

An Analysis of the First Ten Articles of the Principles Governing the Administrative and Legal Procedures of the Judicial Courts of the Islamic Emirate of Afghanistan

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ABSTRACT

The principles on the Administrative and Legal Procedures of the Judicial Courts of the Islamic Emirate of Afghanistan has 278 articles, which is all about the administrative and judicial relevant issues, it has five chapters, the first chapter contains 53 article and it's about the procedure for appeal. In this study the first 10 articles are analysed. This study is much crucial today because it's a new regulation and needs to be discussed in order to elaborate its positives and weaknesses. The aim of this study is to let people know the first 10 articles of administrative and judicial regulations and get them obey the rules. This research is conducted library based, first the article text is mentioned, later on the objectives, explanation and implementation of the article is discussed, meanwhile at the end of each article I have my own comment as well where I have tried my best to have my comment via Afghanistan laws. Finally, I would better say that Afghanistan Islamic Emirate has taken the power from 2021 and had abolished all the laws and regulations constituted by Islamic Republic of Afghanistan, the first 10 articles are all about the procedure for appealing and courts classifications are as well mentioned.

KEYWORDS: Administrative, Judicial, Court, Islamic Emirate, Afghanistan

1. INTRODUCTION

The judicial system plays a fundamental role in maintaining justice, protecting legal rights, resolving disputes, and ensuring the proper administration of justice within society. Clear administrative and legal procedures are therefore essential for ensuring that courts exercise their authority in an orderly, consistent, and impartial manner. In this regard, the Regulation on the Administrative and Legal Procedures of the Judicial Courts of the Islamic Emirate of Afghanistan provides a framework governing various aspects of judicial proceedings and the administration of courts (United Nations, 1985).

The Regulation on the Administrative and Legal Procedures of the Judicial Courts of the Islamic Emirate of Afghanistan consists of five chapters and 278 articles. The first chapter contains 53 articles and addresses several fundamental matters concerning judicial proceedings. Given the broad scope of this chapter, the present study specifically focuses on analyzing its first ten articles. These articles address matters relating to the hierarchy and jurisdiction of courts, the finality and enforcement of judgments, the authority of non-judicial institutions in legal matters, the jurisdiction and working framework of primary courts, the obligations of courts to adjudicate referred cases, the timetable for judicial proceedings, compliance with Islamic Sharia, the attendance and release ticket, and the authority of higher courts to adjudicate cases following the decisions of lower courts (Islamic Emirate of Afghanistan, 2025).

The first article concerns the hierarchy of courts and establishes the primary court as the initial judicial forum for hearing claims. The second article addresses the finality of primary-court judgments concerning claims amounting to 20,000 Afghanis. The third article concerns the judgment of the primary court and its enforcement. The fourth article provides that decisions of non-judicial institutions concerning legal matters are invalid. The fifth article addresses the working jurisdiction and framework of the primary court. The sixth article establishes the obligation of courts to adjudicate cases referred to them. The seventh article concerns the timetable within which cases are to proceed. The eighth article requires courts to adjudicate cases in accordance with Islamic Sharia. The ninth article addresses the attendance and release ticket, while the tenth article concerns the authority of the higher court to decide cases after their consideration by the lower courts (Islamic Emirate of Afghanistan, 2025).

The introduction of new judicial principles and regulations may create both opportunities and challenges in their practical interpretation and implementation. Accordingly, the central problem addressed by this study is the need to understand and critically analyze the first ten articles of the Regulation, particularly with regard to their administrative and judicial implications. Although these provisions establish important procedural rules, their practical meaning, scope, strengths, limitations, and implications for litigants and judicial institutions require systematic examination. A detailed analysis is therefore necessary to clarify the meaning and objectives of each provision and to identify issues that may arise from its application (United Nations Office on Drugs and Crime [UNODC], 2006).

The main objective of this study is to clarify and analyze the first ten articles of the Regulation and to provide a systematic commentary on each provision. More specifically, the study seeks to explain the judicial procedures established by these provisions for law students and other individuals interested in the judicial system; clarify the hierarchy and jurisdiction of courts so that litigants and members of the public can better understand the

appropriate judicial forum for their claims; and examine each article in terms of its purpose, interpretation, associated issues, strengths, weaknesses, and practical implications.

Accordingly, the study seeks to answer the following research questions: (1) How many chapters and articles does the Regulation on the Administrative and Legal Procedures of the Judicial Courts of the Islamic Emirate of Afghanistan contain? (2) What matters are addressed in the first chapter of the Regulation? and (3) What are the strengths and weaknesses of the first ten articles of the first chapter?

The significance of this study lies in its potential contribution to a clearer understanding of the administrative and legal procedures governing the judicial courts. The study may be useful not only to individuals and law students but also to government officials, legal practitioners, and persons involved in the administration of justice. By examining the first ten articles systematically, the study provides an analytical understanding of the positive aspects, limitations, and procedural implications of these provisions. Furthermore, the study may contribute to academic discussion concerning judicial administration by explaining the structure, authority, obligations, and procedural requirements established by the Regulation.

For each of the first ten articles, this study examines the relevant provision sequentially by considering its text, objective, explanation, associated legal and procedural issues, advantages, shortcomings, and concluding commentary. Through this approach, the study aims to provide a comprehensive and structured analysis of the first ten articles and to facilitate a clearer understanding of their role within the administrative and legal framework of the judicial courts of the Islamic Emirate of Afghanistan.

2. LITERATURE REVIEW

Several classical and contemporary studies have addressed issues relating to judicial procedures, civil litigation, and Islamic judicial administration. However, no previous study has comprehensively analyzed the Principles on the Administrative and Legal Procedures of the Judicial Courts of the Islamic Emirate of Afghanistan. The following review summarizes the most relevant literature and highlights the research gap addressed by the present study.

Rustambaz and Siddiqi (2016), in their translation and commentary *Tawdih al-Maram: Sharh Majallat al-Ahkam al-'Adliyyah*, primarily analyze the provisions of the *Majallat al-Ahkam al-'Adliyyah*. Although the authors briefly discuss litigation and courts under several articles of the *Majallah*, they do not examine the Principles on the Administrative and Legal Procedures of the Judicial Courts of the Islamic Emirate of Afghanistan. Furthermore, neither the *Majallah* nor the Principles provides comprehensive definitions of a lawsuit, judicial courts, or the essential elements and conditions of legal claims. The present study fills this gap by providing detailed analyses of the concepts of lawsuits, judicial courts, the essential elements and conditions of legal claims, the classification of courts, judicial jurisdiction, and litigation procedures.

Afandi (1991), in *Durar al-Hukkam Sharh Majallat al-Ahkam*, provides a detailed article-by-article commentary on the *Majallat al-Ahkam al-'Adliyyah*, supplemented with practical examples. However, the work does not analyze the provisions of the Principles on the Administrative and Legal Procedures of the Judicial Courts of the Islamic Emirate of Afghanistan. Moreover, the Principles themselves discuss petitions, court proceedings, courtroom discipline, and summons procedures only briefly. The present study expands these topics through a comprehensive legal analysis of petitions, courtroom procedures, judicial discipline, and related procedural rules.

Arifi (2019), in *Principles of Civil Procedure*, discusses various stages of civil litigation, including the filing of complaints, introduces the different types of courts, examines territorial and subject-matter jurisdiction, and analyses evidentiary rules in civil litigation. Nevertheless, the author does not in detail examine or analyse the provisions relating to lawsuits and judicial courts contained in the Principles of the Islamic Emirate of Afghanistan. Similarly, the Principles themselves do not sufficiently define lawsuits, classify their types, explain their legal conditions, or undoubtedly describe the classification of courts. This study addresses these deficiencies through a detailed examination of court case, litigation procedures, judicial courts, and procedures of courtroom.

The Pashto edition of *Dar al-Ulum Deoband Fatwas* (2019) discusses numerous issues of Islamic jurisprudence, including certain aspects of litigation. However, it neither analyses the legal provisions relating to lawsuits and judicial courts contained in the Principles nor provides a systematic legal interpretation of those provisions. In contrast, the present study first develops conceptual definitions of lawsuits, judicial courts, petitions, and courtroom discipline before providing a detailed legal analysis of each subject.

Shams Safi (2019), in *Principles of Civil Procedure*, examines the stages of civil litigation, including the submission of complaints, the organization and jurisdiction of courts, evidentiary rules, objections, documentary evidence, and related procedural issues. However, the author does not specifically investigate the Principles on the Administrative and Legal Procedures of the Judicial Courts of the Islamic Emirate of Afghanistan, nor does he provide an article-by-article analysis of its provisions. Furthermore, issues such as judicial decisions, categories of judgments, components of judicial decisions, petitions, summons procedures, courtroom proceedings, courtroom misconduct, and the jurisdiction of competent courts are not comprehensively addressed. These subjects institute major components of the this conducted research.

3. MAIN BODY

3.1 Article 1

Text of article 1: All cases shall, in the first step, be referred to the Primary Court.

- ***First: Objective of the Article***

The objective of this article is to identify the court of first instance before which a claim should be filed, so that the parties to a dispute may clearly know the competent authority for the initial submission of their claims and accordingly present their cases before that court.

- ***Second: Explanation of the Article***

This article refers to both the claim and the authority responsible for hearing it in order to clarify the court before which a claim must initially be instituted. The Regulation on the Administrative and Legal Procedures of the Judicial Courts of the Islamic Emirate of Afghanistan does not provide a specific definition of a court in relation to this provision. Questions naturally arise regarding the court before which a claim should first be filed and the authority to which objections or appeals may be submitted if the parties are dissatisfied with the judgment of that court. Fortunately, the Regulation on the Administrative and Legal Procedures of the Judicial Courts of the Islamic Emirate of Afghanistan addresses these questions by specifying not only the court of first instance for filing claims but also the competent authority for lodging objections and appeals.

In the legal system of Afghanistan, there are three levels of courts: The very first is the Primary Court, the second one is Appeal court and the third one is Supreme Court. whereas, this article refers only to the Primary Courts. Which include:

- The Primary Court of the Provincial Centre;
- The Juvenile Primary Court;
- The Commercial Primary Court;
- The Personal Status Primary Court;
- The District Primary Court (Arifi, 1396)

- ***Third Issue: Benefits of the Article***

The consequence of this article lies in the information that it identifies the knowledgeable authority before which claims must be filed. Based on this article, all claims shall, in the first instance, be filed before and adjudicated by the Primary Court later.

- ***Commentary***

Meanwhile, claims are initially given to the Primary Court for adjudication, the hierarchical structure of the judiciary is conserved and administrative complications are avoided. Once a judgment has been condensed by the judges, any party reluctant with the decision may, as a second step, fill in an objection or appeal before a higher or appellate court to proceed the case.

3.2 Article 2

Text of the article 2: In civil cases where the amount claimed by the plaintiff does not go beyond (20,000) Afghanis, and in criminal issues where the punishment does not exceed one month's detention such offences being classified as minor offences, the judgment of the Primary Court shall be conclusive and final. All other cases shall be enforced and finished unless either of the parties seeks an appeal. However, cases involving minors, capital punishment, Hudud punishments, Qisas, and life imprisonment are released from this rule and shall be applied only after they have passed through all three levels of courts.

First: Objective of the Article

Pursuant to the provisions of the above-mentioned article, the conditions under which a judgment becomes final and conclusive, besides the circumstances under which a person may pursue appellate review, have been discussed and explained.

- ***Second: Explanation of the Article***

The parties to judicial proceedings are granted the right to object to or challenge court decisions. However, the law prescribes specific time limits within which such objections or complaints must be filed. Upon the expiration of these legally prescribed periods, the parties' right of objection becomes subject to the statute of limitations, and consequently, no complaint or challenge may be lodged against the court's judgment after the expiry of the limitation period.

- ***Third: Exceptions to the Article***

Under the aforementioned article, judgments relating to minors, capital punishment, Qisas (retaliatory punishment), Hudud punishments, and life imprisonment are excluded from the general rules applicable to other judgments.

A minor is a person who, from birth until attaining the age of puberty, is regarded as a child. Likewise, a person may still be referred to as a boy in reference to his earlier stage of life.

- ***Allah the Almighty states***

"These are the limits prescribed by Allah, so do not transgress them. Whoever transgresses the limits of Allah, such are indeed the wrongdoers."

The term Hudud is the plural of Hadd. Linguistically, it denotes prevention or restriction, whereas in Islamic jurisprudence it refers to a punishment prescribed and determined by Allah the Almighty for specific offences and acts of disobedience committed by human beings (Qazwini, 1399).

- ***Capital Punishment (Execution)***

Execution refers to the carrying out of a death sentence by hanging the convicted person until death.

Since capital punishment involves the deprivation of a person's life and restoration of life is impossible once the sentence has been executed, and since Hudud punishments may be waived in cases of doubt or uncertainty, it is necessary that such cases proceed through all three levels of judicial review before their judgments are implemented.

- ***Fourth: Benefits of the Article***

The significance of this article lies in the fact that it clarifies the circumstances under which judgments of the Primary Court become final and conclusive.

- ***Commentary***

The above article discusses the finality of judgments rendered by the Primary Court and the circumstances in which such judgments become final. It also identifies those cases that must proceed through all three levels of the judiciary. Accordingly, judgments may be classified, from the perspective of finality, into two categories: final judgments and non-final judgments. With respect to claims, the article refers only to civil and criminal claims. In its literal sense, a civil claim refers to a claim arising from a legal relationship pertaining to civil rights. A claim may also be defined as the institution of proceedings by private individuals before a competent court for the purpose of obtaining or protecting their rights. The claims that arise in society today take various forms, including commercial claims, civil claims, administrative claims, criminal claims, and other categories. However, the Regulation on the Administrative and Legal Procedures of the Judicial Courts of the Islamic Emirate of Afghanistan does not provide a specific definition of a civil claim. In contrast, Article 5 of the Civil Procedure Law provides a specific definition of a claim and also clarifies its essential elements.

In my view, this article should first have classified claims into their various categories and then explained each category separately, just as it specifically identified the circumstances in which judgments become final and the factors that result in such finality.

3.3 Article 3

Text of the article 3: Judgments of the Primary Courts shall be enforceable and binding, provided that they have not been annulled, set aside, or reversed either by the same court itself or by a higher court of equivalent jurisdiction through review or appellate proceedings.

- ***First: Objective of the Article***

The objective of this article is to clarify enforceable judgments (Mar'i al-Ijra') so that the parties to a dispute may distinguish between enforceable and non-enforceable judgments.

- ***Second: Explanation of the Article***

This article includes three major matters: (1) the Primary Courts, (2) the Appellate Proceedings, and (3) the Enforceable Judgments. According to the compromise of jurists, a judge possesses the authority to cancel or set aside a judgment under certain conditions. A judicial decision may be annulled in the following four situations (Niazi, 1396)

1. Error on the Part of the Judge

A judgment may be revoked where the judge has committed an error. For example, if a judge orders that one hundred thousand Afghanis be awarded to the plaintiff on the basis of witness testimony, but it is subsequently established that the witnesses had a personal interest in the case, and upon investigation they are found to be interested parties, the judge may revoke the judgment previously issued.

2. Judgment Based on the Judge's Personal Knowledge

A judgment may also be annulled where the judge has rendered a decision based on his personal knowledge, although reliance upon a judge's personal knowledge as a basis for judgment is considered a weak and disfavoured ground in Islamic jurisprudence. If the judge later becomes aware that deciding a matter solely on the basis of his personal knowledge is impermissible, he may rescind his previous decision.

3. Departure from the Applicable School of Jurisprudence

Where a judge is bound by the opinion of a particular school of jurisprudence and renders a judgment contrary to that school, the judgment may be annulled. For example, in Afghanistan, judgments are generally rendered according to the Hanafi jurisprudence school, if a judge agrees a case in accordance with the view of Imam Shafi, such actions creates an exit from the set legal framework and is conflicting to the applicable laws. Pursuant to Article 122 of the 2004 Constitution of Afghanistan, in the absence of a specific legal provision or applicable custom, decisions are to be rendered in accordance with Hanafi jurisprudence. Accordingly, such a judge may be regarded as having acted beyond his lawful authority.

4. Retraction by the Plaintiff or Witnesses

A judgment may further be revoked where, after the judgment has been issued in favor of the plaintiff, the plaintiff subsequently appears before the court and states, "Your Honor, I was dishonest in my claim and the

judgment rendered in my favor was unjustified," or where the witnesses who had testified return and admit that their testimony was false.

In these four circumstances, the Primary Court may set aside its own judgment and decision. In the absence of these circumstances, the judge does not possess the authority to revoke the judgment (Mashkini, 1379).

- ***Third: Benefits of the Article***

The benefit of this article lies in the fact that it specifies the enforceable judgments of the Primary Courts. As a result, difficulties in the implementation of judgments are avoided, and court decisions are executed in an orderly and timely manner.

- ***Commentary***

As explained in the above article, enforceable judgments have been identified, and the article itself contains no apparent ambiguity. This is because it clearly specifies the circumstances under which judgments of the Primary Courts become executable and enforceable. Consequently, no practical difficulties arise in implementing such judgments, and their enforcement is expedited. This, in turn, helps prevent delays and obstacles in the administration of justice and in the performance of judicial duties.

3.4 Article 4

Text of the article 4: in legal matters decisions made in non- judicial meetings are not valid.

- ***First: Objective of the Article***

The objective of this article is to regulate the resolution of civil matters outside the courtroom by a judge and to define the temporal and territorial limits of a judge's jurisdiction and authority.

- ***Second: Explanation of the Article***

This article imposes certain limitations upon judicial authority. In other words, judicial power is subject to restrictions in five respects:

- Time;
- Place;
- Persons;
- Subject matter;
- The opinion of the Mujtahid (Niazi, 1396).

Accordingly, a judge's authority is restricted in five areas. In the present context, however, the restrictions under discussion relate specifically to time and place.

With regard to place, territorial limitation has two dimensions: first, territorial jurisdiction, and second, the designated place of judicial proceedings, namely the courtroom itself. For example, if a judge is appointed by

the Supreme Court to serve in Surkhrod District, his territorial jurisdiction is limited to that district. Nevertheless, his judgments are enforceable throughout the entire district of Surkhrod. Beyond the boundaries of Surkhrod District, however, the judge has no jurisdiction.

Secondly, where a judge is restricted to a specific venue for conducting judicial proceedings, any judgment rendered outside that designated place shall not be valid. For example, if the Supreme Court directs that judicial proceedings in a district be conducted in the district's central mosque, then that mosque becomes the designated venue for judicial sessions. If the plaintiff, the defendant, and the judge are all present outside that mosque and the judge renders a decision there, such a judgment shall have no legal effect.

There is, however, an implied exception to this rule in relation to criminal matters, as will be discussed under Article Eleven. In criminal matters, a judge may exercise jurisdiction at the scene of the incident. Whether the judge conducts an investigation at the place of occurrence and subsequently returns to the designated venue, or makes findings directly at the scene, both procedures are legally valid.

- **Commentary**

The provision that judgments rendered by judges outside the courtroom are not legally valid in civil matters is intended to prevent judges from being subjected to undue interference or inconvenience in every place and to ensure that judges do not render decisions outside their lawful judicial capacity, thereby preserving the dignity and authority of the judicial office.

There is a difference of opinion among Islamic jurists concerning the permissibility of arbitration.

1. The Hanafi and Hanbali Jurists

The Hanafi and Hanbali jurists regard arbitration as permissible and rely upon the Qur'an, Sunnah, and consensus (Ijma') as evidence.

a. The Qur'an

Allah the Almighty states:

"And if you fear dissension between them, appoint an arbitrator from his family and an arbitrator from her family. If they both desire reconciliation, Allah will cause harmony between them. Indeed, Allah is All-Knowing and All-Aware." (Qur'an 4:35)

This verse indicates the legitimacy of arbitration, for had arbitration not been permissible, Allah would not have commanded it.

b. The Prophetic Sunnah

It is narrated from Shurayh, from his father Hani', that when he came to the Messenger of Allah (peace and blessings be upon him) with his people, the Prophet heard them referring to him as Abu al-Hakam (Father of Judgment). The Messenger of Allah (peace be upon him) summoned him and said:

"Indeed, Allah is the Judge, and judgment belongs to Him. Why are you called Abu al-Hakam?"

Hani' replied:

"Whenever my people disagree regarding a matter, they come to me, and I arbitrate between them, and both parties are satisfied."

The Messenger of Allah (peace be upon him) said:

"How excellent this is."

This hadith indicates the permissibility of arbitration because the Prophet (peace be upon him) approved and commended his practice (Sahih-al-Bukhari, 2002).

c. Consensus (Ijma')

It is well established that the Companions (may Allah be pleased with them) practiced arbitration, and no objection to this practice has been reported (Niazi, 1396).

3.5 Article 5

Text of the article 5: Judicial courts shall hear and decide all those cases that are in their work frame.

- ***First: Objective of the Article***

The objective of this article is to draw judges' attention to the jurisdiction of courts and to ensure that disputes are adjudicated within the limits of the courts' legally prescribed jurisdiction.

- ***Second: Explanation of the Article***

As the purpose of the article is to identify the authority or jurisdiction of the courts, jurisdiction may be defined as the power conferred by law upon judicial authorities to hear and determine disputes. In our view, jurisdiction is a form of authority and competence granted by law to courts for the purpose of resolving matters by examining them and rendering judgments in accordance with the law.

In order to ensure transparency in judicial functions and to maintain order in the adjudication of cases, courts are vested with both territorial and subject-matter jurisdictions.

1. Territorial Jurisdiction of the Courts

Territorial jurisdiction refers to the geographical area or territorial limits within which a judicial administrative unit or court exercises its authority.

The purpose of territorial jurisdiction is that each judge has a designated territorial sphere within which he may hear and adjudicate cases. Islamic jurisprudence also recognizes the territorial limitation of judicial authority. Article 495 of the Civil Procedure Law expressly provides:

"The jurisdiction of a judge may be restricted with respect to time, place, subject matter, and the occurrence of events."

Similarly, Article 1801 of the Majallat al-Ahkam al-'Adliyyah provides:

"Judicial authority may be restricted by time, place, and the exclusion of certain disputes. A judge appointed to adjudicate in a specific court may render judgments only in that court and has no authority to adjudicate elsewhere."

According to these principles, a judge's authority may be restricted with respect to place, time, and subject matter. A judge, as the representative entrusted with the administration of justice, may therefore be bound by the conditions and limitations imposed by the appointing authority.

Civil disputes are ordinarily adjudicated in the place of residence of the defendant. Where the defendant has more than one place of residence, the civil action shall be heard by the court within whose judicial jurisdiction the defendant resides at the time of filing the claim.

Likewise, commercial disputes are instituted before the court within whose judicial jurisdiction the defendant's legal domicile is situated, irrespective of whether there is one plaintiff or several plaintiffs and regardless of the multiplicity of issues involved (Majallat al-Ahkam al-'Adliyyah; Al-Māwardī, 1999).

Third: Ambiguity of the Article

Although this article refers to jurisdiction, it does not clarify the nature of the jurisdiction upon which courts are authorized to hear and determine disputes. Had the article expressly specified the forms of jurisdiction under which disputes are adjudicated, its ambiguity would have been eliminated. Likewise, no mention has been made of delegated or substitute jurisdiction.

• Commentary

This article imposes certain conditions concerning judicial authority, namely territorial and subject-matter jurisdiction. However, the article does not expressly identify the different types of jurisdiction and contains no discussion whatsoever concerning delegated jurisdiction. It merely refers to territorial and subject-matter jurisdiction by name.

Accordingly, a judge's authority may be restricted by place, time, and subject matter. In this respect, the Civil Procedure Law of Afghanistan adopts a substantially similar but more detailed approach. It provides that an

action shall ordinarily be instituted at the defendant's place of residence and, in order to avoid difficulties relating to domicile, it first defines residence and then classifies its different forms.

Furthermore, pursuant to Article 42 of the Law on the Organization and Jurisdiction of the Judiciary, courts have jurisdiction solely over those disputes that are referred to them in accordance with the law and for the adjudication of which they have been established. The rules governing subject-matter jurisdiction have been devised to ensure the proper organization and administration of judicial affairs.

Likewise, the courts of the Islamic Emirate of Afghanistan have issued decisions concerning territorial and subject-matter jurisdiction. Pursuant to Decision No. 2/12 dated 26/12/1444 AH, a court issued an order declaring lack of territorial jurisdiction in a particular case, and under Decision No. 3 dated 12/1/1444 AH, an order declaring lack of subject-matter jurisdiction was issued in another matter.

Accordingly, in order to prevent an excessive workload upon the courts and to maintain judicial order, it is essential that every matter be adjudicated by the competent court on the basis of territorial and subject-matter jurisdiction. Such an approach also enables defendants to receive proper adjudication of their respective claims before the appropriate judicial forum (Arifi, 1396; Ibn Qudāmah, 1997).

3.6 Article 6

Text of the article 6: The courts of justice shall adjudicate and decide those claims and disputes that are submitted to them by the parties concerned or by the relevant authorities in civil and criminal matters, where a request has been made for their resolution and settlement

- ***First: Purpose of the Article***

The purpose of this Article is to distinguish between civil and criminal cases and to refer each case to the competent division (Diwan) for adjudication in accordance with its nature and subject matter.

- ***Second: Explanation of the Article***

This Article states that cases may be submitted to the courts either by the claimants themselves or “by the relevant authorities.” The term “relevant authorities” includes parties such as the claimant, legal representative, guardian, trustee, or curator, as well as the competent governmental bodies involved in legal and criminal matters.

The relevant authorities primarily refer to state institutions such as police commands, the Directorate of Rights, and the courts. Each institution may contain specialized departments. For instance, in criminal problems, a police patrol may arrest a suspect during the commission of an offense. In such conditions, there may primarily be no private complainant. The suspect is transferred to the department of criminal investigation, subjected to investigation, and then referred to the capable court. These governmental institutions are the relevant authorities through which cases may be brought before the judiciary.

Therefore, a case may reach the court either through a claim filed by the original claimant or the request of the competent state authorities.

- ***Third: Benefits of the Article***

The advantage of this Article is obvious it enables both the claimant and the defendant to obviously determine the proper authority before which their case should proceed. This underwrites to the proficient administration of justice, prevents needless delays, and ensures that each matter is examined by the capable court or there is separation having jurisdiction over the subject matter (Rahimi, 2007; Al-Māwardī, 1999).

- ***Commentary***

As is obvious from the text of the above mentioned Article, judges shall proceed with the separation and classification of cases referred by the by the competent authorities or litigating parties. Each case is then submitted to its appropriate division for resolution and adjudication. This procedure ensures the proper observance of administrative hierarchy, avoids confusion and chaos in judicial proceedings, facilitates the efficient and effective organization of court affairs, and empowers the suitable disposition of claims brought by appellants.

3.7 Article 7

Text of the article 7: Where a numerous of cases are referred to the court, the dominant judge shall manage and schedule them accordingly. Each defendant and claimant shall be issued a ticket in the order in which they receive their cases, identifying the date on which they are required to be present by the time court for the institution and hearing of their claims.

- ***First: Purpose of the Article***

The main purpose of this Article is to avoid excessive cramming and overcrowding inside the courts. At the same time, each person should appear before the court at the specific date and time assigned to him or her when they submit their case, thereby certifying the orderly judicial proceedings or administration.

- ***Second: Explanation of the Article***

The above discussed Article points out two major matters. The very first disquiets are the responsibility of the judge to impartially act and administer justice and order, while the second concern is related to the specification of hearing dates.

In reality, however, the application of this Article includes both the court clerk and the judge. The organization and registration of cases are generally duties of the clerk, whereas judicial orders and decisions fall within the authority of the judge.

Islamic jurists maintain that the recording, registration, and documentation of cases constitute the responsibilities of the court scribe or clerk, while judicial rulings and determinations remain the exclusive functions of the judge. On the other hand, statutory laws provide that when numerous cases are submitted to the court, the arrangement and scheduling of such cases become the responsibility of the judge. Assigning this authority to the judge serves the interests of justice and proper judicial administration.

Historically, the Prophet Muhammad (peace be upon him) employed scribes to record official matters. Likewise, judges may appoint clerks to assist them in carrying out administrative duties. Even where such clerks are not qualified jurists, they are expected to possess the qualities required for performing their official functions competently.

The obligation of equality and justice referred to in this Article is also derived from the well-known directive of Caliph Umar ibn Al-Khattab (may Allah be pleased with him) to Abu Musa Al-Ash'ari (may Allah be pleased with him), in which he instructed: "Treat people equally." This directive emphasizes that all litigants appearing before a judge, whether Muslims or non-Muslims, must be treated equally in seating arrangements, communication, and all procedural aspects of judicial proceedings. Therefore, a judge is required to conduct court sessions with complete impartiality and fairness (Niazai, 1396; Bassiouni, 2003).

The principle of equality further applies to the scheduling of cases. For example, if one litigant has four separate cases pending before the court while two other litigants each have only one case, the judge must ensure fair treatment among all parties. If the judge completes all 4 cases of one litigant on a single day while delaying the cases of the other litigants to another day without explanation or sufficient reasons, this kind of act may constitute unsatisfactory treatment and be unpredictable with the principle of judicial justice and equality.

Third: Ambiguity of the Article

One vagueness contained in Article is the disappointment to clarify the exact period within which the parties are asked to return or appear before the trial. The Article would be obvious if it particularly determined the timeframe for such appearance.

Fourth: Benefits of the Article

This Article eases the timely, obvious, and orderly behavior of judicial affairs. Judges are capable to organize their work in accordance with the predetermined schedules and send for specific parties on chosen dates.

Consequently, judicial proceedings advancement more professionally, judicial resources are used more successfully, and litigants are safe unnecessary delays and expenses of time by appearing before the court only on their arranged dates.

- **Commentary**

As a requirement to the initiation of judicial proceedings, the request relating to the relevant disagreement must first be registered with the court registry department. so, preliminary proceedings may take place before the formal judicial hearing occurs. The parties are then providing with attendance tickets or notices showing a registration number and an exact hearing date, requiring them to appear before the court on the scheduled day. if a party fails to appear despite having received appropriate notice, the court may issue a judgment in absentia according to the appropriate procedural rules. Since the absent party was formerly informed of the hearing date through an official notice, such party cannot then challenge the validity of the trial solely based on non-attendance.

4.8 Article 8

Text of the article: Courts of justice are obliged to examine and adjudicate the cases brought before them according to the provisions and regulations of Islamic Sharia.

First: Purpose of the Article

The goal of this Article is to describe the responsibilities and obligations of judges and to draw their attention to the appropriate discharge of their judicial responsibilities.

Second: Explanation of the Article

As exact qualifications and conditions have been made for judges for the purpose to ensure that they own the needed professional proficiency, the reference to “Islamic legal provisions” in this Article shows that, once a case is referred before the court, the petition or application must please all procedural requirements and prescribed legal.

After the appeal has been duly registered and recorded in the registry department of court, and provided that all legal necessities have been fulfilled, the judge may proceed with the case and issue the essential commands. Similarly, at the time of rendering judgment, the subject matter and truthful basis of the claim must exist and be correctly recognized. The issuance of a verdict in the absence of the essential basics of the claim would be opposing to the due process and principles of Islamic law (sediqi, 1399; Al-Kāsānī, 1406 AH/1986 CE).

Third: Benefits of the Article

By explicitly imposing duties upon judges, this Article gives the greater diligence and efficiency in the performance of judicial tasks. It inspires judges to remain watchful for their duties and to carry out their responsibilities in a conscientious manner, professional and timely.

Fourth: Deficiencies of the Article

The very first insufficiency in this Article is that it is about the duties and obligations of the “court” rather than the “judge.” In practice, it is not the court as an organization but the judges themselves who accept responsibility for examining cases and issuing orders. Hence, it would have been more exact for the Article to refer straightly to the duties and responsibilities of judges.

- ***Commentary***

Judges, like all members of the community, are not excused from the application of the law. Accordingly, they are asked to observe with all applicable legal provisions in the same way as other citizens. In addition to these overall responsibilities, though, judges are subject to certain special obligations arising from the nature of their workplace. Among these special obligations is the judicial promise, which judges are requested to take upon assuming office. Besides, judges are forbidden from holding membership in political parties or engaging in political deeds that may question their independence and impartiality. Since the judicial task is a sacred, valued and highly responsible public trust, judges must desist from undertaking any activities or obligations that may affect the proper performance of their official duties.

Islamic law similarly recommends specific qualifications and conditions for judges in order to keep the integrity, dignity, and authority of the judicial department.

3.9 Article 9

Text of the article 9: The attendance or release ticket shall be delivered by the judge of the Court of First Instance, Appellate Court, or Court of Cassation in the presence of both parties, specifying the relevant reference number and the definite date.

First: Purpose of the Article

this Article aims to ensure that the judges issue the attendance ticket in the presence of both parties, clearly specifying its reference number and date, therefore the parties may make conform their procedural position and proceed properly with the institution and continuation of the legal actions.

Second: Explanation of the Article

The Article places a procedural limit upon the authority of the judge. In other hand, once the parties appear before the court, the judge's ability regarding the issuance of the attendance or release ticket becomes subject to the conditions discussed by the law.

Where both parties are available, the judge is authorized to give the attendance or release ticket. Though, where both parties are absent, the judge does not have the authority to issue the ticket. Therefore, the availability of the litigating parties establishes a prerequisite for the exercise of this judicial power (Rahmani, 2007; Al-Māwardī, 1999). Another topic addressed by Islamic scholars concerns the period of adjournment or leave that may be granted by the judicial authorities. In the view point of classical jurists, a judge may, within his freedom of choice, grant either the claimant or the defendant a period of up to three working days. Conceding a period exceeding three days generally requires the agreement of both parties.

Third: Benefits of the Article

One of the core benefits of this Article is that it helps in distinguishing between genuine claimants who are pursuing legitimate rights and those who initiate claims without a legal basis. Besides, the procedural fees related to judicial proceedings institute a source of public income, and failure to fulfil the prescribed procedures may effect in the imposition of lawful penalties or fines.

- ***Commentary***

According to this Article, judges of the Courts of First Instance, Appeal, and Cassation issue attendance or release tickets when both parties are present while stating both the reference number and the date thereof.

The presence of the date is the particular legal meaning because it gives us the basis for calculating statutory periods, as well as the time limits for filing complaints, appeals, and other legal remedies, in addition to the period for the implementation and execution of judgments. In criminal issues, the date of the judgment is as important for the implementation of penalties as other judicial orders. If the date is lost from the attendance or release ticket, hesitation and procedural confusion may take place regarding the administration of court records and the implementation of judicial decisions. Such shortages may result in postponements, procedural hindrances, and the potential violation of the rights of the contesting parties.

3.10 Article 10

Text of the article 10: Higher courts of justice shall not decide or determine any case unless a decision or judgment has first been taken by the lower courts.

First: Purpose of the Article

Every article has its own purpose so; the main aim of Article 10 is to reserve the independence of the courts in the performance of their judicial tasks. It means all the cases should first be decided in the lower courts and later on if the parties are not consent the case can be referred to higher courts, it means directly a case cannot be judged by the higher court until it's not discussed in the lower court.

Second: Explanation of the Article

Pursuant to Article 10, all claims and disputes must first be heard and adjudicated by the primary. Today, this principle is implemented, and cases are firstly processed and decided by the capable primary courts. The Article is in force, and there is no significant trouble in its implementation.

Third: Benefits of the Article

One of the crucial benefits of the Article 10 is the protection of the hierarchical structure of the judiciary system. Is obliges each court to do its designated role within the judicial system, needless delays, disruptions and procedural confusion in court operations are banned. Another advantage of this article is, it avoids interferences and separation of power, and gives authority to each and every court in their level.

- ***Commentary***

Inside every organization, an effective system of hierarchy and supervision is much essential for the proper administration of affairs being performed. This supervision usually originates from the highest level of authority and prolongs downward through subordinate levels. Officials inhabiting higher positions possess the authority and responsibility in order to supervise the performance of subordinate offices and ensure compliance with recognized procedures. The judicial system runs in accordance with the same standard. With the intention of ensure the orderly administration of justice, maintaining discipline, and support procedural effectiveness, courts role within a structured hierarchy. As we have previously said, the judiciary contains of three levels of courts; primary court, appellate court, and the Court of Cassation. so all cases must first be decided in the primary court later on appellate and cassation court are authorized to proceed.

4. CONCLUSIONS

The first ten articles of the Principles of Administrative and Judicial Processes of the Judicial Courts of the Islamic Emirate of Afghanistan illustrate how the principles set the formal and structural basis for the

administration of justice and offer a general outline of judicial proceedings. They consider the Court of First Instance as the first instance for litigation and the appeal stage as well as the cassation stage in the judicial review system.

In parallel, the study highlights some of the points that need more stringent procedures. In particular, the legal concept and necessary elements of a claim, the procedure of filing petitions, the requirements, legal grounds and deadlines for appeal and cassation, are not sufficiently delineated. The provisions on arbitration also need to be further clarified in terms of their legal status and how they will be applied in practice. Likewise, while the Principles discuss interference or disruption of court proceedings, it does not make it clear what disciplinary action or legal sanctions would apply if. Likewise, while the Principles discuss interference or disruption with court proceedings, it does not make it clear what the corresponding disciplinary action or legal sanctions would be, if.

The first ten articles therefore constitute a basic structure for judicial administration, but are general in certain aspects of procedural control. This may result in ambiguity and inconsistencies in the interpretation and use in practice. However, the findings must be interpreted in the context of this study that only covers the first ten articles – not a complete analysis of all the Principles.

The study also recommends for the procedural clarity of the claims, petitions, appeals, cassation, arbitration and interference with the proceedings in court. Further research is needed on other provisions in the Principles in relation to applicable Islamic legal principles and other relevant procedural laws for areas that need to be clarified, consistent and effective.

4.3 Conflict of Interest

All authors express no conflict of interest in any part of the research.

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