akhtjamov wrote a special article on the issue of 22 waqf for the Yoldyz ('Star') newspaper in which he came to the conclusion that mak-23 ing a *waqf* endowment was impossible under the then existing legislation (Axtemov 24 25 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 26 of the Spiritual Institutions of Muslims in Russia". The lecture was attended by some 27 500 people, including mullahs and almost the whole Tatar elite of Kazan. The news-28 paper Kamsko-Volžskaja Reč noted: "The lecturer aroused special interest of the audi-29 30 ence 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 31 others, because there are no laws regulating such endowments, whereas in the Crimea 32 the procedure was legitimised" (Maksudov 1914, p. 22). 33

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 *waqf*s (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 Please give these data. ll. = Vol. II?

ZAVDAT SALIMOVICH MINNULLIN

waqf plots of land were kept intact. It was only after 1886 that the Tsar's government 1 dared to attack the economic power of religious organisations. All lawful waqf plots 2 of land were declared the property of those who farmed them, and the uninhabited 3 ones were exempted from land tax". "The number of waqfs was reduced substantially. 4 5 What is more, the establishment of new *waqfs* was only permitted in exceptional 6 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, 7 p. 124). Hence, the attitude of the authorities towards the institution of *waqf* was in 8 line with the endeavours of the "ruling elite for cultural and administrative unifica-9 tion of the country for the purposes of creating a «united» Russia, shifting emphasis 10 in legislation from «confessional» towards «national» motives, etc." (Usmanova 11 12 2005, p. 81).

All this leads to the question whether it is proper to qualify various cases of 13 giving in will or donating property mentioned by modern authors as waqfs. A classic-14 15 al waqf was established by Muslims in accordance with the canons of shar $\bar{t}^c a$, certified by deeds of waqf written in Arabic or some other language (as a rule, based on 16 Arabic script), and supported by subsequent certification by $q\bar{a}d\bar{a}s$, i.e. religious 17 judges.³ In the territory of the region of the Orenburg Mohammedan Spiritual Assem-18 bly, there was no special department to regulate the activity of the *waqf* entities and 19 20 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 21 the dominant religious doctrine. 22

If the *waqf*s 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 Moham-26 27 medan 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 28 peoples search for new legal methods to satisfy the social needs of Muslim commu-29 nities. One of such methods was charitable societies and mutual aid funds, which 30 came into existence in the Tatar society in the 1870s and became more or less widely 31 spread after the Revolution of 1905–1907.⁴ Even if we theoretically admit the dona-32 tions and wills that are qualified as valid waqfs by some modern scholars (which would 33 mean mistaking wish for reality), what would they be quantitatively? D. D. Aza-34 35 matov describes 91 waqfs in his article (Azamatov 2000), R. R. Xajrutdinov and R. R. Salixov provide information on 11 waqfs in the late 19th and early 20th centu-36 ries (Xajrutdinov-Salixov 2002). If we take into account that there were 4254 Mus-37 lim parishes (OMDS 1905, p. 32) in the territory subordinate to the Orenburg Mo-38 hammedan Spiritual Assembly with a population of 3.5 million as early as 1889, the 39 negligibility of the number of waqfs becomes quite obvious. 40

We have *OMDS* 1891 and *SC OMDS* 1905. Which one should this be?

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).

Acta Orient. Hung. 68, 2015

346

3. Conclusion

2 We cannot corroborate the assertion of many researchers who claim that in the Middle 3 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 4 (subjects, views, phenomena, principles, facts, etc.). The Tatar waqfs were not of that 5 kind, since they did not develop an integral system. 6

So one can conclude that the Tatars made numerous attempts to restore the in-7 stitution of waqf endowment in the 19th and early 20th centuries, which, in general, 8 proved unsuccessful. 9

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43

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