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SOME CHARACTERISTICS OF ULEMA MEDŽLIS FATWAS AND THEIR ROLE IN DETERMINING GENERAL POLICY OF THE HIGHEST ISLAMIC AUTHORITY IN BOSNIA AND HERZEGOVINA (1883-1909)

Summary

Fatwas as “written or oral opinions/answers issued by a religious scholar to a question concerning Islamic law” are one of the most important sources for understanding socio-cultural life and its changing dynamics since they contain information about two interrelated aspects of religious life: the problems facing Muslims and the decisions issued by the religious authorities corresponding to them. Whereas determining and evaluating the questions asked by Muslims enables us to familiarize ourselves with the real life situations in which Muslims were living, the answers provide details about the general policy of the fatwa giver, especially if it is the highest religious authority in a country as is the case in this paper. Moreover, the practice of issuing fatwas should be considered as one of the efficient instructive tools for preserving and creating a distinctive Islamic identity, by providing authoritative advice for those who are unfamiliar with the provisions of Islamic law or uncertain about the compatibility of their behaviour with Islamic rules. Therefore, fatwas should be taken into consideration not only as answers given to a particular religious question, but also as a living text which provides us with information about the role and the functions of religious authority as a moral leader in society.

The main purpose of this paper is to give a general overview on the fatwas found in the primary resources of Ulema-Medžlis, namely Ulema-Medžlis Records and Protocols. The paper covers only the period from 1883 till the proclamation of *Statute for the Autonomous Administration of Islamic Religious, Waqf and Educational Affairs* in 1909. Since the statute granted Bosnian Muslims their religious autonomy, it also considered Mešihat as the authority for issuing the ultimate fatwa in cases when there was any uncertainty or lack of clarity about an issue. As is presented in the paper, working on fatwa texts in Ulema-Medžlis archives has much significance for two main reasons: firstly, for ascertaining the general situation of Muslims at that time; and secondly, for tracing the impacts of socio-cultural changes on Bosnian Muslims. From a more methodological perspective, it also allows researchers to

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compare the techniques or procedures of fatwa issuing in the Ottoman and Austro-Hungarian periods.

The paper does not to evaluate fatwas from the point of view of Islamic law, but focuses primarily on the characteristics of fatwas and their use in shaping the Muslim community under Austro-Hungarian occupation. Therefore, after giving the general framework of the work, the inventory and the documents related to the fatwas are outlined. Secondly, structural features of fatwas in the Records and the Protocols as well as the fatwa issuing procedure are introduced. Finally the content of fatwas and their relevance along with the general policy of Ulema-Medžlis is evaluated.

Keywords: Ulema-medžlis, fatwa.

Fatwas, even in its simplistic definition , as “written or oral opinions/ answers issued by a religious scholar to a question concerning Islamic law” might be regarded as one of the most important sources of interpreting and understanding the socio-cultural characteristics and the changing dynamics of a society as they contain information about two interrelated aspects of religious life: problems faced by Muslims and decisions given by the religious authorities corresponding to them.² Even though fatwas are not considered as binding, their relation with the sacred and the position of fatwa giver among people ascertain their significance for the person who asks the question and obviously cares about the relevance of the issue with Islamic law.

Whereas evaluating the questions enables us to familiarize ourselves with the real life situations in which Muslims are living through, the answers provide details about the general policy of the fatwa giver, especially when it is the highest religious authority in a country as is the case in this paper. Therefore, fatwas should be viewed not only as an answer given to a particular religious question, but also as a point of reference which provides us more details about the role and the functions of a religious authority in the society. Although it is hard to verify whether and/or how the legal ruling was regarded and implemented by the one(s) asking for it, my contention here is that the practice of issuing fatwa should be also considered as one of the efficient instructive tools in preserving and creating a distinctive Islamic identity. Such a socio-religious constructive function is mostly achieved through delivering

2 Even though the fatwas are based on the main Islamic sources, they are bound with the certain socio-cultural factors surrounding the society. By keeping this fact in mind, fatwas provide a wide range of details on changing structures of societies. For further information see, Muhammad Khalid Masud, Brinkley Messick, David S. Powers, “Muftis, Fatwas and Islamic Legal Interpretation”, in *Islamic Legal Interpretation, Muftis and Their Fatwas*, ed. by Muhammad Khalid Masud, Brinkley Messick, David S. Powers, Harvard University Press, 1996, pp. 4-5.

of authoritative advice for the ones who are unfamiliar with the provisions of Islamic law or uncertain about the compatibility of their behaviors with Islamic rules.

Regarding the fatwas discussed in this paper, the above assumption acquires certain relevance as they belong to a period in which Bosnian Muslims had to grapple with the reality of being under non-Muslim rule and administration. Bosnia had been first occupied and later on annexed to Austro-Hungarian Empire according to the clauses of the Berlin Treaty signed in the end of Berlin Congress held after the Russo-Turkish War of 1877-1878.³ During the ensuing 40 years of Austro-Hungarian Administration in Bosnia many reforms concerning the various aspects of socio-cultural life were introduced. Most of them aimed at changing the existing Ottoman infra-structure in the country. In this regard the appointment of Reisu-l-Ulema in 1882 and the establishment of Ulema Medžlis in the same year as the executive body of Rijaset presided by Reisu-l-Ulema were two of special importance. They were interpreted as a secession from the Mesihat, the main religious authority of Muslims, by most of the scholars and most importantly by many Muslims of that time.⁴

According to the regulation issued in 1883, Ulema Medžlis was decreed as the highest authority empowered to govern, supervise and direct all the religious affairs related to Bosnian Muslims. In other words, as it happened to all fields related to Muslim religious affairs, issuing fatwa was also considered among the responsibilities of the newly established Ulema Medžlis.⁵ As in the traditional fatwa issuing practice religious knowledge and piety were the only requirements the Mufti should meet, the appointment of Ulema Medžlis by a non-Muslim authority constituted by itself a special case. This act evokes some interpretations that can be briefly summarized here. It can be viewed as

3 For further information about the Congress of Berlin and its aftermath see Willi Medlicott, *Congress of Berlin and After*, Routledge, 1963.

4 Fikret Karčić, *The Bosniaks and The Challenges of Modernity, Late Ottoman and Hapsburg Times*, Sarajevo, el-Kalem, 1999, pp. 123-139.

5 Even though it hasn't been stated explicitly in the regulation that Ulema Medžlis should issue fatwas, obviously it was regarded inside the Article nr.1 "... empowered to govern, supervise and direct all religious affairs related to Bosnian Muslims". Moreover, with the 3rd article "guidance to religious and ethical issues" was regarded as a responsibility for Reisu-l-Ulema. *Istorijski razvoj institutije Rijasete*, ed. by Omer Nakičević, Sarajevo, 1996, pp. 126-134. For further details on the establishment of Ulema Medžlis see "Memorandum o organizaciji Islamske zajednice u Bosni i Hercegovini", *ibid*, 102-125. Also a general overview on Ulema Medžlis' field of activities can be found in the chapter of "Die Neuordnung der mohammedanischen Kultusverhältnisse" in Ferdinand Schmid, *Bosnien und die Hercegovina, Unter der Verwaltung Österreich-Ungarns*, Leipzig, 1914, pp. 674-695.

an attempt to establish a control mechanism by the Administration over the decisions of the highest Islamic authority in Bosnia - Ulema Medžlis⁶. Still, although it might be expected that due to its legal status the Ulema Medžlis should have been vested with the highest priority before the people, it most probably was not the only religious authority accepted from the people of being in the capacity of issuing fatwas. However, verifying the above assumptions requires further research as the time period 1883-1909 remains largely uncharted with only few works done on the topic.

Aside from the institutional foundations and authority issues, the fatwa texts in Ulema Medžlisi Fonds are one of the most valuable resources which can contribute to understand more about the general situation of Muslims at that time. Moreover, they allow us to follow the socio-cultural changes and their effects on Bosnian Muslims. From a more methodological perspective, the fatwas in the Fonds also provide the researchers with the rare opportunity to compare the techniques/procedures of fatwa issuing in the Ottoman and Austro-Hungarian periods.⁷

This paper covers only the period from 1883 till the proclamation of *Statute for the Autonomous Administration of Islamic Religious, Waqf and Educational Affairs* in 1909. While the statute granted the Bosnian Muslims their religious autonomy, it also regarded the Mesihat as the ultimate authority for issuing fatwa in the case there were any suspicions or obscurity about the issue.⁸ Although this new state of relations between the Rijaset and the Mesihat did not necessarily mean that Bosnia was put literally under the jurisdiction of the Mesihat in Istanbul, it might be assumed that it was probably interpreted by the Bosnian Muslims as a new dimension of their long awaited re-bound with Istanbul.

However, the scope of this paper does not allow us to explore further this question or to make any comparisons with the traditional fatwa giving; we will rather focus on the content and the style of the fatwas thriving on the above assumption that they are among the most useful tools for sketching the socio-cultural transformation of a specific community. Thus, this paper will

6 For some different examples of religious legitimization and the relation between the administration and fatwa givers throughout the history see Masud, Messick, Powers, *ibid.*, pp. 8-15.

7 Although Ulema Medžlisi Fonds have not been yet researched largely, there are some available academic works on fatwas issued in later periods. For example, Muhamed Hodžić, "Nekoliko fetvi iz arhivskog fonda Gazi Husrev-begove Biblioteke u Sarajevu", *Anali Gazi Husrev-begove biblioteke u Sarajevu*, Knjiga XXV-XXVI, Sarajevo, 2007, pp.161-192.

8 Article 142, *Štatut za autonomnu upravu, islamski vjerskih i vakufsko-mearifskih poslova u Bosni i Hercegovini*, Sarajevo, Zemaljska Štamparija, 1909, p.71.

be mostly focused on the characteristics of fatwas and their role in the development of the Muslim community in Bosnia under the Austro-Hungarian Occupation. Therefore, after giving the general framework of the work, the inventory and the documents related to the fatwas will be outlined. Secondly, structural features of fatwas in the Records and the Protocols as well as the fatwa issuing procedure will be introduced. Finally, the content of fatwas and their relevance with the general policy of Ulema Medžlis will be evaluated.⁹

AN OVERVIEW OF ULEMA MEDŽLIS FATWAS (1883-1909)

Two of the remaining resources of the Ulema Medžlis belonging to the Austro-Hungarian Period, namely Ulema Medžlis Records and Ulema Medžlis Daftars are currently preserved in Gazi Husrev Begova Library in Sarajevo. Combination and, to some extent, comparison of these two resources provide substantial information for following many events of Bosnian Muslims' life at that time.¹⁰ Since Ulema Medžlis Records provide information about the questions addressed to the Medžlis and the Protocols cover the decisions, in order to be able to understand completely the cases referred to in the fatwas both resources should be merged.¹¹ Such a general methodology was used in this paper.

Even though documents related to these religious questions cover a small portion (2%) of the Ulema Medžlis Records in comparison to other topics¹²

9 Research conducted on Ulema Medžlis Documents has been carried out in two different periods of time, September 2010 and February-July 2011. I would like to express my cordial thanks to the Director and officials of Gazi Husrev Begova Library for giving me the opportunity to work on these documents.

10 Whilst Ulema Medžlis Daftars (hereinafter will be mentioned as GHB UM PD) cover the whole period between 1883 and 1918 with some deficiencies, Ulema Medžlis Records start with the year of 1885 and continue till the end of 1918, again with some deficiencies. In brief, Daftars are consisted of three different types of record books: *incoming documents*, *outgoing documents* and *session minutes*. On the other hand, Ulema Medžlis Records (hereinafter will be mentioned as GHB UM) include only the documents which were addressed to Ulema Medžlis. Thus, they only offer information about the subject and technical content of the incoming documents.

11 For today, unfortunately it is unlikely to merge all the documents for many different reasons. In many cases the questions (a) were responded quickly without being brought to the Medžlis meetings, (b) got lost over time or, (c) were replaced with a note saying that the document was returned back to the owner of question (an individual or a legal personality) or relocated. As far as the daftars are concerned, luckily, apart from some years missing, they provide more tractable information.

12 In the first classification attempt made on the Ulema Medžlis Records (1883-1909), 7756 documents, in total, were identified. Among these documents are *appointments of religious functionaries such as kadis, imams, hatibs, mudarrises and muallims etc., the*

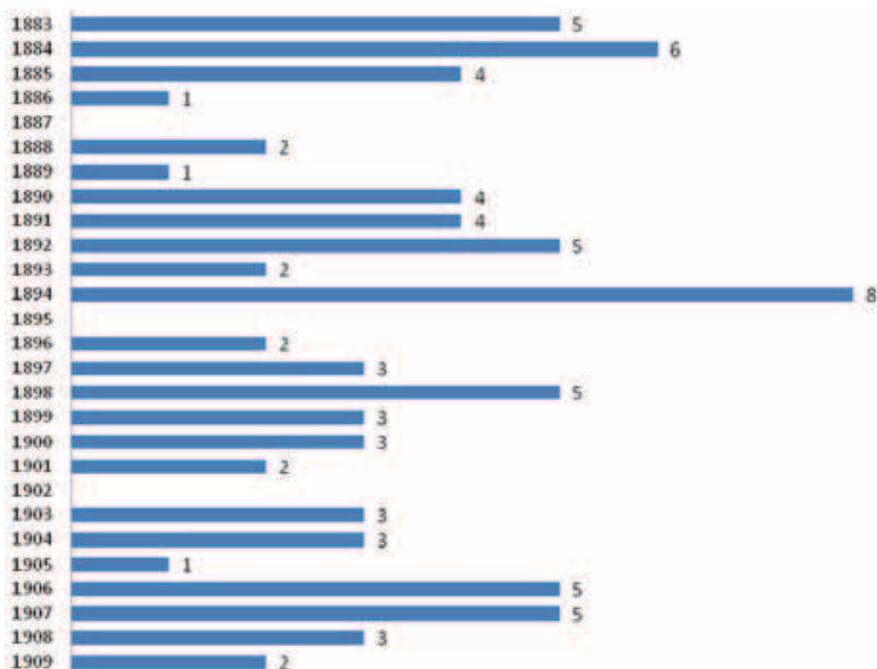


Chart 1: Distribution of Fatwas per Years

they still constitute one of the very interesting document groups in the Fonds as they are directly related to the concerns which Bosnian Muslims faced with in their everyday life at that time and provide insights about Ulema Medžlis' religious policy corresponding to them.

In the documents of the period under discussion here, 88 records related to the fatwas were found. These documents include 82 separate cases of which 38 cases were discussed during Ulema Medžlis meetings¹³ and docu-

exam papers conducted for appointment of future religious functionaries, regulations related to the religious institutions sent by the Austro-Hungarian Authorities, documents related to the reform acts and their implementation in religious schools and in religious education offered by public schools, reports on educational institutions, documents related to the organization and regulation of waqf properties, fatwas and religious questions and documents related to private matters (e.g. family, inheritance, conversion etc). It is very difficult to estimate the amount of different types of documents in the Ulema Medžlis Records for our today's knowledge owing to the fact that one document may include only one document (e.g. report or petition) or different kinds of documents (e.g. an appointment paper includes usually an official request, a regulation, candidate's diploma and sometimes the exam paper).

13 There is only one case which could not be located in the Medžlis Minutes (GHB UM 1903/172), since that part of the Daftar is missing despite the decision of the Ulema

ments of 57 cases were identified inside Ulema Medžlis Records.¹⁴ While asking for a fatwa is explicitly mentioned in 16 of them; the rest includes only the question.

As seen on the chart 1, it is difficult to say whether there is a relation between the number of the documents and the year they were issued in. Rather it looks like the documents show a random dispersion among the years with the exception of three years in which no religious questions had been filed. A more detailed analysis of the documents showed that they originated from three different sources: the individuals, governmental agencies and private associations. Whereas 61 of 89 documents were sent by governmental agencies such as the Provincial Administration, the Provincial Appeal Court, Waqf Commission, different regencies (Niyabets), two of them were sent by some associations like Visoko Reading Hall (Visoko Kiraathane). Even though some generalizations can be made, e.g. Waqf Commission was mostly interested in asking questions about the Waqfs as a natural consequence of its jurisdiction, it is hard to draw a link between the senders and the topics because of the wide variety of the cases. Nevertheless, the existence of individual questions underscores the fact that Ulema Medžlis not only was designed as an advisory body for the governmental offices but it was also accepted by the people as the constituent religious authority.

FORMAL CHARACTERISTICS OF FATWAS

As it was mentioned above, in order to comprehend the whole process of fatwa giving, all resources of Ulema Medžlis should be cross-referenced and evaluated together. Although this process might present us with a general picture of the fatwa issuance, methodologically speaking it is a very challenging issue due to two main reasons.¹⁵ Firstly, because of the binary nature of the Ulema Medžlis Fonds, it is unlikely to find one group of documents in a specific order, be in contextual or formal order, rather in a scattered document bulk. Secondly, neither the Records nor the Protocols were recorded or

Medžlis is mentioned in the registration notes of the document. Nevertheless, the records of other cases are available in the Ulema Medžlis Session Minutes.

14 Since some documents in the Ulema Medžlis Records were interrelated, these were considered as parts of the same case in this paper. By re-arranging the documents in this way, 84 separate case/questions have been identified. Also, two entries, the document nr.9 and nr.10, were not included in this classification since they are related to the administrative issues.

15 Therefore, these materials should not be confused with the fatwa compilations. For further information on fatwa compilations see Seda Örsten, "Osmanlı Hukuk Tarihi Kaynağı Olarak Fetva Mecmuaları", *Türk Hukuk Tarihi Araştırmaları*, no. 4, 2007 (Spring), pp. 29-40.

preserved for the purpose of providing samples for practical or pedagogical reasons. Thus, as evaluation of the documents from the diplomatic point of view is far beyond the limits and scope of this paper, here only some distinctive features will be pointed out in order to give a general introduction to the documents.

Ulema Medžlis Records

Ulema Medžlis Records are the main resource for determining the religious question addressed to the Medžlis. The documents in the Records are written on A4 size paper generally in the form of a petition, regardless of its sender. In most of the cases a bigger paper was folded into the A4 format and used as two pages. While the first page of the paper contains the question, the back side of the second page is left for the registration notes.¹⁶ The documents were mainly written in Ottoman or Bosnian whereas in some cases both of these languages were used.¹⁷ Even though in some cases German was also used, it was restricted to very few documents, especially the ones which contain the regulations from Vienna.

Another interesting point is the use of Arabica in some documents.¹⁸ Due to the regulation of 1883 which stipulated that only the documents sent to the provincial administration from Ulema Medžlis should be in local language (Bosnian), it is very hard to evaluate the Ulema Medžlis' policy in regard to its inner correspondence. However, it can be observed that the use of language was gradually changing from Ottoman to Bosnian.¹⁹

16 After 1898, it is also seen in some cases that this part is used for mentioning the addressee. Sometimes even the document started from this part. GHB UM 1899/213; GHB UM 1905/375 etc.

17 Of the total number of the documents 53% is in Bosnian (f=31), 37% is in Ottoman (f=22) and only 10% uses both language, Ottoman and Bosnian (f=6). For example, as in the case nr. 24, on asking permission to get married with another person, has been sent to Ulema Medžlis from Appeal Court in Bosnian language (document nr. 1891/19), while Ottoman was used in the paper which was written by the complainant (document nr. 1891/20). The appendix of second document which came from Bihac Regency (*Bihke Niyâbet*) was also written in Ottoman.

18 For example, the document in GHB UM 1909/69, sent from Visoko Kiraathane, was written in Bosnian. Most probably language preference was related to the correspondence policy of the Kiraathane owner.

19 Roughly speaking, the Ottoman language is still used till 1898 as the main language of documents or at least the language of the cover letter with some exceptions. Nevertheless, after this period Bosnian language has become overwhelming and Ottoman has started to appear as the language of appendices, especially when there was need for a decree or statement from the court or a legal authority. This change should be related to the development of language policy by the administration. For further details on the language

The body of the documents usually starts with “Bismih”, a short form of “Bismillahirrahmanirrahim”, then, the addressee’s name is mentioned. Many different addressing modes can be found here. In Ottoman documents “*Bosna ve Hersek Heyet-i Ulema Riyaset-i Aliyyesine, Bosna ve Hersek Ulemâ Riyâseti Cânib-i Aliyyesine, Umum Bosna ve Hersek Ulemâ-i İslâmiye Riyaseti, Bosna ve Hersek Meclis-i Ulemâ Riyâseti Cânib-i Semühilerine*” are among the most commonly used modes. However, Bosnian documents show more variety in this sense. In many cases the addressee was formulated in long forms as “*Presvjetlom Medžliss-ulema u Carevoj džamiji u Sarajevu, Visokoslavnom predsjedništvu Medžliss-ulema u Sarajevu, Presvjetlom presjedništvu Heyeti Uleme za Bosnu i Hercegovinu u Sarajevu*” or only Reisu-l-Ulema was mentioned as “*Presvjetlom Velenčenom gospodinu H. Mehmed Tevfik ef. Azabagić, Reis-el-ulemi za Bosnu i Hercegovinu itd itd u Sarajevu*”. In telegrams especially a short form of “Reis el Ulema, Sarajevo” was used.

Since the documents were not designed in the form of classical Ottoman fatwas²⁰, rather in the form of an official letter submitted to a superior office for requesting an answer to a question or a controversial issue, they include all the possible details embodied with the real characters and incidents explaining the reason why asking the compatibility of issue with Shari‘a was important. If the place was not sufficient for completing the body of the text, the back side of the paper was also used.

While Ottoman documents usually end with “*olbâbda emr u irâde efen-dim hazretlerinindir*” (*the right to give command and edict in this respect belongs to my lord, the Excellency*) or a different formulation of the same expression “*olbâbda emr u fermân hazret-i men lehu'l-emrindir*” (*the right to give command and decree in this respect belongs to the one who possesses the right to give commands*), in Bosnian documents such kind of an epilogue was not used. In both types of documents the date of the letter was added in

of policy applied at that time see Dževad Juzbašić, “Jezička politika austrougarske uprave i nacionalni odnosi u Bosni i Hercegovini”, in *Politika i privreda u Bosni i Hercegovini pod austrougarskom upravom*, Sarajevo 2002, pp. 383-421.

20 For further information on the forms of classical Ottoman fatwas see Atar, *ibid.* and Seda Örsten, *Osmanlı Hukukunda Fetva*, unpublished MA thesis, Ankara University, Ankara 2005, pp. 11-20. There found only two exceptions in Ulema Medžlis Records between 1883 and 1909, i.e. GHB UM 1885/18 and GHB UM 1894/23 of which formulation were made very similar to the classical Ottoman fatwas. Whereas the first one was already prepared in the classical form, the question was rewritten in the classical fatwa form and added to the back side of the paper in the second.

the end along with the signature of the owner of the letter. It is very hard to say whether there were any standards followed in the appendices as they were prepared at different places.

The back side of the document was usually assigned for registration notes written in Ottoman language regardless of the language of the document. Here, firstly the arrival date and the number of document along with a registration note “kayd şod” (*recorded*) were mentioned. Then, it was noted whether the case was brought into the Medžlis meetings or immediately responded to. Also, the procedure for the decision making, and in some cases, the decision was also mentioned here.²¹

However, there is one document among the Ulema Medžlis Records which requires more attention and enables us to make possible inferences about the fatwa texts at that time. This is one of the two fatwas found in the records between 1883 and 1909.²² Asking about the appointment of one of the sons of the late Mutawalli of Šarić Hadži Osman Aga Waqf in Stolać (*İstolçe*), this document, sent from the Provincial Waqf Commision (*Meclis-i İdâre-i Evkâf-ı Bosna ve Hersek*), encloses 4 appendices including the copy of Waqfiyya and a related Fatwa.²³

The fatwa found in this document contains similar patterns which were used in classical Ottoman fatwas.²⁴ It starts with “Huwa” and states that this is a copy of the fatwa. The body of the text is formulated as follows:

*Zeyd-i vâkıf vakfiye-i ma'mulunbihâsında vakfının tevliyeti Amr'a ve ba'de vefâtihi evlâd-ı zükûrları eslah ve erşed olanlar olalar deyu yazdıktan sonra Amr vakf-ı mezbûrun tevliyetine mutasarrıf iken Amr'ın salâh ve rüşdde velevki mütasâvi müteaddid evlâd-ı zükûru kalmış olsa lakin içlerinden Bekr rüşd ve salâh ile berâber âlim dahî olmakla merkûm Bekir tevliyet-i mezbûrede müteveffânın sâir evlâdı üzerine mürecceh olur mu?*²⁵

21 For example, GHB UM 1892/28; GHB UM 1894/230.

22 The second fatwa text was found in GHB UM 1908/341. The fatwa was added to a petition asked for a solution to a conflict arose from the appointment of a second imam to a džemaat. Both fatwas have the similar features. However, GHB UM 1902/32 has been chosen as a sample as it provides more details.

23 GHB UM 1902/32.

24 For content of styles of fatwa giving in Ottoman tradition see Uriel Heyd, “Some Aspects of the Ottoman Fetva”, *Bulletin of the School of Oriental and African Studies*, University of London, vol. 32, no.1, 1969, pp. 35-56.

25 The translation of the text is, briefly, as following: Zayd, who is the Endower (Wâqif), mentioned in his endowment charter (waqfiyya) that the requirements of the waqf shall be fulfilled by Amr and after his death by his male inheritors if they are among the most righteous and virtuous ones. While ‘Amr is the trustee (Mutawalli) of the Waqf, if his sons are equal in rightfulness and virtuousness, however, among them Bakr is the best in

In the body of the text the question was put in a very explicit way using typical fictitious names, e.g. Zayd, ‘Amr and Bakr. In the end of the text the reply was given starting with “*beyân buyurula*” (shall be explained), “*Allah-u Teâla a’lam*” (God knows the best), then comes the reply “Olur” (yes). The signature was added as “*Katabahu al-faqir ilâ rabbihi’l-qadîr, el-Hadj Mehmed Tawfiq al-muftî, medînet-i Saray ufiye anhu*” (it is written by the one who is in need of his God, al-Haj Mehmed Tawfiq, the mufti of Sarajevo, may he be forgiven) mentioning that the fatwa was issued by Sarajevo Mufti, el-Haj Mehmed Tawfiq.²⁶ The fatwa ended with an Arabic text which gives a very short summary of the question. The respond was issued based on a verse from the Qur’an²⁷, as Sheik Ismail gave the fatwa, from *Tanqih al-Hamidiyya*.²⁸ As it is seen from the fatwa, its general form is very similar to the classical Ottoman fatwas; however it is difficult to make any further conclusions based on this only sample.

Since this paper covers only a short period of time - 26 years, it is very hard to determine whether any changes occurred throughout these years in terms of patterns and style used in fatwa questions. Moreover, based on our today’s knowledge no rule or ordinance was issued for regulating the formulation of the documents, rather it was the sender who applied its correspondence patterns to the documents. Let alone the cases of which the sender were individual, even the composition of the documents varies at the institutional level since the sending office was determinant of the type and writing style of the document. In some cases, as it might be expected, especially when the documents came from administrative offices more official standards were have been used. But still, without a detailed evaluation of all Ulema Medžlis Records, it is very early to come to any conclusion.

knowledge in addition to his rightfulness and virtuousness, can he be preferred upon the other sons in administrating aforementioned waqf?

26 Even though there is no indication on the date of fatwa in the text, considering the box in which it was founded, most probably Tawfiq ef. was Reisu-l-Ulema at that time (1893-1909).

27 See Qur’an 39 (Zumar) / 9.

28 It can be assumed that this work was written on *el-Hamidiyya* by Hanafi Muftî Hamid b. Ali b. Ibrahim b. Abdurrahim el-Imâdi el-Dimashqî (d. 1171) as a revision of the book. For *Hamidiyya* see *Suppl Kashf ez-Zunnun*, vol.1, p. 390.

Ulema Medžlis Protocols²⁹

While the Records give details about the questions asked to Ulema Medžlis, the Protocols, on the other hand, provide complementary information. Actually, it should be pointed out that the protocols, in its broadest sense, meet the minimal expectations from a fatwa text by including even the summaries of question addressed to Ulema Medžlis and the decision given in response to them. Therefore, they can be effectively used in evaluating the nature and contents of questions and decisions, if it is not for their composition style. The general rules of keeping the protocols were clearly defined in the regulation in 1883. As the regulation stated the meetings were supposed to be held every week, an official who keeps the records was also present in the meetings. The date of the meeting, the names of the present members at the meeting, their personal opinions, their suggestions, the result of voting and the decision of the Medžlis had to be recorded in the entry.³⁰ Although the Daftars vary in size, all entries including religious questions are similar in their structural features and written all in Ottoman language.

A primary evaluation of the Protocol entries showed that a basic protocol entry consisted of four different parts separated from each other by the title except the last one. The entry begins with the date of the meeting and the list of the Ulema Medžlisi members present in the meeting (under the title of *Hazırîn*). The second part is allocated to the summary of the topic handled in the meeting (titled mostly as *Hulâsa-i Tahrîrât*, *Hulâsa-i Meâl*, *Hulâsa-i Meâl-i Tezkire* etc.) and the third is to the decision given by Medžlis written under the title of “*Meclis Karârı or Karârı*”. In most of the entries, the respond is given in details mentioning the reasons behind the decision. Moreover, even it is very rarely, reference to the sources which the decision was based on can be also found in the decisions.³¹ If there was more than one case handled in the meeting, all cases were recorded in order.

When the meeting came to the end, a note formulated in “*Ve karâr verilmele meclise hitâm verildi*” (By giving this decision the session has been closed) along with the date was dropped to confirm it. The fourth part of the

29 Ulema Medžlis Protocols are consisted of three different record books. As it is already mentioned above, these are record books of *incoming documents*, *outgoing documents* and *session minutes*. Here will be focused on session minutes since the other two gives only a summary of the content of the document.

30 For the details of regulation see Article nr. 12, “Statut o djelokrugu i poslovnom redu Medžlisu-l-ulemaa kao i vodenju administrativih i manipulacionih poslova”, *Istorijski razvoj institucije Rijaset*, p. 129.

31 For example, such a case is recorded in GHB UM PD 1891/52 related to the question in GHB UM 1891/19 and GHB UM 1891/20.

entry is composed of the signatures of Medžlis members present in the meeting. According to the regulation at least two members of Ulema Medžlisi had to be present in the meeting in order to constitute a majority. In every entry, whether it is related to a religious question or not, the same format was kept.

FATWA ISSUANCE PROCEDURE

Based on the information gathered from the available documents in the archive resources it is possible to draw a map of how the questions were responded and the decisions given. In other words, how fatwa issuing system was functioning during the Austro-Hungarian Period. As it was mentioned above, from the notes on the back side of the document's last page registration and handling process can be traced. Based on this information and the records in *Incoming Document Daftars* it can be concluded that the questions were handled in two different ways.³²

In some cases, *when the question was about a personal issue, a well-known case, a similar issue to a previously settled one or in the case that the respond was requested urgently*, as it was mostly the case with the telegrams etc., it was answered without being proceeded in Medžlis meetings. As we see in Appendix 1, there were many cases of which records were neither found in the Medžlis Protocols nor the correspondence notes specifically note that they were brought to the Medžlis Meetings. Thus, without completing the research on all Ulema Medžlis Records, it is not possible to find answers to questions such as "who were responding to them, which rules were followed in answering, or whether there was a regulation or a manual for this process". However, most probably, the responds were given by Reisu-l-Ulema or Medžlis members. As to the best of our knowledge there was no office in Rijaset assigned to answer the questions. The signature under the only fatwa found in the Fonds, which was Reisu-l-Ulema's signature, supports this assumption.

On the other hand, when the case *was related to a public issue or the decision might have had effects on a large scale etc.* the question was handled at Medžlis meetings. After discussing the issue during the meeting, the answer had to be recorded in the Protocol books. If there was a case of any disagreement among the participants in the decision making process, opposing views had to be also presented in the records. Even if this situation was clearly stated in the regulation³³, such kind of a case was not encountered in the entries, at least during the period under discussion here.

32 These assumptions are based on the evaluation of Medžlis records and protocols since there is no resource on regulation or ordinance on fatwa issuance of Ulema Medžlis found yet.

33 Article nr. 13, "Statut o djelokrugu i poslovnom redu Medžlisu-l-ulemaa kao i vodenju administrativnih i manipulacionih poslova", p. 130.

Although fatwa issuance procedure seems very simple in theory, there are some documents found in the Fonds which convince us it was not that simple every time. Question in GHB UM 1900/19, on whether the post of Mutawalli can be inherited by a woman if Mutawalli hasn't got a male inheritor, is one of these examples. After receiving the question from *Provincial Waqf Commission*, Medžlis has decided to ask to *Sarajevo Waqf Commission* for further information about the female inheritors of the Mutawalli. Upon the reception of the answer, the decision was given.³⁴ This additional correspondence shows that Medžlis, in the case of not being able to decide because of some reasons, was empowered with conducting further investigation. Moreover, Medžlis could prefer not to give any decision and instead send the case to the related authority by stating it is not in the field of its competence.³⁵

As far as the fee given for the issuance of fatwa is concerned, it is explicitly mentioned in some documents that the price for fatwa was 2 forint, even though some other documents say that "1 forint which was sent for fatwa was returned back".³⁶ As there is no indication of the price of fatwa found in the documents from the governmental agencies, it cannot be verified whether they were also paying the fee.

CONTENTS OF THE FATWAS

In the above sections mostly the formal characteristics of fatwas have been elaborated upon. For evaluating the contents of fatwas, they need to be classified per their topics first. Table 1 provides detailed data showing the relation between the topics and the years they were filed.³⁷

34 There are also some similar cases in the Ulema Medžlis Fonds. Even though it is not included here since it does not contain a question rather asks for a certificate (ruhsatnâme), GHB UM 1890/166 and GHB 1890/182 are of those interesting instances. The issue asked about is very similar to GHB UM 1891/19 and 20, about a woman divorced from her husband who went away without leaving any alimony and asked for marrying with another man. Medžlis has given her the permission for marriage, but after asking the extent of real situation to Kladanj Regency (Kaladin Niyabet) where the complainant was living.

35 See GHB UM 1898/73, on attaching a part from a Muslim graveyard into public garden, Medžlis has concluded that since the case was related to the nature of place, it can be considered as a waqf property even though it was claimed to be complainants' private property. Thus, the case should be handled by Nizamiyya Courts.

36 See GHB UM 1883/37; GHB UM 1884/85; GHB UM 1893/21 etc. Since the documents are not in direct proportion with year, it is unlikely to say that the price had been increased or decreased over time.

37 Two out of 82 cases have been included into the table because of the absence of related documents.

	Administration of Waqfs	Religious Sites	Inheritance	Non-Muslims	Rituals	Trade	Religious Officials	Marriage	Entertainment	Funeral	Land	Innovations	Faith	Legal procedures	Social Life	Publishing	Unknown	TOTAL
1883			4	1														5
1884	1	1	3		1													6
1885			1			1						1					1	4
1886	1																	1
1887																		
1888	2																	2
1889	1																	1
1890	2			1			1											4
1891		3						1										4
1892		2			1			1		1								5
1893						1											1	2
1894	6	2																8
1895																		
1896				1	1													2
1897											2	1						3
1898	1	1	1	1			1											5
1899	2			1														3
1900	1				2													3
1901		1							1									2
1902																		
1903	1			1	1													3
1904		1		1									1					3
1905		1																1
1906		3		1		1												5
1907	1					1			1	1				1				5
1908							2								1			3
1909									1							1		2
TOTAL	19	15	9	8	6	4	4	2	3	2	2	2	1	1	1	1	2	82

Table 1: Relation between the Topics and Years

As it is seen in the table, the fatwas addressed to Ulema Medžlis were mostly related to the field of Muamalat. The issues related to the administration of waqfs constitute the most frequently asked question. Among the Ulema Medžlis Documents, 19 cases were identified as related to this topic which includes the conditions of appointments of waqf servants, adaptation of waqf conditions to the contemporary situations (e.g. currency change), selling waqf properties etc. Considering the importance of the administration of waqfs at that time, redundancy of these questions is quite understandable. For a very long time, the problems faced in waqf administration occupied the core of Bosnian Muslims struggle for religious autonomy and maintained its importance even after the proclamation of Statute³⁸. The fact that most of those questions were sent from governmental agencies means that Medžlis decisions were regarded as one of main determinants in shaping the general administrative policy towards waqfs. The decisions made by Ulema Medžlis regarding this topic should be evaluated together with the second most frequently asked topic, i.e. the situation of religious sites, since most of the documents under this category are closely related to the ones about the waqf administration.

Ulema Medžlis decisions related to religious sites can be divided in two groups: destruction of religious buildings and transformation of ruined and abandoned religious sites, mostly graveyards. Questions of the first group are mostly formulated as “whether it is permitted by Shari‘a to destruct the mosques which are not in use anymore”. Decisions made by Ulema Medžlis upon these questions were, without exception, in favor of the protection of the mosque or of its waqf. In one of these cases, Ulema Medžlis’ sensitivity on this topic was explicitly expressed by the conclusion that “before transferring the waqf into soon-to-be built mosque, waqf property and money should be recorded”.³⁹ However, the second group presents us with a more interesting example of the general policy of Ulema Medžlis. These questions are mostly related to the transformation of a graveyard and using the place for public purposes. One of the determinants in Ulema Medžlis’ decision making process was the nature of the place, i.e. whether the place could be regarded as waqf or

38 As is seen on the table, in the year of 1894 there is a remarkable increase in the questions on waqfs. The relation between the ordinance issued in the same year, which brings an organizational change in addition to new regulations on waqf properties, and these questions needs further research. For further details see Aydin Babuna, *Die nationale Entwicklung der bosnischen Muslime. Mit besonderer Berücksichtigung der österreichisch-ungarischen Periode*, Peter Lang, Frankfurt am Main, 1996, pp. 98-103.

39 GHB UM PD 1906/165.

not.⁴⁰ When the question was about the transformation of a graveyard which was not a waqf a permission was given for using it as a public place, e.g. for opening or widening a street or urban planning. However, in this case it was noted that if there was a need for removal of the corpses, the required respect should be paid and if there were no corpses in the specified area the value of the places should be compensated. There was only one question found about a graveyard which was actually considered as a waqf, even though there was no waqfiyya to confirm its situation. In this case, Ulema Medžlis preferred not to answer by stating that “since the area is considered as a waqf, the case should be handled in the Nizamiya Courts”.⁴¹ It is also interesting that while the questions about the waqfs were mostly asked by individuals, the ones on religious sites were sent by Waqf Commission. These answers acquire certain significance when one tries to discern the general attitude of Ulema Medžlis in preserving waqf properties as well as taking care of some delicate issues among the Muslims, e.g. showing respect to the dead.

Similar patterns in protecting the rights of Muslim community can be seen in other Medžlis decisions. One of the interesting cases in this regard is about women who left behind by their husbands for various reasons including immigration and casualties in war. Upon the question of “whether it is permitted by Shari‘a that the woman left behind in desperate situation can get married with another man” Ulema Medžlis decided that the woman could marry another man whereas ruling that this decision should be taken as a precedent for similar cases.⁴² It is interesting that the decision was given based on Imam Shafii’s and Imam Malik’s opinions, even though Bosnians are known as being followers of Hanafi School. Considering the social problems being encountered in war times especially by women, the decision of Ulema Medžlis was significant especially in the sense of protecting women rights as well as maintaining the balance in the society.

The questions regarding the relations with non-Muslims constitute another interesting topic. Some of these documents are directly related to the relations between Muslims and Non-Muslims such as marriage, business,

40 There is also another similar case in Ulema Medžlis Documents. Asking about the use of a specific place which is known as a private graveyard, the question focuses on “whether a graveyard can be considered as waqf, even if no document would prove it, but the corpses are buried there”. The answer of the Ulema Medžlis is, in brief, that “even though the place can not be considered as waqf because there is no proof for that, it can not be used for any other purposes, i.e. constructing a building on the area, since there are corpses buried”. See GHB UM 1891/111 and GHB UM PD 1891/108. The answer is noteworthy because of the emphasis given to the corpses found inside the area.

41 GHB UM 1898/73 and GHB UM PD 1898/67.

42 GHB UM PD 1891/52.

inheritance etc., but the rest refers to the building of a church. Although it is very hard to make a generalization due to the variety of questions, one case is worth mentioning. In Ulema Medžlis answer to a question referring to a marriage with a non-Muslim woman, it is clearly mentioned that the permission is given “under the condition that to be born child from this marriage will be dependent on the father and will stick to Islamic faith”.⁴³ This case is a good example of the attitude of Ulema Medžlis towards preserving the Islamic identity in the society. Moreover, the question asked about building church has never been answered by Ulema Medžlisi, it was only mentioned that the case had to be closed because of the delay in the correspondence.⁴⁴

Among other topics one deserves also a special consideration, even though the related documents are few in numbers. These are related to the innovations that had been recently introduced then in Bosnia. They are not only noteworthy because of their content but also because of the fact that Ulema Medžlis’ decision was required for applying them⁴⁵. One of these questions was on the lightening of Gazi Husrev Begova Mosque with electricity; the other one deals with transforming the time showed on the clock tower according to the western system. Even though the decision upon the latter could not be found, Medžlis has responded positively for the former.

Considering the extent and variety of the questions, it is obvious that further research is needed to clarify the position of Ulema Medžlis towards the newly arisen questions among the Muslims as a consequence of administration change, long lasting warfare etc. However, this preliminary study shows that Ulema Medžlisi was not only designed to approve the decisions of the administration, but it was enjoying also an important role in the decision making process. In addition to that, the decisions given by Medžlis support our preliminary assumption that Ulema Medžlis was more than a state office, rather a religious authority whose decisions were taken into consideration by the people and different governmental offices. Hopefully future research will bring new resources into the light to enable us comprehend further the real nature and functions of Ulema Medžlis.

CONCLUSION

Fatwas have their unique power of steering and shaping people’s religious perceptions and behaviors at the individual level as well as of expand-

43 GHB UM 1898/99.

44 GHB UM 1890/49 and GHB UM PD 1890/107.

45 Both questions were asked from Waqf Commission. See GHB UM 1885/51 and GHB UM 1897/63.

ing and/or limiting the practices of many official authorities by advising or enforcing them. This potential of the fatwas turns them into one of the most effective instructional tools. Fatwas issued by Ulema Medžlis during the Austro-Hungarian occupation of Bosnia, have their own special place not only because they were issued by the highest Islamic authority in the country but rather due to the fact that they were used as much to enlighten people on Islamic norms and practices as to maintain and preserve their Muslim identity while living under the non-Muslim administration. The use of fatwas for shaping individual or public practices has been evaluated through some special cases in this paper, especially when the case was related to keeping the balance in society, protecting the women's rights, the destruction of a religious site, transformation of waqf property or relations with the non-Muslims.

Even though the current research has only laid the foundations for cross-referencing of the main Ulema Medžlis resources with the real life events, the results allow for sketching the general issues which were on the Bosnian Muslims' agenda at that time. They are like small mirror reflects of the most crucial issues Bosnian Muslims were facing during the researched period. Considering the inherent capacity and the general policy of Ulema Medžlis as an Islamic authority of the Bosnian Muslims, future works on these materials could allow us to explore more about its responsibilities and power in shaping Bosnian Muslim's life and identity.

Sažetak

NEKA OBILJEŽJA FETVI ULEMA MEDŽLISA I NJIHOVA ULOGA U ODREĐIVANJU OPĆE POLITIKE TOG NAJVIŠEG VJERSKOG AUTORITETA U BOSNI I HERCEGOVINI (1883. -1909.)

Fetve kao "pisana ili usmena mišljenja/odgovori koje je izdao vjerski učenjak na pitanje u vezi s islamskim pravom" čine jedan od najvažnijih izvora za razumijevanje društveno-kulturnog života i njegove promjenljive dinamike. One sadrže podatke o dva međusobno povezana sadržaja vjerskog života: probleme s kojima su se muslimani suočavali, te odgovarajuće odluke koje su vjerske vlasti izdale. Dok nam određivanje i vrednovanje pitanja postavljenih od strane muslimana omogućava nam da se upoznamo sa životnim situacijama u kojima su muslimani živjeli, odgovori na njih daju nam pojedinosti o općoj politici davaoca fetve, naročito ako se radi o najvišem vjerskom autoritetu u zemlji, kao što je ovdje slučaj. Štaviše, praksu izdavanja fetvi treba smatrati instruktivnim oruđem za stvaranje i očuvanje

posebnog islamskog identiteta time što se nudi autoritativan savjet za one koji nisu upoznati s odredbama islamskog prava ili su nesigurni u pitanju podudarnosti svoga ponašanja s islamskim pravilima. Stoga, fetve treba uzeti u razmatranje ne samo kao odgovore na određena vjerska pitanja, već i kao živi tekst koji nam pruža informacije o ulozi i funkcijama vjerskog autoriteta kao moralnog predvodnika društva.

Glavna svrha ovog rada je da dadne opći pregled fetvi koje su pronađene među primarnim izvorima Ulema Medžlisa, tj u Bilješkama i Protokolu Ulema medžlisa. Rad pokriva period od 1883. do proglašenja *Štatuta za autonomnu upravu islamskih vjerskih i vakufsko-mearifskih poslova* iz 1909. Pošto je Štatut bosanskim muslimanima jamčio vjersku autonomiju, Mešihat je smatran za organ zadužen za izdavanje konačne fetve u slučajevima kada je postojala nesigurnost ili nejasnoća oko nekog pitanja. Kao što se u radu navodi, proučavanje fetvi iz arhiva Ulema medžlisa je značajno iz dva razloga: prvo, za određivanje općeg položaja muslimana tog vremena; i drugo, za praćenje odraza društveno-kulturnih promjena na bosanske muslimane. S metodološkog stanovišta, ti tekstovi dopuštaju istraživačima da uporede tehnike i procedure izdavanja fetvi u osmanskome i austro-ugarskom periodu.

Rad ne vrednuje fetve s gledišta islamskog prava, već se uglavnom fokusira na obilježja fetvi i njihovu upotrebu u oblikovanju muslimanske zajednice pod austro-ugarskom okupacijom. Nakon davanja općeg okvira rada, u općim crtama predstavljen je inventar i dokumenti koji se odnose na fetve. U drugom dijelu, predstavljena su strukturalna obilježja fetvi iz Bilješki i Protokola kao i procedura izdavanja fetvi. Konačno, procjenjen je sadržaj fetvi i njihova relevantnost zajedno sa općom politikom Ulema Medžlisa.