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BEHIND A PETITION: WHY MUSLIMS' APPEALS INCREASED IN TURKESTAN UNDER RUSSIAN RULE[1]

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Abstract

Petitions from Muslims to the Tsarist administration in Central Asia were not *per se* a novelty as Khans and Emirs had continually received requests and complaints, usually of a legal nature. What instead was new in the relationship between the colonial government and its subaltern subjects was that when Muslims appealed to the state it was to ask that cases already adjudicated by Islamic courts be revised. This paper describes the reasons why this occurred. Accordingly, the main goal of our study was to discover how the statutory regulations introduced by the colonial government transformed the Islamic legal system by favoring appeals from Muslims. The study identifies the important changes that occurred in the organization of the Islamic judiciary by comparing the pre-colonial legal order with the one under Russian rule. The thesis of this paper is that the increase in appeals for revision of cases previously heard by *qāḍī*-courts was the unforeseen result of a colonial reform which made the Muslim judiciary part of the Imperial legal system of the post-Reform era. The Russians eliminated the traditional post of the Chief Judge (*qāḍī kalān*), who under the local principalities was indispensable in ascertaining the validity of an appeal. It was then that Muslims began to lodge appeals with the Tsarist administrators: as the Russians were not nearly as skilled as the Muslim judiciary in Islamic casuistry, obtaining a review of a *qāḍī*'s judgment became easier than it had been in the pre-colonial period.

I Introduction

When in 1867 Turkestan officially became a province of the Russian Empire, local bodies of law were fully integrated into the Imperial legal system. Thus the jurisdiction of both Islamic (*sharī'at*) and customary (*'ādat*) law courts, as well as the appointments of judges in these institutions, were defined by the statutes

1 This study was done as part of the research project "Islamic Law in Central Asia Under Tsarist and Early Soviet Rule: Tashkent Qadi-Courts from 1865 to 1928" funded by the Volkswagen Stiftung. I would like to thank Ulfatbek Abdurasulov for his valuable assistance during this research. I am also grateful to Alexander Morrison, Anke von Kügelgen, Jürgen Paul, and Niccolò Pianciola for their insightful comments on earlier drafts.

on the administration of the region issued in 1867 and 1886. During the entire period of Tsarist colonization in Central Asia, *sharī'at* and *'ādat*-based courts continued to hear cases. However, with the implementation of the colonial statutes, the Russians introduced a provision that those serving as judges in these courts (respectively named *qāḍī*-s and *biy*-s) would no longer be appointed by the state, but elected by assemblies of representatives of fifty households (*īllīkbāshī*). Officially the rationale behind the introduction of the regulation was twofold: to make access to the post of judge comply with the Imperial standards of the post-Reform era and relieve the colonial administration from the burden of appointing individuals to judicial posts choosing among people they did not know. However, as has been showed elsewhere, the true aim of the regulation was to reform the duty of the Muslim judges in order to undermine their authority over the local population.[2]

If we are to evaluate the long term effects brought about by this regulation, we should first note that archival and published sources give contrasting signals. On the one hand it is apparent that the Russians did not succeed in making judgeships less stable than they had been before, as the *qāḍī*-s held their posts for more than a three-year mandate.[3] In fact, by the beginning of the 20th century, the colonial administration had come to the conclusion that the provision they had introduced had not produced the desired effects.[4] On the other hand, articles in the Muslim press indicate that elections spread corruption among the native judiciary[5] and made it possible for people who did not have adequate legal knowledge to exercise judicial authority.[6] This was the view, for example, of Maḥmūd Khwāja Bihbūdī – a renowned scholar with credentials as both a jurist

2 SARTORI, 2008.

3 Cf. the list of the judicial registers of the Tashkent *qāḍī*-s covering the period 1868–1924 (*Tāshkandning qāḍīlāri wa shahr siyāz qāḍīlārin akt wa ḥukm daftarlarī*), TsGARUz, f. I–362, op. 1, d. 59, ll. 7–22.

4 This argument was used by the colonial administration to propose a project to abolish the *sharī'at* and *'ādat*-based courts, *Proekt uprazdneniia narodnykh sudov v Turkestanskom krae*, TsGARUz, f. I–36, op. 4, d. 6009, ll. 1–20. The proposal was drafted in 1913 by N.I. Nenarokomov, State Counselor of the Tashkent judicial chamber. Even if the project was never implemented, the proposal must have had wide resonance as it was discussed even in the local Muslim press by BIHBŪDĪ, 1913b.

5 NĀSI', 1918. This was also the opinion given by Muslim notables and jurists who were questioned by the Girs Commission on the elections to native administrative posts, Cf. SBORNIK, MS, f. 7v., 14r., 39r.

6 On this specific matter the journal *al-Iṣlāḥ* addressed six requests for authoritative judicial opinions (*istiftā'*) to Turkestani jurists, cf. IDĀRA, 1915.

(*muftī*) and a progressive intellectual (*jadīd/taraqqī-parwar*)[7] – who claimed that, once elections were introduced, bribery and *qāḍi*-s and *biy*-s' use of discretionary power were so blatant that Muslims complained about legal wrongdoing and preferred the Imperial courts to *sharī'at* and *'ādat*-based tribunals.[8]

Bihbūdī's opinion is of particular interest as it points to a major change among Muslims in Turkestan, namely an increasing number of appeals local individuals addressed to the colonial authorities as they were confronted with *qāḍis'* decisions they saw as unjust. Similar phenomena are not completely unknown to scholarship on colonial Central Asia: Robert D. Crews has described (often taking sources at face value)[9] how Russian officials of the colonial administration were involved in settling Muslims' lawsuits through an "appellate mechanism."[10] However, no-one has yet tried to detect the reason behind this shift in Muslims' views on the administration of justice through the courts. The aim of this paper is to examine in detail the reasons why this occurred. Accordingly, the main goal of the present study is to identify why the ways in which the colonial government transformed the Islamic legal system favored an increase in appeals from Muslims.

If we accept Bihbūdī's arguments, we have to infer that the introduction of elections was the main cause behind the increase in Muslims' appeals to the Russian authorities. However, there are some points which suggest that his reasoning is misleading. First, it seems that the Samarkandi scholar overstated the

7 SHIMADA, 2002. It is worth remembering that in the Central Asian Muslim press, the term *jadīd* was used to depict the promoters of the "new-method" (*uṣūl-i jadīd*), a reformed curriculum for the Islamic primary and secondary schools focused on the vernacular languages as well as on a number of Western disciplines. The term in itself had disparaging connotations as it was mainly adopted by the Muslim scholars who criticized the "new-method" as an unlawful innovation (*bid'at*) or else condemned it as heresy (*kufr*). Such intellectuals usually referred to themselves as *taraqqī-parwar* (progressive) or else as *yāshlār* (the youth). The term *jadid* later become a historical category in the Soviet Union as well as in the West after the collapse of the USSR. Nowdays it is widely used to refer to the modernist and nationalist-minded Muslim intellectuals of Central Asia in the early 20th century. On this subject see DUDOIGNON, 1996; KHALID, 1998; FEDTKE, 1998; SARTORI, 2007:71–85.

8 *Īndī shūl manṣablargha īllīkbāshīlar akthariyat īla nā-munāsib wa ḥattā sawādsīz kishīlardan aqcha ālīb sarf-'ilmsīz kishīlardan saylamāq 'ādat būlūb ahālīnī bar bād wa sharī'atnī khār wa ḥuqūq-i khalq-allāhnī mu'aṭṭal būlūshīgha wa khalāyiqnī 'ilmsīz qāḍīlarnī sahw-khaṭāsīdīn ḥukūmatgha dā'imā shikāyat ītmāqīgha bā'ith wa ākhirī qāḍīlar ḥuqūqīnī wa dāyra-i ḥukmīnī taḥdīd ya'nī qāḍīkhāna īshlarīdan ba'ḍīsīnī sūdiyalargha ḥawāla qīlinmāqīgha bā'ith būlūr*, cf. BIHBŪDĪ, 1913a:83.

9 See SAHADEO, 2008; MORRISON, 2008a.

10 CREWS, 2006:213, 287.

negative effects of elections in order to persuade Muslims of the need to establish a centralized institution, on the model of the Orenburg Spiritual Assembly, which would oversee the appointment of the judiciary for the region.[11] In addition, to see that Bihbūdī's arguments are unsubstantiated and exaggerated, we need only consider, as Baberowski has shown, that Imperial tribunals never succeeded in becoming an alternative to the region's Islamic courts.[12] In fact, only in a very limited number of cases did Muslims have recourse to the Russian judiciary. For example, the archival fund of the Imperial Court based in Tashkent indicates that between 1871 and 1879 Russian judges heard 306 cases. Only 18 were based on lawsuits filed by Muslims.[13]

II On Methodology

Given these premises, the thesis of this study is that the increased number of appeals brought by Muslims did not depend on the *qāḍī*-s' inability to judge, and its cause has instead to be sought elsewhere, namely in system-level changes to the judiciary that were introduced by the Russians.[14] In order to do this, we have made the following methodological assumptions:

1. Detecting continuity and discontinuity in the ways legal matters were handled among Muslims in Turkestan between the pre-colonial and the Tsarist period requires a definition, albeit cursory, of the way the *shar'ī* judiciary was

11 Bihbūdī drafted a proposal for setting up a "Muslim ecclesiastic and local administration in Turkestan" and submitted it twice (April and November 1907) to the Muslim Fraction of the Second State Duma and to Count Pahlen in 1908. As Komatsu has suggested, the project was drawn up "to create a fair and appropriate judicial system which was lacking in Russian Turkestan". It recommended a series of detailed regulations for the *qāḍī*-s, who were to be appointed to the courts of the "ecclesiastic administration", KOMATSU, 2007:20.

12 BABEROWSKI, 2006:359.

13 On the cases processed by the *uezd* Imperial court involving Muslims, see TsGARUz, f. I–136, op. 1, dd. 74, 159, 160, 163, 167, 170, 172, 173 and TsGARUz, f. I–136, op. 2, dd. 27, 41, 43, 116, 125, 140, 207, 235, 236. However, there is some evidence that by the 1890s it became more common for Muslims to bring cases before Russian courts. The Samarkand *oblast'* court heard about 500 cases in 1892 which were brought by people from the old city. See MORRISON, 2008b:270.

14 Russians also introduced statutory regulations designed to change the Muslims legal practice in other regions of the Empire. It should be noted that, in order reduce the influence of *sharī'at*, in the Northern Caucasus the Russian administration promoted customary law (*'ādat*). On this point see KEMPER, 2007.

organized and fulfilled its duties before colonization. To date, the study of Islamic law in colonial Central Asia has focused on the writings of a few local divines, which have come down to us both in manuscript form[15] and as newspaper and magazine articles[16] or else has been based almost exclusively on Russian accounts.[17] These studies have certainly enhanced our knowledge of how Russian colonialism was perceived by Muslim scholars and the way local jurists tried to mold Islamic jurisprudence, but the subject of the *shar'ī* judicial setting has remained largely unexplored. If we want to understand the role judges played in the local principalities (khanates and emirates) and the procedures Muslims had to follow to submit petitions to the courts in pre-colonial times, obtaining and analyzing legal documents and royal patents from pre-colonial Turkestan is crucial. However, as the legal history of modern Central Asia is still in its infancy, rather than guaranteeing that we will arrive at a comprehensive picture of the Islamic legal system, this approach remains a preliminary attempt to describe the system at a macro-level with a focus on its procedures for submitting petitions. For the sake of clarity, we should anticipate one of the arguments of this study which will be developed later on: in the Islamic legal system of pre-colonial Central Asia, a petition did not necessarily convey a lawsuit as the former might refer to any request addressed by a subject to a ruler. Moreover, lawsuits were not usually lodged only in a tribunal, but also in the ruler's chancery.

2. Russian policy on the Central Asian judicial system was far from monolithic. The consolidation of Imperial power depended in part on the progress made by the colonial administrators in understanding the new institutional and cultural phenomena they were confronted with. As they learned more about Turkestan, this was reflected in major changes within the policies of the colony on a number of issues such as land tenure, land tenancy, irrigation, and sedentarization of the nomads. I contend that the time has come for a systematic assessment of the colonial regulations which directly affected the legal practice of *sharī'at*-courts in Turkestan, as it will reveal the evolving nature of the Russian colonial enterprise as well as shed light on the legal history of the Central Asian Muslim communities under colonial domination. To be as systematic as possible, I have decided to limit the time span considered in my research. The perio-

15 BABADZHANOV, 2004.

16 KOMATSU, 2007:3–21. We are excluding from our evaluation the various editions of primary sources which have been published since the Soviet period.

17 MORRISON, 2008b:chapter 7.

dization of colonial regulations concerning Tashkent's judiciary coincides with the implementation of the two enactments which profoundly changed life in Turkestan: the Provisional Statute on the Administration of the Semirech'e and Syr-Dar'ia *oblasts* issued in 1867 and the Statute on the Administration of the Turkestan region introduced in 1886[18]. The formulation of the 1886 statute clearly owed much to the experience the colonial administration gained in implementing the provisional one of 1867. It should be also kept in mind that for half a century there had been a number of special commissions whose purpose was to gather information, the best-known being the ones led by Girs and Count Pahlen.[19] Their results proved to be crucial in the various orientations taken by the colonial administrations on many questions. For this reason, this paper will describe the colonial legal system as it was first organized under the Provisional Statute, thus covering the period 1867–1886.

3. The present study has fixed boundaries both in time and space. As will be shown in this paper, the regulations contained in the Provisional Statute did not enable Tsarist administrators to govern the region and oversee the Muslims' legal *habitus*. This is why some amendments to the Provisional Statute on matters of Islamic law were introduced by the colonial administration on the basis of the experience Russian government officials were gathering on the spot. In order to show the day-to-day involvement of colonial officials in the exercise of legal authority and to survey the practice of the *sharī'at*-courts, I will then shift my attention to the Chancellery of the Tashkent City Commandant. Relying on a micro-historical approach, I will present the results of research done using the files of this chancellery as well as evidence of how the colonial bureaucracy functioned there. Within the boundaries of the city of Tashkent and its province (*uezd*), the City Commandant (*nachal'nik*) was the Russian official whose name every Muslim knew. He was probably the best known Russian after the Governor General, given the way the colonial and the native administrations were organized. The colonial administrative structure envisioned by the Provisional Statute was quite simple: there was a military governor at the head of the *oblast'* administration, and a commandant at the head of the *uezd* administration, each of which had a chancery. But this institution was understaffed, as its commandant had only one senior and one junior assistant, the latter a native who worked

18 "Proekt polozheniia ob upravlenii semirechenskoi i syr-dar'ynskoi oblastei," in MASEVICH, 1969:282–316 and "Polozhenie ob upravlenii Turkestanskogo kraia," in MASEVICH, 1969:352–379. When referring to the Provisional Statute, we will use the symbol §.

19 GIRS, 1884; PALEN,1910.

as their translator.[20] On the hierarchical ladder, as the Provisional Statute indicates, under the *uezd* commandant the administrators were all Muslims, namely the *volost'* governor (*upravitel'*), the *qāḍī*-s, and elected officials, most of whom worked either collecting taxes or overseeing irrigation (*āqsaqāl*-s and *arīgh-āqsaqāl*-s). Therefore, if a mullah, a bazaar trader, or a peasant wanted to submit a request (*proshenie*) or a complaint (*zhaloba*) to the Russian colonial authorities, the first address considered would have been the City Commandant's.

III Lodging Lawsuits in Pre-Colonial Central Asia

The method we used to reconstruct the legal framework within the *sharī'at*-based courts was to look at the royal patents (*yarlīgh*) for the appointments of judges and jurists in Tashkent under the rule of the Kokand Khanate and compare them with the earliest documents listing *qāḍī*-s and *muftī*-s in the city during the transitional period between the Russian military occupation (1865) and the establishment of the colonial administration (1867). These consist in 6 *yarlīgh*-s issued between 1821 and 1864 and two lists of Tashkent jurists.[21] The first list is an ordinance issued by Cherniaev in 1865 that confirmed several individuals in the positions they had held until that time as judges, jurists, and *madrasa* teachers,[22] while the other lists the Tashkent scholars who discussed the Provisional Statute with the Russian authorities in March 1868.[23] When we compare the two, it appears that before the Russian conquest there were two *sharī'at*-based courts in the city, as only two individuals on the lists just mentioned had the title of *qāḍī*.[24]

With minor variations, the hierarchy of the judiciary in pre-colonial Tashkent resembled Bukhara's, as depicted – albeit in a very theoretical way – in the Appendix (*Tadhyīl*) of *Majma' al-arkām*.[25] The *shar'ī* judiciary was organized

20 ANONYMOUS, 1867.

21 TsGARUz, f. I–164, op. 1, d. 1, ll. 1–6.

22 TsGARUz, f. I–164, op. 1, d.3, ll. 1–3ob.

23 TsGARUz, f. I–1, op. 16, d. 66, ll. 92–92ob.

24 This means that the presence of four *sharī'at*-based court in Tashkent – one for every district of the *āqsaqāl* – should be conceived of as a novelty introduced by the Russian administration.

25 BADĪ' DĪWĀN, Facs. ed & tr. Vil'danova 1981:92. The dating and authorship of the *Tadhyīl* were questioned by BREGEL, 2000:16–18 and also by KÜGELGEN, 2002:26–27. It should also be noted that the description of the *shar'ī* judiciary given in the *Tadhyīl* does not represent

along hierarchical lines. At its head was the *shaykh al-islām* whose duty was to supervise the administration of pious endowments (*awqāf*),[26] and oversee the work of local jurists.[27] There was then the Chief Judge (*qāḍī kalān*, *aqḍā al-qaḍā*, or *qāḍī al-quḍḍāt*), who, according to the royal patents, could decide upon all judicial matters of great importance (*dar faṣīl-i jamī'-i muhimmāt-i shar'iyya*).[28] Although the royal patents give no further definition of what was meant by "great importance", legal documents suggest that the tribunal of a *qāḍī kalān* functioned as a court of appeals for the revision of judgments previously issued by a *qāḍī*-court,[29] or else – as we shall see – processed petitions addressed to the ruler.[30] Lower down the hierarchical ladder, we find the *qāḍī*-s, whose job was to fulfill ordinary duties such as issuing certificates and *responsa*, keeping registers, settling disputes and overseeing transactions.[31] In this respect, it is worth recalling that legal certificates, such as contracts in general (*'aqd*), certificates of acknowledgment (*iqrār*), and testimonies (*shahādat*), which were necessary for the registration of a variety of transactions, were issued by a *qāḍī* who

the entire range of Islamic judicial appointments in modern Bukhara. For example, on *ra'īs* fulfilling the duties of notaries, see KAZAKOV, 2001:61.

26 In Tashkent he was supposed to ensure that the *mutawallī* levied the tithe (*'ushr*) according to the conditions set forth in *waqf* deeds. Cf. the royal patent (probably only a copy) appointing Īshān Āy Khwāja as *shaykh al-islām* in 1279/1862–3 in TsGARUz, f. I–164, op. 1, d. 1, l. 7.

27 In Samarkand, the person who was chosen to be *shaykh al-islām* was also expected to confirm the *responsa* given by the local *muftis*, cf. URUNBAEV/DZHURAEVA/GULOMOV, 2007:Document no. 101.

28 Cf. the *yarlīgh* with the appointment of Īshān Tūra Khwāja to the office of Chief Judge (*qāḍī kalān*) of the province of Tashkent (*wilāyat*) by Sayyid Muḥammad 'Alī Khān in 1259/1842–3, TsGARUz, f. I–164, op. 1, d. 1, l. 3; the *yarlīgh* with the appointment of Īshān Maḥmūd Khwāja to the position of Chief Judge (*qāḍī al-quzzāt*) of the province of Tashkent by Shāh Murād in 1278/1861–62, cf. TsGARUz, f. I–164, op. 1, d. 1, ll. 5; the *yarlīgh* with the appointment of Maḥmūd Khwāja to the position of Chief Judge (*qaḍā bā ḍamm-i riyāsat*) of the province of Tashkent by Khudāyār Khān and 'Alīm Qulī Amīr al-Umarā in 1280/1863–64, cf. TsGARUz, f. I–164, op. 1, d. 1, l. 6. Note that in the last document the Chief Judge is also appointed to the position of *muḥtasib*.

29 URUNBAEV/CHORIKAVA/FAIZIEV/DZHURAEVA/ISOGAI, 2001:Document no. 353. Based on the legal documents that have come down to us, there were very few appeals: I was able to find only one document related to a case of this kind.

30 The fact that this was one of a *qāḍī kalān's* duties was pointed out by KÜGELGEN, 2002:95.

31 [...] *bāyad ki riwāyat wa wāthāyiqāt wa sijillāt wa qaṭ'-i khuṣūmat dar nazd-i īshān [...] mu'āmilāt-i khwudhā rā dar pīsh-i īshān-i madhkūr burda*, cf. the *yarlīgh* with the appointment of Īshān Maḥmūd Khwāja to the post of *qāḍī* for the Sibzar district in 1263/1844–45, cf. TsGARUz, f. I–164, op. 1, d. 1, l. 4.

was usually flanked by one or more *muftī*-s,[32] who were responsible for issuing authoritative opinions (called both *fatāwā* and *riwāyat*).[33] When a *shar'ī* court prepared a notary act, the tribunal was commonly referred to as *maḥkama*.[34] It is clear that the *maḥkama* was a legally recognized institution whose work involved collegiality and reciprocity between *qāḍī*-s and *muftī*-s.

A Muslim who wished to bring a lawsuit usually went directly to the local *qāḍī*-court. If well informed, he usually asked the *muftī* there to register the claim in a protocol (*maḥḍar*) or else to provide him, as claimant, with an authoritative juridical opinion on the legal questions involved in the claim. When the claimant then appeared in court, the document obtained from the *muftī* would be submitted to the judge who took the authoritative juridical opinion into account when deciding the merits of the case.[35]

However, turning to a *qāḍī*-court was not the only avenue open to an individual or group of people in pre-colonial Central Asia when they wanted to lodge a lawsuit. Recourse to the Khan's or the Emir's chancery was also a routine procedure. Evidence that this was so is the fact that the catalogue edited by Troitskaia describes 337 legal documents issued by one *qāḍī*-court in Kokand in the year 1872. These documents are all reports addressed to the Kokand ruler on judgments regarding claims (*da'wā*) lodged with the ruler's office on the basis

32 In Central Asia a senior *muftī* was commonly referred to as an *a'lam*.

33 Cf. the royal patent for the appointment of Dāmullā Sulṭān A'lam as *muftī* (*manṣab-i jalīl al-qadr-i fatwā-niwīsī*) of the Province of Tashkent in 1238/1821 by Sayyid Muḥammad 'Alī Khān, TsGARUz, f. I–164, op. 1, d. 1, l. 1. For the appointment of Dāmullā Maḥmūd Khwāja to the same office in 1251/1834–35, see TsGARUz, f. I–164, op. 1, d. 1, l. 1.

34 According to Maḥmūd Khwāja Bihbūdī the *maḥkama* was the institution deputed to oversee transactions and stipulate certificates, and contracts, while the *qāḍī-khāna* was meant to deal with wrongdoings and crimes which involved a sanction or punishment (*jazā'*), such as fraud, slander, pederasty, adultery, alcohol consumption and other immoral conduct, highway robbery, and violence, cf. BIHBŪDĪ, 1913a:82. There is evidence of the use of the word *maḥkama* to refer to notary acts in Bukhara at the beginning of the eighteenth century, cf. SAYYID 'ALĪ B. SAYYID MUḤAMMAD AL-BUKHĀRĪ, MS, f. 175$^{v.}$, 178$^{r.}$, 179$^{r.}$ The term *maḥkama* appears in a *muftī* seal affixed to two certificates of acknowledgment issued in Tashkent by *qāḍī* Maḥmūd Khwāja respectively in 1856 and 1864. The oval 2 × 2.4 cm seal reads: "Abd al-Rasūl Muftī-i Maḥkama-i Shar' b. Mīr 'Ashūr, 1276/1860–1", cf. TsGARUz, f. I–164, op. 1a, d. 6, ll. 47, 54.

35 IUSUPOV, 1941:f. 19–30. I am currently working with Ulfatbek Abdurasulov to prepare an annotated edition of this source. Primary sources which support Iusupov's account, are the *muftī*-s' registers. See for example the personal register of MULLĀ NIẒĀM AL-DĪN MUFTĪ, MS.

of a petition (*'arḍ/'arīḍa*).[36] It is worth recalling that, according to the typological description given by Troitskaia, the word *'arḍ*, *'arīḍa* was used to define three different types of letters submitted to an official of high standing: a "petition" (*chelobitnaia*), a "reply" (*otpiska*) and a "report" (*donesenie*).

Unfortunately very few "petitions" are described in this catalogue. Despite this, it is still possible to reconstruct the entire legal procedure in use at the time on the basis of the content of the judicial replies (*otpiska*) the *qāḍī*-s addressed to the Khan so that the chancery would know how cases had been decided. As this type of document – like all others issued by *qāḍī*-s – was written using a set of codified expressions, there is usually a reference to the lawsuit which had been brought before the Khan's chancery. While checking the archival holdings described by Troitskaia, we found that a considerable number of the judicial replies contained the following expression: "On matters regarding [...], [he/she] manifested a claim, submitting a petition [...]" (*az wajh-i* [...] *iẓhār-i da'wā karda 'arīḍa dāda budast*).[37]

The custom of first filing a lawsuit with the office of the ruler was not peculiar to the Kokand Khanate; it was also a well-established procedure in the Bukharan Emirate under the Manghits (eighteenth to nineteenth century). Among the letters (*mubarak-nāma*) which the Bukharan Emir Muzaffar (1860–1885) addressed to the *qāḍī* Muḥiyy al-Dīn between 1874 and 1876 in order to inform him that his rulings had been accepted, we found many documents which were lawsuits forwarded to the *qāḍī* after initially being lodged with the Emir's chancery. These lawsuits, which had originally been conveyed by petition, involved a wide range of legal questions, including not only land holdings, pious endowments, and inheritance, but also matters dealing with public morality. Thus a petition could be addressed to the Emir by an *āqsaqāl* and corpse washers (*ghassālān*) in the city of Vobkent denouncing a certain 'Umar-Qūl who had taken a prostitute to his house and kept her there. The Emir instructed the *qāḍī* to

36 TROITSKAIA, 1968:10–11. For other studies concerning seemingly very similar ways of treating petitions in the Ottoman Empire and under the Qajars see respectively URSINUS, 2005 and SCHNEIDER, 2006.

37 Cf. TsGARUz, f. I–1043, op. 1, dd. 22, 23, 24, 25, 26, 32, 33, 34, 36, 37, 38, 39, 41, 42, 43, 44, 45, 57, l. 1. A petition could be addressed to the ruler's chancery by individuals or a group of people for purposes other than to lodge a claim. In fact a petition could convey a complaint regarding *waqf* mismanagement, a request for tax exemption or regulation of the irrigation system, etc. For examples see TROITSKAIA, 1973, 1969:18.

ensure that such behavior be forbidden and, as the woman had died, ordered an investigation to ascertain the circumstances of her death.[38]

IV *Sharī'at* as State Law in Russian Turkestan

The few regulations on the judiciary introduced by the Provisional Statute were clear. The colonial administration created three types of courts that served as jurisdictions hearing criminal and civil cases among both the settled and nomadic indigenous people: military courts (*voennyi sud*), courts operating according to the general laws of the empire (*sud na osnovanii obshchikh zakonov imperii*) and People's Courts (*narodnyi sud*) (§ 129). The first of these, the military courts, each constituted by a military-judicial commission operating at the *oblast'* level, heard cases involving the following crimes: treason, inciting opposition to the government and authorities, raiding mail or treasury caravans, damaging telegraph wires, the murder of a person who wanted to convert to Christianity, and the murder of an official (§ 130). The second type of tribunal – the Imperial courts – could hear charges against indigenous people and pronounce sentences for the following crimes: murder, robbery, plunder, *barimta*,[39] raiding trade caravans, escaping to foreign states, arson, counterfeiting coins, damaging state property, breaking state regulations, and abusing positions of authority (§ 133). Imperial laws were applied by three different official bodies: courts of *uezd* judges; hearings held by an *oblast'* administration; hearings in the Ruling Senate (§ 136–147). In the People's Courts, the third legal system established by the Provisional Statute,[40] legal proceedings were conducted in accordance with either Islamic or customary law,[41] allowing Turkestani Muslims to absolve their

38 AMĪR MUZAFFAR, MS, f. 258r.

39 This refers to a custom that was widespread among the nomads of Central Asia. It consisted in driving away livestock in revenge, cf. MARTIN, 2001:xiv.

40 The same subdivision was introduced into the Governorship of the Steppe, presumably because these regulations were drawn up by the Steppe Commission, see MARTIN, 2001:52.

41 What the Russians did not integrate was the system presided over by *āqsaqāl*-s, who heard cases and settled disputes at the village level. *Āqsaqāl*-s resorted to legal mechanisms originating in both *sharī'at* and *'ādat*. In this regard, interesting analogies with the *āqsaqāl*-courts can be found in the practice of customary law in Uyghur Xinjang, see BELLER-HANN, 2004. The fact that Russians did not legalize the judicial status of the *āqsaqāl*-s does not imply that the colonizers ignored them, as was recently claimed by BEYER, 2006:161–162. On the fact that the *āqsaqāl*-courts were certainly known to the Russian colonial officials, see

obligations and safeguard their rights in keeping with their religious beliefs. As far as Islamic law is concerned, civil cases involving less than 100 rubles were to be heard in a court chaired by a single *qāḍī*. For sums over that amount and for penal cases, the police authorities had to inform the *uezd* commandant who consequently would convoke a consultative judicial body with 4 *qāḍī*-s (§ 227). The Russian term for this consultative judicial body was *s"ezd kaziev* (§ 232). Muslims used the word *maḥkama* to refer to it, thus – as we have seen – the term traditionally used in Central Asia when speaking of a collegial judicial institution. It was stated that the rulings of the People's Courts were final (*okonchotel'no*).

If we compare the structure of the Islamic judiciary existing in the pre-colonial period with that found after the Russian reform, we see that the colonial government introduced four major innovations:

1. The positions of *shaykh al-islām* and *qāḍī kalān* were abolished
2. *Muftī*-s were no longer officially recognized as court officials[42]
3. The *qāḍī*-s in each defined area were told to convene an assembly (*s"ezd kaziev*)[43]
4. It was not possible to appeal to a *sharīᶜat*-based court in order to revise judgements previously issued by *qāḍī*-s.

for example ANONYMOUS, 1849:200. When the Girs commission traveled through the country to gather opinions on the implementation of the Provisional Statute, scholars from Khojand made it clear that "disputes on land holding (*yir da'wāsī janjāllārnī*) were dealt with by *qāḍī*-s, *muftī*-s, *mingbāshī* and *āqsaqāl*-s", cf. SBORNIK, MS, f. 15 r.

42 The Provisional Statute of 1867 as well as the Statute of 1886 did not define the position of *muftī*-s in *sharī'at*-based courts. This happened because *shar'ī*-courts were conceived as a parallel of the Imperial courts, thus ignoring the utility of Muslim jurists in Islamic legal practice. The reaction of the Muslim judiciary was prompt. In fact, in early March 1868 the Tashkent *qāḍī*-s asked the colonial authorities to allow *muftī*-s to flank them. The Russians agreed and delegated to the *qadis* the choice of the legal experts that would work alongside them in court, cf. TsGARUz, f. I–36, op.1, d. 452, ll. 1–3. However, appointments of *muftī*-s always had to be confirmed by the colonial authorities. See, for example, the appointment of *muftī*-s in Tashkent in 1884, TsGARUz, f. I–36, op. 2, d. 2396, ll. 1–5. The long-term effects of the colonial legislative vacuum with regard to the *muftī*-s was the subject of a preliminary study by SARTORI, 2009.

43 One of the Russian sources describing colonial interference in the legal domain claims that the *qāḍī*-s' assemblies were an institution that already existed in pre-colonial Central Asia: *Ne dovolnye resheniiami kaziev prinosili appeliatsii beku, po rasporiazheniiu kotorogo dela peredevalis' na reshenie s"ezda kaziev*, cf. KRAFT, 1898:61. To date not a single legal document which supports this claim has come to light.

In addition, the colonial rulers introduced norms which directly and indirectly overlapped or interfered with the sphere of Islamic law:

1) If both the claimant and the defendant agreed, Muslims could bring a case or else appeal to an Imperial court of general law (§ 233) to revise *qāḍī*-s judgements

2) Muslims could petition the *uezd* commandant to revise cases regarding family law (§ 235).[44]

In short, these regulations were meant to enable the colonial government to become directly involved in administering justice over its subaltern subjects.

Seen from this perspective, it seems that the Muslim citizens of Russian Turkestan had enough legal alternatives to very comfortably engage in "forum shopping," in other words, an individual could choose "to have his action tried in a particular court or jurisdiction where he could receive the most favorable judgment or verdict."[45] In addition to being able to choose between a *qāḍī* or a *biy*-court, as noted above, the provision regarding agreement between parties to a suit also allowed lawsuits between Muslims on matters regarding inheritance, property rights, and land tenancy to be filed in the Imperial courts. Actually, this could only happen in theory. Practice was very different. First of all, as we have already noted, the legal alternative proposed by the Imperial tribunals was not particularly attractive for Muslims. Moreover the normative regulations defined by the Provisional Statute of 1867 and the Statute of 1886 were not always strictly followed.[46] This should come as no surprise, as we cannot expect a legal system to work without mistakes and short circuits. However, legal practice was

44 The colonial government went on to redefine the sanction-oriented provisions in order to replace the *ḥudūd* system and the rules for appointing judges. Moreover, *waqf* deeds had to be confirmed by the *oblast'* administration.

45 SHAHAR, 2008:123–24.

46 It could happen that *qāḍī*-s heard cases of robbery even if these should have come under the jurisdiction of the Russian judiciary, or that a Russian judge acting in an Imperial court at *uezd* level accepted appeals from Muslim plaintiffs, even though he was supposed to try them only with the agreement of the defendants. See the cases of robbery heard by the Sibzar *qāḍī* Muḥiyy al-Din Khwāja in the year 1898 TsGARUz, f. I–365, op. 1, d. 73, ll. 23, 64, 114, 115, 148, 149, 163; TsGARUz, f. I–365, op. 1, d. 73, ll. 204, 265, 285, 317, and cases heard by Ishān Bābā-Khān in 1899 cf. TsGARUz, f. I–365, op. 1, d. 74, ll. 45, 77, 81, 83, 117, 141, 147, 149, 155, 176, 208, 218, 229, 237, 256, 283, 288, 299. On cases involving Muslims heard in the Imperial court of Tashkent, see TsGARUz, f. I–136, op. 1, dd. 74, 159, 160, 163, 167, 170, 172, 173 and TsGARUz, f. I–136, op. 2, dd. 27, 41, 43, 116, 125, 140, 207, 235, 236.

quite different from the legal framework it was meant to be regulated by. In fact, Turkestanis began to besiege the colonial administration with petitions. This phenomenon immediately attracted the attention of external observers such as the Privy Counselor Girs, who in 1882 had been dispatched from St. Petersburg with a Commission to survey the situation of colonial rule in the region. His notes indicate that between 1880 and 1882 the colonial administration of Syr-Darya received 641 petitions with appeals for revisions of cases which had already been adjudicated.[47] I believe that this was a major, if not the most important change in the way the indigenous population of Turkestan dealt with legal matters after the establishment of Russian power in the region. In fact, starting in 1868, not only did Muslims continue to bring lawsuits and make complaints to the new rulers, as they had done before under the Khans, they also began to routinely lodge appeals asking that *qāḍī*-s decisions be over-turned.

V Petitions and Appeals

Thousands of petitions to the colonial administration are stored in the Central State Archive of Uzbekistan. However, petitions could deal with many different issues and appeals concerning *qāḍī*-s' decisions are only a small part of this avalanche of paper.

As the colonial administration was understaffed, petitioning the Tsarist authorities was a rather complex procedure. There were five different steps involved: first, the appeal in Arabic script had to be translated into Russian; after this, if it was found that there were grounds for the claim, it had to be transmitted to an Islamic judicial institution (a *qāḍī*-court or a gathering of judges called *maḥkama* or *s"ezd kaziev*); the third step was the translation of the *qāḍī*'s decision; the fourth entailed a report to the Tashkent City Commandant. As he had the same status as an *uezd* commandant, he did not have the judicial authority to decide the case. Therefore, he had to transmit all the documentation to the Military Governor so that a final decision could be taken. This was the fifth step.

In the pages that follow, we summarize five petitions submitted to the colonial authorities from Muslims in Tashkent. We give these examples to show the different reasons that prompted petitioners to appeal to the colonial administration. In fact, the first two petitions we examine asked for the enforcement of

47 GIRS, 1884:29.

Islamic law upon a given legal matter, while the other three are instead appeals for the revision of a case already adjudicated by a *qāḍī*.

1. At the beginning of June 1881 'Abd al-'Azīz, son of 'Abd al-Rasūl Bāy, petitioned the Tashkent City Commandant concerning an alleged wrongdoing regarding a case of inheritance (*mīrāth*). After his death, all 'Abd al-Rasūl Bāy's property had gone to a certain 'Izzat Bībī, and 'Abd al-'Azīz and his sister Bubash Bībī had been left without anything. The inheritance was quite large: plots of land within and outside the city, a garden, money, animals (10 donkeys and 1550 sheep), plus an assortment of tools. The Russian administration was not asked to intervene, but to ensure, in the petitioner's words, that "the inheritance would be divided according to Islamic law" (*sharī'at buyūncha taqsīm qīlūb*).[48] As the appeal was felt to be well grounded, Lieutenant German, Assistant to the Tashkent City Commandant, ordered the *qāḍī* of Kukcha district, the place where the family lived, to decide how the inheritance should be divided.[49] One year later, on 21 October 1882, the *qāḍī* heard the case, kept a record of the testimony given and transmitted this to the Chancellery of the City Commandant. According to the record, the two petitioners had appeared in court: 'Abd al-'Azīz, acting on his own behalf (*aṣīl būlūb*), and Mullā 'Isā Muḥammad, son of Mullā Muḥammad 'Azīz, acting as the legal representative of Bubash Bībī (*wakīl būlūb*). The two had claimed (*da'wā*) it was their right to inherit two estates (*matrūka*): one owned by 'Abd al-Rasūl Bāy and one which had been left to 'Abd al-Rasūl Bāy's daughter, Ālmān Bībī. For the plots of land inside and outside the city, as well as for the trees on it that 'Izzat Bībī had already sold, 'Abd al-'Azīz and Mullā 'Isā Muḥammad received 100 rubles. Apparently this sum satisfied them as at this point the lawsuit was settled peacefully and the claim was withdrawn (*ṣulḥ wa ibrā'*). The *qāḍī* also reported that, after receiving compensation, the plaintiffs had declared in his presence that they completely quitted (*ibrā'-i 'āmm*) previous disputes and renounced the right to make any further claims against 'Izzat Bībī.[50] In this same document we find an abridged Russian translation, which was meant to be addressed to the Tashkent City Commandant but as a case of this sort was a routine matter for a *qāḍī*, it is difficult to understand why 'Abd al-'Azīz did not first file the lawsuit in the Kukcha

48 *1881nchī 'arḍ-nāma 25nchī māy āyinda*, TsGARUz, f. I–36, op. 2, d. 2240 l. 10.

49 Russian annotation beside the Turkī original. Cf. *ibid.*

50 *1882 9nchī ūktābr 8nchī dhū al-hijja bir mīng ikkī yūz tūqsān tūqqūzūnchī yilda*, TsGARUz, f. I–36, op. 2, d. 2240 l. 11.

qāḍī-court, and instead decided to appeal to the Russian administration. In the absence of any other documentation, the most logical conclusion is that 'Abd al-'Azīz took advantage of the colonial government's authority over the Islamic judiciary in order to compel a *qāḍī* to hear the case.

2. The parties in this case were Kāmil Jān, son of Sulṭān Bāy, and Muḥammad Rasūl Kārwān-Bāshī, son of Mīr Dāda Bāy, acting as legal representative (*wakīl*) on behalf of his daughter, Ḥanīfa Bībī. Sometime in 1874 they had appeared before the Tashkent *qāḍī*-s' assembly (*maḥkama*). They were there because after the death of Ḥanīfa Bībī's husband Rustam Bāy, Kāmil Jān (probably a relative of the deceased) had claimed he was entitled to part of the inheritance. In the *maḥkama*, Kāmil Jān convinced Ḥanīfa Bībī's father that she should renounce part of her inheritance and accept a smaller sum of money. Some months later Ḥanīfa Bībī appealed to the Tashkent City Commandant and claimed (*da'wā*) her due part of the inheritance (*mirāth ḥaqqī*), which consisted of 270 gold coins (*tilā*) and 13 *tīn*. As the local *qāḍī*-s had already heard the case and made a decision and could not judge the same case again, the file was sent from Tashkent to Kuiluk, the city where the *qāḍī*-s of the Kurama *uezd* gathered. On 3 February 1875 the judges met and investigated the complaint (*taḥqīq wa taftīsh*). They summoned Kāmil Jān and Muḥammad Rasūl. The former provided them with a transcript of the ruling issued by the Tashkent *qāḍī*-s. This document clearly showed that he had acknowledged that even though Ḥanīfa Bībī was entitled to inherit the largest share of her deceased husband's property, her father had agreed to her accepting less (*kūp ḥaqqī bār īdī āz ālīb rāḍī būldī*). Local jurists (*a'lam wa muftīlar*) were asked by the Kurama *qāḍī*-s to issue an authoritative opinion on this point. They presumably held that the agreement was not permissible and accordingly the *qāḍī*-s ruled in favor of Ḥanīfa Bībī.[51] The judgment was then translated and transmitted to the *oblast'* administration via the Chancellery of the City Commandant. It was then forwarded to the Military Governor who confirmed the judgment and ordered the City Commandant to enforce it.

51 TsGARUz, f. I–36, op. 1, d. 1181, unnumbered folio between ll. 50 and 60. Kāmil-Jān was notified of the Kurama *maḥkama*'s ruling by the *āqsaqāl* of Shaykhantaur and appealed to the Tashkent City Commandant to have the case revised again but his request was denied, cf. TsGARUz, f. I–36, op. 1, d. 1181, l. 150. The bureaucracy of the petitioning system under Russian rule changed the way the *qāḍī*-s kept records of the revision of cases. While under the Kokandi rulers, the *qāḍī*-s reported to the Khan in Persian (TROITSKAIA, 1968:11), under the Tsar all records had to be written in Turkī, in order to facilitate the work of the Tatars the Russian colonizers hired as translators.

Accordingly the latter asked the *āqsaqāl* in Kukcha, the district of Tashkent where Kāmil Jān lived, to inform him that he had to pay Ḥanīfa Bībī the money due her.[52]

3. Petitions were sometimes presented to the colonial administration by a group of people.[53] This often happened in cases of *waqf* mismanagement as a number of parties were involved: the *madrasa* faculty and its students, the endowment's administrator (*mutawallī*), peasants working the property of the endowment, tenants, etc. In such cases the colonial administration was called upon to intervene in the lawsuit.[54] A typical example is the case of mismanagement of the endowment which was supporting the Mūy-i mubarak *madrasa* in Tashkent. The lawsuit began with a petition (*'arḍ-nāma*) from the faculty of the *madrasa* addressed to the Tashkent City Commandant.[55] The document, which was undated, reached the Commandant's desk on 24 March 1874. In summary it was sent to inform the colonial administration of mismanagement of the cash revenues produced by a plot of land situated in the village of Eski Tashkent located in the *volost'* of Chinaz, in the Kurama *uezd*, which had been bequeathed to the *madrasa*. The document described a chaotic situation: in 1872 the land had been administered by Mullā Mīr 'Azīz; in 1873 a certain Bahādir Khwāja had taken over as administrator and since 1874 the land had been leased to tenants. The *madrasa* faculty asked that a mullah named Mīr Jalīl be appointed to administer the *waqf*. Their request was completely ignored. One year later, on 18 March 1875, an order issued by the Kurama *uezd* commandant confirmed Bahādir Khwāja as endowment administrator, after he won the election held in Eski Tashkent.[56] At this point the mullahs of the *madrasa* realized they would have to struggle if their man was to get the job. The turf war began on 13 March 1876, when Mullā Mīr Jalīl, the candidate the *madrasa* staff was lobbying for, a p-

52 TsGARUz, f. I–36, op. 1, d. 1181, l. 150.

53 As TROITSKAIA (1973) has shown, this was already a common practice under the Khans and Emirs. This phenomenon may be another indication that Muslims saw colonial administrators as having taken the place of the former potentates and looked to them as those that had the power to intervene to safeguard their rights.

54 For further examples, see TsGARUz, f. I–36, op. 2, dd. 1758, 2016, 2149, 2798.

55 *'Izzatlīk wa marḥamatlīk Tāshkand ḥākimīgha*, TsGARUz, f. I–36, op. 1, d. 1320, l. 6ob.

56 *Mutawallī lawāzimīgha mustaḥkam qīlāman Bahādir Khwāja 'Aẓamat Khwāja-ūghlī*, TsGARUz, f. I–36, op. 1, d. 1415, l. 11.

peared before the *qāḍī*-s' assembly in Tashkent.[57] He came bearing a document with the seal of the Islamic judge of the Province of Kashghar stating that he was the representative and legal administrator (*wakīl wa mutawallī-i shar'ī*) of the endowments of the Mūy-i Mubarak *madrasa*, and was acting on behalf of Mīrzā Aḥmad Qūshbīgī, the founder of the *madrasa* and the person who had established the endowments in Eski Tashkent, Ak Teppe, and Sari Yagach. Because of these disputes over the land bequeathed to the *waqf*, Mullā Mīr Jalīl appointed two legal clerks (*mutaṣaddī-i shar'ī*), Mullā 'Abd al-Mu'min Khwāja and Mullā Mīr 'Azīz, to take over his duties administering the endowment. The two were to be in charge of seeing to it that the *madrasa* received the share of produce due to it from the land being leased, and restoring *madrasa* buildings. Only two months later (22 May 1876), Bahādir Khwāja, whose election to the post of the administrator of the endowment in Eski Tashkent had been confirmed by the commandant of the Kurama *uezd*, appeared at the Sibzar district *qāḍī*-court in Tashkent as a party in the dispute over the land donated to the *waqf*. In the presence of the *qāḍī* Muḥiyy al-Dīn Khwāja, acting as the *mutawallī* of the endowment of Mūy-i mubarak, Bahādir Khwāja agreed to rent (*ijāra-i shar'iyya*) the cultivable area in Eski Tashkent to his brother Shāh 'Abd al-Rasūl Khwāja in return for a payment of 1070 rubles.[58] The two newly-appointed clerks Mullā 'Abd al -Mu'min Khwāja and Mullā Mīr 'Azīz responded immediately to Bahādir Khwāja's tactic. Supported by the faculty of the *madrasa* in Tashkent and the population of Eski Tashkent, on 20 September they appeared in the *qāḍī*-court in Kuyluk[59] and asked for a *fatwā* on the permissibility of renting the land in Eski Tashkent to another tenant.[60] The authoritative opinion they received reads as follows: [61]

57 *Dar tā'rīkh-i shānzdahum-i shahr-i jumādī al-thānī 1293*, TsGARUz, f. I–36, op. 1, d. 1415, l. 17.

58 *Taḥdīd-i qiṭ'āt-i arāḍī-i qābil-i har anwā'-i zirā'at-i waqf-i Mūy-i Mubarak*, TsGARUz, f. I–36, op. 1, d. 1415, l. 9. It is worth noting that, even if the value of the contract of tenancy exceeded 100 rubles, the certificate of acknowledgment was not issued by a *maḥkama*, but instead by a single judge. This was clearly in contrast with the regulations of the Provisional Statute.

59 The document bears the seal of the *qāḍī* Mullā Mīr Ṣāliḥ, judge of Kuyluk.

60 According to the local procedure for requesting a *fatwā* (*istiftā'*), the petitioner appeared in court with a judicial opinion already prepared (*riwāyat*). If the court's jurists agreed with the opinion, they would put their seals on it thereby endorsing the document with their judicial authority.

61 *Mas'ala ki bar taqdīr-i ān ki ba za'm-i khwud mutawallī-i awqaf*, TsGARUz, f. I–36, op. 1, d. 1415, l. 11.

> A person presuming to be the administrator of the endowments situated in the locality of Eski Tashkent, claiming to act for the profit of the said endowment, has rented for the given time the use of the *waqf* of the *madrasa* of Mūy-i mubarak to Shāh 'Abd al-Rasūl for the sum of 1050 [sic] rubles. This was not a fair rent,[62] but in the act all the agreements were made clear. After the laymen and the aristocracy among the citizens and officials considered it opportune to express their disagreement to the Commandant of the Province and his delegate, the faculty of the aforementioned *madrasa*, its students, the *mutawallī* and his legal representatives, Mullā Mīrzā 'Azīz Ākhūnd and Mullā 'Abd al-Mu'min Khwāja agreed to legally rent the aforementioned area of the *waqf* to Mīrzā Biy as a tenant[63] for the aforementioned period for the sum of 1350 rubles. According to the Ḥanafite school of law, as far as the two *mutawallī* mentioned above are concerned, after consultation with the commandants of this province, it was decided that as the first rent contract was not produced, they have to lease the land to the second tenant for the sake of the endowment, for the welfare of its people, and because the first person who rented the property was a deceiver, while the second acted in good faith.

At this point it is worth noting that the involvement of the two *qāḍī*-courts in Tashkent and Kuyluk was not unusual: it is known that hearing lawsuits and issuing certificates on matters regarding pious endowments was routine work for *sharī'at*-courts.[64] It was normal for parties involved in disputes of this sort to resort to the Islamic judicial authorities to legalize their positions and their activities. But in this case the notarized certificates could not resolve the dispute. Immediately after Mīrzā Biy, the new tenant, claimed the right to collect rent from the peasants of Eski Tashkent, a petition from the inhabitants of the village reached Abramov, the Commandant of the Kurama *uezd*. The Russian official had no information about the dispute. He was the one who had confirmed the election of Bahādir Khwāja to the post of administrator of the endowment just some months before. Accordingly he ordered Bahādir Khwāja and Īshān Jān, the *qāḍī* in Chinaz, to make an inspection. On 21 November 1876 they wrote a report to inform Abramov that "[...] [the new tenant] had a document which is a legal judgment (*qūlīda sharī'at ḥukmī būyūncha ḥujjatī bār īkān*) which says that in the presence of Mullā Mīr Ṣāliḥ, a judge of the *s"ezd kaziev* of the Kurama *uezd* (*ūyāz maḥkamasīnī qāḍīsī*), the mullahs [of the *Madrasa* of Mūy-i mubarak] appointed Mīrzā Biy as the tenant of the lands donated to the endow-

62 *Ān ijrā al-mithl nay būda ast, ibid.* On the topic of fair rent in classical Ḥanafite doctrine, see JOHANSEN, 1988:64, 77 note 70.

63 In the text *mustā'jir.*

64 KNOST, 2006.

ment, in return for a payment of 1350 rubles."[65] The next day, the Russian officer received a report from the head of the Chinaz *volost'*. He informed the Kurama colonial administration of the results of the inspection carried out by the *qāḍī* Īshān Jān in Eski Tashkent. The account was brief, but differed significantly from the one given by the *qāḍī*, as it emphasized that Bahādir Khwāja, the *mutawallī,* had committed an injustice (*ẓūlmlīk*), as he had not paid the money due to the mullahs according to the old certificates of the endowment.[66]

In front of Captain Abramov there was an obscure puzzle of documents in Arabic script, mostly consisting of authoritative opinions, certificates of acknowledgment, and tax registers. Most probably bewildered by this complicated situation, on 31 January 1877 he decided to write to the Tashkent Commandant. He stated that the citizens of Eski Tashkent had petitioned him because in 1876 the mullahs of the Mūy-i mubarak *madrasa* and the inhabitants of Eski Tashkent had chosen two different people for the same position as tax collector. He admitted he did not have enough information to resolve the question. Accordingly he asked the Tashkent Commandant to transmit all the records to an Islamic court.[67] The documents we have considered so far were given to the Tashkent Commandant, Platon Platonovich Pukalov, who then forwarded everything to his assistant. This person took over the investigation and on 13 June 1877 sent his conclusions to Pukalov.[68] He found that "when Mīrzā Aḥmad Qūshbīgī – now living in Kashgar – was Governor (*ḥākim*) of Tashkent he had established the *madrasa* of Mūy-i mubarak[69] and bequeathed land in Eski Tashkent and Sary-Aghach to it, along with the income of the bazaar in the Khwāja Mālik *maḥalla*. Subsequent political changes in Kokand forced Mīrzā Aḥmad Qūshbīgī to flee to Bukhara without leaving instructions regarding the administration of the endowment. The Kokandi ruler Malla Khān[70] then issued a patent (*'ināyat-nama*) to Bahādir Khwāja and appointed him as *mutawallī*." The picture was complicated by the

65 *Qurama uyāzī ḥukmīgha*, TsGARUz, f. I–36, op. 1, d. 1415, l. 20ob. Along with this report, the Commandant of the Kurama *uezd* received another document, the same one shown by the tenant Mīrzā Biy to Bahādir Khwāja and Īshān Jān. *Tā'rīkh bir mīng īkkī yūz tūqsān ūchūnchī yilda*, TsGARUz, f. I–36, op. 1, d. 1415, l. 19.

66 *Qurama uyāzī ḥukmīgha*, TsGARUz, f. I–36, op. 1, d. 1415, l. 16ob.

67 TsGARUz, f. I–36, op. 1, d. 1415, l. 1.

68 TsGARUz, f. I–36, op. 1, d. 1415, ll. 22–23.

69 OSTROUMOV, 1914:189–190, holds that the *madrasa* of Abu al-Qāsim Khān – named for its founder – is called *Mūy-i mubarak*. This is evidently not the same *madrasa*.

70 Malla Khān, brother of Khudāyār Khān ruled the Khokand Khanate from 1858 to 1862, see NEWBY, 2007:241–45.

Russian arrival in Turkestan. When General Cherniaev captured Tashkent, Syrov, the commandant of the Cossack Unit, ordered the Chinaz tax collector to compel the citizens of Eski Tashkent to pay taxes to Mullā Mīrzā 'Azīz, as he was considered the administrator of the endowment. The problem was, as there had not been an order to fire Bahādir Khwāja, that the endowment had two *mutawallī*s. The Assistant to the City Commandant went on to reconstruct the mismanagement and ascertained that five years before, Mīrzā Aḥmad Qūshbīgī sent a proxy from Kashgar to Mīr Jalīl *āqsaqāl*, appointing him the administrator of the *waqf*. At this stage the Russian official claimed that "according to Islamic law (*po shariatu*), as it was Mīrzā Aḥmad Qūshbīgī who had established the *waqf*, his decision was to prevail over the orders issued by the governors." After this he dealt with the issue of the tenancy. He reported that Bahādir Khwāja and Mullā Mīrzā 'Azīz rented the land to two different people, thus arousing public unrest in Eski Tashkent. The peasants there had taken the side of Bahādir Khwāja, as the contract of tenancy he had stipulated allowed them to pay less than under the tenancy agreement drawn up by Mullā Mīrzā 'Azīz. However, the Russian officer wrote, "there are two reasons why Mīrzā 'Azīz has more right to oversee the income: he had a proxy from Mīr Jalīl and he rented the properties for a greater sum of money. However, angered by the petitions of the inhabitants and the mullahs, Mīr Jalīl took back the proxy from Mīr 'Azīz and gave it to his son Ṣāliḥ Bīk who is now the only person in charge of overseeing all the *waqf*'s property."[71]

Thanks to the effort made by the Assistant City Commandant, the Russians could finally understand the battle that had taken place over the endowment. But the investigation did not stop at this stage. All the papers concerning it were transmitted to the Military Governor, Vitalii Nikolaevich Trotskii and the *oblast'* administrators met in plenary session to study the documents. In the fashion of a

71 Along with this report, Pukalov received a Turkī copy of the certificate of acknowledgement issued by the Sibzar *qāḍī* court, according to which Mullā Mīr Jalīl appointed his son Ṣāliḥ Bīk as his "plenipotentiary legal representative (*wakīl-i 'āmm-i shar'ī*) who, according to the endowment deed, was the only person in charge of levying taxes on the products of the areas of Eski Tashkent and Sarigh Yaghach." TsGARUz, f. I–36, op. 1, d. 1415, l. 7. Surprisingly the date of the document is later than the one on the report to Pukalov which informed him of this event. The certificate issued by the *qāḍī* -court is dated 11 *rajab* 1294 (22 July 1877), while the report written to Pukalov is dated 13 iyunja 1877 (25 June 1877). Most probably, once the Sibzar *qāḍī*, Muḥiyy al-Dīn Khwāja, one of the members of the *maḥkama*, had been involved in the investigation by Pukalov and his assistant, he made a Turkī copy of the original certificate of acknowledgement with a different date.

judicial assembly, they proceeded to assess what was lawful or unlawful according to Islamic law. More specifically the military-judicial commission wanted to define the legal status of the contract of tenancy with Mīrzā Biy. The investigation focused on determining when the contract of tenancy had been stipulated. It was obvious it had been stipulated by Mullā Mīrzā 'Azīz, acting as Mīr Jalīl's legal representative. But if this had been done when Mīr Jalīl had already been replaced by Ṣāliḥ Bīk, the contract would not have been valid. Therefore the military-judicial commission had to resolve the following basic questions: Did Mīrzā Jalīl have the right to appoint Mullā Mīrzā 'Azīz and his son Ṣāliḥ Bīk to oversee the property of the *madrasa* of Mūy-i mubarak? Did Mīrzā 'Azīz have the right to rent *waqf* land to Mīrzā Biy? As the *oblast'* administration could not reach a conclusion on this issue, it ruled that the case be decided in the Tashkent *qāḍī*-s' assembly.[72] As ordered, Pukalov sent all the papers to the four Tashkent *qāḍī*-s.[73] Although the city administration would have preferred to see the case decided immediately,[74] the *qāḍī*-s' assembly had heard rumors that Mīrzā Aḥmad Qūshbīgī was on his way back to Tashkent from Kashghar, and the judges waited to convene until he was in the city. It was the most reasonable choice they could opt for. Two of them – Muḥiyy al-Din Khwāja and Muḥammad Sharīf Khwāja – had been directly involved in the lawsuit as the former had issued the certificates for Bahādir Khwāja while the latter had stipulated acts for Mīr Jalīl and Mīr 'Azīz. From this point of view, the members of the assembly were asked to rule on their previous legal activity as notaries. In their judgment, the *qāḍī*-s accept that Mīrzā Aḥmad Qūshbīgī was in fact the person who had established the endowment on land in Zangi Ata, Aulia Ata, and Chimkent. Moreover he had tilled previously unutilized land in Eski Tashkent, Ak Tepe, and Sary Agach and "brought the land to life" (*ozhiviv ikh*). After this he had donated the income from the land to the *madrasa* of Mūy-i mubarak. During his absence, the administrators behaved incorrectly: they did not respect some of the conditions in the endowment deed and did not give income to the beneficiaries named in it. Back in Tashkent, Mīrzā Aḥmad Qūshbīgī claimed the right to take

72 *Voennyi gubernator Syr-Dar'inskoi oblasti 19 noiabria 1877, no. 12894 Gospodinu nachal'niku g. Tashkenta*, TsGARUz, f. I–36, op. 1, d. 1415, ll. 27–29.

73 *Predstavit' mne v neprodolzhitel'nom vremeni svoe zakliuchenie, kto imenno iz mutavalliev i mull imeet pravo izbirat' sborshchika dlia vzimaniia deneg na zemliu, prinadlezhashchuiu vakufu Muj-i Mubarek*, cf. TsGARUz, f. I–36, op. 1, d. 1415, l. 6.

74 *Gospodinu pomoshchnika voennogo gubernatora Syr-Dar'inskoi oblasti, no. 4054, 8 aprelia 1878*, TsGARUz, f. I–36, op. 1, d. 1415, l. 33.

right to take over the property and to once more appoint its administrator. The *qāḍī*-s' assembly found the claim rightful according to the *sharī'at*.[75]

Now that he was willing to put the management of the endowment in order, Mīrzā Aḥmad Qūshbīgī wrote to Pukalov that the deed (*waqf-nāma*) for it was missing. He complained that in absence of legal evidence, people had seized some of the lands donated to the *waqf*, while the administrators took the lands of others, claiming they belonged to the endowment. Accordingly Mīrzā Aḥmad Qūshbīgī opted for the easiest and most reasonable solution: verifying the endowment deed in order to put an end to the dispute.[76] Pukalov tried to comply with his request and asked the *oblast'* administration to send him the *waqf-nāma*.[77] But the endowment deed was also missing there.[78]

The picture that emerges from the archival traces left by the involvement of the colonial administration in this affair is truly amazing. The Russian officials, who just some years before had conquered the region, were busy searching for a *waqf-nāma* in their archives. They were bewildered that the document could not be found: "If there is a translation, there must be the original somewhere", they wrote.[79] Apparently the translation was not enough: they wanted to have the original description of the properties donated to the endowment. Ascertaining the limits of the *waqf* properties would have resolved the entire dispute. In fact Mīrzā Aḥmad Qūshbīgī was still encountering the resistance of peasants who were not willing to give him a share of their crops. This was true of a citizen of Karatal, a village in the Kurama *uezd* who refused to give the due amount of tobacco to the endowment.[80] Confusion reigned. The colonial administration, now informed about the entire issue concerning the Mūy-i mubarak endowment acted as the guarantor of the implementation of Islamic law. This was of course to the Russians' advantage: they did not want a property the treasury could tax to be mismanaged.

75 *Perevod. 1225 shavalia 13 dnia – 1878, 27 sentiabria*, TsGARUz, f. I–36, op. 1, d. 1415, ll. 31–32.

76 *'Izzatlū wa marḥamatlū Tāshkand ḥākimī pūdpūlkuwnīk Pūkūlūf janāblārīgha*, TsGARUz, f. I–36, op. 1, d. 1415, l. 38.

77 *No. 7247 11 iiulia 1878 g. k Syr-Dar'inskomu oblastnomu pravleniiu*, TsGARUz, f. I–36, op. 1, d. 1415, l. 37.

78 *Syr-Dar'inskoe oblastnoe pravlenie. 21 iiulia 1878 g. no. 8073, Gospodinu nachal'nika goroda Tashkenta*, TsGARUz, f. I–36, op. 1, d. 1415, l. 40.

79 *Esli raz est' perevod, to dolzhen sushchestvovat' i original.* Cf. *Proshenie k nachal'niku goroda. Perevod polucheno 1 iiulia 1878*, TsGARUz, f. I–36, op. 1, d. 1415, l. 38ob.

80 *No. 6162 iiunia 1878 g., Nachal'niku kuraminskogo uezda*, TsGARUz, f. I–36, op. 1, d. 1415, l. 35.

4. On 9 March 1875 an illiterate woman named Tursūn Jān, assisted by In'ām Jān Mīngbāshī, the *āqsaqāl* of the Shaykhantaur district, appealed to the Tashkent City Commandant Colonel Medinskii. According to her petition, she had lent a property (*'āriyyatgā birīlgān mulk*) to Amin Jān, son of Jān Bāy but afterward claimed her property back. Summoned by the *qāḍī*-s, Amin Jān denied he had borrowed it (*munkir būldī*). Tursūn Jān was therefore told to produce witnesses who could confirm her claim. She stated that she repeatedly brought witnesses to the *qāḍī*-s' assembly, but the judges never questioned them, and instead set a date for a new hearing a month and a half later, as Amin Jān had requested. At the next session of the *qāḍī*-s' assembly, the judges summoned the witnesses for the defendant, but ignored those of the claimant. Denouncing the *qāḍī*-s' for legal wrongdoing, the woman claimed that the judges first asked her to bring witnesses, but then only allowed Amin Jān's witnesses to testify. In this way, she argued, "the *qāḍī*-s contradicted their own judgment and committed an injustice" (*ūz ḥukmlārnī qāḍīlār būzdī 'adālat qīlmāsdan*)." She appealed to the Tashkent City Commandant, asking that he have judges from another place (*ūzgā jāydan qāḍīnī āldurūb*) hear her case.[81] Tursūn Jān probably hoped that the Russians, lacking knowledge of Islamic law and faced with an allegation of wrongdoing against the *qāḍī*-s, would immediately take her side. In order to have dared to ask the colonial administration to convene an assembly with different judges, she had to have been well informed about the new legal system introduced by the Russians, or at least have had a well-informed person like the *āqsaqāl* to advise her. But things did not go as Tursūn Jān hoped they would. Once the colonial administration received her petition, the bureaucratic machine started processing it. The City Commandant, Medinskii, was provided with a translation of the petition[82], which he then transmitted to the *oblast'* administration. On 9 April Golovachev, the Military Governor, answered him, requesting additional information. Medinskii asked his assistant Major Batyrev to investigate the circumstances in which the *qāḍī*-s had postponed the hearing of Tursūn Jān's case.[83] On 21 April, Batyrev sent his report on the case to the City Commandant. The document explained that during the first session of the *qāḍī*-s' assembly, the judges had ordered Amin Jān to take an oath but she had refused.[84]

81 *'Izzat-lū wa marḥamat-lū buland martaba-lū Tāshkand*, TsGARUz, f. I–36, op. 1, d. 1181, l. 138.

82 *Gospodinu nachal'niku g. Tashkenta polkovniku Medinskomu*, TsGARUz, f. I–36, op. 1, d. 1181, l. 139.

83 *Voennyi Gubernator Syr-Dar'inskoi oblasti 1 aprelia 1875 goda*, TsGARUz, f. I–36, op. 1, d. 1181, l. 232.

Thus the *qāḍī*-s' decision to hold a second hearing was reasonable: if Amin Jān had taken an oath, Tursūn Jān would have immediately lost the case. According to Batyrev's report which was then transmitted to the *oblast'* administration, the resolution of the case depended entirely on what Tursūn Jān had done in court. The Military Governor once more wrote to the City Commandant ordering that the *qāḍī*-s have Amīn Jān take an oath and definitively decide the case. In the same document, Medinskii wrote a resolution addressed to his assistant Batyrev: the *qāḍī*-s were to convene and comply with the Governor's order unless there were obstacles to implementing the command from the point of view of the *sharī'at*, in which case he was to be informed.[85] The *qāḍī*-s resolved the question in compliance with the orders they were given. When Batyrev reported on the case to the City Commandant, in the fashion of an ethnographer, he used it as an example to show fellow administrators how oaths were used in *sharī'at*-based judicial proceedings. His report reads:

> Having been summoned to the *qāḍī*-s' assembly, as evidence of his rights to ownership of the garden he was tilling, Amīn Jān brought three witnesses. They confirmed that he actually bought the garden from the husband of Tursūn Jān more than 20 years before the dispute. In order to confirm the validity of the certificate [of purchase he had given the court], according to the *sharī'at* the witnesses had to take an oath. On the basis of her refusal to take an oath, Tursūn Jān must clearly lose her suit, as on her side there is no evidence to support her claim to the garden. As a consequence, all the evidence is on Amin Jān's side. In conformity with the many precise indications of the *sharī'at*, analogous cases can and have to be decided on the basis of an oath, as the *qāḍī*-s do not have any other means of deciding [the merits of] such cases.[86]

Judging from the way Batyrev described Tursūn Jān's case to the office of the City Commandant, it is clear that at that time the colonial administrators knew little or nothing about the *qāḍī*-courts, as otherwise there would have been no need to explain to them the functioning of the practice of oath taking. Nevertheless, their ignorance of the basic tenets of judicial practice in *sharī'at*-courts did not stop them from making correct, albeit bold decisions, such as prescribing how the *qāḍī*-s should deal with a lawsuit according to Islamic law.

84 *Doklad Batyreva.* TsGARUz, f. I–36, op. 1, d. 1181, l. 232ob.

85 *Voennyi Gubernator Syr-Dar'inskoi oblasti 5 maia 1875 goda*, TsGARUz, f. I–36, op. 1, d. 1181, l. 298.

86 *Doklad Batyreva.* TsGARUz, f. I–36, op. 1, d. 1181, l. 298ob.

5. As was seen in the previous case, appealing to the City Commandant and asking for the revision of a case by another judiciary body was no guarantee that a claim would be decided in the petitioner's favor. In this respect, the investigations carried out by the Chancellery of the City Commandant was of fundamental importance in ascertaining the validity of a claim before transmitting it to the *qāḍī*-s' assembly. At the beginning of March 1881 the Chancellery of the Tashkent City Commandant received an appeal (*'arḍ-nāma*) from Sulaymān Qulī, son of Ḥusayn Bāy, a citizen of the Shaykhantaur district. One year before he had bought a garden from 'Ālim Khwāja Īshān, son of Sayyid Khwāja. Before Sulaymān Qulī purchased this garden, it had changed owner three times. Problems arose when an inhabitant of the Sibzar district, a certain Ḥakīm Jān claimed the right of pre-emption over that garden on the basis of contiguity (*shafī'līgh da'wā qīlūb*). In keeping with the regulations of the Provisional Statute, Sulaymān Qulī submitted a lawsuit (*murāfi'a qīlādūrghān*) to the *qāḍī* in whose jurisdiction the defendant lived.[87] This means he went to the court presided over by Sayyid Bāqī Khān in the Sibzar district. The *qāḍī* questioned him. Sulaymān Qulī, who most probably did not have a deed to the property, wanted to rely on a legal representative (*wakīl*). The judge rejected his claim and decided that he had to take an oath (*qasam īchmāqgha*). Sulaymān Qulī saw the decision as an injustice (*jabr wa ẓulm*).[88] The petition reached the Chancellery of the City Commandant accompanied by a brief translation which said that Sulaymān Qulī claimed that the Sibzar *qāḍī* had not allowed him to have an agent (*doverennyi*). The file was given to Lieutenant German, Assistant to the new City Commandant Pukalov, who proceeded with an investigation. He questioned the Sibzar *qāḍī* and the witness for the defendant. They both stated that during the hearing in court Sulaymān Qulī was helped by an agent, Abdu Khāliq, who himself confirmed his presence in court. On the basis of this evidence, Lieutenant German decided that there were no grounds for appeal and the sentence should not be revised.[89] Lieutenant German, like others working in the Chancellery of the City Commandant at this time, was asked to be particularly careful in examining appeals, as those which explicitly requested a case be heard by a different judiciary body aroused the suspicion of the colonial administration. The investigations (*rassledovanie*) the Russian officer carried out were therefore fundamental. He

87 § 225.

88 *1881nchī yilda 'arḍ-nāma 28nchī fibrāl āyinda Janāb shafaqatlū Tāshkand ḥākimī,* TsGARUz, f. I–36, op. 1, d. 1867, l. 61

89 *K dokladu*, TsGARUz, f. I–36, op. 1, d. 1867, ll. 60–60ob.

did not limit himself to questioning the *qāḍī*-s, or the two parties in a lawsuit, but was also present during hearings in the *qāḍī*-s' assembly. Thus the evidence in his reports (*doklad*) were the basis upon which the City Commandant accepted or rejected an appeal.[90] In cases when an appeal was heard by the *qāḍī*-s' assembly, the Lieutenant's report gave the City Commandant the information he needed to close the file and report to the *oblast'* administration, directly to the Military Governor.[91]

VI Conclusions

The actions of the Russian colonial officials described in the documents examined show that both the *uezd* and *oblast'* chanceries played a crucial role in first-instance hearings and appeals in cases that involved Muslims and were based on Islamic law. Russian officials, whether or not they had any knowledge of Islamic law, were asked to provide Muslims with just solutions to legal questions. If we look as this phenomenon keeping in mind the Imperial policy of integration of local customs, it could not have been otherwise: by distinguishing between a military-judicial commission, Imperial courts and People's Courts, the Imperial state acknowledged the validity of bodies of law by integrating them into the Imperial legal system, thus claiming exclusive right over the definition of their range of application. With the implementation of the Provisional Statute and the formal embodiment of Islamic law within the Imperial legal system, the Russian government became the guarantor on all legal matters. This legal polity had a significant implication which had not been foreseen by the colonial rulers, namely that the indigenous population would perceive the colonial administration as determining the legal authority of the region's traditional courts. In other words, Turkestani Muslims began to turn to the colonial government every time they were left somehow dissatisfied with a *sharī'at*-court's decision concerning their rights or obligations or when they wanted to be sure that the rule of Islamic law would be enforced. In this respect, Crews has suggested that the duties the Russians were asked to perform were the same as those performed by the chancery of the Khan or the Emir. As we have noted above, receiving a petition complaining about *waqf* mismanagement or requesting the enforcement of the rule of law on

90 *Predstavliaia pri sem perepisku po zhalobe*, TsGARUz, f. I–36, op. 1, d. 1867, ll. 211–212.

91 *Zhitel' Bish-agachskoi chasti goroda Tashkenta*, TsGARUz, f. I–36, op. 1, d. 1867, ll. 100–101ob.

a matter of inheritance were routine events for the rulers in nineteenth-century Kokand and Bukhara. How then can we explain the exceptional number of Muslim appeals for revision, which was apparently not a widespread legal custom in pre-colonial Central Asia? Reading these documents one has the impression that Turkestani Muslims saw the colonial bureaucratic procedure of dealing with their appeals as particularly advantageous. I think this phenomenon is the result of the interaction of two different factors.

1. The Russians integrated the *qāḍī*-courts into the Imperial legal system on the condition that appeals in cases of litigation between Muslims would be tried in Imperial courts (§ 233). For Muslims, however, presenting an appeal to the colonial administration must have seemed to be more in line with *shar'ī* tradition because if the Russian administrators agreed to accept their appeal, the proceedings would be held either in a *qāḍī*-court or in a *maḥkama*, and thus be subject to Islamic law. This option was clearly much more secure than lodging a claim with a colonial court, where a Russian judge would have issued a sentence in keeping with the general laws of the Empire.

2. Russians basically conceived of the Islamic judicial system as the exact *parallel* of the Imperial courts. Accordingly they did away with traditional legal official positions, such as the Chief Judge (*qāḍī kalān*), which under the Khanate were indispensable in ascertaining the validity of an appeal. Therefore, left without the institution that previously investigated their petitions, Muslim appellants presented their appeals directly to the colonial administration hoping that arguments like *qāḍī*-s' legal wrongdoings, or unjust judgments would automatically persuade colonial officials to take the part of the claimant even if the complaint was baseless. There is a wealth of sources which demonstrate that the Russians viewed the *qāḍī*-s with suspicion and were disturbed by their moral authority over the local communities.[92] Local Muslim groups were aware of this and tried to use it to their advantage. This is presumably the reason why in the archives there are so many collective petitions complaining about the corruption and the discretionary powers of the *qāḍī*-s.[93]

92 *G.nu Voennomu Gubernatoru Syr-Dar'inskoi Oblasti*, TsGARUz, f. I–36, op. 1, d. 883, l. 30–31ob; *O musul'manskikh dukhovnykh litsakh*, TsGARUz, f. I–36, op. 2, d. 3428, ll. 1–25.

93 *S zhalobami na Kazi Seid Baki Khana Abdul Kasym Khan-Ishanova na nespravedlivyi razbor del, vziatki i t. p. 1883 god*, TsGARUz, f. I–36, op. 2, d. 2240, ll. 1–10; *Po voprosu o suzhdenii Kaziev i Biev v prinosimykh na nikh raznogo roda zhalob i iskov*, TsGARUz, f. I–

At the end of roughly the first 15 years of colonization, the Russians understood that they did not have the means to keep up with this petitioning system. In the report of the Girs Commission (1883) the Russians acknowledged that if they wanted to stop the increasing number of appeals, they had to establish second-instance judicial proceedings based on Islamic law. For this reason, the Statute of 1886 on the administration of Turkestan empowered the *qāḍī*-s' assembly (*s"ezd kaziev / maḥkama*) to serve as a court of appeal (§ 240). Moreover, the 1886 Statute introduced a provision which allowed the *qāḍī*-s' assembly to hear a lawsuit upon the agreement of both the plaintiff and the defendant (§ 244). Thus the lawmakers profited from the administrative knowledge gathered by the colonial apparatus in order to free the *vezd* and *oblast'* chanceries from the burden of dealing with Muslims' lawsuits. However, this did not imply that Muslims' appeals would be heard directly by the *qāḍī*-s' assembly. In fact, appeals brought by Muslims continued to be addressed first to the colonial authorities and were only afterwards forwarded to the *qāḍī*-s' assembly, which was then asked to report its judgment on the case to the Russian administration.[94]

This study has shown how investigating different sources – archival files and periodical literature – can lead to substantially different results. Maḥmūd Khwāja Bihbūdī's account gives the impression that by reforming the *shar'ī* judiciary, the Russians had achieved their goal, that is to say that Muslims ultimately preferred Imperial tribunals to *qāḍī*-courts. This study, based on documents in the files of the Tashkent City Commandant, has instead demonstrated that many Muslims tried to benefit from the colonial administration's willingness to review *qāḍī*-s' judgments. However, Russian interference notwithstanding, in colonial Turkestan *shar'ī* courts remained the locus to which Muslims had recourse to resolve controversies and uphold their rights.

In conclusion, it should once more be emphasized that the most striking feature of the petitioning system was that its functioning largely depended on the ability of Russian officials, most of whom had little knowledge of Islamic law. Although it is true that this system provided that Muslims would ultimately have appeals judged by *qāḍī*-s, Muslims knew that Russians officials carried out the preliminary investigations and that the enforcement of the *qāḍī*-s' rulings depen-

36, op. 2, d. 3006, ll. 1–10; *O prichislenii Sibzarskogo narodnogo sud'i Mukhitdina Khodzhi k otvetstvennosti za upushcheniia po vedeniiu opekunskikh del*, TsGARUz, f. I–36, op. 3, d. 3367, ll. 1–27ob.

94 See, for example, the appeals heard in 1892 by the Tashkent *qāḍī*-s' assembly, cf. TsGARUz, f. I–36, op. 3, d. 3373, ll. 1–12. The protocols of legal proceedings were written down in the register of the *qāḍī* s' assembly (*kniga reshenii s"ezda kaziev*).

ded on the Russians' understanding of the case. From the archival documents we studied, it emerges that this did nothing to deter Muslim appellants.

Bibliography

Archival Sources

TsGARUz Tsentral'nyi Gosudarstvennyi Arkhiv Respubliki Uzbekistan [Central State Archive of the Republic of Uzbekistan]

Files:

I–1 Kantseliariia Turkestankogo General-Gubernatora [Chancery of the Governor General of Turkestan]

I–36 Nachal'nik gor. Tashkenta [Tashkent City Commandant]

I–136 Sud'ia gor. Tashkenta [Imperial Tribunal of Tashkent (1871–79)]

I–164 Tashkentskii Kazi-Kalian [Tashkent Chief Judge]

I–362 S"ezd narodnykh sudej gor. Tashkenta [Assembly of People's Judges, Tashkent]

I–365 Kazii sibzarskoi chasti gor. Tashkenta [Judge of the Sibzar District of Tashkent]

I–1043 Arkhiv kokandskikh khanov [Archive of the Khans of Kokand]

Secondary Sources

AMĪR MUZAFFAR, MS

Mubaraknāmajāt-i Amīr Muzaffar ba qāḍī Muḥiyy al-Dīn, MS Tashkent, Institute of Oriental Studies, Academy of Sciences, inv. no. 407.

ANONYMOUS

1849 "Obozrenie Kokanskago Khanstva, v nyneshnem ego sostoianii". In: *Zapiski russkago geograficheskogo obshchestva*, knizhka III. St. Petersburg:176–216.

1867 "Po povodu uchrezhdeniia novogo Turkestanskogo General-Gubernatorstva i voennogo okruga". In: *Golos* 194.

BABADZHANOV, Bakhtiiar

2004 "Russian Colonial Power in Central Asia as Seen by Local Muslim Intellectuals". In: Beate Eschment and Hans Harder (eds.), *Looking at the Coloniser. Cross-Cultural Perceptions in Central Asia and the Caucasus, Bengal, and Related Areas.* Würzburg:75–90.

BABEROWSKI, Jörg
2006 "Law, the Judicial System, and the Legal Profession". In: Dominic Lieven (ed.), *The Cambridge History of Russia. 2: Imperial Russia, 1689–1917*. Cambridge:344–368.

BADĪʿ DĪWĀN. Facs. ed & tr. Vil'danova
1981 *Madzhmaʿ al-arqām ("Predpisaniia fiska"), priemy dokumentatsii v Bukhare XVIII v.*, faksimile rukopisi, vvedenie, perevod, primechaniia i prilozheniia A.B. Vil'danovoi. Moscow.

BELLÉR-HANN, Ildikó
2004 "Law and Custom among the Uyghur in Xinjang." In: Wallace Johnson and Irina F. Popova (eds.), *Central Asian Law: An Historical Overview. A Festschrift for the Ninetieth Birthday of Herbert Franke*. Topeka, Kan.:173–194.

BEYER, Judith
2006 *"Revitalization, Invention and Continued Existence of the Kyrgyz Aksakal Courts: Listening to Pluralistic Accounts of History."* In: *The Journal of Legal Pluralism and Unofficial Law*, vol. 53/54:141–175.

BIHBŪDĪ, Maḥmūd Khwāja
1913a "Saylāw munāsibatī īla". In: *Āyina* 4:82–84.
1913b "Qāḍī wa biylar ḥaqqinda lāyḥa". In: *Āyina* 5:105–107.

BREGEL, Yuri
2000 *The Administration of Bukhara under the Manghits and some Tashkent Manuscripts*, Paper on Inner Asia 34. Bloomington, Ind.

CREWS, Robert D.
2006 *For Prophet and Tsar. Islam and Empire in Russia and Central Asia*. Cambridge, Mass.

DUDOIGNON, Stéphane A.
1996 "Djadidisme, mirasisme, islamisme". In: *Cahiers du Monde Russe* 37/1–2:13–40.

FEDTKE, Gero
1998 "Jadids, Young Bukharans, Communists and the Bukharan Revolution: From an Ideological Debate in the Early Soviet Union". In: A. von Kügelgen, M. Kemper, A.J. Frank (eds.), *Muslim Culture in Russian and Central Asia from the 18th to the Early 20th Centuries*. 2: *Inter-Regional and Inter-Ethnic Relations*. Berlin:483–512.

GIRS, Fëdor K.
1884 *Otchët, revizuiushchago, po visochaishemu poveleniiu, Turkestanskii krai tainogo sovetnika Girsa*. St. Petersburg.

IDĀRA
1915 "Zarūrī su'āllār". In: *al-Iṣlāḥ*, 13:406–408.
IUSUPOV, M.S.
1941 *Sud v Bukhare. Sudoustroistvo i sudoproizvodstvo v Bukharskom èmirate v kontse XIX i nachale XX vv.*, MS Samarkand, Archive of the Museum of History, Culture, and Art of Uzbekistan, inv. no. 828.
JOHANSEN, Baber
1988 *The Islamic Law on Land Tax and Rent. The Peasants' Loss of Property Rights as Interpreted in the Hanafite Legal Literature of the Mamluk and Ottoman Periods.* London / New York / Sydney.
KAZAKOV, Bahodir
2001 *Bukharan Documents. The Collection in the District Library, Bukhara.* Translated by Jürgen Paul. Berlin.
KEMPER, Michael
2007 "'*Adat* Against *Shari'a*: Russian Approaches towards Daghestani 'Customary Law' in the 19th Century." In: B. Balci and R. Motika (eds.), *Religion et Politique dans le Caucase Post-Soviétique*, Paris:74–95.
KHALID, Adeeb
1998 *The Politics of Muslim Cultural Reform: Jadidism in Central Asia.* Berkeley / Los Angeles / London.
KNOST, Stefan
2006 "The *Waqf* in Court: Lawsuits over Religious Endowments in Ottoman Aleppo". In: M. Khalid Masud, R. Peters, and D.S. Powers (eds.), *Dispensing Justice in Islam: Qadis and Their Judgements.* Leiden:427–450.
KOMATSU, Hisao
2007 "*Dār al-Islām* Under Russian Rule as Understood by Turkestani Muslim Intellectuals". In: Uyama Tomohiko (ed.), *Empire, Islam, and Politics in Central Eurasia.* Sapporo:3–21.
KRAFT, I.I.
1898 *Sudebnaia chast' v Turkestanskom krae i v stepnykh oblastiakh.* Orenburg.
KÜGELGEN, Anke von
2002 *Die Legitimierung der mittel-asiatischen Mangitendynastie in den Werken ihrer Historiker* (18.–19. Jahrhundert), Istanbul/Würzburg.

MARTIN, Virginia
2001 *Law and Custom in the Steppe. The Kazakhs of the Middle Horde and Russian Colonialism in the Nineteenth Century.* Surrey, Eng.

MASEVICH, M.G.
1969 *Materiali po istorii politicheskogo stroia Kazakhstana (so vremeni prisoedineniia Kazakhstana k Rossii do velikoi oktiabr'skoi sotsialisticheskoi revoliutsii).* Tom I. Alma-Ata.

MORRISON, Alexander
2008a "Review of *For Prophet and Tsar: Islam and Empire in Russia and Central Asia*, by Robert D. Crews, Cambridge, Mass: Harvard University Press, 2006, 463 pp.". In: *The Slavonic & East European Review*, 86/3:553–557.
2008b *Russian Rule in Samarkand, 1868–1910: A Comparison with British India.* Oxford.

MULLĀ NIZĀM AL-DĪN MUFTĪ, MS
Untitled Collection of maḍḥar, riwāyat, and wathāyiqāt, MS Samarkand, Archive of the Museum of History, Culture, and Art of Uzbekistan, inv. no. 4089/7.

NĀSI'
1918 "Rishwatkhārlīk". In: *Iẓhār al-Ḥaqq* 4:57–60.

NEWBY, Laura J
2007 *The Empire and the Khanate. A Political History of Qing Relations with Khoqand c. 1760–1860.* Leiden/Boston.

OSTROUMOV, Nikolai P.
1914 *Islamovedenie. Vvedenie v kurs islamovedeniia.* Tashkent.

PALEN, Konstantin K.
1910 *Otchët po revizii Turkestanskogo kraia. Pravovoi byt' tuzemnago naseleniia.* St. Petersburg.

SAHADEO, Jeff
2008 "Review of *For Prophet and Tsar: Islam and Empire in Russia and Central Asia*, by Robert D. Crews, Cambridge, MA: Harvard University Press, 2006, 463 pp.". In: *Central Asian Survey*, 27/1:105–106.

SARTORI, Paolo
2007 "La nazione nella tradizione. Il termine *millat* nella pubblicistica degli *'ulamā'* di Tashkent (1917–1918)". In: *Rivista degli Studi Orientali* 79/Supplemento 1.
2008 "Judicial Elections as a Colonial Reform: The *Qadis* and *Biys* in Tashkent". In: *Cahiers du Monde Russe* 49/1 (Janvier/Mars) (forthcoming).

2009 "An Overview of Tsarist Policy on Islamic Courts in Turkestan: Its Genealogy and Its Effects". In S. Abashin, and S. Gorshenina (eds.), *Russian Turkestan: A Colony Like the Others?* Paris (forthcoming).

SAYYID 'ALĪ B. SAYYID MUḤAMMAD AL-BUKHĀRĪ, MS

Namūna-i khuṭūṭ-i qaḍā, MS Tashkent, Institute of Oriental Studies, Academy of Sciences, inv. no. 8586/II.

SBORNIK, MS

Sbornik otvetov, MS Tashkent, Institute of Oriental Studies, Academy of Sciences, inv. no. 1644/II.

SCHNEIDER, Irene

2006 *The Petitioning System in Iran: State, Society and Power Relations in the Late 19th Century*. Wiesbaden.

SHAHAR, Ido

2008 "Legal Pluralism and the Study of Shari'a Courts". In: *Islamic Law and Society*, 15/1:112–141.

SHIMADA, Shizuo

2002 "Introduction". In: *An Index of Āyina*. Tokyo:1–9.

TROITSKAIA, A.L.

1968 *Katalog arkhiva kokandskikh khanov XIX veka*. Moscow.

1969 *Materialy po istorii kokandskogo khanstva XIX v*. Moscow.

1973 "Chelobytnaia uchashchikhsia medrese kokandskomu khanu Khudaiaru". In: *Pis'mennye pamiatniki vostoka. Ezhegodnik*:174–178.

URSINUS, Michael

2005 *Grievance Administration (Sikayet) in an Ottoman Province: The Kaymakam of Rumelia's 'Record Book of Complaints' of 1781–1783.* London.

URUNBAEV, A.; CHORIKAVA, T.; FAIZIEV, T; DZHURAEVA, G.; ISOGAI, K.

2001 *Katalog kaziiskich dokumentov (XIX – nachala XX vv.)*. Tashkent/Kioto.

URUNBAEV, A.; DZHURAEVA, G.; GULOMOV, S.

2007 "Katalog iz fonda sredneaziatskikh zhalovannykh gramot iz fonda instituta vostokovedeniia im Abu Raikhana Beruni Akademii Nauk Respubliki Uzbekistan." In: *Orientwissenschaftliche Hefte*, 23.