

# ADMINISTRATION AND DENATIONALIZATION OF WAQF PROPERTY OF THE ISLAMIC RELIGIOUS COMMUNITY IN THE REPUBLIC OF NORTH MACEDONIA: HISTORICAL ROLE, LEGAL FRAMEWORK, AND THE CHALLENGES OF PROPERTY RESTITUTION

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## Abstract

This academic paper examines the institution of waqf (Islamic endowment) in the territory of the Republic of North Macedonia (RNM), addressing three interconnected dimensions: the historical and social role of waqfs during the Ottoman period; the administration and legal transformations of waqf property across successive political regimes; and the process of denationalization of waqf properties belonging to the Islamic Religious Community (IRC). The waqf, as an instrument of Islamic law, served as the primary pillar of cultural, educational, humanitarian, and economic development in this territory from the fourteenth until the twentieth century, when communist regimes applied systematic nationalization and mass confiscation of religious properties. The paper draws on original *waqfiyyas* (endowment deeds), archival documents, court decisions, and the positive legislation of the RNM, critically evaluating the legal deficiencies and inequalities embedded in the Law on Denationalization of 1998. Employing historical, juridico-normative, analytical, and statistical methods, the paper demonstrates that the denationalization process has been protracted, inconsistent, and frequently discriminatory against the IRC, leaving a sig-

nificant number of waqf properties outside effective legal protection. The conclusions and recommendations aim to contribute to reforming the legal framework and ensuring the full restoration of the IRC's property rights in the RNM.

**Keywords:** *Waqf, Denationalization, Islamic Religious Community, Republic of North Macedonia, Islamic law, Waqf administration, Waqfiyya, Property confiscation, Legislation.*

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## Intrudiction

The institution of waqf constitutes one of the fundamental pillars of Islamic civilization and has served as the primary mechanism of social solidarity, educational financing, and cultural heritage preservation across Islamic empires. In the territory of the present-day Republic of North Macedonia, the first waqfs were established with the Ottoman conquest in the fourteenth century and developed over five centuries into a sophisticated institutional system. Mosques, madrasas, tekkes, libraries, imarets, and the urban infrastructure of major cities such as Skopje, Tetovo, Bitola, and Ohrid were built and maintained through waqf endowments.

The twentieth century brought dramatic changes to the waqf institution in these territories. The Yugoslav communist regime treated waqf property as an obstacle to ideological centralization of the state, applying, through agrarian reforms and nationalization laws, the mass confiscation of IRC assets without compensation. With the collapse of communism and the declaration of Macedonian independence, the legal process of denationalization began — the restitution of property unjustly confiscated from institutions and individuals. However, this process was not free of serious shortcomings. The Law on Denationalization adopted in 1998, as amended in 2000 and 2003, was applied with double standards toward Islamic religious institutions, resulting in the exclusion of a large number of waqf properties from the restitution process.

The case of Harabati Baba Tekke, the properties of the Tetovo Mufti's Office, and numerous other waqf sites remain unresolved to this day, as reflected in contradictory court and administrative decisions.

This paper analyzes the condition of waqfs in the RNM through a multi-disciplinary approach — historical, legal, and social — relying on primary

sources including Ottoman *waqfiyyas*, archival documents from the State Archive of North Macedonia (ДАРМ), court and administrative decisions, and positive legal sources. The paper is organized into three main sections:

- (1) the historical and social role of waqfs during the Ottoman period;
- (2) the administration and legal transformations of waqfs across successive political regimes; and
- (3) the denationalization process of IRC waqfs, with a particular focus on the Tetovo region.

## 1. The historical and Social Role of Waqfs in the Territory of the Republic of North Macedonia

### 1.1 *The Waqf as an Institution of Islamic Civilization*

The term *waqf* — from the Arabic root meaning ‘to halt, to stop, to deprive’ — denotes the perpetual endowment of property by its owner for religious, charitable, or public benefit purposes. According to the *Islamic Religious Encyclopedia* of the Turkish Directorate of Religious Affairs (DIA, 1986, vol. 42, p. 475), the waqf is ‘a charitable organization established through a legal process, consisting in the permanent donation of property for the fulfillment of religious and social purposes.’ This concept grants the waqf the status of a sui generis legal entity in Islamic law: endowed property becomes the property of God (*habs*), while its management is entrusted to persons and institutions appointed for that purpose.

Waqfs can be classified according to several criteria. By the nature of ownership, they are divided into original waqfs (land, movable and immovable property) and irsadi waqfs (revenues from state-owned land designated for public services). By purpose and beneficiary, they are distinguished as charitable waqfs, zurrî waqfs (family/hereditary endowments), and public interest waqfs (imarets, hospitals, libraries, bridges). By income generation, waqfs are divided into those producing direct benefits (mosques, schools, fountains) and indirect ones (shops, inns, mills, vineyards), whose revenues finance the main waqf institutions (Çizakça, 2000, p. 24).

### 1.2 *Waqfs as the Foundation of Educational and Cultural Development*

Waqfs served as the primary support of Islamic educational infrastructure — *mektebs* (primary schools), *madradas* (secondary and higher schools),

libraries, and *zawiyas* — throughout the territory of the present-day RNM. Historian Naser Ramadani notes that, according to the Ottoman traveler Evliya Çelebi, the number of madrasas in Macedonia in 1660 had reached twenty-four, while by the nineteenth century that figure exceeded forty-five (Ramadani, 1998, p. 82). The *waqfiyya* of Kukli Beg, authenticated in 1538, clearly attests that the endower had built two mosques functioning simultaneously as schools, providing students with clothing and food through waqf funds (Kaleši, 1972, p. 302).

The urban development of the RNM's principal cities is closely linked to waqfs. Skopje acquired its urban character through the waqfs of Yigit Pasha (14th century), Isa Bey, and Mustafa Pasha (15th–16th centuries), while Tetovo was distinguished by the waqfs of Sinan Çelebi and Koca Recep Pasha. According to records provided by the Waqf Directorate of Skopje in 1936, the Isa Bey Mosque was built in 884 AH, and that of Mustafa Pasha in 890 AH, financed by waqfs encompassing thirteen entire villages (ДАПМ, f. 613.23.91-96/378-414). The waqf was not merely a religious institution — it was the primary generator of the social, economic, and cultural organization of the Muslim community throughout the Ottoman period.

The economic power of waqfs should not be underestimated. According to Öztürk (2004, p. 41), waqfs controlled approximately 15–26% of the Ottoman economy between the seventeenth and nineteenth centuries. The imaret (public kitchen) of Harabati Baba Tekke in Tetovo was obliged, according to its original *waqfiyya*, to provide three daily meals to at least sixty poor persons and travelers (Barkan, 1963, p. 299). This demonstrates that waqfs fulfilled the clear function of a welfare state, covering needs that are today the responsibility of the public administration.

## 2. Administration of waqfs and legal transformations across political regimes

### 2.1 *Waqf Administration in the Ottoman Period*

The *waqfiyya* (notarial deed of endowment) was the fundamental legal document of every waqf. It set out in detail the purpose of the endowment, the list of properties, the appointment of the administrator (*mütevelli*), the salaries of staff, and the specific conditions imposed by the endower. The *waqfi-*

*yyas* examined reveal sophisticated legal instruments: the *waqfiyya* of Yahya Pasha, preserved in the Archive of the General Directorate of Waqfs (VGMA, 629/332), prescribes in detail the salaries of tomb custodians, conditions for Quranic recitation, and the distribution of revenues to descendants (VGMA, 629/332, pp. 421-422).

The *mütevelli* held a central role in waqf administration — he was bound to implement the conditions of the *waqfiyya*, manage properties, and report before the Islamic court (*qadi*). The Ottoman state control over waqfs was reinforced through the Ministry of Waqfs (Evkaf Nezareti), established in the nineteenth century. This institutional system guaranteed the continuity and functioning of waqfs as a source of public services, preventing misappropriation of endowment funds (Özcan, 2005, pp. 513-552).

## **2.2 Waqfs under the Kingdom of Yugoslavia and the Communist Regime**

With the Ottoman withdrawal and the integration of Macedonian territories into the Kingdom of Serbs, Croats, and Slovenes (1918), waqfs entered a period of serious legal uncertainty. The Kingdom of Yugoslavia imposed the first significant restrictions on Islamic waqfs — the Agrarian Reform Law of 1921 led to the expropriation of numerous waqf lands, while the Waqf Directorate in Skopje was subjected to continuous administrative pressure. Archival documents from ДАРМ reveal government initiatives to dispose of waqfs as ‘surplus property’ (ДАРМ, 6.1.34.43/820-822). The situation culminated in the dissolution of the Waqf-Educational Council (Vakufsko-Mearifski Sabor) of Skopje in May 1940, when the Ministry of Justice appointed a state commissioner (AJ, Fund 63, fasc. 135).

The communist period of Socialist Yugoslavia (1945–1991) delivered the fatal blow to the waqf system. The Agrarian Reform of 1945 and the nationalization laws of 1947–1958 confiscated the majority of waqf properties without any compensation. The ideological purpose was explicit: the Minister of Agriculture, Vasa Čubrilović, openly stated that the economic weakening of religious communities was a necessary precondition for socialist unification of the state (Radić, 2002, p. 179). The IRC was left legally diminished, with restricted property and financial competences, while its waqfs were transferred to communal enterprises, schools, and state institutions.

### ***2.3 Waqfs after Independence — The Legal Framework of the RNM***

With the declaration of Macedonian independence (1991), the IRC immediately began formal requests for the restitution of confiscated properties. The IRC Presidency submitted its first official letter to the Government in May 1991 (no. 509, dated 22.05.1991), demanding the restoration of waqf properties to their pre-confiscation status. The adoption of the Law on Denationalization (Official Gazette of the RNM, year LIV, no. 20, 29.04.1998) opened the legal avenue for property restitution, although the legal framework presented serious interpretative problems.

The 1998 Law provides for the restitution of properties expropriated after August 2, 1944 (Article 2), recognizing religious communities as entitled subjects. However, concrete application has shown that legal norms have been applied selectively against the IRC: numerous waqf properties have been rejected on grounds of changed land use or inaccurate cadastral registration, resulting in the continuation of de facto occupation even after the law's adoption (Shasivari, 2011). The fundamental deficiency of the law lies in the absence of effective alternative compensation mechanisms and binding administrative deadlines.

## **3. Denationalization of IRC Waqfs in the RNM- with Particular Focus the Tetovo Region**

### ***3.1 The Denationalization Process: Achievements and Obstacles***

The denationalization process of IRC waqfs in the RNM has followed a dual trajectory: on one hand, there are positively resolved cases in which property has been returned to the IRC — including certain mosques and land in Skopje and Tetovo; on the other hand, a considerable number of cases remain unresolved or has been concluded negatively for the IRC. The Skopje Mufti's Office submitted the first formal denationalization request under reference no. 19-08-715/1 (38) on 07.09.2000, followed by requests from the Shtip Mufti's Office (no. 19-385/07-2, dated 20.11.2007) and again from the Skopje Mufti's Office (no. 19-08-580/1 (554), dated 14.05.2002), clearly documenting the breadth of the problem.

The assessment of the Director of Waqfs of the IRC, Mr. Driton Dikena, highlights that judicial and administrative practice has demonstrated dou-

ble standards in the treatment of IRC denationalization cases compared to other legal subjects. Particularly problematic are cases where waqf property has been built upon or physically altered in the interim, which complicates the restitution process and frequently serves as grounds for rejection (Dikena, internal assessment). This legal approach has generated serious criticism from civil society and the Macedonian legal academy.

### ***3.2 Specific Cases: Harabati Baba Tekke and Tetovo Waqf Properties***

Harabati Baba Tekke of Tetovo, founded in the sixteenth century, represents one of the most sensitive and politically charged cases of waqf denationalization in the RNM. This site of extraordinary historical, cultural, and spiritual significance has been the subject of conflict between the IRC and the Bektashi Community. The property title of the tekke belongs legally to the IRC according to the original *waqfiyya*, but it was confiscated during the communist period. The denationalization of the tekke has been complicated by competing claims and divergent legal interpretations by the competent state bodies of the RNM (Bislimi, 2007, pp. 96-97).

Similarly, the Tetovo Mufti's Office has submitted multiple requests for the denationalization of various properties: land near the cemetery (cadastral parcel 3530, cadastral commune Tetovo-1), the Correctional House, and building land near the music school (parcel 1645, cadastral commune Tetovo-1). The IRC's internal register for Tetovo and its surrounding villages documents the actual number of properties historically belonging to waqf funds but not yet returned. The Mufti of Tetovo, Prof. Dr. Qani Nesimi, has publicly emphasized that delays in the denationalization process directly damage the IRC's capacity to provide religious and educational services (Nesimi, interview 2015).

### ***3.3 Critical Assessment of the Legal Framework and Recommendations***

Analysis of the denationalization process reveals several structural deficiencies in the legislation: (1) the 1998 Law contains no specific provisions for waqfs as a distinct category of property with the particular characteristics of Islamic law; (2) procedural deadlines are insufficient and impose no sanctions on administrative bodies that delay proceedings; (3) the criterion of 'new construction' on waqf properties is frequently invoked as grounds for rejection, without offering the IRC an equivalent alternative compensation;

(4) there is a lack of full transparency in the cadastral database and periodic reporting by competent bodies to religious communities.

Professor Jeton Shasivari has correctly argued that a restrictive interpretation of the law produces *de facto* discrimination against the IRC, by failing to treat the waqf as a category of property with constitutionally guaranteed status (Shasivari, 2011). This approach is incompatible with Article 19 of the Constitution of the RNM, which guarantees religious freedom and the right of religious communities to own property, and with the Ohrid Framework Agreement amendments (2001) on the equality of communities. The full and just denationalization of Islamic waqfs is not merely a matter of property rights — it is a question of historical justice and constitutional respect for the Muslim community in the RNM.

## Conclusion

This paper has examined the institution of waqf in the territory of the Republic of North Macedonia through a historical, legal, and social analysis, covering the period from the Ottoman foundations of the fourteenth and fifteenth centuries to the contemporary challenges of denationalization. The waqf has demonstrated rare institutional resilience: it has survived five centuries of Ottoman rule, two world wars, the Kingdom of Yugoslavia, and communism — and today it faces the difficult process of legal restoration.

Several conclusions emerge clearly from the analysis. First, waqfs played an uncontested and fundamental role in the educational, cultural, humanitarian, and economic development of the present-day RNM during the Ottoman period, providing public services that are today considered functions of the welfare state. Second, the Yugoslav periods — especially the communist one — marked the most destructive process in the history of waqf in the RNM, confiscating properties and dismantling institutions without any legal compensation. Third, the denationalization process since 1991 has been incomplete, inconsistent, and frequently discriminatory toward the IRC.

Based on these conclusions, the following recommendations are presented:

(1) Amendment of the Law on Denationalization to include waqfs as a distinct category of property, with additional procedural guarantees;

- (2) Establishment of a Special Inter-institutional Commission, composed of representatives of the IRC, the Ministry of Justice, and the Cadastral Agency, for the systematic inventory and resolution of waqf property cases;
- (3) Application of an alternative compensation mechanism — equivalent land or financial compensation — when physical restitution is not feasible;
- (4) Enhanced transparency through periodic public reporting on the status of active denationalization proceedings concerning religious properties. The implementation of these recommendations would contribute to the restoration of historical justice and the strengthening of the rule of law in the Republic of North Macedonia.

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