

CONCEALED DONATION OR A SALE: THE ACQUISITION OF CHRISTIAN MONASTIC PROPERTY IN OTTOMAN EMPIRE (XVTH - XVIITH C.)

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The way in which the churches, monasteries, as well as the whole Christian church organization in the Ottoman Empire were financially supported is still an insufficiently studied issue. The main reason for that is the fact that within this topic appear interwoven the pre-Ottoman tradition, preserved in the autonomous church law (limited and recognized by the Ottomans) and new experiences, which resulted from the infliction of new, Shari'a law regulations and adaptation to new, completely different conditions of life in the Ottoman Empire.

One of the ways in which the income was made, and not the negligible one, was the receiving of contributions from the congregation. Contributions from religious Christians regularly arrived in big churches and famous monasteries, especially those on Mount Athos. They were mostly brought by travelling monks on their way from alms collecting. Presents were predominantly comprised of money, books, icons, more or less worthy church liturgical and other objects. Monks probably sold grain and cattle, which they received in remote areas. Whenever possible, "travellers" took also such contributions to a monastery or a nearby metochia (big *çiftlik*s). Presents were given also by the pilgrims who were coming to worship the sacred relics. Since the pilgrims were mainly from the rich classes of the population, mostly high-ranking members of the clergy, and afterwards also, merchants and craftsmen, their donations were more considerable. Many pilgrims deserved the eternal commemoration and the title of great donor (ktetor) by helping with their donations the reconstruction of ruined or construction of new buildings in monasteries. Donors were also the monks themselves, especially hegumens of monasteries¹.

¹ On Christian donations in general, cf. J. Kabrda, *Le système fiscal de l'Eglise orthodoxe dans l'Empire ottoman (d'après les documents turcs)*, Brno 1969, 84-85; O. Zirojevic, "Hrišćansko zaduzbinarstvo u periodu osmanske uprave", *Prilozi za orijentalnu filologiju* 46 (1997) 131-139; On donations to Mount Athos monasteries, cf. A. Fotic, *Sveta Gora i Hilandar u Osmanskom carstvu (XV-XVII vek)*, Beograd 2000, 134-149, 221-240; idem, "Athonite Travelling Monks and the Ottoman Authorities (16th-17th Centuries)", *Halil İnalçık Armağanı*, İstanbul: Eren Yayinevi, submitted for printing; *The Present State of the Greek and Armenian Churches, Anno Christi, 1678*, Written at the Command of his Majesty, by Paul Ricaut, Esquire, Late Consul at Smyrna, and Fellow of the Royal

No special precautions had to be taken for donations of money and other movable property. Donations and bequests of immovable property in the Ottoman Empire were, however, subject to certain law regulations, in the way bequests in other places and countries (Valachia, Moldavia, Russia) were subject to the will of rulers and laws of those countries. The Ottoman law recognized Christian legacies and the process of donating or bequeathing to churches and monasteries. Every legacy, either Muslim or Christian, was called *vakıf*. In that general sense, Ottoman officials used, even for the Christian *vakıfs*, the verbs *vakf etmek* [to establish (or make) a *vakıf*, i. e. "bequest", "donation", "present", mostly in religious purposes] and "to bequeath" (*vasiyyet etmek* – from the term *vasiyyet* in the meaning of "will", "last will"). The Muslim documents on foundation of *vakıfs* or donations, known as *vakıfnâme* had a special Shari'atic form. The documents on donations and bequests of the Christians, otherwise very rare, were written simply, in the form of plain *hüccets*².

Although bequests and bestowals of immovable property were permitted, documents concerning such donations are not numerous. Majority of bequests were written as sale contracts. The reasons for such practice have not been clearly explained, but can be supposed.

According to the Hanefite interpretation of Shari'a, which was in force in the major part of the Ottoman Empire, it wasn't permitted to address a bequest to a monastery itself. The donor had to bestow his properties to the monks, novices and servants of the chosen monastery, provided that income from the donated property was to be used for the food for monks, travellers and poor people, which gathered around the monasteries. If that condition wasn't fulfilled, the bequest was considered annulled. There was a certain inaccurate restriction, probably not respected in reality: bequests had to be donated only to poor congregations and not to rich ones. However, the biggest bequests were intended exactly for the biggest and the richest monasteries! As a Moslem – there is no difference – *zimmi* could freely bequeath the third part of his possessions. The rest was divided among the inheritors. The inheritors had the right to dispute the bequest if it exceeded one third of the whole property. However, if the inheritors managed to reach the agreement, or if there were no inheritors, *zimmi* could bequeath more than one third, even his whole property. Naturally, only possessions in complete personal

Society, London 1679 [Reprint: AMS Press, 1970], 224; *Evlîyâ Çelebî Seyâhatnâmesi*, XVIII, İstanbul 1928, 103.

² The first known documents on Christian bequests are, as far as I know, *hüccets* from the St Paul monastery (Mount Athos), mentioned in: V. Boškov, "Mara Brankovic u turskim dokumentima iz Svete Gore", *Hilandarski zbornik* 5 (1983) 193-194. Both of them concerns bequests of Despina Mara Brankovic: 1469 movable and immovable property to Hilandar (Mount Athos too) and St Paul, and 1471 one metochion (*çiftlik*) to St Paul (in Arabic language). Cf. also *hüccets* preserved in Hilandar monastery archive, Turcica, (further HMA) 1/14 (from 1518) and 12/37/10 (from 1519).

ownership (*mülk*) could be donated. *Mülk* comprised everything except the arable land, meadows and pastures, namely: vineyards, gardens, orchards, mills, houses, stores, beehives, fishing places, cattle and other similar possessions. Donations and bequeaths of "state land" was strictly prohibited. However, by fictive sales i.e. by assigning the rights of *tasarruf* to the monasteries' monks, even fields and pastures could be relinquished to monasteries for the *permanent* usage. That was possible by a privilege, granted by sultan, which allowed monks to use a piece of land jointly, with *tapu*, but without paying *tapu resmi* after one monk's death³.

The principal motive of ktetors (big donors) and smaller donors was undoubtedly the wish to join the ktetors' rank, and to be included in monastery memory books, in order to be regularly mentioned during the liturgical services. Concerning Mount Athos, many Christians from the hinterland who desired a peaceful life and everyday prayers became monks in their old age on the Virgin Mery's peninsula. Monasteries rented the cells, sometimes for shorter, sometimes for longer periods, even as a lifelong rent. By donating worth bequests, rich donors could provide for themselves big cell in, or out, of the monasteries, as well as servants who took care of them if they fell ill or weakened.

Among Ottoman documents of Hilandar monastery archive (Mount Athos), issued up to the end of the 17th century, there are only two *hüccets* about bequests of immovable property. They were made almost concomitantly: less than two months apart. In the first case, at the beginning of December of 1518, brothers Jefimije and Mardarije, sons of Manol, by than already monks of Hilandar, established a *vakif* in favour of the monastery with their hereditary fishing places near Provlaka (Proavlox, between Ierissos and Mount Athos). In January of the following year, a certain *zimmi* Yorgo, son of Rali (?) from Novo Selo (near Sidrekapsı, today Neohorion), bestowed upon Hilandarians 26 beehives. Bequests are registered at the Sidrekapsı *kadı* court. They had the same form. The donors stated before the *kadi* that they "separate the mentioned estates from their estates in full ownership and bestow them to the infidel monks and pilgrims ... of the Hilandar monastery" (*mülkümüzden ihrâç edüb ... Filandâr manâsturuñ kefereden mücâvirlerine ve müsâfirlerine vakf etdük*). The condition was also stated. The part

³ A. Fattal, *Le statut légal des non-musulmans en pays d'Islam*, Beyrouth 1958, 142-143; A. Akgündüz, *İslâm Hukukuunda ve Osmanlı Tatbikatında Vakıf Müessesesi*, Ankara 1988, 173-174; Kabrda, 85; M. E. Düzdağ, *Şeyhülislâm Ebussuûd Efendi Fetvaları Işığında 16. Asır Türk Hayatı*, İstanbul 1983², No. 452-455, 469-471; A. Fotić, "The Official Explanations for the Confiscation and Sale of Monasteries (Churches) and Their Estates at the Time of Selim II", *Turcica XXVI* (1994) 36-42; J. C. Alexander (Alexandropoulos), "The Lord Giveth and the Lord Taketh Away: Athos and the Confiscation Affair of 1568-1569", *Mount Athos in the 14th-16th Centuries (Athonika Symmeikta 4)*. Athens 1997, 154-169; E. Kermeli, "Ebû's Su'âd's Definitions of Church vakfs: Theory and Practice in Ottoman Law", *Islamic Law: Theory and Practice*, London: I. B. Tauris, 1997, 141-156 (with different interpretation of church vakfı).

that would remain after the payment of regular taxes "had to be spent for the food in the monastery" (*vakf-i mezbûruñ ... mahsûlâtı mezkûr manâsturuñ me'kûlâtına masârifine sarf oluna*). Since the bequest and the condition were assessed as clear and valid (*vakfen ve şarten sarîhîn mer'in*), the authorized monk from Hilandar confirmed the statements of the donors and asked for a *hüccet*⁴. Even the *şeyh ül-islam* Ebusu'ud, in the period of confiscation and repurchases of monasteries' estates in the years of 1568/69 couldn't raise any objection against this kind of bequests.

There were other presents or bequests, acknowledged indirectly, but still from the Ottoman documents. There were mostly *hüccets* that Hilandarians used to protect themselves from possible demands for bestowed estates from donors' inheritors. Papa Strati, son of Kiryaki, bestowed to Hilandar (*Hilandâr manâstırına vakf etmişdir*) in 1501 one and a half *dönüm* of vineyards in a village of Koutsi (Strymon region, today Evkarpia). Four years later, possibly after the death of Strati, monk Danil and Manol, son of Kseno, husband and representative of Strati's sister Irina were brought to *kadı* court of Serres. Manol stated on behalf of his wife that "he accepted the mentioned *vakıf* and consider it undisputable" (*zıkr olunan vakıf makbûl ve müselleme dutdum*) and that he didn't have any claims for the same. One meadow in Pijavica (near Sidrekapsı, not existing today) was not contested too. Dimitrije and Mara, children of the deceased Djura, daughter of Brale, and wife of Petar from Pijavica, confirmed before the *kadı* of Sidrekapsı in 1511 that the meadow "while living and of clear mind" (*hâl-i hayâtında ve kemâl-i sıhhatında*) Djura at one time bestowed to Hilandar (*mezbûr manâstura vakf eyledi*). More than three decades later, in February of 1543, Hilandar monks exchanged that meadow for two meadows in vicinity and a store in the village of Izvor (today Stratoniki). However, when a month later Mara, daughter of the donor Djura, heard of that, she interfered. She contested the exchange since, according to the condition of the bequest in question, the donated meadow could not be exchanged and the hay should have been used for feeding of the monastery cattle forever. As the monks confirmed Mara's statements, the exchange probably didn't take place. In that way Mara's understandable concern for the peace of her mother's soul prevented Hilandarians to gain the probably better possession by such exchange⁵.

The foundation of big metochion (*çiftlik*) of Hilandar monastery, called Papastati, on Kassandra, in a proper way opens an issue of concealment of donations or bequests behind the classic sales. The first two saved documents represent the usual, clear and unambiguous sales contracts. There is no word that can arouse even a smallest suspicion regarding the veracity of the act. Firstly, on

⁴ HMAT, 1/14, 12/37/10.

⁵ HMAT, 1/10, 1/12, 1/28, 1/29.

December 26th, 1669 the *zabit* of the *vakif*, in the name of the "master of land" (whole Kassandra was the *vakif* of *Bab us-se'adet aga Gazanfer Aga*), issued a title deed (*tapunâme*) on sales, i.e. on transfer of the rights of usufruct of all fields belonging to the *çiftlik*. According to the title deed, the earlier holder of the fields, and owner of the *çiftlik*, monk Kalinik, son of Dimo, sold the fields to the proxy of Hilandar for (1)40 *guruşes*. The *zabit* charged the title deed tax of (1)4 *guruşes*. (Figures in brackets were written above the text of the *hüccet* afterwards.) Although it would be logic to "sell" at the same time also the *mülk* part of the *çiftlik*, that was done almost one year later for the amount of 200 *esedî guruşes*. The *na'ib* of Kassandra issued a *hüccet* for Hilandar monks on November 18th, 1670. The true nature of the act was revealed in the Kalinik's *omologia* (contract), written two days later in Greek. It unambiguously evidences that the elder Kalinik, already member of the monastery brotherhood, bestowed to the monastery a "metochion", provided that in return he got a novice to look after him in the monastery and his cell in Karyes. Ottoman *hüccet* from February of 1674 confirms that the transaction in question was a real bequest. The reason for turning to *kadi* was the dispute between the Hilandarians with the hereditary of the late Kalinik, his sister Maruda. When Kalinik died, Maruda recognized the establishing of this *vakif*. However, from the Papastati steward, *ekonomos*, monk Petron, she demanded wheat and money, obviously thinking that the contract didn't refer to them. The monk's reply had the completely correct Shari'a form: that, while living, Kalinik "by the irrevocable donation [bequest]" donated [bequeathed] to the monastery poors his *çiftlik*, houses, granary, vineyard and garden (*manâstur-i merkûm fukarâsına vakf-i lâzım ile vakf edüb*). It seemed that Petron got instructions regarding the terminology by someone well-experienced. Even when counting the possessions, he skillfully omitted the fields, obviously knowing that it wasn't permitted to donate (bequeath) them, as "state lands". He added that he didn't know anything about the wheat and money. Eventually they agreed that Petron had to pay 110 *guruşes* to Maruda⁶.

We have here an interesting terminological case also from the other point of view, which could lead us to the wrong conclusion if we don't analyze the Ottoman terminology in its most general meaning. It is exactly on Kassandra that we have opportunity to realize the existence of a *vakif* on a *vakif*. The monasteries' *vakif* (not connecting with the status of *miri* land) on the *vakif* land of Gazanfer Aga.

The monk's open story about the *vakif*, although the Ottoman documents evidence the sales, demonstrates that in fact the whole procedure didn't have to be concealed. It seems that "buying and selling" was a notorious and accepted form of

⁶ HMAT, 12/4/9, 12/4/10, 2/196a; V Mošin in A. Sovre, *Dodatki na grškim listinam Hilandarja. Supplementa ad acta Graeca Chilandarii*, Ljubljana 1948, 53. About the metochion/*çiftlik*, cf. chapter "Papastati", in: Fotić, *Sveta Gora i Hilandar*, 361-363.

bequests (donation)⁷. When we talk about arable land and meadows, which belonged to the "state land", it is obvious why only title deeds were taken. It wasn't permitted to establish *vakıf* with that kind of land. Since the "master of the land" charged the buyer with the title deed tax in the amount of 10% of the value of the land, the value of fields were certainly assessed in proper way. In such cases the tax was probably paid by the donor, if he wanted the monastery not to pay anything for his donation. In spite of the fact that they belonged to the *mülk* and that it was permitted to donate them, the vineyards, gardens and other such possessions were on the "state land" and subject to title deeds regulations. It remains to answer the question why sale contracts for houses and stores were made at all when that wasn't necessary, and neither the country nor the "master of the land" had any benefit from that.

On the other hand, maybe donors (ktetors) opted for the form of buying and selling believing that, from the juridical point of view, this kind of transfer of estates was more secure - whether there was a possibility that the contract could be disputed by the Ottoman authorities (we should remember the clause on bequests only to the "poor" fraternities) or because of the distrust in the inheritors. Eventually, the form of buying and selling was the only way to donate to a monastery more than one third of the estate set by the law, especially if the donor knew that his inheritors would upon his death dispute over his bequest demanding the maximum two thirds of the estate. All this, however, remains within the domain of hypotheses. The real answer to the question on registration of bequests under the guise of buying and selling still cannot be given.

The *vakıfnâmes* of Mount Athos monasteries written after the repurchasing of monastic land on January 31st 1569, represents the consequence of a coercive measure and by their form and contents they are unique. There is no similar known *vakıfnâme* relating to church or monasteries in the Ottoman state. Soon after the buying out of their own properties, the Hilandarians, and probably also the representatives of all Athonite monasteries, took measures to secure the monastery properties in the full ownership (*mülk*). Precisely listed *mülk* properties, the Hilandarians donated to their monastery (established a *vakıf*), better to say to themselves, poor people and travellers, as was regulated by the Shari'a. Their hegumen Pajsije was pronounced *mütevelli*. *Vakıfnâme*, written between February 27th and March 8th 1569 contained even the legalization with the apparent legal conflict regarding the revoke, characteristic of Moslem *vakıfnâme*⁸.

⁷ The same was practiced in Cyprus too, cf. *The Kanakaria Documents 1666-1850: Sale and Donation Deeds*, edited with introduction and commentary by C. P. Kyrris, Nicosia: Cyprus Research Centre 1987, 109.

⁸ HMAT, 11/5, 11/5a. On that kind of *vakıfnâme*, cf. Alexander, 170-176; A. Fotic, "Sveta Gora u doba Selima II", *Hilandarski zbornik* 9 (1997) 153-154.

It is completely clear that such unique act in no way can be taken as an example of Christian bequest to a monastery.

Even though there are only several certain proofs of donations (bequests) of immovable property to Hilandar from the 15th to 17th century, there are no doubts that there were many of such. One should always bear in mind that they can be hidden in Ottoman documents on transferring the rights of usufruct, or on the real estate sale in favour of monastery. And there are several dozens of such documents. Research done on Ottoman documents found in Hilandar monastery, without any doubt can be applied to all other monasteries and churches in Balkan Peninsula.

Summary

Having adapted themselves to the new, Shari'a, terms and Ottoman institutions, the Christians resumed the earlier tradition of making donations to monasteries. Although Christian bequests and donations were registered by the *kadi*, only few such documents have survived. That the practice was not that infrequent is indirectly evidenced by other documents. That fact raises the question of the possible concealment of donations under unmistakable sales contracts. It is obvious why the assets classified as the state-owned land were not donated – it was forbidden to turn the latter into a *vakif*. *Tapunâme* had to be issued, but there is no answer to the question as to why the *hüccet* covered the sale of the entire *mülk* part of the property. The "purchase-and-sale" action seems to have been generally accepted as a form of expressing a donation. Such form was considered, with or without reason, as being legally safer, both from the authorities and from subsequent claims by the donor's heirs. When studying monastic archives, we must always bear in mind that many Shari'a contracts for realty transactions actually conceal donations.

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