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TAPUNĀME ON VAKIF LANDS — CONTRIBUTION TO THE OTTOMAN DIPLOMATICS

Classifications and divisions of documents accustomed to Ottoman diplomatics treated only those documents which came from, or were addressed to central and local administrative governments. The official documents of private origin were considered only if they belonged to this second group.¹ These classifications did not cover the official documents which regulated relationships between persons with private attributes (the fact that some of the subscribed individuals had been of high official rank did not have importance for the form or content of the document).

This particular group of documents consists of various types of contracts (*çakd*), title-deeds (*tapunāme*), certificates (*tezkire*, *temessük*), regarding rentings acquisitions, sales, bills, receipts acknowledging debts or paying debts etc. The majority of them is of modest historical value. But, the *tapunāme*, on the basis of its significance, belongs to documents which deserve attention and treatment. They might offer informations of general value — for the history of agrarian and feudal relations, taxes, the manner of disposing the *vakif* lands, and local significance — for the history of regions with its specifics, historical geography, onomastics etc.

This line of thoughts drope me to make an analysis of a certain type of the *tapunāme* — the one which was given for

¹ L. Fekete, *Einführung in die osmanisch-türkischen Botmassigkeit in Ungarn*, Budapest 1926; Б. Недков, *Османотурска дипломатика и палеография*, 1, София 1966; M. Guboglu, *Paleografia și Diplomatika Turco-osmana*, Bucarest 1958; V. Stoyanow, *Die Entstehung und Entwicklung der osmanisch-türkischen Paläographie und Diplomatik*, Berlin 1983.

the *vakıf* lands. Its function and diplomatic characteristics do not distinguish much these *tapus* from the *tapus* given for the other types of the *mīrī* lands.

The *tapunāme* was a document of private-legal character. In written sources it could be found as: *tapu*, *tapunāme*, *tapu tezkiresi*, *tapu temessüki*, *tezkire*, *temessük*.² In essence it was a certificate of paid tax called *tapu* (*resm-i tapu*, *resm-i tapu-yi zemīn*, *tapu-yi misil*), and *ipso facto*, a certificate of the right to "use" (*tasarruf*) the piece of the limited land named in the paper. The *tapu tezkiresi* was issued by landowner (*sāhib-i arz* i.e. *īmār* and *zēcāmet* holders, *emīn* for the *hāss* estates, *mütevelli* for the *vakıf* lands) on a particular paesant's request.

The payment, in fact, was nothing but a fixed rent paid in advance (*icāre-i mu'accele*). With the *tapu* payment, the paesant acquired the right of life "usage", of course, if he fulfilled certain conditions i.e. the obligation to pay yearly dues and taxes, or a rent (*icāre-i mu'eccele*).³ From that point of view, the *tapunāme* was essentially specific contract — there were obligations on both sides to be fulfilled (*sāhib-i arz*'s to the *mīrī* lands, and the *tasarruf* holder's to the Empire and to the landowner), because, in contrary, the *tapu* would had been annuled.

The relationships between landowners and *recāyā*, the conditions of *tasarruf*, the type of land which might be or must be let on the *tapu*, as well as the right on the *tapu* itself (*hakk-i tasarruf*), were all regulated in detail by the only real landowner of *mīrī* lands — sultan, by his regulations and law-codes (*kānūns*, *kānūnnāmes*).⁴

Besides *tapunāmes* themselves, the function of *tapunāme* given for *vakıf* lands, the right of *mütevelli* and the obligations

² In literature can be found thought, based on the *sicills* of Sofia, that the document which was given on *vakıf* lands was *temessük*, but not *tapunāme* (B. Мутафчиева, *Аграрните отношения в Османската империя през XV—XVI в*, София 1962, 203—204). But, the comparison of not so small number of various kinds of *tapunāmes* leads to the conclusion that the term *temessük* was only one of many terms equally used with same significance — *tapunāme* (every *tapunāme* was understood as *temessük*, but not contrary).

³ Üsküb ve Selanik Kanunu (1568—9) in: Ö. L. Barkan, *XV ve XVI inci Asrirlarda Osmanlı İmparatorlugunda Zirai Ekonominin Hukuki ve Mali Esaslari, I, Kanunlar*, Istanbul 1943, 299; «Osmanli Kanunnameleri», *Millî Tetebbular Mecmuasi*, I (1331) 70; H. A. R. Gibb — Harold Bowen, *Islamic Society and the West*, vol. I, part II, Oxford 1957, 166.

⁴ Barkan; *Osmanli Kanunnameleri, MTM*, I (1331) 49—112; H. Hadžibegić, *Kanunnama sultana Sulejmana Zakonodavca*, Glasnik Zemaljskog muzeja u Sarajevu, nova serija, IV—V (1950) 295—382; Закон за земята от 1609 г. in: Г. Гълъбов, *Турски извори за историята на правото в Българските земи*, I, София 1961, 128—201, etc.

of *mutasarrıf* could be best seen in quoted *kānūns* and *kānūn-nāmes*, *fermāns*, *fetvās* of *şeyh ül-islms* and *müftis*, *kāzıs* register books, *hüccets*, *mülknāmes*, *vakıfnāmes*, and some narrative sources which treated *imār* system and the causes of the decay of the Empire. In the *kānūns* and *kānūnnāmes* one could find the difference between *wakıf* and *sipāhi* lands made by Central government. The *mütevelli's* authority and right on land were broader than *sipāhi's*. The essential difference was evident in: 1) *mütevelli's* right to overrule the transaction done by his precedent if the *tapu* had been let on a lower payment than usual, and 2) the right to return escaped *recāyā* without any time limit. The *sipāhi's* rights, on the other hand, were limited in both cases.⁵ *Tasarruf* holders on *vakıf* lands were more closely connected to the land by releasing some taxes as, for example, *cavāriz-i dīvāniye ve tekālif-i cörfiye*.⁶ The privileges of *vakıf* estates exactly show the importance of *vakıfs'* economic life for the development of the region, as well as religious and educational. The accent here was on their general social importance, and not the fact that they had been donated to the meritorious individuals.

The *tapunāme* itself did not need to be registered or verified by *kāzı*. But, because of a number of possible complications, there were claims for exact transcript in the *sicill*, and more often, claims to the certificate from *kāzı* (*hüccets*, *temessüks*).⁷ That was the way of confirming its authenticity. As the regulations were provided by the law-codes, the negative reflex of disregarding the statutes, in complete could be seen in *sicills*. *Tapunāmes* were submitted as a trustworthy proof at Sacred tribunal in numerous sale-acquisitions, donations, interferences on property, reclamations and not realized duties — between *tasarruf* holders themselves, as well as between *tasarruf* holders and *sipāhi* or *mütevelli's*.⁸

The diplomatic analyse of the *tapunāme* on *vakıf* land points at a certain form which was in life until the middle of 19. century. Later on, it was transformed into printed formular which totally changed its shape.

⁵ «Osmanli Kanunnameleri», *MTM*, 1 (1331) 95; Gibb — Bowen, vol. I, part II, 247; Закон за земјата от 1609 г, in: Гълъбов, 143.

⁶ *Fermān* to the *kāzı* of Manastir from 1635; in: *Турски документи за историјата на македонскиот народ*, серија 1, том II, Скопје 1966, Doc. No. 258.

⁷ M. Mujić, *Sidžili mostarskog kadije, 1632—1634*, Doc. No. 405, 406, 497, 499.

⁸ Mujić, Doc. No. 174, 186, 194, 240, 306, 308, 339, 381, 432, 500 etc; H. Ongan, *Ankara'nın İki Numaralı Şer'iye Sicili*, Ankara 1974, Doc. No. 49, 254, 400, 682 etc; *Турски документи...*, серија 1, том I—IV, Скопје 1963—1972, a lot of examples.

External characteristics:

Tapunāme were original documents, written on paper, approximately 14×20 cm. The type of handwriting was *divāni* combined with *rikca*.

The signer of *tapu*, *mütevelli* or his agent, usually put his seal (*mühür*) on the back, but the seal was not compulsory part of the document.

Internal characteristics:

Tapunāme let on the *vakıf* lands were written in established form. Some terms and phrases were compulsory elements, but some of them could be omitted without changing *tapu*'s principal content.

The *tapu tezkiresi* could be divided in following parts:

1. *Temcīd (dācvet)* — invocation
2. *Nakl (iblāg)* — narration
3. Transaction
4. *Şurūt* — conditions
5. *Clausula prohibitiva*
6. *Tacālīm* — instruction
7. *Tārīh* — date
8. *Imzā* — signature

As on the majority of the ottoman documents, the invocation was: هو .It was put on the very top of the paper.

After blank space, from the middle of the paper began the text of *tapu*, directly with the introduction to the *nakl*:

وجه (باعث) تحرير حروف اول در كه ...

a phrase well-known from many various types of ottoman documents.

Nakl gives the exact location of the object of the transaction and explains the reasons for the issue of *tapunāme*. The name of the *vākıf* and of *vakıf*'s village, as well as the complete boundaries of the estate, were all the obligatory components of *narratio*. Besides the name of the *vākıf* there were characteristic attributes together with the pray (*ducā*):

... مرحوم و مغفور له ... (جنت آميدان فرد وس مكان) طاب ثراه ...

»The deceased and whose sins are forgiven«, sometimes »whose home is Eden«, or »let him rest in peace«.

The field (vineyard, uncultivated land etc) was in the boundary, *سنورنده حد و دنده* of mentioned *vakıf's village*. The size of the land and the exact continuous limits, *محدود متصل* from all four sides clearly and undoubtedly determined it. One *tapunāme* could be let on more than one field, if they were given to the same man. In that case, the reasons of letting and the complete boundaries for each one of them particularly, had to be cited. Sometimes, the land could be determined only by its name — if that was sufficiently precise.

The second but not less important part of the *nakl* was the cause of issuing the *tapu tezkiresi*. The law-codes strictly determined which kind of land could be let on *tapu*. The accordance with law was reflected in *tapunāme* in the expression:

طیبه مستحق اولاد قد •

Which causes were permitted by law regulations? It was explicitly forbidden the neglect and uncultivation of the arable land — because that was considered as a great loss for the *vakıf*. If the land was left uncultivated for more than three years, it had to be let on *tapu* to the other peasant. After *matasarraf's* death the estate passed to his sons without *tapu* payment, even if they had been under age. If he left no son as a heir, before all other possibly interested persons, the priority of claim was given to close family relatives in strictly regulated order and with privileged pay for *tapu*. All others were obliged to pay full amount.⁹ Very important condition, which legalized the sale, inheritance or any other transaction, was the landowner's permission (in this case *mütevelli's*) for the transaction — because that meant new *tapu* payment¹⁰. If the landowner did not respect those provisions, he could be persecuted by the *kāzî*, which could be seen clearly in *sicills*.¹¹ And if that legal neglect took wider proportions, the sultan himself interfered protecting the *recāyā*.¹²

The reasons for letting on *tapu* were evidently very important. They were written in the document according to the above-mentioned conditions:

— ظاهرده وارث معروضي اولمايوب •••••

— بلا ولد فوت اولوب •••••

— کسننک تصرفنده اولمايوب •••••

— حالي و معطل قالب •••••

⁹ «Osmanlı Kanunnameleri», *MTM*, 1 (1331), 65, 76—77; Gibb — Bowen, vol. 1, part II, 239.

¹⁰ Закон за земята от 1609 г, in: Гълъбов, 129.

¹¹ See footnote 8.

¹² N. Filipović, *Carska zapovjest Bešaretu*, GZM, nova serija, IV—V (1950) 285—294.

هو

- (1) باعث تحرير حروف اول در كه محبيه بلغراد ده واقع يحيالي
 غاني محمد پاشا مرحومك اوقافي (2) قراسندن ميريوه نام قره
 د اخلنده واقع بر طرفي امير چلبلي باغه و بر طرفي حسن بشه
 باغه و بر (3) طرفي ادام تارلاسنه و طريق عام ايله محدود
 متصل اولوب تخميناً اون كونلك تارلا اون (4) سندن برو خالي
 و معطل قالب زراعت و حراستي ايچون امر سلطاني وارد اولوب
 (5) و شرع شريف طرفندن تفويض اولنمسي ايچون اذن وهرلد كدن
 ذكر اولتان ارض مزبور (6) توليتم حسبيله اشبو صاحب الحروف
 جابي مصطفى چلبلي به بش يوز اقچهيه حق تصرفن تفويض (7)
 ايدوب مرقوم دخي غوض و قبول قلد قدن صگره تارلا مزبوره متصرف
 اولمق (8) ايچون طرف و قدن طپو تذكرسنه طالب اولد قده
 طرفندن اشبو حروف ترقيم اولندي (9) مادامكه اولوب سابق
 اوزره تارلا مزبورك حاصل اولان محصولي عشون طرف (10) وقفه
 ادا و تسليم ايله تارلا مرقوم ملك مشتراسي اولوب اخردن كمسنه
 تصرفنه (11) مانع اولمامق ايچون ايچون اشبو حروف براي تمسك
 كتب اولنوب مرقوم مصطفى (12) چلبلي يدينه وضع و دفع اولندي
 وقت حاجتده ابراز ايدوب احتجاج ايدينه تحريراً في اوا (13)
 خرشوال العكرم لسنه ثلاث و سبعين و الف

الفقير
 حسن
 وكيل
 متولي
 م

or, as simply handing over (*tefviz*) the right to »use« the holding to the other for agreed sum.

Besides the name of the new *mutasarrif* came the attributes often used in legal documents, such as: *sāhib ül-hurūf*, *bācis-i tezkire* etc.

The term *resm-i tapu* was not always quoted in literally. Obviously, it was understood simply by the mentioning of the sum. That paragraph, and that also happened sometimes, could be omitted totally by not quoting even the amount itself.

The validity of the document and the competence of *mütevelli* to issue the *tapu* were inevitably accentuated by the phrase: »upon my authority of *tevliyet*«.

تولیتیم (مز) حسبیلہ

The terms *tefviz* (handing over) and *tefevvuz* (taking possession of a thing handed over) were characteristic obligatory parts of the *tapunāme*. They showed the only legally possible transaction of *miri* land. That kind of the land could not be sold as private property (*mülk*), but the right of using it could be transferred:

... حق تصرفی تفویض اید وب ...

... مرقوم دخی تفویض و قبول قلد دن صگره ...

Şurūt were indicated as the part of the *tapunāme* in which the *mutasarrif* was obliged by *mütevelli* to the fulfillment of the conditions legally established for »using« the land in question. In fact, legally it was considered as the payment of periodical rent (*icāre-i mu'eccele*). The due of the »tithe« (*cöşr*) was one of the most frequent obligations. As long as the conditions were fulfilled, »the land could have been enjoyed as purchased property«, which ment »in the manner he wishes«:

مادامکه اوسلوب سابق اوزره باغ مزبورک محصولی عشرین

طرف وقته بلا نزاع ادا و تسلیم ایلیه باغ مرقوم ملک مشتراسی

اولوب (کیفما یشا ضبط و تصرف ایلیه) ...

Depending on the type of the land or the right of the *vakıf*, the conditions were heterogeneous. It could be yearly paid amount whether it was determined as »instead of the tithe« (*cöşr bedeli*), or not. But, it was underlined that the paying must be handed in fixed price and at once — *maktūc*.

The *şurūt* were closely connected with the *clausula prohibitiva*. As long as the *mutasarrif* was fulfilling the conditions, »no one, even not the *vakıf* authorities, had right to interfere and

disturbe his right to enjoy the land«. »That was the reason why this paper (*tapunāme*) was issued as certificate (*temessük*)«:

۰۰۰ اخردن كسنه تصرفنه مانع اولمامي ايچون اشبو حروف

براي تمسك كتب اولنوب

The text of the *tapunāme* ended by the instruction (*ta'ālīm*) which indicated its legal power. The existance of the identical phrase in *hüccets* and similar certificats verified by *kāzī*, put the *tapunāme* on the same level with them, although they were not verified and registered by the court. The *tapu tezkiresi* itself was legal proof of the *taşarruf* holding. »Let it be shown when circumstances require«:

۰۰۰ وقت حاجده ابراز ايدوب احتجاج ايديه . . .

In terms of diplomatic analysis, the date (*tārīh*) did not show any specifics.

The signature (*imzā*) was more or less skillfully symbolized. It always belonged to the person which issued the *tapunāme*: the *mütevelli* or his agent (*kāim-makām, vekil*), using the phrase:

الفقير المتولي لوقف مزبور م

The privileges of the *vakıf* estates could be seen also in the *mütevelli's* right towards the acts of his agent. According to the *fetvā* of *şeyh ül-Islām* Ebussu'ūd, the *mütevelli* could annul the *tapu* if his *vekil* had let it for lower price. According to the *fetvā* of *şeyh ül-Islām* Yahyā, in the same *kānūnname*, that right was not given to the *sipāhī*¹³.

The significance of *mim*, the letter which was put at the end of the signature, between all its possible meanings as abbreviation, here was considered as *temme* (the end).

The proper expression of the *tapunāme* certainly could not be get throw its separated and particularly analysed parts. That was the reason of presenting, as example, one characteristic *tapunāme* on *vakıf* land.

The diplomatic analysis of the *tapunāme* on *vakıf* lands indicates one simple and commonly used pattern. That pattern, with small modifications, was also present on the *tapunames* on the other types of the *mīrī* land. Schematic phrases, administrative style and clarity of expressions were adapted for practical use and function of ordinary, but very important — certificate.

¹³ »Osmanlı Kanunnameleri«, *MTM*, 1 (1331) 94—95.

ТАПИЈА НА ВАКУФСКУ ЗЕМЉУ — ПРИЛОГ ОСМАНСКОЈ ДИПЛОМАТИЦИ

Резиме

Акти приватних лица су ретко разматрани у османској дипломатици иако њихова историјска вредност није занемарљива. Тапија представља исправу приватноправног карактера којом се потврђује плаћање дажбине зване *resm-i tapu*, а самим тим и право притежавања одређене земље. Тапију издаје „господар земље“ (*sâhib-i arz*), тј. спахија на тимару и зеамету, емин на хасу а мутевелија на вакуфској земљи. Дипломатичка анализа вакуфске тапије указала је на један једноставан и општекоришћен образац, присутан и код тапија на друге врсте миријске земље, уз мале и карактеристичне измене. Сувопарне фразе, административна форма и јасноћа израза прилагођени су начину употребе, њеној функцији обичне али веома важне — *потврде*.

Тапија на вакуфску земљу би се могла разложити на следеће делове: 1. *temcid* (инвокација), 2. *nakl* (нарација), 3. *teviz* и *tefevvuz* (преношење права притежавања), 4. *şurut* (услови), 5. *clausula prohibitiva*, 6. *talim* (упутство), 7. *tarih* (датум) и 8. *imza* (потпис). У чланку су цитирани и објашњени најкарактеристичнији изрази.

Превод документа:

Он!

Разлог писању писмена је следећи: У селу Миријеву, једном од села београдских вакуфа блаженопочившег Јахјаи газии Мехмеда-паше, налази се њива од приближно десет дана [орања], која је у потпуности омеђена: с једне стране Емир-челебијиним виноградом, с једне стране Хасан-бешиним виноградом, с једне стране Адамовом њивом и јавним путем. Већ десет година је пуста и занемарена. Пошто је од султана стигло наређење да се она обрађује и чува, а од часног шеријата дата дозвола за пренос, у складу са мојим правом тевлијета, право притежавања поменуто земље пренесено је за 500 акчи на цабију Мустафа-челебију, сопственика овог писмена. Пошто је споменути примио пренос и преузео њиву, да би могао да је притежава, од стране вакуфа је затражио тапијску тескеру и ја сам му оверио ово писмено. Све док на стари начин вакуфу предаје и уручује ушур од производа са поменуто њиве, она је његова купљена имовина. Да нико други не би ометао притежавање, написано је ово писмено као темесућ [потврда] и потом предато и положено у руку поменутог Мустафа-челебије. У случају потребе нека се покаже као доказ. Написано у последњој декади поштованог шевала хиљаду седамдесет треће године [29. V — 7. VI 1663].

Убоги Хасан, опуномоћеник мутевелије, М [свршетак]