Newcastle University

# THE ROLE AND JURISDICTION OF THE BOARD OF GRIEVANCES IN SAUDI ARABIA


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**A thesis submitted for the degree of Doctor of Philosophy**

**Newcastle Law School**


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**DEDICATED:**

**TO MY LATE MOTHER**

**AND**

**TO MY FATHER, WIFE, DAUGHTER AND MY SON**

**FOR THEIR PATIENCE, ENCOURAGEMENT, AND THE INSPIRATION AND CONFIDENCE THEY GAVE ME.**

**I AM TRULY INDEBTED TO THEM.**

## Abstract

This thesis presents a critical study of the administrative court of Saudi Arabia (Board of Grievances). Its aim is to evaluate the modern Board of Grievances. The study also investigates the nature of the Board of Grievances, that is, the extent to which its role is entirely administrative according to the Act of 1982, or also contains aspects of an appeal, review, or investigatory court.

The study explores the legal nature and jurisdiction of the Board, the appointment, qualifications, and training of its members and processes for their removal or retirement, transfer, promotion, and discipline. It is argued that the Board's membership, jurisdiction and procedures all reflect historical, legal and constitutional factors; and that these influences affect the efficiency of the Board as a mechanism for the legal control of administration and of grievances against the government. The thesis seeks to identify major changes which would enhance the Board's role and strengthen its contribution to the rule of law in Saudi Arabia.

The first part of the thesis consists of two chapters dealing with the historical, constitutional and legal framework within which the Board operates. Chapter 1 examines the law and constitutional background of Saudi Arabia. The main thrust of this chapter is to place the Board of Grievances within the constitutional and legal environment in which it operates, in other words within the history of the growth of the state itself.

Chapter 2 examines the historical development of the Board of Grievances in Islam. The chapter also briefly compares the Islamic Board of Grievances with an institution that has interesting similarities, the Court of Chancery in English legal history.

The four chapters of the second part examine the modern Board of Grievances, tracing its development since 1924, and its present jurisdiction, practice, and procedures. Chapter 3 discusses the modern development of the Board of Grievances in Saudi Arabia. The purpose of this chapter is to explain the various stages of the development of the Board of Grievances as established in Saudi Arabia. Chapter 4 examines the composition and structure of the modern Board of Grievances. This chapter also discusses the status of the Board members as administrative judicial officers.

Chapter 5 highlights the scope and limits of jurisdiction of the Board of Grievances. Chapter 6 examines the rules of procedure of the Board of Grievances and its working practices.

The concluding Chapter 7 refers to issues arising from the study in order to suggest some reforms necessary to improve the performance of the Board and to satisfy the expectation of the people.

## ACKNOWLEDGMENT

**This work could not have been accomplished without the help of the Almighty Allah who provided me with knowledge, strength, and patience.**

**My vocabulary is inadequate to express how grateful I am to my academic supervisor, Professor John Alder, for giving me guidance on how to write this thesis and also for giving me information to facilitate the writing thereof.**

**I would very much like to thank the Chairman of the Board of Grievances M. Al-Ameen and the members of the Board whom I had the opportunity to interview and to contact by phone or e-mail to answer some of my questions. I wish also to thank the lawyers and the law experts whom I had the opportunity to interview**

**I wish also to thank the staff of the Law library at the University of Newcastle and the staff of King Fahad National Library in Riyadh Saudi Arabia.**

**I probably could not have completed the thesis without the editorial work of Mrs. Alison Menzies and Mr. Fred Miller. My thanks to them.**

**Thanks also should go to my mother's spirit who died during my time in Newcastle and also to my father and my mother-in-law and all of my brothers who have always encouraged and consistently advised me to go for this PhD degree. They gave me support in both cash and kind, to make my stay in England very comfortable.**

**Last but not the least; I would like to thank my beloved wife, Duaa and my daughter, Juri and my son, Bader for bearing with the problems of living in a foreign country. They were very kind and loving; and they gave me all the necessary moral support, which has made studying in Britain a pleasure for me.**

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# ABBREVIATIONS

| | |
|---|---|
| **BCI** | **The Board of Control and Investigation** |
| **CAAMB** | **The Committee of Administrative Affairs of the Board Members** |
| **DC** | **The Disciplinary Committee** |
| **GBCS** | **The General Board of Civil Service** |
| **MFNE** | **The Ministry of Finance and National Economy** |
| **SHCS** | **The Saudi House For Consultative Affairs** |
| **SJC** | **The Supreme Judicial Council** |
| **SIDF** | **Saudi Industrial Development Fund** |
| **GTA** | **The General Traffic Administration** |
| **MDC** | **The Military Disciplinary Council** |
| **LLA** | **The Labour and Labourers Act** |
| | |

| CDSC | The Commercial Dispute Settlement Committee. |
|---|---|

# THE SYSTEM OF TRANSLITERATION

| | |
|---|---|
| A---------- | أ |
| B---------- | ب |
| T---------- | ت |
| Th---------- | ث |
| J---------- | ج |
| H---------- | هـ |
| Kh---------- | خ |
| D---------- | د |
| The---------- | ذ |
| R---------- | ر |
| Z---------- | ز |
| S---------- | س |
| Sh---------- | ش |
| S---------- | ص |

| | |
|---|---|
| D---------- | ض |
| T---------- | ط |
| Dh---------- | ظ |
| A'---------- | ع |
| Gh---------- | غ |
| F---------- | ف |
| Q---------- | ق |
| K---------- | ك |
| L---------- | ل |
| M---------- | م |
| N---------- | ن |
| H---------- | هـ |
| W---------- | و |
| Y/ i---------- | ي |

# GLOSSARY

| Word | Meanings |
|---|---|
| *al-* | The |
| *al-Shari'a* (or Islamic law ) | The *Quran* and Islamic *Shari'a* |
| *Ibn* | Son |
| *Ijmah* | The consensus of the community |
| *Ijtihad* | Islamic legalisation (within Islamic law) |
| *Nizam* | Law or Act |
| *Qadi* | Judge (*Shari'a* or civil) |
| *Kias* | The method of analogy |
| *Quran* | The Holy Book of Muslims revealed to Prophet Muhammad |
| *Shura* | Consultation |
| *Sunnah* | What was transmitted on the authority of the prophet Muhammad (BPUH), his deeds, sayings, tacit approval, or description of his physical appearance. |
| *Ulama* | Religious Scholars |

# INTRODUCTION

## 1.1 Introduction

## 1.2 Methodology and sources of the study

## 1.3 Limits of the study

## 1.1 Introduction

The term "Grievances" in Arabic is *Madhalim*, plural of *madhlamah*. *Madhalim* means to exceed the defined limits, as well as injustice and oppression. *Diwan* is the place where grievances are dealt with.[1] The modern Saudi Board of Grievances, or *Diwan Al-Madhalim*, retains the name of an ancient Islamic institution, which had its origins in early Islamic jurisprudence.

After the founding of the Kingdom of Saudi Arabia in [1932], efforts were made by Saudi rulers to establish an effective mechanism to deal with complaints brought by individuals over decisions made by the administrative organs of the state. In 1953 the modern Board of Grievances was formally established. It was not entirely without precedent, being derived from the much earlier initiative.

The Saudi Board of Grievances needs to be evaluated. Twelve years ago, after several years of negotiation, the Saudi government joined the World Trade Organisation. Most issues that will arise as a result of this joining, such as protection of intellectual property rights, will be dealt with by the Board of Grievances. The Board of Grievances plays a major role in Saudi public administration. It is the only body which has the power to review and annul government decisions and order government departments to award compensation for damage resulting from either their unlawful decisions or their public activities. It is a right at the disposal of both citizens and foreigners who work in the Kingdom to complain against the government. However, although the Board

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[1] Ulian, S. "*Qada al-Madhlim fi al-Islam*", 2nd edition, Riyadh, Dar al-Rasheed Linasher wa al-tawze'a, 1980. p. 49.

emerged to protect grievance rights, questions remain about whether the Board does really respond to the expectation of the grievances. There are two very important questions with respect to the Board of Grievances, regarding the full independence of judicial decision-making and its clear evolution into an administrative court. These questions will be explored in this study. The study will also investigate the nature of the Board of Grievances, that is, the extent to which its role is fully administrative according to the Act of 1982, or also contains aspects of an appeal, review, or investigatory court. Furthermore, this study will explore the legal nature and jurisdiction of the Board, and the appointment, qualifications, and training of the members and their removal or retirement, transfer, promotion, and discipline. The study also seeks to identify any major changes which would enhance the Board's role and strengthen its contribution to the rule of law in Saudi Arabia.

The scope of this thesis necessarily extends beyond a study of the Board of Grievances to include the Islamic model from which it derives. Further, any examination of the history of the Saudi Board must raise the question of whether it may be classified at all as a judicial body. The Board lacks a central characteristic, namely independence from the executive: its Chairman is directly appointed and removable by the King, and its personnel are appointed by the King on the recommendation of the Committee of Administrative Affairs of the Board Members. In order to examine the Board's relationship to the executive power of state, and the extent to which it can effectively review acts and decisions of state administration, it is essential to include a basic study of the constitutional and legal order in Saudi Arabia. Such an inquiry is complicated by

the fact that, as in the case of Britain, there is no written constitution in Saudi Arabia. However, in the case of the UK, even though there has been an absence of a written constitution, British political and legal language over the centuries has been wealthy in its argument of the principle of the 'ancient constitution'. The British constitution has a very long and proud history. However, it is a matter of dispute as to whether Saudi Arabia has any constitution at all, a topic that is also examined in this thesis. Such an inquiry necessitates some examination of the political and legal history of the country.

On 1st. March 1992, three new laws were promulgated which reorganised the system of government. The Basic Law of Government, which came into force on 2 March 1992, contains an article on human rights, and also sets out the principles, powers, and institutional arrangements of government, as well as the form of the state. This departure from established legal norms is particularly relevant to the debate as to whether Saudi Arabia has or has not a constitution, a subject explored in Chapter One. The law which gave rebirth to the Consultative Council, a body of sixty people appointed to advise the government, is also addressed in Chapter One. The third Law, of 1 March 1992, concerns the establishment of regional authorities. The effects envisaged in the governmental structure as a result of this Act, which has not yet come into force, are also briefly discussed in the first Chapter. However, although touching on subjects lying at the heart of its role, none of the laws of March 1992 changed the core subject of this thesis, the institution of the Board of Grievances.

Government, its administrative agencies and departments, represents the most visible source of power in Saudi Arabia, which touches potentially every citizen and resident in the country. The Board of Grievances exists to answer complaints against that power. This study argues that the Board faces considerable challenges in fulfilling that role. It suggests that constitutional, legal and historical factors have created uncertainties about the Board's jurisdiction, membership, and procedures. Such uncertainties must give rise to doubts as to both its effective power to redress grievances and complaints against the state, and its character as a tribunal of law within the judicial system of Saudi Arabia defending citizens' rights and entitlements.

The research for this thesis took place early in 2007, at the time of a discussion of the *Majlis Ash Shura* (Consultative Council) to re-evaluate the Act that founded the Board and its system. In addition, the Consultative Council is going to re-examine and evaluate a wide range of state regulations, in order to repair systems, such as the laws governing the judiciary and labour.

This study is divided into two parts. The first part consists of two chapters dealing with the historical, constitutional and legal framework within which the Board operates.

Chapter 1 examines the law and constitutional background of Saudi Arabia. The emergence of Saudi Arabia at the beginning of the 20th. century is examined, as well as constitutional developments and the modern government and judicial systems. The main thrust of this chapter is to place the Board of Grievances

within the constitutional and legal environment in which it operates, in other words within the history of the growth of the state itself.

Chapter 2 examines the historical development of the Board of Grievances in Islam. It explores this historical source of the Board through a discussion of the judiciary in Islamic history. The chapter also briefly compares the Islamic Board of Grievances with an institution that has interesting similarities, the court of Chancery in English legal history.

The second part, consisting of four chapters, examines the modern Board of Grievances, tracing its development since 1924, and its present jurisdiction, practice, and procedures.

Chapter 3 discusses the modern development of the Board of Grievances in Saudi Arabia. The purpose of this chapter is to explain the various stages of the development of the Board of Grievances as established in Saudi Arabia. It concentrates on the basis of the Board prior to the 1982 Act. It thus seeks to provide the historical formation of the modern Board as an introduction to an examination of the present functioning of the institution in the country.

Chapter 4 examines the composition and structure of the modern Board of Grievances. This chapter also discusses the status of the Board members as administrative judicial officers.

Chapter 5 in this second part highlights the scope and limits of jurisdiction of the Board of Grievances. It aims to throw light on the areas of jurisdiction prescribed by the Board of Grievances Act, in order to define the tasks and role of the Board. It deals also with the power of the Board, when it can intervene and exercise its power, and when it must refrain.

Chapter 6 examines the rules of procedure of the Board of Grievances and its working practices. It is intended to provide a critical examination of the procedures of the Board, in particular the way in which the Board deals with administrative cases. This examination combines both analyses of the rules that govern the actions of the Board and of information gathered through interviews with members of the Board and lawyers practising before it.

Chapter 7 is the conclusion, which presents some necessary reforms, based on the issues raised by discussion in the previous chapters, to improve the performance of the Board and meet the expectation of the people.

Attention is paid in this study to both the Gregorian and Islamic calendars. As is well known, the Gregorian calendar starts with the birth of Jesus Christ, and this calendar is the primary use within the text of this study. The Islamic calendar, however, starts with the Prophet Mohammed's migration from *Makkah* to *Madina*, and is referenced in brackets as years AH.

## 1.2 Methodology and sources of the study

The main sources used in the research for this study were local legal materials, including official regulations and statute law, Government papers, and decisions of the Chairman of the Board of Grievances. The writer was offered the opportunity to consult a large number of unpublished decisions of the Board for the period 1983 to 1990. These decisions are filed at headquarters in Riyadh and access was granted by permission of the Deputy Chairman of the Board. The writer also had the opportunity to examine the Board of Grievances case records for the year 1982 to 1998. Secondary written sources include unpublished research completed for degrees in several countries and articles in academic journals. Statistical data relevant to the subject was also collected and used.

The writer had the opportunity to carry out certain interviews. These were informal and unsystematic, and are intended only to serve as background to this thesis. On this basis, interviews took place with M. Al-Amen, the Chairman of the Board, M. Al-Essa, the Deputy Chairman of the Board, and more than ten Board members. Lawyers, legal experts, and government officials were also interviewed. Interviews with academics were conducted at the University of King Abdul Azez, King Saud University and King Fasel University. These interviews were conducted during a three month study visit to Saudi Arabia.

It should be pointed out that under the 1982 Act there is a duty on the Chairman to arrange for the classification, printing, and publication of the Board's judgments on an annual basis. However to date no judgments have been printed

or published. The official explanation is that publication is in process. The opportunity to examine the unpublished judgments for this dissertation was, therefore, all the more important for the study.

Attention is drawn to the fact that reference to cases used in the study are made by giving the case number. The name and details of parties are not included. This is because access was granted to the case records of the Board of Grievances on the basis that no such particulars would be published.

### 1.3 Limits of the study

At different points in this study it is admitted that information is lacking on certain issues discussed. Even with the opportunity to interview and observe the Board directly, detailed information was sometimes difficult to obtain. Nevertheless, sufficient information was obtained from all the sources to offer a reasonably detailed and balanced critique of the organization and functioning of the Board.

The study does not deal in detail with the substantive features of the Board's jurisdiction of judicial review with the panel cases which fall under its jurisdiction. The study is essentially concerned with the Board as an institution. The research was not designed to be primarily comparative. However, where appropriate, brief comparisons are drawn with comparable institutions in France, the United Kingdom and Egypt.

**CHAPTER ONE**

LAW AND CONSTITUTION OF SAUDI ARABIA

**CHAPTER TWO**
HISTORICA DEVELOPMENT OF THE BOARD OF GRIEVANCES IN ISLAM

**CHAPTER THREE**
THE MODERN DEVELOPMENT OF THE BOARD OF GRIEVANCES IN SAUDI ARABIA

**CHAPTER FOUR**

THE COMPOSITION AND STRUCTURE OF THE MODERN BOARD OF GRIEVANCES

**CHAPTER FIVE**

THE SCOPE AND LIMITS OF THE JURISDICTION OF THE BOARD OF GRIEVANCES

**CHAPTER SIX**
THE RULES OF PROCEDURE OF THE BOARD OF GRIEVANCES AND ITS WORKING PRACTICES

**CHAPTER SEVEN**

**CONCLUSION**

Part One

Part Two

Conclusion

# LAW AND CONSTITUTION OF SAUDI ARABIA

## 1.1 Introduction.

**1.2 Origins of the Kingdom of Saudi Arabia.**
1.2.1 The emergence of the Saudi state 1738-1901.
1.2.2 The modern Saudi state 1901 to present day.

**1.3 Sources of Law.**
1.3.1 The rules of Islamic *Shari'a.*
1.3.2 Law and Regulations.
1.3.2.1 Legislative Procedure.
1.3.3 By-Laws.

**1.4 The modern government and administration of Saudi Arabia.**
1.4.1 The categories of state power.
1.4.2 The King.
1.4.3 The Council of Ministers.
1.4.4 Public Corporations.
1.4.5 Local administration.

**1.5 The Judicial System.**
1.5.1 Organisation of Courts.
1.5.1.1 *Shari'a* Courts.
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B- Court of Cassation *Tameez* Court
C- Courts of First Instance
1.5.1.2 Judicial hierarchy.
1.5.1.3 Judicial Committees.
1.5.1.4 The new "Judiciary", The Board of Grievances.
1.5.2 Conflict of Jurisdiction.

**1.6 The Emergence of the Saudi Arabian Constitution and the Organic Instruction.**
1.6.1 *Majles Al-Shura*, the Consultative Council.
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**1.7 Constitutional Development since 1953.**
1.7.1 The Council of Ministers of 1958.
1.7.2 Pressure for constitutional reform.

**1.8 The Constitution of Saudi Arabia: Does it exist?**
1.8.1 The argument that there is a constitution.
1.8.2 Claims that Saudi Arabia lacks a constitution.
**1.9 Conclusion**

## 1.1 Introduction.

Present day Saudi Arabia dates as a state from 1932. It is a monarchy and an Islamic state with a population of 16.5 million. As a country Saudi Arabia has at least two grounds for claiming regional and global importance. For the Muslim world it is the site of the holiest Islamic shrines. Saudi Arabia has also the largest oil reserves in the world ensuring its crucial importance to the developed economies.

Before 1963 the system of government and administration was extremely simple.[1] The King was the dominant figure, and directly ruled the kingdom with his advisers. In 1953 the latter were formalised in a Council of Ministers, gaining further authority over subsequent years. In the early nineteen sixties the country turned to outside advice for assistance with establishing a more modern administration.[2] As a result some ministries and a civil service system were established. A Board was established for the civil service and an institute of public administration created. As the country began to produce oil it established a ministry of Finance and National Economy which reflected the eagerness of the government to use the oil revenues to bring about a high standard of welfare and education and a modern state administration. The system of law in the country is Islamic but there has also been direct influence from Egyptian law and procedure which in turn was influenced by French law.

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[1] See Al-Mutairy, T. *Asasiyat al-Idarh fi al-Mamlakah al-A'rabiah al-sa'udiah*. Riyadh: Dar Al-Lewa, 1987, pp.26-28.
[2] See Al-Mutairy, Ibid. p.28

While this study is concerned with one aspect of the current system of administration, the Board of Grievances, it is necessary to locate that institution within the history of the growth of the state itself. The Board's emergence and development cannot be understood without understanding the constitutional and legal environment. It was, in the first place, part of the administrative system, and a department in the Council of Ministers. Therefore it is necessary for the political history and the origins of the constitution to be examined. This chapter is concerned with that history with a focus on the political and constitutional origins of the country.

## 1.2 Origins of the Kingdom of Saudi Arabia.

Saudi Arabia was created from the consolidation of four long established regions in the Arabian Peninsula. The region of *Hijaz* along the coast of the Red Sea is renowned as the site of the holy places for Muslims, *Makkah* and *Madina*, and is the region from which the modern state developed. *Najd* region, located in the centre of the peninsula, is the modern centre of the state with its capital Riyadh. It is mainly a desert area with some oases in the north. To the east, *Al-ahsa* is situated along the coast of the Gulf and finally the southern region, *Asir*, lies along the border with Yemen.

The modern history of the Arabian Peninsula can be traced to the Ottoman period. *Hijaz* was governed by the Ottoman Empire from 1517. In 1552, the

same Empire took over the Eastern part of Arabia.[3] The *Najd* region remained outside the control of powers in the Arabian Peninsula such as the Ottoman Empire and later the British.[4] The region consisted of small emirates. For the people of the cities as well as the countrymen and villagers, this meant a family in power by heritage or by succession from father to son or from brother assassination.[5]

The nomads, or desert people, invested power in those members who were well known for generosity and strength, in short, those people who had leader personality.

The political history of the kingdom of Saudi Arabia can be considered as falling into two main periods as follows:

### 1.2.1 The emergence of the Saudi state 1738-1901.

This period began with an alliance between two persons: Mohammed bin *Saud*, the father of the *Saud* family, who was the governor of *Dera'yah,* one of the cities of *Najd,* and Mohammed Bin *Abdulwahab*, who called for purification of Islam and for the reformation of the Muslim society of the day.[6] This political and religious alliance was the basis on which the first Saudi state came to be established.

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[3] See Ibn Uthimeen, S. A, *Buhuth wa ta'ligat fi Tarikh al-Mamlakah al-A'rabiah al-sa'udiah.* 1984, pp. 12-15.
[4] Ibid
[5] Ibid, p. 16
[6] Ibn Uthimeen, S. *Tarikh al-Mamlakah al-A'rabiah al-Sa'udiah.* 1984, vol. 1, p. 96.

The consolidation of the various regions of the Arabian Peninsula under one single power took about forty years. That task was undertaken by the sons of Mohammed Bin *Saud*.

The creation of a new state in the Arabian Peninsula alarmed and threatened he leaders of the Ottoman Empire as well as the British interest in the Gulf. As result, the Ottoman sultan encouraged the government of Egypt (at that time Mohammed Ali Pasha) to invade the Arabian Peninsula and to destroy the new state.[7] The new state was defeated and its ruler, Abdullah, was captured and taken to Cairo from where he was sent to the central government in Turkey, where he was beheaded in 1818[8], marking the end of the first Saudi state.

The important results of that invasion were firstly, the defeat of the first Saudi state, secondly, that the Ottoman Empire again became dominant over the Arabian Peninsula, and particularly among those Emirates which had been allied to the Saudi state. Britain made more treaties with the Gulf Emirates to ensure its control over that region.[9]

After a period of political peace in the Arabian peninsula, particularly from the Al-*Saud* family after its defeat by Mohammed Ali Pasha, the second Saudi era began when one of the last ruler's sons, *Turky*, returned to central Arabia. He attained the rule of *Al-Saud* in the Arabian Peninsula again. He was, however, assassinated, and was succeeded by his son Faisal who remained as ruler for

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[7] Al-Ghamdi, M., *The Arab Gulf Countries in Egyptian strategy:* A study of Muhammed Ali's Ambitions and British responses:1818-1840. Ph.D. thesis, Essex university, 1990, pp. 52-80.
[8] Ibid., p.63.
[9] Ibn Uthimeen, op. cit., note No. 6, p.166.

about thirty years. After Faisal's death, a struggle erupted between his sons. It led eventually to the collapse of the second Saudi state and the escape to Kuwait in 1888 of *Abdurhman Bin Faisal*, one of Faisal's sons. The family of Al-*Saud* was succeeded in the rule of *Najd* by another family, Al-Rashid, which remained in power until the beginning of this century.[10]

### 1.2.2 The modern Saudi state: 1901 to the present day

The revival of *Al-Saud* in the Arabian Peninsula at the beginning of this century was the work of *Abdulaziz Bin Abdulrahman*, the founder of the present Kingdom. He launched an attack on Riyadh in 1901 and seized power from the governor. He then took over the other cities of the *Najd* region, defeated the Ottoman Empire and captured the *Al-Ahsa* region, now called the Eastern Province.[11]

*Abdulaziz* defeated his opponent, al-Rashid, in the North of the Peninsula and proclaimed himself the Sultan of *Najd* and its Provinces. *Sharif Hussainj*, governor of Hijaz, proclaimed himself King of *Hijaz* and then Caliph of Muslims in 1924. *Abdulaziz* launched an attack on *Hijaz* (*Makkah*) and seized it in 1926.[12] He was then proclaimed King of *Hijaz* and Sultan of *Najd* and its Provinces. In 1932 the present Kingdom emerged after the consolidation of *Hijaz*, *Najd*, Eastern province and *Asir*, the southern province.

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[10] Ibid., pp. 150-201.
[11] Ibn Uhimeen. Op. cit., note No. 6, p.166.
[12] Mahmassani, S., *Al-Andhimah al-Qanuniah fi al-Dwal al-A'rabiah: Al-Hader wa al-Mustaqbal*, 1957. p.316-318.

## 1.3 Sources of Law.

Within the Saudi Arabian legal system, the government as well as individuals must respect the law and regulations in force. In other words, they share an obligation to observe the rule of law. There are two sources of law in the Saudi Arabian legal system: the rules of Islamic *Shari'a* and the laws enacted by the legislative power of the state

### 1.3.1 The rules of Islamic *Shari'a.*

The rules of Islamic *Shari'a* are the primary law of the state and the legal foundation of every other Saudi law. Of the different jurisprudence sects within Islamic *Shari'a*, the state has adopted the *Hanbali*. Early reference to the fact that the Islamic *Shari'a* is the law of Saudi Arabia may be found in the Organic Instruction of the *Hijazi* Kingdom, 1926. Article 5 reads

> *The administration of the Hijazi Kingdom is in the hands of His Majesty King Abdulaziz the first B. Abd Al-Rahman Al-Faisl Al-Saud and his Majesty [is bound to submit to ...] the rules of the Shari'a.*

Article 6 also confirms this point:

> *Legal judgements shall always be in accordance with the book of God, the Sunnah of his Prophet and with that which the companions and the pious patriarchs have agreed upon.*

The Council of Ministers Act 1958 which repealed the Organic Instructions does not mention Islamic *Shari'a*. However, according to *Al-Dughaither*, this does not mean that Islamic *Shari'a* is not a source of law. On the contrary, it is still considered to be the source of all laws, and is not subject to repeal.[13]

The new Basic Law of Government promulgated on `1 March 1992, states this very clearly; it also established a hierarchy of law. Article 48 reads

> *The courts will apply the rules of the Islamic Shari'a in cases brought before them, in accordance with that which is indicated in the Book [the Quran] and Sunnah, and the statutes decreed by the ruler, which do not contradict the Book or the Sunnah.*

Article 55 provides that the King must carry out the affairs of the nation according to the rules and prescriptions of Islam. Moreover, according to the Basic Law of Government 1992, the King has also to oversee the implementation of the Islamic *Shari'a*.[14]

Consequently, the sources of Islamic *Shari'a* (*Quran*, *Sunnah*, *Ijma* and others) in accordance with the *Hanbali* School of Islamic jurisprudence are the sources of law in Saudi Arabia. These rules are both the foundation and pinnacle of the Saudi legal system and they may not be contradicted.[15]

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[13] Al-Dughaither, F, *Durus fi al-Qada al-Idari al-Sa'udi* Unpublished paper, p.9
[14] Article 55 of the Basic Law 1992.
[15] Al-Dughaither op. cit., p.17, and Shaibt Al-Hamd, M., *Al-Wilaya al-Qadaiya li Diwan al-Madhalim fil Mamlakh al-A'rabiah al-Sa'udiah*. PhD dissertation, University of Imam Mohammed Bin Saud, 1989, p.104.

It should be noted here that according to Islamic *Shari'a*, new legislation is possible in order to meet new legal issues. *Ijtihad* or independent reasoning and the fundamental jurisprudential rule that 'everything is permissible unless there is proof that it is prohibited' are the criteria for finding answers to these legal issues.[16]

### 1.3.2 Law and Regulations.

Legislation is the second source of law in Saudi Arabia. These laws (*Andhimah*) may not contradict the rules of Islamic *Shari'a*.

Legislative power in the Saudi Arabian system rests with the King and the Council of Ministers. Article 18 of The Council of Ministers Act 1985 states that

> *The Council of Ministers shall lay down the policy of the State... It possesses the regulatory authority [legislative], executive authority and administrative authority...*

This source of authority to make law is repeated in Article 67 of the new Basic Law of Government 1992. It reads as follows

> *The regulatory authority [the legislature] lays down regulations and motions to meet the interests of the state or to remove what is objectionable in accordance with the Islamic Shari'a. This authority exercises its functions in accordance*

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[16] See Seaman, B. Islamic Law and Modern Government: Saudi Arabia Supplements the Shari'a to Regulate Development in *Columbia Journal of* Transnational *law*. No. 18, p.443, 1979.

*with this law and the laws pertaining to the Council of Ministers and the Consultative Council.*

### 1.3.2.1 Legislative Procedure.

The first of four stages which a bill must pass through before becoming law is the preparation state, when a minister can suggest and prepare a bill relating to matters that come within his ambit.[17] When this stage is passed he can then submit the bill to the Council of Ministers where it will be referred to the General Committee. Here it will be examined by the ministers of the General Committee who will prepare a report for the Council.

The second stage is the voting stage, when the report and the bill are submitted to the Council where they will be discussed thoroughly, and the vote on the bill will be taken.[18] If a bill is rejected, the bill cannot be presented again to the Council.[19] If the Council passes the bill, the Council will issue a decision of approval. After the Council of Ministers has approved it, the bill will be referred to the King for Approval. A Royal Decree (*Marsum Malaki*) will be issued. The bill then becomes law. If the King rejects the bill, he, the King, will return it to the Council of Ministers with reasons for its rejection.[20] The final stage is that of promulgation, or the 'issue' stage, when the law is published. The new law will not be valid unless it is published.[21]

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[17] Article 22 of the Council of Ministers Act 1958.
[18] Ibid., Article 21.
[19] Ibid., Article 22, the Act adds "... unless there is necessity".
[20] Article 24 of the Council of Ministers Act 1958.
[21] Ibid.

### 1.3.3 By-Laws.

In addition to the laws (*Andhimah*) issued by Royal Decree (*Marsum Malaki*), the Council of Ministers may also by resolutions, make by-laws (*lwaih*).[22] Moreover ministers, by ministerial resolutions, also can make by-laws and issue circulars in accordance with the laws. Such resolutions, decisions or circulars are subordinate in the hierarchy to Royal Decrees.

Amendment of legislation and laws cannot be made by resolution or by a decision of the Council of Ministers or by any other means, except by the same instruments and procedures by which the law is introduced.

## 1.4 The modern government and administration of Saudi Arabia.

This section will give a general survey of the present system of government and administration including the judicial system, within which the Board of Grievances operates. It will first discuss the different sources of power and the applicability of the office of the king as head of state and as president of the council of Ministers. The institution of the Council of Ministers, the role of public bodies and local government structures will also be considered.

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[22]Al-Dughither, op. cit., p.195, Seaman, op. cit., p.445.

### 1.4.1 The categories of state power.

Modern constitutional theory typically recognizes three organs of government: the legislature, the executive and the judiciary. The relationship between these organs varies in accordance with the type of government considered; for example, the parliamentary or presidential system of government. In this sense, and according to the Saudi Constitution, the state has three divisions. According to the council of Ministers Act 1958, these are: Legislative, Executive (Administrative) and Judicial power.[23] The first two are linked in the Council of Ministers with the king as head.

Legislative competence, as already discussed, is subject to the Islamic *Shari'a*. Neither the state as such nor the king and the Council of Ministers can act outside that which is laid down in *Shari'a*. However, Islamic *Shari'a* does not purport to cover all aspects of human life. The ruler (*Wali Alamer*), Muslim scholars and jurists can legislate for themselves, provided that such legislation does not encroach on *Shari'a*.

In the early days of the foundation of Saudi Arabia, there was a separate legislative body known as the *Shura* Council.[24] Legislative power was vested in that Council. Moreover it could question the annual budget and had power to call the government's attention to any injustices in the application of laws or regulations.[25]

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[23] Article, 18.
[24] Um Al-Qura, 12 July 1928. The Act of Council of Consultation 1928.
[25] See Dahlan, op. cit., p.9, and Al-Solaim, op. cit., pp. 29-31.

The *Shura* council passed many Acts before it was superseded by the Council of Ministers Acts 1958. The latter took over all legislative functions as well as other functions from the *Shura* Council.[26]

Executive (administrative) power is also vested in the Council of Ministers. The Council has power to direct and control the implementation of all laws and regulations. The Council has full powers to administer the affairs of state.

The judiciary is the only division of state power not linked to the Council of Ministers. It is independent from the rest of the government system. In the Saudi context, however, judicial independence is not absolute. Rather, judicial competence is subject to the Islamic *Shari'a* and regulations in force. Thus the first section of the Judicature Act 1975 provides that "the judges are independent and there is no dominant power over them in their work whatsoever but for Islamic *Shari'a* and the regulations in force. No one has the right to interfere in the judiciary".[27] This is further confirmed in Article Forty-six of the Basic Law promulgated on the first of March 1992.[28]

The full doctrine of the separation of power is not part of the governmental system of Saudi Arabia, particularly with regard to legislative and executive powers. The king as the head of state, at the same time the president of the council of Ministers, and the Council of the Ministers, are dominant over both legislative and executive authority. The only limits to the Council are the

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[26] The Council of Ministers Act 1958, articles Nos. 18-24.
[27] See, Jeerah, A, *Nidham al-Oada fi al-Mamlakah al-A'rabiah al-Sa'udiah.* 1988, pp. 64-65.
[28] Bulloch, J. Reforms of the Saudi Arabian Constitution. 1992, p.46.

teachings of the Islamic *Shari'a*. As one of the sources of the constitution, Islamic *Shari'a* should be respected and should not be infringed. However, there is no body to control the legislative function of the Council in order to see whether the law which is promulgated is according to the Constitution or not; there is no system, judicial or otherwise, of constitutional control. In his article, "the Saudi policy system" (1982) *Al-Amri* says "checks and balances in the Saudi system are provided, as is usual, by the judiciary branch of the government."[29] He argues that Saudi Arabia knows only two organs of government: the Executive and the Judiciary. The latter controls the former. This view is inaccurate for two reasons. Firstly, there are not only two organs of government as *Al-Amri* has argued, but three, as could be deduced from the Council of Ministers Act which establishes another branch, the Legislature. This has recently been made clear in Article Forty-four of the Basic Law of March 1992.[30]

It can be argued that the judiciary has the right to control the Council of Ministers' legislative power by refusing to apply whatever law has not been enacted according to the Constitutional requirements, in particular *Shari'a*.

However, the response to attempts by the judiciary, *Shari'a* court and the Chief *Qadi*, to control legislation in this way in the sixties, has led to interference in the judicial role, specifically through the establishment of alternative judicial channels such as the Board of Grievances. It is one of the hypotheses of this

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[29] See Al-Amry, B. O. "The Saudi Policy System" in *Journal of Economics and administration.* No. 15 Aug. 1982, p. 12. Al-Amri is an associate professor in political sciences in king Abdulaziz University – Saudi Arabia.
[30] Bulloch, op. cit., p.46.

study that the creation of the Board of Grievances has contributed to an erosion of the independence and importance of judiciary as a whole.

### 1.4.2 The King.

Saudi Arabia is a monarchy. It is ruled by a king who exercises supreme authority over all the affairs of his Kingdom. The king usually chooses his successor during his lifetime. After his death his successor becomes king by approval of *Ulama* (Muslim scholars) and the people. This approval is performed by giving *Biah* or allegiance.[31]

The king is the paramount figure in the country. All powers, more or less, are maintained in his hands. His power is limited by Islamic *Shari'a.*

There is no separation of functions between the position of the head of state and the position of the president of Council of Ministers: the king holds both. He is therefore dominating over the state powers, legislative and executive. The king as the head of state in other countries and in international organizations accredits and receives diplomatic representatives, confers honours and titles.[32]

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[31] See Knauerhase, R. *The Saudi Arabian Economy.* New York: Praeger Publisher, 1975. P.31. Biah means: Inauguration, or fealty, which means that a person who gives Biah to some one should obey and support him within the Islamic Shari'a rules.
[32] See Al-Juhani, op. cit., p.98.

As president of the Council of Ministers, he appoints ministers on his own initiative, terminates their offices, and accepts their resignations.[33] He is assisted by two deputies, one of whom is the Crown Prince.

The king has legislative power. Firstly, as the president of the Council of Ministers, he contributes to making law in the council where the latter has that power. When a Bill is approved by the Council, it is still a Bill until it is countersigned by the king as the Head of State.[34]

Article 44 of the Council of Minister 1958 explains the function of the president of the Council of Ministers:

> *The president of the council is to direct the general policy of the state. He shall ensure the (proper) direction and coordination of and cooperation between the various ministries, and shall ensure continuity and unity in the activities of the Council of Ministers. He shall receive Royal directives from His Majesty the King and act upon them. He is to sign the decisions of the Council and to order their transmission to the various (Government) departments. He shall supervise the Council of Ministers, the Ministers, and the public departments; and he is to oversee the execution of the regulations and decisions issued by the council of Ministers.*

From the foregoing survey of the role of king in the Saudi Arabian monarchy, it is clear that the king is the most powerful person in the state. There is no limit to royal power apart from his adherence to Islamic *Shari'a*.

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[33] Ibid.
[34] Ibid.,p. 101.

### 1.4.3 The Council of Ministers.

As pointed out earlier, the Council of Ministers has both legislative and executive powers. It is presided over by the king. It consists of the president, two deputies (who are from the royal family), ministers without portfolio, and the king's advisers. All are appointed by Royal order and dismissed also by Royal order. Only Saudi citizens are entitled to be members of the Council.[35]

Ministers are individually responsible to the president of the Council for the discharge of the duties in their respective ministries.[36] Thus the Council of Ministers, with the King at its head, has complete control of and supervision over all government departments.

A minister exercises power according to the terms of the Council of Ministers Act 1958 and, according to the internal regulations that have been adopted by his ministry.[37] A minister proposes Bills in relation to his ministry, and presents them to the Council for discussion and approval. He appoints, dismisses, and promotes civil servants who work under his authority. He may take any decision or action that ensures the implementation of the plans and works of the ministry, provided that they are taken according to the law.[38]

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[35] Al-Mutairy, p.41.
[36] See in this respect Article 18 of the Council of Ministers Act (Decree No 38-1958).
[37] See Al-Juhani, op. cit., p. 149.
[38] Al-Mutairy. op, cit., pp. 38-39.

### 1.4.4 Public Corporations.

By the term "public corporations" is meant those organizations which are formed in order to run some of the public services or utilities which are different from those run by the Ministers.[39] According to *Assaf*, in Saudi Arabia there is no general regulation to control such corporations. Rather, every organization has its own regulations.[40] Yet those corporations are not independent; they are controlled and supervised by the council of Ministers. Each corporation is administered by a Board of Directors which is appointed by the Council of Ministers.

Public corporations in Saudi Arabia are classified into five categories. Firstly, corporations that deals with administrative affairs, such as the Institute of Public Administration responsible to the Ministry of Finance and National Economy (MFNE). Secondly, corporations dealing with economic matters, such as Saudi Arabia Airlines responsible to the Ministry of Defence and Aviation. Thirdly, corporations which deal with educational matters, such as the universities. Fourthly, social corporations, such as the Social Insurance Establishment, and fifthly, corporations which are concerned with financial matters, such as the Saudi Monetary Establishment, controlled by the MFNE.[41]

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[39] Assaf, A. *Mabadi fi al-Idara al-A'ama wa tabiqateha fi al-Mamlakah al-A'rabiah al-Sa'udiah.* 1990, p. 186.
[40] Ibid., op. cit., pp 190-192.
[41] See Al-Hawaty, B, "*Dirasa fi al-Nidham al-Idari fi al-Mamlakah al-A'rabiah al-Sa'udiah*" *Dirasat Sa'udiah*, Institute of Diplomatic Studies. 1986, pp.70-72.

### 1.4.5 Local administration.

Local administration in the context of Saudi Arabia means those authorities which deal with the local affairs of the various regions and towns. In the early days of modern Saudi Arabia, there were local councils such as the 1924 local council in *Makkah*. The members of such councils were elected.[42]

In 1938 (1357) the Municipal Act abolished elected local councils.[43] In 1940 (1359) the Governors Act was enacted. It divided Saudi Arabia into several regions, each of which was presided over by a governor (*emir*) who was assisted by an administrative Council. This was followed, in 1963 (1383), by the Provinces Act. Saudi Arabia was divided again into provinces, each ruled by a Governor appointed by Royal order on the advice of the Council of Ministers. In 1977 (1379) a further reorganization was undertaken: the Municipal and Rural Areas Act. This Act aims to meet local needs and fulfil local interests.[44] It defines the functions of the municipality, its powers, the municipal council and its membership, and other matters such as the financial affairs of the municipality and rural affairs.[45]

In March 1992 the Regions Act was introduced on the establishment of the regional authorities.[46] This Act aims, as stated in Article 1, to improve the

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[42] See Chapman, R., "Administrative reform in Saudi Arabia" *Journal of Administration Overseas*. 1974, p.335. Ibid., pp. 66.
[43] Sadeq, op. cit., p.187.
[44] See Al-Hawaty, op. cit., p. 64
[45] Dahlan, op. cit., pp. 250-261.
[46] Royal Decree No. 1/92 on 1/March 1992, (27/8/1412), see the translation of this Act in Bulloch, op. cit., pp.62-70.

administrative work as well as the development of the regions. It also aims at maintaining law and security, and safeguarding the right and freedom of the people. Article 7 defines the duties of the Governor which reflect also the subordination of the regional authority to the central authority. It provides that the "...*Emir* (Governor) will assume the administration of the region in accordance with the general policy of the state..." and specifies his duties. He has, for instances, to maintain law and order, implement the judicial decisions, and guarantee the right of the people and in particular he is enjoined not to interfere in their rights by any measure unless in accordance with the law. These responsibilities stated in the Regions Act of 1992 are more or less identical to those set out in Article 8 of the Province Act of 1963. The Regions Act 1992 further provides that there will be a council for each region, all the members of which are appointed by an order from the president of the Council of Ministers.[47] The Act is due to come into force within a year of its publication in the official paper.

Despite the series of reorganisation sketched here, in reality local administration today is merely part of central administration. Ministers devolve power to the regional authorities. There are fourteen provinces (Emirates) which are all responsible to the Ministry of the Interior. Each Emirate is headed by a Governor who is appointed by the king on the advice of the Interior Minister.[48] Under each governor there are several towns which are also governed by appointed rulers. There are various emirates. For instance, they are responsible for maintaining

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[47] Article No. 16 of the Act.
[48] See Al-Muhawas, M. & Khashigjy, H.; *Mabadi al-Idara al-A'ama wa al-Tandhim al-Idari fi al-Mamlakah al-A'rabiah al-Sa'udiah*. 1987, p.159.

law and order within their boundaries and for implementing the judicial judgements.[49]

In summary the central government has full control over all aspects of local administration as well as municipal authorities, none of which are elected. All are appointed by the central authorities.

## 1.5 The Judicial System.

The judiciary is one of the pillars upon which a modern state is founded. Its main function is to guarantee the rule of law - to ensure that law is maintained and applied to all members of the state, the citizens and the leaders, the government as well as the governed. In order that individuals put their trust in it to uphold these principles it is essential that the judiciary has certain features which enable it to work independently and freely without any pressure or influence from anyone. Courts may then fulfil their duties and responsibilities towards society.

In Saudi Arabia the details of the current judicial system are to be found in the Judicature Act of 1975. This Act provides for the independence of the judiciary, the organisation of the courts and their different jurisdictions, the appointment of judges, their qualifications, and immunities.

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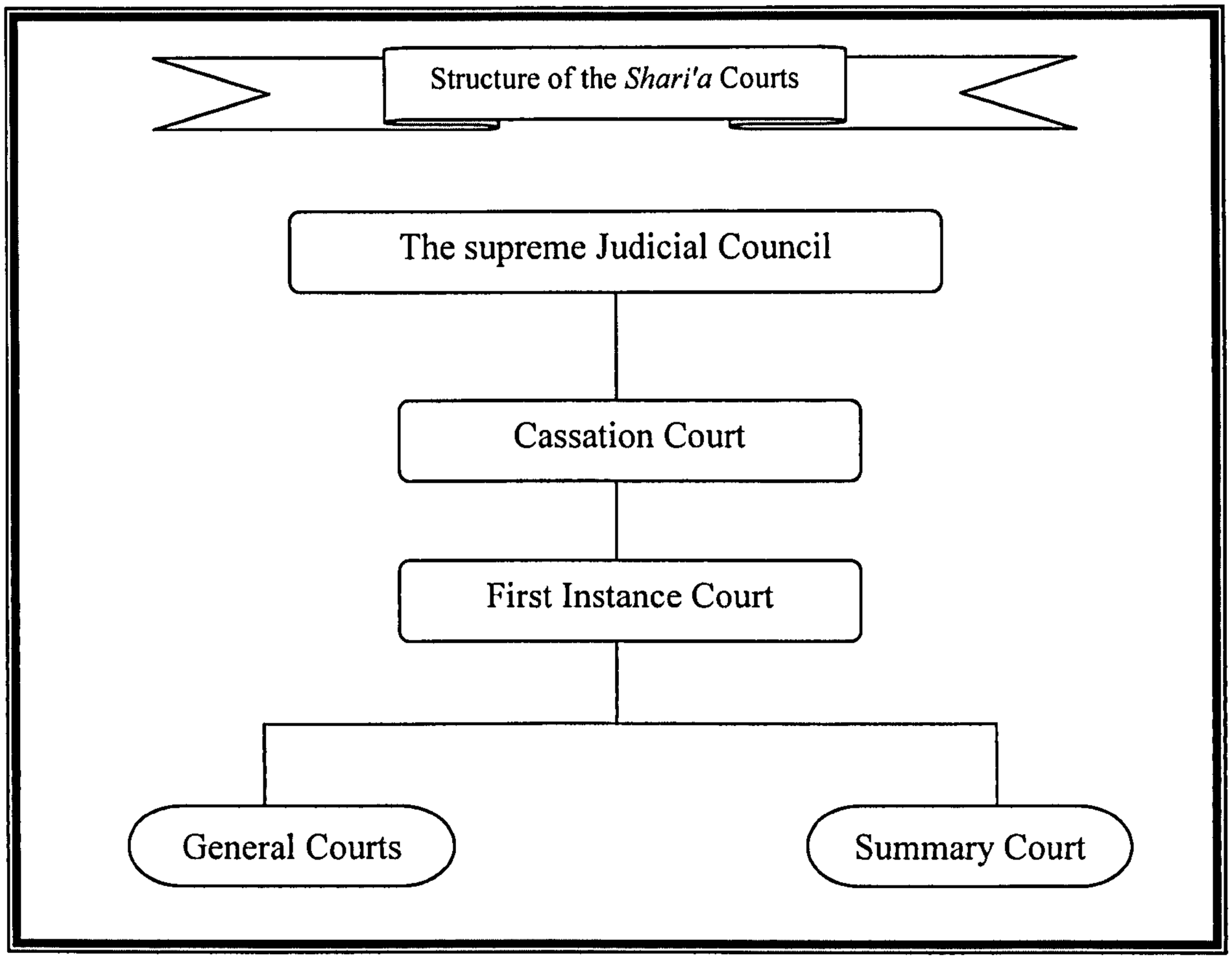
[49] Ibid.

Figure 1-1




### 1.5.1 Organisation of Courts.

The judicial system has undergone change since the establishment of Saudi Arabia. The first legislation on the judicial system was passed in 1927.[50] It organised the courts, their competence, and the judges. Replacing the previous Act, a new Act was promulgated in 1938 and amended in 1952, which set out the

[50] Um Al-Qura No. 140, 19/8/1927 (21-2-1346).

detailed system of the judiciary.[51] In 1975 the Judicature Act, the current legislation, replaced earlier laws.[52]

A notable characteristic of judicial organisation in Saudi Arabia is the existence of many administrative committees which have judicial powers that normally fall under the power of *Shari'a* courts. These committees are examined below.

### 1.5.1.1 *Shari'a* Courts.

As a rule the *Shari'a* Court, with which the Judicature Act is mainly concerned, has general jurisdiction over all disputes whether civil or criminal.[53] The hierarchy of the courts can be divided into three: the Supreme Judicial Council (SJC), The Cassation Court or *Tameez* court and the courts of first instance.

#### A- The Supreme Judicial Council (SJC)

This Council consists of eleven members. Five are permanent judges and constitute the Permanent Board of the Council. Each permanent member must have the rank of Cassation Court President and all are appointed by a Royal Order. The remaining five are the President of the Cassation Court or his Deputy, the Deputy of the Ministry of Justice, and three senior judges drawn from the

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[51] This Act was called *Nidham Tarkiz Mas'ulyyat al-Qada al-Shara'I* (Allocation of the Responsibilities of the Shari'a Courts Act 1938, 1952. there was another Act which was promulgated in 1967 (1387) regarding the hierarchy of the judges, conditions of appointment and promotion.. it was called kader al-Qudah (Judges Cadre), see Jeerah, op. cit., p.34.
[52] Royal Decree No.64 in 1975.
[53] Musa, A. K. "Al-Nidham al-Qadai wa al-Itejahat al-Mua'serah", *Al-Idara Al-A'amah*. 1981, pp. 5-27.

first instance courts. Those members and the permanent judges form the General Committee of the Council which is presided over by the President of the Supreme Judicial Council. He represents the eleventh member in the Council and is appointed by a Royal Order.[54]

The SJC is empowered to control the administration of justice and supervise the work of the courts. The Council has the authority to review some judgements, particularly sentences of capital punishment and mutilation. The judges are appointed, promoted and dismissed by the king after a recommendation from the Council.

The independence of the SJC is affirmed in the first article of the Judicature Act 1975. It states that the judges are independent and are not to be subject to any influence except that of the established laws of the state.

The King, as the head of state, appoints the members of the SJC, although his power to select and appoint is restricted to some extent. The permanent member must hold the qualification of the post of President of the Cassation Court, *Tameez* Court.[55]

The Judicature Act 1975, however, omits to say who has the right to dismiss the members of the SJC and particularly a permanent member, and what the criteria for their removal are. It would seem, however, that the permanent members are

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[54] See Jeerah, op. cit.
[55] Article 6(a) of the Judicature Act 1975.

not removable. Article 2 of the Act states that judges are not removable except in the circumstances stated in this Act. This, in effect, gives greater independence to the SJC and to the judiciary.

### B- Court of Cassation *Tameez* Court

This consists of the president and several judges, the number of whom is not determined according to the Act. The Court has three panels: namely, a panel which has jurisdiction over criminal cases, a panel for personal matters, and the third for all other cases.[56] This court hears appeals from individuals against judgements issued by the courts of first instance.

Judgements of this court are issued by three judges except for cases involving execution or mutilation which must be determined by five judges.[57]

### C- Courts of First Instance

These courts are divided into a General Court which consists of one judge or more according to the type of the case, and Summary Courts. The former courts are empowered to hear criminal, civil and family cases. Judgement is taken in this court by a single judge except in cases involving execution or mutilation which must be taken by three judges.[58]

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[56] Ibid., and see also Musa op. cit. there are two Cassation Court in Saudi Arabia, one in Riyadh and on in Makkah.
[57] Judicature Act 1975, article 23.
[58] Al-Duraib, *Al-Tandhim Al-Qadai fi al-Mamlakah al-A'rabiah al-Sa'udiah.* 1984, p.170.

Summary Courts[59] have power to try minor cases which do not exceed 8000 Saudi *Rials*, and also misdemeanour cases.[60]

### 1.5.1.2 Judicial hierarchy.

As in other countries the judiciary is divided by seniority, experience and functions which is reflected in various levels or ranks of appointment. At the highest level is the President of the Supreme Judicial Council. The other levels of judiciary are discussed in Appendix 6.

### 1.5.1.3 Judicial Committees.

In addition to the *Shari'a* court there are committees which exercise judicial power. These committees have emerged principally to fill a gap caused by the position of the *Shari'a* court on secular legislation, that is the laws emanating from the Council of Ministers. The *Shari'a* Court, concerned that such legislation might conflict with *Shari'a* law and principles, has not been in favour of adjudicating on them.[61] When the *Shari'a* Courts objected to the promulgation of the Labour and Labourers Act 1969, the Chief *Qadi* issued the following statement:

> *We have been informed that some judges (Qadis) refer some cases to Labour and Labourers offices or to other panels on the grounds that they come*

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[59] See Truck, N., "Dispute Resolution in Saudi Arabia" in *The International Lawyer*. 1988, vol. 22, No.2, p.418.
[60] See the Order of the President of the Council of Ministers No. 4/z/384 on 6/1/1397 H (1979).
[61] Jeerah, op. cit, p.198.

*within the jurisdiction of these other departments. It is evident that the Shari'a Law has the jurisdiction to intervene in the reform of all areas of humanity, whether material or other, and its jurisdiction is adequate to satisfy all disputes and to explain all situations. Referring cases to these committees is recognition of their authority and the law applied by them is not in accordance with the rules of the pure Shari'a.*

As a result of this circular, the *Shari'a* court refused to enforce such laws and this consequently gave rise to the creation of quasi-judicial committees. Three major judicial committees are: the Committee for the Settlement of Labour Disputes, the commercial paper Committee (1968) which applies the rules of the Commercial Papers Act 1964, and the Customs Committee (1952), which applies the rules of the Customs Act 1952. in addition to these major committees, there are other committees which deal with the trials of ministers, and committees which deal with military and security personnel.[62]

### 1.5.1.4 The new "Judiciary", The Board of Grievances.

The Board of Grievances, the "Board", has undergone different stages of development since 1954. In 1982 a new Act was promulgated which organized the Board as an independent, judicial body which is concerned, as the first article states, with administrative cases. This Act gives the Board new jurisdiction as well as a new legal status. This Board is different from the ordinary courts or *Shari'a* court, which has general jurisdiction all over disputes. The Board has

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[62] For a study of the system of these committees see Bhader, M. A., *Al-Lijan al-Idaria thatil Ikhtisas al-Qadai fi al-Mamlakah al-A'rabiah al-Saudiah.* Unpublished diploma dissertation Institute of public Administration, 1990, and Al-Duraib, op. cit., pp.180-200.

been invested with judicial power to try cases involving the Administration. As a result such cases have been excluded from the jurisdiction of the ordinary courts. The development of the Board of Grievances will be the subject of this study.

### 1.5.2 Conflict of Jurisdiction.

As noted earlier, there are various other judicial bodies in the Saudi Arabian legal system apart from the *Shari'a* court, and this can result in a conflict of jurisdiction between these various judicial bodies.

The Judicature Act of 1975 which organizes the *Shari'a* Court attempted to solve this conflict between jurisdictions. Article 29 reads:

> *If a particular case is brought before a court controlled by this Act [Shari'a Court] and is at the same time brought before another judicial body which has jurisdiction to settle particular cases, and each court either insists on hearing the case or rejects it, an application should be made to the Conflict of Jurisdiction Committee to determine which jurisdictional body should hear the case. This Committee consists of three members, two of whom are selected from the [permanent] members of the SJC. The senior member of the two will be the President of the SJ committee. The third member is the President, or Deputy President, of the other judicial body. This committee also has the jurisdiction to settle disputes which arise as a result of enforcement of two final contradictory judgements, one of which has been issued by a court which is controlled by this Act and the other which has been issued by another judicial body.*

The decision of this committee is final and is not subject to appeal.[63]

## 1.6 The emergence of the Saudi Arabian Constitution and the Organic Instruction.

Unlike most other countries of the world, with the notable exception of the United Kingdom, Saudi Arabia has until recently been without a written constitution. The government has always maintained that the constitution of Saudi Arabia is the Muslims' Holy Book, the *Quran.* On the question of whether or not Saudi Arabia has a written constitution, jurists are divided into two schools. This will be discussed in Section 1.8 below. Nevertheless, the reason there is no written constitution in UK is different. Lord *Halisham* pointed out in *Halsbury's* Laws of England that:

> *The boundaries of English constitutional law have never been satisfactorily defined, partly because there is no constitutional document possessing an extraordinary sanctity or legally protected status, partly because the constitutional rules are susceptible to change by more or less formal means, partly because many of the rules are not justifiable, and partly because the differences between public law and private law are not clear.*[64]

The reason given for there being no written constitution is that the British constitution has gradually evolved without the kind of fundamental revolutionary

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[63] Article 32 of the Judicature Act 1975.
[64] J, Alder. *Constitutional and Administrative law*, Basingstoke: Macmillan. 6th ed, 2007, p7.

event that has created the need for a new constitution in other countries[65] such as Saudi Arabia. When the need for a constitution started in 1926, when *Abdulaziz*, the founder of current Saudi Arabia, captured the *Hijaz* region, he ordered the formation of a National Assembly of which eight members were elected by a secret ballot by representatives from the region, and five members were appointed by the King. The Assembly's function was to establish a governmental structure.[66]

This National Assembly issued the so-called Organic Instructions which were approved by the King in September 1926.[67]In the first section, Saudi Arabia was declared to be an Islamic, consultative, and monarchical state. The second section concerned the administration of the Kingdom, the dominant law of the state, and administrative responsibilities. The third concerned state functions such as legal, internal, foreign, financial, and military affairs. The fourth section covered the form and membership of consultative and administrative councils. The fifth section established a Financial Board to control the budget. The sixth section concerned administrative control of government activities. The seventh and eighth dealt with the government employees and municipal councils.[68]

In his unpublished thesis, *Constitutional Development in Saudi Arabia, Saaty* (1982) states that the "Organic Instructions" formed "a constitution for Saudi

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[65] Ibid.
[66] It was established in 1925. See Dahlan, A., *Dirasah fi al-Syasah al-Dakhaliah lil Mamlakah al-A'rabiah al-Sa'udiah.* 1984, p. 120.
[67] Um. Al-Qura official newspaper No. 90 on 3-9-1926 and No. 91 on 10-9-126.
[68] Ibid., and see also Solaim, S. A., *Constitutinal and Judicial Organization in Saudi Arabia,* Ph.D. thesis, Johns Hopkins University, 1970.

Arabia at that time, which enjoyed many aspects of the constitutions in our time...."[69]

Although those Organic Instructions included some aspects of a modern constitution such as the organization of legislative power (articles 28 to 37) it is doubtful that it could be considered a constitution as such. For example, its name "Organic Instructions" suggests a different concept to that of fundamental law. Moreover, it included some subjects that were irrelevant to what is generally accepted in other political systems as a constitution. Stating some of its defects, Saaty says:

1. *The first defect is the name "organic instructions", which does not apply to its function...*
2. *The organic instructions suffer from great weakness in the legal form, and constitutional sections, to the extent it did not apply the regular convention of the three powers...*
3. *The organic instruction did not specify the head of the state, ...*
4. *The fourth defect is the [omission] of rules on] the throne inheritance on which the system is based. The lack of this subject could affect drastically the system when an inheritance problem arises, or when greed dominates the brothers or sons.*
5. *The fifth defect of the organic instructions was that it was not voted upon by the people, as all other constitutions to be a result of the people's wish, not the consultative council.*

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[69] Saaty, A., *The Constitutional Development in Saaudi Arabia*, Phd. Thesis, Claremont Graduate school, 1982. pp.6.

6. *The constitution provides the main system of the country and does not include details because they must be in the laws, regulations, and by-laws. But the organic instructions entered into details which were not necessary, like the general inspection, audit, and municipals... pp. 100-105 See also Solaim, S. "Constitutional and Judicial organization in Saudi Arabia". PhD thesis, the John Hopkins University, Washington D.C. 1970. pp 22-26.*[70]

It should be noted that the Organic Instructions were formulated for only one part of what is now Saudi Arabia i.e., the *Hijaz* region. The Organic Instructions were formed and organized by the people of *Hijaz* themselves only when the King asked them to do so. The National Assembly which created such instructions was formed from *Hijazy* people. When the National Assembly was formed to organize the structures of government and when that assembly issued the Organic Instructions in 1926, other regions which constitute Saudi Arabia today were not yet unified or consolidated. As mentioned earlier, these regions were united only in the leader. As *Solaim* states:

> *Even when the country was named Saudi Arabia in 1932, the organic instruction remained applicable in Hijaz, and up to present time, there has never been a clear official statement suggesting that they are applicable over all the kingdom.*[71]

The Organic Instructions declined and were eventually abandoned after the Council of Ministers Act was promulgated in 1953.

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[70] Ibid
[71] Solaim, op. cit. p. 23.

### 1.6.1 *Majles Al-Shura*, the Consultative Council.

Pursuant to articles 28 to 37 of the Organic Instructions a consultative council was established.[72] However, after a year (1927) that council was dissolved and a new council of eight members was formed. Four of the members were chosen by the government after a consultation with experts. The remaining four were appointed directly by the government.[73] The President of the council was the general Viceroy, son of *Abdulaziz* King *Faisal*. King *Abdulaziz* addressed the first meeting of the council on its goals and aims, saying:

> *I have ordered that no bill must be enacted in this country unless it is submitted to your council by the office of the Attorney General. You are free to examine and amend it. The examination and the amendments have to be for the sake and benefit of this country and the basis of our system and policies is the Islamic Shari'a. You may, independently, legislate any law and pass any regulations that are beneficial to the country on condition it does not encroach on the Islamic Shari'a...*[74]

The council had the power to enact laws. It was also invested with financial control of the government, its budget, financial and economic projects, and approval of public privileges.[75] One of the main functions was its power to

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[72] Um Al-Qura, No. 71, 14-5-1926.
[73] Sadeq, op. cit., pp.35-38.
[74] Al-Juhani, op. cit., pp.80-81.
[75] Article 5 of the Consultative Act of f1927.

control the government's actions, so that it might draw the attention of the government to any illegality that might occur in implementing the laws.[76]

In 1928, the Act was amended to authorize the government to appoint any number of members to the Council. A new position, that of deputy president appointed by the King, was created by the amending Act.[77]

The Consultative Council based in *Hijaz* enjoyed many aspects of a modern legislature. It had a legislative as well as supervisory role. However, the fact that its members were appointed rather than elected would be considered significant in terms of modern democratic criteria.

March 1992 witnessed the rebirth of a new Consultative Council. As has been noted in the introduction a council of sixty appointed members was established within six months of the promulgation of the consultative Council Act 1992.

### 1.6.2 *Majles Al-Wukala*, the Deputies Council.

At the end of 1932 a further council was established.[78] The main aim of this body was envisaged as the determination of public policy for the state. The Council of Deputies had the powers of the executive in modern constitutions. The Council of Deputies had power to take any decision without approval of the King.[79] According to Harrington this council "... was to have been a strong government

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[76] Ibid., Article 9.
[77] Um Al-Qura, No 186 in 12-7-1928.
[78] Um Al-Qura 15/1/1932.
[79] Sadeq, p. cit., pp. 45-47.

organ - in some ways stronger than the present Council of Ministers".[80] The powers of the Deputies Council, however, were greatly reduced when the Council of Ministers was established in 1953 where most of the jurisdictions of the Deputies Council were brought under the Council of Ministers.

## 1.7 Constitutional Development Since 1953.

This era followed a period of political stability in Saudi Arabia. It marks a vast change in the political environment which enabled *Abdulaziz* gradually to change the institutional basis of government. As mentioned earlier, all councils, such as the consultative council, which were established before 1953 were exclusively limited to the *Hijaz* region.

Following the consolidation of all the regions of the Arabian Peninsula under one Kingdom of Saudi Arabia, the activities and the duties of the new state greatly increased. There was an increase in the number of government departments and ministries and in the expectations of the people. Consequently, in 1953, before the death of the founder of the state, an Act establishing a Council of Ministers was promulgated.[81]

The Council of Ministers had as its president the Crown Prince, and the ministers and advisers who comprised it were appointed by the King.[82] The Council was empowered to supervise and direct the internal and foreign affairs of the country,

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[80] See Harrington, C. W. "The Saudi Arabian Council of Ministers", *Middle East Journal*. 1958, vol.12 ,No. 1, p.2.
[81] Royal Decree No. 5-19-1-4288 in 1-2-1372 H, See Um AL-Qura No 1485 on 16-10-1953.
[82] The Council of Ministers Act of 1953, and see also Sadeq, op. cit., p53.

with the capacity to take decisions in all such matters. Treaties, international agreements, and government contracts were not valid unless they were approved by the president of the council. The decisions of the council were final, subject to the King's approval. One might therefore conclude that the king's power was still dominant and that, despite the terms of the law establishing the council of Ministers, it remained more a consultative than an executive body of final decisions.

### 1.7.1 The Council of Ministers of 1958.

At the beginning of 1958, after almost five years' experience, an amendment of the Act[83] strengthened the council's powers.

Under Article 7 of the 1958 Act, amended in 1964, the council is described as a "legally constituted body", the King being now the president. Thus the King had added the office of the Council president to his power.

Article 18 which summarizes all of the council jurisdiction, provides that:

> *the Council of Ministers shall lay out the policy of the country in relation to internal and foreign matters, finance, education, the economy, defence and all public affairs and will supervise the implementation thereof. It retains legislative power, executive authority and administrative power. It is the ultimate power for financial affairs and for entire affairs connected with the*

[83] Royal Decree No. 38on 22-101377. See Um Al-Qura 1717 on 16-10-1958.

*different ministers of the state and measures which ought to be taken in these matters. Treaties and international agreements shall not be considered effective until approved by the council. The decisions of the council of ministers are final except for those which require the issuing of a royal decree or order in accordance with the provisions of this constitution.*

The council has the power to enact laws by certain procedures. When the council agrees to a Bill the latter does not become law until approved by a Royal Decree from the King. The Council's legislative role contributed to the erosion of the legislative power of the Consultative Council which was, as mentioned earlier, still in force without authority.

Institutional development since the creation of the local and elected council in *Hijaz* had been a gradual process of centralization of power in the hands of the rulers. Such developments also marked the erosion of the people's contribution to power. Thus it was clear when the Council of Ministers, with the King at its head, was established, that its powers spelled the demise of the older Consultative Council which had legislative power. In 1992 the Consultative Council was re-established but it is unclear whether its new phase of existence will challenge the overall high degree of centralized power held by the rulers.

### 1.7.2 Pressure for constitutional reform.

Before 1960 the question of adopting a written constitution and the demand for constitutional reform had seldom been seriously contemplated, for several reasons. Firstly, there was actually, as mentioned earlier, a participation in the

government, at least to some extent, and secondly, there was no constitutional consciousness among the people which encouraged them to demand participation in the government. In addition, the level of education, a strong factor in the raising of consciousness affecting the political system, was very low. By surveying the period before the end of the fifties and the beginning of the sixties, one finds that there has been a series of developments important enough to raise a demand for constitutional reform. That period saw a transfer of power from the people to the rulers. More clearly, most of the power of the constitutional institutions such as the Consultative Council, as pointed out earlier, had been invested in one power i.e. the Council of Ministers. Consequently the need for constitutional reform arose.[84] In fact it came from within the ruling family, namely one of King *Abdulaziz's* sons.[85] This demand brought about a proposal for a written constitution[86] but this proposal has not gone farther than the initial step. Nevertheless, it is a significant and serious attempt to create a new constitution. *Solaim* notes that:

> *Its importance, however, lies not only in its being the only attempt, so far, at writing down a constitution for the kingdom and its relevance to any future movement in this direction but also in the fact that it came very close to its being adopted.*[87]

The possibility of constitutional reform received support from an announcement on Radio *Makkah* in 1960 which stated that there would be a written

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[84] See Lackner, H. *A House Built on Sand: a political economy of Saudi Arabia.* London: Ithaka Press 1978, p. 90.
[85] He was Prince Talal Bin Abdulaziz.
[86] Solaim, op. cit., p. 70.
[87] Ibid.

constitution.[88] However, the movement for change did not succeed. The period between 1960 and 1964 marks a struggle within the ruling family for power. In 1960 the Prime Minister, Faisal, resigned from the government.[89] Then in 1962 his brother, King *Saud*, brought him back as Prime Minister.[90] Faisal promised to set up a "basic law" for the country. His promise was made when he established his Cabinet in 1962 and he spoke of working hard to draw up a written constitutional system based on *Quran* and *Sunnah*. This promise was never realised. It appears that there had been no intention to establish a written constitution. In 1966 in an interview with *Le Monde* King *Faisal* stated that there was no need for a constitution: "Constitution! What for ….?" he is quoted as asking.

Announcements of constitutional reform had been nothing more than a tactical step to maintain political stability in the country. Such promises are quite often influenced by either internal incidents such as the *Makkah* crisis of 1979,[91] or external ones such as the Yemen coup.[92] A similar conclusion might be drawn from the changes announced on the first of March 1992 in the wake of the Gulf crisis.

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[88] See New York Times, Monday 26/12/1960. It says that "the Mecca Radio said today a national council to draw up a constitution for Saudi Arabia would be set up under a decree by King Saud". The announcement said a third of the council would be selected and the rest appointed from among tribal chiefs and business men…", p. 3.
[89] Royal Order No. 35 on 3/7/1381, (1961).
[90] Royal Order no. 31 on 13/6/1381, (1962).
[91] Sankari, F. A. Islam and Politics in Saudi Arabia, in *Islamic Resurgence in the Arab World.* Edited by, Dessouki, A. E, Greenwood Publishing Group 1982.
[92] See Saaty, op. cit., pp. 110-112.

## 1.8 The Constitution of Saudi Arabia: Does it exist?

In the preceding section I have talked about the legal and governmental structure of Saudi Arabia. This section will conclude with a discussion of a subject of controversy which, on the other hand, has received little serious attention in the literature. Is there a constitution as such in Saudi Arabia? An answer to this question is of direct significance to the focus of this thesis, which concerns the right of the citizen to complain about abuse of rights and against those in governmental authority. Is the right to bring grievances against the King and his ministers, for example, a matter of grace or can it be said to have a constitutional basis independent of those who govern Saudi Arabia?

In discussing the Saudi constitutional experience, we should first understand the meaning of constitutional; starting by briefly throwing some light on the concept of a constitution itself. One may note that the constitutions of most countries of the world, particularly those countries which have a single document that is called a "constitution", emerged as a result of achieving independent statehood, usually from colonial power. *Wheare*, in his study of modern constitutions (1962), describes how such countries as "... Austria or Hungry or Czechoslovakia after 1918, communities [that] had been released from an Empire as the result of a war and were now free to govern themselves...." established new constitutions.[93] This applies also to most of the developing countries such as Nigeria.[94] In still other countries, such as the Eastern European

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[93] Wheare, K. C., *Modern Constitutions*, Frome & London, Butler &Tanar Ltd, 1951
[94] See Ostheimer, J., *Nigerian Politics*. New York: Harper & Row Publishers, 1973, pp.20-29.

states, the constitution or constitutions developed after wars. In others the constitution emerged after political unrest.[95] On the other hand some countries, such as Britain, that do not have a written constitution, claim that they have a special type of constitution that differs from other countries, i.e. an unwritten constitution.

Saudi Arabian constitutional experience does not fit within any of the categories mentioned by *Wheare*, for the state of Saudi Arabia was not created from colonial rule but consolidated from local power centres by the rulers of *Najd*, nor did it result from a pact following internal conflict or civil unrest.

A few points should be completed about the literature which has discussed or, more to the point, mentioned the subject before reviewing the particular debate over the existence of a constitution in Saudi Arabia. Books or articles which concern the constitution of Saudi Arabia are few. Even those books or articles which deal with such matters hardly treat the subject in depth. Even though the title of an article or chapter may be called "The constitution in Saudi Arabia", typically the writer does not examine the issue in any satisfactory way, emphasizing rather the political history of the country and its origins.

Against this sparse background, the question of the nature of the constitution will be examined in the light of available material. The test, it may be said in advance, as to whether a constitutional basis exists for modern Saudi Arabia, is less the possibility of pointing to a document called a constitution than the

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[95] Yardley, D. C., *Introduction to British Constitutional Law*. London: Butterworths,6th 1984, p.5.

answer to the question whether constitutional rules can be identified which function to constrain and regulate the exercise of power. In particular the concern of the thesis is whether a constitutional rule can be identified which legitimates both the right of the citizen to call apparently absolute authorities to account and with the institution through which such may be done, the Board of Grievances.

Opinions on the question of the constitutional basis of Saudi Arabia may be divided into two categories; those writers who argue that there is a constitution and those who assert there is not.

### 1.8.1 The argument that there is a constitution.

The first group can be divided into two sub-groups. First are those who say that the constitution of Saudi Arabia is contained in the Council of Ministers Act of 1958 which was first promulgated in 1953 before the death of the founder of modern Saudi Arabia, namely King Abdulaziz. This Act has since been amended and took its final form in 1958[96] and contains a number of articles where the structure of the Council of Ministers is specified. Second are those who claim that the constitution of Saudi Arabia is the Islamic *Shari'a.*

In his article on the Saudi Arabia Council of Ministers, *Harrington* (1958), although he does not address the question whether there is a constitution in Saudi Arabia or not, calls the Council of Ministers Act a "constitution" on many

[96] It was amended in 1964.

occasions.[97] Similarly, *Madani*, although he does not claim explicitly that the Council of Ministers Act is itself a constitution, states that " the constitution of 1953 which was the core of the 1958 Act... comprised the closest approach to modern, constitutional law in Saudi Arabia."[98] That opinion about the Saudi constitution is also supported by *Hanson* in his article, "The Influence of French Law on the Legal Development of Saudi Arabia", (1987). *Hanson* states that "in the absence of other dispositions, this statute (i.e. the Council of Ministers Act) can be understood as a constitutional instrument".[99] None of these assertions is sufficiently developed in the sources cited.[100]

*Al Juhani*, who writes on public law in Saudi Arabia, gives more details about the Saudi constitution. He argues that, as a constitution might be written in a single document, Saudi Arabia has a constitution, which is the Council of Ministers Act 1958. This law, he claims, is considered to be the basic law of Saudi Arabia, i.e. the constitution. He supports his argument by stating that "...the rules of that Act have the same nature as of the constitutional character of other constitutions whether it is written or conventional constitutions."[101] He supports his opinion by reference to some features of that Act. He points out; firstly, that Saudi Arabia has one single written document which is considered to be the fundamental law of the Kingdom, i.e. the Council of Ministers Act. Secondly, the basic law in the Kingdom is considered to be flexible and not rigid.

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[97] C. W. Harrington, op. cit., p 19.
[98] M. Madani, *The Relationship between Saudi Arabian Domestic Law and International Law: A Study of Oil Agreement with Foreign Companies*. Ph.D. dissertation, George Washington University, 1970.
[99] See Hanson, M. "The Influence of French Law on the Legal Development of Saudi Arabia", in *Arab Law Quarterly*. 1987, vol. 2, part 3, pp. 283-285.
[100] Ibid.
[101] See Al-Juhani, op. cit., p. 93.

He defines the flexible constitution as that "... constitution which could be amended by the same procedures by which other ordinary legislation could be amended". In the case of Saudi Arabia, the state has the right to amend any rules or articles in the law whenever it wants, which means the Act is flexible. Thirdly, the basic law of Saudi Arabia is developed according to the social development in Saudi Arabia. Its drafters did not take rules from other constitutions as did other countries. In summary, *Al-Junhani* argues that Saudi Arabia has a written and flexible constitution which is the Council of Ministers Act. It seems that the reason underlying his argument is that the Council of Ministers Act organizes some constitutional organs such as the legislature and the executive. *Al-Juhani* states that the Act delineates the general framework of state powers.[102]

If such arguments were correct, Saudi Arabia would be a unique case. However it is submitted that they are not. One of the most important features of a constitution is its supremacy over other laws, as *Wade* and *Bradley* state in the textbook, *Constitution Law.* It is, according to these authors, "... a document having a special legal sanctity which sets out the framework and principal functions of the organs of government of a state and declares the principles governing the operation of those organs".[103] Similarity *Wheare* states that a constitution "... is intended to state supreme rules of law".[104]

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[102] I. M. Al-Juhani, " *Majlis al-wzara fi al-Mamlakah al-A'rabia al- Sa'usia byn al-Shari'a al-Islamia wa al-Ijtahad al-Mua'aserh"*. First edition, Riyadh: Al-Majd Press, 1984. pp.45-48.
[103] E. C. Wade & K. D. Ewing, *Constitutional and Administrative Law.* Pearson Education Limited, 14th ed. 2007, and also see, E. C. Wade & A. W. Bradley, *Constitutional Law.* London: Longmans, 10th ed. 1985.
[104] Wheare, op. cit., p. 73.

However, if, as accepted by *Al-Juhani* and other writers, any law is subject to Islamic *Shari`a*, even the Council of Ministers Act, how can that Act be the constitution? Moreover, the Council of Ministers Act was not regarded as a constitution by the people who made it in the first place. For example, Article 20 states that laws, treaties, international agreements, and concessions should not be amended except by law to be promulgated according to Article 19 of the Act. Accordingly, in 1964 when the Act was amended for the second time[105], it referred to that Article as a ground of the amendment. This means that the Act is nothing other than ordinary law. Furthermore, the Council of Ministers Act cannot be regarded as a constitution in itself, as that term is understood in other countries. As has been said previously, it has no supremacy over other law, especially Islamic *Shari'a*. It does not determine, for example, the form of the state, the type of government, nor does it concern the citizens` rights or the organization of the Judiciary, its independence and immunity. *De Smith* points out that a constitution is mainly about political power. He adds that it also establishes "... the location, conferment, distribution, exercise and limitations..." of the power of the various government branch.[106] Further, the Council of Ministers Act contains elements that are not constitutional. As *Ballantyne* states:

> *[The] "constitution" of the Council of Ministers contains such features as measures to avoid conflict of interest in Ministers, the requirement that taxes, duties and exemption therefrom be by law and that all states revenues pass through the Council hands, and the appointment of Comptroller-general to*

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[105] Royal Decree No. 14, of 1389.
[106] A. S. De Smith, *De Smith Constitutional and Administrative Law.* London, Penguin Books,8th ed., R. Brazier ed., 1989.pp.6-7.

*audit all government accounts – features which are encountered in the constitutions of other jurisdictions. However, these are not constitutional instruments, but legislation, or regulations, outlining the machinery of government, and cannot therefore validly be drawn into a comparison of Constitutional Law.*[107]

Finally, one should take into consideration the purposes and the motives that lay behind the passing of such an Act in the first place. This Act was designed to organize the Council of Ministers. On the face of it, it does not purport to do anything else. It was concerned to establish the institution of the Council of Ministers, to regulate its meetings, its jurisdiction and other features. It appears that one of the purposes of the promulgation of that Act was the necessity for a single power to control and organize the activities and work of various ministries and offices of the Government. *Harrington*, who was one of the few early writers who wrote about the Council of Ministers, pointed out that the establishment of the council, was:

*...one more step in the coordination and consolidation...that remained for the ministers to be assembled into a coordination body. This started in October 1954 when King Abdulaziz ordered the formation of the council of ministers. The Decree preamble states that the King decided to establish a council of ministers, in part "...because of increase in the number of obligations and the diversification of the responsibilities placed upon state.*[108]

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[107] H. W. Ballantyne, " The constitution of the Gulf states, a comparative study", in *Arab Law Quarterly*. 1986, vol. 1.
[108] C. W. Harrington, op. cit., p.27.

It was the economic development which occurred after the discovery of oil in the 1930s that forced the rulers to reorganize the political system.[109]

It is submitted that the Council of Ministers Act cannot be considered as the sole comprehensive source of the constitution of Saudi Arabia.

*Hassn*[110] appears to agree with this position. While he argues that the constitution of Saudi Arabia is the Council of Ministers Act and that it is basic law, he adds that the Act is supplemented by Islamic *Shari'a* rules such as the consultative Principle.[111] His argument is that although the Decree which was promulgated in 1958 carries the name of the council of Ministers Act, yet it is in fact a basic law and it stands on the same level with other world constitutions.[112]

Although this opinion has merit, it can also be criticized. *Hassn* argues that the council of Ministers Act as a constitution is supplemented by the rule of Islamic *Shari'a*. However, as has been stated earlier, all law in Saudi Arabia is subject to *Shari'a*, in the sense that it must not conflict with it. *Hassn's* argument should be the other way round. He should have stated that the "basic law" derives from Islamic *Shari'a* constitutional rule, and is supplemented by the council of Ministers Act.

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[109] Solaim, op. cit.
[110] A. Hassn, "*Durus fi al-Qanon al-Idari*". Riyadh: Institute of Public Administration, (No date), pp.116.
[111] Ibid.
[112] Ibid.

The second set of opinions is expressed by those who argue that there is a constitution in Saudi Arabia, and is based on the claim that the Saudi Arabian constitution is *Quran* and *Sunnah* i.e Islamic *Shari'a*. Thus, *Mahmassani* states that the monarchy in Saudi Arabia is constitutionally restricted in its powers by Islamic *Shari'a*.[113]

*Amin*, likewise, argues that the state Constitution is Islamic law. In his article, "Legal systems in the Gulf States" he states: "Saudi Arabia adopted no formal constitution other than the *Quran* and the other Sources of Classical Islamic Law".[114]

Another writer, *Ahdab*,[115] takes a position which seems contradictory. He asserts that there is no constitution in Saudi Arabia; the royal power is unlimited; there are no constitutional limits to restrict that power. Then he concludes by saying "...Quran is the written Constitution...."[116] The view that the *Quran* has constitutional status finds support in Saudi rulers. Thus King Faisal said, in an interview with *Le Monde* in 1960, when he was asked about this matter:

> *Constitution! What for? The Quran is the oldest and the most efficient constitution in the world; election of parliament? After the unsuccessful*

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[113] Mahmassani, op. cit,. p.317.
[114] Amin, S., "Legal systems in the Gulf States", in *Lloyd's Maritime and Commercial Law*. 1983, pp. 71-85.
[115] Al-Ahdab, A. *Al-Nidham al-Qanuni Lil Betrul fi al-Mamlakah al-A'rabiah al-Sa'udiah*. 1982, pp.64-78.
[116] Ibid., p. 64, and see also Dhanani, G. "Political Institutions in Saudi Arabia", in *International Studies*. 1980, vol. 19, No.1, pp. 59-69, where the writer also supports the idea that, Saudi Arabian supreme law is based on *Quran* and *Sunnah*.

*experiences held in neighbouring countries, sufficiently, simply and, flexible enough to the happiness of our people.*[117]

However this argument can hardly be correct. While Islamic *Shari'a* has constitutional rules like the Consultative principle it is not exclusively about constitutions. It sets out at the same time criminal, civil and commercial Laws which lack any constitutional aspects. *Anderson*, a scholar on Islamic law, has pointed out that the *Shari'a* is not only a political system but also embraces other aspects of life. He notes "the *Shari'a*, therefore, covers a much wider field then any detail of man's life – his conduct towards God, the state, his fellow creatures, his family and himself".[118] A constitution, as the concept has been widely understood in the modern world, concerns the relationship between the governors and governed, their duties, rights and a system of government. *Shari'a* goes beyond these matters.

### 1.8.2 Claims that Saudi Arabia lacks a constitution.

It is time to examine the alternative thesis, that Saudi Arabia lacks any constitution. The point is asserted boldly by *Peaslee*, "...there is no constitution

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[117] Le Monde, 24th, June 1966.

[118] Anderson, "The Shari'a Today", in *Journal of Comparative Legislation*. 1949, No. 31, p. 18. Dhanani, Assistant Professor of Gulf studies, seems to agree with Anderson's view. He states that:

*A constitution is the highest law of a country to be followed by its Government and the people towards a regulated and constantly improving life in the country. Shari'a is much more than a constitution..., it is not just an instrument for a better life. It represents "the great eternal goals" which an Islamic Government should strive to achieve for their own intrinsic merit.*

[in Saudi Arabia]".[119] Other writers support that position. For example *Serhal* argues that there is no constitution in Saudi Arabia as it is understood in other countries. He goes on to point out that the Monarchy is absolute, i.e. it is not restricted with a written constitution. However, he adds that the King cannot be described as a totalitarian or autocratic king as were European monarchies in the medieval era; he is restricted by *Shari'a* principles.[120] In this context, however, he does not, as some writers such as *Mahmassani* or *Amin* do, treat the *Shari'a* as a constitutional source.

It seems that the arguments of those who think that there is no constitution are based on the fact that there is no written document that regulates the relationship between the government and the governed.

From the above survey of opinion, it can be seen that the matter of the existence of a constitution in Saudi Arabia was, and still is, controversial. However, to resolve this conflict, some facts should be taken into account. First of all, the political system and the type of constitution that is adopted are affected, in one way or another, by the context that surrounds it, such as the social and economic background. Saudi Arabia, unlike other developing countries, has never been under any sort of colonial rule. Consequently, as has been said earlier, it has not passed through the same stages as other developing countries, which have a written constitution. Secondly, Saudi Arabia has a unique situation that distinguishes it from other countries, in that it applies a divine law, i.e. Islamic

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[119] A. J. Peaslee, "Constitution of Nations". *Dordrecht: Martnus Najhoff Pubishers*, 4th ed., VOL. II, 1985. pp.1297-1298.
[120] A. Serhal, "*Al-Nudhm al-Syasyah wa al-Dusturiah fi Lubnan wa al-Duual al-A'rabiah*". Beirut: Dar Al-Baheth, 1980. pp.342-343.

*Shari'a*, as a way of life. Accordingly, the religion of Islam as a social force plays a significant role among the people in Saudi society. Therefore any opinion would be inaccurate if it ignored such issues.

Consequently it would also be inadequate to apply to one country the concepts and principles that developed in another, whilst at the same time ignoring the environment that strongly affects them.

Be that as it may, and taking into consideration the above mentioned facts, it can be said that Saudi Arabia has a constitution, yet it is not written in a single document. The absence of a single constitutional document does mean that there is no constitution at all.

The British constitution is usually classified as an unwritten constitution. The constitutional institution and rules in Britain have their origins in old and deep-rooted conventional rules. These are the general basis of the current constitution.[121] With respect to Saudi Arabia, its constitution theoretically comprises many constitutional rules, derived from various sources, the main source being the Islamic *Shari'a*. It is considered to be the fundamental basis for every act including constitutional rules. It is according to *Al-Awaji*, 1971, the:

> *...supreme law of the land. As a socio-legal framework, it is concerned with all activities of the individuals and the government from the most private to the most public, that is, from questions relating to the most public, that is, from the most private to the most public, that is, from*

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[121] Wade and Bradely, op. cit., pp. 1-5.

> *questions relating to definition of higher public authority to detailed laws regulating marriage and divorce. Such an unlimited scope of Al-Shari'a plus its sacred status are the basic features in the claim of the constitutional function...*[122]

Islamic *Shari'a* has three main legislative sources in Islam. They are *Quran*, the *Sunnah* and *Ijma*. The *Quran* is the word of god as revealed to the Prophet Mohammed; it contains directives given to Muslims in this life.[123] The *Sunnah* is considered to be the second source of Islam and comes directly after *Quran*. It means the statements, acts and conformations of the Prophet. Generally speaking the *Sunnah* usually amplifies and explains the rules which are laid down in *Quran*. In some situations, it creates new rules about which *Quran* is silent.

The third legislative source is *Ijma* is an Arabic word meaning consensus. It is "an agreement of Muslim jurists in a particular age on a juridical question". Its authority as a source of law is based on certain Quranic verses and the sayings of the prophet, chiefly the saying: "My followers (nation) will not agree upon an error or what is wrong..."[124] These are the three sources upon which all Muslim scholars agree.

Muslim scholars and jurists agree that the *Quran* and *Sunnah* contain the basic foundation, general principles and rules. They do not cover every individual situation i.e. there are some aspect of legislation which have been left to the

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[122] See Al-Awaji, I. M., "*Bureaucracy and Society in Saudi Arabia*" Ph.D. Dissertation, University of Virginia, 1971, pp. 104-105.
[123] See Al-Hakeem, S., Al-Raqabah a'la Aa'mal al-Idara fi al-Shari'a al-Islamih wa al-Nudhum al-Wada'iyah. 1987, pp. 74-75.
[124] Ibid.

Muslim nation to deal with. Qualified jurists and scholars can create rules which are suitable to particular issues, on the condition that they do not infringe the Islamic law.[125] This is a fourth source of Islamic Law which is called *Ijtehad* or independent reasoning.[126] There is therefore no obstacle to the making of constitutional rules in order to meet new situations because the texts are limited but the cases are not.[127] In the light of the previous facts some constitutional documents have been enacted in Saudi Arabia, such as the Council of Ministers Act 1958.

The above mentioned points can be summarized as follows: Saudi Arabia can claim to have an unwritten constitution; it does not have its most important laws establishing the structure of government, stating the rights and duties of both ruler and ruled, and the organs of the state, codified in one single document. Nonetheless, it does possess such laws which combine with the principles of the *Shari'a* to make up its constitutional norms.

On 1st March 1992, King *Fahd* promulgated a new law which is described as *Al-Ndham Al-Asasi Llhukm*, The Basic Law of Government. While the Act has been described as a constitution[128] and does contain some important constitutional features it does not as such contradict the argument made here. Thus the Basic Law of Government in Article 1 states that:

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[125] See Odah, A. *Al-Islam wa Awda'na al-Syasyah.* 1986, p. 233.
[126] Qalaji, M.& Qunaibi, H. *Dictionary of Islamic Legal Terminology.* 1988, p.43.
[127] Mohammed, M. A. *Al-Tatawur al-Tashria'I fi al-Mamlakah al-A'rabiah al-Sa,udiah.* 1977.
[128] See for example the International Herald Tribune, 2/3/92.

> *The Kingdom of Saudi Arabia is a sovereign Arab Islamic state with Islam as its religion; the Book of Allah (The Quran) and the Sunnah of his Prophets, Allah's prayers and peace be upon him, are its constitution, Arabic is its language and Riyadh is its capital*[129]

Therefore the case remains that the constitution of Saudi Arabia is an amalgam of sources, *Shari'a* and its principles, as well as the legislation already discussed, including the Basic Law of Government.

That Saudi Arabia has a constitution, albeit an unwritten one, can be demonstrated by an enquiry into the central focus of this thesis: the right of citizens to a remedy against the administration. Is there a constitutional norm which governs this question?

As has been pointed out, *Shari'a* is the main source of constitutional rules in Saudi Arabia. According to that source the right of the people to complain against the governmental authority is recognized. The caliphs used to hear complaints brought against the governors and officials of the different regions of the state, when they used to deal with the complaints directly by themselves.[130] Throughout Islamic history there was a separate institution called "The Board of Grievances", where the complaints against governors of provinces, powerful people, and functionaries were heard.[131] This institution will be examined in detail in Chapter Two.

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[129] Article 1
[130] Abdul Muna'm, H. *Diwan al-Madhalim fi al-Islam.* 1983, pp. 36-94.
[131] Ibid.

The Council of Ministers Act of 1958, as a constitutional document, does not deal in detail with complaints procedure. Nor does it mention the right of the people to bring their grievance before a court. It does however refer to the Board of grievance established by other legislation. Article 46 of the Act states.

> *The Grievances Board and the staff of the office of the Comptroller General of State Accounts come under the president of the Council of Ministers, in accordance with their respective regulations.*[132]

The new Basic Law states the rights of the people to litigation in general. Article 47 states that the right to litigation is guaranteed to citizens and residents of the kingdom on an equal basis. The law defines the required procedures for this. "Article 33 refers without any detail to the Act of the Board of Grievances. It would appear that the Basic Law of Government is more specific than the Council of Ministers Act.

The constitutional basis, therefore, of the citizen's right to complain and right to a remedy lies in the *Shari'a* as the fundamental source and in the legislation mentioned, the Council of Ministers Act 1958, the new Basic Law of Government and the Act of the Board of Grievances of 1982.

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[132] See the Council of Ministers Act 1958.

## 1.9 Conclusion

In the course of this chapter, the law and the constitutional background of Saudi Arabia have been examined. The emergence of Saudi Arabia at the beginning of this century, the constitutional developments, and the modern governmental and judicial system has been traced. The main thrust of this chapter has been to place the Board of Grievances within the constitutional and legal environment in which it operates, in other words, within the history of the growth of the state itself. The chapter also considered the debate over whether Saudi Arabia may be considered to have a constitution as such, in the sense understood in contemporary legal debate. The most recent innovation, the adoption of a Basic Law in March 1992, has been noted. This welcome development confirms the argument in the chapter that Saudi constitutional norms are to be found in various legislative sources including the Basic Law, but mainly in the principles of *Shari'a*.

# Historical development of the Board of Grievances in Islam

**2.1 Introduction**

**2.2 Original form of the Islamic judiciary**

**2.3 Emergence of the Board of Grievances**

**2.4 Separation from the form of the ordinary courts**

**2.5 Reasons for the rise of the Board of Grievances**

**2.6 *Nadhir or Wali Al-Madhalim:* (The complaints director or governor)**

**2.7 *Majlis Al-Madhalim* (The Board of Grievances categories or structure)**

**2.8 The judicial authority**

2.8.1 Issues that the judge of Grievances could examine on his own initiative

2.8.2 Jurisdiction to receive complaints

**2.9 The legal personality of the Board in the Islamic judicial system**

**2.10 English court of Chancery**

2.10.1 Origins and development of the Chancery in English Law

2.10.2 Reasons for the appearance of the court of Chancery

2.10.3 The Chancellor (the Head of Chancery)

**2.11 The Chancery court and the Board of Grievances**

**2.12 Conclusion**

## 2.1 Introduction

The Board of Grievances is a stage developed from Islamic law and Islamic culture: the Board established under Saudi legislation is not a new institution. It has its origins in the Islamic institution of the same name and the concept has firm roots in Islam. The earliest information on the Grievance Board was written around the 11th Century by a greater number of Muslim jurists.

This chapter explores this historical source of the Board through a discussion of the judiciary in *Islam*. The chapter will also briefly compare the Islamic Board of Grievances with an institution that has interesting similarities, the court of chancery in English legal history.

## 2.2 Original form of the Islamic judiciary

To approach a clear understanding of the judiciary in Islam we should first of all understand its origin when the prophet started his mission. After his emigration from *makkah* to *madina*, capital of the Islamic state at that time, and until his death in 632, Prophet Mohammed laid the foundations of the Islamic state. This period is considered to be unique by virtue of the prophetic position.[1] He received the revelation which contains the *Shari'a*, or Islamic law, as a messenger of God, as well as other rules such as those concerning worship per

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[1] See Ahamed, Manzooruddian, "The Classical Muslim State", *Islamic Studies*. 1962, vol. 1. pp.96.

se. He was not only the head of state, but also of the judiciary. In other words, he was both the political and religious leader.

The judicial position of the Prophet in the Islamic society of *Madina* is made clear in the following verses from the *Quran*:

> *But no, by your Lord, they can have no (real) Faith, until they make you (Muhammad) judge in all disputes between them, and find in themselves no resistance against your decisions, and accept (them) with full submission.(Quran 4:65)* [2]

And:

> *If they come to you (Muhammad), either judge between them, or turn away from them. If you turn away from them, they cannot hurt you in the least. And if you judge, judge with justice between them. Verily, Allah loves those who act justly. (Quran 5:42)* [3]

These verses emphasize the position of the prophet as both a judge and head of state. According to *Guraya*, who wrote about the judiciary in *Islam*: "... the function of the prophet is to submit himself to the will of Allah and to apply the divine principles in case of dispute and not to resort to his wishes".[4]

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[2] Surat An-Nisaa. Or the Women (S.4A .65) "THE HOLY QURAN" English translation of the meaning and Commentary , King Fahd Holy Quran Printing Complex., 1410 H, p.230.
[3] Surat Al-Maida. Or the Table Spread (S5A 42) ) "THE HOLY QURAN" English translation of the meaning and Commentary , King Fahd Holy Quran Printing Complex., 1410 H, p.297.
[4] Guraya M. Y., *Judicial system under the Holy Prophet. Lahore* (Pakistan): Kutub Khana: Anjuman Himayat –I-Islam, (1982), p.119.

The Prophet had the authority to appoint judges for different provinces of the Islamic state. He used also to appoint them to settle disputes or case where he himself could have been the judge.[5] This shows that the Prophet laid down a principle of delegation of part of his authority to another judge. In the Caliphate period the Caliphs followed suit. According to Muslim scholars and jurists the Caliphate period was special in the sense that it immediately followed the Prophet's death. As in the Prophet's time executive and judicial powers were exercised by the Caliph himself.[6] The role of the judiciary was still one of the fundamental functions of the head of state, and it was developed considerably during this period, probably during the rule of the second *Calipf, Omar Ibn Al-Khattab*. According to some Muslim thinkers, he developed a framework which gave more significance and independence to the role of judges.[7]

This change of policy could be attributed to the expansion of the Islamic state which at that time included Egypt, Iraq, and Iran, as well as the Arabian Peninsula. The caliphs had, naturally, many responsibilities that made them unable to carry out all judicial functions. As a result, they appointed judges in different areas of the Islamic state even in *Madina*, their place of residence. The first Caliph, Abu Baker, for example, appointed Omar as a Judge. Similarly Omar, as a second Caliph, assigned *Zayd Ibn Thabit*, one of the Prophet's companions, to the job of a judge. As *Guraya* states

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[5] Ibid. p.155-159.
[6] Manzooruddin, op. cit.,p.97.
[7] See in this respect Al-Qasimi, "*Nidham al-hukum fi al- Shari'a wa al- Tarikh al-Islami: al-Sultah al-Qadiayah*". P. 187, and Zydan. *Nidham al-Qada fi al-Shari'a al-Islamiah.* 1984, pp.71-76.

> *The first step which Omar took for the separation of judiciary and executive was the appointment of Zayd Ibn Thabit as a judge of Madina... [He] was appointed not only a judge in Madina, but was also frequently consulted by Caliph in judiciary matters*[8]

In the *Abbassid* period[9], the delegation of the judicial function witnessed further development when the judiciary itself was invested with the power to appoint judges. *Qadi Alqudah* i.e. the Judge of Judges, for instance, had the power to select, control and dismiss judges with the consent of the Caliph.[10] Hence the independence of the judiciary became more established.

## 2.3 Emergence of the Board of Grievances

The adjudication of grievances has simultaneously developed with the expansion of the Islamic state. The early Islamic state, including the prophet's period as well as that of the caliphate, did not pass without witnessing cases that involved grievances against the state. In fact some Muslim jurists and thinkers nowadays[11] believe that there were some cases similar to present day administrative cases. For example, a case occurred during the prophet's period which could be summarized as follows: the prophet appointed one of his companions, *Khalid Bin*

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[8] Guraya. Op.cit., p.302.
[9] Al-Abbasiyah, is the second major Muslim dynasty (750-1258 A.D.) ruling after the Umayyad. Its capital is Baghdad and during this period, much development ensued. The dynasty began with *Abbas*, an uncle of the prophet Mohammed
[10] See Abu Fares, M.., *Al-Qada fi al-Islam*. 1984, pp.210-211. Regarding the dismissal of a member of the Judiciary, it should be noted that certain attributes must be present in a person in order to be appointed as a judge; such as good health, intellect. If the judge, for instance, becomes deaf or blind or he becomes very ill that he can not perform his duty, he could be dismissed. However, the Caliph cannot dismiss any ordinary or grievances judge without legal reasons. Shanqity. pp. 226-227.
[11] See Al-Refa'ai, *Al-Qada al-Idari*. 1987, p. 119, Ulian, op. cit., p.51, and Abdul Muna'm, H. *Diwan Al-Madhalim*. 1983, pp.49-69.

*Al-Walyed*, as the chief commander of a detachment. On his way with the detachment, *Khalid* met members of a tribe who levelled weapons at the soldiers of the detachment (unsheathed their weapons). Then *Khalid* asked them to drop their weapons and informed them that he had not come to fight, but to call for Islam. Then they dropped their weapons. However, *Khalid* thinking that this was an act of deception, because they were famous for their deceit, ordered his soldiers to tie them up and killed some of them. A member of the tribe, however, managed to escape and met and related the matter to the prophet. The prophet said "O' God, I am innocent of what *Khalid* did". Then he asked another companion who was *Ali Bin Abi Talib* to go to that tribe and determine what actually had happened. He took some money with him to be paid as blood-money and other compensations for those who had been killed. Then he asked them whether they had something that they would like to be compensated for; they replied there was nothing. Then he distributed all the remaining money among them.[12]

This case may illustrate how complaints against one of the state officials were dealt with. In this case, *Khalid* was the chief of a detachment of the state, or a military leader, who took a wrong decision which resulted in a complaint against him which was brought before the prophet. The prophet compensated the aggrieved people for the consequences of such a decision and at the same time chided *Khalid* for such a grievous mistake.[13]

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[12] Al-Refa'ai, op. cit., p. 120
[13] Ibid.

The period after the prophet's time witnessed some cases which could also be classified as complaints against the governing authority. Omar, the second caliph, used to control his governors and officials and try them for complaints made against them. For example one of his military leaders tried to cross a river with his soldiers on a very cold night; he ordered one of his soldiers to look for a place where the water was shallow so that the soldiers could cross the river to the other bank. The solder refused to obey, saying the water was extremely cold and that he might die of cold. Despite the soldier's plea, the leader forced him to cross the river. As the soldier went to check the water and stepped into the river, he shouted "*O'Omar*". Then after a while, he died. When Omar was informed about this incident he dismissed the leader and ordered blood-money to be given.[14] The case shows the leader, a government official, taking an inappropriate decision which resulted in his dismissal from the job and led to compensation being paid from the state treasury for the life of the deceased soldier.

These cases show there was no body or separate judicial institution which dealt specifically with complaints against the government in early Islamic history; at that phase the judiciary itself was not a separate body. There were few state institutions as the Islamic territory was small, being restricted to *Madina* and its hinterland. Since the population was small, there were few disputes to be settled. This, however, does not mean, as has been shown, that there were no complaints against the government and its officials. There were some cases which can be

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[14] Ibid. p. 121.

said to be of an administrative nature. But the general jurisdiction of the ordinary judge at that time included the power to try such cases.

Later, when the Islamic state expanded during the *Umayyad* and *Abbassid* Caliphates, its population and government functions increased, with the result that complaints multiplied. The need thus arose for a person with characteristics such as strength, reverence, and justice, and who could restore aggrieved individuals' rights against oppressive, strong, and influential people. This encouraged the development of procedures for adjudication that became increasingly distinctive. In the period of the *Umayyad* and *Abbassid* caliphates, a separate day was allocated to hear complaints against any oppression. The first Caliph who devoted such a day was *Abdulmalik Bin Marwan* (685-705). His practice was to examine all individual complaints that were brought to him and then refer them to a judge to try under his supervision.[15] It seems that there were two reason for the Caliph's giving personal attention to such grievances: to underline that such complaint were to be considered important, and to exercise a form of supervision by the head of state over his officials.

Cases are recorded which concerned complaints against government officials. For example, during the reign of one of the *Umayyad* Caliphs, *Omar Bin Abdulaziz*, a government official abused his power and usurped land from someone by force. The owner complained to *Omar*, who examined the case with his judge by reviewing official records concerning the registration of lands.

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[15] Al-Mawardy, A., *Al-Ahkam al-Sultaniah wa al-Wilayaat al-Deenyh*. Cairo: Al-Baby press, 1972, P. 78.

When he determined that the claim was proved, he ordered the land to be returned to the complainant.[16] The case illustrates two features: the quashing of an administrative act on the ground that there was an abuse of power, and the use of compensation for the injury caused by such a wrongful act.

The Caliph himself was also subject to the Grievances Board. *Haroun Al-Rasheed*, one of the *Abbassid* Caliphs, appointed a judge, *Abu Yousef*, to hear grievances from the public in his presence. *Abu Yousef* used to read complaints and sign them in the presence of the Caliph at a special meeting. One day while he was examining complaints, he came across a grievance against the Caliph. The complainant claimed that the Caliph had usurped his land. *Abu Yousef* put the case aside with others until the day he and the Caliph usually heard grievances from the people. On that day, he started reading grievances and giving judgement on them until he reached the complaint against the Caliph. He called the complainant to present his case, after which the Caliph replied that the land "was ours which we inherited from *Al-Mansoor,* [the second Caliph of *Abbassid* era]". *Abu Yousef* asked the plaintiff whether he had no evidence. The plaintiff replied that he had no evidence, but asked the Caliph to take an oath. The Caliph took the oath and the man left.[17]

It could be concluded from the above instances that the power to try complaints against administrative officials came under the ordinary judge's, *Qadi,* jurisdiction. As it has been seen, the Caliph used to refer all grievances to the

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[16] See Abdul Muna'm, H., op. cit., p. 78.
[17] Al-Shanqyty, M. A., *Wilayat Al-Madhalim fi al-Islam wa Dawraha fi al-Raqabh a'la Aa'mal al-Sultah.* 1987, pp. 76-78.

ordinary judge. Such cases were distinguished from others in that, firstly, that they had been given a particular day for hearing. Secondly, the Caliph himself maintained an interest in the hearing of such cases to the extent that he was often present while they were tried.

During the *Abbassid* era the process of adjudication of grievances became more developed than before. One of the Caliphs established a board in the form of an assembly to hear grievances, and appointed a person to hear and try them.[18] He used to appoint some of his local governors in distant provinces to hear grievances from the people and sometimes authorized them to appoint persons to hear and try complaints against officials or prestigious people.[19]

It should be noted that during the *Abbassid* era, at certain time the vizier played a central role in the development of *Diwan Al-Madhalim*.[20] They were in charge of supervising grievances. *Haroun Al-Rashid* vested the power to hear grievances in *Ja'far Al-Barmaki.*[21] According to Nielsen (1985), "the vizier would [offer] the delegate the supervision of the [*Madhalim*] to an official carrying the title of [*Nazir Al-Madhalim*] or [*Sahib Al-Madhalim*]".[22] Later, however, after the fall of the *Barmakid* viziers, the viziers were prevented from supervising the *Madhalim*.

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[18] See Al-Sayd Radwan, *Judicature of Grievances, in Dirasat.* (1987), Vol.14, No.10, pp. 127-173.
[19] Abdul Muna'm, op. cit. pp. 81-87.
[20] See Nelson, J., *Secular Justice in an Islamic State: Mazalim Under the Bahri Mamluks*, 662/1264-789/1387. 1985, p.4, Al-Refaai, op. cit., p.130, and Amedroz, H, F, "The Mazalim Jurisdiction in the Ahkam Sultaniyyah of Mawardi" *in the Journal of the Royal Asiatic Society of Great Britain and Ireland*, 1911, p. 656.
[21] Ibid.
[22] Nielson, op. cit, p.4.

## 2.4 Separation from the form of the ordinary courts

It is believed that in this period, i.e. *Abbassid*, the court of grievances began to separate from other ordinary courts. It began to take form as a board attended by the Caliph himself.[23]

That form developed in the late stage of Islam. Sultan *Nor Al-deen Zingi* (1146-1174 AD), for example, established a house in Damascus where grievances were heard and tried. It was called *Dar Al-A'dl* or the House of Justice.[24] The Sultan used to visit it twice a week accompanied by judges and jurists to hear grievances and their trials.[25]

Under *Mamluk* rule in Egypt, Baybars (1260) established another *Dar Al-A'dl*. Later *Qalawan*, one of the *Mamluk* sultans, used to hear grievances in *Al-Iwan Al-Kabir*, the Great Portico Hall. This *Iwan* was also commonly called the *Dar Al-A'dl*.[26]

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[23] Al-Sayed, R. op. cit., p. 174.
[24] Al-Refa'ai, op. cit., p. 131.
[25] Ibid.
[26] Nielson, op.cit., p.51.

## 2.5 Reasons for the rise of the Board of Grievances.

Not much has been written on the subject of why a separate institution dealing with grievances emerged in Islamic judicial process. Most Muslim scholars give no more than three or four lines to the subject. For example, *Al-Mawardy* and *Abu Ya,la* state that the Board's emergence resulted from the weakness of the religious consciousness and an increase of oppression and the abuse of power by local governors and officials. *Al-Mawardy* claims that ordinary judges failed to implement their decisions and to do justice, because one party of the litigation was powerful or had a high social position and could easily refuse to abide by the law. Then the need emerged to assign a special person with characteristics such as strong-mindedness and determination in order to deal adequately with those cases, which involved powerful litigants.[27]

*Al-Ashmawy* (1953), a modern writer, cites what *Al-Mawardy* said and adds that the emergence of the Board is to be accounted for by the expansion of the Islamic state. Expansion gave rise to a need to maintain law and order and to require oppressive people to submit to the law.[28]

The importance of these historical factors in the emergence of the Board of Grievances cannot be disregarded. Religious consciousness had a strong role in social control. It prevented oppression and the abuse of rights of the weak. However, it is doubtful whether this was a sufficient reason to account for the

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[27] Al-Mawardy, op. cit., p.77. Most late Muslim authors quoted his opinion.
[28] Al-Ashmawy, A., cited in Abdul Muna'm. op. cit., p. 219.

establishment of a separate judicial institution to deal with such cases. The claim that the ordinary judges failed to do justice seems unlikely to be a major factor. The ordinary judge, appointed by the head of state, had powers over every dispute regardless of its nature or the parties involved. His aim was to restore justice. What would allow him to fulfil his duties adequately was not the establishment of a new institution but rather genuine support. The question that might be asked is what explained the weakness of the judges which, it is argued, resulted in the emergence of the Board?

*Al-Tamawy* (1961), an Egyptian scholar of administrative law, also explains the rise of *wali Al-Madhalim* and subsequently the Board of Grievances, as resulting from the need to assure the dominance of the rule of law over every individual, however high his social standing.

> *...[T]he actual reason for the establishment of this system was to see the rule of law prevail over senior governors and state officials whom the judiciary failed to subjugate to the rule of law...*[29]

The principle that all were subject to Islamic law can be found in the sources of *Shari'a* itself. One *Hadith*, i.e. narrative, relating to deeds and utterances of the Prophet says that "there is no obedience due to a human being if it entails disobedience to God".[30] Therefore the administration has no immunity against

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[29] Al-TamawyS., *Al-Tatawwur al-Syasy Lil-Mujtma' al-A'rabi.* 1961, pp.112-118.
[30] See Al-Hakeem, S., *Al-Raqabah a'la A'amal al-Idara fi al-Shari'a al-Islamiah wa al-Nudhum al-Wada'yiah.* 1987, pp.53-60.

the law. *Abu Bakr*, the first Caliph, in this first speech after his appointment as leader of the Muslims, shows this perfectly:

> *Oh people I have been appointed as your Leader and I am not the best of you. If I rule properly then support me; and if I transgress correct me...If in my acts I disobey God then you are not bound to obey me.*

*Al-Tamawy's* thesis that the emergence of the Grievances Judge and then the Board of Grievances was to assure the dominance of the rule of law over every person, may however, also be questioned. If the assurance of the dominance of law was the principal reason behind the establishment of the Board of Grievances presided over by the Grievances Judge, in what sense did the function of the ordinary judge differ? The objective of the ordinary judge was also to ensure the proper application of the law. If one argues that it was necessary to appoint *Wali Al-Madhalim* in order to deal with special kinds of cases as the ordinary judges failed to do justice because of their weakness, the argument returns to the question asked above, what is the reason for the weakness of the ordinary judge?

*Kahdduri* (1984) states that one of the reasons for the emergence of the Board of Grievances in Islamic history was in order "...to provide a set of positive laws to deal with questions for which there existed no applicable rules in Shari'a".[31] This view may be interpreted in two ways. Firstly, it could be that the writer means

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[31] Khadduri, M., *The Islamic Conception of Justice*. 1984, p. 156.

that the Board was established to decide on issues for which there were no corresponding rules in *Shari'a*. In this respect, the Board could create rules applicable to those issues. This method is known in *Shari'a* as *Ijtihad* (independent reasoning which must accord with the principles of *Shari'a*). However, it should be noted that this power (of *Ijtihad*) was also available to the ordinary judge who could use the same method in dealing with issues that had no corresponding rules in *Shari'a*.

A second interpretation of *Khadduri's* assertion may be that the Board of Grievances was established to provide and apply rules which were different from those applied by the ordinary judge in *Shari'a* courts.

*Coulson* (1964) who says that the political authority would like to exercise judicial function in certain matters according to different procedures and different laws agrees with this view. As a result, another judicial system is created outside the ordinary system. He goes on to say that "...the *Qadi* [the ordinary judge] was regarded as a representative of God's Law, the *Sahib Al-Mazalim* was regarded as a representative of the Ruler's Law".[32] He substantiates his opinion by saying that the *Wali Al-Madhalim* used to hold sessions of the court in a private building and not in the mosque as the *Qadi* usually did.[33]

The location of the court is not proof of any difference in the substantive law. According to *Al-Awa* (1974), during the history of the *Madhalim*, the *Madhalim*

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[32] Coulson, N.J., *A History of Islamic Law*. Edinburgh: Edinburgh University Press, 1964 pp.128-129.
[33] Ibid.

judge would sometime hear grievances in the market place of the city and in the government building.[34]

The view of *Khadduri* and *Coulson* is questionable on the grounds that both the ordinary and grievance judges were bound by the same rules, i.e. *Shari'a* rules.[35] The Board of Grievances consisted of *Shari'a* jurists, apart from its other members. The presence of *Shari'a* jurists on the Board was important in the sense that the Grievances judge could consult them about matters he could not resolve. If the Grievance judge were to apply a different law than that of the *Shari'a* law, there would be no need for *Shari'a* jurists on the Board. *Al-Mawardy* says "...hearing a grievance does not permit rules which are prohibited by *Shari'a*..."[36]

However, the previous view may be based on what *Al-Maqrizi* said. *Al-Maqrizi* pointed out that during the *Mamluks* era in Egypt (1264-1387), the *Mamluk* rulers applied the rules of the Mongol law beside the rules of *Shari'a*. He added that the *Mamluk* rulers applied the rules of what is called the "*Yasa*" of the Mongols.[37] *Al-Maqraizi* was quoted by Nielsen as writing:

> *Know that people in our time and even from the arrival of the Turkish regime in Egypt and Syria consider that the laws have consisted of two parts, the Shari'a and the Law of Siyasa*[38]*... There are two kinds of siyasa. The just*

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[34] Al-Awa M., "Qada Madhalim", *Mjalat Idarat Qadaia al-Hukumah*. No. 8, 1974, p.998.
[35] Al-Mawardy, op. cit., p. 83.
[36] See Al-Mawardy, op. cit., p.86, and see also Amedroz, op. cit., p.645.
[37] See Abdul Muna'm, op. cit. p.189 and Nielsen, op. cit., p.104.
[38] "Siyasa" in Arabic is "politics" in English.

*siyasa extract the truth from the wrongdoer and the profligate. It is part of the Shari'a; they have in common what it recognizes and what it ignores; men have written a number of books about siyasa Shar'iyya. The second is the evil siyasa which the Shari'a has forbidden, despite what people today say about it. In origin, 'yasa' is a Mongol word to which the Egyptians have added a sin [s] and say siyasa. They introduced it with an alif and lam, and those who are ignorant think it is an Arabic word.*[39]

*Yasa* was laid down by *Ginghiz Khan* during the process of organizing his empire.[40] However, the above opinion may be questioned. According to Nielsen (1985), who based his study on a number of cases, the *Al-Maqrizi's* opinion finds little support in case material. He says "there is ample evidence to show that the [*Madhalim*] dealt with administrative questions, but very little support for the idea that these were dealt with according to the *Yasa*".[41] In any event, it is submitted that even if *Al-Maqrizi's* statement was correct, it could never be taken as a basis from which one may argue that the Board was established to apply different legal rules, for one important reason: this statement only concerned a political period in Islamic history which came after the emergence of the Board of Grievance, i.e. 1264-1387 AD. Thus, it cannot be regarded as a reason for the emergence of the Board.

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[39] Nielsen, ibid., p.104.
[40] Ibid., p.106.
[41] Ibid., p.109.

It might also be argued, as *Coulson* and *Khadduri* do, that the Board was created in order to afford different procedures from those applied by the *Shari'a* judge.[42] In some respects the Board did apply different procedures from the ordinary judge.[43] But this argument is questionable. The *Shari'a* judge also had the authority to apply the same procedural law which was applied by the Grievances judge. According to *Ibn Farhun*, a jurist of the *Malikite* Islamic jurisprudence school, the ordinary judge can exercise most of the procedural rules which are stated by *Al-Mawardy*.[44]

Consequently, if the ordinary judge were allowed to use the same rules of procedure as applied by the Grievances judge, it could not be argued that the Board was created to provide another set of procedural rules different from those of the ordinary judge.

It is submitted that the explanation for the rise of the Board of Grievances was a rather more political one. It should be noted first of all that the jurisdiction of *Madhalim* was an integral part of the jurisdiction of the ordinary judge, except in cases involving powerful people, which required the intervention of the Caliph to maintain justice and show commitment to restore people's rights and defend the aggrieved individuals against oppressors. But in later stages of Islamic history the intervention of the head of state and other governors in the jurisdiction of the

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[42]Coulson says that the rules of evidence of the Islamic Shari'a that the Shari'a Court should apply raises the need '... for these rules to be supplemented...'. He adds that '... the jurists admit the power of the ruler to employ such methods as the use of threats or extortion of confession by corporal punishment and imprisonment...'. See Coulson, N, J, "The state and the Individual in Islamic Law" in *International and Comparative Law Quarterly*, vol. 6, part 1, 1957, p.52

[43] Al-Mawardy, op. cit., pp. 83-84.

[44] See Al-Awa, op, cit., p.999, and Nielsen, op. cit., p. 31.

ordinary judge had reached such an extent that it undermined the latter in carrying out his duties.[45] Such frequent interventions contributed significantly to the weakening of the stature of the ordinary judge. The creation of the *Diwan Al-Madhalim* or the Board of Grievances, presided over by the head of state at the expense of the ordinary judge (the *Qadi*) was therefore in the first place an initiative to restore the authority of the law. *Ibn Al-Arabi* (468-534 AH) clearly expresses this explanation for the emergence of the Board:

> *...as to Madhalim jurisdiction, it is a strange one created by the late leaders due to corruption of both leadership and people. ... It is also reported that it was originally part of the judiciary, but the leaders have weakened the judiciary to monopolize the weakness of the citizens so that the latter would always need [their interference] in which cases they [the leaders] would abandon them and so grievances remain unsolved.*[46]

The rise of the Board was therefore a corrective measure which did strengthen the administration of justice. However its later history contributed to the undermining of the ordinary judge. This fact became evident during the time of the *Bahri Mamluks*, 662/1264-789/1387. Nielsen (1985) points out that of the various factions of the *Bahri Mamluk* military elite, '... it could be used for or against the power of the Sultan or any official or institution according to the current balance of power'.[47]

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[45] See Abdul Muna'm, op. cit., pp. 132-133.
[46] Ibn Al-Arabi, *Ahkam Al-Quran*. Vol. 4. p. 1643.
[47] Nielsen, op. cit., pp. 131-132.

## 2.6 *Nadhir or Wali Al-Madhalim:* (The complaints director or governor)

If the aim of the grievances judge in *Islamic* history was to enforce justice in disputes between the powerless and those who seek to oppress them,[48] then apart from legal qualifications, he required certain moral characteristics such as strength and will, beyond those demanded of the ordinary judge, who should be an honourable person who is powerful and influential. He ought also to be virtuous, righteous and pious and he should have sufficient legal training to enable him to carry out his duties.[49]

## 2.7 *Majlis Al-Madhalim* (The Board of Grievances categories or structure)

According to *Al-Mawardy*, [50]the Board of Grievances traditionally consisted of five categories of officials apart from the person who was in charge of grievances i.e. *Nadhir Al-Madhalim*. He lists these officials as:

1- Guards and assistants similar to the police or security officers of today, to maintain security and keep order in the court.[51]

2- Judges and governors; the duty of these people in the Board was to guide and help the Grievances Judge to try the case, in accordance with *Shari'a* rules.

3- Jurists or *Shari'a* scholars, advisers whom the grievances judge might consult on matters of law. The scholars' role was not to weigh the evidence but to

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[48] Abdul Muna'm, op. cit., p 97
[49] Al-Mawardy, op. cit., p. 77.
[50] Ibid p. 80.
[51] Al-Refa'ai, op. cit., p. 137.

identify rules for disputes, which were consistent with *Shari'a* principles. In other words, they were practicing *Ijtihad*.

4- Witnesses; their duty was to witness the judgments that the grievances judge would pass.

5- Court clerks who wrote down the record of the hearing and the judgement.

It appears however that it was not necessary for all of these assistants to be always present in the court for the investigation of grievances to be carried out. During the *Mamluks* period, for example, the personnel of the Board, which was then called '*Dar Al-A'dl'*, consisted among others of the sultan, the deputy of the *Dar Al-A'dl*, the *Hajb*, 'chamberlain', the *Qadis*, 'judges', and secretarial staff.[52]

## 2.8 The judicial authority

*Al-Mawardy* was the first authority to lay down the principles of jurisdiction from the Board of Grievances. In his book *Al-Ahkam al-Sultaniah wa al-Wilayaat al Deenyah Al-Mawary* deals with grievances in Islam. He makes a detailed study of the Board's jurisdiction, procedure and personnel. Writers who came after him like *Al-Shayzari*, *Al-Nuwayri* and *Al-Qalqashandi* adopted his general principles.[53]

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[52] Nielsen, op. cit., pp. 79-92
[53] Ibid., pp. 28-31.

Cases could come before the Board in two ways. Firstly at the initiative of the Grievances judge himself and, secondly, as a result of cases brought before him for litigation by parties.[54]

### 2.8.1 Issues that the judge of Grievances could examine on his own initiative

The authority to examine and investigate matters at the initiative of the Grievances Judge is known to have extended to at least five types of case.

1- Considering rulers' and governors' transgression against subjects, and generally their abuse of power and authority. The judge of grievances could review the actions of the rulers in order to support them in cases where they had acted justly and to prevent abuse of power or dismiss them in cases where they had transgressed.[55] What is worthy of notice here is that the Judge of Grievances had the authority to inquire after the ruler and official of the state and penalise them. This is clearly expressed in the words of prominent Muslim leaders. For example *Abu Baker*, the first Caliph, said "the weak among you is the powerful in my opinion until I do him justice, and the powerful among you is weak in my opinion until I punish him for his offence by God's will…"

2- Oppression by revenue officials: where the appropriate rules should be invoked and applied to such as *Zakat* (alms) and *Kharaje* (land tax). If the state official collected and took from the public treasury more than the amount due,

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[54] Ibid., p.158.
[55] Al-Mawardy, op. cit., p.78.

the judge of grievances had the authority to order the excess to be returned to those who were unfairly forced to pay.

It can be inferred from this jurisdiction that to annul wrong imposition of taxation, the Court of Grievances had the power to quash what is nowadays known as administrative decisions or actions in relation to taxes. Thus it is related that *Al-Muhtadi*, one of the *Abbassid* Caliphs, was hearing grievances concerning the increase in the land tax i.e. *Kharaj*, levied on the people oppressively. "Whether the tax was levied before or after me, it makes no difference; it must be abolished". He then abolished it because it was illegal. Some of the people at the meeting said "If *Amir Al-Moomenin*, the commander of the Believers, abolishes the increase in the land tax, there will be a decrease of twelve thousand *Dirham* in the state Treasury income". *Al-Muhtadi* replied "I have to assure and confirm the right, and abolish the wrong..."[56]

3- Scrutiny of governmental officials and clerks. Such officials were the authorized representatives of the Muslims in the Treasury, advising on what was due to and required of them. It was the duty of the Grievances Judge to investigate what had been entrusted to them. If a mistake was committed in the recording of income or expenditure, the Judge of Grievance should rectify it, and if there were deliberate acts, punish the offender.

4- Restoration of properties usurped by Rulers. Illegal seizure by rulers or governors of individual's properties could be challenged by the Grievances

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[56] Al-Shanqyty, op. cit., p. 85.

Judge. If the latter knew about these offences, he should order the property back to its owner even if no complaint had been made. If however, he was not aware of it, it remained the task of the aggrieved individual to make a complaint.

5- Organization of public religious endowment *Waqf.* As this came under the state administration, it became the duty of the Judge of Grievances constantly to investigate public religious endowment to fulfil it in accordance with the conditions and wishes of the donors of the *Waqf.*

It is these types of jurisdiction available under Islam to the Judge of Grievances, which influenced the modern office of *Diwan Al-Madhalim* as an institution for controlling modern government and its administration. The principle seems clear that the Board of Grievances from the outset had a power of administrative supervision over all facets of government activities including the collection of revenue.

As noted earlier the Grievances Judge or *Wali Al-Madhalim* was often the Caliph himself who was the head of the Executive. In cases when he delegated this power to someone else he, the Caliph, was usually present at the session of the *Madhalim* meeting. Thus it seems that the *Wali Al-Madhalim*, when he was some one other than the Caliph, was often also a member of the executive. Such power of investigation and decision which the Grievances Judge might undertake at his own initiative amounted to a system of control exercised by the executive over its members.

### 2.8.2 The jurisdiction to receive complaints

Within the framework of traditional jurisprudence there were cases which the Grievances Judge could not examine unless he had received a complaint. Such cases were:

1- state employees or officials: if there was a reduction in their wages or delay i.e. unjust decisions by their employers, the Judge of Grievances referred to the appropriate rules which dictated salaries and allowances. If an injustice had been done, he would compensate the aggrieved employees. If it was an employer's mistake, the Judge of Grievances would seek recompense from him; otherwise the compensation should be made from the public treasury.

2- Restoration of properties usurped by people of high social rank, not being rulers or state officials. The outcome of such cases depended on the aggrieved person i.e. whether he complained or not. For example, an aggrieved woman brought her case before *Al-Mamoon*, an *Abbassid* Caliph. She claimed that *Al Abbas*, the son of the Caliph, usurped her lands. *Al-Mamoon* asked his judge to try the case. The latter tried it in the presence of the Caliph and his control, and decided that her lands should be returned to her. *Al-Mamoon* immediately implemented the decision.[57]

3- Implementation of decisions of the ordinary judges against the powerful. This might occur when the defendant had a high social position; the Grievances Judge

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[57] Al-Mawardy, op. cit., pp. 84-85.

as powerful authority could ensure the execution of the ordinary judge's decision.

4- Where officials, in charge of the general supervision of religion and moral welfare of the people (e.g. *Muhtasib*) had failed to perform their duties, the Judge of Grievances might act and deal with offences and settle disputes arising from such cases until the normal situation were restored.

5- Private religious endowments. The *Waqf* officials managing such endowments often misused their authority. On complaint, the Grievances Judge could take control of the endowment on behalf of the eligible people who might have been unaware of their right to it.

6- Hearing and settling disputes of an ordinary nature between ordinary litigants according to the law. This function overlaps with that of the ordinary judge.[58] The existence of this overlapping authority with that of the ordinary court is supported by *Al-Mawardy*. *Mustafa* however has argued that such cases should not be included in the jurisdiction of the Board of Grievances (i.e. *Wali Al-Madhalim's* jurisdiction). If, as *Al-Mawardy* states, this power is invested in *Wali Al-Madhalim*, there would be a conflict between him and the ordinary judge. Mustafa considers a number of possible reasons which may have explained why the writer *Al-Mawardy* included this power to hear ordinary cases in his account of the Board of Grievances. These need not be detailed here, except to note that

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[58] Al-Refa'ai, op. cit.

*Mustafa* rejects them.[59] He concludes his argument by stating that the authority to intervene and adjudicate ordinary litigation is not within the competence of the *Wali of Al-Madhalim*. As a result he is of the opinion that this authority should be excluded from the initial jurisdiction of the *Wali Al-Madhalim.*

It is submitted that *Mustafa* has failed to recognize an important principle concerning the nature of judicial authority in Islam which may support the opinion of *Al-Mawardy*. According to Muslim scholars and jurists, the judiciary is one of the functions of the head of state.[60] In *Islamic* political theory, which has been developed by Muslim scholars, the executive and judicial powers are vested in the Caliph.[61] *Ibn Jama'a*, one of the Muslim jurists, has pointed out very clearly that the *Imam* (caliph) had the power, among other powers, 'to obtain justice for the oppressed from the oppressor'.[62] Over time the head of state, for the reasons discussed earlier, began to delegate the power to others. Delegation of the judicial function does not mean however that he abandoned this power completely. *Ulian* (1982), states that the delegation of judicial power did not prevent the Caliph from exercising it whenever required.[63] On the one hand the Caliph himself could exercise the judicial power as an ordinary judge. On the other hand as the Caliph usually had the necessary characteristics, like strength and honour, he was, as noted earlier, for much of the time the *Wali Al-Madhalim* in person. Thus jurisdiction in ordinary litigation was one of the Caliph's original functions in addition to his role as Grievance Judge. The

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[59] Mustafa, M., *Wilayat Al-Madhalim: Dirasa Muqarana*, pp. 76-81.
[60] See Ulian, op. cit., p. 66.
[61] See Lambton, A, S, *State and Government in Medieval Islam.* (1981), p. 308, and Coulson, op. cit., p. 57.
[62] Lambton, ibid, p. 140.
[63] Ibid., p.133.

argument for including such a jurisdiction with that of *Wali Al-Madhalim* arises from the fact that it was historically the same person who exercised both forms of judicial authority. Since the establishment of the Islamic state in *Madina*, it has been known that according to Islamic political practice, the head of the state performs judicial functions. The prophet Mohammed was in the habit of hearing and deciding cases, then the four caliphs who succeeded him performed the same role. The learned caliphs who were familiar with Islamic Jurisprudence also used to carry out judicial functions. As the later caliphs became less knowledgeable about the rules of the *Shari'a* they began to leave this function to the specialists, i.e. the judges.[64]

## 2.9 The legal personality of the Board in the Islamic judicial system

Having examined the history, aims, structure, and jurisdiction of the institution of the Board of Grievances and the Grievances Judge, it is appropriate now to consider the Board's legal character in Islamic history.

Many writers have argued that the nature of the grievances jurisdiction in Islam (i.e. *Diwan Al-Madhalim*) is equivalent to an appeal court in a modern court system. Thus for *Mustafa*, Professor of the History of Law at Alexandria University, the Board of Grievances is similar, in some aspects, to the high appeal court. The Board tries cases which the ordinary judge could not settle, or

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[64] See Odah, A., *Al-Islam wa Awda'ana al-Syasyah.* (1986), p. 237.

where one of the litigants brings his case before the Judge of Grievances claiming that the ordinary judge has been unjust in his judgment.[65]

*Mansoor*,[66] in his preface to *Abdul Muna'm's* book '*Diwan Al-Madhalim'* The Board of Grievances (1983) briefly stated that apart from the power of the Grievances Judge over administrative matters, he has also the power to investigate and control the ordinary judges' decisions when one or both parties of the litigation complains that the judge's judgment is unjust or wrong. Consequently, he adds, the Grievances Judge is considered to be an appeal venue i.e. an appeal court.[67]

*Anderson* (1976), in the course of his discussion of courts in Islamic, points out that the Grievances Judge i.e. Judge of *Madhalim*, has several functions, one of which is the appellate one. He says:

> *... [The grievances judge] had multiple functions. Primarily it was designed as an informal court of appeal, in the sense that anyone who felt outraged by the judgment of another court, whether that of a Qadi [Judge] or anyone else, could appeal to the Caliph for justice.*[68]

*Anderson* also states that the Grievances Judge has power to try cases for the first time i.e. power as a first instance court.

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[65] See Mustafa, U., *Usul Tarikh al-Qanun.* 1960, p. 399, cited in Abdul Muna'm, op. cit., p. 230.
[66] The President of the High Committee of Islamic Legislation and the President of High Constitutional Court Egypt.
[67] Abdul Muna'm, op. cit.
[68] Anderson, N., *Law Reform In Muslim World.* London Athlone (1976) p. 14.

*Shapiro* also argues that *Madhalim* jurisdiction was an appellate procedure where the litigant might pursue his case and have the ordinary judge's decision reviewed or even quashed. He points out three elements which eventually come from the appellate procedure. They are:

> *...Firstly the mazalim is court of complaints against all government officials, including the Qadi [judge]. Second, it is a kind of equity court designed to do substantial justice where the Qadis [Judges] have failed to achieve that end. Third, the Mazalim jurisdiction is peculiarly connected to the head of the regime.*[69]

For these writers and others therefore, the Grievances Board or *Diwan Al-Madhalim* is rightly characterized as an appeal court in modern terms. Other writers have come to the same conclusion.[70]

What is decisive for this conclusion is the abundant evidence that decisions of the other courts and judges have been reviewed and quashed by the Grievance Judge. One example cited by the writers is that of *Al-Amin*, a Caliph of the *Abbassid* period, who overruled a decision of another court on the ground that the decision was not an honest or fair one.[71]

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[69] Shapiro, M., "Islam and Appeal", *California Law Review*. 1980, vol. 68, part 1, pp. 1034-1039.
[70] See for example: Taha, A., *Al-Qada fi Usureh al-Mukhtalifah" Majalt Al-Muhamh Al-Shari'ah.* 1952, p.17, Al-Rafea'i, M., *Al-Tandhim al-Qadai fi Lubanan.* 1969, p.19. Both previous references are cited in Abdul Muna'm, op. cit., see Also Coulson, *A History of Islamic Law.* 1964. Coulson says that "no hierarchy of Shari'a courts existed and no system of appeal as such, although dissatisfied litigants could always seek the intervention of the political authority through his Mazalim jurisdiction.", p.163.
[71] Mustafa, M., op. cit., pp. 78-79.

However the view that the Board was an appeal court is not unanimous among writers on the Board of Grievances in Islam. Thus *Sayed* argues that the occasion on which the judgments of other courts brought before the Grievances Judge were rare and too infrequent to justify the conclusion that the Grievances Judge exercised the functions of an appellate judge. He argues that the majority of cases considered by the Board of Grievances were first instance complaints.[72] In his view to treat the exceptional cases as defining the nature of the tribunal is questionable. *Al-Awa* also rejects the characterisation of the Grievance Judge as an appellate institution.[73] In his view there is no indication that the judge had such competence. It is submitted that the reasoning of these writers is persuasive. Unlike the jurisdiction of the ordinary judge, the Board of Grievances' jurisdiction was limited to certain kinds of claim or conflict. The Board of Grievances lacked the power normally associated with an appeals court, i.e. to review, uphold or reverse a judgment.

Another characterisation of the Board is that of an administrative court, an institution where an aggrieved person or persons can seek protection against administrative injustice. The Board of Grievances seeks to ensure that those who have power or duties of a public nature exercise them adequately and according to the law, and the nearest analogue in a modern judicial system is that of the continental European administrative court.

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[72] Al-Sayed, op. cit. p. 161.
[73] Al-Awa, op. cit.

*Al-Refa'ai* (1987) and *Al-Juhani* (1983),[74] believe that the Board of Grievances in Islam is a full administrative court where the wrong actions or decisions taken by the administration could be quashed and the plaintiff compensated against any loss as a result of such decisions.

However, although the Board of Grievances in Islam performs the same jurisdiction as modern administrative courts, such as controlling the administration, trying cases where the administration is a party, compensating people when it is found out that hardship has occurred, the modern Board like its antecedent has more power than the model of an administrative court with which it is being compared. Thus in addition to its power over administrative matters, as has been seen, it can try ordinary cases which are usually tried by ordinary judges. This distinguishes it from an administrative court such as the *Council d'Etat* of France. According to *Garner* and *Brown*, "... the administrative courts' power of judicial review requires the existence of an *acte administrative* (i.e. administrative action) emanating from some organ of the administration."[75]

In concluding this survey of opinions on the nature of the Board it must first be said that there is value per se in attempting to draw parallels with modern developed court systems. But the possibility should also be considered that the Board is Sui generis. It is a judicial body with characteristics similar and dissimilar to other courts. But ultimately it is an institution which was created in its own Islamic legal culture and particular historical conditions. Plurality of

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[74] Al-Refa'ai, op. cit., and Al-Juhani., I., *Al-Qada al-Idari*. P. 108.
[75] Brown, L. N. *French Administrative Law*. Oxford University Press, 5th ed, 1998. p, 98.

judicial bodies is possible[76] as in the similar but not identical case of the English Chancery jurisdiction. It can be argued that plural, parallel judicial institutions should be the exception. Judicial institutions should be united in common functions. Rulers should not resort to the creation of judicial agencies if there is no instantaneous and exceptional need for such agencies to fulfil the public interest. In that connection it is worth recording (as *Al-Mawardy* and *Ibn Al-Arabi* do) that during the first stage of the Caliphate, the Caliphs did not appoint any person as *Wali Al-Madhalim.*[77] As these authors note, later Caliphs resorted to the establishment of the Board of Grievances as an exceptional expedient in face of the challenge of powerful people and corruption in the later stages of Islamic history, a time when the religious motivation weakened and the people appeared resigned to oppression.

## 2.10 The English court of Chancery

Some writers on the Board of Grievances have spoken of its jurisdiction as incorporating "equity" although none has sought to draw a parallel with the development of equity jurisdiction in the history of English Law. It seems appropriate for research carried out on this Islamic institution in England to make some reference to the emergence of the jurisdiction of Chancery in the English legal system. The account can be but brief and the comparison only suggestive. Nevertheless, it is submitted that in further work that might be undertaken the

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[76] See Al-Marzogy, M., *Sultat Waly al-Amr fi Taqyid Sultat al-Qadi*. M. A. dissertation, 1986, p. 121.
[77] Ibid.

parallels between the Board of Grievances in Islam and the Chancery jurisdiction based on the Christian Church may be worth deeper exploration.

### 2.10.1 Origins and development of the Chancery in English Law.

The origins of the Chancery and the Chancellor can be dated to the twelfth century.[78] The Chancellor, who became, in later stages of the Chancery's development, the head of the Chancery, was a department secretary in the King's Council.[79] In the later stages of its history, the Chancery became a department of the Curia Regis. Later the Chancery began to separate from the Council. According to *Holdsworth* (1938), this separation may be dated to the thirteenth century, and to the year 1238.[80]

After that, the office of the Chancellor grew in importance particularly when the chancellor was appointed as the keeper of the Great Seal. That post placed him in an important position in the English legal system. *Holdsworth* points to this great power of the Chancellor, "... the Chancellor's position as the keeper of the Great Seal ... puts him at the head of the English legal system, and makes him the legal centre of the constitution".[81] As the keeper of Great Seal the Chancellor had the power to issue writs. In the thirteenth and fourteenth centuries the king began to

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[78] Holdsworth, W., *A History of English Law*. London: Methuen & Co. Ltd., vol. I, V, IX, X, XII, 1938 pp. 446.
[79] See Holdsworth. Vol. I, p. 395, and Kiralfy, A., *Potter's Historical Introduction to English Law*. London: Sweet & Maxwell, 4th ed, 1958, p. 161. For more details about the history of English Law and the history of Chancery see, for example, Milsom S., *Historical Foundation of The Common Law* London: Butterworths, 1981, 2nd ed., see also, Levy-Ullmann, H., *The English Legal Tradition, its sources and history*. London Macmillan & Co. Ltd., 1935, and see, T. Plucknett,, *A Concise History of The Common Law*, London: Butterworths 5th ed 1956.
[80] Ibid., p.395.
[81] Ibid.

refer to the Council petitions presented to him by citizens who sought justice in the Common Law Courts. For example, a note is endorsed on a petition of 1394 that "*Le roy voet qu soun Counsel Ardayn*", which means that "The King wills that his Council ordain".[82] The Chancellor, the most important person in the Council, used to hear such petitions and deal with and decide on them. *Holdsworth* notes:

> *Applicants for justice in the Courts of Common Law, petitioners to the King, to the Council, or to the parliament, will sooner or later come to the Chancery either for an original writ, or to obtain the execution of the answer endorsed upon their petition.*[83]

One may ask why the Chancellor possessed such power. According to *Holdsworth*, there are two reasons. First, the Chancellor had control over the issue of original writs, and second, the Chancellor and Chancery had from the first been closely connected with the King's Council.[84]

The first complaints which were seen by the Chancellor were first presented to the King by individuals. The involvement of the king and the Chancellor in a purely judicial matter could be attributed to the fact that there might have been "...miscarriages of justice in the Common Law Courts for which they

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[82] Kiralfy, op. cit., p.155.
[83] Holdsworth, op. cit., pp.396-397.
[84] Ibid. pp.397-400.

[petitioners] could get no redress..."[85] Consequently, the King intervened to maintain justice among his subjects.

The jurisdiction of the Chancellor developed at a later stage whereby instead of presenting petitions to the king first, the petitioners sought redress from the Chancellor directly.

In the fifteenth century the Chancery court began to exercise judicial functions independently from the Council. Later it developed into a fully independent court. Indeed, by the end of the fifteenth century and in the sixteenth century, the development of an independent court with its own procedures, and officials could be manifestly observed.[86]Furthermore in order to avoid the rigidity of the common law, the Chancellor began to develop equitable principles outside the boundaries of the common law and even contrary to it.[87] In fact, the rise of the Chancery Court was partly attributed to the need for equity which could not be formed in a system of fixed rules. Consequently, there were two different judicial channels, the common law courts which applied common law and the chancery which applied equity.[88]

*Holdsworth* in his account of this development of a Chancery Court explains that during the fifteenth century it was possible to make a distinction between the different types of cases that were brought before the Council on the one hand and the Chancellor on the other. This distinction between "fields of jurisdiction" had

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[85] See Levy-Ullmann, 1935, op. cit., p.299.
[86] Holdsworth, 1938, pp. 216-217, and vol. 1, pp. 400-409, and Baker, op. cit., 1990.
[87] Holdsworth, op. cit., vol. v, pp. 215-218.
[88] Ibid., pp. 215-218, and pp. 278-337.

resulted in the development of other institutions, such as the Court of Admiralty, which took much jurisdiction considered to be under the Council's authority. This breakdown in the Council's power enabled the Chancery to obtain independence from it.[89] It seems that at that time there was a tendency to distinguish between jurisdiction and the institutions in the judicial system.

Later the Chancery court witnessed a further development. During the eras of Lord Hardwick, Chancellor from 1736 to 1756, and Lord Eldon who was the Chancellor from 1801 to 1827, equity which was applied by the Chancery became a body of set rules.[90] This means that the Chancellors eventually produced a body of rules which controlled the application of equity by the Chancellors as a means of justice.

By the nineteenth century the Chancery Court was in the final stage of its history and the jurisdiction of equity was merged with common law in the Judicature Act 1873.

### 2.10.2 Reasons for the appearance of the court of Chancery

The growth of equity jurisdiction may be attributed to defects in the Common Law in its early stages and defects in the courts and their procedures. According to *Levy-Ullmann* (1935), however, it could also be attributed to the personality of those who held the post of chancellor.[91]

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[89] Holdsworth, pp. 407-409.
[90] See Kiralfy, op. cit., p.598.
[91] Levy-Ullmann, 1935, op. cit., p. 199.

One of the greatest defects in the Common Law was its rigidity.[92] That rigidity meant either there was no rule or remedy which could be applied to new cases, or there was a remedy but it was not effective and adequate. In the Earl of Oxford Case, Lord Ellesmere explained:

> *... the cause why there is a Chancery, for that men's actions are so diverse and infinite, that it is impossible to make any general law which may aptly meet with every particular act and not fail in consciences for frauds, breaches of trust, wrongs, and oppression, of nature whatsoever they may be, and to soften and mollify the extremity of the law, which is called Summum just. And for the judgment, etc., law and equity are distinct, both in their Courts, their judges, and rules of justice.*[93]

Litigants who found no remedy or rules included cases related to uses, trusts and cases concerning the family. Such defects led the people to seek redress from other channels i.e. the Chancellor, who usually interfered to restore justice. As a result, he gradually developed principles which might be applied in such cases.

The Common Law remedy was frequently inadequate or ineffective. The sole remedy damages in Common Law were in early stages inadequate. As a result, the Chancellor interfered and might offer special relief.[94]

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[92] See for example, Baker, 1990, op. cit., pp. 121-123, H. Holdsworth, op. cit., vol. I, pp. 404-406.
[93] Earl of Oxford's Case cited in Kiralfy, Supra, p. 586, and Baker, op. cit., p. 122.
[94] See Kiralfy, op. cit., p. 583.

A further problem concerned cases which had a remedy in Common Law, but a remedy which could not be obtained because of the disturbed state of the country or the power of the defendant. His social standing could be employed to abuse or frustrate the common law machinery.[95]

Procedures before the common law Court were also defective. A chief grievance was delay and for others it was the expense of bringing their cases before the court.[96]

The rise of chancery was also influenced by the position of the chancellor himself. As mentioned, the Chancellor had the responsibility to issue writs by virtue of which he became "... the door-keeper of Justice..."[97] Hence, every petitioner or suitor had to bring his case to the Chancellor in order to get a writ. The Council referred the petitioners to the Chancellor who was one of its important officials. The connections between the Chancellor and the King who was the "fountain of justice", strongly contributed to the later emergence of the Chancery Court which with the Chancellor as head dealt with some petitions independently.[98]

### 2.10.3 The Chancellor (the Head of Chancery)

At the head of the Chancery court was the Chancellor. Until later stages in the development of Chancery, i.e. prior to the reign of Henry VIII, the Chancellor

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[95] See Holdsworth, op. cit., vol. 1, pp. 405-406, and H. Levy-Ullmann, supra. P. 299.
[96] Ibid. op. cit. vol. 5, pp. 279-280.
[97] Ullmann, (1935), op. cit., p. 301.
[98] Ibid.

was a churchman.[99] In the early stages of Chancery, lawyers did not hold the office of Chancellor. However, after the Reformation, the ecclesiastical Chancellors began to yield to legal professionals. According to *Holdsworth*, this development tended to ease the tensions between the Chancellor and the Common Law judges and at the same time kept the Chancellor close to the judges.[100] In later stages, the Chancellor's post became exclusively occupied by lawyers.

## 2.11 The Chancery Court and the Board of Grievances

Despite the fact that the two institutions operated in vastly different environments and different eras, and that there are clear differences as will be noted later, in one major aspect they had a common purpose. That was the restoration of justice and fairness among people who sought relief by petitioning their rulers.

Thus the Court of Chancery, like the Board of Grievances, tried cases and petitions where the King was a party. The rise of Chancery was attributed to the fact that the King might not be questioned or tried before his own courts. The Board of Grievances in Islam also tried cases where the Caliph, a member of his family, or a prestigious person was involved. However, it should be noted that the reason which enabled Chancery to hear cases against the King was the fact that the Common Law Courts had no power over the King to be tried before

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[99] Holdsworth, W. *Sources and Literature of English Law.* Oxford: the Clarenton Press, (1952), pp. 178-179, and see also Levy-Ullmann, op. cit., pp. 292-293.
[100] Ibid.

them because "the King could not be sued by his own writ in other Courts".[101] The Caliph, however, was in fact subject to the ordinary courts, he had no privileges; but the Grievances Board had to interfere when the ordinary judge failed to restore justice in cases involving the Caliph or prestigious people.

Secondly, both institutions had competence to try cases which might have a remedy in the ordinary courts. The Board, like the Chancery, could hear cases which fell under the ordinary court's jurisdiction.

The origins of Chancery consisted in hearing cases which arose from petitions presented to the King by his people. In other words, the King in person would exercise judicial power in order to ensure justice. Later he referred them to the Council and the Chancellor.[102] The parallel with the Board of Grievances is striking. The Caliph would hear complaints from individuals and then refer them to a judge. The Caliph, like the King, also interfered in certain cases in which powerful and influential people likely to frustrate justice were involved, in order to require of them that they submitted to the law.

*Levy-Ullmann* (1935) refers to the factor of power in explaining the early "Court of Conscience".

> *English authors seem nowadays to agree that the first cases referred to the Chancellor arose from petitions presented to the 'graces' of the*

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[101] Baker, op. cit., p. 116.
[102] Holdsworth, op. cit., p. 396.

*King by his subjects, on account of miscarriages of justice in Common Law Courts for which they could get no redress because of the social standing of the defendant, his high rank or the protection afforded him by some powerful Baron, the Sheriff, or some other officers of the County where circumstances arose. The petitioner often also pleaded his poverty, and that he was opposed by a rich and influential adversary, "too rich, too influential 'as Maitland says' to be left to clumsy processes of the old courts and the verdicts of juries.*[103]

Moreover, as *Amedroz* (1911) points out, there are similarities in jurisdictions. As the Board could examine cases of *waqf*, or endowment both public and private, the Courts of Equity had the same competence, "e.g. trusts charitable and private, and mandatory and prohibitive injunctions".[104]

There are naturally many differences between the two systems. The Chancery Court, unlike the Grievances Board, tried cases where the common law had no adequate remedy or where rights that were not recognized by the Common Law required protection. The Chancery Court applied equity, which it had developed as "... a body of rules or principles which form an appendage to the general rules of law or a gloss upon them"[105]. The Grievances Board in contrast was bound to apply the same rules of *Shari'a* that were applied by the ordinary judges and courts.

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[103] See Levy-Ullmann, op. cit., p. 299.
[104] Amedroz, op. cit., p. 662.
[105] See Snell's Equity, 30th ed (2000), paragraph 1-03.

This last point of contrast is worth emphasis. The existence of a separate Court of Chancery in Britain led to a separate body of law, the principles, and later the rules, of Equity. However, according to *Liebseny* (1975):

> *This is not the case with the Mazalim jurisdiction. It was not systematized in a manner comparable to the equity jurisdiction of the Chancery.*[106]

*Nielsen* argues that under the *Mamluks*, there were different bodies of law. Apart from Islamic *Shari'a* there were the Mongol *Yasa*, customary law, Jewish and Christian communal laws and the international law of treaties.[107] He identifies the relationship between the *Shari'a* rules and *Madhalim* in certain fields such as property, personal cases, and trade. But he disputes the existence of Mongol *Yasa* and finds no relationship between Mongol *Yasa* and the Board of Grievances.

There is no clear evidence from the *Nielsen* study that the Board of Grievances developed and applied different laws during the *Mamluk* era. According to some jurists, customary law is considered to be one of the sources of the *Shari'a* rules. Jewish and Christian laws were applicable to these communities in the Islamic state and it does not mean that different laws existed. Consequently no separate and independent law was developed by the Board. *Nielsen* himself says

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[106] See H. Liebesny, *The Law of the Near and Middle East*. Readings, cases and materials, 1975, p. 257.
[107] Nielson, op. cit., pp. 93-95.

*...what distinguished Mamluk – and the Islamic- state from so many others was that the nominal role of legislator and the legal system had been pre-empted by the Shari'a and its theoreticians buttressed by the religious authority of God and His Prophet. There was no room for an official recognition of a secular legislator or formal legal system parallel to the Shari'a.*[108]

By way of conclusion it can be said that both institutions had a similar purpose: to respond to grievances and to restore justice. Beyond this observation, which led in different cultural political conditions to the dual character of both judicial systems (although the Islamic system never developed a completely parallel set of courts like its English counterpart), a comparison between them does not seem to offer the researcher great insight. However more detailed research could lead to a revision of this opinion.

## 2.12 Conclusion

In this chapter the historical development of the Board of Grievances in Islam has been examined. In early Islamic history, there was no special institution which would hear complaints against the state other than the ordinary courts applying *Shari'a*. However, at later stages specific jurisdiction to answer grievances against the rulers and the powerful gave rise to the Judge of Grievances and later the Board of Grievances.

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[108] Ibid.

The development of the Board has been examined. The Board might both deal with cases on its own initiative, and adjudicate cases brought before it by an aggrieved person.

A comparison with the Chancery court in England, while interesting, yields little more than the observation that the growth of both courts was a response to inadequacies in the ordinary system of courts. The system of *Wali Al-Madhalim* and then the Board of Grievances in Islamic history remains as distant from the court of Chancery in English Christian history, as do their contemporary counterparts.

# THE MODERN DEVELOPMENT OF THE BOARD OF GRIEVANCES IN SAUDI ARABIA

**3.1 Introduction**

**3.2 The declaration of the King 1926 (1344).**

**3.3 The stages of the modern development of the Board.**

**3.4 Board offices.**

3.4.1 The Chairman.

3.4.2 The Deputy Chairman.

3.4.3 The General Administrator.

3.4.4 The Advisers.

3.4.5 Investigators.

**3.5 Jurisdiction.**

**3.6 Conclusion**

## 3.1 Introduction

Although the origins of the Board of Grievances have deep roots in Islamic history, in Saudi Arabia those roots are fairly recent. The provinces of the Arabian Peninsula became united only in 1931 (1351).[1] There was, at that time, no modern administration. As the state came to play a more active role in regulating the affairs of individuals and to fulfil public interests, disputes were bound to arise between the administration and individuals.

The purpose of this Chapter is to explain the various stages of the development of the Board of Grievances as established in Saudi Arabia. It will concentrate on the basis of the Board prior to the 1982 Act. It thus seeks to provide the historical formation of the modern Board as an introduction to an examination of the present functioning of the institution in the country.

## 3.2 The declaration of the King 1926 (1344).

King Abdulaziz managed to establish foundations of justice for all citizens when he unified Saudi Arabia in the 20th century, a matter that has required giving attention to the settlement of grievances. The first evidence of the hearing of complaints against government officials and other people of power can be traced to 1926 (1344).[2] The late King, *Abdulaziz*, repeating what the earlier Caliphs in Islamic history had done, made an announcement calling the people to bring their complaints and grievances against any person whatsoever, directly before him. He placed a box called the "complaints

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[1] See Chapter 1.

[2] See for example S. Solaim, "*Constitutional and Judicial Organization in Saudi Arabia*", 1970, PhD Dissertation p. 134, & M. AL-Rasheed "*Criminal Procedure in Saudi Arabia Judicial Institutions*". 1973, Ph.D Thesis University of Durham, pp. 69.

box" at the governmental palace where the people could put their complaints. The announcement was published in the official paper, *Um Al-Qura,* and ended with the words:

> *His Majesty makes it public to all people that whosoever has a grievance against whoever it is (be it an official or any body else senior or junior) and then conceals it, is himself that he should blame. And whosoever has a complaint, it is to be public that a box whose key is with His Majesty the King, had been placed by the Government building. Whosoever has any complaint is urged to place it in that box. It is also to be known to the public that they will not be harmed as a consequence of their just complaints against whoever official it is. Complainants should observe the following: a) the complaint should be true, and not false, and whosoever is found doing so will be penalized. b) any complaint that does not bear a signature of the aggrieved person will not be accepted, and whoever does so will be punished. It should be known to the public that justice is accessible to all people, regardless of their standing, and they will be treated the same until justice is done. And peace be upon you.*

Before the conquest of *Hijaz*, 1926 (1344) there was no formal way whereby people could bring their complaints against those in authority; the king used to hear complaints by way of letter, telegraph, personal visits to his office and even on his way to prayer. This was simply because there was no modern administration in the Arabian Peninsula at that time. The "complaints box" was only created after the conquest of *Hijaz*, at that time the most developed of the regions of the Peninsula and the territories that were to become the Kingdom of Saudi Arabia.[3]

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[3] See S. S. Huyett, "*Political Adaptation in Saudi Arabia: A study of the Council of Ministers*". (1985), pp. 52-56.

It can be assumed that King *Abdulaziz's* decision to establish a complaints procedure, which was the beginning of what was to become the Board of Grievances, was made in order to maintain political stability in the region and at the same time to assure the people of the justice of the new power.

From 1923 (1341) until 1953 (1373) the state's administration was underdeveloped. As a result, the country must have experienced fewer complaints or disputes about administrative errors or illegal actions than a more developed country. In 1953 (1373) modern administration was introduced in the form of the Council of Ministers discussed earlier.[4] It was in the Act of the Council of Ministers that the Board of Grievances was first mentioned as a governmental bureau among others. Article 17 of the regulations states that:

> *A general department within the cabinet shall be formed under the name Grievances Board to be supervised by a chairman appointed under Royal decree and shall be directly responsible to the king who will be its high authority*

Thereafter, the Grievances Board regulations were issued under Decree No. 2/13/8759 In 1955 (1374) the Bureau of Grievances was separated from the council and became a "Board" or "*diwan*", with its own president and staff. Article one of the said regulations states that:

> *An independent board under the name of 'Grievances Board' shall be formed and administrated by a chairman with the grade of Minister to be appointed under a royal decree and to be responsible to the King who will be his high authority.*

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[4] Royal Decree No 5/19/1/4288 in 1/2/1373. See Chapter 1.

Its beginning, however, can be traced to the petition box, and in turn to ancient Islamic jurisdiction.[5]

## 3.3 The stages of the modern development of the Board.

The development of the courts is very important for the achievement of justice in any country. Germany, for example, has seen the progress of independent administrative law courts since 1863. There is no equivalent of the *conseil d'Etat* to act in a not compulsory capacity to government and public administration; in actual fact, this is deliberate, which is peculiar to the French *conseil d'Etat*, and those models directly derived from the French system and other latter models do not always possess an advisory capacity. While in France, the progress of administrative law followed a central direction under the *conseil d'Etat*, in Germany the arrangement of administrative law emerged from the Länder and not from centralised institutions.[6] The first development took place in Baden-Baden. There followed the Prussian Higher Administrative Court between 1872-75.[7] Schwarze describes how in 1949, following the Nazi era, the concept of public administration evolved from a liberal constitutional system to a State scheme which integrated social laws and customs. The situation is similar in the Kingdom of Saudi Arabia, where the development of the administrative system came through the development of the administrative court, as will be seen below.

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[5] See M. S. Abu Saad, "Qwa'id al-Ijraat wa al-Murafa'at al-Idariah Amam Diwan al-Madhalim", *Al-Idarah Al-A'amah.* 1990, No. 68, pp.97-151.
[6] P. Birkinshaw, "*European Public Law*" Butterworths, 2003, pp. 135-136.
[7] J. Schwarze "*European Administrative Law*" London Sweet & Maxwell, (1992), p. 114.

Some commentators have spoken of the Board having undergone two stages of development:[8] the first, following its creation in 1953 (1373), when it was a bureau within the Council of Ministers, the second when in 1982 (1402) the Board of Grievances Act was promulgated. However, a member of the Board, Al-Shangyty, states that the Board has passed through three stages of development.[9] The first occurred when the Board was a department in the Council of Ministers like other departments regulated by Article 19 of the Council of Ministers Act (1953) and by the Bureaux of the Council of Ministers Regulations.[10] The second phase occurred when the Board became an independent body and was separated from the Council of Ministers fourteen months later, i.e. 1955 (1374). It then had its own president and procedures and the new regulations were slightly more detailed than the previous ones. The final stage, the current one, began in 1982 (1402) with the promulgation of a new Act, the Board of Grievances Act, under which the Board was formed as a "Judicial body".

Closer analysis suggests that the evolution of the Board of Grievances in Saudi Arabia should be accounted for over a period of time during which the institution's development evolved in five distinct stages. The first began when the Board was constituted as a bureau within the Council of Ministers, as noted by Al-Shangyty above. It is here that the "Board" appears for the first time. Article 19 of the Council of Ministers Act of 1953 (1373)[11] provided that:

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[8] M. Y Mustafa, "*Wilayat al-Madhalim: Dirasa Muqarana*" M.A. Dissertation, Imam Mohammed Bin Saud University, pp.173-177.& I. Al-Juhani, "*Al-Qada al-Idari*". 1984, 111-121.
[9] M. A. AL-Shangyty, " *Wilayat al-Madhalim fi al -Islam wa Dawrah fi al-Raqabh a'la Aa'mal al Sultah*". 1987 M.A Dissertation, Imam Mohammed University, Riyadh, pp. 255-263.
[10] The Bureaux of the council of Ministers Regulations, Section 4.
[11] Royal Decree No.5/19/4288 in 9/10/1953 (1/2/1373).

*A Board will be formed for the Council of Ministers. It consists of the following bureaux: A) General Secretary. B) The state's Account Control. C) Technical Experts. D) Grievances.*[12]

The next Article of that Act stated that these bureaux would be organized and formed by a royal order.

The Regulations of the Bureaux of the Council of Ministers were promulgated in 1953 (1373). The form, jurisdictions and procedures of the Grievances Bureau were laid down in Articles 17 to 24. The Regulations state that the Grievances Bureau would be presided over by a person who would be appointed by an order from the King. According to the Act, the President would be directly responsible to the King. The Bureau had the power to investigate any complaints that were brought before it and to prepare a report, including the result of any investigation and the proposed remedy that the Bureau would recommend. The Regulations provided that the President of the Bureau would forward a report to the King, who would give his instructions either to implement the Bureau's proposed remedy or not to implement it.[13]

This stage of the Board's development, although short, fourteen months, was characterized by some important features. In the first place, the so-called Grievances Bureau was not independent of the executive. It was a department among other departments of the executive, described as a legal Department. Secondly, the jurisdiction of the Bureau was general and vague. Article 18 of the Regulations stated that: "*the Bureau had the power to register and investigate 'all complaints'* ". There

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[12] Ibid
[13] M. S. Abu Saad, op. cit.,pp. 97-151..

was no precision about what type of complaints the Bureau could register and then deal with. All complaints could be registered and investigated, regardless of their type, which might result in a conflict of jurisdiction between the Bureau and other ordinary courts, as is discussed later.[14] Finally, during this initial stage, the Board's decisions were neither enforceable nor mandatory. The department concerned was not obligated to implement its decision unless there was an order from the King.[15]

The second stage of the Board began with the new regulations, issued by Royal Decree in 1955 (1374). The Grievances Bureau was renamed as a "Board of Grievances". In the same year the Bureau had been separated from the Council of Ministers, and was, therefore, formally independent of it.[16] This occurred because the Chairman of the Grievances Bureau, a member of the royal family, was able, by his influence, to have the Bureau separated from the Council of Ministers. Al-Rasheed comments that

> *Prince Musa'ad ben. Abdul Rahman, an uncle of the King, was appointed to be [chairman] of the Board. Its being presided over by this important prince gave the Board considerable prestige. This fact was demonstrated in 1955, when a royal decree was issued re-organizing the Board.*[17]

However the separation from the Council did not give the Board complete or effective independence. New regulations still provided that the Chairman of the Board would be of the rank of minister and appointed by the Head of State. The new regulation of 1955 (1374) consists of ten articles according to the Royal Decree No.7/13/7859. In this regulation, we understand that the king has final authority over the Board. The

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[14] Article 18 (a) of the Regulation of the Bureaux of the Council of Ministers.
[15] See Clauses B &C of Article 18 of the Regulations of the Bureaux of Council of Ministers, (1373).
[16] of 1374 H. Um Al-Qura No. 1577 in 8/5/1955 (17/9/1374).
[17] Al_Rasheed,op.cit.,p.69.

judgements of the Board were not valid and final unless the king ratified or approved them.[18] Moreover, the Board of Grievances under this regulation was considered as executive with regard to its function and did not enjoy immunity of judiciary judgment because its judgments (called proposals or suggestions) were not final unless ratified by the king.[19]

Article Five of this regulation indicates the rules of procedure, but the rules are limited and cover only the investigation of cases and questioning the Ministries and the workers to determine responsibilities and responsible people. There is no article that indicates or covers the review of judgments, there is nothing about an appellate system, and I think the regulation did not indicate the appellate system because its judgments are not final and are only considered as proposals or suggestions.

It is noted that the Board's authority has been increased. First, the Chairman of the Board of Grievances issued on 1/11/1379 H (1960) Decision No.3570/1 in respect to the Board's by-law giving more details and clarification of its authorities and also, by empowering the Board to investigate and issue judgments on crimes of bribery and falsification. Moreover, in 1962 the Board was entrusted to give decisions on applications to execute judgements issued by the courts of Arab countries and to discuss the cases resulting from violation of Arab-Israeli boycott regulations, as well as the cases concerning the validity of excuses given by employees for their delay in filing claims for the delegation allowance for six months etc., in addition to authorities exercised by the Board in participation with other organizations.[20]

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[18] Article 2, Paragraph (d) of the regulation of the Grievances Board 1954 (1374H).
[19] Article 2, Paragraphs (A),(B),(C) and Article 4, of the regulation of the Grievances Board 1954 (1374H).
[20] Explanatory memorandum for Grievances Board regulation.

In 1958, the power of the King in relation to the Board was transferred to the President of the Council of Ministers.[21] However, in 1964, after an amendment of the Council of Ministers Act, the King also became the President of the Council of Ministers. As a result, the Board was supervised directly by the Head of State.

The supervisory link between the executive represented by the President of the Council of Ministers, now the King, and the Board, at this point was reflected in the following:

a) The King appointed the Chairman of the Board and his deputy.

b) The Chairman of the Board was directly responsible to the President of the Council of Ministers, who was also the King.[22]

C) The Board's officials who would occupy the fourth scale position or above would be appointed and dismissed by the President of the Board with the King's approval.[23]

D) The decisions of the Board were not obligatory or enforceable unless approved by the King. In other words the Board's decisions were merely suggestions.[24]

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[21] See The Council of Ministers Act of 1958 Article 46.
[22] Article 1
[23] Article 3
[24] Article 2

E) The Chairman of the Board had to submit to the King a detailed report every six months on the activities of the Board during that period. The report had to include the result of the investigations specifying the responsibilities of different governmental bodies and their employees and the proposed actions recommended by the Board.[25]This can be contrasted with the French legal system, where the *Conseil d'Etat* is officially presided over by the Prime Minister but in reality, by its vice-President, appointed by the Cabinet.[26]

Although these regulations did not change until the 1982 Act was promulgated,[27] the next development (the third stage in this analysis) witnessed an extension in the Board's power over some disputes.

The third stage of the modern development of the Board began when The Council of Ministers issued its Decision No.818 dated 17/5/1396 H (1976) authorizing the Board to give a final decision on claims for compensation submitted by contractors contracting with the government agencies in cases where claims by those contractors are based on a default by the government agencies resulting in losses or damages to contractors.[28] In that time a tendency had emerged whereby the executive prevented the *Shari'a* court from hearing disputes against government departments unless there was permission from the King to do so. This practice began with a case brought before a judge in the *Shari'a* court in Riyadh by a contractor against a government department, the Ministry of Health. The contractor claimed that the Ministry withdrew two projects from him

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[25] Article 4
[26] C. Dadom and S. Farran, "*The French legal system*". London, Sweet & Maxwell. 1996, pp.89-95
[27] It should be noted that some amendments took place later, which will to be mentioned in due course.
[28] Explanatory memorandum for Grievances Board regulation.

because he had failed to finish them on time.[29] As a result of this case and the decision of the court, where the judge decided to call the General Administrator of the Health Ministry to attend the court and take oath before the court, an exchange of letters took place between the president of the Council of Ministers (i.e., the King) and the Chief Judge. In this exchange, the former attempted to persuade the latter to stop ordinary judges hearing cases against the administration unless they had the King's permission.[30] The first response of the Chief Judge was refusal to give such an undertaking.[31] It was only after the President of the Council of Ministers had explained the necessity for his consent before the hearing of any case against the administration[32] that the Chief Judge issued[33] a circular to judges, asking them to implement the content of the King's request. He informed the judges that the King promised to refer to the court any controversial matter needing a judicial decision.[34]

The King's letter No. 20941/1 in 1968 (1387) also indicated that the Board of Grievances should investigate any dispute between government departments.[35]

It might be said here that the main idea behind the request of the President of the Council of Ministers was his inclination to filter the disputes arising between the administration and individuals before having recourse to the court. In other words, as he was the head of the administration and the highest figure in the executive, he had the

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[29] The author has no full details about this case. It was mentioned in the exchange of letters that took place at that time; see, for example, a letter from the President of the Council of Ministers to the Chief Judge No 20941 on 28/1/1968 (28/10/1387).
[30] A letter from the Deputy of the President of the Council of Ministers No 11166 in 1976 (19/6/1387), referred to in letter No. 3298/1 in 8/10/1987.
[31] See letter No. 3298/1 in 8/10/1387
[32] See letter from the Council of Ministers to the Chief Judge No. 20941 in 1968 (28/10/1987).
[33] It appears that there were oral discussions about this matter between the King and the Chief Judge.
[34] Circular No 0/3/T on 5/4/1968 (7/2/1388).
[35] A. Al-Muhaiza', "*Diwan al-Madalim fi al-Mamlakah al-Arabiah al-Saudiah*". 1977, Dissertation, Public Administration Institute, Riyadh, pp.31.

power to resolve such disputes that the department concerned failed to solve because of his paramount power. So one might say that the request of the President of the Council of Ministers to the Chief Judge was to enable the former to exercise his administrative power of control over governmental departments before the judiciary could be involved. However, such an interpretation of the King's request was contradicted by subsequent events, which saw many matters that were commonly considered to fall under the power of the ordinary court being vested in the Board.

This period, it would appear, was a turning point for the Board, for it witnessed the explicit investment of the Board with a power to investigate disputes between the administration and individuals.

In the period to 1976, the Board was granted many additional areas of jurisdiction. Examples are the investigation of forgery cases and the hearing of complaints brought by electricity companies over punitive measures imposed on them by a statutory committee formed under the Regulations of the Electricity Services Agency of 1972 (1392). Such fields of jurisdiction were conferred upon the Board in addition to its principal competence under the 1955 (1374) Regulations. These powers were usually granted to the Board by orders or decisions issued by the Council of Ministers, or according to other regulations which typically stated that disputes arising because of the application of such regulations should be heard and investigated by the Board.[36]

The history of the Board of Grievances at this time includes a point when its dissolution was a possibility. According to a draft of the Council of Ministers issued in 1967, the Board was to be dissolved. However, for unknown reasons, this decision was not

[36] See for example, the Foreign Capital Investment Act 1964 (11/9/1383), Article 35.

carried out. It may be useful to examine this draft decision of the Council. In its Preamble, the draft Decision cited the rationale for the dissolution of the Board. Firstly, the Board could no longer fulfil the objectives and purposes that lay behind its establishment. This was due to the vast development of the government and the expansion of the activities of the administration, which had resulted in an increased number of disputes concerning administrative contracts and decisions. Secondly, although regulations were issued in order to control the administration, to penalise various administrative and financial violations, and lay down the proper punitive measures to stop wrong doers, such regulations did not fulfil their purpose because there was no special body to apply such controls properly. Thirdly, the current Board was performing two different jobs, namely, investigation and adjudication. It could never be sufficiently just and impartial in deciding penal cases, in particular, if the Board continued to combine these functions. There was, according to the draft Decision, a need to create a different body to deal with these pressing problems. Consequently, it was decided to dissolve the Board and to create a new body to be called *Majlis Al-Madhalim.*[37]

The proposed Council would be presided over by a chairman of the rank of minister who would be under the authority of the King and directly responsible to him. Moreover, all members of the Board would be appointed, promoted, sent to other regions, transferred, dismissed or retired by royal order.

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[37] M. S. Abu Saad, op. cit.,pp. 97-151.

The draft Decision also set out the proposed jurisdiction and procedures of the new Council. Noteworthy was a radical provision that decisions the Council might reach had to be approved by the King and would otherwise have no legal effect.[38]

This draft decision of the Council of Ministers, as has been pointed out, was not implemented. The point of discussing the draft decision here is that, later, its contents substantially formed the basis of the Board of Grievances Act 1982. However the proposed subordination of the Council through the King's personal involvement in approving decisions was not to be implemented.

Prior to its new legal basis in the 1982 Act, the Board of Grievances was in its next period gradually directed towards hearing cases which involved government departments only.[39]

This tendency to concede to the Board the power of an administrative court continued to increase until the middle of the 1970s, when an important case led to the promulgation of a crucial decision by the Council of Ministers. This further turning point in the Board's development led to the fourth stage in its history. The case involved a complaint from the *Dallah* Company, a contractor. The company appealed to the administrative department concerned (the Defence Ministry) to alter the cost of a contract in order to meet the changes in prices that had occurred in 1975. The Defence Ministry referred this request to the Council of Ministers. This case brought to light the vast change that had taken place by that date, including the increase in the activities of the government which contributed to the increase in disputes between the government

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[38] Ibid.
[39] A circular issued by Chief of the Judges No 10/3/T in 1968(7/2/1388).

and individuals. The result was the promulgation of the Council of Ministers Decision No. 818 in 1976 (17/5/1396). This Decision concerned the principles which would govern indemnity against damages caused by the administration with regard to contracts between the administrative department and other parties.[40]

Decision No. 818 declared that the Board might hear cases brought before it by any contractor who had contracted with a department where they sought compensation from the government on the basis that the department had made a mistake which resulted in damages or loss to the contractor. Examples given included situations where a government department failed to hand over the site of the project on time or when the department concerned changed the specifications of the project. Under the Decision, the Board's verdict concerning such issues would be final, following approval by the President of the Board.

What is noteworthy here in the evolution of the competence of the Board is that, for the first time, a final and binding decision against a governmental department can be made. From this point, the Board had acquired, in addition to the jurisdiction to indemnify, the power to make a final decision binding on a government department. The Board had acquired the essence of an administrative court.

### 3.4 Board offices

The composition of the Board prior to 1982 changed little. According to the 1954 legislations, the main offices were that of Chairman, his deputy, the advisers and

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[40]See for more information, A. K. Musa, "Diwan al-Madalim bayn al-Hadir wa al-Mustaqbal" *Al-Idarah Al-A'mah*". 1982, No.34, pp.45-52.

investigators.[41] The equivalent of these offices is examined in more detail in the analysis of the modern Board (Chapter Four).

### 3.4.1 The Chairman.

The Chairman was appointed and dismissed by a Royal Order. He was of the rank of Minister and assumed the responsibility of the Board's functioning:

> *An independent board under the name of 'Grievances Board' shall be formed and administrated by a chairman with the grade of Minister to be appointed under a royal decree and to be responsible to the King who will be his high authority.*[42]

The Chairman, on the other hand, was the highest authority in the Board and in the communications of the Board with other government departments. He had also the power to distribute the work among the Board's officials and members according to their jurisdictions.[43]

### 3.4.2 The Deputy Chairman

The King also appointed the Deputy of the Board by a Royal decree:

> *A sufficient number of advisors, investigators and clerks shall be appointed for the Board under a decision by the Chairman except for the following:*

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[41] Article 17 of the Regulations of the Bureaux of the Council of Ministers.

[42] Article 1 of the Board's of Grievances Regulations 1955 (1374H)
[43] Ibid and Article 3 of the Internal Regulations.

*1) Deputy Chairman to be appointed under a Royal decree.*[44]

He would perform the Chairman's job in the case of the latter's absence. Moreover, he would preside at the Cases Review Committee. He had also to administer the work in the Board and follow the inquiries that were sent by the Board to government agencies.[45]

### 3.4.3 The General Administrator

The General Administrator of the Board (GAB) had the task of supervising the work in the Board since he represented the highest authority among the secretaries, clerks and workers. He had the responsibility of the finance affairs of the Board and was directly responsible to the Chairman of the Board.[46]

### 3.4.4 The Advisers

There were two types of adviser to the juridical Board, advisers of *Shari'a* and legal advisers.[47] It was their duty to provide clarification of legal questions ordered to them by the Chairman or his deputy. They were duty bound to help the investigators in technical and legal matters. Also, they were members of the Cases Review Committee.[48]

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[44] The regulation of the Board of Grievances of 1374, Article 3.
[45] See decision of Chairman of the Board of Grievances No 3570/1 in 1960(1/1/1379).
[46] Article 4 (b) of the Internal Regulations.
[47] Ibid, article 2.
[48] Ibid, article 4 (c).

The advisers of *Shari'a*, or the consultants, had to be qualified and graduates from *Shari'a* Colleges or have experience and knowledge in matters of *Shari'a*, or be former judges.[49] The legal advisers, on the other hand, were advisers in matters concerning the state regulations, with knowledge in administrative law. Most were Arab Muslims from different Arab States, particularly Syria and Egypt.[50]

It seems that the influence of other legal systems on the Board such as that of Egypt occurred through these advisers. As Mahassni and Grenley (1987), noted:

> *Most of these advisers were educated and trained in countries following or influenced by the French legal system; consequently, many of the decisions drafted by these legal advisers adopted the principles laid down by the Conseil d'Etat in France to the extent such principles did not conflict with Shari'a precepts.*[51]

The theory of risk, whereby the administrative department may find itself liable even where it is not at fault, was applied by the Board which used to compensate the person i.e., the government contractor, when supervening circumstances arose, such as a sharp increase in prices, after a contract had been signed, and which otherwise might render the contractor unable to carry out the project. A contractor was entitled to an increased cost of contract and to compensation for unexpected damages incurred in the process of carrying out a contract. As an example, once the contractor [the plaintiff] was on site and had started on the job, he was faced with the fact that the soil on which the building was to be erected was not suitable. Thus, it would not be possible to carry out the

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[49] This was explained to the author by personal contact with one of the Board members.
[50] The above-mentioned contact and see H. Mahassani, &N. Grenley, "Public Sector Dispute Resolution in Saudi Arabia: Procedures and Practices of Saudi Arabia Administrative Court", The *International lawyer*. (1987), Vol. 21, No. 3 pp. 835.
[51] Ibid

construction in accordance with the contractor requirements. The contractor attempted to treat the soil but without success and in so doing, lost time as well as money; during this period the cost of labour and materials rose sharply.

The Board decided that the plaintiff had encountered unexpected difficulties which he could not have anticipated. He had been forced to call in experts to examine and treat the soil, and had thus incurred financial loss. Moreover, the Board decided that the contractor was not responsible for the rise in price of labour and materials during that period. Thus the administrative department [the defendant] had to compensate the plaintiff for the unexpected rise in prices.[52]

### 3.4.5 Investigators

According to Article 3 of the main Regulations (the Board of Grievances Regulations of 1954 (1374)), the Chairman of the Board appointed investigators. There were *Shari'a*, legal, financial and technical investigators.[53] Everyone investigated cases referred to him by the Chairman of the Board or his deputy. When they finished an investigation, a report on the case was submitted to the Chairman containing his opinion and recommendations.[54] As with the advisers, many investigators were not Saudis and most came from Syria or Egypt.[55]

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[52] See the Board decision No 7/T of 1978 (1398) in case No. 205/Q of 1976.
[53] Article 3 (f) of the Internal Regulations of 1379.
[54] Ibid. Article 4.
[55] The previous contact and see also, H. Mahaani, &N. Grenley, op. cit.

## 3.5 Jurisdiction

Before the Board of Grievances Act 1982, the jurisdiction of the Board can be divided into three categories: administrative, advisory or consultative and judicial. The Board was in charge of differences between individuals and the state. At the same time, it could investigate and decide in civil and criminal cases where the government was not involved, such as enforcement of foreign judgements and cases of corruption such as bribery cases. In this respect, it differed from the French *Conseil d'Etat,* which is both an advisory and a judicial body. As an advisory body, it delivers opinions to the Government on legislative and administrative matters and, as such, takes part in the law-making process. As a judicial body, it is in charge of disputes between the citizens and the administration.[56]

## 3.6 Conclusion

With this account of how the Board of Grievances survived to achieve its new competence, and a brief account of the offices of the Board, the study of the legal background and stages of development of the modern Board of Grievances is complete. The present day Board was established in 1982, and in the following chapters the work of this reconstituted Board will be discussed specifically as it concerns its administrative jurisdiction.[57]

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[56] C. Dadom and S. Farran, op. cit., pp.92.
[57] The previous interview of ex-chairman, not 49.

# THE COMPOSITION AND STRUCTURE OF THE MODERN BOARD OF GRIEVANCES

**4.1 Introduction**

**4.2 The internal organisation of the Board of Grievances**

**4.2.1 The Chairman of the Board**

**4.2.1.1 Power and functions**

**4.2.2 The Deputy Chairman: appointment and dismissal**

**4.2.2.1 The functions of the Deputy Chairman**

**4.2.3 Assistant Deputies**

**4.2.4 The judicial members of the Board**

**4.2.4.1 Are the members of the Board judges?**

**4.2.4.2 Appointment of members**

**4.2.4.3 Training**

**4.2.4.4 The dismissal of members**

**4.2.4.5 Discipline**

**4.2.5 The advisers**

**4.3 The structure of the Board**

**4.3.1 The Committee of Administrative Affairs of the Members of the Board: (CAAMB)**

**4.3.1.1 The powers of the CAAMB**

**4.3.2 The General Body**

**4.3.3 The Board panels.**

**4.3.3.1 General panels**

**4.3.3.2 Subsidiary panels**

**4.3.3.3 Appeals: the Review Committee**

**4.4 Conclusion**

## 4.1 Introduction

In an earlier chapter, the historical development of the Board of Grievances in Saudi Arabia and its Islamic origins, in particular, were examined. The structure and membership of the present Board of Grievances are considered in this chapter.

The modern legislation regulating the Board of Grievances was promulgated in 1982 (1402)[1]. This Act replaced the Regulations of the Board of Grievances 1955 (1374). Under the 1955 Regulations, the Board of Grievances lacked formal independence and was not defined as a judicial body. The 1982 Act explicitly changed the character of the Board. Article 1 declares the Board of Grievances to be "...an independent administrative judicial body..." directly accountable to the King. Unlike in the previous Regulations, therefore, the Board is clearly acknowledged as being a court. The extent to which the Board is properly considered as an administrative court is examined in Chapter Five, although this chapter also discusses the judicial character of the members of the Board, who have been given the title of 'counsellor'.

The Board of Grievances Act 1982 vested a new jurisdiction in the Board, to try "disciplinary cases".[2] Nevertheless, it also withdrew from the Board certain powers of investigation, which the former Regulations had given it, and vested these in the Control and Investigation Board, which is separate from the Board of Grievances.[3]

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[1] Royal Decree No. 51, in 1982, (17/7/1402).
[2] Clause 1(e) refers to "...disciplinary suits filed by..." This refers to cases brought against civil servants
[3] See Article 10 of the 1982 Act.

Generally, the new law has organised and defined the areas of jurisdiction more clearly than the previous 1955 regulations.[4]

Changes also extended to including the organisation of the Board and its membership. The Board of Grievances is of considerable legal importance, and its decisions affect many individuals, both Saudi Arabian citizens and foreigners, as well as foreign and home-based companies. The success of the Board in the exercise of its powers largely depends upon its composition. Qualified and well trained, as well as experienced, personnel will inevitably have a positive impact on the practice of the Board and contribute to the public perception of the institution as an effective means for the redress of complaints against the government.

Writers on the Board have sought to describe it formally in terms based on the 1982 reforms. Mustafa, for example[5] divided the Board into two: members, those who adjudicate, and employees. Everyone else connected with the institution. The first category he further classified into three: the administration, the judicial section and the General Body of members. Under the category of administration the writer included the powers and function of the Chairman, the Deputy or Deputies to the Chairman, the Assistant Deputies, the Administrative Affairs Committee of the Board's Members (identified by its initials as CAAMB), and the Disciplinary Committee. The judicial section is said to include the Presidents of the various branches of the Board, at Jeddah Dammam and Abha, and the main and subsidiary panels. The General Body is composed of all members of the Board. Under Mustafa's second category of

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[4] See M. S. Abu Saad, "Qwa'id al-Ijraat wa al-Murafa'at al-Idariah Amam Diwan al-Madhalim", *Al-Idarah Al-A'amah.* 1990, No. 68, pp.97-151.
[5] See Mustafa, M. Y., "*Wilayat al-Madhalim : Dirasa Muqaran*", Master's degree, (1986), pp.188-200.

"employees", he included everyone employed to deal with the Board's administrative affairs, including finance, records, typing, and other ancillary departments.

Musa (1982) made a similar analysis but with some differences.[6] He divided the Board into two sections: the presidential and administrative section, and the specialist (technical) section. Under the presidential and administrative section, Musa described the powers of the Chairman of the Board, the Deputy and Assistant Deputies, and the General Administrator of the Board, and the person who has the power to appoint them. However, unlike Mustafa, he does not include CAAMB under this section. In the specialist (technical) section, Musa placed the various panels of the Board including the Review Committee, the General Body and the CAAMB.

Shaibt Al-Hamd (1989) discussed the composition of the Board under two headings, judicial and administrative. According to him, the judicial section consists of the Chairman, the Deputy, the Assistant Deputies, the judicial panels, the CAAMB, and the General Assembly.[7]

The various classifications adopted by those who have written on the Board may seem a trifling matter, but the classification adopted can hide important aspects of the institution. The classifications already outlined fail to give weight to such questions as the status and relative power of different members and fail to recognise, for example, the advisers as an integral part of the Board of Grievances.[8] Moreover, Mustafa and

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[6] Musa, A. K. "Diwan al-Madhalim bayn al-Hadir wa al-Mustaqbal" *Al-Idarah Al-A'amah.* 1982, No. 34, pp.45-52.

[7] Shaibt Al-Hamd, M. *Al-Wilaya al-Qadaiya li Diwan al-Madhalim fil Mamlakah al-A'arabiah al-Sa'udiah.* 1989, Ph.D dissertation, pp.802-836.

[8] Beside the writers mentioned, there are other who have written about the composition and the membership of the Board. See for example Ja'afar, A. G., *Wilayat al-Madhalim fi al-Islam wa Tatbigah fi al-Mamlakah al_A'rabiah al-Sa'udiah.* (1989), pp. 73-85,. Al-Uthman, A. Y. , *Wilayat al-Madhalim fi*

Musa treat Assistant Deputies, who are judicial officers, as administrators, which is in conflict with the clear terms of the legislation. The Disciplinary Committee is considered by Mustafa to be an independent body within the Board. In fact, its members are drawn from the CAAMB.

Most of these accounts of the composition of the Board are descriptive only. The writers consider the Board and construct their classifications of its work, by reference to the terms of the 1982 Act, sometimes misreading its terms in the process.[9] They do not examine how, in practice, the Board's activities relate to the formal provisions of the Act, including the key significance of decisions made by the Chairman of the Board. Accordingly, this chapter attempts to discuss the formal structure and membership of the Board. This approach will not only identify specific personnel who play an important role on the Board; it will also bring out the roles and relationships between the various levels of the Board, in particular the advisers.

## 4.2 The internal organisation of the Board of Grievances

The personnel of the Board consists of the Chairman and a number of Deputy Chairmen, Assistant Deputies, the judicial members, and advisers. Figures 4-1 and 4-2 provide a picture of the main personnel and the internal organisation of the Board of Grievances. The organisation of the Board is as set out in Figure 4-2. Where necessary for the analysis, reference is made to the organisation of the ordinary judicial system

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*al-Islam wa Tatbigatih bil Mamlakah al-A'rabiah al-Sa'udiah.* (1988), M.A. dissertation, pp. 169-186. Al-Fahal, A., *Diwan al-Madhlim fi al-Mamlakah al-A'rabiah al-Sa'udiah wa al-Qada al-Idari.* 1990, Ph.D dissertation, pp. 254-280. Turck, N. B., "Dispute Resolution in Saudi Arabia", *The International Lawyer.* (1988), vol. 22, No. 2, p. 402. Lerrick, A. &Mian, Q. J., *Saudi Business and Labour Law.* (1987), 2nd. edition, p. 238.

[9] However some studies are of high quality. See, for example, Al-Fozan, A. "Diwan al-Madhalim fi Dhil Nidhameh al-Jaded", *Al-Idarah al-A'amah* (1982), No. 3, pp.109-143.

and its hierarchy (discussed in Chapter 1). These diagrams will assist in the detailed discussion of the composition of the organisation, which follows below.

**Figure 4.1**

**The personnel of the Board of Grievances**

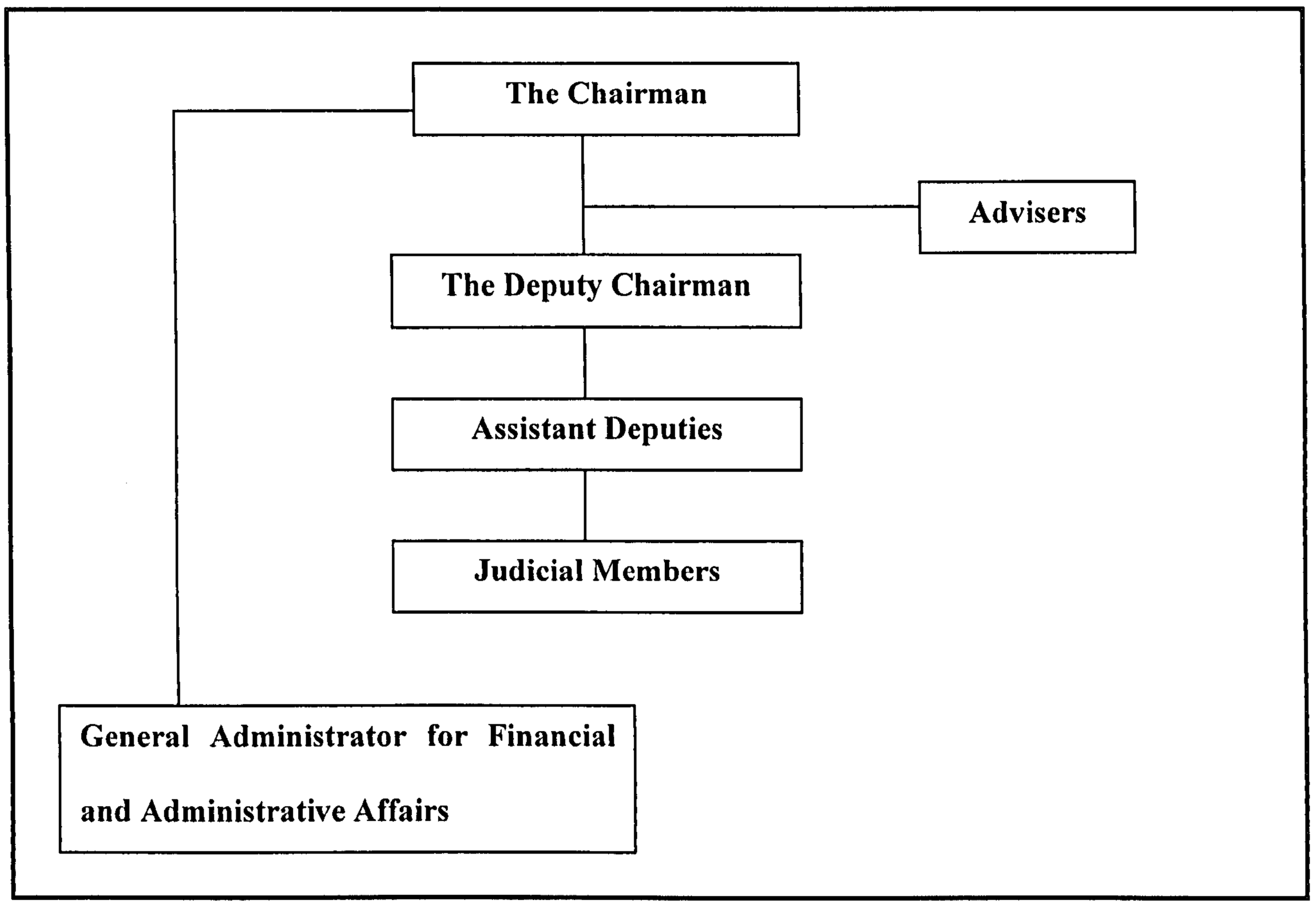
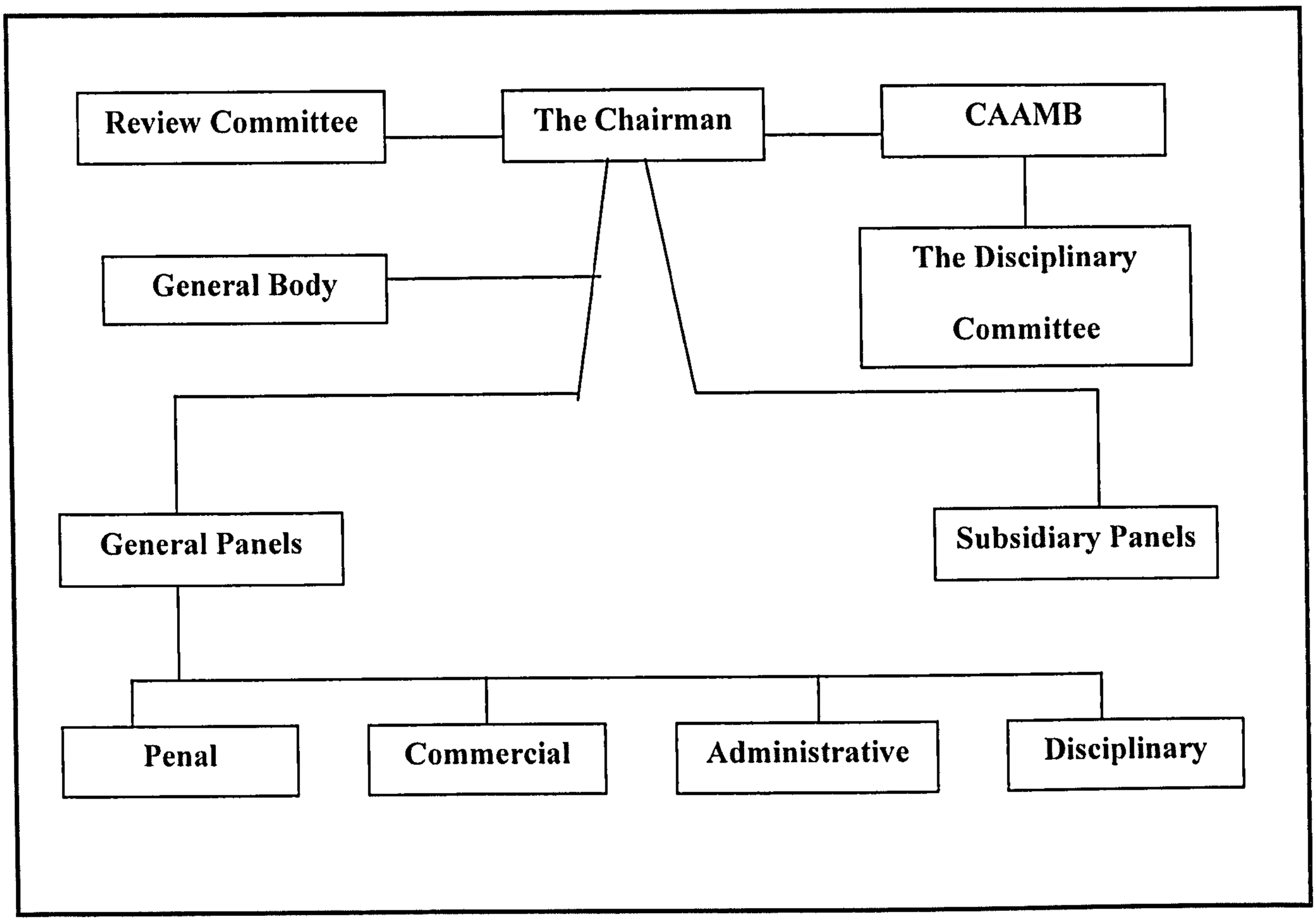


**Figure 4.2**

**The internal structure of the Board of Grievances**




### 4.2.1 The Chairman of the Board

The President or Chairman is at the top of hierarchy of the Board. According to the 1982 Act, the Chairman is appointed and removed by Royal Order of the King.[10] He has the rank of Minister. The Chairman is directly accountable to the King, who is President

[10] The King is at the same time the President of the Council of Ministers. In other words one-person performing two jobs. However, in theory the duties, power, and responsibilities of the King are different from those of the President of the Council of Ministers.

of the Council of Ministers. The qualifications for appointment as Chairman of the Board are somewhat unclear. The 1982 Act states that:

> *The Board of Grievances shall consist of a President with the rank of Minister, one or more Vice-Presidents and a number of Assistant Vice-Presidents as well as Members with qualification in Shari'a and law*[11]
>
> and
>
> *The President of the Board shall be appointed and his services terminated by Royal Order. He shall be directly answerable to His Majesty The King.*[12]

We can see from this translation of the Act that the person selected as President need not previously have held a judicial post. Nor does the Act lay down particular procedures to be complied with in the appointment of the Chairman of the Board. There is no requirement, for example, that a committee be appointed to recommend a person for the post. Furthermore, it might be argued that it is only the judicial members of the Board for whom it is compulsory to be qualified "in Shari'a and Law". In the Arabic original, a similar ambiguity exists. In practice, the Chairman and other offices mentioned have such qualifications. Nevertheless, it has not proved possible to obtain an official interpretation as to whether such qualifications are required of these officials.

According to Article 3 "*the President of the Board shall be appointed and his services terminated by Royal Order*", we can see from this translation that the King not only has wide powers over the appointment, but also over the dismissal of the Board's Chairman.[13] The Act does not state the grounds which would justify dismissal. It is a

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[11] The 1982 Act, Article 2
[12] The 1982 Act. Article 3.
[13] Article 3.

matter entirely at the discretion of the King. As well as the appointment and removal of the Chairman by the King, the Chairman "...*shall be directly answerable to His Majesty the King* ..."[14] This link with the King repeats what was stated in Article 1 of the former 1955 Regulations "...*and to be responsible to the King who will be his highest authority.*" The responsibility of the Chairman of the Board to the King raises directly the issue of the independence of the Board.

This authority to appoint is accorded to the King by virtue of the fact that judicial power in the Islamic state is vested in the Head of State, that is, the Caliph himself (according to some Board members interviewed).[15] Traditionally, in Islamic institutions the grievances officer, *Wali Al-Madhalim,* was appointed by the Head of State and responsible to him. The King in turn vests this power in another person who is directly responsible to him. The connection between the Chairman, and therefore the Board, to the King is also justified in the Explanatory Memorandum issued with the 1982 Act. It says "...the Board's direct affiliation to his Majesty the King is natural because his Majesty is the Ruler." At certain stages of the development of the Board, the grievance officer functioned in the presence of the Head of State (the Caliph). The formal responsibility of the modern Chairman of the Board to the King therefore reflects Islamic principles. However, the power to appoint does not, it is submitted, mean that the king can intervene in the judicial functions of the Board. In practice, the King's sovereign interest concerns the proper administrative functioning of the Board only.

Thus, Article 47 of the Board of Grievances Act 1982 provides:

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[14] Ibid.
[15] Interview with A. Al-Ali, 18/1/2006, Al-Daweesh, 19/1/2006 and Al-Masoud, 17/1/2006.

> *At the end of every year, the President of the Board shall bring before His Majesty the King a comprehensive report of the Board's activities including his observations and recommendations...*

Nevertheless, the power to appoint and dismiss the Chairman is subject to debate, in the light of the nature of the exercise of that authority. No discussion of this vital matter is to be found in the literature on the Board of Grievances Act, 1982.

It is necessary therefore to discuss some reforms, which could make the Chairman and the Board itself a court independent of the King and the Council of Ministers. By 'reforms' is not meant a fundamental change in the constitutional environment in which the King is the source of all power and authority. One proposal might be that a committee should be established to interview, and to recommend to the King, a number of candidates for the post of Chairman. This is the procedure for the appointment of judicial members of the Board. The independence of the Chairman selected by the King could be guaranteed by establishing, through law, conditions which must be met in order to justify his removal from office, for example when he reaches a certain age or is found to have acted improperly. Independence for the Chairman might entail that the person appointed by the King should not have the rank of Minister in the Council of Ministers. It is submitted that these and other options should be considered in any further legislation on the Board of Grievances.

#### 4.2.1.1 Power and functions

According to and within the 1982 Act, the Chairman wields significant authority over both the judicial and administrative sections of the Board, which, together with the

power to make administrative internal decisions issued by the Chairman himself, defines the functions of the Chairman. He presides over the Committee of Administrative Affairs of the Members of the Board (CAAMB) and chooses its members.[16] He also presides over the "General Body" of the Board and exerts supervisory and administrative authority over the members and the various panels. For example, he appoints one or more members of the Board to carry out an inspection of work which is usually done once, but not more than twice, a year.[17] He also authorises the setting up of the disciplinary committee from among the members of the CAAMB.[18] Moreover, the Chairman may, either on his own initiative or on the recommendation of the President of the panel to which the member belongs, initiate disciplinary proceedings against any member of the Board.[19]

The Chairman has the highest authority on the Board of Grievances regarding the application of the 1982 Act and the organisation of judicial work from the commencement of the case until the issue of judgment.[20] In short, he always plays an important role in the judicial work of the Board. For example, he allocates the cases to the various panels. According to Article 47, at the end of every year the Chairman submits an annual report, (as already noted) which is not public, to the King with his observations and suggestions regarding the functioning of the Board.[21] The Chairman also has the duty to classify and arrange the publication of all decisions issued by the

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[16] The Chairman is a graduate of the Shari'a College. The Board has had three Chairmen since its establishment in 1953. One, who was also the first Chairman, was from the Royal family. The other two were qualified in Islamic law.
[17] Article 4.
[18] Article 22.
[19] Article 30.
[20] Article 31.
[21] See Clause 2 of the Decision of the Chairman of the Board No. 12 of 1982 (17/8/1402). See also Article 28 of the 1982 Act.

Board.[22] Furthermore, commentators on the Board have not discussed the potential danger arising from the power exercised by the Chairman over the judicial members of the Board. This needs to be considered and questioned. The Chairman's power of inspection and discipline with regard to the member's affairs, for example, might easily run the risk of abuse and result in undue influence breaching their independence and their neutrality. Article 28 reflects an awareness of this problem. It reads:

> *Without prejudice to the impartiality and independence of Board members, the President of Board may supervise all circuits and members, and the head of each circuit may supervise members subordinate to the circuit.*

Nevertheless, it may be necessary to do more than just recognise the risk, in order to avoid the possibility of excessive influence being brought to bear. To reduce the possibility of any infringement of the neutrality and independence of the members, for example the CAAMB and the Disciplinary Committee should be reviewed. At present supervisory and other committees are composed of people selected by the Chairman. Members of such committees might be elected from among the Board's members for a certain number of years. The possibility of influence over members could thus be reduced. Secondly, the monitoring power of the Chairman over the court or the judicial work of the board should be reviewed. He allocates cases to panels and has oversight of the processes of adjudication from the commencement of cases to completion. The objection is not to this power in itself but to the absolute freedom the Chairman has in exercising it. There should therefore be some involvement in supervising functions by others in addition to the Chairman. If the power to supervise cases exercised by the

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[22] Article 47.

Chairman is allowed to continue without restriction, then the independence of the members and the Board itself will continue to be at risk.

### 4.2.2 The Deputy Chairman: appointment and dismissal

According to Articles 2 and 3 of the Board Act 1982, the Deputy Chairman is also appointed by Royal Order, and dismissal, which is by the king, may be based on the recommendation of the Chairman of the Board. Article 12 clarifies that the Deputy Chairman holds the rank of President of the Appeal Court of the Shari'a Courts, which are the ordinary courts. Article 12 states that:

> *Ranks of members of the Board are as follows:*
>
> - *Trainee of the rank of Judicial Trainee,*
> - *Assistant Chancellor (C) of the rank of Judge (C),*
> - *Assistant Chancellor (B) of the rank of Judge (B),*
> - *Assistant Chancellor (A) of the rank of Judge (A),*
> - *Chancellor (D) of the rank of Court Deputy (B),*
> - *Chancellor (C) of the rank of Court Deputy (A),*
> - *Chancellor (B) of the rank of Court President (B),*
> - *Chancellor (A) of the rank of Court President (A),*
> - *Assistant Deputy with the rank of Appeal Judge,*
> - *Vice President with the rank of Appeal President.*

This post is the most senior post that may be held by a member of the Board.[23] The Act is clear about the rank of Deputy Chairman of the Board and the Chairman's

[23] Articles 2 and 3 of the 1982 Act.

recommendation for the post is restricted to those members who hold the rank of appeal judge: that is, the rank of Assistant Deputy. The qualifications required for the post of Deputy Chairman is not specified in the 1982 Act. It refers to the Judicature Act 1975, which sets out the qualifications which a person should possess for nomination to the post of appeal judge, or, in the case of the Board, to Assistant Deputy. A nominee either should have been a counsellor of least two years' standing, or have taught the subject of jurisprudence and its fundamentals at one of the Shari'a colleges in Saudi Arabia for at least eight years.

The requirements have at least the advantage that the Chairman has not unlimited discretion in the selection of his Deputy. The post is also open to academics, who usually have the legal knowledge to deal with complex cases. However, the risk in appointing academics may lie in the fact that they usually lack experience of litigation and of Board procedures, since they will not have previously served on the Board or even within the hierarchy of Shari'a courts. A further requirement to be noted is that the post is restricted to those who are over forty years of age. However, the most important issue, which arises with the position of Deputy, concerns dismissal, and the grounds of dismissal. On what grounds can the Chairman of the Board recommend the dismissal of the Deputy to the King? The answer is unclear in the 1982 Act.

There are two possible interpretations. Firstly, the grounds for dismissal of the other members could also apply to the Deputy. An argument in support is the fact that the post is on the same level as the other members of the Board.[24] The Deputy also performs judicial work, as do the other members. However, the procedure for dismissal of other Board members is by Royal Order on the recommendation of CAAMB. The

[24] Article 21.

Deputy Chairman is dismissed in accordance with a recommendation of the Chairman of the Board. Another interpretation is that the Deputy Chairman has a special position, different from other members of the Board. Article 3 of the 1982 Act confirms that status: "*...the Deputy Chairman of the Board shall be appointed and their services terminated by Royal Order at the recommendation of the Chairman of the Board...*" The Deputy's status is different therefore from other members in respect of his dismissal, and in addition there are no grounds laid out by the Act. The Chairman therefore may have an unfettered power to recommend the dismissal of the Deputy Chairman. It might be concluded therefore that the Deputy Chairman seems to be insecure and vulnerable as a result of the lack of clarity in the Act. That situation is not compatible with ensuring his independence in the exercise of his important functions.

#### 4.2.2.1 The functions of the Deputy Chairman

The Deputy performs all the tasks that are vested in him by the Chairman of the Board. The Deputy also assumes all the functions of the Chairman, in the event of the latter's absence. Article 46 of the Act states that:

> *The Vice President shall act instead of the President in case of his absence and shall assist him in the duties that he entrusts him with.*

In addition, according to Decision No. 12 of 1983 (1403) of the Chairman, the Deputy has the power to supervise the work of the various panels of the Board. He has the authority to follow up cases heard by the panels. The Deputy also has administrative and financial power in relation to the members of the Board who are subject to the

Judicature Act.[25] Moreover, the Deputy has the authority to examine any draft of legislation for regulations that affect the members or improvement in the work of the Board on the various panels; he then refers the result of the study to the Chairman.[26] The Deputy has the duty to take necessary measures to improve the level of the members' knowledge and organise and supervise their training. The Deputy also has the task of examining and solving problems that might confront the members in their judicial work. He is also expected to suggest solutions to such problems and refer them to the Chairman.[27]

It seems that the Deputy is no less important than the Chairman. He has wide powers, but they are performed with the authority of the Chairman. Consequently, as already noted, to fulfil his duties properly, his independence should be secured by guaranteeing his tenure, by statute, for a definite period. It is submitted that once appointed, tenure should be subject to continuing capability and good behaviour. This function of removal on such grounds should be exercised by an independent committee of senior members drawn from the General Body of the Board.

### 4.2.3 Assistant Deputies

There are several Assistant Deputies whose qualifications are specified by Article 2 of the Act. They all are specialists in Shari'a law. Mechanisms for the appointment or retirement of the Assistant Deputies are not specifically stated in the Board of Grievances Act 1982 or in the Decision of the Chairman of the Board No.12 of 1983, which was based on the 1982 Act and which determined *inter alia* the jurisdiction of the

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[25] Article 12.
[26] See Article 17, and see Decision of the Chairman No. 12 of 1983 (1403).
[27] Clause 4 of the Decision of the Chairman No. 12 of 1983 (1403), op. cit.

Deputies. It would seem that the Assistant Deputies are subject to the same methods of appointment, dismissal, or retirement as the judicial members of the Board. The powers and functions of an Assistant Deputy are not set out in either the 1982 Act or in the previously mentioned Decision. In practice, the Presidents of the three branches of the Board are selected from amongst the Assistant Deputies. The Assistant Deputies also preside over some of the panels of the Review Committee.

### 4.2.4 The judicial members of the Board

The 1982 Act concerning the Board of Grievances contains fifty-one articles, forty of which deal with the members. Six articles deal with other matters, such as the panels of the Board, the General Body, annual reports, and the date from which the Act was effective. Only four articles deal with the legal nature and jurisdiction of the Board. The appointment, qualifications, and training of the members and their removal or retirement, transfer, promotion, and discipline are discussed in this section.

The above situation might suggest that the 1982 Act emphasises control of the members. However, it may also be interpreted to mean that the Act places more emphasis on the rules of promotion, transfer, retirement, resignation, and discipline in order that the rights and duties of the members are beyond dispute, thereby minimising any chance of misinterpretation or abuse of the power *vis-à-vis* members. In addition, the members of the Board form the main body of the Board personnel and carry out its judicial functions. In all there are more than two hundred and fifty members on the different judicial panels of the Board. As provided in Article 12 of the 1982 Act, they have different ranks starting from Assistant *Mulazim* up to Deputy Chairman, the most senior rank.

The 1982 Act uses the word "member" literally, a term in Arabic and English which is confusing if it seems to distinguish one from others attached to the Board. Who is entitled to be called a member? "Members" are those who are appointed to carry out the judicial functions of the Board, who hear cases between litigants. The Chairman of the Board therefore, is not considered to be a 'member' of the Board in the same sense, because he has special status on the Board. Equally, administrators and advisers (whose position is discussed below) are not members as such of the Board. All members are subject to the rules of appointment, promotion, retirement, discipline, transfer and assignment as stated by the 1982 Act. However, according to Article 12 of the Act, despite the fact that the Deputy Chairman is named as a member, he is not subject to these rules. Like the Chairman, he also has special status.[28]

### 4.2.4.1 Are the members of the Board judges?

The 1982 Act refers to members of the Board as 'counsellors' or *Mustashar*.[29] This title is unusual for describing the judiciary in Saudi Arabia and its use raises a question about the legal status of the members. Are they judges and if so why are they called counsellors? According to Al-Fozan (1982) and Shaibt Al-Hamd (1989), the title "counsellors" conforms to the trend which prevails in most countries where a system of administrative courts applies, and where the members of the Council of State are usually called "counsellor". These writers argue that the use of the term does not alter

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[28] Ibid.
[29] Article 3 of the Act.

the legal status of the Board's members as judges. Their decisions are judicial and the characterisation of the person taking a judicial decision is that of judge.[30]

It may be agreed with this argument that the members of the Board are judges, but for different reasons. In the first place, the first Article of the Act establishing the Board calls it the administrative "judicial body". This means that the members of this body who perform its judicial functions are judges. Moreover, the appointment, retirement, duties, and rights set out in the Judicature Act for judges, also apply to the members of the Board.[31] Although it is usual to find the title of counsellor used in countries where a system of administrative courts operates, it should be applied to the members of the Saudi Board with caution for three important reasons. Firstly, the Board and the members not only adjudicate in administrative cases as do the Councils of State in other countries, but they also have a larger jurisdiction of a civil and even criminal character. Secondly, whereas the members of the Council of State in other countries are usually selected from the rank of civil servants, as in the case of the *Conseil d'Etat* in France[32], the members of the Board are very different in that they have qualifications more or less similar to those of an ordinary judge. Finally, the role of the Council of State in other systems is not only judicial but also consultative as, for example, in Egypt and France.[33] Referring to a member, therefore, as counsellor is simply an expression of their actual functions.

The qualifications, as well as the functions laid down by law of the members of the Board are quite likely to place them as judges rather than counsellors. However the

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[30] Article 12.
[31] Al-Fozan, op cit.; Shaibt Al- Hamd, op. cit.
[32] See Articles 16 and 17 of the 1982 Act.
[33] See N. Brown and J. Garner, *French Administrative Law*. (1998 ), pp. 50-52.

question still remains, why are they called counsellors? Pursuant to Article 12 of the Act a circular was issued by the Chairman of the Board instructing the members to refer to themselves as "counsellors", a name specially reserved for them, as the Chairman explained

> *... due to technical considerations which strongly encourage the enriching of independent judgment "Ijtihad" based on consultation and for historical considerations which strengthens the call for the independence of adjudicating of grievances in its direct relation with the Custodian of two Holy Shrines [i.e. the King] and that nobody has right to intervene in the Judiciary...*[34]

The authority for this name as stated in the circular, therefore, is derived from and invokes both the Judicature Act and the Board of Grievances Act, legislation which emphasise the independence of the judiciary and the Board.

The circular however is not entirely convincing. It attributes the name to the need to strengthen the procedures involved in the taking of judicial decisions in the Board through consultation. This may be a reference to the fact that the decision of a panel of the Board, particularly one which is composed of more than the members, is usually taken after discussion and consultation between the panel's members. However, this also applies to ordinary judges. Decisions of the appellate court are taken by at least three judges depending on the type of case.[35] Moreover, first instance courts are formed

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[34] Ibid, pp 42-43, and see Al-Tamawy, S., *Al-Qada al-Idari: Qada al-Ilgha*. 1996, pp.155.
[35] Circular No. 8 in 1989 (23/12/1409). The author was informed that the reason behind the above circular was the fact that some members used to sign their decision as "Judges".

by three judges in special cases.[36] Forming a court from more than one judge implies that discussion and consultation between its members is sought. Nevertheless, they are still called "judges".

The circular refers to historical considerations that strengthen the independence of the Board of Grievances, but it does not actually elaborate on any of these considerations. In addition, it mentions independence as a factor in the choice of counsellor, yet it does not specify who the independence is from! However, it should be noted that the circular refers to the fact that in Islam the person who adjudicated grievances was the Caliph himself or was appointed by the Caliph and supervised by him. This office was later established parallel to and independent from the ordinary judges, to deal with cases involving powerful people; it was called the *Wali Al-Madhalim* (see Chapter Two). However, this historical background is not particularly helpful in explaining why the present members are called counsellor. The ordinary judges were appointed by the Caliph who also appointed the grievances officer. Additionally, although the person who adjudicated grievances was called the *Wali Al-Madhalim*, he was also explicitly called "Grievances Judge" by other authorities.

It is submitted that one reason for calling the members of the Board "counsellor" is the result of the influence of other systems, such as the Council of State of France and the Council of State of Egypt, despite claims that there is no such influence at all.[37] A second explanation could be to mark their clear separation from the ordinary judges, despite the fact that they have similar privileges and duties and the members have more or less the same qualifications. It might be argued that under a separate name, those

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[36] Article 13 of the Judicature Act 1975.
[37] Article 23.

who serve on the Board are more likely to be considered as a separate court, that is, an administrative court.

### 4.2.4.2 Appointment of members

The Board members should be selected from those who have relevant knowledge and experience in order to perform their duties properly and meet the expectations of the society they serve. *Pannick* (1987), in discussing the selection of judges, comments on the importance of their role in relation to the individual and society:

> *Those who find it necessary to bring forward, or have brought forward against their will, the detritus of their lives for public examination and judgment in courts of law are entitled to be heard by judges who understand and reflect the values and concerns of contemporary society. That litigants do not invariably enjoy such benefit is not the fault of judges. It is the inevitable consequences of ... [the] system of appointing and training the judiciary.*[38]

According to the 1982 Act, the members of the Board shall be appointed in a similar manner to judges under, the Judicature Act, 1975. The appointment is by Royal Order, issued by the King and is based on a recommendation of the CAAMB.[39] The King may or may not approve the recommendation of the CAAMB. In this connection, the selection procedures of those recommended for consideration by the King is regulated by the 1982 Act and the Judicature Act, 1975. In the case of appointments to the rank of Assistant or *Mulazem*, the candidates are drawn from those who have graduated from

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[38] Pannick, D., Judges. 1987, p.49

[39] Interview with M. Al-Marsoqy, 21/1/2006, who participated in drawing up the draft of the Act of the Board.

one of the Shari'a colleges in Saudi Arabia.[40] In fact, appointees are employed on a one year probationary period. The appointee can either be confirmed in the post of assistant or removed by a decision of the CAAMB.[41] Moreover, appointments to the higher ranks of counsellors or *Mustashar* require candidates to meet additional criteria of experience and relevant qualifications. All appointees should be Saudi nationals, of good behaviour and conduct, and hold a degree from one of the Shari'a Colleges in Saudi Arabia.[42]

Although Article 12 of the Board of Grievances Act, 1982 provides that the qualifications of a Board member are those prescribed for the equivalent ranks in the Judicature Act of 1975[43], the article also provides that various optional qualification requirements are necessary for promotion, such as a Master's degree or a Diploma in Law from the Institute of Public Administration (IPA). It is useful at this point to examine in more detail the question of qualification for the Board.

The Board's members are designated from among those who graduate from the Shari'a Colleges. There are two main subjects of Islamic jurisprudence taught. These are the act of Worship, *Ibadaat*, such as prayer and fasting ordinances, and the rules of individuals' "mutual dealing", and *Mua'amalat*, which include rules of contract and sale, and such topics as criminology.[44] The Shari'a Colleges also teach the legislative sources of Shari'a such as the *Quran*, *Sunnah*, *Ijma* (consensus), and *Qiyas* (analogy). These

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[40] See Article 17 of the 1982 Act; see also Article 53 of the Judicature Act of 1975.
[41] See Article 12 of the Act of the Board.
[42] Ibid., Article 14.
[43] See Article 11 of the 1982 Act. The Board shall satisfy the following:
a) He shall be a Saudi national. b) He shall be of good conduct. c) He shall be fully competent to assume judicial work. d) He shall be a holder of a degree from one of the Shari'a Colleges in the Kingdom of Saudi Arabia. e) He shall not be less than twenty-two years of years. f) he shall be medically fit for the job. g) He shall not have been convicted of an offence under Shari'a Law or of a crime against honour and shall not have had a disciplinary decision passed against him dismissing him from a public position, even if he was rehabilitated."
[44] See Article 13.

subjects are taught as the fundamentals of jurisprudence over a period of four years full-time study. Furthermore, is a qualification from a Shari'a College sufficient for the post of member of the Board? Some believe it is.[45] However, some lawyers and advisers believe that the syllabus and the length of time involved is insufficient to qualify a person to be appointed as a member.[46] Some critics go further and compare it unfavourably with the traditional method of study, whereby circles of people were taught in the mosques by scholars, and conclude that the modern method is not adequate. Such critics claim that the scholars would never have permitted their students to become teachers themselves, give legal opinions or judge between individuals unless they were positive that their students were fully competent to do so.[47] They argue for a much longer period of study, the length depending on the abilities of the student.

Even if this opinion has merit, it is not easy to see how it could be implemented today. An alternative would be to insist on only graduates with the highest grades and to have an initial period of intensive training in the type of work they will be expected to carry out, before confirmation as a Board member. In practice, graduates of Shari'a Colleges, are appointed as Assistants or *Mulazim*, for one year as a minimum, and usually work as secretaries for one of the various panels of the Board.[48] But a secretary does not undertake judicial work on the panel and this system of induction does not provide the experience necessary to take up a judicial post. More focused training is needed. Another shortcoming of this selection procedure is the fact that most graduates do not have an adequate knowledge of laws issued by the Council of Ministers, despite the requirement in Article 2 of the 1982 Act to be knowledgeable in this field. *Mahassini*

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[45] Personal phone contact with Dr.Fahad Al-Huqbani
[46] Interviews with Dr. A. Al-Dhala'a, and N. Al-Wahaibi, 27/1/2006, members of the Board. Riyadh
[47] Interviews
[48] Al-Munifi, and Mansoor, op.cit.

and *Grenley* (1987) reported that the Board tries to solve this problem by requiring that the new members "... take a six month course of study of Saudi Arabia's secular laws at the public Administrative Institute in Riyadh".[49] However, the writer has been given to understand in interviews with some members that study at the Institute is optional.

It is suggested that the Shari'a Colleges should, in line with other colleges, teach the general principles of law, although not every aspect of law will be covered. At present, it is a fact that instruction does not include the teaching of laws enacted by the Council of Ministers.

With regard to age, a person can be appointed to the Board at the age of twenty-two and pursue a probationary period for one year, following which he will be confirmed in the post at the age of twenty-three or four. The writer would submit that the evident lack of experience in the Board is due to the fact that the Board's members are relatively young and this applies not only to new members but also to those who occupy higher ranks. In practice, most of the members are in the age range between twenty-seven and forty-five years old.[50]

The members who are appointed while still young lack not only the experience of judicial skills, law, and procedures, but also experience of life itself. This is important, bearing in mind that they will be dealing with the lives as well as the livelihoods of others. Saxe (1991), who is a Justice of the New York Supreme Court, believes that to be effective a judge

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[49] Personal contacts.
[50] Mahassni, H. & Grenley, N. "Public Sector Dispute Resolution in Saudi Arabia", *International Lawyer.* 1997, pp. 835-836.

> *...requires an understanding of human nature and a motivation that is often the product of life's seasoning, and even some gray at the temples.*[51]

He emphasises that older judges are more likely than younger ones to have developed judicial experience and skills.

The quality of work in the Board is directly affected by the shortcomings in the appointment procedures and in the qualifications of its members. Members need to gain more experience over a longer period of time than that prescribed by the 1982 Act before being considered for appointment. Before assuming the post on the Board they should have reached a certain age, which would indicate, among other things, that they have adequate experience. Members would thereby avoid gaining experience at the expense of the community.

### 4.2.4.3 Training

Training is very important, as it is the process whereby judicial or procedural skills that are lacking may be acquired from specialists. As judges, members of the Board in particular deal with the lives and livelihood of the people and, above all, with a powerful party, the administration. They should therefore be able to demonstrate at the very least the minimum standard of an ordinary judge. Jerome Frank (1973), commented that a man would not be allowed,

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[51] The author has actually met at least fifteen members whose ages range from twenty seven to forty five, and at least five of them are in their late twenties or early thirties

> *... to perform a surgical operation without a thorough training and certification of fitness. Why not require as much of a trial judge who daily operates on the lives and fortunes of others?*[52]

It is clear from what has been said that members of the Board, and new appointees in particular, require training. In the first place, as they are not qualified in the current regulations promulgated by the Council of Ministers, they should have intensive training in those regulations. A practitioner, when interviewed, related an incident in which the parties to the case asked the member in charge to refer the case to arbitration. The member ended the hearing and closed the case, stating he was referring it to an arbitrator, whereas he should properly have referred it while keeping the case open until agreement was reached between the parties on arbitration. At which point the member would then have approved settlement. When the lawyer drew the attention of the member of the Board to this point, the latter had to look up the procedures in a copy of the Act of Arbitration.[53] It would appear that some members have never, in fact, exercised any sort of administrative, commercial, or criminal jurisdiction. Members should be fully conversant with all aspects of their work.

Training is also needed in procedures and in the conduct of cases. Thus, the rules make it clear that the Board sits in public, but one member, when asked, stated that it was unnecessary to sit in open court and he would not allow members of public to attend a hearing.[54]

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[52] See Saxe, D. "Selecting younger Judges - a critique" *American Bar Association Journal*. Nov. 1991, pp.66-67.
[53] See Frank. J Courts on trial, (1973), p.251, cited in Pannick, op. cit, pp. 70-71.
[54] Interview with Munifi op.cit.

Responsibility for the supervision and control of training in the Board rests with the Deputy Chairman.[55] The Board has enabled the members to attend either the public Administration Institute or the high Institute of Judiciary.[56] The former awards a Diploma in Law after two years study, and the latter awards a Shari'a Masters degree in different subjects, one of which is Comparative Jurisprudence. However, the members are not obliged to attend such courses; they may attend if they wish. In other words, neither the 1982 Act nor any subsequent internal decision of the Chairman of the Board makes these courses obligatory.

Training is important not only for the new appointee but also for other members. The Board deals with many different cases[57] which require not only knowledge but skilful handling. Members need practical training, that is, training in the actual work of the Board. For example, they should be fully familiar with the nature of government administration and the problems that face it in a modern state. They should have a clear sense of their role as being that of administrative judges in administrative courts. In France, for example the *Conseil D'Etat* draws its members from those with civil service experience of the administrative problems on which they adjudicate.[58]

It is submitted that a degree from the Institute of Public Administration or the High Institute of Judiciary should be a required qualification for membership of the Board. Secondly, for the reasons outlined above, training should be properly organised to meet the growing importance of the Board in Saudi society. Regardless of seniority, training should cover all members, either by seminar and lecture, or by sending them to

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[55] Conversation with a member of the Board.
[56] See Decision of the Board No. 12 in 1983 (17/8/1403).
[57] Based on an interview with Dr. Fahad Al-Huqbani
[58] For example, in 1989 5,836 cases were registered.

universities to familiarise themselves with new legal problems, actual techniques of hearing and deciding cases, and the continuous development of laws, particularly in the field of administrative law.

### 4.2.4.4 The dismissal of Members

Security of tenure and immunity from dismissal are important to the Board as a whole, as well as to its judicial members. It guarantees independence in order that the member can concentrate on deciding cases freely and fairly without fear of dismissal.

The Board of Grievances members, with the exception of the assistant *Mulazim*, are not subject to dismissal. They are subject to retirement when they reach seventy years of age or if a member lose the trust and credibility essential to his position. Article 15 provides:

> *Except for the Trainee Mulazim, a Board Member may not be dismissed but must be retired upon reaching the age of seventy. However, should a member lose confidence and respect required for the post, he shall be retired by Royal Order based on a recommendation by the Administrative Affairs Committee for Board Members.*

From the above, it can be deduced that dismissal is not actually offered as a means of terminating a judge's service. In certain circumstances he could be forced to retire; this is explained further below. Other than death or retirement "...by the reason of attaining the age specified in the law...", a member of the Board can be placed on pension by

Royal Order issued by the King and based on a recommendation by the CAAMB.[59] The recommendation of the CAAMB must in turn be based on grounds specified in the Act. Article 42 sets out these grounds:

1. Acceptance of resignation.
2. Acceptance of retirement when the member asks for retirement before the age of seventy.
3. During the period of probation, when a member's service can be terminated by a decision of CAAMB. It should be noted here that this is a special case where the "member" is under probation and not a full member of the Board.
4. When a member loses the "…trust and esteem required by his position..."
5. Medical reasons, where the member cannot perform his duties properly.
6. When a member obtains less than "below average" in the report on efficiency on three consecutive occasions.
7. Where a member is convicted of a disciplinary offence where the punishment is to put him on pension by Royal Order.[60]

Article 43 of the 1982 Act reads

*Except for the two cases of death and reaching retirement age, the services of a Board member shall terminate by Royal Order, based on a recommendation by the Administrative Affairs Committee of Board Members*

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[59] Inspection in respect of the activities of the members of the Board will be conducted by the President of the Board delegating one or more members to conduct the inspection. (Article 22). Article 37 provides that a disciplinary committee is to decide in disciplinary actions filed against a member of the Board.
[60] See Article 43.

This article is misinterpreted by Sfeir (1989) when he states that the CAAMB "...could... recommend to the king the termination of the appointment of a member for no reason."[61]

What this article appears intended to do is to emphasise the procedure and instruments for the termination of a member's service. This means that, apart from death or reaching the age of seventy where, in both cases the termination of the service of the member is automatic insofar as it does not need an official instrument to enforce it, the service of the member of the Board will be terminated by a Royal Order based on advice of the CAAMB, if and only if one of the reasons specified in Article 42 exists. Article 42 state:

> *Services of a Board Member shall terminate for one of the following reasons:*
>
> *(a) Acceptance of resignation.*
>
> *(b) Acceptance of his request for retirement in accordance with the Retirement Law.*
>
> *(c) Reasons provided for in Articles 14, 15, 21, and 26.*
>
> *(d) Death.*

This Article therefore concerns the agency which has the power to recommend termination of appointment. It is not a new open clause allowing dismissal as *Sfeir* suggests. It is not known if anyone has had an appointment terminated.

**4.2.4.5 Discipline**

Just as the member has guarantees which ensure his independence, he should also be supervised in order to protect individuals as well the community from injudicious

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[61] See Article 40.

conduct. As noted earlier, the Board of Grievances Act 1982 requires Board members to be of good conduct and behaviour.[62] At the same time the Act states that the member is subject to disciplinary supervision in the exercise of his duties and functions.[63]

However, the 1982 Act does guarantee the member's independence by selecting the Disciplinary Committee members from within the rank of the members themselves, and from the members of the CAAMB in particular. The Disciplinary Committee is formed by a decision of the Chairman of the Board.[64] It consists of five members and is presided over by the member with the highest rank. If they are all of the same rank, the seniority will be decided when considering the selection of the presiding member.[65]

Disciplinary action against a member may be brought by the Chairman of the Board either on his own initiative or in accordance with a recommendation from the President of the panel to which the member belongs.[66] However, such action should only be based on, and taken after, an investigation.[67] The accused member has the right to defend himself or be defended by his lawyer before the Disciplinary Committee.[68] If the accused member resigns, the disciplinary action will cease, but his resignation will have no effect on possible criminal or civil proceedings arising out of the facts of a disciplinary investigation or hearing.

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[62] Sfer, G. N., "An Islamic Conseil D'Etat: Saudi Arabia's Board of Grievances", *Arab Law Quarterly*. Vol. 4, part 2 (1989), p.134.
[63] Article 11.
[64] See Articles 29-40.
[65] See Article 30.
[66] Ibid.
[67] Article 31.
[68] Ibid.

### 4.2.5 The advisers

There is no direct reference to advisers in the Act, but Article 2 refers to "technical staff": "...there shall be seconded to [the Board] a sufficient number of technical, administrative and other staff."[69]

In practice, all the advisers are foreigners recruited from other Arab countries, principally Egypt.[70] They are specialists in administrative law drawn from the members of the Council of State in Egypt. Although they are judges in their own country, they do not act as judges on the Board[71] and therefore do not usually participate in hearing or deciding cases. Instead, they assist the member who has charge of the hearing.

The main function of the advisers is to give a legal opinion on questions of law. They usually present their opinion and refer it to the panel concerned.[72] Moreover, they can state their legal opinions in cases or other legal questions referred to them by the Deputy Chairman of the Board.[73] Their opinions, however, are not binding, but consultative, in that the panel concerned may not implement them.[74]

In the light of the previous discussion on the qualifications and experience of membership of the Board, the importance of the advisers can be readily understood. Mahassni and Grenley, writing in 1987, anticipated that the role of the Advisers would become less important over time:

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[69] Article 34, 37.
[70] See Shaibt Al-Hamd, op. cit., p.802.
[71] Mahassini, op. cit., p.836.
[72] Shaibt Al-Hamd, op. cit, p. 802.
[73] Conversation with members of the Board
[74] Ibid.

*...some of the panels still have foreign legal advisers ... attached to them as advisers and consultant, but not judges. As Saudi judges, with time, become more versed in their responsibilities, we expect the role of their remaining legal advisers to decrease.*

In practice, however, as confirmed by the writer's personal observation, the advisers continue to have an important role in the functioning of the Board.[75] They not only provide legal opinions but sometimes prepare the draft of decisions as well. In addition, they participate in preparing drafts of regulations delegated to the Chairman under the 1982 Act or the Rules of Proceeding and procedures of 1989.

## 4.3 The structure of the Board

Figures 4-1 and 4-2 earlier provided a picture of the main personnel and the internal organisation of the Board of Grievances. As set out in Figure 4-1, the Board consists of general and subsidiary panels, as well as a Review Committee. In addition, there are two bodies, one of which, CAAMB, deals with members' affairs, such as appointment and removal, and includes the Disciplinary Committee; the other is the General Body of the Board.

By way of introduction to a discussion of the structure, it is useful to mention briefly certain other institutions, which are similar to the Board. The French Council of State, the *Conseil d'Etat,* for example, is an administrative court, with consultative and

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[75] Ibid.

judicial functions reflected in its internal structure.[76] As a result, it is divided into two departments, consultative (including the role of advising on legislation) and judicial. The Egyptian institution, *Majlis Al-Dawlah,* has the same functions as the French Council of State. Its internal organisation, however, is divided into three departments: consultative, legislative, and judicial.[77]

In contrast, the Board of Grievances has judicial functions only. The first article of the 1982 Act reads "... the Board of Grievances is an independent administrative judicial body..."[78] It should be understood here that the terms administrative and judicial do not mean that the Board takes decisions in accordance with administrative policy and not according to the law.[79] It means that the Board's jurisdiction is administrative in that it deals with administrative cases brought by individuals, to which government, and the administration, is a party. Its jurisdiction is judicial, in that it deals with these cases in a judicial manner.[80]

There are other departments of the Board of an administrative character, which together help the judicial section to perform its duties and carry out its objectives, i.e. support services. These services include the financial and communications departments, secretarial and library sections. This chapter is concerned with the judicial activities of the Board only.

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[76] M. R. Al-Helw, "*Al-Qada al-Idari*" 1985, pp. 121-163.
[77] N. Brown, and J. Garner, "*French Administrative Law*". 1983. pp.42-56.
[78] Article 1 of the 1982 Act
[79] M. R. Al-Helw, op. cit.
[80] W. Wade, "*Administrative Law*". Oxford: Clarendon Press, 6th ed. 1988. pp. 46.

### 4.3.1 The Committee of Administrative Affairs of the Members of the Board: (CAAMB)

The CAAMB is composed of the President, who is the Chairman of the Board, or his representative, and six members whose ranks should not be below that of counsellor (b).[81] The Act does not specify a method for selection; this is left to the discretionary power of the Chairman of the Board. The CAAMB has authority over the members of the Board similar to the power of the Supreme Judicial Council (SJC) over the ordinary judges.[82]

#### 4.3.1.1 The powers of the CAAMB

The Board of Grievances Act grants the CAAMB wide powers. The Committee has a general power to make recommendations to the King through the Chairman of the Board regarding appointments and retirements of members.[83] It has the power to appoint, promote, transfer, assign, lend, and recommend the dismissal of any members in accordance with prescribed rules.[84]

The CAAMB also has the power to hear complaints from any member who receives an adverse assessment in the annual assessment conducted by the Board, "… in which his

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[81] Article 4 of the Board of Grievances Act (1982). According to the 1982 Act the members of the Board are ranked from Assistant through Counsellor a, b, c, d up to Deputy Chairman.
[82] Ibid
[83] The SJC has five full-time members who have the rank of President of Appeal Courts. These five form the permanent Board of the SJC. In addition to these members, there is a member whose rank is also that of a President of Appeal Court or his deputy, three members whose rank is that of President of Courts (a) who are chosen on the basis of seniority, and the Deputy Ministers of the Justice Ministry. See Judicature Act, Article 6
[84] See for example Article 14 and 7.

efficiency was entered as below average..." In this instance, the decision of the CAAMB is considered to be final.[85]

The Disciplinary Committee is composed of members of the CAAMB.[86] Moreover, in the event of a member of the Board being caught red-handed in a criminal offence and held in custody, the CAAMB has to be informed within twenty-four hours. It will then decide on either "...a continuation of remaining in custody or freedom on bail or without bail."[87] With this exception, it is not permitted to arrest a member even if he is suspected of a crime, nor is it permitted to investigate him or bring a criminal action against him without the permission of CAAMB.[88] This power represents a guarantee of independence for members of the Board. Article 41 of the Board of Grievances Act 1982, in which these provisions are set out, follows the language of the Judicature Act 1975, Article 84, which vests a similar power in the Supreme Judicial Council. The decisions of CAAMB are taken "... by absolute majority of its members."

Given the considerable power over the career of panel members, it is submitted that there ought to be clearer criteria for the selection of this body's members. There ought also to be a requirement for a higher minimum qualification than that of the lower rank of counsellor in the hierarchy of members of the Board. However, at present, membership and duration of membership are entirely at the discretion of the Chairman of the Board.

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[85] See Articles 15, 17 and 19 of the Board of Grievances Act.
[86] Ibid, Article 25. There is an annual assessment to assess the work of the members of the Board. Grades are awarded which range from Competent to Weak.
[87] Ibid, Article 30.
[88] Article 41.

### 4.3.2 The General Body

According to Article 7 of the Board of Grievances Act 1982, there will be a general body consisting of the Chairman of the Board and all the Board's members. The jurisdiction or functions of this body are not determined in the 1982 Act. Article 7 invests the authority to determine the jurisdiction and procedure of this body in the Council of Ministers. According to a member of the Board, the General Body has a power to examine and discuss collectively problems that may face the Board's members in practice.[89]

### 4.3.3 The Board panels.

The Board's judicial functions are carried out through a number of panels, reflecting the different types of jurisdiction given to the institution.[90]

The basic division is into a general and subsidiary panel. Within the division of the general panel, there are further divisions; thus, the general panels are administrative, commercial, penal, and disciplinary. Each is composed of a president, two members and a secretary, as well as a member from another panel who serves as a substitute in the absence of one of the main members.[91] In practice, the selection of the president of a

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[89] Ibid.

[90] M. Shaibt Al-Hamd, "*Al-Wilaya al-qadaiya li Diwan al-Madhalim fil Mamlakah al-A'arbiah al-Sa'udiah*". 1989, Ph.D dissertation, pp.805-806.

[91] See Article 6 of the 1982 Act. Some decisions have been issued by the Chairman of the Board concerning the formation of these panels. The most important was Decision No. 11 of 1986 (1406) on the organisation of the panels.

panel depends on seniority among panel members. The panel adjudicates and decides cases referred to it by the Chairman of the Board.

There are forty subsidiary panels of the Board located at its headquarters and its branches.[92] Each is composed of a single judge. The jurisdiction of the subsidiary panels is briefly discussed below.

The general and subsidiary panels can be considered equivalent to courts of first instance. Their decisions are subject to appeal within a specific period to a Review Committee. The authority to form panels and their work, number, and territorial jurisdiction is vested by the 1982 Act in the Chairman of the Board.[93] Some relevant decisions issued by the Chairman of the Board on this matter of the panels are discussed below.[94]

**4.3.3.1 General panels**

According to the Chairman's Decision No. 2 of 1983 (1403) and No 11 of 1986 (1406) the administrative panels are vested with the power to try and decide cases where the government and its agencies, including public corporations, are a party.[95] Thus, the administrative panels have the power to try cases in which an administrative decision is challenged, or cases in which an indemnity or compensation is sought arising from

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[92] See Decision No. 11 of 1986 (1406), Clause 3.
[93] See Decision No. 12 of 1406 (1986) Clause 5.
[94] See M. Shaibt Al-Hamd, op. cit., pp.851.
[95] See Decision No.2, 3, 18 of 1983 (1403) and No. 6 of 1988 (1408).

alleged government responsibility for breaching of contracts or fault, by aggrieved individuals or parties of contracts.[96]

With respect to disciplinary panels, Clause 1(e) of Article 8 is the source of the jurisdiction of these panels. The Decision of the Board of Grievances No. 3, of 1983 (1403), provides that the disciplinary panels have the authority to try and decide cases that are brought before the Board by the Board of Control and Investigating (BCI) against officials of government departments or general corporate bodies which concern allegations of violations of financial or administrative regulations. Disciplinary panels are also concerned with cases brought by officials challenging disciplinary actions taken by a department against them.

Penal panels' jurisdiction is governed by Clause 1(f) of Article 8 of the Board of Grievances Act 1982 and by Decision No. 4 of 1983 (1403) of the Chairman. The penal panels have the power to try bribery and forgery cases and, in addition, accusations of infringement of the Public Funds Act of 1975. The penal panels have the power to try cases which the President of the Council of Ministers, the King, directs the Board to try.[97]

Commercial panels have been formed recently in accordance with Council of Ministers' Decision No. 241 of 1987 (26/10/f1407) which transfers the jurisdictions of the Commercial Dispute Adjudicating Board to the Board of Grievances.[98] As a result, the

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[96] In terms of the 1982 Act these panels are concerned therefore with the application of Clauses 1(a), 1(b), 1(c), and 1(d) of Article 8 of the Board of Grievances Act 1982.
[97] See Clauses 1(b) and 1(c) Article 8 of 1982 Act.
[98] See Clause 1(f), Article 8.

commercial panels have a general jurisdiction over all commercial disputes, such as disputes between companies and disputes between traders.

### 4.3.3.2 Subsidiary panels

The work of the forty subsidiary panels of the Board concerns the following types of grievances:

a) Disputes relating to the rights of government officials and employees and the staff of independent public corporate agencies, or their heirs, as prescribed by the Civil Service and Retirement Acts.[99] This jurisdiction is also shared with the administrative and disciplinary panels.
b) Enforcement of foreign judgments.
c) Cases where the aggrieved person has failed to apply within the prescribed time over financial rights, but claims a reasonable excuse.[100]
d) Cases which the Chairman of the Board determines are minor matters.[101]

In this brief review of the jurisdiction of the subsidiary panels, two points may be made. Firstly, the subsidiary panels are in fact often concerned with administrative cases, that is, cases in which the government is a party. These arise, for example, in complaints concerning civil servants and cases where the plaintiff wishes to make a claim after the expiry of the limitation period. In practice, all minor administrative cases, even if they do not relate to what is prescribed in Clause 1(a) of Article 8 of the 1982 Act, are

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[99] The Commercial Disputes Adjudicating Board was dissolved by the Royal Decree No.63 of 1987.
[100] See Clause 1(a) Article 8, of 1982 Act.
[101] See Decision of the Chairman of the Board No.18 of 1983 (1403), Article 2, Clause a.

usually referred to these panels[102]. Since 1987 (1407), when jurisdiction over commercial cases was vested in the Board, the less important commercial cases have also been referred to subsidiary panels.[103] It should be noted that all the previous panels, regardless of type, serve as courts of first instance in the *Shari'a* courts. In other words, their decisions are subject to appeal within a specific period.

### 4.3.3.3 Appeals: the Review Committee

When a case is decided by one of the panels discussed above, it will be referred to the Chairman of the Board who, acting in accordance with the request of one of the parties or according to the Rules concerned[104], will refer the case to the Review Committee. The decision of this Committee on any appeal is final. The Review Committee is situated in the Board headquarters in Riyadh.

The Review Committee was not established under the 1982 Act. It was created by a decision of the Chairman of the Board of Grievances in accordance with Article 6 of the 1982 Act[105]. The Review Committee consists of four panels,[106] each of which has different jurisdiction to review a certain type of case.

According to the Chairman's Decision no. 11 of 1406, each of the Review Committee panels consists of a president, two members and a secretary. The rank of a member should not be less than that of counsellor or *Mustashar*.

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[102]See Clause 4, Decision of the Chairman No 11 of 1406.
[103] Personal contact with Dr.Fahad.
[104] Decisions No.12 of 1988 and No.6 of 1988 issued by the Chairman of the Board, which deal with the procedures before the commercial panels, indicate that the subsidiary panels may try and decide commercial cases.
[105] There are more details in a later chapter.
[106] See Decision No. (8) of 1983 (1403) of the Chairman of the Board of Grievances.

The Review Committee has the power to review decisions of the general and subsidiary panel. It resembles, more or less, the Appeal Court in the ordinary judicial system.[107] However a position in the Review Committee requires fewer qualifications than a post in the Appeal Court. Appointments in the latter are open to candidates of not less than forty years of age. The person appointed as an appeal judge should either have spent two years in the post of a President of Court (A) or have had eighteen years experience in a similar judicial post or eight years teaching Islamic jurisprudence and its fundamentals in one of the *Shari'a* colleges in Saudi Arabia.[108] In contrast, the minimum qualification for the Review Committee is the lowest level of counsellor, counsellor (d).

The powers of the Review Committee are discussed in greater detail in Chapter Six.

## 4.4 Conclusion

This examination of the composition and structure of the Board has revealed some shortcomings. Reforms are needed in order to improve the work of the Board in relation to the procedures of appointment, qualifications, removal, and the training of its judicial personnel.

Members of the Board need to be competent as well as independent. The Board's judicial personnel for all posts are recruited from among those who graduated from the Shari'a colleges. The argument was made that such education on its own leads to

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[107] The first two panels were created in 1983 (1403) by the Chairman's Decisions No 9 of 1983 (1403). The third was established in 1985 (1406) by the Board's Chairman's Decision No 12 of 1985 (1406). The fourth panel was created to review commercial cases, in 1988(1408) by the Chairman's Decision No. 6 of 1988 (1408).

[108] See Clause (e), Article 37 of Judicature Act 1975.

shortcomings. Most Board members do not have an adequate knowledge of laws and regulations made by the Council of Ministers. Moreover, new appointees are young and lack experience and judicial skills. Training of members should be a priority but the Board is not properly organised to provide a programme of training.

This chapter has also discussed the status of the Board members as administrative judicial officers. It has been argued that although not designated 'judges' and although the title 'members' is unsatisfactory, the Board members are nevertheless to be regarded as judges on an equal footing with the judges of the Shari'a courts.

# THE SCOPE AND LIMITS OF THE JURISDICTION OF THE BOARD OF GRIEVANCES

**5.1 Introduction**

**5.2 Administrative cases**

**5.2.1 Government employees' claims**

**5.2.2 Power to annul**

**5.2.2.1 The scope of the Board's jurisdiction concerning annulment**

**a) Administrative decisions**

**b) Sovereign actions**

**c) Decisions and judgements of judicial bodies**

**5.2.2.2 Grounds for review**

**a) Lack of power or jurisdiction**

**b) Defects in the formal or procedural requirements**

**c) Acts contrary to the law**

**i) Direct violation of the law**

**ii) Error in the interpretation of law**

**iii) Misapplication of the law**

**- Ascertaining the existence of the facts**

**- Reviewing the legal interpretation of the facts**

**- Reviewing the proportionality of the facts for taking a decision**

**d) Abuse of power**

**5.2.3 Power to indemnify**

**5.2.4 Administrative contracts**

**5.3 Disciplinary power**

**5.4 Penal jurisdiction**

**5.4.1 Forgery**

**5.4.2 Bribery**

**5.4.3 Royal Decree No. 43 of 1957 (1377 AH)**

**5.4.4 Mismanagement under the Public Finance Act 1975**

**5.4.5 Criminal cases referred by the Council of Ministers**

**5.5 Enforcement of foreign judgments**

**5.6 Actions which come under the Board's authority according to special legal texts**

**5.7 Cases referred to the Board by the Council of Ministers**

**5.8 The legal characteristics of the Board of Grievances**

**5.9 Conclusion**

## 5.1 Introduction

The development of the Board of Grievances from its establishment to its modern basis in the Board of Grievances Act 1982 was examined in Chapter 3. Over time, the jurisdiction of the Board underwent a number of significant changes and was vested with various new powers. These included penal jurisdiction in cases such as forgery and bribery, the enforcement of foreign judgments, and an administrative jurisdiction, in cases in which judicial review of administrative actions and the redress of grievances against the administration were sought. However, as noted in Chapter 3, with few exceptions, the Board's decisions were not final.

The Board of Grievances Act 1982 consolidated these developments. The Act describes the Board as a judicial body. Article 8 lays down the Board's competence. Some areas of jurisdiction were completely new, others were taken from the Board and vested in other institutions, an example being its investigative powers, which were vested by the Act in the Control and Investigating Board. However, in general terms, the present jurisdiction of the Board is no more than a reorganization of the Board's pre-1982 powers. As noted in Chapter 3, the present outline of the Board's competence first appeared in a draft resolution of the Council of Ministers, which had contemplated the dissolution of the Board of Grievances and its replacement with a Council of Grievances.[1]

[1] See the Council of Ministers Decision No. 8 of 1967 (1387 AH). See also Chapter 4.

This chapter aims to throw light on the areas of jurisdiction prescribed by the Board of Grievances Act, in order to define the tasks and role of the Board, and also to answer the following questions:

a) What sort of role does the Board have in protecting aggrieved individuals and the public interest from abuse by the administration?

b) When can the Board intervene to control the administration?

c) On what grounds can such intervention take place?

d) What restrictions are there on the Board's powers that could affect its efficiency?

e) What is the effect of the legal environment on the jurisdiction of the Board and how does the Board deal with new and important issues such as sovereign acts, with which the legal environment is not familiar?

In short, this section deals with the power of the Board, when it can intervene and exercise its power, and when it must refrain.

The Board of Grievances has six main functions:

1. Dealing with administrative cases

2. Dealing with penal cases

3. Dealing with disciplinary cases.

4. Enforcement of foreign judgments.

5. Dealing with cases referred to it under special laws and regulations.

6. Dealing with cases referred to it by the Council of Ministers.[2]

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[2] See the Board of Grievances Act 1982 (1402 AH), Article 8.

## 5.2 Administrative cases

Administrative cases are those cases "...where one of the administrative bodies is a party..."[3] The Board of Grievances, according to Article 8 of the Act, has general jurisdiction over every case to which the administration is a party, except those cases which are exempt from its authority as stated in Article 9 (discussed later). According to Article 8, clauses 1 (a), 1 (c), 1 (d), and 1 (e), the power of the Board over administrative cases includes hearing claims from civil servants, power to annul and indemnify, power to hear disputes arising from administrative contracts, and the power to hear disciplinary cases. The Board's authority is clarified in the Explanatory Memorandum of the Act, which states:

> *...the jurisdiction enunciated by the Act is so comprehensive that the Board has attained a general jurisdiction to adjudicate disputes to which the administration is a party, whether such disputes arise out of a resolution, a contract or an event....*

The Explanatory Memorandum goes on to add that:

> *...the general nature of the provision relating to the jurisdiction of the Board over the adjudication of administrative disputes is not limited except by the meaning of Article 9 of the Act, namely the impermissibility of adjudicating applications relating to questions of sovereignty or the*

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[3] See case No. 429/1/Q of 1981, (1401 AH) decision No. 28/86 of 1981 (1401 AH), case No. 2/1/Q of 1981 (1401 AH) decision No. 4/86 of 1981 (1401 AH) and see also case No. 1274/1/Q of 1990 (1410 AH), decision No 121/D/TJ/3 of 1990 (1410 AH).

*decrees or judgments passed by* Shari'a' *Courts with regards to matters falling within their jurisdiction.*

However, contrary to the Act and the Explanatory Memorandum, there are other types of case, not mentioned in the Act, that are beyond the Board's authority. These are examined below.

### 5.2.1 Government employees' claims

According to Clause 1 (a), the Board has the power to hear cases against the Government or against any public corporation wherein the subject matter relates to the rights of government or to any public corporation employees prescribed under the Civil Service and Retirement Acts:

*1. The Board of Grievances shall have jurisdiction to decide the following:*

*(a) Cases related to the rights provided for in the Civil Service and Pension Laws for government employees and hired hands, and independent public entities and their heirs and claimants.*[4]

It is clear from the Act that only those claims and rights that are prescribed under the Civil Service and Retirement Acts come within the ambit of the Board. However, this raises questions on two important points. Firstly, the Act does not mention claims that may be brought before the Board by people working under contract for the government

[4] Article 8 of the Act

or public corporations. Secondly, the Act does not mention members of the military, the police, or other individuals who come within the same category.[5]

With reference to contractual claims by employees, although these employees are bound by contract, unlike other employees whose relationship with the government is governed by civil service regulations, their rights are protected under Article 8, clause 1 (d) of the Board of Grievances Act which refers to:

> *(d) Cases filed by parties concerned regarding contract-related disputes where the government or an independent public corporate entity is a party thereto.*

With reference to the military and others, note that clause 1 (a) of Article 8 of the Act, confers upon the Board exclusive and specific jurisdiction. It states "*The Board of Grievances shall have jurisdiction to decide the following: ...*" This interpretation is reflected in the practice of the Board, in that the Board cannot intervene to try disputes other than those it has been explicitly empowered to try. As a result, it would appear that as the Act does not clearly mention the members of the military forces, or police and security forces, cases involving them cannot be brought before the Board. In reality, however, the Board does hear cases involving such claims[6] by employees against their departments. The number registered with the Board rose from 2,068 in 1989/1990 (1410 AH), which is far in excess of the total of 901 for all other administrative cases registered in the same year.[7] The hearing of cases involving claims against the military, the police or the security authorities has been justified by a member of the Review

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[5] See I. Al-Juhani, "*Al-Qada Al-Idari*" Alryadh, 1984, p.123.
[6] See for example, case No. 799/1/Q of 1983 (1403 AH), decision No. 99/T/3 1988 (1408 AH).
[7] See Appendix

Committee of the board who has pointed out that there is no other judicial channel open to aggrieved individuals to appeal against violations of their rights by these departments.[8] This practice confirms that the Board will extend its power to include issues outside its formal remit whenever the need arises.

There is a lack of clarity and precision in the 1982 Act with regard to jurisdiction over certain categories of cases. The Board's interpretation of its jurisdiction to hear cases involving rights prescribed under the Civil Service and Retirement Acts is such that even the military and police and security members are entitled to bring their grievances against their respective departments, particularly where pension claims are concerned. The Government would appear to have sanctioned this interpretation by the Board.[9] Claims made by government employees involve financial rights such as salary, allowances, rewards and pensions.[10] Such claims are subject to prescription. An individual cannot generally claim his salary if he does not do so within five years of the date of payment.[11] In cases where there is a legitimate excuse, he may bring the case before the Board to prove the excuse that has prevented him from making his rightful claim in time from the department concerned.[12] The number of such cases brought before the Board has been quite high. From 1985/1986 (1406 AH) to 1989/1990 (1410 AH), 1,094 cases were registered with the Board. The Rules of Procedures and

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[8] A. N. Al-Sheail, "*The law and practice of the Grievance Board in the Islamic judiciary system of Saudi Arabia*" LLM dissertation, Warwick University, 1994, pp.30-39.
[9] The government implements the decisions of the Board concerning the pension cases of the military, police, and security members.
[10] See M. Shibat Al-Hamd, "*Al-Wilaya al-Qadaiyah li Diwan al-Madhalim fi Al-Mamlakah al-A'rabiah al-Sa'udiah*" Ph.D dissertation, 1989, pp.606-608.
[11] The Rules of Procedures and Proceeding before the Board of Grievances (1989), Article 2.
[12] See the Council of Minister Decision No. 990 of 1973 (1396 AH). This Decision is still in force.

Proceedings, introduced in 1989, have changed the period of prescription, and there ought to be no more cases of this type in the coming years.[13]

| YEAR | CASES |
|---|---|
| 1985/1986 (1406 AH) | 243 |
| 1986/1987 (1407 AH) | 296 |
| 1987/1988 (1408 AH) | 213 |
| 1988/1989 1409 AH) | 303 |
| 1989/1990 (1410 AH) | 41 |

Claims by government employees

Source: "Case Records"

Other types of claim made by government employees concern promotion, holidays, and appointments. The aggrieved person or persons may, for example, challenge a decision to promote someone if it creates any distinction between individuals of equal status who are thought to be equally deserving of promotion.[14]

This power of the Board resembles the powers of the *Madhalim* Judge in Islam. The *Madhalim* Judge had the power to hear grievances from government officials regarding

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[13] For an example see case No. 1057/1/Q of 1985 (1405 AH), Decision No. 133/T/1 of 1985 (1405 AH) where the complainant stated that he could not claim his salary from the department concerned because he was abroad. The Board decided that this was a legitimate reason.

[14] See F. Al-Dughaither, "*Durus fi al-Qada al-Idari al-Sa'udi*". Unpublished papers (No date), pp.112-113.

their financial rights. The Board of Grievances, however, goes beyond financial matters to include issues concerning holidays, appointments, and promotions.[15]

The Board provides judicial protection for government personnel. It has the power to hear cases brought by aggrieved persons against their government departments, to establish whether the latter have in fact acted in accordance with the law, and the power to establish whether the persons making the claim have in fact had rights violated and have a valid claim. Hence the power of the Board does not stop at deciding whether the decision under challenge is null and void, but goes further to determine whether the aggrieved official is entitled, in the first place, to the right under the law and whether or not there has been failure on the part of the administration to observe this right. The Board performs a double role in respect of this jurisdiction. Firstly, it has the power of annulment and secondly, power to restore the aggrieved official's rights once it is established that such rights exist in law.[16]

### 5.2.2 Power to annul

The Government, including ministries, public corporations and its administrative agencies have at their disposal "special instruments", not available to the public, for carrying out their duties in the public interest. The Government may, for instance, issue unilateral decisions in the course of its administrative activities without the previous consent of the citizen. These decisions are enforceable and applicable to all

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[15] For more information see M. Y. Guraya, "*Judicial System under the Holy Prophet and the first two pious Caliphas*", Lahore, 1982, p.119. And see A. Manzooruddian, "*The Classical Muslim State*", Islamic Studies, 1962, Vol. 1, pp.95-115. See also S. Ulian, "*Qada al-Madhlim fi al-Islam*", 2nd edition, Riyadh: Dar al-Rasheed Linasher wa al-tawze'a, 1980, p.49.

[16] A. Jeerah, "Nidham al-Qada fi al-Mamlakah al-A'rabiah al-Sa'udiah", 1988, p.512.

individuals.[17] The Government, however, is bound to observe the law and it is the duty of the Board of Grievances to ensure that it does so. Article 8 refers to:

> *Cases of objection filed by parties concerned against administrative decisions where the reason for such objection is lack of jurisdiction, a deficiency in the form, a violation or erroneous application or interpretation of laws and regulations, or abuse of authority.*[18]

Whereas Section 5.2.1 above discussed an aggrieved person seeking to restore rights and claims, here he seeks to have the administrative decision quashed on one of the grounds stated in Article 8, clause 1 (b). The Board of Grievances Act itself is not clear on the competence of the Board in this matter. It states that the Board has the power to hear cases challenging administrative decisions, but it does not indicate the remedies the Board might provide, such as the annulment of those decisions. The practice of the Board, however, indicates that it does assume the power to annul defective administrative decisions.

In case No 172/2/Q of 1983 (1403 AH), with Decision of the Review Committee No. 54/T/1 of 1985 (1405 AH), the Board stated clearly that the aim of such litigation:

> *...is directed to the administrative decision itself to control the application of the law and reject any action contrary to law... [In other words] the administrative decision ... is the subject matter in this litigation.*

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[17] A. A. Jeerah, "*Nidham al-Qada fi Madhalim fi al-Mamlakah al-A'rabiah al sa'udiah*" 1988, p.455.
[18] Article 8, clause 1 (b).

When someone challenges an administrative decision before the Board of Grievances, the Board examines the decision to determine whether the administration has infringed the principle of legality. Administrative bodies as well as public corporations are bound to respect any acts, resolutions, and rules in force when they take a decision. Moreover, they are bound to respect the hierarchy of these acts. The constitutional rules, for instance,[19] may not be infringed by any by-law, act, decision or order, and the Board will quash any such decision if it is contrary to the law.

The Board of Grievances Act does not answer important questions as to the scope of the Board's jurisdiction in relation to such administrative cases. In particular it leaves open the questions as to whether the Board can examine the merits of the administrative decision under scrutiny and whether the Board can substitute its decision for that of the administration. It is also unclear whether the Board can order the administration to act or take a different decision In order to answer these questions and to assess both the Board's capability to deal with administrative cases and the extent to which the Board can intervene, it is essential to look briefly at what is meant by 'administrative decisions' and then to discuss the grounds on which one may be challenged.[20]

### 5.2.2.1 The scope of the Board's jurisdiction concerning annulment

The Board of Grievances reviews only administrative decisions. However, what is meant by "administrative decisions"? Are there any decisions excluded from the jurisdiction to annul of the Board?

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[19] See F. Al-Dughaither, op. cit., p.17
[20] A. Al-Fozan, "Diwan al Madhalim fi Dhil Nidhameh al Jaded", *Al-Idarah Al-A'amah*. 1982, p.132.

**a) Administrative decisions**

The Board defines an administrative decision as "…the open declaration of the binding volition of the administration by virtue of its legal power with the intention to create possible and legal effect."[21]

The Board agrees that there should be a declaration of the volition of the administration, but it also regards situations in which the administration does not act or refuses to take decisions which it should take, as administrative decisions despite there being no explicit declaration of the will of the administration. Article 8 of the Act sets this out as a basis for challenging an administrative decision. It reads:

> *It is considered as an administrative decision the rejection or refusal of an administrative authority to take a decision that it should have been taken pursuant to laws and regulations.*[22]

The administration, in this case, should make a decision according to the law but fails to do so. If, for example, the Ministry of Finance and National Economy refuses to act and give an aggrieved individual his legal right, then the aggrieved person can challenge the decision by the Ministry to make no decision regarding the specific matter.[23] In addition to negative or non-decisions, a refusal by the administration to act is subject to review by the Board.

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[21] See Case No. 912/1/Q of 1983 (1403 AH), decision No. 32/T/1 of 1984 (1405 AH).
[22] Article 8, clause 1 (b) of the 1982 Act.
[23] Case No. 736/1/Q of 1980 (1400 AH). Decision of the Review Committee No. 861/T/1 of 1988 (1408 AH).

Decisions that may be reviewed by the Board should be capable of being defined exactly. In principle, they should be administrative, i.e., issued by the administration or by a public corporation thereby excluding all legislative or judicial decisions. However, the problem arises of how to distinguish between legislative and executive (administrative) decisions. In the Saudi Arabian political system, as noted in Chapter 2, legislative and executive powers are in the hands of the Council of Ministers and the King, who are at one and the same time both head of the administration and the legislature. It is not obvious how one is to distinguish between legislative and executive decisions issued by the Council and the King.[24]

It is known that acts or regulations, for example, must be issued by Royal Decree, based on decisions by the Council of Ministers. This means that Royal Decrees, as well as Council of Ministers' Resolutions, are not subject to the power of the Board. This leaves other decisions of the Council of Ministers to be considered, which deal with administrative matters.

It would seem that the Board, in practice, does not presume to review decisions issued by the Council of Ministers, regardless of their nature. According to the Deputy Chairman of the Board, the Board considers them to be sovereign acts over which it has no jurisdiction.[25]

It is submitted that the Board is concerned with the nature of the body which issues orders, rather than the nature and subject-matter of such orders, acts, and decisions. This position would be acceptable if there was a proper application of the doctrine of

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[24] A. Al-Fozan, op. cit., p.137.
[25] See M. Shibat Al-Hamd, op. cit.

separation of powers. This does not apply in Saudi Arabia, which has no separation of powers. Decisions of the Council of Ministers, for example, are not only legislative, but contain decisions which are administrative in nature. It is submitted that the approach of the Board of Grievances needs to be more precise. The Board should set up and adopt criteria for distinguishing between the decisions which are issued by such bodies.[26]

The Board will also not hear cases where the individual challenges an administrative decision which is yet to be sanctioned or approved by a higher authority.[27] Tentative or provisional decisions, therefore, are not subject to the Board's jurisdiction because they are not final.

The decisions challenged should also be issued by a national authority. Decisions issued by other countries or foreign organisations should not be subject to review by the Board.[28] Thus, the decisions of the Gulf Cooperation Council (GCC) or the Islamic World League, which are both located in Saudi Arabia, are not subject to review by the Board.

Finally, the decision involved must not be an internal one.[29] Thus, the Board cannot review any decision which has been issued by a consultative section in any government department, which usually gives propositions in certain matters, because it is internal and does not affect the public interest.

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[26] Ibid.
[27] See M. Ja'far, "*wilayat al-Madhalim fi al-Islam wa Tatbgaha fi al-Mamlakah al-A'rabiah al-Sa'udiah*" 1987, pp.101-102, and A. Al-Fahal "*Diwan al-Madhalim fi al-Mamlakah al-A'rabiah al-Sa'udiah wa al-Qada al-Idari*" Ph.D dissertation, 1990, pp.391-392. And see also case No. 108/1/Q of 1985 (1406 AH), Decision No. 14/T/1 of 1985 (1406 AH).
[28] M. Ja'far, ibid, pp.103-105.
[29] Ibid., p. 104.

**b) Sovereign actions**

In general, the Board of Grievances Act states that the Board has the power to hear cases involving challenges to administrative decisions. However, there are some decisions which are explicitly exempt from the Board's jurisdiction. The Act states clearly in Article 9 that some decisions by government or other bodies are not subject to the Board's authority. Article 9 reads:

> *The Board of Grievances may not hear requests related to sovereign actions, nor objections filed by individuals against judgments or decisions issued by courts or legal panels which fall within their jurisdiction.*

This Article excludes two types of decision: firstly, decisions of administrative agencies which relate to sovereignty (discussed in this section), and secondly, decisions or judgments by judicial bodies (examined in c), below).

A person aggrieved by administrative action relating to the question of sovereignty is not therefore entitled to challenge the validity of that action through the Board. The Board is explicitly prohibited from reviewing such actions. If a case brought before the Board is found to relate to or have some connection with a matter of sovereignty, the Board must not intervene and must refuse to adjudicate on the grounds that the matter is beyond the scope of its jurisdiction.[30]

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[30] A. Al-Fozan, op. cit., p.145.

The concept of sovereignty exclusion is new to the Board, and to the constitutional and legal environment in which it has developed. There was no exclusion of sovereign acts prior to the introduction of the Board of Grievances Act 1982. Moreover, there is no reference to a "sovereign act" in any law or regulation in force in Saudi Arabia today.[31]

The Islamic legal system, from which the Board claims to have evolved, does not acknowledge such exclusion, and does not, in the first instance, recognise these acts. Judges within the Islamic judicial system were allowed to hear and adjudicate any type of case, regardless of its nature.[32]

There is no specific historical reason to explain the emergence of the exemption. A possible explanation may lie in the fact that the Saudi Legislature has been influenced by foreign experience. The Egyptian Council of State, in particular, does not intervene in questions of sovereignty.[33] Article 9 of the Board of Grievances Act, which states this exemption, is similar to Article No 11 of the Law of the Council of State of Egypt 1972. Article 11 reads:

> *"...the Council of State will refuse applications relating to acts of sovereignty".*

Other systems recognise this exclusion. For instance, the French *Conseil d'Etat* does not hear acts of government.[34] In English law also, acts of state are not justiciable.[35]

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[31] See B. Al-Bassam, "*Nadhriyat Aa'mal al-Syadah*", 1988, unpublished Diploma, Institute of Public Administration.
[32] A. M. Ali, "*Mabda al-Mashroa'iyah fi al-Nidham al-Islami wa al-Andhimah al-Wada'yah al-Mua'aserh*", 1984, p.242. See also A. Al-Fahal, op. cit., p.465, and Shaibt Al-Hamd, op. cit., p.778.
[33] See S. Al-Tamawy, "*Al-Qada al-Idari: Qada al-Ilgha*", 1986, pp.387-389, and M. Al-Helw, "*Al-Qada al-Idari*", 1985, p.48.
[34] See L. Brown, and Garner, "*French Administrative Law*", London: Butterworths, 1983, p.100.

Although it is understandable that the administration will attempt to exclude certain of its decisions from review by the courts,[36] it is not proper that this exclusion should be without limitations. In the absence of a specific limitation to eliminate vagueness of interpretation, government, in order to protect any illegal decisions, can claim that they are sovereign acts.

Neither the Act of the Board of Grievances 1982 nor the Explanatory Memorandum defines exactly what is meant by a sovereign act. Nor does it give examples of such acts. Who then has the right to decide which act is sovereign, and which is not, and on the basis of what criteria?

It is submitted that the determination of which act is sovereign and which is not is a judicial function, which rests with the Board.[37] However, the 1982 Act does not mention any criteria. Thus, the lack of criteria by which sovereign acts may be distinguished from other administrative acts allows the Board itself very wide powers to determine such issues, and in consequence the Board would appear to have authority to prevent the administration from abusing its role in relation to sovereignty.

Al-Fozan (1982) has commented that this situation can lead to either the Board extending its power to cover decisions which are in fact sovereign, or limiting its power and using this exclusion to refuse to hear cases that might not in fact be sovereign.[38]

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[35] De Smith, "*Judicial Review of Administrative Acts*" London: Stevens & Sons Limited, 1980, pp.357-364.
[36] De Smith, ibid, p.357.
[37] Al-Fahal, op. cit., p.466.
[38] See A. Al-Fozan, op. cit., p.124.

Despite the absence of guidance in the 1982 Act, the Board has evolved guidelines for the application of this exclusion. To the best knowledge of the writer, there is no case that clearly defines what a sovereign act is. However, a member of the Board has adopted a corporeal criterion based on the subject matter and the nature of the challenged decision.[39] It follows from this that sovereign acts are those issued by the government in the performance of its political function, whereas administrative acts are those issued by the government in the furtherance of its administrative function.[40]

However, the criterion is not peremptory and since political and administrative acts are issued by the same power, namely the executive, it raises again the problem of the distinction between them.[41] As a result, in practice, the Board confuses the two functions. For instance, the Board regards every order issued by the King or Council of Ministers, as a sovereign act regardless of its nature, despite the fact that the High Order, *Al-Amr Al-Samy*, for example, which is usually issued by the President of the Council of Ministers, is of an administrative nature, i.e. performed within the administrative function. The Board in fact contradicts its own criterion. Thus, in cases which challenge Orders issued by the Council of Ministers, the head of the executive, the Board takes the view that because they are usually issued to control and administer government departments and agencies, they are sovereign acts and therefore immune from review by the Board.[42]

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[39] Shibat Al-Hamd, op. cit., p.776.
[40] Ibid.
[41] S. Al-Tamawy, "*Al-Nadhriyah al-A'amah Liqrarat al-Idaria: Dirasa Muqarana*", 1991, p.133.
[42] An example of the application of this doctrine is focused in case No. 631/1/Q of 1985 (1405 AH), Decision of the Review Committee, all members, No. 1/D/M of 1987 (1407 AH). The Board held that the dismissal of a member of the military other than on the grounds of discipline is to be considered to be an act of sovereignty.

Some writers argue that certain acts are sovereign acts. *Al-Dughaither* and *Shaibt Al-Hamd,* for example, say that specific acts such as foreign acts and some internal affairs should be immune from judicial review. Here, foreign affairs are taken to mean decisions made by the Government regarding its relations with foreign countries, such as the making of treaties, the recognition of newly independent states, or the declaration of war.[43] Internal affairs are seen to concern policy making and the taking of vital decisions regarding national security, law and order, and declarations of emergency laws.[44]

There is good reason for excluding external affairs from the jurisdiction of the Board as argued by Al-Dughaither and Shaibt Al-Hamd, for they are concerned with international law. However, there is no argument for excluding decisions taken by the administration in relation to domestic affairs. It is submitted that, bearing in mind the fact that sovereign acts are not justiciable in any court, the administration of domestic affairs should not be considered to be the carrying out of sovereign acts. The existence of discretionary power of the administration, subject to the limits of the law, should be sufficient. The administration would have the power to function appropriately whenever necessary while at the same time the rights of the individual would be protected by the Board against any possible infringement.

Finally, if this principle of exclusion of sovereign acts is to continue, it should be defined and circumscribed so that aggrieved individuals and their legal representatives may seek relief in the event of the administration claiming that its decisions are sovereign, or in the event of the Board refusing to hear cases challenging administrative

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[43] Al-Dughaither, op. cit., pp.40-44; Shaibat Al-Hamd, op. cit., p.776.
[44] Ibid.

decisions on the basis that they are sovereign. Unless the principle of sovereignty is defined and circumscribed more clearly, individuals may be prevented from obtaining their rights and may not be properly protected against government actions. Moreover, such vague exclusions may considerably contribute to the limitations of the power of the Board and subsequently to its efficiency as an instrument at the disposal of individuals to challenge government departments' decisions.

**c) Decisions and judgements of judicial bodies**

According to Article 9, the Board will not hear appeals against the decisions or judgements of the Courts or of any other judicial body. The application of this Article may be seen in case No. 625/1/Q of 1985 (1405 AH), decision of the Review Committee No. 134/T/1 of 1985 (1405 AH), when the claimant challenged a judgment issued by the *Shari'a* Court. The Board dismissed the appeal, noting that:

> *...the Panel makes mention of the fact that the* Shari'a' *judgment which was issued against the claimant is final ... and the Panel has no right to examine it again....*

The reason for this exclusion may be attributed, in the first place, to the fact that the *Shari'a* court is on an equal footing with the Board of Grievances and has the same powers. Secondly, an appeal against a judgement of the *Shari'a* court is already available through the hierarchy of the *Shari'a* court. If a person wishes to appeal against a first instance judgement, he can appeal to the Cassation Court, the *Tamyeez* Court. Thirdly, the Board is given a specific administrative jurisdiction, as stated in its Act, whereas the *Shari'a* court has a general judicial jurisdiction. As a result, any

examination of judgements made by the *Shari'a* court by the Board would lead to a conflict between the two.

Appeals from decisions issued by other bodies given judicial powers are also outside the competence of the Board.[45] According to the Explanatory Memorandum, the Board is not concerned with administrative decisions taken in cases which are heard by a:

> *...Committee formed under a legal provision, a decision of the Council of Ministers or a High Order [an order from the President of the Council of Ministers or his deputies] which stipulates that the decision of said committees shall be final; then such decisions shall be final unless amended in such a way so as to render the adjudication of a grievance there within the jurisdiction of the Board of Grievances...*

These committees include, for instance, Appellate Custom Committees and the Appeal Committee of Disputes created by the Act of Mining, which covers concession contracts.[46] In addition, finality means that decisions issued by these committees are immune from judicial review. Such exclusion can be criticised from the point of view of the principle of legality. Bearing in mind the fact that there is no appeal to a higher authority, which could examine the rulings of these committees to determine whether they have been made in accordance with the law and within the proper jurisdiction, the exclusion of the Board can lead to these committees making decisions arbitrarily and without accountability. On the other hand, in the English legal system, if any statutes

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[45] See case No. 1274/1/Q of 1990 (1410 AH), Decision No. 12/D/TJ/3 of 1990 (1410 AH).
[46] See Al-Dughaither, op. cit., p.114. These bodies are considered to be judicial. For more details about these tribunals see Jeerah, op. cit., pp.198-253.

declare that a decision "…shall be final…" it does not mean that it is not reviewable by court. Rather it is "...final on facts but not final on law...", and therefore the court may examine them[47]

Administrative decisions regarding lands and estates are also outside the Board's jurisdiction. If a dispute about land, to which the administration is a party, is brought before the Board, it is bound to reject the case. These cases came within the jurisdiction of the *Shari'a* court. For example, in case no. 613/1/Q of 1983 (1403 AH), Decision No. 123/T/1 of 1985 (1405 AH), the complainants claimed that the Administration had distributed land which was theirs. They brought their complaint before the Board but the latter rejected the case on the basis that this particular dispute came under the Fallow Lands Act 1968 and such disputes are heard before an ordinary judge appointed by the Minister of Justice.[48]

**5.2.2.2 Grounds for review**

The Board authority to challenge an administrative decision or public corporation must always rest on the grounds stated in clause 1 (b), Article 8, of the Board of Grievances Act.

These grounds are derived from the concept of infringement of the principle of legality by the administration. The administration should observe the law or "the principle of legality," the rule of law as it is known in England. In other words, the acts or decisions of the administration should be legal, otherwise they will be considered contrary to the

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[47] See Case: *R. v. Medical Appeal Tribunal; ex p Gilmore,* [1957] 1 Q. B. 574. And see also H. W. R. Wade, and C. F. Forsyth, "*Administrative Law*", 9th edition, Oxford University Press, 2004, p. 701.
[48] See Royal Decree No. 26 of 1968 (1388 AH).

law. This is what is meant by the principle of legality. The sources of legality in Saudi Arabia are: 1) Shari'a Rules, 2) Acts, 3) Delegated Regulations, 4) The general principles of law, and 5) Ijtehad. Consequently, the power of the Board to review a decision of an administrative body should be based on a proper allegation that the relevant administrative department or public corporation has taken a decision which:

a) is out of its jurisdiction, i.e. lack of jurisdiction or power

b) has a defect in the formal or procedural requirements

c) is contrary to the law

d) contains an abuse of power.

These grounds are examined in further detail.

**a) Lack of power or jurisdiction**

The allocation of jurisdiction and competence between administrative agencies, as well as among the members of each authority, is important. Because of this allocation of power, the work and the performance of the administration should be conducted so that the administrative body acts within the boundaries of its prescribed jurisdiction. Lack of jurisdiction means the taking of decisions by officials or the administrative body which are not competent according to the law.[49] It means that an official who has authority within a certain area of jurisdiction, which is determined by the law, is bound not to exceed the limits of this area. For example, if an administrative department issues a "judicial" decision, which is of course only within the jurisdiction of the courts, the decision will be quashed on the basis of lack of competence. Likewise, if an official

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[49] Al-Fozan, op. cit., p.130. According to Brown and Garner, "...if an official acts completely without authority, his decision will be declared void for incompetence", p.145.

takes a decision on a matter that does not come within his jurisdiction, but falls within the jurisdiction of another person, it will also be quashed on the same grounds.[50]

There are two forms of lack of jurisdiction. First, there is a substantive lack of jurisdiction,[51] as when an administrative agency exercises the jurisdiction of other powers of the state such as the legislative, or when an unqualified person takes an administrative decision.[52] There was one case brought to the Board in which the Board stated that the Act of Fallow Lands determined the judicial body that might decide disputes arising from fallow land, so when the administration took the decision to set up a committee to adjudicate in a dispute between itself and individuals, its decision here was illegal, void from the start. The administration exercised the power of the judiciary where it had no jurisdiction to deal with such matters.[53]

The second form is an insubstantial lack of jurisdiction.[54] This applies when, for instance, one official encroaches upon another's jurisdiction or take decisions on matters outside his territorial jurisdiction,[55] acts after he has been dismissed, transferred, or retired.[56] An example of this is a case brought before the Board in which the aggrieved person, employed at a University, challenged the decision of the Chancellor of the University to dismiss him. The Board held that the disciplinary decision taken by the Chancellor of the University was void, as the Chancellor had no authority to make such a decision according to the Regulations of the University. The Board went on to

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[50] For more detail see Ja'far, op. cit., pp.109-144, and Brown, op. cit., p.130.
[51] Ja'far, op. cit., pp.461-462, and see Helmy, M. Al-qada Al-Idari. 1977, p.134.
[52] Ibid
[53] Case No. 613/1/Q of 1983 (1403 AH), Decision of the Review Committee No. 76/T/1 of 1986 (1406 AH).
[54] Ja'far, op. cit., and Helmy, op. cit., pp.144-147
[55] See case No. 751/1/Q of 1984 (1404 AH), Decision of the Review Committee No. 60/T/1 of 1985 (1405 AH), and case No. 23/2/Q of 1985 (1405 AH), Decision of the Review Committee No. 48/T/1 of 1986 (1406 AH).
[56] Ja'far, op. cit., pp.461-462.

state that such decisions, according to the Regulation, can only be taken by the Disciplinary Council of the University. As a result, the Board annulled the decision on a number of grounds, one of which was that the Chancellor lacked competence.[57]

**b) Defects in the formal or procedural requirements**

Where relevant acts or regulations are set down to determine specific forms or procedures that have to be observed by an administration in the process of issuing an administrative decision, the administration must respect the act or regulations and act accordingly, otherwise its decision will be void.[58] If, for example, the law requires that certain decisions must be written, there will be a defect of form if the administration does not act as required by the law, and its decisions will be void. Or, if the law requires that certain decisions may be issued only after consultation with specific bodies, the administration must seek this consultation; otherwise its decisions will be quashed. Moreover, if the law requires that the administration state the reasons for its decisions, the latter must do so.[59] In addition, the 1982 Act does not give details of the procedural errors that may empower the Board to intervene and quash a challenged administrative decision. This means that the Board has the power to determine the procedural error in form that may lead to the annulment of the administrative decision.

Some procedures which have to be followed by the administration in the process of the issuing of an administrative decision are substantial; such as procedures laid down to

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[57] Case No. 751/1/Q of 1984 (1404 AH), Decision No. 60/T/1 of 1985 (1405 AH). No damages were awarded to the plaintiff in this case. The plaintiff needed another claim for compensation. As in English law, an applicant does not get damages awarded in public law unless there is a private right.
[58] Ja'far, op. cit., pp.115-116.
[59] Ibid., op. cit., pp.562-463.

protect the individual interest.[60] If for example, prior to issuing a decision to dismiss an official, the case has to be referred to the disciplinary panel concerned, and the administration fails to do this, it will lead to the decision being made void when challenged before the Board. This procedure, which is substantive, is imposed as an obligation by the law and the administration is bound to observe it.[61]

Where minor or insubstantial defects of procedure occur, the administration's decision will still be valid.[62] Such minor defects are, usually, stated in the interest of the administration and not in the interest of the individual. For instance, the Regulations of the Saudi Industrial Development Fund (SIDF) state that the SIDF should obtain a financial guarantee from the owner of a project who applies for a loan from the SIDF. If the latter does not comply with this formality, this act will not be illegal because the requirement is one only provided for the benefit of the administration, that is, SIDF.[63]

The importance of procedural requirement lies in the fact that when the law requires a certain procedural requirement from the administration, the purpose is to protect individuals and their rights and interest against the administration, which may abuse its unilateral power, and at the same time to improve the quality of the administrative performance.[64] For example, when an employee was dismissed without an investigation of the facts, and without being given the opportunity to defend himself as the procedures required, the administrative decision was deemed defective and void.[65] The

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[60] Ibid.
[61] See case No. 625/1/Q of 1985 (1405 AH), Decision of the Review Committee No. 134/T/1 of 1985 (1405 AH).
[62] Ja'far, op. cit., and see Al-Fahal, op. cit., p.404.
[63] See case No. 912/1/Q of 1983 (1403 AH), Decision of the Review Committee No. 32/T/1 of 1984 (1405 AH).
[64] See case No. 80/1/Q of 1988 (1408 AH), Decision No. 15/D/F/2 of 1988 (1408 AH).
[65] See case No 751/1/Q of 1984 (1404 AH), Decision of the Review Committee No. 60/T/1 of 1985 (1405 AH).

department concerned violated the right of the person concerned to be heard. However, the administration, in general, is not bound to observe certain procedures or formalities when it takes a decision to act, unless the acts or regulations require it to act in accordance with certain procedures.

**c) Acts contrary to the law**

On the face of it, one may consider that a defect in form or lack of jurisdiction may come within a defect of law. For instance, whenever the law imposes an obligation upon the administration to issue certain decision in a specific manner, such as that the decision should be in writing, the administration has to conform with the law prescribed, otherwise its decisions will be quashed on the grounds of defect in form. Equally, the Board will deem the act to be contrary to the law.

The same applies to the defect of lack of jurisdiction.[66] An administrative body cannot act without jurisdiction, or again if so doing, the Board of Grievances will intervene. However, in the case of the defect of contradicting the law, where the administrative department has jurisdiction and issues the decision properly according to the procedures required by the law, the decision itself may still be contrary to the law if, for example, no rule exists under the law to allow the administration to effect the particular legal consequence of its decision or if the administrative act is in contradiction to the exact requirements of the law. In other words, this defect is directed at the subject matter of the administrative decision and whether or not the result, or the legal effect which the administration has achieved, violates the law or the regulations.[67]

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[66] Brown and Garner, op. cit., p.147.
[67] See Al-Fozan, op. cit., p.130, and see Helmy, op. cit., p.155 and pp.167-170.

It is not, then, a question of the administration possessing or not possessing the authority to do or not, but whether it was, in law, right or erroneous in acting as it did. This defect in fact includes three forms: i) direct violation of the law, ii) error in the interpretation of the law, and iii) error in the application of the law.

### *i) Direct violation of the law*

In this case, the administrative body ignores or disregards the law in force when it deals with or decides a matter in which the law must be observed.[68] The Board here will intervene and quash the decision or act on the grounds that it is contrary to the law. For instance, if a department decides to impose taxes that are not prescribed by law, its decision will be annulled on the basis that the administrative act is contrary to the law. If the Ministry of Health appoints an unqualified person to be a surgeon, this appointment will be invalid, and will be annulled accordingly, on the grounds that it constitutes a violation of the law. Moreover, if the administration fails to take a decision it is supposed to take, the act of failing to take action, will in the first instance be held to be an administrative decision, that is, a negative decision, and will be annulled on the basis that it is contrary to the law.[69] This point may be illustrated by case No. 19/7/Q of 1983 (1403 AH), Decision of the Review Committee No. 88/T/3 of 1989 (1410 AH). In this case, the administration ordered the plaintiffs to work overtime for an hour each day and for sixteen hours at the weekends. Although the minister concerned, and under whose authority the administration functioned, refused to take a decision whereby they, the claimants, could obtain their financial rights, the Board held that the administration

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[68] Ja'far, op. cit., p.122.
[69] See clause 1 (c) of Article 8 of the Board of Grievances Act 1982. See further, Brown and Garner, op. cit., p.147, and Ja'far, op. cit., p.122, and Al-Helw, M., op. cit., pp.402-403.

had to pay the plaintiffs a sum of money for their overtime, and this quashed the Minister's negative decision.

As noted earlier, it may be questioned whether, since the Board was not intended to substitute for the administration and exercise its power or order the administration to take a particular decision, the Board can intervene to order the administration to act?

This issue was not raised in these circumstances, because the Board in this case intervened when the administration refused to take a decision on matters for which the law had imposed the obligation on it to do so. The administration here does not have a discretionary power in order to determine whether it takes a decision or not. The law is clear: if certain facts occur, the administration should act.

***ii) Error in the interpretation of law***

Contradiction of the law may occur not only when the administration does not act according to the law as mentioned above, but also when the administration misinterprets the law.[70] The administration may recognize the law, but it may interpret it in such a way as to be contrary to the intention of the legislature.[71] The situation may occur when the rules are not clear.[72]

The wrong interpretation of the law may be deliberate and can occur when the law concerning the matter is so clear that it is not possible to interpret it otherwise.[73] This

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[70] See Shaibt Al-Hamd, op. cit., p.601.
[71] Ibid.
[72] For example see case No. 736/1/Q of 1987 (1407 AH), Decision No. 86/T/3 of 1988 (1408 AH).
[73] Helmy, op. cit., p.168.

may be a presumption of misuse of power, and as a result, the Board may examine the motives and purpose of the administration behind the wrongful interpretation.

***iii) Misapplication of the law***

It may be also considered as contrary to law in so far as the administration misapplies the law. The Board will intervene to examine the facts on which the administration has based its decision, in order to see whether the facts exist or not. This leads to the examination of the reasons for the administrative decision which leads the administration to act.

The Board defines the reason as "a factual or legal state which induces the administration to intervene with the intention of creating a legal effect in the public interest".[74] For example, if a riot breaks out, it is a factual state which leads the administration to act in order to preserve law and order. Therefore the reason here for the administrative decision is the riot.

The administration is not bound to give a reason for its decision unless the law requires it.[75] If the administration does not state the reason when it has an obligation under the law to state the reason for the decision, the Board will be empowered to intervene and quash the administrative decision on the grounds that the latter has defect in form. However, where the administration is not required to give reasons, there will not only be lack of improvement of quality of decision making, but also the aggrieved person will not be able to know whether it is possible to challenge the decision; and judicial

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[74] Case No. 535/1/Q of 1980 (1400 AH).
[75] Case No. 1141/1/Q of 1985 (1405 AH), Decision of the Review Committee No. 2/D/3/1 of 1987 (1408 AH).

review may be impossible. If the aggrieved person claims that the administrative decision is based on no reason or insufficient reason and he, "the plaintiff" raises strong presumptions about the validity of the administrative decision, then the Board may ask the administration to give reasons for its decision.[76] In one case, the plaintiff challenged a government department which had transferred him to another in a different location. The plaintiff argued that prior to being transferred, he had held a senior position in his department - reason perhaps for the decision by the other officials to transfer him from that position. The plaintiff also claimed that there was no justifiable reason for his transfer nor for why he had been singled out from among the hundreds of officials working with him for transfer. In addition he claimed that as an investigator, his role was important in the fight against corruption and those who benefited from that corruption may well have sought to have had him transferred. The administrative department rejected these allegations and claimed that the decision to transfer the plaintiff had been taken in accordance with the law and was an independent decision. They said that they had used their discretionary powers to arrive at the decision to transfer the plaintiff in the public interest.

The panel which heard the case asked the department concerned to give reasons for using its discretionary powers to transfer the plaintiff. The department replied that the reasons were contained in the (written) decision.

The Board decided that the administration could not be forced to state reasons for its decision and it had the right not to specify them unless the law required it to do so, as every decision has legal reasons which may be deduced from the presumptions surrounding it. Any person who claims otherwise must prove it. However, where the

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[76] Ibid., and Al-Tamawy, op. cit., p.220.

administration states the reason for its decision, as in this case, the reasons will then be subject to review. The Board has to be sure that reasons exist, and if it becomes evident to the Board that the given reasons are not proper or not in existence, it may annul the decision.

The panel went on to say that although the reasons advanced for the transfer was that it was in the public interest, the circumstances that surrounded the case, according to the case file, showed that the administrative decision to transfer the plaintiff was based on reasons other than the public interest, such as the plaintiff's incompetence and his questionable conduct. Thus, the reason for the decision was disciplinary and consequently the challenged decision was not based on any proper reason and was therefore contrary to the law.[77]

The absence of any requirement to give reasons for an administrative decision does not, therefore, mean that the administration has an absolute freedom of decision. The Board has a power to examine the facts on which the administration has based its decision and to decide whether there was, in fact, any proper legal basis on which the administration could act to take this particular decision. The Board has stated that:

> *...the administrative court has the power to review the facts and whether they exist and to assess them in the light of the law. This power of review ... is limited, as a judicial review, to ascertaining whether the conclusion arrived at in the decision is derived from existing sources [facts] or not, and whether this conclusion is*

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[77] Case No. 1141/1/Q of 1985 (1405 AH), Decision of the Third Administrative Panel No. 2/D/3/1 of 1987 (1408 AH)

*properly deduced from these sources. Accordingly, if the conclusion arrived at by the administrative decision is deduced from sources which cannot lead to the same decision or if the adjustment of the facts, on the assumption that they exist, does not reveal the same result achieved by the decision, then the decision is defective because one of its pillars is missing: which is the "reason", and the decision is therefore contradicting the law.*[78]

Therefore the power of the Board to examine the facts involves three matters: ascertaining the existence of the facts, reviewing the legal interpretation of the facts, and reviewing the proportionality of the facts for taking a decision.

**- Ascertaining the existence of the facts**

The Board can extend its power to review the administrative decision to ascertain whether the facts upon which the administration has acted upon are existent or not.[79] This means that the power of the Board does not stop at reviewing the jurisdiction of the administrator or in deciding whether he has acted in due form or contrary to the law, but extends to examining the facts on which the administration bases its own conclusions. If it appears that the administrative decision is based on no facts, the Board may quash that decision. The following case may illustrate this point. The governor of the province of Jazan dismissed an official, "the plaintiff", who worked for him, because he was no longer competent for the post. He based his decision on inferences he drew from a decision made by the *Shari'a* court of Jazan. That judgment as understood by the

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[78] See case No. 535/1/Q of 1980 (1400 AH), Decision of the Review Committee No. 2/86 of 1981 (1401 AH).
[79] Ja'far, op. cit., p.126.

administration, stated that the plaintiff and another person opened fire on a car which passed along a road during the night thereby causing damage to the car. The *Shari'a* court, after examining the evidence, ruled that only the person who was with the plaintiff should be imprisoned for five months. The Board however, stated that the judgment had not sentenced the plaintiff and held that he was innocent because there was not enough evidence against him and, consequently, the conclusion that had been drawn by the governor justifying the dismissal was not based on any established fact. The decision under challenge was therefore illegal.[80]

The Board held that if the facts do not exist, one pillar of the administrative decision is lacking. On this basis, the Board can intervene and annul the decision being challenged.

It should be noted here that the power of the Board to examine the facts is limited to ascertaining whether the conclusion that has been drawn is deduced from facts in existence that could lead to such a conclusion being deduced by the administration. The Board will not intervene and annul the challenged decision if the conclusion on which the administrative decision is based has been drawn or deduced from existing facts which should, on the assumption of their existence, have led to the same conclusion. Otherwise, the Board has the power to quash the administrative decision.[81]

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[80] Similarly, the English legal system requires the existence of certain "jurisdictional facts". An administrative agency or administrator has no power to make certain decisions unless certain facts are existent. See Schwartz, B. *Lions over the Throne,* 1987, pp.127-128, Regina v. Home Secretary; ex parte Khawaja, [1984] 1 A.C. 74, and see also Administrative Justice some Necessary Reforms. Report of the Committee of the JUSTICE-All Souls Review of Administrative Law in the United Kingdom, 1988, p.171.

[81] Case No. 535/1/Q of 1980 (1400 AH), op. cit.

- **Reviewing the legal interpretation of the facts**

On the assumption that the facts behind the complaint are actually true, the Board can still intervene to examine whether the administration has properly appreciated these facts to legally justify a decision.[82] In case No. 15/4/Q of 1987 (1408 AH), Decision of the Review Committee No.138/T/3 of 1988 (1408 AH), the plaintiff claimed that the department concerned deducted a day's salary. The administrative department based its decision on the fact that he was absent on that day. The plaintiff argued that he was on holiday. The Board said that the validity of the disciplinary administrative decision had to be based on valid fact. Furthermore, such facts should constitute error in order that the administration could apply the law to them. The Board, ruling in favour of the plaintiff added that although the fact actually existed, it did not constitute an error because the official was actually on holiday.

It is relevant to note that where the assessment of technical facts is involved, the Board is not in a position to adjust a decision. Thus the Board may not intervene and review factual conclusions of a technical character such as those arising out of medical cases.[83] In such cases, the Board confines itself to ascertaining whether the facts exist or not.

- **Reviewing the proportionality of the facts for taking a decision**

Finally, it should be mentioned here that while the Board has the power to examine the facts according to which the administrative decision has been taken in order to see whether such facts are subject to the law which has been applied by the administration,

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[82] Ja'far, op. cit., pp.127-128.
[83] Ibid

the Board has no power to examine the proportionality of the administrative decision itself. In other words, the Board has no power to examine the significance of the facts and whether they are proportional or expedient with the decision which is based on them. It should be taken into account that the administration is in a position to assess the facts and circumstances so that it can decide whether a decision ought to be taken or not. Despite this, the administrative decision should be based on valid and firm facts which conform to the objectives of the decision.[84]

The Board has stated this clearly in case No. 912/1/Q of 1983 (1403 AH), Decision No. 32/T/1 of 1984 (1405 AH). In this case, the complainant challenged the decision of the administration of the Saudi Industrial Development Fund (SIDF) which had refused to grant him a project loan. He was asked to submit a bank guarantee, a condition which, according to the complainant, was not required of others. Despite the point raised by the complainant concerning the decision, the Board quoted the Regulations which had been laid down to determine how the administration should exercise its power: "...the Fund administration must receive financial guarantee from those involved in industrial projects, equivalent to the amount of finance given by the Fund". The regulations required that the Fund administration should receive satisfactory financial guarantee. But the regulations did not provide details of the nature of the financial guarantee required. The administration had a discretionary power to assess the nature of the guarantee according to the circumstances of each project, taking all the relevant factors into account, and also taking into account what the Fund administration saw as expedient and in the public interest, that being the ultimate purpose of the Fund. The Board adds that the "...Fund is not liable to the control of the Board [in this matter]

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[84] Al-Helw, op. cit., p.437, and Ja'far, pp.128-131.

unless there is an abuse of power". It seems that in this case, the administrative department applied the same criteria as in other cases. Although the Fund is supposed to give equal consideration of cases, it is not under any obligation to treat them in the same way. In other words, it is not a matter of the application of the principle of equality, rather a question of the Fund exercising its discretionary power in the light of the regulations.

The Board's approach of not intervening in proportionality questions, and the assessment of the significance of facts in order to arrive at decision can be explained as follows. Firstly, the administration should have some freedom to assess and weigh certain administrative issues which it is impossible for the judge to do, owing to his being distanced in time, place and circumstance from the facts surrounding the case and from when the administration took that decision. It is impossible to lay down specific rules for each possible case in order to control the administration.[85] It should be given some freedom to manoeuvre in order to deal with new cases which may arise, presenting different circumstances.[86]

Secondly, the Board's attitude may be influenced by the doctrine of the separation of powers. This principle, as has been discussed in Chapter 1, does not apply to the constitution in general, but concerns the relationship between the executive and the judiciary, insofar as the court (judges) will not trespass into the executive domain, and as long as the public authority acts within its jurisdiction. The executive must act in good faith, exercise powers for the purpose for which they were given, and take into

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[85] Cf Davis, K. C. Discretionary justice, a preliminary inquiry, 1977, pp.15-18.
[86] Ibid., pp.20-21.

consideration relevant matters and exclude irrelevant ones.[87] Thus, if the Board attempts to intervene and examine the proportionality of an administrative decision, it means that it assumes a position of authority over the administration concerned, or at the very least it substitutes for that administration in its functions and issues a new decision. The Board itself insists that it has no power to replace the administration or perform its functions.[88]

Although the Board should not intervene to examine the proportionality of the fact and the administrative decision, the Board, in reality, attempts to limit the freedom of the administration by curtailing some of the latter's power by reviewing, for example, the lack of *evident* proportionality between the fact and the decision that has been taken by the administrative department. The Board says that even if the decision is based on facts which exist and which lead to the same conclusion as deduced by the administration, there should be an *evident* proportionality and expediency in the administrative decision.[89] In case No 189/2/Q of 1987 (1407 AH), Decision of the Review Committee No. 100/T/4 of 1990 (1410 AH), a disciplinary case, the Board added that the punishment should be appropriate to the offence committed: it should be just and free from extravagance in severity or diligence in mercy.[90]

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[87] Vile, M. J. C, Constitutionalism and the separation of power, 1967, pp.1-20, and see Foulkes, D. Administrative Law, 1990, 7th ed., pp.4-5.
[88] For example, case No. 912/1/Q of 1983 (1403 AH), Decision of the Review Committee No 32/T/1 of 1984 (1405 AH).
[89] Case No. 189/2/Q of 1987 (1407 AH), Decision of the Review Committee No. 160/T/4 of 1990 (1410 AH).
[90] Ibid.

**d) Abuse of power**[91]

In cases involving the abuse of power, the administration acts in due form, within its jurisdiction and according to the law, but the purpose behind its decision is different from that which the law states or allows. In the French legal system, for example, it will be an abuse of power when "…an administrative power of discretion has been exercised for some object other than that for which power or discretion was conferred by the statute..."[92] This defect tends to appear most when the administration has a discretionary power to act or not to act.[93]

Grounds for abuse of power here are different from other grounds because, as Auby (1970), says

> *The other defects of administrative orders have an objective character; they concern only the elements of the order itself, or the rules which govern it. The abuse of power, on the other hand, cannot be discerned except by examining the subjective motives of the actor.*[94]

Instances of abuse of power may arise, in practice, in many forms. For example, an official may take a decision which serves his own private interests, or which benefits a certain person, or he may be motivated by political considerations.[95]

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[91] For further detail about the abuse of power see Auby, Jean M. "The abuse of power in French administrative law," *The American Journal of Comparative Law*, 1970, Vol. 18, pp.549-563, and Brown & Garner, op. cit., pp.147-150; Al-Tamawy, op. cit., pp.861-936.
[92] Brown, op. cit., p.148.
[93] Al-Tamawy, op. cit., p.863, and Al-Fozan, op. cit., p.131.
[94] Auby, op. cit., p.552.
[95] Auby, op. cit., pp.556-557, and see also Al-Tamawy, pp.873-897, and see Al-Fahal, op. cit., p.412.

Here, the Board's scope of review extends to cover questions of motive and purpose. This "authorizes the judge to examine the actual content of the act of the administration."[96] However, this power is limited, due to the fact that a defect on the grounds of abuse of power is hard for complainants to prove and difficult for the member of the Board to discover.[97] This is because it is linked with the intent of the administration issuing the decision.

The Board can intervene on these grounds when the intent of the administration does not conform with the intent stated by the law. The Board has to determine the intent behind the decision of the department using such presumptions as may assist in identifying it, and then compare the intent of the law in order to see whether or not they are compatible.[98] However, there is an absence of parliamentary debates on legislation from which the Board might infer its purposes from what has been said in the process of the promulgation of that specific legislation or any other *travaux preparatoires*. This increases the difficulty of discovering an abuse of power.[99]

Evidence of the abuse of power may occasionally be reflected in the reason stated for the decision being challenged. Thus, discovering the reasoning on which the administrative decision was based may ease the task of the Board in determining the question of motive. This will be difficult for the Board if the law or the statutes do not require that the administration give reasons for its decisions. However, as stated earlier,

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[96]Brown, N. and Garner, op. cit., p.147.
[97] Al-Fozan, op. cit., p.131.
[98] Shaibt Al-Hamd, op. cit., p.604.
[99] See Brown, op. cit., p.148.

if the Board considers that the assumed reason behind a decision is invalid or in doubt, then it can ask the department itself to provide reason.[100]

The reason may not always help the judge to discover whether or not there has been an abuse of power. The reasons which appear in the decisions or those given by the administration may be relevant and proper, and not in contradiction with the law. The Board will scrutinise all the circumstances that surround the matter of the challenged decision and which may undermine its validity. Such an approach was adopted in case No.1141/1/F of 1985 (1405 AH). The Board panel concluded that

> *...after the examination of the facts of the case, it would appear that there is no proper reason to justify [the administration] transferring the aggrieved person as stated in the decision ...it is evident to the panel that, contrary to the reasons given in the decision, the circumstances and the facts surrounding the issue on which the administration took its decision confirm that the purpose of transferring the aggrieved was not to uphold the public interest but to discipline him.*

The panel went on to note that the disciplining of civil servants should be undertaken according to established procedures.

The Board's practice does come across examples of abuse of power. Case No. 631/1/Q of 1985 (1405 AH), in which all the Members of the Review Committee panels took a

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[100] See case No. 1141/1/Q of 1985 (1405 AH), Decision of the Third Administrative Panel No. 2/D/3/1 of 1987 (1408 AH).

unanimous decision (No.1/D/M of 1978 (1407 AH)), illustrates this area of jurisdiction. The aggrieved person had been accused of attempted theft. He was convicted and punished by an ordinary court. However, as the aggrieved person worked as a policeman in the General Traffic Administration (GTA) which falls under the General Security Department, the case was referred to the Military Disciplinary Council (MDC). The MDC decided to suspend the officer for a month and without his salary during the period of trial in the *Shari'a* Court. However, the president of the GTA believed the MDC's decision to be inadequate. He referred the case to the Head of General Security with a request to dismiss the officer. The Head of General Security agreed and an administrative decision was issued whereby the aggrieved person was duly dismissed.

When the aggrieved officer sought review of the decision before the Board, it held that the decision to dismiss violated the law, because the Department concerned had not followed the prescribed procedures. There was also an abuse of power in that the department concerned had disciplined the person by using an exceptional power which was not vested in it to be used in disciplinary action but only when there was a need to fulfil a public interest. The decision added that punishing a single individual, in the circumstances mentioned in the case, could not possibly be considered in the public interest. Therefore, the official who issued the challenged decision used his power for purposes other than those stated in the law.

### 5.2.3 Power to indemnify

According to Article 8, clause 1 (c), the Board has the power to order compensation to an aggrieved person who has suffered hardship as a result of an act of government or a public corporation. In such a case, the Board may not only set aside the administrative

act, but also award compensation if the quashed decision has led to damage to the aggrieved person. It also means that the administration will be held liable if its acts cause hardship to individuals. This damage or hardship should be evaluated financially.[101] In this respect, the Board will intervene to order the administration to compensate if, for example, there is evidence of any physical damage or financial loss. However, the Board will not intervene if only emotional or mental suffering are caused, neither of which can be evaluated financially.[102] This jurisdiction is based on the omissive liability of the administration. In other words, the fault of the administration which caused the hardship to the individual is not derived from a contract, but is the direct result of the administrative decision or act.[103]

Article 8, clause 1 (c) refers to:

> *...suits for indemnification presented by those concerned to the Government and persons of independent and general character by reason of their acts.*

This Article raises three points. Firstly, indemnification cases may only be persons who have an interest, i.e. persons who have suffered from the act of the administration. Secondly, the Article is, to some extent, misleading because it implies that the aggrieved person should bring his case "...to the Government...", which may be taken to mean that the person should first present his case to the Government in order to obtain compensation directly. In the case of refusal, he may have recourse to the Board,

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[101] Shaibt Al-Hamd, op. cit., p.615.
[102] Ibid.
[103] Jeerah, op. cit., p.466.

which would mean that there should be prior decision from the administration to enable the Board to examine such cases. In France, for example,

> *A right to bring an action for damages against the administration does not occur simply because some event (e.g. the explosion of a munitions dump) has happened; there must first be a decision (such as to pay the victim no damages which he deems inadequate), and it is then against this decision that the victim seeks redress from the administrative judge.*[104]

The question is how does this work in Saudi Arabia? The above mentioned Article 8 might have caused problems before the introduction of the "Rules of Proceedings and Procedures before the Board" in 1989. These Rules have made it clear that there is no need, as a first step, to ask the Government for indemnification. In other words it is not necessary for the aggrieved person to get a decision from a department to seek redress from the Board according to such a decision. Rather he (the aggrieved person) can bring his case directly before the Board.

Finally, the Article states that compensation may be awarded because of the acts of Government or persons of independent and public corporation i.e. damages may be awarded as a result of administrative acts. It implies that there should be fault, damage, and a connection between the fault and the damage, i.e. a causality relationship.[105]

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[104] Brown and Garner, op. cit., p.101.
[105] Shaibt Al-Hamd, op. cit., pp.614-617.

The question may be raised about damages or hardship which may occur to individuals where there is neither fault nor a defective act causing such damages. Brown and Garner (1998), observed:

> *...The activities of the state, even when conducted without fault, may in certain circumstances constitute the creation of a risk; if the risk materializes and an individual is occasioned injury or loss it is only just that the state should indemnify him.*[106]

The Board of Grievances Act 1982 does not mention such jurisdiction with respect to the Board. What it does state is that the Board may intervene and order indemnity for the injured person if the injury happened as a result of an administrative act. However, where the theory of risk is concerned, when there is no fault or defective act, the Board cannot, theoretically speaking, intervene. Yet, according to *Shibt Al-Hamd*, the Board may consider cases where there is no fault from the administration. Here it usually bases its decision on the theory of risk involved in, for example, labour injuries, the construction of roads, and the construction of bridges, which may result in the violation of the individual's rights and occasional damages.[107] This view is questionable. The Board, in practice, has extended its powers to order compensation to cover only part of that theory. In other words, it may compensate for some damages that may occur to individuals but not all. In case No. 81/1/Q of 1986 (1410 AH), Decision of the Review committee No. 66/T/3 of 1989 (1410 AH), the Board stated that

> *[the Review Committee] would like to highlight one of the accepted rules relating to liability of the administration in the process of*

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[106] Brown and Garner, op. cit., p.121.
[107] Ibid., see for example case No. 81/1/Q of 1986 (1407 AH), Decision of the Review Committee No. 66/T/3 of 1989 (1410 AH).

*carrying out public services or projects, in the interest of the public, there is an obligation on the part of individuals involved to bear some of the burden of any insubstantial damages that they may suffer as a result of carrying out such services, provided that the burden is not of such grave consequences that it is beyond the individuals' capacity to bear.*

The French *Conseil d'Etat*, for example, will impose compensation on the part of the administration if a particular individual is injured, even if the activities of the administration were lawful. Unlike French law, it could be inferred from the above-mentioned case that the Board differentiates between substantial and insubstantial damages which may result from a legal act of the administration. This leaves the questions, what are substantial and insubstantial damages, and do they differ from case to case and from individual to individual?

It is submitted that the Board ought to order the administration to compensate injured individuals even for minor damages suffered. The activities of the administration are carried out on behalf of all members of society, and the obligations that may result out of these activities, i.e. damages suffered by only a few citizens, should not be shouldered just by particular citizens.[108] The administration should compensate fully those citizens who bear the public burden.

Compensation may be based on the annulment of an illegal administrative decision which results in damages to the aggrieved person, or on an act by the administration which is

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[108] Ibid.

legal and where the administration is not at fault, for example, in major construction projects.[109]

### 5.2.4 Administrative contracts

According to clause 1 (d) of Article 8, the Board has the power to decide cases involving disputes between the Government or persons of public corporations and others. According to this Article, any contract is subject to the authority of the Board as long as the Government or persons of public character are a party. The Explanatory Memorandum supports this when it says that *"... the (word) contract means an absolute contract, whether an administrative contract in the legal sense or a special contract, including labour contracts."*

This is unlike French and Egyptian law.[110] According to French administrative law, the Council of State makes a distinction between contracts to which the government is a party. There are some contracts which are not subject to the power of the Council of State, despite the fact that the government is a party.[111]

This raises the question as to why the Board has been given this power over administrative contracts.

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[109] Ibid.
[110] Egyptian Law also does not consider all contracts where the administration is a party to be administrative. See M. Helmy, "*Al-Qada Al-Idari*", 1977, pp.284-308.
[111] See Brown, op. cit. p.125.

The reason for this may be that the legislature would like to exclude the *Shari'a* courts from trying disputes arising out of contracts in which the administration is a party.[112] Historically, during the 1960s, the *Shari'a* Court was prevented from hearing any case to which the Government was a party, as a result of a particular dispute over a contract between the government and a contractor.[113]

Although the 1982 Act as well as its Explanatory Memorandum make it clear that all contracts of government come within the authority of the Board, in practice there are exceptions. The Board holds the view that labour contracts between the Government and individuals do not come within the Board's jurisdiction.[114] This decision was based on the fact that the rules stated in the Act concerning the Board's jurisdiction are restricted by legal rules stated in the Labour and Labourers Act (LLA) of 1969 (1389 AH). Moreover, the Decision of the Council of Ministers No. 212 of 1986 (1406 AH) states that disputes arising from government contracts with labourers are not subject to the Board but come within the jurisdiction of the Labour Committees.

The Board's position regarding labour contracts with the Government may be questioned. Firstly, the Board holds the view that the rules of the Board of Grievances Act 1982 are limited by the LLA of 1969. However, this is hardly accurate, because the Board of Grievances Act was issued after that legislation. Clause 1 (d) of Article 8 of the Act gives jurisdiction to the Board without any exception, over all "...contracts to which the government or a general corporate person is party". Secondly, in so far as the Board's position is based on the Decision of the Council of Ministers cited above (No.

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[112] See A. Al- Hussayan, "*The Grievances Board in Islamic Judiciary System and its practice in Saudi Arabia*", LLM. dissertation, Harvard University, 1985, p.41.
[113] For further detail see Chapter 3, and see also, the High Order No. 1049 of 1967 (1387 AH).
[114] Decision of all Members of the Review Committee No. 3/D/M of 1987 (1407 AH) in cases Nos. 186/1/Q of 1985 (1405 AH) 98/2/Q of 1984 (1404 AH), and 118/1/Q of 1984 (1404 AH).

212, 1986), it ignores the important point that such a decision cannot amend legislation. Legislation may only be amended by Royal Decree, *Marsum Malaki*, based on a decision by the Council of Ministers. The Board of Grievances Act 1982 has not been amended. Decision No. 212 therefore cannot exclude any labour dispute or any contract involving government from the jurisdiction of the Board. Although there is a hierarchy of sources of law, as has been discussed in Chapter 2, there is no obvious reason why the Board takes such an attitude except for the tendency of the latter to limit its powers over the administration, when possible.[115]

With regard to administrative contracts, the Board takes the view that it should never try contract cases if the dispute involved concerns the implementation of the contract; for example, if the cost of materials rises during the period the contract is carried out. The Board will only try disputes arising from administrative contracts if there is negligence or dereliction on the part of the Government, such as delay in making the location of the project available, or stopping the contractors in the process of their work. The Board takes this approach from the Decision of the Council of Ministers, No. 818 of 1976 (1396 AH) which limited the power of the Board to the hearing of cases in which there is negligence or dereliction on the part of the Government unless there is permission to do so from the King or from the Council of Ministers.[116]

It is submitted, however, that the Board, in maintaining this exclusion of cases concerning implementation, is acting wrongly. It is based on a decision, i.e., the Council of Ministers Decision No. 818, which has itself been annulled. Decision No. 818 was issued under earlier regulations. In view of the fact that Article 50 of the Act repeals the

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[115] A. Al-Fozan, op. cit.
[116] For example case No. 385/2/Q of 1988 (1408 AH), decision of the Review Committee (First Panel) No. 26/T/1 of 1988 (1409 AH).

old regulations and all "...implementing decisions thereof; ..." the Decision of the Council of Ministers No 818 is also repealed. Clauses 1 (c) and 1 (d) of Article 8 provide for no restrictions or conditions whatsoever on the Board regarding disputes arising out of administrative contracts of whatever nature, including disputes alleging negligence by the Government or delay in honouring a contract in, for example, unexpected circumstances. To argue otherwise is to ignore the terms of clause 1 (d) of Article 8. It is submitted that the legislature aims to confer jurisdiction on the Board in respect of administrative contracts. If this had not been the intention of the legislation, it would have included the content of the Council of Ministers Decision No. 818 in the new Act. Moreover, taking into account the fact that the *Shari'a* court will never adjudicate any case where the government is a party, where otherwise would an aggrieved contractor have recourse to justice? As in the case of labour contacts with the government, the Board seems, with no clear reasons, to restrict its own powers of jurisdiction in order not to intervene and review cases in which a government department is a party. This self-limitation may be ascribed to a wish to avoid clashes with the government.

## 5.3 Disciplinary power

The Board has the authority to hear disciplinary actions brought by the Board of Control and Investigation (BCI) against government employees.[117] This jurisdiction was a part of the power of the Disciplinary Committee, which was dissolved by the introduction of the Board of Grievances Act 1982 and transferred to the Board.[118] In disciplinary cases,

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[117] See clause 1 (e) of Article 8 of the Board of Grievances Act 1982.
[118] See the Council of Ministers decision No. 95 in 1982 (25/6/1402) which contained the draft of the Board of Grievances Act 1982.

the Board applies the sanctions that are stated in the Regulations for the Discipline of Officials.[119]

According to the jurisdiction of the Board prior to 1982, it used to have two specific powers concerning these cases, i.e. investigation and trial. Now, however, the Board of Control and Investigation deals with the investigation of disciplinary offences as well as bringing accusations before the Board against any official or government employee.[120] As a result of this transfer of power, the Board is the body which reserves the right to pass sanctions on accused officials when they infringe the law.

## 5.4 Penal jurisdiction

The Board is vested with the power to try certain crimes, such as bribery. The common characteristic of these crimes is that they are what is called in Islamic *Shari'a* law "*Ta'zir* crimes"[121] *Ta'zir* is a disciplinary punishment for sins (offences) for which there is no prescribed punishment in *Shari'a* and which are not specified in Islamic *Shari'a* as are other crimes.[122] Rather, they are defined as sins only at the discretion of Islamic jurists and scholars and punished in the public interest.[123]

There are different laws issued in relation to these offences. The Board has the power to apply these acts and to pass sentences accordingly.

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[119] See Shaibt Al-Hamd, op. cit., p.646.
[120] See Article 8 of the Act and for further detail on the disciplinary power of the Board see Shaibt Al-Hamd, op. cit., pp.628-650, Ja'far, op. cit., pp.143-146, M. Y. Mustafa, "*Wilayat al-Madhalim: Dirasa Muqarana*", pp.221-227, and Al-Dughaither, op. cit., pp.118-119.
[121] Ta'zir means chastisement or castigation. There are three types of crimes in Islamic Shari'a. a) Hudud or "prescribed punishment" which is determined and fixed, as in the case of adultery and theft, b) Qesas or retaliation and blood money crimes such as murder and homicide, and c) Ta'zir crimes
[122] A. Odah. "*Al-Tshria' al-Jenaay al-Islami Muqaranan bil Qanun al-Wada'iy*", pp.131-133
[123] Ibid.

Before examining the penal jurisdiction of the Board, an initial question must be asked about the Board itself. The Board of Grievances Act 1982 states in its first article that the Board is a "...Judicial administrative body..." Why then does it have penal jurisdiction?

Penal jurisdiction is not new to the Board. It was part of the jurisdiction of the Board before the promulgation of the 1982 legislation and has existed since 1962 when the Anti-Bribery Act was introduced.[124] The Board of Grievances Act 1982 states explicitly in Article 8, clause 1 (f) that the Board has jurisdiction over some penal cases. However, examination of the Explanatory Memorandum suggests that the legislators consider penal jurisdiction to be exceptional and, as it were, appropriated from the *Shari'a* Courts which has the general jurisdiction. The Explanatory Memorandum states:

> *...as the Board is a body of administrative law, then its penal jurisdiction is temporary until the necessary arrangements have been made for the courts to adjudicate such cases in accordance with the judiciary law.*

*Sfeir* (1989) points out that the Saudi legislature considered that it was obliged to lay down such jurisdiction:

> *The Saudi legislature must have acted reluctantly in either case since criminal law matters were and still are the province of he Shari'a courts.*

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[124] See Chapter 3 of this study.

*In fact he found it necessary to justify this action in the Explanatory Memorandum of the law.*[125]

The Act is somewhat vague in this respect. It states that this jurisdiction is temporary and at the same time it leaves clause 1 (f) of Article 8 open for any case to be referred to the Board by the President of the Council of Ministers. As the Board, until now, has not refused such cases,[126] it would appear unnecessary to state that this jurisdiction is temporary. Moreover, if this jurisdiction was intended to have been temporary, it should have been for a short time. The Board has already been vested with this jurisdiction for twelve years, and it had this jurisdiction before 1982 i.e., for more than thirty years, so what does "temporary" in the context of the Act really mean?

A number of different Acts have been passed in which certain crimes and their respective punishments are specified. According to the Act, the Board may try five types of penal case, namely, a) forgery b) bribery c) crimes listed in Royal Decree No. 43 of 1956 (1377 AH), d) crimes specified in the Managing Public Finance Act, and e) crimes defined in different Acts referred to the Board by an order from the President of the Council of Ministers.[127]

As has been noted, some elements of criminal jurisdiction, such as bribery, were under the power of the Board before the introduction of the 1982 Act.[128] However, whereas the Board according to the old regulations had two powers in respect of crimes coming

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[125] George. N. Sfeir, "*An Islamic Conseil D'Etat: Saudi Arabian's Board of Grievances*" Arab Law Quarterly. Vol. 4, part 2, 1989, pp.128-137.
[126] One of the latest additional jurisdictions was conferred by the Act of the Protection of the Public Services (1985).
[127] See clause 1 (f) of Article 8 of the Board of Grievances Act 1982.
[128] See Chapter 3.

within its jurisdiction, namely investigation and adjudication, the new Act excluded the power to investigate from the Board and gave it in the Board of Control and Investigation (BCI).

### 5.4.1 Forgery

The anti-forgery act 1980 (first promulgated in 1960) described those crimes considered to be forgery and prescribed the sentences for each. These are:

a) imitation and forgery of documents or signatures of His Majesty the King or the President of the Council of Ministers, or official governmental documents,

b) imitation or forgery of any stamps or distinguishing mark of any government department,

c) imitation or forgery of documents or making or possessing any equipment moulded for the purpose of imitating or forgery, and

d) forgery of any official documents.

The Board has the power to apply the rules of the above-mentioned Act and to pass sentence. These sentences depend on the crime committed. Sentences range from imprisonment for between one and ten years, or a fine ranging from three thousand to ten thousand Riyals, depending on the particular type of forgery.

### 5.4.2 Bribery

According to the Anti-Bribery Act 1962, amended in 1982, the Board usually deals only with government officials who accept bribes from others. The accused person must be

an official who has abused his position.[129] The Act defines an official subject to this section as a government employee, whether he or she works temporarily or permanently for the government or any public corporation.[130]

The Act also states the form that accepting bribes must take before the official may be punished for the offence of bribery.

If the allegation is proved, the Board may pass sentence, which, depending on the type of bribery, can be imprisonment, a fine, or both. The sentence of imprisonment ranges from one to five years, and the fine should not exceed one hundred thousand Riyals.[131]

### 5.4.3 Royal Decree No. 43 of 1957 (1377 AH)

The common characteristic of the crime referred to in the Royal Decree lies in the fact that the accused person is a government official and the crime has some relationship to his governmental position. This fact leads some authorities to argue that these cases should have been included in the disciplinary cases since they involve government officials.[132] However, this argument overlooks the fact that this Decree covers crimes such as bribery which the Act regards as penal cases and not disciplinary, despite the fact that they involve governmental officials.

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[129] For a more detailed treatment, see Al-Sayfy, A. *Al-Nidham al-Jasaai fi al-Mamlakah al-A'rabiah al-Sa'udiah,* 1987, cited in Ja'far, op. cit., p.160.
[130] Ibid
[131] Ibid., pp.162-163.
[132] See Shaibt Al-Hamd, op. cit, p.688, Ja'far, op. cit, pp.163-164

When the above-mentioned decree was first promulgated, it did not name any judicial body by which its rules could be applied or sentence could be passed.[133] The Government Employees Disciplinary Act, however, stated in Article 49 that the King had a discretionary power to entrust either the BCI or the Disciplinary Committee with the application of the rules of Decree No.43.[134] After a considerable period, the Council of Ministers issued a decision whereby the application of that Decree was the Act vested in the Disciplinary Committee.[135] However, when the Act of the Board of Grievances came into effect, the Disciplinary Committee was dissolved and this area of jurisdiction among others was transferred to the Board (Article 8, clause 1 (f)).

The Decree established eleven crimes with their respective penalties. The Decree, for example, prohibits any official, acting in his official capacity, from mistreating others by torture or appropriating the personal freedom of others.[136]

Some of these offences were repealed by the Anti-Bribery Act of 1962 (1382 AH), such as acceptance of gifts from individuals. Moreover, some cases which the Decree considered to be a crime now come under clause 1 (b) of Article 8 of the Board of Grievances Act. These include where the official abuses his power or refuses to take a decision he is supposed to take. This overlapping could make the allocation of cases difficult as there could be a conflict of jurisdiction between the administrative and penal panels of the Board.

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[133] Shaibt Al-Hamd, op. cit, p.688.
[134] Ibid
[135] Decision No. 677 of 1975 (1395 AH).
[136] See Al-Fahal, op. cit., pp.446-447.

### 5.4.4 Mismanagement under the Public Finance Act 1975

These crimes, as stated in Royal Decree No.77 of 1975 (1395 AH) and amended in 1980 (1400 AH), are associated with the management and abuse of public finance. Thus, if an official misuses or misappropriates public finance, he will be sentenced by the Board of Grievances according to the rules laid down by the Decree.[137] The Board has the power to pass sentence of imprisonment up to a maximum of ten years, or a fine of not more than one hundred thousand Riyals, or both.

### 5.4.5 Criminal cases referred by the Council of Ministers

Clause 1 (f) of Article 8 of the Act states that at the discretion of the President of the Council of Ministers, any penal case concerning crimes that are specified in law may be referred to the Board. However, no specific judicial body is here vested with the authority to pass the sentences prescribed by these Acts.

This means that the President of the Council of Ministers has discretionary power with regard to crimes stated in these Acts, and clause 1(f) of Article 8 opens the door to jurisdiction in respect of the Board. This article

> *...refers to existing and future regulations which designate the Board as the appropriate forum, other than those mentioned in the law. (sfeir)*[138]

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[137] Ibid., p.448.

[138] Sfeir, G., "An Islamic Council D'Etat: Saudi Arabia's Board of Grievances", *Arab Law Quarterly*, Vol. 4, Part 2, p.133.

Accordingly, the Board has the power to try cases brought against those who violate the Regulations of the Accountants Act 1974 (1394 AH), and the Telephone Service Regulations. Indeed these powers were already under the Board's jurisdiction before 1982 and remained under its power after 1982. The Board was again vested with this jurisdiction and recently added to it, with the authority to hear cases against those accused of violation of the Trade Marks Act 1985 (1404 AH) and the Protection of Public Services Act 1985 (1405 AH).

In summing up this brief examination of the penal jurisdiction of the Board, it may be useful to emphasise some of the more significant points. The Board is a body with judicial power to control possible corruption among officials, and to this end it is given the power to pass sentences which may involve imprisonment. Secondly, the common factor of the Board's penal jurisdiction, apart from the fact that the offences are *Ta'zir* crimes, is that the offences are prescribed in laws and regulations issued and codified by Royal Decree and through the due procedures of law making in Saudi Arabia. Finally, although the Explanatory Memorandum stated that these jurisdictions are temporary, the Act leaves it open for more penal cases to be referred to the Board. Further penal jurisdiction has been conferred on the Board since 1982, which must raise a doubt about the "temporary" nature of this jurisdiction.

## 5.5 Enforcement of foreign judgments

According to clause 1 (g) of Article 8 of the Board of Grievances Act 1982, the Board has the power to examine the enforcement of judgments issued by foreign courts. This

jurisdiction was exercised by the Board prior to the 1982 Act in accordance with the Council of Ministers order No.250 of 1960 (1379 AH). However, the previous Jurisdiction of the Board was exclusive in so far as the Board had power only for those judgment which were issued by courts within the member states of the Arab League. The present Act gives the Board wider power to examine any foreign judgments regardless of origin.[139]

The question that may be asked here is why this jurisdiction was vested in the Board, when it might have been thought appropriate to the *Shari'a* Courts, which have general jurisdiction?

Some writers believe that the *Shari'a* Court does not hear applications for the execution of foreign judgements because *Shari'a* Courts will never agree to enforce judgements which are contrary to Islamic Law. As a consequence, the legislature has vested this power in the Board. *Al-Juhani*, for example, confirms that most foreign judgements are not in accordance with Islamic *Shari'a* and as a result the *Shari'a* Courts may "find it difficult to agree to enforce such Judgements". Hence the jurisdiction was vested in the Board.[140]

According to a second writer, the reason for investing the Board with this jurisdiction

> *...is that the Shari'a court does not under any circumstances feel obliged to honor a decree from a foreign country. The Shari'a Court passes judgement according to the Shari'a Law....*[141]

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[139] Ibid
[140] Al-Juhani, op. cit., pp.114-115.
[141] Al-Hussayan, op. cit., p.42.

Both writers have concluded that the Board was empowered with this jurisdiction because *Shari'a* courts will never execute any foreign judgments unless they are according to *Shari'a.* However, regardless of this point, both writers fail to recognize the constitutional framework aspects of the Board. The Board of Grievances, as in the case of *Shari'a* Court, will also reject any foreign judgment if it contradicts Islamic *Shari'a.*

The Chairman of the Board has issued a circular in which he lays down the principles that have to be taken into consideration in the examination of the Board's judgments, one of which is that a foreign judgment under examination should not be enforced if it is contrary to the Islamic *Shari'a.*[142]

Consequently, if a foreign judgement involves *Riba* or usury, it will never be executed.[143] The writer was told that a judgment was brought before the Board which forced the defendant to pay a certain amount of money as interest. However, the claimant, knowing that the Board would reject his case on the grounds that it was in conflict with Islamic Law, waived all claim to the interest and applied for the enforcement of the judgement without interest. As a result, the jurisdiction was accepted as it did not conflict with the rules of *Shari'a,* although the case was finally rejected on the basis of reciprocity.[144]

There would appear to be little point in vesting the Board with this jurisdiction apart from the fact that the Board will apply the rules of the Enforcement of Judgements

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[142] Circular No. 7 of 15/8/1405 (1985).
[143] See Shaibt Al-Hamd, op. cit., p.731.
[144] Conversation with a Member of the Board in the Jeddah branch. The facts of this case were not disclosed.

Agreement of the members of the Arab League and therefore it will not examine the facts of the case again, as a *Shari'a* court would do.[145]

## 5.6 Actions which come under the Board's authority according to special legal texts

"Legal texts" are taken to mean, as the Explanatory Memorandum explains, those laws and regulations which are issued by Royal Decree or order, orders of the Council of Ministers or High Orders. Consequently, the Board has the power try any dispute arising as a result of the application of any law or regulation, as long as the latter states that the Board has the power to do so.

The Board, as explained in Chapter 3, had this power prior to the Board of Grievances Act 1982 and still retains this power, so there are laws and regulations which were issued before 1982 which refer to the Board as the judicial body which may try any dispute arising out of the application of the regulations. However, some further jurisdiction, including the Protection of the Public Services Act 1985 (1405 AH) has been added to the Board.

The most important cases which have been referred to the Board recently are commercial cases. This jurisdiction originally came under the Commercial Dispute Settlement Committee (CDSC). However, in 1987 the CDSC was dissolved and its jurisdiction was transferred to the Board. As a result the Board has the power to adjudicate in all commercial cases between merchants or companies.[146]

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[145] For the procedure for examining a foreign judgement in the Board see Shaibt Al-Hamd, op. cit., pp.712-734, the Enforcement of Judgement Agreement of the Members of the Arab League, and Al-Hussayan, op. cit.

[146] See the Council of Ministers order No. 241 of 1987 (26/10/1407).

According to the records of the Board, commercial disputes head the list of cases with 2,738 registered in 1988/1989 (1409 AH) (i.e. 47%). In 1989/1990 (1410 AH) commercial cases amounted to 1,690 (i.e. 29%). In 1990/1991 (1411 AH) commercial cases totalled 1,976 (i.e. 47.5%).[147]

## 5.7 Cases referred to the Board by the Council of Ministers

Clause 2 of Article 8 of the Board of Grievances Act 1982 reads:

> *With consideration to the rules of jurisdiction set forth by law, the Council of Ministers may, at its discretion, refer any matters and cases to the Board of Grievances for hearing.*

The Council of Ministers, according to this article, has the discretionary power to refer any subject or case to the Board, but this power would seem to be restricted by the rules of jurisdiction which are prescribed by the law. This particular point, however, has been the subject of debate.

*Shaibt Al-Hamd* (1989), who is a Member of the Board of Grievances, argues that the first part of this clause, i.e. "subject to the rules of jurisdiction prescribed legally, …", means that the Council of Ministers may refer any case or subject which does not come within the jurisdiction of the Board according to the first clause of Article 8, but which at the same time may come within the jurisdiction of another judicial body such as the *Shari'a* Court. He adds that with due respect to the jurisdiction of other judicial bodies

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[147] See Appendix 5.

it is still permissible for the Council of Ministers to refer to the Board, in particular, any matter or any case for hearing. The writer goes on to say that it is not possible to interpret this article as if the Council of Ministers had to consider the rules of jurisdiction as prescribed by the law in force. So according to him, the Council of Ministers would be able to refer any case or matter, regardless of whether any other judicial body had this particular jurisdiction.

Objections can be raised to *Shaibt Al-Hamd's* thesis. First, the legislature might have had no intention of giving the Council of Ministers the power which the writer gives it. If this is so, it could mean that two different judgments could effectively be passed in two very similar cases, resulting in a clear violation of the principle of equality of the individual before the law. In certain cases which come within the jurisdiction of the *Shari'a* Courts, it would be unfair and unjust to withdraw a particular case arbitrarily and transfer it to the Board or to any other judicial body. It is highly unlikely that this possibility represents the intention of the legislature.

Second, *Shaibt Al-Hamd's* argument suggests by implication that the executive would have the power to intervene in the work of the judiciary by withdrawing particular cases and directing that they be heard by the Board, thereby ignoring the rules of jurisdiction. However this is, also, highly unlikely. It would mean the executive would infringe the independence of the judiciary.

Finally, if the argument were correct, there would definitely be a conflict of jurisdiction between the *Shari'a* courts which enjoy the original jurisdiction and the Board to which the case is referred.

It is submitted that the clause "subject to the rules of jurisdiction prescribed legally" is intended to mean that the Council of Ministers should observe the rules of jurisdiction when it proposes to refer any case to the Board of Grievances. Case number 1034/1/Q of 1984 (1404 AH) would support this argument. This case concerned a dispute over "bounced" cheques (cheques without sufficient covering funds) submitted by the complainant to the defendant, who were partners. As a consequence, the Committee of Commercial Papers issued a decision whereby it obliged the complainant to pay the amount of money for which the cheques were issued. At the same time, the Commercial Dispute Settlement Committee issued a decision to liquidate the partnership between the two adversaries. The complainant petitioned the King and the Council of Ministers who then referred the case to the Board.

The Board, however, held that the case was outside its jurisdiction, and gave several reasons for the decision, one of which was that it could not deal with commercial disputes.[148] It stated:

> *...hearing disputes between partners regarding a company, its liquidation, and their respective rights, and hearing cases arising from commercial dealings with that company ... falls within the jurisdiction of the Commercial Disputes Settlement Committee in accordance with the regulations issued to that effect:... the Board of Grievances is not permitted to deal with a commercial dispute... as that is beyond its jurisdiction which is specified in its Act. This jurisdiction comes within the jurisdiction of CBSC according to the laws in force issued by the Ruler in this respect. Supporting this is*

[148] This case was heard before the transfer of commercial cases to the Board.

*the fact that when clause 2 of Article 8 of the Act of the Board of Grievances allowed the Council of Ministers to refer whatever subject and cases it deems fit to be heard by the Board of Grievances, it imposes as a condition for that the necessity to respect the lawfully established jurisdiction.*

## 5.8 The legal characteristics of the Board of Grievances

Having discussed the development of the Board of Grievances, its present composition, membership and jurisdiction, the purpose of this section is to examine the legal character of the Board within the judiciary.

It is generally understood that the judicial system in Saudi Arabia is dual. In other words, apart from the *Shari'a* courts there is an administrative court, which is the Board of Grievances. *Al-Fahal* and others hold that the existence of an established and independent body known as an administrative court (i.e. the Board of Grievances) is neither controversial nor does it raise any doubt as to its nature as an administrative court. *Al-Fahal* adds that the Board commands both a distinguished jurisdiction and a special composition. It is neither subject to the Supreme Judicial Council which is at the highest level of the judiciary, nor are its decisions subject to appeal before the Cassation court.[149] *Al-Juhani* (1984), Musa (1982), and *Rasslan* (1989) also argued that the Board of Grievances is an administrative judicature in the full sense of word. They agree that with the establishment of the Board, Saudi Arabia has adopted a dual judicial system.

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[149] Conversation with Dr. A. Al-Fahal and other staff members of the Law Department in King Abdul-Aziz University.

The above opinions, which define the Board as an administrative court, rely on three main factors. First, that the first article of the Act obviates any need for argument and makes it clear that the Board is an "...independent administrative judicial body." In other words, as long as the Act itself has so defined the Board there is no reason to argue otherwise.[150] Secondly, the Explanatory Memorandum of the Act also indicates that the Board is an administrative court. It says that

> *The provision that the Board is an independent body of administrative law is a clarification of its capacity as it exercises judicial functions.*[151]

Finally, the jurisdiction of the Board laid down in Article 8 (clauses 1a, 1b, 1c, and 1d) is indicated without any doubt to be an administrative judicature, with similar jurisdiction to other administrative judicatures in other countries.

However, while these writers admit that there is a conflict between the legal status of the Board as an administrative court and its penal jurisdiction, they argue that the penal jurisdiction is only temporary and that it will be transferred to the *Shari'a* court in due course, as suggested in the Explanatory Memorandum.

Three important points on the legal status of the Board have been overlooked: the historical development of the Board, the nature of its jurisdiction, and the Board in practice.

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[150] Ibid., and conversations with Al-Fahal, op. cit. and with some members of the Board, namely A. Al-Dhalia, and Al-Sea'wi.
[151] See Rasslan, op. cit., p.38.

The Board, as discussed in Chapter 3, had considerable jurisdiction which has become wider over a period of years. During the 1960s and 1970s, and up to the present day, many laws and regulations were laid down by the legislature, the Council of Ministers. The *Shari'a* courts refused to apply these laws and regulations on the grounds that they were not established according to Islamic *Shari'a.*[152] In this respect the Chief Judge said "...the courts of this Kingdom are not bound by any positive law, rather they judge in accordance with what Islamic *Shari'a* orders ...".[153] These circumstances led first to the establishment of judicial tribunals to deal with disputes arising from the application of these laws, and secondly this was followed by the transfer of jurisdiction over these disputes to the Board of Grievances. The jurisdiction of the Board thereby become wider. It could be deduced that the Board was established not only to deal with administrative cases but also to absorb the disputes arising from the application of such laws and regulations, in which cases the Board could not be described simply as an administrative court.

As has been stated earlier, the Board not only hears cases where the administration is a party, but also tries cases between individuals in matters such as commercial cases and the enforcement of foreign judgments. Moreover, clauses 1 (e) and 2 of Article 8 are open for any case to be referred by the Council of Ministers. These cases might not necessarily be administrative.

Regardless of the Explanatory Memorandum of the Act, which would support the argument that the Board is not an administrative court, there are two points which

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[152] Mohammed, M. A. *Al-Tatawwur al-Tashrai fi al-Mamlakah al-A'rabiah al-Sa'udiah*, 1977, pp.118-119.
[153] See Bin Gasim, M.A. *Fatawa wa Rasail al- Shaikh Mohammed bin Ibraheem bin Abdulateef Al-Ashaikh*, 1979, p.248.

confirm that the argument that the penal jurisdiction is only temporary has no basis whatsoever in reality. First of all, apart from being vested in the Board as described above, the Board has enjoyed this jurisdiction for more than thirty years, including twenty years before the actual introduction of the Board of Grievances Act 1982. The Act then confirmed this jurisdiction by stating it clearly in Article 8. Moreover, according to clause 1 (f) of Article 8 there are penal cases other than those which, as stated in the Act, were specifically invested in the Board. Apart from this, the word "temporary" is of little significance so long as the Board still continues to receive penal cases. Overall, therefore, it would appear that the argument that the Board's penal jurisdiction is only temporary has no basis in reality.

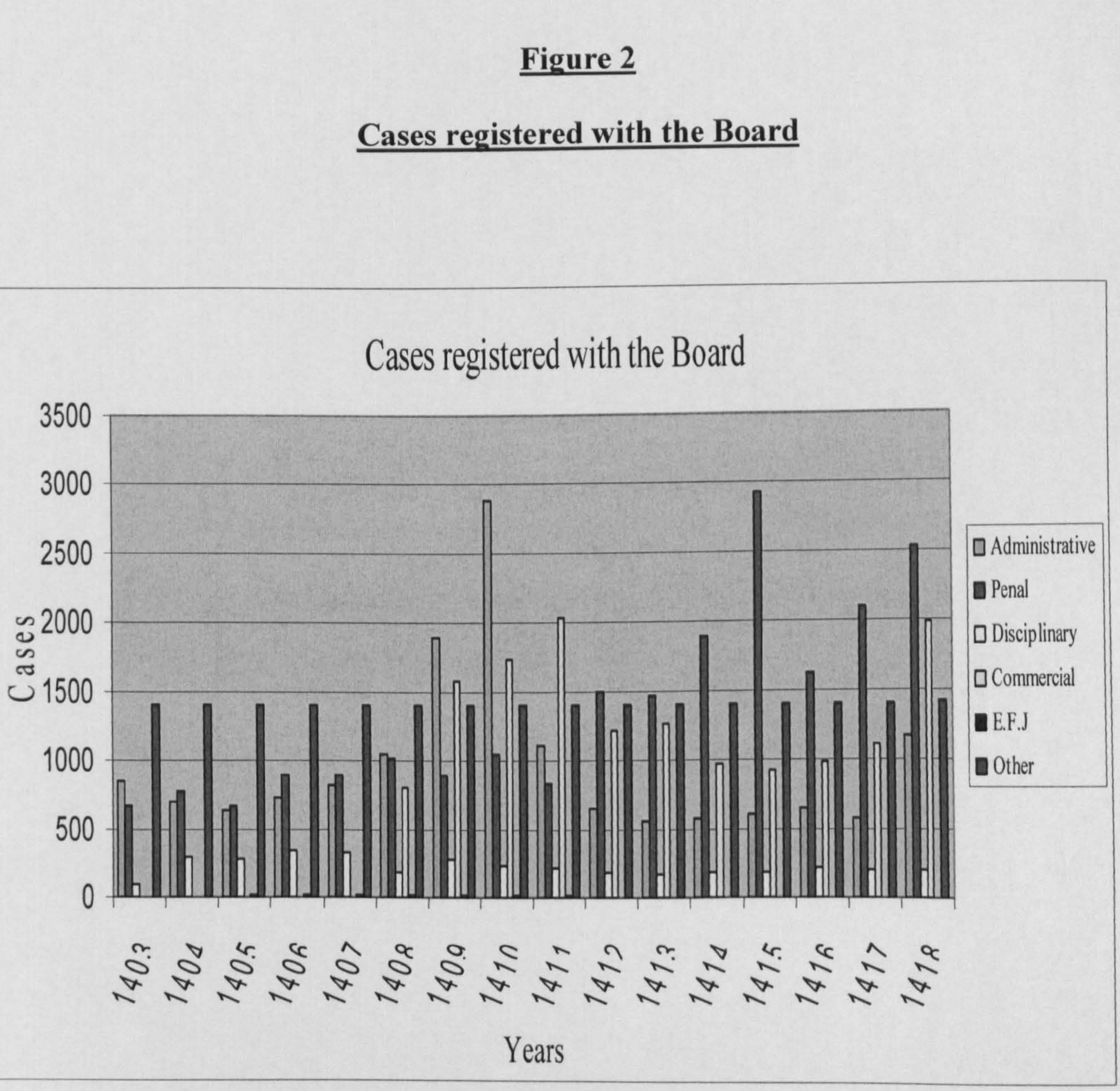
The composition and the structure of the Board contribute to undermining claims that it is solely an administrative court. The Board, as earlier discussed in this chapter, has penal and commercial panels apart from the administrative panels. Therefore, if the Board is to be described as an administrative court, there is no good reason it might not also be termed a penal or commercial court.

Finally, it is submitted that the actual practice of the Board should not be ignored when determining its legal character. The submission that the Board of Grievances is an administrative court contradicts the reality as seen in Figure 5-2 below. The number of penal and other cases registered with the Board in 1984/85 (1405 AH) was 1,073, while the number of administrative cases registered in the same year was 643. In 1985/1986 (1406 AH) the number of penal and other cases was 1,273, while administrative cases were 1,033, i.e. 40% of all registered cases. In 1990 the number of penal, commercial, and other cases was 2,890, while the number of administrative cases was 2,969. The number of administrative cases in 1990 and 1991 does not indicate the true number of

administrative cases, due to the fact that there was one dominant type of administrative case, namely, the retirement of members of the military forces and police. When it was realised that the Board had adjudicated in a case concerning one such case concerning an individual, this resulted in an increase in the number of administrative cases by 2,068. If those cases are excluded from the number of administrative cases, the latter total 902, which is far fewer than the penal and commercial cases.

**Figure 2**

**Cases registered with the Board**



Taking the above-mentioned points into consideration, it would seem that the Board of Grievances is merely an ordinary court in addition to the *Shari'a* courts. However, although it has the power to deal with cases in which the government or its agencies are a party, it still cannot be defined purely as an administrative court. Consequently, there are two judiciaries in Saudi Arabia which have the same features and with their members having more or less the same qualifications: one encompasses the *Shari'a* courts with the Supreme Judicial Council occupying the highest level of its hierarchy, and the other is the Board of Grievances which is directly affiliated to the King.

## 5.9 Conclusion

Having discussed the jurisdictions of the Board there are two important points that should be mentioned here, one of which has regard to the influence of the environment on the Board, and the other is the power of Board to deal with administrative cases.

In relation to the former, it would seem that the constitutional and legal dimensions of the country have their effect on the Board. As has been noted above, the *Shari'a* court does not feel obliged to apply laws enacted by the legislature, that is the King and the Council of Ministers, for the reasons stated earlier. This situation has induced the legislature to find other judicial channels to deal with such acts. As a result, the Board has become the "heir" to these jurisdictions. Moreover, as the legislature and the executive are one body, the latter has wide powers afforded to it to refer cases which are not originally within the Board's jurisdiction. There is an open-ended article, particularly clauses 1 (f) and 2, Article 8, which allows the Council of Ministers to invest the Board with jurisdiction which is not necessarily administrative. In addition, the Board is given the power to deal with non-administrative cases such as penal cases.

Consequently, it could be said that the Board has contributed to the erosion of the power of the *Shari'a*.

This expandable jurisdiction, as well as the non-administrative jurisdiction of the Board, has, in fact, influenced its legal characteristics, as has been argued. This may affect the functioning of the Board in respect of its original jurisdiction, which is dealing with administrative cases. The involvement of the Board with non-administrative cases may lead to less efficiency on the part of the Board in dealing with those administrative cases and this may be reflected in the huge number of other cases the Board has to deal with in comparison to administrative cases (see Appendix 4).

The second point relates to the administrative jurisdiction of the Board as an administrative court. The Board can control the administration in respect of its decisions and acts. It can intervene to examine whether or not an administrative department has really acted in accordance with the law, and in exercising this power, the Board applies certain criteria in order to examine the legality of the challenged decision. The Board can also order the administration to compensate injured citizens who might have suffered as a result of the fault of the bureaucracy.

However, the Board has no absolute control over the administration. The Board cannot order the administration to do something, or to take a decision in certain matters or substitute for the administration and perform its functions on its behalf. However, the Board can order the administration not to carry out its decision in the case of an application for a stay of execution, examined in the next chapter. The administration can also deal with matters without any challenge from individuals and the Board has no power of review over such actions. This occurs when the administration invokes

sovereignty, and here the Board will not intervene at all. In addition, the Board will not intervene in the exercise of discretion by the administration.

However, the Board can intervene in discretionary matters if there is an abuse of power. The administration has the power when making decisions to find facts and apply the law to them. The administration also has the power to assess the facts and the proportionality of making a decision. Nevertheless, the Board can extend its power to review the appreciation of or the balancing of the facts by the administration and, as has been discussed earlier, the Board will quash the challenged administrative decision if it lacks manifest proportionality. The Board will also examine whether or not the facts on which the administration has based its decision are really existent and it will examine the conclusions the administration has drawn from such facts.

In addition, the administration is not obliged to give reasons for its decisions unless the law requires it specifically to do so. Yet, as this chapter has shown, the Board has attempted to restrict the discretionary territory of the administration, and to expand its own power to cover such matters.

In general, the Board showed reluctance in intervening in and reviewing specific cases especially those involving labour contracts with the government and the applications of contracts asking the Board to apply risk theory, which may result in compensation awarded to them against the government. The Board of Grievances Act 1982, as a result, was interpreted by the Board in order to wrongly exclude such important issues. This self-constraining attitude may eventually affect and restrict the Board's power to very limited issues.

# The rules of procedure of the Board of Grievances and its working practices

**6.1 Introduction**

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**6.2.1.1 The complainant's interest**

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**6.8 Review of the panel's judgment**

**6.8.1 Objections and reviews of judgments**

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**6.9 Is it possible to appeal against the final decision of the Board?**

**6.10 Procedural guarantees**

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**6.10.4 The independence and impartiality of the Board**

**6.10.5 Decisions within a reasonable time**

**6.10.6 The language used in the Board**

**6.11 Conclusion**

## 6.1 Introduction

Substantive law requires proper procedures if justice is to prevail. The efficacy of the Board of Grievances depends on the quality of such procedures, as well as on their proper application. Article 49 of the Board of Grievances Act 1982 provided that the rules of procedures and proceedings of the Board would be issued through a resolution of the Council of Ministers. Such rules, however, took about seven years to be promulgated; only coming into force from the beginning of August 1989 (1410 AH).[1] Meanwhile, different panels of the Board complied with procedural rules issued in a circular by the Chairman of the Board.[2] This circular set out general principles for dealing with cases, including hearings, the absence of the parties concerned, and the recording of cases.

The new rules of procedures and proceedings of the Board (hereinafter 'the Rules') are divided into five chapters.[3] The first is devoted to matters relating to administrative cases such as applications for review, conditions prior to application, and preparation of cases. The second chapter deals with penal and disciplinary cases and who can bring an accusation. The third is devoted to the rules governing hearings. The fourth focuses on methods for reviewing the decisions of the Board, and the final chapter deals with general rules.

There are three characteristics that distinguish the procedures of the board from those of other courts and judicial bodies in Saudi Arabia. First, as the Board deals with various types of jurisdiction, the rules provide different procedures for each type. Second, procedures before administrative panels in particular are both inquisitorial and adversarial. This dual character is worthy of emphasis. The

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[1] Resolution of the Council of Ministers No.190 of June 1989 (16/11/1409 AH), see Umm AL-QURA the official paper No. 3266, July 1989 (4/12/1409 AH).
[2] See Circular 3 of 1984 (13/5/1404 AH).
[3] The official title is 2*Ouwa'id al-Murafa'at wa al-Ijraat Amam Diwan al-Madhalim"*

member or members of the administrative panel concerned are not restricted to the documents and claims provided by the parties involved. They themselves play an active role in the conduct of the trial of sessions. Thus, Article 18 of the Rules states that if the defendant (the government department) does not appear before the Board after the second notification, the panel concerned may decided the case and the Rules lay down that the decision will not be a decision in default. The burden of preparing the case for decision, controlling the hearing, and following its progress lies with the members thus reducing the effect of the absence of either party. On the other hand, the procedures before the administrative panels of the board are also adversarial, and the Rules ensure that each party to the cases has the right to submit his rebuttal either in writing or *viva voce* during a session.[4]

A third characteristic of the procedures is that in common with the UK administrative court, the principle medium for the conduct of proceedings before the administrative panels of the Board is in writing, with the exchange of briefs and briefs in rebuttal defining the process. This does not mean that there are no oral exchanges in the procedure. The Rules make it clear that the parties to the case may submit their claims either orally or in writing.[5]

Unfortunately there is no detailed study devoted to the operation of the 1989 Rules of the Board. As far as the writer can determine, only one article has been written on this subject.[6] This chapter is intended to provide a critical examination of the procedures of the Board, in particular the way in which the Board deals with administrative cases. This examination combines both analysis of the Rules

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[4] See Article 19 of the Rules of Procedures and Proceedings of the Board.
[5] Ibid.
[6] See Abu Sa'ad, M. S., "*Qwa ' id al-Ijraat wa al-_Murafa 'at al-Idariah Amam Diwan al-Madhalim*", Al-Idarah Al-A'amah, 1990, No. 68, pp.97-151.

themselves along with information gathered through interviews with members of the Board and lawyers practicing before it.

## 6. 2 Pre-hearing procedures

The rules for the preliminary steps prior to a hearing depend on whether a case falls within the Board's administrative, penal, or disciplinary jurisdictions.

### 6.2.1 Administrative cases

As discussed in Chapter 5, different types of action may be taken against the administration including annulling and indemnifying actions.[7]

In respect of actions of annulment, which aim at challenging defective decisions of the administration on the basis of *ultra vires* or other grounds, certain conditions must be satisfied before the complainant can bring a case before the Board. As noted in Chapter 5, the nature of the decision in question must be properly classified as an administrative decision.[8] Moreover, in respect of indemnifying actions, the claimant must show fault on the part of the administrative department and consequential damage to him. In addition to the jurisdiction conditions, there are three procedural conditions that must be satisfied before bringing any dispute before the Board: the applicant must have a sufficient interest, he must have petitioned the relevant administrative department, and he must have observed the time limit clauses.

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[7] See Chapter Five, Section 5.2.
[8] Ibid.

### 6.2.1.1 The complainant's interest

Complainants should have some connection with the issue under adjudication in order to pursue the case.[9] The complainant should be able to show that the decision under challenge has affected his interest. Accordingly, the complaint can be refused for lack of interest on the part of the plaintiff; if there is no interest, there is no litigation.[10]

What is the position of the Board on the question of litigants' interest? First, it should be noted that a complainant, in claims brought according to clause 1 (c) and 1 (d) of Article 8 (indemnification and administrative contracts cases), should have an interest in maintaining an action against the administration. This is because such cases concern only the aggrieved party or parties personally and the remedy sought will not really affect others. The standing of the aggrieved person in such a case is clear. The impugning decision or action is made directly against him and this is the basis of his standing. In claims by civil servants, such as salary claims, the aggrieved person could challenge a decision directed against him, which has affected his own salary and no-one else's. A contractor also has similar clear standing by virtue of the contract between him and the administration. In one case, No 944/1/Q of 1983 (1403 AH), decided in 1988, when a subcontractor sued the administration, the Board refused to hear the case

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[9] In English Law, for example, the complainant should have "a sufficient connection (sufficient interest) with the matter in issue to qualify him to pursue the remedy", see Administrative Justice: some Necessary Reforms. Reports of the Committee of Justice-All Souls Review of Administrative Law in the United Kingdom. Oxford: Clarendon Press, 1988, p.178.

[10] Ibid., and see in Egyptian law Al-Tamawy, S., *"Al-Qada al-Idari:Qada al-Ilgha"*, 1986, Vol. 1, pp.499-560.

on the grounds that he had no interest because there was no contract between him and the administration .[11]

The question of standing in an annulment action, in which the complaint challenges an administrative decision, raises a question of interpretation of the Board of Grievances Act 1982. Clause 1 (b) refers to "... *Cases of objection filed by [parties concerned] against administrative decisions* ..." The term "parties concerned" is ambiguous and the Act does not offer any clarification. Does this term mean that the plaintiff should have "objective concern" or "subjective concern"? Does the plaintiff have to have a direct interest in bringing a case in the sense that he is directly affected by a decision, or is it enough that he has a general but not personal interest? This is an important issue since it concerns the Board's role, as well as its power to intervene and examine the legality of the actions of government, and generally concerns the scope of its power over the administration. The question of standing or interest is thus closely connected with the Board's relationship with the administration.

There are different views of the interpretation of clause 1 (b). Al-Fozan (1982) states that the term "parties concerned" implies that the right to challenge an administrative decision is limited to those who can show the Board that the challenged decision has affected their interests. However, Al-Fozan also argues that there is no need for the plaintiff to have an interest in the matter under adjudication by the Board. He states that it is permitted for every citizen, whether

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[11] Case No.944/1/Q of 1983 (1403 AH), decision of the Review Committee No. 116/T/1 of 1988 (1408 AH).

or not he has interest in the action, to bring such a case before the Board because, in his view, the annulment action is usually connected with the public interest. The judge himself has a discretionary power to decide on questions of interest and whether or not he can accept them. The writer goes on to say that the expression "if there is no interest there is no litigation " refers to those cases which relate to personal claims and rights which only concern certain individuals and their private interest.[12]

Jeerah (1988) also argues that the term "parties concerned" is general and unrestricted. Consequently, he says, it can be taken to include every person who has interest whatever his relationship to the administration.[13] These writers support the view that the Board should act as a controller.

There is, however, a different point of view, which favours a more restrictive approach. According to Shaibt Al-hamd (1989), a member of one of the administrative panels of the Board, the complainant is required to show that he has an interest in the action. He argues that proving the existence of personal interest in order to get an administrative action review by the Board is fundamental to having an action accepted by the Board. He goes on to say that if a case is registered and the defendant shows that the plaintiff has no direct and personal interest in the case under review, the Board should decide not to accept that particular case on the grounds that there is no interest. Moreover, if the administrative panel concerned discovers that the plaintiff has no interest, it

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[12] Al-Fozan, A., "*Diwan al-Madjalim fi Dhil Nidhamed al-Jadeed*", Al-Idarah Al-A'amah, No. 35, 1982, p.132.
[13] Jeerah, A., "*Nidham al-Qada fi al-Mamlakah al –A'rabiah al Sa'udiah*",.1988, p.456.

should immediately decide not to try the case. Shaibt Al-Hamd bases his argument on the principle that if there is no interest there is no litigation.[14] In the context of the practice of the Board, it would seem that the Board has adopted Shaibt Al-hama's view. It will not admit the liberal approach in relation to standing and the Board will not accept any case if the applicant has no personal interest. Thus in one of the cases decided by the Board, the Review Committee held:

> *...the condition of interest in proceeding with a case is that the claimant should be the one who has the right to claim his case or a legal representative in accordance with rules of attorneyship. The rebuttal of the claimant's interest is a rebuttal to reject the case. Therefore, the panel may activate this rebuttal because it is related to the public policy. For a case to be valid, it should be claimed by a person himself concerned or his representative.*[15]

It may be posited that the question of a litigant's interest is an important determent in respect to the Board's operation and its relationship with government departments. It will in fact determine the boundaries of the Board's powers over the administration. Thus if the role of the Board of Grievances is merely that of a "judge" whereby "disputes" between the administration and citizens may be tried, then the concept of "dispute" presupposes a "narrow

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[14] Shabit Al-Hamd, M., "*Al-Wilaya al-Qadaiyah li Diwan al Madhalim fil Mamlakah al – A'rabiah al-Sa'udiah*", 1989, pp.594-595.
[15] Case No. 944/1/Q of 1983 (1403 AH), decision of the Review Committee No. 116/T/1 of 1988 (1408 AH).

requirement of interest" because the Board will adjudicate a dispute which necessarily requires a party who has interest. In this sense, there will be no litigation without an interest, because the concept of litigation is a concept of dispute. Therefore there will be no dispute without litigation: the two are inextricably related.

If, however, the role of the Board of Grievances is to control government departments, it acts as a "controller" of the acts and decision of the departments, rather than resolving disputes. Therefore, there will be no need for a narrow standing requirement. In this case the role of the Board might be presented as being to enforce the principle of legality upon the government and its department on behalf of the general public.

This distinction between "dispute" and "control" reflect more general problems of public law systems evident elsewhere.[16] Namely, should standing or interest requirements be restrictive or liberal? As discussed below, this issue has led to controversy. In essence, two positions may be contrasted. One seeks to argue that applicants should always have a specific interest. The other argues that courts should be able to intervene in issues of government illegality even when particular applicants do not have a specific interest.

This distinction between "dispute" and "control" is therefore not unique. It was adopted, for instance, by Thio (1971) under two different terms. The first is

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[16] P Cane "Standing Up for the Public" [1995] Public Law. 276, and See for example Thio, S., "*Locus Standi and the Judicial Review*". Singapore, Singapore University Press, 1971.

*jurisdiction de droit objectif.* The role of the judiciary in this case is to maintain "*...the legal order by confining the legislative and executive organs of government within their power in the interest of the public...*". The second is *jurisdiction de droit subjectif.* The aim of the judiciary here is merely to protect the private rights of individuals from illegal violation. As a result, the power of the judiciary is restricted to cases where individual rights are violated. If there is no violation the judiciary cannot intervene. [17]This distinction in judicial roles has been explained by Schiemann (1990) using the concept of open and closed systems.

The requirement for the plaintiff to show that his personal interest is affected by unfavourable administrative decision, i.e. a restrictive or closed system, finds its justification in the following factors:

a) The jurisdiction of judicial review may force the administrative court to examine matters over which it has no "... *special competence and hence are better left to the experts to whom the matters have been entrusted*".[18] In other words judges are not prepared to adjudicate in matters that are not familiar to them. A closed system ensures that judges deal with disputes of the type for which they are equipped to deal.[19]

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[17] Ibid., p.3.
[18] Ibid.
[19] Schiemann, K., "*Locus Standi*", Public law, 1990, p.348.

b) It is a well established judicial principle that a judge cannot start the process of litigation on his own initiative. Thus, if anyone is permitted to challenge the administration on any issue whether or not he has interest distinguishing him from others, he will not be regarded as the "real litigant". It would appear that the judge is bringing the litigation on his own initiative and consequently the judge would be seen to be violating the above mentioned principle.[20]

c) Bringing a case involves financial cost not only to the plaintiff, the court or the administration, but also to general citizens; for substantial cost will affect the public treasury.[21] Moreover, if there is no limitation on judicial intervention there will be an increase in the number of cases registered with the court and subsequent delays in hearing other cases.

d) The requirement of standing as a prerequisite to hearing any challenge to an administrative decision operates to control the volume of cases being brought against the administration and thereby limit the amount of time-consuming or vexatious litigation against the administration.[22]

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[20] Al-Tamawy, S., p.502.
[21] Schiemann, op. cit., p.348
[22] Al-Shobaji, O., "Raqabh al-Qada a ' la Qararat al- Idarah al-A ' amah fi Ingeltera ma' al-Muqarana bi al-Nidham al-Urduuni", unpublished Ph.D. thesis, Cairo University, 1988, pp.427-428.

e) By leaving the door open to everyone to challenge the acts or decision of the administration, officials would be liable to be challenged about their decision at any moment and their work would suffer. Further it is argued that they would tend to concentrate their efforts on protecting themselves from possible judicial challenge.

f) Ignoring the requirement of standing in an annulment action would effectively change the role of the "court" from judicial to administrative.

Another approach supports the *actio popularis* or open system as it is called by Schiemann (or, as defined by Thio, a *jurisdiction de droit objectif*). The justification for the open system may be said to rest on the following factors:

a) An annulment action is an action that deals with the legality of an administrative decision. In other words it is an "objective action" which aims at quashing the illegal administrative act or decision. There is no need therefore for the plaintiff to establish that he has an interest because he does not approach the court for his own interest; he does so in the interest of the public.[23]

b) The aim of an annulment action is to vindicate the principle of legality or the rule of law by reviewing administrative decisions. Consequently, if the plaintiff in an annulment action is refused the

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[23] Al-Tamawy , op. cit.,

right to sue the administration on the grounds that he has no interest in the litigation, it means that the court will not be able to maintain the rule of law and keep the administration within the boundaries of the principle of legality.[24]

c) An annulment action also aims at setting aside illegal decisions or acts, and, at the same time, improving the future performance of the administration by controlling it. If administrators are given to understand that they may be questioned by anybody about their decisions and acts before the court, they will avoid taking illegal decision or acting contrary to the law.[25]

d) As stated earlier, the court will not take the initiative in examining any administrative action. Moreover, the administrators will not "put the court in action" either because they believe that they have acted in accordance with the law or because they believe that they have acted contrary to the law and do not want their action to be publicised.[26] Therefore, it is essential to open the doors of the courts to anyone to challenge administrative decisions which are believed to be illegal.

e) Finally it could also happen that although some individuals have an interest and therefore standing, they will not challenge the

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[24] See Lord Diplock, cited in Schiemann, K., op. cit., p.46.
[25] Ibid.
[26] Schiemann, op. cit.

> administration because of apathy.[27] In such a case, it is not proper to leave the administration unchallenged in the court.

With reference to the Board of Grievances, it would appear that the tension between restrictive and unrestricted requirements of interest will not be settled unless the Board adopts a clear view as to the role it should play. In particular, it needs to decide whether its role is to act principally as a judge adjudicating upon disputes between citizens or whether its role is primarily to control government departments as a protector of the principle of legality.

It is submitted that under the 1982 Act, the question of standing is a matter of discretion. It would appear that the legislature, in using the term "parties concerned", has invested a discretionary power in the Board to decide on this matter. It has not given the Board a list of the criteria or interests which may be taken into consideration to help it determine when to accept a case. It is submitted that since there is no clear criterion the burden upon the Board is to establish its own measures and criteria upon which its discretion is exercised.

The question now is who decides whether a complainant has interest or not? In other words, is the decision supposed to be administratively taken by the Chairman of the Board or his deputy, or is it a legal question for the board panels during a hearing? Neither the Board of Grievances Act 1982 nor the Rules of Procedures and Proceedings determine who has the power to decide this important issue. The practice of the Board is unclear. The Chairman has wide power to examine and assign a case to a panel and to contact a government

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[27] Ibid.

department, but it is not clear whether or not he can reject a case on the grounds that the complainant has no interest. This is an important issue, because if the matter is to be decided by the Chairman, as an administrative matter, the latter's decisions are not subject to review by the review committee (as discussed below) and therefore the claimant may lose his right. But if the issue is a matter to be decided by the Board panels, as a legal decision, their decisions are subject to review.

It is submitted that whatever approach the Board decides to adopt on the question of standing, it is a legal matter to be decided by the Board panels. The Chairman does not have the competence to decide, as he does not have the details of the case as do the Board panels.

### 6.2.1.2 The petition submitted to the department concerned

In some disputes involving the administration, unlike disputes between other parties, the aggrieved person must first ask the department concerned to reconsider its decision. This precondition is applicable only to annulment actions and to civil servants' claims, cases which are included in clauses 1 (a) and 1 (b) of Article 8 of the Board of Grievances Act 1982. Cases involving indemnification and administrative contracts are not subject to this requirement. With respect to indemnification cases in particular, it is unclear why the Regulations do not require the aggrieved person to exhaust such internal administrative channels as are available to him before resorting to the judicial remedy before the Board. Indemnification cases may be divided into two types,

the first being those which arise as a result of a fault on the part of the administration or a defective administrative decision which causes damage. This type of indemnification case is possibly covered by the requirement that the aggrieved party must exhaust internal administrative channels. The second type arises where the administration is obliged to compensate any person or persons injured as a result of actions taken in the public interest and where there is no question of fault or a defective decision that may give rise to a right to compensation. In such a case it is submitted that there is no justification for not requiring the aggrieved party to seek a remedy from the relevant department before resorting to judicial solution, thus putting this type of case on the same footing as others.

With respect to administrative contracts, their exclusion from the need to petition the department in question may be attributed to the fact that a contract, whatever its type, usually establishes a relationship between the parties, each agreeing to be bound by its stipulations and provisions. In other words, the contract is the law of the parties. Moreover, unlike private contracts or other administrative cases, the rules which control administrative contracts are different from those which control other private contracts. As is the case with French law, the administration in Saudi law has the power to amend the terms of its contracts with anybody, as long as its aim is to protect the public interest.[28] Consequently, there is no need for the Rules to specify certain measures to delineate such a relationship, as is the case with other administrative cases.

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[28] Brown, N. and Garner , J. "*French Administrative Law*", 1983, pp.123-4

In an annulment action where the aggrieved person attacks an administrative decision, the department concerned must be petitioned before bringing the case before the Board for hearing. Article 3 states as a prerequisite, that the complainant must petition the administrative department which issued the decision within sixty days. This time limit commences from the date on which the person concerned is notified of the decision. This prior condition is obligatory for any person wanting to challenge an administrative decision and failure to do so may result in the Board refusing to accept the case.

For civil servants' claims, the Rules stipulate certain conditions prior to pursuing a claim before the Board.[29] The claimant must try to satisfy his claim first with the department concerned, within five years beginning from the existence of that right. The department concerned should examine the claim and make a decision regarding it within ninety days. If the department concerned fails to act, or refuses to consider the claim, the complainant must then complain to the General Board of the Civil Service (GBCS), within a period of sixty days, before resorting to the Board of Grievances. The sixty day period should begin from the date of notification of the decision by the administrative department, if the period expires without action being taken by the department concerned. The GBCS should take a decision within sixty days. If the GBCS fails to act within the prescribed time or supports the decision of the administrative department, the claimant then has the right to bring his case before the Board after a maximum period of five months.[30]

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[29] These claims are stated in clause 1 (a), Article 8, of the Board of Grievances Act 1982.
[30] See Article 2 of the Rules.

On the face of it, this requirement appears merely to be a statutory obstacle delaying justice to the advantage of the administration. However, this procedural precondition is important and may, in fact, serve the interest of all parties concerned – the administration, the Board, and the aggrieved person. To be required to reconsider its decision is essential for the administration, since it is the body which carries out public services on behalf of all of society. In the first instance, the attention of the administration will be drawn to the illegality of the decision taken if such is the case, and given the opportunity to reconsider and modify it without resort to judicial means. Second, in cases where a department believes its decision to be legal and without defect, an opportunity is given to it to prepare itself for the consequences of a challenge before the Board.[31] It may for example delay implementing its decision until a judicial solution is secured.

From the Board's point of view, the requirement helps to reduce its case-load and maintain its efficiency.[32] It is undoubtedly desirable that the time of the Board and its panels should not be wasted on adjudicating disputes that could be solved more easily at preliminary stages.

It might seem that the precondition of resort to the department can be of no advantage to an aggrieved individual. Nonetheless, the individual claimant may benefit. As mentioned earlier, there is a chance that the administration may

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[31] Cf Le Sueur, A. P. and Sunkin, M., "*Application for judicial review: the requirement of leave*", Public Law, 1992, pp.102-129.

[32] See case No . 564/1/Q of 1983, decision of the Review Committee No. 96/t/1 of 1985 (1405 AH).

reconsider its "illegal decision" and meet the demands of the aggrieved party, thereby saving individuals the financial cost and effort in going to court.

The advantages to all parties of the petitioning requirement could be enhanced by reforms. The prescribed period within which to petition for an annulment action could be reduced, thereby reducing delay in the process of justice. Moreover there may be undue suffering caused to the aggrieved person if the Board were not to intervene in good time. The Rules appear to be unclear as to whether petitioning the administrative department concerned is required in such urgent cases and there is no clear answer in the practice of the Board. In order to avoid unfair consequences from this requirement, it is submitted that it should not be applied to decisions which require an immediate stay of execution. Bearing in mind the fact that the Board will not decide on the case but will only examine the urgency of the case for a stay of execution and, in the event, use its discretion, it would be convenient for individuals to have direct access to the Board to seek a stay of execution.

In relation to civil servants' claims, the operation of the current petition procedure has a number of shortcomings. First, the various time periods are confusing, making the procedures unnecessarily complex, as a result of which the aggrieved person may easily lose his rights. Second, these conditions may delay the process of justice. The aggrieved person must wait five months to qualify for the right to seek a judicial remedy – a considerable delay. Third, the fulfilment of time periods is also a burden on the Board itself. It has to satisfy

itself that the prerequisites have been fulfilled before a panel adjudicates a case. This may also lead to delay in the adjudication of such cases.

It is submitted that an improvement would result from reducing the periods for petitioning. Moreover, the rules requiring a civil servant to complain to the GBCS lack any clear purpose. Clause 4 of Article 2 of the Rules states that

> *If the decision of the General Board of Civil Service affirms the right of the plaintiff to his claims, and the administrative body fails to execute it within thirty days from the date of notification thereof, the case may be filed with the Board of Grievances within sixty days subsequent to such period, or within the remaining period of the five years stipulated in the first paragraph of this Article, whichever is longer.*

So what need is there for resorting to the GBCS when it has no power to force the administrative department concerned to alter its decision?

### 6.2.1.3 Limitation period for bringing a case before the Board

The Board's Rules state that disputes involving civil servants' claims, indemnity cases, and contractual claims against government departments will not be heard by the Board after a period of five years from the time the right or claim first come into existence. However, the Rules provide that the Board can intervene if the claimant has a legitimate excuse for any delay which prevented him from applying within the prescribed period of time. The Board has the power therefore

to examine the excuse or excuses given by the plaintiff, and to decide whether the excuse constitutes a legitimate one.[33]

In relation to actions where the aggrieved person challenges an administrative decision, the aggrieved, as stated earlier, must appeal to the administrative department within sixty days to reconsider its decision. The department concerned should reply within ninety days of the aggrieved person's application. Should the administration fail to act or refuse to reconsider the decision, the aggrieved person should bring his case before the Board within sixty days starting from the day on which the department concerned refused to act, or when the ninety-day period has expired.[34]

There are thus two situations in which the aggrieved person may lose the right to challenge an administrative decision. The first is when he fails to appeal to the administrative department concerned within the sixty days following the issue of the decision. This means that he will be unable to appeal to the administrative department concerned and that he will be unable to bring his case before the Board, the second is when he actually appeals to the administrative department and it rejects his appeal, and he then fails to appeal to the Board within the sixty days specified in the Rules. Unlike civil servants' claims and compensation cases, which the Board can hear if the plaintiff has a legitimate excuse, the Board here has no power to intervene once the time limit has elapsed. In such a situation, the aggrieved is under undue pressure from the complexity of the

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[33] Articles 2 and 4 of the Rules.
[34] Article 3 of the Rules.

limitation periods and their length that the Rules require. Moreover, the negative consequences of this pressure are intensified, particularly when the aggrieved person is a layman who has no basic knowledge of the law. Therefore there must be doubts as to the desirability of the time limit requirement or, at least, its length.

The limitation requirement, it can be argued, affords immunity to illegal administrative decisions. At the same time it allows any illegality to continue.[35]

Another view holds that the limitation on marking a claim is essential to ensure the stability of the administration's work and procedure and avoids confusion and disorder arising from the quashing of administrative decision after a long period. The Board has held that the time limitation in the case of annulment action is required by public policy. It has stated:

> *It has been established in administrative judiciary that the time limit for annulment action belongs to public policy. When time limits are specified by law, administrative decisions will be non-annullable. This is done only with the highest regard for the public interest which may be realized in the stability of administrative activities ... observing such time limits is a considered part of public policy. Therefore the court or the panel which considers the case should reject the case if a challenge to an administrative decision is brought after the expiry of the prescribed time limit.*[36]

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[35] Cf Schiemann, op. cit., p.342.
[36] Case No . 564/1/Q of 1983 (1403 AH) , *cf* de Smith, op. cit., pp.374-375

This view arose out of a case where a company (the plaintiff) appealed against a number of administrative penal decisions (made against it by a particular ministry) for damage caused to telephone cables. The plaintiff claimed that it was not responsible for the damage to the cables. The fault was that of the ministry, as the latter had not co-operated with the company in locating the said cables before starting the job, although it had promised to do so. Moreover the depth of the cables under the ground was in breach of the law. The ministry rejected the claim on the ground that it was out of time.

The Board refused to allow some of the appeals lodged because the company had challenged them after the legal time limit had expired. The other appeals were allowed by the Board.

It is submitted that the position adopted by the Board is the preferable one. If the decisions of the administration remain vulnerable to challenge at any time the public services and activities which are carried out by the administration in the interest of the public will always be subject to interruption. Further, the administration will always be under pressure from possible legal challenge to decisions that may well have been issued for a long time and which may have become the grounds for further decisions.

However, while this requirement is desirable in principle, it would appear that the period stated by the Rules to enable an aggrieved person to challenge a

defective administrative decision - 60 days – is too short. The invalidity of the administrative decision may appear some time after when the aggrieved person comes to realise that the decision is illegal and may affect his interest.[37]

### 6.2.2 Penal and disciplinary cases

Prior to 1982, the Board had the power to undertake necessary pre-trial proceedings such as the investigation of different crimes like bribery and forgery, and at the same time to adjudicate upon such cases.[38] However, after 1982 the responsibility for proceedings before trial, including investigation and preparation of the indictments, was removed from the Board and vested in the Bureau of Control and Investigation (BCI). Article 10 of the Board of Grievances Act 1982 reads:

> *The Bureau of Control and Investigation shall prosecute before the competent circuit the crimes and offences which the Bureau investigates.*

The reason for this lies in the fact that judicial and prosecutorial functions cannot be vested in one and the same body. The Explanatory Memorandum clarifies this point:

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[37] *Cf* "*Administrative Justice, some necessary reforms*", Report of the Committee of the JUSTICE- All Souls Review of Administrative Law in the United Kingdom, 1988, pp.155-157.
[38] See Chapter Three.

> *...as the functions of the Board of Grievances have, by virtue of this Act, become judicial only, investigation has become [the function] of another independent body ...*[39]

With regard to the appearance of an accused before the Board, the Rules state that the accused must be notified of the date of trial. If he fails to appear he will again be summoned. If he does not appear on this occasion the panel has the power to try the case and take action in default.[40] Furthermore, the Rules give the panel, before whom the case is brought, the right to order the accused to be brought before it;[41] but the Rules do not specify the means by which he may be brought, that is, whether by force or by some other means. However, Article 19 of the Rules implies that in the event of the accused not appearing after the second summons, the Board has the choice of either trying the case and taking a default judgment or compelling the accused to appear before the panel by force.

Finally, it should be noted here that in the event of the death of the accused, the prosecution ceases in those cases, falling within clause 1 (f) of Article 8 of the 1982 Act.[42] In such an event, any monies and financial assets illegally acquired by the accused, however, will be confiscated by the State.[43] This Article raises the question of how the State confiscates monies or financial assets from the accused after his death while he was still a suspect. It may be suggested that the justification for this is to return those monies and financial assets by which the

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[39] The methods by which the BCI carries out its investigations into the right of accused persons in respect of these measures is not examined here as the present study is concerned primarily with the Board of Grievances.
[40] Article 19 of the Rules.
[41] Ibid.
[42] Article 12 of the Rules.
[43] Ibid.

accused became illegally wealthy. This still leaves the question of how the illegality of this wealth could be proved when the accused is dead. The Rules are silent in this respect.

## 6.3 The instigation of cases

In cases to which the administration is a party, the complainant may begin his case by submitting a citation, *Istida'a*, or an application addressed to the Board's Chairman or a person delegated by the Chairman.[44] This means that the *Istida'a,* must be submitted directly by hand to the headquarters of the Board in Riyadh, or by post or telegram.[45] The question here is whether it is also possible to submit complaints to one of the Board's branches if more convenient for the aggrieved person. Theoretically, and according to Article 1 of the Rules, the complaint should be directed only to the Chairman of the Board or to a person authorised by him. This means that the Rules give the Chairman of the Board wide power to authorise any person to deal with this formality. In practice, however, the three branches of the Board do accept complaints from individuals, but they will immediately refer them to the Chairman of the Board who determines how they are to be allocated.

The complaint, as the Rules state, should be brought by "the plaintiff" and generally speaking this can be either a citizen or a legal body. Article 8 of the

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[44] Article 1 of the Rules.
[45] See case No . 252/1/Q of 1988 (1408 AH), decision of the Third Panel of the Review Committee No. 84/T/3 of 1990 (1410 AH).

Board of Grievances Act 1982 defines the plaintiff as having a dispute with the administration or appealing to quash an administrative decision relating either to the right prescribed under the Civil Service and Pension Laws or relating to administrative contracts. In all cases, the implication appears to be that the action is brought by individuals. Can the administration bring cases against individuals and therefore become a plaintiff before the Board? According to the Rules and the Board of Grievances Act 1982, the administration cannot bring cases against individuals and in principle such a possibility should not admitted. The administration is in a strong position *vis-à-vis* administrative matters. It can take decisions unilaterally without consulting the citizens affected. Moreover, in the case of administrative contracts, for example, the administration can alter the terms and has discretionary power to do so insofar as it serves the public interest and provided that it gives proper compensation to the contractor. As a result, it would seem that the administration has no need to act as plaintiff. However, occasionally the administration has initiated action against an individual.

The author has come across three cases of this type, two of which were brought initially to the Board for consultation; these were later registered as cases against individuals.[46] In the first, the claimant had asked the relevant government department to pay him his salary for ten months in which he was absent from work. As the time limit for making a claim had elapsed the head of that particular department asked the Board for its views on the matter. The Board registered the matter as a case and held that the claimant was eligible to receive his salary for

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[46] See case No.1057/1/Q of 1985 (1405 AH), decision of the First Panel of the Review Committee No. 133/T/1 of 1985 (1405 AH); 1nd Case No . 42/2/Q of 1982 (1403 AH), decision of the First Panel of the Review Committee No. 63/T/1 of 1985 (1405 AH).

the period claimed. In the second case, the administrative department paid the claimant his salary which the claimant had not claimed for more than two years and long after the time-limit had elapsed. This decision came to the attention of the General Control Board (GCB) which is concerned with financial control of the state. This Board asked the government department to refer the matter to the Board of Grievances for its opinion.

The third case was against a foreigner who was not resident in Saudi Arabia. This person had a contract with a government department which he had failed to carry out. The department brought an action before the Board. As the other party was a foreigner who lived abroad and the project had to be carried out abroad, the administration had no power over the other party. In this instance the administration could act to secure its right either to bring the other party before the Board or, if he did not appear, to at least obtain a default action which might be implemented in the country where the defendant resided.

As the complaint must be brought by *Istida'a* or action it should be written, as the Rules require. The Rules state that the complaint or citation should include information about the plaintiff and the defendant. In other words, the complaint should specify the parties to the case, their authority and their addresses.[47] The complaint should also state the subject matter of the litigation. The Rules, however, do not state how detailed the statement should be, or whether there should be a full statement of the facts and the law, or whether any documents relevant to the case should be filed. In practice, however, the *Istida'a* contains at

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[47] Abu Sa'ad , op. cit., pp.101-102, and see Article 1 of the Rules.

a minimum, the grounds for the complaint, the damage that has occurred, and what sort of remedy the complainant is seeking from the Board.[48] Where the complaint relates to civil servants and pension rights, the *Istida'a* should contain the date on which the aggrieved person appealed to the administrative department concerned to obtain his or her rights, and the result of that appeal.

If the aggrieved person is asking for the annulment of an administrative decision affecting him, his complaint should contain the date on which he petitioned the administration asking it to reconsider its decision.[49]

### 6.3.1 Stay of Execution

As a general rule, the implementation of an administrative decision will not be restrained simply because it is challenged before the Board.[50] However, the panel may order a stay of execution by the department. It can also issue an urgent and temporary precautionary measure within twenty-four hours of an urgent application from the plaintiff or as soon as the case is referred to it. This procedure will be initiated whenever the panel feels that a suspension is necessary and implementation of the decision would case irreparable damage and effects on the plaintiff.[51] As far as the writer is aware, no application of a stay of execution has yet been made in practice.

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[48] Review by the writer of some *Istida'a* to the Board, see Mahassni, H. and Grenley, N. F., "*Public Sector Dispute Resolution in Saudi Arabia's Administrative Court*", The International Lawyer, 1987, Vol .21, No.3, pp.836-837.
[49] Article 1.
[50] Article 7 of the Rules.
[51] Ibid.

### 6.3.2 Allocation of cases

The Rules of Procedures do not contain details as to the allocation of cases among the different panels of the Board. This power is vested in the Chairman of the Board. The Rules add that the Chairman will allocate a registered case to the panel which is located in the territorial area where the headquarters of the administrative department concerned is situated.

In practice, the Chairman of the Board, in exercising this power, acts through an office called "The Chairman's Office" which consists of secretaries and other staff. As soon as the case is referred to the Chairman's Office it is registered in a "Cases Record ". An "Allocation Card" is completed for referral to one of the Board's panels and the Chairman of the Board or his deputy then approves the allocation. The Rules give the Chairman a discretionary power to allocate cases and this is only limited by circulars that define some of the grounds for allocation.[52]

In practice, apart from the territorial jurisdiction of the administrative panels, the allocation of cases takes into account the question of subject matter. There are general administrative and subsidiary panels, each type invested with particular jurisdiction. For example, the general administrative panels, consisting of three members each, have authority to deal with cases involving large amounts of money, whereas the subsidiary panels deal with cases involving lesser amounts.[53]

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[52] See Circular 11, of 1985 (1406 AH).
[53] See Circular of the Chairman of the Board, No .11 of 1985 (1406 AH).

As the Rules lack a well-defined method of allocating cases and as there are more than five thousand cases registered with the Board every year,[54] it would appear essential that proper rules be laid down regarding allocation in order to improve the work of the Board. Although abuse of power has not occurred, the current practice of the Board in relation to allocation could invite abuse. Apart from this, the improper allocation of cases to panels that do not have jurisdiction could occur and in such cases there would be delay in adjudicating.[55]

In order to improve the procedures within the Board and the same time reduce the risk of error in the allocation of cases, it submitted that there should, first of all, be a panel consisting of some experienced members whose function it is to examine a case, without looking too deeply into the facts or law, and then to allocate it on the basis of the information available in the case file. Secondly, there should be some explicit criteria on which to base the allocation.

The Rules do not specify any time limit between the registration and allocation of cases. In practice this may take anything from one day to several months. For example, in case No. 564/1/Q of 1983 (1403 AH), decision of the Review Committee No. 96/T/1 of 1985 (1405 AH), the period between registration of the *Istida'a*, and allocation took only two days, from 7/3/1983 to 9/3/1983. In another case, however, it took four months.[56] The reason for such variation is attributed to the fact that the Chairman or his deputy will initiate contact with the

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[54] See the Appendix.
[55] See for example decision No. 121/D/TG 13 of 1990 (1410 AH), case No. 1274/1/Q of 1990 (1410 AH).
[56] See case No . 1161/1/Q of 1985 (1405 AH), decision of the Review Committee No. 53/T/1 of 1986 (1406 AH), the case was registered on 30/07/1985 (12/11/1405 AH) and the allocation was on 24/11/1985 (11/3/1406 AH).

administrative department in order to provide the Board with any relevant documents or information before referring the case to the panel concerned.[57] This procedure is improper since a panel has the duty to prepare a case for adjudication, and it can cause delay in referring to a panel.

### 6.3.3 Penal and disciplinary cases

Penal and disciplinary cases are brought by the Board of Control and Investigation (BCI). The indictment should contain the name of the accused person or persons, their positions, addresses, the accusation made against them, the place of crime, evidence of accusation, and the law that the BCI would wish to have applied.[58] The case will then be registered. After, as in administrative cases, the Chairman or person authorised by him will allocate the case to one of the various penal or disciplinary panels.[59]

## 6.4 The preparation of the case

Article 1 of the Rules states that the panel in charge of a case can request assistance in its preparation from specialists. This raises question about the Article and its application in practice. First, what is meant by "specialists" and

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[57] Interview with the Deputy Chairman, 18/1/2007 and 9/2/2007.
[58] Article 8 of the Rules.
[59] Applications for enforcement of foreign judgments have the same procedure as administrative cases. See Article 8. Furthermore, it should be noted that the Rules do not mention commercial cases.

secondly, what exactly is meant by "the preparation of the case"? Is it preparation for the hearing or for the final decision?

The Deputy Chairman of the Board, referring to the actual practice of the Board, argues that "the preparation of the case" refers to preparation for the final session of the hearing, that is the sessions at which the final decision of the panel is made. The specialist must be a member of the Panel. In preparing the case the member of the panel writes to the relevant government department asking them to provide him with evidence and document relating to the case. He hears both parties and enters into the record any oral or other evidence taken at the hearing. Finally he gives all other members of the Panel a copy of the dossier of the case to examine and prepare for the final session of the hearing and for the final determination. These final hearing sessions in which the members of the panel as well as the parties of the case are present are those which are referred to in Article 15 of the Rules. This states that all members of the panel must be present at the hearing sessions.[60]

It is submitted that this approach involves the application of a wrong interpretation of the Rules of Procedures and Proceedings. First it does not distinguish between the preparation of a case and its hearing. In fact it confuses the two. For instance, taking evidence and hearing the parties to the case should be undertaken during a hearing session at which all the members are present and should not be undertaken during the preparation of the case. A second

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[60] Interview with the Deputy Chairman of the Board, op. cit.

questionable aspect is the interpretation of "specialist" as one of the panel members. The Rules state that "....*the panel concerned can get assistance from one of the specialists to prepare the case under its supervision*". The Article clearly implies that the panel can seek assistance from a person outside the panel itself. This approach would appear clear and evident when a panel which consists of a single member requests assistance. In such a case, the specialist could hardly be the panel member himself. It is submitted that the specialists mentioned in Article 1 refer to the advisers who are attached to the Board and who have experience in administrative law. As discussed in Chapter 4, some of the Board members are not experienced in administrative law or in the day to day working of the Board of Grievances. Advisers, who are drawn from the Egyptian Council of State, are available to assist such Board members with any legal question that may arise. They should represent the "specialists" referred to in the Rules.

It is submitted that "the preparation of the case" in Article 1 of the Rules refers to the preparation of the case prior to hearings. The purpose of this stage is to examine the plaintiff's application and declaration in order to clarify any ambiguity or vagueness in the application and to examine the subject matter of the case to see whether it falls within the jurisdiction of the panel. This stage may also include notifying the department concerned and checking whether the plaintiff has followed the requirements or not, such as petitioning a particular department. The view of the Deputy Chairman of the Board on the nature of the preparatory stage of a case is not supported by the Rules.

When a case is referred to the administrative panel, the President of the panel should fix a date for the hearing and notify both parties concerned. The period between notification and the date of the first hearing should not be less than thirty days.[61]

Unlike the procedures before 1989, the Board must notify the department with which the plaintiff has the dispute and the Ministry of Finance and National Economy (MFNE), the General Control Board (GCB), and the General Board of Civil Service (GBCS) in cases involving disputes over civil servants' rights.[62] Most of the administrative cases involve financial matters and as such concern both the department involved and also the other departments that deal with financial matters within the state. This Article has lead to some controversy. In interviews with the author, some lawyers state that they believe that imposing such conditions will lead to delay in hearing cases by the Board as there will be four different parties involved and the administrative panel will not hear a case unless all the parties are present.[63] Consequently, it has been argued that the procedures should be changed in favour of an arrangement whereby the departments concerned meet before with the administrative department against whom the case is brought and this department alone should attend the Board hearing.

However such a change is unlikely to be acceptable to other departments concerned with the final implication of any decision by the Board. Thus, in an

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[61] Article 5 of the Rules.
[62] Ibid.
[63] Interviews with T. Al-Ibraheen. on 7/12/2006. Jeddah.

interview with the author, the president of the Legal Affairs Department in the MFNE pointed out that some departments are not as eager as others to defend the position of the administration.[64]

A solution to the problem may lie in the creation of a single government agency to deal with all cases before the Board of Grievances to which the administration is party. All department concerned, such as MFNE, would be represented by this department. This solution would ease the task of the Board and, at the same time, the administration would be adequately represented. In addition, a body of trained and experienced staff would develop which could deal with cases before the Board. A possible disadvantage is that there might still be delay in dealing with cases as the new agency would still need to check and examine the position of the administrative department involved in the case under adjudication.

## 6.5 The hearing

As already noted, the Rules require that all the members of the panel must be present throughout all sessions that make up the hearing. According to Article 15 of the Rules, a session of the panel will be invalid if any of the three members is not present. If one member fails to attend the session for any particular reason another member from another panel should be appointed. This rule of course, applies only to those panels which consist of more than one member. It is not applicable to subsidiary panels composed of a single judge. The practice,

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[64] The president of the Legal Affairs Department showed the writer some counterclaims of the administrative department to prove the need for the member of the fourth administrative panel.

however, is different from the theory. Once the President of certain panels receives a case he assigns a member to deal with this case from the members of the panel. This member, contrary to what the Rules stipulate, will be the sole member in most sessions of the case. During the discussion of the facts and the law, however, and when taking the final decision, all three members of the particular panel are present.

The incompatibility of the Board's practice with the rules in force is explained by some members of the Board as a consequence of the large number of cases referred each year, in addition to a backlog of cases.[65] The work load makes it very difficult to implement the Rules properly.

However, if the Rules were properly adhered to, the problem would be less severe. As already noted, the Board is confusing the preparation of a case with the hearing, the consequence of which is that the Board's practice operates differently from the Rules. Distinguishing clearly between the preparation and hearing of cases would save the panel time and might reduce the length of the actual hearing sessions.

In the course of both hearing and preparing a case for a final decision, panel members play an active role. Because of the Board's inquisitorial nature in relation to administrative cases, the Board has the right to pursue its own investigation of facts and law, and not simply rely on the briefs or arguments of

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[65] Conversation with the members of the fourth administrative panel.

the parties involved.[66] Should the defendant department fail to appear before the panel after the second notification, adjudication can proceed on the case and a decision be reached despite the absence of a party.

The procedures are also adversarial insofar as each of the parties has the chance to address the panel and to contradict other parties in oral submissions.

According to Mahassni and Grenley (1987), there are no special rules or procedures governing the exclusion, suppression, or discovery of evidence.[67] The new Rules are silent on rules of evidence. The law of evidence applied by the Board follow the general rules as practised in the ordinary courts.[68]

When the hearing starts, the secretary of the panel (*Amin As' ser*) enters the name of those present at that particular session into the record of the case (*Ad' dhabt*). The names include those of the plaintiff, defendant, and the members of the panel present, as well as the name of the secretary.[69] The proceedings before the administrative panel are usually in writing. There is an exchange of arguments and briefs between the parties through the members of the Panel and each party has to provide two copies or more of his brief depending on the number of parties to the case under adjudication. It is highly likely that at this first session the defendant will ask the panel to adjourn the hearing in order to give his

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[66] See case No. 625/1/Q OF 1985 (1405 AH), decision of the Review Committee No. 134/T/1 of 1985 (1405 AH). The Board has stated in this case that the panel concerned pursued its own investigation by contacting administrative department.

[67] Mahassni and Grenley , op. cit. p.838.

[68] See, for further detail on the law of evidence in Saudi Arabia, Al-Rasheed, M., *Criminal Procedures in Saudi Arabian Judicial Institutions"*, Ph.D thesis, University of Durham , 1973 , pp.155-207

[69] Interview with H. Mansoor on 20/1/2007 and Munifi, op. cit; and interview with A. Al-Dala' on 21/1/2007, a member of one of the Board's panels.

evidence and to rebut the claim of the other party.[70] If the panel accepts that a request from either party to adjourn the hearing is not simply sought to gain tactical advantage, the panel will often adjourn the hearing without asking the party calling for adjournment to provide any compelling reason.[71] However, having heard the submissions, if the panel believes there is no need to adjourn the hearing; it may ask the party requesting the postponement of the hearing to provide the panel with convincing reason. It may also refuse the party's request.[72] The intervals between sessions of the panel will depend on a number of factors, for example the backlog of cases, or the complexity of the cases, some of which may need full and detailed examination, all of which takes time, or the case may be referred to an expert who may obviously take much longer to examine it and give evidence. On average, a case can take from four weeks to six months.[73]

When any party to the case presents briefs or documents, the panel should enable the other party to examine them so that he may give his response. The Rules state that the panel must not rely on briefs or documents which are presented by one side of the case, if the other party has not been enabled to examine them.[74] The Rules, however, do not specify the meaning of "enabled". Does it mean, for example, allowing the other party to read and examine only, or does it mean to provide them with copies? It would seem that the panel should provide the other parties with copies of briefs, but the panel may refuse photocopies of some the

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[70] Mansoor , Ibid.
[71] Mahassni and Grenley, op. cit., p 839.
[72] Ibid.
[73] Ibid., and see also Turck, N. "*Dispute Resolution in Saudi Arabia*" , The International Lawyer, 1988, Vol.22, No.2 , p.420, and Interview with Mansoor , op. cit.
[74] Article 17 of the Rules.

government documents, although it may enable a party to have sight of them at the Board and take notes.[75] Whether such documents are given to the other side or not depends on the discretionary power of the members of the panel.[76] However, taking into account the position of the Board's members in other respects, this situation could result in the fact that the members may restrict the appropriate rules and refuse to provide governmental documents to the other party, although the Rules imply that the panel should provide the other side with any brief or document to examine and the opportunity to rebut.

The administrative panel, which deals with administrative cases, can ask the department concerned to provide it with any document relevant to the case under adjudication. If it is made clear to the panel that there are documents vital to the case in the possession of the administrative department concerned, and the latter refuses to provide the panel with them then the panel is entitled to draw its own conclusions. According to Al-Dala, a member of the Board, the panel has the right to force the department to submit such documents provided that the plaintiff can prove that there are documents in the possession of the administration and relevant to the case. The decision of the panel is rendered defective by the exclusion of relevant documents from the Board.[77]

This raises the question of "confidential" documents. The Rules do not specify how the Board should deal with these. However according to Munifi, a well–

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[75] Mahassni, op. cit., p.838. The author was told, in conversation with some members of the Board, that they, the members, will not provide any government document to the other parties if, according to their discretionary power, they regard this document as confidential.
[76] Ibid.
[77] An interview with Al-Dala', a member of the Board, on 21/1/2007.

known lawyer and former vice-president of the Bureau of Experts of the Council of Ministers, a Board member should examine any document he feels to be relevant to the case and has the authority to decide whether or not to provide the other side with it. But the question here is, if the Board is in fact invested with this power, on what basis can the Board insist on providing the plaintiff with such documents? In other words, on what grounds can the Board decide to order the administration to disclose such documents?

Al-Masoud, a lawyer and former civil servant, believes that the administration should provide the panel with any document that it deems relevant, except for those documents which may involve the security of the state.[78] Again, this raises the question as to what constitutes security and what does not.

There is very little evidence of the nature of the actual practice of the Board. It may be assumed that those views represent normal procedure. However, there is some anecdotal evidence that in different cases, full disclosure is not made. A case was related by Mahassin and Grenley (1987) in which the Board refused to allow the contractor's lawyer to examine government documents, although they did not involve state security. Later, however, the Board allowed just the lawyer to read and take notes from the documents, but not to photocopy them.

In the first place it is submitted that the panel should be trusted to decide whether any question of state secrecy is involved. By vesting this power in the panel the ability of the administration to refuse to provide the Board with documents

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[78] Interview with Al-Masoud , 19/1/2007.

because they are secret would be curtailed. Even if the panel decides that the matter before it does, indeed, involve state security, the administration should not keep documents from the Board member. The member should assess the importance of a document and its relevance, then taking the public interest as a criterion and, balancing the interest of the plaintiff against this, he should take the decision whether or not to disclose.[79]

The administrative panel should have a record or *Ad'dhabt*, in which all statements, briefs and documents will be entered. This record, as Article 21 of the Rules state, will be kept by the secretary of the panel, *Amin As' ser*, under the supervision of the President of the panel. If the panel has no secretary, as is the case with most of the subsidiary panels, the member himself will take care of the record. This raises the question as to the legality of the record written by the member himself. It may be said that although the member is considered to be impartial, he is still human and can make mistakes and may not always be impartial. Consequently, the record may be subject to the member's own subjectivity. It would seem, however, that such problems would be minimal and would not arise for two reasons. First, most of the proceedings are written. Secondly, the member will read out what is written in the record and if any party feels that there is any alteration to his oral statement he may request the member of the panel to correct it. The record should also contain the name of the members of the panel present at the hearing, the venue and the time of the session, the names of the parties of the case and their representatives.[80]

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[79] Cf *Conway v . Rimmer* [1968] A.C. 910.
[80] Article 21 of the Rules.

The record details all the procedures that are followed by the panel during the hearing of the case from the initial examination, including the discussion of the statements, and the briefs that are submitted to the panel.[81]

It should also contain the statements of the parties concerned, the statement of claim and remedy sought by the plaintiff, any rebuttals of the defendant, and any testimony that is given during the proceedings.[82] The record should be signed by the member(s) of the panel, the secretary and the parties to the case.[83] The record will also contain the date of the next hearing.

If the panel fails to observe these formalities, in principle, the case will be returned to it by the Review Committee for re-hearing because of a defect in form.[84] However, as noted earlier, defects of form occur in practice. Thus there may only be one member present at a hearing, and the other members will not sign their names to the record of the hearing until later.[85]

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[81] See case No. 226/1/Q of 1984 (1405 AH), decision of the Review Committee No. 45/t/1 of 1986 (1406 AH), and see also case No. 554/1/Q of 1985 (1405 AH), decision of the Review Committee No. 28/T/1 of 1986 (1406 AH).
[82] Article 21 of the Rules.
[83] Ibid.
[84] See case No. 2/1/Q of 1985 (1406 AH), decision of the Review Committee No. 29/T/1 of 1986 (1406 AH), case No. 1161/1/Q 1985 (1405 AH), decision of the Review Committee No.53 /T/1 1986 (1406 AH), case No . 226/1/Q 1984 (1405 AH), op. cit., and case No 554/ 1/Qof 1985 (1405 AH), op. cit.
[85] Interview with member of the Board.

## 6.6 Seeking help from experts

Unlike the situation before 1982, the Board now has the power to examine and adjudicate technical and legal issues.[86] As a result the panel may encounter in those cases involving administrative contracts, technical questions with which the member or members of the Board are not familiar or have no expertise. The panel can then call in assistance from outside experts.[87]

Although the use of experts is allowed, it is restricted to technical matters. In one of its decisions the Review Committee said :

> *It is only acceptable that a judge seek the use of experts to solve problems which are of a technical nature and beyond the scope of his ability, knowledge and specialty. However, it is neither acceptable for the court to seek the use of an expert if solving these problems falls within the scope of its own specialty, nor is it acceptable for the panel to seek the use of an expert in understanding legal matters and in interpreting contracts as its own knowledge of these matters should be sufficient to perform its judicial tasks"*[88]

Consequently, if the panel orders an expert to decide issues relating to law its decision will be defective and may be set aside by the Review Committee. In case No. 437/1/Q of 1982 (1402 AH), decided in 1986, a company was in

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[86] Mahassni and Grenley, op. cit., p.339
[87] Article 24 of the Rules.
[88] Case No. 437/1/Q of 1982 (1402 AH), decision of the Review Committee No. 89/T/1 of 1986 (1406 AH).

dispute with a ministry regarding equipment, including vehicles, camp equipment and utensils, which were confiscated by that ministry. The issue was whether the ministry owned the equipment and simply allowed the company to use it to carry out a project between them, or whether the equipment was owned by the company. The administrative panel which heard the case considered that there were some technical issues to be settled about the ownership of the equipment. As a result it referred the case to an expert. However, the Review Committee set the decision aside, on the basis that there was no technical question requiring an expert opinion; there was a determination involving facts and law about the ownership of the equipment which was the subject matter of the case according to the evidence submitted by the parties, and arising from the interpretation of the contract between them. It went on to state that this task should be performed by the panel itself and the panel was not permitted to seek assistance from experts on such issues.[89]

When a panel needs to refer the case to an expert it should issue a provisional decision whereby it orders an expert. The decision should state exactly and in full the function and mandate of the expert, the date by which he should hand in his report, and date of next hearing when the expert report will be examined.[90] The panel may call the expert to give his evidence *viva voce* which will then be entered into record.[91] The cost of experts is not regulated in the Rules, and in practice the regulation of costs is left to the Chairman of the Board.[92] Moreover, the Rules do not state who will pay the cost of the expert in the first instance,

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[89] Ibid.
[90] Article 24 of the Rules.
[91] Ibid.
[92] Ibid.

whether the plaintiff or defendant or both. The plaintiff of the moving party must bear the cost in advance.[93] However, on the completion of the case, the cost of the expert will be paid by the losing party, and a successful plaintiff will recover any expert costs.[94]

The Rules do not specify any person, body or committee that may be used as an expert to the Board. It is left to the Board to decide according to the issue under adjudication. In practice, however, the Board refers questions about administrative contracts to the Saudi House for Consultative Services (SHCS). The SHCS however is owned by the Government and this raises doubts as to its impartiality and neutrality. Al-Masoud believes that it is improper for the SHCE to function as an expert to the Board in cases where the government itself is a party, when the SHCS is considered to be a government organ.[95] Mahassni, however, believes that although the SHCS's policy is controlled by the Council of Ministers, it is "... *highly competent and impartial*".[96] Nevertheless, international standards of fair trial and due process would suggest that as long as the SHCS is owned and its staff are paid by the government, the Board should not refer any case to it. It is open to the Board, for example, to refer the case to experts in the universities.[97] According to Mahassni and Grenley, practicing lawyers in Saudi Arabia, the Board does this occasionally.

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[93] See for example case No. 617/1/Q of 1981 (1401 AH), decision of the Review Committee No. 91/T/1 of 1986 (1406 AH).
[94] Ibid.
[95] Interview on 19/1/2007.
[96] Mahassni and Grenley, op. cit., p.340.
[97] Ibid.

If the panel feels that during the proceedings it is necessary to go to the site of the dispute for inspection, the rules empower it to do so. It also has competence to undertake a supplementary investigation if needed, and the panel may carry this out itself or direct one of its members to do so.[98]

## 6.7 The Judgment

The Rules do not specify when proceedings may be ended However, as soon as the panel concerned is satisfied that both sides have stated their cases and adduced their evidence, and the panel thinks that the issues and questions of fact and law have been sufficiently examined and ventilated, it has the right to end the hearing and the exchange of briefs and documents. Deliberation then starts between the members of the panel and all briefs and documents contained in the dossier of the case are thoroughly examined.[99]

The Rules state that the deliberation should be in secret between all the members where the panel consists of more than one member.[100] During the deliberation, the members of the Board examine the briefs and documents tendered during the sessions of hearing and they may need to consult the laws and regulations in force. However, in practice the members of the Board find it difficult to obtain and examine the laws and regulations in force, as the Board lacks a document centre and the library of the Board has few reference materials or books.[101] As well as this drawback the administration of the Board rarely distributes new laws

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[98] Article 23 of the Rules.
[99] Interview with A. Ali , op. cit.
[100] Article 30 of the Rules.
[101] The writer personally visited the library. It has few books and the shelves are quite empty.

and regulations.[102] Faced with these obstacles, the members themselves buy the laws and regulations at their own expense, lend them to each other or contact the administrative department concerned to provide them with the laws and regulations which they need.[103] Obtaining information depends ultimately therefore on the member and on his own efforts to obtain the laws and regulations.[104] Lack of a document centre may eventually affect the efficiency of the work of the Board, and may prolong the time taken in deciding cases.

The period involved in deliberation and the taking of a final decision varies from one case to another, depending on the case load of the panel. According to Mahassin, it takes months even years depending on the case load and the complexity of the specific case.[105] If the panel needs further documents, evidence, or clarification of the case, it may re-open the hearing and re-call both parties.[106]

According to the Rules, the decision or judgment will be made by a majority on administrative panels which comprise more than one member. The decision will be that of the panel, although there may be a member who does not agree.[107] However, the member who differs in his opinion has the right to state his own view and the reasons for his dissent will be noted in the record of the case. Moreover, the majority can also give their comments on the other member's

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[102] Interview with Al-Dala ', op. cit.
[103] Ibid., and interview with Al-Wahaiby, a member of the Board, Dammam Branch , on 27/1/2007, Al-Daweesh, who is a member of an administrative panel on 27/1/2007, and other member such as Dr. A. Al-Ali, a member of the second administrative panel.
[104] Ibid.
[105] Mahassni, op. cit., p.842.
[106] Ibid.
[107] Article 30 of the Rules.

dissent and these too will be entered in the record. Finally the record will be signed by all members of the panel as well as by its secretary.[108]

The final decision of the panel should contain the name of the panel concerned, the date, place of issue, and type of case, (administrative, panel, or disciplinary), the names of the members present at the proceedings, the names of the parties and their positions, their status, and their address. It should also contain the reasons, demands, rebuttals, evidence,[109] the reasons supporting the decision, the facts, and the law.[110] Knowing that they must eventually state their reasons for their decision obliges the panel to examine their reasoning very closely and consider it in the context of the evidence before arriving at a decision.[111]

The pronouncement of the panel's final decision should be in open court even if the hearings were *in camera*,[112] But the Rules do not state any conditions to be observed by a panel of the Board when a decision is pronounced, such as the appearance of the parties to the case, or what will happen if they do not appear before the panel. Again it would appear that such details are left for the Chairman of the Board to decide in accordance with Article 44 of the Rules. Moreover, the Rules do not state what the effect would be if the decision were to be pronounced in private, and whether such action renders the whole trial void or not.

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[108] Ibid.
[109] Article 31 of the Rules.
[110] Ibid.
[111] Abu Ssa'ad, M., op.cit., p.138.
[112] Article 15 of the Rules.

The original copy of the final decision should be signed by the President of the Panel, its members and secretary within fifteen days of the pronouncement. However, as is the case with other articles of the Rules which have been referred to here, Article 31 does not state what the effect would be if the member of the Panel do not sign within the prescribed period. According to other comparable legal systems, such as Egyptian law, if the judgment has not been signed within the period prescribed by the law, the judgment will be rendered void.[113] Each member of the panel will then receive a copy of the decision.

Following the pronouncement of the decision the panel must inform the judgment debtor, or the person who has lost the case, that he has the right to ask for the decision to be reviewed. Article 31 of the Rules determines that the period within which a review must be sought is not more than thirty days. The decision of the panel will, after the prescribed period has elapsed, be sent to the Chairman of the Board.[114]

## 6.8 Review of the panel's judgment

The Rules state that a person who feels aggrieved by the decision of a first instance panel has the right to request a review of the decision by a higher panel of the Board, the Review Committee. Chapter Four of the Rules lays down the

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[113] Obaid, R., "*Mabadi al-Ijraat al-Jenaayh fi al-Qanun al-Masry*", no date , pp. 755-756.
[114] Every decision which the writer examined was accompanied by a letter addressed to the Chairman of the Board in which the Presidents of the administrative or subsidiary panels states that he encloses the file of the case, and the decision that is taken by the panel. See, for example, case No. 138 of 1982 (1402 AH), decision of the Third Administrative Panel No.4/3 of 1988 (1408 AH) , and case No. 115 /2/Q of 1985 (1405 AH).

rules for review.[115] A party who wishes to take the matter further must file an appeal within the fixed period of thirty days as determined by Article 31 of the Rules, starting from the date on which the appellant received a copy of the final decision. These rules governing the period of review apply to all cases regardless of their type. Should the party concerned fail to request review within the prescribed timescale, the decision will automatically be final and enforceable.[116]

Applications for review will be referred to the Chairman of the Board, who in turn will refer the complete case-file together with the panel's decision, to the Review Committee. Applications for review should contain information about the parties to the case, the decision under appeal, the date of notification of that decision, and the legal grounds on which the challenge is based.[117] In practice, the appellant may include any new evidence or briefs relating to the case but is not allowed to present new requests other than those which were presented to the first panel. The Chairman will then refer the file of the case to the Review Committee.[118]

Unlike the situation prior to 1982, the decisions of the Review Committee are final. However, decisions issued by the Board to dismiss senior civil servants of Grade 14 and above or equivalent are not final until they are sanctioned by the President of the Council of Ministers.[119] This may be attributed to the fact that

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[115] Articles 34 - 42 of the Rules.
[116] Article 31 of the Rules.
[117] Article 37 of the Rules.
[118] The Review Committee consists of four panels, each of which is concerned with specific jurisdictions. See Chapter Five.
[119] Article 37 of the Rules.

civil service appointments are made by the President of the Council, thus any dismissal of these officials must be approved by him. It would seem, however, that there is no need for this exception, which effectively withholds the decision of the Board. It is in fact a sort of justice retinue which was practiced by the Board before the Board of Grievance Act 1982 was introduced. In relation to this, it is significant that although the Board is described as an independent judicial body, competent to issue judgments without the approval of anyone whatsoever, it does not, in practice, have that independence.

### 6.8.1 Objections and reviews of judgments

For administrative cases there are two methods of objection or review, ordinary and automatic. The latter applies to any decision issued in relation to administrative cases involving indemnity or administrative contract cases, that is cases covered by clauses 1 (c) and 1 (d) of Article 8 of the 1982 Act. Consequently, any decision issued against a department and not in its favour will not be final and enforceable until it is reviewed.

This raises the question of why such decisions must be reviewed automatically without appeal from either of the parties? Here the legislation may be taking into account the fact that decisions of this type force the administration to pay indemnification and compensation to the other party and this payment must be taken from the public purse. Consequently, this rule would appear to have been laid down to protect the public treasury by taking further steps to ensure adequacy and accuracy of decision making.

The ordinary review procedures apply to all other types of administrative cases, that is cases covered by clauses 1 (a) and 1 (b) of Article 8 of the Board of Grievances Act 1982. Each party, be it the MFNE, GCB, the administrative department which is the original party, or the aggrieved person, may demand review of the panel's decision. Moreover, the GBCS also has the right to seek review in cases which concern public services.[120]

### 6.8.2 The scope of review

Generally speaking, all the decisions of the general and subsidiary panels are reviewable. The Rules allows for no exclusion in the matter of review regardless of whether the case is disciplinary, penal, administrative, or concerns the enforcement of foreign judgements. Provisional decisions, and decisions taken by the Chairman of the Board at the beginning of the case and before he refers them to a panel, are not subject to review. Thus, the Rules provide that decisions that are reviewable are those which have involved the final decision of the panel .The Rules also state that after receiving his copy of the panel's decision, the party who wants to appeal must be informed by the relevant panel that he has the right to request review of the decision.[121] It follows therefore that provisional decisions are not reviewable since they lack finality.

In case No: 631/T/1 of 1985 (1405 AH), the Review Committee stated that:

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[120] Article 35 of the Rules.
[121] Article 31.

> *...the Review Committee of the Board is a judicial review body which is empowered by law to review legal decisions taken by panels and committees of the Board regarding disputes brought before them. Accordingly, the Review Committee has the discretion to conduct a substantive evaluation of all elements of the disputes if it is related to the legal adjustment of claims and their evidence. Therefore, it has the power to request the panel which issued the decision under review to submit what is necessary for adjudication of the case in accordance with the legal adjustment of claims of the Review committee ... whose decisions are not reviewable ....*

Here, the Review Committee argues that although it does not in theory have jurisdiction over provisional decisions, in fact it went on to review this decision, justifying its action by the fact that the decision contained a major error. In this case, the panel had taken a decision to refer a question to an expert. The Review Committee, however, reversed that decision, holding that there were no technical questions that required the opinion of an expert. The case had rather involved questions of law, which should have been resolved by the panel itself.

Nevertheless, if it is agreed that the above findings support the Review Committee's view that a panel's decision can be overturned if it contains a major error, the conclusion must be drawn that the Review Committee does, in practice, review provisional decisions and affirm them. An example of this is case No: 115/2/Q of 1985 (1405 AH), decided in 1990 (1410 AH). This case involved a tenancy contract between the plaintiff and a government department.

The former vacated the premises before the date of expiry of the contract, claiming that there were defects in the sewage system and frequent cuts in the electricity supply, as well as the existence of cracks in the whole building which could render the premises unsuitable for use. Accordingly as the case involved technical matters, the panel referred the case to the Saudi House of Consultative Services to inquire about whether buildings were suitable for use or not. This decision was referred to the Review Committee and affirmed.[122]

However decisions taken by the Chairman of the Board at the beginning of a case and before referring it to one of the Board's panel are not reviewed. The Chairman of the Board has the power not to register a case because, for example, he believes that it is beyond the Board's jurisdiction. These decisions which have been discussed earlier in this Chapter are not treated as judicial and subject to appeal.

### 6.8.3 The powers of the Review Committee

When a decision is referred to the Review Committee, the latter will examine the entire content of the challenged decision under review. In other words, it will review the facts and the law, and it will not restrict itself solely to that part of the decision which the party requesting the review wishes to have challenged.[123]

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[122] Case No. 115/ 2/Q of 1985 (1405 AH), decision of the Review Committee No. 235/T/3 of 1990 (1410 AH).
[123] Interview with M. Al-Sa'dan, a member of the Review Committee, third panel on 28/12/2006 and 29/12/2006.

According to the Rules, the decision under review may be affirmed or reversed.[124] However, in practice, the Review may also "*remand the case to the original panel for further consideration before a final decision is issued...*"[125] or it may alter part of the decision and then affirm it. Remand, which according to the Deputy Chairman of the Board is called a "partial review", will be made when there are procedural errors arising from the panel not observing the prescribed procedures.[126]

On what grounds may the decision of a panel be reversed? The Rules do not mention any grounds and leave it to the members of the Review Committee to determine such grounds. However, examples of grounds are evident from the practice of the Board. For example, a decision will be reversed if (i) it is invalid in law,[127] (ii) the panel did not observe the prescribed procedures, (iii) a proper record of the case is lacking,[128] (iv) it is a case of excess of power,[129] (v) the panel reached a decision which is contradicted by the reasoning upon which the decision should be based,[130] (vi) the panel failed to hear evidence, such as the evidence of a witness,[131] (vii) and the panel failed to consider and examine some of the plaintiff's claims.[132] When the Review Committee sets aside a decision

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[124] Article 36, and see Turck, N. B., "*Resolution of Disputes in Saudi Arabia*", Arab Law Quarterly, 1991 , Vol. 6, Part 1, pp.3-32.
[125] Turck , Ibid., p.10.
[126] Interview with the Deputy Chairman of the Board on 18/1/2007.
[127] Case 189/2/Q of 1987 (1407 AH), decision of the Review Committee No 100/T/4 of 1990 (1410 AH).
[128] Case No. 692/1/Q of 1985 (1405 AH), decision of the Review Committee No. 25/T/1 of 1986 (1406 AH), and case No. 226/1/Q of 1985 (1405 AH), decision No 25/T/1 of 1986 (1406 AH).
[129] Case No. 42/1/Q of 1982 (1403 AH), decision of the Review Committee No . 63/T/1 of 1985 (1405 AH).
[130] Case No. 458/1/Q of 1986 (1406 AH), decision of the Review Committee No. 232/T/3 of 1990 (1410 AH).
[131] Case No .734/1/Q of 1987 (1407 AH), decision No. 199/T/3 of 1990 (1410 AH).
[132] Case No. 72/4/Q of 1988 (1408 AH), decision of the Review Committee No. 314/T/3 of 1990 (1410 AH).

under review it has two options, either to return the case to the original panel for reconsideration in the light of the comments of the Review Committee, or to try the case itself.[133] If the Review Committee decides to remand the decision to the original panel and the latter insists on standing by its original decision, the Review Committee again has two options: either to affirm the decision under review or try the case *de novo*.[134] Although there are instructions issued by the Chairman of the Board direct the panels, in effect, to obey any ruling from the Committee. If the Review Committee decides to try the case itself, it should observe the procedures prescribed in the Rules of Procedures and Proceedings.

The power of the Review Committee to subject the decisions of the panels of the Board to review on legal grounds and the right to rehear cases *de novo* raises questions about its legal character. It appears that the Review Committee performs the double function of a court of cassation and an appeal court. In other judicial systems, such as those of France and Egypt, these functions are performed by separate courts.[135] It can be said that the Review Committee of the board has a unique legal characteristic in that these two different functions are combined in one body.

## 6.9 Is it possible to appeal against the final decision of the Board?

Theoretically, once a decision is approved by the Review Committee or the period of appeal has elapsed without request for review, the decision of the

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[133] Article 36..
[134] Ibid
[135] See for example Lawson, F., Anton, A., and Brown ,L., *"Amos and Walton's introduction to French Law"*, 1979, p.8

Board is final and enforceable.[136] However, in practice, it is quite different. It is possible to have the final decision reviewed again by appealing to the Council of Ministers, who may refer the case back to the Board to reconsider the decision.[137] For example, a plaintiff (a company) complained that it had been contracted by an administrative department to design a public surface water drainage scheme. The administrative department had agreed to pay 2.6% of the total cost of the work which amounted to SR 19,417,476. However, although the company had submitted its programme according to the terms of the contract, there was delay in its implementation. Moreover, the department concerned decided to make amendments to the original project plan. The amendments were completed by the plaintiff, and as a result the cost of the venture rose to SR 19,800,000. The plaintiff asked the department to pay 2.6% of the revised cost. The department refused to pay, on the grounds that the plaintiff was to be paid on the basis of the original project before the amendments had been required, i.e. SR 19,417,476.

The Board decided in favour of the company and the administrative department appealed to the Council of Ministers, even though it had exhausted its right of appeal. The case was then referred back to the Board, who again upheld the Review Committee's decision and rejected the department's appeal. Appeal may also be made to the Chairman of the Board.[138] However most of these appeals are unsuccessful. The Board tends always to insist on its original decision.

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[136] Article 31and 36 of the Rules.
[137] Case No. 1055/1/Q of 1983 (1403 AH), decision of the Review Committee No. 37/T/1 of 1986 (1406 AH).

[138] Case No. 650/1/Q 1982 (1402 AH), decision of the Review Committee No . 20/T/1 of 1985 (1405 AH).

## 6.10 Procedural guarantees

There are certain fundamental guarantees to assure that the procedures before the Board of Grievances are efficient and fair.

### 6.10.1 Openness of the hearing

Hearing in open court is one of the main standards of fair administration of justice. The courtroom should be open to the public, and to the media in particular.[139] However, the openness of the court is subject to certain conditions such as order in the court and availability of space.

The Rules provide in Article 15 that hearings of the Board must take place in public, subject to one exception. The panel may hear the case in private if the panel concerned believes that to hear it in public would be in breach of the accepted standards of morality and public policy. However, regardless of whether the hearing itself is in public or in private, the pronouncement of the final decision of the panel must be in public.[140]

The Rules do not explain what is meant by morality and public policy when deciding whether the panel may hold the hearing in private or not. Such vague terms may lead to the panel preventing the public from attending a hearing beyond what could be justified on these grounds. On the other hand, it may, in

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[139] See Mitchell, S. and Richardson, P. J. (eds.), *"Archbold's pleading, evidence, and practice in criminal cases"*, 1988, 4th ed ., pp.289-290.
[140] Article 35 of the Rules, and the European Convention on Human Rights, Article 6.

using its discretionary power, limit the application of the condition to a narrow range of cases and as a result exclude cases from being heard in private where they should properly be heard.

The actual practice of the Board is again quite different to what the Rules lay down. Open court is rarely practised by the Board. In the first place, according to members of the Board, although the doors of the courtrooms are open for the panel hearings, the public and the media rarely attend.[141] The reason for this may be that the individual citizen is not aware of the right to attend and the Board itself lacks the means to make known its duties and role to the public.[142] It is not surprising therefore that no-one but the parties concerned turn up to the sessions of the Board.

Another problem is the attitude of individual members. Some have no objection to anyone attending a hearing, provided that the session is not *in camera* according to the Rules.[143] However, some will not allow the public to attend a hearing unless they have the permission of the President of the panel or the branch. A member told the writer that "...I will never allow a person who comes from outside to attend the hearing unless he has permission", and this is despite the fact that he allowed the writer to attend one of the sessions.[144] The Deputy Chairman of the Board argues that only those cases which need to be in public

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[141] Interviews with A. Al-Ali on 2/1/2007, and A. Al-Dala', op. cit.
[142] There is no budget in the Board devoted to the publicity of the role of the Board. Interviews with Al-Wahaiby, N. and interview with the Deputy Chairman of the Board, op. cit.
[143] Interview with A .Al-Ali, op. cit.
[144] Interview with W. Al –Wahaiby, op. cit.

should be held in open court.[145] He also adds that some cases should be in public to show the community that the Board and the panel in charge of the case perform their duties with justice and impartiality. However, this argument is not compatible with the Rules. It could be said that the Deputy Chairman believes that hearings as a rule must be private, but on exceptional occasion may be held in public for the reasons that he states. The Rules however are clear that hearings must be in public, and only in exceptional cases should they take place in private, and only then to observe morality and public policy.

Another aspect is the size of the panel rooms. The facilities that are available do not encourage the members of panels to hear cases in public. The available rooms are so small that, apart from the members of the panel, only the parties concerned (and they are usually more than four), may attend. This situation makes the principle of an open court impossible even for those members who would like to practise it.

Finally, it should be added that if the hearing is not properly conducted in open court, the pronouncement of the final decision, which is supposed to be in public, will never take place in public.

### 6.10.2 Order during a hearing

The President of the panel or the members on single judge panels, i.e. the subsidiary panels, has the responsibility for maintaining order during hearing

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[145] Interview with the Deputy Chairman of the Board, op. cit.

sessions.[146] He has the power to expel any party that disturbs order in the court. If the party does not submit to the rules of the court and continues to disturb proceedings, the panel has the power to imprison him for twenty four hours or impose a fine of SR 200 as punishment.[147] According to the practice of the Board, disturbances include insulting the other parties, or contempt of the member or members of the panel.[148]

The power of the President of the panel extends to ordering the deletion of any expression in the briefs and counter briefs submitted by either party, which is harmful or which violates public morality and policy.[149] Determining what is harmful or what is a violation of public morality and policy is left to his discretionary powers.

In the event of any contempt of court, a disturbance by either of the parties, or an offence being committed during a hearing, the President of the panel will order that an accurate written record be made stating exactly what happened and then refer it to the Chairman of the Board or his Deputy, who will then order that appropriate measures be taken against the person who has caused the disturbance or held the court in contempt.[150]

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[146] Article 16 of the Rules.
[147] Ibid
[148] Interview with the Deputy Chairman of the Board, op. cit.
[149] Ibid.
[150] Ibid.

### 6.10.3 Legal representation

The Rules as well as the practice of the Board safeguard the right of equality between parties .If a party has not been given the opportunity to defend himself or has not been provided with briefs submitted by the other party, the final decision of the panel will most likely be annulled on the basis that it has a substantive defect.[151] Moreover, the Rules of 1989 grant the plaintiff in administrative cases and the accused in penal and disciplinary cases the right to retain counsel to represent him before the various panels of the Board.[152] In Egypt, counsel who acts as a representative before the Council of State in Egypt is required to be a professional lawyer.[153] In Saudi Arabia, the Rules do not require counsel to hold any minimum qualifications nor do they restrict representation before the Board to qualified lawyers. Consequently, lay persons as well as professional lawyers often act as representatives. However, the representatives, lay or legal, should obtain a legal procuratorship or "attorneyship" from the Notary Pubic. The legal procuratorship certificate should then be submitted to the panel concerned in order to identify the standing of the person who is pleading the case before the Board. In practice, however, the plaintiff may introduce his representative to the panel without his certificate, and ask the panel to enter his name in the record.[154]

Although there are no rules which limit legal representation to lawyers before the Board, it is not permitted for just anyone to set up a legal office or firm unless he

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[151] Article 17 of the Rules.
[152] Articles 18 and 19 of the Rules.
[153] See Article 23 of the Laws of the Council of State of 1959.
[154] Interview with the Deputy Chairman of the Board, op. cit.

has certain qualifications which are stated in the Organization of the Legal Profession Regulations 1981. A lawyer must have a law degree and at least two years experience.[155]

Most plaintiffs do not in fact employ representatives; they prefer to argue their cases themselves. The reason for this may lie in the fact that many cases are straightforward, insofar as they involve only a small claim, equal to their salaries for example, whereas retaining counsel is costly. Some individuals may, however, be unaware of the role of the professional lawyer.

Most non-Saudi contractors and companies employ counsel to represent them before the Board.[156]

### 6.10.4 The independence and impartiality of the Board

It is vital to the independence of judicial institutions that judges should perform their duties without any interference; it is an aspect of the rule of law. According to *John Alder* "Judicial independence is an aspect of the rule of law in its own right. It overlaps with but goes beyond the separation of powers. Separation of powers concerns the independence of the judicial system from other branches of government. Judicial independence requires the independence of individual judges from any pressures that threaten not only actual impartiality but also the

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[155] See Organization of the Legal Profession Regulations, issued by Ministerial Resolution No. 1190.
[156] Mahassni, op. cit., p.837.

appearance of impartiality".[157] Thus, the independence as well the impartiality of the Board is of great importance, particularly when one considers that the Board deals with a powerful party, the government.

The Board of Grievances Act 1982 in its first article declares that the Board is an independent judicial body. In Chapter 5 the procedures for appointment, promotion, and dismissal of Board members, together with other concerns that may violate the independence of its members were considered.[158]

One issue touching on the independence of Board members is the relationship between a panel of the Board and the Review Committee. Article 36 of the Rules provides that if the Review Committee decides to set aside and return a decision to the panel, the panel has the right to insist on its original decision. However, the instructions issued by the Chairman of the Board direct the panels, in effect, to obey any ruling from the Committee. According to Circular 9 which was issued in 1990 (13/3/1411 AH) by the Chairman, if in its final decision a panel holds that a particular case is outside the panel' s jurisdiction, or if it decides to drop a case, or not to accept a case, or if the final decision is about procedural questions, and if the Review Committee decides to set aside that particular decision and return it to the panel that has issued it, the latter must comply without question with the decision of the Review Committee.[159] Moreover, Circular 9 states that if the Review Committee instructs the panel to consider a

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[157] Alder. J "*Constitutional and Administrative Law*" 2007 6th edition, pp. 175-177, and see also de Smith, S.A. *Constitutional and Administrative Law"*, 1994, 7th. edition., pp.368-370.
[158] See Chapter Five, Section 5.1
[159] This Circular is based on Article 44 of the Rules, which delegates to the Chairman of the Board the task of issuing decisions which implement the Rules.

particular aspect of procedure or of evidence, or any other procedure which is relevant to the case under adjudication, the panel must consider it and act in accordance with the instructions and remarks of the Review Committee.

On the face of it, the Circular seeks to cut down the powers of the panel. The 1989 Rules provide that where a panel insists on its original decision, then the Review Committee may try the case itself *de novo*. Should the Committee do so, its decision will prevail. It may be anomalous that the panel can refuse to follow what is a decision of an appeal body, but the instructions issued by the Chairman do not conform with the power given to the panel by the Rules, and it could be considered as a form of interference with the independence of the members.

In compiling the Rules, the legislator acknowledged the importance of the impartiality of the Board. The Rules state that, on objection by either party or the accused, a member may be refused and disqualified from hearing a particular case if there is an acceptable reason.[160] Once this request is filed, the hearing will be stopped until a decision is taken on the matter.[161] The Chairman of the Board has the power to examine and decide on such claims and his decision is final.[162] However, the Rules do not state the reasons by which a member may be refused and therefore, the grounds upon which the Chairman may accept such a claim. It may be said that in practice a member may be refused from hearing a case because of self-interest, for example, possible prejudice, or bias.

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[160] Article 25 of the Rules.
[161] Ibid.
[162] Ibid.

Moreover, the member can disqualify himself from hearing a case in which he feels it would not be just to do so for some reason.[163] The Chairman also decides in respect of such applications.

### 6.10.5 Decisions within a reasonable time

As mentioned in the previous chapter, the Board deals with different types of cases, over two thousand in a year, and the number is increasing.[164] Apart from stating that the panel which hears the case should fix a date for a hearing within one month from the date of notification of the defendant, the Rules do not specify the period of time within which the case must be heard.

As far as administrative cases are concerned the Board can apply certain measures to speed up the period of hearing. It will, for example, try to resolve the dispute from the beginning, and as soon as the case is registered. When an individual brings a case before the Board, the Chairman will immediately contact the administrative department concerned to inquire about it.[165] The result of this inquiry is usually adequate and may resolve the case quickly without proceeding judicially before the panels of the Board. Moreover, in the event of the defendant failing to appear on the fixed date of hearing after the second notification, the Board has the right to proceed and hear the case then making a decision.[166] This decision will be regarded as being made as if the defendant were present.

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[163] Ibid.
[164] See the Appendix.
[165] Interview with the Deputy Chairman of the Board, op. cit.
[166] Article 18 of the Rules.

In practice, however, and generally speaking, the number of cases registered each year is more than the number of decided cases.[167] For example, the number of registered administrative cases in the year 1406 AH (September 1985-September 1986) totalled 704, while the number of decided administrative cases totalled 564. In 1408 AH (August 1987-August 1988), the number of registered administrative cases increased to 1,033, while the number of decided administrative cases totalled 725.

It would seem that the reason for this may be attributed, first of all, to the fact that most of the administrative cases are concerned with contract claims between the government and individuals or companies. Most of these contracts involve complex technical questions which require specialist consideration and have to be referred to experts. These procedures frequently take a long time to complete. Second, the parties in each case, regardless of its type, need to be given enough time to examine books and documents so that they can present evidence or rebuttal briefs. The panel will then adjourn the hearing to enable the party to present his evidence. This situation will inevitably prolong the period of hearing.

Third, it may be argued that the Rules themselves contribute to prolonging the period of hearing. As stated earlier in this chapter, Article 5 of the Rules stipulate that in administrative cases where financial issues are the subject matter of the case, the Ministry of Finance and National Economy, and the General Control Board must be notified. In addition to the above mentioned departments, the

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[167] See the Appendix.

Public Board of the Civil Service must also be notified in administrative cases which involve claims relating to civil service regulation. As a result, a representative from these departments has to attend the hearing session. This increases the time the case remains with the Board, because each of the departments involved needs time to present its evidence and rebuttal briefs. There will be delay therefore on the part of the administration itself. High Order 14523 in 1990 (22/9/1410 AH) support this argument. This Order urges various administrative departments, agencies, and ministries to co-operate with the Board in order to speed up its work and decide cases within a reasonable period of time.

### 6.10.6 The language used in the Board

The official language used in the Board is Arabic.[168] A plaintiff who is a non-Arabic speaker should be heard through an interpreter. However, evidence against him and his rebuttals will be in his own language and all briefs will be signed by him. The briefs and counterbriefs will then be translated into Arabic and signed by the plaintiff and the interpreter. In practice, most non-Arabic speakers retain Saudi lawyers to act as their representative.

Documents and papers, such as most administrative contracts with foreign contractors, should be translated into Arabic and presented to the Board.[169] However, the Rules do not specify who may translate such documents and papers. They say only that an official translation will be accepted by the Board.

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[168] Article 13 of the Rules.
[169] Article 13 of the Rules.

In practice, the Board only accepts translations by officially authorised translation offices.

## 6.11 Conclusion

Having examined the procedures and proceedings of the Board, it should be said that the Rules do provide proper regulation to protect the parties to a case and to ease the work of the Board and make it efficient. The Rules provide protection for both parties, ensuring equality before the Board, and an equal right to submit evidence in support of their claims and counterclaims. Both parties to the case can also be confident that their case will be examined by different members and if need be referred to an expert for opinion. The party who is not satisfied with the decision of the first instance panel will have the opportunity to have his case reviewed by the review system and his case examined by a panel of three senior members. There is no financial burden on the aggrieved when he brings his case before the Board and there is no registration fee. Nor is there any obligation to employ counsel or particular counsel. In addition, the Rules provide guarantees to ensure that the procedures are effective, for example that the hearing must be held in public, and either party can ask a member of the Board who appears to have an interest in the case to step down for that case.

Although the Rules have laid down proper procedures there are some aspects, either in the practice of the Board or in the Rules themselves that are open to criticism.

**a)** In order to limit the Board in the exercise of its power to frustrate an aggrieved party in his attempt to appeal to the Board, the Rules embody certain requirements which should be complied with prior to resorting to the Board, such as petitioning the administrative department concerned within a limited time. Other requirements include time-limits on the administration for examining the appeal, and a specified period of time during which the aggrieved person must bring his case. The Rules also state that there should be more than one representative for the administration.

Although these requirements are of advantage to the administration, the aggrieved party, and the Board, as discussed above, the protection afforded to the administration by the Rules would appear to be excessive. To understand the extra protection which the administration enjoys, one has to appreciate constitutional practice in Saudi Arabia. The Rules are actually issued by the Council of Ministers, the head of the administration. It is not surprising, therefore, that the government protects itself by statutory instrument as long as it can do so.

However, although the Rules protect the administration, at the same time they give the aggrieved person the opportunity to challenge it. The Board then has the right to exercise its power and intervene in certain areas. In respect of claims of civil servants, the Board restores rights which have been violated even if the required time-limit may have elapsed, on the conditions referred to above. Moreover, while the Board cannot intervene

to quash illegal administrative decisions after the prescribed period has elapsed, it does have the power to compensate an aggrieved person for the damage occurred to him by such a decision.

**b)** In relation to the practice of the Board, it would appear that there is a gap between the Rules and actual practice. It has been noticed that the Rules are not being applied properly. For instance, there are no comprehensive rules for governing the allocation of cases; there is confusion between the preparation of a case and the hearings; and the principle of open court is not facilitated. The gap between theory and practice may be attributed to several reasons. First of all, it should be noted that there was a long period between the promulgation of the Board of Grievances Act 1982 and the Procedure and Proceeding Rules 1989 - some seven years. This period enabled the Board to establish its own rules, based on its practice. This means that the Board needs time to fully adopt the new rules. Secondly, it may be suggested that the members of the Board are ill-informed about the new rules of procedure. Finally, it may also be suggested that this gap between the new rules and the Board's practice can be attributed to a pressure of the administration. As has been noted in this chapter, the decision of the Review Committee of the Board is final according to the new rules. However, it was witnessed that the Board, under pressure from the administration, was once forced to review one of its decisions, even though it was final.

Taking into account the fact that the Board deals with a wide spectrum of public cases where the interest is different from that in private cases, it must be concluded that some improvement should be made to increase the effectiveness of the role of the Board in subjecting the administration to the law. In respect of practice, the Board should comply with the Rules. In respect of the Rules, some important changes should be made, for example to the length of time allowed for petitioning the administration and generally in relation to time-limits. Moreover the overwhelming number of government representatives in administrative cases should be reduced in order to reduce delay.

# Conclusion

## 7.1 Conclusion

## 7.2 Reforms

## 7.1 Conclusion

The Board of Grievances is the only body which has the power to review and annul government decisions. It is also the only body which may order government departments to award compensation for damage resulting from either their unlawful decisions or their public activities. Consequently, the Board plays a major role in Saudi public administration. The existence of the Board is recognition of the legal right of individuals to challenge unlawful government actions and decisions before a judicial body. It is a right at the disposal of both citizens and foreigners who work in the Kingdom to complain against the government.

This study has considered the constitutional and legal environment of the Board of Grievances. The Board has been examined within the context of the history of the state itself, and reference was made to the debate over whether Saudi Arabia has or does not have a constitution. It appears that since there is no written constitution, the question of the Board remains problematical. The Board of Grievances under Saudi legislation is not a new institution, but is ancient with roots in Islamic history. The study has explored this historical dimension. It has been shown that the Board of Grievances in Islam emerged because of the weakness of the ordinary judges to deal with the powerful. This weakness, the study has argued, was a result of the intervention of governors and rulers in the work of judges later in the Islamic state. Today, questions remain over the full independence of judicial decision-making with respect to the Board of Grievances, and likewise for its clear evolution into an administrative court.

A brief account of the legal background and stage of development of the modern Board of Grievances in Saudi Arabia has been provided. The Board has passed through five distinct phases. It began as a department of the government itself, i.e. the Council of Ministers. The second phase began with the 1955 regulations at which stage the Board achieved separation from the Council of Ministers. The third stage, dating from 1967, was marked by a struggle between the executive and the ordinary judiciary which resulted in the Board being invested with new powers. The fourth stage can be dated from 1976, when the Board took on more of the character of an administrative court by obtaining the power to try disputes concerning administrative contracts. The passing of the Board of Grievances Act 1982, which formally established the board as a judicial body, represents its final stage of modern development, although more recent tendencies to give non-administrative jurisdiction to the Board are discussed and criticised in the study. Throughout these phases of development, the Board has clearly been shaped by the realities of the political order in Saudi Arabia. It has not achieved completed independence from the administration it exists to police.

The study examined in considerable detail the working of the Board, under the Board of Grievances Act 1982 and the Rules of Procedures and Proceedings of 1989. There are some aspects of the composition of the Board which are open to criticism and in need of reform. Reform should include, in particular, a reappraisal of the procedures for appointment, the qualifications required, the power of removal, and the training of Board members. The King has paramount power over the Chairman and members. Taking into consideration the

constitutional system of state whereby the King is at the head of both the executive (the administration) and legislature, it seems that there are insufficient constitutional guarantees of independence of the Chairman and members. The absence of such guarantees both undermines the constructional legitimacy of the Board and may influence its day to day work. Reforms have been suggested to put the independence of the board beyond doubt.

But members need to be competent as well as independent. The Board's judicial personnel for all posts are recruited from among those who graduate from the *Shari'a* colleges. The argument was made that such education on its own leads to shortcomings. Most Board members do not have adequate knowledge of the laws and regulations made by the Council of Ministers. Moreover, new appointees are young and lack experience and judicial skills. Training of members should be a priority but the Board is not properly organised to provide a programme of training.

A major emphasis of the study has been upon the administrative jurisdiction of the Board. The Board has power to control government departments once a decision is challenged before it. It can examine whether it was a lawful decision. If not, the Board can annul it. Not only can the Board annul unlawful administrative decisions but it may compensate the individual. This power of the Board, however, is not unfettered, as there is a restricted scope of review which the Board may not exceed. The Board cannot, for instance, order government departments to make a decision, nor can it substitute for a department and perform its duties. Moreover, the Board has no power to examine the

proportionality of unfavourable decisions and is denied the power to examine sovereign acts.

Sovereign acts are ill-defined by the 1982 Act. It has been argued that although there are some administrative decisions that are not subject to challenge in the judicial system, this particular immunity should be restricted with more clarity. It has been suggested that criteria to determine the scope of sovereign immunity should be adopted by the Board.

This study has shown that although the Board's jurisdiction is restricted by law, the executive has wide powers to refer any case to the Board. This makes the jurisdiction of the Board expandable; a fact which has created uncertainties as to the role and, indeed, the character of the Board. In this regard, the large amount of non-administrative jurisdiction has inevitable adverse effects on the efficiency of the original jurisdiction of the Board; that is, its administrative competence. This conclusion can be supported by the huge number of penal and commercial cases registered with the Board (see Appendix 3). As a result, even though the 1982 Act says clearly that it is an administrative court, the character of the Board as an administrative court is questionable.

The Board in action has been discussed. The Rules of Procedures and Proceedings before the Board as well as their practice have been examined. The operation of the rules of standing, petitioning government departments, and time limitations have been reviewed, and the case made that reforms to strengthen individual rights and the powers of the Board are necessary.

The commencement of cases, hearings, taking decisions, appeals, and guarantee of hearing have been discussed. It has been shown that although the 1989 Rules provide, in principle, proper procedures, there are aspects both in practice and in theory which are open to criticism. This study has shown that there is a gap between theory and practice. The 1989 rules have not been applied fully in reality. In addition it would seem that the government has protected itself by legislative means from any legitimate challenge. It has also protected the senior civil servant from the judicial decisions taken by the Board.

But whether the Board of Grievances is considered in broad terms or in detail, the reality of a constitutional system in which there is no separation of powers must be taken into account in assessing the role and prospects of the Board.

However the picture which emerges from this study of the Board of Grievances is not all negative. The Board exercises real powers which discipline the behaviour of departments in their dealing with citizens. The large number of people who have recourse to the Board annually is a clear endorsement of its performance as a judicial forum and of the quality of its personnel. The challenge facing the Board over the coming years is to develop and strengthen its role as an administrative court.

## 7.2 Reforms

Reforms are necessary in order to improve the performance of the Board and meet the expectations of the people. There are two broad approaches to reform, the radical and the incremental. Radical reform would aim at change in the constitutional system. Reform has indeed taken place recently in Saudi Arabia, but constitutional change of a fundamental nature needs time to be implemented and developed.

The second approach is a more pragmatic one: to seek to improve the institution of the Board of Grievances within the existing political and legal system. This approach should include action along the following lines:

1. Stop the ever growing non–administrative jurisdiction vested in the Board. The government should cease diverting jurisdiction from the ordinary courts and giving it to the Board of Grievances. This undermines the rule of law and prevents the full development of the Board as an independent forum for citizen grievances against the administration. As seen in comparative reflection on France and Germany, these countries decided as early as the 19th century to develop separate administrative courts. The UK has followed different approach - more recently the administrative court in the Queen's Bench division of the High Court undertakes a more refined judicial review procedure. There should be an independent and separate courts which deal with commercial cases,

separate court deals with penal cases and separate court deals with labours cases.

2. Submit all administrative decisions to the powers of the Board. The latter, rather than the government, should decide what is justiciable in the field of administration. This would give more power to the judiciary.

3. Regarding of sovereign acts, the Board should control and distinguish between the executive and legislative decisions of the government by adopting a specific criteria as in European countries. The Board should adopt a corporeal criterion based on the subject matter and the nature of the challenged decision. The sovereign acts should be those issued by the government in the performance of its political function, whereas administrative acts are those issued by the government in the furtherance of its administrative function.

4. Improve the methods of selection, appointment, removal, and training of the Board Chairman and members. More transparency is needed in the selection of members of the Board, like the UK Constitutional Reform Bill of 2004, which makes the selection of judges a more transparent process.

5. Reorganise the structure of the Board. A panel should be set up to deal with the allocation of cases, and a cassation panel should be above the Review Committee.

6. The Board should apply the Rules of procedure and proceedings consistently and fully as laid down.

7. Attention should be paid to the physical organisation of the hearing to allow cases to be properly considered including provision for the public to have access to hearings.

8. The decisions of the Board should be published promptly, as required by 1982 Act; there is a duty on the Chairman to arrange for the classification, printing, and publication of the Board's judgments on an annual basis. The decision which going to be published should be final and reviewed by the Review Committee of the Board. Publication should be by giving reference number of the case, the name and details of parties should not include, as in European countries.

The reforms suggested above would make the Board of Grievances a more rigorous, consistent, professional, and effective body.

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# PAGE NUMBERING AS ORIGINAL

# APPENDIX 1

# LAW OF

# THE BOARD OF GRIEVANCES[1]

## Royal Decree NO. M/51

## 17 Rajab 1402 – 10 May 1982

### *Part One*

### *Formation and Jurisdiction of the Board*

**Article (1)**

The Board of Grievances is an independent administrative judicial commission responsible directly to His Majesty the King. Its seat shall be the City of Riyadh. When needed, branches may be established by a decision of the President of the Board.

**Article (2)**

The Board of Grievances consists of a president of the rank of minister, a vice president or more, a number of assistant vice presidents, and members specialized in

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[1] http://www.saudiembassy.net/Country/laws/GrievancesBoard82.asp

Shari 'ah and law. Attached to it shall be an adequate number of technical and administrative employees and others.

**Article (3)**

The President of the Board shall be appointed and his services terminated by Royal Order. He shall be responsible directly to His Majesty the King.

Vice presidents of the President of the Board are appointed and their services terminated by Royal Order upon nomination by the President of the Board.

The President of the Board shall select the branch heads from members of the Board, taking into consideration the ranks of the branch's personnel.

**Article (4)**

A committee called "The Administrative Affairs Committee for Board Members" shall be formed and it shall consist of the President of the Board or whomever he deputizes and six members whose ranks shall not be lower than counselor (B), and they shall be selected by the President of the Board.

**Article (5)**

"Administrative Affairs Committee for Board Members" shall be presided over by the President of the Board or whomever he deputizes, and its session shall not be valid unless all members are present. In case one of them is absent due to the Committee's reviewing a matter concerning him or in which he has a direct interest or for any other reason, he shall be replaced by a member nominated by the President of the Board, who satisfies conditions of membership. The Committee's decisions shall be issued by majority vote of its members.

**Article (6)**

The Board shall exercise its powers through circuits whose number, formation, subject-matter and venue are determined by decision of the President of the Board.

**Article (7)**

The Board of Grievances shall have a general panel consisting of the President of the Board and all members in service. Its Jurisdiction and procedures shall be determined pursuant to a resolution by the Council of Ministers.

**Article (8)**

1. The Board of Grievances shall have jurisdiction to decide the following:
   (a) Cases related to the rights provided for in the Civil Service and Pension Laws for government employees and hired hands, and independent public entities and their heirs and claimants.
   (b) Cases of objection filed by parties concerned against administrative decisions where the reason of such objection is lack of jurisdiction, a deficiency in the form, a violation or erroneous application or interpretation of laws and regulations, or abuse of authority. It is considered as an administrative decision the rejection or refusal of an administrative authority to take a decision that it should have taken pursuant to laws and regulations.

(c) Cases of compensation filed by parties concerned against the government and independent public corporate entities resulting from their actions.

(d) Cases filed by parties concerned regarding contract-related disputes where the government or an independent public corporate entity is a party thereto.

(e) Disciplinary cases filed by the Bureau of Control and Investigation.

(f) Penal cases filed against suspects who have committed crimes of forgery as provided for by law, crimes provided for by the Law of Combating Bribery, crimes provided for by Royal Decree no. 43 dated 29/11/77 H, and crimes provided for by the Law of Handling Public Funds issued by Royal Decree No. 77 dated 23/10/95 H and penal cases filed against persons accused of committing crimes and offenses provided for by law, where an order to hear such cases has been issued by the President of the Council of Ministers to the Board.

(g) Requests for implementation of foreign judgments.

(h) Cases within the jurisdiction of the Board in accordance with special legal provisions. (1)

(i) Requests of foreign courts to carry out precautionary seizure on properties or funds inside the Kingdom. (2)

2. With Consideration to the rules of jurisdiction set forth by law, the Council of Ministers may, at its discretion, refer any matters and cases to the Board of Grievances for hearing.

**Article (9)**

The Board of Grievances may not hear requests related to sovereign actions, nor objections filed by individuals against judgments or decisions issued by courts or legal panels which fall within their jurisdiction.

**Article (10)**

The Bureau of Control and Investigation shall prosecute before the competent circuit the crimes and offenses which the Bureau investigates.

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(1) Powers of the panels for settlement of commercial disputes were transferred to the Board of Grievances pursuant to a resolution of the Council of Ministers No. 241 dated 26/10/1407 H. Also jurisdiction of the Disciplinary Board provided for in the Law of Employees and resolutions of the Council of Ministers were transferred to the Board of Grievances and all disciplinary cases were referred to it pursuant to Royal Decree No.M/51 dated 17/7/1402H.

(2) This paragraph was added to this Article per Royal Decree No. M/5 dated 11/02/1421H.

*Part Two*

*Law of Members of the Board*

**Article (11)**

Members appointed to the Board shall fulfill the following requirements:

(a) Be a Saudi national.

(b) Be of good character and conduct.

(c) Be fully qualified to carry out judicial work.

(d) Be a holder of a diploma from a college of Shari'ah in the Kingdom of Saudi Arabia or another equivalent university diploma.

(e) Be of the age of not less than twenty two years.

(f) Be physically fit for service.

(g) Not have been sentenced to *hadd* (Quranic prescribed punishment), t*a'zir* (discretionary punishment), or a crime impinging on integrity, nor been subjected to disciplinary decision for dismissal from public office, even if rehabilitated.

**Article (12)**

Ranks of members of the Board are as follows:

- Trainee of the rank of Judicial Trainee,
- Assistant Counselor (C) of the rank of Judge (C),
- Assistant Counselor (B) of the rank of Judge (B),
- Assistant Counselor (A) of the rank of Judge (A),
- Counselor (D) of the rank of Court Deputy (B),
- Counselor (C) of the rank of Court Deputy (A),

- Counselor (B) of the rank of Court Head (B),
- Counselor (A) of the rank of Court Head (A),
- Assistant Head of the rank of Appellate Judge,
- Assistant Head of the rank of Appellate Chief.

**Article (13)**

To occupy the ranks of Board membership requires the qualifications specified for each rank in the Law of the Judiciary, taking into consideration the following:

(a) A Master's degree in the field and a diploma of legal studies from the Institute of Public Administration are considered to be equivalent to working for four years in similar judicial duties.

(b) A Doctorate degree in the field is equivalent to working for six years in similar judicial duties.

(c) Performing investigative, judicial, and consultative activities in the field shall be equivalent to working in similar judicial duties.

**Article (14)**

Members initially appointed shall undergo a probationary period for one year. The Administrative Affairs Committee for Board Members shall issue a decision of tenure after the end of the probation period and upon proof of suitability of the appointee. Prior to such decision, the Administrative Affairs Committee for Board Members may issue a decision of his dismissal.

**Article (15)**

Except for the Trainee, a Board Member may not be dismissed but must be retired upon reaching the age of seventy. However, should a member lose confidence and respect required for the post, he shall be retired by Royal Order based on a recommendation by the Administrative Affairs Committee for Board Members.

**Article (16)**

Without prejudice to requirements of the provisions of this Law, Board Members shall have the rights and guarantees granted for judges and shall be bound by the same duties as those of judges.

**Article (17)**

Appointment and promotion to the ranks of Board members shall be carried out in accordance with procedures specified for appointment and promotion in the judicial cadre. In this respect, the Administrative Affairs Committee for Board Members, with regard to its members, shall have the same powers as those of the Supreme Judicial Council with regard to members of the judicial cadre.

**Article (18)**

With respect to salaries, allowances, rewards and benefits, the Board member shall be treated similarly to his counterpart within the ranks of members of the judicial cadre.

**Article (19)**

Transfer, assignment, and secondment of Board Members shall be in accordance with the procedures specified set for transfer, assignment, and secondment of the judicial cadre. In this respect, the Administrative Affairs Committee for Board Members, shall have, with regard to Board members, the same powers specified for the Supreme Judicial Council in regard to members of the judicial cadre. In this respect the President of the Board, with regard to Board Members, shall also have the same powers specified for the Minister of Justice with regard to members of the judicial cadre.

**Article (20)**

The President of the Board shall approve vacations of Members within the limits of the provisions of the Civil Service Law. As an exception to these provisions, the sick leave a member may have during a period of three years may reach six months with full salary and three months with half salary. It may be extended for three additional months with half salary, subject to the approval of the Administrative Affairs Committee for Board Members.

**Article (21)**

If a member, due to sickness, fails to resume his work following the expiry of the sick leave specified in the previous article, or if it is proven at any time that he is unable, for health reasons, to perform his duties properly, he shall be retired.

**Article (22)**

Inspection of work of Board Members, of the rank of counselor (B) and below, shall be conducted by one or more of Board Members entrusted to perform the inspection by the President of Board. Inspection shall be carried out at least once to a maximum of twice a year.

Inspection shall be conducted by a member whose rank is higher than that of the member under inspection, or by a member senior in service if both are of the same rank.

The members' competency assessment shall be based on the following grades: competent, above average, average, below average.

**Article (23)**

A copy of the observations shall be forwarded, without the competency assessment, to the member concerned for his review and to state his objections regarding them within thirty days.

**Article (24)**

The President of Board shall form a committee of three Board members to examine the observations and the objections submitted by the member concerned. Whatever observations approved by the Committee shall be kept in the member's file along with the objection. Whatever is not approved shall be removed from the assessment and filed. The Member shall be notified of his competency assessment approved by the Committee.

**Article (25)**

A member who obtains a grade of below average may complain to the Administrative Affairs Committee within thirty days following the date of his notification of the assessment. The Committee's decision in this respect shall be final.

**Article (26)**

If a member receives a grade of below average in his competency assessment for three consecutive times, he shall be retired by Royal Order based on a recommendation by the Administrative Affairs Committee.

**Article (27)**

Regulations stating rules and procedures of inspection shall be issued pursuant to a decision by the President of the Board of Grievances following approval of the Administrative Affairs Committee.

**Article (28)**

Without prejudice to the impartiality and independence of Board members, the President of Board may supervise all circuits and members, and the head of each circuit may supervise members subordinate to the circuit.

**Article (29)**

The head of each circuit may notify members subordinate to the circuit of all actions in violation of their duties or requirements of their jobs, after hearing their statements. Such notice may be verbal or written. In the latter case, a copy shall be forwarded to the Board. The member, in case of his objection to the written notice

issued by the Head of the Circuit, may, within two weeks following the date of notification, request an investigation be carried out regarding the incident that led to the notice. A committee of three counselors shall be formed for this purpose by a decision of the President of the Board. After hearing the member's statements, and if it sees fit, the committee may entrust one of the members to perform the investigation. The committee may then either uphold or nullify the notice and notify the President of the Board of its decision. If the violation is repeated or continued after the notice has been upheld, a disciplinary case shall be filed by the committee.

**Article (30)**

Disciplining of members shall be the jurisdiction of a committee formed pursuant to a decision by the President of the Board. The committee shall be composed of five members from among the Administrative Affairs Committee. It shall be chaired by the member of the highest rank. If they are equal in rank, it shall chaired by the member senior in service. Should the member standing trial be a member of the Administrative Affairs Committee, or should he become unable for any reason to take part in the Disciplinary Committee, the President of the Board may assign a Board member who satisfies the conditions of membership of the Administrative Affairs Committee to take over.

The session of the Disciplinary Committee shall not be valid unless all members are present, and its decision shall be taken by absolute majority of its members.

**Article (31)**

The disciplinary action shall be filed pursuant to a request by the President of the Board on his own, or based upon a recommendation by the head of the circuit to which the member belongs.

Such request shall not be submitted unless based on a criminal or administrative investigation carried out by one of the counselors assigned by the President of the Board.

**Article (32)**

A disciplinary action shall be filed in a memorandum containing the accusation and supporting evidence to be submitted to the Disciplinary Committee to issue its decision of summoning the accused to appear before it.

**Article (33)**

The Disciplinary Committee may conduct whatever investigations it deems necessary, or assign one of its members to carry them out.

**Article (34)**

If the Disciplinary Committee finds a reason to continue with the trial proceedings with regard to all or some of the accusations, the accused shall be summoned to appear at a later date. The summon to appear shall include a sufficient statement of the subject matter of the case along with evidence of accusations.

**Article (35)**

The Disciplinary Committee, when it decides to continue with the trial proceedings, may order the suspension of the accused from carrying out the duties of his job. However, the Committee may at any time reconsider such suspension order.

**Article (36)**

The disciplinary action shall terminate when the member resigns. Such disciplinary action shall have no impact on the criminal or civil case resulting from the incident itself.

**Article (37)**

Hearings of the Disciplinary Committee shall be confidential. The Disciplinary Committee shall render its judgment after hearing the defense of the member against whom the case is filed. He may submit his defense in writing or delegate someone else to defend him. The Committee may at any time summon him in person. Should he fail to appear or delegate someone, a judgment may be rendered by default after verifying the correctness of his summon.

**Article (38)**

In a disciplinary action, the judgment rendered shall contain the grounds on which it was based. Its grounds shall be read when the judgment is delivered in a confidential hearing. Judgments of the Disciplinary Committee shall be final and not subject to appeal.

**Article (39)**

The disciplinary punishments which may be inflicted upon the member are reprimand and forced retirement.

**Article (40)**

Judgments of the Disciplinary Committee shall be reported to the President of the Board. A Royal Order shall be issued for the implementation of the punishment of forced retirement, and a decision by the President of Board to implement the punishment of reprimand.

**Article (41)**

In *flagrante delicto* cases, when a member is arrested and detained, the matter shall be brought before the Administrative Affairs Committee within the following twenty four hours. The Committee shall decide whether to continue detention or to release him with or without bail. The member may request that his statements be heard before the Committee when the matter is presented to it.

The Committee shall determine the period of detention in the decision issued for detention or continuation thereof. The aforementioned procedures shall be observed whenever the continuation of the preventive detention is considered, after the expiry of the period decided by the Committee. Except for the above, a member may not be arrested, and no investigation procedure shall be initiated nor a criminal action be filed against him unless there is permission from the mentioned Committee. The detention of members and the implementation of punishments that restrict their freedom shall be carried out in separate places.

**Article (42)**

Services of a Board Member shall terminate for one of the following reasons:

(a) Acceptance of resignation.

(b) Acceptance of his request for retirement in accordance with the Retirement Law.

(c) Reasons provided for in Articles 14, 15, 21, and 26.

(d) Death.

**Article (43)**

Except for the two cases of death and reaching retirement age, the services of a Board member shall terminate by Royal Order, based on a recommendation by the Administrative Affairs Committee of Board Members.

*Part Three*

*General Provisions*

**Article (44)**

Without prejudice to the provisions stated in this Law, the President of the Board shall have the authority and jurisdiction of a minister as provided for in the law and its implementing decisions regarding all members, employees, and hired hands of the Board. He is the authority for whatever is communicated by the Board to different ministries and other bodies, as well as supervising the administration of the Board, its branches and departments, and progress of work in the Board.

**Article (45)**

By a decision, the President of Board shall determine the authorities and powers of the heads of branches.

**Article (46)**

The Vice President shall act instead of the President in case of his absence and shall assist him in the duties that he entrusts him with.

**Article (47)**

At the end of every year, the President of the Board shall bring before His Majesty the King a comprehensive report of the Board's activities including his observations and recommendations.

At the end of every year, he shall also classify, print and publish in volumes the judgments rendered by the Board's Circuits and a copy thereof shall be attached with the report.

**Article (48)**

Subject to the provisions of Article (16) of this Law, Board's employees, other than members, shall be governed by the Civil Service Law and its Regulations.

**Article (49)**

Rules of litigation and procedures before the Board of Grievances shall be issued pursuant to a resolution by the Council of Ministers.

**rticle (50)**

Law of the Board of Grievances issued by Royal Decree no. 2/13/8759 dated 17/9/1374H and decisions issued for its implementation shall be nullified, and Article (17) of the Law of Combating Bribery issued by Royal Decree no. 15 dated 7/3/1383H shall be nullified, and resolutions of the Council of Ministers no. 735 for the year 1391H, no. 1230, for the year 1393H, and no. 111 for the year 1398H related to the determination of bodies that conduct the investigation of forgery cases and hearing them shall be nullified, and Articles (14) to (30) of the Employees Disciplinary Law issued by Royal Decree no. M/7 dated 1/2/1391 H regarding the Disciplinary Commission shall be nullified, and any provision inconsistent with the provisions of this Law shall be nullified.

**Article (51)**

This Law shall be published in the Official Gazette and shall come into force one year after the date of its publication.

# APPENDIX 2

## PROCEDURAL RULES
## BEFORE THE BOARD OF GRIEVANCES[1]
## [1989]

**Council of Ministers Resolution No. 190,**
**16 Dhu al-Qa'dah 1409 [19 June 1989]**

### *Section One*

### *Administrative Cases*

**Article 1:**

An administrative case shall be filed by the plaintiff with the President of the Board of Grievances or his designee. It shall contain particulars about the plaintiff, defendant, subject-matter of the case, and the date of filing the claim against the administrative body if such a claim is of the type that must be demanded before filing the case, in accordance with Article Two of these Rules, and the outcome of the claim; or the date of filing the grievance against the decision contested if it is of the type against which a grievance must be filed with the administration body prior to filing a case, in accordance with Article Three of these Rules, as well as the outcome thereof. The

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[1] http://www.saudiembassy.net/Country/laws/GrievancesBoardProcedure89.asp

President of the Board shall refer the case to the competent circuit within whose jurisdiction the head office of the defendant is located, or to the competent circuit within whose jurisdiction the branch of the defendant is located, if the plaintiff so requests, and the case is related to such branch.

The competent circuit may seek the assistance of a specialist to pre pare the case under its supervision.

**Article 2:**

The following shall be observed in relation to cases stipulated in paragraph (a) of Article Eight of the Law of the Board of Grievances, prior to filing those cases with the Board:

1. Filing a claim against the competent administrative body within five years from the date on which the claimed right arose, unless it was precluded because of a legitimate excuse proved to the competent circuit. The administrative body must decide such claims within ninety days from the date of filing. As for rights arising before the effectiveness of these Rules, the period specified for claiming them shall commence on the date of the effectiveness hereof.
2. If the decision of the administrative body was to reject the claim within the period specified in the previous paragraph, or if such period lapses without deciding upon the claim, the claim shall not be filed with the Board except after filing a grievance with the General Board of Civil Service within sixty days from the date of notice of the decision of rejection of the claim or from the lapse of the period specified in the previous paragraph without deciding thereon. The decision of rejection of the claim by the administrative body shall

state the reasons for the rejection. The General Board of Civil Service shall decide on the grievance within sixty days from the date of its filing.

3. If the decision of the General Board of Civil Service was to reject the grievance, or the period specified in the previous paragraph lapses without deciding on the grievance, the case may be filed with the Board of Grievances within ninety days from the date of the notice of rejection, upon the lapse of the sixty days stipulated without deciding on the grievance, or within the remaining period of the five years provided for in the first paragraph of this Article, whichever is longer. The decision made by the General Board of Civil Service rejecting the grievance shall state the reasons therefore.
4. If the decision of the General Board of Civil Service affirms the right of the plaintiff to his claims, and the administrative body fails to execute it within thirty days from the date of notification thereof, the case may be filed with the Board of Grievances within sixty days subsequent to such period, or within the remaining period of the five years stipulated in the first paragraph of this Article, whichever is longer.

**Article 3:**

Unless otherwise specifically stipulated, the case provided for in paragraph (b) of Article Eight of the Law of the Board of Grievances shall only be filed with the Board after filing a grievance with the competent administrative body within sixty days from the date of knowledge thereof. Knowledge shall be established by notifying the parties concerned or by publication in the Official Gazette if such notification is not possible. With respect to decisions made before the effectiveness of these Rules, the

specified period for filing a grievance shall begin from the date of effectiveness thereof.

The administrative body shall decide on the grievance within ninety days from the date of filing it. If the decision was to reject such a grievance, the reasons for rejection shall be stated. The lapse of ninety days following the date of filing of such a grievance without a decision shall be considered as though a decision has been made to reject such a grievance.

If not related to the civil service affairs, the case shall be filed with the Board within sixty days from the date of knowledge of the rejection decision, or upon the lapse of the ninety days stipulated without a decision thereon.

However, if the case is related to civil service affairs then before filing a grievance with the Board, it shall be filed with the General Board of Civil Service within sixty days from the date of knowledge of the decision to reject the grievance or upon the lapse of the period of ninety days specified for the administrative body without deciding thereon.

The General Board of Civil Service shall decide on the grievance within sixty days from the date of filing thereof.

If the General Board of Civil Service issues a decision to reject the grievance, or if the period specified for it lapses without a decision thereon, the case may be filed with the Board of Grievances within ninety days from the date of knowledge of the rejection decision or after the lapse of the sixty days stipulated without a decision on the grievance. The decision of the General Board of Civil Service rejecting the grievance shall state the reasons for the rejection.

If the decision of the General Board of Civil Service is in favor of the complainant and the administrative body fails to execute it within thirty days from the date of

notice thereof, the case may be filed with the Board of Grievances within the sixty days subsequent to this period.

**Article 4:**

Unless otherwise specifically stipulated, the cases specified in paragraphs (c) and (d) of Article Eight of the Law of the Board of Grievances shall not be heard after the lapse of five years from the date on which the claimed right arose, unless it was precluded because of a legitimate excuse proved to the competent circuit. With respect to the rights that arose before the effectiveness of these Rules, the period specified for hearing the cases shall start from the date of effectiveness of these Rules.

**Article 5:**

Upon receiving the case, the head of the circuit shall set a date for hearing it and notify the parties concerned as well as the Ministry of Finance and National Economy and the General Audit Board. The period between the notification and the date of the hearing session shall not be less than thirty days. He shall also notify the General Board of Civil Service if the case is related to the civil service affairs referred to in Articles Two and Three of these Rules.

During this period, the Ministry of Finance and National Economy, the General Audit Board and the General Board of Civil Service, as the case may be, shall send their views to the Board of Grievances or request participation in the proceedings. In this case, coordination shall be made with the government body that is a party to the case.

**Article 6:**

Cases for enforcement of foreign judgments shall be filed in accordance with the procedures for filing administrative cases stipulated in Article One of these Rules.

The competent circuit shall render its judgment after completion of the case documents and hearing the statements of both parties to the dispute, or their representatives, either by dismissing the case or enforcing the foreign judgment on the basis of reciprocity, provided that it is not inconsistent with the provisions of *Shari'ah* . The party in whose favor the judgment is rendered shall be given an execution copy of the judgment affixed to it the following caption: "All competent government bodies and agencies are required to enforce this judgment by all applicable lawful means even if this leads to use of coercive force by the police."

**Article 7:**

Filing a case shall not entail suspending the enforcement of the contested decision. The competent circuit, however, may give an order to cease the enforcement of the decision or otherwise make an urgent order for a preventive or provisional measure whenever necessary within twenty-four hours of submission of an urgent application or its referral thereto, if the circuit anticipates unavoidable consequences, until it renders a final judgment on the case.

## *Section Two*

## *Penal and Disciplinary Cases*

**Article 8:**

Penal and disciplinary cases, including the request for describing a crime as impinging on integrity and honesty as referred to in Article 30/16/C of the Implementing Regulations of the Civil Service Law, shall be filed by the Control and Investigation Bureau with the Board of Grievances pursuant to an indictment containing the names of the accused, their descriptions, places of their residence, the charges against them and the places where they were committed, the prosecution evidence, and the legal provisions requested to be applied to them; and the entire case file shall be attached therewith.

**Article 9:**

The President of the Board or his designee shall refer the case to the competent circuit. Upon receiving the case, the circuit head shall set a date for hearing it and notify the Control and Investigation Bureau accordingly. The accused shall also be notified and provided with a copy of the indictment. The period between such notification and the date of the hearing shall not be less than thirty days.

**Article 10:**

A person preventively detained or a person banned from travel by reason of a case pending before one of the Board circuits, may file a grievance with the President of the Board or his designee against his detention or travel ban decision.

The President of the Board, or his designee, shall refer such a grievance to the competent circuit, which shall decide on the grievance promptly, within a period not exceeding seven days. If that is not possible, the circuit shall issue a decision, prior to the expiry of such period, to set another period, stating the reasons therefore.

The grievance shall be decided upon after hearing both parties to the dispute. The discharge or permission to travel shall be made whether or not against a surety. The complainant may not renew his grievance before the expiry of sixty days following the date of dismissing the previous grievance, unless justified by new facts or documents.

**Article 11:**

The President of the Board or his designee shall notify the bodies concerned of the decisions of discharge and removal of the travel ban against the accused for enforcement of such decisions, unless there is another reason for detention or ban.

**Article 12 :**

The cases stipulated in paragraph (f) of Article Eight of the Law of the Board of Grievances shall terminate with the death of the accused. The termination of the case, however, shall not preclude confiscation or recovery of the property illegally acquired by the accused. It shall neither preclude the hearing of private right of action before competent courts.

## *Section Three*

## *Hearing the Case and Judgment*

**Article 13:**

Arabic is the official language approved for recording the procedures of hearing the case. Statements of non-Arabic speakers shall be heard through an interpreter. The questions directed to him and his answers thereto shall be recorded in his own language and signed by him. Translation into Arabic shall also be recorded and signed by said person and by the interpreter. Certified Arabic translations of documents and official papas written in a foreign language shall be submitted.

**Article 14:**

The case shall be heard and decided by the competent circuit, which shall be formed of a head and two members. The President of the Board may form subsidiary circuits of a single member to hear minor cases. Such minor cases shall be specified by a regulation to be issued by the President of the Board.

**Article 15:**

Sessions held by the circuit shall not be valid unless attended by all members and in the presence of a prosecutor in penal and disciplinary cases. If the attending members do not constitute a quorum, another may be designated to complete it. The sessions shall be public unless the circuit decides to make them closed in observation of morals or for maintenance of public order, provided that in all cases the delivery of the judgment be in a public session.

**Article 16:**

Control and management of the session are the duty of the circuit head. For this purpose, he may take any of the following measures:

- Expel any person from the session for disorderly conduct. If the person does not comply with the order and persists, the circuit may immediately sentence him to a twenty-four hour imprisonment or impose a fine of two hundred riyals. The circuit may cancel such sentence before the end of the session.
- Order the deletion from any document or memorandum presented by the litigants any expressions which constitute an insult or a violation of morals or public order.
- Order the writing of a report about each offense or crime that takes place during the session as well as about any transgression against the circuit, any of its members, the public prosecutor or anyone working for the circuit. The report shall be forwarded to the competent authority for appropriate disciplinary action. The circuit head may order the arrest of a person who commits such offenses, if the situation so dictates.

**Article 17:**

Documents and memoranda submitted by one of the parties to a case shall not be relied upon without permitting the other party to review them. The accused or his representative may review the investigation papers in the presence of the circuit clerk. He may also make photocopies of the part that concerns him, as specified by the circuit head.

**Article 18:**

Litigants in an administrative case or their representatives shall appear on the date appointed therefore. If the plaintiff does not appear without an excuse acceptable to the circuit the circuit may decide the case as it is, at the request of the defendant or may strike the case. If stricken, the plaintiff may request reinstatement of the case, and the circuit shall set a date for the review and notify the defendant thereof. If the plaintiff does not appear without an excuse acceptable to the circuit the circuit shall strike the case and shall not rehear it except pursuant to an en banc decision by members of the appeal panel. If the defendant does not appear, the circuit shall postpone the hearing of the case to a following session of which the defendant shall be notified. If he fails to appear, the circuit shall decide on the case, and the judgment shall be considered in all cases as if rendered in the presence of the defendant.

**Article 19:**

In disciplinary and penal cases, the accused himself shall attend the trial sessions and shall defend himself in writing or verbally. He may seek the assistance of a lawyer and ask for the summoning of witnesses to hear their testimony. If the accused in a disciplinary case does not appear after being duly notified, the circuit shall proceed with the trial procedures.

However, if the accused in a penal case is notified and does not appear, he shall be summoned again to attend another session. If he still fails to appear, the circuit may render a default judgment or order him summoned to a fixed session. If it is impossible to summon him, the circuit may render a default judgment in the case.

**Article 20:**

If the plaintiff or the defendant attends any session of an administrative case before the competent circuit the trial shall be considered as if in his presence even if he fails to attend the subsequent sessions.

As for the disciplinary and penal cases, the judgment shall be considered as if in the presence of the accused person if he attends one session and presents his defense, even if judgment is postponed and he does not attend the session in which the judgment is rendered.

**Article 21:**

The circuit clerk shall prepare the minutes of the session under the supervision of the circuit head. The minutes shall include the names of the circuit members who attended the session, time and place of the session, the litigants or accused persons present and their representatives. The minutes shall also include the procedures taken during the session, the testimony of the witnesses, the statements of the parties and their claims, in addition to a summary of their defenses. The minutes shall be signed by the members of the circuit, its clerk and the parties to the case.

**Article 22:**

The accused person shall appear before the circuit free of restraints, but suitably guarded. He shall not be expelled from the session unless he disturbs the order of the session. The circuit may proceed with the trial until it is possible to conduct it in the presence of the accused, provided that he is made aware of the procedures taken in his absence. In all events, the accused person shall be the last to speak.

**Article 23:**

If the circuit, during the proceedings, finds that it is necessary to inspect or carry out complementary investigations, it shall carry it out by itself or designate one of its members for that purpose.

The circuit, whether on its own or according to a request by the prosecutor or the accused person, may summon any witness to attend the session to give testimony. The circuit, however, must not allow directing questions to the witness that are irrelevant to the subject of the case, or which may lead to confusing or intimidating him.

**Article 24:**

If the circuit decides to seek expert help, it may designate one or more experts provided that its decision shall specifically and fully determine their task, a deadline to submit their report, and a deadline for the hearing session based on the report. It may as well seek assistance of the expert for a verbal opinion during the session, provided that his opinion is included in the minutes of the session.

The President of the Board shall issue the necessary provisions regarding the experts' fees.

**Article 25:**

The accused or any interested party may request the recusal of any member of the circuit if there is a reason justifying this request. Accordingly, the trial procedures shall be suspended until a decision has been taken. The President of the Board shall decide this request and his decision shall be final.

If a member of the circuit feels embarrassment hearing a case, he may submit to the President of' the Board a recusal request and the President of the Board shall make a decision thereon.

**Article 26:**

If the circuit hearing a disciplinary case finds that the incident stated in the indictment constitutes a penal crime, it shall refrain from hearing the trial as a disciplinary case and decide to refer the case to the Control and Investigation Bureau to take the necessary action.

**Article 27:**

The circuit may change the legal description of the action attributed to the accused, or amend the charge by adding the aggravating circum-stances proven to the circuit through the interrogation or the pleading during the session, even if such circumstances are not stated in the indictment. The circuit shall notify the accused of such change and, upon his request, give him sufficient time to prepare his defense in light of the new description or change.

**Article 28:**

The circuit shall decide on the facts cited in the indictment. However, it may, at the request of the Control and Investigation Bureau, render a judgment on facts not cited in the indictment or against newly accused persons if the case file includes such facts, provided that the accused be given an appropriate deadline to prepare his defense. The circuit may on its own undertake to make a decision to refer the case to the Control

and Investigation Bureau to investigate the case and take whatever actions required by law, as in any other case.

If the case is returned to the Board, it shall be transferred to a circuit other than that which originally handled it. If that circuit did not decide the original case, and the case is connected in an inseparable way with the new case, then the whole case shall be transferred to the circuit which originally handled it.

**Article 29:**

If the judgment issued by the Board of Grievances includes an indication that an act has been committed constituting a penal or disciplinary offense, the competent investigation authority shall be provided with a copy of that judgment in order to take the necessary action required by law.

**Article 30 :**

If the circuit is formed of more than one member, it shall confidentially deliberate in session. Judgments shall be rendered by majority vote, and the judgment shall be attributed to the circuit. A dissenter shall, in the session minutes, give explanation for his dissent and the reasons therefore. The majority shall also state, in the minutes of the session, their opinion in response to the dissenter's dissent. The minutes shall be signed by all members of the circuit and its clerk.

**Article 31:**

Notice of judgment shall include the reasons on which the judgment was based, grounds thereof, the circuit issuing it, date and place of issuance, the relevant case, whether it is administrative, penal or disciplinary, names of circuit members who

heard the pleading, name of the prosecutor and his demands, names and capacities of the parties in the case, their domicile, attendance or absence, names of their representatives and the demands or defenses submitted by them as well as the evidences proffered by them.

The original copy of the judgment notice shall be signed by the circuit head, the circuit members and its clerk within fifteen days. In case the circuit is formed of only one member, the original copy of the judgment notice shall be signed by him and the circuit clerk.

The original signed copy of the judgment notice shall be deposited in the case file and a copy, affixed with the seal of the circuit and signed by the circuit head and its clerk, shall be given to all relevant parties. The circuit rendering the judgment shall inform the convict after providing him with a copy of the judgment notice, of his right to appeal the judgment within thirty days from the date of his receiving the judgment notice and that if he does not appeal the judgment within such period, the judgment against him shall be final and enforceable.

**Article 32:**

If the circuit finds in the convict's conduct, past record, age, personal circumstances, or the circumstances under which the crime was committed, or any other reasons that justify staying the execution of the judgment, it may state in its judgment the stay of the execution of the penalty. Such stay shall have no effect on the disciplinary penalties to which the convict is subject. The stay shall be lifted if the convict is convicted by one of the Board circuits of a corporal penalty in another penal case

committed within three years from the date on which the stayed judgment becomes final.

**Article 33:**

The circuit shall, on its own or at the request of a relevant party, correct any purely material mistakes made in its judgment, whether written or computational.

But in case of ambiguity or vagueness in the judgment, any relevant party may file a request with the President of the Board to refer the case to the circuit which made the judgment for an explanation.

## *Section Four*

## *Ways of Objection to Judgments*

**Article 34:**

Judgments rendered in cases provided for under paragraphs (c) and (d) of Article Eight of the Law of the Board of Grievances, contrary to what is requested by the administrative body or not in its favor, shall not be final and enforceable until they are appealed.

**Article 35:**

Subject to the provisions of Article Thirty Four of these Rules, judgments rendered by the Board with respect to administrative cases shall be final and enforceable after the lapse of the period specified for the application for appeal referred to in Article

Thirty-One of these Rules, unless either of the parties to the case, the Ministry of Finance and National Economy or the General Audit Board, in respect of administrative cases, or the General Board of Civil Service, in respect of cases related to the civil service affairs referred to in Articles Two and Three of these Rules, apply for appeal during the said period.

**Article 36:**

Acceptance of the application for appeal entails that the competent appeal circuit either affirms or reverse the judgment. In case of reversal, it may either remand the case to the issuing circuit or adjudicate it. If the case is remanded to the circuit which originally handled it, and that circuit insists on its judgment, the appeal circuit shall adjudicate the case if it is not persuaded by the arguments of that circuit.

In all instances where the appeal circuit undertakes to adjudicate the case, the decision shall only be made after hearing the statements of the litigants.

The appeal circuit may take whatever it deems appropriate with respect to inspection or seeking the assistance of experts.

In all cases, judgments made by the appeal circuit shall be final.

**Article 37:**

In penal and disciplinary cases, the prosecutor and the convict may appeal the judgment within the appeal period specified in Article Thirty-One of these Rules, including the judgment issued which describes the crime as impinging on honor or integrity as mentioned in Article Eight of these Rules.

The application shall include data relevant to the parties to the case, description of the judgment requested for appeal, the date of notification, and the grounds upon which the application was based.

The President of the Board or his designee shall refer the application along with the case file to the appeal circuit to adjudicate the case and make a decision thereon. Its judgment shall be final, except for judgments to terminate services of employees of Grade Fourteen and above, or its equivalent, which shall only be final upon ratification by the President of the Council of Ministers.

If the application for appeal is filed by the prosecutor, the appeal circuit may uphold, reverse, or amend the judgment. However, if such amendment is not in favor of the accused, the circuit must hear his statements before the amendment.

If the application for appeal is filed by the convict alone, the circuit may only uphold the judgment or amend it in his favor.

**Article 38 :**

The appeal circuit may remand the case to the circuit that rendered the judgment for explanation of any ambiguity or vagueness contained therein.

**Article 39:**

An appeal circuit shall be established, headed by the President of the Board of Grievances and consisting of an adequate number of members to be appointed by the President of the Board. It shall have one or more appeal circuits.

The appeal circuit shall be comprised of three members appointed by the President of the Board who shall appoint one of them as the circuit head. The President of the

Board may form the appeal circuit of one member to appeal minor cases as determined by the President of the Board in accordance with Article Fourteen.

**Article 40:**

If the appeal circuit decides on any case under its consideration to change an independent reasoning which it or another circuit had previously reached, or which had been previously affirmed by the appeal circuit, it shall forward the matter to the President of the Board who shall refer it to the appeal circuit for an en banc meeting to be headed by the President of the Board, together with three of the circuit heads selected by the President of the Board. The joint circuit shall render its decision by majority vote of two-thirds of the members.

**Article 41:**

The person convicted in absentia may apply to the President of the Board or his designee to appeal the judgment rendered against him, within thirty days from the date on which he was notified of the judgment The President of the Board or his designee shall refer such application to the circuit that had rendered the judgment for retrial in the presence of the accused.

**Article 42:**

If, after the final disposition of the case, new facts emerge or documents are presented which were not known at the time of the trial, and such documents were to acquit the convict, the convict or the prosecutor may apply to the President of the Board or his designee to reconsider the final judgments. The application shall be submitted within thirty days from the date of knowledge hereof. It shall include the judgment and the

grounds for the reconsideration requested. The President of the Board or his designee shall refer such application to the circuit which had rendered the judgment to dispose of in the presence of the parties to the case.

## *Section Five*

## *General Provisions*

**Article 43:**

Notifications specified in these Rules shall be made as follows:

- Notices shall be delivered to the person himself wherever he is. Otherwise, they shall be delivered to anyone who shares residence with him.
- With respect to commercial companies and private establishments, notices shall be delivered to one of the general partners, the chairman of the board of directors, the manager, or to anyone acting on their behalf, or to the owner of the private establishment or to someone acting on his behalf.
- With respect to foreign companies with a branch office or an agent in the Kingdom, notices shall be delivered to the manager of such branch office or to the agent.
- If delivery of the notices is not possible in accordance with the foregoing, they shall be delivered to the *umdah* (chief of a neighborhood).

- If it is not possible to know the place of residence of the accused or his address in the Kingdom, he shall be notified through publication in the Official Gazette.
- With respect to the residents outside the Kingdom, they shall be notified through the Ministry of Foreign Affairs, and it shall be sufficient in this case to receive a reply evidencing notification.
- With respect to the State, notices shall be delivered to the ministers concerned or to heads of government authorities, the directors of public institutions or commissions or to those acting on their behalf.
- With respect to military personnel and persons employed by military bodies, notices shall be delivered through the relevant authority.
- With respect to prisoners, notices shall be delivered to the prison warden.

**Article 44:**

The President of the Board shall issue the decisions necessary for the implementation of these Rules.

**Article 45 :**

These Rules shall apply to cases pending at the time of the implementation of such Rules at the stage reached.

**Article 46:**

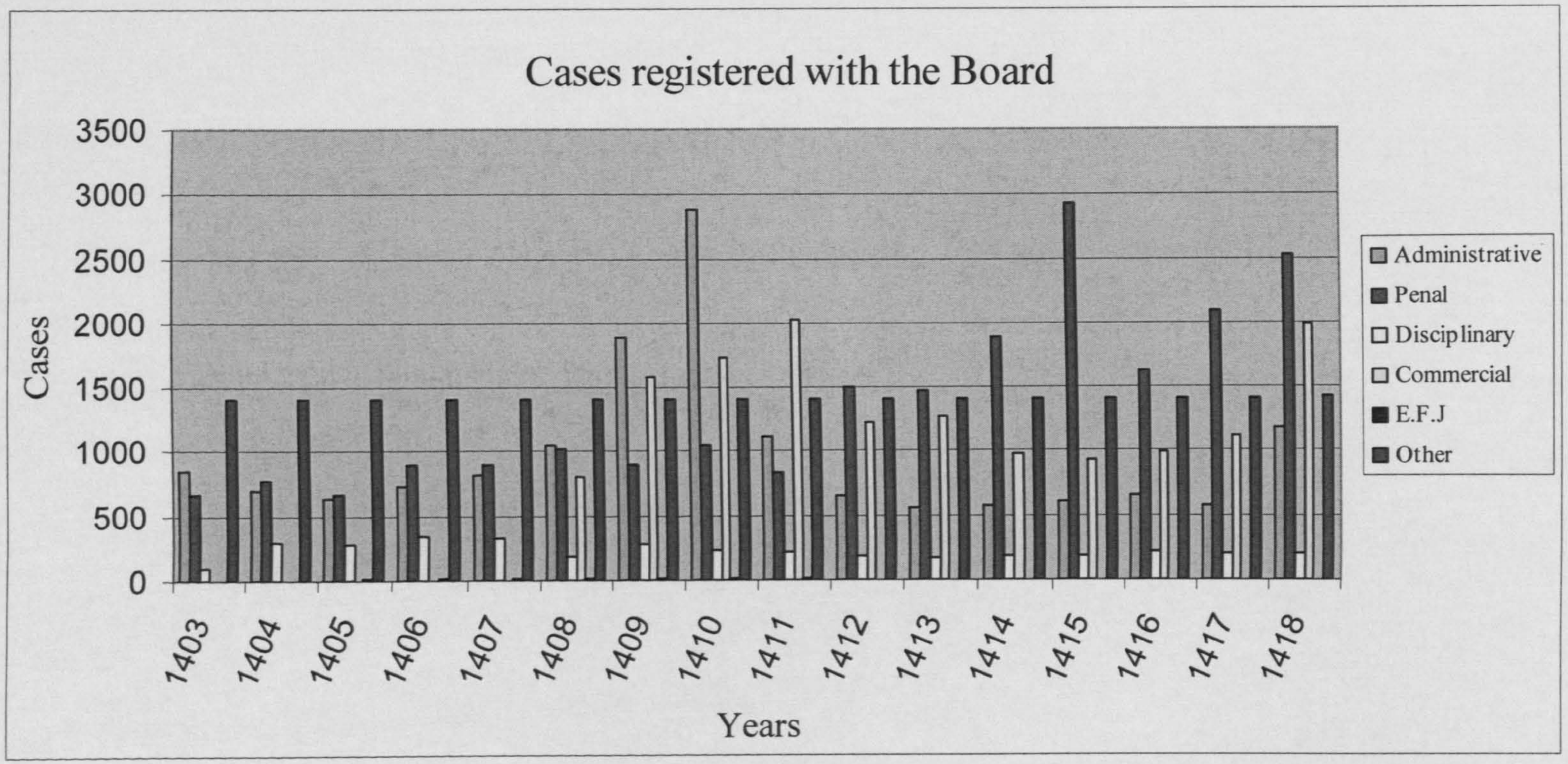
Judgments that have not been notified to the parties to a case prior to enforcement of these Rules shall be subject to the provisions concerning the ways of objection to judgments.

**Article 47:**

These Rules shall be published in the Official Gazette and shall come into effect after thirty days from the date of publication thereof. They shall supersede the Council of Ministers' Resolutions No.16 dated 06/01/1382 H, and No.968 dated 15-16/09/1392 H, and shall also supersede all provisions inconsistent therewith.

# APPENDIX 3

## Figure 1



# Figure 2

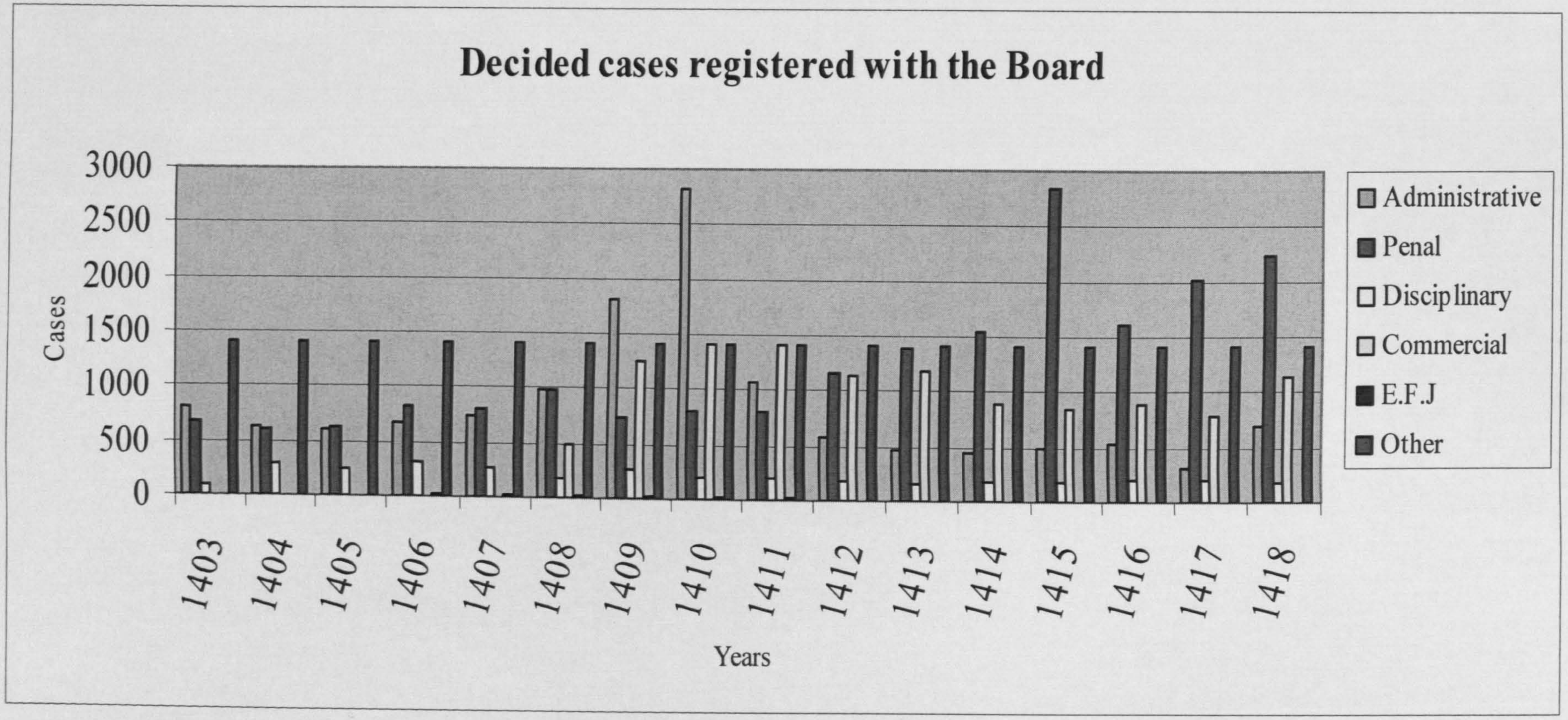
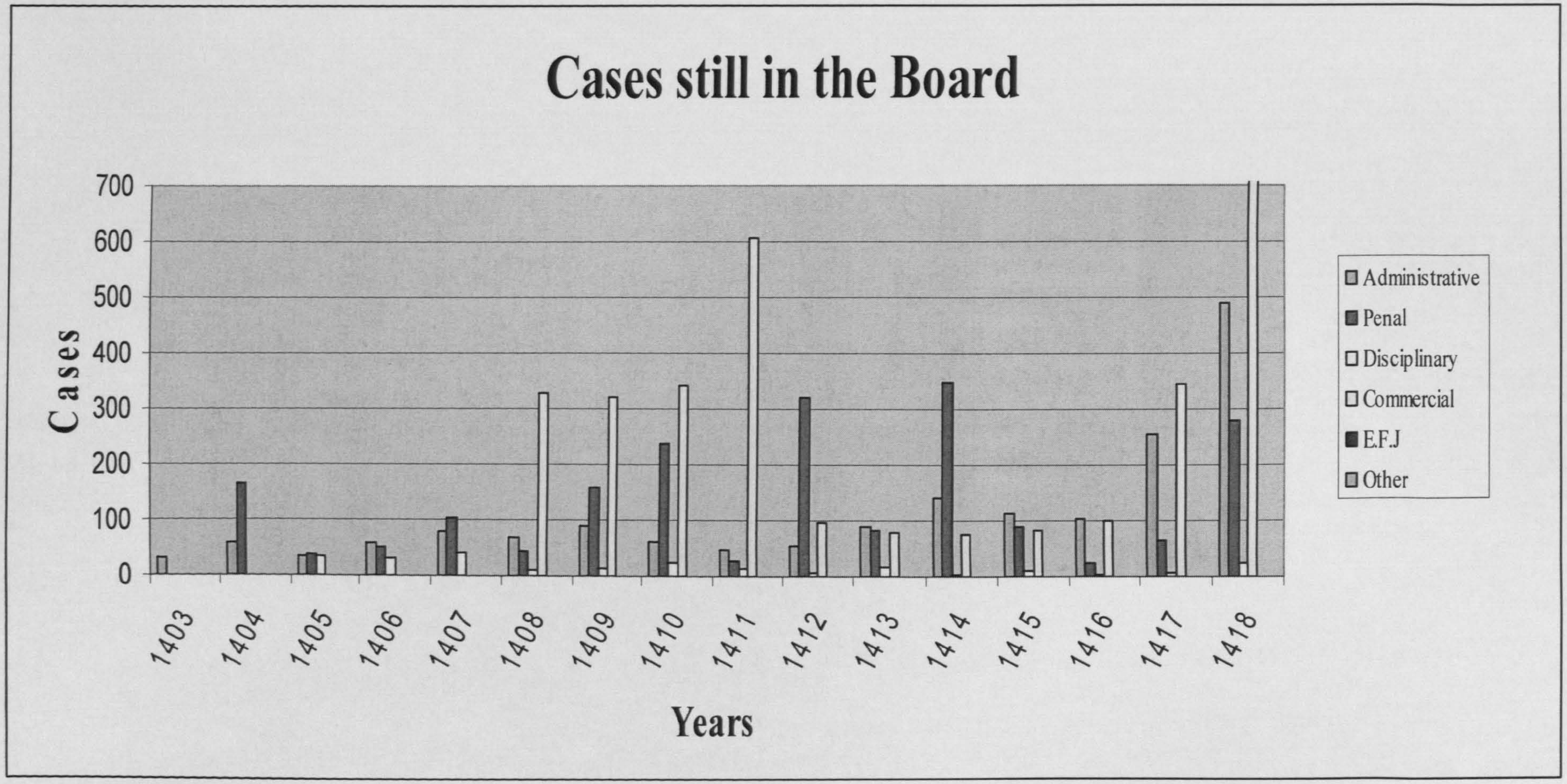

Decided cases registered with the Board
3000
2500
2000
1500
1000
500
0
Cases
1403
1404
1405
1406
1407
1408
1409
1410
1411
1412
1413
1414
1415
1416
1417
1418
Years
Administrative
Penal
Disciplinary
Commercial
E.F.J
Other

Figure 3


Cases still in the Board
700
600
500
400
300
200
100
0
Cases
1403
1404
1405
1406
1407
1408
1409
1410
1411
1412
1413
1414
1415
1416
1417
1418
Years
Administrative
Penal
Disciplinary
Commercial
E.F.J
Other

PAGE

MISSING

IN

ORIGINAL

| Year | Cases | Cases registered | Decided cases | Cases still in the Board |
|---|---|---|---|---|
| (1403H) 1982/83 | **Administrative** | 845 | 815 | 30 |
| | **Penal** | 661 | 661 | --- |
| | **Disciplinary** | 86 | 86 | --- |
| | **Commercial** | --- | --- | --- |
| | **E.F.J*** *Enforcement of Foreign Judgments | --- | --- | --- |
| | **Other** | --- | --- | --- |
| | **Total** | 1592 | 1562 | 30 |
| (1404H) 1983/84 | **Administrative** | 691 | 632 | 59 |
| | **Penal** | 775 | 609 | 166 |
| | **Disciplinary** | 299 | 299 | --- |
| | **Commercial** | --- | --- | --- |
| | **E.F.J*** | 3 | 3 | --- |
| | **Other** | 10 | 10 | --- |
| | **Total** | 1778 | 1553 | 225 |

| Year | cases | Cases registered | Decided cases | Cases still in the Board |
|---|---|---|---|---|
| (1405H) 1984/85 | **Administrative** | 640 | 604 | 36 |
| | **Penal** | 662 | 624 | 38 |
| | **Disciplinary** | 281 | 245 | 36 |
| | **Commercial** | --- | --- | --- |
| | **E.F.J*** | 9 | 9 | --- |
| | **Other** | 42 | 42 | --- |
| | **Total** | 1634 | 1524 | 110 |
| (1406H) 1985/86 | **Administrative** | 733 | 676 | 57 |
| | **Penal** | 891 | 838 | 53 |
| | **Disciplinary** | 348 | 317 | 31 |
| | **Commercial** | --- | --- | --- |
| | **E.F.J*** | 16 | 16 | --- |
| | **Other** | 19 | 19 | --- |
| | **Total** | 2007 | 1866 | 141 |

| Year | cases | Cases registered | Decided cases | Cases still in the Board |
|---|---|---|---|---|
| (1407H) 1986/87 | **Administrative** | 814 | 735 | 79 |
| | **Penal** | 898 | 795 | 103 |
| | **Disciplinary** | 320 | 278 | 42 |
| | **Commercial** | --- | --- | --- |
| | **E.F.J*** | 16 | 16 | --- |
| | **Other** | 15 | 15 | --- |
| | **Total** | 2063 | 1839 | 224 |
| (1408H) 1987/88 | **Administrative** | 1049 | 979 | 70 |
| | **Penal** | 1022 | 978 | 44 |
| | **Disciplinary** | 191 | 181 | 10 |
| | **Commercial** | 811 | 484 | 327 |
| | **E.F.J*** | 16 | 16 | --- |
| | **Other** | 2 | 2 | --- |
| | **Total** | 3091 | 2640 | 451 |

| Year | cases | Cases registered | Decided cases | Cases still in the Board |
|---|---|---|---|---|
| (1409H) 1988/89 | **Administrative** | 1892 | 1803 | 89 |
| | **Penal** | 894 | 736 | 158 |
| | **Disciplinary** | 282 | 267 | 15 |
| | **Commercial** | 1583 | 1261 | 322 |
| | **E.F.J*** | 13 | 13 | --- |
| | **Other** | 1 | 1 | --- |
| | **Total** | 4665 | 4081 | 584 |
| (1410H) 1989/90 | **Administrative** | 2887 | 2825 | 62 |
| | **Penal** | 1053 | 814 | 239 |
| | **Disciplinary** | 227 | 203 | 24 |
| | **Commercial** | 1742 | 1400 | 342 |
| | **E.F.J*** | 17 | 17 | --- |
| | **Other** | 6 | 6 | --- |
| | **Total** | 5932 | 5265 | 667 |

| Year | cases | Cases registered | Decided cases | Cases still in the Board |
|---|---|---|---|---|
| (1411H) 1990/91 | **Administrative** | 1118 | 1068 | 50 |
| | **Penal** | 830 | 802 | 28 |
| | **Disciplinary** | 220 | 207 | 13 |
| | **Commercial** | 2029 | 1421 | 608 |
| | **E.F.J*** | 12 | 12 | --- |
| | **Other** | --- | --- | --- |
| | **Total** | 4209 | 3510 | 699 |
| (1412H) 1991/92 | **Administrative** | 646 | 591 | 55 |
| | **Penal** | 1495 | 1173 | 322 |
| | **Disciplinary** | 179 | 172 | 7 |
| | **Commercial** | 1230 | 1133 | 97 |
| | **E.F.J*** | No information | = | = |
| | **Other** | No information | = | = |
| | **Total** | 3550 | 3069 | 481 |

| Year | cases | Cases registered | Decided cases | Cases still in the Board |
|---|---|---|---|---|
| (1413H) 1992/93 | **Administrative** | 558 | 468 | 90 |
| | **Penal** | 1473 | 1391 | 82 |
| | **Disciplinary** | 175 | 159 | 16 |
| | **Commercial** | 1271 | 1191 | 80 |
| | **E.F.J*** | No information | = | = |
| | **Other** | No information | = | = |
| | **Total** | 3477 | 3209 | 268 |
| (1414H) 1993/94 | **Administrative** | 579 | 438 | 141 |
| | **Penal** | 1890 | 1540 | 350 |
| | **Disciplinary** | 193 | 189 | 4 |
| | **Commercial** | 973 | 897 | 76 |
| | **E.F.J*** | No information | = | = |
| | **Other** | No information | = | = |
| | **Total** | 3635 | 3064 | 571 |

| Year | cases | Cases registered | Decided cases | Cases still in the Board |
|---|---|---|---|---|
| (1415H) 1994/95 | **Administrative** | 602 | 489 | 113 |
| | **Penal** | 2931 | 2843 | 88 |
| | **Disciplinary** | 181 | 170 | 11 |
| | **Commercial** | 929 | 846 | 83 |
| | **E.F.J*** | No information | = | = |
| | **Other** | No information | = | = |
| | **Total** | 4649 | 4348 | 295 |
| (1416H) 1995/96 | **Administrative** | 643 | 538 | 105 |
| | **Penal** | 1633 | 1610 | 23 |
| | **Disciplinary** | 215 | 211 | 4 |
| | **Commercial** | 995 | 894 | 101 |
| | **E.F.J*** | No information | = | = |
| | **Other** | No information | = | = |
| | **Total** | 3486 | 3253 | 233 |

| Year | cases | Cases registered | Decided cases | Cases still in the Board |
|---|---|---|---|---|
| (1417H) 1996/97 | **Administrative** | 579 | 323 | 256 |
| | **Penal** | 2092 | 2026 | 66 |
| | **Disciplinary** | 204 | 198 | 6 |
| | **Commercial** | 1120 | 775 | 345 |
| | **E.F.J*** | No information | = | = |
| | **Other** | No information | = | = |
| | **Total** | 3995 | 3322 | 673 |
| (1418H) 1997/98 | **Administrative** | 1179 | 689 | 490 |
| | **Penal** | 2521 | 2243 | 278 |
| | **Disciplinary** | 205 | 182 | 23 |
| | **Commercial** | 1975 | 1148 | 827 |
| | **E.F.J*** | No information | = | = |
| | **Other** | No information | = | = |
| | **Total** | 5880 | 4262 | 1618 |

# APPENDIX 4

## The Board of Grievances: Cases Reports consulted

- Case No. 799/1/Q of 1983 (1403), decision No. 99/T/3 1988(1408).
- Case No. 1057/1/Q of 1985 (1405), decision No. 133/T/1 of 1985 (1405
- Case No 172/2/Q of 1983 (1403), decision No. 54/T/1 of 1985 (1405)
- Case No. 912/1/Q of 1983 (1403), decision No. 32/T/1 of 1984 (1405
- Case No. 736/1/Q of 1980 (1400). Decision No. 861/T/1 of 1988 (1408).
- Case No. 108/1/Q of 1985(1406), decision No. 14/T/1 of 1985 (1406)
- Case No. 631/1/Q of 1985 (1405), decision, No. 1/D/M of 1987 (1407).
- Case No. 625/1/Q of 1985 (1405) decision No. 134/T/1 of 1985 (1405
- Case No. 1274/1/Q of 1990 (1410), decision No. 12/D/TJ/3 of 1990 (1410).
- Case no. 613/1/Q of 1983 (1403), decision No. 123/T/1 of f1985 (1405),
- Case No. 613/1/Q of 1983 (1403), decision No. 76/T/1 of 1986 (1406
- Case No. 751/1/Q of 1984 (1404), decision No. 60/T/1 of 1985 (1405),
- Case No. 23/2/Q of 1985 (1405), decision No. 48/T/1 of 1986 (1406).
- Case No. 751/1/Q of 1984 (1404), Decision No. 60/T/1 of 1985 (1405
- Case No. 625/1/Q of 1985 (1405), decision No. 134/T/1 of 1985 (1405).
- Case No. 912/1/Q of 1983 (1403), decision No. 32/T/1 of 1984 (1405
- Case No. 80/1/Q of 1988 (1408), decision No. 15/D/F/2 of 1408 (1988).
- Case No 751/1/Q of 1984 (1404), decision No. 60/T/1 of 1985 (1405).
- Case No. 19/7/Q of 1983 (1403), decision No. 88/T/3 of 1989(1410).
- Case No. 535/1/Q of 1980 (1400).
- Case No. 1141/1/Q of 1985 (1405), decision No. 2/D/3/1 of 1987 (1408).

- Case No. 1141/1/Q of 1985 (1405), decision of the Third Administrative Panel No. 2/D/3/1 of 1987 (1408)

- Case No. 535/1/Q of 1980 (1400), decision No. 2/86 of 1981 (1401).

- Case No. 535/1/Q of 1980 (1400), op. cit.

- Case No. 15/4/Q of 1987 (1408), decision of the Review Committee No.138/T/3 of 1988 (1408)

- Case No. 912/1/Q of 1983 (1403), decision No. 32/T/1 of 1984 (1405)

- Case No 189/2/Q of 1987 (1407), decision No. 100/T/4 of 1990 (1407),

- Case No. 912/1/Q of 1983 (1403), decision of the Review committee No 32/T/1 of 1984 (1405).

- Case No. 189/2/Q of 1987 (1407), decision of the Review Committee No. 160/T/4 of 1990 (1410).

- Case No.1141/1/F of 1985 (1405).

- Case No. 1141/1/Q of 1985 (1405), decision of the Third Administrative Panel No. 2/D/3/1 of 1987 (1408).

- Case No. 631/1/Q of 1985 (1405), decision (No.1/D/M of 1978 (1407)),

- Case No. 81/1/Q of 1986 (1410), decision No. 66/T/3 of 1989 (1410),

- Case No. 81/1/Q of 1986 (1407), decision No. 66/T/3 of 1989 (1410).

- Decision of all Members of the Review Committee No. 3/D/M of 1987 (1407) in cases Nos. 186/1/Q of 1985 (1405) 98/2/Q of 1984 (1404), and 118/1/Q of 1984 (1404).

- Case No. 385/2/Q of 1988 (1408), decision of the Review Committee (First Panel) No. 26/T/1 of 1988 (1409).

- Case number 1034/1/Q of 1984 (1404)

# APPENDIX 5

## The judiciary in Saudi Arabia

Following the Judicature Act 1975 article 38 Shari'a judges range between Assistant (Mulazim), at the bottom of the hierarchy, up to Supreme Judicial Council President. Judge (c) is the rank above mulazim. A person who is appointed to this post should have spent at least one year in the post of mulazim. A candidate for the post of judge (b) should have at least one year standing in the rank of judge (c), or have worked in an equivalent field for at least four years. Alternatively he should have taught jurisprudence or its fundamentals in one of the Islamic Shari'a colleges for at least four years, or be a graduate of the high Institution of Judiciary. The category judge (b) is followed by the rank of judge (a). A person will be appointed to this rank if he has either spent at least six years in the post of judge (c), worked in equivalent work for six years or he has taught the subject of Jurisprudence and its Fundamentals in one of the Shari'a Colleges in Saudi Arabia for seven years. The post of Court Deputy Chairman (b) will be held by a person who has either spent at least three years in the judge (a) category, or worked in an equivalent sphere for ten years or who has taught the subjects of Jurisprudence and its Fundamentals for ten years. The next rank is that of Court Deputy Chairman (a). A person will be qualified for this rank if he has either held the post of Court Deputy Chairman (b) for at least two years, worked in similar work for twelve years or, taught the subjects of Jurisprudence and its Fundamentals for twelve years. The post of Court Chairman (b) will be held by a person who has either spent at least fourteen years in the rank of Court Deputy Chairman (a), worked in an equivalent field for fourteen years or

taught the subjects of Jurisprudence and its Fundamentals for fourteen years. The next rank is that of Court Chairman (a). For this rank a person will have held the post of Court Chairman (b) for at least two years, have for sixteen years equivalent experience or, have taught the subjects of Jurisprudence and its Fundamentals for sixteen years.

*Tammys* Judge (the judge of Cassation) will be a person who either has spent two years in the rank of Court chairman (a), or had eighteen years experience or taught for eighteen years in one of the Shari'a Colleges in Saudi Arabia. The *Tammys* Court Chairman is selected from amongst the *Tammys* Judges. Finally the post of the president of the Supreme Judicial Council, the top of the judicial ranks, requires the holder to have the same qualifications as the *Tammys* judge, (See the Judicature Act 1975, article 49).