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Islamic Emirate of Afghanistan

Leadership's office

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In the name of Allah, the most gracious and the most merciful

The decree of Amir al-Momenin (May Allah protect him) regarding dealing with officials and employees of the previous government.

Decree

Following the decree of amnesty, this fatwa concerns the punishment and non-punishment of criminals from the previous corrupt administration, as issued by the scholars and confirmed by the heads of the Supreme Audit Institution. Accordingly, I also endorse the related fatwa. Execute your actions in accordance with this fatwa.

Regards,

Islamic Emirate of Afghanistan

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In the name of Allah, who is kinder and more gracious

Questionnaire

Question: [It is requested] if scholars could provide answers for the following matters:

- 1- After the pardon issued by Amir al-Momenin, may Allah protect him, can the criminals of the previous administration be punished by the Emirate? Can ordinary people punish these criminals?
- 2- Can employees of the corrupt administration who committed crimes before joining it be punished after the pardon? Is there a warranty in place?
- 3- Are employees of the corrupt administration who committed crimes within the same organization now subject to punishment after being pardoned? Is there a warranty in place?
- 4- How are employees of the corrupt administration who committed crimes after its termination punished? Is there a warranty in place?

Answer: Praise and prayer

Regarding the first case, pardoning and providing peace to rebels is similar to granting peace to followers of other religions and Ahl al-Kitab (adherents of the Abrahamic faiths). Anyone can offer them security, and the order of the Imam dictates that if the Imam makes peace or pardons someone, killing, enslaving, or torturing them without a religious reason is impermissible.

However, there are some exceptional cases concerning punishment and bail as follows:

After the forgiveness of Amir al-Momenin, no one is allowed to murder, enslave, or torture these individuals except for legitimate reasons.

في فتح القدير باب البغاة (فروع) ٣٣٠/١٣ :

وإذا امن رجل من اهل العدل رجلا من أهل البغي جاز أمانه؛ لأنه ليس أعلى شقاقا من الكافر و هناك يجوز فكفا هنا. وجاء في الموسوعة الفقهية ١٧٠/٣٧ ط، بيروت. ذهب جمهور الفقهاء رى أنه اذا وقع الأمان من امام أو من غيره بشروطه، وجب عل المسلمين جيعا الوقاء به، فلا يجو قتلهم، ولا أسرهم؛ ولا أخذ شيء من مالهم، ولا التعرض لهم، لعصمتهم، ولا أذيتهم يغير وجه شرعي.

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Answer to the second case: In this situation, if these individuals have committed any crimes, they will not be absolved by the pardon of Amirul Momineen. Instead, they will be punished according to their crimes and may also face repercussions for their actions.

وجاء في البحر ٥/ ٢٣٢ وفي الهداية الباغي:

إذا قتل العادل لا يجب الضمان ويأثم ، في البدائع لا يضمن ما أصاب من دم أو جراحة أو مال ولو فعل شيئاً من ذلك قبل الخروج وظهور المنعة أو بعد الانهزام وتفرق الجُمع يؤخذ به اهـ. وفي رد المحتار ٣/٣٤٢: ٤: طب. وقال أصحابنا ما فعلوه قبل التحيز والخروج وبعد تفرق جمعهم يؤخذون به لأنهم من أهل دارنا ولا منعة لهم كغيرهم من المسلمين، أما ما فعلوه بعد التحيز لأضمان فيه لما بيننا اهـ إلى قوله وما كان قائماً في يد كل واحد من الفريقين للأخر فهو لصاحبه.

Answer to the third case: In the mentioned case, these criminals cannot be punished or granted bail. They are provided with a guarantee of justice and honesty, and if they fail to uphold these principles, they are considered sinners and will face punishment in the hereafter. However, people's property and goods that remain in their possession can be retrieved from them.

في البحر ٥/٢٣٩ ؛ و الحاصل أن نفي الضمان منوط بالمنعة مع التأويل فان تجردت المنعة عن التأويل كقوم تغلبوا على بلدة فقتلوا واستهلكوا الأموال بلا تأويل ثم ظهر عليهم أخذوا بجميع ذلك ولو انفرد التأويل عن المنعة بأن انفرد واحد أو اثنان فقتلوا وأخذوا عن تأويل ضمنوا إذا تابوا أو قدر عليهم كذائي فتح القدير . وجاء في رد المختار ٣/٣٤٢ والحاصل أن نفي الضمان منوط بالمنعة مع التأويل فلو تجردت المنعة عن التأويل كقوم تغلبوا على بلدة فقتلوا واستهلكوا الاموال بلا تأويل ثم ظهر عليهم اخذوا بجميع ذلك ولو انفرد التأويل عن المنعة بأن انفرد واحد واثنان فقتلوا وأخذوا عن تأويل ضمنوا إذا تابوا وقدر عليهم الي قوله قال حمد رحه الله تعالى: إذا تابوا أفتهم أن يغرموا ء ولا أجبرهم على ذلك لأنهم اتلفوه بغير حق فسقوط المطالبة لا يسقط الضمان فيما بينه وبين الله تعالى.

Answer to the fourth case: In this scenario, they are not covered by the amnesty of Amir al-Momenin, and they may face punishment according to their crime with the potential of incurring liability.

وجاء في البحر ٥/٣٣٣ وفي الهداية الباغي:

إذا قتل العادل لا يجب الضمان ويأثم. ولو فعل شيئاً من ذلك قبل الخروج وظهور المنعة أو بعد الانهزام وتفرق الجمع يؤخذ به اهـ وفي درالمختار ٣٣/٤٢: طب. وقال أصحابنا ما فعلوه قبل التحيز والخروج وبعد تفرق جمعهم يؤخذون به لأنهم من أهل دارنا: ولا منعة هم كغيرهم من المسلمين.

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