

## ORIGINAL ARTICLE

### Functional Specialization for Judge of Grievances in Islamic Law, Jordanian Law and Saudi Law

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#### ABSTRACT

This article compares and discusses the Functional specialization for judge of grievances at the Fifth century AH (at the Abbasi era) with the Functional specialization for judge of grievances in Jordanian Law and Saudi Law in current era. It searches for the extent to which the Jordanian and Saudi Laws achieves the same role which was achieved and applied in Abbasi era in this regard. This study is selected because of its importance in our life whereas any maltreated person should know the functional specialization for judge of grievances and, accordingly, know when he can resort to this judicature instead of the normal judicature. This study depends on qualitative methodology where the viewpoints of jurists are collected and the legitimate bases on which their opinions are built. It depends also on analytic methodology by analyzing the legal articles and the collected viewpoints. Besides that, the study depends on quantitative approach by referring to grievances courts, search in the files and doing Interviews with the specialized persons. The conclusion of this study is that the functional specializations for judge of grievances in the Abbasi era were wider and more comprehensive than those in Jordanian and Saudi Laws. Also, the Abbasi judge had position and status stronger than the position and the status of the current judge in Saudi Arabia and Jordan.

**Key words:** Specializations, judge, grievances, Islamic, law.

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#### Introduction

Judiciary is divided, in Islamic jurisprudence, into three sections; the normal judge, grievances judge and *Al-Hisbah* judge. The grievances judge had important role in Judiciary, and the Abbasi state had prominent role to create and develop this section of judiciary. The successive orders of Muslim Caliph and the social reality which was prevalent in the Abbasi era specified the functional specializations for the judge of this section of judiciary. Thus, the judge of the grievance became competent to judge in the disputes which happen between normal individuals and the legal person who belongs to the state. This study will make comparison between the specializations of judge of grievances in Abbasi era and what is applied in Jordan and Saudi in the current era. This comparison may lead to specify if the specializations of judge of grievances in Jordan and Saudi in this era agree or disagree with that in Abbasi era.

*Specializations of judge of grievances in jurisprudence in Al-Abbasi era:*

The specializations of the judge of grievances in Al-Abbasi era is classified into three categories:

The first category: grievances which happens as a result of the public authority behavior. This behavior is divided into two sections. The first one happens when the judge resists the grievance without claim, i.e. when he decides to achieve justice in a specific case without litigation. The second section happens when the judge resists the grievance when one of the parties claims.

The first section contains five cases:

- A. When the rulers assault on the rights of their citizens arbitrarily
- B. When the employees of the state assault on the rights of the citizens
- C. When the solicitors who belong to the state assault on the rights of the citizens

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- D. Supervision on endowments
- E. Grievances which is originated from Sultan power

The second section contains grievances of the employees and workers toward their supervisors.

The second category refers to disputes which belong to jurisdiction of public judiciary. It contains reviewing the manner in which the judicial decisions are carried out. It contains also judgment between conflicting parties.

The third category is specialized to hear non-judiciary actions. It contains worships such as Pilgrimage, jihad and others.(Al-Mawerdy, 1985.Alfaraa, 1983).

#### *Position of law:*

Jordanian GrievanceLaw regulates the functional specialization of judge of grievances in Article 12 which provides: "the boardof grievances conducts the following: A) to hear and decide in the claims which relate to decisions, procedures, practices and acts which are issued from the public department or its belonging employees. B) To recommend and simplify the administrative procedures in order to enable citizens to benefit from services which are provided by the public department. This should be done actively and simply through litigations", (Jordanian GrievanceLaw of 2008).

Additionally, Article 19 of this law provides: "the chief is authorized to study any subject relates to any decision issued by public department, or its procedures, or its practices. He is also authorized to dispatch recommendations in this regard to the department and to embody it in the annual report which is issued according to the rules of this law", (Jordanian GrievanceLaw of 2008).

These Articles show that the specializations of the judge of grievances in Jordanian GrievanceLaw are wide to include some specializations of judge of grievances in jurisprudence. Nevertheless, there are some specializations regulated in jurisprudence but not regulated in Jordanian Law. These specializations are: the disputes which are covered by public judiciary and the disputes which are not heard by judiciary but by other authorities.

At the same time, Jordanian GrievanceLaw agrees with Islamic jurisprudence in the point which renders the grievances judge is competent to hear the disputes in which the state is a party. Thus, the judge looks at the extent to which these grievances agree with the rules of jurisprudence. Despite that, this agreement is incomplete. This is because when the judge looks at the grievances in which the state is party, he is bound to do that in the light of the rules Jordanian Law which differ from the rules of Jurisprudence in this regard. This incompleteness picks holes in Jordanian Law because this Article in Jordanian Grievance Law is not consistentwholly with Islamic jurisprudence, i.e. Jordanian Law in this regard agrees partly, but not wholly, with Islamic jurisprudence.

In respect of Saudi Law, this law regulates the functional specializations of grievance board in Article 11 which provides: "the high administrative court is competent to look at the objections of decisions which are issued from the administrative appellant courts if the objection relates to:decision disagrees with the rules of Islamic law, decision disagrees with the rules of systems agree with Islamic law, decision applies or interprets the rules of Islamic law wrongly including contradiction with judicial principle approved by the high administrative court, decision issued from incompetent court, decision issued from a court which is formed illegally or if there is wrong in adaptation or description of the event". (Saudi Grievances Law of 1428 AH).

In addition, Article 13 of Saudi GrievanceLaw provides: "a. Cases related to the rights provided for in the civil and military service laws and pension laws for government employees and hired hands, and independent public entities and their heirs and claimants; b. Cases of objection filed by parties concerned against final administrative decisions where the reason of such objection is lack of jurisdiction, a deficiency in the form, a violation or erroneous application or interpretation of laws and regulations, or abuse of authority including disciplinary decisions and other decisions issued by semi-judicial tribunals and disciplinary boards and decisions issued by public profit societies and the like related to their activities. It is considered as anadministrative decision the rejection or refusal of an administrative authority to take a decision that it should have taken pursuant to laws and regulations; c. Cases of compensation filed by parties concerned against the government and independent public corporate entities resulting from their actions; d. Cases filed by parties concerned regarding contract-related disputes where the government or an independent public corporate entity is a party thereto; e. Disciplinary cases filed by the concerned agency;69 f. Other administrative disputes and g. Requests for the enforcement of foreign judgments and foreign arbitrators' judgments." (Saudi GrievanceLaw of 1428 AH).

Thus, these Articles show that the functional specializations of grievances judge in Saudi state are wide to include a lot of the functional specializations of grievance judge in Islamic jurisprudence. Despite that, there are some jurisprudential specializations not regulated in Saudi Law such as the disputes which are heard by public judicature and the disputes which are not heard by judicature, but by other authorities.

On the other hand, it is clear that Saudi Grievance Law agrees with Islamic jurisprudence in the point that the grievance judge is competent to hear the disputes in which the state is a party. The judge here looks at the extent to which the grievance is consistent with the rules of Islamic jurisprudence. Nevertheless, this agreement is incomplete. This incompleteness picks holes in the Saudi Grievance Law because Article 14 of this law prevents grievance judge to decide in the actions which are done by the administration and relate to sovereignty. This Article provides: "The courts of the Board of Grievances may not hear requests related to sovereign actions or objections filed by individuals against judgments or decisions issued by courts or legal panels which are not governed by this law and whose judgments fall within their jurisdiction or related to decisions issued by the Supreme Judicial Council and the Administrative Judicial Council", (Saudi Grievance Law of 1428 AH). Thus, the provision of this Article contradicts the previous Article obviously.

Accordingly, it can be concluded that the Saudi Law agrees with Islamic jurisprudence in several points and contradicts it in other points, i.e. the Saudi Grievance Law agrees and, at the same time, disagrees with Islamic jurisprudence.

#### *Conclusion:*

The study shows that the functional specializations of the judge of grievances in Al-Abbasi era agree with Islamic jurisprudence. Rather, they are derived from it. Meanwhile, Saudi and Jordanian Grievance Laws disagree with Islamic jurisprudence in some functional specializations of the judge of grievances. At the same time, it is clear that Saudi Law is closer to Islamic jurisprudence than Jordanian Law.

The study also shows that Islamic jurisprudence authorizes the judge of grievances broad specializations that are not given to the normal judge. But Saudi and Jordanian Laws limit these specializations and give the judge less power than that given to him in Al-Abbasi era.

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