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IN ARAB COUNTRIES***

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***FIQH* AS A SOURCE OF CONTEMPORARY LAW IN ARAB COUNTRIES²**

This article studies the role of Islamic legal doctrine (*Fiqh*) as a source of contemporary law in Arab countries. The continuing Islamization of their legal systems includes the codification of *Fiqh*, which has acquired the role of the material (historic) source of law. *Fiqh* also plays the role of the official (judicial) source of contemporary law in Arab countries. In Saudi Arabia, it is still the primary source of law. *Fiqh* plays an active role as a subsidiary source of contemporary law, above of all, in private law.

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Introduction

Over the course of Middle Ages, the doctrine (*Fiqh*) used to be the only source of Islamic law; it started giving way to legislation in the second half of the 19th century (Layish, 2004:89-91; Schacht. 1959:141-143). The codification of the conclusions of *Fiqh* has had a dramatic impact on modern Islamic law, beginning in the Ottoman Empire where in 1869-1876 they adopted the Mecelle – the major legislative decree in Islamic history using Hanafi *Fiqh* as the material source³. With the collapse of the Ottoman Empire, it was abolished in Turkey but remained in force in a number of Arab countries until the adoption of the new civil codes in 1940-1950.

Islamic legal doctrine as a historical source of modern law

In modern Arab countries, *Fiqh* is especially popular when it comes to elaborating statutory instruments. In many countries, such status of *Fiqh* doctrine is officially recognized. Moreover, the legislations of a good half of these countries proclaim Sharia and its principles as the main source of their legislation. In the course of interpreting certain constitutional provisions, bodies for constitutional supervision in some countries (for instance, Egypt, the United Arab Emirates) conclude that they do not address the court but the legislator. The latter is supposed to bring existing positive law into compliance with Sharia and oversee that the newly adopted laws meet this requirement (Butti, Butti, 1996; Murray and El-Molla, 1999; Vogel, 1999). In other words, the constitutional characteristic of Sharia implies that the material source of statutory instruments cannot contradict imperative Sharia injunctions. In practice, Sharia means *Fiqh*, for example, the memorandum to the Constitution of Kuwait stipulates that in Article 2 by Sharia they mean that *Fiqh* is to be the source of law⁴.

The role of *Fiqh* as the source of modern Islamic law is clear in those Arab countries which Islamized their law. This strategy is often called “the implementation of Sharia by means of *Fiqh* codification”. Libya was one of the first to do so. In October 1971, commissions were organized to verify the legislation and eliminate all the content which contradicted the major principles of Sharia. As a result, they adopted quite a few laws codifying the *Fiqh* norms and institutions⁵.

After the regime change in 2011, the previously adopted Sharia law was not abolished. The Islamization of the legal system in Libya is upheld by the constitution instruments and is clearly

³ See the translation into Russian.: Sharia and the court (property and obligations law). Translation of the civil code applied in the Ottoman Empire (Mecelle). Volume 1-3. Tashkent, 1911-1912.

⁴ See: Administration of fatwas and legislation. Collection of Legislation of Kuwait. P.5.Constitution of Kuwait. Explanatory note and other laws. El Kuwait, 1994. P.59 (Arab.).

⁵ See: the Arab Republic of Libya. Higher and field commissions on reviewing the legislation and bringing it in line with Sharia norms. Documents and research related to Sharia norms implementation. P.1-2. Without place of publication, 1972-1973 (Arab.).

in evidence in state bodies. The 2011 Constitutional Declaration, in accordance with the amendments dated 2015, proclaims Sharia as the source of law and any act or decree in conflict with Sharia norms and aims is null and void⁶.

In fact, the new power in Libya is reorienting the law to be in compliance with Sharia. In particular, they adopted a law on sukuk (Islamic securities) and a law on the protection for public morality which bans all public events (including sport events and artistic events) if they are in conflict with Sharia norms.

The Sharia laws adopted under Muammar Qaddafi's rule on theft and robbery, adulterate sexual relationships, false accusations of such relationships, alcohol, marriage, divorce, testaments, murder and bodily harm, punished by means of diya (compensation) and qisas (*lex talionis* - "an eye for an eye"), were substantially amended. These amendments more consistently codified Sharia in the legislation and eliminated all the deviations from traditional *Fiqh*.

Islamization even touched on the legislation adopted during the previous regime which was not initially impacted by Sharia. For instance, the 2010 code of commerce excluded all the provisions stipulating business interest as Sharia requires. The legislator made an important point on the attitude of the court towards customs. Considering the results of commercial activities, the judge is to apply only conventional customs which are not in conflict with Sharia. Similarly, the 2005 law on civil aviation was amended. Initially it stipulated the validity of the international agreements ratified by Libya. However, at present they are applied only if they do not contradict Sharia norms.

The consistent Islamization of the law affected the criminal code of 1953. In 2016, new articles stipulating the death penalty for apostasy according to traditional *Fiqh* were included. With this provision Libya completed the implementation of all the Sharia and *Fiqh* sanctions in the criminal code.

Fiqh codification is being implemented in other regions of the Arab world. This legal policy is most impressive in Yemen and Sudan. In the Arab Republic of Yemen, even before the union with the People's Democratic Republic of Yemen in 1990 and the establishment of the Republic of Yemen, a scientific corporation on Sharia codification was formed. Its mission was to systemize the rules on issues of secular interrelations provided that they are not in conflict with the provisions of the Quran and Sunnah or the unanimous opinion of *Fiqh* experts. The conclusions were in the form of general imperative legal norms conventional for modern law, avoiding the pluralism typical for traditional *Fiqh* by means of implementing one conclusion on each issue⁷.

⁶Link to the legislation of Libya: <http://www.itcadel.gov.ly>

⁷ See: «Al-Jarida ar-Rasmiyya». Sana, 31.05.1975. P.3-4.

In Yemen the focus on the Islamization of the legislation is becoming more intense. Currently *Fiqh* norms permeate practically all the areas of the law. Since 1990, they have adopted laws on personal status, waqf, zakat, and Islamic banks⁸. This focus also concerns the law on evidence which, for example, stipulates the terms and conditions for the acceptance of testimonial evidence in full compliance with traditional Islamic legal doctrine. Particularly, evidence given by only four men can serve as proof of an adulterate sexual relationship; other crimes such as hudud and qisas are proved by two men. In terms of property disputes, evidence given by two men or one man and two women is accepted. The criminal code of 1994 stipulates certain Sharia sanctions imposed on crimes of hudud and qisas and the criminal procedure code of 1994 stipulates famous *Fiqh* conclusions regarding the imposition and execution of sentences with regard to these offences including corporal punishment and mutilation, financial compensation for murder and physical abuse.

The total inclusion of *Fiqh* provisions in the legislation in Yemen was confirmed by the provisions of the 1992 law on waqf and the 2002 civil code, which say that they are adopted from Sharia norms. The civil code excludes amending or abolishing provisions of any act concerning property relations if this refers to a clearly understood norm directly adopted from the Quran or Sunnah of the Prophet or its replacement by another norm which is in conflict with Sharia principles.

The major codification of conclusions of Islamic legal doctrine can also be observed in Sudan. Radical changes in the legal system started in 1983 with the adoption of a series of laws which codified *Fiqh* conclusions. The criminal code, the criminal procedural code, laws on evidence, appeals to what is approved by Sharia and curtailing what is condemned by Sharia stand out⁹. Later the code of civil relations, laws on zakat and taxes and the first Sudanese law on the personal status of Muslims came into force.

The content of all these acts (decrees) mainly followed the Islamic legal doctrine mainly of Hanafi school. Thus, the 1983 criminal code adopted Sharia charges for hudud and qisas crimes and the criminal procedure code of 1983 introduced mutilation and corporal punishment applied according to the principle of “an eye for an eye”.

Researchers highlight the fact that in 1983, the legal policy in Sudan was drastically directed toward Sharia enforcement by means of *Fiqh* codification (Al-Kabashi, 1986: 13-14). As a result of this almost all the key areas of the law in the country were reoriented. Sudanese law directly acknowledges this. For instance, the 1991 law on the personal status of Muslims mentions

⁸ Link to the legislation of Yemen: <http://www.coca.gov.ye>

⁹ Link to the legislation of Sudan: <http://www.moj.gov.sd>

the Hanafi *Fiqh* school and clearly stipulates that the general provisions are to be interpreted and particularized in accordance with the historical source its content is taken from.

A similar logic permeates the 1983 law on the delivery of judgment, which plays a central role among the Sharia laws adopted in Sudan. This law completed the formation of the legal system based on Sharia; when interpreting the provisions of any legislation the judge is to proceed from the fact that the legislator does not make it a point to violate Sharia, i.e. to prevent the realization of actions set by Sharia or allow taking actions prohibited by Sharia. Together with that, the legislator is supposed to take into account the Sharia injunctions in terms of the actions recommended and condemned. Simultaneously, the judge's interpretation of the generalizing and evaluative injunctions of the law is to conform to the norms, principles and common spirit of Sharia. The judge is to interpret all legal terms and expressions in the sense of the methodological and linguistic rules elaborated in *Fiqh*. This orientation relates the interpretation of positive law and legal practice by the court in general to Sharia without which it is impossible to grasp the purview of any law. Therewith, the position of *Fiqh* as the material source of the contemporary Islamic law obtained additional normative consolidation.

The Islamization of the law referring to *Fiqh* as the material source of law is taking place in other countries as well, though on a more modest scale. In Egypt, since the 1960s there have been working commissions on bringing the law into line with Sharia. Such work intensified in 1980 – they made amendments to the constitution in accordance to which Sharia principles were proclaimed as the major source of the law. The supreme constitutional court concluded that any new law adopted could not be in conflict with principles which are the stipulations of Sharia and general principles of *Fiqh*¹⁰.

Accounting for this requirement, by 1982 the Egyptian parliament had introduced drafts of the codes of civil relations, maritime commerce, laws on evidence and lawsuits, the criminal code and the code of commerce. In parliamentary sessions, they highlighted the fact that the provisions had been directly loaned from Sharia or worded based on its norms and initial values. Herewith, all articles of the legal drafts were backed by references to Sharia injunctions so that when interpreted, they could easily refer to the *Fiqh* sources¹¹.

Kuwait has implemented a special institution elaborating projects on the Islamization of the law. In 1976, the government decided to modify the legislation in accordance with Sharia norms (As-Sabah, 2000: 317-324). In 1991, the Kuwaiti emir established the High Consulting

¹⁰ See: The Arab Republic of Egypt. Supreme Constitutional Court. Cairo, 1987.P. 215-224 (Arab.).

¹¹ See: the Arab Republic of Egypt. People's Assembly. Sharia norms codification Commission. Appendix № 16. Draft of the code of civil relations. Cairo, 1982. P. 3 (Arab.).

Commission on Sharia enforcement¹². Its functions are to revise the legal acts in force and make suggestions in respect to bringing the whole legislation in line with Sharia.

The result of the work of the commission was that by the end of 2017 they had made dozens of suggestions to change and amend Kuwaiti legislation. Notably, these new laws are grounded in the conclusions of Islamic legal doctrine. For instance, suggestions to amend a series of articles of the 1980 civil code are backed by references not only to provisions of similar codes of the United Arab Emirates and Sudan but also to the works by high-profile Muslim lawyers.

Regardless of the scale of *Fiqh* codification in modern Arab countries there is a common trait – the consistent orientation of family law and other institutions of personal status to Sharia injunctions. In all these states, apart from Saudi Arabia, this area is represented by laws stipulating Sharia norms. Islamic legal doctrine is its material source. In most cases they focus on the interpretation of *Fiqh*. It is not uncommon that this law accepts the conclusions of different *Fiqh* schools which better meet the interests and conditions of a certain country. For instance, the 1984 explanatory note to the law on personal status in Kuwait is filled with references to works about Maliki *Fiqh*, which prevail in Kuwait, and its other directions as the material source of this legislative act¹³.

The unique feature of the 2017 family code of Bahrain is that it is applied both to Sunnis (mostly Malikites) and Shiites (Ja'farites)¹⁴. Apart from the common norms, this act stipulates various regulations on certain issues for adepts of both branches. This feature confirms the fact that the material source of this law is *Fiqh* for both; any amendments are possible only with the involvement of experts representing both the Maliki and Ja'fari *Fiqh* schools.

The 2005 law in the United Arab Emirates directly states that Islamic legal doctrine is the material source of the legislation on the issues of personal status¹⁵. According to the law, when interpreting its articles, it is necessary to address that type of *Fiqh* they are adopted from.

The orientation of the law in Arab countries to the provisions of the Islamic legal doctrine is obvious in one common trend – the legislative recognition of its principles. Many of them are included in the civil codes of Sudan, the United Arab Emirates and Yemen, the laws on evidence of Iraq and Sudan, and the law on personal status of Muslims in Sudan. The principles equal to the Sharia injunctions were elaborated by Islamic legal doctrine (Az-Zuhaili, 2006). Thus, their legal recognition should be considered as an important pattern of how *Fiqh* fulfils the role of the material source of contemporary law.

¹²Documents and the materials of the Commission: [http:// www.sharea.gov.kw](http://www.sharea.gov.kw)

¹³ Link to the legislation of Kuwait: [http:// www.e.gov.kw](http://www.e.gov.kw)

¹⁴ Link to the legislation of Bahrain: [http:// www.legalaffairs.gov.bh](http://www.legalaffairs.gov.bh)

¹⁵ Link to the legislation of the UAE: <http://www.moj.gov.ae>

Some countries use other forms to restrict the regulatory activity of the state by Sharia. For instance, according to the 1973 law on the supreme court of the United Arab Emirates, this body applies the laws which comply with Sharia norms. In Saudi Arabia there are nizams (regulations) on power, justice, Sharia (civil) and criminal proceedings containing similar provisions¹⁶. In accordance to them, the courts apply the acting nizams which are not in conflict with the Quran and the Prophet's Sunnah and the authorities of the Supreme Court of the Kingdom oversee the application of the acts meeting this requirement. It is demonstrative that the nizams on criminal proceedings say that procedural actions are invalid if the nizams extracted from the Sharia norms have been violated.

In other words, in the United Arab Emirates and Saudi Arabia they recognize only those normative legal acts which are not in conflict with Sharia. It is obvious that *Fiqh* is viewed as the material source only of those that follow the conclusions of Islamic legal doctrine. They even impose special requirements on the material source of the legislation elaborated without any direct address to *Fiqh* provisions, though not in conflict with it. The content of the adopted normative legal act must not contradict the provisions of the Quran and the Prophet's Sunnah. Since such injunctions are determined by *Fiqh*, they should be viewed in conjunction with the material source of the law specified.

In this connection, in Saudi Arabia they do not use the terms "law" and "legislation" in the official documents as the former in Arabic is translated by the loaned word "canon" which is associated with foreign influence and the latter has the same root as the term "Sharia". It is considered that the only legislator in terms of accuracy is Allah and the law is Sharia (Al Duraib, 1984: 245-251). This concept proceeds from the premise that the state is not a legislative but a regulatory authority as it can introduce norms only within the frameworks of Sharia in order to specify and implement its provisions. In Saudi Arabia, for this reason, high-level normative legal acts are called nizams, i.e. regulations (Hanson, 1987: 289). It is no coincidence that the major nizam on power dated 1992 says that the Quran and the Prophet's Sunnah are the Constitution of the Kingdom. They prevail over this act and other nizams in the country.

***Fiqh* as the legal source of the contemporary law**

The meaning of Islamic legal doctrine is not reduced to serving as the original material the legislator applies to when elaborating normative legal acts. In modern Arabic countries, *Fiqh* is often applied directly as the legal source of the law on practically all levels of the legal system where the Islamic law is in force.

¹⁶ Link to the normative legal acts of Saudi Arabia: <http://www.boe.gov.sa>

In contrast to the Middle Ages, the status of *Fiqh* as a legal source is today recognized legally and worded in different ways. This is common when normative legal acts refer to Sharia in general, to its principles and norms which are to be implemented as the legal source overall or in terms of specific issues. There is also a direct link to a certain school of Islamic legal doctrine and its interpretation on which the law is based. Eventually, the concrete works of some Muslim legal experts are recognized as a legal source. .

The legal system of Saudi Arabia is unique in this respect. The state legal policy stems from the fact that the negative consequences of total *Fiqh* codification outbalances its positive results. Eventually, the country still has no criminal, civil and family codes or other laws. Moreover, in the system of legal sources of positive law in the Kingdom, the priority is given to *Fiqh* doctrine not the acts.

The normative consolidation of certain sources of *Fiqh*, which law enforcement bodies use for reference, is a distinctive feature of the legal system in the Kingdom. In 1928, the supreme judicial authority decided that courts were to apply the conclusions of Hanbali, although in certain cases conclusions of other *Fiqh* schools could be applied. They also specified the authoritative works by some Hanbali legal experts and set the order of applying to them when making court decisions¹⁷.

The legislation of other Arab countries also recognizes *Fiqh* as the legal source of the law. Primarily, this refers to the legal regulation of relations of personal status. For instance, in Sudan, before adopting the law on personal status of Muslims in 1991, according to the 1983 code of civil procedure they applied the conclusions Hanafi *Fiqh* to such issues. In accordance with the 2006 family code of Qatar, Muslims who do not follow the prevailing Hanbali school of Islamic legal doctrine in respect to family issues apply the provisions of the *Fiqh* they follow¹⁸. A similar provision is stipulated in the 1984 law on personal status in Kuwait - the only difference is that it mentions not Hanbali but Maliki *Fiqh*. Together with this, the 1980 civil code of the country stipulates that Sharia norms were to be applied in terms of inheritance and testament.

The 1984 law on personal status contains direct or indirect references to *Fiqh* in respect to certain issues. It recognizes testament valid if it is not connected with committing a sin and the testator's motives are not in conflict with Sharia. The testament left by a non-Muslim is recognized on condition that it is not prohibited by Sharia. The conditions included in the testament are not to be in conflict with Sharia. It is obvious that the implementation of such provisions of the law is impossible without referring to *Fiqh* as the legal source.

¹⁷See: Justice in the Kingdom of Saudi Arabia. History, institutions, principles. Without place of publication, 1419 Hijra.P.68-69 (Arab.).

¹⁸ Link to the legislation of Qatar: <http://www.almeezan.qa>

The peculiarity of the 2017 family code in Bahrain, as noted, is the legal recognition of two types of *Fiqh* (Maliki and Ja'fari). This is reflected in the status of the doctrine as the legal source. For instance, according to this act, the validity of marriages is determined in compliance with the *Fiqh* schools specified. The same relates to the consummation of marriage. It is also stipulated that in terms of inheritance, testament, granting and waqf, they apply the conclusions of the *Fiqh* the testator, grantor, and waqf founder follow.

The role of *Fiqh* is also the legal source for contemporary criminal law in Arab countries. This principle is recognized by the criminal codes of the United Arab Emirates and Qatar. The legislation stipulates that as far as hudud and qisas crimes are concerned, Sharia norms are to be applied. In Qatar, they specify the list of crimes in the law, while the criminal code of the United Arab Emirates does not provide the list of such crimes. They address the *Fiqh* conclusions in order to specify the crimes and the sanctions. Court sentences are based on the authoritative works of Maliki Islamic legal doctrine.

This approach can be compared with the experience of Sudan where the 1983 criminal code stipulates Sharia punitive measures for certain crimes of the hudud category but also allowed the application of such sanctions for other types of crimes. On these grounds, in 1995, the court passed the death penalty for apostasy which was not directly mentioned in the code (Al-Kabashi, 1986: 80-91).

In some countries the provisions of Islamic legal doctrine refer to public order. Libya is a good example in this respect. The 1954 civil code (amended in 2016) referred the established and clearly understandable Sharia norms, based on the Quran and Sunnah, the unanimous opinion of high-profile Muslim legal experts or *Fiqh* principles, to public order. In accordance with the 1985 code of civil relations in the United Arab Emirates, public order comprises legal regulations concerning personal status, the basis of power, the freedom of trade, the turnover of resources, private property and other basic functions of society which are not in conflict with Sharia norms and common principles. According to the 1984 provision on personal status in Kuwait, Sharia norms touching upon the key issues of personal status are elements of public order. Such injunctions make the understanding of the latter dependent of the provisions of *Fiqh*, turning them into the legal source of law.

We cannot neglect the specified role of *Fiqh* when interpreting contemporary law in Arab countries. Particularly, the 1991 law on personal status of Muslims in Sudan stipulates that its provisions are interpreted and specified based on the primary (historical) source of the act – the Hanafi *Fiqh*. In accordance with the 2005 law on personal status of the United Arab Emirates, in order to understand the sense of its articles and their interpretation one should address the basic principles of *Fiqh*. The 2001 law on personal status in Mauritania stipulates its interpretation

according to the provisions of Maliki *Fiqh*¹⁹. According to the 1959 law on personal status in Iraq when applying its provisions, courts are to address the norms formed in the course of justice and set by *Fiqh*²⁰.

The 2002 civil code in Yemen proclaims *Fiqh* as the source of the interpretation of legislative texts and according to the 1985 code of civil relations in the United Arab Emirates *Fiqh* norms and principles are to be referred to when interpreting the content of the code. The 2013 code of civil relations in Oman contains a similar provision according to which when interpreting its provisions and grasping their sense one should refer to the principles and basics of *Fiqh*²¹. In accordance with the 1996 law on Islamic banks in Yemen, the interpretation of any legislative provisions concerning such banks is not deemed to contradict Sharia norms. Finally, the 1953 criminal code of Libya (amended in 1996) stipulates that all legislative provisions referring to hudud and qisas crimes are interpreted according to the mode of *Fiqh* which is the softer in a certain situation.

***Fiqh* as a subsidiary source of law**

In modern Arab countries, Islamic legal doctrine is the subsidiary source of law. First of all, it is typically the basis for laws on personal status and family. For instance, the 2000 law on the regulation of certain issues of personal status in Egypt and the 1991 law on the personal status of Muslims in Sudan stipulate that in default of legal norms the court applies the conclusions of Hanafi *Fiqh*. A similar law in Mauritania, dated 2011, refers the court to the provisions of Maliki *Fiqh*; the family code in Morocco²² orientates the court to the views of the same school of Islamic legal doctrine on condition that the values of Islam, justice, equality and support of family relations in Sharia injunctions are realized. In Kuwait, the 1984 law on personal status refers to Maliki *Fiqh* in default of the norms required, but it simultaneously stipulates that if they are absent other provisions of this school should be applied. When they are not found, the court is referred to the common principles of the school.

The role of the subsidiary source is often attached to not one, but several schools of Islamic legal doctrine. In particular, according to the 2005 law on personal status in the United Arab Emirates, decisions should be searched for consistently in the Hanbali, Shafi'i and Hanafi *Fiqh*. The 1974 law on marriage and divorce in Libya (amended in 2015) says when certain norms are

¹⁹ Link to the legislation of Mauritania: <http://www.justice.gov.mr>

²⁰ Link to the legislation of Iraq: <http://www.arb.parliament.iq>

²¹ Link to the legislation of Oman: <http://www.omanlegal.org>

²² Link to the legislation of Morocco: <http://www.justice.gov.ma>

absent, the court decision is to be made in accordance to the recognized types of *Fiqh* largely corresponding to the content of this act.

The legislation on personal status in some Arab countries recognizes certain *Fiqh* schools, *Fiqh* as a whole and even Sharia as the subsidiary source of law. For instance, the 2010 law on personal status in Jordan²³ guides the court to the conclusions of the Hanafi interpretation of Islamic legal doctrine and in its absence to the norms of *Fiqh* most corresponding to its content. The 2006 family code in Qatar, in the absence of a norm, refers to the preferable opinions of Hanbali *Fiqh*, if the court does not deem it necessary to base its choice on another provision. If the school does not have any corresponding rule, the court is entitled to refer to the most acceptable solution from any of the four Sunnah schools. However, if this is impossible, the code demands the implementation of common *Fiqh* principles. The 2017 law on family in Bahrain is similar; if the required norm is absent, with regard to Sunnis the court takes decisions based on Maliki *Fiqh* and if they are absent according to the standpoints of other Sunnah interpretations. Regarding Shiites, they apply the provisions of the Ja'fari school of Islamic legal doctrine. If this is impossible, the court is to make a decision according to general the principles of *Fiqh* and Sharia injunctions.

The 1959 law on personal status in Iraq, in case of default, does not refer to *Fiqh* at all and as the subsidiary source it mentions the Sharia principles most corresponding to the sense of its text. In Yemen, there is a broader solution to this issue. The law on personal status obliges the judge to apply the most convincing sources of Sharia. Finally, the 1984 Algerian family code determines the subsidiary source to the full²⁴. In the absence of a norm, Sharia norms are to be applied without any specification.

The civil codes of practically all Arab countries recognize the status of *Fiqh* or Sharia as the subsidiary source of this legal area. In particular, the civil codes of Libya, dated 1954; Sudan, dated 1984; and Yemen dated 2002 are deeply affected by the Islamic stipulation that courts are to apply the general principle of Sharia in the absence of the required norms. According to the act in Yemen, other subsidiary sources (for example, customs) can be applied only if they are not in conflict with the principles specified. By Sharia or its principles, they mean the conclusions of *Fiqh*. The 1985 code of civil relations of the United Arab Emirates testifies to this as an example of adopting Sharia norms. It says that if the court does not find the Sharia norm, it applies Sharia on condition of choosing the most acceptable solution from Maliki and Hanbali *Fiqh*. In the absence of the conclusions required, the court refers to the opinions of the Shafi'i and Hanafi

²³ Link to the legislation of Jordan: <http://www.moj.gov.jo>

²⁴ Link to the legislation: <http://www.joradp.dz>

schools of Islamic legal doctrine and the choice between them is dictated by the interests of the settlement of the dispute.

Sharia and *Fiqh* are recognized as the subsidiary source of the civil law in countries where the respective legislation is minimally affected by Islam and keeps to the European tradition. This provision is stipulated in different forms. For instance, the civil codes of Egypt, dated 1948; Syria, dated 1949; Algeria, dated 1975; and Qatar, dated 2004 refer to Sharia principles in the absence of the required norm. The law in Iraq clarifies that in the absence of the required norm, the courts should apply the Sharia principles which best correspond to its content with no mention of a particular *Fiqh*. The 2001 civil code of Bahrain recognizes Sharia as the subsidiary source, taking into account the situation.

Islamic legal doctrine is represented in other spheres of life and institutions, particularly, in trade, taxation, criminal and procedural laws. The legislation of Libya is a good example, changing in proportion to the Islamization of the legal system. This found its way into the recognition of the status of *Fiqh* as the subsidiary source of law. The 1972 law on waqf refers to the preferable opinions of the Maliki school. Adopted in 1972-1974 the laws on imposing Sharia sanctions for theft, banditry, alcohol consumption and false accusation of sexual intercourse out of wedlock initially stipulated a similar rule. However, in 1975, a special law changed this formula and referred to the famous provisions not of Maliki but most acceptable type of *Fiqh*.

A similar provision was stipulated from the very beginning in the law on punishment for sexual intercourse out of wedlock (dated 1973) and later it was included to other laws. In particular, the current law on the punishments for theft and banditry applying Sharia sanctions dated 1996 (amended 2016) obliges the court to apply conclusions of more acceptable type of *Fiqh* in the absence of the required norm. The 1994 law on qisas and diya (financial compensation for murder) is an interesting example. Initially, the law recognized Sharia principles and norms most fully conforming to its content as the subsidiary source. However, in 2016 this provision was altered. Nowadays in the absence of the required norms the court applies the Sharia norms set by the most acceptable interpretation of the Islamic legal doctrine.

Trade, taxation and procedural legislations in other Arab countries demonstrate recognition of Islamic legal doctrine as the subsidiary source of law. Particularly, the 1991 code of commerce in Yemen and the 1999 law on zakat, in the absence of norms, refers the courts to Sharia norms. The 1992 law on waqf refers to more authoritative sources of Sharia. In the United Arab Emirates, the 1992 law on evidence for civil and trade issues literally reproduces the provision of the 1985 code of civil relations. If the court does not find the required rule, it is to apply most acceptable solutions of Maliki and Hanbali *Fiqh*. In the absence of the required conclusion there, the court

refers to the opinions of the Shafi'i and Hanafi schools of Islamic legal doctrine meeting the interests of the settlement of the dispute.

Conclusion

Finally, let us address the Sudanese practice. Sudan is the only Arab country where *Fiqh* is recognized on the level of the whole legal system of the country. According to the 1983 law on delivering judgments, in the absence of the required legislative norm on any issue except for criminal cases, the judge is to apply the Sharia norm set by the Quran and the Prophet's Sunnah. In the absence of such texts, the judge is to lay down the rule keeping to common Sharia norms and principles, an analogy based on Sharia norms, the aims of Sharia meeting the interests of the case, preventing damage, the presumption of "non-burdening" with civil liabilities and permissibility in terms of temporal affairs as well as following the conclusions with regard to *Fiqh* and its principles made by legal experts.

These examples allow us to conclude that nowadays Islamic legal doctrine has a high profile as the source of law in Arab countries. This role of *Fiqh* shows an important aspect of contemporary Islamic law as an independent legal system.

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