ΙΔΡΥΜΑ ΜΕΙΖΟΝΟΣ ΕΛΛΗΝΙΣΜΟΥ

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Summary :

After giving a brief description of the legal framework to which Greek communal estates belonged during the 19th century, this article sums the legal developments after the 1935 Law, which equated the “pious foundations of the (Christian and Jewish) communities” with Muslim *vakıf*s.

Date

19th century – today

Geographical Location

Constantinople (Istanbul)

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1. Introduction

In the Arabic language the word wakf (Turkish: vakıf) means to stop, to contain, to impede, to immobilize. According to Muslim Law, the vakıf is a legal action through which an individual/natural person waives one or more of his belongings and removes them from commercial exploit by dedicating them for life to a holy, charitable or social purpose. The vakıf constitutes the foremost means to provide charity (sadaka), one of the five pillars of Islam. From a legal point of view, it is one of the most complex constructions of Muslim Law, which –although keeping all the semantic components of an institution– developed significantly during the following centuries.

One of the basic elements of the vakıf is the founding charter (vakfiye), in which the founder’s will is expressed; this cannot be altered. This document [the charter] clarifies the purpose of the vakıf’s foundation, which conclusively binds both the founder and his successors. The rigidness of this specific term, however, was only nominal: in fact, vakıfs proved to be both adaptive and flexible. The cases of estates belonging to pious foundations, the legal status of which was altered, are numerous during the Ottoman period. Indeed, during the 19th century the Omperial Ministry of Vakıfs (Evkaf-ı Hümayun Nezareti) did not hesitate to sell many estates considered too costly to keep and the legal status of which was –in theory– impossible to change.

The concept of vakıf does not only include landed estates; it sometimes refers to mobile objects (books, crops, merchandise etc). (The present article focuses solely on landed property.)

2. Different kinds of vakıfs

In the Empire, even during the first period of the Ottoman conquest, many categories of vakıf estates were defined on the basis of different criteria: who the founder was (state, individuals), external form (urban, agricultural), type of administration, rates toi be collected. Sultanic foundations comprised the largest part of this type of estates. In the cities, the biggest vakıfs belonging to sultans were the ones created with the purpose to support and maintain the most significant Muslim places of worship. The religious foundation for the support of the Hagia Sophia Mosque (Ayasofya Camii) in Constantinople is recorded, for example, for which more than 1,650 stores and workshops within the borders of the city’s historical centre had been excluded from commercial exploit; they were considered “immobile” and they belonged to the vakıf, which rented them and used the revenue from the leases to fund the mosque's repairs. All pious foundations not belonging to the sultan were characterized as “private”, further categorized into smaller groups and subdivisions. In most cases, the individuals dedicating part of their property to some pious and charitable deed (i.e. soup kitchens, paying a muezzin to cite prayers in regular intervals, maintenance of school buildings etc) were not only motivated by religious reasons, but also because they considered the legal framework of vakıfs as securing the henceforth “immobilized” assets, while simultaneously providing a favourable tax status.

3. Legal framework of Christian pious foundations

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3.1. 19th century

Considered an autonomous legal person, the vakıf can freely negotiate with third parties through its legal representatives, thus covering –partly– the legal vacuum created by the non-recognition of juridical persons by Ottoman Law. Rules, however, are confirmed by exceptions. Moreover, in the Ottoman Empire the distance between the judicial rule and actual reality was usually substantial. So, legal persons were a concept initially and theoretically "unknown". In reality, however, the situation was quite different. Until the mid-19th century, the treasuries of professional guilds (esnaf sandıkları) were definitely granted legal status, since they could lend money to natural persons – usually guild members themselves. Another "exception", well known to the Greek-Orthodox population of Constantinople, was the lot on which the church of Agia Triada (St Trinity) of Stavrodromi and the Zappeio Girls' School were constructed: it was registered in the name of the "Greek-Orthodox nation" (rum milletinin) on the 11th of Muharrem, 1191 (February 20th, 1777).

It remains to be explored whether and how an institution so closely connected to the philosophy and purposes of the Muslim faith as the vakıf, was adopted and applied by the non-Muslim peoples of the Ottoman Empire.[1]

In his detailed study of the Ottoman real law, the jurist N. P. Eleftheriades from Smyrna answers clearly and in no uncertain terms on this point. He states that Greek-Orthodox charitable foundations were never founded as vakıfs before the Muslim kadi and were, consequently, excluded from his jurisdiction.[2] They owed their existence to the magnanimity and generosity of the sultans, who issued special firmans and granted permission to construct churches, schools and hospitals; moreover, they did not oversee to issue an imperial berat after the enthronement of each new Patriarch, thus clarifying that the Patriarch and the Holy Synod would be the sole administrators of the Patriarchate's revenue and benefices. The same berat systematically stated, as Eleftheriades stresses, that "all churches and monasteries within the state will come under the jurisdiction and possession of the Patriarch and the various metropolitans, as of old."[3]

Most of the Orthodox churches in Constantinople, the school buildings, cemeteries and the hospital legally base their foundation upon the sultan's will, which is reflected in the imperial firman – henceforth regarded as a title of quasi-proprietorship. But none of these communal or ecclesiastical estates fell under any specific or clear legal status.[4] And although Eleftheriades denies that these estates were vakıfs, he does not clarify their legal status. It must be stressed, however, that the Greek-Orthodox population of Constantinople did use the mechanisms and procedures of the vakıfs in order to manage communal estates, although under no such obligation.

According to the general regulations issued for the Greek-Orthodox millet in 1862, the administration of charitable foundations as well as ecclesiastical and monastic estates was assigned to the National Permanent Mixed Council; the Council appointed curators with the obligation to oversee annual budgets and accounts – same practice as the one followed with the appointment of stewards (mütevelli) for Muslim pious foundations.

Moreover, most of the orthodox parishes in Constantinople "owned" –as did mosques– landed property (houses, workshops, professional spaces), with the revenues of which they covered the expenses for the church's maintenance. The geographical location of these estates in the surrounding area around the church more or less reproduces the model of the (Muslim) vakıf. Two examples out of many are the following: the apartment buildings and workshops around the church dedicated to the Presentation of the Virgin Mary in Pera (Beyoğlu) "belonged" to the Orthodox community of Stavrodromi (Pera, Beyoğlu); that was also the case for the many stores in the Kadıköy (Chalcedon) market, located close to the St Euphemia church.

However, during the 19th century "belonging to the community" did not necessarily mean that the community reserved all the relevant rights and possessed the titles of proprietorship. Generally, because communities were not recognized as legal persons, the lucrative estates were nominally registered in the name of a certain natural person, usually a notable parishioner. In Pera (Beyoğlu), for example, most communal estates belonged with full proprietorship (mülk) to the wives of notable donors and benefactors from the Greek-Orthodox community of Constantinople; they rarely were, however, Ottoman subjects and subsequently could not – until

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1866– acquire real estate in Ottoman territory. As a solution of necessity, this nominal ownership required the choice of natural persons whom the community could trust, even though no one could anticipate the behavior of their successors and inheritors. For the Greek-Orthodox community, these people were only nominally and not actually proprietors of the estates registered in their name. In cases of dispute, however, Ottoman courts recognized these nominal proprietors as sole holders, since even if the community possessed documents proving the contrary they had no legal force outside the communal framework. In effect, however, as gathered from official documents of the Ottoman municipality, the government not only did not ignore the practice of nominal proprietorship, but also accepted it as "legal".

The juridical relations between non-Muslim communities and the Ottoman state were so complex that by the end of the 19th century the study of ownership could only be conducted on the basis of case-studies. One of the difficulties that the Greek-Orthodox population of Constantinople had to face (and still faces) is that in Muslim Law the propriety of land and its appendages are considered separate and distinct rights. The basic principle of the Roman and Byzantine Law according to which "the superincumbent belong to the underincumbent" (meaning that the proprietor of a lot is immediately perceived as proprietor of whatever building already erected or to be constructed upon it) does not apply in Islam. In the urban plexus of Ottoman Constantinople there are many buildings constructed upon a lot of vakıf status, but belonging with full proprietorship to a natural person extraneous to the vakıf. In this rather extensive form of proprietary "symbiosis", the proprietor of the building had to pay an annual rent to the vakıf for the possession and use of the lot. The Greek-Orthodox parishes of Constantinople possessed many such buildings, known with the name mukataalık. It is gathered that in the case that the "superincumbent" building was destroyed (due to fire, earthquake etc), its possessor did no longer have any real rights on the "underincumbent" ground.

3.2. 20th century

3.2.1. From the beginning of the 20th century until the Asia Minor Catastrophe

After 1912, the term "legal person" –that from the end of the 19th century also referred to commercial companies– gradually expands within Ottoman law. Non-Muslim communities can henceforth register their urban estates directly in their own names thus ending nominal deeds of transfer. The following years will be extremely dark for both the Ottoman state, singing its swan song, as well as for the Greek-Orthodox population of Constantinople, which enters its stage of shrinkage. The changes were never spectacular: according to archival material from the General Directorate of Vakıfs (Vakıflar Genel Müdürlüğü), only fifty buildings constructed from 1847 until 1914 were registered as communal.

3.2.2. After the Asia Minor Catastrophe

In reality, the concept of "communal vakıfs" (Christian and Jewish, cemaat vakıfları) was introduced with the 2762/1935 law. With the formation of this particular category of foundations, the newly-formed Kemalist state achieves participation to the administration of the communities' financial resources. So, while pious foundations of the Ottoman period were solely administered by the National Permanent Mixed Council and without any interference from the Ministry of Imperial Vakıfs (Evkaf-ı Hümayun Nezareti), from 1935 onwards they fall under the jurisdiction of the General Directorate of Vakıfs .

The 2762/1935 law offered minorities a deadline of a few months in order to make an inventory of their estates, to compile respective catalogues and submit statements where they would provide accurate information regarding the revenue collected from these specific estates, their administrators and the purpose of their foundation. In the statements submitted by some foundations, they were careful to point that they had never acquired the status of vakıf, since they did not even have a founding charter (vakfiye). So, in that way the minorities protested and expressed their protest against a system imposed unilaterally from the state and which they felt would gradually lead to the loss of their landed property.

According to the 1935 law, the minorities' foundations are to be administered by committees appointed by the communal authorities. However, since they were finally registered as vakıfs they did henceforth fall under the jurisdiction of the Turkish Law. Specifically, no alteration of their external form was allowed without previously acquiring the necessary permit by the General Directorate of Vakıfs.

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And most importantly: since they were equated with vakıfs, the minorities' foundations could no longer stray from their initial purpose. Lacking foundation charters, their "initial purpose" was understood as their operational activity when the 1935 statement was submitted and could no longer change.

In Kemalist Turkey, as well as during the Ottoman period, law and politics were closely connected. Bilateral relations with Greece and, especially, the Cypriot Question did indeed affect the stance Turkish authorities adopted vis-à-vis minorities. The verdict issued in July 1971 by the Annulment Court, "ending" the case that had involved as litigant parties the Baloukli (Balıklı) Hospital and the Turkish Republic, constitutes a resounding slap. Since they were not included in the 1936 statement, all property that came into the possession of minorities' foundations after this date were thought of as being acquired illegally, no matter the fashion of their acquisition (purchase or benefaction). So, the deeds of transfer that had taken place between 1936 and 1971 were annulled in retrospect and the estates were either returned to their former proprietors or were confiscated if the owners were unknown. And their argumentation? Firstly, it is noted in the court rule that Turkish Law forbids foreign legal persons to own landed property in Turkey. Secondly, since minority vakıfs lacked a foundation charter, the will of the founder regarding the acquisition of new estates could not be accurately known; consequently, they did not have the right to acquire new estates besides those that had been registered in 1936. This verdict caused a storm of protests – even from Turkish jurists. The political climate in Turkey during the 70s and 80s, however, did not at all favour open controversy, especially on matters concerning non-Muslim minorities.

3.3. 21st century: new legal framework

In the context of Turkey's candidacy for joining the European Union, the 2767/1935 law was repeatedly altered from 2002 onwards. Regarded as "conciliatory", the various proposed legislations were met with serious protests on behalf of the minorities, but also from Turkish jurists, as well as –for different reasons– top state officials.[5] After lengthy negotiations and public discussion, the Turkish parliament in February 2008 voted the 5737 law, replacing the 1935 one. This law serves as a framework containing all the pious foundations; it contains special articles for "minority vakıfs" as well, thus clarifying the previous legislation. Firstly, it is recognized that it is possible for the pious foundations of minorities to lack founding charters. It is explained that their members are citizens of the Turkish Republic and that their boards of directors are elected by the minorities, according to their statutes verified by the General Directorate of Vakıfs. The administration of vakıfs that have remained without administration for 10 consecutive years immediately comes under the authority of the General Directorate of Vakıfs. The status of those that had been declared mazbut (meaning "engaged", i.e. under the direct supervision of the General Directorate of Vakıfs)[6] with a court order issued before the 5737/2008 law is not altered. The minority vakıfs from henceforth do have the right to acquire new estates and –under conditions– exchange or sell property in their possession. In case that the foundation's initial purpose cannot be fulfilled (de facto or de jure), it is allowed to alter it, on the condition that the new purpose will not contradict the will of the founder: in the case of minority vakıfs, the change of purpose is negotiable after the submission of a request by their board of directors.

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1. Until the 19th century sources regarding the proprietorship status of communal estates (especially those "owned" by the Greek-Orthodox community and the Patriarchate of Constantinople) are extremely few, even non-existent. For the 19th century and, especially, the Tanzimât period, there are some monographs, studies and reports, composed mostly by Greek-Orthodox jurists, usually appointed by the Patriarchate, which tried to secure a coherent legal framework in order to both consolidate and protect ecclesiastical and communal property.

2. Ελευθεριάδης, Ν. Π., *Η ακίνητος ιδιοκτησία εν Τουρκία* (Αθήναι 1903), p. 84.

3. Ελευθεριάδης, Ν. Π., *Η ακίνητος ιδιοκτησία εν Τουρκία* (Αθήναι 1903), p. 85.

4. In any case, even if Greek-Orthodox estates were fully declared as vakıfs, they would be included in the special category of "extraordinary dedications" (evkaf-i müstesna), as were mosques; these oblations were managed by special curators and were excluded from the control of the Ministry of Imperial Vakıfs (Nezaret-i Evkafi Humayün), which was acquired great power during the Tanzimât period.

5. The 4771/200w law was voted in August 2002, a few months after the formation of the first government of the Justice and Development Party (Adalet ve Kalkınma Partisi) It was supplemented with the executive regulation of October 10th 2002, which caused acute protests and was replaced in the beginning of 2003 by initiative of the new government. The 4778/2003 followed, which was also strongly criticized. In 2006, the 5555 was blocked by the veto of President Sezer.

6. A vakıf is declared "engaged" when there are no more existing members (natural persons) in the managing committee and it is impossible to replace them, as well as when the purpose for the foundation of the vakıf is not met. Since the "engaged" vakıf falls under the complete and total control of the General Directorate of Vakıfs, the possibility for the confiscations of its property increases.

Bibliography :

- **Αναστασιάδου Μ.**, **Ντυμόν Π.**, *Οι Ρωμηοί της Πόλης. Τραύματα και Προσδοκίες*, Αθήνα 2007
- **Barnes John**, *An Introduction to Religious Foundations in the Ottoman Empire*, Leiden 1986
- **Yerasimos S.**, "La communauté grecque orthodoxe de Constantinople aux lendemains de la conquête ottomane. Le repeuplement de la ville et de ses environs", Anastassiadou, M. (ed.), *Identités confessionnelles et espace urbain en terres d'islam*, Paris 2005, Revue des Mondes musulmans et de la Méditerranée, no 107-11, 375-399
- **Βιθυνός Ι.**, *Έκθεσις της προς εξασφάλισιν των μοναστηριακών κ.λπ. κτημάτων επιτροπής*, 1897
- **Γεωργιάδης Γ.**, *Σχέδιον εκθέσεως περί μοναστηριακών κτημάτων*, 1896
- **Ελευθεριάδης Ν.**, *Η ακίνητος ιδιοκτησία εν Τουρκία, Αθήναι*, Αθήναι 1903
- **Θωμαΐδης Χ.**, *Σκέψεις περί εξασφαλίσεως των εθνικών ημών πραγμάτων*, Πατριαρχικό Τυπογραφείο, Κωνσταντινούπολις 1901
- **Λεωνίδου Ι.**, **Τσελλέντης Φ.**, *Οδηγός επί της διεξαγωγής των κυριωτέρων κτηματικών υποθέσεων μετά συντόμου μελέτης περί μουλκίων, βακουφίων, γεδικίων και μουκαταά*, Ζιβίδης και Δεοδάτης, Κωνσταντινούπολις 1903
- **Σερούιος Ν.**, *Επιτομή του εν τοις εκκλησιαστικοίς δικαστηρίοις του Οικουμενικού Θρόνου εν ισχύι ρωμαϊκού και βυζαντινού νόμου*, Πατριαρχικό Τυπογραφείο, Κωνσταντινούπολις 1886
- **Τσιτσελίκης Κ.**, *Τα βακούφια των ελληνορθόδοξων κοινοτήτων της Τουρκίας. Νομικές όψεις ενός πολιτικού προβλήματος*, Αθήνα 2008
- **Χαρισιάδης Ν.**, *Στοιχεία οθωμανικής νομοθεσίας, εν Κωνσταντινουπόλει*, Κωνσταντινούπολις 1887
- **Bilici Faruk (ed.)**, *Le waqf dans le monde musulman contemporain (XIXe-XXe siècles): fonctions sociales, économiques et politiques*, Istanbul 1994, IFEA
- **Çetin F.**, "Yerli Yabancılar", *Droits des minorités en droits national, supra-national et international (Nations Unies, Conseil de l'Europe et Union Européenne et Traité de Lausanne)*, Istanbul Barosu, Istanbul 2002, 70-81
- **Dikici M.**, *Uyum Yasaları. Yabancıların Mülk Edinmeleri ve Azınlık Vaıfları*, İstanbul 2005

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- **Eryilmaz B.**, *Osmanlı Devletinde Gayrimüslim Tebaanın Yönetimi*, İstanbul 1996
- **Öztürk N.**, *Azınlık Vakıfları*, Ankara 2003
- **Padel W.**, **Steeg L.**, *De la législation foncière ottomane*, Paris 1904
- **Reyna Y.**, **Moreno-Zonana E.**, *Son Yasal Düzenlemelere Göre Cemaat Vakıfları*, İstanbul 2003
- **Sungurbey I.**, *Eski Vakıfların Temel kitabı*, İstanbul 1978
- **Sungurbey I.**, *Eski Vakıfların Yeni Sorunları*, Istanbul 2001

Glossary :

berat

A sultanic decree that bestowed an office or a set of privileges on an individual or a group of people. They were given not only to all state officials, but also to the members of the high clergy, including patriarchs and metropolitans.

firman

In the Ottoman Empire, an imperial edict or commission signed and sealed by the Sultan.

kadi

Office that combinbed judicial, notarial and administrative duties. The kadi, who held court at the kaza's seat, registered all legal acts and documents in the court's codices (sicil). The kadi passed judgement based on the saria (the holy law of Islam), taking also into consideration the kanun (sultanic law) and the customary law (örf). Resort to his court had all the subjects of the Empire. The kadi had also administrative duties, which he performed in collaboration with the officials of the kaza., and he had to supervise tax collection.