

**NEIGHBORHOOD RIGHTS IN LANDOWNERSHIP IN TURKISTAN
AND CRIMEA, SIMILARITIES AND DIFFERENCES (LATE XIX AND
EARLY XX CENTURY)**

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Abstract: During the end of the XVIII – second half of the XIX century. Russia, through its colonization policy, has annexed vast territories with a predominantly Muslim population. In 1783, the Crimean Khanate became part of the Russian Empire, and the Muslims managed to remain only on the territory of the Crimean Peninsula itself. In the first half of the XIX century, Russia gradually established control over the lands of the North Caucasus from the Black Sea to the Caspian Sea. In the 1820s, the northern provinces of Iran, including the Azerbaijani khanates, were occupied by the empire. In the 1850s. the territories of modern Kazakhstan were finally incorporated into Russia. In the 1860s and 1880s, Russian troops conquered the territories of Central Asia, including the Kokand Khanate, part of the lands of the Bukhara Emirate, and the Turkmen territories (Transcaspian region). As a result of the Russian-Turkish war of 1877-1878, the Kara region and Adjara were conquered. Almost all of these territories had Muslim legislation. In this article the landownership in Turkistan and Crimea during the reign of the Russian Empire and the legal status of using it is discussed. The management of land and water economy in the country according to the traditional Shariah laws and the concept of the right of shuf'ah in landownership, its definition and status are studied. The application of the right of shuf'a'h in the landownership relationships of the population of Turkistan and Crimea and the attitude of Russian officials towards it are analyzed on the basis of primary sources and archival documents. Also, a comparative analysis of the differences in the application of this right in Crimea, which is typical to the settled population in Turkistan, and the colonial policy of the Russian government in the development of fertile lands in the occupied territories are described.

Key words: Turkistan, Crimea, Landownership, Land Sale, Shariah, Property Partnership, Neighborhood Rights.

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TÜRKİSTAN VE KIRIM'DA TOPRAK MÜLKİYETİNDE KOMŞULUK HAKLARI, BENZERLİKLER VE FARKLILIKLAR

Öz: XVIII'in sonunda - XIX yüzyılın ikinci yarısında Rusya, sömürgeleştirme politikasıyla, çoğunluğu Müslüman nüfusa sahip geniş toprakları ilhak etti. 1783'te Kırım Hanlığı, Rus İmparatorluğu'nun bir parçası oldu ve Müslümanlar yalnızca Kırım Yarımadası'nın kendi topraklarında kalmayı başardılar. XIX yüzyılın ilk yarısında Rusya, Karadeniz'den Hazar Denizi'ne kadar Kuzey Kafkasya toprakları üzerinde kademeli olarak kontrol kurdu. 1820'lerde Azerbaycan hanlıkları da dahil olmak üzere İran'ın kuzey eyaletleri imparatorluk tarafından işgal edildi. 1850'lerde modern Kazakistan toprakları nihayet Rusya'ya dahil edildi. 1860'larda ve 1880'lerde Rus birlikleri, Kokand Hanlığı, Buhara Emirliği topraklarının bir kısmı ve Türkmen toprakları (Transcaspian bölgesi) dahil olmak üzere Orta Asya topraklarını fethetti. 1877-1878 Rus-Türk savaşı sonucunda Kara bölgesi ve Acara fethedildi. Bu bölgelerin neredeyse tamamında Müslüman yasaları vardı. Bu makalede Rus İmparatorluğu döneminde Türkistan ve Kırım'da toprak mülkiyeti ve bu toprakların kullanılmasının hukuki durumu ele alınmıştır. Ülkede toprak ve su ekonomisinin geleneksel Şeriat kanunlarına göre yönetimi ve toprak mülkiyetinde komşu hakkı kavramı, tanımı ve statüsü incelenmiştir. Türkistan ve Kırım halkının toprak mülkiyeti ilişkilerinde komşu hakkının uygulanması ve Rus yetkililerin buna karşı tutumu ana kaynaklar ve arşiv belgeleri temelinde incelenmiştir. Ayrıca, Türkistan'daki yerleşik nüfusa özgü olan bu hakkın Kırım'da uygulanmasındaki farklılıkların karşılaştırmalı bir analizi ile işgal altındaki topraklarda verimli toprakların geliştirilmesinde Rus hükümetinin sömürge politikası anlatılmaktadır.

Anahtar Kelimeler: Türkistan, Kırım, Toprak Mülkiyeti, Arazi Satışı, Şeriat, Mülk Ortaklığı, Komşuluk Hakları.

Introduction

After Turkistan became a colony of the Russian Empire and the Governor-General of Turkistan was established in the second half of the XIX century, the issue of restructuring the political, economic and social life of the local community and the administrative system for the sake of the empire became the most important issue on the agenda.

In Turkistan, an agrarian country, administrative government as well as reforming the system of using land and tenure like various spheres of social life was in the spotlight of Russian administration. In controlling the agrarian sector in Turkistan, the Russian Empire planned, firstly, to turn the country into a supplier of cheap raw materials, and secondly, to relocate landless peasants from the central regions of Russia to Turkistan and allocate land to them.

The first governor-general of the Russian administration in the country, K.P. von Kaufmann put the first step to make structural changes in the lands of the occupied territories. Kaufman focused his reforms on the economy of the local people belonging to Islam and its foundation – landownership and land use. The government gradually began to change the existing economic and economic system in Turkistan, because they were well aware that they could not drastically change the existing rules related to landownership that had been formed over the centuries.

As soon as von Kaufman came to the government in Turkistan, he set up several special commissions in order to study local Islamic laws on the use of land. The archival documents confirm that Kaufman was well aware of the seriousness and importance of landownership and land use policies to strengthen the political position of the new government in the occupied agrarian country¹. Kaufman wrote in his draft report that in the “Regulation on the Administration of the Turkistan country” in 1867, issued to govern the country, there was no guidance on how the government should begin to regulate its relations with the land². As a result, von Kaufman began to study the basis of the rights of land according to Shari’ah and tried to develop new land legislation. The Governor-General of Turkistan sent Captain A.N. Kuropatkin³ to Kashgar (East Turkestan) and Algeria which were the French colonies to study the foreign experience of Muslim legislation of landownership⁴. The aim of

¹ Savitskii A., *Pozemel’ny vopros v Turkestane (V proektakh i zakonakh 1867-1886 gg.)* [The land question in Turkestan (In the drafts and laws of 1867-1886)], Tashkent, 1963, s. 14.

² Project of the All-Subject Report of Gen. - Adjutant K.P. von Kaufman I on civil administration and organization in the regions of the Turkistan General Government. November 7, 1867 March 25, 1881 St. Petersburg, 1885, s. 219.

³ Alexey Nikolaevich Kuropatkin - (1848-1925) a famous Russian general, is one of the most important participants in Russia's activities for the occupation of Turkestan. To study the foreign colonial experience, the Governor-General of Turkestan sends Captain A.N.Kuropatkin to Algeria and to Kashgar, where an analysis of Muslim land use was carried out, described in detail in his published scientific works. *See more:* Savitskii, a.g.e., s. 80-84.

⁴ Mukhamedov Shukhrat, «*Osobennosti zemlevladieniya i vodopol’zovaniya v Sredney Azii i Alzhire v XIX v.*» [Features of land ownership and water use in Central Asia and Algeria in the XIX century], *Metamorfozy Istorii*, №13, 2019, s. 2.

the Russian government was to study the experience of colonialism and colonialism in land use relations in the colonized Muslim lands.

Oriental scholars such as Middendorf, Rostislavov, Idarov, Pantusov, Pashino, and Kun were invited to the country to study the norms of Sharia laws of landownership⁵. As a result of studying Muslim theory and practice of land use, Russian administrators got acquainted with the rules of Sharia concerning landownership and land use rights, such as amlok ((Arabic) estate, land, property; a taxed unit of land in the Bukhara Khanate), mulk (property), waqf ((Arabic) pious foundation, usually money donated to sustain an Islamic school, mosque, etc), khiraj ((Arabic) tribute, tax (on farmers)), ushr ((Arabic) tenth part tax on income), mulki hur (property of the free), mulki khairi hur (charity property of the free), shuf'a.

In this article, in the process of studying the issues of land use of Shariah law in Turkistan, we will try to study only the concept of the right of shuf'a and reveal its role in the practice of land use in Turkistan. There are few separate studies on the role and importance of the rights of Shuf'a in land relations in Turkistan and Crimea, among the works devoted to this issue we can show the works by L.Dembo⁶, I.Aleksandrov⁷, O.Zaripov⁸. In the research of the other authors the issue of shuf'a has been mentioned not as a separate object of scientific research, but in this or that issue.

The right of Shuf'a (the right of neighborhood) is one of the most important structures of Muslim right of land. Shuf'a is the privileged right of a person or a neighbor who is a partner in the property to purchase the property⁹. The concept of Shuf'a right is clearly and widely described in Islamic sources. In Turkistan region, which is a follower of Hanafi sect, the main sources of Shariah law such as "Hidoya" and "Mukhtasari Viqaya", also have a separate chapter on the right of shuf'a, and its practice in Shariah is fully described.

"Shuf'a" means "addition" and "pairing" in the dictionary. In the Shariah, however, it means giving the privilege of buying the partnership thing to the old partner by forcing. This meaning is explained in "Mukhtasari Viqaya" as follows:

⁵ Savitskii, a.g.e., s .5.

⁶ Dembo L., *Zemelnyy stroy Vostoka* [Land system of the East], Leningrad, 1927.

⁷ Aleksandrov I., «O shifate v Krymu» [About shifat in Crimea], *Izvestiya Tavricheskoy uchenoy arkhivnoy komissii*, № 51, 1914.

⁸ Zaripov Odil. Turkiston yer egaligida shuf'a huquqi ["Right of Shuf'a" in the land use of Turkistan], *Imom Bukhoriy saboqlari*, № 1, 2020.

⁹ Dembo, a.g.e., s. 7.

“It is the right of being the owner of a real estate against its buyer and at the price that has been set”¹⁰. Also, according to jurisprudence of Hanafi sect, besides the partnership of property, a neighbor also has the right to shuf’a. As a proof of it, the scholars of the Hanafi sect cited the hadith, “The neighbor house is more entitled to the house and land of the neighbor”¹¹.

The owner claims the shuf’a fee at a meeting where he/she is aware of the sale. It is called the leap requirement¹². The person who has the right of shuf’a must declare his requirement to the person who is selling the land. If the land has been purchased, the person who is a partner in the property or the person who bought the neighboring land may demand to return the land at that price. The right of shuf’a is given first to the property partner and then to the neighbor. The right of shuf’a is divided equally according to the number of property owners¹³. It should be noted here that shuf’a refers only to the concept of transaction, that is, sale, and does not refer to Shariah concepts that are not the practice of sale such as hiba (gift), lease or inheritance, and like this. A. Schmidt, who studied Shariah and water use rights in Central Asia, described the shuf’a as “a restriction in the right to possess a real estate” and mentioned that it was an integral part of private property in the Muslim East¹⁴.

Having mentioned above the essence of the right of shu’fa in land possession and the basic concepts of Islamic law in the sources, we will analyze below the practical application of shu’fa in Turkistan and Crimea in the late XIX century.

The fact that the right of shuf’a of the neighbourhood relations of Turkistan was widely used in practice was reflected in the documents of land sales of that period and in the works of some local historians. Paolo Sartori, a researcher of the legal system of Turkistan during the Russian colonization, a local historian Abu Ubaydallah Tashkandi writes in his book “*Khulasat al-akhwal*” “about a dispute between his father and a stranger over a garden near his family’s house. His father was particularly interested in the property because his yard was too small for the family, but a stranger had bought the property first. When Abu Ubaydallah’s father heard it, he demanded his right

¹⁰ Sheikh Mukhammad Sodiq Mukhammad Yusuf. *Kifoya (Sharkhi Mukhtasari viqoya)* [Kifaya (Summary of Mukhtasar Viqaya), V.3. Tashkent, 2008, s. 155.

¹¹ Sheikh Mukhammad Sodiq, a.g.e., s. 157.

¹² Sheikh Mukhammad Sodiq, a.g.e., s. 154.

¹³ Dembo, a.g.e., s. 7.

¹⁴ Schmidt A., «*Shariat i pravo vodopol’zovaniya v Sredney Azii*» [Sharia and law of water management in Central Asia], Narodnoe khozyaystvo Sredney Azii, № 8-9, 1926, s. 2.

of shu'fa"¹⁵. This historical fact means that the right of neighborhood was widely practiced in the country before the invasion.

“Through its relentless colonial activities, the Russian state made the Volga region, Siberia, Crimea, the Caucasus, and Turkistan, which were part of the Muslim world its property, and thus took the responsibility for deciding the fate of millions of “Muslims dependent on Russia”¹⁶. The agrarian sector, which was an integral part of the economy in these countries, was on the constant focus of imperial officials. Especially, arable lands and the income taken from them were of great concern to the colonialists as the main source of funding for the anti-colonial religious class. The attitude of the administration of the country towards Islam, including Shu'fa, has been described in various sources.

Aleksander Geins, the first head of the Turkistan governor-general's office, provided valuable information in his memoirs about landownership and land use in Tashkent. The mufti of the court, one of the most knowledgeable people in Tashkent, was asked to write a report about the procedure of land tenure assigned in Shariah. In the report the mufti cited the forms of landownership in the country, and mentioned that in private landownership there was a preemptive right of the neighbor to buy his neighbor's land in sale – shu'fa (referred as *tuf-at* in the book)¹⁷. The Mufti of the court explained that this rule was set so that an evil and immoral neighbor would not be placed next to a good man. The fact that the right of shu'fa was indicated after the description of the existing forms of land tenure in the report shows that it has a special place in private land tenure in the province¹⁸.

A.I. Shakhnazarov, an agronomist in Turkistan, said that while the growth of the population was leading to land fragmentation, this situation was reducing the landowner's annual savings and it was therefore forcing him to sell his land to a wealthy neighbor. Because according to Shariah, the land can be sold to a third party only if one of the neighbors does not want to buy it¹⁹. The survival of medieval farming in Central Asia, and even more ancient

¹⁵ Paolo Sartori. *Visions of Justice: Sharī'a and Cultural Change in Russian Central Asia*, Leiden and Boston: Brill, 2016, p. 130.

¹⁶ Bartold V., «Raboty po istorii islama i Arabskogo khalifata» [Works on the history of Islam and the Arab Caliphate], *Sochineniya*, Moskva, T. VI, 1966, s. 365.

¹⁷ Geyns A., *Upravlenie Tashkentom pri kokandskom vladychestve, (Kak kharakteristika administratsii sredneaziatskikh gorodov)* [Administration of Tashkent under the Kokand rule, (As a characteristic of the administration of Central Asian cities)], T. II, Sankt-Peterburg, 1898, s. 440.

¹⁸ Geyns, a.g.e., s. 440.

¹⁹ Shakhnazarov A., *Ocherk selskogo khozyaystva Turkestanskogo kraya* [Essay on agriculture of the Turkestan region], Sankt-Peterburg, 1898, s. 43.

methods and traditions in some parts of the country, forced small landowners to sell their land to large landowners having difficulties in farming by the end of the XIX century. It can be assumed that the right of shuf'a played an important role in the expansion of large landowners at the expense of landless farmers.

In the research materials of the General Directorate of Land Management and Agriculture, published in 1911, we can see that the right of shuf'a was in power in Turkistan until the beginning of the XX century in the relations of the local population.

“According to the established procedure, the owner of the land must notify his neighbors if he wants to sell his land. If one of the neighbors wants to buy the land at a price similar to that set by the owner, then the land must be sold to the neighbor. If “shaafi” that's the partner or a neighbor does not want to buy the land, the land can be sold to a stranger. In this case, the person who bought the land gave them money or a coat as a gift in order to establish good relationships with his new neighbors in the future”²⁰.

It can also be seen in the articles published in the Turkistan press that this right of Shariah has become a tradition of local land use in the country. In the newspaper “Turkestanskoe Vedomosti” reported an article dedicated to the traditions of land use of the local people that «every neighbor has a preemptive right rather than others to buy his neighbor's land at a price offered by a third party»²¹ and it proves that this right was widespread in the practice of sale in the country.

The sale of the land was carried out on the basis of the relevant documents, in case there is no document of the land, the right of ownership of the land is determined by the Qadi (judge) with the help of witnesses. The claim for the right to shuf'a itself must also be announced in front of witnesses; it is set by the testimony of witnesses and regulated by the Qadi (judge) in case of any disagreement. According to the research of Davletshin, an expert on the life of Turkistan and Muslim rights, in the transaction of real estates, this right is given first to the property partner and then to the neighbors. In this, the priority of the neighbors is also determined, first the neighbor on the right, then the neighbor on the left, the neighbor behind, and other close neighbors. At the request of those who have this right, even if certain formalities are done, the agreement of completed transactions can be annulled by the court of law.

²⁰ Yuferev V., *Khozyaystvo sartov Ferganskoy oblasti* [Farm of sarts of Fergana region], Tashkent, 1911, s. 17.

²¹ The customary right to use the land and its processing by the natives. // *Turkestanskoe vedomosti*. No. 104, 1909. - P. 24.

This practice can be seen in the documents such as “bayi batt”, that is, the transaction of real estate in the notebooks of Tashkent Qadis (judges) which belonged to the colonial period, kept in the National Archives of Uzbekistan. For example, in the notebook of the Qadi (judge) of Kokcha district of Tashkent city there is a record of land purchase and sale practice No. 51 on April 29, 1887, with the following content: “... Decided by shariah by Rahimabibi and Mehribonbibi the daughters of Razhabbay ..., we both completely sold our property with its all *obraha* (Persian) *small canal (which passes through the courtyards of neighboring houses)* and *haqraha*: (Persian) *ease-ment, path separating two neighbors; roadway directly in front of one’s door* to the son of Zokhidbay Pachchah Kalaan... Zokhidbay accepted this decision. In the presence of the sons of Akhund Rakhimbaba and Bakhorinur Mukhammadbay, I, Rakhima Bonu agreed and signed this agreement. I, Mekhribonbibi agreed and signed and again in this meeting Zahidzhon bay decided by shariah that if the Shafi’ demands this land from me, I will give it. I, Mukhammad Musa, know those who decided it”²². In other words, in this agreement, a person named Zakhidbay, who was buying the land owned by two women from Tashkent, stated in front of two witnesses that he would give over the land to the shafi’ if the person with the right of shafi’ came with a claim for the land, and it was recorded in the judge’s book. This notarial document confirms that the practice of shuf’a was used as it is indicated in Shari’a, and the above information of Russian authors on this subject.

Shuf’a is not divisible: to give up a part of it means to give it up completely. The Shafi’ is not entitled to take only a part of the Shuf’a land. The right of shuf’a’ is not applied to the state lands, communal and waqf lands²³.

The right of Shuf’a is revoked in the following cases:

- 1) When the person entitled to this right is aware of the sale of land and does not invite witnesses;
- 2) When the shafi’ refuses to buy the land himself;
- 3) In the case of conversion of the land into a waqf²⁴.

The Russian government was already familiar with the right of shuf’a in landownership. For example, in the Crimea, which was occupied by the Russian Empire in 1873, the right of shuf’a was practiced under Islamic laws. In I. Alexandrov’s article published in 1914 in the issue 51 of the «Izvestija» of the Tavriya Scientific-Archival Commission the following information was noted about the application of the right of shuf’a in the Crimea.

²² National Archive of Uzbekistan, f. I-364, o. 1, d. 12, l. 13a.

²³ Dembo, a.g.e., s. 7.

²⁴ Dembo, a.g.e., s. 7.

“The right of shuf’a is not included in our civil laws, however, it is widely used among the Muslim population of the Crimea. Moreover, this customary right is admitted by the authorities and representatives of other religions”²⁵. As I. Alexandrov said, «If a Muslim sells his land to a local Christian, Crimean or Karaites, and a Muslim neighbor demands his intercession of shafi’ according to the rules of Shariah, in most cases the buyer gives his purchase to the person demanding his intercession of shafi’ at the same price, otherwise the seller cancels the sale agreement, and even forces to pay a fine or fully grant the right of land to the shafi’”²⁶. The above information indicates that the practical application of the right of shuf’a in colonial countries annoyed the Russian officials, and especially, made it uncomfortable for the policy of relocating the landless Russian farmers to Turkistan and allocating land to them. Because the existence of this right limited the opportunity of the government and relocated farmers to purchase fertile lands, the biggest problem of the policy of resettlement was that these existing fertile lands were in the consumption of the local population.

Different from Turkistan, it can be seen that in the Crimea, shuf’a was used by the locals not only to the neighbor or property partner but also to the entire local Muslim population. That is, shuf’a may also be asked by one’s fellow believers. We can see in the following example that the Russian authorities used various tricks in developing the fertile lands of the Crimea. Mustafa Gasprinsky, a lieutenant in the Russian army, the father of the famous enlightener Ismail Gasprinsky, helped General Vorontsov to buy the lands of the Crimea²⁷.

The researcher V.N. Pashchenya notes that “According to the law of shuf’a, Muslims had the right of priority in the purchase of land (O.Z.), and Gasprinsky used this right for the benefit of his “patron”, for which he obtained his “noble rank”²⁸. As a result, Massandra lands belonging to local agrarian farmers were purchased at very low prices²⁹. This information shows, firstly, how the tsarist government Russified the Crimean lands, and secondly, that the officials used Shariah laws to achieve their goals in land acquisition. In order to occupy the lands of the local population the colonialists used the right

²⁵ Aleksandrov, a.g.e., s. 205.

²⁶ Aleksandrov, a.g.e., s. 205.

²⁷ Pashchenya V., «Ismail Gasprinskiy: ego vremya, vzglyady, uroki iz zhiznedeyatelnosti» [Ismail Gasprinsky: his time, views, lessons from life], *Kultura narodov Prichernomorya*, № 199 T.2, 2011, s. 7.

²⁸ Pashchenya, a.g.e., s. 7.

²⁹ Memetov A., «Obshchestvenno-politicheskie i filosofskie vzglyady Ismaila Gasprinskogo» [Socio-political and philosophical views of Ismail Gasprinsky], *Kultura narodov Prichernomorya*, № 199, T.2, 2011, s. 10.

they had for their own benefits. The reason for this, of course, was that this right corresponded to Russia's interests.

Konkin, a researcher who analyzed the above-mentioned cases of grabbing lands of the Crimea by the Russian noblemen in various ways, the expulsion of the local population from the fertile lands, and the conflicts over the land in the late XVIII and early XIX centuries, explained the government's policy as followings: "the government of the Empire, on one side, guaranteed the inviolability of the traditional social way of life of the Crimean people with its decrees and manifestos, and on the other hand, attempted to incorporate the whole rules of Russia into the centuries-old system of relations"³⁰.

We can also apply these views of the researcher in the policy carried out towards Turkistan. Of course, although there were many undeveloped lands in Turkistan, the creation of new irrigation networks for their use required a lot of money and hard work. Therefore, in contrast to the Crimea, where there was no great need for irrigated agriculture, in Turkistan the use of water along with land was also in the right of shuf'a.

If someone sells his land together with the use of water, the right of shuf'a to water belongs first to the partner in the ditch, then to the owner of the stream flowing in the ditch, and finally to the owner of the large river³¹. Such a connection indicates how important the artificial irrigation was in the natural climate of Turkistan and the peculiarity of shuf'a. The secret advisor, F.K. Girs, the head of the inspection commission, who came to Turkestan in 1882, on behalf of the Russian Emperor, said in his report: "You will not meet our land communities here, you will find the community in water, not land ... the community exists only in irrigation relations not land relations... because the land does not produce anything without water (without artificial irrigation)"³². However, it is not correct to say that land communities in Turkistan are built only on irrigation water. Of course, while the water factor is primarily the basis of irrigated agriculture, the right of shuf'a is a proof to us that there were land communities in the country too. Because according to the above-mentioned Shariah rules, the basic concept of shuf'a besides neighborliness is a property partnership on land that is not distributed and boundaries

³⁰ Konkin D., «*Zemelnye konflikty v Krymu (konets XVIII - nachalo XIX vv.): «mneniya» i «proekty»*» [Land conflicts in Crimea (late XVIII-early XIX centuries): "opinions" and "projects"], *Materialy po arkhologii, istorii i etnografii Tavrii*, Vyp. XXI, 2016. s. 375.

³¹ Dembo, a.g.e., s. 7.

³² Report of inspection, according to the Imperial command, Turkistan region, the Secret adviser Girs. 1882. p. 346.

are not defined. Although there are many other reasons to prove the existence of land communities in Turkistan, the right of shuf'a also played a role in it.

The right of Shuf'a was a legal concept unique to the settled population of Turkistan. The nomadic population of the Syrdarya region of the Governor-General of Turkistan even had no idea about Shuf'a. The following information of the military governor of the region N.I. Grodekov confirms our opinion above. "Lands planted with alfalfa are not only leased but also sold at any price, regardless of the labor expended by the partner. In the Qurama region, not only alfalfa lands but all lands can be sold. Not only the Kyrgyz, but even the Chalakazaks do not know about shuf'a that is, the right of neighborliness and partnership"³³. This situation is explained by the fact that legal relations between the nomadic populations are regulated according to the customs. However, the Turkmens of the Caspian region, who switched to a sedentary farming culture, strictly followed the right of shuf'a in peasant communities, according to which the agreement of community members and close relatives had to be obtained when selling the land³⁴.

In the following points in the inspection report written by F.K. Girs to the Emperor Alexander III we can see very cautious attitude of the Russian government towards the system that had been in for centuries in Turkistan landownership.

"If the existing forms and system of land tenure satisfy the people, and it is valued by the people, there is no reason not to legitimize the existing system. Both justice and prudence require it..."³⁵ These opinions of the Imperial Secret Adviser indicate that the Russian authorities were well aware that changing the land tenure procedures that had existed in Turkistan region since the time of the khanate was a very delicate matter. But practically, the colonial administration did differently, von Kaufman's policy towards property and waqf lands in the country can be example of it. However, these "reforms" carried out in the landownership of Turkistan bypassed the right of shuf'a.

In the resettlement policy, this right, which limited Russian farmers' opportunities to purchase fertile lands from the settled population, was ignored by the government, firstly because local officials did not study the landownership and the system of using it, and secondly because the laws they en-

³³ Grodekov N., *Kirgizy i karakirgizy Syr-Dar'inskoy oblasti* [Kyrgyz and Karakirgiz of Syr-Darya region], T.1. Yuridicheskiy byt, Tashkent, 1889, s. 104.

³⁴ Rusinov V., *Vodozemel'nye otnosheniya i obshchina u turkmen* [Water-land relations and community among Turkmens], Tashkent, 1889, s. 39.

³⁵ Report of inspection, according to the Imperial command, Turkistan region, the Secret adviser Girs. 1882. p. 346.

acted, according to Girs's opinion above, ensured the preservation of local customs in their land relations.

Even, according to the Article 261 of "Regulation of the Provisional administration" adopted in 1886, it was stated that "the transaction of land among the local population (sale - O.Z.) ... will be carried out in accordance with the customs of the local population everywhere"³⁶ and the absence of a prohibition on shuf'a in subsequent laws also allowed this Shariah rule, which had become a tradition of the people of the country, to survive until the time of the new colonial political regime, which abolished private ownership of land.

Conclusion.

Thus, the right of shuf'a was in force only among the settled population in Turkistan, and it regulated not only land management but also the ownership and use of water. The popularity of such a right can be explained not only by the Islamic factor, but also by the fact that agriculture in the region was based on irrigated agriculture demanding collective labor. The peasant communities formed by irrigated agriculture practiced this right in order to preserve the integrity of the community in purchase of land. In addition, it can be concluded from the above historical data that the right of shuf'a, which belonged to a property partner and neighbor, was also applied to close relatives and believers in Turkistan and the Crimea, in order to protect the interests of landowners and peasant communities.

None of the documents adopted by the Russian Empire to govern the country adopted any law about the legal status or prohibition of shuf'a, and "shuf'a" was practically used as a Shariah norm in land tenure relations of Turkistan and the Crimea until the establishment of the Soviet state.

Also, during the colonial period, neither the Crimea nor Turkistan was included in the single legal system of the empire. The practice of Shuf'a and similar rights mean that after occupying the Crimea and Turkistan, the Russian Empire considered these territories not as an integral part of its structure, but as a colonial territory under its control.

REFERENCES

ALEKSANDROV I., «O shifate v Krymu» [About shifat in Crimeal], *Izvestiya Tavricheskoy uchenoy arkhivnoy komissii*, № 51, 1914. [in Russian]

³⁶ Regulation on the administration of Turkestan region. Volume II, part 2. 1885.

BARTOLD V., «Raboty po istorii islama i Arabskogo khalifata» [Works on the history of Islam and the Arab Caliphate], *Sochineniya*, Moskva, T. VI, 1966. [in Russian]

DEMBO L., *Zemelnyy stroy Vostoka* [Land system of the East], Leningrad, 1927 [in Russian]

GEYNS A., *Upravlenie Tashkentom pri kokandskom vladychestve, (Kak kharakteristika administratsii sredneaziatskikh gorodov)* [Administration of Tashkent under the Kokand rule, (As a characteristic of the administration of Central Asian cities)], T. II, Sankt-Peterburg, 1898. [in Russian]

GRODEKOV N., *Kirgizy i karakirgizy Syr-Dar'inskoy oblasti* [Kyrgyz and Karakirgiz of Syr-Darya region], T.1. Yuridicheskiy byt, Tashkent, 1889. [in Russian]

KONKIN D., «*Zemelnye konflikty v Krymu (konets XVIII - nachalo XIX vv.): «mneniya» i «proekty»*» [Land conflicts in Crimea (late XVIII-early XIX centuries): “opinions” and “projects”], *Materialy po arkheologii, istorii i etnografii Tavrii*, Vyp. XXI, 2016. [in Russian]

MEMETOV A., «*Obshchestvenno-politicheskie i filosofskie vzglyady Ismaila Gasprinskogo*» [Socio-political and philosophical views of Ismail Gasprinsky], *Kultura narodov Prichernomorya*, № 199 T.2, 2011. [in Russian]

MUKHAMEDOV SHUKHRAT, «*Osobennosti zemlevladieniya i vodopol'zovaniya v Sredney Azii i Alzhire v XIX v.*» [Features of land ownership and water use in Central Asia and Algeria in the XIX century], *Metamorfozy Istorii*, №13, 2019. [in Russian]

NATIONAL ARCHIVE OF UZBEKISTAN, f. I-364, o. 1, d. 12, l. 13a. [in Uzbek]

Obychnoe pravo polzovaniya zemley i ee obrabotka u tuzemtsev [Customary land use and cultivation among the natives], *Turkestanskije vedomosti*, № 104, 1909. [in Russian]

Otchet revizuyushchego, po Vysochayshemu povelению, Turkestanskiy kray, Taynogo Sovetnika Girsy [Report of the auditor, by the Highest command, Turkestan region, Privy Councilor Girs], 1882. [in Russian]

PASHCHENYA V., «Ismail Gasprinskiy: ego vremya, vzglyady, uroki iz zhiznedeyatelnosti» [Ismail Gasprinsky: his time, views, lessons from life], *Kultura narodov Prichernomorya*, № 199 T.2, 2011. [in Russian]

Polozhenie ob upravlenii Turkestanskogo kraya [Regulations on the administration of the Turkestan Region], Tom II, chast 2. SPb., 1885. [in Russian]

Proekt Vsepoddanneyshego otcheta Gen. - Adyutanta K.P. fon Kaufmana 1 po grazhdanskomu upravleniyu i ustroystvu v oblastiakh Turkestanskogo general-gubernatorstva. 7 noyabrya 1867-25 marta 1881 g. SPb., 1885. [in Russian]

RUSINOV V., *Vodozemel'nye otnosheniya i obshchina u turkmen* [Water-land relations and community among Turkmens], Tashkent, 1889. [in Russian]

SARTORI PAOLO. *Visions of Justice. Sharī'a and Cultural Change in Russian Central Asia*, Leiden; Boston: Brill, 2016.

SAVITSKII A., *Pozemel'ny vopros v Turkestane (V proektakh i zakonakh 1867-1886 gg.)* [The land question in Turkestan (In the drafts and laws of 1867-1886)], Tashkent, 1963. [in Russian]

SHAKHNAZAROV A., *Ocherk selskogo khozyaystva Turkestanskogo kraya* [Essay on agriculture of the Turkestan region], Sankt-Peterburg, 1898. [in Russian]

SHEIKH MUKHAMMAD SODIQ MUKHAMMAD YUSUF. *Kifoya (Sharkhi Mukhtasari viqoya)* [Kifaya (Summary of Mukhtasar Viqaya)], V.3. Tashkent, 2008. [in Uzbek]

SHMIDT A., «*Shariat i pravo vodopol'zovaniya v Sredney Azii*» [Sharia and law of water management in Central Asia], *Narodnoe khozyaystvo Sredney Azii*, № 8-9, 1926. [in Russian]

YUFEREV V., *Khozyaystvo sartov Ferganskoy oblasti* [Farm of sarts of Ferghana region], Tashkent, 1911. [in Russian]

ZARIPOV ODIL. Turkiston yer egaligida shuf'a huquqi ["Right of Shuf'a" in the land use of Turkestan], *Inom Bukhoriy saboqlari*, № 1, 2020. [in Uzbek]