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INTERNATIONAL REGULATION OF WAQF PROPERTY IN THE WESTERN BALKANS

Since the beginning of the 19th century, waqfs in Serbia shared the destiny of the Muslim population which-being bound to the Ottoman state – was at the receiving end of Serbian attempts to gain independence and establish their own state.

This paper deals with waqf property in the Western Balkans in the post-Ottoman period. The term 'Western Balkans' refers to countries of former Yugoslavia – Slovenia, Croatia, Serbia, Bosnia and Herzegovina, Kosovo, Montenegro, and Macedonia.

What is particularly characteristic of this period is that the legal position of Muslims in the independent nation states of the post-Ottoman Western Balkans came to be regulated by international conventions. Within these international conventions, waqf property was also regulated, which alone reveals the importance of waqfs in Muslims societies and inter-state relations. The problem of regulating waqf property in international conventions will be dealt with here by looking at the sociopolitical circumstances, content, form, as well as its legal and factual significance.

Scholarly work on this topic is still rather scarce. This work is mainly based on earlier works dealing with state building, political history, land property, and the legal position of ethnic and religious minorities. This issue was earlier studied by applying dogmatic-normative methods while in contemporary times the historical development of this institution is studied along with its reflection in legal theory.[1]

I

Since the beginning of the 19th century, waqfs in Serbia shared the destiny of the Muslim population which – being bound to the Ottoman state – was at the receiving end of Serbian attempts to gain independence and establish their own state.

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1 An example of such an approach is a work by Mehmed Begović, *Vakufi u Jugoslaviji*, Beograd, 1963.

During the first Serbian uprising (1804-1813) in the territories affected by the uprising, Muslims property was confiscated without compensation while their owners, if lucky enough, were forced to flee. The Ottoman state considered the uprising as a revolt against its own, legitimate state. Therefore, it established no diplomatic relations or contacts with the new state born out of the uprising. It is also due to this that there were no international legal documents dealing with Muslims or their property. During the same period, waqf property was either destroyed (as in the case of mosques), their purpose changed (converted to storages), became the property of Serbian landlords and beneficiaries, or along with other Muslim property, became state owned and was eventually auctioned off.[2]

After the second Serbian uprising, a joint Ottoman-Serbian rule was established (1815-1830) from where the autonomous Serbian state emerged. During that process, the Serbian leadership – with active Russian support – attempted to secure international legal guarantees to strengthen and build its state. In the legal documents concluded with that aim, waqfs were not explicitly mentioned although the legal position of the Muslims population was dealt with – which in a way also impacted the aforementioned institutions.

A separate Act added to Article V of the Convention of Akkerman signed on the 7.10.1826 between Russia and the Ottoman Empire forbade Muslims who did not belong to military garrisons to reside in Serbia and envisioned the concession of Muslim property to Serbian administration under the condition that their revenues were paid along with taxes to the Ottoman State – which were then passed on to their respective owners. Since the Ottoman Empire did not fulfill all its obligations under the Peace Treaty of Edirne signed on the 14.9.1828, it was compelled to promise how it would act in relation to them.

As international legal acts, both the Convention of Akkerman as well as the Treaty of Edirne indirectly obliged Ottoman state institutions.[3] They were also directly obliged by internal Ottoman legal acts – *firmans* – provided by the Sultans signature, which were, according to the Convention of Akkerman, to be announced to the Russian court and thenceforth considered part of the international agreement.[4]

The Sublime Porte (*Bab-i-Ali*) soon after 30.9.1829 promulgated the *Hatt-i-Serif* in which earlier regulations of international acts were mostly repeated. On the basis of negotiations held with Serbian representatives in Istanbul, on 15.7.1830, a *Hatt-i-Serif* was promulgated which laid out in detail the legal position of Serbia. In light of the Muslims population, stipulations of the mentioned act were repeated and specified. The entire Muslim population, except for the garrison members in cities, had to leave Serbia.[5]
With regard to Muslim property, they had varying destinies. Property which was legally considered part of state property (*erazi miri*) – such as *timars*, *ziamets*, and *mukatas* – were given to Serbs to administer. Their revenues were to be used to pay taxes. The private owners of goods (*mulk*) ''who wished to waive their ownership of such property'' were given a one year deadline

2 Branislav M. Nedeljković, *Istorija baštinske svojine u novoj Srbiji od kraja 18. veka do 1931*, Beograd, 1936, p. 159.

3 *Istorija država i prava naroda Jugoslavije*, Beograd, 1981, p.110.

4 Mihajlo Gavrilović, Miloš Obrenović, II, Beograd, 1909, p. 231.

5 In our historiography, it is often talked about the ''eviction of Turks from Serbia''. Inasmuch as such terminology suited the period when the word ''Turk'' connoted one's belonging to the Islamic faith, it is completely unsuitable today's use. It is a fact that a significant part of the Muslim population of then Serbia was made up by ethnic Slavs. The deputies of Duke Miloš in Istanbul stated that ''The Turks of Belgrade are the worst of the lot: all angry Arnauts (Albanians) and Bosniaks''. (M. Gavrilović, Miloš Obrenović, III, Beograd 1912, p.467).

to sell their property to Serbs – for a reasonable price. The revenues of property from those who ''were not willing to waive their ownership of such lands'' were to be, once estimated, handed over along with other taxes to the treasury of Belgrade and then passed on respectively.[6]

The question of the tax amount was not dealt with in this *Hatt-i-Serif* and it also proved that the one year deadline for Muslims to sell their property and leave was not sufficient. The *Hatt-i-Serif* of the 7.11.1833 regulated that too. A five year deadline was given, starting from the day the *Hatt-i-Serif* was promulgated, for Muslims to abandon their dwellings in counties around cities, except for the county of Belgrade. The revenues from *zaimets*, *timars*, and *mukatas* were to be included in the annual tribute.

The question posed here is: what happened to waqfs, which in the Ottoman property system, enjoyed special treatment?

Most noticeable of all is that not in one *Hatt-i-Serif* were waqfs explicitly mentioned. Confusing is the fact that the Ottoman Empire, whose head of state carried the title of Caliph, did not put in the effort to include in its acts stipulations securing the interests of waqfs and all that at a time when the same acts also secured state and private property. Perhaps the answer should be sought analogically with one position adopted at a conference in London on the 16.6.1830 – the same approach taken by Dr. Branislav M. Nedeljković in a study on Serbian property heritage.[7]

At that conference dealing with the case of Greece, it was agreed that waqf land, in principle at least, belonged to state property.

It could have been the same in the case of Serbia and that compensation for waqf property was paid along with compensation for state and private property. According to this interpretation, waqf property was bound to the Ottoman state and not to the local Muslim population, for whose use it mainly served. The destiny of waqf property was decided likewise. However, binding waqf property to the local Muslim population, concretely in the case of 19th century Serbia, would most probably not have changed the flow of events. This was because during that time Muslims in central and southeast European territories experienced the same destiny as the Ottoman state and its social structures (B. Nedeljković has written in detail what exactly happened to waqfs in Serbia).[8]

Up until 1836 waqf property was considered part of Serbian state property. That same year it was decided for it to be sold off. The State Council (*Soviet*) selected a commission tasked with estimating the value of waqf property and then charging that estimated value from persons using it or willing to buy it. After the promulgation of the so called 'Turkish constitution' in 1838 that too was changed with the decision to ''concede waqf property around mosques to local churches''. The Soviet of the Serbian Duke (*Knez*) confirmed this position with a decision from 1839 where it was stated that all waqf land parcels must belong to the church. Trade agreements that were concluded regarding this property with private individuals were annulled. The church was given the right of ownership of waqf property, but not the right to use it. On the other hand in places were Muslims, according to the *Hatt-i-Serif* of 1833, had the right to live, the local functioning mosque was considered the owner of that waqf property. The holders of waqf property had to pay a so-called *waqf rights fee* to the mosques.

6 B. Nedeljković, op.cit., p.188; M. Gavrilović, op.cit., III, p.606.
7 B. Nedeljković, op.cit., p. 189.
8 Ibid, pp. 186-188.

This situation remained until 1862, when after the violence in Belgrade, it was decided at the conference in Kanlica that the entire Muslim non-military population had to move out from towns and counties (including Belgrade, Užice, Sokol, Šabac, Smederovo and Kladovo). In the protocol signed after this conference (23.VIII 1862) it was established that according to the principle of mutuality, compensation was to be paid for property belonging to the expelled Muslim population along with compensation for property damaged as a result of the violence. For the implementation of this clause, a civilian Ottoman-Serbian commission was formed. After long and painstaking negotiations, it completed its work in 1865 with the agreement that the Sublime Porte be paid a total sum of 9 million groschen for all compensations in accordance with the Kanlica conference protocol. There was not much word on the compensation of waqfs. The Ottoman side tried only to have Muslim cemeteries and mosques in counties (which fell under the jurisdiction of waqfs) left to ''its discretion''. However, the Serbian side was against this, pointing out that this could affect the administration of these counties.[9] It could be assumed that the final compensation sum included compensation for waqf property as well.

In 1867 when Ottoman garrisons left Serbia, a special Law on Waqf Property was promulgated. The first two paragraphs of this law regulated relations between the church and the proprietors of former waqf land, while paragraph 3 extended the application of these regulations to waqfs which were until 1862 considered part of mosques.

II

After the Ottoman defeat during the 1876-1878 wars, the territory where Ottoman rule ceased to exist was expanded. The defeat of the Ottomans and the policies of newly found states resulted in the expulsions of great numbers of Balkan Muslims. It was a ''classical way of solving the eastern question.''

The treaty of San Stefano concluded on the 3.3.1878 between Russia and the Ottoman Empire envisioned the territorial expansion of Serbia and Montenegro on territories inhabited by Muslims. This treaty contained stipulations on Muslim property in territories annexed by Serbia. It presented the first international legal document on relations between the Ottoman Empire and Serbia where the issue of waqfs was explicitly mentioned, along with its possible solutions.

Article IV of this treaty stated that:

The Mussulmans (Muslims) holding lands in the territories annexed to Serbia, and who wish to reside out of the Principality, can preserve their real property by having them farmed out or administered by others. A Turkish-Serbian Commission, assisted by a Russian Commissioner, will be charged to decide absolutely, in the course of two years, all questions relating to the verification of real estate in which Mussulman interests are concerned. This Commission will also be called upon to settle within three years the method of alienation of State property and of religious endowments (Vacouf), as well as the questions relative to the interests of private persons which may be involved. Until a direct Treaty is concluded between Turkey and Serbia determining the character of the relations between the Sublime Porte and the Principality, Serbian subjects travelling or sojourning in the Ottoman Empire shall be treated according to the general principles of international law.[10]

9 For more on this, see Jovan Ristić, *Spoljašnji odnošaji Srbije novijega vremena*, II, Beograd, 1887, pp.153, 277-279.

10 The Preliminary Treaty of Peace, signed at San Stefano, available at http://pages.uoregon.edu/kimball/1878mr17.SanStef.trt.htm (accessed May 2, 2012).

According to Article IV of this treaty, a joint Ottoman-Serbian commission was to be formed in which a Russian commissar had the duty to 'settle within three years the method of alienation of State property and of religious endowments (Vacouf), as well as the questions relative to the interests of private persons which may be involved.'[11] This clause of the San Stefano treaty completely maintained the position of the newly formed states, or rather their powerful protector, towards Muslims. Efforts to bind the Muslim population with the new state structures were not put in. Waqfs were treated as property of the Ottoman Empire. For them, only their method of alienation and regulation of related private interests was envisioned. For Montenegro, not even this kind of obligation was prescribed – not in view of waqfs nor in view of any other Muslim property. (Prof. Vaso Ćubrilović explains this by stating that the expulsion of Muslims from annexed fertile plains of Montenegro was due to economic as well as political reasons. Therefore, the Russian representatives failed to include in the San Stefano similar clauses as those prescribed for Serbia and Bulgaria)[12].

As an expression of Russian triumph, the San Stefano peace treaty met with the disapproval of major European powers. For its revision, a Congress of major European powers was held in Berlin on the 13.6.1878. In the treaty which was concluded at the end of this Congress, a number of clauses dealing with Muslims and their property in Serbia and Montenegro were included. The inclusion of these clauses came as a result of the English representative's efforts. (The acceptable reasoning behind this could be attributed to the anti-Russian feelings of the then English government. It could also have been due to the impact of European public opinion which was unhappy with the policies of newly formed Balkan states towards their Muslim populations, but also to the spirit of legitimism – which, thanks to Bismarck, pervaded the congress.)[13]

Within the Berlin peace treaty, Serbia and Montenegro obliged themselves to respect the property rights of Muslims on annexed territories (article XXXIX for Serbia and XXX for Montenegro). In that frame, the regulation of waqf property was also included.

Article XXXIX stated that:

Les musulmans qui possedent des proprietes les territoires annexes a la Serbie, et qui voudraient fixer leur residence hors de la Principaute, pourront y conserver leurs immeubles en les affermant ou en les faisant administrer par des tiers. Une Commission turco-serbe sera chargee de regler, dans le delai de trois annees, toutes les affaires relatives au mode d'alienation, d'exploitation ou d'usage, pour le compte de la Sublime Porte, des proprietes de l'Etatet des et des fondations pieuses (*vacoufs*), ainsi que les questions relatives aux interets des particuliers qui pourraient s'y trouver engages.[14]

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11 J. Ristić, *Diplomatska istorija Srbije za vreme srpskih ratova za oslobođenje i nezavisnost 1875-1878*, Beograd, 1898, II, p. 137.

12 Vaso Ćubrilović, *Politički uzroci seoba na Balkanu od 1860 do 1880. god.*, Glasnik Beogradskih društava, Beograd, 1930, sv. XVI, t.XVI, p.45.

13 Vladimir-Đuro Degan, *Međunarodnopravno uređenje položaja Muslimana sa osvrtom na uređenje položaja drugih vjerskih i narodnosnih skupina na području Jugoslavije*, Prilozi Instituta za istoriju radničkog pokreta u Sarajevu, 8 (1972), p.61; Novak Ražnatović, *Crna Gora i Berlinski kongres*, Cetinje 1979, p. 82. We do not agree with the position taken by the author of the latter work who states that due to the protection of Muslim property ''the results of the anti-feudal, liberating struggle of Montenegrians in Berlin were verified in the direction of conservative intentions and principles''. That would mean that the entire Muslims population in Montenegro belonged to the feudal class, which is far from true.

14 W.N. Medlicott, *The Congress of Berlin and after: A diplomatic history of the Near Eastern Settlement 1878-1880*, Second Edition, Routledge, 1963, pp.415-416.

The obligation of both states in light of waqf property was the same: a mixed commission (Ottoman-Serbian and Ottoman-Montenegrin) was given the task of solving for the Sublime Porte, within three years, all questions dealing with the confiscation and use of property which belonged to state and religious foundations (waqfs). This also included issues pertaining to the relationship of individuals who were also involved.[15]

As it is seen, in light of regulating the question of waqfs, the Berlin treaty had similarities with the San Stefano peace treaty but also significant differences. For instance, both treaties envisioned a joint body which would regulate the question of waqfs (an inter-state commission). The same procedure was to be used for waqf and state property. They both dealt with waqf property in annexed lands, but not in areas that earlier belonged to the mentioned states. On the other hand, the make-up of bodies which regulated the question of waqf property was different. (The San Stefano treaty envisioned a Russian commissar in the Ottoman-Serbian commission.) So was the task at hand (according to the San Stefano treaty, the commission needs only to regulate the means of alienating waqf property, but according to the Berlin Treaty – it deals with all questions pertaining to confiscation, usurpation, and use of such property for the benefit of the Ottoman Empire). Likewise, we notice that both treaties speak about waqf property in general terms and envision the same procedure for all waqf property (''dues to the Sublime Porte'') although it is well known that, regarding the means of management, there existed different kinds of waqfs of which some were directly managed by the Ottoman ministry of Waqfs (*evkaf-i-mazbuta*), others that were under the supervision of *avkaf-i-mulhaka*, while the third were under the supervision of *evkaf-i-mustesna* – and the ministry of waqfs did not interfere in its affairs. Among the latter, many were under the supervision of the local Muslim population.[16]

The question that begs for an answer here is: how were the obligations of the Berlin Treaty reflected upon the destiny of waqfs in the annexed territories of Serbia and Montenegro?

The stipulations of the Berlin Treaty concerning Serbia were proclaimed part of its legal system by a decree from the 10.8.1878. On the other hand, Montenegro did not oblige itself legally to implement stipulations concerning itself.[17] It is considered that these stipulations were silently accepted. In the then practice of international relations, decisions made by major powers were obligatory for smaller states, regardless of whether they accepted them or not.[18]

In the local language literature, even in works dealing with the Congress of Berlin, the implementation of stipulations dealing with waqf property is hardly mentioned. This question remained in the shadow of greater legal-political controversies which were sparked and enflamed after the conclusion of the peace treaty.

In the case of Serbia, B. Nedeljković mostly dealt with this topic in his aforementioned study. Since at the time of his writing he did not have access to the archives of the Serbian ministry of foreign affairs due to formal reasons, while the available sources and literature did not offer all the necessary information, he had to resort to assumptions. He adds that two possibilities existed: first, which is more likely, is that Serbia simply refused to adhere to the stipulations of Article XXXIX, clause 2 of the Berlin Treaty (which is proved by the fact that on all territories oc-

15 J. Ristić, op.cit., 264, Dr. Ilija Radosavović, *Međunarodni položaj Crne Gore u XIX vijeku*, Beograd, 1960, p. 109.

16 Dr. Milan J. Pećanac, *O Vakufima i njihovim glavnim vrstama, sa naročitim osvrtom na vrste vakufa u Carigradskom ugovoru o miru između Srbije i Turske*, Beograd, 1914, pp. 16-17.

17 For more, see J. Ristić, op.cit., pp.255-267.

18 I. Radosavović, op.cit., p.66.

cupied during combat, mosques were either destroyed or converted to storages). The second possibility is that there was some kind of agreement which was probably not carried out (in state debts, there was no mention of such payments).[19]

As for Montenegro, it is clear that she used all possible means to evade her obligations from article XXX of the Berlin Treaty.[20] Regarding these obligations, existing literature mostly talks about the destiny of private property whose owners fled Montenegro. This problem was in the shadow of the Ottoman-Montenegrin demarcation where the Montenegrin government managed to have it solved in its interest. In different ways, most property belonging to fleeing Muslim population was confiscated without compensation. The representatives of Austro-Hungary and England unofficially labeled this policy as a violation of the Berlin Treaty.[21]

In resolving the question of property belonging to the fleeing Muslim population, a number Ottoman-Montenegrin treaties were signed, including a convention between representatives of these two states signed on the 25.11.1880 in the village of Kunje (in which the regulation of waqf and state property was mentioned).[22] These acts were not respected, however, and so the problem of Muslim property was open for some three decades and added burden to the already tense Ottoman-Montenegrin relations.

In the absence of other details, based on these facts we can conclude that the stipulations of the Berlin Treaty regarding waqfs in Montenegro were not implemented.

Article XXV of the Berlin Treaty gave Austro-Hungary the right to occupy Bosnia and Herzegovina but it did not explicitly get any international legal obligation pertaining to the administration and treatment of its population. Therefore, such an obligation did not exist towards Muslims nor towards their property – among which waqfs, according to social, economic, and cultural importance, enjoyed an esteemed position. That question was left to the Austro-Hungarian and Ottoman Empire to regulate. However, according to international law, occupation assumes maintaining the existing status quo and legal order on occupied territories. If the stipulation of Article XXV is viewed in this light, Austro-Hungary had the obligation to maintain the existing status quo regarding waqf property as well.

The Convention of Constantinople from the 21.4.1879 did not deal with any questions pertaining to waqfs. However, article II pointed out that the Austro-Hungarian military and civilian authorities would protect the honor, traditions, freedom of religion, and security Muslims and their property.[23] The Austro-Hungarian authorities undertook a number of measures for establishing what exactly constituted waqf property and created a new organization of waqfs under their own control. This was later expressed in the form of an order by the Provincial Government of Bosnia and Herzegovina no.644438/I from 1894.[24] Such a policy, even with positive administrative and economic effects, due the obvious mingling of a Christian state into the internal affairs of an Islamic institution, led to Muslim dissatisfaction and a movement for waqf-mearif autonomy in Bosnia and Herzegovina.[25]

19 B. Nedeljković, op.cit.,p.276, note 1.

20 See, Dr. Žarko Bulajić, *Agrarni odnosi u Crnoj Gori (1878-1912*), Titograd, 1959, p.31 and further.

21 N. Ražnatović, op.cit., p.227.

22 Ibid, p.293.

23 Up. V. Degan, op.cit.

24 *Glasnik zakona i naredaba za Bosnu i Hercegovinu*, XV/1894, pp. 167-178.

25 For more see Dr. Nusret Šehić, *Autonomni pokret Muslimana za vrijeme austro-ugarske uprave u Bosni i Hercegovini*, Sarajevo, 1980.

The Ottoman state recognized the Austro-Hungarian annexation of Bosnia and Herzegovina by signing a Protocol on Bosnia and Herzegovina and the former Sanjak of Novipazar on the 26.2.1909. Austro-Hungary also obliged itself to guarantee civil-political equality and religious freedoms to Muslims. In article IV which regulated it, it was stated that: 'the rights of waqfs shall be respected as before'.[26] This international legal act did not specify the obligations of Austro-Hungary towards waqfs but that was left to its internal normative ordering.

At the same time, the autonomous movement came to a position where an agreement with the Austro-Hungarian authorities was possible regarding a significant number the requests. The result of all this was the promulgation of the 'Statute for the autonomous administration of Islamic religious and waqf-mearif affairs in Bosnia and Herzegovina' from the 15.4.1909). With that, the principle of autonomy and election of bodies that govern waqfs was established, while the jurisdiction of Shari'a courts was reaffirmed regarding waqfs.

III

After the Balkan wars (1912-1913) Ottoman rule ceased to exist in the Sanjak of Novipazar, Kosovo, and Macedonia. Soon, on the 14.3.1914 in Istanbul, a Treaty was signed between Serbia and the Ottoman Empire. During the negotiations prior to the signing of the agreement, the question of waqfs turned out to be one of the most difficult and received great publicity in the then Balkan and European press.[27]

All that resulted in the fact that the Treaty of Constantinople of 1914 dealt with the position of Muslims who came under Serbian rule in the most detailed way since the question of this religious and national group became a subject of international legal regulation. In that sense, the position of waqfs in annexed territories was also regulated.

Article VII of the Treaty of Constantinople envisioned that: waqfs which were established according to Ottoman laws before the Serbian annexation will be respected regardless of their type (*ijare-i-vahide*, *ijareteyn*, *mukata'a*) as well as management (*mazbuta*, *mulkhana*, *mustesna*); the purpose of the waqfs can be changed with prior and just compensation; Muslim municipalities would administer waqfs according to Shari'a norms and as legal bodies are considered their owners; the rights of the *mutevelli* and the *galedar* (the user of the waqf property) shall be respected; Muslim municipalities will administer even the waqfs whose revenues belong to institutions found in the Ottoman Empire – until the Ottoman ministry of waqf does not sell them, whereby Serbian subjects shall have priority among equals with other potential buyers; the government of the Kingdom of Serbia is required to offer help to religious, educational, social, and other institutions if they were prevented from functioning due to the abolishment of *dim-waqf*; any conflicts over the interpretation or implementation of this article shall be solved through mediation at the Hague.[28]

Apart from that, with this treaty the administration and supervision of waqfs, especially regarding its finances, was placed under the authority of the mufti who also performed the function of the Shari'a judge (Article VIII).[29]

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26 V. Degan, op.cit., p. 74.

27 During that time M. Pećanac, professor at the University of Belgrade, wrote a paper on waqfs, to which we have referred a number of times in this work.

28 M. Pećanac, op.cit., pp. 18-19.

29 V. Degan, op.cit., p. 81.

After its signing, the Constantinople peace treaty was ratified but in Serbia it was not made statutory. As it is well known, the Ottoman Empire sided with the Central powers during WWI, and so the Serbian government declared this treaty null and void.[30] That way, a legal act which in the best of terms regulated the position of Muslims and waqfs – was left without its practical implications. Muslim religious administration as envisioned in this treaty was not carried out. The legal regulation of waqf property, management and jurisdiction at times of litigation – was left to the Kingdom of Serbs, Croats, and Slovenes to regulate.

IV

After the First World War and the creation of the first Yugoslav state, the question regarding the position of the Muslim population in those territories was once again brought into light. During that time, a new international legal institution known as the 'protection of minorities' came into being. It expressed the educational corrective of new states on the principle of ethnicity, and was tasked with protecting citizens of a given state who differ from other citizens due to their race, language, or religion. Within its framework, the position of Muslims in the newly formed Yugoslav state was regulated. The entire Muslim population (Muslims as well as members of the Albanian and Turkish ethnic groups) were treated as one religious minority. Due to such treatment, certain international legal acts contained only stipulations dealing with the religious life of Muslims or their religious characteristics.[31]

Article 51 of the Peace Treaty between Austria and the Kingdom of Serbs, Croats, and Slovenes signed on the 10.9.1919 in San Germaine, obliged the Yugoslav state to accept all regulations which the Great Powers considered necessary for the protection of minorities.[32] It added that:

The Serb-Croat-Slovene State accepts and agrees to embody in a Treaty with the Principal Allied and Associated Powers such provisions as may be deemed necessary by these Powers to protect the interest of inhabitants of that State who differ from the majority of the population in race, language or religion.

These obligations were further clarified in special acts along with the aforementioned article – in literature known as the Treaty on the Protection of Minorities. Apart from the general protection of religious freedoms, this treaty contained a special article dedicated to Muslims (Article 10). It guaranteed the personal and family status of Muslims, promised to undertake measures for the appointment of the religious leader - *Reis-ul-Ulema* - and offered protection of mosques, cemeteries and other religious institutions. It added that ''all necessary mitigations and permissions be granted to religious foundations (waqfs) and religious and charitable Muslim foundations, which already exist, and that the Kingdom of Serbs, Croats, and Slovenes will not withhold any benefit for the creation of new religious and charitable foundations, which is guaranteed to other private foundations of the same type''.[33]

The inclusion of stipulations dealing with the protection of minorities into peace treaties was the result of the general stance of the United States of America and other Great Powers, which through such means wanted to prevent possible conflicts and misunderstandings in the newly

30 Ibid, p. 82.

31 The specificity of the protection of Muslims and within its framework the protection of waqfs using the protection of minorities institution, was not in material nature but rather in providing international legal guarantees. For more see Dr. Ilija Pržić, *Žaštita manjina*, Beograd, 1933, p.272, pp.295-298.

32 Dr. Ilija A. Pržić, op. cit., pp.111-114.

33 Ibid, p.123.

found states. The inclusion of a special article dedicated solely to Muslims came about as the result of positions taken by French, Austrian, and Ottoman diplomats. A book on the position of Bosnian Muslims in the creation of the Yugoslav state, written by the French journalist Charles Rivet, perhaps had some influence too (*En Yugoslavie*, Paris 1919).[34]

In any case, for the Yugoslav government it was somewhat inconvenient that this stipulation entered the peace treaty with Austria since it could be viewed that Muslims came from a better position to a worse one and that the Austrian government was their protector. Both treaties were declared statutory through temporary laws on the 10.5.1920.[35]

The most important aspect of these acts was the protection of waqfs within the framework of the protection of minorities which drew international guarantees and protection before the League of Nations. In international legal scholarship, the stipulations in Article 10 of the Treaty of the protection of minorities and similar stipulations for other religious and national minorities were interpreted differently.[36]

For some authors, it was about minority rights, while for others it was about personal autonomy (without any political connotations). Here we can refer to the thoughts to a pre-war Yugoslav lawyer Dr. Ilija Pržić, who believed that this was about adapting the treaty to the existing situation in a particular country. According to him, these international legal obligations protected the particularities of a given religion but it was left to the legislature of the same state to create a broader or narrower autonomy for that religious community.

It is important to note that the obligations from Article 10 extended to all Muslims and waqfs in the Yugoslav state, even with the Yugoslav governments attempts (during negotiations) to exclude territory belonging to the Kingdom of Serbia prior to the beginning of World War I. That way, they wanted to exclude the implementation of this stipulation from the southern parts of Serbia, annexed after 1912 and 1913 on which that state – as it was pointed out – had ‘’acquired rights’’.[37]

Article 10 talked about waqfs in general terms, so the Yugoslav state had to, through its legislation, make these obligations concrete. The question posed here is: did the Yugoslav state, with its normative politics, give waqfs ‘’all the necessary benefits and permissions’’[38]?

In Bosnia and Herzegovina during the time of the Yugoslav Kingdom, the ‘’Autonomous statute’’ continued to be valid. In comparison with the regulations of waqfs in Serbia and Montenegro, it provided better solutions for fulfilling the goals of waqfs. In light of international obligations from article 10, it was expected that the validity of this act extended to other parts too. However, that did not happen.

The 1894 Austro-Hungarian Order, against whose regulations the autonomous movement was, served as a basis for the Regulation of the Administration of Waqfs in the Kingdom of Serbs,

34 V. Degan, op.cit., p. 92; Atif Purivatra, *Jugoslovenska muslimanska organizacija u političkom životu Kraljevine Srba, Hrvata i Slovenaca*, Sarajevo, 1977, p.66, note 14.

35 I. Pržić, op. cit., p.117.

36 Ibid, pp. 223-224.

37 Ibid, pp. 111-114.

38 In presenting the normative policies of the Yugoslav state towards the Islamic Religious Community, we largely adhered to Mustafa Imamović, *Pravni položaj verskih zajednica u vreme šestojanuarske diktature*, MA thesis, Beograd, 1967.

Croats, and Slovenes (except Bosnia and Herzegovina) dated on 12.9.1919 as well as the Law on the Administration of Waqfs from the 28.2.1922. With these legal acts, the religious organization of Muslims outside of Bosnia and Herzegovina was organized as part of the state administration. The ministry of Justice had administrative and supervisory powers. In such a way, waqfs outside Bosnia and Herzegovina in the normative and organizational view, were brought in a direct relationship with state bodies and practically became an object of usurpation and destruction by territorial authorities but individuals too. In such circumstances, the negative role was played by unscrupulous religious leaders, administrators and beneficiaries of waqf property.

Such a situation worsened during the 6th January regime, when the Law on the Islamic religious Community of the Kingdom of Yugoslavia dated 31.3.1930 abolished the validity of the ''Autonomous statute'' in Bosnia and Herzegovina, reorganized this religious community and in its leadership introduced regime-friendly staff.

Paragraph 5 of this law added that the Islamic Religious Community ''freely uses its religious property, waqfs, within the limits of this law and its constitution, under the supreme supervision of the state.''[39] The imposed constitution repeated in article 11.3 the stipulation from article 12.3 of the Vidovdan Constitution according to which the administration of foundations and funds within the limits of law, fell under the jurisdiction of recognized and adopted religions.

From the normative point of view, the administration of waqfs was regulated the same way as the administration of foundations of other state-recognized religions. For instance, paragraph 2 of the Law on the Serbian Orthodox Church dated 8.11.1929 pointed out that this church independently manages and freely makes use of church property, church funds, and church foundations – within the limits of the law and the church's constitution, under the supreme supervision of the state.[40] However, right after the promulgation of the Law on the Islamic Religious Community, on the 5.2.1939 the government brought a Regulation on the Temporary Organization of authority and affairs of the Islamic Religious Community in Kingdom of Yugoslavia.

According to this regulation, the role of the state was not limited to supervision. The Ministry of Justice became the highest administrative authority for waqf-mearif affairs in the entire Yugoslav territory. In such a way, the ''legal borders'' mentioned in the constitution were narrowed through bylaws. Only after changes were made in the organization and management of the Islamic Religious Community in 1936, certain changes in the administration of waqfs also came about. On the other hand, the authority of Shari'a courts pertaining to waqf affairs was mostly respected. This is understandable since the administration of waqfs was a powerful means of steering the entire Islamic Religious Community and other Muslim organizations.

We can conclude that the normative policies of the Yugosalav state were an expression of the government policies towards the Muslim population and maintained the general position, strength, and respect of the religious and political representatives of this community. Yugoslav monarchy, which throughout its existence did not provide equal treatment between the recognized and adopted religions, was not able to provide for the implementation of international legal obligations regarding waqfs the same treatment as for 'other private institutions of the same type'.

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39 M. Imamović, op.cit., p.121.

40 Ibid, p. 118.

International legal documents which regulated relations between various Western Balkan nations towards their Muslims populations also regulated certain issues pertaining to waqfs. It mostly dealt with the public ordering of this institution. The very establishment of waqfs and cases where waqf property was not questioned was left to the domain of Shari'a law and Ottoman state law. Throughout the decades, the international legal regulation of waqf property expressed not only different positions towards this institution but also towards Muslims as a whole. Progress was made from the preliminary position whereby waqf property was bound and shared the fate of the Ottoman state to being bound to the local Muslim population. Waqf questions were regulated in bilateral international agreements, collective agreements, and at one time – it even received international guarantees through the League of Nations. As with all international legal obligations, obligations pertaining to waqfs had to be made statutory through internal laws of the concerned states.

However, even though international law regulated, sometimes in great detail, the position of waqfs – more often than not such obligations were not carried through in the Western Balkan states.