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annotated by

SARA BERENGAN

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# *The role of the Waqf Directorate of Islamic Community in Bosnia and Herzegovina in managing and disposing of waqfs*

## *Il ruolo della Direzione Waqf della Comunità Islamica in Bosnia ed Erzegovina nella gestione e nella amministrazione dei waqf*

AMELA TRAKO – MAHMUTOVIĆ

### ABSTRACT

*The contribution examines the role of the Waqf Directorate of the Islamic Community in Bosnia and Herzegovina, looking at the control and coordination functions and the main activities financed through waqfs in the Bosnian context.*

### KEYWORDS

*Waqf; foundation; waqf management; Islamic Community in BiH; Waqf Directorate*

### RIASSUNTO

*Il contributo esamina il ruolo della Direzione del waqf della Comunità islamica in Bosnia ed Erzegovina, esaminando le funzioni di controllo e coordinamento e le principali attività finanziate mediante i waqf nel contesto bosniaco*

### PAROLE CHIAVE

*Waqf; fondazione; gestione del waqf; Comunità islamica in BiH; Direzione Waqf*

*SUMMARY: 1. Introduction – 2. Definition and Purpose of Waqfs – 3. Historical Background – 4. Status of Waqf Property in the Legislation of Bosnia and Herzegovina – 5. Management and Disposal of Waqf Property in Bosnia and Herzegovina – 6. The Role of the Waqf Directorate of the Islamic Community of Bosnia and Herzegovina – 6.1. Vision – 6.2 Mission – 6.3. Waqf funds – 7. Conclusion*

## *1. Introduction*

All nations and all civilizations know the institution of donation and charity: Chinese, Indians, Babylonians, Persians, Egyptians, Romans, Germans,

Slavs. There have always been good people who shared their good deeds with others. Endowments are mentioned in the Code of Hammurabi, one of the oldest legal monuments in general. The noble people have always donated part of their real estate for charitable purposes. Such an act is called a *foundation* among Christians and a *waqf* among Muslims. Waqf is a philanthropic institution which is unique to Islam. Since the time of the Prophet Muhammad (may the mercy and blessings of Allah be upon him) until today, millions of waqfs were set up by Muslims worldwide. The importance of its activity is increasingly recognized in the modern world due to its ability to respond to the numerous needs of today's society. Therefore, it is important to have a well-organized system of disposal and management of endowments. The aim of this paper is to show the way of managing waqfs in Bosnia and Herzegovina, to give a brief overview of the legal regulations that define this area in Bosnia and Herzegovina, as well as to show the model of disposal of waqf assets applied by the Islamic community in Bosnia and Herzegovina.

## *2. Definition and Purpose of Waqfs*

The word *waqf* (Arabic origin) means: retention, closure, capture, holding, and preservation. Therefore, a waqf property cannot be subject to transactions or trade. The essence of a waqf is unchangeable and exempt from trade for all time, and only the generated profits can be used<sup>1</sup>.

The institute of *waqf*<sup>2</sup> defined in this way corresponds in many characteristics with the institute of *foundations*<sup>3</sup> among Christians. Although waqf is not an

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<sup>1</sup> Islamic jurists define waqf differently according to differences in the accepted methodology within Islamic legal schools in relation to the legal nature and consequences of waqf. The essence is that in each of these approaches waqf is inalienable. For more information, see: SENAD ĆEMAN, *Vakufi i fondacije: Komparativna studija o položaju uakufa i fondacija u šerijatskom pravu i pozitivnim zakonskim propisima u Bosni i Hercegovini*, El-Kalem – izdavački centar Rijaseta Islamske zajednice u Bosni i Hercegovini, Sarajevo, 2011, pp. 20-24.

<sup>2</sup> Waqf means good that a person (waqif) voluntarily separates from his property, handing it over to Allah, while the income or purpose of the waqf serves people. Waqf is not prescribed or ordered by the Qur'an, it is encouraged by Prophet Muhammad himself in his hadiths. The document describing the endowment is called a waqfnama, at the end of each waqfnama it is written "Cursed be the one who desecrates this good deed of mine in any way!"

The first waqf is considered to be the waqf of Omer r.a., who waqfed a garden with palm trees. According to the hadith, Omar said to the Prophet before the endowment, "O Messenger of Allah, I have a garden, which I love very much and I want to give it as a permanent good!" The Prophet answered: "Endow the thing so that it can neither be sold, nor gifted, nor inherited, and its income be used as a common good!" (See: Bukhari, *Sahih al-Bukhari*, Chapter on *waqf* and how it is recorded; Muslim, *Sahih Muslim*, About *wasīyyat*, Chapter on waqf).

<sup>3</sup> A foundation is an institution whose purpose is precisely determined by the founder through

institute of European continental law, but rather a part of *Sharia law*, which has its origins in the 7th and 8th centuries, due to the historical connection of Bosnia and Herzegovina with the Ottoman Empire and the presence of the Muslim population in the country, waqf plays a significant role in our legal practice<sup>4</sup>.

*«A waqf, or an endowment or foundation established under Sharia law, is based on the permanent exclusion of a particular property or its substance (principal) from legal transactions, thus creating a perpetual asset, while the income and returns from that property are to be used for charitable purposes»<sup>5</sup>.*

It is necessary to emphasize that a waqf is not essentially aimed only at setting aside property for religious purposes. It is intended to meet many broader social needs, so its beneficiaries do not necessarily have to be Muslims. A waqf can be aimed at caring for travelers, helping the poor, establishing public services, but also helping to stimulate economic development<sup>6</sup>.

*«In Islamic jurisprudence, it refers to a charitable endowment made in the name of Allah (S.W.T), i.e., the act of dedicating an item from one's property and giving it for the sake of Allah. Property can be endowed for social, religious, health, educational, cultural, and humanitarian purposes, with each of these purposes being imbued with Islamic ethical values»<sup>7</sup>.*

*«The institution of waqf has made an immeasurable contribution to human life culture and civilization. Waqf helped the creation, development and maintaining the following activities:*

- 1. construction of tekkes and hanikah, for Sufis;*
- 2. financing of trade operations, through loansfarmers and farmers;*
- 3. construction and repair of roads and bridges;*
- 4. digging wells;*

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his assets. As a rule, the assets of the foundation remain permanent, while the funds for the intended purpose are used from interest and income. The function of the foundation is to encourage general and charitable activities (philanthropy). Foundations have their own governing bodies and distribute financial resources for educational, cultural, religious, political, social or other general purposes through support to associations, charities, educational institutions, individuals or through their own programs.

<sup>4</sup> See DARIA SOFTIĆ KADENIĆ, *Organizacijski oblici posvećivanja imovine: trust, fondacija i vakuf kao funkcionalno ekvivalentni instituti*, in *Godišnjak Pravnog fakulteta Univerziteta u Sarajevu LIX*, Pravni fakultet Univerziteta u Sarajevu, 2016, pp. 89–119, especially p. 109.

<sup>5</sup> *Ibidem*.

<sup>6</sup> MEHMED DŽ. BEGOVIĆ, *Vakufi u Jugoslaviji*, Naučno delo, Beograd, 1963, p. 11.

<sup>7</sup> NUSRET ISANOVIĆ, *Vakuf i islamski etos*, in *Naučni skup: Vakufi u Bosni i Hercegovini (Zbornik radova)*, Islamska zajednica u Bosni i Hercegovini, Vakufska direkcija Sarajevo, 2011, pp. 63 – 75, p. 71, fn. 19.

5. construction of hotels and taverns for travelers;
6. establishment of checkpoints at the borders and supply of food and water;
7. construction of special houses for the poor and homeless, etc»<sup>8</sup>.

*Waqf* is the basis for progress in the economic, cultural, social and civilizational aspects of a society. Bosnia and Herzegovina is a land of waqfs. Many cities were founded around mosques, madrasahs and bazaars that were formed by waqfs. The importance of waqf for the development of Bosnia and Herzegovina and the founding of urban, and therefore political, economic, cultural and religious centers is illustrated in the best way by the fact that the word *waqf* is included in the names of some cities, which indicates that they were founded on such an endowment. These cities are, for example, Kulen-Vakuf, Skender-Vakuf, Gornji Vakuf, Donji Vakuf and others.

Waqf inherently carries the concept of humanity. According to scholars like Robert D. McChesney and Norman A. Stillman, this concept became the legal foundation for philanthropy in Islam. A waqf founder (*wāqif*) is not only a person who does good and helps others but is also one who loves people (a philanthropist), and this love is directly demonstrated through charitable acts<sup>9</sup>.

The founding and development of most of the old cities in our country are closely related to the appearance of a waqf that is, to the personality of a *wāqif*, a benefactor. These are among others: Sarajevo (Gazi Husrev-beg and Isa-beg Ishaković), Tuzla (Turali-beg), Mostar (Karadžoz-beg), Tešanj (Ferhad-beg), Banja Luka (Ferhad-paša Sokolović), Foča (Mehmed-paša Kukavica), Višegrad (Mustafa-paša Sokolović) and etc.

Even today, waqfs are factors of the development of cities and local communities: waqfs provide space for the development of various forms of economy, contribute to the jobs opportunities, they are the basis of tourism in Bosnia and Herzegovina, and waqfs income is used to do good for the entire society.

### *3. Historical Background*

In the area of Bosnia and Herzegovina, endowments *waqf* began to be established as early as the arrival of the Ottomans in the 15th century. During their

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<sup>8</sup> MUHAMED ČAJLAKOVIĆ, *Nastanak i razvoj institucije vakufa s posebnim osvrtom na vakuf u BiH*, in *Glasnik Rijaseta Islamske zajednice u Bosni i Hercegovini*, Vol. LXXI, No. 3-4, Sarajevo, 2009, pp. 239-256, p. 243.

<sup>9</sup> NUSRET ISANOVIĆ, *Vakuf i islamski etos*, cit., p. 73.

rule, hundreds of waqfs were created and developed, which had an impact on the development of existing cities and the construction of entirely new ones. The waqf in its structure, enabled the fulfilment of various needs of the population. During this period, the waqf was in constant growth and progress. This situation continued until the end of the Ottoman Empire's rule in Bosnia and Herzegovina and the arrival of the Austro-Hungarian monarchy.

The first major challenges facing Bosniak Muslims in Bosnia and Herzegovina appeared after the occupation by the Austro-Hungarian Monarchy in 1878. It was necessary to invent new methods of operation of the Islamic community and management of such a powerful institution as the waqf<sup>10</sup>.

This was the time when waqf property was registered in the land registry and the *National Waqf Commission* was established in 1883, which drafted regulations on the management of waqf property and fully supervised the work of the administrators (*mutawalis*) of individual waqfs<sup>11</sup>.

In this period, there was freedom in the disposal of waqf assets, but this disposal was also strictly controlled by the National Government through the National Waqf Commission and other bodies that it directly formed:

*«With this, the National Government, through its ministries and the appointed leaders of the Islamic Community, achieved full control over the activities of the Islamic Community and the management of waqf assets. All Commission officials are paid from waqf funds. Even that was not enough for the authorities, so it established the position of government commissioner for endowment affairs, without whose permission no decision could be made or a session of the Land Endowment Commission held. The government knew that if the waqf is controlled, the entire Islamic community is also controlled. "She noticed that this institution (waqf) can serve as a convenient means and way to interfere in the religious affairs of Muslims and to keep religious officials who support themselves from the waqf property "in check", says Dr. Mehmed Begović»<sup>12</sup>.*

After the First World War, Bosnia and Herzegovina became part of the Kingdom of Serbs, Croats and Slovenians, and conditions did not improve either for the Islamic community or for the waqfs. If it had a certain autonomy in terms of activities and disposal of waqf property during the Austro-Hungarian Monarchy, the Islamic community increasingly lost these rights during the

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<sup>10</sup> AHMED MEHMEDOVIĆ, *Upravljanje vakufima u BiH 1847-2017*, Vakufska direkcija IZ u BiH i El-Kalem, Sarajevo, 2017, p. 97

<sup>11</sup> *Ibidem*.

<sup>12</sup> *Ibidem*.

period of the Kingdom. «All religious and waqf bodies were placed under the supervision of the state, which received the right of supreme supervision over the management of the assets of the Islamic community»<sup>13</sup>.

What marked this period was the direct seizure of all forms of waqfs without the Bosniaks being asked:

*«Waqf plots in the most attractive places in the cities, Muslim cemeteries that made up at least a fifth of the city's space were confiscated in order to build public buildings, bus and train stations, playgrounds, parks, schools, homes, post offices, and administrative buildings. During the Kingdom of Serbs, Croats and Slovenes, later the Kingdom of Yugoslavia, from 1918 to 1939, about four million dunums of land were taken from the vakuf! At the same time, twelve and a half million fugitive lands were confiscated in Bosnia and Herzegovina, which amounts to a total of sixteen and a half million dunums of land! This is almost a third of the total area of Bosnia and Herzegovina!»<sup>14</sup>.*

The Second World War brought additional desecration and destruction of waqf property throughout Bosnia and Herzegovina:

*«Waqf property suffered a lot in the Second World War. Numerous mosques were destroyed, desecrated and usurped, many buildings owned by the Islamic community and its foundation were destroyed and damaged. In the Archive of the Islamic Community, numerous documents speak about this»<sup>15</sup>.*

The period after the Second World War was marked by the complete erasure of many waqfs about which there are numerous documents that testify to their existence, but the authorities at the time often did not leave any material trace that they existed. This happened with the property of other religious communities as well. Mehmedović (2017) describes such a phenomenon as follows:

*«What remained of the waqf after Serbian rule, during the Kingdom of Yugoslavia, was confiscated by the communists in the post-war Socialist Federal Republic of Yugoslavia. The Islamic community was left with only purely religious buildings, mosques, imams' apartments, some mektebs (not all), turbes, tekkes,*

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<sup>13</sup> Ivi, p. 124.

<sup>14</sup> Ivi, p. 126.

<sup>15</sup> Ivi, p. 130.

*and one madrasa. Waqf plots, cemeteries, residential buildings and apartments, madrasa buildings, shops and business premises, mills and workshops, palaces, spas, hotels, everything that could be confiscated and had some value were confiscated. Gazi Husrev-beg's waqf was reduced to the Bey's mosque and its harem. All the shops that surrounded it were confiscated. In a single act, dozens of shops of Gazi Husrev-beg and other larger Sarajevo waqfs were confiscated»<sup>16</sup>.*

*«Confiscation of waqf property was carried out through agrarian reform, nationalization and expropriation of private property. The legal basis for robbery was found in the following laws: the Law on Agrarian Reform and Colonization of August 28, 1945, the Law on the Disposal of Apartments and Business Premises of February 17, 1945, the Law on Nationalization of Private Business Enterprises of December 6, 1946. . (with amendments from December 29, 1948), to the Basic Law on Expropriation from 1947, the Law on the Nationalization of Rental Buildings and Construction Land of December 28, 1958, and others. Article 7 of the Republic Law on Agrarian Reform and Colonization of January 9, 1946 states: The following shall be taken away from their current owners by expropriation and transferred to the hands of the state: (...) land holdings of all types of secular and religious endowments, as well as individual places of worship, monasteries, tekkes, religious institutions and waqfs. In order to support individual places of worship and waqfs that serve to support mosques, monasteries, tekkes and religious institutions, 100 dunums of the total area of their properties, fields and forests are left. If places of worship, monasteries, tekkes, mosques and Religious institutions of greater importance or greater historical value shall be left to them from their estates up to 300 dunums of total arable land and forests, which shall be determined separately in each case. The character of such institutions shall be determined, upon the proposal of the District People's Committee, by the Minister of Agriculture in agreement with the Minister education. This was primarily done for the sake of monasteries and convents which had large land holdings, vineyards and orchards. Article 9 of this law states: Churches, monasteries, tekkes, mosques and religious institutions will be left with a proportionate part of the buildings and inventory according to the land left in the sense of Article 7, point c. According to the provisions of the law of July 30, 1946, all forest properties owned by religious communities are subject to confiscation of their property without any compensation»<sup>17</sup>.*

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<sup>16</sup> Ivi, p. 133.

<sup>17</sup> Ivi, p. 133.

A number of factors contributed to the status in which the endowments found themselves until the end of the aggression against Bosnia and Herzegovina:

*«in short, it can be stated that the following factors have influenced the status and condition of waqfs in Bosnia and Herzegovina:*

*Enemy operations from neighboring territories*

*Fires and other natural disasters*

*Usurpations and agrarian reforms*

*Nationalization of waqf assets*

*Subjective failures and weaknesses in the organization and management of the endowment»<sup>18</sup>.*

During the period of aggression against Bosnia and Herzegovina (1992 – 1995), a large number of waqf buildings were destroyed.

It was only after the end of the aggression on Bosnia and Herzegovina in 1996 that the Waqf Directorate was re-established, resuming its duties from before its dissolution, protecting waqfs from further usurpation and deterioration, and restoring and establishing new waqfs. In less than 30 years, waqf in Bosnia and Herzegovina has gained new momentum, thanks to both domestic and foreign waqf founders and individuals dedicated to the welfare of waqfs.

#### *4. Status of Waqf Property in the Legislation of Bosnia and Herzegovina*

In Bosnia and Herzegovina, the Law on Freedom of Religion and the Legal Status of Churches and Religious Communities, adopted in 2004, applies to all churches and religious communities.

Article 2, paragraph 3 of the Law on freedom of religion and legal status of churches and religious communities stipulates that churches and religious communities are communities, institutions and organizations of believers, established in accordance with their own regulations, teachings, beliefs, traditions and practices, which are recognized legal capacity and registered in the Register of Churches and Religious Communities in Bosnia and Herzegovina.

Article 8 of the same Law determined is that churches and religious communities on the territory of Bosnia and Herzegovina have the status of legal persons. This Law confirms the continuity of the legal personality of historically based churches and religious communities in Bosnia and Herzegovina in accordance with religious regulations and internal organization, as a The Is-

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<sup>18</sup> MUHAMED ČAJLAKOVIĆ, *Nastanak i razvoj institucije vakufa s posebnim osvrtom na vakuf u BiH*, cit., p. 250.

lamic Community in Bosnia and Herzegovina, the Serbian Orthodox Church, the Catholic Church and to the Jewish Community of Bosnia and Herzegovina, as well as all other churches and religious communities that were recognized as legal persons before the entry into force of this law.

In the Law on Freedom of Religion and Legal Status of Churches and Religious Communities the issue of property is also treated:

*«Churches and religious communities may own property and property rights, which they shall be free to use and administer. Churches and religious communities shall have the right to restitution of expropriated property throughout Bosnia and Herzegovina, without discrimination, in accordance with the law»<sup>19</sup>.*

These provisions provide a legal framework that enables religious communities to own, manage, and dispose of property. They also establish the legal and economic foundation necessary for the social recognition and affirmation of these communities. It allows them to establish cultural, charitable, healthcare, and educational institutions across various fields.

Under the Law on Freedom and Legal Status of Churches and Religious communities, the Islamic Community of Bosnia and Herzegovina and their organs and institutions have the status of a legal entity. As such, it is entitled, in accordance with legal regulations, to hold real rights.

The organizational structure and operations of the Islamic Community are also governed by the Constitution of the Islamic Community in Bosnia and Herzegovina. As the highest document of the Islamic Community, it outlines its functions and organization, and also addresses the issue of property ownership. A dedicated chapter in the Constitution specifically deals with the property of the Islamic Community in Bosnia and Herzegovina<sup>20</sup>.

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<sup>19</sup> Cf. Article 12 of the *Law on Freedom of Religion and the Legal Status of Churches and Religious Communities in Bosnia and Herzegovina*.

<sup>20</sup> Article XXVIII: The property of the Islamic Community consists of the Waqf property, other properties and financial resources.

Article XXIX: The property of the Islamic Community can be used for the activities that are with reference to the aims of the Islamic Community and cannot be used for other purposes.

Article XXX: The property of the Islamic Community is consisted of:

- the Wakaf property and other real estate and movable property of the Islamic Community;
- regular fees;
- the Zakat, the Sadaqatu-1-fitr and the Ourban;
- the revenue of the organs and institutions of the Islamic Community that obtain profits;
- endowments;
- gifts, testaments as well as other possible income and donations.

Article XXXI: Each person with a legal power may establish a Waqf property in accordance to the Law of Shari'ah. The Waqf properties are by the definition inalienable properties. The Riyasat of

Article 3 of the Law on Real Rights of the Federation of Bosnia and Herzegovina stipulates that every natural and legal person can be the holder of ownership and other real rights. In accordance with this article, the Islamic Community freely acquires, manages, and disposes of its property in accordance with legal regulations and the regulations of the Islamic Community.

In Bosnia and Herzegovina, there is no special legal regulation that regulates the issue of waqf property, regarding the management and disposal of waqf property. Waqf property is a type of property of the Islamic Community that enjoys full protection, like the property of natural and legal entity. One of the primary issues concerning waqf property in Bosnia and Herzegovina is the failure of the state to fulfill its obligation regarding restitution. During the former totalitarian regime, almost all waqf property was confiscated, and the Law on Restitution, which would enable the return of this property to the Islamic Community, has yet to be enacted. As a result, the Islamic Community of Bosnia and Herzegovina, as the rightful holder of the Waqfs, is still awaiting restitution.

### *5. Management and Disposal of Waqf Property in Bosnia and Herzegovina*

*The Waqf Directorate* is an institution of the Islamic Community in Bosnia and Herzegovina, which, in accordance with the rules of the Islamic Community, manages Waqf property in the territory of Bosnia and Herzegovina with the aim of protecting, preserving, and enhancing waqf property.

The Islamic Community in Bosnia and Herzegovina adopted a series regulations that regulate the management and disposal of waqf property in more detail. In accordance with the Constitution of the Islamic Community in Bosnia and Herzegovina, the waqf property is governed by the Waqf Directorate. The Waqf Directorate was re-established in 1996. By a decision of the Parliament, the Directorate is considered the legal successor of the Waqf Directorate

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the Islamic Community may take a decision to give the Waqf property in exchange for the property of another person if, by means of its commission, the Riyasat incontestably establishes that such exchange is in the interest of the Waqf property as a whole. The decision of the Riyasat in such cases will be valid only if two thirds of the members present at the session of the Riyasat vote in favor.

Article XXXII: The Waqf property is administered by the Waqf Head Office. The Council of the Islamic Community issues regulations concerning the organization and activities of the Waqf Head Office. In managing of the Waqf property, the application of the rules of the Waqfnama (the written testament of the Waqf-donor) are obligatory for everyone.

Article XXXIII: The sum of the collection of the Zakat, the Sadakatu-l- fitr and the qurbans constitute the Baitu-l-mal. The management of the Fund of the Baitu-l-mal is regulated by a special legal act which is legislated by the Council of the Islamic Community.

of the Islamic Community in Bosnia and Herzegovina, which ceased operations in 1958, inheriting all its rights and obligations, and it is an institution of special importance for the Islamic Community in the Republic of BiH and for Bosniaks in the homeland and the diaspora.

The management and utilization of waqf property are governed by specific regulations. In Bosnia and Herzegovina, waqf property is administered and allocated based on *The Constitution of the Islamic Community in BiH, the Statute of the Waqf Directorate, the Rules for Waqf Endowments, the Regulations on Leasing Waqf Property, the Rules for the Transformation of Waqf Property, the Rules for Leasing Waqf Property for Housing Imams and Other Employees of the Islamic Community in BiH, and the Regulations regarding the Legal Status and Waqf Property in the Bosnian Diaspora*.

Each of the mentioned acts regulates a specific area of management and disposal of waqf property. What is common to all the acts is the hierarchy of decision-making, or granting consent for certain activities related to waqf property. When it comes to endowing, transforming, encumbering waqf property, long-term disposal, establishing burdens, full and partial expropriation, the final consent for these types of activities related to waqf property is given by *The Council of Muftis* upon the proposal of the Waqf Directorate.

The leasing of waqf property falls under the authority of the bodies and institutions managing that property, with the mandatory consent of the Waqf Directorate required for any form of leasing of waqf property. Given this, we can conclude that the management and disposal of waqf property, in terms of decision-making regarding waqf property, is centralized.

The establishment of a waqf is tied to the fulfilment of strict formal requirements. As already mentioned, the Islamic Community is responsible for waqfs in Bosnia and Herzegovina, and within it, a special body – the Waqf Directorate – has been established, in accordance with the Constitution of the Islamic Community in Bosnia and Herzegovina<sup>21</sup>.

Begović (1963) points out an important fact about waqf, namely that its purpose is not only religious even today. In other words, waqf does not only refer to mosques and spaces exclusively for prayer, but also encompasses numerous secular benefits, such as helping people in need, establishing schools, and building economically sustainable structures, among others.

Waqf, in addition to its form and purpose as prerequisites for its establishment, must include essential elements and general conditions for its realization. These elements are: the founder of the waqf (wāqif), the subject of the

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<sup>21</sup> Cf. SENAD ĆEMAN, *Vakufi i fondacije: Komparativna studija o položaju uakufa i fondacija u šerijatskom pravu i pozitivnim zakonskim propisima u Bosni i Hercegovini*, cit., str. 16.

waqf, and the beneficiaries of the waqf<sup>22</sup>.

The subject of the waqf can be property that is subject to the general waqf regulations and, depending on its type, can be movable or immovable, principal or subsidiary, consumable or non-consumable. The wāqif must be the owner of the property<sup>23</sup>.

In accordance with the Rules on Endowment, the establishment of a waqf in Bosnia and Herzegovina primarily involves submitting a request for endowment to the mosque congregation (džemat), the local Islamic community council (medžlis), or another institution of the Islamic Community in Bosnia and Herzegovina. The written request for endowment must contain the following elements: a precise specification of the property to be endowed, the unequivocal will of the wāqif to endow the said property, the conditions set by the wāqif (purpose and objectives, distribution of income, etc.), proof of ownership of the property to be endowed, and the signature of the wāqif.

After the written request is submitted, the *medžlis* or other institution of the Islamic Community in whose jurisdiction the waqf is located examines the validity of the proposed endowment, which includes the following:

the property to be endowed must be free of encumbrances (it must be in the ownership and actual possession of the wāqif, as evidenced by the land registry entry and possession certificate), and there must be no ongoing dispute between the wāqif and third parties, nor any other legal encumbrance related to the property.

The property in question must also be suitable for the goals of the waqf that the wāqif seeks to achieve, and it must be assessed as being in the interest of the Islamic Community in BiH.<sup>24</sup>

If the *medžlis* or another institution of the Islamic Community in Bosnia and Herzegovina accepts the proposal for endowment as justified, the request to initiate the waqf procedure is submitted to the Waqf Directorate. The established proposal is then forwarded by the Waqf Directorate to the Council of Muftis for a final decision. After the final decision on the endowment is made by the Council of Muftis, the conclusion is sent to the Waqf Directorate and

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<sup>22</sup> For more information, see: *ivi*, pp. 86-96; MEHMED DŽ. BEGOVIĆ, *Vakufi u Jugoslaviji*, cit., p. 20.

It should be noted that each of the important elements of a waqf has special regulations that must be observed due to the importance and consequences that the act of establishing a waqf has for the wider community. Therefore, the wāqif must also fulfill the prescribed conditions. The statement he gives is based on his both material and mental ability to exempt a part of his property by his own choice to fulfill the general good and benefits.

<sup>23</sup> SENAD ĆEMAN, *Vakufi i fondacije: Komparativna studija o položaju uakufa i fondacija u šerijatskom pravu i pozitivnim zakonskim propisima u Bosni i Hercegovini*, cit., p. 88.

<sup>24</sup> Article 3. Rules for Waqf Endowments, Available at <https://vakuf.ba/bs/tekst/normativni-akti/20>.

the medžlis, or the relevant organ or institution of the Islamic Community in Bosnia and Herzegovina for whose benefit the waqf is being established<sup>25</sup>.

In the process of endowment, waqf property is registered in the ownership documentation in accordance with the Decision on the Method of Registering Property of the Islamic Community in Bosnia and Herzegovina from 2012<sup>26</sup>. By this decision, it was determined that all waqf property should be registered in the following manner: “Islamic Community in BiH – medžlis IZ (specify the name of the medžlis) – waqf (specify the name of the waqf).” When registering waqf property, official abbreviations may be used. If the property is under the jurisdiction of other organs of the Islamic Community, instead of “Medžlis IZ,” the name of the organ or institution that is recorded as the owner of the property should be used.

After the submission of evidence regarding the changes made, the Waqf Directorate issues a waqf deed (*vakufnama*) to the *wāqif*<sup>27</sup>. In the management of Waqf property, adherence to the rules outlined in the *Waqfnama* (the written testament of the *wāqif-donor*) and the provisions of Sharia is mandatory for all parties involved. The waqf deed (*vakufnama*) is prepared in two identical copies, one of which is delivered to the *wāqif*, while the other remains in the collection of waqf deeds, which is maintained by the Waqf Directorate.

When it comes to the relationship between the Islamic Community in Bosnia and Herzegovina and the Islamic Community of Bosniaks in the diaspora, it is important to emphasize that normative legal rules are respected. A good example of this can be seen in the Islamic Community of Bosniaks in Italy, which has endowed its premises in a way that was registered in accordance with the decision, as the Islamic Community of Bosniaks in Italy – the Waqf of the “Nur” Mosque in Verona. For this endowment, the Waqf Directorate issued a waqf deed to the Islamic Community of Bosniaks in Italy.

In the absence of a specific law governing the area of waqf in Bosnia and Herzegovina, the Islamic Community has sought to find a model for managing waqf that would, on the one hand, be in line with the existing regulations regarding the position of religious communities and their property in Bosnia and Herzegovina, while, on the other hand, enabling the waqf to fulfill its

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<sup>25</sup> Article 5. Rules for Waqf Endowments, Available at <https://vakuf.ba/bs/tekst/normativni-akti/20>.

<sup>26</sup> The Rijaset of the Islamic Community in Bosnia and Herzegovina on February 16, 2012, adopted Decision No. 01-04-1-356-1/12 on the method of registering waqf property, i.e., the method of entering ownership indications.

<sup>27</sup> The waqf deed (*vakufnama*) is a unilateral declaration of intent made by the *wāqif* under the supervision of the Waqf Directorate. The waqf deed must be prepared in a strictly prescribed form and signed by the *wāqif*.

intended purpose.

## *6. The Role of the Waqf Directorate of the Islamic Community of Bosnia and Herzegovina*

The Waqf Directorate has directed its activities towards all aspects of society, developing *religious waqfs*, *educational waqfs*, *social waqfs*, and *economic waqfs*. Each new waqf provides its beneficiaries with practical social benefits and addresses specific social needs, while every restored or revitalized waqf returns to society one of the symbols of the country and its cities. Hundreds of projects have been realized in the past period, with the goal of strengthening the institution of the Islamic Community and society as a whole.

### *6.1. Vision*

The Waqf Directorate as an institution of the Islamic Community, play an important role in the material and property-legal development of the Islamic Community in Bosnia and Herzegovina. As the main institution and coordinator of waqf property management in Bosnia and Herzegovina, it will aim to become financially self-sustaining in its operations. The general consensus is that the waqf institution has had and continues to have an enormous role in multiple aspects. The appeal of waqf, by permanently ensuring benefits for the community and the donor (waqif), is growing across various social segments. To be a key factor in the material and property-legal development of the Islamic Community, becoming a leading source of contemporary scientific knowledge and practice in the field of waqf, and to reclaim all unlawfully confiscated waqfs properties.

### *6.2. Mission*

Its mission is to foundation of new waqf properties, the restoration and revitalization and protection of existing waqf assets, as well as contributing to overall prosperity of society through innovation and cooperation. Aim is to protect, preserve, and improve waqf property.

### *6.3. Waqf funds*

An important driver, especially in a financial sense, of both individual and collective activities that impact the improved quality of life for individuals

and society as a whole, are numerous funds and waqfs established by private individuals, associations, donor groups, and governments, which help fulfill vital segments of social needs. In this sense, the role of waqf in modern times is invaluable. The primary task of waqf is to meet the general needs of a community, the individual needs of its members, and achieve overall well-being, regardless of which aspect of human life it pertains to. Consequently, each Muslim community has an obligation to develop its own waqf system. Today, many types of waqf could be developed and all of them could play an important role in advancing the welfare and prosperity of the community and its members. In this context, the Waqf Directorate has formed the following waqf funds:

Fund for the protection, improvement, revitalization, and promotion of waqfs;

Fund for the construction of new, reconstruction, and adaptation of existing waqf and religious facilities;

Fund for cultivating waqf land parcels;

Fund for professional development and education in the field of waqf;

Fund for socially vulnerable categories of society;

Fund for assistance in education;

Fund for publishing Islamic editions.

The Waqf Directorate has registered numerous endowments over the years and has successfully carried out dozens of major projects in collaboration with relevant institutions and organizations.

Given the role and significance of the Islamic Community among Muslims, as well as its centuries-long experience in managing waqfs, it remains the most important factor and the best example in this area. The Islamic Community, through its authority, regulations, and supervision, ensures that all waqfs and voluntary contributions are invested in accordance with the intentions of the wāqif (the benefactor). It directs the investments towards those waqfs that are most socially beneficial and necessary for society. Examples of thoughtful and strategic *waqf* planning include the new buildings of the *Turali-beg waqf* and the *Behram-beg Madrasa* in Tuzla. Of course, other educational projects of the Islamic Community are the result of a well-designed educational policy. Three universities, 10 high schools, 20 kindergartens, and a large number of educational and cultural centers throughout Bosnia and Herzegovina are part of the waqf wealth that will be a source of pride for generations to come.

As support for the education of the youth, science, and scientific research, the *Waqf Fund for Educational Assistance* was established. Its main goals are: to encourage the younger generation to study science, to revive and promote scientific research, to form an elite of experts, particularly in the field of *waqf*

studies, to secure scientific works in all fields, and to form libraries with various contents. In addition to educational institutions, the Islamic Community also has several *waqf* educational funds. A modern example of an educational *waqf* is the Bošnjaci Fund<sup>28</sup>.

## *7. Conclusion*

The *waqf* is one of the institutions that has received significant attention throughout the history of Islamic civilization. Since Islam requires Muslims to be socially active and to care for their community in the broadest sense, the *waqf* provided immeasurable opportunities for Muslims to serve the well-being of their community and its continuous improvement. As a result, numerous buildings, arising from the *waqf* institution, became some of the most representative symbols and contributions of Islamic civilization.

*Waqf* is not only important for Muslims, but it is often intended to be used by all members of society. Therefore, the good and effective management of *waqfs* is crucial in order for them to fulfill their purpose. For this reason, all systems and societies in which a *waqf* is established should actively seek models of good governance. In this context, the model of *waqf* management used by the Islamic community in Bosnia and Herzegovina, presented in this paper, can assist different administrative systems in finding an appropriate approach to *waqfs* in their respective environments.

In an age of consumerism, greed, and an increasing divide between the rich and the poor in all societies, *waqf* and other philanthropic projects are arguably more important than ever. This is particularly true for social *waqfs*, which harmonize the extremes and alleviate social imbalances. *Waqf* is open to everyone, not just Muslims, thus benefiting all members of society. Through this purpose, it reminds us that the common good should not differentiate between people. In this way, every type of *waqf* fulfils its mission to improve the environment in which we live for all of us.

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<sup>28</sup> The Fund was established by the first president of Bosnia and Herzegovina, Alija Izetbegović. The mission of the Fund is to provide scholarships to outstanding students in schools and universities. Every year, a large number of students receive annual scholarships, with special attention given to students from families with lower financial status.