Fatwa Issuance in the Islamic Law: the Specific of Implementation under the Conditions of the Chechen Republic (History and Modernity)

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Abstract. The scientific article is devoted to the analysis of fatwa-issuance procedure, characteristic of the Muslim legal system. The article also provides the concept of fatwa and the requirements for the status of a fatwa-issuer. The scientific analysis is based on the Holy Quran and the Sunnah of the Prophet Muhammad (peace and blessings be upon him), as well as the basic four religious and legal schools of Islamic fiqh (madhhab). In addition, the fatwa-issuing activity in the conditions of historical Chechnya is considered on the example of qadi’s theological activity from Shalinsky district, Sheikh Sugaip-mullah. A religious figure who issues a fatwa must comply with a number of conditions and requirements. In conclusion, the article notes that issuing fatwa (fatwa-issuance) is a very serious and responsible procedure and mission that must be carried out based on the fundamental sources of the Muslim law and the achievements of the religious and the legal schools (madhhab). A person who issues a fatwa (fatwa issuer) must meet very high standards. Ignorance, and especially in religious matters, gives seeds producing sprouts of confusion and ignorance (fitnah).

1 Introduction

The Muslim legal system is fundamentally based on the two sources of fiqh, religion and Sharia – the Holy Quran and the Sunnah of the Prophet (peace and blessings be upon him). Two other additional sources of this system are ijma and qiyas. At the same time, the concept of fatwa and the fatwa-issuance procedure is a separate legal category in the Muslim legal law, correlating with the sources mentioned above. A fatwa should be issued and the fatwa activity should be based on the sources of the Islamic law served as a basis.

The Chechen land (from Chechen – Nohchicho, Daimokhk) has always been famous for its alims (theologians, religious figures). For a long time, the alims (theologians) of Chechnya were engaged in research in various areas of Islamic science (fiqh) despite the difficult, sometimes tragic history of the Chechen land and its people. And in our opinion, one of the duties of the contemporary religious figures, theologians, as well as representatives of science [1, p. 78] is to revive the works of our great alims of the past,

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bringing a new impetus to their significant studies of the past in order to develop future
generations in matters of the Islamic religion, the practical use of obligations according to Sharia and the research in the field of fiqh. After all, alims of the past belonged to the
category of people who strictly followed and practiced the classical theological approach to
religious issues in their works and in their lifestyle.

The relevance of this work is an analysis of fatwas issuing by some great theologians of
the past from Chechnya. This article will emphasize and highlight the fact that theologians of Chechnya were and remain followers of traditional legal theological schools. The identification and designation of this fact, as well as the process of understanding these issues, is a very important factor today, since we are witnessing division and fitnah (from Arabic – chaos, turmoil) in previously orderly ranks of Islamic society (Ummah) and its destabilization. We are sure that one of the reasons for this negative process is a complete or partial refusal to follow the traditional legal schools and the deliberate policy of destructive forces, the enemies of Islam spreading confusion and contradictions in the contemporary Muslim Ummah. And there is one more important aspect of this problem, which laid the foundation for contradictions between the traditional religious worldview and new (for the entire post-Soviet space) movements in Islam. A certain radicalization of the population in the North Caucasus, based on the new trends of the times, in the early 90s of the last century was facilitated by the unpreparedness, and in some places the inability of traditional institutions, including religious ones, to adequately respond to the new realities, changes that began to rapidly take place on the socio-political and spiritual-religious landscape of the North Caucasus, including the Chechen Republic. In other words, classical confessional institutions based on "traditional" Islam failed to transform and adequately respond to the threats in the new realities and the challenges they received from various kinds of movements that filled the religious landscape of the entire North Caucasus.

2 Fatwa-Issuance as the Most Important Tool to Regulate Religious Issues

The history of Chechnya and its religious figures shows that alims lived and worked on the "land of the fathers" (Daimohk, Dekasta) that left behind the most valuable thing – their religious works on problematic issues that arose among the inhabitants of Chechnya regarding the life and people lifestyle of that time.

A perfect example of the invaluable works of the Chechen alims is the books that have come down to us as a proof of the above. Among them are the works of a well-known alim, the theologian and preacher of Chechnya, the qadi of the Shalinsky district – Sheikh Sugaip-mullah (in Chechen – Soip-molla). The theologian activity was in the early 20th century and included the work of the qadi in solving various practical issues related to the religious issues that the residents of the Shalinsky district faced, and he had to deal with controversial issues that required reconciliation (in Chechen – maslaat), the fatwas issuance on various practical problems that arose among the residents of the Shalinsky district. There are his well-known works such as (in Arabic): “Khidayat aa-Razhiy ila ma’rifati hukmi Nakhachi” (On the rules of zakat and correcting this process among the residents of Chechnya), “Fakku ar-Rikabi min kaffi al-‘ikabi” (Liberation from the divine judgment/ordeal).

We will try to formulate the concept of fatwa before finding out the content of the fatwa issuance process. Fatwa (also – fetwa; from Arabic – novelty, clarification, explanation) is a Sharia conclusion, an irrefragable answer given by an expert on Islam to a specific religious issue and establishing a certain "hukm" (rule, decision) in its implementation. A fatwas issuer is called a mufti (alim, faqih, mujtahid). A person who needs some kind of a religious solution to a problem either extracts this solution from the sources (in case when
one has the relevant knowledge is a mujtahid), or, if cannot do it, refers to people who are competent in this area, based on what the Holy Quran establishes (semantic translation): “Ask the followers of the Remembrance if ye know not!” (ayat 43 of Sura 16 “an-Nahl” (Bees)) [2].

There are specialized spiritual centers that are responsible for this important activity in the Muslim community in Russia, in regions with a predominantly Muslim population. These centers receive daily various questions from the population, and competent specialists in this field try to answer them, referring to reliable sources. For example, there is a department of fatwas under the Spiritual Administration of Muslims in the Chechen Republic (Muftiat of the Chechen Republic), where various questions on topical subjects are received daily from residents of the Chechen Republic.

Meanwhile, fatwa-issuance is a religious-applied “art” that is not subject to a random person in this area. Sometimes, in order to obtain the status of a fatwa specialist, a person must devote decades of his life to religious education, has a spotless reputation, be a man of high spirituality, with high moral qualities, a responsible person. Today, we sometimes witness situations when various “precocious” figures who call themselves “scholars” try to make certain conclusions regarding Sharia issues on their own, without relying on the opinions of generally accepted classical religious legal schools (madhhabs), thereby rudely violating the traditions of fatwa-issuance in Islam. Historical facts show that over the fourteen centuries since the foundation of the Islamic religion, many attempts were made to violate this principle, which resulted in a split and subsequent decline of the Muslim Ummah.

It is fundamentally important to note once again that fatwa-issuance activity should be carried out by theological scholars who have theoretical knowledge at a sufficiently high level and are aware of their own responsibility for the decisions made (fatwas issued), both before the society – the Ummah of Muslims, and before the Creator – Almighty Allah. We believe that the qualitative regulation and systematization of such activities will be a developing factor in the domestic Muslim theology and will contribute to ensuring the spiritual security of the Ummah of Muslims in Russia.

Faithful Muslims often face with various kinds of issues in everyday life and when performing religious procedures that present a certain difficulty, misunderstanding, ambiguity of interpretation, etc. due to the fact that an ordinary person – a Muslim, as a rule, is very ignorant of certain Sharia provisions/rules.

The fatwa-issuance procedure is very complicated and sometimes contains contradictory moments. Religious questions of related application require answers without leaving the doctrines of religious-legal schools (madhhabs). At the same time, some difficult situations occur in practice when it is difficult to fulfill a specific Sharia decision made by issuing a fatwa without leaving the madhhab. Alims, theologians of the past, such as the highly esteemed Sheikh Sugaip-mullah, also encountered such difficult situations. Being a qadi of the Shalinsky district residents addressed him and he had to search for answers to their various religious questions. However, he was a hostage to such a situation when it was necessary to give a fatwa based on four Sunnite legal schools and it was almost impossible or very difficult to do it in Chechnya of that time (taking into account the religious-political, socio-economic situation). Sheikh Sugaip-mulla in his book “Fakku al-Riqabi min kaffi al-`ikabi” (Deliverance from the divine judgment/ordeal) [3] referred to the works of famous theologians of the past to justify his arguments. Here are some quotes from these books. Sheikh `Abdu ar-Rahman in his book “Bugyatu al-Mustarshidiyna” (The Desired Goal for the Seeker of Truth) cites the following: “The Sheikh quotes the words of a great scholar and says that Jalaluddin as-Suyuti, who belonged to a large group of alims (Imams) conveyed the following: these alims issued fatwas to people who did not have profound knowledge of fiqh (four legal schools) to facilitate their situation in solving a
specific issue and the opportunity to follow any of the four madhhabs (taqlid) where the answer to their question was. These scholars said that it is allowed if a committed action of a person without profound religious knowledge corresponds with the opinion of the scientists of fiqh (four legal schools),” [4, p. 761].

Also the book contains the following: al-Kurdiy conveyed from `Abdu ar-Rahman: if there is discrepancy on any issue between ibn Khajar and Ramali and other scholars, the one has the right to do so if he has knowledge and able to give preference to one of them, and the one who cannot do it, then he follows the majority [5, p. 730].

Also, in his book Sheikh Sugaip-mullah cites the words of the great learned theologian Imam al-Ghazali (Faysal at-Tafriqat bayna al-Islami wa az-Zandaqati) (Reasoning/Considering between Islam and unbelief): maybe if you become moderate, you will know that one who limits the truth to one person he is close to disbelief or falling into contradiction. As for disbelief, he gave it a degree of infallibility that the prophets (peace be upon all of them) could have it only, which is not correct. As for the contradiction, each researcher needs to see how it would be if it is required to investigate any issue from different opinions, but at the same time a condition is imposed to follow his opinion only, which is taken as a basis. You can investigate your question, but you must not see in the solution of the question more than me that is also wrong, that is, contradictory. And all I can see is the argument, and you commit yourself and believe in this argument. Further, Imam al-Ghazali says: “And what is the difference between the one who says: “You follow my legal school”, and the other one who says: “You follow my legal school and my arguments together” [3, p. 96].

In conclusion, Sheikh Sugaip-mullah indicates, which is confirmed by the above: a fatwa issuer has the right to make a final decision, based on an unfavorable decision for the category of people who are strong (able) and willing to follow the preferred decision if they are told, and those who are unable to follow both the preferred and non-preferred opinion (solution) and however they ask: “Is there a decision in the four legal schools that could be followed?”, then you can tell them that there is an opinion that one can follow and consider the performed action as valid when he asked about it after performing the action. For example, there are cases when a person sacrifices and later finds a fetus in the carcass of a slaughtered animal. In this regard, the question arises: would it be considered a sacrifice for such people if it was done without knowing the fact that the animal carried the fetus? In this situation, the theologian can give them an explanation that their actions are considered valid and permissible, because, as Ibn-Rif'at said, “the one who makes the decision does not know which decision is more correct in terms of the argument, not to mention its correctness in the Creator's view.

If we use examples that include, in particular, cases when, at the end of the annual fast in the month of Ramadan, the faithful are obliged to perform zakat (Arabic – zakatul-fitr, Chechen –marhiin sagha) [6]. According to the madhhab of Imam ash-Shafi’i that the population of the Chechen Republic adheres to, zakat must be made through the distribution of products most consumed in the area (for example, in the Caucasus, cereals (usually wheat) weighing 3 kg for each family member of the faithful). However, taking into account the problematic issues related to the purchase of grain for some people (the needy), as well as its subsequent processing (the grain must be ground to get flour), it is allowed to make zakat by giving money and a person should have the intention to do so relying on the madhhab of Abu Hanifa. By the way, based on the results of the last month of Ramadan in 2022 (1443), the Spiritual Administration of Muslims in Chechen Republic issued a booklet that contains the procedure for making zakat with products in the fixed weight according to the madhhab of Imam ash-Shafi’i, or in the form cash payment of 100 rubles for each person according to the madhhab of Abu Hanifa [7].
Another example: a Muslim performing the Hajj rite and identifying himself as a madhhab of Imam ash-Shafi‘i, during a ritual walk around the Kaaba (tawaf), faces the following problem: this ritual round is performed by a large number of people at the same time, there is a huge crowd, male and female, people can be close to each other, involuntarily touch each other with their hands. One of the conditions to perform a ritual round is that a person has a small ablution (Arabic –taharat, Chechen – lamaz karakhhillar) [8]. According to the madhhab of Imam ash-Shafi‘i, it is known that the touch of a man to another woman (intentionally, accidently) violates the state of small ablution. In this connection, in order to alleviate such a difficult situation and perform a ritual round of the Kaaba, the followers of the madhhab of Imam ash-Shafi‘i are allowed to make an intention to perform such a round relying on the madhhab of Abu Hanifa. After all, as you know, according to the madhhab of Abu Hanifa, the state of small ablution when touching a woman is not violated, which facilitates the performance of a ritual round of the Kaaba for representatives of the madhhab of Imam al-Shafi‘i.

The most important sources of the Muslim legal system – the Holy Quran and the Sunnah of the Prophet (peace and blessings be upon him) contain arguments that the religion of Islam does not complicate a human life (in terms of everyday life and the implementation of religious prescriptions and rituals), does not impose on a person more than he can stand. As given in the Holy Scriptures (semantic translation): “Allah does not obligate anyone beyond his capacity<…>” (ayat 286 of Sura 2) [2]. Mufassir as-Saadi gives the following tafsir of the verse: “He made the Muslim Sharia extremely easy and does not burden Muslims with hardships and obligations that were so burdensome for previous religious communities. Allah did not order them to perform duties that exceeded their capabilities, forgave their sins, had mercy on them and so grant them victory over the disbelieving people. Also, another mufassir ibn Kasir tells us in the tafsir of the verse: “Allah burdens not a person beyond his scope—lay not on us the kind of burden that we have not the strength to bear. This is a mercy and beneficence of Allah to His servants. After all, a man is not responsible for them” [10].

In another case, the Holy Quran gives (semantic translation): “<…>. Allah intends for you ease and does not intend for you hardship<…>.” As-Saadi gives the following interpretation of this verse (excerpt): “He miraculously facilitated the paths for His servants leading to His contentment, and therefore all God’s commands are, in principle, simple and unburden. If there are obstacles that hinder the fulfillment of God’s commands and make them burdensome, then Almighty Allah facilitates these commands to a greater extent or even delivers His servants from these duties. This Quranic proposal cannot be described in detail, since it extends to all the prescriptions of religion and includes all Sharia reliefs and permissions” [11].

Thus, to this issue under study, it is essential to take into account that the correct answers to problematic points are contained in the four legal schools of fiqh (madhhabs) that is fundamentally important, and the one who claims that there are no answers does not know the provisions of fiqh and usul al-fiqh (Islamic jurisprudence), and has insufficient knowledge in these matters. In this regard, there is a following important aspect of this issue: the effect of the personality factor and the person who makes the fatwa.

In the Islamic religion and Sharia, a theologian who issues a fatwa (decision) is called a mufti (also: alim, faqih, mujtahid). The mufti should accept the complexity and peculiar “danger” of fatwa-issuance activity, that this activity is not based on something personal, on inner feelings and personal desires, and interests (maybe even selfish), but on the contrary,
it is an explanation of what Almighty Allah has ordered to their servants from the decisions for their individual and social life, which by definition contains eternal happiness in this world and in the next world, subject to the full worship of Allah Almighty. And it is not just a matter of the fulfillment of the five daily prayers, but also the fact that the goal of Allah servant’ life should be the worship of his Creator.

Part of the conditions, qualities, requirements that a mufti, a fatwa issuer must have are as follows:

1) Knowledge of the decision which he wants to answer the question to, otherwise he is not allowed to answer this question, as this answer will be based on ignorance and, accordingly, his answer will mislead others, and this is a great responsibility;

2) This answer must be issued for a situation that should occur in the future and, accordingly, a person looking for an answer to the question must perform actions in accordance with the issued decision;

3) The absence of fear for the consequences to make a decision, because his decision is based on Sharia. If, on the other hand, it would be more useful to refrain from making a decision, then it would be better for such a person to refrain from making a particular decision;

4) The need to know for what purposes the questioner wants to use the received decision (fatwa), in order to exclude the possibility to use such a decision as an argument in incorrect, unacceptable behavior (changing, adjusting words, etc., for example the situation when usury is called and passed for trading).

3 Conclusion

Issuing a fatwa (fetwa) is a very serious and responsible procedure and mission that must be carried out based on the fundamental sources of Muslim law and the achievements of religious and legal schools (madhhabs). Fatwa issuer must meet very high standards. Ignorance, and especially in religious matters, gives the seeds producing fitnah sprouts (disagreements, contradictions). Unfortunately, similar facts can be observed in the modern Ummah. An erroneous fatwa issuance and even more the similar activity of a systemic nature is the cause of disagreement, religious discord in the Ummah of Muslims and as a result a large number of people professing Islam suffer.

References


