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**SHARIA COURTS: MODERN
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SHARIA COURTS: MODERN PRACTICE AND PROSPECTIVES IN RUSSIA *

This article touches on the fundamental principles of *Sharia* judiciary, the modern practice of *Sharia* court activity in Muslim and Western countries and their establishment and functioning in Russia. The place which *Sharia* courts occupied in the judicial system of the Muslim state during middle ages, the general historical evolution of *Sharia* justice institutions and the role played by modern *Sharia* courts in Muslim countries, which depends on the place which Islamic *Sharia* occupies in their legal systems, are shown. The *Sharia* model of judiciary has been known in Western countries from the middle ages and today *Sharia* courts are still functioning in some of them.

In Russia, *Sharia* institutions of dispute resolution were created in the 19th century. They existed in some forms until the end of the 1920s. After that, while they still existed, their decisions did not have any legal force. From the 1990s, *Sharia* courts began to re-emerge in Russia as religious or civil structures. Russian legislation provides the legal basis for establishing *Sharia* institutions of dispute resolution in the form of arbitration courts or mediation structures. Such institutions can be an alternative to illegal *Sharia* courts, and they could assist securing legal fundamentals and values within the Russian Muslim community.

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Introduction

Recently the subject matter of *Sharia* courts has been drawing the attention of the Russian media. Lawyers and legal researchers are quite reluctant to participate in the discussions held mainly by journalists, religious figures and political experts. This could be why the issue is covered superficially resting upon emotional, biased and politically motivated assessments. Further the subject matter itself is not always clearly specified and fundamentally different issues of *Sharia* courts get mixed. All this necessitates a legally correct analysis of the *Sharia* judiciary and the track record of the *Sharia* courts and the possibility of their establishment in our country.

The *Sharia* system of justice: the practice of Muslim countries

The subject matter of justice and law has always taken a significant position in *fiqh*—the Islamic science of the rules regulating the explicit behaviour of human beings. A famous letter written by Caliph Umar ibn Al-Khattab about *Sharia* judiciary is a benchmark as it covers all the key issues of *Sharia* [See (Anthology. 1999. P. 681–682)]. This brief document is just a few dozen lines but the comments run to hundreds of pages, and make it one of the most outstanding works of medieval *fiqh*, created by Ibn al-Qayyim al-Jawziyyah, a notable Muslim legal scholar [See (Al-Dzhawziyya, Ibn al-Kayyim. Ch. 1. P. 86–383; Ch.2. P. 3–182)]. Interpreting the idea of the Caliph’s letter, he gives a detailed rendering of Islamic legal theory.

Characteristic features of Islamic law simultaneously manifest themselves both in the organization and functioning of the *Sharia* courts. What is meant here are the norms elaborated by *fiqh* (the norms are also called *fiqh*) which meet the criteria set to the law [See (Sykiainen. 2007)]. In the first instance, it covers the source of Islamic law represented by the doctrine over the course of history and the

works by Muslim legal scholars *Sharia* judges (*qadi*) referred to while taking their decisions.

It is no coincidence that *Sharia* courts as state institutions played a crucial role in the enforcement of Islamic law. According to *fiqh* the principal designation of the power is the implementation of *Sharia* and this task is completed in the activity of judicial bodies. Taking into account the concept of the separation of powers, modern Islamic legal thought highlights the leading role of the judicial power not the legislative one. The practical effect of the *Sharia* norms is impossible without the *Sharia* judicial bodies executing the principal function of the Islamic state.

Over the course of history in most Muslim countries *Sharia* courts specifically were the core of the judicial system and ensured *Sharia*'s implementation. The situation started changing in the second half of the 19th century when profound political and administrative reforms in the Ottoman Empire and Egypt entailed a shift of positions—in more developed Muslim countries Islamic law gave central place in the legal system to European type legislation. The *Sharia* courts were significantly modified as a result of those changes. In most countries their jurisdiction was limited to the consideration of the personal status of Muslims.

The reforms of the 19th century predetermine the specifics of the *Sharia* judicial bodies which function in the Muslim world today. A lot depends on the position Islamic law occupies in the legal development of a particular country. The broader it is, the more consistently *Sharia* justice principles are implemented in the legal system. However, even accounting for the modifications these bodies significantly differ from traditional *Sharia* courts working in medieval Muslim states and, moreover, from the ideal model of the *Sharia* justice elaborated by traditional *fiqh*.

At present the organization of *Sharia* courts and procedural rules applied by them comprise traditional Islamic norms and institutions with forms typical for modern European law. In particular, traditional *Sharia* justice was based upon the

sitting of a single judge (*qadi*), while nowadays a panel hearing is the norm. In the Middle Ages *Sharia* courts functioned on one level and court decisions delivered by them were considered irreversible. Today in all Muslim countries with such courts there is a multi-level system of *Sharia* judicial bodies which stipulates the possibility, and in certain cases even necessity, of an appeal of a decision taken by the court in the first instance.

Given the above and the modern practice of some Muslim countries the *Sharia* system of justice should not be understood as a certain form of court but a model which is different due to specific *Sharia*-related features. First of all, *Sharia* justice involves the regular application of the *Sharia* norms by the court and special procedural rules (such as testimonial evidence and other forms of proving legal facts) elaborated by Islamic legal doctrine. Some of the courts organizational principles are characteristic features, particularly the requirements imposed on judges.

At present it is difficult to find a judicial body completely meeting all these requirements. However, in different Muslim countries there are courts in organization of which these requirements are realized to some extent; it is possible to identify some modern *Sharia* courts or, to be more precise, some forms of the implementation of the *Sharia* model of judiciary or elements of it in the modern judicial system of Muslim countries.

In some countries all regular courts are called *Sharia* courts although they are not always *Sharia* courts in the strict sense. In Saudi Arabia courts of general jurisdiction are not just called *Sharia* courts but they really are. According to the *nizam* (regulation, order) about the judiciary, all courts are obliged to implement, first of all, *Sharia* and only then the state normative acts which do not contradict it. That is why even the administrative and special courts in the Kingdom can be considered *Sharia* courts. The current procedural legislation both for regular and administrative courts implements numerous *Sharia* rules, and recruits only judges who have certificates or diplomas of *Sharia* education.

The peculiarity of the judicial system of Pakistan is that it comprises the Federal *Sharia* court established in 1980, which is the body of constitutional control since it is authorized to check the compliance of all the laws adopted in the country to *Sharia* norms. Together with this, the court is the appeals court for verdicts of the courts of general jurisdiction passed in accordance with the legislation which stipulates *Sharia* punishment for certain crimes. A special law on procedural regulations applied by the Federal *Sharia* court was adopted in Pakistan in 1981.

In some modern Muslim countries (for example, Jordan, Iraq, Lebanon) there are independent *Sharia* courts for the resolution of disputes linked with personal status of Muslims on the basis of *Sharia* law, acting in the form of legislation or modern Islamic legal doctrine (*fiqh*). In Egypt such courts are called family courts but in reality they are also *Sharia* judicial bodies.

The judicial systems of such countries as Libya, Kuwait and the United Arab Emirates do not include *Sharia* courts and generally are guided by European traditions. However, regular courts here use principles of *Sharia* for instance, to resolve disputes on personal status issues. The civil procedural legislation often contains special provisions which are applied during the hearing of similar cases and differ from the general regulations of civil procedures.

Islamic judicial law norms are sometimes applied by the courts of general jurisdiction leaving open the possibility of sentences in accordance with *Sharia*. This practice is in evidence in Libya, the United Arab Emirates and as mentioned, Pakistan. These judicial bodies have features of the *Sharia* court since they do not only implement the norms of the Islamic material law but they also stick to the *Sharia* procedural regulations particularly in assessing evidence.

A good example is the 1984 Pakistani law on testimonial evidence meeting the *Sharia* criteria and accepted by the court during hearings of crimes for which there are *Sharia* sanctions. The laws adopted in Libya in 1972–1973 can be also mentioned in this context. Those are the laws on the *Sharia* responsibility for theft

and assault with intent to rob, adultery, and alcohol consumption which stipulate traditional *Sharia* standards of evidence for these crimes.

This important quality of *Sharia* justice institutions (concerning both procedure rules and material norms applied) explains why other courts of general jurisdiction in Muslim countries cannot be called *Sharia*. They not only address the *Sharia* norms episodically (for example, litigation of Islamic business organizations negotiating deals using the *Sharia* requirements) but also within the framework of general procedural rules not using the *Sharia* criteria.

Sharia justice principles work partially in those non-Muslim countries of Asia and Africa where Muslims are the minority but are traditionally entitled to regulate relations of their personal status in accordance with *Sharia* norms. The indicative examples are India, Israel or South Africa with *Sharia* courts applying *Sharia* to issues of conjugal relations.

***Sharia* courts in the West**

The *Sharia* model of justice has been long known to Western Europe where, with modifications, it functioned for some centuries in Middle Ages. To a greater extent this refers to Spain, where certain regions were exposed to Muslim conquest and the significant impact of Islamic laws and culture. Throughout its history *Sharia* laws were in force here in one form or another. Some European countries were occupied by the Ottoman Empire, the influence of which extended to their legal and judicial systems including the *Sharia* courts.

But it is not the historical experience of *Sharia* justice that has attracted recent attention in Europe. The issue has been about the formation and functioning of *Sharia* courts in modern West European countries, which has been the direct result of the intensive growth of the population of Muslim minorities, who play an increasingly significant role in the social, political and legal life of those countries.

These processes entail conflicts which are based on the significant differences between the Islamic and European legal cultures. In this context the actions of

Sharia justice institutions cannot be unambiguously evaluated. In reality the functioning experience of these bodies intensifies this conflict.

Occidental practice allows two basic forms of *Sharia* courts to exist. The first is represented by dispute resolution bodies which are founded on the basis of the legislation of the country. The second is the existence of religious and public institutions called *Sharia* courts but which are not included in the recognized system of legal dispute resolution. There are also institutions which combine the functions of courts and religious organizations.

An important example of a European country where the *Sharia* justice model is implemented not only in the form of religious or public institutions but also in bodies of judicial or alternative dispute resolution within the framework of the law is the UK.

The appearance of *Sharia* judicial structures in the UK started in the 1980s. The first was the Islamic *Sharia* council founded in 1982 in Leyton. Today the total number of such institutions exceeds 80. Most of these courts, according to their legal form, are public (sometimes charitable) structures and their decisions have no legal standing. In most cases they resolve family and minor property disputes. According to the statistics more than 90% of all the decisions taken by those courts refer to dissolution of marriages, divorces and their consequences [See (Women's equality in the UK. 2013)]. They implement *Sharia* rules which often explicitly contradict British legislation. Their tendency to resolve family and property disputes according to *Sharia*, and their decisions in respect of these issues against UK law predetermine the negative attitude of the public opinion in the UK.

The negative assessment of the activity of unofficial *Sharia* courts predominates and it explicitly influenced the perception of the lecture given by the Archbishop of Canterbury, Rowan Williams in February 2008 [See (Archbishop's lecture. 2008)]. His entire speech was dedicated to the problem of the interaction of the British and Islamic law. He supported the idea of officially acknowledging the right of Muslims to follow *Sharia*, and of including some of these rules in the legal

system of the country. In his opinion there is no reason for UK national courts not to accept decisions based on the *Sharia* principles.

This position from a leading religious figure met unanimous harsh criticism from the media and from parliament. Their principal arguments came down to the fact that *Sharia* norms were implemented for the sake of reasoning the discrimination of women and actual polygamy, prohibition for Muslims to marry non-Muslims, the legalization of forced marriages, the restriction of women's rights after divorce. *Sharia* court opponents insist that Muslim women apply to these bodies not of their own volition but forcibly since Muslim communities actually prohibit them from seeking the protection of their rights by applying to state courts.

In December 2008 in the UK a campaign was launched with the slogan "One Law for All" [See (Enemies Not Allies: The Far-Right)]. Its activists radically deny *Sharia* and *Sharia* courts. This position is substantially grounded on decisions delivered by such courts which do not meet the modern vision of human rights and justice; however it is equally unjust to criticize the *Sharia* justice model as a whole based on the activity of certain institutions. There are other *Sharia* courts which work legally correctly and actually function within the legal framework of the UK on the basis of its legislation. These are the *Sharia* courts which were formed and function in accordance with the Arbitration Act of 1996 [See (Arbitration Act 1996)]. It allows an arbitration tribunal by agreement of the parties, which at their own initiative apply to it for the resolution of their dispute, and who are willingly ready to follow the decision made by this body. It is important that disputes related to public interest or disputes requiring serious consideration cannot be resolved by arbitration proceedings. For example, criminal cases are not covered by the arbitration tribunal, which is authorized to resolve only civil disputes and moreover with several restrictions.

The parties before the arbitration tribunal have opportunities to set the procedural regulations to resolve the conflict. Moreover, they are entitled to choose the law applied to their dispute. Specifically these terms allow certain religious

communities to establish arbitration bodies enforcing not British law but the legal traditions typical for that confession. It is known that Jewish communities use this opportunity. Their members regularly apply to the arbitration tribunal Beth Din (House of justice) which enforces Judaic law to resolve their disputes.

Approximately two dozens of Islamic institutions refer to such arbitration bodies and they are called *Sharia* courts. The Muslim arbitration tribunal is one of the most authoritative among them. It takes up cases of forced marriages and domestic violence, family disputes, commercial and debt disputes, hereditary cases and conflicts in mosques. However, in accordance with the Arbitration Act of 1996 this tribunal does not resolve disputes related to divorces. It elaborated the procedural regulations applied. According to these rules when formulating their decisions the tribunal takes into account the British legislation of as well as the conclusions elaborated by the recognized school of Islamic law [See (Procedure rules)].

However, the public in the UK and most western countries are not familiar with the practice of *Sharia* arbitration tribunals and simply negatively assesses the practice of *Sharia* justice in general.

A similar unilateral view of the *Sharia* courts had a decisive impact on the functioning of religious arbitration in Canada. In the Province of Ontario the Arbitration Act 1991 [See (Arbitration Act, 1991)] is similar in content and idea to the British Arbitration Act of 1996, although the Canadian act allows for the arbitration of family disputes. Moreover, the arbitration agreement on these issues is considered to be a private contract stipulated in the 1990 Act on family law and is to be executed in compliance with it. However, the arbitration acts coincided until 2006 in that the parties of the arbitration case themselves determined the law to be used in resolving the dispute.

By the beginning the 2000s, arbitration bodies of confessional and ethnic orientation had been formed in Ontario. In particular, there were courts for Jews, followers of different branches of Christianity and for the aborigines.

In 2003 the Congress of Canadian Muslims decided to establish a similar structure for Muslims and the Islamic Institute of Justice was established, which used *Sharia* arbitration within its framework implementing the 1991 Arbitration Act. However, that initiative caused a negative reaction from the public and the provincial authorities. In 2005 the Prime Minister of Ontario Dalton McGuinty introduced a bill to the legislative assembly, which excluded any possibility for arbitration structures to implement *Sharia* norms for the resolution of family conflicts [See (Farrow. 2006; Predko, Gregory. 2006)]. Some important amendments were made to the acts on arbitration and family law in February 2006 [See (Family Statute Law Amendment Act, 2006)]. They stipulate that arbitration on family issues is to be guided exclusively by the legislation of Ontario, or another Canadian jurisdiction. Together with this, arbitration is subject to the norms of both acts and in the case of conflict between them the provisions of the Act on family law prevail.

Eventually, the Arbitration Act of Ontario, after the alteration in resolution of family disputes, excluded any free choice of law which is applied by the family arbitration. Consequently, it excludes any chance to establish *Sharia* arbitration on family issues. This also applied to other religious arbitration bodies dealing with family conflicts.

The prohibition of free choice is restricted to family issues only. That is why other religious arbitration institutes can be established including *Sharia* arbitration institutes. This does not bother Canadian public opinion which believes there is no danger in implementing *Sharia* norms for issues other than family ones.

This attitude has something in common with the estimation of the *Sharia* justice in the UK and other European countries, such as Germany, Spain and Belgium where there are unofficial *Sharia* courts within Muslim communities. Their negative perception is motivated by public opinion mainly referring to decisions taken by those bodies which violate women's rights. Attention is attracted by the practice of *Sharia* courts considering cases according to *Sharia* or local traditions and customs (*adat*) replacing the state courts, for instance, in

respect of honour killings or blood feuds, to reconcile the criminal with the complainant.

The experience of *Sharia* courts and Islamic arbitration tribunals, especially their practice in the UK, the USA and Canada is still debated actively. In general Western research concludes that the activity of such *Sharia* institutions very often dispose Europeans against any forms of *Sharia* justice [See, for example (Bakht. 2004; Bano. 2007; De Blois. 2010; Islamic law in U.S. Courts. 2013; Shariah in American Courts. 2014)]. This position affects the discussion of the issue of *Sharia* courts in Russia. However Russia has its own history of *Sharia* courts and its own modern practice of their functioning.

***Sharia* justice in modern Russia: diversity of form and assessment uniqueness**

The initial forms of *Sharia* justice appeared in Russia together with the dissemination of Islam in the North Caucasus and the Volga and Ural regions. This process entailed the confirmation of *Sharia* as a system of norms acting together with the local traditions and customs (*adat*) among Muslims. Simultaneously there were different bodies of *Sharia* judiciary which ultimately took shape in the 19th century when the North Caucasus became part of the Russian Empire.

Since the 1860s verbal and people's courts were functioning here [See, for example (Bobrovnikov. 2001)]. They considered disputes between Muslims in accordance with some material and procedural norms of *Sharia*. As a rule, besides *Sharia*, those bodies widely applied *adat*. That is why these courts can conventionally be called *Sharia* courts.

After the establishment of the Soviet power, official *Sharia* justice institutes remained until the end of the 1920s. Though, their organization, principles and activity drastically differed from the traditional *Sharia* norms.

From the end of the 1920s until the collapse of the USSR there were no judicial bodies that could be called *Sharia* courts in Russia. Although in the traditionally Islamic regions like the Caucasus there were institutes which resolved

disputes among Muslims on the basis of *Sharia* and *adat*, often in mosques involving Muslim religious leaders.

However, the situation changed in the 1990s and *Sharia* courts publicly announced themselves in the country. In 1995 in Chechnya, which actually was at that time out of the Russian legal framework, the first *Sharia* courts implementing *Sharia* norms including those related to criminal cases appeared. A few years later a similar body was established in the Kadar area in Dagestan where real power belonged to Muslim radicals for a certain period of time, and they proclaimed *Sharia* law instead of the Russian legislation.

These models of *Sharia* justice were part of the political plans of separatists and Muslim extremists who did not fall into line with the Russian authorities. Simultaneously there were other *Sharia* courts which did not officially oppose *Sharia* and its norms to Russian law. Many of them are still working now. These institutes are not official judicial bodies; however they are powerful and authoritative. For instance, in the 1990s in many regions of the North Caucasus there were so called *Sharia* courts which resolved disputes between Muslims in the areas of influence of traditional *jamaats* (communities). Their specialty is the preferential implementation of *adat* not *Sharia* norms [See (Albogachieva. 2012, P. 142-208; Makarov. 1998, P. 19)]. That is why such structures can be called *Sharia* courts only conventionally. This does not concern the *Sharia* courts which appeared in the new millennium among young Muslim *jamaats* in the Caucasus. They try to follow *Sharia* completely without referring to *adat* [See (Yarlykapov. 2014)].

In 1999 a *Sharia* court acting under the spiritual directorate of Muslims of the Ingushetia republic emerged. There are similar structures called *qadiyats* within numerous spiritual directorates of Muslims (mostly those having the status of the central religious organization).

Sharia courts in Chechnya and Kadar area of Dagestan remained in the past. In respect of other *Sharia* institutes of dispute resolution existing today, their establishment is not stipulated in Russian law. Their decisions have no legal status

but they are recognized by Muslims for whom they are often the only option. Quite often such *Sharia* courts take decisions which explicitly contradict Russian legislation. However, the power of traditions and the authority of public opinion effectively disallow Muslims, whose rights are effected by such decisions, to defend their rights in Russian courts.

For some time only the extremist *Sharia* model was negatively assessed by public opinion and the Russian authorities. In respect of other *Sharia* courts their activity did not kindle any interest for quite a long time, possibly because the information about their controversial decisions was not widely spread.

However, the situation changed in 2010 when in Saint Petersburg the autonomous religious organization *Al Fath* declared the establishment of an Islamic human rights organization with a *Sharia* court within its structure. That initiative was decisively rejected by society and authorities. In particular, Russian parliamentarians, the Human Rights Ombudsman of St. Petersburg and even prosecution authorities expressed their negative opinion.

There was a similar reaction to the initiative of the Moscow lawyer Dagir Khasavov who on 24th April, 2012 in an interview on REN TV channel declared the necessity to establish a *Sharia* court in the capital. And in case of failure of this project he threatened severe consequences and even bloodshed. As in 2010 this initiative was condemned and even caused a prosecution inspection [See (Who needs *Sharia* in Russia?)].

There are a few arguments against *Sharia* courts and their prospective establishment in modern Russia. Purely emotional arguments obtained wide circulation—they come down to a categorical non-acceptance of *Sharia*, especially in the form it was implemented by certain *Sharia* courts and structures representing themselves in the role of such bodies. In this respect the examples of such courts were the *Sharia* courts in Chechnya and Dagestan in the 1990s, unofficial institutes of *Sharia* justice in Europe, the project of the corresponding court in Moscow which was assessed by the aggressive declarations of its initiator. The Russian

public is convinced that *Sharia* courts are unjust—they humiliate women, strengthen inequality, and assist criminals.

Along with political, social and psychological arguments it is important to note the legal rationale of the impossibility of *Sharia* courts in our country. This argument imposes a distorted evaluation of *Sharia* based on those courts which allegedly does not acknowledge the legal system of a secular state which denies confessional principles of the force of law. If *Sharia* cannot be a legal phenomenon in Russia, then the issue of the establishment of *Sharia* courts is invalid.

Another legal provision which has a key meaning is that opponents of *Sharia* courts assert that only state judicial bodies can act in Russia. That is why any projects to establish these courts are claimed to be illegal, to undermine the constitutional system and to threaten the unity of the state.

This legally incorrect objection raises the eyebrows even of Russian parliamentarians who are obliged to master the basics of legal culture. Non-state courts can work in our country and alternative means of dispute resolution can be applied as well. There is legislation about courts of arbitration and mediation procedures. So this argument against the model of *Sharia* justice is insufficient.

The position of Muslim religious figures is interesting—they were among those who were crucially against the establishment of the *Sharia* court. However, their objections are not based on a legal analysis of the problem. In private talks and public speeches Muslim leaders emphasized the fact that there are *qadis* within the spiritual directorates of Muslims. Any Muslim can go to them to ask for help to resolve a dispute. That is why there is no necessity to establish special *Sharia* courts at the initiative of unknown people acting, moreover, without any agreement with Muslim religious centres. In other words Muslim leaders do not differentiate between the structures within the spiritual directorates, the decisions of which are simple advice or opinion of a religious nature, and institutes of justice and out-of-court resolution of disputes stipulated in the Russian legislation and taking legally significant decisions.

***Sharia* courts and modern Russian legislation**

Thus, there are quite a few arguments against *Sharia* courts in contemporary Russia. But are there any grounds in their favour? In our view there are. The principal factor is the practical impact of *Sharia*. Let us agree it is possible to discuss the prospective of *Sharia* justice in Russia only if *Sharia* as a legal phenomenon really functions, its norms are included in the legal system or recognized by the legislation. Only under this condition is there reason to establish *Sharia* courts or *Sharia* institutes of out-of-court dispute adjudication. Indeed, it is impossible to imagine *Sharia* courts which do not apply *Sharia* norms. The opposite is also true; the implementation of *Sharia* norms in the legal area forms the need for *Sharia* institutes of justice.

The answer to the question whether *Sharia* is compatible with the modern Russian law should be generally positive. In a recent publication we have shown different forms of interaction between *Sharia* and the Russian legislation. Moreover, *Sharia* norms can work in the form of provisions of the legislation and in the form of regulations agreed by the parties in legal relation on issues which are regulated by dispositive law provisions [See (Sykiainen. 2014)].

Another argument closely related to it supports the possibility of the appearance of *Sharia* courts. Russian legislation stipulates the forms that the *Sharia* model of justice can be implemented in. There is a regulatory framework for *Sharia* courts functioning in the legal framework to become an alternative to illegal *Sharia* courts. That is why there is no legal grounding to close such a prospective for *Sharia* courts.

Sharia courts can be established and function in compliance with Federal Law No.102-FZ “On private arbitration courts in the Russian Federation” [See (Federal Law No.102-FZ)]. In art.3 it stipulates the establishment of institutional arbitration courts and arbitration courts for dispute resolution. Institutional courts are established by legal entities including religious organizations [See, e.g. (Kleymentov. 2013)]. But in practice arbitration courts, as a rule, are formed under

trade chambers, stock exchanges, unions of entrepreneurs and consumers associations. There are Muslim organizations among them and it is obvious that *Sharia* courts can function within those organizations.

The formation of *Sharia* courts by some Muslim organization is not sufficient enough to characterize it as a *Sharia* court. The main feature of a *Sharia* court is that it implements *Sharia* norms. Does the Russian legislation allow this in respect of arbitration courts?

In accordance with art.1 of the above mentioned law any dispute coming from civil legal relations can be transferred to an arbitration court by the consent of the parties. It is settled in art.6 that the arbitration court in the course of a trial takes a decision in accordance with the terms of the agreement accounting for customary business practices. *Sharia* norms can potentially represent those terms and customs if *Sharia* provisions included in the agreement as terms and customs of business intercourse suitable for the Russian legal system really exist and can be implemented in legal practice. The compatibility of *Sharia* with the Russian legislation comes out of this possibility.

Taking this into account, if the parties of the dispute passed to the arbitration court their wish to adjust their relationship according to *Sharia* norms, their agreement may include terms which meet these requirements and, together with this, do not violate the imperative provisions of Russian legislation. Indeed, within the framework of the dispositive provisions of the Russian legislation there are possibilities to refer to the *Sharia* norms. In this case the arbitration court resolves the dispute related to the execution of this agreement in accordance with *Sharia* norms. To be more exact, for the court they are the terms of the agreement but the parties will perceive them as *Sharia* provisions. This relates to the customs of business intercourse which can include *Sharia* norms in the field of civil legal relations between Muslims or Muslim organizations.

In this respect the arbitration court taking such norms into consideration obtains an important quality which allows us to call it a *Sharia* court as it implements *Sharia*. This characterization will be even more appropriate if the

documents of the institutional arbitration court and regulations applied directly stipulate its specialization in dispute resolution according to *Sharia* norms within the Russian legislation.

In accordance with the law, the arbitration court upon application of the parties can take a decision approving the agreement of the arbitration. Conciliation procedures are elaborated in detail in the Islamic concept of dispute resolution. In this regard *Sharia* norms can be applied to gain the agreement of the case and its confirmation by the arbitration court.

However, the implementation of the material norms of *Sharia* is not enough for an arbitration court to be a *Sharia* court. It is important to take into consideration the norms and procedural regulations of the arbitration proceedings. Arbitration courts can work in accordance with their own rules or the rules agreed upon by the parties. Such procedures can be orientated to the *Sharia* requirements compatible with the practice adopted in Russia.

This conclusion is confirmed by the view of modern Islamic thought on arbitration courts and the possibility of using these institutes for dispute resolution within *Sharia*. A good example is the standard of the arbitration court elaborated by the accounting and audit organization for Muslim financial institutions [See [Arbitration Court. 2014)]. It is possible to make a reference to decisions, recommendations and *fatwas* concerning the arbitration court delivered by other authoritative centres of modern Islamic legal studies, for instance, the *Fiqh* academy of the Organization of Islamic cooperation.

In other words, in respect of procedural issues together with the procedural regulations characteristic of Russian judicial practice certain *Sharia* forms are admissible (for example, in reference to evidence, the requirements of testimonial evidence, oaths). They can be formalized in the approved regulations of an institutional arbitration court or in the agreement of the parties for the resolution of certain disputes.

Finally, certain *Sharia* provisions can be taken into account when specifying the requirements imposed on arbitration judges in respect of their qualification. In

particular, it is in the rules of the arbitration trial to bespeak that the arbitration judge is to possess *Sharia* knowledge. Parties are entitled to agree on that independently.

There remains a serious issue related to the consequences of the decision taken by the arbitration court applying *Sharia* norms if it violates current Russian legislation. The probability of such a situation is not high. Indeed, according to the law, the arbitration court resolves disputes on the basis of normative legal acts valid on the territory of Russia. Even if simultaneously the decision is taken in accordance with the *Sharia* norms as agreement terms or customs of business intercourse, the law is not likely to be violated. *Sharia* does not practically enter into a conflict with Russian law in the field of civil legal relations.

Let us assume, however, that the decision of the arbitration court, taken with due account for *Sharia* norms, contradicts Russian legislation. In principle the law emanates from the fact that the decision of the arbitration court is executed voluntarily. That is why the decision violating the legislation in force can be executed on a voluntary basis as well.

However, the law stipulates two situations when a decision violating the law can be cancelled or not executed. First, the decision delivered by the arbitration court can be cancelled by the general or commercial arbitration court in case of recourse of the decision by one of the parties if it is proved that the decision violates the basic principles of the Russian law. Second, under the forced execution of the decision taken by the arbitration court the competent court declares the refusal to issue the order of enforcement if it determines that the decision of the arbitration court violates the basic principles of the Russian legislation.

However, this situation is more hypothetical than realistic. Indeed, the arbitration court is authorized to resolve disputes deriving only from civil legal relations. This point is very important since the main objections against *Sharia* courts in the West and in Russia rest upon probability of taking unlawful decisions on family and criminal cases by such bodies. That is why such arguments against the *Sharia* justice model emphasizing the incompatibility of *Sharia* with the

modern legislation are inappropriate in respect of *Sharia* arbitration courts if they are established in our country.

Together with these conclusions denying the right of existence for *Sharia* courts because of their position on family issues should be accounted for by assessing the prospective of the *Sharia* model of dispute resolution in the form of mediation. In our view Federal Law No.193-FZ “On alternative procedure of dispute resolution through participation of mediator (mediation procedure)” [See (Federal Law No.193-FZ)] in principle provides for opportunity of using *Sharia* norms within mediation procedures for resolution of disputes arising from civil, labour and family relations. Such a conclusion with regard to civil disputes rests upon the arguments already considered in the course of analysing the forms of implementation of *Sharia* norms in the activity of arbitration courts. Regarding family relations it is important to ask to what extent the *Sharia* norms are admissible in these relations and in the course of resolving the arguments arising from them with the participation of the mediator.

Russian Muslims entering into marital relations are often guided by *Sharia* provisions. Provided that these regulations relate to the issues which are of no interest for the Russian law or are part of its dispositive norms, there are no legal obstacles to using *Sharia* norms in the regulation of family relations. For example, couples may inscribe terms directly taken from *Sharia* and which do not violate the imperative norms of Russian law in their marriage contracts. In the case of arguments arising from the contract, mediators or organizations providing mediation procedures are to assist in dispute resolution in order to gain a mutually acceptable decision according to the terms specified. It is obvious that for the mediator they are the terms of the contract but for the parties they are *Sharia* rules.

Of course, as theory and practice show, some *Sharia* norms regulating family relations contradict Russian law since they confirm the inequality of women and restrict their rights in some situations. This includes the rights of women concerning children after divorce. However, the resolution of disputes flowing out

of relations based on *Sharia* with the help of mediators and reaching mutually acceptable agreements does not contradict the legislation.

Mediation on family issues can follow *Sharia* norms. Its rules can be used in procedures to reach an agreement between the parties. As mentioned the conditions and ways to reach agreement are worked out in detail in *Sharia*. Moreover, the position of modern Islamic legal doctrine in respect of this problem does not crucially differ from the provisions of the Russian law on mediation procedure, therefore *Sharia* provisions can be included in the terms of dispute adjustment agreed by the parties under the auspices of the mediator or reflected in the regulations of mediation procedures approved by the organization providing mediation procedures. This has a direct relationship to the mediation agreement approved by the court as the resolution of a dispute.

Sharia criteria may be taken into consideration to determine the qualities mediators are to have. The resolution of a dispute or regulations approved by the organization providing mediation can set additional requirements for the mediator besides those stipulated by law. There are no obstacles to the inclusion of certain requirements related to *Sharia* criteria in the list. This will be natural for the organization specializing in mediation procedures to regulate disputes arising from legal relations formed with due regard to *Sharia*. This also refers to the requirements to the mediator which are agreed to by both parties if in the adjustment process they take into account *Sharia* provisions.

The conclusion is that Russia has all the legal grounding to implement *Sharia* justice models in the form of dispute adjudication through mediation. Though, this view can be disputed with reference to the practice of unofficial *Sharia* courts in the West and in Russia, in particular, to their unlawful decisions on family issues. However, all concerns that mediation applying *Sharia* norms will take specifically this path are ungrounded.

Mediation agreements being the result of application of the mediation procedure may mean the implementation of *Sharia* provisions violating the Russian law, however the law on mediation procedures enforce the possibility of

influencing this practice. In particular, even at the conclusion of the mediation procedure, and the obligation of the parties not to go to court to resolve a dispute that might arise is possible if one of the parties thinks it is necessary for the protection of their rights. An agreement gained by the parties through mediation without going to court is a civil transaction. The protection of rights violated as a result of the non-execution or inappropriate execution of the mediation agreement is realized by means stipulated in the civil legislation.

Of course, the legal possibility for *Sharia* justice in Russia in the form of arbitration courts does not testify to the need for them. However, in our view there are reasons to discuss the feasibility of the establishment of such institutions. First and foremost, forms of *Sharia* justice which are stipulated in Russian law and function within its framework should be set against the unofficial *Sharia* courts carrying out unlawful activity.

It is of great importance to account for the fact that these illegal structures often refer to archaic customs against which *Sharia* wins since many of its provisions meet the criteria of the law. That is why the formation and activity of the *Sharia* justice model in forms recognized by the legislation can contribute to overcoming outmoded traditions and become a step towards the affirmation of values of justice in the life of Russian Muslims.

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