

**HISTORY OF AWQAF IN THE OTTOMAN EMPIRE AND THE
TURKISH REPUBLIC**

By

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HISTORY OF AWQAF IN THE OTTOMAN EMPIRE AND THE TURKISH REPUBLIC

Within the Islamic world, the Ottoman Empire possessed one of the most sophisticated waqf systems. It was in the Ottoman Empire that in addition to the traditional real –estate waqfs, the more controversial cash waqfs also flourished. Since the former, traditional waqfs, are well-known, I will focus below on the cash waqfs and their further evolution, waqfs of stocks. At its simplest, the term cash waqf refers to a foundation established with cash. This *corpus* is then invested and the revenue generated is spent for the charitable purpose of the waqf.

The earliest origins of cash waqfs can be traced back to the eighth century when Imam Zufar was asked about the possibility of establishing a waqf with cash. His answer was in the affirmative. He had envisaged a *mudaraba* partnership between the cash waqf and the borrower; the former being the principal of this partnership, and the latter the agent. The wide-spread application of cash waqfs, however, had to wait until the Ottoman era.

In practice, an Ottoman cash waqf was established by the founder with cash and the endowed capital was then distributed as credit to a number of borrowers and the return from this investment was spent for religious and social purposes. If the return exceeded the expenses, the remainder was added to the original capital of the endowment the following year. Enhancement of the original capital was not limited to the addition of the previous year's profit, it also occurred when other waqfs or donors contributed to the waqf as well.

Ottoman courts approved cash endowments as early as the beginning of the fifteenth century and by the end of the sixteenth, they had become extremely popular all over Anatolia and the European provinces of the empire. This popularity eventually led to a reaction and a fierce and prolonged debate about the legality of cash waqfs emerged.¹ While the opponents expressed their objections on fiqhi grounds, supporters focused on the enormous benefits these waqfs provided for the expansion of Islam in South-Eastern Europe, the Balkans.

Indeed, in a society where health, education and welfare were primarily financed by gifts and endowments, cash waqfs were essential for the survival of the social fabric. Moreover, they also provided major injections of capital to the economy of the cities where they functioned.

¹ Mandaville, "Usurious Piety".

The trustees of the Ottoman cash waqfs, however, refused to apply Imam Zufar's suggestion. Instead, they applied not the recommended and completely legal *mudaraba* but the more dubious *istiglal* which was a legal device concealing a usurious transaction. While *istiglal* conformed to the letter of the law, it violated its spirit by approaching the ordinary rate of interest. It is highly probable that the trustees preferred *istiglal* due to risk aversion.

Cash waqfs were established by well-to-do individuals who allocated a certain amount of money for pious purposes. The amount endowed had to be privately owned and the capital of the waqf was "transferred" to borrowers who after a certain period, usually a year, returned to the waqf the principal plus a certain "extra" amount, which was then spent for all sorts of pious or social purposes. *Istiglal* appears to have emerged out of the need for collateral, usually a house owned by the borrower. When the borrower applied to the cash waqf for a loan, a sale transaction was arranged and the borrower "sold" his house to the waqf and in return received the cash that he needed. It was then mutually agreed that the borrower could continue living in his house as a rent paying tenant. After a certain period, usually a year, the tenant returned the money that he had borrowed, (or bought back the house). The rent that the tenant paid while he kept the loan constituted the profit of the waqf. It was this profit that was then spent for the purpose of the waqf. The entire

procedure can be summarized as sale-lease and buy back. Interestingly, one can observe exactly the same procedure in every modern *sukuk*. Moreover, the Special Purpose Vehicle that conducts this operation in *sukuk* transactions has the same legal structure as a waqf. No wonder that cash waqfs are considered to be, even if partially, the origin of the modern *sukuk*.²

The Ottomans were meticulous record keepers. Consequently, the Ottoman archival sources are both plentiful and detailed. A typical eighteenth century Ottoman Cash Waqf Inspection Register contains the following information:

- a) The name of the waqf and the purpose for which it was established
- b) The name of the *mahalle*, district, in which the endowment was registered.
- c) The name of the trustee
- d) The period of time covered by the inspection.
- e) Original capital of the waqf
- f) Later additions, donations, to the capital of the waqf either by individuals or other waqfs
- g) The balance of the new capital thus formed

² Çizakça, *Islamic Capitalism*, pp. 178-183.

- h) The return obtained from the investment of the total endowed capital at the end of the year, the so-called, *murabaha fi sene-i kâmile*.
- i) The purpose for which the annual return was designated, i.e., the expenditure, *mesarif*. This section was followed by another one called *zimem* which included the following information on borrowers:
 1. The names of the borrowers
 2. The amount of capital each borrower borrowed
- j) The religious denomination of the borrowers
- k) Gender of the borrowers

Early research by Murat Cizakca based upon the Ottoman court registers of the city of Bursa, revealed that cash waqfs, which originally appeared as a promising and unique Ottoman institution of capital accumulation, actually functioned, instead, as an institution of capital distribution (Cizakca, 2000). Capital pooling was certainly practised among the endowments but borrowers were mostly small consumers and the endowments' funds were not utilised to finance important business ventures. A tiny minority of borrowers, usually the trustees themselves, who did practice capital pooling did so in order to lend the waqf funds at a higher rate of return to the *sarrafs* of Istanbul thus in this process creating a secondary capital market.

Later research based upon a document found in the Venetian archives, however, revealed a different picture (Pedani Fabris, 1994, p. 252). In a catalog of the Venetian archives prepared by Pedani Fabris, Professor Faroqhi discovered that the cash waqfs of Bosnia financed Bosnian merchants with major trade capital (Faroqhi, 2004, pp. 225-239). Faroqhi's claim was later on substantiated by Stefini, who showed that a cash waqf that owned 16.000 akces lent 13.000 akces, thus nearly all of its capital, to a partnership of four merchants. He also observed substantial capital pooling by merchant partnerships from as many as 15 waqfs (Stefini, 2014, p. 12-14, fn. 34). These findings indicate very clearly that Ottoman cash waqfs did not merely redistribute capital but also functioned as an institution of significant capital accumulation. Why the Bursa cash waqfs were so risk averse while the Bosnian ones were not, however, remains a mystery.

Centralization of the Waqf System:

While the process of centralization is being discussed, it must be remembered that a waqf is an institution, which has legal personality.³ So, subjugating the waqfs under the jurisdiction of a central authority often involves the violation of this legal personality and an institution which was intended to be autonomous ends up being subjugated. In

³ This is definitely so in Turkey, where legal personality of waqfs is recognized by law. Historical waqfs, known as *marsad* waqfs, could also borrow in their own names indicating that they too had legal personality. See, Cizakca, "Operational Structure".

general, the autonomy of the waqfs was respected in the Ottoman empire until almost the end of the eighteenth century. The state usually did not interfere in the normal functioning of the waqfs and limited itself to routine inspections through the court system. In this period Ottoman waqfs functioned as decentralized autonomous institutions according to the conditions put forward by their founders.

It has been argued that the first attempt at the centralization of the waqf system took place in the middle of the eighteenth century during Sultan Mustafa III's reign and reached a turning point during Abdulhamid I's reign (Barnes, 1987: 68-73). It was indeed Abdulhamid I, who paved the way for the foundation of the *Ministry of Awqaf*, a ministry which reached to its fullest development under his son Sultan Mahmud II during the nineteenth century. Thus the father and the son, Abdulhamid I and Mahmud II, played a crucial role in the centralization of the waqf system. The establishment of the *Ministry of Awqaf, Nezaret*, and the centralization of the waqf management allowed the state to interfere extensively in waqf affairs. The establishment of the *Nezaret* was legitimised on the grounds that the awqaf revenues were left in the hands of dubious trustees. But, centralization which was supposed to achieve a much better financial control of the revenues, miserably failed to do so: the *Minister of Awqaf*, Musa Safveti Pasha, admitted that despite all his efforts he could not even determine the amount of the total revenue of

the waqfs. His successor Nafiz Pasha also failed to do so (Öztürk, 1995: 298). This failure was brought to the attention of the *Shurayı Devlet*, the Council of State, in the year 1868 when the entire matter of provincial waqf management was critically examined. The conclusion reached by the Council amounted to a general indictment against the administration of the *Ministry of Awqaf*. But the solution proposed by the Council was as before and entailed simply further centralization (Barnes, 1987: 150).

Current administration of Waqfs in Turkey

The republic of Turkey simply continued the process which had been started by the Ottomans themselves during the Tanzimat era. This may appear strange, for nearly all the reasons that prompted the hostility of the Ottoman governments, i.e., provisionism, the diminishing miri lands due to the constant expansion of waqf lands and intensification of nationalism, had lost their meaning in this new era. But secularist leaders of the republic continued to be hostile to the waqfs. This hostility was primarily directed against Islamic brotherhoods but waqfs too came under the republican fire since the former, it was claimed, were financed by the latter. The greatest republican destruction appears to have lasted for about a quarter of a century: from the middle of the 1920s to the 50s. Apparently the idea of destruction was becoming a popular issue as well, for it is known that during the 1931 general elections many

parliamentary candidates put the abolition of the waqfs at the top of their list of promises. It is conceivable that those who stood to gain from the sale of waqf properties applauded the situation. All of this, moreover, was in conformity with the party ideology. It was stated in a report dated 1939 that this extensive sale of waqf properties was in conformity with the “for the people” slogan of the Peoples’ Party (Öztürk, 1995: 430), as if what was being sold off had not been endowed “for the people” in the first place.

The most dramatic destruction of waqf property rights occurred in the year 1954, ironically, by the Menderes government with Islamic credentials!. It was in 1954 that all the endowments of cash waqfs that survived from the Ottoman era were confiscated by the state and pooled together to establish a bank of waqfs. Thus, overnight each Ottoman cash waqf lost not only its original capital but also its legal personality. Despite this dramatic event, all was not lost. While Ottoman cash waqfs were thus destroyed, the newly established Vakıfbank,⁴ emerged as the fifth largest bank in Turkey with its \$46 billion in assets as of December 31, 2009. The bank offers some of the largest services in Turkey, and operates 610 branches domestically. About half of the capital of the

⁴ The original name was Vakıflar Bankası

bank belongs to the waqfs controlled by the General Directorate of waqfs.⁵

The General Directorate is very active in restoring the real estate assets of waqfs it controls. Since the year 2003, it has restored 198 run down Ottoman, even Selcukid, waqf assets. The preferred method of restoration is expressed briefly as “Restore-manage-transfer”. Accordingly, a rundown waqf asset is leased for 10 to 20 years to an entrepreneur who undertakes to restore it true to its original architecture, manages it for a number of years and then transfers it back to the General Directorate. Another method used is “build-lease/manage-transfer”. Accordingly, an urban land possessed by the Directorate is leased to a developer for usually 20 years. In return the developer builds a building on the land, leases it from the Directorate for this period and then, after 20 years or so, transfers it back to the Directorate. So far, from the year 2003 on some 208 assets were developed by this method.⁶

The development of the current law of Awqaf in Turkey

About a decade after the destruction of the Ottoman cash waqfs, a new law of waqfs revitalized the republican Waqf system. Led by a powerful businessman, Vehbi Koç, and supported by a group of politicians and

⁵ https://www.google.com.tr/?gws_rd=ssl#q=Vak%C4%B1flar+Bankas%C4%B1. Retrieved on July 27th, 2015.

⁶ <http://www.vgm.gov.tr/sayfa.aspx?Id=9> . Retrieved on July 27th, 2015.

academics, the new law of waqfs was accepted in 1967. This law not only confirmed the legitimacy of cash waqfs but also made it possible for a waqf to establish its own company or companies and also for a company to establish its own waqf. The law also made it possible to establish a cash waqf with shares of companies as its *corpus*.

These developments mattered for two important reasons. First, when a waqf is established with shares of joint-stock companies, its income in the form of annual dividends becomes identical to *mudaraba* returns. Thus ironically, while the Ottoman cash waqfs were involved in *istiglal*, an instrument of disguised or quasi interest, the waqfs of the secular Turkish Republic finally eliminated this problem and applied the original idea of Imam Zufar. Second, they eliminated the information asymmetry problem that had haunted waqfs for centuries.⁷ Indeed, thanks to the 1967 law, waqfs did not anymore had to be *managed* by directives of their long deceased founders. Instead they became passive recipients of profits made by professional managers of companies whose shares they held. While the directives of the founders now applied to only how the revenue generated should be spent on charity, the actual

⁷ In waqf matters, information asymmetry refers to the problem that while the long deceased founders' directives stated in the endowment deed are binding on the current trustees, it is the latter who are informed about the contemporary problems but have no power to act upon them.

revenue is generated by professional managers of the associated companies whose shares the waqf possesses.

A recent decision declared by the *General Directorate of Waqfs* (GDW) on August 6th, 1999 has carried this process even further. The directorate has now permitted waqfs to purchase shares of a young company not even yet traded in the stock exchange. Purchasing such shares has been left entirely to the discretion of the trustees. Reselling such shares, however, is more difficult and involves a complex procedure. If this process is simplified, this latest decision could be an exciting development, which may pave the way for cash waqf-venture capital (*mudaraba*) linkages (Çizakça, 1998: 60-67).

The reader may wonder about the actual impact of these innovations introduced by the Law No. 903 on the Turkish waqf system in 1967. This is best illustrated by the actual number of waqfs endowed. From the beginning of the Republic in 1923 to 1967 when the new law was promulgated, a time span of 44 years, merely 73 new waqfs had been established, whereas from 1967 until 1985, a time span of 18 years, one observes 1.877 new waqfs. From 1986 to 1996 more than one hundred waqfs were established annually with the trend rising until it reached 439 new waqfs in 1996, a maximum (Aydın, Sağlam and *et.all*, 1999: 34). Defining the “new waqfs” as those established after the 1967 Law,

the number of these waqfs has been calculated as more than 4,000 (Büker, Aydın, Sağlam, 1998: 4 and Aydın, Sağlam and *et. all*, 1999: 33, 34). Indeed, by the end of 2013, the total number of new waqfs reached 4.774.⁸ Another major development of the Republican waqf sector has been observed in the field of education. By 1998, altogether 16 waqf universities had been established. By the year 2015, this number increased to 76. Some of these already enjoy an excellent reputation and are considered among the top universities of the country.⁹

The 2008 Law of Waqfs:

In 2008 a new law of waqfs was accepted. The new law grants full legal personality to waqfs (Article 4) and while it exempts them from corporation tax it subjects them to income tax.¹⁰ When new waqfs lease their real estates, their rental income is taxed at the rate of 20 percent. Even those waqfs exempted from taxation are obliged to pay this (Gelir İdaresi, 2012, Article 1.3).¹¹

⁸ www.vgm.gov.tr/db/dosyalar/webicerik260.pdf

⁹ https://tr.wikipedia.org/wiki/T%C3%BCrkiye%27deki_%C3%BCniversiteler_Li

¹⁰ Currently (in 2015) corporation tax in Turkey is 20 percent, while income tax ranges between 15 and 35 percent depending upon the income brackets.

¹¹ Tax exemption is extremely rare in Turkey. Out of the 4.774 “new” waqfs, merely 255, that is 0,05 percent, are tax exempt.

www.vgm.gov.tr/db/dosyalar/webicerik260.pdf

The new law has introduced a Council of Waqfs composed of 15 members. This Council has now the power to appoint the trustees of the *mülhak* waqfs (Article 6).¹² Thus an important traditional freedom of waqf founders, appointing their own trustees, has been curtailed. Such appointments are now subject to the approval of the Council of Waqfs. Appointed trustees can be removed by a recommendation of the Council and a verdict of the local court (Article 9-f).

On the upside, the Council has reduced the prohibitively high minimum paid-in capital requirement for establishing a new waqf to a much more reasonable 50.000YTLs. This condition used to be so difficult to meet that on average 35 persons used to pool capital among themselves to be able to establish a waqf.¹³

The Council also has the power to confirm or reject exchanging a waqf asset with another (*istibdal*) or sell it (*ibdal*) (Article 12). Trustees are obliged to inform the General Directorate within one month of such transactions. Article 15 grants *cy-prés* authority to the Council.

Article 18 has facilitated usurpation of the old Ottoman *ijareteyn* or *mukataalı* waqf assets by their tenants. These individuals can now own the waqf assets they have rented by paying a *taviz bedeli*, equal to

¹² *Mülhak* waqfs are those managed by their founders or their descendants.

¹³ Aydın, Çarkoğlu, Çizakça and Gökşen, *Hayırseverlik*, p. 139.

merely ten percent of the real estate tax due to these assets. This transaction is facilitated further by making it possible to pay half of the *taviz bedeli* in cash and the remaining in five equal installments to be completed within a year. Clearly, these very easy conditions reflect a policy of privatization of the surviving Ottoman waqf assets.

Renting a waqf asset is usually permitted for a maximum of three years. But if the tenant has agreed to restore or rebuild the buildings of the asset, this period can be extended to 20 years subject to the approval of the General Director of Waqfs. The lease period can be extended to a maximum of 49 years if approved by the Council of Waqfs.

Article 25 permitted waqfs to be involved in international activities providing these are pertinent to their original purposes stated in their endowment deeds.

Article 26 makes it crystal clear that waqfs are permitted to establish companies in order to raise revenue. They are also permitted to become partners of established companies. But the income generated from these must be allocated to the original purpose of the waqf. As for those waqfs whose founders have passed away, known as *mazbut*, the General Directorate has the power to establish companies with the revenue yielded by their assets. The General Directorate has also the power to

sell company shares and or exchange them for shares of other companies.

We noted above that the 2008 Law had exempted waqfs from corporation tax. But, if more than 50 percent of the shares of a company are owned by a *mazbut* waqf or the General Directorate (GD), 10 percent of the corporation tax of the company is transferred to the GD as revenue to be used for restoration of the waqf's historical assets (Article 28).

Trustees are obliged to make annual statements and inform the GD about the management team of the waqf, its activities of the previous year, budget and the balance sheet, a list of its assets, its companies and partnerships (Article 31).

Article 34 is probably unique in the world in that 20 percent of the gross revenue of all the *mazbut* waqfs are transferred to the GD. This is a blatant violation of the conditions put down by the long deceased founders – surely no founder must have put it down as a condition that 20 percent of the before tax revenue of his waqf should be allocated to bureaucracy rather than charity.

Article 41 gives further details about the composition of the Council of Waqfs, which is composed of five persons from the Directorate, including the General Director himself, another five, recommended by the Prime Minister, three, elected by the new waqfs, one each elected by the *mülhak* and minority waqfs.¹⁴ The Council meets at least twice a month.

At this point the reader may wonder about the impact of this law on the waqf system in Turkey. As usual, the most obvious criterion to look for this purpose is the change that occurred in the number of new waqfs after the new law was promulgated. The total number of new waqfs have increased from 4.443 in 2008 to 4.867 in 2014.¹⁵ This is an increase of, on average, 70 waqfs per annum. Although not a dramatic increase, the long term trend of moderate increase ever since the 1980s appears to have continued. But if we compare this annual rate of increase in the early 21st century with those in the 1990s, we note a substantial downturn. Indeed, on average, more than one hundred new waqfs were being established in the period 1986 to 1996. The trend reached a maximum in 1996 with 439 new waqfs established. Thus 70 waqfs being established annually in the period 2008 to 2014 is not an impressive result at all. If we look at the data for *mülhak* waqfs, moreover, we note a steady decline in their numbers from 287 in 2009 to 277 in 2013. Thus

¹⁴ Minority waqfs are those established by non-Muslim minorities in Turkey.

¹⁵ www.vgm.gov.tr/icerik.aspx?id=192 . Retrieved on August 26th, 2015.

it can be concluded that the impact of the new law on the overall number of new waqfs established was moderate and in the case of *mulhak* waqfs was even negative. Moreover, there was a serious decline in the amount of donations that these waqfs received from 382.568 YTLs in 2009 to 158.224 in 2013.

The dissatisfaction felt with the new law appears to have triggered a reaction. Led by TUSEV¹⁶ and supported by two other Turkish NGOs and the European Union, a new initiative for the *Enhancement of the Civil Society and the Co-operation between Civil Society and the State* has been launched.¹⁷ This project aims at making sure that laws and regulations concerning civil society are designed with full participation and discussion of the parties concerned. It is to be seen whether this project will have any impact.

When asked about the most pressing problems waqfs are facing, Tefvik Başak Ersan, the CEO of TUSEV has stated that it was taxation. What exactly is the tax burden imposed upon Turkish waqfs? To start with, we noted above that merely 0,05 percent of waqfs in Turkey enjoy tax exemption.

¹⁶ The Third Sector Foundation of Turkey.

¹⁷ *Türkiye’de Sivil Toplumun Gelişimi ve Sivil Toplum-Kamu İşbirliğinin Güçlendirilmesi Projesi.*

When waqfs make payments to the beneficiaries, the latter are subjected to income tax. When a waqf purchases a commodity or service, it is obliged to withhold 5 percent for the former and 10 percent for the latter transaction and declare it to the tax department.¹⁸

When *mülhak* waqfs lease their real estate assets, their rent income is taxed at 20 percent. Even the tax exempt waqfs are subject to this tax. With respect to the Value Added Tax (VAT), although waqfs are not considered as VAT persons, their tenants are.¹⁹

When waqfs deposit their cash with banks, the latter withhold 15 to 18 percent of the interest yielded. This applies to tax-exempt waqfs as well. If the deposit is in hard currency, 18 percent of the interest yield is withheld, if in YTLs the rate is 15 percent. As for shares, while capital gains tax is zero percent, dividends are subject to 15 percent withholding. Profit shares paid to those lending without interest, profit-loss account investment yields paid by Islamic banks are subject to the same rule. If an associated company transfers to the waqf, even in the form of a donation, any money, this amount becomes subject to 15 percent income tax.²⁰

¹⁸ Gelir İdaresi Başkanlığı, *Vakıfların Vergilendirilmesi*, p. 4.

¹⁹ *Ibid.* p. 5, Article 1.3.

²⁰ *Ibid.*, Article 2.4, p. 11.

Thus the tax department treats a saving account deposit – a very safe transaction- and a profit and loss account – a risky one- in exactly the same way with total disregard to the risk taken by the investor.²¹ It goes without saying that if venture capital type profit-loss sharing accounts are to be encouraged, this totally unfair and blunt taxation system treating all deposits with total disregard to the risk taken, must be abandoned and be replaced with one, where the high-risk profit and loss account yields are exempted from any taxation. Put differently, the higher the risk of an instrument utilized by the saver, the lower should be the tax burden. Very risky instruments such as the *mudaraba* accounts in Islamic banks as well as shares traded in the stock exchange should be completely tax-exempt. The word “completely” should be emphasized here. It is correct that there is no capital gains tax pertaining to the share transactions but the dividends are not tax-exempt. It is recommended here that the latter should be tax-exempt as well. The recommendation that the *mudaraba* accounts and shares should be completely tax-exempt has been recommended by the present author as far back as 1989, with apparently, only partial effect.²²

This insensitivity of the finance department to micro-economic considerations appears to vindicate the view that the Republican Turkish

²¹ *Ibid*, p. 6, Article 1.5.

²² Çiller and Çizakça, p. 179.

public finance is in many ways but a continuation of the old Ottoman fiscalist system (Genç, *Devlet ve Ekonomi*).

Moreover, when a waqf buys shares of certain companies in order to finance with the dividends its original purpose and sells these shares several times in a year or cashes them, these transactions will not be considered as having constituted a continuous commercial enterprise associated with the waqf. The returns received from these transactions will be subjected to a final income tax. If these transactions are of a big enough magnitude so as to necessitate the employment of even a single person, a continuous commercial enterprise will be considered to have emerged and these revenues will be subjected to corporation tax.²³ In short, waqfs are being panelized for employing accountants and generating revenue from financial transactions !

On the upside, donations made to the tax exempt waqfs are deductible from the income and corporation taxes. Moreover, donations made to the waqfs spending at least three-fourth of their revenues for supporting state universities or institutes of advanced technology, can be deducted from the corporation tax. Such deductions can be affected only if it is specifically stated in the endowment deed of the waqf that it is specifically established to support state universities and that three-fourth

²³ Gelir İdaresi Başkanlığı, *Vakıfların Vergilendirilmesi*, Article 1.5, p. 7.

of its revenue is to be spent for this purpose and that the inspections conducted by the Ministry of Finance, indeed, confirm that the waqf observes these pledges.²⁴ The fact that non-state universities established by waqfs are some of the best ones in the country, this rule discriminating against waqf universities simply impedes channeling of cash support to these institutions.

Commercial enterprises established by waqfs are subject to corporation tax. This is so, even if these enterprises are non-profit establishments or in case they are for-profit, their profits are earmarked for the charitable purpose of the waqf.²⁵ In general, although waqfs, themselves, have judicial personality and are exempt from the corporation tax, if they engage in any continuous payable commodity trade or production or service, their associated units engaged in these activities become subject to the corporation tax. The term continuous is defined so broadly that it includes any commercial transaction that takes place more than once during a financial year. All of this, naturally, makes waqf exemption from the corporation tax purely theoretical. Companies associated with waqfs are subject to corporation, income and value added taxes. Waqf buildings, however, providing they are not leased and are used for the original waqf purpose, are exempt from property taxes. All buildings of *mazbut* waqfs are exempt from property tax regardless of whether they

²⁴ *Ibid.*, Article 1.7, p. 9.

²⁵ *Ibid.* Article 2.1, p. 10.

are leased or not. Finally, if a foreign foundation has an associated company in Turkey, it becomes subject to Turkish taxation.²⁶

To sum up, Turkish waqfs are under severe fiscal pressure. This is considered to be the weakest link in, otherwise, a well-established institutional tradition.²⁷ Indeed, in a questionnaire conducted with 1,500 persons, 72,6 percent of the respondents stated that tax exemption was a very important factor for their donations.²⁸ The prevailing legal framework, excessive interference and bureaucratic controls imposed by the state have also seriously impeded philanthropy in modern Turkey. A culture famous throughout history for its generosity as witnessed by the thousands of Selcuk and Ottoman waqfs and their magnificent monuments has been ranked by the Charities Aid Foundation at the end of 2014 as the 128th among 135 countries. Only Croatia, Montenegro, Ecuador, Palestinian Territory, Venezuela and Yemen ranked lower.²⁹ Clearly, when the state is so demanding from the non-profit sector, individuals go through a mind shift: rather than giving voluntarily through the waqf system, they begin to expect services from the state. This was dramatically demonstrated in the aftermath of the 1999 earthquake in the Eastern Marmara region. Waqfs and volunteers poured

²⁶ *Ibid.* Article 2.3, p. 11.

²⁷ Interview conducted with Tevfik Başak Ersan, the CEO of TUSEV (Third Sector Foundation of Turkey) on July 2nd, 2015.

²⁸ Aydın, Çarkoğlu, Çizakça and Gökşen, *Hayırseverlik*, pp. 95-96

²⁹ Vehbi Koç Foundation, *Faaliyet Raporu*, 2014, p.1.

in aid immediately after the quake, which stopped abruptly when the state introduced an “earthquake tax”.

CASES: SOME TURKISH WAQFS

Vehbi Koç Vakfı:

Vehbi Koç Vakfı was established almost immediately after the 1967 waqf law on January 17th, 1969. This is not surprising as the late Vehbi Koç, perhaps the greatest business tycoon of Turkey, played a considerable role in the promulgation of this law.³⁰ When finally the law was accepted in the Parliament, he felt ready to establish the first modern Turkish incorporated waqf of stocks by donating his personal shares of the Koc Holding companies.

The Board of Directors is chaired by Semahat Arsel, his eldest daughter and comprises other family members, the CEO of Koç Holding, the CEO of İsbank and two academicians. Budgets and all the donations and investments of the waqf are planned by this Board. The decisions are executed by Erdal Yildirim, the President of the Foundation.

At the end of 1993, the book value of the assets of the foundation stood at 120 million USD with an approximate market value of 297 million

³⁰ For details, see; Çizakça, *Philanthropic Foundations*, chapter IV.

USD. These increased to 187 million and 762 million USD respectively due to the superb performance of the Istanbul Stock Exchange in 1999.³¹ At the end of 2014 the market value reached 1.429 million USD indicating a highly efficient management of the Foundation.³²

The waqf has basically three sources of income: the annual income derived from 7.15 percent of Koç Holding shares; annual donations by the Koç Holding companies and members of the Koç Family; revenues yielded by various cash and real estate assets.³³ Initially, in 1969, 9.4 percent of the Koç Holding shares were donated to the foundation.³⁴ The decline from the 9.4 to the current 7.1 percent has occurred due to the sale of various Koç companies. Koç Foundation is exempt from income and corporation taxes but pays value added tax.³⁵

The year 1973, the 50th anniversary of the establishment of the Turkish Republic, is considered to be a turning point in the history of the foundation. On the occasion of the anniversary, the foundation decided to establish a major library in Istanbul to be managed by the Istanbul

³¹ Çizakça, *Philanthropic Foundations*, pp. 99-100.

³² Vehbi Koç Foundation, *Faaliyet Raporu*, 2014, p. 2. Converted from 3.317.563.438 YTLs at the rate of 1USD=2.32 YTLs.

³³ *Ibid.*, p. 1.

³⁴ Çizakça, *Philanthropic Foundations*, p. 99.

³⁵ Interview conducted by Dorukhan Selçuk with Seçil Kınay of the Koç Foundation on September 7th, 2015.

municipality. When it became clear that the municipality failed to provide effective management, it was decided that the foundation should become an operational foundation managing its own donations.³⁶ In this sense Koç Foundation is different from the Sabancı Foundation to be explained below with the latter focusing more on building facilities and entrusting their management to public authorities.

While originally envisaged as a family foundation with revenues limited to the sources mentioned above, in 2015 the Koç Foundation decided to open up to international donors with particular interest in Europe-wide projects. Actually, the foundation has been a member of the European Foundation Centre since 1996 and is accustomed to co-operating with European foundations. Therefore, this latest decision to open up is considered as another important step in the same direction.

These revenues are spent in a variety of philanthropic activities ranging from education, historical research and archeology, medicine and nursing, the arts and museums. Some major steps the foundation took can be summarized as follows:

1974: Establishment of the Nursing Fund.³⁷

1980: Establishment of the Sadberk Hanım Museum

³⁶ *Ibid.*

³⁷ Vehbi Koç Foundation, *Faaliyet Raporu*, 2014, p. 50.

1989: Establishment of the Koç High-School with the aim of producing citizens of the world well informed about the Turkish culture.

1994: Establishment of the Koç University

1995: Major progress in the health sector. American Hospital in Istanbul is taken over, Koç University Faculty of Medicine with its own hospital is established, all health institutions are combined under the umbrella of Vehbi Koç Foundation Health Institutions. 3.000 health workers are employed in these institutions which provide health services at North-American standards. In the year 2014, the formerly American Hospital performed more than 10.000 operations, and more than 150.000 patients were examined.³⁸

1998: Establishment of the Koç University School of Nursing.

2002: Establishment of annual awards in the fields of education, health and culture.

2014: The first phase of the Koç University Hospital is completed and began to function. Students of the Koc University Faculty of Medicine began to receive their practical training at this hospital. In the same year the Vocational College for Automotive Technologies associated with the Ford-Koç car factory in Golcuk was established.

Of these activities, the most important one is the establishment of Koç University, with 5,300 students and 400 faculty in 2014. Looked from

³⁸ Vehbi Koç Foundation, *Faaliyet Raporu*, 2014, p. 59

the perspective of the fiercely competitive and centralized university entrance exams in Turkey, Koç university ranks the second from the top after Bogaziçi, a state university which charges no tuition fees. Koç follows Bogazici in the quality of the students thanks to the generous scholarships it provides. These scholarships exhibit a sustained increasing trend. While in 2008 30,6 percent of Koç University students were awarded scholarships, in 2014 this ratio increased to 79 percent.³⁹ Looked from the perspective of TUBITAK Science and Incentive Awards, Koç University stands at the very top.

Looked internationally, since 2007 only 8 projects from Turkey have been granted the European Research Council Awards, in the last 3 years 4 of these have been won by Koç University researchers. The university ranked 41st among the world's top 100 universities under 50 years old.

Even more important and with great potential is the university – industry linkages being established within the Koç system.⁴⁰ For instance, TUPRAS a major Koç holding energy company specializing in refining petroleum products, has financed the establishment of the Koç University TUPRAS Energy Center, which provides an interdisciplinary environment that allows researchers from various disciplines to work

³⁹ Vehbi Koç Vakfı, *Kirk Yil Kitabı* (Istanbul: 2009).

⁴⁰ On the huge importance of this link see; Çizakça, “Risk Sharing And Risk Shifting : An Historical Perspective”.

together. The ultimate aim of the center is to make Koç University an authority in energy research. Two other well-known centers of research are in the social sciences, the Centers for Gender Studies and Migration Research. Overall, Koç University has 104 laboratories.

While the President of the university has explained this success with the prevailing vision emphasizing the liberty of the researchers to choose their subjects, driven only by their own curiosity and the joy of scientific discovery, the annually 50-55 million YTLs subsidy provided by the Foundation should also be considered as a very important factor.⁴¹

Sabancı Vakfı:

Sabancı Waqf was established in 1974 by the six brothers of Sabancı family, with each brother contributing 200.000 TLs to the corpus. In contrast to the Koc Foundation established with the personal shares of the late Vehbi Koc, three Sabancı companies also contributed in total 3,800,000 TLs to the *corpus* of the Sabancı Waqf.⁴² The waqf has evolved to become one of the greatest waqfs in Turkey.

⁴¹ Vehbi Koç Foundation, *Faaliyet Raporu*, 2014, p. 7- 14.

⁴² www.sabancivakfi.org/sayfa/resmi-senet-2

The Board of Trustees is comprised of seven persons with three family members and four professionals. Board members are selected by the Management Board of the Sabancı Holding.⁴³ Decisions taken by the Board are executed by an Executive Committee. The trustees are volunteers and do not receive any payment. But members of the Board of Trustees appointed from outside the holding, may receive salaries not exceeding 1% of the income of the waqf of the previous year. The exact amount is determined by the Board of Trustees.

Until the year 2006, the waqf focused primarily on building schools, cultural facilities etc. After the re-organization in that year, the waqf has now moved on to strategic philanthropy. These programs are mostly in the form of gifts and focus on women, the youth and the handicapped. The schools built and maintained by the waqf are given as gifts to the Ministry of Education. Since 1974, 41,000 persons have benefited from Sabancı scholarships.

Furthermore, the family also gives rewards in the arts, sports and education in the events that it sponsors such as the Turkish folklore contest, International Theatre Festival of Adana, Turkish Youth Philharmonic Orchestra, International Ankara Music Festival, etc.. Sabancı Vakfı has also established the “Sowing Season” program by

⁴³ www.sabancivakfi.org/sayfa/resmi-senet-2, p. 3/8, item 8.

which, they have given grants to 46 carefully selected waqfs and social projects. Thus, it has become a grant making foundation. 37 of these projects have been completed by which 70.000 women, youth and disabled persons have been reached directly all over Turkey. In addition an estimated 300.000 persons have been reached indirectly.⁴⁴

But the most important gift of Sabancı Vakfı to Turkey is the Sabancı University which started its academic activities in 1999. It has a huge campus of 1.190.705 square meters, where some 4.000 students study under 388 professors and teaching staff.⁴⁵ It is considered to be one of the top universities in Turkey.

Although the endowment deed permits it, the foundation does not accept donations from outsiders.⁴⁶ But every Sabancı company gives a percentage of its annual profits to the waqf. The waqf does not have its own company and has been tax-exempt from the beginning.

Sabancı waqf has judicial personality. According to the endowment deed the management is obliged to spend 5% of the gross revenue on

⁴⁴ Sabancı Vakfı, “Sowing Season”, p. 7. See also, Sabancı Vakfı, *Fark Yaratanlar-Change Makers*, *passim*.

⁴⁵ <https://www.sabanciuniv.edu/tr/sayilarla-su>

⁴⁶ www.sabancivakfi.org/sayfa/resmi-senet-2, p. 2/8, item 5, 6. Interview conducted by Dorukhan Selçuk with Serpil Işıldar of Sabancı Foundation on August 12th, 2015.

management, 28% on investments to enhance waqf assets and 67% on the purposes of the waqf. Any change in the endowment deed must be approved by a two-thirds majority of the Board of Trustees. Abolishment of the waqf can be executed only if the assets of the foundation are depleted and fail to fulfill its purposes.

The total value of the assets of the waqf stood at the end of 2014 at ca. 233 million USD.⁴⁷ The waqf generates sustained profits, which stood at the end of 2013 at 29.577.080 TLs and at the end of 2014 at 39.677.153TLs. The latter corresponds to ca. 16 million USD.

Waqf of Entrepreneurship (Girisimcilik Vakfi):

In sharp contrast to the two giant waqfs just explained, it would be appropriate to complete this article by explaining a very young but most interesting waqf, the Waqf of Entrepreneurship. Established by Sina Afra in 2014, this waqf aims at disseminating the culture of entrepreneurship in Turkey. Mr. Afra is of the opinion that merely 10 percent of the youth in Turkey aims at becoming an entrepreneur. His aim is simply to expand this ratio to 25 percent.

⁴⁷ 583.718.528 TLs.

To achieve this aim, he has persuaded 30 like-minded successful entrepreneurs to join the Executive Board of his waqf. With the capital that they have pooled, they have established a fellowship program. Once selected, fellows are awarded a monthly stipend of 500 YTLs during their education. They are also given the opportunity to meet members of the Executive Board and other successful entrepreneurs to learn about their personal stories of struggles, failures and success. Such meetings are organized once every two months. The waqf gives neither seed capital nor executive training, it simply focuses on inspiring the youth and imbuing them with entrepreneurial ambition and determination.

Disseminating entrepreneurial culture in such a deliberate and organized fashion is considered so unique that Google has agreed to join the Executive Board, a first outside the United States. Klaus Hommels, one of the early investors of Facebook and Skype, has also joined.⁴⁸

So far, out of the 40 fellows chosen last year, 15 have established their own companies. During the very first year of the waqf 6.400 persons have applied for a fellowship. This year, in 2015, the number has increased to 30.000. Out of this figure, only 80 will be selected. The selection is a vigorous process comprising six phases. The waqf aims at doubling the number of fellows every year. Interestingly, they

⁴⁸ Sina Afra, "Girişim Elçileri", p. 63.

communicate with the public primarily through twitter and have achieved this increase without any advertisement.

Another aim of the project is to persuade the youth to give-back. Mr. Afra considers the waqf his own personal 'give-back' project. Being a Turk of Jewish background, he believes that the huge success of Israel as a hub of venture capital is primarily due to the culture of entrepreneurship prevailing in that country.⁴⁹ His ultimate aim is to create a similar culture of entrepreneurship in Turkey. With this purpose in mind, he has sent some selected fellows to various entrepreneurial events in Germany and England. All the fellows, without exception, were taken to Tel Aviv. Next year, they will be taken to San Francisco in order to observe the way venture capital functions in Silicon Valley.

Thus established merely a year ago, the Waqf of Entrepreneurship represents an exciting synthesis of waqf, venture capital and entrepreneurship. While this particular waqf focuses on disseminating entrepreneurial culture, it is perfectly possible that other waqfs can be established focusing directly on creating entrepreneurs by providing seed capital or mezzanine finance. The only difference between such venture capital waqfs and pure venture capital companies would be while the former would be non-profit, the latter would be for-profit, with

⁴⁹ Afra argues that, a city of merely 500.000 people, Tel Aviv has produced some 7.000 start-up companies. *Ibid.* p. 64.

the former still generating profits but instead of distributing them to its shareholders, it would channel them for providing additional financial support to entrepreneurs.

Conclusion:

Turkey has a fascinating history of waqfs. From the medieval Selcuk and early-modern Ottoman Empire until the 19th century, this country has enjoyed a flourishing waqf culture. From the 19th century onward, however, the decentralized Ottoman waqf system with autonomous waqfs, were subjected to a massive process of centralization.⁵⁰ The system continued to be undermined during the secularist one-party rule of the republican era. Thanks to the development of democracy, however, concerned citizens, academics and politicians were able to design the 1967 Waqf Law, which gave new life to the system. It still remains to be seen if the Turkish waqf system will ever recover its former glory.

The fact that the country has done so poorly in the world-wide index of giving is surely not a good sign. Serious studies examining why the Turks were so much willing to give in history and why they are so reluctant to do so today need to be undertaken. Only a thorough

⁵⁰ On the details and reasons of this process see Cizakca, *A History of Philanthropic*, ch. IV/II.

understanding of these causes can provide the correct policy suggestions for the future.

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