

HISTORY

DOI: <https://doi.org/10.32653/CH184884-898>

Research paper

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LEGAL DISCOURSE OF DAGESTANI THEOLOGIAN OF THE 17TH-19TH CENTURIES (BASED ON THE MANUSCRIPT FROM THE BAGUZHALAV AL-MACHADI'S COLLECTION)

Abstract. The paper presents an analysis of a unique manuscript identified in the book collection of a prominent Dagestani theologian Baguzhalav al-Machadi. It comprises 9 works compiled in the form of questions and answers, which reflect the theological discourse on various legal aspects. The discussion was attended by such reputed theologians as Dawud al-Usishi, Sheikh Izz ad-Din Tayyib, Said al-Makki, Muhammad-haji al-Uradi, Muhammad al-Aliji, Sheikh as-Sijini, Hadith al-Machadi, Muhammad al-Hifnawi and Muhammad al-Aymaki. Some of them were Dagestanis, while others – of the Middle East origin. Their works are written in a form of answers of a number of Middle Eastern theologians to the questions of Dagestanis on various topical issues of that time. The works were compiled in the second half of the 17th – first quarter of the 19th centuries, which allows to trace to a certain extent the development of the legal tradition of Dagestan of that period. They are also a valuable source on the history of everyday life, economic and socio-political development of Dagestan society. The range of questions and answers considered in the theological discourse is extremely diverse, and concerns the various aspects of everyday life. As we believe, Dagestani theologians, turning to their more authoritative compatriots, as well as to scholars from the Middle East, sought to legitimize adat norms through Sharia texts. At the same time, addressing the latter, Dagestani theologians sought to use the unspoken priority in favor of their opinion that existed in the Muslim world. Moreover, the identified Arabic-language sources clearly demonstrate how closely Dagestan was included in the unified legal field of the Arab-Muslim world.

Keywords: Dagestan; Muslim law; adat; Sharia; Arabic-language works; Baguzhalav al-Machadi.

For citation: Abdulmazhidov R.S., Alibekov K.G. Legal discourse of Dagestani theologians of the 17th-19th centuries (Based on the manuscript from the Baguzhalav Al-Machadi's collection). History, Archeology and Ethnography of the Caucasus. 2022. Vol. 18. N. 4. P. 884-898 . doi: 10.32653/CH184884-898

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ИСТОРИЯ

DOI: <https://doi.org/10.32653/CH184884-898>



Исследовательская статья

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ПРАВОВОЙ ДИСКУРС ДАГЕСТАНСКИХ БОГОСЛОВОВ XVII–XIX вв. (НА ОСНОВЕ РУКОПИСИ ИЗ КОЛЛЕКЦИИ БАГУЖАЛАВА АЛ-МАЧАДИ)

Аннотация. Данная статья посвящена обзорному анализу уникальной рукописи, выявленной в книжной коллекции крупного дагестанского богослова Багужалава ал-Мачади. В ней собраны 9 произведений, составленных в форме вопросов-ответов, в которых отражен богословский дискурс по различным правовым аспектам. В дискуссии участвовали такие известные богословы как: Давуд ал-Усиши, шейх Изз ад-Дин Тайиб, Саид ал-Макки, Мухаммад-хаджи ал-Уради, Мухаммад ал-Алиджи, шейх ас-Сиджини, Хадис ал-Мачади, Мухаммад ал-Хифнави и Мухаммада ал-Аймаки. Часть из них дагестанского происхождения, а другие являются выходцами из Ближнего Востока. Созданные ими произведения представляют собой ответы ряда ближневосточных богословов на вопросы дагестанцев по тем или иным актуальным вопросам того времени. Они были составлены во второй половине XVII – первой четверти XIX вв., что позволяет в определенной степени проследить развитие правовой культуры Дагестана данного периода. Она также является ценным источником по истории быта, экономического и социально-политического развития дагестанского общества. Палитра рассматриваемых в богословском дискурсе вопросов и ответов чрезвычайно разнообразна, и касается самых разных сторон жизни и быта. На наш взгляд, дагестанские богословы, обращаясь к более авторитетным своим соотечественникам, а также к ученым из Ближнего Востока, стремились легитимировать адатные нормы через шариатские тексты. Вместе с тем, обращаясь к последним, дагестанские богословы стремились использовать и негласный приоритет в пользу их мнения, существовавший в мусульманском мире. Кроме того, выявленные арабоязычные источники наглядно свидетельствуют о том, насколько тесно Дагестан был включен в единое правовое поле арабо-мусульманского мира.

Ключевые слова: Дагестан; мусульманское право; адат; шариат; арабоязычные сочинения; Багужалав ал-Мачади.

Для цитирования: Абдулмажидов Р.С., Алибеков Х.Г. Правовой дискурс дагестанских богословов XVII–XIX вв. (на основе рукописи из коллекции Багужалава ал-Мачади) // История, археология и этнография Кавказа. 2022. Т. 18. № 4. С. 884-898 . doi: 10.32653/CH184884-898

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Introduction

During the archeographic expedition funded by the grant of the Russian Academy of Sciences No. 22-18-00295 “Electronic library of Arabographic manuscripts from archival, library, museum and private collections of Russia”, an extremely valuable compiled manuscript (convolute) was identified in a private library belonging to a prominent Dagestan theologian Muhammad, son of Baguzha, better known as Baguzhalav al-Machadi¹. The works compiled in it are written by one person, but the copyist is not specified. According to paleographic data, it was compiled in the first half of the 19th century. The manuscript in the 17.5 x 22.5 cm format consists of 36 sheets, and contains 9 works on Muslim law written in the form of questions and answers, which are presented in the manuscript in chronological order. The authors of 5 of them are Dagestani theologians, and the remaining 4 works are the answers of a number of Middle Eastern theologians to the questions of Dagestanis on various topical issues of that time. The works were compiled in the second half of the 17th – first quarter of the 19th centuries, and only a small part of them have been in the focus of research by Russian orientalists. The present paper is devoted to a review analysis of these identified materials.

Compilation of fatwas by Dawud al-Usishi

The manuscript begins with the famous collection of fatwas by the prominent Dagestani theologian Dawud al-Usishi (d. 1171/1757). A contemporary of al-Usishi, Titalav al-Karati, addressed him more than 50 questions on a wide range of legal aspects that worried Dagestanis at that time: trade and property disputes, divorce proceedings, Muslim cult practice, attitude towards non-believers, issues of obligation and inheritance law (*nazr*, *wasiya*, *waqf*). Al-Usishi’s brief and elaborate answers were subsequently selected for a separate work, which became widely popular in Dagestan. For example, 8 lists of this work are stored only in the Fund of Oriental Manuscripts of the IHAE DFRC RAS². In the manuscript under study, the work is presented on 4 sheets (L. 1a – L. 4b).

One of the questions to which al-Usishi gave his answer was related to the discussion about the legitimacy of Dagestani attacks on Georgian regions. Some theologians recognized the participants of such attacks as warriors for the faith – *ghazis*, but al-Usishi refused to recognize them as such due to the absence of infidels (*harbi*) around Dagestan, against whom they could wage a holy war [9].

Answering the question “who jurists mean by imam in their following words: *If the imam requires the owner of the property to provide zakat precisely to him, and he refuses to do it, will then the payment of his zakat to other persons not be counted* [according to Sharia]?” al-Usishi replies that the imam can also be understood as clerics (imams and

1. The book collection of Baguzhalav al-Machadi is currently stored in the village of Machada, Shamil district of the Republic of Dagestan as part of the M.G. Shekhmagomedov’s library. Шехмагомедова. This collection contains around 150 arabographic manuscripts, the chronological framework of which ranges between the 14th – 20th centuries.

2. Fund of Oriental Manuscripts of IHAE DFRC RAS, F. 14, Inv. 1, No. 85 (i), No. 309 (b), No. 1165 (g), No. 1390 (a), No. 1850 (b), No. 2597 (d), No. 3018, No. 3073 (b).

qadis) of Dagestan. According to him, they “took on such functions in our region because of extreme necessity, since the power of the legitimate imam (ruler) does not reach us”.

Answering the question whether Dagestani qadis are allowed to take a certain fee for their work from each household in the village in which they perform their functions, if only a certain part of its inhabitants agree with this, al-Usishi answers in the affirmative. He believes that qadis have the right to take such a fee even forcibly, but in the absence of a person in that village who is willing to voluntarily provide for the qadi. At the same time, the consent of the entire jamaat is not required to determine the amount of the fee, only the approval of its authoritative members is sufficient (*ahl al-hall wa al-'aqd*).

Al-Usishi's answer regarding the privileges of women in receiving zakat³ is also noteworthy. The question is: “What is the decision regarding the payment of zakat to women? Do they have privileges if, unlike men, they can only be hired by their close relatives (*mahram*)? Or do they not have them, and have to provide for themselves, as is customary according to *adat*, although it contradicts Sharia law?” Al-Usishi replies that women have a privilege over men, since only close relatives can hire them. Therefore, according to him, they should not be forced to work in a sphere that is not appropriate for women.

Compilation of fatwas by Sheikh Izz ad-Din Tayyib

The following work consists of small notes (L. 4b – 5b) from the legal opinions of Sheikh Izz al-Din Tayyib, whom we have not been able to identify. From its contents it becomes clear that this sheikh was asked to answer a number of questions by a certain Imam al-Argwani⁴. At the very end of the work, the famous Dagestan scholar Muhammad, the son of Musa from Kudutl (d. 1717) is listed as the codifier of Sheikh Izz al-Din's answers. Most likely, al-Kuduki, going on his next trip to the Middle East, handed over the questions of the theologian from Argvani to Sheikh Izz ad-din Tayyib, and then compiled the answers received in one list.

The issues addressed in this list cover a variety of aspects of the everyday life of the mountaineers. Some of the answers indicate that the sheikh was approached for a fatwa in order to circumvent existing restrictions in books on Muslim law. For example, one of it says that “contrary to the opinions of the authors of the books ‘*al-Hall*’⁵ and ‘*al-Anwar*’⁶, there is nothing wrong with the fact that our common people do not know the conditions required for concluding a marriage”. Another answer clarifies the conditions for paying zakat to such a social category as students of the *madrasah* – *mutaallims*. When asked about determining their level of poverty, Sheikh Izz ad-Din replies that if a *mutaallim* is able to provide himself with food only

3. Zakat – a mandatory annual tax in Islam paid on various types of income and property in favor of those in need.

4. Nisba indicates the origin or residence in the village of Argvani, now in the Gumbetovsky district of the Republic of Dagestan.

5. “*Hall al-Ijaz*” – a work on Muslim Shafi'i law, the authorship of which is commonly attributed to Sheikh Ali al-Baghdadi at-Targuli. Ali al-Baghdadi was a clerk and a qadi of the village of Tarki, a native of Baghdad, who came to Tarki no later than 1635. An author of a number of works, including poetics. Died and buried in Tarki in 1655. The present work is a commentary on the work “*al-Ijaz*” written by the Iranian Shafi'i jurist Taj ad-Din Mahmud bin Muhammad al-Kirmanli (d. 1404).

6. “*Al-Anwar li a'mal al-abrar*” is a work on Shafi'i law by Jamal ad-Din Yusuf bin Ibrahim al-Ardabili (d. in the second half of the 14th century).

by studying, then he is allowed to receive zakat in an amount sufficient for the rest of his life; however, such a student should not own real estate or other property. Whether, after abandoning his studies, he is able to earn a living, then he is provided with zakat only for the period of his studies.

Compilation of fatwas by Said al-Makki

The following work is known under the conditional title “*As’ilya ulama’i Dagestan wa ajwiba ash-shaikh Said al-Makki*” (“Questions of Dagestan scholars and answers to them by Sheikh Said al-Makki”). In a small compilation on two pages (L. 5b – 6a), 8 questions are given, to which Sheikh Said al-Makki provides brief answers. Said al-Makki was a well-known hadith scholar and jurist from Hejaz. His full name is Muhammad Said bin Muhammad Sunbul al-Makki (d. 1174/ 1761-2). He was a prominent Shafi’i theologian in Mecca, and taught there at the Reserved Mosque (*Masjid al-Haram*).

During the Hajj season, many Muslims from different parts of the Muslim world took the opportunity to ask for a fatwa from reputable Meccan scholars. So did many Dagestanis, in particular, Muhammadhaji al-Uradi and his son Ibrahim-haji al-Uradi. The latter, apparently, was in close contact with Sheikh Said and praised him over other theologians. For instance, there is a story about a dream that Ibrahim Hadji had in Cairo. After falling asleep near the grave of the eponym of the Shafi’i madhhab Imam ash-Shafi’i, Ibrahim-hadji sees the imam in a dream and asks him if he should seek advice from the theologians of Cairo. Imam ash-Shafi’i warns him against addressing them, as well as Dagestani theologians, in particular, Titalav al-Karati and Ali al-Argwani. However, he advises turning to Sheikh Said al-Makki, with whom “*no one can compare in the knowledge of Fiqh*” [11, pp. 398–399].

The compilation of answers of al-Makki addresses the following issues: payment of zakat on a harvest that has ripened only partially; the use of gravestones in the construction of a mosque; tobacco use; the position of qadi in a city whose inhabitants commit grave sins; the consumption of meat of animals slaughtered by non-believers (*dhimmi*); the use of sheep skins brought from non-believers (*majus*); the use of otter skin; the validity of Ibn Abbas’ fatwa that the formula of repudiation (*talaq*) pronounced three times in one place and at one time is counted as one *talaq*.

This is followed by another work by Said al-Makki (L. 6a – 8a). It is presented in the form of a compilation of notes, each paragraph of which begins with the words “a useful note” (*faida*). A close examination of this work has revealed that this compilation of comments represents answers to questions that were previously addressed by Titalav al-Karati to Dawud al-Usishi. As we believe, a certain Dagestani theologian, not content with the answers of Dawud al-Usishi, sent the same questions with answers to Mecca, to Sheikh Said.

This allows us to compare the answers of both scholars. First of all, it is interesting how al-Makki answers the question of the legitimacy of the status of the *ghazis* regarding Dagestanis who carried out attacks on Georgia territory. Al-Makki answers in a vaguely manner that if a group of people goes on a military campaign not for the purpose of “*exalting the Word of Almighty Allah*”, but for the sake of earthly benefits, then the trophies won in such a campaign have the same status as the trophies obtained for pious religious purposes. However, those *ghazis* will not receive a reward in the afterlife.

In some cases, the answers of al-Makki and al-Usishi contradict each other, while the answers of the former are more consistent with the decisions of the Shafi'i madhhab. For example, answering the question whether a person who does not comply with Sharia norms is allowed to enjoy privileges (*ruhas*) easing the fulfillment of certain religious prescriptions, for example, shortening and (or) postponing prayer, al-Usishi answers in the affirmative. Al-Makki, on the contrary, considers it forbidden, because, in his opinion, embarking on the illicit path deprives a person of the privileges provided by Sharia. At the same time, alluding to the fatwa of al-Usishi, al-Makki adds: “*Whoever issued a fatwa on the permissibility of enjoying Sharia privileges, referring to the madhhab ash-Shafi'i, is wrong.*”

Said al-Makki also disagrees with the opinion that if an imam requires someone to pay zakat, and they refuse, but pay it to another person, then such zakat is not counted. Unlike al-Usishi, al-Makki claims that the payment of zakat is considered fulfilled, and the imam has the right only to demand from the person to swear that zakat was actually paid.

Compilation of fatwas of Muhammad-haji al-Uradi

This one is another small compilation of legal opinions on three pages (L. 8a – 9a). At the end of it it says that the questions come from “*qadiya al-Indiri*”, who is given answers by “*al-Haji al-Uradi*”. We have not been able to identify the author of the questions; we only know that he held the position of qadi in the village of Endirei⁷. As for the author of the answers, he is certainly the father of the aforementioned Ibrahim-Haji – Muhammad-Haji al-Uradi (d. 1739-40). He was also a prominent theologian, qadi of Gidatl⁸ and a public and political figure of the first third of the 18th century. Muhammad-haji al-Uradi received a Muslim education, including in the Middle East, where he studied with major theologians, in particular with the authoritative hadith scholar Abdullah bin Salima al-Basri al-Makki (d. 1722). In his native village of Urada, he opened a madrasah, in which he educated a number of prominent Dagestani theologians [11, pp. 35–40].

Muhammadhaji al-Uradi answers seven questions related to trade, property law, inheritance division, and relationships with female slaves. We believe it is no coincidence that the question concerning the female slaves was asked by qadi from Endirei: since the second half of the 17th century this village became the center of the slave trade in the North Caucasus [7, p. 125]. The essence of the question asked was as follows: if a female slave voluntarily entered into an intimate relationship with her master who did not know about the illegality of the contract of her sale, should he present her a *mahr* (marriage gift)? Muhammad-haji al-Uradi replied that in this case, intimacy is forbidden, but the owner should not pay *mahr*, because the woman knew about the prohibition of such a relationship, and thereby put herself in the position of an adulteress.

7. Now part of the Khasavyurt district of the Republic of Dagestan.

8. A large Avar union of societies, now part of the Shamilsky district of the RD.

Compilation of fatwas by Muhammad al-Aliji

Further goes another collection of fatwas on 7 pages (L. 9a – 15b) under the authorship of a prominent jurist and theologian of the turn of the 18th – 19th centuries, Muhammad, the son of Ibrahim al-Aliji⁹, known as Chalyabi. He came from a theological family in which he received primary education, and then, in search of knowledge, traveled to Muslim countries, where he met with prominent theologians. The main teachers of Muhammad al-Aliji were his father Ibrahim al-Aliji; mufti of Medina Muhammad al-Kurdi al-Madani, and the theologian from Damascus Abd al-Karim ad-Daghistani, who in his childhood, due to the invasion of Nadir Shah in Dagestan, moved with his family to the Middle East. In the end, Muhammad al-Aliji settled in his homeland, where he was engaged in teaching and scientific activities [10, pp. 64–65]. Among his students, two Dagestani theologians are known, one of them is a certain Murtazaali al-Usishi, and the second is a well-known political and religious figure, Sufi Sheikh Muhammad al-Yaragi. We have at our disposal the permission (*ijazah*), authorizing to issue fatwas to the latter, passed to him by Ibrahim, the son of Muhammad al-Aliji in AH 1239 (started in 1823).

Muhammad al-Aliji is the author of a number of works, one of which, “*Tazkirat al-ikhwan*” (“Reminder to the brothers”), dedicated to clarifying terminology from the most famous book on Muslim law “*Tuhfat al-Mukhtaj*”¹⁰, has become very popular among Sunnis of the Shafi‘i Madhhab.

The compilation of fatwas of Muhammad al-Aliji was also very popular. In the lists it can be usually found in two parts, but the manuscript under consideration contains two more parts. In the first part, the author answers the questions of a certain “major scholar of Dagestan”, whose name is not mentioned in the lists. However, in the list copied by Zakaria an-Nukushi (d. 1338/1919-20), kept in one of the private collections of Dagestan¹¹, it is indicated that this theologian is Muharram (Magaram) al-Ahti. Muharram from the village of Akhty was a prominent scholar and theologian of the 18th century. He was the father-in-law and teacher of the aforementioned Muhammad al-Yaragi. The Kazikumukh ruler Surkhay Khan II moved him, as a major theologian, to the village of Mahmudkent¹², where he opened a madrasah for teaching natural sciences [10, p. 74].

This part of the compilation contains twenty-three questions with answers. Most of the questions are of a legal nature, but at the beginning there are several questions concerning theology. For example: “*for what reason will peoples of other religions go to hell if they profess their religions, being convinced of their truth? After all, if they knew about their fallaciousness, they would certainly renounce their religious beliefs?*”. Al-Aliji replies that they will go to hell because they did not make sufficient efforts to determine the truth, and also because they did not submit to the religion from which the prophet Muhammad came.

To the issue regarding marriages concluded in Dagestan, when the participants of the marriage ceremony, without even basic knowledge of Islam, “*cannot determine*

9. Nisba indicates the origin from the village of Alich, which was formerly part of the Quba Khanate, and now in the eponymous district of the Republic of Azerbaijan.

10. Here we deal with the popular work of one of the most authoritative Shafi‘i jurists Ibn Hajar al-Haytami.

11. The manuscript is stored in the private collection of Magomedov Mahmud in the village of Rahata, Botlikhsky district of the Republic of Dagestan.

12. Now part of the Magaramkent district of the RD.

the difference between their religion and other religions, and if some of them are asked whether the Prophet Muhammad was an inanimate object, a living being or something else, they will not be able to give the correct answer", Al-Aliji, with reference to other jurists, replies that, according to the Shafi'i and Hanbali madhhabs, marriages concluded by such people are not considered valid, but are recognized as such by the Maliki and Hanafi madhhabs. He urges Dagestanis to follow these two madhhabs in this matter. Further, Muhammad al-Aliji writes that he contemplated this issue and came to the conclusion that such marriages of Dagestanis are valid even according to the ash-Shafi'i madhhab, since many Dagestanis, in order to feed themselves and their families, are forced to engage in daily labor in high mountains or in inaccessible gorges in winter and summer. For this reason, they do not have the opportunity to get the necessary knowledge about the religion, and, according to Imam al-Nawawi, if an ordinary Muslim does not have the opportunity to get such knowledge because of the need to feed themselves or their family, then this religious precept is not applied to them.

When asked whether individual Muslims can carry out punishments strictly mandated by Sharia (*hadd*) or whether it is the prerogative of only the ruler or his deputies (appointees), Muhammad al-Aliji replies that other Muslims besides the Sharia ruler are prohibited from carrying out such punishments. However, if someone, for example, executes another for adultery, they will be sinful not for the murder, but for exceeding authority. To the next question regarding the possibility to deprive Dagestani women who disobey their husbands of maintenance, al-Aliji answers in the negative. According to him, the fact that this has become a widespread practice does not allow to deprive a woman of her rights.

The initiator of the second part of the collection of fatwas was a certain theologian Haji Muhammad from the village of Kubachi. It contains eight questions to which al-Aliji gives his answers. For instance, one of the questions concerns the gifts that, according to custom, the groom provides to the bride's side¹³. Is it permissible to accept such a gift and does the bride or her guardian (*vali*) become the owner of this property? At the same time, it is stipulated that in Dagestan this custom is tacitly mandatory, i.e. in case of refusal to provide such a gift, the marriage will not be concluded. According to al-Aliji, if the gift is considered part of the *mahr* (marriage gift) which the groom is obliged to provide to the bride according to Sharia law, then the bride becomes its owner. If it is not considered as such, and the guardian appropriates this property without the permission of the groom's side, then it will be forbidden for him, and he is obliged to return it. All this concerns the case when the groom provides a gift at the request of the bride. If he provides it voluntarily, then it should be determined to whom he sends this property: to the guardian or personally to the bride and, in accordance with this, declare the owner of the gifted property. However, if the groom does not clarify all the above, then the guardian becomes the owner of the gift.

The third part of the compilation is a record, apparently by one of al-Aliji's students, in which he gives his teacher's answers to various questions. Some fatwas are presented in the form of a question and answer, but most of them are in the form of comments. At the same time, some of the answers are al-Aliji's clarifications to his previous fatwas. It is unknown who issued these fatwas initially, but at the end of one of the answers it is said that "*this is the answer of Muhammad al-Aliji to the question of Shuaib al-afandi al-Gumuki*".

13. Subsequently, the property transferred to the bride's guardian was named kalym.

The fatwas cover the similar topics as in the previous compilations and relate to specific precedents that took place in Dagestan.

One of the questions reports a case when someone called a group of people to help in the construction of a house. When, during the work, some of them were on the roof and the other inside, the supports of the house, unable to withstand the weight, collapsed and one of those who were in the house died. The question is whether in this case anyone should pay compensation for his death. Al-Aliji replies that in this case, compensation is not due, since the death was not the fault of those gathered. Those on the roof did not rock it on purpose, and the owner of the house is not to blame, since the deceased voluntarily entered this building. At the end of the third part of his compilation of fatwas, al-Aliji indicates that what he wrote is “fatwas (*ifta'*) as an instruction (*irshad*)”. By this he means that the fatwas were issued by him neither officially nor on behalf of the qadi. Issuing legal conclusions in the form of instructions (*irshad*) was widely exercised by Muslim theologians, based on the fact that the theologian could issue a fatwa not on the basis of an “official” decision of the madhhab, but on the basis of the opinion of one or another authoritative scholar.

The fourth part of al-Aliji's fatwa, the smallest in volume, presents only two questions. They were sent by the residents of the village of Tarki¹⁴. One of them addresses the permission to establish a special prayer for the forgiveness of sins for carelessness during urination. It is known that the Prophet Muhammad paid special attention to the need to refrain from getting urine drops on the body or clothes. He claimed that most of the grave torments in the afterlife would be precisely for this sin [6, p. 125]. In the late period, Muslims, or rather Sufis, introduced a special prayer of two rakats (*salat al-bawl*), after performing of which a Muslim was cleared of sins for being careless in this case. Muslim jurists unequivocally condemned such prayers, and attributed them to the category of reprehensible innovations (*al-bid'a al-mazmuma*). Al-Aliji, pointing out that this prayer has no foundation, and according to jurists belongs to the category of fictional, at the same time notes that the “*scholars of the Tariqa*” mention it in their books. He believes that the prayer is one of the distinguishing features of Sufis, and “*if someone is not a Sufi, then he should adhere to the opinion of jurists*”. Thus, al-Aliji is trying to reconcile with both sides. Being an expert in Muslim law himself, he could not ignore the opinion of jurists, but at the same time, the influence of Sufism on him is obvious, which is why he tried not to offend Sufis with his fatwa.

Compilation of fatwas by as-Sijini ash-Shafi'i

The following short work on two pages (L. 15b – 16a) contains 6 questions from one of the Dagestani theologians addressed to the Egyptian theologian Sheikh Abd ar-Rauf as-Sijini ash-Shafi'i. Sheikh as-Sijini was a theologian and Shafi'i jurist, for a long time he was the sheikh of the eastern gallery in the al-Azhar Mosque. After the death of Sheikh al-Azhar Muhammad bin Salim al-Hifnawi in 1767, as-Sijini briefly held the position of Sheikh al-Azhar, and died in 1769 [3, p. 502].

14. Now part of the municipal district of Makhachkala

Three of the six questions deal with such practice as giving an oath by divorce (*tahlif bi-talaq*). In general, such an oath was widely used both in the compulsory and criminal law of the peoples of Dagestan [2, p. 27]. The essence of the oath by divorce is that a Muslim swore that if he have done or will do something in the future, his wife will get a divorce. In case of violation of this oath according to Sharia, the divorce is considered to have entered into force. This practice was quite popular and a very effective deterrent measure, which was often used in the legal culture not only in Dagestan, but also among other peoples of the North Caucasus. As A.I. Ladyzhensky writes: “Among the Mohammedan peoples of the Caucasus, including Kabardians, the oath was of two kinds – in the name of God according to Sharia over the Koran ‘wallagi, billagi, tallagi’, and the so-called ‘khatuntallah’ or ‘kebin-tallah’, which guaranteed the validity of the spoken words: in the case of a false oath, the man at fault had to divorce his wife. If the man taking the oath had several wives, he had to indicate which one of them he would divorce if the oath turned out to be false” [8, p. 112].

As-Sijini writes that if a spouse violates his oath, then the divorce given to his wife will immediately take effect.

Compilation of fatwas of Hadith al-Machadi

The following (L. 18b – 21b) is the work in the form of answers of the famous Dagestani theologian and jurist Hadith al-Machadi, given to all the same questions by Titalav al-Karati. We believe that the latter did not address them to al-Machadi, who decided to give his answers to questions that were widely circulated among the Dagestan intellectual elite and did not lose their relevance. Thus, answering the question: should winter wheat and rye¹⁵ be considered one species when paying zakat on crops, Hadith, with reference to the authoritative Shafi'i jurist Ibn Hajar al-Haytami, writes that two crops can be considered one species if they are the same in shape, color, nature and taste, or at least, three of the four mentioned properties must match. Further, al-Machadi cites the opinion of another Dagestani jurist, Tayyib al-Kharakhi, that rye among the Avars is not considered one species with wheat, therefore, zakat on them should be paid separately. Al-Machadi also explains the silence of a major Dagestani theologian of the turn of the 17th-18th centuries Muhammad al-Kuduki on following issue: “*He might have kept silent so that the poor would not lose their share of zakat because of his fatwa. I heard that when the Tlaratins asked him whether rye should be equated with wheat, he asked a counter question: ‘And then what will your poor people eat?!’ He did not issue a direct fatwa about what should be equated, nor that it should not be done*” (L. 21a).

Al-Machadi proceeds: “*When Muhammad al-Khuuri¹⁶ asked Mufti al-Halabi ash-Shafi'i about this and showed him and those present at the meeting this rye, and they tasted it, his answer was as follows: ‘We do not consider it either a wheat variety or a barley variety. Therefore, it should not be equated with wheat upon reaching nisab¹⁷...’*”. At the end of the fatwa, the Hadith concludes that even if these cultures are not equated

15. In the text: “ukub” (ogob), translated from the Avar language as “rye”. See: Shikhsaidov A.R., Aitberov T.M., Orazhev G.M.-R.. Dagestan historical works. Moscow, 1993. pp. 144, 146.

16. From the village of Goor, now in the Shamilsky district of the RD.

17. *Nisab* – the minimum level of assets upon reaching which the payment of zakat is due.

with each other, then “*oh scholars, wouldn't it be better for us not to prevent ordinary people from considering those cultures of a single species and paying one zakat on them until they themselves turn to us for a fatwa on this issue? After all, wealthy people will receive a reward for paying more zakat to those in need*”.

Compilation of fatwas by Muhammad al-Hifnawi

The manuscript under study contains one of the most popular compilations of fatwas in Dagestan (L. 22a – 24b; 27a – 28a), written by the Egyptian theologian and Sheikh al-Azhar al-Hifnawi (d. 1767). Muhammad bin Salim al-Hifnawi (al-Hifni) was a prominent theologian and jurist, a descendant of the Prophet Muhammad through his grandson Hussein, the sheikh of the Khalwati Tariqa. In 1757, he took the post of Sheikh of al-Azhar. He is the author of a number of works on various branches of Muslim sciences. The collection of fatwas of al-Hifnawi presents answers to the questions of several Dagestani theologians. It consists of three parts, which is obviously due to the fact that each of them was compiled at different times and was compiled by different people.

The first part of the book contains fifty questions, to which al-Hifnawi gives very brief answers, sometimes in one sentence. It is unknown who exactly initiated this part of the fatwas, al-Hifnawi only reports that “one of the honorable persons from Dagestan asked me to answer these wonderful questions”. The issues raised in this part of the compilation relate to a variety of aspects of life and are of a more general nature. Special attention is paid here to the analysis of the relationship of Dagestanis with non-Muslims. Thus, the first question addressed the conditions for receiving, according to the established tradition, payment from the non-Muslims, with whom the Dagestanis concluded a peace treaty that did not meet all the conditions of Sharia. As we believe, one of such agreements was an agreement concluded in 1718 between the leaders of the Jar-Belokan unions and the Kakhetian nobility [1, p. 148–158]. Al-Hifnawi replies that this payment belongs to the category of *fai'*, i.e. assets that Muslims receive from non-believers peacefully. Such assets, in his opinion, should be divided, like the spoils of war (*ghanimah*), into five parts. And to the question of whether Muslims are allowed to take rewards from the non-Muslim ruler for participating in their army, either simply as a gift as a sign of respect, or for helping to assemble a militia, al-Hifnawi clarifies that if this happens to the detriment of Muslims, then it is prohibited. If participation in such an army is directed against other non-believers, then this is allowed.

Al-Hifnawi's answers about the legitimacy of Dagestani adats are also interesting. He refuses to declare those Dagestanis who use the adate norms in court proceedings as infidels, however, in his opinion, they are sinners. He believes that clerics are forbidden to work as qadis in those villages whose inhabitants follow the norms of adat. Fines imposed by the elders of the communities for certain crimes, al-Hifnawi also calls illegal, and calls for turning to Sharia norms in these matters.

When asked whether smoking or snuffing tobacco is allowed, al-Hifnawi answers in the affirmative. According to him, there is not a single evidence from the Sharia on the prohibition of this. Tobacco use can only be an undesirable thing, since its smell can harm angels, by analogy with the smell of garlic or onions. Moreover, he finds the opinion about the prohibition of this, as stated by a group of Muslim jurists, unfounded. He also writes that the husband is

even obliged to provide his wife with tobacco if she is used to using it and will ask for it. Al-Hifnawi allows Shafi'is to drink alcoholic beverages, except wine, following the opinion of Abu Hanifa. At the same time, it is allowed to drink only such an amount that cannot cause intoxication. He even allows the use of solid narcotic substances, such as opium or hashish, in any quantities. However, according to him, it should not be made public for ordinary Muslims so that they do not start abusing it.

The second part of the collection contains ten questions with answers by al-Hifnawi¹⁸. It was initiated by a Dagestani theologian named Haji Muhammad, the son of Ismail. Most of the issues in this part relate to marriage, divorce, inheritance, economic life of the community. For example, one of the questions asks whether husbands are obliged to pay for the labour of Dagestani women who do various chores around the house: tailoring, harvesting, water delivery. At the same time, it is noted that they perform these chores even without their husbands' demands. Al-Hifnawi replies that husbands are not obliged to pay for their labour, since it was not agreed in advance that their work would be paid. He notes that women's labour is not required to be paid by their husbands, even if the former did the work at the demand of their husbands. At the same time, he stipulates that all this concerns adult and prudent women. Otherwise, the husband is obliged to pay for her work, even if the payment has not been agreed. At the end of the fatwa, al-Hifnawi reminds in a separate paragraph that women, in principle, are not obliged to conduct household chores: *“Know that it is forbidden for husbands to use their wives as servants, even in such matters as making dough, baking bread or cleaning. On the contrary, husbands are obliged to provide them with everything they need ready-made”*.

The third part of the collection consists of al-Hifnawi's answers to the questions of another Dagestani theologian, al-Hadji Muhammad (Tinamuhammad) an-Nukushi (d. 1755). Muhammad the junior (*sagir*) an-Nukushi studied Islamic sciences, first of all, with his father Haji Muhammad (Tinamuhammad) the elder, then went in search of knowledge in Muslim countries, where he met with prominent theologians, including al-Hifnawi [12, pp. 80–82]. In Cairo, an-Nukushi became a disciple of al-Hifnawi and in 1162 (began on 21.12.1748), being in a place popular for Dagestanis, near the grave of the eponym of the Shafi'i madhhab Imam ash-Shafi'i, he composed questions for his teacher. At that time, al-Hifnawi was not yet the sheikh of al-Azhar, he became one only after the death of an-Nukushi.

This part of the collection contains seven questions relating to the most diverse aspects of the life of the mountaineers. In one of the questions, an-Nukushi asks (L. 27a): *“What is the decision regarding the infidels of Kurdjistan (Georgia)? They are our neighbours, they have a city called Tiflis. We heard that the first one who conquered this city was Usman bin Affan¹⁹, may Allah be pleased with him. But then the infidels retook it. After that, the city was conquered by Muslims several more times: once it was conquered by the Ottomans (Ahl ar-Rum), another time by the Persians, and the third time by the inhabitants of our region. In most cases, these wicked infidels make peace with the one in whose hands this city is, whether it is the sultan*

18. There are lists in which the number of fatwas from this part of the al-Hifnawi's collection of fatwas reaches 18. One of the lists is kept in the library of the Muftiate of the RD, the other – in a private collection in the village of Khartikuni of the RD.

19. Usman b. Affan al-Quraishi (d. 656) – one of the closest companions of the Prophet Muhammad, the third righteous Caliph.

of the Ottomans or the Persians. In this situation, if they stumble upon us or our property, they will not fail to covet it. Also, many of them live on the lands that we [once] conquered. Are we obliged to leave them alone in such a situation? And is there any difference in who they concluded a peace treaty with: the Sultan of the Ottomans or the Persians?”

Al-Hifnawi replies that in this matter it is important to determine exactly how this country was conquered: by military force or through a peace treaty. If it was re-conquered by Muslims, then, in his opinion, the solution that was established at the first conquest applies to it. If they conclude a peace treaty with the Muslims, then it should be respected until it is violated. And there is no difference who represented the Muslims in this treaty: the Sultan of the Ottomans or the Persians. At the same time, al-Hifnawi notes that this applies only to those infidels who are covered by the peace treaty.

Compilation of fatwas by Muhammad al-Aymaki

The final part of the manuscript under study contains (L. 29b – 34b) a collection of fatwas of the Dagestani theologian Muhammad, the son of Muhammadmirza from the village of Aymaki. Muhammad al-Aymaki was a prominent scholar of the late 18th – early 19th century, who moved from his native village to Verkhny Jengutai and received the corresponding nisba. He is the author of a number of works, including in poetics. Due to the discord that occurred between him and Mahdi Shamkhal Tarkovsky, he was arrested and imprisoned in the Kizlyar fortress, where he died on June 21, 1820 and was buried on the banks of the Terek.

The set of fatwas of al-Aymaki is known by two names given by the author. The first is “*Fatah al-Mujib bi tawzih masail al-Habib*” (“Suggestion from a Person answering pleas to help answer questions from a friend”), and the second is “*Bazl al-fatwa fi ma ‘ammat bihi al-balwa*” (“Issuing fatwas on common pressing matters»). This is the only work in the manuscript under study that has its own name. This work is mistakenly attributed by many authors, starting from ad-Durgeli, and ending with modern researchers [10, p. 57; 4], to another theologian from the village of Aymaki – Abu Bakr. Another work of Muhammad al-Aymaki, “*az-Zajir an muwalyat al-fajir*” (“A warning against friendship with the sinner”) is also mistakenly attributed to Abu Bakr [5]. The collection of fatwas of Muhammad al-Aymaki is the answers to the questions of one of the Dagestani scholars, whose name is not mentioned. The work presents 42 fatwas on a variety of issues that troubled the minds of Dagestanis of that time.

One of the questions concerns compurgation. It says that residents of a certain city have a custom, when, for example, a horse is stolen, the suspect is required to take an oath together with several other trustworthy people that he did not steal it. If they swear an oath, then he is cleared of charges by adat. The question is whether there is a basis for such a cleansing oath in Sharia. Muhammad al-Aymaki replies that there is no justification for it in the Shafi‘i madhhab, and that none of the major scholars have stated that this is permissible. However, al-Aymaki adds that according to Sharia, it is allowed to take an oath about the commission or non-commission of any action by someone. Or take an oath that he does not know this, if the action has not been set before him. He further quotes the words of the Shafi‘i jurist al-Bulkini that it is permissible to take such an oath if there is a

firm assumption (*zann al-muqqad*). According to al-Aymaki, it was on the basis of his conclusions that some Dagestani theologians justified the permissibility of the cleansing oath.

Conclusion

As follows from the above, the identified manuscript from the book collection of Baguzhalav al-Machadi contains a number of interesting works, according to which, to a certain extent, it is possible to trace the development of the legal tradition of Dagestan in the 17th - 19th centuries. It is also a valuable source on the history of everyday life, economic and socio-political development of Dagestan society of the specified period. The range of questions and answers considered in the theological discourse is extremely diverse, and concerns the various aspects of everyday life. As we believe, Dagestani theologians, turning to their more authoritative compatriots, as well as to scholars from the Middle East, sought to legitimize adat norms through Sharia texts. This, for example, is evidenced by the fact that the author of the last set of fatwas from the manuscript under study, Muhammad al-Aymaki, does not express his unequivocal opinion on the issue under consideration, pointing to the divergence of opinions of Shafi'i jurists.

At the same time, addressing scholars from the Middle East, Dagestani theologians sought to use the unspoken priority in favor of their opinion that existed in the Muslim world. The presented material clearly demonstrates how closely Dagestan was included in the unified legal field of the Arab-Muslim world.

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Recieved 27.10.2022
Accepted 28.11.2022
Published 25.12.2022

Поступила в редакцию 27.10.2022
Принята в печать 28.11.2022
Опубликована 25.12.2022