



cilt
3

BALKANLARDA
İSLÂM
MİADI DOLMAYAN UMUT

İSLAM IN THE BALKANS
UNEXPIRED HOPE

GÖNÜL FETHİNDEN ZİHNİYET TEMSİLİNE
FROM THE CONQUEST OF HEARTS TO THE
REPRESENTATION OF MENTALITY

EDİTÖR
MUHAMMET SAVAŞ KAFKASYALI



ANKARA - BELGRADE - BUCHAREST - BUDAPEST - CHISINAU - KIEV
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MİADI DOLMAYAN UMUT

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From the Conquest of Hearts to the Representation of Mentality

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Confiscation of Property in Sandzak - The Case of Awqaf

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Summary

Waqf is a very important institution of the Islamic social and property system. It was formed under the umbrella of the Shariah, evolved and survived to present day, resisting the various challenges, assaults, usurpation, nationalisations and attempts of literal elimination and liquidation. During its long history, awqaf have played an immeasurably large role in the field of educational, scientific, social, health, economic and overall progress and development. For various reasons, awqaf were subject to frequent attacks, usurpation, pillage and plunder. Behind such illegal and illegitimate activities often stood individuals, states, regimes and the ruling establishment. For example, when Austria-Hungary occupied Bosnia and Herzegovina in the late 19th century, they realised the importance of awqaf and wanted to control this institution. They knew very well that control of waqf will enable them to interfere in the religious affairs of Muslims and to control clerics,

who received their income from the proceeds of waqf properties. Furthermore, waqf properties were very large in size, especially with regard to agricultural land and forests, and waqf buildings were in attractive locations in towns. Therefore, many individuals tired to take over the ownership of these waqf properties for their personal gain.

Muslims in Sandzak have lost many of their awqaf. After the retreat of the Ottomans Muslims were forced to leave their homes and their awqaf were confiscated by the new Serbian rulers. After the formation of the Kingdom of Yugoslavia, agrarian reforms led to the loss of Muslim private and waqf property, which had the goal to weaken the socio-economic position of Muslims. The formation of communist Yugoslavia after World War II led to ideological mass confiscation of property of all citizens, thus also of Muslims and the Islamic community. After the end of communist rule in Sandzak in the 1990s the Islamic community in Serbia tired to revive waqf institutions by reopening and renovating mosques, reopening the male madrassa in 1990 and female madrassa in 1996, opening kindergartens for pre-school education, opening the International University of Novi Pazar in 2002 as a waqf providing education for all citizens independently of religious affiliation and opening of soup kitchens for the poor and needy as a waqf. So the Islamic community pay special attention to develop an education system according to the principles of awqaf and helping poor and needy received from its awqaf revenues. However, these projects face many challenges, especially political ones. The restitution of property to the Islamic Community is not enforced, because the state artificially established a parallel Islamic community and is not very interested to return valuable assets to the Islamic community. Furthermore, private individuals try to take over waqf property for their personal gain. Because the application of law in Serbia is very low and corruption widespread, the Islamic community has been continuously struggling for their right to retake waqf property in order to use this property for the general welfare of Muslims, as well as non-Muslim. As long as there are functional awqaf in Sandzak, there will also be Muslims in this region.

Sanjak'ta Mülke El Konulması Vakıf Olayı

Özet

Vakıf İslami sosyal ve mülkiyet sisteminde çok önemli bir kurumdur. Bu kurum şeriatın çatısı altında oluşturuldu, gelişti ve çeşitli zorluklara, saldırılara, gasp, kamulaştırmalara ve edebi eleme ve tasfiye girişimlerine direnerek günümüze kadar gelebilmiştir. Uzun tarihi boyunca vakıflar eğitim, bilim, sosyal, sağlık, ekonomi alanlarında ve genel kalkınma ve gelişme bağlamında ölçülmeyecek rol üstlenmişler. Çeşitli nedenlerden dolayı vakıflar sıkça saldırılara, gasp, yağma ve talana maruz kalmışlar. Böyle yasadışı ve gayri meşru faaliyetlerin arkasında genellikle bireyler, devletler, rejimler ve iktidarlar duruyorlardı. Örneğin Avusturya-Macaristan 19. yüzyılın sonlarında Bosna Hersek'i işgal ettiğinde vakıfların önemini fark etmişler ve bu kurumları kontrol altına almak istediler. Vakıfları kontrol ettiklerinde Müslümanların dini işlerine ve gelirlerini vakıfların mülklerinden temin edilen gelirlerden elde eden din adamlarına müdahale etme olanağı sağlayacağı çok iyi bi-

liyorlardı. Ayrıca, vakıf mülkleri özellikle tarım arazisi ve ormanlar bakımından genişti ve vakıf binaları kasabaların cazip yerlerinde yer alıyordu. Bu nedenle birçok birey kişisel kazanç elde etmek için bu malların mülkiyetlerini devralmaya çalışıyorlardı.

Sancak Müslümanları birçok vakfı kaybetmişti. Osmanlıların çekilmesinden sonra Müslümanlar evlerini terk etmek zorunda kalmışlar ve vakıfları yeni Sırp hükümdarları tarafından gasp edilmiştir. Yugoslavya Krallığı kurulduktan sonra yapılan tarım reformları ile Müslümanlar özel ve vakıf mülkiyetleri kaybettiler ve esas amaç olan sosyo-ekonomik durumlarının zayıflaması da gerçekleşmişti. II. Dünya Savaşı'ndan sonra kurulan komünist Yugoslavya'da ideoloji gereği tüm vatandaşların ve haliyle Müslüman vatandaşların ve İslam topluluğunun mülklerine kitle halinde el konmuştu. 1990'lı yıllarda komünist iktidarı sona erdiğinde Sırbistan'daki İslam topluluğu Sancak'ta camileri yeniden açarak ve yenileyerek, erkek öğrencilerinin medresesini 1990 yılında ve kız öğrencilerinin medresesini 1996 yılında açarak, okul öncesi eğitim için okul öncesi sınıfları ve 2002 yılında Novi Pazar'daki Uluslar arası üniversiteyi dini yönelimden bağımsız ve tüm vatandaşlara eğitim veren vakıf olarak ve yoksul ve muhtaçlara imarethaneleri açarak vakıf kurumlarını yeniden canlandırmaya çalışmışlar. Yani İslam toplumu vakıf ilkeleri doğrultusunda olan bir eğitim sisteminin geliştirilmesi ve vakıf gelirlerini yoksul ve muhtaçlara harcanmasına özel dikkat sarf etmektedir. Ancak bu gibi projeler özellikle siyasi güçlüklerle karşı karşıya kalmaktadır. İslam Toplumuna ait malların iadesi ile ilgili yaptırımlar uygulanmıyor çünkü devlet tarafından paralel suni İslam Toplumu oluşturulmuş ve devlet bu kıymetli varlıkları İslam topluma iade etme konusunda çok fazla istekli değildi. Ayrıca özel kişiler kişisel kazançları için vakfın malvarlığına el koymaya çalışıyordu. Sırbistan'da yasalara fazla riayet edilmediğinden ve rüşvetin yaygın olmasından dolayı İslam Toplumu vakıf malları geri alma haklarını ve bu malları hem Müslümanlar hem gayri Müslimlerin yararına kullanabilmek için sürekli mücadele etmek zorunda kalmıştır. Sancak'ta işlevsel vakıflar olduğu müddetçe Müslümanlar bölgede var olmaya devam edecekler.

Introduction

Waqf is a very important institution of the Islamic social and property system. It was formed under the umbrella of the Shariah, evolved and survived to present day, resisting the various challenges, assaults, usurpation, nationalisations and attempts of literal elimination and liquidation. During its long history, awqaf¹ have played an immeasurably large role in the field of educational, scientific, social, health, economic and overall progress and development. For various reasons, awqaf were subject to frequent attacks, usurpation, pillage and plunder. Behind such illegal and illegitimate activities often stood individuals, states, regimes and the ruling establishment. For example, when Austria-Hungary occupied Bosnia and Herzegovina in the late 19th century, they realised the importance of awqaf and wanted to control this institution. They knew very well that control of waqf will enable them to interfere in the religious affairs of Muslims and to control clerics, who received their income from the proceeds of waqf properties.² Furthermore, waqf properties were very large in size, especially with regard to agricultural land and forests, and waqf buildings were in attractive locations in towns. Therefore, many individuals tried to take over the ownership of these waqf properties for their personal gain.

Due to the importance of this topic, we want to analyse the history of confiscation of waqf property in the region of Sandzak. We want to show the legal framework, how waqf property was taken away from Muslims and what the consequences were for the Muslim community in Sandzak.

In order to achieve this goal, this paper will have the following structure. First, the region of Sandzak and its special features. Because, Sandzak is nowadays divided between Serbian and Montenegro, we will especially concentrate on the Serbian part of Sandzak, in order to concentrate our analysis on one legal framework. After that, we will show what is a waqf and its role in Muslim societies. Here, a special emphasis will be done with regard to important awqaf in Sandzak. The third part of this study will present the historical framework of the confiscation of waqf since the retreat of the Ottoman Empire from Serbia, beginning in the 19th century, to the situation in the Kingdom of Yugoslavia between the two world wars and the situation under communist rule after World War II. In the last part, we will analyse the status of restitution of waqf property. As a candidate for EU membership, the Republic of Serbia has passed legislation for restitution of property owned by churches and religious communities. Here, we will show whether measures have been taken to return confiscated waqf property to the Islamic community and which challenges the restitution of waqf property is facing.

1 Plural of waqf.

2 Suad Mahmutović, "Višedecenijsko uništavanje vakufa u Bosni i Hercegovini", *Novi Muallim*, No. 32, 2007, p. 27.

1. THE REGION OF SANDZAK

Illustration 1. Political situation around Sandzak in 1878



Political situation in 1878 / Politička situacija 1878. godine:

- - Ottoman territories / Osmanske teritorije
- - Sanjak of Novibazar, nominal Ottoman territory occupied by Austria-Hungary
Novopazarski sandžak, nominalna osmanska teritorija pod okupacijom Austro-Ugarske
- - Bosnia and Herzegovina, nominal Ottoman territory occupied by Austria-Hungary
Bosna i Hercegovina, nominalna osmanska teritorija pod okupacijom Austro-Ugarske
- - Other Ottoman territories / Ostale osmanske teritorije
- - Independent states of Serbia and Montenegro / Nezavisne države Srbija i Crna Gora

Sanjaks were administrative divisions of the Ottoman Empire. Ottoman provinces (*vilayets*) were divided into *sanjaks* and were further subdivided into *timars*. For example, there were about 123 sanjaks organised in 55 vilayets in 1865.³ However, today only one of the many sanjaks kept its name: the sanjak of Novi Pazar or today it is called only Sandzak.⁴ From 1699 to 1878 Sandzak was part of the vilayet of Bosnia. After the annexation of Bosnia and Herzegovina

3 Harun Crnovršanin and Nuro Sadiković, *Kako se kalio Sandžak*, Frankfurt/Main, Sandžačka riječ, 2005, p. 26.

4 We can compare such a naming with the French region of "Provence", the first Roman province beyond the Alps, which is still called by its general name.

by Austria-Hungary, Sandzak became part of Kosovo vilayet. When we speak of today's Sandzak, we think about the area that after the Congress of Berlin in 1878 and the Treaty of Berlin remained in the Ottoman Empire as the space between Bosnia and Herzegovina, then occupied by Austria-Hungary on the one hand, and the Kingdoms of Serbia and Montenegro, on the other side. After the end of the first Balkan War, Sandzak was divided between Serbia and Montenegro. Also, during Yugoslavian times, the region of Sandzak did not have any autonomy, and the partition made during the Balkan Wars at the beginning of the 20th century has been kept until today.

The region of Sandzak, as it is considered today, stretches on an area of 8,409 square kilometres and covers the south-west part of Serbia and the north-eastern part of Montenegro. The part, which belongs to Serbia covers an area of 4,504 km², while the part that lies within Montenegro has an area of 3,905 km².⁵ Six municipalities of Sandzak are in Serbia (Novi Pazar, Sjenica, Tutin, Prijepolje, Nova Varoš, and Priboj), and seven in Montenegro (Pljevlja, Bijelo Polje, Berane, Petnjica, Rožaje, Gusinje and Plav).⁶ The biggest administrative, educational, economic, cultural and sports centre of Sandzak is the city of Novi Pazar.

Sandzak is an ethnically very mixed region. According to the 2011 population census of the Serbian part, a total of 238,787 people live in it, with a significant ethnic diversity, although Bosniaks hold the majority in the area, with the west having a Serb majority and the east a Bosniak one. The distribution among nationalities in the Serbian part of Sandzak is the following

- 142,373 Bosniaks (59.62%)
- 77,555 Serbs (32.48%)
- 12,441 Ethnic Muslims (5.21%)
- 241 Montenegrins (0.10%)
- 284 Albanians (0.12%)
- 5,893 others, undecided, regionally declared, undeclared and unknown (2.47%)

According to the 2011 population census for Montenegro, the Montenegrin part of Sandzak has 146,879 inhabitants. The ethnic composition of the Montenegrin part is significantly more mixed than that of the Serbian part. No ethnic group forms an absolute majority in the Montenegrin part.

The distribution among nationalities in the Montenegrin part of Sandzak is the following:

5 <http://www.bnv.org.rs/aktuelno/sandzak/>, (Accessed 2 November 2015).

6 The municipality of Petnjica was part of the municipality of Berane and became an independent municipality in 2013. Also, the municipality of Gusinje was part of the municipality of Plav and became an independent municipality in 2014.

- 46,813 Bosniaks (31.87%)
- 51,643 Serbs (35.16%)
- 11,452 Ethnic Muslims (7.80%)
- 26,363 Montenegrins (17.95%)
- 3,777 Albanians (2.57%)
- 6,831 others, undecided, regionally declared, undeclared and unknown (4.65%)

The municipalities with Bosniak ethnic majority are: Tutin (90.00%), Rožaje (83.91%), Novi Pazar (77.13%), Sjenica (73.88%) and Plav (51.90%). With regard to religious affiliation, Bosniaks, Ethnic Muslims and Albanians are Muslim (Sunnis), whereas Serbs and Montenegrins are Orthodox Christians.

Illustration 2. Major municipalities in Sandzak



2. WAQF (ENDOWMENT)

2.1. Origin

The Arabic word “waqf” (pl. awqaf) means hold, confinement or prohibition. Under Islamic Law the word waqf means the donation of an asset (*mal*) and the prevention of the consumption of this asset in order to use the usufruct for a righteous goal.⁷ Therefore waqf is a continuously usufruct-giving asset. Thus it is neither allowed to sell the donated asset nor to use it otherwise than the conditions prescribed by the founder (waqif).

The practice of founding awqaf dates back to the time of Prophet Muhammad, peace be upon him. The following hadith⁸, narrated by Anas bin Malik, shows one example of founding a waqf: “Abu Talha had the greatest wealth of date-palms amongst the Ansar⁹ in Medina, and he prized above all his wealth (his garden) Bairuha’, which was situated opposite the Mosque (of the Prophet). The Prophet used to enter it and drink from its fresh water. When the following Divine Verse came: **“By no means shall you attain piety until you spend of what you love,”** (3:92.) Abu Talha got up saying. “O Allah’s Apostle! Allah says, ‘You will not attain piety until you spend of what you love,’ and I prize bairuha’ above all my wealth, which I want to give in charity for Allah’s Sake, hoping for its reward from Allah. So you can use it as Allah directs you.” On that the Prophet said, “*Well done! It is a profitable property. I have heard what you have said, and I recommend that you distribute this amongst your relatives.*” On that Abu Talha said, “O Allah’s Apostle! I will do (as you have suggested).” So, Abu Talha distributed that garden amongst his relatives and cousins.¹⁰ Ibn ‘Umar narrated the following: In the lifetime of Allah’s Apostle, Umar gave in charity some of his property, a garden of date-palms called Thamgh. ‘Umar said, “O Allah’s Apostle! I have some property which I prize highly and I want to give it in charity.” The Prophet; said, “*Give it in charity (i.e. as a waqf) with its land and trees on the condition that the land and trees will neither be sold nor given as a present, nor bequeathed, but the fruits are to be spent in charity.*” So ‘Umar gave it in charity, and it was for Allah’s Cause, the emancipation of slaves, for the poor, for guests, for travelers, and for kinsmen. The person acting as its administrator could eat from it reasonably and fairly, and could let a friend of his eat from it provided he had no intention of becoming wealthy by its means.¹¹

These ahadith¹² show the basic principles of a waqf. The major motivation for founding a waqf is the goal of having a continuous source “for good deeds”, dur-

7 Monzer Kahf, “Financing the Development of Awqaf Property”, 1998. http://monzer.kahf.com/papers/english/FINANCING_AWQAF.pdf (Accessed 1 June 2013), p. 4.

8 Everything what the Prophet Muhammad, peace be upon him, said.

9 Residents of Medina at the time of the Prophet, peace be upon him.

10 Sahih al-Bukhari, Hadith No. 2769, <http://sunnah.com/bukhari/55/32> (Accessed 3 November 2015)

11 Sahih al-Bukhari, Hadith No. 2764, <http://sunnah.com/bukhari/55/27> (Accessed 3 November 2015)

12 Plural from the word “hadith”.

ing and after the life of the founder. This reasoning is highlighted in the following hadith: “When a man dies, his deeds come to an end except for three things: Sadaqah Jariyah (ceaseless charity); knowledge which is beneficial, or a virtuous descendant who prays for him (for the deceased).¹³ The meaning of this hadith is that when a person dies his/her “deeds come to an end”, so he/she is not able to perform any deeds anymore and therefore does not receive reward for actions anymore. But there are three categories of actions for which he/she can receive reward even after death. One of these categories is “*Sadaqah Jariyah*”, i.e. donation of an asset from which people can continuously benefit, despite the demise of the person who originated it. For example, the establishment of a school, mosque, orchard or any other continuously usufruct-giving asset. The second hadith also shows that an asset, which is transformed into a waqf, cannot “be sold nor given as a present, nor bequeathed”. This rule shows that awqaf are a special type of asset, as Islamic legal scholars call it the “ownership of Allah”, because this type of asset cannot be revoked, inherited, donated or given as mortgage.¹⁴ In order to achieve the goal of a waqf “the fruits are to be spent in charity”, i.e. any revenue generated by the waqf has to be spent for the general welfare or the waqf *per se* should be used for the general welfare (e.g. a mosque).

For a better understanding of the concept of waqf, it is necessary to distinguish three legal terms, which are similar as a waqf, but not identical: endowments, funds and foundations. These three terms are often treated as equal to waqf, which is not correct. Endowments are institutions significantly narrower defined than awqaf and are historically older than waqf. There are numerous data on endowments as an obligation, which previously revealed religions demanded from single tribes and nations. Evidence for this are countless temples and other religious objects around the world. In polytheistic groups the size of temples and other areas for ritual, burials of rulers and human purposes was taken as a reflection of the size of the faith and power of the monarch.

Historically, however, waqf as an institution is considerably wider than the system of endowments in other religious systems. Endowments have almost exclusively covered temples, but today this range has significantly expanded, and we have not only temples as endowments.¹⁵

2.2. Role of Waqf in Islamic societies

The system of waqf in its real and essential meaning was defined during the time of the last Prophet who was sent to Muslims. In Islamic societies awqaf have become, besides the zakat, the core of the social network. The Ottoman fuqaha

13 Sahih Muslim, Hadith No. 1631, <http://sunnah.com/muslim/25/20> (Accessed 3 November 2015)

14 Abdulhamid M. Tuhmaz, Hanefijski Fikh, Book 2, Sarajevo, Grabus, p. 421.

15 Esad Hrvačić, Vakuf – trajno dobro, Sarajevo, El-Kalem, 2001, p. 7.

described under the term “Muessessat-e-Khairat (the waqf institutions) all buildings and organisations, which included places of worship, universities, schools, bridges, hospitals, public springs, caravansaries and cemeteries.¹⁶ This definition shows how important the awqaf were in the Muslim societies in the past. Information from the registers of awqaf in Istanbul, Al-Quds (Jerusalem), Cairo and other cities show that lands of awqaf covered a considerable proportion of the total cultivated area. For example, in the years 1812 and 1813 a survey of land in Egypt showed that waqf represented 600,000 feddan¹⁷ out of a total of 2.5 million feddan. In Turkey one third of the cultivated land consisted of awqaf.¹⁸

With regard to the beneficiaries, the major recipients of waqf revenues were mosques, education, the poor and needy as well as the health care. The support of mosques usually included the salaries of imams, teachers and preachers. With the help of this independent source of income, religious scholars have always been able to take independent positions on political and social topics.¹⁹ For this reason, political leaders, especially those who always have had a negative stand towards Islam, awqaf have been a thorn in their side.

The educational system, and not only religious education, was the second major beneficiary of the waqf revenues.²⁰ Since the beginning of Islam, education has been financed by donations. Even governmental support of education took the form that a school was built and a certain property was added as waqf, which provided the school with regular revenues in order to cover its operating expenses.²¹ For example, Al-Quds (Jerusalem) had 64 schools at the beginning of the twentieth century, all of them were awqaf and supported by awqaf agricultural and metropolitan properties in Palestine, Turkey and Syria. Of these schools 40 were already made awqaf by the Ayyubide (1171-1249) and Mamalik (1249-1517) rulers and governors.²² Another example is the well-known Al-Azhar University. It was founded in Cairo in 972 and was financed by its waqf revenues until the government of Muhammad Ali in Egypt took control over the awqaf in 1812.²³ The system of awqaf made it possible that educated persons did not only come from the rich or ruling class. To certain times in history, the majority of Muslim scholars came from the poor class or were even slaves.²⁴

The third biggest beneficiary of waqf proceeds were the poor, needy, orphans etc. Another beneficiary was the health care, i.e. hospitals, physicians, patients

16 *Anonymous newspaper article*: “Was ist ein Waqf?”, *Islamische Zeitung*, No. 56, p. 23.

17 1 feddan = 0.42 hectares.

18 Monzer Kahf, “Waqf: A Quick Overview”. http://monzer.kahf.com/papers/english/WAQF_A_QUICK_OVERVIEW.pdf (Accessed 1 June 2013), p. 5-6.

19 *Ibid.*, p. 6.

20 *Ibid.*

21 *Ibid.*

22 *Ibid.*

23 *Ibid.*

24 *Ibid.*

as well as pharmaceutical research profited from awqaf revenues. An example for a health waqf is the Shishli children hospital in Istanbul, which was founded in 1898 as a waqf.²⁵

It is worth mentioning that also the familial awqaf played an important social role. These awqaf provided family members an additional income, so they were not dependent on support from zakat-funds. An economic side-effect of this is the capital accumulation through generations, which is an important factor for growth and development.²⁶

Furthermore, there were awqaf on animals as well as awqaf for helping people to travel to Mecca for pilgrimage, marriage bureaus and many other philanthropic purposes.²⁷

Therefore, we can conclude that waqf is a very important institution of the Islamic social and property system. It was formed under the umbrella of the Shariah, evolved and survived to present day, resisting the various challenges, assaults, usurpation, nationalisations and attempts of literal elimination and liquidation. During its long history, awqaf have played an immeasurably large role in the field of educational, scientific, social, health, economic and overall progress and development. Even entire villages and towns have emerged and developed thanks to this Islamic institution, as is the case with Novi Pazar, Sarajevo, Skopje and elsewhere. For various reasons, usually those arising from the ordinary, single, selfish, personal interests of individuals and groups awqaf were subject to frequent attacks, usurpation, pillage and plunder. Behind such illegal and illegitimate activities often stood individual states, regimes and the ruling establishment. The question of waqf and waqf property was in many cases even the subject of inter-state disputes and international peace treaties.²⁸

2.3. The importance of awqaf in Sandzak

Immediately after the arrival of the Ottomans in Sandzak in the fifteenth century, the first awqaf were established. Awqaf have been indispensable for the development of economic, cultural and religious centres of Sandzak. This is best illustrated when we look at the city of Novi Pazar. Novi Pazar was founded by Gazi Isa bey Ishaković in 1461²⁹, who not only established the city, but also left significant awqaf behind him, which until today represent the most important treasures

25 Ibid.

26 Monzer Kahf, "The Role of Waqf in Improving the Ummah Welfare". http://monzer.kahf.com/papers/english/ROLE_OF_WAQF_IN_THE_WELFARE_OF_THE_UMMAH.pdf (Accessed 1 June 2013), p. 19-20.

27 Monzer Kahf, Waqf: A Quick Overview, p. 6.

28 See Fikret Karčić, Međunarodnopravno regulisanje vakufskih pitanja u Jugoslavenskim zemljama, Anali GHB, IX-X, 1983, str. 141 - 153.

29 Gazi Isa bey Ishaković was also the founder of Sarajevo and Skopje.

of Novi Pazar, such as the Gazi Isa bey madrassa and the old hamam (Turkish bath), located in the city centre. Most of the old buildings in Sandzak trace their emergence and development with the occurrence of a waqf, or with the founder of a waqf. For example, today there are 58 mosques in the territory of Novi Pazar, which are a waqf of a founder or established collectively by several founders. Also, a large number of awqaf represent buildings that are of historical significance for the cities of Sandzak and the states of Serbia and Montenegro. Therefore, we can conclude that the most important institutions in the towns of Sandzak, especially in Novi Pazar, are awqaf. This will be proven by the following list about the major awqaf in the region of Sandzak:

1. The building of the Islamic institutions (“*Islamske ustanove*”), which today houses the Faculty of Islamic Studies in the centre of Novi Pazar in the square of Gazi Isa bey Ishaković. The building was nationalised by applying the “Law on Nationalisation of Private Economic Enterprises”³⁰ dated 28 April 1948 and taken from the Islamic community, and then handed over to the representative of the Ministry of Trade and Supply of the People’s Republic of Serbia. Later, this building was given to the state-owned enterprise “Lipa”. The government of Serbia tried (illegally) to privatise this asset in 2006. However, the Islamic community claimed it for restitution, and since the building has been used for the Faculty of Islamic studies.

Illustration 3. The building of the Islamic institution (“*Islamske ustanove*”) in Novi Pazar between the two World Wars



30 Official Gazette of the Federal People’s Republic of Yugoslavia, No. 98 dated 06 December 1946.

2. Gazi Isa bey Madrassa in Novi Pazar. In the area of today's Sandzak, Turkish traveller Evliya Çelebi recorded 5 madrassas in Novi Pazar in 1661. This included Gazi Isa bey madrassa which dates back to the fifteenth century. The madrassa operated until 1946 when the communists closed it, as all other madrassas in Sandzak. The madrassa was reopened on 17 September 1990 on its original place.

Illustration 4. Gazi Isa bey Madrassa in Novi Pazar today



3. The hamam of Gazi Isa bey, located in the centre of Novi Pazar, which dates from the 15th century and was built by Gazi Isa bey Ishaković. The hamam is an example of so-called “dual city hamam”. The building housed male and female rooms, completely identical, separated by a constructed stone wall. The building has eleven domes of varying sizes and with hexagonal holes. Each room is covered with a dome. On the north side of the hamam there was a large fountain, which was a kind of waiting and dressing room, while on the south side there was the so-called “*hazna*” - the room for the heating of water. There were three rooms for bathing with marble fountains and one room for a break from bathing. Today, The building is under the protection of the Institute for the Protection of Cultural Monuments of Serbia. But the institute neglects this monument of Islamic architecture, so it is unfortunately almost a ruin.

Illustration 5. The hamam of Gazi Isa bey in Novi Pazar today



4. The old spa of Novi Pazar, which is a special treasure of Pazar and of great importance for the entire Sandzak and Serbia in general. The ancient Romans discovered this spring in Novi Pazar in the period from II to IV century AD and they built baths, pools and villas. The Ottomans enhanced these buildings by constructing a hamam, which is still used today in Novi Pazar. The old spa of Novi Pazar is a waqf with a size of about five hectares. It was confiscated by the communist regime and given to the public enterprise “Lipa”. The Islamic community, retook the ownership of this waqf in 2013 and has started reconstruction work in 2015.

Illustration 6. The old spa of Novi Pazar, under reconstruction in 2015



Besides these important buildings, the majority of awqaf in Sandzak are mosques. Mosques have been built in Sandzak since the arrival of the Ottomans. Therefore, mosques which were built more than 500 years ago can be found in Sandzak. In the following, we will mention the most important:³¹

1. Ahmed bey Silahdar (“Lejlek”) mosque, which was built in the mid 15th century and is located in the centre of Novi Pazar. It is one of the oldest mosques in Novi Pazar. There is even a tradition which says that Sultan Mehmed Fatih, in his campaign against Bosnia, performed a prayer in 1459 in this mosque.³² Ahmed bey Silahdar mosque, as well as almost every other mosque in Novi Pazar, has repeatedly been destroyed and burned. The second construction of the mosque dates from the first half of the eighteenth century.

³¹ Archives of the Islamic Community in Serbia.

³² <http://www.novipazar.com/turizam/lejlek-dzamija/> (Accessed 1 November 2015)

Illustration 7. Ahmed bey Silahdar (“Lejlek”) mosque today



2. Tabak Ishak mosque, which was first mentioned in 1468 and is located in Novi Pazar.

3. Duke Ahmed Mosque, which was first mentioned in 1516 and is located at “1st of May” street in Novi Pazar.

4. Altun Alem mosque, which was built between 1516 and 1528 by Muslihedin Abdul Gani, also known as Muezzin Mullah Al Madinah and is also at “1st of May” street in Novi Pazar. The exact year of construction of the mosque is not known. But it can be approximated, because the mosque was first mentioned in the Turkish census in 1528, but not in the earlier census of 1516. Therefore, the construction of Altun-alem mosque should be placed between 1516 and 1528. At any case, this building is very beautiful and rare. In Skopje, manuscripts state that it is a rare architectural work and that such kind of building could only be found in cities such as Istanbul, Edirne and Bursa, and that it resembled *Tash han* in Skopje. In addition to the mosque, founder Muslihedin Abdul Gani ordered to build a “house where the Qur’an will be taught to little children,” (*maktab*) as it is written in the terms of the waqf, which also determined the salary of the teacher and his deputy, on condition that the muallim has to be “reliable, and the best among the good, steady, competent, to teach and educate.” Altun-alem *maktab* is also significant, because it is one of the two oldest *maktabs* of the former Bosnian eyalet, preserved to present time.³³

33 <http://www.novipazar.com/turizam/altun-alem-dzamiya/http://www.novipazar.com/turizam/lejlek-dzamiya/> (Accessed 1 November 2015)

Illustration 8. Altun Alem mosque today



5. Gazi Sinan bey mosque, which was first mentioned in 1528 and is located next to the Town Wall in Novi Pazar.
6. Hajrudin mosque, which was first mentioned in 1528 and it is considered that this is the date of construction. The mosque is located in Novi Pazar in the neighbourhood Parice.
7. Hasan Çelebi (Arab) mosque, which was mentioned in the census of 1528 and located in the centre of Novi Pazar.

Illustration 9. Hasan Çelebi (Arab) mosque today



8. Iskender Çelebi mosque, which was first mentioned in 1528 and which is located in the centre of Novi Pazar.

9. Çalap Verdi mosque, which was first mentioned in 1540, which is located in the centre of Novi Pazar.

10. Ferhadija mosque, which was first mentioned in 1540 and is located in the neighbourhood Yarmisha in Novi Pazar.

11. The main mosque in Tutin, which was built in 1825 and is located in the centre of the town.

12. Ibrahim Pasha mosque, which was built in 1572 and is located in Prijepolje.

Illustration 10. Ibrahim Pasha mosque in Prijepolje today



13. Mosque in the village Ugao, municipality of Sjenica, which was built in 1704 and is called Askeri mosque.

14. Mosque in Nova Varos, which was built in 1894 and is located in the town centre.

15. The mosque in the village of Zabrnjica was built in 1590 and is located in the municipality of Priboj.

16. Sutan Murat II Mosque is the biggest mosque in the town of Rožaje. It was built in the same time as the nearby fortress and was built by Sultan Murat II in 1450. It was rebuilt in 2008.

17. Mosque “Sultaniya” in Plav. Sultan Abdul Hamid ordered the construction of this mosque in 1909. It was built of cut stone with domes and a stone minaret. However, the mosque was only used for a short period of time for religious purposes, and after the pressure of the Kingdom of Yugoslavia in 1924, it was taken from the Islamic community, turned into a warehouse, then to a school, and then into a police station. Valuable calligraphies, the minaret and the dome of the mosque were destroyed. After the end of the communist regime, the mosque was returned to the Islamic Community.

Of course, there are many other important awqaf in Sandzak. However, this short overview shows the importance of awqaf in Sandzak and that Muslims from Sandzak have adopted the system of awqaf and developed it further until today. Especially mosques are characterised by one important fact that these assets have generally outlived their founders and are often in function until today.

3. CONFISCATION OF WAQF PROPERTY IN SANDZAK

3.1. The confiscation of waqf property in the 19th century until the end of World War I

Upon the adoption of the *hatt-i sharif* (written order from the Sultan) in 1830, the question arose what to do with waqf property. The authorities of Serbia at that time were of the view that they have the right to make their own rules with regard to these assets and developed some basic principles that are related to awqaf:

1. Functioning mosques are entitled to receiving revenue from its waqf property;
2. Other awqaf belong to the Serbian government as assets without owners;
3. The Serbian government can give the claimed waqf property to churches, schools and municipalities for their needs.

This regulation was already the first step towards confiscation of Muslim waqf property. Only active mosques had the right to use the income from its waqf property. Other awqaf were classified as “assets without an owner”, so such property could be confiscated and given to the church and other public institutions. Because many Muslims were forced to leave central Serbia after the issuing of *hatt-i sharif*, the Serbian government took over many awqaf and used them for the already mentioned purposes. After the almost complete eviction of Muslims from the then Principality of Serbia, Serbia adopted the Law on Waqf properties on 3 June 1863, which set the legal basis for the establishment of an Islamic religious community. In order to give these remaining Muslims a place of worship, Bajrakli mosque was given to the Muslim municipality (*jamaat*) in Belgrade as the only place of worship. For maintenance and salaries the Serbian government

allocated funds. This process indicates that the Islamic community was losing its waqf property, and thus financial independence. By putting the Islamic community on the state budget the state was able to indirectly control this community.

After the Balkan wars of 1912-1913, Serbia recognized again the right of the Islamic community to administer their religious and waqf affairs in the spirit of Shariah regulations. This can be seen from Article 79 and 81 of the Regulation on the Organization of the Liberated areas of dated August 1913 and the Decree on Amending the Decree on the Organization of Courts and Court Proceedings in the Annexed Areas of Old Serbia dated 07 June 1914. The question about awqaf arose even to international level, as Article 39 of the Treaty of Berlin dated 13 July 1878 talks about the formation of a Ottoman-Serbian Commission that would within a time limit of three years discuss, among other things, all disputed issues relating to the awqaf.³⁴

In the Kingdom of Serbs, Croats and Slovenes the question about awqaf erupted again on the international plan. The newly formed state was committed according to Article 51 of Treaty of Saint-Germain-en-Laye dated 9 October 1919 "to protect the interest of inhabitants of that State who differ from the majority of the population in race, language or religion."³⁵

In 1930, the Act on the Islamic Religious Community was passed, which established a single administration on awqaf in the whole of the then Kingdom of Yugoslavia. The Islamic religious community received the "right to self-govern and manage its religious, educational and waqf affairs."³⁶ In 1936, some amendments to the law and the Constitution of the Islamic religious community were made, but the waqf administration remained largely identical.

3.2. Confiscation of the property of Muslims during the Agrarian Reform (1918-1941)

Despite this legal regulation with regard to the respect of ownership, especially of minorities, the practice looked different. The newly formed Kingdom of Serbs, Croats and Slovenes was a multi-religious and multi-cultural state, which also inherited a different type of organisation in different parts of the country. Land ownership in parts of the country, which were part of the Ottoman empire (Serbia, Montenegro, Sandzak, Kosovo and Macedonia), was recorded by a system of precise *Tapis* (Titles). Other parts of the Kingdom, which were part of Austria-

34 Mehmed Begović, *Vakufi u Jugoslaviji*, Beograd, SANU, 1963, p. 6.

35 Treaty of Saint-Germain-en-Laye, <http://treaties.fco.gov.uk/docs/pdf/1919/TS0011.pdf> (Accessed 15 November 2015)

36 Article 1, Law on the Islamic community, Official newspaper of the Kingdom of Yugoslavia, No. 29/1930

Hungary, such as Slovenia, Croatia and Bosnia and Herzegovina, land ownership was organised as a land register.

Immediately after unification and the creation of the new state, on 24 December 1918, King Alexander Karadjordjevic issued a proclamation which seeks the abolition of serfdom and big landownership. The consequence of this proclamation was the start of plunder and pillage of land of Muslim landowners. This robbery was carried out by Serbian peasants (serfs), because they considered to have a right to the land they cultivated and they held under lease. The agrarian reform in the Kingdom of Yugoslavia should have been carried out as in all other European countries by liquidating feudalism, but not by murdering owners, looting and plundering of land.³⁷

In order to understand the long-term consequences, it is necessary to mention the situation of land ownership before the agrarian reform in Bosnia and Herzegovina and Sandzak, parts of Yugoslavia with a Muslim majority and where the reform was most drastically executed. Austria-Hungary made a list of land ownership and population according to religious affiliation in 1910. According to this list, Bosniaks (Muslims) owned 91.1 percent, Orthodox Serbs 6.0 percent and Catholic Croats 2.6 percent, while "others" owned 0.3 percent of land in Bosnia and Herzegovina. A similar situation was also in Sandzak, where about 90 percent of was owned by Bosniaks and the rest was owned by Serbs and others. But after the establishment of the Kingdom of Serbs, Croats and Slovenes, the Bosniak nation was in an inferior position due to the agrarian reform of 1918 and 1919. The confiscation of property of Bosniaks was carried out in a perfidious way in Bosnia and Herzegovina and Sandzak, with a symbolic compensation for land owners, which was usually never paid, although the payment of the compensation was guaranteed. After losing land ownership, many Bosniaks emigrated to Turkey as a result of this injustice. The taken land of Bosniaks was given mainly to citizens of Serbian ethnicity in Bosnia and Herzegovina and Sandzak. The new property owners recorded the ownership in cadastre without paying any compensation to the previous owners. The major goal of such a policy was to forcefully alter the demographic structure in regions with a Muslim majority.

After the first agrarian reform in 1918 and 1919, a total of 1,175,305 hectares of agricultural and forest land owned by Bosniak Muslims in Bosnia and Herzegovina was confiscated. Joint stock companies, banks and other institutions were stripped of 110,922 hectares of land. A similar situation could be found in Sandzak, where the agrarian reform of 1918 and 1919 mostly aimed at citizens of Muslim faith. Bosnia and Herzegovina (and other Muslim majority regions) was, therefore, the backbone and the main target of the agrarian reform that not only pursued socio-economic, but above all national and political goals. The aim

37 Enes Durmišević, *Vakufi u različitim političkim sistemima - odnos vlasti prema vakufima, posebno nakon agresije na BiH, Novi Muallim*, Vol. XII, No. 47, 2001, p. 19.

was to fully destroy Muslim landowners socioeconomically in order to ruin and subjugate them.³⁸

3.3. Confiscation of the property of Muslims after World War II (1945-1990)

The confiscation of property after World War II, during the rule of the communists, was executed using several measures. The first step was a new “Agrarian reform” combined with colonisation, and the second step was the nationalisation of confiscated property.

3.3.1 Agrarian reform and colonisation

The Law on Agrarian Reform and Colonisation in 1945³⁹, and the Law on the Confirmation and Amendments to the Agrarian Reform and Colonisation in 1945⁴⁰, were the legal basis upon a large part of the property of churches and religious communities was confiscated. Land reform and colonisation were a major political, economic, social and legal project, which during the rule of communism had a distinct ideological line. Because of the importance of this project, the state had formed a special Ministry of Agrarian Reform and Colonisation, and the whole state apparatus was employed for the realisation of this important project.

The consequence of this land reform was that land holdings of religious institutions (churches, monasteries and religious institutions) and the assets of endowments, religious and secular, were nationalised. Individual churches, monasteries and religious institutions had only the right to keep land up to 10 hectares of fields, gardens, vineyards, orchards, pasture and forests, and those that were of greater importance a larger area was allowed to keep (up to 30 hectares). Immovable property and other goods taken away by applying the above mentioned laws became property of the state, which was used these assets to form a land fund. These lands were allocated to farmers, who at that time did not have land or did not have enough for their needs, and the other beneficiary were large state farms.

It should be noted that the taking of property under the land reform was carried out without any monetary or any other compensation to the owners, except in case of confiscation of excess arable land from farmers and owners (non-farmers), which envisaged a payment of compensation in the amount of one-year yields per hectare and on account of the person who took over the confiscated

38 Ibid, p. 20, 21.

39 Official Gazette of the Democratic Federal Yugoslavia, No. 64/45, which entered into force on 28 August 1945.

40 Official Gazette of the People's Republic of Serbia, No. 4/1946.

land.⁴¹ Compensation had also to be paid for confiscated surplus of forest properties of farms.⁴² However, in practice these payments have never been made, so any owner whose land was confiscated did not receive any compensation during communist rule.

3.3.2. Nationalisation

The Law on Nationalisation of Private Economic Enterprises of 1946⁴³, the Law on Amendments to the Law on Nationalization of Private Economic Enterprises of 1948⁴⁴ and the Law on Nationalisation of Leased Buildings and Construction Land from 1958 to 1959⁴⁵ also affected the property of churches and religious communities. Religious organisations which were founders of private companies, retail stores, hotels, sanatoriums, hospitals and spas, have lost their property due to the Law on Nationalisation of Private Economic Enterprises.

Subject to nationalisation were all commercial buildings in private property that were used to carry out economic, administrative, educational, cultural, health, social and other similar buildings, except farm buildings that were used for agricultural activities, small warehouses and basements, garages to accommodate a maximum of two cars and small rooms (laundry, drying rooms, cellars, garages) for the needs of the tenants in the building. The Law on Nationalisation of 1958 led to the nationalisation of all buildings, whether built or unbuilt, which were located in the narrow construction area cities and towns. Nationalised was also land on which there was a building that was not nationalised with the right of owners of the building to freely the use land that covers the building and land used for regular use of the building, as long as it is on the land of the building.

3.4. Overview of confiscated awqaf in Sandzak in the period from 1945 to 1990

As already said, the communist regime issued several laws which enabled them to confiscate waqf property. Especially waqf in the form of land and buildings in urban areas were confiscated. It has to be mentioned that many waqf buildings were destroyed in order to make place for urbanisation projects.

41 Article 6, The Law on Agrarian Reform and Colonisation, Official Gazette of the Democratic Federal Yugoslavia.

42 Article 26 - paragraph 2, The Law on Agrarian Reform and Colonisation, Official Gazette of the Democratic Federal Yugoslavia.

43 Official Gazette of the Federal People's Republic of Yugoslavia, No. 98/46, which entered into force on 5 December 1946.

44 Official Gazette of the Federal People's Republic of Yugoslavia, No. 35/48, which entered into force on 28 April 1948.

45 Official Gazette of the Federal People's Republic of Yugoslavia, No. 52/58, which entered into force on 28 December 1958.

Table 1. List of Confiscated awqaf in North Sandzak in the period from 1945 to 1990

Town	Type and Number of Object	
	Land	Administrative and Commercial Buildings
Novi Pazar	65 lots of at least 30.6 hectares	21
Tutin	12 lots of at least 12.7 hectares	0
Sjenica	16 lots of at least 4.3 hectares	0
Priboj	3 lots of at least 0.7 hectares	3
Prijepolje	16 lots of at least 2.0 hectares	4
Nova Varosh	17 lots of at least 0.9 hectares	1
TOTAL	129 lots of at least 51.2 hectares	29

Table 1 shows a list of confiscated waqf property which can be reclaimed according to laws which were issued after the dissolution of the communist regime. According to our research of the archive of the Islamic Community in Serbia, we found that in Novi Pazar waqf land of a size of at least 30.6 hectares were nationalised during communist rule. Furthermore, 21 administrative and commercial waqf buildings were nationalised. Commercial waqf buildings were all located in the most attractive areas in the city centre and were of priceless value. It was the clear intention of the regime to enrich their own institutions by taking away the most profitable estates of the Islamic community. An example for this is the building of the Islamic institutions, which is in the city centre and is the most valuable building in the city. This administrative building of the Islamic community was taken away and given to the public enterprise “Lipa”, which later opened a department store there.

In the municipality of Tutin agricultural land and forests were confiscated. The reason for such confiscation is that such type of land dominates in this municipality and agriculture and forestry are the main economic sectors in this municipality. On the other hand, in the municipality of Sjenica majority of confiscated lands is in the town and used for the construction of public institutions and public companies.

In the municipality of Priboj the majority of confiscated waqf properties is in the town of Priboj. Waqf buildings were given to public enterprises, and land was used for the construction of infrastructure and public buildings. A similar situation is in the town of Prijepolje, where four waqf houses were confiscated, located in the urban area. With regard to waqf land, the majority of about two hectares

of land are of agricultural nature - orchards, gardens and pastures of high quality, because the land in Prijepolje is very fertile.

In the municipality of Nova Varosh the confiscated waqf land is in the town of Nova Varosh, because the Muslim population lives mainly in the town in this municipality.

So we can conclude that in North Sandzak at least 129 lots of land with a size of about 51.2 hectares were confiscated during communist rule. Keeping in mind that the majority of land is in urban areas, and land in rural areas were high quality forests and agricultural lands, the value of these lands can be estimated at millions of Euros. The same is valid for waqf buildings; the majority of them are in the most attractive location in the respective towns. Therefore they are of priceless value.

It is necessary to mention that the town of Novi Pazar is much bigger than all other towns in North Sandzak (Serbian part of Sandzak), therefore the number of confiscated buildings is much lower than in Novi Pazar.

4. Property Restitution in the Republic of Serbia

After democratic changes in Serbia in 2000 and the goal of Serbia to become a member of the European Union, the Serbian government passed several laws in order to regulate claims related to property confiscated by communist authorities after World War II. The goal of restitution is to correct the decades of injustice to natural and legal persons and to resolve property relations in the Republic of Serbia, in order to fulfill the accession criteria for European Union membership.

With regard to the properties of religious communities, Serbia passed the "Law on Returning (Restitution) of Property to Churches and Religious Communities" on 25 May 2006 and the Law came into force on 1 October 2006. Article 1 of this law states that "This law regulates the conditions, manner and procedure for return of property that in the territory of the Republic of Serbia were seized from churches and religious communities, as well as their endowment and companies, the implementation of regulations on agrarian reform, nationalisation, sequestration and other regulations passed and adopted since 1945, as well as all other acts that has occurred of such property without compensation according to market-value."⁴⁶

As it can be seen, this law does not treat the period between the two world wars, not to say earlier periods, where also much of waqf property was confiscated. The right to restitution under the Law on Returning (Restitution) of Property to Churches and Religious Communities have all churches and religious commu-

⁴⁶ Law on Returning (Restitution) of Property to Churches and Religious Communities, Official Gazette of the Republic of Serbia, No. 46/06.

nities, regardless of the reason of confiscation, even when confiscation was made without any legal basis, only on the basis of a decision or other act of state organs, with the fulfillment of the three basic requirements needed:

1. that the assets (immovable property or asset of cultural and historical significance) of the church or religious community was confiscated after 1945,
2. it had been seized by the state, based on the then applicable regulations or other acts of state bodies and
3. it had been seized without compensation or other real estate allocation.

The request for the return of property or compensation or indemnification could be submitted not later than 30 September 2008.⁴⁷

4.1. Overview of submitted requests for restitution of waqf property in Serbia

According to the Law on Returning (Restitution) of Property to Churches and Religious Communities, the Islamic community in Serbia has filed 56 claims for restitution of property, in which the return is required 51 ha of land, of which 30 ha of agricultural land, 3 ha of forests and forest land and 18 hectares of construction land. The claims covers also 33 business and 5 residential buildings, the total area estimated at 9,900 m² and 400 m², respectively. The Islamic community also asks for the return of 18 cemeteries.⁴⁸

Analysing official statistics about requested and returned assets of religious communities issued by the Agency for Restitution of the Republic Serbia, we can see that the biggest claim was submitted by the Serbian Orthodox Church. This church claims a total of 73,150 hectares of land, of which 44.48 % or more than 32,535 hectares have already been returned. Furthermore, the Serbian Orthodox Church claims a total of 191,444 square metres in the form of buildings, of which 36580 square metres has already been returned. The second highest seeker in Serbia is the Roman Catholic Church, who has already received 11.81% of its confiscated land and 13.49% of its confiscated buildings.

But as tables 2 and 3 show that no assets have been returned to the Islamic community up to now. In the following, we will analyse the reasons for this situation.

⁴⁷ Article 25, Law on Returning (Restitution) of Property to Churches and Religious Communities, Official Gazette of the Republic of Serbia, No. 46/06.

⁴⁸ Archive of the Islamic community in Serbia.

Table 2. List of Requested and Returned Confiscated Land of Churches and Religious Communities in Serbia

Churches / Religious Communities	Land [ha.a.m2]								
	Requested				Returned 2007 - 2010				
	Agricult.	Forest	Construct.	TOTAL	Agricult.	Forest	Construct.	TOTAL	%
Serbian Orthodox Church	38987.92.08	33798.77.92	363.30.00	73150.00.00	9281.86.31	23195.72.96	58.36.42	32535.95.69	44.48
Roman Catholic Church	3956.49.83	0	42.02.18	3998.52.01	468.60.19	0	3.63.36	472.23.55	11.81
Slovak Evangelical Church in Serbia	1802.00.00	65.00.00	208.00.00	2075.00.00	66.67.29	0	0.52.80	67.20.09	3.24
Romanian Orthodox Church	1136.00.00	0	0	1136.00.00	82.67.80	0	0	82.67.80	7.28
Greek Catholic Church	537.00.00	0	229.00.00	766.00.00	48.44.49	0	0	48.44.49	6.32
Christian Reformist Church	419.00.00	0	1.00.00	420.00.00	80.11.77	0	0.69.98	80.81.75	19.24
Evangelical Christian Church in Serbia	358.61.52	0	0.38.48	359.00.00	0	0	0.38.48	0.38.48	0.11
Jewish Religious Community	182.00.00	0	17.00.00	199.00.00	0	0	1.01.57	1.01.57	0.51
Islamic Religious Community	30.00.00	3.00.00	18.00.00	51.00.00	0	0	0	0	0.00
Armenian Catholic Church	42.00.00	0	0	42.00.00	0	0	0	0	0.00
Evangelical Methodist Church	0	0	0.31.00	0.31.00	0	0	0	0	0.00
Other Churches and Rel. Communities	0	0	0.61.00	0.61.00	0	0	0.07.54	0.07.54	12.36
TOTAL	47451.03.43	33866.77.92	879.62.66	82197.44.01	10028.37.85	23195.72.96	64.70.15	33288.80.96	40.50

Source: Agency for Restitution of the Republic of Serbia, <http://www.restytucija.gov.rs/latinica/direkcija-za-restituciju.php>

Table 3. List of Requested and Returned Confiscated Buildings of Churches and Religious Communities in Serbia

Churches / Religious Communities	Buildings [m2]								
	Requested				Returned 2007 - 2010				
	Resident.	Commerc.	other	TO-TAL	Resident.	Commerc.	other	TO-TAL	%
Serbian Orthodox Church	55816	132226	3402	191444	7129	26049	3402	36580	19.11
Roman Catholic Church	64461	49404	0	113865	1934	13430	0	15364	13.49
Jewish Religious Community	18260	16036	0	34296	84	3469	0	3554	10.36
Slovak Evangelical Church in Serbia	5176	10151	0	15327	380	1260	0	1640	10.70
Islamic Religious Community	400	9900	0	10300	0	0	0	0	0.00
Evangelical Christian Church in Serbia	2560	6300	0	8860	0	1253	0	1253	14.14
Greek Catholic Church	880	1532	0	2412	0	178	0	178	7.38
Romanian Orthodox Church	420	672	0	1092	0	0	0	0	0.00
Evangelical Methodist Church	670	300	0	970	0	0	0	0	0.00
Christian Reformatist Church	160	400	0	560	377	400	0	777	138.75
Armenian Catholic Church	160	0	0	160	0	0	0	0	0.00
Other Churches and Rel. Communities	160	3016	0	3176	0	3016	0	3016	94.96
TOTAL	149123	229937	3402	382462	9905	49055	3402	62362	16.31

Source: Agency for Restitution of the Republic of Serbia, <http://www.restytucija.gov.rs/latinica/direkcija-za-restituciju.php>

4.2. Problems in the Process of Waqf Restitution

The process of waqf restitution in Serbia faces many challenges. The first issue relates to the process of the identification of confiscated property. Only in a small number of municipalities a land registry was established at the time of property confiscation and in the existed registries properties were only recorded descriptively. For example, in Novi Pazar land registry was established after the confiscation of property, i.e. property was confiscated in 1945, but the land register in Novi Pazar was established only in 1952. Furthermore, during the Second World War almost all tapis were destroyed not reconstructed at all.

Another problem that has occurred in practice is the usage of property which is subject to restitution. Namely, the law expressly prohibits the usage of such property since 1 May 2006, and all legal affairs, legal acts which are contrary to this provision are be void.⁴⁹ Since in Serbia the process of privatisation was at its full height at this time, the Agency for Privatisation of the Republic of Serbia has been one of the key violators of the law on prohibition of disposing.

In Novi Pazar, we have two examples of this situation. Because one part of the confiscated waqf property of the Islamic community was given to state-owned enterprises, this waqf property would have been sold with the privatization of the state enterprises. However, the Law on Returning (Restitution) of Property to Churches and Religious Communities prohibits the privatisation of the assets subject to restitution. But, because waqf property often represents the most valuable part of the fixed assets of state enterprises, there has been big pressure to keep the waqf property as part of the state-owned enterprise in order to usurp it. A classic example in Sandzak is the building of the "Islamic institutions", one of the most valuable buildings in the city, and the old spa of Novi Pazar. Unfortunately, the Agency for Privatisation has offered for sale state-owned enterprises "Uniprom" and "Lipa", which used the two mentioned awqaf, including the waqf property. Despite strong political pressure and pressure of individual businesspersons, who wanted to acquire attractive waqf property for cheap money, the Islamic Community in Serbia has managed to stop the privatisation and sale of the waqf buildings. Now the Islamic community uses these facilities until the legal process of restitution will be finalised.

Such a situation is caused by a major neglect of the process of restitution of Waqf property by Serbian authorities - from the local government to the national government. Despite the fact that legal regulations are in place, the lack of rule of law in Serbia hinders the implementation of these laws. Another problem in Serbia is the problem of corruption, where businesspersons try to buy state-owned companies cheaply. So government officials often try to "help" these businesspersons.

⁴⁹ Article 36, Law on Returning (Restitution) of Property to Churches and Religious Communities, Official Gazette of the Republic of Serbia, No. 46/06.

A third major specific problem in Serbia is the formation of a parallel Islamic community by the government of Serbia in 2007. In order to have pro-government Islamic community, and to reduce the influence of the legal and legitimate Islamic community in Serbia from Novi Pazar, which is part of the Islamic community in Bosnia and Herzegovina, the Serbian government wanted to have its “own” Islamic community, which will behave according to government lines. The then-government of Serbia of prime minister Vojislav Kostunica, with the help of local politicians in Sandzak, formed a parallel Islamic community the so-called “Islamic community of Serbia” with headquarters in Belgrade. Immediately after its formation, this Islamic community opened its parallel institutions - own kindergartens, madrassas, theological faculty, tried to take over mosques etc. This state-sponsored aggression on the legal and legitimate Islamic community in Serbia has also big consequences on the process of restitution of waqf property. Now, two institutions claim waqf property in Serbia: The Islamic community in Serbia, from Novi Pazar, and the Islamic community of Serbia, headquartered in Belgrade. So, the Agency for restitution justifies the fact that no waqf property has been returned to the Islamic community up to now with the argumentation that they allegedly do not know who is the legitimate representative of Muslims in Serbia.⁵⁰

5. Conclusion

Islamic sources motivate Muslims to found awqaf, so many Muslim believers endowed part of their private assets as a waqf. As a consequence a whole social system with places of worship, universities, schools, bridges, hospitals, public springs, caravansaries and cemeteries arose as awqaf. It is important that not only an asset was endowed in order to perform a certain service, but also an asset which would generate proceeds for financing the operational expenses of a waqf. These independent source of income enabled religious and other scholars to take independent positions on political and social topics. Furthermore, the system of awqaf made it possible that educated persons did not only come from the rich or ruling class. However, this important social system has been targeted by different groups, who wanted to change or eliminate the distinguish lifestyle of Muslims. Muslims in Sandzak have lost many of their awqaf due to pogroms, agrarian reforms, nationalisation and other political interests by Muslim and Non-Muslim politicians. The confiscation and destruction of Muslim property - private and awqaf - forced many Muslims to leave their place of birth and go especially to Turkey and later to Western European countries.

After the end of communist rule in Sandzak in the 1990s the Islamic community in Serbia tried to revive waqf institutions by reopening and renovating

50 Agency for Restitution of the Republic of Serbia, <http://www.restytucija.gov.rs/latinica/direkcija-za-restituciju.php> (Accessed 2 June 2015).

mosques, reopening the male madrassa in 1990 and female madrassa in 1996, opening kindergartens for pre-school education, opening the International University of Novi Pazar in 2002 as a waqf providing education for all citizens independently of religious affiliation and opening of soup kitchens for the poor and needy as a waqf. So the Islamic community pay special attention to develop an education system according to the principles of awqaf and helping poor and needy received from its awqaf revenues. However, these projects face many challenges, especially political ones. The restitution of property to the Islamic Community is not enforced, because the state artificially established a parallel Islamic community and is not very interested to return valuable assets to the Islamic community. Furthermore, private individuals try to take over waqf property for their personal gain. Because the application of law in Serbia is very low and corruption widespread, the Islamic community has been continuously struggling for their right to retake waqf property in order to use this property for the general welfare of Muslims, as well as non-Muslim. As long as there are functional awqaf in Sandzak, there will also be Muslims in this region.

Bibliography

Archives of the Islamic Community in Serbia.

BEGOVIĆ, Mehmed, *Vakufi u Jugoslaviji*, Beograd, SANU, 1963.

CRNOVRŠANIN, Harun and Sadiković Nuro, *Kako se kalio Sandžak*, Frankfurt/Main, Sandžačka riječ, 2005.

DURMIŠEVIĆ, Enes, Vakufi u različitim političkim sistemima - odnos vlasti prema vakufima, posebno nakon agresije na BiH, *Novi Muallim*, Vol. XII, No. 47, 2001.

HRVAČIĆ, Esad, Vakuf – trajno dobro, Sarajevo, El-Kalem, 2001.

KAHF, Monzer, "The Role of Waqf in Improving the Ummah Welfare", http://monzer.kahf.com/papers/english/ROLE_OF_WAQF_IN_THE_WELFARE_OF_THE_UMMAH.pdf (Accessed 1 June 2013),

KAHF, Monzer, "Waqf: A Quick Overview", http://monzer.kahf.com/papers/english/WAQF_A_QUICK_OVERVIEW.pdf (Accessed 1 June 2013)

KARČIĆ, Fikret, Međunarodnopravno regulisanje vakufskih pitanja u Jugoslavenskim zemljama, Anali GHB, IX-X, 1983

Law on Agrarian Reform and Colonisation, Official Gazette of the Democratic Federal Yugoslavia, No. 64/45, which entered into force on 28 August 1945

Law on Amendments to the Law on Nationalization of Private Economic Enterprises, Official Gazette of the Federal People's Republic of Yugoslavia, No. 35/48, which entered into force on 28 April 1948.

Law on Nationalisation of Leased Buildings and Construction Land, Official Gazette of the Federal People's Republic of Yugoslavia, No. 52/58, which entered into force on 28 December 1958.

Law on Nationalisation of Private Economic Enterprises, Official Gazette of the Federal People's Republic of Yugoslavia, No. 98/46, which entered into force on 5 December 1946.

Law on Returning (Restitution) of Property to Churches and Religious Communities, Official Gazette of the Republic of Serbia, No. 46/06.

Law on the Confirmation and Amendments to the Agrarian Reform and Colonisation, Official Gazette of the People's Republic of Serbia, No. 4/1946

Law on the Islamic community, Official newspaper of the Kingdom of Yugoslavia, No. 29/1930

MAHMUTOVIĆ, Suad, "Višedecenijsko uništavanje vakufa u Bosni i Hercegovini", *Novi Muallim*, No. 32, 2007

Sahih al-Bukhari, <http://sunnah.com/bukhari/55/32> (Accessed 3 November 2015)

Sahih Muslim, <http://sunnah.com/muslim> (Accessed 3 November 2015)

Treaty of Saint-Germain-en-Laye, <http://treaties.fco.gov.uk/docs/pdf/1919/TS0011.pdf>
(Accessed 15 November 2015)

TUHMAZ, Abdulhamid M., Hanefijski Fikh, Book 2, Sarajevo, Grabus

<http://www.bnv.org.rs/aktuelno/sandzak/>, (Accessed 2 November 2015)

<http://www.novipazar.com/turizam/lejlek-dzamija/> (Accessed 1 November 2015)

<http://www.novipazar.com/turizam/lejlek-dzamija/> (Accessed 1 November 2015)

<http://www.restitucija.gov.rs/latinica/direkcija-za-restituciju.php>, (Accessed 1 November 2015)

http://www.rijaset.ba/index.php?option=com_content&view=article&id=14780:historijsko-pravne-i-politicke-osnove-povezanosti-bosnjaka-bih-i-sandzaka&catid=207&Itemid=220 (Accessed 1 December 2014)

<https://en.wikipedia.org/wiki/Sand%C5%BEak>, (Accessed 1 September 2015)

https://en.wikipedia.org/wiki/Sanjak_of_Novi_Pazar (Accessed 1 September 2015)