



CONDITIONS OF THE FOUNDER (EL-WAQIF) IN ALGERIAN LAW AND JURISPRUDENCE

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Abstract:

Waqf (endowment) is at the forefront of donation contracts, being a unilateral act intended to achieve charitable purposes by targeting the realization of good deeds and the distribution of benefits. This act is voluntary, and as such, it necessitates consideration of the wishes of the FOUNDER (EL-WAQIF) when establishing the waqf. Therefore, the intentions of the FOUNDER (EL-WAQIF) and the conditions they impose must be taken into account. This perspective is supported by Algerian legislation regarding waqfs and judicial practices, both before and after the enactment of the Waqf Law, in line with the principles established by Islamic law that emphasize respect for the FOUNDER's will.

Keywords: *Waqf, the founder(EL-WAQIF), FOUNDER Will, Conditions of the founder, The Ten Conditions.*

INTRODUCTION

There is no doubt that waqf (endowment) is, in essence, a voluntary act of charity, undertaken by the FOUNDER(EL-WAQIF) freely and with intention, aimed at serving a cause of goodness and benefit.

Since waqf is a legal act that falls under donation contracts, the will of the FOUNDER (EL-WAQIF) is the foundation and basis of the waqf. The FOUNDER (EL-WAQIF) has the right to establish their waqf in the manner they choose and for the purposes they wish, whether that pertains to the category of beneficiaries or the methods of benefiting from it, as outlined in the deed or contract of the waqf, expressed through their free will. This is a natural consequence of their freedom to dictate and express their will in organizing the waqf, which is legally and doctrinally known as the conditions or stipulations of the FOUNDER's (EL-WAQIF).

This is so because the FOUNDER (EL-WAQIF) is the original owner of the waqf property or the intended charitable purpose. Consequently, the rewards of the waqf return to them, allowing them to impose any conditions they desire during its establishment and formation. However, this right is not absolute; the implementation of the FOUNDER's (EL-WAQIF) will must have limits and regulations, which are defined by legal rulings.

Thus, we pose the following question: How do Algerian law and jurisprudence address the conditions imposed by the FOUNDER's (EL-WAQIF) will when establishing a waqf, and do they align with Islamic law in this regard?

We will address this issue through the proposed outline of this research paper, structured as follows:

Chapter One: Conditions of Waqf in Islamic Law

Chapter Two: Provisions of the FOUNDER's (EL-WAQIF) Conditions in Algerian Law and Jurisprudence

Chapter Three: The Ten Conditions for FOUNDER's (EL-WAQIF) and Their Applications



CHAPTER ONE: CONDITIONS OF THE FOUNDER (EL-WAQIF) IN ISLAMIC LAW

In this chapter, we will address the meaning of FOUNDER (EL-WAQIF) conditions and then discuss their legal classification by Islamic jurists, based on the premise that Islamic law serves as both a direct and indirect source of the legal framework for waqf. Thus, it is essential to examine the FOUNDER's (EL-WAQIF) conditions within this context.

Section One: The Meaning of FOUNDER (EL-WAQIF) Conditions

The term "FOUNDER (EL-WAQIF) conditions" refers to the stipulations that the FOUNDER (EL-WAQIF) imposes in the deed of the waqf, expressed through their free will, to articulate their desires and intentions regarding how the waqf is established and the system followed¹.

These are commonly referred to as the conditions of the FOUNDER's (EL-WAQIF), which pertain to the allocation of the waqf's benefits, the designation of the beneficiaries, and the methods for distributing the revenues among them. They may also relate to the oversight of the waqf and its management. The fundamental principle in Islamic law is that the conditions set by the FOUNDER's (EL-WAQIF) are binding on the overseer (nadhir) and the administrator (mutawalli) of the waqf, and they are not permitted to contravene these conditions².

The FOUNDER (EL-WAQIF), in establishing their waqf, acts freely and voluntarily. Since waqf is a voluntary act of charity, the FOUNDER(EL-WAQIF) has the right to determine the system of allocation and distribution in the deed of the waqf, which serves as the constitution of the waqf. The waqf deed or document is the official record that fully captures the FOUNDER's (EL-WAQIF) intentions. In matters not explicitly stated, the provisions of Islamic law concerning waqf apply, and the interpretation of legal texts comes into play. In this context, general terms may be restricted by specific instances, and later conditions may override earlier ones. Therefore, jurists often assert that the FOUNDER's (EL-WAQIF) conditions are akin to legal texts, as they adhere to the same principles of interpretation applied to religious texts³.

Section Two: The Legal Classification of FOUNDER(EL-WAQIF) Conditions

Since most issues related to waqfare based on juristic interpretation and innovation, scholars have differed regarding the legal classification of the conditions imposed by the FOUNDER(EL-WAQIF) when establishing the waqf. This ranges from permitting the application of contractual conditions to waqf, thus validating the FOUNDER's (EL-WAQIF) stipulations, to some scholars who restrict or even prohibit certain conditions⁴.

The scholars have varied in their interpretations of the legal implications of FOUNDER(EL-WAQIF) conditions. Below is a brief overview of these perspectives:⁵

Subsection One: The Opinion of the Hanafi School

The Hanafi view holds that the FOUNDER's (EL-WAQIF) conditions are akin to the texts of the Sharia, meaning they are understood and must be adhered to in the same way. They assert that the meaning of the FOUNDER's(EL-WAQIF) conditions is significant and should be considered, as indicated by later scholars of the school. Consequently, the term used by the FOUNDER(EL-WAQIF) should be interpreted according to their

¹- Ben McharennKheirEddin, The Management of Endowments in Algerian Law, Master's Thesis, Faculty of Law, University of Tlemcen, 2011-2012, p. 49.

²- ZahdiYaken, Endowments in Sharia and Law, Dar Al-Nahda Al-Arabiya for Printing and Publishing, Beirut, Lebanon, 1388 AH, p. 50.

³- Imam Muhammad Abu Zahra, Lectures on Endowments, Ahmed Ali Mokhimer Press, Egypt, 1959, p. 155.

⁴- Moundher Abdul Karim Al-Qudah, The Provisions of Endowments (A Comparative Legal and Jurisprudential Study). Dar Al-Thaqafa for Publishing and Distribution, 1st edition, 2011, p. 78.

⁵- Qanfoud Ramadan, The System of Endowments in Islamic Law and Algerian Law, Master's Thesis, Faculty of Law, SaadDahlab University, Blida, 2002, p. 88.



customary language and expression, whether or not it aligns with the Arabic language or the language of Sharia.

This leads to the conclusion that anything contradicting the FOUNDER's(EL-WAQIF) condition is in opposition to the text, and ruling on such matters would be without evidence.

The Hanafis have established four criteria for assessing FOUNDER(EL-WAQIF)conditions, which are:

- Contradiction to Sharia: For example, if the FOUNDER(EL-WAQIF)stipulates that the overseer must not be held accountable or must be dismissed for misconduct.
- harm to the Waqf'sInterests:such as a condition prohibiting the maintenance of the waqf even when it is necessary.
- Harm to the Beneficiaries: For instance, stipulating that the property cannot be rented for more than its designated purpose.
- Legal Benefit:Such as a condition requiring the FOUNDER(EL-WAQIF)to give a portion of the waqf's profits to those who ask for help at a specific location⁶.

Subsection Two: The Opinion of the Maliki School

The essence of the Maliki position is that the FOUNDER's(EL-WAQIF) conditions must be followed if they are permissible. Even if such conditions are considered disliked (makruh) but not prohibited, they should still be adhered to. If the conditions do not meet this criterion, they are not followed. For example, stipulating a specific administrator for the waqf or requiring equal treatment of male and female beneficiaries is permissible. However, conditions that are disliked, such as bequeathing the waqf solely to male heirs while excluding female heirs, would not be upheld⁷.

Subsection Three: The Opinion of the Shafi'i School

The Shafi'i view holds that the FOUNDER's(EL-WAQIF) conditions should be followed just like any other conditions that serve a beneficial purpose. However, they provide an exception for cases of necessity, justifying this by stating that preventing the fulfillment of such conditions could lead to the invalidation of the waqf, which contradicts the interests of the waqf. For instance, if the FOUNDER(EL-WAQIF)stipulates that only unmarried individuals may reside in a certain area, or if a non-Muslim FOUNDER(EL-WAQIF)establishes a waqf for their children with the condition that they must not convert to Islam, such conditions would be evaluated in light of this necessity⁸.

Subsection Four: The Opinion of the Hanbali School

The Hanbali view holds that the FOUNDER's(EL-WAQIF) conditions must be adhered to if they are permissible and not disliked. They affirm the application of the FOUNDER's(EL-WAQIF) conditions regarding the duration of the waqf and the arrangement and distribution among beneficiaries. They maintain that in all contracts, not just waqf, any condition not explicitly prohibited is valid and must be respected. Any condition that explicitly states a prohibition is considered invalid, while those that do not are permissible⁹.

FOUNDER(EL-WAQIF)conditions must be fulfilled unless they contradict an objective of Islamic law. Observing the opinions of the aforementioned scholars,it is clear that they agree that any condition explicitly prohibited is void, although they differ on the extent of this prohibition¹⁰. Thus, the FOUNDER's (EL-

⁶- Ibrahim Belbali, *Algerian Endowments Law (A Critical Analytical Study Compared to Islamic Jurisprudence)*, Master's Thesis, Faculty of Islamic Sciences, University of Algiers, 2004, p. 321 and following.

⁷- The same reference, pp. 316-318.

⁸- The same reference, p. 318.

⁹- Ibrahim Belbali, *Previous Reference*, pp. 318-320.

¹⁰- Imam Muhammad Abu Zahra, *Previous Reference*, p. 157.



WAQIF) conditions are binding unless they are unlawful or a means to achieve something unlawful, as waqf is fundamentally an act of charity, and charity can only be realized through lawful means.

Section Three: Categories of FOUNDER(EL-WAQIF) Conditions

Scholars have classified FOUNDER(EL-WAQIF) conditions and their implications into three categories:¹¹

Subsection One: Valid and Acceptable Conditions (Valid Conditions)

These are conditions that do not contradict Sharia and do not conflict with the essence of the contract¹². They must be followed and respected, as they align with Islamic principles and do not cause harm to the waqf or its beneficiaries. For example, a FOUNDER(EL-WAQIF) may stipulate that the proceeds of the waqf are allocated to a specific cause, or that the distribution of benefits is based on necessity.

Subsection Two: Invalid Conditions that Nullify the Waqf (Invalid Conditions)

These conditions contradict the permanence of the waqf and undermine its fundamental nature, which is perpetuity. For instance, if a FOUNDER(EL-WAQIF) stipulates that the waqf property remains in their ownership or claims the right to sell or gift the waqf property, or that it should revert to their heirs after their death, these conditions are incompatible with the permanence and binding nature of waqf.

Subsection Three: Invalid Conditions that Do Not Nullify the Waqf (Corrupt Conditions)

These are conditions that are disregarded and not taken into account; if associated with the waqf, the latter remains valid without being affected by them. Such conditions may be prohibited or contrary to the principles of Islamic law or the interests of the beneficiaries. For example, if a FOUNDER(EL-WAQIF) stipulates that the overseer of the waqf cannot be dismissed even if they are negligent, or that the waqf property cannot be replaced even if it becomes unfit for its intended purpose, these conditions are not upheld.

CHAPTER TWO: PROVISIONS OF THE FOUNDER'S (EL-WAQIF) CONDITIONS IN ALGERIAN LAW AND JURISPRUDENCE

In this chapter, we will address how Algerian law deals with the conditions set by FOUNDER's(EL-WAQIF), as reflected in the provisions of the Family Law and the Waqf Law. We will also examine examples of Algerian judicial applications concerning this issue.

Section One: Consideration of the FOUNDER's(EL-WAQIF) Will in Algerian Law

Algerian law addresses the conditions of the FOUNDER(EL-WAQIF) in both the Family Law and the Waqf Law.

Article 218 of the Family Law states: "The condition of the FOUNDER(EL-WAQIF) is enforceable unless it contradicts the legal requirements of the waqf; otherwise, the condition is void, and the waqf remains valid."¹³ This is the only article in the Family Law that discusses the FOUNDER(EL-WAQIF)'s conditions, and it is succinct, reflecting the general provisions regarding waqf in this text.

As for the Waqf Law, while it addresses conditions in various contexts, it dedicates an independent chapter specifically titled "Conditions of the FOUNDER(EL-WAQIF)," which comprises Articles 14, 15, and 16. Article 14 states: "The conditions set by the FOUNDER(EL-WAQIF) in their waqf are those that govern the waqf unless prohibited by Sharia."¹⁴ This article makes it clear that the organization of the waqf is entrusted to the will of the FOUNDER(EL-WAQIF), who sets the limits governing the categories of beneficiaries, the methods of

¹¹ - Munther Abdul Karim Al-Qudah, Previous Reference, p. 79.

¹² - Imam Muhammad Abu Zahra, Previous Reference, pp. 163-164.

¹³ - Law No. 84-11 dated 09-06-1984 concerning Family Law, amended and supplemented, Official Gazette No. 24.

¹⁴ - Law No. 91-10 dated 27-04-1991 concerning Endowments, amended and supplemented, Official Gazette No. 21.



benefiting from the waqf, the conditions surrounding it, and the appointment of the overseer. The FOUNDER's(EL-WAQIF) will also dictates how the funds of the waqf are to be invested¹⁵.

In addition to Article 14, Article 6 of the same law reinforces this provision, stating: "General waqf is that which is dedicated to charitable purposes from the time of its establishment, and its proceeds are allocated to support charitable causes. It is divided into two types:

- A waqf that specifies a particular allocation for its proceeds, referred to as a specific general waqf, which cannot be diverted to other charitable purposes unless it is exhausted.
- A waqf that does not specify the charitable purpose intended by the FOUNDER(EL-WAQIF), referred to as a non-specific general waqf, which uses its proceeds to promote knowledge and encourage research in charitable endeavors."

From this article, it is evident that the FOUNDER's(EL-WAQIF) will defines the waqf as general at its inception and specifies the intended charitable purpose, which is among the recognized conditions. If the FOUNDER(EL-WAQIF) fails to do so, the authority responsible for waqfs intervenes to designate an allocation for it. Similarly, in the case of a private waqf, the FOUNDER's (EL-WAQIF) will determines its classification as private and specifies the beneficiaries¹⁶.

Furthermore, Article 26 bis4 of the Waqf Law acknowledges the FOUNDER's (EL-WAQIF) conditions and considers them valid. It states: "Changing the purpose of the waqf property to a more beneficial one for the beneficiaries is permissible unless prohibited by one of the FOUNDER's(EL-WAQIF) conditions."

Additionally, Article 45 of the same law reflects a similar ruling in terms of its outcome, stating: "Waqf properties are to be utilized, invested, and developed according to the will of the FOUNDER(EL-WAQIF) and in accordance with the objectives of Islamic law concerning waqfs, following the procedures outlined in this law and applicable legal rulings that do not conflict with it."

There have been practical rulings regarding these legislative provisions in the executive decree related to the management of waqf properties¹⁷. Article 13 states: "... 8- Ensuring the rights of the beneficiaries are fulfilled, while respecting the conditions set by the FOUNDER(EL-WAQIF)...". Article 14 also states: "The appointed overseer of the private waqf property shall perform their duties in accordance with the FOUNDER's(EL-WAQIF) conditions as per the provisions of this decree. They are responsible to the beneficiaries and the FOUNDER(EL-WAQIF), if stipulated, as well as to the authority responsible for waqfs." Similarly, regarding the appointment of the overseer of the private waqf, it is entirely based on the waqf deed and the FOUNDER's (EL-WAQIF) will in that appointment, as outlined in Article 16 of this decree. Article 33 of the same decree states: "The committee mentioned in Article 9 above shall determine the expenses of public waqf properties in accordance with the provisions of Article 6 of Law No. 91-10 dated April 27, 1991, while respecting the conditions set by the FOUNDER(EL-WAQIF)...".

In addition to all the above, and in line with the consideration of the FOUNDER's (EL-WAQIF) will and the conditions they specify in the waqf deed, the state, with its sovereignty and public authority, ensures respect for the FOUNDER's (EL-WAQIF) intentions, as stated in Article 5 of the Waqf Law.

The repeated emphasis by the Algerian legislator on the consideration of the FOUNDER's (EL-WAQIF) conditions in multiple parts of the Waqf Law is evidence of the significant importance given to the FOUNDER's (EL-WAQIF) will when outlining the conditions that govern and organize their waqf. This is based on the premise that the essence of waqf is that it is a voluntary act of charity, and thus the desires of the

¹⁵- Ibrahim Belbali, Previous Reference, p. 34.

¹⁶- Ibrahim Belbali, Previous Reference, p. 322.

¹⁷ - Executive Decree No. 98-381 dated 01-12-1998 specifying the conditions for the management, administration, and protection of endowment properties and the methods thereof, Official Gazette No. 90.



FOUNDER(EL-WAQIF) and their intentions in how they establish their waqf and the system they follow—regarding its management and distribution of proceeds—must be respected.

From the review of legislative and regulatory provisions concerning FOUNDER(EL-WAQIF) conditions, we find that Algerian legislations align with the views of Islamic jurists, particularly the Hanafischool¹⁸.

Section Two: Regulations on FOUNDER(EL-WAQIF) Conditions in Algerian Legislation

The Algerian Waqf Law does not permit the FOUNDER(EL-WAQIF) to impose conditions that are prohibited by Islamic law, as confirmed by Article 14.

In cases of disputes regarding the FOUNDER's(EL-WAQIF) conditions, the judge may annul any condition if it contradicts the requirement of the waqf's permanence, harms the waqf property, or adversely affects the interests of the beneficiaries, according to Article 16 of the Waqf Law. This can be detailed as follows:

1. If the condition contradicts the requirement of the waqf's permanence: If the FOUNDER's (EL-WAQIF) condition includes not making the waqf permanent, it contradicts the provisions of Articles 3 and 28 of the Waqf Law, which affirm the necessity of permanence in waqf. For example, if the FOUNDER(EL-WAQIF) stipulates a right of reversion that implies a temporary nature rather than permanence.
2. If the condition harms the waqf property: for instance, if the FOUNDER(EL-WAQIF) stipulates that the waqf should not be maintained even when it requires it, this condition is considered void. The judge may then annul the condition and rule the waqf must be maintained.
3. If the condition harms the interests of the beneficiaries:

This is evident in several examples, including a condition that allows the overseer to rent the waqf property at a price lower than the market rate, which could harm the income of the waqf. Such a condition is subject to annulment by the judge, as explicitly affirmed by Article 26 bis 4 of the Waqf Law.

Furthermore, Article 29 of the Waqf Law reinforces the ruling intended by the aforementioned Article 16, stating: "A waqf is not valid if it is contingent upon a condition that contradicts the legal texts; if such a condition exists, it is void, and the waqf remains valid."

The FOUNDER(EL-WAQIF) may retract some conditions of the waqf if they stipulate this upon the establishment of the waqf, as confirmed by Article 15, which states: "The FOUNDER(EL-WAQIF) may retract some of the conditions stated in the waqf deed if they specified this for themselves when the waqf was established."

It is worth noting regarding the FOUNDER's (EL-WAQIF) conditions and the regulations governing them in the Waqf Law that this law does not introduce anything new to its foundation based on the rulings of Islamic law, remaining generally consistent with its references. This is both a positive and a negative aspect: it is positive in emphasizing the necessity of adhering to Islamic legal principles, but negative in two respects:¹⁹

- It does not define the scope of prohibited conditions that do not pertain to the organization of the waqf.
- It does not clarify what is meant by Islamic law in matters and issues that differ among Islamic jurists.

Section Three: The Stance of Algerian Jurisprudence on FOUNDER(EL-WAQIF) Conditions

The judiciary exercises general authority regarding the interests of waqf and the conditions set by FOUNDER's(EL-WAQIF), a power enshrined in the Waqf Law. It is noteworthy that Algerian judicial reasoning was proactive, even before the enactment of the Waqf Law, in affirming what scholars have posited regarding FOUNDER(EL-WAQIF) conditions²⁰.

¹⁸- Qanfoud Ramadan, Previous Reference, p. 91.

¹⁹- Ibrahim Belbali, Previous Reference, p. 311.

²⁰- Qanfoud Ramadan, Previous Reference, p. 92.



Here are some decisions from the Supreme Court that illustrate this issue, which are numerous, including:²¹

1. Decision dated 06-11-1968 (Annual Bulletin 1968, p. 124):

“If the principles of Islamic law require that the endowment contract be subject to the will of the FOUNDER(EL-WAQIF), who is entitled to impose conditions in accordance with any of the Islamic schools of thought, then violating these principles necessitates the nullification of any resulting rulings that are inconsistent. Therefore, it is necessary to overturn the decision that invalidates the endowment contract for deviating from the established rules in the Maliki school, thus contradicting the legal principle that requires respect for the FOUNDER’s (EL-WAQIF) will.”

2. Decision No. 42971 dated 05-05-1986 (Unpublished):

“The endowment is a contract characterized by specific conditions set by scholars, which cannot be regarded as a will. It is a valid contract that is governed by the FOUNDER’s (EL-WAQIF) will and cannot be annulled in any way as long as it is based on established legal principles that were in effect at that time. The choice of the Hanafischool in this matter is not objectionable, nor is the exclusion of any beneficiaries from the waqf.”

From these two decisions, it can be observed that the Algerian judiciary has acknowledged the use of legal justifications founded on Islamic jurisprudence to affirm its various rulings, even before the Waqf Law was enacted. This law has also confirmed and endorsed this principle through Article 2, which refers to the application of Islamic law in matters not explicitly addressed within it.

3. Decision No. 204.958 dated 31-01-2001 (Journal of Judicial Jurisprudence for the Real Estate Chamber, Part One, 2004, p. 132):

“The FOUNDER(EL-WAQIF) may retract some of the conditions stated in the waqf contract if they stipulated this for themselves at the time of establishing the waqf. Therefore, ruling the retraction in the endowment contract, which is deemed a final act as long as the contract does not contain a condition allowing retraction, is an error in the application of the law.”

However, this allowance does not imply a retraction from the waqf as a unilateral obligation, as it cannot be dismissed or nullified in the view of the Algerian legislator, who requires permanence in accordance with Article 3 of the Waqf Law. The waqf is nullified if it is time-bound, based on Article 28 of the same law²², although the issue of time limitation for waqf requires consideration, given Article 11 of this law and some investment applications and formulas mentioned within it, such as profit-sharing and deposits with waqf benefits, for example.

CHAPTER THREE: THE TEN CONDITIONS OF FOUNDER’S (EL-WAQIF) AND THEIR APPLICATIONS

There is a phrase that has been newly used, which did not appear in the words of earlier jurists: “the ten conditions.” This term has been used in the context of the contracts of FOUNDER’s (EL-WAQIF), in the fatwas of some later scholars, and in courtroom language, to the extent that its meaning has become defined and precise, turning it into a technical term²³.

In this chapter, we will identify these conditions, their validity, and the stance of the Algerian legislator regarding their adoption.

Section One: Defining the Subject Matter of the Ten Conditions of FOUNDER’s (EL-WAQIF)

²¹- Hamdi Pasha Omar, *Real Estate Judiciary in Light of the Latest Decisions Issued by the Council of State and the Supreme Court*, Dar Houma, 8th edition, 2009, pp. 272-281.

²²- Ben McharennKheirEddin, *Previous Reference*, p. 51.

²³- Moundher Abdul Karim Al-Qudah, *Previous Reference*, p. 79.



These conditions, in terms of their subject matter, are as follows:²⁴

1. Increase and Decrease: This condition implies that the FOUNDER(EL-WAQIF) can stipulate an increase or decrease in the shares of the beneficiaries. It pertains to the extent of entitlement, not its essence.
2. Inclusion and Exclusion: Inclusion means making someone who is not entitled to the waqf eligible for it, while exclusion means rendering an entitled person ineligible.
3. Granting and Withholding: Granting refers to giving all or part of the waqf's proceeds to certain beneficiaries for a specified period or permanently, while withholding means the opposite, with the essence of withholding being permanent, although it could be for a specified time, which would then constitute exclusion.
4. Replacement and Substitution: Replacement entails removing the property from its designated waqf purpose by selling it, while substitution refers to purchasing another property to serve as a waqf in place of the sold one. Thus, both actions are interconnected, as selling the waqf property necessitates its replacement to maintain the continuity of the waqf.
5. Change and Alteration: These two conditions are sufficient and encompass the others mentioned previously, unless they are narrowed down in interpretation. They may expand to include changes in the allocations of the waqf, making them fixed amounts instead of shares or specific to certain beneficiaries instead of general.

In addition to these ten conditions, the conditions of preference and specification may appear in the contracts of FOUNDER's (EL-WAQIF). Preference means increasing the share of some beneficiaries without increasing that of others, while specification refers to distinguishing some beneficiaries with something not given to others. Thus, preference and specification do not introduce a new meaning beyond the ten conditions.

Section Two: Conditions for the Validity of the Ten Conditions

Scholars have established specific conditions for the validity of the ten conditions of FOUNDER's (EL-WAQIF), which can be summarized as follows:²⁵

- These conditions must relate to the allocations of the waqf and the waqf properties and must be stipulated at the time of establishing the waqf. If the FOUNDER(EL-WAQIF) does not stipulate them for themselves or for anyone else, they are not valid, unlike the authority that is established for the FOUNDER(EL-WAQIF).
- These conditions are only established for the FOUNDER(EL-WAQIF) if they stipulate them for themselves; they do not inherently apply to the overseer unless the FOUNDER(EL-WAQIF) specifies them for the overseer or if the interests of the waqf necessitate the overseer's intervention in implementing any of those conditions with the permission of the authority responsible for waqfs.
- Whoever has stipulated the ten conditions may only implement them once unless they specifically require repetition in their application.
- The use of the ten conditions is not dependent on the FOUNDER's (EL-WAQIF) state of health, whether they are sound or ill.
- The ten conditions are subject to waiving, except for those established by a legal reason that cannot be waived, as the default is that these conditions are deemed as abstract rights.

²⁴- Ben McharennKheirEddin, Previous Reference, p. 50.

Qanfoud Ramadan, Previous Reference, p. 90.

Moundher Abdul Karim Al-Qudah, Previous Reference, p. 80.

²⁵- Ben McharennKheirEddin, Previous Reference, p. 51.

Ganfoud Ramadan, Previous Reference, p. 91.



Section Three: The Stance of the Algerian Legislator on the Ten Conditions

The Algerian Waqf Law and the Family Law, which contains provisions related to waqf, do not explicitly mention the ten conditions of FOUNDER's (EL-WAQIF). However, these conditions fall under the general stipulations of the FOUNDER(EL-WAQIF), which the Waqf Law states are what govern the waqf. Consequently, according to Article 2 of the Waqf Law, it is necessary to refer to the provisions of Islamic law in matters not addressed in the Waqf Law. The conditions that FOUNDER's (EL-WAQIF) impose on their waqfs are numerous and varied, reflecting their diverse purposes and intentions, leading scholars to explore their rulings and categorize them as the ten conditions previously outlined.

It is worth noting that some Arab laws explicitly mention the ten conditions, such as Egyptian Law No. 48 of 1946 in Article 12, which states: "The FOUNDER(EL-WAQIF) may stipulate the ten conditions for themselves, not for others, or any of them, and may repeat them, provided they do not take effect except within the limits of this law." Similarly, in the Lebanese Atomic Waqf Law, Article 14 states: "The FOUNDER(EL-WAQIF) may stipulate the ten conditions known in Islamic law for themselves or for others,"²⁶ and in the Jordanian Civil Code, which enumerates the ten conditions in Article 1237²⁷.

CONCLUSION

From the above discussion, we observe that the will of the FOUNDER(EL-WAQIF) is taken into account in Algerian law, which is a natural and logical extension of the principles established in Islamic law, considering that the latter is an important source of the legal framework governing waqf.

It is evident that the FOUNDER's (EL-WAQIF) will organizes the waqf to the extent that it holds a position equivalent to that of the legal text in meaning and concept—where the FOUNDER's (EL-WAQIF) condition is akin to a legal stipulation. Algerian jurisprudence has also weighed in on this matter, even before the enactment of the Waqf Law, through numerous judicial decisions that emphasized respect for the FOUNDER's (EL-WAQIF) conditions and accorded them the necessary significance. This has truly served as a guarantee and protection for the FOUNDER's (EL-WAQIF) intentions, which the Algerian Waqf legislation has made an obligation on the state, as stated in Article 5. All of this aims to encourage individuals to engage in waqf while ensuring the care and respect for their wishes regarding how they establish their waqfs and how the proceeds are distributed, as well as their utilization and growth. However, the Algerian law has not clarified some contentious points among scholars, which would make the matter of adopting these conditions clear and unambiguous, thereby preventing the judiciary from having to navigate through their various interpretations and complexities.

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²⁶- Ibrahim Belbali, Previous Reference, p. 329.

²⁷- Moundher Abdul Karim the judges, Previous Reference. p. 81.



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