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The fatwa institution within the public establishment

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Abstract:

This article examines one of the transformations experienced by the fatwa institution in the course of this century. Indeed, its presence is no longer confined, as previously mentioned, to the central administration and its various bodies. Over time, the public authorities resolved to establish it within the public establishment, an entity recognized as one of the canonical modalities for the management of public utility services.

A reading and analysis of the legal texts reveal that this does not concern a single, uniform category of public institutions. Indeed, one is of an industrial and commercial character, while the other possesses a distinct, specific nature-referring here to the National Office of Waqfs and Zakat and the Djamaâ El Djazaïr. Each possesses its own unique particularities in terms of organization and management. Consequently, the fatwa institution has now assumed a critical function at this level.

Keywords: Fatwa, Djamaâ El Djazaïr, public establishment, The Waqfs and Zakat Office, the Ministry of Religious Affairs.

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Introduction

Fatwa, a traditionally non-binding Islamic legal opinion, occupies an intricate and evolving position at the intersection of religious authority and secular state law. Historically residing within the domain of scholarly interpretation (ijtihād) and moral suasion, its influence on formal legal systems was indirect, flowing through social and cultural channels rather than codified statutes.

In the classical system, the authority of the mufti, the one who issues the fatwa, rested on his personal reputation, knowledge, and piety, and not on an official appointment by the state. The fatwa was therefore a free opinion, issued by independent scholars.

Paradoxically, it was precisely because it was not imposed by public force that it was widely respected: people voluntarily incorporated it into their daily lives, for their business, their food, or their family relations.

The colonial period upset this balance. The colonial powers introduced modern legal codes and limited Islamic law to the sole domain of personal status, such as marriage or inheritance. This weakened the role of the mufti while leaving a void in the moral regulation of society.

After independence, the new states inherited this confused situation and had to find a way to reconcile the persistent influence of informal religious authorities with their desire to control all law.

With the emergence of mass media, then the Internet and social networks, the dissemination of fatwas has exploded. Today, anyone can issue a religious opinion that will be seen by millions of people across the world, sometimes in total contradiction with state laws and the opinion of recognised scholars. This anarchy has worried governments, who see it as a threat to legal stability, social unity, and their authority.

Fatwas broadcast by satellite or on the Internet often come from foreign countries with different legal traditions. They thus introduce rules that compete with those of the state in the lives of citizens. The authorities increasingly consider this free market of religious opinion as an affront to their sovereignty and a danger to public order.

The contemporary era, however, has witnessed a paradigm shift, as modern states actively seek to appropriate, define, and institutionalize this religious instrument. This process of formalization constitutes a deliberate juridical project to harmonize sacred jurisprudence with sovereign governance, thereby converting fluid religious discourse into a regulated component of the public legal order.

An analysis of recent legal texts regulating the fatwa reveals a normative evolution, characterized by a shift from constitutional to regulatory texts without resorting to legislative enactment.[1] The first part of the previous article addressed the instance of the High Islamic Council (HIC), established by the Constitution.

The novelty lies in the 2021 regulatory text establishing the National Office of Waqfs and Zakat, placed under the supervision of the Ministry of Religious Affairs and Waqfs, similar to many other public establishments.[2]

This regulatory text is supplemented by the set of provisions relating to the Mosque of Algiers, created in 2022, which includes within its structure the Rectorate, classified as a public establishment with a specific character, whose legal regime has raised questions.[3]

Given that the fatwa entity is mentioned in both regulatory texts, it is being integrated in an unprecedented manner into another Public Legal entity, the public establishment, which implies its participation in the latter's management.

This development invites us to question the institutional place of the fatwa within this new framework of the public establishment?. To address this problem, we will first examine the Office of Waqfs and Zakat (First section), and then the scientific council and the mosque spaces related to Djamaâ El Djazaïr (Second section).

First section: Fatwa institution within the Waqfs and Zakat Office

We will briefly address the organization of the Office (First sub-section), before examining its relationship with the institution of the fatwa (Second sub-section).

First sub-section: The organization of the Office of Waqfs and Zakat

The institutions of zakat and waqf represent two foundational pillars of Islamic social finance, historically operating as autonomous mechanisms for wealth redistribution and the provision of services of general interest. Zakat is a compulsory alms calculated on surplus wealth, while waqf consists in the voluntary endowment of assets whose revenues are dedicated in perpetuity to charitable works.

Together, they constituted a sophisticated pre-modern infrastructure of social solidarity, funding everything from poverty alleviation to education, healthcare, and public amenities, the waqf having thus historically participated in what are today designated as public service missions.

Under colonial administrations and then modern centralising states, these institutions were progressively marginalised, absorbed into state bureaucracies, or left to atrophy, thereby severing their direct link with community-based governance. The resulting institutional vacuum left a critical gap in the provision of social welfare and deprived the public sphere of a historically resilient, faith-

based redistributive mechanism. Contemporary states now face the challenge of reviving these instruments within a formal legal framework that reconciles religious authenticity with the requirement of administrative accountability.

The integration of a zakat and waqf office within a public establishment constitutes, from a legal standpoint, an operation of re-institutionalisation aimed at subjecting these traditional practices to a public law regime guaranteeing transparency, regularity, and a developmental orientation.

This transformation converts informal charitable flows into an administrative service endowed with public legal personality, fully inserted into the establishment's organisational chart and capable of producing administrative acts engaging the responsibility of the public entity.

The office thus becomes, at the heart of this establishment, a legal instrument of convergence where religious obligation is channelled within a public service framework, under the oversight of the administrative judge.

The National Waqfs and Zakat Office was established in 2021 by Executive Decree No. 21-179 [4]. It is a public establishment of an industrial and commercial nature [5], placed under the supervision of the Minister of Religious Affairs [6]. However, it should be noted that, although the founding text of this office deals with both the organization of the Wakfs and Zakat at the same time, Zakat (governed by 4 ministerial decrees promulgated in 2004), has often been relegated, at the normative level, to the second place for the benefit of the Waqfs (Law No. 91-10 promulgated in 1991).

This marginalization contrasts with the essential role that Zakat plays in economic and social development, particularly through the redistribution of wealth and support for vulnerable populations.

Under this executive decree, the Office is entrusted with several tasks related to the management of the Wakfs and Zakat, structured around four main axes for the Wakfs [7]. First, it is responsible for providing public services, thus ensuring transparent and efficient management of Wakfs assets. Secondly, he supervises the commercial activities related to these goods, aiming to optimize their profitability while respecting their religious and social purpose. Thirdly, it contributes to the revival of the Waqfs by encouraging their rehabilitation and enhancement in a contemporary context. Finally, it conducts information and scientific research activities, aimed at deepening knowledge and promoting effective management of Waqfs.

With regard to Zakat, the Office's missions are structured around three main axes [8]. The first axis concerns the provision of public services, including the collection and distribution of Zakat under Islamic principles. The second axis focuses on contributing to socio-economic development, channelling Zakat resources towards projects and initiatives that benefit disadvantaged communities.

Finally, the third axis encompasses scientific and information activities, aimed at raising public awareness of the rules and objectives of Zakat, as well as encouraging research in this area.

The first axis of the Office's mission with regard to Zakat concerns the provision of public services, which entails the systematic collection and redistribution of funds in strict accordance with Islamic jurisprudential principles. This operational framework ensures that Zakat serves as a formal, state-administered mechanism for wealth circulation rather than an informal charitable practice.

The collection process is governed by clearly defined eligibility thresholds and rates, while distribution is targeted to the eight canonical categories of recipients. Consequently, this axis embodies the institutionalization of a religious obligation into a transparent and accountable public utility.

The second axis of the Office's mission is oriented towards socio-economic development, wherein Zakat resources are strategically channeled beyond immediate consumption needs to fund sustainable projects. This approach leverages Zakat as a fiscal tool for poverty alleviation and economic empowerment, focusing on initiatives such as vocational training, micro-enterprise support, and essential infrastructure for disadvantaged communities.

By financing productive assets and capacity-building programs, the Office aims to transform beneficiaries from aid recipients into economically self-sufficient agents. This developmental role highlights the macroeconomic potential of Zakat in mitigating structural inequalities and fostering inclusive growth.

The third axis of the Office's mission encompasses scientific and informational activities designed to optimize the Zakat ecosystem through knowledge dissemination and scholarly inquiry. It involves deploying educational campaigns to enhance public comprehension of the juridical rules, spiritual objectives, and socio-economic functions of Zakat.

Furthermore, the Office promotes multidisciplinary research to quantify the impact of Zakat flows and refine the instruments of its collection and allocation. This axis thus functions as a feedback loop, where heightened public awareness and empirical evidence collectively improve the efficiency and legitimacy of the institution.

In its relationship with Zakat, the Office acts simultaneously as its fiduciary administrator, ensuring collection and distribution in accordance with Islamic

rules, as its strategic investor, directing these resources towards structural poverty alleviation projects, and as its scientific promoter, tasked with deepening knowledge of Zakat and strengthening its legitimacy through research and public awareness.

Second sub-section: The creation of an institution of the fatwa by the Office

One of the innovative aspects of the Decree No. 21-179 is the creation of a body dedicated to fatwa, called "Charaïc instance". Following Article 29 of the Executive Decree, this body has an advisory nature, which means that it does not have decision-making power. Its main role is to issue religious opinions on projects related to the Agency's activities and programmes. The tasks of this body can be summarised as follows:

- Issue a religious opinion concerning the projects relating to the programmes and activities addressed to it by the Director-General of the Office;
- Make commendations on the programme of activities of the Office as well as reports and transmit them to the Director-General;
- Participate in the development of scientific studies aimed at developing and promoting the activities of Wakfs and Zakat.

The Charaic body is composed of nine members, who are [9]:

- A representative of the High Islamic Council;
- Five members from scientific expertise, appointed by the Minister of Religious Affairs and Waqfs;
- Three members chosen from among the secretaries of the scientific councils under the foundation of the mosque, appointed by the Minister of Religious Affairs and Waqfs.

According to this composition, it can be seen that this body is mainly composed of personalities from various bodies. However, it also includes a representative of the High Islamic Council, which raises questions about the relevance of this presence in a body specialized in the fields of Waqfs and Zakat, since the specialization of the Charaic body in these two areas could make the presence of a representative of the High Islamic Council less relevant.

Indeed, the specific skills required to deal with issues related to Waqfs and Zakat could be better mastered by experts directly involved in these areas, rather than by a member of a constitutional institution such as the High Islamic Council.

The Executive Decree also details the modalities of operation of the body, through the rules of procedure, specifying aspects such as the frequency of meetings, the system of deliberations, the quorum required for the validity of decisions, as well as the rules of ethics governing the activities of its members[10].

Theoretically, the periodicity of meetings, as set forth in the internal regulations, guarantees a regular working rhythm that enables the body to fulfil its mission continuously, without excessive interruption or the multiplication of superfluous sessions, thus ensuring the predictability of its functioning and facilitating its coordination with the other services of the public establishment.

The deliberation system organises the proceedings according to precise rules governing speaking order, the examination of cases, and the confrontation of arguments, so that each member may contribute meaningfully and the opinions rendered are the product of a collective, balanced reflection, free from internal power dynamics.

The quorum that is, the minimum number of members required to be present for the body to validly sit constitutes an essential condition for the regularity of deliberations, and combined with attendance obligations and ethical rules relating to impartiality and the prevention of conflicts of interest, it ensures that decisions are taken within a framework that is at once representative, ethical, and legally secure.

The modalities for adopting recommendations and opinions, whether based on a majority vote or on a prior search for consensus, are clearly defined so as to offer full transparency as to how the final position is reached, with the formal recording of any minority opinions completing this mechanism by making it possible to trace the decision-making process and to facilitate subsequent judicial review.

Once approved by the members of the body, the rules of procedure must be validated by the Minister of Religious Affairs and Wakfs,[11] and not by the Director General of the Wakfs and Zakat Office. This procedure underlines the strategic importance of this body and its direct link with the Minister.

However, the decree remains ambiguous as to the competence of the said body to issue religious opinions on new or emerging issues in the fields of the Wakfs and Zakat. This gap raises questions about the capacity of the body to respond proactively to contemporary challenges, particularly about complex or interdisciplinary issues that could require an innovative interpretation of Sharia principles.

A clarification of this point would be essential to allow the body to fully play its advisory role, while adapting to social and economic developments related to the management and exploitation of Wakfs and Zakat.

Second section: Creation of a fatwa institution within Djamaâ El Djazaïr

Before discussing the emergence of the institution of a fatwa within the Djamaâ El Djazaïr (Second sub-section), we will first examine the creation of this new and largest mosque in the Islamic world (First sub-section).

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First sub-section: The creation of Djamaâ El Djazaïr

The conceptualization of Djamaâ El Djazaïr reflects a deliberate institutional strategy aimed at anchoring a contemporary religious landmark within the broader national framework of Islamic affairs.

This project was conceived not as a mere architectural undertaking but as a functional hub integrating spiritual, cultural, and educational dimensions. Its initial formalization required a phased legislative approach in order to establish a solid legal and administrative foundation for the structure.

The preliminary phase involved the creation of a dedicated public entity endowed with the legal personality and financial autonomy necessary to oversee the project's exceptional scale. This institutional precursor was mandated to manage all technical, contractual, and logistical aspects of the construction process. Structuring the project under a distinct public institution ensured operational efficiency and direct state oversight.

The subsequent phase was characterized by the promulgation of a comprehensive corpus of regulatory texts to define the mosque's governance, missions, and operational statutes.

These legal instruments formalized the transition from a construction-focused body to a permanent administration responsible for the site's multifaceted activities. This normative framework was essential to codify the mosque's unique status and integrate its functions into the national religious infrastructure.

We first mention that the creation of Djamaâ El Djazaïr (Algiers Mosque) took place in two stages: the first was to create a Public institution for the construction of the mosque, and the second was to promulgate a large number of regulatory texts relating to this great mosque.

The public industrial and commercial establishment was created in 2005 on the basis of Executive Decree No. 05-137 and is called the National Agency for the Implementation and Management of Djamaâ El Djazaïr[12] under the supervision of the Ministry of Religious Affairs and Wakfs.

To understand the nature and challenges of this ambitious project, it is relevant to refer to Executive Decree No. 06-349 of 2006, which declares the realization of the Mosque of Algiers to be of public utility[13]. This text offers a clear vision of the scale of the project, which covers an area of 20 hectares[14] and includes, in addition to the mosque itself with its iconic minaret, several ancillary facilities[15]. These include a Koranic school, an Islamic cultural centre, an administrative building, and official housing.

It thus appears that the project is not limited to the construction of a mosque as a building with exceptional technical and architectural characteristics, but also includes the construction and management of all the associated infrastructures.

This comprehensive approach aims to make the Mosque of Algiers a leading religious, cultural, and scientific hub, contributing to its ambition to become the third-largest mosque in the Islamic world.

The management of these facilities by the public institution in charge of the project underlines the importance of rigorous coordination between the various aspects of the project, whether religious, educational, cultural, or logistical. This reflects a desire to create an integrated complex, capable of playing a central role in religious and cultural life, while strengthening Algeria's influence within the Islamic world.

Concerning the Agency's relationship with the application of the rules of Islamic Sharia, it is established that the latter are implemented within the framework of the management of real estate and movable property under the jurisdiction of the Mosque of Algiers. Indeed, these goods are considered waqf goods, governed by the Waqf Act of 1991, as amended and supplemented. This application is explicitly confirmed by Article 33 of Executive Decree No. 05-137, mentioned previously.

It should be noted that this approach represents a notable innovation in the Algerian institutional landscape. For the first time, a public institution integrates, in the exercise of its missions, in particular in the field of the organization of the Muslim religion, rules from the Islamic sharia, in addition to positive law.

This approach was also adopted by the Office of Waqfs and Zakat, which instituted a fatwa body, as mentioned earlier, to ensure the conformity of decisions with the principles of Sharia.

During the second phase, a significant number of regulations were adopted to govern the organization and operation of the Mosque of Algiers, taking into account the growing importance of the new structures attached to it.

For this study, we will focus on the most relevant aspects directly related to our subject. It is appropriate, in the first place, to refer to the main decrees recently introduced concerning Djamaâ El Djazaïr[16], namely:

- Presidential Decree No. 22-122 of 17 March, 2022 fixing the organization and management of "Djamaâ El Djazaïr".

- Executive Decree No. 22-160 of April 14 2022 establishing the scientific council of Djamaâ El Djazaïr and fixing its organization and operation.

- Executive Decree No. 22-161 of 14 April, 2022 amending the status of the national agency for the realization and management of Djamaâ El Djazaïr.

- Executive Decree No. 22-162 of 14 April, 2022 establishing the National School of Islamic Sciences (Dar El Coran).

- Executive Decree No. 22-163 of 13 Ramadhan 1443 corresponding to April 14 2022 establishing the Research Center in Religious Sciences and Dialogue of Civilizations.

- Executive Decree No. 22-164 of 13 Ramadhan 1443 corresponding to 14 April, 2022 establishing the library of Djamaâ El Djazaïr and establishing its status.
- Executive Decree No. 22-165 of 13 Ramadhan 1443 corresponding to 14 April, 2022 establishing a national public museum "Museum of Islamic Civilization in Algeria".
- Executive Decree No.22-166 of 13 Ramadhan 1443 corresponding to April 14, 2022 fixing the status of the space of the mosque of Djamaâ El Djazaïr.

The importance of the Algiers Mosque project is highlighted by the regulatory texts promulgated during the month of Ramadan in 2022, as well as by the profile required for its leader, the rector of the mosque. Indeed, the latter must be a national figure, by the provisions of Presidential Decree No. 23-122.[17]

About the current rector, his appointment was formalized by a presidential decree dated 10 March 2022[18]. This appointment took place before the publication of the aforementioned texts, and therefore before the legal existence of the Rectorate. Previously, this rector was a member of the High Islamic Council, but he was removed from office at his request, according to the presidential decree dated 23 December 2022.[19]

Following the presidential decree, the Rectorate is qualified as a Public institution of a particular nature, placed under the direct authority of the President of the Republic. He thus joined another major religious institution, the High Islamic Council.

Generally, the Mosque of Algiers is structured around multiple central institutions: the Scientific Council and the National Agency for the Realization and Management of Mosques. To these are added integrated institutions such as the Higher School (*Dar El Coran*) and the Cultural Center, among others.

This institutional configuration allows the supervision of a public institution, the Rectorate, over a set of public institutions of various categories, as evidenced by the Centre for Research in Religious Sciences and Dialogue of Civilizations, as well as the National Agency.

This method of organizing public administration, specifically related to cults, is another singularity in the Algerian institutional landscape, as it does not find an equivalent in other ministerial departments, according to our knowledge.

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Second sub-section: Fatwa within the institution of the mosque

When we examine the role of the Mosque of Algiers in terms of fatwa, the analysis refers us directly to Executive Decree No. 23-220 relating to the Scientific Council of the Mosque of Algiers.[20] According to this text, the Council is placed under the authority of the dean of the Mosque of Algiers[21], without its legal nature being explicitly defined.

On the other hand, Executive Decree No. 22-160 (repealed) qualified it as a public institution of an administrative nature. Although the new executive decree does not explicitly mention the fatwa, it can be deduced from certain paragraphs of the text, which deal with the powers of the Council and its composition.

About the functions set out in Article 4, the consultative process related to fatwa could be based on two main elements:

1 - To provide consultation for the benefit of state services on matters relating to Islamic Sharia;

2 - To examine any question of a religious or scientific nature which is the subject of a referral.

The existence of fatwa can also be seen through the composition of the Scientific Council. By Article 8, the Bureau of the Council shall be composed of a set of members comprising:

- A representative of the High Islamic Council;
- The chairpersons of the scientific and/or policy-making bodies under the integrated entities and institutions active within Djamaâ El Djazaïr.

Fatwa bodies are recognized to issue advisory opinions in the religious field, under the principles of Islamic Sharia. These opinions are generally not binding, except when the legal text makes it explicit, as is the case in the context of Islamic finance. This particularity was mentioned earlier about the HIC, which sits as a member of the Scientific Council of the Mosque of Algiers.

Members of the Scientific Council also include personalities involved in the fatwa process, including the director of the mosque space, who represents one of the annexed bodies within this institution. It should be noted that the new executive decree removed the provision relating to the composition of the heads of the scientific councils of the foundation of the Mosque.

The research also leads us to a second text relating to fatwa, namely Executive Decree No 23-224, promulgated in 2023[22] amending and supplementing Executive Decree No 22-166 relating to the mosque space. The latter is not qualified as a public institution, but rather a spiritual and religious space that

includes the prayer hall and its annexes, and which is managed by a director under the supervision of the dean of the Mosque of Algiers[23].

While the first decree placed this space under the supervision of the Minister of Religious Affairs and Waqfs, it thus appeared as a separate body from the Mosque of Algiers, and this is perhaps one of the reasons why the ministry reviewed this version a year after its publication in the Official Gazette.

Contrary to what was mentioned previously about the Scientific Council, the question of the existence of a fatwa organ at the level of the mosque space was explicit in the executive decree, because its Article 4 stipulated that one of the attributions of the mosque space is to organize the fatwa, and to distinguish it from the rest of the other missions, it was decided to organize it as a section of the mosque space[24]. In the end, this decree did not specify the areas of the fatwa and its legal regime, although it concerns the third- largest mosque in the Islamic world.

Conclusion

The progressive institutionalization of the fatwa represents a seminal intervention by the modern state to regulate religious discourse and align it with national legal and social frameworks. By establishing official bodies, standardized procedures, and accredited councils, the state has transformed what was once a largely informal, scholarly opinion into a formalized instrument of governance.

This process inherently centralizes religious authority, bringing it under a bureaucratic umbrella to ensure consistency, combat extremism, and foster a unified national religious identity.

From the foregoing analysis, the new orientation of the fatwa body has become clear: it was decided to establish this body within a range of public institution categories.

The initial phase of this initiative was materialized by the Office of Waqfs and Zakat, under the auspices of the Ministry of Religious Affairs and Waqfs, which incorporated a "Charaïc" instance into its structure. Subsequently, other such entities emerged, notably within the Mosque of Algiers.

This institutionalization as a public body grants the fatwa authority both administrative legitimacy and financial sustainability (through Waqfs revenues), setting it apart from traditional informal scholarly circles. By being integrated into the state structure, it acquires official standing, and its opinions tend to carry normative -and at times binding- force for the host institutions. Consequently, its role extends beyond mere consultation to include regulatory and oversight functions, ensuring religious compliance across the organization's activities.

Footnotes:

[1] Given that the rank of a norm is defined in relation to that of its author. See: Denys de BECHELLION, «On the French Conception of the Hierarchy of Norms: Anatomy of a Representation *(French language)* », RIEJ, n° 1, 1994, p.87.

[2] Lahcene BENAMZAL, Tandim esha'air ediniya fi el kanoun el djazairi (*The Regulation of Religious Practices in Algerian Law*), PhD thesis, University of Algiers 1, 2016, p.181.

[3] For further details, see:

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[5] For further details, see: Yves GAUDEMET, Treatise on Administrative Law *(French language)*, V.1, LGDJ, 16 edit., French, 2001, p.309.

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[6] Articles 2 and 3.

[7] Art. 7.

[8] Art. 8.

[9] Art. 30.

[10] Art. 32.

[11] Art. 33.

[12] Executive Decree No. 05-137 of April 24, 2005, amended and supplemented, JO no 30.

[13] Executive Decree of October 5, 2006, amended and supplemented, JO no 63.

[14] Art. 3.

[15] Art. 4.

[16] Published in the JO no 20 and no 28.

[17]Article 7 and 9.

[18] JO no 17.

[19] JO no 83.

[20] JO no 41.

[21] Art. 2.

[22] JO no 41.

[23] Art. : 2, 3 and 5.

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