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ROLE OF QĀDĪ'S IN THE ISLAMIC INSTITUTIONS

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Abstract

The article is based on most recent accomplishments, conclusions and methods in World Islamic and historical sciences. The historical-comparative method was applied to study the sources including various manuscripts of "Ḥanafī Law" and many other sources written in Arabic that are available in the Fund of Manuscripts of the Institute of Oriental Studies under Academy of Sciences of the Republic of Uzbekistan.

It relies on recommendations, conclusions of research works and the conceptions related to the history of civilization of the Central Asia that were stated by leading scientists of our country and foreign countries such as Joseph Schacht, Monika Gronke, Ulrich Rebstock, Chafik Chehata, Émile Tyan, Chalmeta P; Carriente F, Riberta J., Asin, Jeanette A. Wakin, Michael Thung, Wael Hallaq, Carl Brockelmann[1].

The aim of the article is to illuminate the role of literature on juridical documents in the development of divinity science in Transoxiana in X-XIII centuries. Moreover,

[1] Schacht Joseph. Das kitab al-Shuf'a aus dem al-gami' al-Kabir fi-l-Shurut des Abu Ga'far Ahmad ibn Muhammad al-Tahawi. Heidelberg: Carl Winter´s Universitätsbuchhandlung, 1930. − Б. 58; Schacht Joseph. Das kitab adkar al-huquq war-ruhun aus dem al-gami' al-Kabir fi-l-Shurut des Abu Ga'far Ahmad ibn Muhammad at-Tahawi. Heidelberg: Carl Winter´s Universitätsbuchhandlung, 1927. − Б. 38; Monika Gronke. Arabische und persische Privaturkunden des 12. und 13. Jahrhunderts aus Ardabil (Aserbeidschan). Berlin: Klaus schwarz verlag.1982. − Б. 449; Ulrich Rebstock. A Qodi's Errors // Islamic law and society. – Leiden, 1999. – № 6. – Б. 1-38., Ўша муаллиф. Abwägen als Entscheidungshilfe in den usûl al-fiqh: Die anfänge der targîh-Methode bei al-Gassos // Der Islam (zeitschrift für geschichte und kultur des Islamischen orients) // 2003. – № 80. – Walter de Gruyter. Berlin. Б. 110-122; Chehata Chafik T. Theorie Generale de l'obligation en Droit Musulman, les sujets de l'obligation avec une bibliographie,une methodologie et un tableau general de la theorie de l'obligation en droit Hanefite. Le Caire: Imp.F.E. Noury & Fils, 1936. − Б. 367; Tyan Emile. Le Notariat et le regime de la prevue par ecrit dans la pratique du Droit Musulman. Lyon: Universite de Lyon, 1945. – Б. 99; Emile Tyan. Histoire de L'organisation Judiciaire en Pays D'Islam. Leiden: E.J.Brill, 1960. − Б. 673; Chalmeta P; Carriente F. Formularo notarial Hispano-Arabe(por elalfaqui y notario cordobes Ibn al-Attar(sX) Madrid: Academia Matritense del Notariado Instituto Hispano-Arabe De Cultura, 1983. − Б. 675; Riberta J., Asin M. Este formulario ha sido objeto de la tesis doctoral de dona Asuncion Ferreras Sanchez. − Paris: Universidad Complutense, 1991. − Б. 256; Ahmad B. Mugit al-Tulaytuli (m.459/1067). Al-Muqni' fi 'ilm al-Shurut (formulario natarial).ed. Francisco Javier Aguirre Sadaba Madrid, 1994. − Б. 405; Jeanette A. Wakin. The Function of Documents in Islamic Law: The Chapters on Sales from Tahawi´s Kitab al-Shurut al-Kabir. Albany State University of New York Press, 1972. − Б. 203; Michael. H. Thung. Written obligations from the 2nd/8th to the 4th/10th century. Amsterdam. Amsterdam University press.1997. 135б; Same author. Written obligations from the 2nd/8th to the 4th/10th century. The Journal, Islamic Law and Society, Vol. III.Leiden: E.J. Brill, 1996. − Б. 3-13; Hallaq Wael.B. Model *Shurut* Works and the Dialectic of Doctirine and Practice. Jurnal, Islamic Law and Society,Vol. II. (Leiden, E.J.Brill,1995). − Б.109-134; same author, The *qadi's diwan(sijill)* before the Ottomans. Bulletin of the School of Oriental and African Studies, University of London, Vol.61, No 3. (1998). − Б. 415-436; Brockelmann C. Geschichte des arabischen Litteratur. − Supplementband 1. − Leiden: Brill, 1937. − 17+1+973 s.

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to illuminate the importance of such works in regulating the social relations of the cultural life of our society. To highlight the historical-juridical forms, theoretical and practical foundation of juridical documents functioning in the world of Islam and Transoxiana in X-XIII centuries that was the important part of the social life.

Key words: faqīh, Sulṭān, raʾīs, Āli Burhān, ijtihād, Furū, uṣūl, Ḥanafī law, qāḍī, qāḍī's court, Transoxiana.

INTRODUCTION

The scholars of Ḥanafī madhab in such big cities of Central Asia as Bukhara and Samarkand were actively involved into social-political life during 10th-13th centuries. And the introduction of Ḥanafī madhab into this area and the way of its development was studied by many Western scholars[2].

It is known that faqīh (Islam lawyers) were the main executors of social and political government of a society in Transoxiana during the 10th-13th centuries. The specific feature of that period was that, Sulṭān appointed both raʾīs (who was occupied with religious affairs) and amīr (the representative of the government) in one city. Raʾīs made policy to strengthen Sunnīsm in the territory of the occupied countries. Here faqīh family members as Āli Burhān[3] family assisted them. They also paid much attention to weaken their political enemies, especially shi'a groups who were near the capital of the country Khurāsān. In order to accomplish these tasks they used Ḥanafī scholars of Khurāsān and Transoxiana. Those scholars made a lot of afford to strengthen Ḥanafī madhab in Central Asian countries and decrease shi'as status. The ruling dynasties as Sāmānids, Qarakhānids, Ghaznavids and Seljukids Sultans in order to obey the people made benefit of Islam faqīhs' participation in it.

The period which the project will cover is considered as the second part of development of Islamic History in Central Asia. That is mutual impact and assimilation of Islamic cultures. The article will also deal the activities of qādī and qādī courts which were as means between Sulṭān and his people in social life of Transoxiana during 10th-13th centuries.

Judicial-legal problems in Islam were always connected with the level of statehood development, the complexity or simplicity of relations in society. That is why qādī's activity was developed in specific level in every period.

And beginning from the 10th-13th century in the territory occupied by Arabs, qādī courts become an important body in state governing system.

[2] See, Madelung W. The Early Murji'a and the Spread of Hanafism/Der Islam, 43 (1982), pp. 32-39.

[3] Omeljan Pritsak. Al-i Burhan. Der Islam (zeitschrift für geschichte und kultur des Islamischen orients) Band 30. Berlin: Walter de gruyter & co. 1952. – pp. 81-133

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Because of this reason, the order of courts in medieval Transoxiana was the same as qādī courts of Abbasids period (132-656/750-1258). At that time Ḥanafī madhab was ruling and all qādīs were working based on the teachings of Ḥanafī madhab which was formed in Iraq[4].

Ḥanafī scholars works, who lived after 13th century C.E., such as Abū Nasr al-Samarqandī's (d. 550/1155) [5] Burhān ad-dīn Mahmūd al-Bukharī's "al-Muhīţ"[6], and "al-Zahīra al-burhāniyya"[7], Muhammad Hasan al-Ustrushanī's "Kitāb al-fusul"[8] were dedicated to shurūt sciences. And it can be observed that while creating these works they used Abū Hanifa's, Muhammad al-Shaybanī, Abū Yusūf, Ibn Sama'a and Hassaf, Abū Ja'far al-Tahawī's manuals as the initial source and al-Sarakhsi.

The study of the literature of Shurūt and of individual forms for documents is rewarding from many points of view.

In The kutub al-shurūt much space was given to the contracts on sale and property rights (bay'. pl. buyu') and marital rights (nikah. Pl. ankiha) besides has another third category of contracts which are about slavery issues. This issue can also be referred to both categories as well. From one side, slavery issues could be considered as a part of because slaves were regarded as close people to the family. From another side, slavery was a type of commerce in Medieval East. Slaves were sold and bought. From this point of view, it can be referred to both categories.

The first "shurūt" work which reached us are "al-Jami' al-kabīr fi-l-shurūt" and "al-Jami' al-saġ'īr fi-l- shurūt" written by Abū Ja'far at-Tahawī (d. 321/933).

There are a lot of manuscript copies of "Al- Jami' al-kabīr fi-l- shurūt". They were studied by many Western scholars. German scientist Joseph Schacht for the 1st time studied "Adkar al-huqūq va-l-ruhūn" (comments on guarantees and rights)[9] and "al-Shuf'a" (the right of privileged purchasing)[10] chapters of "al-Jami' al-kabīr fi-l-shurūt"[11]. The "Bay'" (trade) chapter of the work "Al- Jomi' al-kabīr fi-l- shurūt" was

[4] Madelung W. The Early Murji'a and the Spread of Hanafism/Der Islam, 43 (1982), pp. 32-39.

[5] Abū Nasr al-Samarqandi. Kitāb al-Shurūt va-'ulūm al-sukūk / Ed. Muhammad Jasim al-Hadisi. – Bagdad: Vizārat al-saqāfa va-l-'ilām, Dār al-shu'ūn al-saqāfiyya al-'amma, āfāq 'arabiyya, 1407/1987.– pp. 46.

[6] Tashkent: Fund of Manuscripts of the Institute of Oriental Studies under Academy of Sciences of the Republic of Uzbekistan. Manuscript. №2861. 1241p.

[7] Tashkent: Fund of Manuscripts of the Institute of Oriental Studies under Academy of Sciences of the Republic of Uzbekistan. Manuscript. №3102. 441 p.

[8] Tashkent: Fund of Manuscripts of the Institute of Oriental Studies under Academy of Sciences of the Republic of Uzbekistan. Manuscript. №3245. 724 p.

[9] Schacht Joseph. Das *kitāb adkar al-huqūq wal-ruhūn* aus dem *al-gami' al-Kabīr fī-l- shurūt* des Abū Ga'far al-Tahawī. Heidelberg: 1927. – 38 p

[10] Schacht Joseph. Das *kitāb al-Shuf'*a aus dem *al-gami' al-Kabīr fil-Shurūt* des Abū Ga'far al-Tahawī. Heidelberg: 1930. 58 p.

[11] Joseph Schacht based on the manuscript of the work which is kept under # 140, at the department of Hanafi fiqh of *"Maktaba al-hidiwiyya al-misriyya" library in Cairo.* Nowadays the library *al-hidiwiyya al-*misriyya is united with the library of al-Azhar.

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translated into English in 1972 by J.Wakin and published with original text[12]. In 1996 Michael Tung[13] published a paper about the chapter "Adkar al-huqūq va-l-ruhūn" of the given work[14]. Abū Ja'far at-Tahawī's another work on this theme "al-Jomi' al-saġīr fī-l- shurūt" was published in Bagdad as complete two volumes (Al-Tahawī. Al-Shurūt al-saġīr. Vol.II. Bagdad: 1974. 823p.)[15].

Ispanian researchers P. Chalmeta, F. Carriente[16], J. Riberta[17], F. Sadaba[18] studied "shurūt" works of Maliki madhab. According to their opinion, Maliki madhab shurūt science were written by qādīs of Kordova and Granada cities of Andalusia mainly from 399/1009 to 767/1365. The first "shurūt" work of Maliki madhab is "al-Wasa'iq va-l-sijillāt" by Muhammad al-Attar (d. 399/1009). After him Ahmad al-Tulaytuli (d. 459/1067) also wrote "al-Muqnī' fī 'ilm al- shurūt". The last work concerning shurūt was "al-'Iqd al-munazzam li-l-hukkām" written by Abū Muhammad al-Kin'oni (d. 767/1365) lived in Granada, Andalusiya.

The initial researshes showed that, shurūt is a complex of rules which teach the conditions of drawing up the contracts and is of valuable importance. The shurūt chapters met in fiqh sources studied the following social problems: trade "ashriyya" (اشرية), marriage "ankiha" (انكحة), divorce "talāq" (طلاق), to liberate the slave "'itāq" (عتاق), to bound up the liberation with death "tadbīr" (تدبير), maidservant gave birth to a child of her master "ummahātu-l-awlād" (امهات الأولاد), to be free according to the contract "kitāba" (كتابة), to stay under the liberator's guardianship "muwālāt" (موالات), safe keeping "wadī'a" (وديعة), temporarily using "'awārī" (عواري), give an evidence of smone's being free of dept obligation "ishhād 'ala-l-isqāţ" (إشهاد على الإسقاط), gift and charity "hiba wa śadaqa" (هبة و صدقة), waqf-property at the disposal of religious organization "awqāf" (اوقاف), testaments "wasāyā" (وصايا), the right of privileged purchasing "shuf'a" (شفعة), division of property "qisma" (قسمة), renting "ijārāt" (إجارات), confessions "aqārīr" (اقارير), authority "wakāla" (وكالة), guarantee "kafāla" (كفالة), to shift the responsibility to another person "hawāla" (حوالة), to solve the conflictbasing on reconcile "sulh" (صلح), get rid of responsibility "barā'a" (براءة), deposit "rohn" (رهن), muzora'a and mu'omala partnership "muzāra'a and mu'āmala" (مزارعة و معاملة), mudāraba partnership "mużāraba" (مضاربة), partnership "sharikāt" (شركات), conditions of cancellation of relations "muqāţ'āt" (مقاطعات), the norms of international contracts and safeness (to seek asylum) "muwāda'āt wa kutub al-āmān" (موادعات و كتب الآمان), decorations "huliy" (حلي).

[12] Wakin Jeanette A. The Function of Documents in Islamic Law. New York: 1972. – 203 p.
[13] Michael. H. Thung. Written obligations from the 2nd \ 8th to the 4th \ 10th century. Journal, Islamic Law and Society, Vol. III.Leiden: 1996. – pp 3-13.
[14] Michael Tung based on the manuscript of the work which is kept in Public library in Vienna, Austriya.
[15] It was published on the basis of two volume manuscript under the # 212266 in Masul Central library, Iraq.
[16] Chalmeta P., Carriente F. Formularo notarial Hispano. Madrid: 1983. – 675 p.
[17] Riberta J., Asin M. Este formulario. Paris: 1991. – 256 p.
[18] Ahmad B. Mugit al-Tulaytuliy (m. 459/1067). *Al-Muqni' fi 'ilm al-shurūt* (formulario natarial).ed. Francisco Javier Aguirre Sadaba Madrid, 1994. – 405 p.

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The work "al-Muhīţ al-burhānī" of the 13th century consisted of sample contracts concerning marriage issues in shurūt chapter. The following is father's agreement about the marriage of his full age daughter:

هذا ما تزوج فلان فلانة بتزويج وليها فلان إياه بإذنها ورضاها وأمرها إياه بمهرها كذا نكاحا صحيحا جائزا نافذا

حضره جماعة من العدول

وزوجها هذا كفؤ لها في الحسب وغيره قادر على إيفاء مهرها ونفقتها

ليس بينهما سبب يؤدي إلى نقض النكاح أو فساده

والمهر المسمى فيه مهر مثلها

وهي امرأته بهذا النكاح الموصوف فيه

وهذا الصداق لها عليه حق واجب ودين لازم, وذلك كله في تاريخ كذا.

"This (document) is about someone's marriage to some woman. The women's **valī** (a person responsible for her) basing on her permission, agree and order for some quantity of **mahr** (the property given to the bride by the bridegroom) married her with **sahih** (true) and **jai'z** (as **shari'at** orders) **nikāh** (marriage) to him.

There were a group of honest witnesses during the process of **nikāh**. Her the very husband is **kufu'** (equal) in **hasab** (social status) and others and capable to give her mahr and compensation.

There is no reason to dissolve or cancel a marriage between them. The confirmed mahr **(mahri musamma)** in the contract is **mahri misliy**

She is his wife because of this narrated **nikāh**.

This **mahr** is her husband's responsibility **wājib haq** (obligatory fee) and compulsory debt.

All of this happened on ____ day (Confirmed by qāḍī's stamp)"[19]

There are widely spread contracts concerning buying and selling in Islam. That's why "shurūt" works dealt with this problem widely. For instance, the work "al-Muhīţ al-burhānī" deals with the rules of making the contract "śakk" (صك) which was used in central cities of Transoxiana. The following are the main features of it:

1. The sides;
2. Property and its components;
3. The right of property ownership;
4. The address and the form of property;
5. The amount of money given for property;
6. The evidence of the fact of the absence of another people's right for property;
7. The fact of acceptance the property by purchaser;

[19]Tashkent: The Fund of Manuscripts of the Institute of Oriental Studies under the Academy of Sciences of the Republic of Uzbekistan. *"Al-Muhīţ"* Manuscript. № 2861. P. 946.

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8. The fact of willingly signed contract by sides, without any interference by other people;

9. The date[20].

All of the mentioned features should be given in the all kind of buying-selling contracts as the major rules. Some of the features changed depending on the type of contract, property and money.

The other documents of qādī court are mahdar and sijill. These documents differ from contracts, were signed by qādī or his assistants during mahkama (court) process, and were of practical value.

The point to be stressed here is that both of these works clearly show:

1. That the mahādir and sijillāt, which represented the entire range of legal subject matter dealt with in the courts of law, originally existed as an integral part of actual qādīs dīwāns;

2. The fact that these legal treatises appropriated the mahādir and sijillāt as a model discourse to be reproduced by court scribes and qādīs meant that these records existed within a constant dialectical cycle of judicial praxis and juristic control and refinement; and most importantly;

3. These works reflect the formal nature of mahādir and sijillāt, and their permanence in the qādīs dīwān. At this point, it would be well to consider the history of the dīwān, at least insofar as the fragmented pieces of evidence allow us to glean a general picture of its beginnings. On several occasions throughout this article, We cited historical reports concerning a variety of practices related to the judicial dīwān in the early centuries of Islam. The evidence of these reports makes it clear that the institution has deep roots in both history and legal practice. We shall now integrate the available material in an attempt to show that the early origins of this institution suggest that it had become formalized and practiced systematically long before the Islamic administration themselves appeared in the Islamic World. It is not entirely unlikely that keeping a record of the judge's decisions and perhaps of other important judicial matters was a pre-Islamic practice, and that when the Arabs conquered the Fertile Crescent, Andalusia, North Africa, Central Asia and Iran, they adopted the fundamentals of this practice from one or other of these areas. Be that as it may, we have no reason to reject Kindi's report that Sulaym b. 'Itr was the first Muslim qādī in Egypt to make a written record of his decisions sometime between 40/660 and 60/679, when he held the office there. The context of Kindi's report had to do with the need to keep track of court decisions for future reference, a matter which I have already discussed. When Sulaym decided in a matter of inheritance, the parties to the lawsuit seem to have appealed his decision or, simply, a dispute had arisen amongst them

[20] Tashkent: Fund of Manuscripts. *"Al-Muhīţ"* Manuscript. № 2861. P. 972.

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subsequent to his verdict. In the wake of this appeal or dispute, Sulaym decided to record this and other cases in sijills. Kindi's report of Sulaym, especially if we assign the initiative to write records a later date in Sulaym's legal career, seems to tally with a significant remark made by Ibn Hajar al-'Asqalani in one of his hadith works. There, he declares that the Prophet and his immediate successors never maintained a record of their judicial decisions[21]. Being compatible, 'Asqalani's and Kindi's reports acquire further credibility in light of the generally accepted notion that certain dīwāns (viz., dīwān al-junūd, dīwān al-kharaj) had already been established by the first few years of the Umayyads. If our two authors admit that judicial dīwāns did not exist when non-judicial dīwāns did, then the evidence of the origins of this institution as suggested by Kindi seems sufficiently persuasive. To what extent judicial dīwāns were kept systematically between the sixth decade of the first century and the first quarter of the second (c. 675-740 A.D.) is a question our sources cannot answer. Sometime immediately thereafter, however, the institution becomes pervasive, as evidenced in the multiple references to it in legal, quasi-legal, biographical and non-legal works. Be that as it may, the nature of the sijill in the period between 60-125/680-742 is not clear, and is likely to remain so. But we can at least infer that the sijill is the first or one of the very first elements to have emerged as part of what was to become later the qādīs dīwān, Furthermore, in its early history the sijill appears to have consisted of a brief statement of the case and of the decision rendered. The brevity of the sijill throughout the first century of Islam is suggested by at least two reports about Sawwar b. 'Abd Allah and al-Mufaddal Ibn Fadala. The former, a Basran qādī who served during-and probably before-the reign of al-Mansur (136-58/754-775), became widely known for enlarging his entourage as well as for being the first qādī to have written long and elaborate sijillāt. The same novelty was attributed to Ibn Fadala, who served in the same capacity in Egypt until 169/785. That the sijill was the first or one of the first elements to have entered what was to become the qādīs dīwān is inferred from the fact-which we thus far have no reason to dispute-that it was not until the middle of the second/ eighth century that such matters as inheritance, bequests, debts and custody of orphans were recorded in the dīwān. We do not have early information about the record of prisoners, but it is clear that by the beginning of the third/ninth century it had long become part of the dīwān[22].

Moreover there was a condition of running the documents in qādī courts in Islam. There was obligatory six rules which shoulbe entered the document:

[21] See. Olivia Remie Constable. Cross-Cultural Contracts: Sales of Land between Christian and Muslims in 12th – Century Palermo. The Journal Studia Islamica, 1971\1(Febuar) pp/85.

[22] Shihab al-Din Muhammad b. Hajar al-'Asqalani, Talhīs al-habīr fī takhrīj ahādīth al-rafi'i al-kabīr, ed. 'Abd Allah al-Madani, 4 vols. (Madina: n.p., 1964), iv, 189; Accepting the sixth decade of the Hijra (670s A.D.) as the beginning of recording sijillat does not preclude the possibility that the practice may have been pre-Islamic. For it must have taken the prototypal Muslim *qādīs* sometime before they could assimilate foreign elements.

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1. Qādī's sentence. The sentence was passed by qādī using the following word combinations: charged "alzamtu" (الزمت), delivered a judgement "hakamtu" (حكمت), passed a sentence "qadaytu" (قضيت), accused you "anfaztu 'alayka al-qadā' "(انفذت عليك القضاء), sentenced "amdaytu al-qadā' " (امضيت القضاء), executed the sentence "aqamtu al-qadā' " (اقمت القضاء), it is right according to me "sahha 'indi" (صح عندي), it is correct according to me "sabata 'indi" (ثبت عندي), I've found that the truth is on his side "'alimtu anna al-haqqo lihaza al-fulān" (علمت ان الحق لهذا الفلان), I've seen that the truth is on his side "aro al-haqqo lahu" (ارى الحق له);

2. Qādī and his deputy should be defined to their position by authorized person. The person who gave the case to deputy and the date should be entered as obligatory;

3. The evidence in Islamic Law, mainly consisted of documents, confession or refuse to swear an oath (nukūl);

4. Plaintiff;

5. Defendant;

6. Action[23].

Medieval qādī courts used mostly mahdar and sijill documents, and they were drawn up as following:

1. "Basmala" was written.

2. Qādī who takes the chair in certain qādī meeting "majlis al-qadā' "(مجلس القضاء) was introduced and his name, nickname and his origin was entered to document.

3. The place wherein qādī meeting had been held was also indicated. Here, there was compulsory condition to indicate the region "kura" (كرة), the partial of region – district "nāhiya" (ناحية).

4. There also was a section in the documents, indicating who gave the qādī authority. If it is temporary authority or the power of authority was given to his deputy, his condition and position should be also entered.

5. There was recorded the territory where qādī sentence was valid.

6. There was also indicated the date of the case proceeding and the date when sentence was passed.

In addition to those early reports just cited, there are many others speaking of dīwāns changing hands, bribing scribes to write one thing or another in the dīwān, refusing to act in accord with a predecessor's dīwān, caliphs confiscating dīwāns, qādīs who were dismis-sed for failing to take proper care of their dīwāns, recording one particular or another in the dīwān, ways of keeping dīwāns, how certain qādīs treated their own dīwāns, etc.

Three prominent conditions are:

[23] Burhānuddīn Mahmūd. *Al-Muhīţ.* Tashkent: Fund of Manuscripts. Manuscript. № 8781. P.2a.

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1. The dīwān, especially in larger towns and cities, consisted of a great number of loose leaves which failed to be bound even in the later periods. The early form of the qimatr (a word that is of high frequency in the early and late medieval period) was some sort of a case or bag[24] in which the loose leaves were parcelled. The qimatr as a bound ledger does not appear on the scene until very late, probably in late Mamluk times. Even the Ottoman qādīs also did not always bind these loose leaves, a fact evidenced, for instance, in the court of Damascus, where Jon Mandaville found more than 2,000 leaves that remained unbound[25]. In the late eighteenth and early nineteenth-century court of Tripoli, a similar situation exists, which may account for the bad condition of the documents[26]. This must suggest to us that documents in the form of loose leaves, which must have made up the bulk of Islamic dīwān records, were less likely to survive. They were more difficult to maintain, and were at times used for other purposes (e.g., fuel). At times, documents of such nature were simply thrown on rubbish dumps, as is attested by Rabie who based his important study partly on such documents which were salvaged by accident.

2. The reason why such type of documents received little care from those who value books and written material is that they were of highly limited interest to literate individuals. They represented none of the literary forms that interested Muslims. They were neither poetry, nor hadith, nor historical narrative; and, with one exception, they even failed to constitute legal subject-matter that could be put to a meaningful use. Once the dīwān was copied down, the original which remained in the outgoing qādīs hands had no practical, theoretical or literary use. In the entirety of the Islamic cultural environment which produced colossal mountains of writing, it is hard to imagine who would benefit from such dīwāns. One might think, with a distinct twentieth-century bias, that Muslim historians would have shown some interest in such valuable material. But for obvious reasons, a serious twentieth-century historian should not be tempted by such a thought. The exception to all this are the shurūt authors who had good reason to be, and as we have seen were, interested in this body of writing, but by the very nature of their interest, they subjected the material to their own editorial and redaction purposes. Hence, the great majority of the surviving sijillāt and mahādir represent juridical formularies that have been stripped of their highly individualized social context.

[24] That the qimatr may also be a sort of bag (kis) is attested by Ibn Nujaym, al-Bahr al-ra'iq, vi, 299.

[25] Bedir M. Osmanlı Öncesi Türk Hukuk Tarihi Yazıcılığı // Türkiye Araştırmaları Literatür Dergisi. – Анкара, 2005. – Т. 3. – № 5. – В. 27-84.

[26] In this court, many records consisted of loose leaves, especially those belonging to the periods of 1098-1127/1686-1715 and 1215-25/1800-10. See Khalid Ziyada, 'Wathā'iq mahkamat Tarablus al-shar'iyya ka-masdar li'l-dirāsat al-Islamiyya', in 'Abd al-Jalil Tamīmi (Temimi), ed., al-Wilāyat al-'arabiyya wa-masādir wathā'iqa fi 'l-'ahd al-'uthmani (Les provinces arabes et leurs source documentaires a l'epoque ottomane) (Tunis: Matba'at al-Ittihād al-'Amm, 1984), 228-9.

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3. The lack of literary or other interest of these documents, and the poor protection afforded what seem to have been bundles of loose leaves, would have probably been compensated for by proper storage, which most certainly was not the case. The dīwāns were in the possession of private individuals, not institutions, a central and crucial fact in our enquiry. The Islamic legal system never acknowledged a well-defined, legally instituted, physical space for courts of law. As we have seen, the qādī held his majlis in any of a number of places, and the dīwān was carried from one place to another, by the scribe, the khāzin, or by the qādī himself[27]. Now, once the dīwān was copied by the incoming qādī the original would cease to be public property, and become the private possession of the outgoing qādī who became a private person after leaving office. Furthermore, having been copied, the dīwān became at once obsolete, losing its legal- and in fact any other-relevance[28]. Since every dīwān was copied, it follows that all dīwān, except (in theory) the very last, ultimately became both legally irrelevant and private property, to be disposed of in any way their owners saw fit. By all indications, this private ownership continued until such time when the state dictated that the dīwāns should be deposited in a public domain, which Islamic administration seem to have done. In all of our Islamic administration sources, there is no hint whatsoever that the qādīs, upon dismissal or death, were required to deposit their dīwāns, in any form or manner, in a state-owned building or other public space.

CONCLUSION

General information is given about the principles of writing shurūt, mahdar and sijill, and samples of documents where had been recorded marital, economic and criminal court cases are provided. Besides, guidelines and examples of claiming against some claims are presented in this chapter. Moreover, samples of official letters, and qādī's appeal hukmī kitab (كتاب حكمي) to another city's qādī where the defendant is living/traveling (such instances take place in case if the plaintiff is present, but the defendant is absent in court case as he lives/travels in another city, and consequently, the qādī, whom the plaintiff had addressed with requirement of bringing an action, requests another city's qādī where the defendant lives) are given. Furthermore, Qādī's decisions on appointing a trustee and granting an allowance are presented. Then, samples of letters addressed to the officials muzakkī who were responsible for examining the witnesses are given. Finally, conclusions about rejected official documents are provided.

[27]Abū Nasr al-Samarqandi. pp. 34; Emile Tyan. Le Notariat et le regime de la prevue par ecrit dans la pratique du Droit Musulman. – Lyon: Universite de Lyon, 1945. – 99 p., Tyan perhaps thought that Ibn Abi al-'Awwam transferred a collection of *dīwāns* belonging to him and to other *qādīs,* but this interpretation is not borne out by the text. The same text also announces that other *qādīs,* kept their *dīwāns* in their residences. Furthermore, this attestation to the centralization of the *dīwān*-maintenance remains solitary and unique in our sources.

[28] We should recall here that not all cases were copied down in the incoming *qādīs dīwān*. Those which have become inconsequential because they are considered, for example, old (where all the concerned parties have died), would expectedly be left out. This practice has the important implication that the bulk of the *dīwān's* material did not grow cumulatively but was constantly subjected, at the stage of copying, to a measure of trimming.

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Now, whatever the reasons for the seeming failure of the Islamic administration dīwāns to survive, we should in no way use this failure to argue that such an institution was not maintained in a formal and systematic manner. Nor is there any justification for the claim that the keeping of the dīwān was less than systematic, and that it was kept up in a haphazard manner until the ascension of the Islamic administration. Not only does the evidence show the contrary, but the claim itself makes no sense: the Muslim qādīs either kept a dīwān or they did not. If there was good reason to keep a dīwān for, say, a few years or even a few months, then the reason must stand for all time. And since, as we have seen, there was, indeed, a convincing reason to keep a dīwān, we are compelled to conclude that in reality the institution was maintained systematically.