

The Position of Islamic Jurisprudence in UAE Private Law: Analytical Study

Authors : Iyad Jadalhaq, Mohammed El Hadi El Maknouzi

Abstract : The place of Islamic law in the legal system of the UAE is best understood by introducing a differentiation between its role as a formal source of law and its influence as a material source of law. What this differentiation helps clarify is that the corpus of Islamic law constitutes a much deeper influence on adjudication, law-making and the legal profession in the UAE, than it might appear at first sight, by considering its formal position in the division of labor between courts, or legislative lists of sources of law. This paper aims to examine the role of Shariah in the UAE private law system by determining the comprehensiveness of Sharia in the legal system as a whole, and not in a limited way related to it as a source of law according to Article 1 of the Civil Transactions Law. Turning to the role of the Shariah as a formal source of law, it is useful to start from Article 1 of the UAE Civil Code. This provision lays out the formal hierarchy of sources of UAE private law, these being legislation, Islamic law, and custom. Hence, when deciding a civil dispute, a judge should first refer to positive legislation in force in the UAE. Lacking the rule to cover the case before him/her, the judge ought then to refer directly to Islamic law. If the matter lacks regulation in Islamic law, only then may the judge appeal to custom. Accordingly, in connection to civil transactions, Shariah is presented here, formally, as the second source of law. Still, Shariah law addresses many other issues beyond civil transactions, including matters of morals, worship, and belief. However, in Article 1 of the UAE Civil Code, the reference to Islamic law ought to be understood as limited to the rules it lays out for civil transactions. There are four main sets of courts in the judicial systems of the UAE, whose competence is based on whether a dispute touches upon civil and commercial transactions, criminal offenses, personal statuses, or labor relations. This sectorial and multi-tiered organization of courts as a whole constitutes an institutional development compatible with the long-standing affirmation in the Shariah of the legitimacy of the judiciary. Indeed, Islamic law authorizes the governing authorities to organize the judiciary, including by allocating specific types of cases to particular kinds of judges depending on the value of the case, or by assigning judges to a specific place in which they are to exercise their jurisdictional function. In view of this, the contemporary organization of courts in the UAE can be regarded as an organic adaptation, aligned with Shariah rules on the assignment of jurisdictional authority, to the growing complexity of modern society. Therefore, we can conclude to the comprehensive role of Shariah in the entire legal system of the United Arab Emirates, including legislation, a judicial system, institutional, and administrative work.

Keywords : Islamic jurisprudence, Shariah, UAE civil code, UAE private law

Conference Title : ICGALCL 2020 : International Conference on General Administrative Law and Civil Law

Conference Location : London, United Kingdom

Conference Dates : May 21-22, 2020