



**Judicial system of Saudi Arabia and analysis of jurisdiction courts  
of first instance**

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**Judicial system of Saudi Arabia and analysis of jurisdiction courts of first instance**

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**SUMMARY**

The above analysis of the development of judicial system of Saudi Arabia allows authors reflecting the dynamics of the judiciary hierarchy. Particular attention is focused on the jurisdiction of the courts of first instance. The Law on the Justice System of Saudi Arabia (2007) excluded single consideration of petty crimes by kadi. Hence, their consideration was completely transferred to the courts of first instance in a collegiate composition of three kadis. In most countries of the world, consideration of petty crimes has been transferred to the jurisdiction of world courts or magistrates' courts. Therefore, the authors recommend the legislator of Saudi Arabia to return to the system of courts of summary jurisdiction, which provide the consideration of petty criminal cases under simplified legal proceedings.

**Key words:** judicial system, Saudi Arabia, courts of first instance, jurisdiction analysis Muslim law, Sharia, magistrate's jurisdiction.



## **1. INTRODUCTION**

This article considers the ways that would optimize the work of both world and federal judges, settling the number of offenses related to their jurisdiction. The main task, which would have been solved by so doing, is the reduction of magistrate's burden that has greatly increased in recent years.

The scientific novelty of this article is to obtain a knowledge base in the field of magistrate's jurisdiction of Saudi Arabia.

This study is quite relevant and in demand, as it is directly related to the magistrate's activity in the territory of Russia, which has begun 17 years ago in the courts of first instance.

This study is in demand in practical terms, as it helps to intelligently approach the solution of fundamental tasks faced by the current world justice. The results of this study allow objectively assessing the situation and make the right decision on forming the list of offenses attributed to the magistrate's jurisdiction of the Russian Federation.

## **2. MATERIALS AND METHODS**

This scientific article is written using comparative procedural methods of research in relation to the regulatory legal acts of Saudi Arabia, outlines its brief analysis, taking into account all decisions made earlier by the legislator to amend the jurisdiction of the judge of first instance - kadi. For a more complete comparison, the authors cited the kadi's jurisdiction stipulated by the Nizam on the Courts, 1975 and The Saudi Arabian Justice Systems, 2007. To make the comparison, the authors used the works of foreign scientist-processors: Amin S.Kh., Bollantin V.M., Lerrick A., Mian J. et al.

It is noteworthy that the authors chronologically describe the legislative changes in the kadi's jurisdiction prior to 1970 and to the present.

In the process of research, we used the general scientific and special methods of science: observation, comparative, system-structural, structural-forensic, historical method, integrative method and other research methods.

## **3. RESULTS AND DISCUSSION**



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Riyadh was elected the capital of Saudi Arabia. The population of the state amounted to 21.5 mln. people, consisting mainly of Arabs, in 1999. The official language is Arabic. The state religion is Islam.

In the VII century, Islam arose and was formed the Arab Caliphate on the territory of Saudi Arabia. In the XIII century, the Arab Caliphate broke up into separate states. In 1264 the country was conquered by Egypt, and in 1517 it became part of the Ottoman Empire. In 1932, the state's unification was completed by the proclamation of the Kingdom of Saudi Arabia. It is important to note that slavery was abolished in Saudi Arabia in 1952.

Saudi Arabia belongs to unitary states, consisting of 13 administrative districts (provinces).

Saudi Arabia is an absolute theocratic monarchy. The head of state is the King. Saudi Arabia is the birthplace of Islam. Muslim law was not inferior to its role as the main source of law.

Muslim law is one of the main legal systems, its main feature is a close connection with the religious consciousness, moral and everyday prescriptions of Islam. The Muslim-legal science believes that legislation is sent down by Allah, his will is directly reflected in the rules of behavior and should be revealed by lawyers. In this regard, the Muslim jurisprudence defines four sources of law: 1) The Quran - a sacred script, which is a divine revelation transmitted through the Prophet Muhammad; 2) the prophet's Sunnah - the Hadith, i.e. the traditions that convey the prophet's sayings; 3) ijma - the opinion of authoritative lawyers on issues not directly regulated by the Quran and Sunnah; 4) Qiyas - an inference using analogy (Legal Systems of the Countries of the World: Encyclopedic Guide// Edited by Sukharev A.Ya. M.: Norma, 2003).

In the legal sense, the leading formal source of Muslim law was the doctrine (fiqh) - the works of outstanding Muslim lawyers. The Muslim law is often identified with the Sharia. However, these concepts do not exactly coincide, since the Sharia, along with the rules of external behavior, includes religious dogmatists and ethical postulates addressed to the conscience of Muslims.

Before the formation of the Kingdom of Saudi Arabia in 1932, the Muslim law was used as the basis of the legal system of the country, interacting with local customs.



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It should be noted that the current legal system of the country continues to focus on the Muslim law, which is stipulated by the Basic Nizam on Power, according to which the supreme law of the country is the Quran and the Sunnah. It is necessary to distinguish three basic elements of the legal system of Saudi Arabia. The first is the Muslim law, being uncodified it acts in the form of a doctrine. Before the Kingdom formation, the courts were ordered to apply the Hanbalian doctrine (rejects the analogy as a source of law), but they are not currently bound by any specific sense. The second element of the legal system is the legislation that establishes the Muslim legal regulations. The third element is the regulatory legal acts regulating the issues that have not been covered by the Muslim law. These acts are the forms of solving the procedural and organizational issues required for the application of the Muslim law. In the country, the accepted official concept provides that the only lawmaker is the Allah, whose will is expressed in the Sharia (Quran and Sunnah). In addition, the state carries out the norm-setting functions only within its framework. It is for this reason that the legal acts, being in force in the state, are called Nizams, i.e. regulations, and the bodies that receive them are considered to be the regulatory authority (Amin S. H. 1985).

The Nizam action depends on their non-contradiction with the Muslim law. The same approach is applied to the human rights and freedoms. The main Nizam on Authority determines the state's obligation to protect human rights and freedoms in accordance with the Islamic Sharia, and society is built on the basis of strict adherence to the will of Allah, on their mutual cooperation, their close solidarity and prevention of a split between them, which is enshrined in the Quran.

There is a structure designed to monitor the strict observance of the norms of Islamic law in Saudi Arabia. It includes the Council of the Largest Ulama, as well as the Monitoring Committee for the Sharia Observance. The Council of the Largest Ulama is authorized to formally interpret the Muslim law, creating new legal norms in practice (Reshetnikov F.M. 1993).

Criminal law in Saudi Arabia continues to remain uncodified and is applied in the form of a Muslim legal doctrine. The regulatory legal acts adopted by the state bodies operate along with it.



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The Muslim lawyers have developed a classification of offenses based on two criteria: the degree of punishment certainty for the committed offense and the nature of interests and rights violated. Therefore, all offenses are divided into 3 groups. Thus, the first one covers the crimes representing the greatest social danger, encroaching on the "rights of Allah" (the interests of the entire Muslim community), which are punished with a precisely defined sanction - hadd. The second one combines crimes involving fixed punishment (qisas) for the violation of rights of the individuals. The third group covers all other offenses - tazir, which are punished not by a rigidly established sanction and affect both "the rights of Allah" (violation of all religious duties) and the interests of citizens (Ballantyne W. M.1980).

For example, the category of hadd includes such crimes as: adultery, consumption of alcoholic beverages, theft, robbery, apostasy and rebellion. The crimes of the category of qisas (retribution) include: murder and bodily harm with grave consequences. All other offenses are classified as tazir. It is recognized that the state has the right to impose sanctions for the latter category of offenses. This approach allows adopting the modern legislation, with the exception of the first two categories of crimes.

Thus, several Nizams, considered as acts regulating the tazir punishment for those crimes in which the Sharia establishes permanent measures of responsibility, have been adopted in Saudi Arabia. Such Nizams include the liability acts for homosexuality, counterfeiting, commercial abuse and fraud, bribery and forgery of documents.

The criminal law of Saudi Arabia, based on the Sharia law, has spread to non-Muslims, including foreigners.

The penal system includes both the death penalty and corporal punishment.

Thus, corporal punishment is applied for certain crimes of the hadd category (for example, for the consumption of alcohol or drugs, punishments in the form of 80 cane strokes), as well as for the commission of individual crimes of the tazir category according to the provisions of the corresponding Nizams (Lerrick A. and Mian J. 1982).

In addition, it is applied self-harming punishments. Let us note that the commission of theft, which meets all the criteria established by the Muslim-legal doctrine, is punished by cutting off a hand. In the 1960-1980's, this measure was used quite seldom.



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The criminal process in Saudi Arabia is also based on the norms of Islamic law, enshrined by the Nizams. Like the Sharia, these acts do not make a clear distinction between the criminal and civil process. The Nizam on the Courts, 1975, (World Justice: Study Guide .2008), the Nizam on the Sharia Process, 1989, as well as other acts that establish the principles coinciding with the generally recognized democratic bases of legal proceedings (equality of all before the law and the presumption of innocence, imposition of the burden of proof on a plaintiff) are built on the same principle. Let us note one feature of the rules of criminal procedure applied in the country - it is the preservation of the system of formal evidence and private action for certain serious crimes (for example, murder). The testimony and confession of an accused person are important among the evidence (Official web-site of Saudi Arabia Supreme Court. Access mode: <http://www.moj.gov.sa/> Last accessed date: 03.05.2013).

The charge (the claim) should be confirmed by two male witnesses, preferably Muslims, or one man and two women. The Sharia has very strict requirements for the proof of illicit relationships - it is needed the testimony of four male witnesses. The guilt in this case can be proved by the confession of an accused person.

The confession of an accused is also sufficient in the absence of witnesses and other evidence, then the refusal to make a confession at any stage of the trial may lead to the rejection of the hadd punishment.

Until the mid-1970's, the system of Muslim courts had three levels in Saudi Arabia. Thus, the functions of the lower instance were performed by the courts of summary jurisdiction in which the kadi single-handedly examined petty property disputes, personal status matters and minor offenses. There were two appel courts, the jurisdiction of which included: revision of lower court decisions, consideration of real estate disputes and complex criminal cases for serious crimes. The appeal courts are appointed in the composition of three members, however, most cases are considered by the judge alone. It should be noted that the court considered the cases of murders in full force. Decisions of the courts of this instance for the most serious crimes were approved by the Supreme Judicial Council, which performed the functions of the supreme appellate instance.



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Since 1975, a somewhat different judicial system stipulated by the Nizam on the Courts, 1975, has operated in Saudi Arabia. For example, it includes: 1) the courts of first instance consisting of kadi, solely considering marriage and family affairs and minor civil disputes; 2) general courts considering criminal offenses and consisting of three kadi; 3) the Court of Appeal, having chambers for criminal, marital and other matters, and 4) the Supreme Judicial Council, exercising control over all courts and acting as the highest appeal instance, considering the most serious criminal cases. The judges are appointed by the King from among persons having a higher religious and legal education.

It is important to note that at the present stage the Justice System of Saudi Arabia took the place of the Saudi Arabian Judiciary Law by the Royal Decree No. 78 dated October 1, 2007. Article 6 of this Law specifies the creation of courts in accordance with the nomenclature stipulated in Article 9, their merger or division, the determination of their place and subject of jurisdiction, i.e. the jurisdiction of courts, among the powers of the Supreme Judicial Council. Thus, Article 9 (Third Chapters "Courts and Jurisdiction") provides the hierarchy of courts: 1) the Supreme Court, 2) the Appeal Courts, 3) the courts of first instance, which include: a) General Courts, b) Criminal Courts, c) Family Courts, d) Commercial Courts, f) Labor Courts.

Similar to these courts, Article 16 lists the courts of appeal instances. The courts of first instance are mentioned in Section 4 (Article 18 to Article 24). Thus, Article 18 states that the courts of first instance should be established in provinces, circuits and districts as necessary. Article 20 regulates the provisions relating to the Criminal Court, consisting of: 1) Qisas Courts; 2) Tazir Court; 3) Juvenile Court. At the same time, each court consists of three judges (kadi), except in cases determined by the Supreme Judicial Council, which are considered by the kadi alone (Saudi Arabia Code of Civil Procedure 2000/ Access mode: <http://www.track.unodc.org/LegalLibrari/>. Last accessed date: 26.03.2013. Published in official newspaper "Umm al-Qura" №3811 15 of September 2000).

The judges who deal solely with family matters are mentioned in Article 21; the possibility of sole consideration of commercial cases and labor disputes is mentioned in Article 22 (The Code of Criminal Procedure of the Russian Federation. M.:Prospekt,





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2016. P. 23-25.). The function of the Supreme Judicial Council to determine the jurisdiction of criminal cases in the courts of general jurisdiction, subject to consideration by the judge alone, is mentioned in Article 23 of the Saudi Arabian Justice System, 2007.

### **4. CONCLUSIONS**

It should be noted that the jurisdiction of magistrates includes consideration of criminal cases up to 3 years of imprisonment, minor civil cases, as well as cases arising from administrative offenses currently in Russia (The Criminal Code of the Russian Federation. - M.:Prospekt, 2017. P. 84-96, P. 131-137.). However, as stated earlier, the courts of first instance were introduced by the Nizam on the Courts, 1975, in Saudi Arabia, in which the kadi solely considered marriage and family affairs and minor civil disputes. The criminal cases were considered only collectively in the courts, i.e. the court consisted of three kadis. Thus, the legislator has followed a complicated path that does not contradict the requirements of international UN documents. There is only one explanation for this - the level of crime in this Muslim country does not increase, so they can afford collegial consideration of even minor criminal offenses.

### **5. SUMMARY**

However, the world practice, according to which Russia has followed, shows that the countries select the simplified criminal proceedings. This step is forced by the growth of crime in these countries. In this regard, the legislator of Saudi Arabia could be recommended to return to the previous system of courts of the summary jurisdiction, allowing earlier considering the minor civil disputes and petty crimes by the kadi in a sole manner. This approach, of course, would relieve the courts of higher instance for better consideration of more complex criminal cases. Otherwise, the country's judicial system will not be ready to consider a large number of criminal cases collegially.

### **6. ACKNOWLEDGEMENTS**

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