

## СРАВНИТЕЛЬНОЕ ПРАВО

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**Judge requirements and ethical issues  
in the Cooperation Council  
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This paper examines the core sources governing judicial ethics in the Cooperation Council for the Arab States of the Gulf (GCC), primarily in the United Arab Emirates (UAE), taking into account mixed nature of its legal system, comparing to the Kingdom of Saudi Arabia (KSA) with its more religious approach and the State of Qatar with a manifested democratic one. On grounds of the analysis and systematization of the regulatory framework, a study was conducted in accordance with the current state of affairs regarding qādi qualifications in Arab countries and summarized in a table. The ideological differences in Islam are also taken into account through the study of the opinions of authoritative mujtahids and the works of foreign scholars. The authors have analyzed Islamic doctrine and compared it with the current Emirati, Saudi and Qatari legislation regarding the requirements for judge (qādi). The United Arab Emirates federal laws and decrees more precisely elaborate teachings and modify specific evaluative concepts. They also provide more lenient rules, despite the predominance of Mālikī and Hanafī madhabs. The authors also note the more detailed regulation of the disciplinary and criminal responsibility of judges and slight changes in relation to the observations indicated in the Reports of the Special Rapporteur on the Independence of Judges and Lawyers No. A/HRC/29/26 2015 in UAE and Qatar. The Kingdom of Saudi Arabia and Qatar has more similar, but rigid regulation due to one madhab domination (Hanbali). The issue calls for the

revision of a number of laws that are examined in detail, since the implementation of them causes inequality that deems to be fought against.

*Keywords:* Saudi Arabia, the United Arab Emirates, Qatar, qādi, Islamic law, Shari'ah, judge requirements, judicial ethics, Gulf Cooperation Council.

## 1. Introduction

The United Arab Emirates (UAE), the State of Bahrain, the Kingdom of Saudi Arabia (KSA), the Sultanate of Oman, the State of Qatar and the State of Kuwait are the members of Cooperation Council for the Arab States of the Gulf (GCC). In this article authors are going to review the current affairs as to judge requirements, conditions and ethical issues primarily in the UAE, the KSA and Qatar with some references to the rest.

Pursuant to Art. 94 of the Constitution of the United Arab Emirates of 18.07.1971 (amended by Law No. 1 of 10.02.1972, Law No. 1 of 26.11.1976, Law No. 2 of 28.11.1976, Law No. 1 of 07.11.1981, Law No. 1 of 15.10.1986, Law No. 1 of 28.10.1991, Law No. 1 of 02.12.1996, Law No. 1 of 10.01.2004, Law No. 1 of 10.02.2009)<sup>1</sup> (the UAE Constitution) and Art. 1 of the Federal Law No. 3 of 26.05.1983 concerning the federal judicial corps (amended by Federal Decree-Law No. 18 of 29.08.2019)<sup>2</sup> (FL No. 3 of 1983) the judges are independent and rely on Shari'ah, law and their own beliefs. Article 7 of the UAE Constitution states that the source of the law is Shari'ah, so the Islamic teachings must be considered. The research interest lies in the following ground. The UAE hosts around 200 nationalities and Emirates constitute a roughly small part of population, in particular 11,6 % in 2022<sup>3</sup>. The number of Russian-speaker migrants has already reached around 100 000 in 2019<sup>4</sup>. The high migration flow calls for adaptations, although Shari'ah is supposed to prevail. Examining models governing ethics of judges may help elaborate the way judge are to treat litigants, inter alia dhimmi or mu'ahid (معاهد) or non-Muslims.

In order to distinguish a strict religious approach from an interim way, it is reasonable to review the framework of Saudi Arabia. Under Art. 1 of Basic Governance of the Kingdom of Saudi Arabia (Royal Decree No. A/90 of 01.03.1992)<sup>5</sup> Quran and Sunnah are its constitution. Article 23 of Basic Governance of the Kingdom of Saudi Arabia and Art. 1 of Law of the Judiciary (Royal Decree No. M/64 of 23.07.1975)<sup>6</sup> binds application of Shari'ah.

Discriminating Arabic terminology may be easily done based on Qatari legal framework. Pursuant to Art. 1 of the Permanent Constitution of the State of Qatar dated

<sup>1</sup> 1971 سنة المتحدة العربية الامارات الدستور [Constitution of the United Arab Emirates 1971]. The legal portal of the United Arab Emirates. Accessed May 25, 2024. [https://elaws.moj.gov.ae/ArabicTranslationTree.aspx?val=UAE-MOJ\\_LC-Ar/00\\_دستور\\_20%الامارات%20المتحدة%20العربية%20/00\\_الدستور/UAE-LC-Ar\\_1971-07-18\\_00000\\_Dos.html&np=&mp=undefined](https://elaws.moj.gov.ae/ArabicTranslationTree.aspx?val=UAE-MOJ_LC-Ar/00_دستور_20%الامارات%20المتحدة%20العربية%20/00_الدستور/UAE-LC-Ar_1971-07-18_00000_Dos.html&np=&mp=undefined).

<sup>2</sup> "Federal Law No. 3 Issued on 1983/5/26 Concerning the federal judicial corps". *The legal portal Qistas*. Accessed June 3, 2024. <https://qistas.com/legislations/uae/view/MDEyOTQ3NjI=?lang=en>.

<sup>3</sup> "The United Arab Emirates". *Migration Information Resource*. Accessed May 25, 2024. <https://www.migrationpolicy.org/country-resource/united-arab-emirates>.

<sup>4</sup> "UAE's 100,000 Russian-speakers, values of tolerance bind Russia and UAE: Russian diplomat". *Emirates news agency — WAM*. Accessed May 25, 2024. <https://wam.ae/en/details/1395302793790>.

<sup>5</sup> "Royal Decree No. A/90 01.03.1992. The Basic Governance of the Kingdom of Saudi Arabia". *Bureau of Experts of the Council of Ministers of the Kingdom of Saudi Arabia*. Accessed May 25, 2024. <https://laws.boe.gov.sa/Files/Download/?attId=ed4842e1-9543-40b9-973b-ada200d4ed10>.

<sup>6</sup> "Royal Decree No. M/64 23.07.1975. The Law of the Judiciary". *Ministry of justice of the Kingdom of Saudi Arabia*. Accessed May 25, 2024. <https://www.moj.gov.sa/Documents/Regulations/pdf/En/06.pdf>.

08.06.2004 (Qatari Constitution)<sup>7</sup>, the Sharī'ah Islamic Law shall be the principal source of Qatari legislation (tashrī'atun) and the state regime is democratic. Article 130 of the above-mentioned Act stipulates that the judgments are to be passed according to Law (qanuunun). The notion tashrī'atun (تشريعات) means legislation or literally legislative acts, whereas qanuunun (قانون) is a synonym<sup>8</sup>. Articles 2 and 60 of The Basic Statute of the State (Sultanate of Oman) promulgated by Royal Decree No. 101/96 and amended by Royal Decree No. 99/2011 and Royal Decree No. 6/2021<sup>9</sup>, Art. 2 of the Constitution of the Kingdom of Bahrain issued 06.12.1973 and amended 14.02.2002<sup>10</sup> and Art. 2 of the Constitution of the State of Kuwait issued 11.11.1962<sup>11</sup> quote verbatim the Qatari Constitution in terms of law source.

Under Sharī'ah fairness (Quran 3:159, 5:42, 42:15) and equality (Quran 49:10, 49:13, 42:38) are the milestone of justice and apply to judge requirements. One should take into account that there are diverse obligatory conditions to be met depending on the madhhab. Despite the domination of the Maliki madhhab in the UAE, the views of the followers of the Hanbali and Shafī'i schools have a strong impact on particular Emirates. As for Saudi Arabia and Qatar, Hanbalis are exclusively prevalent.

## 2. Basic research

### 2.1 Specification under Sharī'ah

In general, a fair, impecunious and competent adult male Muslim who is free of serious physical handicaps and able to act as a witness in a case, may be appointed as a qādī, that is an Islamic judge. However, there are a few peculiarities and exceptions.

The range of physical disadvantages that prevent a person from becoming a qādī belongs to the category of impeccability or literally perfection (kamāl). The division is al-Ahkām in terms of performing religious duties and al-Khilqah as to physical fitness. For example, according Hanbalite and the Mālikite point of view, a prospective qādī should be sound of organ of hearing, sight and speech, but the Mālikī sometimes add to this list such aspects as good memory and ability to write (Azad 1984, 250, 252). Although a lot of debates arise as to perfection in creation, it is not so complicated as to perfection in decision.

As for kamāl al-Ahkām, first and foremost is that a qādī should be a sane free adult male Muslim. It involves equality controversy and sometimes unjust treatment.

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<sup>7</sup> إصدار الدستور الدائم لدولة قطر [The Permanent Constitution of the State of Qatar 08.06.2004]. *Sherlock*. Accessed June 3, 2024. [https://sherloc.unodc.org/cld/uploads/res/the-permanent-constitution-of-the-state-of-qatar-0-2004\\_html/Constitution\\_0\\_2004\\_2284.pdf](https://sherloc.unodc.org/cld/uploads/res/the-permanent-constitution-of-the-state-of-qatar-0-2004_html/Constitution_0_2004_2284.pdf).

<sup>8</sup> Taking into account the way the word is usually used, one may assume that a separate act is to be enacted.

<sup>9</sup> النظام الأساسي للدولة [The Basic Statute of the State]. *Qanoon*. Accessed June 3, 2024. <https://qanoon.om/p/2021/rd2021006>.

<sup>10</sup> دستور مملكة البحرين [Constitution of the Kingdom of Bahrain]. *Legislation and Legal Opinion Commission of the Kingdom of Bahrain*. Accessed June 3, 2024. <https://www.lloc.gov.bh/page/دستور%20البحرين%20مملكة>

<sup>11</sup> دستور دولة الكويت ومذكرته التفسيرية [Constitution of the State of Kuwait and explanatory Memorandum]. *Kuwait government online. State of Kuwait*. Accessed May 25, 2024. <https://e.gov.kw/sites/kg0English/Forms/DastoorKuwaity.pdf>.

The Hanafī madhhab, which is not widespread in the UAE, explicitly allows women to hold office of a judge to resolve property and family disputes, on the grounds that their testimony (aš-šahādah) can be used as evidence (Chaudary 2015, 43). There are many cases in which the Prophet Muhammad acted on the aš-šahādah of women, which indicates that they can be witnesses (aš-šahīd) (Al-Misri 1983, 5–6). Federal Law No. 35 of 15.06.1992 on enacting criminal measures law (amended by Federal Decree Law No. 28 of 27.09.2020)<sup>12</sup> and Law of Criminal Procedure (Royal Decree No. M/2 of 25.11.2013)<sup>13</sup> have no obstacles for women to be witnesses in the UAE and KSA. However, the conservatives are arguing on its admissibility. In case of financial transactions two women may be required to testify in lieu of one man (Quran 2:282). Surprisingly, Hanafis madhab assume that women could be judges in cases of finances (Daghi 2011, 26; Fawzi 2001, 22).

Although financial disputes are the only case, such a distinction between aš-šahīd has been extended to other incidental occurrences, especially when it comes to hadd and qisās or criminal law in general (El-Ali 2022). Still, in Saudi Arabia women's evidence normally carries half the weight of men in Sharī'ah courts that deal with family, civil and religious matters. As for criminal trials such aš-šahādah is generally not admitted (Kamali 2019, 291–292).

It is worth noting that the Quran does not have provisions that deprive women from acting as judges. On the contrary, the ayahs related to the administration of justice are addressed to all (Quran 4:58). This implication justifies that they formally meet the requirements for a qādi in this respect, but the practical implementation differs from reality. Dato' Param Cumaraswamy as the Special Rapporteur on the Independence of Judges and Lawyers submitted his Report in accordance with Commission on Human Rights resolution 2002/43 which indicates to absence of female judges (Cumaraswamy 2003). Notably, Para. 66 and 67 of the Report of the Special Rapporteur on the Independence of Judges and Lawyers, Gabriela Carina de Knaul No. A/HRC/29/26/Add.2 of 05.05.2015 (A/HRC/29/26/Add.2 Report) state that women can and do become judges in Emirates such as Abu Dhabi and Dubai, regardless of categories of dispute, as opposed to federal level (Knaul de 2015a; 2015b).

Authors would like to make a few remarks on this issue. That was quite true for such Arab states as Saudi Arabia, Qatar, Jordan, Kuwait and the UAE in 2000s, while Libya, Lebanon and Morocco have allowed women to participate in judiciary since 1990s (Kelly, Breslin 2010, 118, 135, 154, 176, 196, 243, 255). In October 2008, the first female Emirati judge was sworn in and four women have been appointed as judges. In 2013, Qatar's first ever female judge was appointed<sup>14</sup>. Two years later women began to work as criminal judges (even in the highest judicial body) (Al-Mal n. d.). Only in March 2019, two female judges were appointed to the UAE Federal Judiciary for the first time. Moreover, earlier the first female Emirati common law judge was appointed in February 2019 in a so-called

<sup>12</sup> قانون اتحادي رقم ٥٣ بإصدار قانون الإجراءات الجزائية [Federal Law No. 35 15.06.1992 on enacting criminal measures law]. *The legal portal of the United Arab Emirates*. Accessed May 25, 2024. [https://elaws.moj.gov.ae/ArabicTranslationTree.aspx?val=UAE-MOJ\\_LC-Ar/00\\_جزائية%20الإجراءات/UAE-LC-Ar\\_1992-06-15\\_00035\\_Kait.html&np=&imp=undefined](https://elaws.moj.gov.ae/ArabicTranslationTree.aspx?val=UAE-MOJ_LC-Ar/00_جزائية%20الإجراءات/UAE-LC-Ar_1992-06-15_00035_Kait.html&np=&imp=undefined).

<sup>13</sup> “Royal Decree No. M/2 25.11.2013 Law of Criminal Procedure”. *Ministry of justice of the Kingdom of Saudi Arabia*. Accessed May 25, 2024. <https://www.moj.gov.sa/Documents/Regulations/pdf/En/06.pdf>.

<sup>14</sup> “Qatari judge is highest new entry on female Arab power list”. 2013. *Arabian Business*. Accessed May 25, 2024. <https://www.arabianbusiness.com/powerlists/qatari-judge-is-highest-new-entry-on-female-arab-power-list-491675>.

Financial Free Zone (FFZ) such as the Dubai International Financial Centre (DIFC). By contrast, there was one Saudi female arbitrator at a commercial court, in particular the Court of Appeal in Dammam, appointed in 2016<sup>15</sup>. Still, Art. 28 of the Saudi Basic Law of Governance<sup>16</sup> grants equal job opportunities to each person regardless of their gender. Article 31 of the Saudi Law of the Judiciary<sup>17</sup> doesn't list a gender as a stipulation for the person who assumes the position of qādi and the same implication derives from Art. 14 of the Saudi Arbitration Law (Royal Decree No. M/34 of 16.04.2012)<sup>18</sup> (Al-Agha 2021).

Abdulrahman Yahya Baamir, Saudi PhD, claims that allowing women is contradictory to Shari'ah in general and this matter is not debatable (Baamir 2016). Having reviewed general requirements to qādi, the authors cannot agree with this point of view. Others consider the core challenge to lie in lack of education (Swan 2010). Still, even in 2000s in some Arab states such as Bahrain lots of women specialized in law (Kelly, Breslin 2010, 62).

Aš-šahīd eligibility in Islam also raises an issue with non-Muslims or non-citizens of a particular Muslim state. The non-Muslim's evidence is inadmissible in terms of Hanbali madhab (Kamali 2019, 291–292). Most Islamic scholars argue that under no circumstances can they also be a qādi, but Abū Hanīfah admitted that a non-Muslim could be a judge in cases involving non-Muslims on the basis of their customary law (Zaidan 1988, 596). In particular, in the UAE instead of Shari'ah special provisions applicable to their community or confession may be not applicable to non-Muslims under the Federal Law No. 28 of 19.11.2009 on personal status (amended by Federal Decree-Law No. 29 of 27.09.2020)<sup>19</sup>.

The A/HRC/29/26 Reports point out that non-Muslim judges are hired in the UAE and Qatar to settle disputes whose participants do not follow Islamic faith, but there is little regulation for them to equalize in status with a qādi (Knaut de 2015a; 2015b). Such a diversification shows a broader approach rather than Islamic doctrine. The administration of justice by a non-Muslim (infidel) is to be forbidden in an Islamic state according to preferred opinion, since Islām dominates and is not dominated (Chaudary 2015, 41).

In the context of perfection or kamāl, it is also worth considering the difference between the Hanbali and Hanafī approaches as to the possibility of appointing a faqih to the position of qādi. The Hanbalis do not consider a fāsiq (a person who committed minor sins) as a judge. Nevertheless, there is no consensus in the Islamic doctrine regarding a clear division into major and minor sins, so each case is considered individually in conjunction with other qualities of the person (Azad 1984, 256–257).

The Hanbalis and Shafi'is believe that the qādi should also be recognized as a mujtahid having sufficient knowledge of Shari'ah to perform al-Ijtihad, that is, to exercise diligence in interpreting the sources of Islamic law to make a judgment. This principle

<sup>15</sup> "Economic and Social Council of the UN. Women in the Judiciary in the Arab States: Removing Barriers, Increasing Numbers". *Digital library of the United Nations*. Accessed May 25, 2024. <https://digitallibrary.un.org/record/3880358?ln=en>.

<sup>16</sup> النظام الأساسي للحكم [Basic Law of Governance]. 1992. Accessed May 25, 2024. <https://laws.boe.gov.sa/BoeLaws/Laws/LawDetails/16b97fcb-4833-4f66-8531-a9a700f161b6/1>.

<sup>17</sup> نظام القضاء [Law of the Judiciary]. 2007. Accessed May 25, 2024. <https://laws.boe.gov.sa/Files/Download/?attId=e1939954-6df5-450f-ab75-adbb01252cee>

<sup>18</sup> نظام التحكيم [Arbitration Law]. 2012. Accessed May 25, 2024. <https://laws.boe.gov.sa/BoeLaws/Laws/LawDetails/5535039e-13da-43f6-8f53-a9a700f26485/1>.

<sup>19</sup> "Federal Law No. 28 19.11.2009 on personal status". *Online UAE legislation base*. Accessed May 25, 2024. [https://elaws.moj.gov.ae/UAE-MOJ\\_LC-En/00\\_PERSONAL%20STATUS/UAE-LC-En\\_2005-11-19\\_00028\\_Kait.html?val=EL1&Words=Personal%20Status](https://elaws.moj.gov.ae/UAE-MOJ_LC-En/00_PERSONAL%20STATUS/UAE-LC-En_2005-11-19_00028_Kait.html?val=EL1&Words=Personal%20Status)

may be found in the hadith about the conversation between the Prophet Muhammad and his companion Mu'ādh ibn Jabal (Muhammad 1977, 141; Az-Zabidi 2017, 572). The Malikites stand for the opinion that it is enough to be a faqih<sup>20</sup>. The Hanafī madhhab, on the other hand, denies this qualification as obligatory, although it considers it preferable (Al-Marghinani 2020, 134).

The judge must have a clear mind, be shrewd and resolve each case without ceasing, treating the parties to the conflict equally, listening to each party, and evaluating the evidence objectively (Al-Hafiz 1999, 677). The qādī is obliged to strive to resolve the conflict peacefully (Al-Hafiz 1999, 679) and to remain balanced (Khassaf 1999, 88–92). Caliph Umar writes in a letter.

Treat people as equals, deal with them alike and spend time with them equally, and follow equality in the administration of justice, so that the noble will not harass your self-rule and arbitrariness in their interests, and the weak will not lose hope of finding justice in you... Avoid anger, excessive agitation and irritation, do not offend people or pour out your anger on them during the trial (Al-Jawziyya 2001, 85–86).

The qādī cannot be jāhil, that is illiterate, because the decisions are to be based on the Quran, the Sunnah, the unanimous opinion of the ulama and common sense.

## 2.2. Legislation

### 2.2.1. Qualifications

#### 2.2.1.1. The United Arab Emirates

One should bear in mind that, given the predominance of Muslim law in the UAE, there are elements of secular law. Even before the 19<sup>th</sup> century reforms, Muslim countries were characterized by a dualistic judicial system (Sukiaynen 2003). Moreover, the UAE is a federal state with five independent jurisdictions and federal one. In 2008, apart from federal there were two judicial local departments, that is Dubai and Ras-al-Khaimah (Al-Shamsi 2008)<sup>21</sup>. Now it involves Abu Dhabi as a distinct system.

Article 18 of FL No. 3 of 1983 lays down the following qualifications for a federal judge: eligible Muslim who has UAE citizenship, a bachelor's degree in law or Shari'ah from a recognized university or institute and an excellent reputation and no criminal record for acts against honor or dignity. Still, at the UAE Federal Supreme Court, even rehabilitated cannot become judges, but they are admitted to the lower courts. It also establishes a more precise age limit than the Shari'ah, depending on the case: 30 years for judges of first instance, 35 years for appellate judges, and 40 years for presidents of federal appellate courts and judges of the Federal Supreme Court. Another requirement is experience as a judge, jurist or other position related to public prosecution, fatwa issuing, law-making, public affairs, teaching Shari'ah or law in a recognized university or institute from 8 to 20 years, depending on the position.

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<sup>20</sup> While a faqih is considered to be an expert in fiqh (Islamic law), a mujtahid also has the right to issue a fatwa on a particular issue, thereby interpreting a norm. Sometimes synonymous may be alim.

<sup>21</sup> "The Federal Judiciary". *The United Arab Emirates' Governmental portal*. Accessed May 25, 2024. <https://u.ae/en/about-the-uae/the-uae-government/the-federal-judiciary#structure-of-the-judicial-system>.

Restrictions related to the function of judge include prohibition of any commercial and other activities that are incompatible with the independence and appointment of a judge, prohibition to express political opinion and participate in political activities, prohibition to disclose the secrecy of the meeting of judges, prohibition of having family ties up to 4<sup>th</sup> degree in the same court district (Art. 35–38 of Law No. 13 of 1983).

### 2.2.1.2. The Kingdom of Saudi Arabia and the State of Qatar

Chapter 4 of Law of the Judiciary (Royal Decree No. M/64 of 23.07.1975) lays down some similar regulations depending on their own ranking that is more diverse in comparison to the UAE system: trainee judge, judge C, judge B, judge A, vice-presidents and presidents of courts B and A, appeals judge, president of a court of appeals and president of the Supreme court. Although the age minimum standard is lower than in UAE (22 years), having made simple calculations, authors assume that for positions other than trainee judge it matches Emirati approach (e. g., 32 for judge A, 45 for appeals judge in terms of probation period and judicial experience). Constraints are pretty the same (Art. 31, 51–52 of above-mentioned Law), expect the fact that rehabilitation is an absolute impediment. Competence shall be determined by Sharī'ah principles. One should also undermine that experience is affected by occupation confined to judiciary and teaching and the higher rank is, more degrees in Sharī'ah, legal studies or public administration a person should possess.

Despite the fact that Law No. 10 of 12.08.2003 Promulgating the Law on Judicial Authority with amendments (Decree-Law No. 21 of 07.11.2010) (Law No. 10 of 2003)<sup>22</sup> has no ranking or categories, it is based on seniority with the following age limitations. Judge of the first instance should be no younger than 25 years, the judge of Appeal should be no younger than 38 years. As for the Supreme Constitutional Court, the restriction is a bit higher (40 years). Rehabilitation is not permitted in terms of neither offence, nor misdemeanour (involving moral turpitude or dishonesty). Appointment to judicial office may be from outside the judiciary in prescribed cases similar to Saudi approach. Authors have outlined rather distinctive feature as for citizenship requirement in Qatar. A judge may be citizen of another Arab state. Such provision arises the question what exactly countries should be treated as Arab. Neither the Law itself, nor the citizenship and immigration legislation clarifies the case.

### 2.2.2. Ethics

There is a Model Code of Conduct and Ethics for Judiciary in the Cooperation Council for the Arab States of the Gulf (GCC Model) dated 06.10.2016<sup>23</sup>. It prescribes such prohibitions and ill practices as conducting business or being involved in commercial

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<sup>22</sup> قانون رقم (10) لسنة 2003 بإصدار قانون السلطة القضائية [Law No. 10 12.08.2003 Promulgating the Law on Judicial Authority]. *Encyclopedia of Ministry of Justice of State of Qatar*. Accessed June 3, 2024. <https://encyclp.sjc.gov.qa/lawlib/Files/ViewDOC.aspx?id=13778>.

<sup>23</sup> مدونة السلوك لأخلاقيات العمل القضائي في دول مجلس التعاون لدول الخليج العربية [Code of Conduct and Ethics for Judiciary in the Cooperation Council for the Arab States of the Gulf]. Accessed May 25, 2024. <https://www.gcc-sg.org/ar-sa/CognitiveSources/DigitalLibrary/Lists/DigitalLibrary/%20القانون%20والقضاء%20الjudicial%20work.pdf>.

activity in any other way, engaging in politics or running for elections, carrying out arbitration functions, disclosure, advancing from judicial position or exploiting office, biased or favoured attitude and enlists seven principles such as independence, integrity, honesty, propriety, equality, efficiency and diligence.

### 2.2.2.1. The United Arab Emirates

At the federal level in the UAE, judges are public servants according to Federal Decree No. 11 of 2008 on human resources in the Federal Government (as amended by Federal Decree Law No. 9 of 2011 and Federal Decree Law No. 17 of 2016<sup>24</sup>). Consequently, they are subject to the 2017 Code of Ethics and Professional Conduct<sup>25</sup>. In course of work public servants are to follow ten principles. Firstly, striving for excellence is required. Civil servants should take every reasonable opportunity to further personal growth by improving their knowledge, skills and competencies, and make efforts to increase their awareness of the skills and competencies of their colleagues. Secondly, diligence implies that civil servants must show an interest in and commitment to continually adhering to the high standards of ethics, morals, traditions and customs of Emirati society. Thirdly, public servants are professionals, what's why they must put public interests above personal interests, avoid conflicts of interest, respect confidential and sensitive information and prevent the secret leak. Fourthly, public servants must be honest and open, willing to make efforts to gain the trust of the people. Fifthly, public servants must make decisions based on a reliable and thorough analysis of the available evidence, thus performing objectively. Sixthly, neutrality involves public servants must act on facts with impartiality and neutrality pursuant to the law. Seventhly, efficiency means that public servants must ensure that resources are not wasted, misused or misdirected, and strive to use available resources appropriately within the nature of their work. Eighthly, public servants must promote core values and work to improve the quality of services provided to the public, increasing their credibility. Ninthly, transparency involves public being open and conspicuous about procedures, goals and objectives public servants perform. Tenthly, public servants must perform their duties on time, without discrimination on any ground, encouraging fairness and equality.

Certain ethical issues are regulated by the Federal Law No. 10 of 25.07.1973 on the Federal Supreme Court (amended by Federal Law No. 11 of 05.12.1977, Federal Law No. 18 of 20.12.1980, No. 14 of 15.12.1985 and Federal Law No. 26 of 25.03.1992) (FL No. 10 of 1973)<sup>26</sup>. Under Art. 4 of FL No. 10 of 1973, one of vague requirements is good conduct and reputation, although, analyzing this provision, one may conclude that it concerns criminal or disciplinary conviction for any matter relating to honor. This Law

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<sup>24</sup> "Federal Decree Law No. 11 for 2008 on human resources in the federal government as amended by Federal Decree Law No. 9 for 2011 and Federal Decree Law No. 17 for 2016". *The Federal Authority for Government Resources*. Accessed May 25, 2024. <https://www.fahr.gov.ae/Portal/Userfiles/Assets/Documents/38e702a7.pdf>.

<sup>25</sup> "Code of Ethics and Professional Conduct". 2<sup>nd</sup> ed., 2017. *The Federal Authority for Government Resources*. Accessed May 25, 2024. <https://www.uaeu.ac.ae/en/employment/code-of-ethics-professional-conduct.pdf>.

<sup>26</sup> Federal Law No. 10 Issued on July 25, 1973, Concerning the Supreme Federal Court. MENA Rights Group. Accessed May 25, 2024. [https://menarights.org/sites/default/files/2016-12/UAE\\_FederalSupremeCourtLaw\\_EN.pdf](https://menarights.org/sites/default/files/2016-12/UAE_FederalSupremeCourtLaw_EN.pdf).



primarily governs prosecution of judges rather than disciplinary accountability, *inter alia* basis that constitutes it. The proceedings are adversarial. The trial hearings are confidential, at which a disciplinary council dismisses case or impose such sanctions as reprimand, revocation, non-payment of salary for a year or two years, denial of promotion, demotion, transfer to a non-judicial position with lower salary and termination of the judge's authority. The case is initiated by the Public Prosecutor (Attorney General of the UAE) upon his own request of the Minister of Justice or upon request of the President of the Federal Supreme Court. The panel is composed of four senior judges of the Federal Supreme Court and the President of the Federal Supreme Court.

Article 21 of FL No. 10 of 1973 also reveals the peculiarities of prosecution and some guarantees *in flagranti delicto*. A judge cannot be subject to arrest and pre-trial detention without the authorization of the Judges Disciplinary Council, which also decides on the extension of the measure and its termination (with or without bail).

Unlike the Anglo-American legal system, there is no *stare decisis* rule in classical Islamic theory. If a judge has rendered a judgment on which he changed his mind on the same day, choosing the truer path to justice, it should not prevent him from departing from it and considering a new similar case differently in an effort to establish the right. He should not take into account the former judgment every time. Indeed, the latter is unaffected by time and nothing invalidates it. Therefore, to turn again to the right for the sake of its approval by abandoning former opinion is better than to persist in defending the wrong one (Al-Jawziyya 2001, 85). Nevertheless, it is worth noting that in December 2019 the Federal and Local Judicial Principles Unification Authority named Commission for the Unification of Conflicting Judicial Principles was established in the UAE (Federal Law No. 10 19.12.2019 on regulation of the judicial relationships between the federal and local judicial<sup>27</sup>). Its core activity is to establish uniformed rules of justice and conduct (Abuwasel 2022). Although judges at all levels are obliged to follow the orders of the High Commission such principles as *res judicata* and *stare decisis*, failure to follow such rules is not recognized as grounds for disciplinary liability.

The UAE FFZ courts have their own rules of conduct. For instance, Judicial Discipline Prescribed Procedures Rules 2015 regarding conduct of judges of the Abu Dhabi Global Market Courts regulate issues related to the disciplinary responsibility of judges: the procedure for filing and handling a complaint by the authorized body (the Abu Dhabi Global Market Judicial Conduct Investigations Bureau), the bodies handling the complaint (appointed judge, investigating judge or disciplinary panel), the timing and order of the decision, the sanctions and publication of the decision in specific cases<sup>28</sup>. The Dubai Law No. 12 of 2004 in respect of judicial authority at Dubai International Financial Centre (amended by Law Dubai No. 16 of 31.10.2011)<sup>29</sup> states the obligation of judges to perform their function in good faith, otherwise they must be held liable, but it is rather obscure.

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<sup>27</sup> "Federal Law No. 10 Issued on 2019/12/19 On the regulation of judicial relationships between federal and local judicial". *The legal portal of the United Arab Emirates*. Accessed May 25, 2024. [https://elaws.moj.gov.ae/UAE-MOJ\\_LC-En/00\\_JUDICIARY/UAE-LC-En\\_2019-12-19\\_00010\\_Kait.html?val=EL1](https://elaws.moj.gov.ae/UAE-MOJ_LC-En/00_JUDICIARY/UAE-LC-En_2019-12-19_00010_Kait.html?val=EL1).

<sup>28</sup> "Judicial Discipline Prescribed Procedures Rules 2015". *Thomson Reuters Institute*. Accessed May 25, 2024. [https://en.adgm.thomsonreuters.com/sites/default/files/net\\_file\\_store/ADGM1547\\_18652\\_VER2015.pdf](https://en.adgm.thomsonreuters.com/sites/default/files/net_file_store/ADGM1547_18652_VER2015.pdf).

<sup>29</sup> "Law No. 12 of 2004 in respect of The Judicial Authority at Dubai International Financial Centre". *Dubai International Financial Centre*. Accessed June 3, 2024. [https://www.difccourts.ae/wp-content/uploads/2017/10/Dubai12of2004\\_amended2011.pdf](https://www.difccourts.ae/wp-content/uploads/2017/10/Dubai12of2004_amended2011.pdf).

### 2.2.2.2. The Kingdom of Saudi Arabia and the State of Qatar

When it comes to Saudi Arabia, the only source of ethics regulation is Shāri'ah principles that have been described above.

Under Law No. 10 of 2003 Qatari judges may be held accountable for breaching the duties or requirements, brining suspicion or mistrust and falling below the standard specified for the honour and prestige of the judiciary. The procedure is quite conventional, though the sanction list is rather little and includes warning, censure and dismissal.

Qatar International Court and Dispute Resolution Centre is an authority similar to the UAE FFZ courts like DIFC. It has its own Judicial Code of Conduct<sup>30</sup> based on four principles (out of seven in GCC Model) with vague concepts and more precise forbidden practice such as political activity, accepting any gift, bequest, loan or favour, exploiting office for own sake, their family or friends, accepting payments other than from the Court, disclosing or using confidential information.

The Report A/HRC/29/26/Add.1 of Gabriela Carina de Knaul dated 2015 underlines the absence of a written code of conduct or ethics for Qatari judges (Knaul de 2015a; 2015b). Although Qatar News Agency<sup>31</sup> reports that Supreme Judicial Council (SJC) has launched new Code of Judicial Conduct on December 8, 2020, there is no official text published on official web-site of SJC. Still, it refers to Islamic law principles, moral values and traditions of Qatari judiciary and society as core sources<sup>32</sup>.

## 3. Conclusions

The diversity of conditions according to different madhabs are summarized in Table. One of major problems is that legislation do not prohibit certain categories from working in judiciary, but the real situation is vice versa. Cultural constraints and gender stereotypes prevail, unfortunately.

While the KSA relies exclusively on Islamic law in terms of judicial ethics, the dualism of the judicial system in the UAE involves apart from Shari'ah another source governing judicial ethics (legislation). According to Islamic doctrine, there are contradictions concerning the requirements for qādī. The UAE legislation is considered more lenient regarding, e. g., women and physical disabilities, but the Arab states' regulations in general lack definitions of assessment categories such as kamāl, fasiq, mistrust that reveals the concept of impeccable reputation and standards specified for the honour and prestige of the judiciary. Still, in general they wouldn't adequately explain the range of qualities required of a qādī. Some provisions concerning age, education, restrictions and general principles of judicial ethics are specified in laws and decrees, while Islamic doc-

<sup>30</sup> "The conduct of justices of the Qatar International Court and Regulatory Tribunal". *Qatar International Court and Dispute Resolution Centre*. Accessed May 25, 2024. [https://www.qicdrc.gov.qa/sites/default/files/regulation-pdf/2022-01/1-judicial\\_code\\_of\\_conduct.pdf](https://www.qicdrc.gov.qa/sites/default/files/regulation-pdf/2022-01/1-judicial_code_of_conduct.pdf).

<sup>31</sup> QNA was established 25.04.1975 by the Emiri Decree No. 94. Accessed May 25, 2024. <https://www.qna.org.qa/en/Pages/about-us>.

<sup>32</sup> المجلس الأعلى للقضاء ي دشّن مدونة السلوك القضائي الجديدة [Supreme Judicial Council launches new Code of Judicial Conduct]. *Qatar News Agency*. Accessed May 25, 2024. <https://www.qna.org.qa/ar-QA/News-Area/News/2020-02/26/المجلس-الأعلى-للقضاء-يدشّن-مدونة-السلوك-القضائي-الجديدة>.

trine pays more attention to the moral character of a judge. The milestone is avoiding any suspicions and perfect performance of duties, but neither GCC Model, nor national regulations doesn't contain any guarantees as to judges themselves that secure the implementation of principles.

It is worth noting that under Reports A/HRC/29/26 there is no unified code of conduct and principles for the entire judiciary in the UAE and Qatar. After seven years, this issue has still not been regulated at the legislative level. Although specific bodies created to resolve commercial and civil disputes in Emirati Free Financial Zones and Qatari specialist court have enacted their own Codes regarding best international practices, the contribution to national issues is rather modest. Moreover, such emirates as Abu Dhabi, Dubai and Ras Al-Khaimah do not have their own codes of conduct for judges, so the authors consider it advisable to adopt a unified code at the federal level by the UAE Minister of Justice, taking into account the Bangalore Principles of Judicial Conduct of 26.11.2002<sup>33</sup>. It is a common situation when the Minister of Justice issues by his decision an ethics Code like the Charter of Technical Experts<sup>34</sup>. Basic principles on the Independence of the Judiciary endorsed by UN General Assembly Resolutions No. 40/32 dated 29.11.1985 and No. 40/146 dated 13.12.1985<sup>35</sup> may be supplementary for regulating judicial ethics, since following such international practices enhances confidence in judiciary in general. Recent introduction of UAE legal framework for non-Muslims, inter alia marriage, divorce, child custody, trademarks and probate issues, reflects need for brand new legislation regarding mu'āhid communities<sup>36</sup>. However, enacting substantive law should be accompanied by due process procedure that can be also achieved by implementing Basic principles on the Independence of the Judiciary. Taking into account the fact that law roots in Shari'ah under the UAE Constitution, the federal judiciary code is supposed to reconcile religious rules on non-religious one and unify applicable provisions as to judge conduct. It would promote credibility and trust of multicultural society. As for Qatar, the issue is unclear due to lack of official publication of the Code based on Shari'ah.

Having conducted analysis of the regulatory framework, the authors conclude that issues related to the procedure for bringing to disciplinary and criminal responsibility of judges are sufficiently detailed, but the absence of uniform standards and rules of conduct for judges at all levels does not contribute to a uniform practice with respect to judicial appointments. Moreover, the dominant madhab in an Arab state pre-empts judiciary policy.

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<sup>33</sup> Bangalore Principles of Judicial Conduct of 26.11.2002. Accessed May 25, 2024. [https://www.unodc.org/pdf/crime/corruption/judicial\\_group/Bangalore\\_principles.pdf](https://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf).

<sup>34</sup> قرار وزاري رقم ٦١ لسنة ٢٠١٥ بشأن ميثاق عمل الخبراء الفنيين [Ministerial Decree No. 116 of 2015 on the Charter of Technical Experts]. *LexMena*. Accessed May 25, 2024. [https://lexmena.com/law/ar\\_fed~2015-03-30\\_00116\\_2020-06-15](https://lexmena.com/law/ar_fed~2015-03-30_00116_2020-06-15).

<sup>35</sup> Basic principles on the Independence of the Judiciary. Accessed May 25, 2024. <http://www.icj.org/wp-content/uploads/2014/03/UN-Basic-principles-independence-judiciary-1985-eng.pdf>.

<sup>36</sup> "New family law for non-Muslim residents comes into effect today". 2023. *The national news*. Accessed May 25, 2024. <https://www.thenationalnews.com/uae/2023/02/01/new-family-law-for-non-muslim-expats-comes-into-effect-today>; Inheritance Rules for Non Muslims in the UAE. Chambers and Partners. May 25, 2024. <https://chambers.com/articles/inheritance-rules-for-non-muslims-in-the-uae>.

Table. Qaḍī qualifications

Criteria	Madhab or state	Mālikī	Hanifī	Hanbali	Shāfi'ī	UAE	KSA	Qatar	Oman
free birth		+	+	+	+	!	!	!	!
legitimate birth		+	!	+	!				
sane (competent)		+	+	+	+	+	+	+	+
Adult		+	+	+	+	+	+	+	!
— min. age of judges of first instance		!	!	!	!	30	32	25	!
— min. age of appellate judges		!	!	!	!	35	45	38	!
— min. age of judges of higher instances		!	!	!	!	40	****	40	!
male		+	+	+	+	+	+	+	!
female		+/-	+	-	-	+	-	+	!
Muslim		+	+	+	+	+	+	!	+
nationality		!	!	!	!	+	+	+	+
Arab state		!	!	!	!	!	!	+	+
non-Muslim (infidel)		!	+	-	!	+	-	+	-
physical perfection (kamāl):		+	+	+	+				
— hearing		+	+	+	+				
— sight		+	+	+	+				
— speech		+	+	+	+				
— good memory		+	!	!	!	!	!	!	!
— capability of writing		+	!	!	!				

knowledge, experience and literacy	faqih	faqih*	mujtahid	mujtahid	Academic degree and experience precisely determined in accordance with level	Academic degree and experience precisely determined with ranking	Academic degree in law or Shari'ah or equivalent and relevant judicial experience precisely determined	Academic degree in law or Shari'ah, fully qualified, relevant experience passing tests and interviews and training in accordance with positions
Jāhil (ignorant)	-	-	-	-	-	-	-	-
good character and conduct (mahmud): — no criminal record impinging on religion or honor/dignity — no disciplinary actions; — fāsiq	probity ! ! +	probity ! ! +	probity ! ! !	probity ! ! !	+ +** !	+ +*** !	+ ! +***	+ +*** ! +

“+” — permitted or required

“-” — restricted

“+/-” — no unified approach

“?” — not specified

\* preferably

\*\* take into account whether rehabilitation is permissible

\*\*\* under no circumstances is the rehabilitation permissible

\*\*\*\* the court of last resort is the King

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