

**The Importance of Arbitration in Contemporary Labour Disputes in  
The Kingdom of Saudi Arabia**

**By**

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**Submitted in fulfilment of the requirements for the degree of  
Doctor of Philosophy**

**Victoria University  
College of Law and Justice**

**January, 2015**

## DECLARATION

“I, Khaled Rshad khayyat, declare that the PhD thesis entitled ' The Importance of Arbitration in Contemporary Labour Disputes in The Kingdom of Saudi Arabia' is no more than 100,000 words in length including quotes and exclusive of tables, figures, appendices, bibliography, references and footnotes. This thesis contains no material that has been submitted previously, in whole or in part, for the award of any other academic degree or diploma. Except where otherwise indicated, this thesis is my own work”.

Signature\_\_\_\_\_ Date /01/2015

In the name of Allah  
The compassionate, the Merciful,  
Praise be to Allah, Lord of the universe  
Peace and prayers be upon his seal of Prophets and Messengers

## **Acknowledgments**

I would like express my deep thanks to my main supervisor Prof. Bruno Zeller for his assistance, guidance and his valuable advice. He really helped me to overcome the difficulties I faced during my study. I also thank my associate supervisor Dr. James McConvill for his help and advice. I also wish to thank Prof. Anona Armstrong for her assistance in completing this thesis.

My appreciation also goes to Dr. Kumi Heenetigala, Ms Tina Jeggo, Murray Greenway and the staff of the School of Law and Justice at Victoria University who supported and assisted me.

I am grateful to the staff at the Saudi Cultural Mission in Australia for their assistance throughout my PhD study. Also, I wish to thank Dr. Adel Fakeih, the Minister of Labour in Saudi Arabia and members of CSLDs who provided me with several labour cases.

My deep gratitude goes to my parents (Amira and Rshad), and my sister and brother for their support.

My special thanks and love go to my wife, Taghrid, my beloved children, Jodi and Sidra who gave me time to focus on my study and were so patient. I thank them for their unfailing support. They really helped to make my dream come true and I could not have accomplished my PhD without their encouragement and sincere blessings.

## Abstract

The arbitration method as an optional method for resolving labour disputes in the KSA was stipulated in past and current Saudi Labour Laws. However, there has been no prior academic research or study that addresses the importance of the arbitration method in resolving labour disputes.

The aim of this thesis is to study the use of arbitration (that is, arbitration as *quasi-judicial*) in resolving labour disputes in the KSA and then to assess whether there are benefits for the parties to labour disputes. Therefore, a hypothesis is established stating that the use of the arbitration method in labour disputes in Saudi Arabia is not beneficial for both parties in a dispute. The hypothesis is then tested. Thus, it is important to investigate labour disputes and the methods used for resolution, and then evaluate these methods.

This thesis uses a qualitative design of data analysis and compares aspects of the legislation with those of other jurisdictions. First, the current Saudi Labour Law is examined to determine the provisions related to labour disputes and the methods for resolving them. The current Saudi Arbitration Law is analysed in respect to arbitration and the question of whether arbitration is a viable optional method to resolve labour disputes is tested. Furthermore, the provisions of Saudi Labour Law are compared with the labour laws in other Arab and Gulf countries. These countries were selected because their laws are similar to the Saudi laws in many aspects due to proximity, and the common language and religion.

The study shows that, currently, three methods operate in the KSA for resolving labour disputes involving claimants who are individuals or a collective, or Saudi or foreigners. The first method under the Labour Law is an amicable settlement, which takes place in the offices of the Saudi Ministry of Labour after a claimant files a case. Amicable settlement sessions are attended by the parties to a dispute to discuss the issues raised by the claimant and the response of the other party in the presence of a conciliator, who presents a proposal for settling the dispute. This settlement is not binding unless agreed to by all parties.

The second method under the Labour Law relates to determination by the Commissions for the Settlement of Labour Disputes (CSLDs), which are responsible for labour issues. The parties to a dispute cannot access the Commissions unless the amicable settlement has been attempted and failed. The third option is arbitration under the Arbitration Law. The two parties to a dispute can agree to resolve the dispute through labour arbitration proceedings.

Through a detailed analysis, evaluation and discussion of these methods, the hypothesis was not proved. The use of the arbitration method to resolve labour disputes in Saudi Arabia does provide many advantages for the parties, due to recent (2012) amendments to the Arbitration Law. Previous issues evident in the former Arbitration Law were resolved by the latest changes. Further, it was also clear that using the arbitration method for resolving labour disputes will be of greater benefit to the parties to labour disputes than resolving disputes through the current official judicial labour authority in the KSA, which are the CSLDs.

## **Abbreviations index**

CSLDs - Commissions for the Settlement of Labour Disputes

PCSLDs - Preliminary Commissions for the Settlement of Labour Disputes

HCSLD - High Commission for the Settlement of Labour Disputes

H - Hijri (Arabic calendar)

KSA – Kingdom of Saudi Arabia

GCC - Gulf Countries (GULF Corporation Council)

PBUH - Peace Be Upon Him

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## Chapter 1: Introduction

### 1.1 Overview

This chapter will address the research problem and discuss its academic and practical contributions. It also addresses the aim and objectives of the study and determines the research questions and hypothesis of the study.

This chapter also describes the methodology adopted for the study and the motivation for undertaking this research. The chapter is divided into 8 sub-chapters: Sub-chapter 1 provides an overview of the chapter. Sub-chapter 2 introduces the research subject; Sub-chapter 3 concerns the research problem. Sub-chapter 4 explains the research contribution, whilst Sub-chapter 5 states the research objective and the research hypothesis. Sub-chapter 6 presents the thesis methodology and research limitations, and Sub-chapter 7 shows the thesis structure. Sub-chapter 8 concludes the chapter.

### 1.2 Introduction

The first quarter of the 20th century witnessed the establishment of the modern Saudi State on the Arab Peninsula, at a time when no written laws were in existence and Shari'ah law and Arab traditions regulated all relationships and disputes in society.<sup>1</sup> Hence, the traditional concept of labour relationships was based on the employer committing to paying an agreed wage for a task completed by the worker, under supervision or otherwise.<sup>2</sup> Workers could be paid daily or in kind, such as with a portion of the crop (for example, grain or dates).<sup>3</sup>

Despite this simple labour relationship, disputes between parties (employer, employee) rarely occurred. If there was a dispute, it was likely to be resolved amicably between the two parties, as it rarely required using the official legal authorities in the KSA.

However, in some parts of the peninsula that were still under Ottoman rule at the time, specifically the Hejaz<sup>4</sup> a chief or Sheikh was appointed or elected for each occupation or profession by members of the classification or by the Ruler. The criteria for choice were experience, wisdom and honesty. This was common in Arab areas under Ottoman rule.<sup>5</sup> As part of his duties, the Sheikh was an arbitrator in the resolution of labour disputes related to this profession and the disputes that occurred between the member employers and employees. The leader of the profession was respected and trusted by all, and therefore he was accepted as arbitrator in the labour dispute. This was a customary form of arbitration not subject to written legislation but decided by common professional customs prevailing at that time,

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<sup>1</sup>Hassan Al-Sheikh, *Judicial Organization in Kingdom of Saudi Arabia* (Tohama for Publishing, 1983) 29-34.

<sup>2</sup>Saud Al-Dareeb, *Development of Saudi Law in Labour and Social Security* (King Abdul-Aziz foundation for Researches and Archives, 1999) 2.

<sup>3</sup>Youssef Elias, *Labour Legislations in Arab Gulf Countries* (Council of Minister of Labour and Minister of Social Affairs in Arab Gulf States Executive Bureau, 1984) 11.

<sup>4</sup>"Hejaz" The name of the west area of the KSA before the establishment of the KSA (these cities are Makkah, Medina, Jeddah, and Taif).

<sup>5</sup>Nafed Swed, 'Craftsmen and their Historical Role in Developing the Islamic City' (1999) 76 *Arab Heritage Journal* 150, 157.

which would vary according to each profession but were all based on the principles of justice in Shari'ah.<sup>6</sup>

Thus, using arbitration to resolve labour disputes is a custom long-accepted by Saudis, so that the establishment of labour laws was acceptable to society.

The first Saudi Labour Law was issued in 1942, although it was rejected by the legal courts (Shari'ah courts) on the assumption that it violated Shari'ah Law.<sup>7</sup> The officials of the court feared that such a law would be contrary to Shari'ah and that Shari'ah would be replaced by secular laws as had occurred in several neighbouring Islamic countries.<sup>8</sup>

As a result, the second Saudi Labour Law was issued in 1947 to guarantee two things through its provisions: first, it stated that Commissions of Labour were responsible for labour disputes and were independent of the official courts in the KSA<sup>9</sup>; second, the law introduced the concept of arbitration as an option for the resolution of labour disputes in the KSA.<sup>10</sup>

Since the issuance of this law, the arbitration method is still an optional alternative method (that is, arbitration is quasi-judicial) for resolving all types of labour disputes that is stated in all the following labour laws issued in the KSA. These laws were then developed in terms of regulations and proceedings in labour disputes.

This research will address the importance and contribution of labour arbitration as an optional method for resolving labour disputes in the KSA.

### 1.3 Research Problem

Although access to arbitration for resolving labour disputes has existed in the Saudi labour law for more than sixty-five years, it is rarely used. There is little literature or research on the Kingdom's arbitration law or its labour disputes; in fact, a search of the repositories for labour law indicates that there is no extant research on arbitration for Saudi labour disputes.

Thus, this thesis is the first of its kind in the KSA. Hence, this research is interested in studying the concept of labour disputes in the KSA and discussing the current official authorities' competency in resolving labour disputes. The methods and processes for resolving labour disputes in the KSA are addressed in detail and evaluated.

The aim of this research is to explain the current means of resolving labour disputes and explore the arbitration method in the KSA, and showing the benefits of using arbitration to resolve labour disputes. The research also is intended to reach conclusions and make recommendations to enhance the methods for resolving labour disputes in the KSA in general and through arbitration in particular. Therefore, it is expected that obtaining updated information will be very useful for the study of the labour arbitration method in the KSA.

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<sup>6</sup>Abdullah Abo-Bakr, *History of Mecca in the Hijri 14<sup>th</sup> Century* (Manar for Publishing, 2<sup>nd</sup> ed., 2000) 170; Swed, above n 5, 156.

<sup>7</sup>Aktham Al-Khouly, *Lessons in the Saudi Labour Law* (Institute of Public Administration Riyadh, 1973) 70.

<sup>8</sup>Muhammad Al-Fawzan, *Comment on the New Labour Law* (Library of Law and Economy, 2<sup>nd</sup> ed., 2008) 18.

<sup>9</sup>Galal Al-Adawy, *Principle of the Saudi Labour Law* (Institute of Public Administration Riyadh, 1981) 11,12.

<sup>10</sup>Hussein Khafagi, *The Brief in Social Legislation in Saudi Society* (2<sup>th</sup> ed., 1981) 88-93.

## **1.4 Contribution to Knowledge and Statement of Significance**

The objective of this study is to contribute knowledge about the resolution of labour disputes in the KSA by using primary and secondary sources. This is in order to determine the importance of using the arbitration method to resolve labour disputes in the KSA.

### **1.4.1 Contribution to Knowledge (Academic Contribution)**

This research adds to the academic legal references and resources in the KSA. It can be a reference for academics and law school students in Saudi universities, enabling them to better understand labour disputes and the methods for resolving them, and the arbitration method of resolving labour disputes in the KSA. The academic contribution of this research stems from its being the first academic research of its kind that is concerned with the use of arbitration as a means of resolving labour disputes in the KSA. It will also be an important reference in English to explain the methods used for resolving labour disputes in the KSA.

The research will be beneficial for the parties to labour disputes, helping them to understand the current methods and proceedings associated with resolving labour disputes in the KSA. Furthermore, this thesis will contribute to an understanding of the rules and proceedings of arbitration for resolving labour disputes in order to advance the debate regarding labour laws in general and disputes in particular.

### **1.4.2 Statement of Significance (Practical Contribution)**

This research may produce useful, practical results. These results may contribute to determining the best current method for resolving labour disputes in the KSA. Also, the research can be useful for employers and employees in determining whether or not to access the arbitration method for the resolution of labour disputes.

The research will also show the difficulties that are currently faced by the parties to a labour dispute during the process of resolving the dispute, and will suggest ways by which these issues can be avoided. It will also make recommendations regarding the development of systems and laws for the benefit of the parties to a dispute, and for the authorities.

The research outcomes and recommendations will also benefit the authorities who are responsible for labour disputes (Saudi Ministry of Labour) and who should recognise the need to improve their administration of labour dispute resolution. Further, they can use these recommendations in the public interest and the interests of the parties to a dispute.

## **1.5 Objectives of the Study**

The aim of this research is to determine the efficiency of using the arbitration method in resolving labour disputes in the KSA and the expected benefits to the parties to the labour relationship (employers and employees) for using arbitration method in resolving labour disputes.

To achieve these objectives the research will discuss the following:

1. The historical development of labour laws and arbitration laws in the KSA
2. Defining the concept and types of labour disputes in the KSA.
3. Defining the current official authorities competent to resolve labour disputes in the KSA
4. Studying in detail and attempting to evaluate the methods of resolving labour disputes currently used in the KSA.
5. Defining what is meant by optional arbitration method as a method for resolving labour disputes in the KSA.
6. Effectively evaluating arbitration method in resolving labour disputes in the KSA.

### **1.5.1 Research hypotheses**

The hypothesis of this research is:

The use of arbitration to resolve labour disputes has not had beneficial effects on both parties to any labour disputes in the KSA.

### **1.6 Methodology**

A qualitative approach was selected and content analysis was used for this research. The qualitative analytical study was deemed appropriate to investigate the use of the arbitration method in resolving labour disputes in the KSA and to determine any benefits that it might provide for the two parties to labour disputes. Moreover, it investigates and seeks to understand labour dispute resolution in the KSA. The qualitative analytical method was selected in light of the absence of literature on this topic.

The qualitative approach is frequently used in seeking information on social and legal research, particularly where there is little precedent. In a thesis, the methodology reflects the nature of the research questions and the most appropriate manner of answering the research problem. In this case, content analysis is used to gather data from the available documents, generally legislative and case material. This is preferable to other forms of data collection, such as a survey or interviews, due to the employers' and employees' general lack of knowledge about the options available to them in case of dispute. Further, a qualitative approach to the methodology can be extended to comparative studies of similar labour legislations in other Arab and GCC countries.

To achieve the objectives of the research, the researcher will collect all the related documents, data, information, studies, articles, academic research and theses, past cases and judgments, official annual reports and statistics issued by the official authorities, and all the current and previous laws related to the subject of research.

#### **1.6.1 Analysis of Content and Documents**

Analytical methods were used with all data relating to the research topic and the Saudi Labour law and Arbitration Law. The research also analysed a number of previous labour dispute cases that were heard by the commissions for settlement of labour disputes in the KSA.

### **1.6.2 Comparative Study**

A comparative method was employed when comparing the provisions of the Saudi Labour Law and several Arab and GCC labour laws. Due to the similarity of language, religion, culture, society and geography, there is a similarity between labour laws in Arabian and GCC countries and the Saudi Labour Law. This comparison provides additional knowledge about the Saudi labour resolution processes, and is therefore important to the research.

The comparative analytical method was also used for old Saudi Arbitration Law and the recent Saudi Arbitration Law to determine the differences between, and developments and advantages of the rules pertaining to labour arbitration in the KSA.

### **1.6.3 Research Difficulties**

The difficulty of this research lies in the unavailability of English references on the subject of this research in particular, as all the available books, articles, reports and statistics related to the Saudi Labour Law, labour disputes and the methods for resolving them are in Arabic. Another difficulty is that there are very few online references and academic references available that are related to the subject of research.

To overcome this problem, the sources of information varied, including books, academic theses and articles that are not available in electronic versions in hard copy in the KSA. The Saudi Ministry of Labour granted access to past cases, official reports, and decisions related to the subject of research. Some books were purchased direct, as copies were not available in libraries. All the Arabic texts have been translated by the author.

## **1.7 Structure of the Thesis**

This research is presented in eight chapters.

### **Chapter 1**

This chapter is an introduction to the research. It includes a brief introduction on the subject of the research and the research problem. It also discusses the contribution made by this research and the benefits that it is expected to produce. In addition, the chapter includes the aims and objectives of this study.

This chapter also includes the research questions and research hypothesis, and describes the means used for testing the hypothesis. It also discusses the research methodology and the strategy for collecting information. It also shows the limitations of the research and the ways in which these can be addressed in future. Finally, it shows the thesis structure.

### **Chapter 2**

This chapter concerns the historical background of the labour and arbitration laws in the KSA.

This chapter discusses the stages of historical development of labour laws in the KSA starting from the first labour law to the current Saudi Labour Law. It also discusses the history of the arbitration method in resolving disputes in the KSA and the development stages of arbitration laws in the KSA in different fields. Finally, this chapter discusses the stages of emergence and development of labour arbitration legislations in the KSA.

### **Chapter 3**

This chapter concerns the labour relationship according to the Saudi Labour Law. The chapter defines the concept of labour relationship in the KSA. This was accomplished through a detailed study of the labour categories, subject to the application scope of the provisions of the current Saudi Labour Law, and defining the concept of work contract according to the Saudi Labour Law.

This chapter also discusses the labour categories excluded from the application of some provisions of the Saudi Labour Law and the labour categories excluded from all provisions of the Saudi Labour Law. Some provisions of the Saudi Labour Law in relation to the previous topics are compared with those applied in some Arab and GCC labour laws.

### **Chapter 4**

This chapter concerns labour disputes according to the Saudi Labour Law and their types. It examines labour disputes in the KSA and studies individual and collective labour disputes in Saudi Labour Law, comparing these to outcomes from selected Arab and GCC labour laws. The chapter also discusses the legal impact on the difference between individual labour disputes and collective labour disputes.

### **Chapter 5**

This chapter is about the official authorities currently competent to resolve labour disputes in the KSA. It determines the authorities responsible for resolving all types of labour disputes in the KSA and study their competences and current role in resolving labour disputes.

It studies the labour offices in the KSA and explains their purpose and their role in labour disputes. It also addresses the current labour justice authorities in the KSA: the CSLDs and their development, their responsibilities, and the advantages and disadvantages of these Commissions.

This chapter also examines the labour courts to settle labour disputes established by statement of the Saudi Judicial Law 2007 as alternatives to the CSLDs. It will also discuss the reasons for not establishing these courts until now despite this law having been issued a long time ago.

### **Chapter 6**

This chapter examines the amicable settlement of labour disputes through labour offices in the KSA. The chapter discusses how the claimant submits a labour case, and the rules and

proceedings of amicable settlement by the labour offices in resolving labour disputes in the KSA. In addition, it shows the legal consequences of accepting or rejecting a settlement by the parties to the labour dispute. The chapter further evaluates amicable settlement and its role in resolving labour disputes, and the advantages and disadvantages of using this method.

## **Chapter 7**

This chapter describes the judicial method of resolving labour disputes in Saudi Arabia by the CSLDs. The chapter explains the current judicial solution for resolving labour disputes through the Commissions and evaluates their effectiveness in resolving labour disputes in the KSA.

The chapter discusses the rules and proceedings of litigation before the CSLDs, that is, the PCSLDs and the appeal before the HCSLD. This discussion attempts to evaluate the effectiveness of this method in resolving current labour disputes in the KSA.

First, there is a study of the effectiveness of the laws through which litigation proceedings are heard before the CSLDs. Secondly, there is an investigation of the time delays of settlement when resolving labour disputes, using examples of past cases. Finally, the cost of judicial settlement of labour disputes by the CSLDs in the KSA is considered.

## **Chapter 8**

This chapter concerns the arbitration method as an option for resolving labour disputes in Saudi Arabia. This chapter defines the concept of the arbitration method in labour disputes by discussing the differences between optional arbitration in resolving labour disputes in the KSA and the compulsory arbitration method used in some Arab and GCC countries in resolving collective labour disputes.

It also discusses the legitimacy of using the optional arbitration method to resolve different types of individual and collective disputes in the KSA. These results are compared to those in other Arab and GCC countries. In this chapter, the law currently applicable when choosing the arbitration method in resolving labour disputes in the KSA is discussed, together with the current rules and proceedings of the Saudi Arbitration Law of 2012.

Finally, in this chapter, the advantages and disadvantages of using the arbitration method for the resolution of labour disputes in the KSA are discussed.

## **Chapter 9**

This chapter summarises the findings of the thesis; the labour disputes, methods currently used for resolving labour disputes in the KSA, the arbitration method in resolving labour disputes, and compares the systems. The chapter discusses these findings and the outcome of the hypothesis; then recommendations are proposed.

## **1.8 Conclusion**

This chapter introduced the subject of this research regarding arbitration and its importance in labour disputes in the KSA. It was made clear in the chapter that, traditionally, arbitration was used to resolve labour disputes in some areas of the KSA before the emergence of the Saudi State, due to the absence of written labour laws.

When the labour laws were issued in the KSA, they included a statement about the possibility of resolving labour disputes through arbitration. This is the case in the current Saudi Labour Law, as it allows labour disputes to be resolved through arbitration.

This chapter also discussed the gap in the research concerning the use of the arbitration method in resolving labour disputes and its importance in the KSA despite its introduction in the Saudi labour laws some time ago.

The chapter noted the research contribution to knowledge and its significance to the authorities, employers and employees. It also stated the main purpose of this research which is determining the effectiveness and importance of using the arbitration method to resolve labour disputes in the KSA. As explained, this involves many issues such as a detailed study of the methods of resolving labour disputes in the KSA, evaluating them, and examining the rules and procedures of arbitration in labour disputes in the KSA.

The chapter included stating the research hypothesis that assumed that arbitration method in resolving labour disputes in the KSA is not useful. The method used in this study was also determined which is a qualitative method that relies on analytical and comparative description. Finally, the chapter stated the topics of the chapters included in this thesis.

## Chapter 2

### Historical Stages of the Development of Labour Laws and Arbitration laws in the KSA.

#### 2.1 Overview

The aim of this chapter is to discuss the historical evolution of labour laws and arbitration in the KSA since its foundation until the present time. This aim will be realized through an investigation and in-depth research into successive labour and arbitration laws which were applied before the emergence of the KSA until the present time, and by showing the progressive development of these laws.

This chapter will address the historical stages of the development of labour laws and Regulations in the KSA, and will discuss all labour laws issued in the KSA until the current labour law.

Furthermore, the history of arbitration in the Arabian Peninsula will be discussed. Moreover, the development of arbitration laws in the KSA from their initiation to the present Saudi Arbitration Law will be discussed. The history of arbitration in labour disputes in the KSA will be discussed in this chapter also, along with the development of labour arbitration laws in Saudi Arabia until the present time.

The chapter is divided into 5 sub-chapters: sub-chapter 4.1 presents an overview of the chapter; sub-chapter 4.2 discusses the historical development of labour laws & legislation in the KSA; sub-chapter 4.3 discusses the stages of development of arbitration laws and legislation in the KSA; sub-chapter 4.4 studies the emergence and development of labour arbitration in the KSA; and sub-chapter 4.5 concludes the chapter.

#### 2.2 The Historical Development of Labour Laws & Legislation in the KSA

At the beginning of the establishment of the KSA in 1932, there were no labour laws for organizing work and workers' relationships.<sup>11</sup> All judgments concerning work were often subject to the traditions of each profession or category. In some very few cases, parties resorted to the special rules of hiring under Shari'ah Law, as the hiring contract in Islamic Law addresses the issues of human service regarding the hiring of craftsmen and workmen.<sup>12</sup> There was no need for work-specific regulations because of the primitive nature of professions in those times. Economic conditions were harsh due to the scarcity of resources and the absence of modern industries. Thus, job opportunities existed only for manual crafts, farming, grazing, building, or manual industries.<sup>13</sup>

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<sup>11</sup>On the 17th of Jumaada Awal 1351 H - September the 19th 1932 AD, a royal decree was issued announcing the unification of the country under the name The Kingdom of Saudi Arabia, starting from Thursday, the 21st of Jumaada Awal 1351 H - September the 23rd 1932(the first day of Libra); Ministry of Foreign Affairs (Saudi Arabia), *History of the Kingdom* (8 May 2014) <<http://www.mofa.gov.sa/sites/mofaen/EServ/VisitingSaudiArabia/aboutKingDom/Pages/CountryDevelopment36143.aspx>>.

<sup>12</sup>Al Dareeb, above n 2, 2.

<sup>13</sup> Elias, above n 3, 10-11.

The situation remained so until the early stages of searching for oil in the KSA in 1933; this resulted in discovery of sufficient amounts of oil for commercial distribution in 1938.<sup>14</sup> This discovery was a main turning point in the history of the KSA, sowing the first seeds of modern industry and growth in different aspects of life. This was possible due to a stable political and secure environment developed by the KSA's co-founder King Abdul-Aziz. Both factors played an essential role in developing work relations in the KSA; the increase in the variety of opportunities and fields of work and in the number of workmen in the KSA, and the change to the simple pattern of work, all led to the modern hiring of workers situation. This latter had no solid ground because it was imported from the west and focused on those working for oil mining companies. Hence, Saudi authorities recognized the urgent need for organizing labour relations. This led to the issuance of laws and legislation for work and labour over different periods according to the needs of the times. This development in labour laws and regulations will now be described.

### **2.2.1 The Law of Compensating Workers in Industrial and Technical Projects issued in 1937**

The first legislative attempt to organize the relationship of labour and workers in the KSA was by the issuance in 1937 of the law for compensating workers involved in industrial and technical projects.<sup>15</sup> This law applied only to those working in investing oil companies involved in the mining and extraction of oil and minerals in the KSA. The law consisted of 24 articles.<sup>16</sup>

Most of the articles focused on allowing more freedom for oil companies to contract workers. Also, the law explained the details of work injuries and defined the responsibilities of the employer, as well as the types of work injuries (permanent and temporary) and their impact on labour relationships. This led to the issuance of workers' rights that were usually unfamiliar in labour relationships, such as compensating workers in cases of injury, disability, or death resulting from a work injury and providing medical care for workers and paying their costs.<sup>17</sup>

Yet it is argued that the law of compensating workers in industrial and technical projects of 1937 was not sufficiently developed to be considered the first labour law in the KSA. This is mainly due to its limitations, whether in the domain of its application or its organization. In addition, as already mentioned, this law applied only to those working in oil companies in the Kingdom and it was not an integrated law for organizing labour relationships in the KSA. Supporting the previous argument is the fact that the Saudi legislature did not name it a

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<sup>14</sup>Oil was discovered in huge amounts in the famous well (7) in Dammam. Thus, the KSA entered the oil industry era, and soon became the world's number one in exports and reserve; Ministry of Petroleum and Mineral Resources (Saudi Arabia ), *History of Oil and Gas in Kingdom* (2014)

<<http://www.mopm.gov.sa/Arabic/AboutMinistry/PoliticsAndPetroleumIndustry/Pages/HistoryOfOil.aspx>>; U.S. Department of Labour, *Labour Law and Practice in the KSA* (U.S. Department of Labour, Bureau of Labour Statistics, 1972) 5.

<sup>15</sup>*Law of Compensating Workers in Industrial and Technical Projects of 1937* (Saudi Arabia), Royal Decree No. 8/ 44 (18 Rajab 1356 H - 24 September 1937) (copy in Arabia on file with author).

<sup>16</sup>Nizar Al-Kialy, *The Mediator for Explaining Saudi Arbitration Law* (Dar Al- Saudi for Publishing, 1973) 23.

<sup>17</sup>Al-Dareeb, above n 2, 3.

labour law as was done with other labour laws that were introduced later.<sup>18</sup> Thus, the law of compensating labour in industrial and technical projects of 1937 was just the first legislative attempt to organize labour relationships in the KSA. This law cannot be considered as a general labour law. Yet the law of 1937 was a good attempt at such a law, given the era and the KSA's stage of development at that time. If it had not been for the emergence of the oil industry in the KSA just before the issuance of this law, the law would not otherwise have been needed.<sup>19</sup>

### **2.2.2 The First Saudi Labour and Workers Law issued in 1942**

Five years after the law of compensation for workers in industrial and technical projects was issued, Saudi authorities recognized the need for a labour law that organized workers relations in the KSA. As a response, the Saudi Labour and Workers Law was issued in 1942<sup>20</sup>. It was the first Saudi Labour Law and consisted of 17 articles and included various topics such as determining work hours, break hours, and safety precaution rules. Other articles included workers' rights to healthcare, suitable housing and severance pay. The last articles of this law included rules and inspection procedures for checking employers' application of the law.<sup>21</sup> The main defect of this law was its limited applicability, as it applied only to those working in industrial projects.<sup>22</sup>

### **2.2.3 The Second Saudi Labour and Workers Law issued in 1947**

Five years after the issuance of the previous law, it was reconsidered due to many factors and global changes, such as the ending of World War II and the accompanying stability in the world economy, the expansion of economic and industrial activities in the KSA which led to the emergence of new types of work, and because the 1942 Law had limited application. Therefore, it became necessary to issue a new labour law, more comprehensive in its application than the previous one. Hence, the second Saudi Labour and Workers Law was issued, in 1947.<sup>23</sup> This law stated clearly that all previous labour laws in the KSA were subsequently to be repealed, according to Article 58 which stated:

This law replaces all the previous labour laws, instructions, and awards issued in this respect.<sup>24</sup>

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<sup>18</sup>Al-Sayed Naal, *The Mediator for Explaining Labour Law and Saudi Securities Law* (King Saud University Riyadh, 1996) 16.

<sup>19</sup>Muhammad Al-Nafea, *Labour Laws in the KSA During Hundred Years Passed of King Abdul-Aziz entering Riyadh* (King Abdul-Aziz foundation for Researches and Archives, 1999) 4-5.

<sup>20</sup>*Saudi Labour and Workers Law of 1942* (Saudi Arabia), Royal Decree No 5323 (13 Rabia -Thani 1361 H - 30 April 1942) (Copy in Arabia on file with author)

<sup>21</sup>Inspection procedures in this law were under the jurisdiction of the Ministry of Finance, not the Labour Ministry as in the current Saudi labour law because when this law was in effect; there was no labour ministry in the KSA. The Saudi Ministry of Finance was the official reference responsible for implementing and monitoring the verdicts of this law.

<sup>22</sup>Al-Kialy, above n 15, 24; Al-Adawy, above n 8, 11.

<sup>23</sup>*Saudi Labour and Workers Law of 1947* (Saudi Arabia), Royal Decree No 20 (25 Dhul-Qi'dah 1366 H -10 October 1947) (Copy in Arabia on file with author)

<sup>24</sup>*Ibid* art 58.

This law was distinguished from the Labour and Workers Law issued in 1942 as it expanded its scope to include those working in commercial and agricultural projects in addition to those working in industrial projects. This was by virtue of the first Article of this law, which stated:

The rules of this law apply to all cases in which a worker is employed in industrial, commercial, or agricultural projects by a wage-paying authority an employer, or his power.<sup>25</sup>

Also, this law came to be more comprehensive as to organization. It included 60 articles, with Article 40 being very significant.<sup>26</sup> This article stated clearly that labour disputes are to be withdrawn from the Shari'ah courts jurisdiction. The examination of such disputes was entrusted to judicial authorities established for this purpose. Thus, labour disputes were removed from the Shari'ah courts jurisdiction with the existence of an authority for judging labour disputes in the KSA. The articles of this law included the first legislative text permitting the settling of labour disputes in the KSA by arbitration, according to Article 38 of this law.<sup>27</sup> Saudi lawmakers copied most of the text of this law from Egyptian Labour Law No 41 of 1944 which, in turn, had been copied from French Labour Law.<sup>28</sup>

This law was in effect for about 25 years, with amendments and additions by three ministerial awards. The first was the cabinet amendment of 1961<sup>29</sup> which included the expansion of its application to include workers employed by the government in its industrial, agricultural, and commercial projects, thus making them subject to the rules of the Labour and Workers Law issued in 1947.

The second amendment was issued by the cabinet in 1963,<sup>30</sup> including the establishment of a high committee in the Ministry of Labour. This committee was concerned with disputes and labour lawsuits according to the Law of Labour and Worker issued in 1947. Thus, the authority examining labour disputes became completely independent from Shari'ah courts, whether in the first-instance or at appeal levels. According to this amendment, the high committee is an appeals authority having power over the ultimate verdict in all labour disputes and lawsuits.<sup>31</sup>

The last of these amendments to the law of 1947 was issued in 1964.<sup>32</sup> It included granting the labour disputes settlement committee more authority in case of unfair dismissals; the committee had the authority to return the discharged worker to his work once the committee had evidence that the discharge was unfair. It also granted the dispute examining authority the power to make judgments for compensating the worker for any harm resulting from the unfair dismissal.<sup>33</sup>

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<sup>25</sup>Ibid art 1.

<sup>26</sup>Ibid art 40.

<sup>27</sup>Ibid art 38.

<sup>28</sup>Naal, above n 18, 16; Al-Kialy, above n 15, 24.

<sup>29</sup>*Saudi Cabinet Decree* (Saudi Arabia), No. 156 (21 Ramadan 1380 H – 9 March 1961).

<sup>30</sup>*Saudi Cabinet Decree* (Saudi Arabia), No. 643 (29 Dhul-Hijjah 1382 H – 23 May 1963).

<sup>31</sup>Al-Kialy, above n 16, 24-25.

<sup>32</sup>*Saudi Cabinet Decree* (Saudi Arabia), No. 683 (25 Ramadan 1383 H – 9 February 1964).

<sup>33</sup>Al-Kialy, above n 16, 25.

It is worth mentioning that when this law came into effect, particularly in 1960, the KSA had the first Labour Ministry. This ministry was given the task of applying this law, instead of the Ministry of Finance. Thus, the Ministry of Labour became responsible for organizing labour relations in the KSA.<sup>34</sup>

#### **2.2.4 The Third Saudi Labour and Workers Law issued in 1969**

Twenty-five years after the 1947 Law had been issued and applied, it became evident that this law was outdated, especially with an increase in worker numbers and the variety of industries that had been established in the KSA. So, a new labour law was urgently needed; one which was more organized and comprehensive. The aim was to include all categories of workers in the private sector. The executive (legislative) authority in the KSA recognized this need and its importance. The third Saudi Labour Law was issued in 1969 and was called the Saudi Labour and Workers Law.<sup>35</sup>

Through the issuance of this Law, the second Saudi Labour Law of 1947 was cancelled according to Article 210 which stated:

The labour and worker Regulation issued on 25 Dhu al-Qa'dah 1366 (10 October 1947), as well as regulation, orders, and award in effect prior to the coming into force of this Law, are hereby repealed in so far as they are inconsistent with the provisions hereof.<sup>36</sup>

It can be argued that the Labour Law issued in 1969 may be considered the first modern labour law in the KSA to parallel labour laws in modern countries at this time. There are two reasons for this.

First, there was the legislative formulation of the law. It was created by a team of Saudi legal advisers and officials in the Saudi labour ministry, in cooperation with experts from the International Labour Organisation (ILO), so as to take into consideration the global criteria of labour laws – especially Saudi ones - the ministry's needs, and the two parties of the labour relation, the worker and the employer. This was in contrast to previous Saudi labour laws that were mostly copied from Egyptian labour law.<sup>37</sup>

Second, the scope and organization was more comprehensive. The law included all issues to be organized under a modern labour law at that time. There were 211 articles in the law, while the previous law did not exceed 60. The law of 1969 was characterized by the expansion of its jurisdiction to include all categories in the private sector, except for those excluded by a clear text<sup>38</sup>, unlike the previous Saudi labour laws that had limited application.<sup>39</sup>

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<sup>34</sup>Al-Dareeb, Above n 2, 5.

<sup>35</sup>*Saudi Labour and Workers Law of 1969* (Saudi Arabia), Royal Decree No. M /21 (6 Ramadan 1389 H - 16 November 1969)

<[http://www.saudiembassy.net/about/country-information/laws/Labor\\_and\\_Workmen\\_Law-1of4.aspx](http://www.saudiembassy.net/about/country-information/laws/Labor_and_Workmen_Law-1of4.aspx)>.

<sup>36</sup>Ibid art 210.

<sup>37</sup>Abdullah Bn-Mahfouz, *Rights and Commitments of the Worker and Employer in the Saudi labour law* (Kunoz Al- Maarefa for Publishing, 1969) 14; Naal, above n 18, 16.

<sup>38</sup>Saudi Labour and Workers Law of 1969, above n 35 art 3. It states that 'The persons exceptionally not subject to this law'.

The main features of the articles of this law were the inclusion of legal definitions, inspection rules and procedures, labour contracts, wage protection, and vocational hazards and protecting workers from them. Also included were rules pertaining to working hours, juveniles and women, labour dispute settlement procedures, rules of pleading before committees of labour disputes, and the rules and procedures of labour arbitration in the KSA.

### **2.2.5 The Fourth (current) Saudi Labour Law issued in 2005**

During the lengthy period of thirty-six years that had elapsed since the application of the Saudi Labour and Workers Law of 1969, the KSA witnessed changes in all fields, the most important of which was economic and industrial growth. The oil industry was no longer the only economic source. Industry had rapidly grown and had achieved tremendous success. This was due to the attention and financial support by the state, as it realized that the industrial sector played a major role in achieving strategic and economic aims and helping to create job opportunities in the KSA.

To illustrate the point, from 1969 to 2005, state efforts included supporting industrial development through various essential strategies such as providing necessary infrastructure, incentives, and monetary loans. Out of these efforts came the establishment of the Saudi Industrial Development Fund,<sup>40</sup> in addition to the establishment of various industrial cities all over the kingdom. Over 25 cities were created in different parts of the country, with over 1462 factories by the end of 2004.<sup>41</sup>

Thus, the private sector became a major player in the labour market within the KSA by creating jobs. According to a statistical report issued by the information center of the Saudi Labour Ministry in 2004, workers in the private sector totalled (4,648,502).<sup>42</sup>

Although many job opportunities were available in the private sector, the Saudi unemployment rate started to rise, reaching 11% in 2004 (both for males and females) of those capable of working.<sup>43</sup> The increased unemployment rate was due to several reasons, the most significant of which were: most employers preferred foreigners to Saudis because of

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<sup>39</sup>Youssef Abdelmegeed, *Explanation of Labour and Worker Law in Kingdom of Saudi Arabia* (Dar Al- Saudi for Publishing, 5<sup>th</sup> ed, 2005) 10.

<sup>40</sup>The Saudi Industrial Development Fund (SIDF) was established by Royal Decree, No. 3, issued on 26 Safar 1394 H – 21 March 1974, with the objective of supporting the development of the private industrial sector, by extending medium to long term loans for the establishment of new factories and the expansion, upgrading and modernization of existing ones in addition to the provision of guidance and advice in administration, finance, marketing and technology to industrial firms in the KSA; Saudi Industrial Development Fund (Saudi Arabia) *Historical Review* (13 March 2013) <<http://www.sidf.gov.sa/En/AboutSIDF/Pages/HistoricalReview.aspx>>.

<sup>41</sup>Ministry of Commerce (Saudi Arabia), *Report the Performance of the Industrial Sector in 1424 H- 2004* (19 May 2014) 26-28 <<http://mci.gov.sa/MediaCenter/Reports/Pages/default.aspx?PageIndex=3>>.

<sup>42</sup>Ministry of Labour (Saudi Arabia), *The Annual Statistical Book for 2004* (13 May 2009) 122 <<http://portal.mol.gov.sa/ar/Statistics/Pages/stat1.aspx>>.

<sup>43</sup>Central Department of Statistics & Information (Saudi Arabia), *Unemployment Rates (15 Years and Above) by Sex* (2009) <[http://www.cdsi.gov.sa/socandpub/manpower/cat\\_view/40---/29--/87--/85](http://www.cdsi.gov.sa/socandpub/manpower/cat_view/40---/29--/87--/85)>.

their low wages in comparison; and the great development in Saudi women's rights led to an increase in the number of women looking for work, thereby exacerbating the problem.

All of the above factors highlighted the need for new labour laws to match developments and handle the previous problems. As a result, the current Saudi Labour Law was issued in 2005.<sup>44</sup> It is the fourth labour legislation in the KSA's history, and the most sophisticated.

The current Saudi Labour Law of 2005 differed from the old one of 1969 in many significant respects.

To begin with, Saudi lawmakers selected a different title for the Saudi Labour Law of 2005. They called it the Labour Law instead of the Labour and Workers Law which was the title of the previous labour laws in the KSA.<sup>45</sup> Legal experts welcomed this because it was widely used in the GCC and Arab countries. Also, the term "labour" itself implies workers, thus eliminating the need to add the word "workers" to the title.<sup>46</sup>

Moreover, the Saudi Labour Law of 2005 consisted of 245 articles which were divided into 16 chapters,<sup>47</sup> while the old one of 1969 did not exceed 211 articles.

Furthermore, the Saudi Labour Law of 2005 contained specific articles for organizing the CSLDs which are the judicial authority for labour disputes in the KSA, as will be discussed in detail in Chapter 5.

In addition, according to the current Labour Law of 2005, the Saudi Arbitration law has become applicable in the case of choosing arbitration as a method to resolve labour disputes, while the old Saudi Labour Law of 1969 had specific articles pertaining to organization procedures for labour arbitration (as will be discussed in end of this Chapter 2.4.2 & 2.4.3 ).

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<sup>44</sup>*Saudi Labour Law of 2005* (Saudi Arabia), Royal Decree No. M/51 (23 Sha'ban 1426 H - 27 September 2005) <<http://www.boe.gov.sa/ViewSystemDetails.aspx?lang=en&SystemID=186&VersionID=201>>.

<sup>45</sup>Ibid art 1. It states that 'This law shall be called the labour law'.

<sup>46</sup>Al-Fawzan, above n 8, 17-19.

<sup>47</sup>These chapters are: Chapter One which includes definitions of terms used in the law, general rules, the application domain, people subject to the law, and those exceptionally not subject; Chapter Two which includes the organization of the employment process, disabled employment, the organization of civil offices for employing citizens and the civil offices concerned with employing foreign workers to the KSA; Chapter Three which includes the rules of employing expatriates in the KSA; Chapter Four which includes rules of rehabilitation and training of workers and others at the employer's place; Chapter Five which includes the definition of the labour contract, rights and duties of employers and workers, how the contract is terminated, and organization of the discharge compensation paid to workers; Chapter Six which includes the determination of labour terms and conditions, rules of fixing salaries, working hours, daily breaks, and vacations; Chapter Seven which includes part-time labour organization rules; Chapter Eight which includes preventing labour hazards, protection against industrial accidents, workers' rights in cases of work injuries, and social & health services to be provided to workers; Chapter Nine which includes rules for employing women and working women's rights ; Chapter Ten which includes the rules and controls for employing juveniles and their rights; Chapter Eleven which includes details of maritime labour contracts; Chapter Twelve which includes organizing work in hazardous places, such as mines and quarries, and the criteria of securing such places to keep workers safe; Chapter Thirteen which includes inspection rules and the observation of applying the rules and verdicts of this law; Chapter Fourteen which includes determining the authorities having jurisdiction in labour disputes and their power, the procedures of pleading before the Commissions for the Settlement of Labour Disputes, and the procedures of labour arbitration; Chapter Fifteen which includes penalties decided for violation of the rules of this law; and Chapter Sixteen which includes closing verdicts.

Finally, it can be noted that the current Labour Law of 2005 reflects the orientation of the leadership of the KSA towards granting Saudi women their complete rights in order to be active society members - especially in the labour field, unlike the previous Saudi labour laws that included some constraints and obstacles. The current Law includes no text forbidding women to work in the same place as men, as was the case of the previous "old" law of 1969. Article 160 of law of 1969 included an explicit statement preventing women from working with men in the same workplace.<sup>48</sup> By eliminating this constraint, women were granted the right to be employed in locations together with men, with the observation of religious controls in this respect.

It is worth noting that the current labour law includes an explicit article stating the cancellation of the old Labour and Workers Law 1969, and repealing all the provisions of the old law that are inconsistent with the current law. But Regulations issued prior to the effective date of this law would remain in effect until they are amended.<sup>49</sup> The relevant article, Article 244, stated:

This Law shall supersede the Labour and Workers Law promulgated by Royal Decree No. (M/21) dated 6 Ramadan 1389 AH and shall repeal all the provisions that are inconsistent with it. Regulations and awards issued prior to the effective date of this Law shall remain in effect until they are amended.<sup>50</sup>

After this law was issued, the Minister of Labour, using his authority as stated in article 243 of this Law, issued the Implementing Regulations of the labour law in 2007.<sup>51</sup> These Regulations were issued in agreement with the awards of Article 243 of the previous labour law, which stated:

The Minister shall issue, within one hundred eighty days from the effective date of this Law, the awards and regulations necessary for implementing the provisions of this Law. The Implementing Regulations shall be published in the Official Gazette.<sup>52</sup>

These Regulations have determined the rules of work organization, its procedures, the information that has to be submitted by the employer to the labour office, and terms for granting professional licenses. Also, the Regulations established the terms for bringing in expatriates, service transfer, and changing professions for non-Saudis, the terms and rules of replacing expatriates with Saudis, the general rules and criteria of training trainees, official holidays for which workers are given a full wage vacation, obligatory first-aid equipment to be provided by employers in the workplace, and the remote areas in which workers are given privileges according to the Saudi Labour Law.

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<sup>48</sup> Saudi Labour and Workers Law of 1969, above n 35 art 160. It states that 'In no case may men and women commingle in the place of work or in the accessory facilities or other appurtenances thereto'.

<sup>49</sup> Muhammad Megahed, *The Work is Happiness and Life for Human, Zoom on the Labour Law in Kingdom of Saudi Arabia* (2008) 27.

<sup>50</sup> Saudi Labour Law of 2005 above n 44, art 244.

<sup>51</sup> *Implementing Regulations of the Labour Law* (Saudi Arabia), Published in *Umm Al-Qura Gazette No. 4145* (3 Rabi' Thani 1428 H– 21 April 2007)

<<http://portal.mol.gov.sa/ar/MolLists/Pages/%D8%A7%D9%84%D9%84%D8%A7%D8%A6%D8%AD%D8%A9%D8%A7%D9%84%D8%AA%D9%86%D9%81%D9%8A%D8%B0%D9%8A%D8%A9.aspx>>.

<sup>52</sup> Saudi Labour Law of 2005 above n 44, art 243.

## 2.3 Stages of Development of Arbitration Laws and Legislation in the KSA

To understand the developments of arbitration in labour disputes in the KSA, it is important to examine the stages of the development of arbitration laws in the KSA from a historical perspective.

Since the establishment of the KSA, Saudi legislatures have always been interested in arbitration for several reasons. The most important of these reasons is the legitimacy of arbitration in Shari'ah and the fact that arbitration is a historical legacy for the people of the KSA; it is a realistic extension of the pre-Islamic arbitration in the Arabian Peninsula<sup>53</sup> and was a traditional method for resolving disputes for hundreds of years. This situation continued until the modern state was established under the name of the Kingdom of Saudi Arabia, with most of the Arabian Peninsula under its reign, complete with official authorities such as executive, legislative, and judicial functions.<sup>54</sup>

Before considering the legislative development phases of KSA arbitration laws, it is important to understand the following three points: the concept of arbitration known to Arabs of the Peninsula in the pre-Islamic era; the legitimacy of arbitration in Shari'ah; and the role of arbitration in the Arabian Peninsula before the establishment of the KSA. In this way, a clear historical foundation for the modern arbitration laws in the KSA is established.

### 2.3.1 The Concept of Arbitration known to Arabs of the Peninsula

Arabs, the people of the Peninsula in the Pre-Islamic era, were familiar with arbitration as there were no public authorities because of the absence of a concept of state. This, of course, led to the absence of a judicial authority and the consequent result of power prevalence in obtaining individual or tribal rights. With time, the prevailing system turned into customs and traditions by which rights were obtained. Traditionally, arbitration was used as a voluntary means of settling disputes that might arise between people.<sup>55</sup> Arabs resorted to tribal chiefs when the dispute arose inside the same tribe and to neutral persons when the dispute included people from different tribes. In agreeing to settle a dispute by arbitration, each party selected one or more arbitrators, neutral people known to be honest, wise, influential, and expert in Arab traditions.<sup>56</sup> In that era, Arabs had a number of famous arbitrators to resort to for settling their disputes such as Abdul Muttalib bin Hashim, Aktham bin Saifi, and Amir Aladwani. The Messenger Muhammad (PBUH) was a famous arbitrator before Islam. An example of his expertise was the famous dispute he (PBUH) arbitrated when the tribes resorted to him, after finishing the Alka'ba construction, to determine which tribe would have the honour of returning the Black Stone to its place.<sup>57</sup> Before Islam, Arabs accepted women,

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<sup>53</sup>"Arabian Peninsula" was the name of the Kingdom of Saudi Arabia before the KSA was established by King Abdul-Aziz in 1351 H/1932.

<sup>54</sup>Muhammad Al-Marzoay, *Legislative Authority in Kingdom of Saudi Arabia* (Obeikan library, 2004) 31.

<sup>55</sup>Al-Sayed Al-Marakby, *Arbitration in Gulf Countries and its Influence on State Sovereignty* (Dar Al-Nahda Al-Arabia, 2<sup>nd</sup> ed, 2010) 5.

<sup>56</sup>Jawad Ali, *Al-Mofsal in the of the Arab Pre- Islam*, Part 5 (Baghdad university, 2<sup>nd</sup> ed, 1993 ) 495.

<sup>57</sup> Khalid Hussein, *Arbitration nullification* (Dar Al-Nahda Al-Arabia, 2010) 8,9.

too, as arbitrators. They used to accept their judgments as they accepted men's. Some famous Arab women arbitrators were Sahrbint Luqman, Ebnat Alkhess, and Khassela Aladwani.<sup>58</sup>

Arbitration procedures, then, were very simple and appropriate for desert life. After selecting arbitrators, the dispute issue was determined and a pledge taken by both parties to obey and commit to executing the arbitration decision without objection. Arbitration sessions were often held in public places, where arbitrators and opponents gathered in public. An essential condition was the attendance of opponents in person at the arbitration meeting. The rules of making judgments were as follows: let each party prove their claims and provide evidence; if there were no evidence to hand, then the opponent was asked to swear or be condemned. The oath was taken according to the beliefs of the one being sworn and was often done before an idol in which they believed in order to ensure the credibility of the one who swore.<sup>59</sup> Once the decision was taken, it became final and obligatory by virtue of the previous pledge given by both parties.<sup>60</sup> This was the concept of arbitration known to Arabs in the Arabian Peninsula before Islam.

Developments in the practice of arbitration increased with the rise of Islam. The most important one was the establishment of the Islamic state headed by the Messenger Mohammed (PBUH). Justice is one of the basic principles of Islam, so it was natural for Islam to endorse arbitration as a type of judgment because it was legitimised by the Quran, Sunnah, and Ijma'a (consensus).<sup>61</sup> The Holy Quran mentioned arbitration as applying to many issues such as the Saying of Allah the Almighty in Surat An-Nisaa:

If ye fear a breach between them twain, appoint (two) arbiters, one from his family, and the other from hers; if they wish for peace, Allah will cause their reconciliation: for Allah hath full knowledge, and is acquainted with all things.<sup>62</sup>

The above verse is evidence of the legitimacy of arbitration in family affairs between couples. Thus, jurisprudence and Muslim scholars argued the legitimacy of arbitration in all disputes and lawsuits not related to limits set by Allah.<sup>63</sup> Also, Sunnah approved the legitimacy of arbitration, with many traditions endorsing it. In Sahih Abu-Dawood, from Abi-Shuraih, he said that:

when he went with his people to Allah's Messenger (PBUH), he heard them call him Abilhakam. Allah's Messenger called him and said: "Allah is Alhakam (The Judge) and to Him is judgment. So, why are you nicknamed Abalhakam?" Abi-Shuraih said: "When my people have a dispute, they resort to me to judge, and both

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<sup>58</sup> Ali, above n 56, 498.

<sup>59</sup> Abdelhamid Al-Ahdab, *Encyclopaedia of International Arbitration, Second Book* (Halaby Legal Publication, 3<sup>rd</sup> ed, 2008) 56.

<sup>60</sup> Ali, above n 56, 506-507.

<sup>61</sup> Muhammad Al-Bjad, *Arbitration in the Kingdom of Saudi Arabia* (Institute of Public Administration in Riyadh, 1999) 23; The Basic sources of Shariah "Islamic law" are the Quran, Sunna, and Ijma'a.

<sup>62</sup> *The Holy Qur'an*, Surat An-Nisaa (The Women) Verse 35.

<<http://quran.al-islam.com/Loader.aspx?pageid=738&BookID=15&page=1>>.

<sup>63</sup> Najib Al-Gabaly, *Arbitration in Arab laws Comparative Study in Islamic Jurisprudence and Laws* (Al-Maktab Al-Jamay Al-Hadaeth, 2006) 27.

opponents accept my judgments." The Messenger (PBUH) said: How good this is.<sup>64</sup>

This statement by the Messenger (PBUH) is evidence of the legitimacy of arbitration.<sup>65</sup> Another piece of evidence from Sunnah is the approval of the Messenger Mohammed (PBUH) to have Sa'ad bin Mu'ath arbitrate in the issue of Bani Quraitha Jews at their will.<sup>66</sup>

There is a consensus concerning the legitimacy of arbitration. None of the Messenger's companions or Muslim scholars deny it. Arbitration was used by The Messenger's companions for settling critical disputes such as the famous Khilafa dispute between Ali bin Abi-Taleb and Muawia bin Abi-Sufian (May Allah Be Pleased With Them). Arbitration was the means selected for resolving this dispute. Ali selected Aba-Moussa Al-asha'ri as arbitrator and Muawia selected Amro bin Alas.<sup>67</sup> Consequently, there is a consensus regarding the legitimacy of arbitration in Islam, that is the view of the majority of Muslim scholars and the four jurisprudent doctrines, Hanbali, Hanafi, Shafi'i, and Malki.<sup>68</sup>

### **2.3.1.1 The Role of Arbitration in the Arabian Peninsula before the Establishment of the KSA**

Before the establishment of the KSA, the role of arbitration in the Arabian Peninsula continued taking Arab tribal traditions and customs inherited from the first era as sources, as well as religious judgments. These judgments lagged behind due to the ignorance prevailing in society and the political instability that arose because of the absence of a state authority in many parts of the Peninsula. As a result, judicial power was missing in most parts of the peninsula. When it was present, this power resided in two persons: the judge and the prince. The judge of the region was responsible for settling disputes based on Shari'ah and tradition. The prince used his power to conciliate opponents. Upon failure to do so, he referred the dispute to the judge. This was typical, particularly in Najd.<sup>69</sup> In addition, tribal traditions played a major role in resolving disputes based on arbitration, very much like the one known by Arabs before Islam. As to procedures, these were carried out according to traditions and tribal customs inherited from ancestors, with the selection of arbitrators coming from mostly tribal chiefs, princes, or wise men.<sup>70</sup>

Yet, arbitration in Hejaz resembled contemporary arbitration in modern law because the judicial system in Hejaz developed out of the existence of courts, with official judicial

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<sup>64</sup> Solomon Sijistani, *Sunan Abi Dawood* (Dar Ibn Hazm, 1998) 746.

<sup>65</sup> Al-Gabaly, above n, 63.

<sup>66</sup> Moheedab Al-Mohadab, *Development of Arbitration Law in Kingdom of Saudi Arabia in the Reign of the Custodian of the Two Holy Mosques King Fahd* (King Saud University, 2002) 26.

<sup>67</sup> Hussein, n 58, 15

<sup>68</sup> Zeid Al-Zaeid, *Legitimization of Arbitration in Islamic Jurisprudence* (2003)

<<http://almostsharaltahkemy.dahek.net/t29-topic>>; The four schools of Sunna are Hanbali, Hanafi, Shafi'i, And Malki.

<sup>69</sup> "Najd" The previous name of the central region of the KSA, namely Riyadh.

<sup>70</sup> Ministry of Justice in Saudi Arabia, *Judiciary in the Kingdom of Saudi Arabia, its History, its Institutions, its Principles* (Ministry of Justice in Saudi Arabia, 1998); Al-Mohadab, above n 66, 3.

authority applying the verdicts of Shari'ah (according to Hanbali doctrine) and some of the laws established by the Ottoman state in the 19<sup>th</sup> century (as Hejaz was under Ottoman rule at that time).<sup>71</sup> This was reflected in arbitration, as it was done according to written legislative rules known as the judicial verdicts journal. This journal was civil law drawn from the Hanbali doctrine in Islam.<sup>72</sup> The journal established Articles 1841 to 1851 for arbitration proceedings.<sup>73</sup>

According to this journal, one of the basic features of arbitration is that arbitration is optional for both parties to the dispute, based on Article 1790:

Arbitration is defined as both opponents selecting an arbitrator, by their own free will, for settling their dispute and lawsuit.<sup>74</sup>

Article 1841 of the journal determined those disputes that may be settled by arbitration:

Arbitration is permissible in monetary lawsuits concerning people's rights.<sup>75</sup>

Such monetary disputes include sales, bonds, preemption, debts, alimony, divorce, and marriage.<sup>76</sup>

The qualifications of an arbitrator are the same as those of a judge: capacity and discretion. Arbitration by a child, an insane person, the blind or the deaf, is not acceptable according to Article 1794.<sup>77</sup> Arbitration was not restricted to males, according to journal rules, as a woman's arbitration was accepted due to her capacity for testimony.<sup>78</sup> Opponents are entitled to select one or more arbitrators. When more than one arbitrator is selected, a unanimous award must be made according to Article 1844.<sup>79</sup>

Article 1846<sup>80</sup> obligated arbitrators to issue an award during the time period set by opponents, otherwise the arbitration would be deemed cancelled. Also, Article 1847<sup>81</sup> gave opponents the right to seclude the arbitrator before issuing the award – something that did not exist in

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<sup>71</sup>Saud Al Dareeb, *Judicial Organization in the Kingdom of Saudi Arabia in the Zoom of Islamic shariah law and the Judiciary System* (PhD Thesis, Al-Imam Muhammad Ibn Saud Islamic University, 1999) 280,285, Al-Mohadab, above n 66, 2.

<sup>72</sup> *Judicial Verdicts Journal*, has been enacted under the Ottoman Empire (1293 H - 1882) <<http://shamela.ws/index.php/book/8502>> (Translator with the author).

<sup>73</sup>Muhammad Albogha, 'Lawmaking in the Judicial Verdicts Journal' (2009) 25(2) *Damascus University Journal of Economic & Legal Science* 743, 758.

<sup>74</sup>*Judicial Verdicts Journal*, above n 72, art 1790.

<sup>75</sup>*Ibid* art 1841.

<sup>76</sup>Ali Hader, *Dorarr Alhokamm for Explanation of Judicial Verdicts Journal* (Dar Alam Al-Kutub for Publication, 2003) 695.

<sup>77</sup>*Judicial Verdicts Journal*, above n 72, art 1794. It states that 'The qualifications of an arbitrator are the same as those of a judge: capacity and discretion. The arbitration of a child, madman, blind or deaf person, who can't hear the parties, is not acceptable'.

<sup>78</sup>Hader, above n 76, 696.

<sup>79</sup>*Judicial Verdicts Journal*, above n 76, art 1844. It states that 'When more than one arbitrator is selected, a unanimous award must be made'.

<sup>80</sup>*Ibid* art 1846. It states that 'If arbitration is limited by a certain period after which it is cancelled, then the arbitrator may not issue an award after that time. If he does, his arbitration is not to be executed'.

<sup>81</sup>*Ibid* art 1847. It states that 'Each party is entitled to exclude the arbitrator before issuing the award'.

the traditional arbitration practices of Arabia.<sup>82</sup> In addition, according to the journal, arbitration is distinguished by granting the official judge the authority to monitor the arbitration by giving the arbitration award the executive form or cancelling it if not in conformity with regulations.

Article 1849 states that:

If the arbitrator's award is presented to the judge appointed by the ruler then he may endorse it if in agreement with regulations or refute it.<sup>83</sup>

Thus, the arbitration awards, according to the rules of the judicial verdicts journal, are not final but are subject to the judge's discretion.

### **2.3.2 Stages of Arbitration Laws & Legislation in the K.S.A**

Since the establishment of the KSA in 1932, the KSA has recognized the importance of the judiciary and unifying judicial laws in all parts of the state; hence, it developed and organized judicial facilities as a practical application of the modern Islamic judicial system. Yet the benefits and role of arbitration in settling disputes, along with official justice, were not overlooked; the state worked on using arbitration with special attention given to the above-mentioned Islamic legitimacy of arbitration and the history of arbitration as an Arabian custom and tradition inherited by the KSA people.

One proof of the recognition of the effectiveness of arbitration in settling disputes by the KSA is that the founding King, Abdul-Aziz, included a provision for arbitration in the international binary conventions and treaties concerning borders. This provided that any dispute regarding the application of these treaties was to be settled by arbitration. This was the case in the Al-Taif Treaty between the KSA and Yemen in 1934 and the Baghdad Treaty between the KSA and Iraq in 1936.<sup>84</sup>

Also, the KSA accepted arbitration as a means of settling disputes that might arise with oil companies by including an arbitration provision in concession contracts at the beginning of oil exploration.<sup>85</sup> Examples of this are the agreement with Standard Oil Co. in 1933, the neutral region agreement with the Pacific Western Oil Corporation in 1949, and the oil refining agreement with the Japanese Oil Co. in 1949.<sup>86</sup>

In an earnest attempt to develop the concept of arbitration for settling different disputes in the KSA, much legislation was issued allowing arbitration to be used in different kinds of

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<sup>82</sup>Salem Al-Libnany, *Explanation of Judicial Verdicts Journal* (Halaby Legal Publication, 2009) 1154.

<sup>83</sup>Judicial Verdicts Journal, above n 72, art 1849.

<sup>84</sup>Muhammad Abo-Alwafa, *Principle of Settling International Disputes Amicably in the International Treaty of Kingdom of Saudi Arabia* (Dar Al-Saudi for publishing, 1990) 73,74.

<sup>85</sup>Ahmed Abo-Alwafah, *Arbitration in Arab Laws* (Monshaah Al-Maaraf, 4<sup>th</sup> ed, 1983) 169.

<sup>86</sup>Ommar Bakhshab, 'Legal Concepts of Saudi Law of Arbitration for Settling Commercial Disputes within National & International Spheres' (2000) 14(1) *Journal of King Abdul-Aziz University: Economics and Administration* 151,187.

disputes. The legislative development of arbitration went through consecutive historic periods, during which arbitration rules were organized by texts in different laws in various fields through the issuance of an independent arbitration law in the KSA. These stages will be discussed below.

### **2.3.2.1 Ratification of Commercial Arbitration in the KSA according to the Commercial Court Law issued in 1931<sup>87</sup>**

The first legislative use of arbitration procedures in the KSA emerged by stating arbitration in the Saudi Commercial Court Law of 1931, which was drawn mostly from the Ottoman trade law taken from French Commercial Law.<sup>88</sup> Saudi Commercial Court Law is deemed as Saudi Commercial Law.

Saudi Commercial Court Law organized the rules and procedures of arbitration in commercial disputes, with Articles 493-497 of the law having the following features.

Article 493 states that:

If the two litigating parties deem to seek arbitration, they shall make an official document attested by the notary public. Such document shall contain the conditions agreed upon regarding whether to set a time limit for the arbitration, or whether the arbitrators' judgment shall be effective, whether issued by consensus, or by majority and otherwise of whatever they shall agree upon, and they shall sign the agreement and deliver it to the arbitrators.<sup>89</sup>

According to the above article, arbitration in commercial disputes is optional. Both parties are entitled to resort to arbitration as an alternative means of settling commercial disputes. Article 493 above gave opponents the right to select one or more arbitrators. Also, it provided for the arbitration agreement to be written by an official deed. The arbitration deed must include the provisions agreed upon by both parties to the dispute.

Article 494 states that:

The arbitrators shall examine the statements of the two parties according to the legislative rules, check their papers, documents, the testimonies of their witnesses and make their judgment according to evidence and within the bounds of arbitration conditions.<sup>90</sup>

Hence, arbitration procedures are carried out according to the legal and religious controls applied in the KSA, in addition to considering the arbitration terms set by the dispute parties.

Article 495 states that:

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<sup>87</sup>*Saudi Commercial Court Law* (Saudi Arabia), Royal Decree No. 32 (15 Muharram 1350 H - 1 June 1931) <<http://mci.gov.sa/LawsRegulations/SystemsAndRegulations/LawofCommercialCourt/Pages/default.aspx>>

<sup>88</sup>Al-Bjad, above n 61, 9.

<sup>89</sup>Ibid art 493.

<sup>90</sup>Ibid art 494.

If the decision issued by the arbitrators proves to be conforming to the rules, the arbitration document shall be attested by the Court and executed, and if it breaches any of such, the commercial court shall nullify it.<sup>91</sup>

Hence, Article 495 gave the commercial court of the KSA a monitoring authority over the arbitrator's award, by providing for presentation of the award to the commercial court which could examine and scrutinize it. The commercial court could then approve or refute it if it was not aligned with the principles and regulations applied in the KSA or if the award violated the terms of arbitration agreed upon by both parties in the arbitration deed. Moreover, according to the above article, the arbitration award acquires the executive form once endorsed by the commercial court and it becomes final in that case.<sup>92</sup>

Article 496 notes that it is:

Not be permissible for each of the two parties to dismissal the arbitrator he has appointed and is approved by the commercial Court whether prior to or after judgment issuance, and they shall be entitled to object to the arbitrators' judgment before the commercial Court.<sup>93</sup>

Based on the above article, the commercial court law did not permit dismissal of an arbitrator by the party that appointed him when the commercial court had endorsed the arbitration deed. This article did not distinguish between the dismissal of an arbitrator before or after issuing the award.<sup>94</sup> In addition, the commercial court law, according to the previous article, gave both arbitration parties the right to object to the arbitration award. However, Article 496 did not determine what is meant by the objection right stated in the previous article; the question is whether it can be appealed or just challenged as false. It could be said that, based on not determining cases of objection to the arbitration award in the above law, the arbitration award may be appealed and is not final.

Article 497 states that:

The arbitrators, whether of the Court's superintendents or a selected committee, shall submit their signed judgment to the Court after checking it and taking the statements of the two parties regarding if they have an objection, and shall attest such if conforming to the rules, and if it breaches any of such, it shall be nullified.<sup>95</sup>

The previous article bound the commercial court, before endorsing the award, to take statements from both parties regarding their will for objection first, that is, before endorsing the award.<sup>96</sup>

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<sup>91</sup>Ibid art 495.

<sup>92</sup>Walaal Refaat, *International & National Arbitration in Kingdom of Saudi Arabia* (Chamber of Commerce and Industry in Jeddah, 1998) 78.

<sup>93</sup>Saudi Commercial Court Law, above n 87, art 496.

<sup>94</sup> Anwar Bukhargy, *National Courts Supervision Over Arbitration Awards Under The Saudi Arbitration Law* (Master Theses, King Abdul-Aziz University, 2006) 8.

<sup>95</sup>Saudi Commercial Court Law, above n 87, art 497.

<sup>96</sup>Bukhargy, above n 94, 10.

These are the basic features of arbitration rules in commercial court law, which was explicitly cancelled when the Saudi Arbitration Law was issued in 1983.

### **2.3.2.2 The Ratification of Institutional Arbitration in the KSA by the Chambers of Commerce and Industry Law issued in 1946<sup>97</sup>**

The first Chambers of Commerce and Industry Law issued in the KSA gave merchants and manufacturers the right to agree to seek help from the Chambers of Commerce and Industry to undertake arbitration in settling their disputes. Thus, this law laid the foundation for institutional arbitration in the KSA. Under that law, the first Saudi Chamber of Commerce and Industry was established in Jeddah.<sup>98</sup>

The disadvantage of this law is that it lacks verdicts or procedures to which institutional arbitration can be applied by the Saudi Chambers of Commerce and Industry. Thus, the Chambers of Commerce and Industry implemented the arbitration rules stated by the commercial court law.<sup>99</sup>

### **2.3.2.3 Arbitration Rules according to the Chambers of Commerce and Industry Law issued in 1980<sup>100</sup>**

Thirty-five years passed since the issuance of the first Saudi Chambers of Commerce and Industry Law in 1946. As mentioned before, this law ratified the legitimacy of institutional arbitration in the KSA, as undertaken by the Chambers of Commerce and Industry, without stating the rules and regulations of this type of arbitration.<sup>101</sup> Conversely, the current Chambers of Commerce and Industry law in 1980 includes the rules and regulations of institutional arbitration as undertaken by the Saudi Chambers of Commerce and Industry.<sup>102</sup> Article 5 of this law stated the jurisdiction of the Saudi Chambers of Commerce and Industry, including arbitration in commercial and industrial disputes if the parties opted for arbitration.<sup>103</sup> This law was followed in 1981 by the issuance of the Implementing Regulation of the Chambers of Commerce and Industry.<sup>104</sup> According to Articles 49–54, this regulation

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<sup>97</sup> *Law of Chambers of Commerce and Industry of 1946* (Saudi Arabia), Royal Decree No, 23/3/2558 (15 Safar 1365 H – 19 January 1946) (copy in Arabia on file with author).

<sup>98</sup> Ministry of Commerce and Industry (Saudi Arabia), *Historical Overview* (1 August 2014)

<<http://mci.gov.sa/en/AboutMinistry/Pages/HistoricalOverview.aspx>>.

<sup>99</sup> Muhammad Nader, *Conciliation and Arbitration in Kingdom of Saudi Arabia*, (Chamber of Commerce and Industry, 1984) 1-3.

<sup>100</sup> *Law of Chambers of Commerce and Industry of 1980* (Saudi Arabia), Royal Decree No. M / 6 (30 Rabi'a Thani 1400 H – 18 March 1980)

<<http://mci.gov.sa/en/LawsRegulations/SystemsAndRegulations/SystemOfChambersOfCommerceAndIndustry/Pages/19-2.aspx>>.

<sup>101</sup> Al-Bjad, above n 62, 30.

<sup>102</sup> Law of Chambers of Commerce and Industry of 1980, above n 100, art 1. It stated, in regard to the Chamber of Commerce and Industry that 'Chamber of Commerce and Industry does not aim at profitability, it represents within its competences the commercial and industrial interests at the public authorities, and is working to protect and develop that'.

<sup>103</sup> *Ibid*, art 5.

<sup>104</sup> *Implementing Regulation of the Chambers of Commerce and Industry* (Saudi Arabia), Ministerial Decree No. 1871 (05 Jumaada Awal 1401 H – 28 March 1981)

included the rules and regulations of arbitration held before the chambers of commerce and industry. Thus, there was a private system for institutional arbitration in commercial and industrial disputes applied by industrial commercial chambers in the KSA when arbitration was sought.

The rules and regulations of arbitration according to the Saudi Chambers of Commerce and Industry law and its implementing regulation will now be outlined. According to Article 5, the jurisdiction of the Chambers of Commerce and Industry is limited to arbitration in commercial and industrial disputes.<sup>105</sup> Also, the arbitration before them is optional and requires the agreement of both disputing parties. Article 49 of the implementing regulation of the law provided for both parties, be they merchants or craftsmen, to be entitled to the right to resort to arbitration, according to the Chambers of Commerce and Industry law in the KSA.<sup>106</sup>

However, this law did not include a definition of merchants or craftsmen who might be entitled to resort to arbitration and this caused arguments between experts. Some argued that there should be a broad definition of merchants and craftsmen, thereby including freelance professionals (independent workers) in organized activities such as engineers, lawyers, contractors, physicians, and those working in private hospitals. Hence, they all have the right to resort to arbitration before the Saudi Chambers of Commerce and Industry in order to settle their own disputes with others.<sup>107</sup> However, others argued that the definition of merchants and craftsmen should not be expanded to include professionals, and that the right of resorting to arbitration before commercial chambers should be limited to a narrow concept of merchants and craftsmen in accordance with tradition.<sup>108</sup>

It can be seen that the right to resort to arbitration according to the rules of the Saudi Chambers of Commerce and Industry Law and its regulations with regards to two disputing parties from craftsmen or manufacturers must be exclusive, whether in the narrow or wide sense, to members of the KSA Chambers of Commerce and Industry. As evidence, Article 49 of the chambers regulation provides for the affiliation of both parties to any commercial chamber in the KSA if they select arbitration according to the chamber's rules, though exceptions are made for foreign merchants and craftsmen.<sup>109</sup>

The procedures of arbitration before the KSA Chambers of Commerce and Industry start after the dispute parties agree to resort to the Chamber for arbitration. This is done by a written request signed by both parties, stating their desire to resort to arbitration. The request is submitted to the chairman of the board of the Chamber to which both parties belong.

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<<http://mci.gov.sa/en/LawsRegulations/SystemsAndRegulations/SystemOfChambersOfCommerceAndIndustry/Pages/19-4.aspx>>.

<sup>105</sup> Law of Chambers of Commerce and Industry of 1980, above n 100, art 5.

<sup>106</sup> Implementing Regulation of the Chambers of Commerce and Industry, above n 104, art 49.

<sup>107</sup> Al-Mohadab, above n 66, 34.

<sup>108</sup> Ibid.

<sup>109</sup> Bukhargy, above n 94, 12-13.

The arbitration commission is comprised of three parties. According to Article 49, each party is entitled to appoint an arbitrator, and the chairman of the chamber appoints a third arbitrator to be the chairperson of the arbitration commission.<sup>110</sup>

The arbitration commission chief sets a date for commencing arbitration sessions. He is to inform the members of the commission and their opponents of that date, based on Article 50 of the implementing regulation.<sup>111</sup> If any member of the arbitration is absent or excused, then the chamber chairman appoints an alternative arbitrator, according to Article 52 of the implementing regulation.<sup>112</sup>

The disputing parties may not present themselves in person before the arbitration commission. Article 51 of the implementing regulation allows the disputing parties to delegate someone to attend the arbitration sessions on their behalf.<sup>113</sup>

The arbitration commission is committed to settling the dispute within three months. This period is calculated from the date of the first arbitration session and is based on Article 53 of the implementing regulation.<sup>114</sup> The regulation also binds the chief and members of the arbitration commission to sign the award and hand each party a copy.

According to the arbitration rules listed in the KSA Chambers of Commerce and Industry laws and regulations, the award of arbitration before the KSA Chambers of Commerce and Industry is final and cannot be changed before any judicial authority.<sup>115</sup> As a result, the Chambers of Commerce and Industry contributed to promoting arbitration in the KSA. In addition, they played an important role in resolving many disputes. In particular, the Jeddah Chamber of Commerce played an exceptionally important role, having the highest share of arbitration among all Saudi chambers of commerce. It gained the trust of foreign investors and private sector partners by being selected to supervise arbitration because of its expertise and reputation.<sup>116</sup> Yet its arbitration awards encountered difficulties in execution when both parties did not accept the decision. This is because execution is not a concern of the verdict's execution authority in the KSA, and only the region's prince can execute a verdict if he is convinced that it is a correct and fair one.<sup>117</sup>

Many arguments arose regarding the effectiveness of arbitration rules according to the KSA Chambers of Commerce and Industry Law and its implementing regulations after the issuance of the first Saudi Arbitration Law in 1983. Arguments also arose over whether or not the KSA Chambers of Commerce and Industry had lost its jurisdiction for arbitration in commercial and industrial disputes within the KSA.

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<sup>110</sup>Implementing Regulation of the Chambers of Commerce and Industry, above n 114, art 49.

<sup>111</sup>Ibid art 50.

<sup>112</sup>Ibid art 52.

<sup>113</sup>Ibid art 51.

<sup>114</sup>Ibid art 53.

<sup>115</sup>Bukhargy, above n 94, 14.

<sup>116</sup>Al-Mohadab, above n 66, 34.

<sup>117</sup>Ibid.

Some argue that the Chambers' arbitration law and implementing regulation is no longer in effect. Their evidence is that the Saudi arbitration law, issued in 1983, has implicitly repealed any arbitration texts before its issuance, because it comprises the organization of arbitration procedures in all disputes and lawsuits within the KSA<sup>118</sup>. Also, the KSA Chambers of Commerce and Industry was not originally a jurisprudential authority; the jurisprudential authorities are the Shari'ah courts, and the Board of Grievances, as well as administrative committees of judicial jurisdiction.<sup>119</sup> However, it can be argued that the arbitration rules stated in the KSA Chambers of Commerce and Industry Law and its implementing regulation are still in effect even after the Saudi arbitration law was issued in 1983. Evidence for this is that the Saudi arbitration law stated clearly that the texts of arbitration in the Saudi commercial court law are cancelled, whereas it did not address the arbitration texts in the KSA Chambers of Commerce and Industry law. In addition, the arbitration texts in the KSA Chambers of Commerce and Industry law did not violate Saudi Arbitration Law in 1983.<sup>120</sup>

Moreover, the first commercial circle in the Board of Grievances in the KSA<sup>121</sup> stated, in giving reasons for its judgment 81/d/t, c/12 for the year 2000, that arbitration according to the KSA Chambers of Commerce and Industry Law has special texts that may be applied without violating arbitration law. The administrative court of appeal in the Board of Grievances supported this judgment, and it became jurisprudential, as Saudi judicial judgments are not a source of legislation.<sup>122</sup>

#### **2.3.2.4 The Issuance of the Saudi Arbitration Law in 1983 followed by the Issuance of its Implementation Regulation in 1985**

Private arbitration in the KSA was absent for nearly 50 years, despite the existence of arbitration texts in Commercial Court Law. Arbitration remained limited to that done institutionally between merchants and manufacturers until 1983 by the KSA Chambers of Commerce and Industry, according to their law and its regulation.

The reason for the scarcity of arbitration outside the Chambers of Commerce is because, at that time, judicial authorities denied the previous dispute arbitration term if one party wanted it and the other refused. Also, execution was difficult when one party refused the verdict as the execution authority refused execution by force without having permission from the prince of the region. Hence, resorting to arbitration was rare.<sup>123</sup>

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<sup>118</sup> Anas Al-Kelany, Ghada Al-Kelany and Hany Al-Qurashi, *The Complete in Arbitration in Kingdom of Saudi Arabia and Syria* (Dar Al-Anwar for Publication, 2007) 40.

<sup>119</sup> Al-Mohadab, above n 66, 34-35.

<sup>120</sup> Nader, above n 99, 17; Al-Bjad, above n 61, 54.

<sup>121</sup> "The Administrative Judiciary" Board of Grievances" in Kingdom of Saudi Arabia.

<sup>122</sup> Khalid Osman, 'Commercial Arbitration between Arbitration and Chamber of Commerce Law', *Al-Eqtisadiyah* (online), 26 April, 2008

<[http://www.aleqt.com/2008/04/26/article\\_12254.html](http://www.aleqt.com/2008/04/26/article_12254.html)>.

<sup>123</sup> Al-Bjad, above n 62, 30.

Given these obstacles, there was an urgent need for an independent and comprehensive law for rectifying weaknesses in previous arbitration legislation. An important step was the issuing of the Saudi Arbitration Law in 1983<sup>124</sup>, followed by the issuance of its implementing Regulation in 1985.<sup>125</sup>

The Saudi Arbitration Law of 1983 was the first independent arbitration law in the KSA and consists of 25 articles. It was comprehensive and included all stages of arbitration such as the arbitration agreement, the formation of the arbitration commission and its jurisdiction, the procedures of arbitration, and finally, the limits of judicial intervention by accrediting the arbitration document.<sup>126</sup> The Implementation Regulations of the Arbitration Law of 1985 included 48 articles explaining the implementation mechanisms of the provisions of the Saudi Arbitration Law in 1983.

The main features of the Saudi Arbitration Law of 1983 include the regulation of the rules and proceedings of the optional arbitration in various types of disputes in the KSA. This is characterized by being valid for all internal disputes such as commercial, civil, administrative, insurance, and labour disputes.<sup>127</sup> It also did not distinguish local arbitration from foreign arbitration; that is, its verdicts applied to all kinds of disputes, including disputes with foreign parties.<sup>128</sup>

In accordance with Article 1, the agreement to resort to the arbitration method to resolve disputes is stated in two forms: the first one is the arbitration clause, an agreement before dispute arises; and the second form is the arbitration provision that occurs after the dispute arises.<sup>129</sup>

According to Article 3, government bodies may not resort to the arbitration method to resolve any dispute within a country unless approval has been obtained from the Prime Minister of Saudi Arabia.<sup>130</sup>

In accordance with Article 4, the parties to the arbitration shall be entitled to choose the arbitrators, and in case of multiple arbitrators, this must be an uneven number in order to ensure a majority decision. Also, the chosen arbitrator is required to be experienced, of good conduct, and full eligibility.<sup>131</sup>

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<sup>124</sup> *Saudi Arbitration Law of 1983* (Saudi Arabia), Royal Decree No. M / 46 (12 Rajab 1403 H – 25 April 1983) (Copy in Arabia on file with author).

<sup>125</sup> *Implementation Regulation of the Arbitration Law of 1985* (Saudi Arabia), Ministerial Decree No. 7/2021M (08 Ramadan 1403 H – 27 May 1985) (Copy in Arabia on file with author).

<sup>126</sup> Saleh Al-Manzalawy, 'The Saudi Arbitration Law: Reality and Hopes' (2009) (4) *Arab Lawyers Journal* 122.

<sup>127</sup> Abdelhamid Al-Ahdab, *Encyclopaedia of International Arbitration: First Book* (Halaby Legal Publication, 3<sup>th</sup> ed, 2009) 451,468.

<sup>128</sup> Talaat Dewedar, *Guarantees of Litigation during Arbitration Dispute* (Halaby Legal Publication, 2009) 57.

<sup>129</sup> Saudi Arbitration Law of 1983, above n124, art 1.

<sup>130</sup> *Ibid* art 3.

<sup>131</sup> *Ibid* art 4.

Also, the chosen arbitrators may be either Saudis or foreigners; however, the chosen arbitrator is required to be Muslim.<sup>132</sup> According to the law, the chosen arbitrators may not be disqualified after their appointment unless with the consent of all parties to the arbitration.<sup>133</sup>

Under Article 10, in the case of not appointing arbitrators by the parties to arbitration, the authority originally competent to hear the dispute has the task of choosing the arbitrators.<sup>134</sup> In addition, in the case of not determining the arbitrators' fees by the parties to arbitration, the authority originally competent to hear the dispute determines their fees, and this shall be final in accordance with Article 23.<sup>135</sup>

In accordance with Article 5 of the law, before starting arbitration proceedings, the arbitration instrument must be submitted for approval to the authority originally competent to hear the dispute. The arbitration instrument shall include definite information, such as the subject of the dispute, the names of the parties to arbitration, and the arbitrators' names.<sup>136</sup>

In accordance with Article 8 of that law, the clerk of the authority originally competent to hear the dispute is granted the authority of notices and notifications relating to the proceeding of arbitration in addition to performing the secretarial work of the arbitration tribunal.<sup>137</sup>

Under Article 25 of the regulations, the parties to the arbitration shall not be entitled to choose the language of arbitration, as Arabic is the applicable language at all stages of the arbitration.<sup>138</sup>

In accordance with Article 9, the arbitration award shall be issued within the period set by the parties to the arbitration, and in case of not defining that duration, the arbitral tribunal shall issue the award within 90 days from the date of sanctioning the arbitration instrument. In accordance with the previous article, in the absence of the arbitration award within the previously mentioned period, the parties to the arbitration shall be entitled to submit the dispute before the authority originally competent to hear the dispute in order to settle that dispute or extend the arbitration period.<sup>139</sup>

Article 18 states that the arbitration award in accordance with that law shall not be final, and the parties to the arbitration are entitled to object to the arbitration award within a period of 15 days from the date of sending the notification.<sup>140</sup> The objection shall be filed before the

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<sup>132</sup>Implementation Regulation of the Arbitration Law of 1985, above n 125, art 3.

<sup>133</sup>Saudi Arbitration Law of 1983, above n124, art 11.

<sup>134</sup>Ibid art 10.

<sup>135</sup>Ibid art 23.

<sup>136</sup>Ibid art 5.

<sup>137</sup>Ibid art 8.

<sup>138</sup>Implementation Regulation of the Arbitration Law, above n 125, art 25.

<sup>139</sup>Saudi Arbitration Law of 1983, above n124, art 9.

<sup>140</sup>Ibid art 18.

authority originally competent to hear the dispute, and who shall have the right to accept or reject the objection and to settle the dispute. This is in accordance with Article 19.<sup>141</sup>

Those are the most prominent features of the arbitration proceedings in accordance with the Saudi Arbitration Law for 1983. The application of that law continued in the KSA for more than 31 years, and has been criticized because many of its provisions violate modern rules of the arbitration, such as the UNCITRAL Model Law.

The researcher, Dutton, emphasizes this with his statement that “The provisions and articles of the Saudi Arbitration Law of 1983 are not based on the UNCITRAL Model Law”.<sup>142</sup>

### **2.3.2.5 The New Saudi Arbitration Law issued in 2012<sup>143</sup>**

During the writing of this thesis, a new arbitration law was issued in the KSA under the Order in Council no. m / 43 of 2012. This law overturned the Saudi Arbitration Law of 1983 and its Implementation Regulations of 1985.

The Saudi Arbitration Law of 2012 became the current, valid and applicable law in Saudi Arabia when the dispute parties choose the Optional Arbitration method in resolving various types of internal disputes in Saudi Arabia, such as trade, civil, labour and administrative disputes, as well as external disputes, specifically international commercial disputes.

It can be said that the most significant aspects of the new 2012 Saudi Arbitration law is that it is considered to be the latest arbitration law in the GCC region and the Arab region and both its date of issuance and its legal provisions are consistent with the current standards and laws of arbitration globally.

Most of the legal terms and provisions of the Saudi Arbitration Law of 2012 are very similar to those of the UNCITRAL Model Law amended in 2006.

Confirming this, Dr Hawshan states:

The new Saudi Arbitration Law for 2012 is a developed law that is almost transferred completely from the UNCITRAL Model Law on International Commercial Arbitration for 1985, with amendments as adopted in 2006.<sup>144</sup>

The Saudi Arbitration Law of 2012 will be discussed in Chapter 8 of this thesis when the method of labour arbitration in the KSA will be examined.

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<sup>141</sup>Ibid art 19.

<sup>142</sup>Anthony Dutton, *Arbitration in the Middle East* (Norton Rose, 2008). 101-104

<sup>143</sup>*Saudi Arbitration Law of 2012* (Saudi Arabia), Royal Decree No. M / 34 (12 Jumaad Awal 1433 H – 16 April 2012)

<<http://www.boe.gov.sa/ViewSystemDetails.aspx?lang=en&SystemID=123&VersionID=270#search1>>.

<sup>144</sup>Mohammed Hawshan, 'New Arbitration Law Presentation and Comments', *Al-Jazira* (online), 03 July 2012 <<http://www.al-jazirah.com/2012/20120703/fe6.htm>>.

## **2.4 The Emergence and Development of Labour Arbitration in the KSA**

As discussed in Chapter 1, arbitration as a means of resolving labour disputes in the KSA has had a historical and practical basis in communities in some regions of the KSA before the enactment of the labour laws. Despite the simplicity of the arbitration proceedings, as well as the absence of legal regulation, customary arbitration was effective in resolving labour disputes during the period under consideration.

### **2.4.1 The First Legislation Authorizing Labour Arbitration in the KSA, issued in 1947**

Since the early days of issuing legislation and labour laws, the KSA has not overlooked the role of labour arbitration as an alternative means of settling labour disputes. Thus, the second labour legislation in the KSA, the Labour and Workers Law issued in 1947<sup>145</sup>, contained the first legislative text to authorize arbitration as a means of settling labour disputes in the KSA<sup>146</sup>. Article 38 stated:

The worker and the employer are entitled to request arbitration if they had a dispute. This is done by submitting a request to the government. Arbitration is undertaken by two persons, one appointed by the employer and another by the government. If the two members did not agree on an award, the Ministry of Finance appoints a third one to settle the dispute.<sup>147</sup>

From the above article, the rules and procedures of labour arbitration according to the Labour and Workers Law of 1947 may be summarized as follows.

Firstly, the previous law granted parties to the labour relationship the right to choose the arbitration method to settle labour disputes, but it did not state that both parties, employer and worker, needed to agree to arbitration, whether by including an arbitration provision in the labour contract or by common agreement after the emergence of the labour dispute.

Secondly, the party desiring arbitration submitted a request to the government, including his wish to settle the dispute by arbitration. He also needed to name the disputed issue. Arbitration is a process undertaken by two persons, one appointed by the employer, and another by the government.

Finally, if the two arbitrators did not agree on an award, then the Minister of Finance appointed a third arbitrator to settle the dispute. Hence, the arbitration award is issued by a majority decision.

These are the most significant procedures of labour arbitration according to the Labour and Workers Law of 1947, although they did not address many important details pertaining to the arbitration process. Although only one article in the above law addressed labour organization, for the first time the principle of labour arbitration in the KSA was endorsed.<sup>148</sup>

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<sup>145</sup> Saudi Labour and Workers Law of 1947, above n 23.

<sup>146</sup> Al-Dareeb, above n 71, 463.

<sup>147</sup> Saudi Labour and Workers Law of 1947, above n 23, art 38.

<sup>148</sup> Muhammad Al-Zoheely, *Judicial Organizing in Kingdom of Saudi Arabia* (King Abdul-Aziz Foundation for Researches and Archives, 1999) 2; Al-Nafea, above 19, 4-5.

## 2.4.2 The Second Legislation of Labour Arbitration in the KSA according to the Labour and Workers law of 1969

When the third Saudi Labour and Workers Law of 1969<sup>149</sup> was issued, it included, according to Article 210<sup>150</sup>, an explicit clause cancelling all the articles of the previous law issued in 1947, including Article 38 which stated the rules of labour arbitration according to this repealed law.<sup>151</sup>

As previously mentioned in this chapter, the third Saudi Labour and Workers Law of 1996, was characterized by its comprehensiveness regarding the organization of labour relationships in the KSA. This included procedures for labour arbitration organization in Articles 183-184.<sup>152</sup> The procedures of labour arbitration according to this law are now summarized.

Article 183/1 states:

In all cases, the parties to a dispute may by mutual agreement appoint one arbitrator for both of them, or one or more arbitrators for each party so that the arbitrator or arbitrators may settle the dispute in lieu of Committees provided for in this Chapter.<sup>153</sup>

From the above article, it can be seen that arbitration in the KSA is optional, providing that arbitration as a means of settling a dispute, is agreed to by both parties, instead of referring them to the Labour and Settlement of Disputes Committees, as the authority has jurisdiction over labour disputes under Saudi Labour and Workers Law of 1969.<sup>154</sup>

The parties' agreement to resort to arbitration in the event of a dispute is shown in two ways. Firstly, the labour contract has a clause in it called the 'arbitration clause' that states that arbitration is the preferred means for settling any labour dispute concerning the execution, interpretation, or termination of the contract.<sup>155</sup> Secondly, agreement on arbitration takes place subsequent to the dispute. This is called the 'arbitration agreement'.<sup>156</sup>

Also, according to the previous article, the Saudi Labour and Workers Law gave the parties the right to select the arbitrator(s), whether by selecting one for both or more than one for each party. When there are numerous arbitrators, they should be odd in number so that the dispute may be settled by a majority should a split decision occur. The umpire is selected by mutual agreement and the arbitrators' names are written down in the arbitration deed. If the

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<sup>149</sup>Saudi Labour and Workers Law of 1969, above n 35.

<sup>150</sup>Ibid art 10.

<sup>151</sup>Abdelmegeed, above n 39, 217.

<sup>152</sup> Saudi Labour and Workers Law of 1969, above n 35, art 184, 183.

<sup>153</sup>Ibid art 183/1.

<sup>154</sup>Muhammad Omran, *The Mediator for Explaining Labour and Worker Saudi Law* (Al-Nahda Al-Arabia, 1995) 29.

<sup>155</sup>Atef Fakhry, *Alphabetic Guide for Explaining the Saudi Labour Law* (Tohama Press, 1982) 87.

<sup>156</sup>Ibid.

umpire is not agreed upon, the primary Committee chairman must select him according to Article 183/2.

Where the arbitrators fail to select an umpire, the chairman of the primary Committee in whose circumscription the place of work is located shall appoint the said umpire, if such an umpire has not already been appointed in the arbitration agreement.<sup>157</sup>

The rules of the 1969 Law did not make any provision for arbitrators, so Shari'ah was the source for such provisions. After the issuance of the Saudi Arbitration Law in 1983, it became the reference point for the provision of arbitrators.<sup>158</sup>

The law bound arbitration parties to submit the arbitration deed to the relevant authority, namely the Primary Committee, according to the text of Article 183/5.

A copy of the arbitration agreement shall be deposited with the office of the appropriate Primary committee in the area.<sup>159</sup>

The previous Labour and Workers Law determined the basic information to be included in the arbitration deed, the arbitration period, and the principles to be followed for settling the disputed issue according to Article 183/3:

The arbitration agreement shall indicate the time-limits and the rules of procedure to be followed in order to settle the dispute.<sup>160</sup>

The arbitration decision, according to Article 183/ 4 stated that:

The arbitrators' award shall be of first instance and appealable before the High committee within the time-limits, time-extensions and the rules of procedure prescribed for the appeal of awards before the said Committee, unless the arbitration agreement expressly provides that the arbitrators' award shall be definitive, in which case such award shall be irrevocable.<sup>161</sup>

According to the previous article, the origin of the nature of the arbitration decision is primary and vulnerable to refutation by appeal within 30 days of the date of informing the opponents about the arbitration decision.<sup>162</sup> A request for an appeal is submitted to the High Committee.<sup>163</sup> However, it provides for the decision of the parties in the dispute process, regardless of whether the decision will be appealed or not, to be included in the arbitration deed. A decision that the case will not be appealed serves efficiency and early closure in labour disputes.<sup>164</sup>

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<sup>157</sup>Saudi Labour and Workers Law of 1969, above n 35, art 183/2.

<sup>158</sup>Naal, above n18, 306-307.

<sup>159</sup>Saudi Labour and Workers Law of 1969, above n 35, art 183/5.

<sup>160</sup> Ibid art 183/3.

<sup>161</sup> Ibid art 183/4.

<sup>162</sup> Ibid art 180.

<sup>163</sup>Naal, above n 18, 306.

<sup>164</sup>Ibid.

The Saudi Labour and Workers Law states that the arbitration decision has to be registered with the office of the said committee within one week of its rendering; this is based on Article 183/6.

The arbitrators' award shall be registered with the office of the said committee within one week of its rendering.<sup>165</sup>

This may be done by one or both litigants. Delay in registering with the office of the primary committee does not make the award invalid as registration is a provision for execution, not for validity.<sup>166</sup>

In all cases, the arbitration decision is not executable until it is registered with the office of the said primary committee and given the form for execution by the chairman of the committee. According to Article 184:

The arbitrators' awards shall be executed after registration with the office of the appropriate primary committee, and after due endorsement for execution by the chairman of the committee.<sup>167</sup>

The above feature is the most significant of the previous rules and procedures for labour arbitration in accordance with the Labour and Workers Law of 1969. The previous procedures had continued to be applied for labour arbitration in the KSA for more than 35 years. Although labour arbitration was organized through the previous Labour and Workers' Law of 1969, a search of cases of labour disputes in the KSA during this period shows that there were no practical issues resolved by arbitration based on this law.

### **2.4.3 The Current Law of Labour Arbitration in the KSA**

In 2005, the current legislation regarding labour in the KSA was issued under the name "Saudi Labour Law".<sup>168</sup> As discussed in section 2.2.5, Article 244 of the Saudi labour law of 2005 repealed all labour texts in the 1969 Labour and Workers Law including the arbitration articles.<sup>169</sup>

The current labour law of 2005 includes the right of both disputing parties to select arbitration as an alternative means of settling labour disputes in the KSA. It states that labour arbitration procedures are done according to the Saudi arbitration law,<sup>170</sup> based on Article 224:

The work contract parties may incorporate a clause in the work contract providing for settlement of disputes through arbitration or may agree to do so after the dispute

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<sup>165</sup> Saudi Labour and Workers Law of 1969, above n 35, art 183/6

<sup>166</sup> Al-Kialy, above n 16, 522.

<sup>167</sup> Saudi Labour and Workers Law of 1969, above n 35, art 184.

<sup>168</sup> Saudi Labour Law of 2005, above n 44.

<sup>169</sup> Ibid 244.

<sup>170</sup> Al-Fawzan, above n 8, 225.

arises. In all cases, the provisions of the Arbitration Law and its Implementing Regulations in force in the KSA shall apply.<sup>171</sup>

According to the previous article, from 2005 until the middle of 2012, the Saudi Arbitration Law of 1983 was applicable when labour dispute parties chose the optional arbitration method to resolve labour disputes in the KSA. While in mid-2012 in the KSA, the Saudi Arbitration Law of 1983 was cancelled and the new Saudi Arbitration Law issued in 2012. The new Saudi Arbitration Law of 2012 is now the applicable law for the optional arbitration method to resolve labour disputes in the KSA.

Chapter 8 of thesis will include a detailed study of the method currently used in the arbitration of labour disputes in the KSA.

## **2.5 Conclusion**

In this chapter, the historical stages of the development of labour arbitration laws in the KSA were discussed, as were the development stages of labour arbitration in the KSA.

In sub-chapter 2 of this chapter, a detailed discussion was provided concerning the stages of the historical development of labour laws and regulations in the KSA. Through this discussion, it was found that before the emergence and unification of the KSA as an independent country in 1932, and until the early days of its foundation, there were no laws or regulations governing labour relationships; however, labour relationships were organized according to professional customs and traditions prevailing at that time.

With the emergence of the oil industry in the KSA, labour relationships were organized and established in writing within the KSA in 1937. This was done through the issuance of a workers compensation system relevant to industrial and technical projects, although this system was applied only to employees of oil exploration companies.

In 1942, the first labour law was issued in the KSA, called the Labour and Workers Law of 1942; it was a simple law comprising no more than 17 articles, and it applied only to workers in industrial projects.

After five years, the Labour and Workers Law of 1947 was issued; this was the second Saudi labour law and included 40 articles; hence, it was more comprehensive and better organized than the previous law, because the scope of its application involved workers in industrial projects as well as in commercial and agricultural sectors in the KSA. This law took many of its articles from the Egyptian Labour Law No. 41 of 1944.

The third Labour and Workers Law was issued in 1969. It was considered a major development in labour laws in the KSA because of the scope of its application which covered most workers in the private sector in the KSA, as well as including 221 articles dealing with regulating labour relationships in the KSA. The most significant provisions of this law

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<sup>171</sup> Saudi Labour Law of 2005, above n 44, art 224.

concerned the regulation of working conditions in the KSA and the proceedings for resolving labour disputes and litigation before the committees originally competent to hear labour disputes in the KSA.

In 2005, a new labour law in Saudi Arabia was issued under a different name from previous labour regulations, called the Saudi Labour Law. This Law of 2005 is the current labour law in the KSA. This law includes 245 articles dealing in detail with the regulation of labour and employment contracts, and the regulation of proceedings to resolve labour disputes; also, it stipulated the rights of workers and employers. This law was distinguished by its granting several rights to working women in the KSA, as well as organizing the CSLDs. In sub-chapter 3 of this chapter, a discussion was provided concerning the stages of the historical development of arbitration laws and regulations in the KSA. Through the discussion, it was found that using arbitration to resolve disputes is, to Arabs, a very old method that is an ancient cultural tradition. It was discovered that the Arabs of the Arabian Peninsula (which is the old name for Saudi Arabia) used arbitration to resolve disputes even before the emergence of Islam, as at that time arbitration was customary and was being practised within tribes by selecting arbitrators from elders to resolve disputes. After the emergence of Islam, the Islamic Shari'ah adopted arbitration to resolve disputes.

Also, before the establishment of the modern Saudi Arabia, the Ottoman Empire was occupying the western part of the Arabian Peninsula (Hejaz) and the applied law was a written law called the Journal of Justice Judgments, which included written regulations of arbitration for resolving disputes. At the beginning of the emergence of Saudi Arabia, arbitration was approved and the first regulation of arbitration in the KSA included Articles 493 to 497 of the Law on Commercial Court in 1931. According to the law, arbitration was an optional method of resolving commercial disputes in the KSA.

The first Chamber of Commerce and Industry was established in the KSA in 1945. The Chamber approved institutional arbitration in the KSA as it was granted the authority to arbitrate in commercial disputes; however, that system had shortcomings as it did not include any regulations or proceedings.

In 1980, a new system was established by the Chamber of Commerce and Industry that included provisions and regulations for institutional arbitration as conducted by the Chamber of Commerce in the KSA.

In 1983, a major development in arbitration regulations took place in the KSA when the first independent arbitration law was issued, followed by the issuance of its Implementation Regulations in 1985.

This law included regulating the method of optional arbitration to resolve disputes in the KSA. This means of arbitration was distinguished by including all types of disputes when the disputing parties agree to choose arbitration as an alternative to using authorities and courts to resolve such disputes.

According to this law, the parties to arbitration shall be entitled to choose the arbitrators and the duration of arbitration. The Saudi Arbitration Law of 1983 was distinguished by granting the authority originally competent to hear the dispute a major role in the supervision and control of the arbitration process. It was realized through the discussion that the Saudi Arbitration Law of 1983 required sanctioning the arbitration instrument before starting arbitration proceedings by the authority originally competent to hear the dispute,

Also, it granted the clerk of the judicial authority originally competent to hear a dispute the authority to perform the secretarial work and to send all notifications of the arbitration tribunal. Moreover, such law required the chosen arbitrator to be Muslim, and all arbitration proceedings to be in Arabic.

Furthermore, the Saudi Arbitration Law of 1983 stipulated that the arbitration awards shall be subjected to objection before authorities and courts in the KSA without any limitation. This law was applicable to the method of optional arbitration in resolving disputes in the KSA until recently.

Finally, through the research it was realized that in mid-2012, the new Saudi Arbitration Law of 2012 was issued. This is the second Saudi Arbitration Law in the KSA, and after the issuance of the new Saudi Arbitration Law of 2012, that law became the currently applicable law when dispute parties choose arbitration to resolve internal disputes in the KSA, whether the disputes are commercial, labour, or administrative disputes; also, that law may be applied to resolve international commercial disputes when the dispute parties agree to using it.

In sub-chapter 4 of this chapter, the development of labour arbitration in resolving disputes within the KSA before its establishment to the present time was discussed. It became clear through this discussion that the method of customary arbitration to resolve labour disputes was the common method used to resolve such disputes before the establishment of the KSA, and that was the case at the beginning of the establishment of the KSA until the period before the issuance of labour laws in the KSA. During period, arbitration in labour disputes was not regulated and was based on traditional customs.

In 1947, the second Labour and Workers Law in the KSA included the first legal statement declaring the method of arbitration to resolve labour disputes in the KSA. In accordance with that law, the method of optional arbitration was considered a method used to resolve labour disputes. However, that law was criticized as it included only one single article that regulated arbitration and did not include enough of the basic regulatory provisions regarding the arbitration method.

In 1969, the third Saudi Labour and Workers Law organized the procedures of arbitration as an optional method to resolve labour disputes. According to this law, Articles 183 and 184 included the legal regulation of the arbitration agreement in labour disputes, the choice of arbitrators, the legal regulation of the arbitration instrument, and the arbitration award and its execution.

Finally, the current Saudi Labour Law of 2005 reflected a major development in the procedures and rules of optional arbitration method to resolve labour disputes in the KSA. Under Article 224 of this law, the Saudi Arbitration Law become applicable when choosing arbitration as a means of resolving labour disputes in the KSA.

## **Chapter 3**

### **Labour relations in current Saudi Labour Law**

#### **3.1 Overview**

Defining the concept of labour relations in accordance with current Saudi Labour Law will be the main purpose of this chapter and it will be done through the discussion of several key points. First, the scope of the application of Saudi Labour Law in terms of persons and groups will be defined. In doing this, the definition of the concept of a contract of employment and its basic elements according to Saudi Labour Law will be considered. Second, categories of workers that are exempted from the coverage of certain provisions of Saudi Labour Law will be identified, as will be the categories that are exempted from all provisions of Saudi Labour Law.

By discussing the above points, the concept of labour relations in Saudi Labour Law will be clarified, something which is essential for this research as it contributes to an identification and understanding of what is meant by labour disputes in the KSA, a topic which will be the subject of Chapter 4.

Chapter 3 is divided into six sub-chapters. Sub-chapter 3.1 gives an overview of the chapter while sub-chapter 3.2 is an introduction. Sub-chapter 3.3 discusses labour groups which fall within the scope of application of the provisions of Saudi labour law and sub-chapter 3.4 looks at labour groups in the KSA that are exempt from being subject to the application of certain provisions of Saudi Labour Law but are, instead, subject to other provisions. Sub-chapter 3.5 discusses labour groups that are exempt from all provisions of Saudi labour law and sub-chapter 3.6 concludes the chapter.

#### **3.2 Introduction**

Labour law is a set of legal rules that are designed to regulate labour relations between employers and workers. However, it could not be said that every labour relation between workers and employers should be subject to the scope of application or jurisdiction of the provisions of labour law. All labour laws in the KSA, either previous or current, in addition to labour laws in the countries of the GCC and neighbouring Arab states, require that workers in a labour relationship should be performing work for employers for a fee and under the employer's supervision or management; this is known as the dependency or subordination ties between workers and employers.<sup>172</sup> Proving this dependency is considered the standard in determining that a relationship between the worker and the employer exists within the scope of application of the provisions and rules of labour law.

This is the basic concept of labour relations that is regulated by labour law. However, there is an exception to this principle since there are categories of workers exempted from the

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<sup>172</sup>Elias, above n 3, 33.

application of labour law in most Arab countries, including the KSA.

### **3.3 The scope of Saudi Labour Law in terms of persons and groups who are subject to its provisions**

Most of the older labour laws in the KSA applied only to workers in industrial, commercial and agricultural sectors. Then with development in the fields of labour, the existing labour law was established in 2005, broadening the scope of application of Labour Law in the KSA to apply to other categories of workers which included some government workers, workers in agencies and public institutions, and those in charitable organisations. Also, it was applied to workers employed by small businesses. In order to understand the concept of labour relationships in the KSA, it is very important to determine the scope of application of Saudi Labour Law in terms of persons and groups who are subject to its provisions and this is exactly what the fifth article of current Saudi Labour Law emphasizes; Article 5 states that:

The provisions of this Law are applicable to:

- (1) Any contract whereby a person commits himself to work for an employer and under his management or supervision for a wage.
- (2) Workers of the government and public organizations and institutions including those who work in pastures or agriculture.
- (3) Workers of charitable institutions.
- (4) Workers of agricultural and pastoral firms that employ ten or more workers.
- (5) Workers of agricultural firms that process their own products.
- (6) Workers who operate or repair agricultural machineries on a permanent basis.
- (7) Qualification and training contracts with workers other than those working for the employer within the limits of the special provisions provided for in this Law.
- (8) Part-time workers with respect to safety, occupational health and work injuries, as well as what is decided by the Minister.<sup>173</sup>

The categories in the order mentioned above will be discussed.

#### **3.3.1 Workers for an employer, under his management or supervision, for a wage and under labour contract**

In accordance with paragraph 1 of Article 5 of Saudi Labour Law, it can be said that the basis for the application of the provisions of Saudi Labour Law, and the consideration of labour relationships in accordance with this law, is the existence of a contract between two parties, the worker and employer, by which the worker is committed to work for the employer and under his management or supervision for a wage; this means that the worker should be dependent on the employer and not independent in the performance of his job<sup>174</sup>.

The Saudi Labour Law of 2005 gives a precise definition of the employment contract as, according to Article 50:

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<sup>173</sup>Saudi Labour Law of 2005, above n 44, art 5.

<sup>174</sup>Mounir Al-Dakmy, *The Brief for Labour Law and Saudi Social Security* (Dar Hafez for Publication and Distribution, 2007) 35, 38.

A work contract is a contract concluded between an employer and a worker, whereby the latter undertakes to work under the management or supervision of the former for a wage.<sup>175</sup>

According to the above article, the parties to the employment contract are the worker and the employer.

As soon as the two contracting parties (the worker and the employer) agree to the contract, it becomes binding without the need for any formal or specific action and it does not have to be written in order to prove the validity of the contract since writing is not necessary in the work contract but merely a condition to prove its existence. Therefore, an oral work contract is just as valid as a written contract, as affirmed in Article 51 of current Saudi Labour Law:

The work contract shall be in duplicates, one copy to be retained by each of the two parties. However, a contract shall be deemed to exist even if not written. In this case the worker alone may establish the contract and his entitlements arising therefore by all methods of proof. Either party may at any time demand that the contract be in writing. As for workers of the government and public corporations, the appointment decision or order issued by the competent authority shall serve as the contract.<sup>176</sup>

According to the definition of the employment contract under Article 50 of Saudi Labour Law, it could be concluded that the contract of employment in the KSA, is based on two essential elements which are a subordinate relationship and paying a wage. Therefore, no contract of employment can be considered a contract of employment without containing both of these two elements. This was confirmed when the PCSLDs in the KSA, Jeddah branch, in one case stated in the reasons for its decision that:

The two elements of subordination and remuneration should be evident in the contract of employment to consider the contract a contract of employment which is subject to the authority and application of the provisions of Saudi labour law.<sup>177</sup>

The meaning of these two elements in the contract of employment, subordination and remuneration, will be clarified.

First, the element of subordination is the most important characteristic of the labour relationship. The availability of a subordinate relationship between the worker and the employer is considered a most important element in the employment contract, with the effect of this subordination being that the worker works under the supervision of the employer or under his management. In accordance with the previous concept, this subordination is known as the legal subordination; sometimes also, it is called regulatory or administrative subordination. The legal subordination relationship is considered the main criterion that distinguishes the employment contract from other types of contracts.<sup>178</sup>

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<sup>175</sup> Saudi Labour Law of 2005, above n 44, art 50

<sup>176</sup> Ibid art 51.

<sup>177</sup> *Decision of Primary Commission for the Settlement of Labour Disputes Branch of Jeddah* (Saudi Arabia), No. 1455, 23 Dhul-Hijja 1429 H – 22 December 2008).

<sup>178</sup> Al-Dakmy, above n 180, 38-39; Khalid Al-Juhani, *Disciplinary Authority of the in the Saudi Regime and the Islamic Jurisprudence* (Master Thesis, Islamic University in Medinah, 2011) 34-44.

Under this legal subordination, the worker is subject to the authority of the employer who is entitled to guide the worker and to monitor his work performance. The employer can, under this legal subordination, impose disciplinary sanctions in case his orders and directives are violated, as well as in the case of negligence or when there is a failure to work according to what is specified by the system of work. Furthermore, the worker is not required to perform work under the direct control of the employer but it is enough that he performs his duties under the authority of the employer or his representative.<sup>179</sup>

The second element is wages. No-one can imagine the existence of an employment contract without the existence of the wage element, where the employer is obliged to pay remuneration to the worker for his work, regardless of the kind of wage or its method of payment (in accordance with the labour law) or the agreement signed by the two parties of the contract. Article 2 of Saudi Labour Law has defined a wage as:

All that is given to the worker for his work by virtue of a written or unwritten work contract regardless of the kind of wage or its method of payment, in addition to periodic increments.<sup>180</sup>

The wage is a key element of the employment contract and if the contract does not contain the wage element, it is no longer an employment contract but is considered a gift contract or free service or voluntary contract.<sup>181</sup> Saudi Labour Law does not require that the wage be specified in order for the contract to be valid. In accordance with Article 95 of Saudi Labour Law,<sup>182</sup> if the amount of the wage is not specified in the employment contract, then the worker's wage is specified in accordance with the pay estimates for work of the same type in the same organization. If that is not possible, then the wage is estimated according to the profession's norms and conventions, if there are any, or else the worker's wage could be estimated by the competent authority in the KSA: the CSLDs.<sup>183</sup> The worker is not required for the entitlement to wage to perform the work but it is enough that he be willing to do the work on time or when an inability to perform the work is due to the employer; this is in accordance with Article 62 of Saudi Labour Law.<sup>184</sup>

It could be said that the concept of an employment contract in Saudi Labour Law of 2005 conforms totally with the concept of an employment contract in most labour laws in the GCC and Arab states such as the labour law in the United Arab Emirates<sup>185</sup> and Egyptian Labour Law.<sup>186</sup> All these laws agree that the parties to the employment contract are the worker and

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<sup>179</sup>Hisham Hashim, *Labour Contract in Arab Countries* (Dar Al-Nahda Al-Arabia, 1991) 66.

<sup>180</sup>Saudi Labour Law of 2005, above n 44, art 2.

<sup>181</sup>Abdelmegeed, above n 39, 54.

<sup>182</sup>Saudi Labour Law of 2005, above n 44, art 95.

<sup>183</sup>Fahd Al-Dalea, *Provision of Worker Wages in Labour Law* (Master Theses, Al-Imam Muhammad Ibn Saud Islamic University, 2007) 178, 184.

<sup>184</sup>Saudi Labour Law of 2005, above n 44, art 62.

<sup>185</sup>*Emirates Labour Law No. 8 of 1980* (United Arab Emirates), as amended by Federal Law no 8 of 2008

<<http://www.mol.gov.ae/molwebsite/en/labour-law/labour-law.aspx>> (Translation with author); It states that in art 1/3 'Employment contract is any agreement for a fixed term or indefinite duration, between the employer and the worker, where the worker is pledging to work in the service of the employer and under his administration or supervision for a fee which is undertaken by the employer'.

<sup>186</sup>*Egyptian Labour Law No. 12 of 2003* (Arab Republic of Egypt), as amended by Law No. 180 of 2008

the employer and the most important element of the employment contract is the subordinate relationship between the worker and the employer, whereby the worker is committed to work for the employer and under his management or supervision for a wage.<sup>187</sup> It is worth mentioning that what characterized Saudi Labour Law is that it did not distinguish between individual labour contracts and collective labour contracts. Saudi Labour Law did not contain any material relating to the terms of collective labour contracts, unlike most labour laws in the GCC and neighbouring Arab countries which included a definition and special provisions for collective employment contracts. The collective labour contracts in those countries are contracts and agreements regulating the terms and conditions of work and are between the labour trade union and a group of employers.<sup>188</sup> These collective contracts exist in some Arabian countries such as Egypt<sup>189</sup> and Kuwait.<sup>190</sup>

### **3.3.2 Some workers in government and public organizations and institutions, including those who work in pastures or agriculture**

The labour law legislation of the KSA has brought some workers in government and public organizations and institutions, including those who work in pastures or agriculture, within the scope of the provisions of Saudi labour law since the second labour law was issued in 1969. The current Saudi Labour Law of 2005 has taken the same direction, in accordance with Article 5, paragraph 2:

The provisions of this Law shall apply to:  
(2) Workers of the government and public organizations and institutions including those who work in pastures or agriculture.<sup>191</sup>

Therefore, it is important to make a distinction between workers of the state and public institutions who are designated to one of the occupations of public authority in the kingdom, and who are therefore subject to the application of the provisions of the Civil Service Act in the KSA, and between workers of the government, bodies and government institutions who are subject to the provisions of the Saudi Labour Law of 2005. This distinction between them will now be explained.

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<[http://www.egypt.gov.eg/arabic/laws/labour/Law\\_12/F\\_worklow\\_law12.aspx](http://www.egypt.gov.eg/arabic/laws/labour/Law_12/F_worklow_law12.aspx)> (Translation with author); Art 31 of Egyptian Labour Law, defined the individual employment contract as follows 'The contract whereby the worker pledges to work with the employer and under his direction or supervision for a fee'.

<sup>187</sup>Muhammad Banany, *Legislation of the Individual Labour Contract in Arab Countries* (Arab Labour Legislation, 1993) 28.

<sup>188</sup>Muhammad Mansour, *Labour Law* (Halaby Legal Publication, 2010) 474.

<sup>189</sup> Egyptian Labour Law, above n 185, art 152. It provided that 'The Collective Labour contract that is the agreement regulating the terms and conditions of employment and the provisions of the employment, is made between the trade union organization or more organizations and the employer or a group of them, organization, or more than their organizations'.

<sup>190</sup>*Kuwaiti Labour Law No. 6 of 2010* (State of Kuwait)

<<http://www.gcc-legal.org/BrowseLawOption.aspx?country=1&LawID=3635>> (Translation with author);

It provided that in art 111 "collective labour contract is the contract governing the terms and conditions of labour between the union or workers union or more and the employer or more or their representatives of employers' associations".

<sup>191</sup>Saudi Labour Law of 2005, above n 44, art 5/2.

### 3.3.2.1 The public employee or employees of the state and public institutions

“Public employee” or “public servant” refers to employees who are appointed to work permanently in a government job or to serve in public facilities owned by the state or any person in public law.<sup>192</sup> The jurists of administrative law require an essential element to be met in order to consider a person as a public employee: i.e., that the position occupied by the person is a permanent job, not of temporary duration or limited to a particular purpose. In addition, the post should belong to a government or public institution which is run by the state or any person in public law. Finally, to issue a decision on the appointment, a competent employee in the public service must make the decision of appointment.<sup>193</sup>

When the preceding elements are part of the job, the person is considered a public servant and, therefore, is not subject to the scope of the application of the provisions of labour law of 2005 but, instead, is subject to the scope of the application of the provisions of the Civil Service Act in the KSA.<sup>194</sup> The Board of Grievances in the KSA is specialized in all administrative disputes, including disputes arising from the application of the civil service law; however, this is outside of the scope of this thesis, and falls under administrative law.

### 3.3.2.2 Workers in government bodies and public institutions

Current Saudi Labour Law is criticized for not specifically defining what is meant by government workers who fall under the provisions of the Saudi Labour Law of 2005 in accordance with Article 5, paragraph 2. However, despite this, jurists of labour law in the KSA have agreed that what is meant by workers in government and public institutions is all persons who work under a fixed-term labour contract (not under administrative decision by appointment) in running a public facility owned by the state or work in a government project that is implemented directly by the government or public institutions.<sup>195</sup> This concept includes workers in public institutions and administrative and local bodies who are appointed on what is called the wages item in the state budget in the KSA. They have relied on the definition decided upon by the Council of Ministers No. 837, in 1977 regarding what is meant by “workers of the government and a public institution”:

They are employees who carry out labour-intensive actions for the government and administrative bodies such as carpenters, electricians, mechanics and others such as porters, cleaners in the municipalities, excavation workers and transport workers.<sup>196</sup>

From the above it could be said that the reason for the submission and inclusion of the workers of government, agencies and public institutions under the provisions of Saudi Labour Law is the fact that their relationship with the government or public institutions is a

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<sup>192</sup> Jaber Abo-Zeed, *Administrative Law in Kingdom of Saudi Arabia* (Dar Hafez for Publication, 2006) 43.

<sup>193</sup> Abdel-Mohsen Rayan, *The Principle of Saudi Administrative Law* (Dar Hafez for Publication, 3<sup>th</sup> ed, 2008) 14-15.

<sup>194</sup> *Civil Service Law* (Saudi Arabia), Royal Decree No. M / 49 (10 Rajab 1397 H – 27 June 1977).

<sup>195</sup> Al-Kialy, above n 16, 58.

<sup>196</sup> Ministerial Decree (Saudi Arabia), No. 837 (28 Shawal 1387 H- 29 January 1969); Naal, above n 18, 36.

temporary contractual relationship and not a functional relationship.<sup>197</sup> So, in the KSA, they are called workers and not employees, while the relationship of the employees of government and public institutions is a functional relationship; therefore, they are subject to the civil service act or to the laws of public institutions in which they serve. Some examples of these are the police and military personnel and the National Guard. They are not subject to the provisions of Saudi Labour Law and Civil Service Law but they are subject to private regulations for military personnel.

In fact, it may be argued that Saudi Labour Law differs from most labour laws in the countries of the GCC and the neighbouring Arab states of the KSA which have exempted "all" workers in government agencies from being subject to the application of the provisions of labour law. Instead, such workers are subjected to special regulations for state employees that fall under administrative law. For example, as stipulated in Article 3, paragraph 1 of the UAE labour law of 1980<sup>198</sup> or in Article 4 of the Egyptian Labour Law of 2003.<sup>199</sup>

It should be mentioned here that there is considerable debate about the application of the provisions of Saudi Labour Law to some workers in government and public bodies and institutions in the KSA. Should it be considered as a positive or negative feature of Saudi Labour Law? According to Dr Al-Kialy, who supports the notion that workers of the government, in agencies and public institutions should be included within the scope of the labour law, this will be highly significant. They will benefit from the advantages of the labour law and it will ensure the future of workers employed by the government and public institutions.<sup>200</sup> Also, Dr. Abdelmegeed argues that this submission is a good idea and is one advantage of the labour law in the KSA.<sup>201</sup>

However, there is another point of view which sees that the submission of some government workers to the labour law is not to their advantage and that their submission to the civil service system is better for them and has no disadvantages. Dr Elias argues that the exclusion of workers in the GCC government, institutions and government agencies from the terms and conditions of labour law is better than their submission to the provisions of labour law as is the case in the KSA. He argues that the relationship between the State and the employees of the State, either as government workers or workers in public institutions, is an organizational relationship in practice, even if it is temporary and not a contractual relationship as is the case between workers and employers in the private sector. Thus, it is better for the worker in terms of rights and obligations to be in an organized relationship and to be subject to the same

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<sup>197</sup> Fakhry, above n 155, 294

<sup>198</sup> United Arab Emirates Labour Law, above n 185, art 3/1. It Provided that "The provisions of this. law shall not apply to the following categories A - Workers and employees of the federal government and workers in government departments in the UAE"; H Ahwani and R Mabrouk, *The Mediator in the Labour Law of the United Arab Emirates No. 8 for the Year 1980 and its Amendments* (United Arab Emirates University, 2000) 24.

<sup>199</sup> Egyptian Labour Law , above n 186, art 4. It Provided that "The provisions of this law shall not apply to workers in the government, including units of local administration and public bodies"; Ramadan Kamel, *Explanation of the New Egyptian Labour Law No 12 of 2003* (National Centre for Legal Publications in Cairo, 5<sup>th</sup> ed, 2008) 53.

<sup>200</sup> Al-Kialy, above n 16, 58.

<sup>201</sup> Abdelmegeed, above n 39, 10.

regulations that state workers enjoy within the rules of administrative law, rules that may be unknown in the contractual relationship. There is no such preference in the case of submission to labour law.<sup>202</sup>

It could be supported that the position not to include government workers under the provisions of the labour law is the reason that submission of government workers to labour law has several deleterious effects. One of the most important of these is that workers in government and public institutions do not have the same rights as do the state workers in the KSA. This happens because two workers can be in government institutions and both perform the same work but with a different name and one is appointed by an administrative decision, and hence is considered an employee of the state and consequently is subject to the provisions of the civil service law in the KSA, while the other is appointed under a contract under the wages list and consequently is subject to the provisions of Saudi Labour Law.

This ambivalence in the submission of some state employees to the provisions of the civil service law and the submission of some government workers and workers in public institutions to the provisions of the labour system has led to complaints and disputes as the government administration in public institutions is unable, in practice, to give these groups their lawful rights, according to the labour law, for several reasons. The most important of these reasons is the bureaucracy of government institutions. The various complaints and disputes filed by government employees against government institutions to claim their rights provided for in the labour law supports the previous point of view. An example of this is the proceedings raised against a public university before PCSLDs in the KSA by a number of workers at the university who fall within the categories of government workers and public institutions provided for in Article 5, paragraph 2 in Saudi Labour Law of 2005. The subject of the dispute included the workers' appeal to the university to give them their financial rights according to the labour law in the KSA, since the university had appointed them on temporary contracts and some of them had worked for more than ten years yet were still deprived of many of the rights stipulated in Saudi Labour law.<sup>203</sup>

Therefore, in accordance with the above, it could be suggested that all government workers and workers in organizations and government agencies should be exempted from the application of the provisions of Saudi Labour law and they should be subject to the provisions of the Civil Service Law, as is the case in most of the GCC and Arab countries.

### **3.3.3 Charity workers**

In accordance with the provisions of Article 5, paragraph 3 of the above-mentioned Saudi Labour Law of 2005,<sup>204</sup> Saudi Labour Law applies to all workers in charitable institutions. Charitable institutions are those institutions that offer services free of charge and do not

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<sup>202</sup>Elias, above n 3, 41.

<sup>203</sup>Saud Al-Barkati, 'Labour Commission Limits Workers Demands in King Abdul-Aziz University', *Okaz Newspaper* (Jeddah) 11 August 2009, 5.

<sup>204</sup>Saudi Labour Law of 2005, above n 44, art 5/3.

intend to make a profit.

It can be argued that the intent of the Saudi legislation in having the explicit provision in the third paragraph of Article 5 requiring the submission of charity workers to the provisions of the labour law is just to emphasize that this does not require that the business or the employer intends to make a profit. In addition, this emphasizes that workers in charitable institutions in the KSA are subject to the provisions of Saudi Labour Law, regardless of the owner of the charity.

### **3.3.4 Workers of agricultural and pastoral firms in the private sector**

Originally, workers in agricultural and pastoral firms in the private sector in the KSA were not subject to the provisions of labour law, according to the provisions of Article 7/4.<sup>205</sup> This principle has some exceptions identified in Saudi Labour Law as stated in Article 5, paragraphs 4, 5 and 6. Three categories of agricultural and pastoral workers are subject to the application of the provisions of labour law.

Article 5, paragraphs 4, 5 and 6 state:

The provisions of this Law shall apply to:

- (4) Workers of agricultural and pastoral firms that employ ten or more workers.
- (5) Workers of agricultural firms that process their own products.
- (6) Workers who operate or repair agricultural machineries on a permanent basis.<sup>206</sup>

Under paragraph 4 of this Article, , it is clear that workers in agricultural and pastoral firms that employ ten or more workers in one establishment are subject to the application of the provisions of the labour law. Perhaps the requirement that agricultural and pastoral firms employing ten or more workers are subject to the provisions of the labour law is intended for the reason that such agricultural or pastoral firms are closer to being commercial firms rather than operating on a seasonal basis.<sup>207</sup>

In accordance with the preceding Article, paragraph 5, workers of agricultural firms that process their own products are subject to the provisions of the labour law regardless of the number of workers in the firm. Examples of such firms in the KSA are firms that plant dates then package them, as well as agricultural firms that grow fruits.

The last of these three categories of workers in agriculture who are subject to the provisions of labour law, as stated in the preceding Article, paragraph 6, are workers who operate or repair agricultural machinery on a permanent basis.

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<sup>205</sup> Ibid art 7/4.

<sup>206</sup> Ibid art 5/4, 5, 6.

<sup>207</sup> Al-Fawzan, above n 8, 44.

### **3.4 Labour groups in the KSA exempted from the application of certain provisions of Saudi Labour Law and subject to other provisions**

Current Saudi Labour Law is distinguished from other previous and repealed labour laws in Saudi Arabia, by its explicit identification of certain categories of workers that are subject to the application of certain provisions of labour law and exempted from others. There are three categories that Saudi Labour Law exempts from certain provisions of the labour law. These categories are now discussed.

#### **3.4.1 Trainees under qualification and training contracts with workers other than those working for the employer**

Article 5, paragraph 7 stipulates that:

The provisions of this Law shall apply to: (7) Qualification and Training contracts with workers other than those working for the employer within the limits of the special provisions provided for in this law.<sup>208</sup>

In accordance with Article 45 of the Saudi Labour Law of 2005, qualification and training contracts are contracts under which the employer is committed to train and qualify workers other than those working for him so that they are able and prepared to work in a particular profession.<sup>209</sup> Saudi Labour Law has incorporated an organized set of procedures relevant to qualification and training contracts – in Articles 46 to 49 of Saudi Labour Law of 2005.<sup>210</sup>

According to Article 49, qualification and training contracts are applicable to some of the provisions of Saudi Labour Law with regards to annual vacations, official holidays, maximum working hours, daily and weekly rest periods, occupational health and safety rules, work injuries and their conditions, as well as whatever is decided by the Minister of Labour in the KSA.<sup>211</sup>

#### **3.4.2 Part-time workers**

Article 5, paragraph 8 stipulates that:

The provisions of this Law shall apply to (8) Part-time workers with respect to safety, occupational health and work injuries, as well as what is decided by the Minister.<sup>212</sup>

According to the previous Article, part-time workers in the KSA are exempt from some provisions of Saudi Labour Law.

In Article 2 / 12, Saudi Labour Law has defined part-time work as:

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<sup>208</sup>Saudi Labour Law of 2005, above n 44, art 5/7.

<sup>209</sup>Ibid art 45.

<sup>210</sup>Ibid art 46,47,48,49.

<sup>211</sup>Ibid art 49.

<sup>212</sup>Ibid art 5/8.

Part-time Work: Work performed by a part-time worker for an employer and for less than half the usual daily working hours at the firm, whether such a worker works on a daily basis or on certain days of the week.<sup>213</sup>

According to the above Article it is required that the worker in the performance of his work does not work exclusively for the employer; in this case, the normal daily hours of work should be less than half the normal daily hours in the facility in order for the job to be considered part-time.

Thus, where the previous factors apply, the work of the worker is considered a part-time job and is subject only to the provisions relating to occupational safety and health and work injuries under Saudi Labour Law.

### **3.4.3 Incidental workers, seasonal workers and temporary workers**

Incidental workers, seasonal workers and temporary workers are exempted from the application of certain provisions of Saudi Labour Law. Article 6 of Saudi Labour Law states that:

Incidental, seasonal and temporary workers shall be subject to the provisions on duties and disciplinary rules, the maximum , working hours, daily and weekly rest intervals, overtime work, official holidays, safety rules, occupational health, work injuries and compensation, as well as whatever is decided by the Minister.<sup>214</sup>

Incidental work is work that is not part of the usual activities of an employer and its execution does not require more than ninety days, according to Article 2, paragraph 10.<sup>215</sup>

Article 2, paragraph 9 defines temporary work as work that is part of the employer's activities, the completion of which requires a specific period or relates to a specific job and ends with its completion. It shall not exceed ninety days in either case.<sup>216</sup>

The last definition is that of seasonal work which, according to Article 2, paragraph 11,<sup>217</sup> is work that takes place during known periodical seasons. Of the three types of work, seasonal work is the most common, especially during the Hajj pilgrimage and other related services, and the seasonal work during tourist season in summer and during other festivals.

From the above, it can be seen that the Saudi legislation has exempted workers in these three categories from submission to some of the provisions of labour law and, therefore, subjected them only to provisions on duties of workers and employers, disciplinary rules, rules for regulation of the maximum working hours, daily and weekly rest intervals, official holidays, safety rules, occupational health, work injuries and compensation, as well as whatever is

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<sup>213</sup>Ibid art 2/12.

<sup>214</sup>Ibid art 6.

<sup>215</sup>Ibid art 2/10.

<sup>216</sup>Ibid art 2/9.

<sup>217</sup>Ibid art 2/11.

decided by the Minister of labour in the KSA.<sup>218</sup>

### 3.5 Groups exempted from the application of all the provisions of Saudi Labour Law

As already mentioned, the labour law in the KSA governs the labour relationship between workers and employers under a contract of employment if there exist the two essential elements, legal subordination and wage elements, in the relationship. However, it should be noted that not all labour relationships within the previous concept fall under and are subject to the provisions of this law. There are some labour groups which are exempted explicitly and exclusively by the Saudi legislation from subordination to labour law. Therefore, they are subject to special provisions, if any exist, or to the rules and provisions of Islamic Shari'ah in the KSA, on the grounds that Islamic Shari'ah is the main source of all legislation and regulations in the KSA.

Groups which are exempted from the provisions of Saudi labour law are identified specifically in Article 7 which states that:

The following shall be exempted from the implementation of the provisions of this Law:

- (1) The employer's family members, namely, the spouse, the ascendants and descendants who constitute the only workers of the firm.
- (2) Domestic helpers and the like.
- (3) Sea workers working on board vessels with a load of less than five hundred tons.
- (4) Agricultural workers other than the categories stated in Article (5) of this Law.
- (5) Non-Saudi workers entering the Kingdom to perform a specific task for a period not exceeding two months.
- (6) Players and coaches of sports clubs and federations.

The Ministry shall, in coordination with the competent authorities, draft regulations for domestic helpers and the like to govern their relations with their employers and specify the rights and duties of each party and submit the same to the Council of Ministers.<sup>219</sup>

According to the above article, the current Saudi labour law of 2005 has taken the same approach as that of previous labour laws in the KSA that also exempted categories of workers from the provisions of the labour law. However, current Saudi labour law is more precise in defining the categories exempted from the previously abolished labour laws.<sup>220</sup> This situation, of exempting some categories from being subject to the provisions of labour law, fully complies with labour laws in the countries of the GCC and other neighbouring Arab countries. For example, exemptions are provided in Article 5 in Kuwaiti Labour Law,<sup>221</sup> Article 3 in UAE Labour Law,<sup>222</sup> and Article 4 in Egyptian Labour Law.<sup>223</sup> All of these

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<sup>218</sup>Megahed, above n 49, 30,31.

<sup>219</sup>Saudi labour Law of 2005, above n 44, art 7.

<sup>220</sup>Al-Dakmy, above n 174, 20.

<sup>221</sup>Kuwaiti Labour Law, above n 190, art 5. It states that 'The following shall be exempted from the implementation of the provisions of this Law A- Workers who are subject to the provisions of other laws B- Domestic helpers as well as whatever is decided by the competent Minister'.

<sup>222</sup>United Arab Emirates Labour Law, above n 185, art 3. It states that 'The following shall be exempted from the implementation of the provisions of this Law: A - staff, employees and workers in the federal government

articles exempt certain categories of workers from being subject to all the rules of labour law.

Based on the above, each of the categories exempted from the implementation of the provisions of labour law in accordance with Article 7 of Saudi Labour Law will be addressed.

### **3.5.1 Family members of the employer**

The Saudi legislation has exempted family members of the employer who work in family enterprises who constitute the only workers in the firm, in accordance with the first paragraph of Article 7 / 1,<sup>224</sup> which states that family members of the employer are not subject to Saudi labour law provided that two conditions are met.

The first of these two conditions is that the worker in such an establishment is a family member of the employer where family includes husband, wife, ascendants (such as single parents, grandfather or grandmother) or descendants (such as children or grandchildren). The second condition for the validity of these exceptions is that the establishment does not include other workers who are not members of the family of the employer.

Hence, if the establishment includes other workers (even one worker) who are not members of the family of the employer, or if they are members of the employer's family not specified in Article 7, paragraph 1, (such as a brother of the employer), then there is no room here for an exception to the rules of labour law. In this case, the labour law applies to all workers, including family members of the employer.<sup>225</sup>

This exception in Saudi labour law, for the employees of the employer's family members not to include other family members, is the subject of a major debate and controversy among scholars. Those who support this exception argue that it is for the benefit of all members of the family of the employer as, according to their point of view, the submission to the labour law in this case leads to the corruption of family ties and relations between workers and employers. They also believe that the kinship relationship between the worker and the employer in this case is stronger than the relationship of law and, therefore, there is no need to apply the provisions of labour law in this case.<sup>226</sup>

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and government departments in the UAE who are members of the state as well as the officials ,employees , municipal workers and other workers in public bodies , public institutions, either federal or local, as well as staff, employees and workers who are appointed on the federal and local projects of government. B - Members of the armed forces and police and security forces. C - Domestic helpers and the like. D - workers who work in agriculture or pasture, except the people who work in agricultural enterprises that manufacture products or workers who operate or repair agricultural machineries on a permanent basis'.

<sup>223</sup>Egyptian Labour Law, above n 186, art 4. It states that 'The following shall be exempted from the implementation of the provisions of this Law: "1) Workers in government bodies including local administration units and public institutions. 2) Domestic helpers and the like. 3) The employer's family members whom he actually supports'.

<sup>224</sup>Saudi Labour Law of 2005, above n 44, art 7/1.

<sup>225</sup>Suleiman Suwayd, *Labour Groups Who are Exempted from the Application of Saudi Labour Law* (Master Thesis, Al-Imam Muhammad Ibn Saud Islamic University in Riyadh, 2008) 72, 77.

<sup>226</sup>Kamel, above n 199, 57

On the other hand, there is the view that opposes the exclusion of family members of the employer from being subjected to the provisions of labour law.<sup>227</sup> This point of view could be adopted, since this exception does not conform to the principle of the rule of law and justice. It is better for the Saudi legislation to subject labour relationships between family members to the rules of labour law so as to guarantee that family members of the employer, as well as his non-family employees, are protected and have the rights that labour law provides for a worker, especially as the family members of the employer are defined according to the labour law as ascendants, descendants, husbands or wives. This may allow the employer to exploit the kinship relationship through this exception and be unfair to them because they are not subject to the provisions of labour law.

In addition, the rejection of such an exception is based on the actuality that there is no sense legally for the kinship relationship to be a reason to deprive a worker of equal protection under labour law.<sup>228</sup> It could be said that it is unfair to not subject the kinship relationship and family bonds to legal rules because family ties and the kinship relationship are stronger than the ties of law. In addition, if the kinship relationship is sufficient to protect relatives, why does some laws include provisions for family matters such as inheritance or alimony? This indicates that it is the system or the law that achieves justice and not kinship relationships that are based on emotions that vary from person to person. Also, most of the labour laws in the neighbouring GCC States do not exclude family members of the employer from labour law. Thus, it could be concluded that it is important that the Saudi labour legislation reconsider this exception.

### **3.5.2 Domestic helpers, servants and the like**

The next category of those exempted from the implementation of the provisions of Saudi Labour Law are domestic helpers and the like. This is based on Article 7, paragraph 2.<sup>229</sup> In fact, this exception is not new to labour legislation in Saudi Arabia, where all previous labour laws in the KSA explicitly exempted domestic helpers and the like from being subject to the provisions of labour law. The other Arab and GCC countries have a similar exemption in their labour laws. For example, this exemption is provided in Article 4 of the Egyptian Labour Law of 2003,<sup>230</sup> Article 5 of the Kuwaiti Labour Law of 2010,<sup>231</sup> and Article 3 of the UAE Labour Laws of 1980.<sup>232</sup>

The problem with Article 7/2 of Saudi Labour Law is that it does not precisely define what is meant by “domestic helpers and the like”, and this has led to a major jurisprudence and judicial debate.

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<sup>227</sup>Fakhry, above n 155, 295.

<sup>228</sup> Al-Dakmy, above n 174, 23.

<sup>229</sup>Saudi Labour Law of 2005, above n 44, art 7/2.

<sup>230</sup>Egyptian Labour Law, above n 186, art 4; Ali Hassan, *Mediator for Explaining the New Egyptian Labour Law No. 12 of 2003*, (Dar Al-Matboaat Al-Jamiaya, 2003) 67.

<sup>231</sup>Kuwaiti Labour Law, above n 190, art 5

<sup>232</sup>United Arab Emirates Labour Law, above n 185, art 3

The point of view that prevails among scholars of law in determining what is meant by domestic helpers and the like is that they are workers who perform their work regularly in private houses as cooks, baby sitters, and house-keepers.<sup>233</sup> As for what is meant by their “like”, scholars of law have defined “like” as those domestic workers who serve the employer or his family members outside the house or residential building, such as a private driver who is not subject to labour law.<sup>234</sup>

The International Labour Organization, in 1996, and Home Work Recommendation No. 184, regarding Article 1 / A, has defined what is meant by domestic work as:

A) the term home work means work carried out by a person, to be referred to as a home worker.

I) in his or her home or in other premises of his or her choice, other than the workplace of the employer.<sup>235</sup>

With regard to judicial decisions in the KSA, the PCSLDs branch of Makkah, no727, stated in its ruling that:

Domestic workers and the like mean that all those who work in relation to the employer either directly in person or his family or indirectly through the objects owned by him.<sup>236</sup>

Some supporters of the exclusion of domestic workers and the like from being subject to labour laws in the KSA, in Arab countries or in the GCC states, argue that the nature of domestic work is closely related to the personal life of employers and thus justifies the exclusion of domestic workers and the like from being subject to labour laws in order to protect the employers’ private lives.<sup>237</sup> In addition, the submission of domestic workers to the labour law requires that inspectors of the Ministry of Labour pay visits to the houses of employers in order to make sure of the application of the provisions of labour law. However, this is a measure that conflicts with the inviolability of the private life of employers and cannot be applied.<sup>238</sup> In addition, it is impossible to apply the law to domestic workers because their work is not regularly organized and so does not allow for the identification of their rights and duties.<sup>239</sup>

Despite the validity of some of the arguments and opinions of the aforementioned supporters, some would argue that domestic workers should be subject to the provisions of labour law, or at least to some of them. It could be argued that the exclusion of domestic workers and their

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<sup>233</sup>Naal, above n 18, 43.

<sup>234</sup>Youssef Elias, *The Crisis of the Current Labour Law Between State Intervention Path and The Market Economy Approach* (Dar Wael for Publication, 2006) 97; Al-Dakmy, above n 180, 25.

<sup>235</sup> International Labour Organisation, *Recommendation Concerning Home Work* (ILO 184), adopted 20 June 1996, 36 ILM 60 (1997) art1

< [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:R184](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R184)>.

<sup>236</sup>*Decision of Primary Commission for the Settlement of Labour Disputes branch of Makkah* (Saudi Arabia), No 727, 16 Dhul-Qi'dah 1426 H – 22 December ,2005.

<sup>237</sup>Naal, above n18, 45

<sup>238</sup>Al-Dakmy, above n 174, 24.

<sup>239</sup>Al-Adawy, above n 9, 33.

like from the scope of labour law is not legally justified. There is no legally reasonable justification for denying domestic workers and the like all the advantages and rights that preserve the humanity and freedom of workers and which are included in labour law, such as rights established in the articles regarding weekly or sick leave, hours of work, leisure time and compensation for work injuries, as long as they do not conflict with the normal tasks that they do. As for the articles that are incompatible with the nature of domestic work, such as inspection procedures, special rules could be included in the labour law.<sup>240</sup>

### **3.5.3 Sea workers working on board vessels with a load of less than five hundred tons**

The third category exempted from the application of all the provisions of Saudi Labour Law are sea workers working on vessels with a load of less than five hundred tons, as stated in Article 7, paragraph 3 of Saudi Labour Law.<sup>241</sup>

Current Saudi Labour Law is distinguished from most labour laws in the GCC and neighbouring Arab countries by its exclusion of sea workers employed on small vessels with a load of less than five hundred tons. These are not subject to the provisions of labour law whether the vessels are transporting goods or people. It could be said that under Saudi law, sea workers working on vessels of five hundred tons or more are subject to labour law. Perhaps the intent of the Saudi legislation is to apply the law only to trade ships. However, it seems that there is no justification for the capacity of the vessel to be the determinant of whether or not the sea workers are covered by the labour laws. It is also better for the legislation to apply some articles of Saudi Labour Law to workers who work on ships where the capacity is less than five hundred tons of cargo because they need the protection of the law, especially regarding the application of articles pertaining to working hours, leave and work injuries.<sup>242</sup>

### **3.5.4 Agricultural workers**

The fourth category exempted from the application of the provisions of Saudi Labour Law is agricultural workers in the private sector in accordance with Article 7, paragraph 4.<sup>243</sup>

As previously discussed, it could be found that Saudi Labour Law has distinguished workers in agriculture and pasture working in government institutions and has made them a category which is subject to labour law in accordance with Article 5. However, according to Article 7 paragraph 4, the Saudi legislation exempts workers of agricultural and pastoral firms in the private sector from the provisions of Saudi labour law. This exemption of workers of agricultural and pastoral firms in the private sector is not unconditional. In fact, there are three categories of agricultural and pastoral workers who are subject to labour law under

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<sup>240</sup>In 2014, the KSA issued a specific Regulation to ensure the rights and the organization of the work of domestic workers and the like: Regulation of Domestic Workers and the Like under Ministerial Decree (Saudi Arabia), No. 310 (07 Ramadan 1435 H – 27 July 2014).

<sup>241</sup>Saudi Labour Law of 2005, above n 44, art 7/3.

<sup>242</sup>Megahed, above n 49, 38.

<sup>243</sup>Saudi Labour Law of 2005, above n 44, art 7/4..

Article 5, paragraph 4/5/6 and these have been discussed in detail in sub-chapter 3.3.4.

The tendency of Saudi labour law to submit certain categories of workers in the field of agriculture and pasture in the private sector to the provisions of Saudi labour law, while exempting others, is also consistent with what is found in some GCC labour laws, such as that of the United Arab Emirates Labour Law Article 3, paragraph D.<sup>244</sup>

### **3.5.5 Non-Saudi workers entering the KSA to perform a specific task for a limited period**

According to Article 7, paragraph 5,<sup>245</sup> the fifth category exempted from the application of the provisions of Saudi Labour Law is non-Saudi workers entering the KSA to perform a specific task for a limited period. The Saudi legislation limits this category from being exempt from the provisions of Saudi labour law if the worker is non-Saudi, in addition to coming from outside the KSA, in order to perform a specific task for no more than two months.

The reason for this exception is that such workers enter the KSA to perform a specific task for a limited period and then return to their countries.<sup>246</sup> This kind of business increases during the pilgrimage season in Saudi Arabia, specifically in Makkah and Medina, where groups of non-Saudi workers from other Arab countries come to the KSA in order to work during the pilgrimage season for a limited period not exceeding two months; examples of such workers are bus drivers and butchers.

### **3.5.6 Players and coaches of sports clubs and federations**

According paragraph 6 of to Article 7,<sup>247</sup> the current Saudi Labour Law of 2005 excluded a category that was subject to the provisions of labour law in accordance with the previous labour law of 1969; this category is players and coaches of sports clubs and federations. This is the sixth and final category exempted from the application of the provisions of Saudi Labour Law.

Thus, players and coaches of sports clubs and federations became a category exempted from the application of the provisions of Saudi labour law; instead, they became subject to the application of regulations issued by clubs and sports federations either inside or outside the KSA. The reason for this is that the relationship among players and coaches of sports clubs and federations has certain particularities and it differs from other business relationships, especially after the introduction of professionalism in sports in the KSA.

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<sup>244</sup>United Arab Emirates Labour Law, above n 185, art 3. It states that "The provisions of this law do not apply to the following categories: D - Workers who work in agriculture or pasture except for the people who work in agricultural firms that process their own products or those workers who operate or repair agricultural machineries on a permanent basis'.

<sup>245</sup>Saudi Labour Law of 2005, above n 44, art 7/5.

<sup>246</sup>Al-Fawzan, above n 8, 57.

<sup>247</sup>Saudi Labour Law of 2005, above n 44, art 7/6.

### **3.6 Conclusion**

The previous discussions of the scope of Saudi Labour Law and the categories of workers who are subject to the application of labour law of 2005 in the KSA has clearly contributed to defining the concept of labour relationships in Saudi Arabia, in identifying what is meant by the contract of employment and in determining the basic elements that distinguish it from other contracts, namely subordination and wages.

In addition, through previous discussions in this chapter, an important conclusion has been reached: the concept of labour relations and employment contracts in the KSA is perfectly aligned with the concept of contracts of employment in labour legislation in the GCC States and other neighbouring Arab countries. The most essential criterion for the application of labour law to labour relations in the KSA, the GCC States and other neighbouring Arab countries is the inclusion in the employment contract of two vital elements: the subordination element and the element of wages, in the relationship between the worker and the employer.

Moreover, by examining the categories which are subject to the application of provisions of labour law in the KSA, it is obvious that Saudi Labour Law is uniquely distinguished from other labour legislation in the GCC and Arab countries by subjecting some workers in government and public institutions, as well as workers in agriculture and pasture in public institutions, to the provisions of labour law. In addition, some important points have been discussed during the consideration of the controversy about the submission of workers in government and public institutions to the provisions of labour law.

This study has explained that the Saudi Labour Law of 2005 is distinguished by the exemption of some categories of workers from the application of certain provisions of labour law and subjecting them, instead, to other provisions of the labour law according to the nature of the business.

Furthermore, this study has confirmed that there are categories of workers who are exempt from being subject to the scope of the provisions of the labour law, whether in the KSA, the GCC States or other Arab countries such as Kuwait, United Arab Emirates, and Egypt. These exceptions differ in each country's laws. Some of them are due to logical and legal reasons while others need to be reconsidered because of negative outcomes. Also, the rights of the workers who are exempted in the provisions of the labour law must be taken into account.

Finally, of the main purpose of this chapter is to precisely define what is meant by the labour relationship and its parties according to Saudi Labour Law and as compared to other labour law in the GCC and in neighbouring Arab countries, which is characterized by the development of their labour laws. This is an essential introduction to the next chapter, which will be the central part of our research where the nature of labour disputes, in accordance with Saudi labour law and the relevant authorities which resolve labour disputes, will be addressed, as will the manner in which such disputes are resolved in the KSA.

## **Chapter 4**

### **Labour disputes in current Saudi Labour Law and their different types**

#### **4.1 Overview**

The purpose of this chapter is to study the concept of labour disputes in Saudi Labour Law and to identify and discuss their different types. This chapter is important to this thesis as it will answer the critical question "Does Saudi Labour Law distinguish between individual and collective labour disputes when it comes to the difference between a competent authority settling such disputes and the use of different ways of resolving them?"

This question will be answered through a detailed study of the concept of labour disputes in current Saudi labour law. Also, types of labour disputes in the KSA and some Arab states will also be discussed, as well as distinguish between individual and collective disputes. This chapter will also discuss the Effects of the distinction between individual and collective disputes in terms of the competent authorities for settling both types of disputes.

The chapter is divided into 4 sub-chapters. Sub-chapter 4.1 gives an overview of the chapter. Sub-chapter 4.2 introduces the topic while sub-chapter 4.3 discusses the concept of labour disputes under current Saudi labour law. Sub-chapter 4.4 studies the types of labour disputes in the KSA while sub-chapter 4.5 concludes the chapter.

#### **4.2 Introduction**

A working relationship is a contractual relationship between the employer and worker, whereby the latter undertakes to work under the direction or supervision of the employer for a fee. When considering labour relations in accordance with the concept of Saudi labour law, the labour contractual relationship must be between the categories of persons and groups who are subject to provisions of Saudi Labour Law, as was shown in the previous chapter. As a result of labour relations there may be a dispute between the parties of the relationship; the worker or workers on the one hand and employer or employers on the other hand. Whether such disputes relate to the provisions and rules of labour law or employment contract and the rights and obligations about them, or about the end of the employment relationship itself, these differences are identified in the labour laws as contemporary labour disputes, whether they are individual or collective.

Labour disputes are often defined as disputes that occur between one worker and the employer on a legal matter related to the employment contract or labour law. According to this concept most labour legislation considers such disputes as individual labour disputes. However, labour disputes are not always individual and limited between one worker and employer but may include disputes between all workers in a facility or a collective of them, whether they belong to trade union organizations or not, or between the employer and a collective of employers which, in most legislation, are called collective labour disputes.<sup>248</sup>

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<sup>248</sup> Asmaa Oureish, *Arbitration in Collective Labour Disputes* (Master Thesis, Cairo University, 2003) 31.

Although the majority of the comparative labour legislation in the GCC and Arabian countries recognizes the distinction between individual and collective labour disputes, its labour legislation has included a legal definition of what is meant by all types of disputes. However, past and present Saudi labour laws haven't been applied or taken into account the distinction between individual and collective disputes, as will be discussed in this chapter of this thesis.

#### **4.3. The concept of labour disputes according to Saudi Labour Law of 2005**

Successive Saudi labour laws did not include a specific legal definition of labour disputes in the KSA. This reflected negatively on all research and legal references related to Saudi labour law as it did not address labour disputes in the KSA, including what labour disputes are and their different types according to Saudi labour law. But that is not considered an obstacle in defining the concept of labour disputes in the KSA; according to Article 219 of Saudi Labour Law:

Each of these Commissions shall solely have exclusive right to consider all disputes relating to this Law and the disputes arising from work contracts.<sup>249</sup>

According to the above article, which identified the specialized commissions of labour disputes in the KSA, it can be concluded that the meaning of labour disputes in the KSA is that labour disputes mean those disputes and differences relating to the provisions applied of the Saudi Labour Law of 2005 or disputes arising from employment contracts.

According to the previous concept of labour disputes in the KSA, it may be argued that three collective elements can be identified that should be in the dispute in order for it to be considered a labour dispute in accordance with Saudi Labour Law.

The first element is related to the nature of the dispute, where it shall be a labour dispute if it relates to the relationship of labour subject to the application of the provisions of labour law (as previously detailed in the third chapter of this thesis). The second element which needs to be in the dispute is that the subject of the dispute must be tightly related to labour law or the regulations of labour law or related to an employment contract or a list of the organizations of workers inside a facility. The last element that must be in the dispute is that the parties of the dispute shall be parties of the relationship of labour between any worker or collective of workers on the one hand and the employer on the other hand; the parties may also be the heirs of a deceased worker and the heirs of the employer when the dispute is attached to a deceased worker or employer.

When all the previous elements are in the dispute, the dispute shall be considered a labour dispute in accordance with the concept of Saudi Labour Law.

#### **4.4 Types of labour disputes in the KSA**

Saudi Labour Law differentiates from all labour legislation in the GCC and neighbouring Arabian countries in that it hasn't distinguished between individual labour disputes and

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<sup>249</sup>Saudi Labour Law of 2005, above n 44, art 219.

collective labour disputes. According to Saudi Labour Law all disputes are subject to one legal system and procedures to resolve them.<sup>250</sup> This explains the absence of any provisions or rules in Saudi Labour Law that distinguish between individual and collective disputes. Thus the word of a collective or individual does not exist at all in Saudi Labour Law.

Unlike Saudi Labour Law, all labour laws in the GCC and neighbouring Arabian countries distinguish between individual and collective labour disputes whether concerning the definition or the difference between the competent authority that is responsible for settling the individual disputes and that is responsible for the collective labour disputes, in addition to the different ways of resolving the individual about collective labour disputes.<sup>251</sup>

This may be due to the impact on most Arab countries, especially Egypt, of French Law, where the first steps were taken that led to the distinction between individual disputes and collective disputes in the world. Specifically this happened in France in the Law of 1806, with special courts for resolving disputes relating to contract work and where only the commission had the right to settle individual labour disputes and collective disputes were subject to conciliation and mediation.<sup>252</sup> In addition, the emergence of compulsory arbitration in collective labour disputes happened in France in the mid-nineteenth century.<sup>253</sup> So, according to this distinction, it is important to discuss what is meant by collective labour disputes and individual labour disputes.

#### **4.4.1 Individual disputes in the GCC and Arabian countries**

Most labour legislation in the GCC and Arab countries did not include a specific definition of individual disputes, except for the UAE Labour Law and Egyptian Labour Law.

The UAE Labour Law, Article 6, defined individual labour disputes as follows:

If the employer or the employee or any one of them has any rights according to the provisions of this Act.<sup>254</sup>

Also, Egyptian Labour Law in accordance with Article 70, has defined the individual dispute as:

Any individual dispute about the application of the provisions of this Act.<sup>255</sup>

Researcher Oureish summarizes the concept of individual labour disputes in most Arabian countries as follows:

Individual labour disputes: are disputes between the employer on the one hand and, on the other hand, one worker or very few workers. This dispute is about the right claimed by one of the parties, often the worker, according to the law or custom but

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<sup>250</sup>Naal, above n 18, 277.

<sup>251</sup>Elias, above n 3, 134.

<sup>252</sup>Abdullqader Al-Toro, *Arbitration Rules in Collective Labour Disputes* (PhD Thesis, Cairo University, 1988) 121.

<sup>253</sup> Ibid

<sup>254</sup> United Arab Emirates Labour Law, above n 185, art 6.

<sup>255</sup> Egyptian Labour Law, above n 186, art 70.

other party denies or refrains from implementing. For example, if the employer fires one of his employees or refrains from paying his wage.<sup>256</sup>

From the above, it seems that this concept of individual disputes in the GCC and Arabian countries falls within the concept of labour disputes in the KSA.

#### 4.4.2 Collective disputes in the GCC and Arabian countries

Most of the GCC and Arab countries have labour legislations which include a specific definition of collective labour disputes; for example, the UAE Labour Law includes article 154 related to collective labour disputes:

The expression collective labour dispute means any dispute between an employer and his workers the subject of which concerns the joint interests of all or certain group of the workers working in a specific vocational sector.<sup>257</sup>

Article 123 of the Kuwaiti Labour Law define collective labour disputes in Kuwait as follows:

Collective labour disputes are disputes that arise between one or more of the employers and all employees or a team of them because of work or because of working conditions.<sup>258</sup>

This definition of collective labour disputes in Kuwaiti Labour Law is very similar to that in the Egyptian Labour Law, Article 168<sup>259</sup>, Bahrain Labour Law Article 156<sup>260</sup> and Qatar Labour Law Article 128.<sup>261</sup>

From the above, it can be said that in order to consider labour disputes as collective in most GCC and Arabian countries, two elements are necessary.

The first element is objective including disputes related to the common interests of all workers in the establishment or group of them, and the dispute is related to common collective interests when there are reasons related to work or the terms of contract or working

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<sup>256</sup>Oureish, above n 254, 11

<sup>257</sup>United Arab Emirates Labour Law, above n 185, art 154.

<sup>258</sup> Kuwaiti Labour Law, above n 190, art 123.

<sup>259</sup> Egyptian Labour Law, above n 186, art 168. Its definition of collective labour disputes that 'Every dispute concerning the terms or conditions of employment or terms of employment arising between an employer or group of employers and workers of all or a team of them'.

<sup>260</sup> Bahrain Labour Law No. 23 of 2012 (Kingdom of Bahrain)

<<http://www.legalaffairs.gov.bh/LegislationSearchDetails.aspx?id=2045#.VGxUpfmUeAg>> (Translation with author); Article 156 of Bahrain Labour Law, Its definition of collective labour disputes that 'Every dispute concerning the terms or conditions of work and provisions of work between one or more of the business owners and their workers, or all of them team'.

<sup>261</sup> Qatar Labour Law No. 14 of 2004 (State of Qatar)

<<http://portal.www.gov.qa/wps/wcm/connect/5f30f680423f8a149631df3cb857e4ca/Qatar+Labor+Law.pdf?MOD=AJPERES>>;

Art 128 definition of collective labour disputes that 'A collective labour disputes is any dispute between the employer and the whole of his workers or some of them thereof or between a group of employers and their workers or a group of them the subject matter of which is related to an interest common to all workers or to a group of them in a certain establishment, professional or certain craft or in a certain professional sector'

conditions, such as disputes relating to firing workers collectively, workers' wages or hours of work.<sup>262</sup> The second element considers collective disputes as a numerical dispute that depends on the availability of collective attributes, and involves one of the parties to the dispute, all workers in the establishment or a group of them on the one hand, and the employer on the other hand.<sup>263</sup>

However, some labour legislation in Arabian countries specifies another criterion for determining collective labour disputes. For example, the Jordanian labour law is the only Arabian law that has considered a labour dispute to be collective when one of the parties to the dispute is a legal, organized labour group such as any trade union. Article 2 of the Jordanian Labour Law issued in 1999 states that:

The collective labour dispute is any dispute that arises between the union on the one hand and an employer or union of employers on the other hand on the application of a collective labour contract or its interpretation or the working conditions and terms.<sup>264</sup>

The Libyan Labour Law uses a special and distinctive concept for determining collective labour disputes that depends on the numerical standard in the dispute (i.e. the number of employees), where it stipulates that the proportion of workers in the dispute is not less than 40% of the group of the establishment workers and the number of workers is not less than ten in all cases.<sup>265</sup> Article 138, paragraph 2, of Libyan Labour Law provides that:

The dispute is considered collective if it takes place between an employer and a number of his workers at least 40% of the total workers of the organization, or factory, or professional panel, the number of workers shall be not less than ten, Therefore if the dispute is located between the employer and the workers whose number is less than the amount referred to previously, the dispute is considered individual.<sup>266</sup>

#### **4.4.3 Are there collective labour disputes in the KSA, according to the previous concept of collective disputes in comparative law, in other countries of the GCC and the Arab countries?**

Although Saudi Labour Law makes no distinction between individual labour disputes and collective disputes, whether concerning the definition, procedures or the competent commission as mentioned earlier, it does not mean that there are no collective labour disputes in the KSA, according to the concept of collective disputes in the comparative GCC and Arabian labour laws. This is indicated by the study of the internal administrative organization

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<sup>262</sup>Sayed Ramadan, *The Mediator for Explaining Labour Law* (Dar Al-Thakafa for Publication and Distribution, 2006) 500.

<sup>263</sup>Nahd Ashrey, *Amicable Means for Settling Collective Labour Disputes* (Master Thesis, Cairo University, 2000) 18.

<sup>264</sup>*Jordanian Labour Law No. 8 of 1996* (Kingdom of Jordan) as amended by Law No. 11 of 1999, art 2; ( Copy in Arabia on file with author).

<sup>265</sup>Al-Toro, above n 252, 142.

<sup>266</sup>*Libyan Labour Law No. 58 of 1970* (State of Libya), art 138/2; ( Copy in Arabia on file with author).

of the Labour Offices in the KSA and also by examining some of the previous and current issues concerning labour disputes in the KSA

This is supported by the internal regulations in Labour Offices in the KSA that specify particular administrative panels within the Labour Office competent to receive claims of collective labour disputes, called the panel of inspection management; individual disputes also have a special panel called the panel of claims management.<sup>267</sup>

According to Labour Offices in the KSA, the criterion for determining collective claims from individual claims in labour disputes is a standard numerical claims related to the number of plaintiff workers involved in the dispute, where collective labour claims are claims made by three or more workers against one employer.<sup>268</sup>

In accordance with Labour Offices, collective claims are made according to the previous concept of the inspection panel in the Labour Office, while individual claims are claims made by one or two workers and individual labour claims related to the labour disputes turn to the claims panel in the Labour Office.<sup>269</sup>

An important question here, which seems very logical, is: does this mean to distinguish between dispute resolution procedures of individual and collective work within the labour office? Why is there this distinction as long as Saudi Labour Law, as already stated, does not distinguish between individual labour disputes and collective labour disputes in the KSA in terms of the ways to solve them and the use of a competent commission?

What must be emphasized is that the purpose of finding a specialized panel for individual disputes in the labour offices is not a distinction between individual disputes and collective disputes in the KSA in terms of procedures and the use of a competent commission; the only purpose of creating a competent administrative commission in the labour offices is to receive collective claims, while another competent commission receives individual disputes. This is just an administrative organization and its aim is to organize the tasks and functions of each panel of the labour office because this office carries out many of the functions and services relating to work and workers in the KSA.

Both the panel of inspection and the panel of claims are administrative panels within the labour office and they perform the same legal process which is to receive labour complaints and labour lawsuits and try to achieve amicable settlements of disputes, regardless of whether or not the dispute is individual or collective (as will be shown in detail in Chapter 6).

But what can be deduced from this administrative division of the former labour office that allocates a specific commission in the Labour Office to receive collective complaints and suits on one hand, while another competent commission is responsible for individual suits

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<sup>267</sup>The Labour Office is an administrative body under the Ministry of Labour in Saudi Arabia; one of its most important functions is to receive the labour complaint and attempt to achieve the amicable settlement of disputes. The Labour Office will be discussed in Chapter 5.

<sup>268</sup> Labour Office Branch of Medina Area, (Saudi Arabia) *Proceedings of Labour Lawsuit* (2 February 2011)

<<http://www.madmol.gov.sa>>.

<sup>269</sup> Ibid.

and claims on the other hand? This being the case, it is possible to confirm the existence of collective labour disputes in the KSA in addition to individual disputes.

Previous views concerning the current collective labour disputes in the KSA could be supported by several cases of labour disputes considered by the CSLDs. Some such cases involved a wide group of workers in the establishment where all were plaintiffs against one employer in one suit.

One such example of a collective dispute in the KSA was the labour case No. 2947,<sup>270</sup> where the plaintiff was a group of employees numbering 30 workers. All of them filed a complaint against one employer to the Labour Office in Jeddah, and the subject of the dispute was not related to the common interests for all of them because individual demands varied from one worker to another. However, the Labour Office considered that the dispute was a collective labour claim because the case was filed by three or more workers. The inspection panel in the Labour Office is the place that receives such complaints and also tries to achieve an amicable settlement; if this attempt fails, it transfers the case to the CSLDs which settles the dispute judicially.

From the above, it is clear that the criterion for considering collective lawsuits, in accordance with the concept of the Saudi Labour Office, concerns the number of plaintiff workers and this must be three or more, regardless of the reasons for the dispute. This is almost like the concept of collective disputes in Libyan law where, as previously stated, it is stipulated that a certain number of workers is required for it to be considered as a collective dispute, regardless of the reasons for the dispute.

But, as has been said, most labour legislation in the GCC and Arabian countries not only considers a labour dispute collective when there is a certain numerical standard met, represented by the fact that the labour case is filed by all workers or by a group of them, but also most legislation also stipulates that there exists an objective criterion in the dispute, such as that the subject of the dispute relates to the common interests of all workers or a group of them in a particular establishment. When the numerical standard is met, in addition to the previous objective criterion, then the dispute is considered collective in accordance with the labour legislation of those countries.

There are also collective labour disputes in the KSA, according to the concept of collective disputes in most Arabian and GCC countries, involving the condition of there being a case filed by all workers or a group of them in addition to the fact that the subject of the case is related to their common interests. These types of collective disputes exist in the KSA, although their number is low compared with the number of individual disputes.

For example, consider labour case No. 1094/1<sup>271</sup>, which was considered by the PCSLDs in Jeddah city and where the subject of that dispute was a collective dispute settlement. In this case, 68 workers filed a suit against one employer to the Labour Office in Jeddah city, and

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<sup>270</sup>Case No. 2947 , Inspection Panel in Labour Office Branch of Jeddah (Saudi Arabia), 1431 H - 2010.

<sup>271</sup>Case No. 1094 , Preliminary Commissions for the Settlement of Labour Disputes Branch of Jeddah (Saudi Arabia), 1432 H – 2011.

specifically to the inspection panel in the Labour Office. They demanded a cancellation of the decision of collective dismissals issued against them by the employer and they asked to return to work and be given compensation for their arbitrary dismissal. The inspection panel attempted to reach a friendly settlement in this case. However, when the labour office failed to resolve the dispute amicably, the dispute was transferred to the primary commission in Jeddah, which then adjudicated the dispute.<sup>272</sup>

Another example of collective labour disputes which involved the common interests of workers and the plaintiffs was when a lawsuit was filed against a cleaning company by 200 workers. This lawsuit was considered by the Labour Office in the city of Jeddah, and by the panel of inspection, and the subject of the case related to the claim that the company pay three months of overdue wages to workers in that company. The case was settled amicably by the inspection panel in the labour office under a formal settlement report.<sup>273</sup>

On the contrary, with regards to collective labour disputes when a labour union is a party to them, there are no such collective labour disputes in the KSA due to the absence of labour unions in the KSA until now for political reasons.

#### **4.4.4 Effects of the distinction between individual and collective disputes in terms of the competent authorities for settling both types of disputes**

According to Saudi Labour Law as stated above, there are no different consequences when considering the labour dispute as either collective or individual. All labour disputes in the KSA are individually and collectively resolved by two competent authorities which are the labour offices for amicable settlement, and CSLDs; these are the competent judicial authorities for labour disputes in the KSA.<sup>274</sup> This will be further clarified in Chapters 5, 6 and 7 of the thesis where the methods and procedures for resolving labour disputes in the KSA will be examined.

The GCC and Arab countries may resemble the KSA in relation to the role of the labour office in trying to make amicable settlements, whether the disputes are individual or collective disputes, but it seems that the effects of the distinction between individual labour disputes and collective disputes are clear and concrete and they operate in a different way to how the competent judicial commission handles both types of disputes. However, in all the GCC and Arabian countries, the labour courts resolve individual labour disputes.

For example, this is provided in Article 71 of the Egyptian Labour Law regarding the establishment of labour courts within the primary courts which are responsible for individual

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<sup>272</sup>*Decision of Preliminary Commission for the Settlement of Labour Disputes Branch of Jeddah* (Saudi Arabia), No. 427, 1 Jumaada Awa, 1432 H – 5 April 2012.

<sup>273</sup>*Formal Settlement Report No. 2*, Inspection Panel in Labour Office branch of Jeddah (Saudi Arabia ), 1432 H – 2011.

<sup>274</sup>Al-Fawzan, above n 8, 419.

disputes.<sup>275</sup> In Kuwait, according to Article 1 of Law No. 46,<sup>276</sup> a labour panel that is responsible for individual labour disputes has been established in the general courts.<sup>277</sup>

Otherwise, collective labour disputes are addressed by most legislation in the GCC and Arabian countries by independent commissions and otherwise by ordinary courts such as the conciliation and Compulsory arbitration commission of collective labour disputes.<sup>278</sup> For example, Article 125 of the current Labour Law in Kuwait has stipulated that a special conciliation commission is responsible for settling collective labour disputes.<sup>279</sup> In the case of failure, jurisdiction is held by the compulsory arbitration commission.<sup>280</sup> This applies to the United Arab Emirates, Bahrain, and Qatar where the jurisdiction of collective disputes shall be held through conciliation commissions in the case of failure to resolve the collective dispute, then transferred to a compulsory arbitration commission.<sup>281</sup> (*Compulsory arbitration will be discussed in Chapter 8*).

## 4.5 Conclusion

Throughout this chapter, and specifically sub-chapter 3, the meaning of labour disputes in the KSA has been made clear, which are disputes related to the application and the provisions of labour law or disputes arising from labour contracts in labour relations that are subject to the application of the provisions of Saudi Labour Law.

As discussed in sub-chapter 4, Saudi Labour Law makes no distinction between individual disputes and collective disputes. But it does not mean that there are no collective labour disputes in the KSA.

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<sup>275</sup> Egyptian Labour Law, above n 186, art 71. It states that 'a labour court of one or more primary courts is responsible for settling all individual labour disputes referred to in Article 70 of this Act'

<sup>276</sup> Law No. 46 of 1987 (State of Kuwait)

<<http://www.gcc-legal.org/DisplayLegislations.aspx?country=1&LawTreeSectionID=1751>> (Translation with author); Art 1 of this Law states that 'A labour panel shall be established in one or more primary Courts which is formed by a single judge including one room or more as needed which specializes exclusively in adjudicating labour disputes, whatever the value arising from the application of the laws and provisions passed regarding the labour and regulation of the relationship between workers and employers in the private sector and the business sector of oil, it is responsible for settling the claims for compensation arising from such disputes.' (Translation with author)

<sup>277</sup> Tarek Rizk, *Explanation of Kuwaiti Labour Law No. 6 of 2010* (Dar Al-Nahda Al-Arabia, 2011) 590.

<sup>278</sup> Elias, above n 3, 132-135.

<sup>279</sup> Kuwaiti Labour Law, above n 190, 125 states that 'parties of the collective dispute - if he did not bargain directly to solve the disputes, he shall go to the competent ministry and request for settling the dispute amicably through the conciliation commission in collective labour disputes which shall be formed by the Minister'.

<sup>280</sup> Ibid art 127 states that 'the Conciliation Commission shall complete its function in settling the dispute within one month from the date of receipt of a request for it if it is able to resolve it in whole or in part. It must prove what was agreed upon in a record consisting of three copies and signed by the present people and is considered a final agreement final and binding on the parties and if the Conciliation Commission with all documents can not settle the dispute within the specified period it shall send it to the arbitration commission unless it is agreed upon them during the week of the last meeting'

<sup>281</sup> Elias, above n 3, 133-135.

Also, the discussion has clarified that Saudi Labour Law does not distinguish between individual disputes and collective disputes whether in terms of the concept or the authority competent to resolve all types of disputes. All labour disputes are settled by two authorities, one is concerned only in an attempt to make amicable settlement and it is called the labour office, while commissions for settlement of labour disputes specialize in the settlement of labour disputes and are considered labour judicial authorities in the KSA.

However, unlike Saudi Labour Law, labour laws in GCC and Arabian countries have distinguished between individual and collective disputes in terms of the meaning of each type of dispute and the distinction between them. Both types of disputes reflect the difference between a judicial authority specialized in the settlement of individual disputes and a judicial authority specialized in the settlement of collective disputes in those countries where judicial jurisdiction for settlement of individual disputes is transferred to the courts, while the judicial jurisdiction for settlement of collective disputes is transferred to conciliation committees and, in the case of its failure to resolve the dispute, the judicial jurisdiction is then transferred to an arbitration commission.

## **Chapter 5**

### **Competent authorities which currently can settle labour disputes in the KSA**

#### **5.1 Overview**

The purpose of this chapter is to explore the jurisdiction and organization of the authorities which are authorised to settle labour disputes in the KSA.

This chapter is of particular relevance to the purpose of this thesis. It will answer this question: which official authorities are currently responsible for the settlement of all labour disputes in the KSA?

Current Saudi Labour Law settles labour disputes through two official authorities:<sup>282</sup> Labour Offices and CSLDs. The only role of Labour Offices in the KSA is to receive complaints regarding labour disputes and then try to settle the dispute amicably without having any jurisdiction in the dispute. If this fails, then the case shall be sent to the judicial labour commissions, the CSLDs, which have two levels of jurisdiction; the first one is the PCSLDs and the second is the HCSLD.

Currently, these authorities are the only one authorised to settle labour disputes in the KSA, whether the labour dispute is an individual or collective one or one of the parties of the dispute is Saudi or non-Saudi, male or female. All of them are subject to legal procedures before these authorities.

This chapter will clarify what is meant by labour offices in the KSA; their role in the settlement of labour disputes also will be addressed.

In addition, this chapter will focus in detail on CSLDs in the KSA which are responsible for the settlement of labour disputes judicially. The reasons for their establishment and the different types of commissions, how they were formed, how their members were chosen and the specialization of each type of commission, will be discussed.

Moreover, this chapter will also consider the current laws of the Saudi justice system, which approved the establishment of labour courts within the Shari'ah courts in the KSA in order to settle labour disputes judicially and replace the CSLDs. However, these courts have not existed until now so the law concerning these courts has not been applied, despite the passage of more than eight years since it was first issued. Still, it is important to address the features of the legal regulation of the labour courts that may be established, as well as research the reasons for and obstacles to establishing labour courts in the KSA to date.

This chapter is divided into 5 sub-chapters. Sub-chapter 5.1 gives an overview of the chapter. Sub-chapter 2 presents a detailed study of labour offices in the KSA and their role in the settlement of labour disputes. Sub-chapter 3 examines in detail the CSLDs in the KSA. Sub-chapter 4 contains a summary of labour courts in accordance with the current judicial law in

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<sup>282</sup>Saudi Labour Law of 2005, above n 44.

the KSA and the reasons for and obstacles to establishing them to date. Sub-chapter 5 will conclude this chapter.

## 5.2 Labour Offices

In accordance with Article 2/3 of Saudi Labour Law, the Labour Offices of the KSA are an

Administrative authority assuming responsible over the labour affairs within an area specified by a decision of the Minister.<sup>283</sup>

According to this article, the Labour Offices are an administrative authority of the Labour Ministry of KSA, which is responsible for the organization and management of all the affairs of work and workers in private sector in the KSA. There are 39 branches of Labour Offices in the KSA, distributed throughout all regions and governorates of the KSA.<sup>284</sup> Each branch performs its function within a particular geographical region and reports to the Labour minister.

There are also women's sections within Labour Offices in the KSA. All employees in these branches are women and are only concerned with everything related to women working in the KSA. These branches are situated in the cities of Riyadh, Jeddah, Dammam, Medina and Abha.<sup>285</sup> It could be said that these women's sections of labour offices are one of the developments in the KSA in the regulation of women's work and they provide more reassurance to women, as well as protect their rights in accordance with the regulations of Shari'ah Law and social traditions.

### 5.2.1 The role of Labour Offices in relation to labour disputes

Labour offices throughout the KSA perform many functions, including regulatory, administrative and social, in addition to their role in resolving labour disputes amicably without having any jurisdiction (judicial authority) in the labour dispute. All such functions aim to provide services related to labour relationships between workers and employers, whether the parties are Saudi citizens or foreigners residing in the KSA.<sup>286</sup>

Examples of such services provided by Labour Offices in the KSA include assisting Saudi job seekers and considering requests by employers for the recruitment and employment of workers who are non-Saudis, from either outside or inside KSA, giving them work permits and helping employers meet the needs of national workers. Another function is to record workers' data and dealing with inquiries relating to the laws and systems of labour in the

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<sup>283</sup>Ibid art 2/3.

<sup>284</sup>Ministry of Labour (Saudi Arabia), *The Annual Statistical Book for 2013* (16 July 2014) 38 <<http://portal.mol.gov.sa/ar/Statistics/Pages/default.aspx?m=8>>.

<sup>285</sup>The first branch of a Women's Labour Office in the KSA has been created in 20 February 2005; Ibid.

<sup>286</sup>Ministry of Labour (Saudi Arabia), *The Organizational Structure of the Labour Offices in Regions of the Kingdom* (07 May 2009) <<http://portal.mol.gov.sa/ar/AboutMinistry/Pages/%D8%A7%D9%84%D9%87%D9%8A%D9%83%D9%84%D8%A7%D9%84%D8%AA%D9%86%D8%B8%D9%8A%D9%85%D9%8A.aspx>>.

KSA. Also, labour offices inspect work places to ensure that there is no violation by employers in implementing provisions of labour law and they punish those who violate the law according to the penalties provided for in the labour law.

In addition to these functions, Saudi Labour Law grants Labour Offices important roles related to labour disputes as they receive complaints filed by one of the parties of the labour relationship and can do whatever is deemed necessary to settle the dispute amicably,<sup>287</sup> In case the labour office cannot settle a labour dispute, for whatever reason, it shall refer the dispute to the PCSLDs. This is done on the basis of Article 220, which stipulates:

Cases shall be filed through the competent Labour Office with the preliminary commissions in whose locality or under whose jurisdiction the place of work falls. Prior to referring the dispute to the Commission, the Labour Office shall take the necessary measures to settle the dispute amicably. The Minister shall issue a decision setting forth the relevant procedures and rules.<sup>288</sup>

Saudi Labour Law has granted authority to Labour Offices to make amicable settlements to resolve labour disputes which are similar to some of the legislation and labour laws in GCC countries. For example, in current United Arab Emirates Labour Law Labour Offices are called Panels of Labour, They are administrative branches of the Emirates Labour Ministry and their authority allows them to amicably settle individual and collective labour disputes.<sup>289</sup>

In addition, Kuwait Labour Law also has given authority to attempt amicable settlement of individual disputes to Labour Offices which are called Labour Panels.<sup>290</sup> However, labour panels in Kuwait have no authority in amicable settlement of collective disputes; in Kuwait, the Conciliation Commissions are responsible for settling collective labour disputes.<sup>291</sup>

On the other side, Egyptian Labour Law gives authority for the amicable settlement of individual disputes not to the labour offices alone but to other authorities, namely trade unions, as well as to employer unions and representatives of the competent administrative authority, while authority for the friendly settlement of collective labour disputes lies with the Mediation Commission.<sup>292</sup>

Hence, the function of the labour offices in the KSA goes beyond the resolution of disputes. Disputes are only one aspect of the functions. The most important role of Labour Offices in the KSA with regard to labour disputes is to receive labour disputes in addition to trying to make an amicable settlement of the dispute whenever possible before turning a dispute to a CSLDs in the KSA. Moreover, It is arguable that the most negative aspects of Saudi Labour Law in relation to the authority of Labour Offices in the amicable settlement of labour

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<sup>287</sup>Ministry of Labour (Saudi Arabia), *The Guide for Migrant Workers in Saudi Arabia* (2006) <[http://portal.mol.gov.sa/ar/DocLib1/%D8%A7%D9%84%D8%AF%D9%84%D9%8A%D9%84\\_%D8%A7%D9%84%D8%A5%D8%B1%D8%B4%D8%A7%D8%AF%D9%8A\\_%D9%84%D9%84%D8%B9%D9%85%D8%A7%D9%84\\_%D8%A7%D9%84%D9%88%D8%A7%D9%81%D8%AF%D9%8A%D9%86.pdf](http://portal.mol.gov.sa/ar/DocLib1/%D8%A7%D9%84%D8%AF%D9%84%D9%8A%D9%84_%D8%A7%D9%84%D8%A5%D8%B1%D8%B4%D8%A7%D8%AF%D9%8A_%D9%84%D9%84%D8%B9%D9%85%D8%A7%D9%84_%D8%A7%D9%84%D9%88%D8%A7%D9%81%D8%AF%D9%8A%D9%86.pdf)>.

<sup>288</sup>Saudi Labour Law of 2005, above n 44, art 222.

<sup>289</sup>United Arab Emirates Labour Law, above n 185, art 6 , 155.

<sup>290</sup>Kuwaiti Labour Law, above n 190, art146.

<sup>291</sup>Rizk, above n 277, 574.

<sup>292</sup>Egyptian Labour Law, above n 186, art 70, 170.

disputes is that they do not include identification of any specific qualifications or experience of staff working in Labour Offices. Specifically, staff members working on inspection panels or the panel of suits need to have knowledge of labour laws.

Chapter 6 of this thesis explains how the procedures and rules of an amicable settlement of disputes through Labour Offices are applied in the KSA.

### 5.3 CSLDs

CSLDs in the KSA are considered to be the competent judicial authorities to settle all other labour disputes which are subject to the application of the provisions of Saudi Labour Law.<sup>293</sup>

According to Article 219 of Saudi Labour Law:

Each of these Commissions shall solely have exclusive right to consider all disputes relating to this Law and the disputes arising from work contracts.<sup>294</sup>

Current Saudi Labour Law has organized CSLDs in a structured and integrated way. In Chapter XIV of the Act, specifically Articles 210 to 223, CSLDs are defined, different types are described, how to set up them is explained and how their members are chosen and how the functional, qualitative and spatial jurisdictions of these Commissions are determined are also explained.<sup>295</sup>

#### 5.3.1 The establishment and development of CSLDs within the KSA

In the period preceding the issuance of labour laws in the KSA, the ordinary courts (Shari'ah courts) were the judicial authorities concerned with the settlement of all labour disputes in the KSA. These continued until after the issuance of the first Saudi Labour and Workers Law in 1942.<sup>296</sup>

In 1947,<sup>297</sup> the second Saudi Labour and Workers Law was passed in the KSA. As discussed in Chapter 2, this law has witnessed the birth of the establishment of an independent competent authority for the settlement of labour disputes rather than using the Shari'ah courts of the Ministry of Justice for this purpose. In accordance with Article 40 of this law, the settlement of labour disputes came under the jurisdiction of judicial committees established specifically for disputes arising from the application of this law.<sup>298</sup> There then followed the decision of the Saudi Ministers Council in 1963<sup>299</sup> which established a High Committee as a judicial appeal authority in labour disputes. This became the authority for the settlement of labour disputes and was affiliated with the Saudi Labour Ministry and independent of the ordinary courts (Shari'ah courts). One of the disadvantages of the second Saudi Labour and

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<sup>293</sup>Mounir Al-Dakmy, *The New Saudi Labour Law in the Scale of the Jurisprudential Analysis* (Dar Hafez for Publication and Distribution, Jeddah, 2009) 16.

<sup>294</sup>Saudi Labour Law of 2005, above n 44, art 219

<sup>295</sup>Ibid art 210-223.

<sup>296</sup>Saudi Labour and Workers Law of 1942, above n 20.

<sup>297</sup>Saudi Labour and Workers Law of 1947, above n 23.

<sup>298</sup>Ibid art 40 states that 'The local courts and judicial commissions that were established specifically for that. They are the competent authorities for the settlement of labour cases and disputes'.

<sup>299</sup>Saudi Cabinet Decree (Saudi Arabia), No. 156, above n 29.

Workers Law in 1947 was that it did not include rules and procedures for the organization of these committees, nor procedures for hearing litigations.<sup>300</sup>

With the passage of the third Labour and Workers Law in Saudi Arabia in 1969 an eleventh chapter was included with Articles 172 to 188.<sup>301</sup> This created the first integrated legal organization for the competent jurisdiction of labour disputes, called Labour and Settlement of Disputes Committees. In accordance with Article 172 of this law,<sup>302</sup> the labour and settlement of disputes committees are two types and levels of litigation. The first level is the Primary Committee which is a primary authority issuing non-final judgments in most labour disputes, except for minor disputes specified by the law; its decisions are final. The second level is the High Committee which is an appellate authority for decisions issued by the Primary Committees.<sup>303</sup>

In 2005, the current Saudi Labour Law was passed.<sup>304</sup> In accordance with this law, the Committees concerned with the settlement of labour disputes changed their names and were reorganized. The name of the competent authority for settling labour disputes changed from “Labour and Settlement of Disputes Committees” to “Commissions for the Settlement of Labour Disputes (CSLDs)”. CSLDs also have two degrees of litigation: Primary Commission (PCSLDs) and High Commission (HCSLD). However, in general, there are no substantial differences in the jurisdiction of these Commissions in terms of settling labour disputes in accordance with current Saudi Labour Law of 2005 rather than the Committees under the Saudi Labour and Workers Law of 1969.

### **5.3.2 Reasons for the existence of CSLDs as an authority for settling labour disputes in the KSA**

There is no doubt that a question of interest is why these commissions were established as an independent authority for the settlement of labour disputes and disputes concerning the application of labour laws in the KSA. Settlements of this type of dispute were not made under the jurisdiction of the ordinary courts normally (the Shari'ah courts), where such courts had the original authority and jurisdiction for all disputes in the KSA. These courts are related to the Ministry of Justice, as in most GCC and Arabian countries, and the ordinary and Shari'ah courts in the KSA considered and settled labour disputes before the passage of the two labour laws in the KSA.

This thesis seeks to answer this important question. However, there are differences of opinion about the main reasons for the existence of an independent authority for settling labour disputes in the KSA. The independence of CSLDs from the ordinary courts (the Shari'ah courts) is due to a common belief at that time that the application of the law of Saudi labour contravened Shari'ah Law. Supporting this view is the fact that when the first labour law was

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<sup>300</sup>Al-Kialy, above n 16, 24-25.

<sup>301</sup>Saudi Labour and Workers Law of 1969, above n 35, art 172-188.

<sup>302</sup>Ibid art 172 states that ‘The Labour and Settlement of Disputes Committees shall be as follows: A-the Primary Committees for Settlement of Disputes. B-the High Committee for Settlement of Disputes’.

<sup>303</sup>Khafagi, above n 10, 104.

<sup>304</sup>Saudi Labour Law of 2005, above n 44.

issued in the KSA in 1942 under the name of the Labour and Workers law, the majority of judicial institutions in the KSA represented Shari'ah courts and rejected the application of comparative laws, including labour laws, on the grounds that the law in their opinion and belief at that period was a comparative law and its source was secular.<sup>305</sup> This was contrary to the application of Shari'ah Law, which is the source of legislation in the KSA, so many were of the legal opinion at that time that the application of this type of law was prohibited. Furthermore, some religious men in the KSA at that time issued an opinion that the application of written laws (Comparative Laws) is a type of disbelief and should not be used in judgments.<sup>306</sup>

In addition, a fatwa was issued by the highest religious authority in the KSA, Sheikh Muhammad Al-Sheikh Mufti of the KSA.<sup>307</sup> This fatwa prohibited judges in the Shari'ah courts from applying the provisions of labour and workers law as at the time the Mufti, in commenting upon the labour and workers law of Saudi, stated that “The referred labour system is legal but not acceptable by Shari'ah, and it could not be approved or supported in Shari'ah courts.”<sup>308</sup>

Conversely, there are those who see the previous prohibition fatwa as not the main reason for Saudi legislators to decide to establish committees for settlement of labour disputes independent and separate from the Shari'ah courts. Others think the main reason was related to the nature of labour disputes and their difference from other disputes; it was this that required the creation of a competent authority specifically for labour disputes. Such as Dr. AL Kayali said

These labour disputes require a special knowledge of the problems that result from the implementation of labour contracts or their modification, as they need comprehensive and exact information and knowledge of the nature of labour relations in industrial, commercial, and agricultural establishments. The above considerations duly considered during settling labour disputes have led to the legislator of Saudi labour law deciding to establish judicial commissions and committees in the KSA that are responsible for settlement of labour disputes.<sup>309</sup>

Secondly, one of the reasons for the existence of CSLDs is the refusal of judges in Shari'ah courts at that time to apply written laws, which included labour laws, because they weren't used to the application of such written laws and regulations; they believed that if these laws were applied then the authority of the judge would be restricted or limited.<sup>310</sup>

According to Dr Al-Khouly, the reason for establishing administrative committees and commissions with an independent and judicial jurisdiction separate from Shari'ah courts in the KSA with regards to the application of written comparative laws, including labour laws, is the fact that the traditional rehabilitation for Shari'ah judges in the KSA does not allow

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<sup>305</sup>Omar Al-Khouly, *The Brief for Administrative Contracts* (2009) 47.

<sup>306</sup>*Ibid*; Ahmed Attar, *Sharia No Law* (Ahmed Attar, 1964) 15- 19.

<sup>307</sup>Sheikh Muhammad Bin Ibrahim Al-Sheikh was the first Mufti of the KSA.

<sup>308</sup>Muhammad Al-Sheikh, *Fatwa and Letters of Sheikh Muhammad bin Ibrahim: Part 12* (Government Press, 1979) 258.

<sup>309</sup>Al-Kialy, above n 16, 431.

<sup>310</sup>Al-Marzoay, above n 54, 174.

them, in many cases, to deal with written laws. This is especially true of laws of a technical nature that require specialized knowledge when dealing with comparative laws, the latest legal developments, and legal terminology usually not taught in the faculties where Shari'ah law is taught.<sup>311</sup>

It could be said that all the aforementioned reasons have led Saudi legislators, at the beginning of the appearance of labour laws in the KSA, to establish CSLDs in the KSA as authorities independent of the ordinary courts (Shari'ah courts).

It can be said that some of the previous reasons no longer exist now for CSLDs to exist in addition to the Shari'ah courts in the KSA. Specifically, the reasons related to the fatwa which denied the application of Saudi Labour Law in the early period when this law first emerged in the KSA. The reason for this is that it shows to everyone, both Shari'ah scholars and the general public, that nothing in the current Saudi Labour Law contravenes Islamic Shari'ah law but rather, on the contrary, the provisions and texts contained in the Labour Law currently in the KSA are the applications of principles of Islamic Shari'ah Law. For example, Shari'ah Law urges that all kinds of contracts be fulfilled, including labour contracts according to the words of Allah in the Holy Quran.

O you who believed, fulfil (all) contracts.<sup>312</sup>

Shari'ah Law also encourages fair treatment of workers by maintaining workers' rights, paying their wages on time, and not procrastinating with regards to workers' rights. According to the words of the Prophet Muhammad (PBUH),:

Give the employee his wages before his sweat dries.<sup>313</sup>

The principles of Shari'ah Law can be upheld by the application of current Saudi labour law through the organization of the work relationship and by giving workers their rights.

In addition, it may be argued that the application of Saudi labour law aims to be in the best interests of the country, especially for workers and employers, and Shari'ah Law does not prevent this; on the contrary, it aims to protect it. Ibn al-Qayyim said "Wherever interest is found, it will be acceptable to Shari'ah law."<sup>314</sup>

It appears, therefore, that the reason for the issuance of the prohibition fatwa for labour law in the KSA at its earliest stage was that written laws were not common in the KSA and labour laws were new in the KSA; thus, advocates of these fatwas encouraged them because of their fear that Islamic Shari'ah Law would be replaced with comparative and secular laws, as had sometimes happened in other Islamic and Arabian countries.

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<sup>311</sup> Al-Khouly, above n 305, 47.

<sup>312</sup> *The Holy Quran*, Surat Al-Maidah, Verse 1.

<sup>313</sup> Muhammad Al-Qazweny, *Sunnan of ibn Magah* (Dar Ahiaa Al-Turath Al-Araby for Publication, 1975) 170.

<sup>314</sup> Muhammad Al-Jizani, *Methodologies Fundamentalist* (Al-Rushd Library, 2013) 95-99.

Moreover, the reason for Sheikh Muhammad Al-Sheikh's criticism of man-made laws in the KSA was not because these laws were man-made, but because most of these laws were a violation of Islamic Shari'ah according to the articles.<sup>315</sup>

It could be accepted that the Labour and Workers Law of 1947 included certain provisions which violated Shari'ah law because, as was stated in Chapter 2, this law was adopted in full from Egyptian Labour Law and the Egyptian labour law was derived from French Law. Therefore, it is highly probable that there were provisions contrary to Shari'ah law in the Saudi Arabian Labour and Workers law of 1947 because the source of the law, in Egypt and France, was secular. In contrast, the current Saudi Labour Law of 2005, which was specially developed for the KSA by the Assembly of Experts in the Saudi Council of Ministers, does not contravene Shari'ah law according to the provisions of Article 7 of the Basic Law in the KSA, which confirms that Shari'ah Law is the main source of all legislation and shall not be violated.<sup>316</sup>

From the above, the prohibition fatwa applying to labour law in the KSA at the present time no longer exists for the majority of religious scholars and the religious establishment in the KSA. The biggest proof of this is the issuance of a new Saudi law in 2007 which provides for the establishment of competent labour courts for labour disputes under the authority of Shari'ah courts in the KSA and under the authority of the Ministry of Justice. There were no objections to this law from religious scholars.

Also, in terms of the reasons for Shari'ah judges' refusal to apply the written laws, namely because they believed that to do so would challenge their specialty, these beliefs no longer exist now where there are many written regulations which judges apply in Shari'ah courts in the KSA such as the Law of Procedures Before Shari'ah Courts<sup>317</sup> and the Law of Criminal Procedures.<sup>318</sup>

Some of the reasons that led to the existence of CSLDs and the emergence of labour laws in the KSA still exist and the constraints relating to labour disputes have been identified. It is necessary to understand the rules of labour law and the nature of the relationship between labour and the employment contract so there needs to be a competent authority overseeing labour disputes. In addition, there are reasons for the poor legal education of Shari'ah judges which is considered as one of the most significant barriers preventing labour disputes from coming under the jurisdiction of such courts. Unfortunately, the judicial system in the KSA still limits the profession of judges to those who have Shari'ah qualifications who are

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<sup>315</sup>Saad Al-Otaibi, *A View of the Position of Senior Scientists in Regulations and Laws in the Kingdom of Saudi Arabia* (9 November 2009)

<<http://www.alukah.net/web/alotaibi/10622/8133/>>.

<sup>316</sup>*Basic Law of Governance* (Saudi Arabia), Royal Decree No. A/91 (27 Sha'ban 1412 H – 1 March 1992) art 7 <<http://www.shura.gov.sa/wps/wcm/connect/ShuraArabic/internet/Laws+and+Regulations/The+Basic+Law+Of+Government/The+Basic+Law+Of+Government/>>.

<sup>317</sup>*Law of Procedure Before Shari'ah Courts* (Saudi Arabia), Royal Decree No. M / 12 (20 Jumaada Awal 1421 H – 19 August 2000).

<sup>318</sup>*Law of Criminal Procedure* (Saudi Arabia), Royal Decree No. M / 2 (22 Muharam 1435 H – 21 November 2013)

graduates of Shari'ah faculties, and most Shari'ah faculties do not currently offer law or, more specifically, labour law.

### **5.3.3 The legal nature of CSLDs**

The legal description of CSLDs in the KSA is that they are administrative commissions of competent jurisdiction under the authority of the Ministry of Labour in the KSA but independent of labour offices.<sup>319</sup> Also, CSLDs are completely independent of the Shari'ah courts which are under the authority of the Ministry of Justice. They are also independent of the administrative courts which are under the authority of the Grievance Board in the KSA.

Although CSLDs are not courts in legal terms, they play the role and function of labour courts in the KSA and are considered the judicial authority for settling labour disputes in the KSA. This has been their role from the beginning of their establishment until now.

Dr Al-Kialy notes in relation to the nature of CSLDs:

They are the judicial authority for settlement of labour disputes in the KSA and they are exceptional judicial authority taking its power from of the guardian (King of the KSA with his validity) who ordered him to establish those Commissions and determine his authority in settlement of labour disputes and impose penalties for contravention of the Saudi labour Act regulations and decisions issued under this law.<sup>320</sup>

Also, Megahed notes that “the CSLDs in the KSA are considered like special courts for labour disputes.”<sup>321</sup>

Therefore, it will be made clear through this chapter and Chapter 7 that CSLDs are currently the judicial authority for settling labour disputes in the KSA.

#### **5.3.3.1 The effects of CSLDs when they are considered as labour administrative authorities with competent jurisdiction under the authority of the Ministry of Labour**

In the second chapter, it was stated that judicial authority in the KSA is divided between ordinary courts (Shari'ah courts), and the Board of Grievances (the administrative courts), as well as many commissions and committees with administrative and judicial powers in specific types of dispute. It was also stated how the KSA became unique in establishing these committees and commissions that engage in quasi-judicial work and that the number of committees in the KSA has reached approximately 100, including CSLDs.<sup>322</sup>

Therefore, the decisions of CSLDs are accepted as judicial decisions and are mandatory, just like the judicial decisions issued by courts in the KSA.<sup>323</sup> The CSLDs are independent in their decisions and judgments and have broad powers to settle labour disputes; the Ministry of

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<sup>319</sup> Al-Fawzan, above n 8, 420- 424.

<sup>320</sup> Al-Kialy, above n 16, 288.

<sup>321</sup> Megahed, above n 49, 163

<sup>322</sup> Omar Al-Khouly, *The Judicial of Shadow or Hidden Courts* (2010) 13.

<sup>323</sup> Ibid.

Labour or the Minister of Labour or any other authority cannot interfere in their decisions. They derive their independence from labour law and the will and authority of the Prime Minister of the KSA, who decides their structure and their membership as will be shown below.

#### **5.3.4 Jurisdiction of CSLDs**

The main jurisdiction of CSLDs in the KSA is to settle all labour disputes concerning the application of Saudi labour law.

According to Article 219:

Each of these Commissions shall solely have exclusive right to consider all disputes relating to this Law and the disputes arising from work contracts. It may summon any person for interrogation or assign one of its members to conduct such interrogation. It may also require submission of documents and evidence and take any other measures it may deem fit. The Commission shall also have the right of access to any premises of the firm for the purpose of conducting the investigation and reviewing all books, records and documents it deems necessary.<sup>324</sup>

According to the above article, CSLDs are responsible for judicial settlement in all labour disputes concerning Saudi labour law, as well as disputes arising from labour contracts under the application of labour law.

In accordance with Article 219, current Saudi Labour Law has granted broad powers to CSLDs in order for them to do their job. CSLDs have the power to interrogate any person in connection with a dispute, and they have the right to mandate one of their members to investigate a workplace, with access to books, records and documents deemed important. Furthermore, parties to the dispute can be compelled to present documents and other evidence.

#### **5.3.5 Current types of CSLDs under current Saudi Labour Law**

According to Article 210 of the 2005 Saudi labour law, CSLDs are divided into two types:

Commissions for Settlement of Labour Disputes are:

- (1) The Preliminary Commissions for Settlement of Labour Disputes.
- (2) The High Commission for Settlement of Labour Disputes.<sup>325</sup>

In accordance with this article, CSLDs involve two degrees of litigation. First is the PCSLDs. Its decision can be subject to appellate in most disputes as an asset, except in some disputes where, defined by this law, its decisions are final. Second is the HCSLD. It issues final decisions that are not subject to appeal or cassation.<sup>326</sup>

Both types of CSLDs in the KSA are similar to the divisions and functions of labour courts in other GCC and Arabian countries. The CSLDs are equal to preliminary labour courts in other

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<sup>324</sup>Saudi Labour Law of 2005, above n 44, art 19.

<sup>325</sup>Ibid art 210.

<sup>326</sup>Al- Dakmy, above n 293, 19.

GCC and Arabian countries in terms of their jurisdiction of settlement of labour disputes as the first degree of litigation, while HCSLD correspond to appellate courts in other GCC and Arabian countries. Both are considered as the appellate level for the preliminary judgment of labour disputes. (*The procedures and rules of a judicial settlement of labour disputes through CSLDs will be explained in Chapter 7 of this thesis*). Both PCSLDs and HCSLD will now be addressed in detail in terms of their formation, how their members are selected and their functional jurisdiction.

### 5.3.5.1 PCSLDs

Article 212, states:

Based on a decision by the Minister, a preliminary commission comprising one or more one-member circuits shall be formed in each Labour Office specified by the Minister. Each of these circuits shall decide the cases referred to it. If the commission comprises more than one circuit, the Minister shall name a head from among the members, who shall, in addition to his duties, assign the cases to commission members and organize the administrative and clerical work.<sup>327</sup>

According to this article, PCSLDs shall be established in each office in the KSA by a decision issued by the Minister of Labour. Each preliminary commission consists of one panel or more where each panel shall be specialized in the settlement of labour cases and where each panel includes one member who handles the consideration of disputes and tries to settle them. In other words, decisions of the PCSLDs are issued by only one member. In the case of the existence of several panels within the one preliminary commission, one of the members of that commission shall be appointed as chairman by the Minister of Labour. The chairman's task is to allocate cases to the panels and organize the administrative and clerical work relating to those panels.

The number of PCSLDs currently in the KSA is 19 and they are situated in various regions and cities of the KSA.<sup>328</sup>

Spatial or geographical jurisdiction is determined for each PCSLD by the labour office which is located in the same city in which the PCSLD is or is within the scope of their jurisdiction based.<sup>329</sup>

Although there are several branches of PCSLDs in the KSA, there are some cities of the KSA that have no PCSLDs. The reason for this is the lack of labour cases in those cities and the lack of population density and smallness of some cities. In this case, the closest PCSLDs geographically to the city is responsible for the settlement of labour lawsuits.<sup>330</sup>

Article 211, on how to choose members of PCSLDs, stipulates:

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<sup>327</sup> Saudi Labour Law of 2005, above n 44, art 212.

<sup>328</sup> Ministry of Labour (Saudi Arabia), *The Annual Statistical Book for 2010* (19 June 2012) 55. <<http://portal.mol.gov.sa/ar/Statistics/Pages/default.aspx?m=8>>.

<sup>329</sup> Saudi Labour Law of 2005, above n 44, art 220.

<sup>330</sup> Ibid art 213

Pursuant to a decision by the Minister and following the approval of the President of the Council of Ministers, members of the preliminary commissions shall be named from among holders of degrees in Shari'ah or law.<sup>331</sup>

According to this article, the choice of members of PCSLDs shall be made by the Minister of Labour after the approval of the Prime Minister of Saudi Arabia.

In addition, according to the above article, the Saudi Labour Law of 2005 stipulates qualifications for members of the PCSLDs who should have an academic qualification in Islamic Shari'ah or the Law, usually at least a Bachelor degree in either.

In accordance with the Saudi Labour Law of 2005, PCSLDs have jurisdiction to settle disputes concerning the application of labour law, and can issue two types of decisions. First, in some labour disputes their decision shall be final and without appeal.<sup>332</sup> Second, in settling other labour disputes, their decisions are not final and are subject to appeal before the HCSLD.<sup>333</sup> (*This will be discussed in detail in Chapter 7.*)

### 5.3.5.2 The HCSLD

Article 215 states that:

The High Commission for Settlement of Labour Disputes shall be comprised of several circuits, each comprising not less than three members.<sup>334</sup>

Any decision of the HCSLD must be issued by three members at least, and where a decision of the HCSLD is unanimous or by a majority of two against one. The reason for this seems to be that a decision made by the HCSLD is final and not subject to appeal before any other authority. There is no doubt that the issuance of this resolution by at least three members is intended to ensure for litigants the integrity and validity of the decision issued by the HCSLD.

Unlike PCSLDs that are multiple and often found in every city in the KSA, the HCSLD, until recently, was merely a single body located in the city of Riyadh and its local (spatial) jurisdiction included all regions in the KSA. In 2010, a branch of HCSLD was established in the city of Jeddah so now geographical jurisdiction of the HCSLD is divided between HCSLD in Riyadh and a branch in Jeddah.<sup>335</sup>

Also, Article 215, on how to choose members of the HCSLD, stipulates that:

The chairman and members of the High commission who shall be holders of degrees in Shari'ah and law with expertise in labour disputes shall be named by a decision of the Council of Ministers, based on a nomination by the Minister. A decision by the Minister, based on a recommendation of the Chairman of the Commission, shall specify the number of circuits of the High Commission and

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<sup>331</sup>Ibid art 211

<sup>332</sup>Ibid art 214/1.

<sup>333</sup>Ibid art 214/2.

<sup>334</sup>Ibid art 215/1.

<sup>335</sup>Ministry of Labour (Saudi Arabia), *The Annual Statistical Book for 2012* (16 July 2014) 55.  
<<http://portal.mol.gov.sa/ar/Statistics/Pages/default.aspx?m=8>>.

their venue jurisdiction. The Chairman of the Commission shall select the heads of the circuits, assign the duties of each and supervise all administrative functions of the circuits.<sup>336</sup>

It seems the reason why this appointment process for HCSLD members is done by the Prime Minister in the KSA and not by the Minister of Labour, as in the PCSLDs, is to create independence from the Ministry of Labour for members of the high commissions because they are appellate authorities and their decisions are final. Also, the previous article stipulates that members of the HCSLD shall have qualifications in Shari'ah or Law and have previous experiences in resolving labour disputes. This is in contrast to members of PCSLDs, as seen previously, because such previous experience is not required. Perhaps the necessary qualifications in law and Shari'ah, as well as requirements to have previous experience in labour disputes, helps to select qualified and competent people for appointment to the HCSLD. In addition, it gives more confidence and reassurance to litigants that their cases and disputes are in the honest hands of experienced HCSLD members.<sup>337</sup>

Article 216 states that:

Each of the circuits of the High Commission shall have jurisdiction to decide finally and definitively on all appeals brought before it against decisions of the circuits of preliminary commissions.<sup>338</sup>

According to the said article, HCSLD shall specialize in labour disputes where a decision previously issued by a PCSLDs is subject to appeal. Therefore, the jurisdiction of the HCSLD to solve labour disputes is not direct but used only if the decision of the PCSLDs is appealed by one of the parties to the dispute.

### **5.3.6 The most important advantages and disadvantages of CSLDs in the KSA in terms of their jurisdiction and formation**

It can be argued that the existence of CSLDs has contributed effectively to the consolidation of labour law and has helped to issue and apply labour laws in the KSA. As stated above, at the initial stage of the issuance of labour law in Saudi Arabia, the judicial authorities in the Shari'ah courts refused to apply the provisions of labour law and settle labour disputes under that law. Therefore, if it is assumed that there were no such commissions, it is very likely that there would not be a succession of labour laws and their development and the continuation of their application in the KSA might not have occurred. This would have led to the absence of a competent authority for the settlement of labour disputes in accordance with labour law.

Therefore, the establishment of CSLDs has played an essential role in resolving labour disputes and representing the labour judiciary. They have also served as labour courts in the KSA with two levels of litigation. The first is at the PCSLDs level and the second is at the HCSLD level. This has given CSLDs autonomy in settling labour disputes at all stages and without the intervention of any other judicial authority.

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<sup>336</sup>Saudi Labour Law of 2005, above n 44, art 215/2.

<sup>337</sup>Al-Fawzan, above n 8, 420.

<sup>338</sup>Saudi Labour Law of 2005, above n 44, art 216.

As previously considered, with regards to the formation of commissions and how their members are chosen, it can be said that CSLDs have given professionals and holders of law qualifications in the KSA the opportunity to be members of such commissions. This has been unique in the KSA because it has not allowed legal people who have only a law certificate to work in any judicial authority; until now, in Shari'ah courts, the Board of Grievances in the KSA has allowed only those who have qualifications in Islamic Shari'ah to work in this field.

On the other hand, one of the main disadvantages of CSLDs is that if they are considered as administrative commissions with judicial jurisdiction but not as courts, then this leads to commission members being considered as just employees and not judges.<sup>339</sup> As a result, they are not subject to those regulations and organizations that govern the work of judges and which would provide them with judicial immunity for their work, even though the work of commission members is considered to be purely judicial.<sup>340</sup>

There also follows an important issue for CSLDs members because if they are considered as just employees and not judges, then they are denied the financial benefits and salaries that court judges enjoy. The career ladder with regards to salaries of judges in the KSA is higher than the career ladder for employees.<sup>341</sup> This may be considered a barrier to members of CSLDs and may have a negative impact on their work.

The last of the disadvantages of CSLDs in terms of their formation seems to be that they allow anyone who has a qualification in Islamic Shari'ah to be a member, without them needing to obtain a qualification in law, whether a diploma or other law course, or even something covering labour law. This is unfortunate and a problem in itself because most Shari'ah colleges in the KSA do not offer labour law in their curriculum.

Therefore, it is very likely that members who have Shari'ah qualifications only, may have difficulty in understanding the labour law and its application. So their decisions might not be fair, thereby denying the rights of one of the parties to the dispute.

#### 5.4 Labour Courts under the current Saudi Judiciary Law

The current Judiciary Law in the KSA, issued in 2007<sup>342</sup>, included for the first time the establishment of labour courts under Shari'ah courts.

Article 9 of Saudi Judiciary law states that:

The Shari'ah Courts shall consist of:  
1-The Supreme Court  
2-The Appellate courts

<sup>339</sup> Al-Dakmy, above n 293, 17.

<sup>340</sup> Ibid.

<sup>341</sup> Ministry of Civil Service (Saudi Arabia) *List of Rights and Financial Benefits* (01 April 2014) <<http://www.mcs.gov.sa/ArchivingLibrary/Regulations/Regulations/%D9%84%D8%A7%D8%A6%D8%AD%D8%A9%20%D8%A7%D9%84%D8%AD%D9%82%D9%88%D9%82%20%D9%88%D8%A7%D9%84%D9%85%D8%B2%D8%A7%D9%8A%D8%A7%20%D8%A7%D9%84%D9%85%D8%A7%D9%84%D9%8A%D8%A9.pdf>>.

<sup>342</sup> *Law of the Judiciary* (Saudi Arabia), Royal Decree No. M / 78 (19 Ramadan 1428 H – 1 October 2007) <<http://www.boe.gov.sa/ViewSystemDetails.aspx?lang=ar&SystemID=131&VersionID=160>>.

3-The courts of first instance that include:

- a. General courts
- b. Criminal courts
- c. Personal status courts
- d. Commercial courts
- e. Labour courts.<sup>343</sup>

These labour courts in Article 9 will be specialized in labour disputes in the KSA and will be replaced the CSLDs. However, until now labour courts still have not been established, despite the passage of 8 years from the issuance of the Saudi judiciary Law.<sup>344</sup> Perhaps the establishment of labour courts will take many years because there are arguably several obstacles in the Saudi Ministry of Justice in realising the current judiciary law, especially with regard to labour courts. Therefore CSLDs remain as the only competent authority for settling labour disputes in the KSA which are subject to the application of Saudi Labour Law. However, it is important to summarise the features of the current Saudi judiciary Law with regard to labour courts which shall be established in the KSA, and do not exist yet, as well as discuss the main obstacles faced by the Saudi Ministry of Justice in establishing labour courts.

#### **5.4.1 Panels of the labour judiciary within Shari'ah courts under Saudi Judiciary Law**

According to the current judiciary law, the labour law within Shari'ah courts will when put into operation consist of three types of courts: preliminary labour courts, labour panels in the Court of Appeals, and the High Court. The jurisdiction of each court will now be briefly addressed.

##### **5.4.1.1 Labour courts within courts of the first degree/first instance**

As previously seen in Article 9, paragraph 3, the establishment of labour courts within the courts of first degree is done under Article 22 which stipulates:

Labour and commercial courts shall compose of specializes panels. Each panel shall compose of one or more judge according to what determined by the judiciary supreme council.<sup>345</sup>

According to this article, the labour courts are considered courts of the first degree in the KSA and make elementary judgments which are subject to appeal before the Court of Appeals. The labour court consists of several panels and each panel comprises a single judge which means that the judgments of labour courts are issued by a single judge in all labour disputes.

This means that labour courts play a similar role to the PCSLDs and as previously stated, issue their decisions through a single member. Furthermore, decisions of PCSLDs are not final and are subject to appeal before the HCSLD.

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<sup>343</sup>Ibid, art 9.

<sup>344</sup>Abdulmajeed Al-Tweijri, *Labour Courts in the Saudi Judicial System* (Master Thesis, Naif Arab University for Security Sciences, 2011) 120.

<sup>345</sup>Law of the Judiciary, above n 342, art 22.

#### 5.4.1.2 Labour panels of the Court of Appeals

Article 16 of the Saudi Judiciary Law stipulates,

Appellate courts panels are:

1. legal panels
2. criminal panel
3. personal status panels
4. commercial panels
5. labour panels.<sup>346</sup>

These panels for the first time include labour panels specializing in judgments which are subject to appeal and issued by the preliminary labour courts under Article 17 which states that:

The appellate courts shall look in the appealed judgments issued by the first instances courts. They shall issue the judgment after viewing the respondents' petitions according to Shari'ah procedure, law courts and the law of criminal procedure.<sup>347</sup>

The labour panels in the Court of Appeals are made up of three judges and the judgment in labour disputes is issued by three judges. According to Article 15 paragraph 1:

Each province shall have an appellate court or more. It undertakes its work through judicial panels. Each judicial panel shall be composed of three judges except the criminal panel that reviews sentences involving death, amputation, stoning, punishment or others, which shall be composed of five judges.<sup>348</sup>

According to this article, the role of the Court of Appeals in labour disputes under the Saudi judiciary system is similar to the role of the HCSLD, whether in terms of its jurisdiction or the number of members who consider appealing lawsuits.

#### 5.4.1.3 The Supreme Court

Under the current Saudi Judiciary Law, the Supreme Court is the highest court in the KSA. The Supreme Court in Riyadh city in the KSA consists of specialized panels comprising three judges in all cases and includes a labour panel. The one exception to this concerns criminal cases where the number of judges is five; Article 10, paragraph 4 states:

Without prejudice to the provision of Article 13 of the law, the court shall undertake its jurisdictions through specialized panels as required. Each panel shall be composed of three judges except the criminal panel that reviews death, amputation, or stoning sentences. It shall be composed of 5 judges and each panel shall have a chairman.<sup>349</sup>

The Supreme Court in the KSA specializes in monitoring the application of the provisions of Shari'ah Law in the KSA in addition to monitoring for any violation of laws issued by the

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<sup>346</sup>Ibid art 16.

<sup>347</sup>Ibid art 17.

<sup>348</sup>Ibid art 15.

<sup>349</sup>Ibid art 10/4.

King for Islamic Shari'ah. In addition, the role of the Supreme Court is to consider objections to its judgments in the Court of Appeals. The Saudi Judiciary Law has identified cases where the judgment of the Court of Appeals may be challenged; Article 11, paragraph 2 states:

The Supreme Court shall undertake in addition to jurisdictions provided in the Shari'ah procedure law courts and law of criminal procedures observing the validity of executing Islamic Shari'ah laws and laws that the king shall issue that are not inconsistent with Shari'ah laws in the cases come under the authority of general judiciary in the following jurisdictions:

2. Review judgments and decisions issued or supported by the appellate courts and related to cases not mentioned in the past provision or to final matters without dealing with the facts of the case if the reason of objection to the judgment is as follows:

A. inconsistency of Islamic Shari'ah laws and laws that the king shall issue that are not inconsistent with Shari'ah laws

B. Issuing the judgment from a court that does not have a valid composition according to what is stated in this law and others.

C. The judgment is issued by a non-competent panel or court.

D. There is a fault in the facts of the case or the case is described improperly.<sup>350</sup>

In accordance with this article, the Supreme Court is not on the third level of litigation. So, it does not look into the case again, in terms of the facts and evidence, but only affirms or reverses the judgment of the Court of Appeals by examining its judgement and making sure that there is no violation of Islamic Shari'ah Law and other applicable laws in the KSA.

#### **5.4.2 The main differences between the current situation in the settlement of labour disputes in the KSA through CSLDs and labour courts under the current Saudi Judiciary Law**

It is difficult to make a comparison and find the differences and similarities between the current labour judiciary in the KSA using CSLDs and labour courts under the judiciary law because as yet there are no labour courts in the KSA.

However, upon analysing the articles of the Judiciary Law and of the labour courts in accordance with this law, it can be said that there will be no substantial differences in the way that labour disputes are settled in the KSA. The establishment of labour courts and the transfer of jurisdiction for settling labour disputes from CSLDs to these courts will not lead to different ways of resolving labour disputes.

Under the Judiciary Law, the labour judiciary will have two levels of litigation: the first one is the preliminary labour courts (as mentioned earlier); and the second level is the labour panels in the Court of Appeals. This is just like the current situation of CSLDs where the PCSLDs are the first level of litigation and the HCSLD is the second level. Labour courts will be part of Shari'ah courts and will be committed to applying Saudi labour law and settling labour disputes in accordance with the provisions of that law. The current situation is that CSLDs are committed to the application of labour law to all labour disputes.

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<sup>350</sup>Ibid art 11/2.

But the most prominent difference between the current situation of settling disputes through CSLDs and labour courts which will be established under Saudi Judiciary Law, is that the subordination of the labour judiciary will move to the Ministry of Justice and not to the Ministry of Labour as is the case at present with the CSLDs.

As a result, important legal issues will arise because the person who settles a labour dispute in a labour court will be a judge who enjoys the immunity of the judiciary provided by the current law under Articles 1 and 4.<sup>351</sup> Judges are given better financial advantages because a court judge is eligible for the career scale for judges' salaries. There is no doubt that this provides more guarantees than there are now for members of CSLDs who are not judges but merely staff and have no judicial immunity (as clarified previously). This would be one advantage of having labour courts.

Another difference under the Judiciary Law, as stated in Article 31,<sup>352</sup> is that the selection of judges in labour courts will be limited only to those who have a degree from one of the Shari'ah colleges in the KSA; graduates of law faculties will not be allowed to work as judges in labour courts. This is unlike the CSLDs which are allowed to choose their members from those who have degrees of law or qualifications from Shari'ah colleges, without distinguishing between them. This is one of the main disadvantages of the current judiciary law.

These are the most prominent differences that can be considered while such courts are not actually operating.

#### **5.4.3 Obstacles to establishing labour courts under the Saudi Judiciary Law**

As stated previously, it has been more than eight years since the issuance of the Saudi Judiciary Law which has included the establishment of labour courts as a part of Shari'ah courts in the KSA, but unfortunately, labour courts do not exist yet because of several obstacles.

One of the main obstacles is the inability of the Ministry of Justice to find qualified judges to work in the labour courts. This is because the judges in Shari'ah courts have no legal expertise in labour law and require training in the provisions and rules of labour law for the settlement of labour disputes. This problem has been exacerbated by the current lack of judges in Shari'ah courts which makes it difficult to establish labour courts. In addition, there is an inability to transfer members of CSLD to work in such courts because most of them have legal qualifications but they are not graduates of Shari'ah colleges. The Judiciary Law does not allow non-professionals in Shari'ah law to work as judges in those courts.

In an interview recently published in the Al-Watan newspaper in the KSA, the Minister of Justice stated that there are obstacles in the way of establishing labour courts and that there is a plan for dealing with them. He stated that:

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<sup>351</sup>Ibid art 1, 4.

<sup>352</sup>Ibid art 31.

The Ministry of Justice faces some obstacles in establishing labour courts because some members of CSLDs are not qualified to work in judicial courts, and there is a lack of qualified and trained cadres to work on labour law. Therefore the idea has been put forward to move CSLDs, during a transitional stage, from the Ministry of Labour to the Ministry of Justice with the survival of their name as CSLDs and not the courts.<sup>353</sup>

According to the above, until labour courts are established, CSLDs remain the judicial authority specializing in the settlement of labour disputes in the KSA and they are under the authority of the Ministry of Labour. Article 7/5 of the Mechanism for Implementation of Judiciary Law for the new judiciary system in the KSA stipulates:

Continuation of preliminary commissions for settlement of labour disputes and the High Commission for the Settlement of Labour Disputes to consider the claims of labour and to continue using the Regulations of pleadings before those commissions until labour courts will be established labour courts and perform their works and jurisdictions.<sup>354</sup>

## 5.5 Conclusion

In this chapter, the jurisdiction and organization of authorities competent to settle labour disputes in the KSA was discussed.

In sub-chapter 2, Labour Offices, that are the administrative authority of the Ministry of Labour, were discussed in relation to their role and organization. The 39 branches of these offices organize and manage all works in private sector in the KSA. In addition, there is a special women's branch to manage the work-related issues of female employees. Labour offices have many roles with the most important being receiving labour disputes, receiving labour lawsuits and trying to achieve amicable settlements of labour disputes.

Sub-chapter 3 dealt with CSLDs and the reasons for their establishment in the KSA as a competent authority with jurisdiction for the settlement of labour disputes. They are independent of Shari'ah courts and it was found that one of the most important reasons for this is the refusal of Shari'ah courts to apply labour law under the pretext of violating Shari'ah Law. In addition, labour disputes require special consideration and require knowledge of labour law and this is not available in Shari'ah courts. CSLDs were also discussed in detail in relation to their major jurisdiction, which is the settlement of labour disputes subject to the application of labour law.

Moreover, sub-chapter 3 also discussed the different types of CSLDs, showing that they are divided into PCSLDs and the HCSLD.

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<sup>353</sup>Majid Wayli, 'An Interview with the Minister of Justice in the KSA Dr Muhammad Al-Essa' *Al-Watan* (online), 18 December 2011

<[http://www.alwatan.com.sa/Local/News\\_Detail.aspx?ArticleID=79752&CategoryID=5](http://www.alwatan.com.sa/Local/News_Detail.aspx?ArticleID=79752&CategoryID=5)>.

<sup>354</sup>*The Mechanism of Implementation of Judiciary Law* (Saudi Arabia), Royal Decree No. M/ 78 (19 Ramadan 1428 H – 01 October 2007) art 7/5.

During this discussion it was found that PCSLDs issue two types of decisions. First, in some labour disputes their decision shall be final and without appeal. Second, in settling other labour disputes, their decisions are not final and are subject to appeal before the HCSLD.

Also, PCSLDs are characterized by having many branches in different regions of the KSA and their decisions are issued by a single member. However, the HCSLD, which has authority for appeals when decisions issued by a PCSLDs are challenged, makes decisions that are final and are not subject to appeal; its decisions are issued by three members.

In sub-chapter 4, the current Saudi Judiciary Law of 2007 was considered. This law approved the establishment of labour courts for the first time within Islamic Shari'ah courts in the KSA. Such courts are specialized in the settlement of labour disputes and, under this law, substitute for CSLDs. However, it has been observed that although more than eight years have passed since the issuance of the Saudi Judiciary Law, to date, no labour courts have been established. This is because of the obstacles preventing their establishment. This being the case, CSLDs remain the judicial labour authority in the KSA for now.

## **Chapter 6**

### **Current methods and procedures for resolving labour disputes in the KSA: The Amicable Settlement**

#### **6.1 Overview**

This chapter examines and evaluates the amicable settlement method as a means of resolving labour disputes. The Labour Office is specialized in this method and it is the first means of resolving labour disputes currently used in the KSA according to existing Saudi Labour Law.

This chapter is of special significance for the research study as it answers the question "What are the methods and procedures for resolving labour disputes used currently in the KSA?"

This chapter also examines the procedures used to achieve amicable resolutions of labour disputes in the KSA and considers the advantages and disadvantages of such procedures. In addition, the chapter studies and analyses official statistics related to labour disputes in order to evaluate the effectiveness and ability of amicable settlements to resolve labour disputes in the KSA.

In Chapter 4 of this thesis, it was stated that the KSA deals with all labour disputes - whether individual or collective - by using the same methods, namely the amicable settlement or the judicial settlement.

Labour Offices are competent in amicable settlements, which are the first method for resolving labour disputes, but if an amicable settlement fails, then the second method, the judicial one, will be used by the CSLDs. Judicial settlements will be discussed in Chapter 7.

This chapter discusses amicable settlements as a means of resolving labour disputes in the KSA and considers how labour lawsuits are initiated in the Labour Office. It also considers how the Labour Office facilitates amicable settlements between two parties of a labour dispute and the procedures involved in this settlement. Finally, the chapter evaluates amicable settlements and their effectiveness in resolving labour disputes by discussing the advantages and disadvantages of amicable settlements and by analyzing statistics related to labour disputes in the KSA.

This chapter is divided into 5 sub-chapters. Sub-chapter 6.1 is an overview. Sub-chapter 6.2 discusses how a labour lawsuit starts in the Labour Offices of KSA. Sub-chapter 6.3 reviews the procedures for amicable settlements in the KSA. Sub-chapter 6.4 evaluates the effectiveness of amicable settlements for resolving labour disputes in the KSA. Sub-chapter 6.5 concludes this chapter.

#### **6.2 Initiating a labour lawsuit in the Labour Offices of the KSA**

A labour lawsuit is initiated in the KSA when a claimant submits a list related to the labour dispute to the specialized Labour Office. A specialized Labour Office is a Labour Office

which exists in the same area or city where the place of the labour dispute is located. According to Ministerial Decree, No. 2835, Article 1:

The lawsuits are submitted to the competent Labour Office, which is located in the area of the workplace.<sup>355</sup>

And Article 220 of the Saudi labour law states:

Cases shall be filed through the competent labour office with the preliminary commissions in whose locality or under whose jurisdiction the place of work falls...<sup>356</sup>

The claimant must submit the lawsuit himself, but he can authorize another person such as a lawyer or another person, to submit the labour lawsuit and follow all related procedures whether in the Labour Office or the CSLDs in the KSA. The defendant has the same right to authorize another person to advocate on behalf of the labour lawsuit at any stage or do it himself. In order to have another person submit a lawsuit, specific conditions must be met. The representative in a labour lawsuit should provide proof of his authority to represent the claimant. This authorization must be issued by the formal authority which is competent in authorizations in the KSA, such as the notary affiliated with the Ministry of Justice.<sup>357</sup> The authorization document should include an explicit provision which gives the representative the right to submit a labour lawsuit and follow all its procedures on behalf of the claimant.

In addition, the authorization document must include an explicit provision which gives the representative the right to appear before the authority specialized in labour disputes in the KSA. Also, it must include a provision that gives the representative the right to accept or refuse the amicable settlement result.<sup>358</sup>

The summons must contain the following data as required by the Ministerial Decree 2835:

The lawsuit list should include the claimant's name, his address, his demands, the defendant's name and his address.<sup>359</sup>

As stated previously, this data is essential for the lawsuit as it determines the reason for the dispute and records the claimant's demands, his name and address, in addition to naming the defendant in the labour dispute and giving his address. This data also enables the Labour Office to inform the disputing parties about amicable settlement sessions.

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<sup>355</sup> *Labour Ministry Decree* (Saudi Arabia), No. 2835 (9 Ramadan 1427 H – 02 October 2006) Art 1 <<http://portal.mol.gov.sa/ar/Documents/12835.pdf>>. (Translator with the author).

<sup>356</sup> Saudi Labour Law of 2005, above n 44, art 220.

<sup>357</sup> The KSA notary public circles are governmental authorities responsible for documentation of contracts, sales, mortgages, delegations, testament "will" and Legal Agency "authorization"; Ministry of Justice (Saudi Arabia), *The Notary* (2014) <<http://www.moj.gov.sa/ar-sa/Notary/Pages/default.aspx>>.

<sup>358</sup> Labour Office Branch of Medina Area, above n 268.

<sup>359</sup> Labour Ministry Decree (Saudi Arabia), No. 2835, above n 355, art 2.

### 6.3 Amicable settlement as a method to settle labour disputes in the KSA

After submitting the lawsuit list by the claimant, the Labour Office begins the task of resolving the labour dispute by an amicable settlement.<sup>360</sup> This is the first step in resolving labour disputes in the KSA. According to Article 220:

.... prior to referring the dispute to the Commission, the labour office shall take the necessary measures to settle the dispute amicably. The Minister shall issue a decision setting forth the relevant procedures and rules.<sup>361</sup>

An amicable settlement requires official mediation by means of which the Labour Office seeks to resolve labour disputes. It is done by holding sessions for settling the dispute with parties to the dispute attending and it is managed by a labour issues investigator who is an official employee in the Labour Office.<sup>362</sup>

Amicable settlement procedures are based on and draw their authority from Labour Ministry Decree, no 2835.<sup>363</sup> This decree includes 13 Articles which cover the legal organization of settlement procedures which Saudi Arabian Labour Offices should follow in order to make an amicable settlement. This Labour Ministerial Decree was issued according to Article 220 of the Saudi Labour Law and it gives the Labour Minister the power to determine amicable settlement procedures in labour disputes.<sup>364</sup>

It is important to understand the legal effects in relation to the necessary procedures as it will determine the subsequent steps to be taken if the amicable settlement fails.

#### 6.3.1 The amicable settlement process by the Labour Office

When the claimant or his representative submits a lawsuit to the Labour Office, the office employee receives the request and registers it. The claimant receives a number and a date for the labour lawsuit as well as the date of the first session of the amicable settlement. The first session date should be one week after the submission date. According to Article 3, Ministerial Decree 2835:

The lawsuit department in the Labour Office determines a date for attending the claimant and the defendant within a week from the submission of the lawsuit.<sup>365</sup>

Article 4, Ministerial Decree 2835 states that:

The defendant will be informed about the dates of the sessions according to the procedures followed by the Labour Office.<sup>366</sup>

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<sup>360</sup>Al-Tweijri, above n 344, 73.

<sup>361</sup>Saudi Labour Law of 2005, above n 44, art 220.

<sup>362</sup>Megahed, above n 49, 171.

<sup>363</sup>Labour Ministry Decree (Saudi Arabia), No. 2835, above n 355.

<sup>364</sup>Saudi Labour Law of 2005, above n 44, art 220.

<sup>365</sup>Labour Ministry Decree (Saudi Arabia), No. 2835, above n 355, art 3.

<sup>366</sup>Ibid art 4.

According to the previous article, the defendant will be informed about the session dates in accordance with the procedures followed by the Labour Office.

By reference to the rules and traditions followed by Saudi Arabian Labour Offices “informing the defendant” can be done in one of two ways.

The first method is that the claimant may inform the defendant personally when the claimant receives an official paper stating the session's date to the defendant and gets his signature, then returns the official paper to the Labour Office.

The second method is that a defendant may be informed by a communication employee from the Labour Office. Another way recently put into practice is to send a notification by registered mail to the defendant's address.<sup>367</sup>

### **6.3.2 Amicable settlement sessions to resolve labour disputes in the Labour Office**

When the disputing parties attend a scheduled amicable settlement session in the Labour Office, firstly an investigator from the labour office informs the parties about the legal status of the dispute and their relationship to the case. Then they begin to try to settle the dispute amicably in accordance with procedural controls set forth in Article 6, Ministerial Decree 2835:

If the parties attend, the investigator will try to settle the dispute amicably between them through applying the claimant's requests to the defendant and his response, identifying legal requests and convincing the defendant to respond, and convincing the claimant to drop any irregular requests.<sup>368</sup>

In accordance with the previous article, it can be argued that the stages of an amicable settlement session consist of the following procedures.

First, the claimant submits his requests and then the defendant commits to responding to these requests, although the defendant is entitled to request a delay and respond in another session. Second, the investigator studies the claimant's requests and the defendant's responses to these requests and then the investigator confirms that the claimant's requests are legally valid and based on provisions of Saudi Labour Law and the employment contract between the parties in order to determine the legal and illegal parts of the claimant's requests. Third, the investigator will engage the disputing parties in order to try to persuade the defendant to respond to the claimant's legal requests and, in addition, to try to convince the claimant to drop any illegal demands and thus propose a settlement to resolve the dispute. Finally, the investigator will write the proposed amicable settlement which has been reached through discussions with the parties and present it to the parties to ask them for their final opinion on the proposed settlement.

Article 7, Ministerial Decree 2835 states:

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<sup>367</sup> Labour Office Branch of Medina Area, above n 268.

<sup>368</sup> Labour Ministry Decree (Saudi Arabia), No. 2835, above n 355, art 6.

The investigator must write the attempt made at an amicable settlement, show it to the parties and then record the opinion of each party.<sup>369</sup>

According to this article, the competent investigator of the amicable settlement in the Labour Office is obliged to identify the points of view of each party concerning the proposed amicable settlement. In addition, the investigator must officially record all that has taken place during the amicable settlement sessions.

When an amicable settlement has been proposed by the investigator, there are two possibilities, the parties may accept the proposed amicable settlement or the amicable settlement may fail when one or both of the parties refuse to accept it.

### **6.3.3 Legal implications and consequence resulting from proposed amicable settlement by the Labour Office**

When the dispute parties accept the amicable settlement proposed by the investigator in the Labour Office, then the amicable settlement is considered a successful method for resolving labour issues. In this case, the investigator must write the settlement approved by the disputing parties in an official record, called a “quittance”, and both parties should sign it.

This approval obligates the two parties legally and they are not entitled to appeal against or object to the terms of the settlement and it becomes enforceable. This is under Article 8, Ministerial Decree 2835 which stipulates:

If the parties accept the amicable settlement presented by the investigator then this settlement will be final and obligatory for the two parties who will not be entitled to refuse it.<sup>370</sup>

After the parties accept the amicable settlement proposed by the Labour Office, they are not entitled to raise the issue of the labour dispute itself again before any court in the KSA. This is confirmed by Article 9, Ministerial Decree 2835 which stipulates:

Labour lawsuits which are cleared by the Labour Office cannot be raised again by either party to the dispute.<sup>371</sup>

If one or both of the disputing parties refuse the amicable settlement, then it is considered a failure. In such cases the Labour Office investigator writes an official report which outlines the amicable settlement which he reached through the sessions and why it was refused by the parties.

The investigator is committed to write his opinion of the reason for the dispute in accordance with Article 10, Ministerial Decree 2835:

If one or both parties refuse the amicable settlement presented by the investigator, then the investigator should write the reasons why and sign this explanation.<sup>372</sup>

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<sup>369</sup>Ibid art 7.

<sup>370</sup>Ibid art 8.

<sup>371</sup>Ibid art 7.

In such cases the amicable settlement fails to resolve the labour dispute and the second method for resolving labour disputes, the judicial settlement, comes into play and the lawsuit is referred to the CSLDs, specifically the PCSLDs in whose locality or under whose jurisdiction the place of work falls.

In this case, the Labour Office sends the file of the labour lawsuit to a PCSLD and the Labour Office manager sends an official letter attached to the record of the amicable settlement sessions to head of the PCSLD. This must be done within a week of the date of the last session, in accordance with Article 11 of Ministerial Decree 2835.<sup>373</sup>

Then, when the Labour Office role is ended, the claimant is committed to revisit the PCSLDs in order to complete the procedures related to the judicial settlement.

From examining previous amicable settlements used to resolve labour disputes in the KSA, it is clear that the disputing parties are not obligated to accept the settlement proposed by the Labour Office; the disputing parties only have the right to accept or reject the settlement result.

#### **6.3.4 When one of the dispute parties is absent from the amicable settlement sessions held in the Labour Office**

According to Article 5, Ministerial Decree 2835:

If the defendant does not attend the sessions until the last session, the Labour Office has the right to have him brought to the session by the police. Also, the lawsuit may be referred to the specialized Preliminary Commission.<sup>374</sup>

According to this article, if the defendant does not attend the session determined for the amicable settlement in the Labour Office, then another session will be determined within a week from the first session. If the defendant again does not attend, then a third session will be determined and the police will inform the defendant. According to the previous article, if the police fail to inform the defendant and he does not attend any of the amicable settlement sessions, then the amicable settlement sessions will be terminated. In this case, the amicable settlement method is deemed to have failed and the lawsuit will be referred from the Labour Office to a specialized PCSLDs.

Ministerial Decree No. 2835, which covers amicable settlement procedures of labour disputes in the KSA, does not specify the procedures that should be followed if the claimant is the party who does not attend the settlement sessions. However, by reference to previous labour

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<sup>372</sup>Ibid, art 10.

<sup>373</sup>Ibid, art 11. It states that 'If both or one of the parties refuse the amicable settlement results, the lawsuit will be referred to the preliminary commission according to the following procedures:

A) The labour office manager signs the reference letter which is directed to the preliminary commission manager. The letter shows who is the claimant and the addresses of the two parties.

B) The amicable settlement report shall be attached with the letter signed by the lawsuit department in the labour office within a week from the last session'.

<sup>374</sup>Labour Ministry Decree (Saudi Arabia), No. 2835, above n 355, art 5.

lawsuits and the traditional customs of the Labour Office, if the claimant does not attend any of the amicable settlement sessions without apologizing, then the lawsuit is to be cancelled.<sup>375</sup>

The claimant and the defendant may attend amicable settlement sessions but if one of them procrastinates and asks for a delay involving more than one session, does not respond to requests, or does not bring the required documents to the sessions, then these actions indicate that they are not serious about resolving the dispute amicably. In this case, the investigator, after securing the agreement of the Labour Office manager, has the right to cancel the amicable settlement. If this happens, then according to Article 12 of Ministerial Decree 2835, the dispute should be referred to the specialized PCSLD to resolve disputes judicially:

If the claimant or the defendant procrastinates in attending the amicable settlement sessions or bringing the required documents, the lawsuit department has the right to submit the lawsuit papers to the Labour Office manager to decide whether or not to refer the papers to the specialized Preliminary Commission or to complete the amicable settlement within a week.<sup>376</sup>

### **6.3.5 Does the claimant have the right to choose a judicial solution for the labour dispute without first resorting to an amicable settlement by the Labour Office?**

Current Saudi Labour Law obligates the claimant to raise the labour lawsuit in the Labour Office and it obligates the Labour Office to try to reach an amicable settlement before referring it to the CSLDs to resolve the dispute judicially, even if the claimant initially asks for a judicial settlement.

According to Article 220 of the current labour law of 2005,<sup>377</sup> resolving labour disputes in the KSA directly by a judicial solution without first seeking an amicable settlement made by the Labour Office is considered a void and illegal action because it violates Saudi labour law. Therefore, it is not possible to resort to a judicial solution to resolve labour disputes in the KSA even after the Labour Office fails in an amicable settlement.<sup>378</sup>

Therefore, seeking an amicable settlement made by the Labour Office to resolve labour disputes in the KSA is the first obligatory method required of parties to the dispute before the parties may resort to a judicial solution through the CSLD. However, accepting the results of an amicable settlement remains an option for the disputing parties as they have the right to accept or refuse the results.

On the other side, according to the Saudi Labour Law of 2005, it seems that if the parties to the labour dispute choose the optional arbitration method as an alternative to the CSLD in the KSA, they are not required to initiate an amicable settlement process. Saudi Labour Law in

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<sup>375</sup>For example, *Decision of the Lawsuit Department in the Labour Office Branch of Jeddah* (Saudi Arabia), No 1/1099, 22 Shaban 1432 H - 24 July 2011. It provided that "if the claimant didn't attend the first session of the amicable settlement and didn't apologize, so the investigator has the right to cancel the lawsuit."

<sup>376</sup>Labour Ministry Decree (Saudi Arabia), No. 2835, above n 355, art 12.

<sup>377</sup>Saudi Labour Law of 2005, above n 44, art 220.

<sup>378</sup>Al-Fawzan, above n 8, 424.

Article 220 does not require amicable settlement. The parties to disputes can begin to resolve their disputes directly through arbitration.

#### **6.4 Evaluation of amicable settlements method as a solution to labour disputes in the KSA**

It is important at this point to try to evaluate the use of amicable settlements as a means of resolving labour disputes in the KSA.

This can be done by examining the obstacles and negative factors associated with the procedures and approach of amicable settlements and the positive aspects of amicable settlements. An evaluation of this approach also requires studying and analyzing official statistics concerning labour disputes in order to ascertain the efficacy of the amicable settlement approach.

##### **6.4.1 Negative factors**

One of the most prominent negative factors observed in relation to procedures and the approach of amicable settlements is the lack of a specified period assumed from the beginning of labour litigation within which the Labour Office is obligated to complete amicable settlement procedures.

It is observed that Saudi Labour Law and Ministerial Decree 2835, which stipulates amicable settlement procedures, does not include a definite period within which the Labour Office is obligated to finalise amicable settlement sessions. As soon as that period is terminated, the Labour Office is obligated to transfer the lawsuit to the judicial authority, whether or not the settlement has been achieved.

The lack of a definite period of time for the amicable settlement to be concluded is a negative factor because it may be exploited by the defendant to extend the period of settlement. Where there is no legal text, the Labour Office should complete the amicable settlement within a definite period, otherwise there may be slackness and neglect by the Labour Office, leading to an extension of the amicable settlement period.

Such a delay and extension of the session and procedures of amicable settlements in Labour Offices can be confirmed by precedents in some labour disputes when amicable settlement sessions took three to four months to be finalised, even though the process did not succeed in resolving the dispute by amicable settlement.<sup>379</sup>

Moreover, in comparison with the labour laws in other GCC countries, Saudi Labour Law is quite different. The labour laws of most other GCC countries define a specific period in which the Labour Office should complete an amicable settlement and, in case the dispute is not resolved within that period, it is transferred immediately to judicial authorities.

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<sup>379</sup>For example: *Decision of the Lawsuit Department in the Labour Office Branch of Jeddah* (Saudi Arabia), No 2, 29 Safar 1432 H – 4 February 2011. In this lawsuit, the amicable settlement sessions continued for 4 months.

For example, the Emirates Labour Law requires the labour department authorities responsible for amicable settlement of individual disputes, to finalise the dispute process within a two-week period from the date when the claimant first presented the claim. If the dispute is not resolved by an amicable settlement within this period, the dispute is transferred immediately to the court, as per Article 6.<sup>380</sup>

In Kuwait, Labour Law requires that the labour department (Labour Office) the authorities achieve agreement between disputing parties within one month from the date the claim is presented to the department. At the end of this period, if not successful agreement has been reached, jurisdiction over the case is transferred to the court as per Article 146 of Kuwaiti Labour Law.<sup>381</sup>

Moreover, another negative factor is that the amicable settlement method is mandatory in the KSA as a first step before resorting to a judicial solution. This is because Saudi Labour Law does not allow the claimant to directly refer to a judicial solution by the CSLDs but only after the Labour Office fails to resolve the dispute by an amicable settlement.

It seems that this as a negative factor because it detracts from the claimant's right to resort immediately to the judiciary to resolve the dispute, even though this right is approved by the Saudi Basic Law of Governance.<sup>382</sup> In addition, acceptance of the results of an amicable settlement made by the Labour Office is an optional matter for both the claimant and the defender. Hence, why does the claimant not have the right to choose to immediately refer the matter to the judiciary method and resolve the dispute without starting an amicable settlement?

#### **6.4.2 Positive factors**

The most positive thing about the amicable settlement process is that when it succeeds in resolving a labour dispute, the resolution is reached by common agreement between the disputing parties and they accept the settlement results without obligation. For this reason, amicable settlements preserve the relationship between employees and employers.<sup>383</sup>

Moreover, another positive aspect is that it is the only amicable method currently practised in the KSA for the resolution of labour disputes.

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<sup>380</sup>United Arab Emirates Labour Law, above n 185, art 6. It states that ‘Without prejudice to the rules provided for under this Law concerning collective labour disputes if the employer, the worker or any beneficiary thereof disputes any of the rights provided for any of them under this Law, he shall file an application to the competent Labour Department, which shall summon both parties and take whatever action it deems necessary to settle the dispute amicably If no such amicable settlement is reached, the said Department shall, within two weeks from the date of application, refer the dispute to the competent court under a memorandum containing a summary of the dispute, the arguments of both parties and the Department’s comments’.

<sup>381</sup>Kuwaiti Labour Law, above n 190, art 146 states that ‘before the lawsuit, the employee or the claimants should submit an application to the labour department, the department should recall the parties, if the department failed in the amicable settlement within a period of up to a month from the date of presenting the claim to the department, it should be referred to the court’.

<sup>382</sup>Basic Law of Governance, above n 316, art t 7.

<sup>383</sup>Abdelbasset Abdelmohsen , *The Mediation Role in the Labour Dispute Settlement* (Dar Al-Nahda Al-Arabia, 2 nd, 2000) 6-9.

Finally, another advantage of the amicable settlement method in the KSA is that it is cost-free, as the Labour Office considers such settlements as part of its responsibilities.<sup>384</sup>

### 6.4.3 Does the amicable settlement method contribute to resolving labour disputes in the KSA

In order to answer this question, it is necessary to examine the statistics related to labour disputes in the KSA. The following chart shows the number and percentage of labour disputes which were resolved by amicable settlement from 2006 to 2010 and this data is compared with the total number of labour disputes in the KSA during this period.

Year	Total number of labour disputes in the KSA	Number of disputes resolved by amicable settlement in the Saudi Labour Office	The percentage of labour disputes resolved by amicable settlement in the Saudi Labour Office
2006 <sup>385</sup>	20919	12914	61.86%
2007 <sup>386</sup>	18982	11726	61.77%
2008 <sup>387</sup>	19869	14579	73.36%
2009 <sup>388</sup>	19851	13343	67.22%
2010 <sup>389</sup>	17523	11431	65.23%

The following graph shows for the period from 2006 to 2010 the variation in the number of labour disputes which have been resolved by amicable settlement by the Labour Office and the total number of labour disputes in the KSA for the same period.

<sup>384</sup> Ministry of Labour (Saudi Arabia), *Guidelines for Services Provided by the Ministry of Labour in Saudi Arabia* (26 September 2014) 35

<<http://portal.mol.gov.sa/ar/Pages/Document%20Library.aspx?m=8>>.

<sup>385</sup> Ministry of Labour (Saudi Arabia), *The Annual Statistical Book for 2006* (30 March 2010) 98

<<http://portal.mol.gov.sa/ar/Statistics/Pages/default.aspx?m=8>>.

<sup>386</sup> Ministry of Labour (Saudi Arabia), *The Annual Statistical Book for 2007* (30 March 2010) 100-101

<<http://portal.mol.gov.sa/ar/Statistics/Pages/default.aspx?m=8>>.

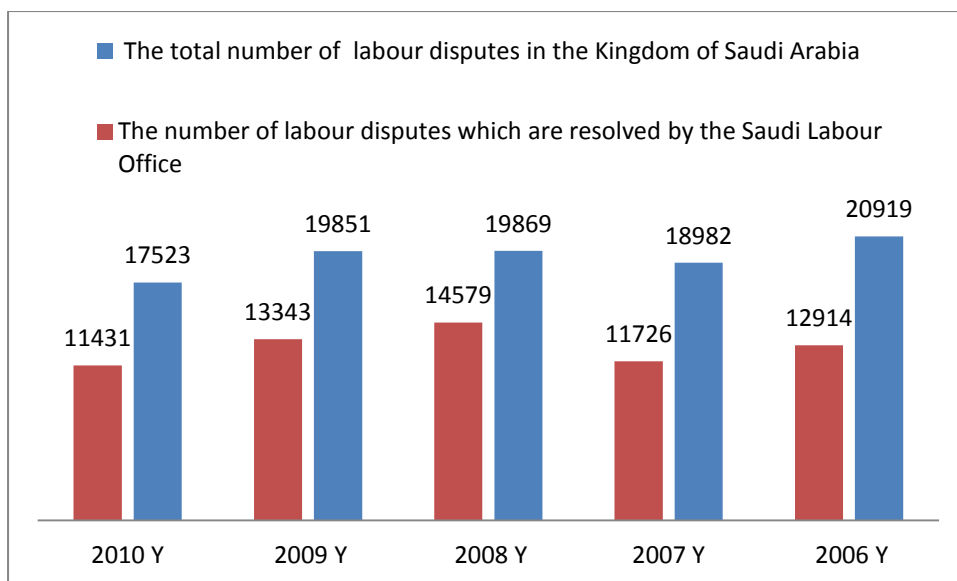
<sup>387</sup> Ministry of Labour (Saudi Arabia), *The Annual Statistical Book for 2008* (13 March 2010) 90

<<http://portal.mol.gov.sa/ar/Statistics/Pages/default.aspx?m=8>>.

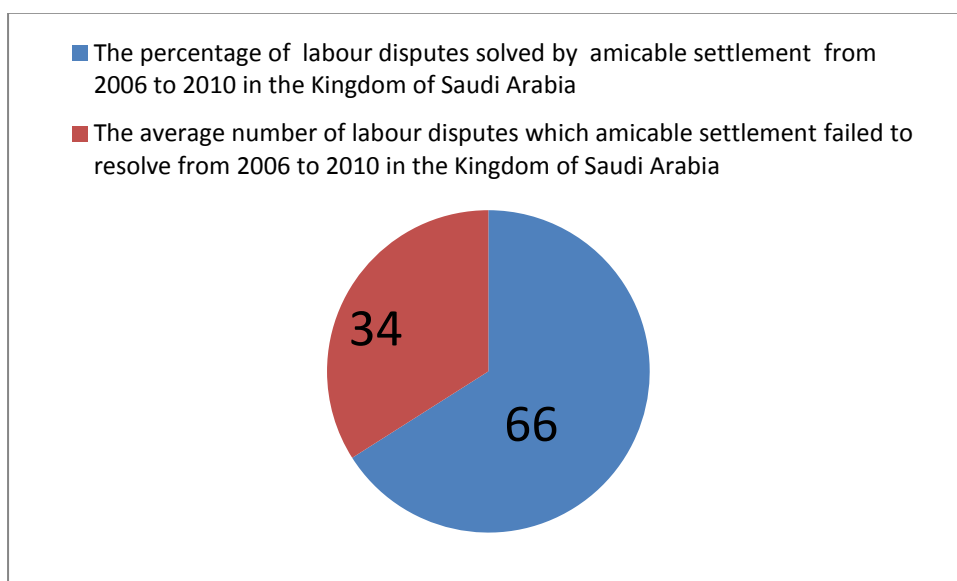
<sup>388</sup> Ministry of Labour (Saudi Arabia), *The Annual Statistical Book for 2009* (26 October 2010) 88

<<http://portal.mol.gov.sa/ar/Statistics/Pages/default.aspx?m=8>>.

<sup>389</sup> Ministry of Labour (Saudi Arabia), *The Annual Statistical Book for 2010*, aboven 328, 82



The graph shows the total number of cases which were resolved by amicable settlement and the number which could not be resolved by this means during the five years from 2006 to 2010.



These statistics indicate that amicable settlements are important for resolving labour disputes in the KSA as this method resolved more than half of all labour disputes during the five year period for which data is available.

## 6.5 Conclusion

This chapter, and more specifically the second sub-chapter, shows how a labour dispute settlement is initiated in the KSA, namely when a claimant submits a lawsuit list related to a

dispute to the Labour Office. It was also noted that Saudi Labour Law allows the authorization of another person to submit a labour lawsuit.

Moreover, this sub-chapter showed that specific data must be made available in a labour lawsuit, including the claimant's requests, the legal instrument for his requests, his name, his address, and the defendant's name and his address.

As discussed in detail in the third sub-chapter, amicable settlements are a method used to resolve labour disputes by the Labour Office in the KSA. Such settlements were defined as settlements where the labour office in the KSA plays a mediation role, according to official measures and procedures, in resolving a labour dispute amicably between disputing parties and suggesting a settlement to the dispute. Amicable settlements are covered by Ministerial Decree, no. 2835 of 2005 and their procedures, discussed according to this decree, cover how to determine sessions, and how to inform parties about the dates, and the steps and phases of an amicable settlement process. Accepting amicable settlement results is optional; that is, the parties are not obligated to accept them.

It became clear through this sub-chapter that when disputing parties accept the amicable settlement results proposed by the Labour Office, they are committed to implementing them. Also, if the parties refuse to accept the Labour Office's decision, then the amicable settlement process is considered a failure and the disputing parties can seek a judicial solution.

To sum up, amicable settlements are the first method used to resolve labour disputes in the KSA; it is obligatory that they be used first, but if they fail, then parties can resort to a judicial solution.

Moreover, in the third sub-chapter, the pros and cons of amicable settlements were discussed, analysed and evaluated using available, relevant statistics for labour dispute outcomes in the KSA. It was discovered that the most negative aspect of amicable settlements is that the labour law does not determine the duration required of the Labour Office to finalise such settlements. This leads to procrastination and the extension of the duration of amicable settlements, something which is considered damaging for the parties in the dispute. Another negative aspect of using amicable settlements to resolve labour disputes is that they are mandatory before a judicial solution can be used.

However, this sub-chapter also covered the positive aspects of amicable settlements; they give disputing parties a satisfactory resolution without the resolution being binding or obligatory, which may help to maintain a good relationship between workers and employers. Moreover, amicable settlements are cost-free.

Finally, the statistics related to labour disputes indicate that amicable settlements are an effective means of resolving labour disputes. The statistics show that the average percentage of labour disputes resolved by amicable settlement during the previous five years is 66% of all labour disputes in the KSA during that period.

## Chapter 7

### **The current judicial method of resolving labour disputes in the KSA by Commissions for the Settlement of Labour Disputes (CSLDs)**

#### **7.1 Overview**

The purpose of this chapter is to study and evaluate the method used for the judicial settlement of labour disputes in the KSA by CSLDs. This chapter is of great importance for the research topic as it answers a number of basic questions: first, how is the judicial resolution of labour disputes currently done by CSLDs in the KSA? Also, how effective are the CSLDs in resolving the current labour disputes in the KSA?

These objectives will be realized in this chapter by discussing the procedures and rules of litigation and pleadings before a CSLDs: *PCSLDs and the HCSLD*, from the beginning of the judicial hearing session until the delivery of the final judgment in the labour case. This chapter will also evaluate the method used in the judicial settlement of labour disputes in the KSA; the advantages and disadvantages of this method will be exposed as well as the problems encountered by the conflicting parties in using the judicial settlement method used by CSLDs in the KSA.

The chapter is divided into 6 sub-chapters. Sub-chapter 1 is an overview. Sub-chapter 2 discusses what is meant by a judicial settlement for resolving labour disputes in the KSA. Sub-chapters 3 and 4 address how rules and procedures of judicial settlement are applied in labour disputes through CSLDs, in both the PCSLDs and the HCSLD. Sub-chapter 5 evaluates the method of the judicial settlement used by authorities for resolving labour disputes. Sub-chapter 6 will conclude this chapter.

#### **7.2 What is meant by a judicial settlement for resolving labour disputes in the KSA?**

The judicial settlement of labour disputes in the KSA is intended to resolve labour disputes by litigation before CSLDs, as this commission has jurisdiction in all labour disputes in the KSA. All types of labour disputes (Individual and Collective) in the KSA are subject to the same rules and procedures for litigation before these commissions. In CSLDs, litigation is a two-stage process; this is based on Article 210 of Saudi Labour Law of 2005.<sup>390</sup>

The first stage is the PCSLDs which is a preliminary stage for settling labour disputes; its decisions can be appealed except for some disputes identified by Saudi Labour Law where no appeal is allowed.<sup>391</sup> The second stage is the HCSLD which is an appeal authority having jurisdiction over those decisions issued by a PCSLDs which can be appealed.<sup>392</sup>

The judicial settlement method for resolving labour disputes is resorted to when the labour office declares that amicable methods for resolving the labour dispute have failed.

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<sup>390</sup> Saudi Labour Law of 2005, above n 44, art 210.

<sup>391</sup> Al-Fawzan, above n 8, 420-421.

<sup>392</sup> Al-Dakmy, above n 174, 16-18.

The legal reference by which litigation and argument procedures are carried out before CSLDs is the Saudi Labour Law of 2005 and the Regulation of pleadings proceedings before the CSLDs, issued in 1970.<sup>393</sup>

To date, the 1970 the Regulation of Pleadings proceedings has been applied because the new regulation of pleadings proceedings before the CSLDs, according to the current Saudi Labour Law of 2005, has not yet been issued, although nine years have passed since the issuing of the current Labour Law in 2005. That is why the 1970 Regulation of Pleadings proceedings are still being used in CSLDs in the KSA.<sup>394</sup>

The continued application of the 1970 Regulation of Pleadings proceedings before the CSLDs is legal because it is based on Article 244 of the current Saudi Labour law of 2005 which states that:

This Law shall supersede the Labour and Workers Law promulgated by Royal Decree No. (M/21) dated 6 Ramadan 1389H and shall repeal all the provisions that are inconsistent with it. Regulations and decisions issued prior to the effective date of this Law shall remain in effect until they are amended.<sup>395</sup>

This article legalizes continuing the application of the regulations and decrees issued before the current labour law until it is amended or reissued.

Arabic is the only language that must be used in all judicial settlement procedures in labour disputes before CSLDs in the KSA. If the parties to the dispute use another language in their labour relations, such as labour contracts written in English, these must be translated to Arabic.<sup>396</sup> The Arabic text only prevails in CSLDs.

This is based on Article 9 of Saudi Labour Law that states:

Arabic shall be the language used for data, records, files, work contracts and the like as provided for in this Law or in any decision issued in implementation of its provisions as well as the instructions issued by the employer to his workers. If the employer uses a foreign language beside Arabic in any of the mentioned cases, the Arabic text shall prevail.<sup>397</sup>

According to Dr Nile, using the Arabic language before the CSLDs is compulsory and a matter of public policy in the KSA. So the parties to disputes cannot use another language.<sup>398</sup>

### **7.3 Rules and procedures of Litigation before PCSLDs**

Immediately upon the failure of the labour office to resolve a dispute by amicable settlement, the Labour Office refers the labour case (lawsuit) to the PCSLDs having jurisdiction over the

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<sup>393</sup> *Regulation of Pleadings Proceedings before the Commissions for the Settlement of Labour Disputes* (Saudi Arabia), Ministerial Decree No. 1 (04 Muharam 1390 H – 11 March 1970). (Copy in Arabia on file with author).

<sup>394</sup> Khalid Al-Shobrumi, *Labour Pleading in the Saudi Labour Law* (Master Thesis, Naif Arab University for Security Sciences, 2013) 51.

<sup>395</sup> Saudi Labour Law of 2005, above n 44, art 244.

<sup>396</sup> Megahed, above n 49, 39.

<sup>397</sup> Saudi Labour Law of 2005, above n 44, art 9.

<sup>398</sup> Naal, above n 18, 281.

case according to *ratione loci* rules. A date for the judicial hearing is set by the president of the Preliminary Commission, according to Article 24.<sup>399</sup> The plaintiff must refer to the Preliminary Commission having jurisdiction over the case in order to receive the time and date of the first judicial hearing.

### **7.3.1. Procedures for informing dispute parties of judicial hearings before PCSLDs**

In PCSLDs, the defendant is informed of the judicial hearing when information about the proceedings is sent to him by the Commission officials. He is also informed by mail. If the defendant cannot be informed through the Commission, then he is to be informed by the police.<sup>400</sup> These procedures are also used to inform the defendant if he is absent from one hearing, so that he knows the date to which the hearing has been postponed.

In order for the hearing to be legal, the information sent must include basic information as stipulated by Article 12.<sup>401</sup> According to this article, the information required is: the branch name of the PCSLDs having jurisdiction over the labour dispute; the date, day, and hour of the hearing; the plaintiff's name, address, and profession (and the name of his representative in case a legal agent is used, and his address); and the name, profession and address of the defendant.

Also, the notice must include the day and hour when it was served, as well as the name of the server and the server's signature. Moreover, the serving of a notice is legal only if it is served on the person to be served, even if he is at a place other than his place of residence or work. If the person to be served refuses to receive the notice, then the server must officially record this refusal.<sup>402</sup>

If the person to be served is not at his normal domicile, then the serving of the notice is deemed legal when it is delivered to his legal agent or a family member, who is of the required legal age, residing at the same house; this is according to Article 14.<sup>403</sup> This article legally defines which family members can be served on behalf of the person to be served: parents, sons, daughters, a wife or spouse, and brothers.

If the person to be served is residing outside the KSA, he is to be served by registered mail according to the formal procedures between the KSA and the country where that person is residing, according to Article 18.<sup>404</sup>

Serving a notice by mail is legal if the proceedings have been sent by registered mail. Once a person to be served signs the mail receipt, it is proof of his being informed of the hearing date, according to Article 17.<sup>405</sup>

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<sup>399</sup>Regulation of Pleadings Proceedings before the Commissions for the Settlement of Labour Disputes, above n 393, art 24.

<sup>400</sup>Ibid art 13.

<sup>401</sup>Ibid, art 12.

<sup>402</sup>Naal, above n 18, 293-294

<sup>403</sup>Regulation of Pleadings Proceedings before the Commissions for the Settlement of Labour Disputes, above n 393, art 14.

<sup>404</sup>Ibid art 18.

<sup>405</sup>Ibid art 17.

According to Article 15a, if the party to be informed of the hearing date in CSLDs is a governmental agency, then the serving of a notice is legal when it is delivered to the person who legally represents the government agency.<sup>406</sup> Also, Article 15b states that serving commercial companies is acceptable once the notice has been delivered to the headquarters of the company, or to the chairman, the manager, or one of the partners in their domicile.<sup>407</sup> As for institutions, civil companies, and other organisations, the serving documents are delivered to the acting person in the organisation's headquarters, according to Article 15c.<sup>408</sup>

According to Article 25<sup>409</sup>, a notice of a judicial hearing must be served at least three days before the hearing is due. Unfortunately, the 1970 Regulation of Pleadings proceedings before the CSLDs does not contain any provision for a penalty to be incurred as a result of not complying with the rules and procedures for serving notice, and whether or not non-compliance leads to a notice being invalid.

Dr Al-Kialy states that not complying with the rules of serving a notice leads to the notice being invalid, unless the party who is favoured by an invalidity decision gives up his right to benefit from such a decision.<sup>410</sup>

### **7.3.2. Rules of presence and absence of litigants from judicial hearings before PCSLDs**

Parties to the labour dispute may attend the judicial hearing in person, or they may entrust a legal agent to attend on their behalf and undertake argument and defence. The Regulation of Pleadings proceedings of 1970 does not stipulate that the agent present in hearings be a lawyer, so persons other than lawyers may be appointed as agents.

According to Article 27<sup>411</sup>, in order to appoint someone as an agent to appear at CSLDs hearings, then that someone must have an official power of attorney from his client. An official power of attorney is one issued by the KSA authority having jurisdiction over powers of attorney, which is the notary public.<sup>412</sup> Also, the appointment of a representative may be done at the same hearing: the client states that he appoints another person to attend hearings and argue on his behalf. In such cases, the power of attorney is written into the hearing minutes and the client signs it.<sup>413</sup>

If the plaintiff is present and the defendant is absent from the judicial hearing examined by the PCSLDs, despite being informed of the hearing date by the correct method and having not produced an excuse in advance, then the hearing is postponed to another time of which the defendant is informed.<sup>414</sup> The serving of further notices must, in this case, include a warning

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<sup>406</sup>Ibid art 15/ A.

<sup>407</sup>Ibid art 15/ B.

<sup>408</sup>Ibid art 15/ C.

<sup>409</sup>Ibid art 25.

<sup>410</sup>Al-Kialy, above n 16, 459.

<sup>411</sup>Regulation of Pleadings Proceedings before the Commissions for the Settlement of Labour Disputes, above n 393, art 27.

<sup>412</sup>Naal, above n 18, 295.

<sup>413</sup>Regulation of Pleadings Proceedings before the Commissions for the Settlement of Labour Disputes, above n 393, art 28.

<sup>414</sup>Ibid art 30.

to the absent defendant that if he does not attend the second hearing, then the commission will make a decision in the labour dispute and any such decision made will have the same force as if all parties had been present.<sup>415</sup>

The Regulation of Pleadings proceedings of 1970 do not state the legal action or penalty resulting from the absence of the plaintiff and the presence of the defendant in judicial hearings before PCSLDs. However, considering judicial precedents then it appears that the action to be taken in PCSLDs if the plaintiff does not attend while the defendant is present is that the commission cancels the prosecuted labour suit. An example of this is case no. 1197, where the plaintiff did not attend the hearings but the defendant was present. The decision in this case was to cancel the lawsuit, The decision stated:

It was evident for the Preliminary Commission that the plaintiff did not comply with attending hearings. So, the commission decides cancelling the lawsuit submitted by the plaintiff.<sup>416</sup>

Hence, it can be said that one disadvantage of the Regulation of pleadings proceedings of 1970 is the absence of any legal action or penalty in the case where the defendant is present and the plaintiff is absent from the judicial hearings of a PCSLDs.

According to Article 69, if both parties, the plaintiff and the defendant, are not present in a judicial hearing in the PCSLDs without an excuse, then the lawsuit is crossed off.<sup>417</sup>

The Regulation of pleadings proceedings of 1970 does not include any legal text stating the legal effect resulting from crossing off a labour suit. Therefore, the result of a PCSLDs decision to cancel the labour suit is legally ambiguous and leaves open the possibility of reopening the suit after it has been cancelled.

An examination of previous decisions by PCSLDs reveals that it is usual for PCSLDs, when the commission cancels a suit, that the suit may be re-examined before that commission if the plaintiff applies to the president of the Preliminary Commission for a re-examination of the suit. An example is case no. 818 at the PCSLDs branch of Jeddah.<sup>418</sup> In this case, the plaintiff was absent from more than one hearing and consequently the Preliminary Commission decided to cancel the suit. Eight months later, the plaintiff requested a re-examination of the suit and the Preliminary Commission accepted his request. From this it can be inferred that one disadvantage of the Regulation of pleadings proceedings of 1970 is that they do not allow for legal action if a suit is cancelled; nor do they state whether a suit can be re-examined after it has been cancelled nor what conditions may apply and any resulting penalties.

A crucial factor in determining whether or not one or both parties are absent from the judicial hearing is whether or not either party appeared within at least one hour of the time set for the

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<sup>415</sup>Ibid art 31.

<sup>416</sup>*Decision of Preliminary Commission for Settlement of Labour disputes Branch of Jeddah* (Saudi Arabia), No 1295, 08 Shawal 1433 H 26 August 2012, Case no. 1022.

<sup>417</sup> Regulation of Pleadings Proceedings before the Commissions for the Settlement of Labour Disputes, above n 393, art 69.

<sup>418</sup> *Decision of Preliminary Commission for Settlement of Labour disputes Branch of Jeddah* (Saudi Arabia), No 396, 08 R.Thani 1432 H 13 March 2011, Case no. 818.

hearing.<sup>419</sup> Based on Article 33, absence rules are not applied if the absent party has sent an apology for his absence to the Preliminary Commission before the time set for the hearing and the apology is accepted.<sup>420</sup> The whole issue of accepting the apology of the absent party is left to the Preliminary Commission having jurisdiction over the suit. Once the commission accepts the apology of the absent party, the hearing is postponed and another date is determined and the absent party is informed.<sup>421</sup>

### 7.3.3 Starting judicial hearings before PCSLDs

Once both parties to the dispute or their legal agents/ representatives are present, the judicial hearings in the PCSLDs can start. The case Examiner in the PCSLDs, usually a single judge / Examiner,<sup>422</sup> starts the hearing. The Examiner starts by examining the formal rules for accepting the labour case and then addresses the dispute issue.

The formal rules which the “case Examiner” in a PCSLDs should check before addressing the dispute issue are the general principal rules for prosecuting any legal suit before judicial authorities. The identities of all parties present must be checked, along with the plaintiff’s interest in bringing the suit. In addition, whether or not the suit was brought within the duration determined by the labour law needs to be checked.<sup>423</sup>

According to Article 7, the case Examiner in a PCSLDs must check the legal capacity of parties present at the hearing or their capacity in that suit.<sup>424</sup> As for labour cases in which one party is deceased, one of his heirs is appointed as a party in the case on behalf of the other heirs.<sup>425</sup>

According to Article 2, for the labour case to be heard before a PCSLDs, there must be an interest or benefit desired by the plaintiff in the suit. No request or disproof is accepted during the hearing if a party has no existing interest.<sup>426</sup>

Article 222 of Saudi Labour Law states that:

(1) No case shall be accepted by the commissions provided for in this Law involving a claim of the rights provided for in this Law or arising from a work contract after twelve months following termination of the work relation.(2) No case involving a claim of the rights provided for in the previous Labour Law shall be accepted after twelve months following the effective date of this Law. (3) No complaint regarding violations of the provisions of this Law or the regulations and

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<sup>419</sup> Regulation of Pleadings Proceedings before the Commissions for the Settlement of Labour Disputes, above n 393, art 32.

<sup>420</sup> Ibid art 32.

<sup>421</sup> Ibid art 34.

<sup>422</sup> In CSLDs in the KSA the member having jurisdiction over deciding in the suit is called the Case Examiner, Which is like Judge.

<sup>423</sup> Bn-Mahfouz, above n 37, 261

<sup>424</sup> Regulation of Pleadings Proceedings before the Commissions for the Settlement of Labour Disputes, above n 393, art 7.

<sup>425</sup> Ibid art 3.

<sup>426</sup> Ibid art 2.

decisions issued hereunder shall be accepted after twelve months following the date of the occurrence of the violation.<sup>427</sup>

In accordance with the preceding Article, CSLDs, both PCSLDs and HCSLD, do not examine labour suits unless the plaintiff prosecutes during the duration determined by the law for acceptance of the suit. This period is 12 months from the date of ending the labour relationship for suits claiming rights stated in labour law and incurred by a contract. Also, according to the previous articles, no complaint or suit is accepted for violations conflicting with verdicts of this law and regulations issued thereof for a period of 12 months after the date that the violation occurred.

The start of the 12 months is calculated from the date of the expiration of the employment relationship or when the violation occurred until the date the lawsuit is officially filed.

Experts in Saudi Labour Law have debated the legal nature of the duration determined by Saudi Labour Law for CSLDs to accept labour suits for examination. For example, if this duration expires, would it result in the prescription<sup>428</sup> of the disputed rights, or would it result only in non-acceptance of the case before a CSLDs without the prescription of the disputed rights?

According to Dr Mounir, the 12 months stated in Article 222 of the Saudi Labour Law is the duration for the prescription of the disputed rights, and this duration is subject to stopping and intermittence according to the rules of civil law.<sup>429</sup> Considering this period to prescription of workers' rights means that the judicial authority having jurisdiction over the labour dispute cannot reject the suit except by request from the defendant.<sup>430</sup>

On the contrary, Dr Al-Kialy says that:

The Saudi Labour Law stipulates that the labour suit must be submitted during a certain period, which does not result in the right of prescription, but it only leads to the labour suit not being accepted for a hearing after that period. The reason here is that the idea of right of prescription is not accepted in Islamic doctrine with Shari'ah applied in the Kingdom of Saudi Arabia.<sup>431</sup>

Also, Dr Fakhri argues that:

There is no right of prescription in the Kingdom of Saudi Arabia. Prescription is a theory in comparative civil laws, not recognized by Islamic doctrine. Therefore, the 12-month period is a period that results in the labour suit not being heard, not meaning right of prescription. This, in turn, means that this duration is not stopped nor intermitted.<sup>432</sup>

Thus, a CSLDs can decide not to hear the suit after that period has elapsed, whether or not the defendant recognizes the right under dispute. That is because this duration is a stipulation for

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<sup>427</sup>Saudi Labour Law of 2005, above n 44, art 222.

<sup>428</sup>(prescription or limitations ) This means the Labour disputed rights be lost by limitations or Rights are lost because of the lengthy passage of time and the fact that plaintiff does not claim his labour rights.

<sup>429</sup>Al-Dakmy, above n 298, 353.

<sup>430</sup>Ismail Ghanim, *Labour and Social Security Law* (Abdullah Wahba Library, 1961) 555.

<sup>431</sup>Al-Kialy, above n 16, 450

<sup>432</sup>Fakhry, above n 157, 140

accepting the labour suit according to the labour law and is to do with public order and interest being served by organizing litigation before CSLDs.<sup>433</sup>

The researcher agrees with the previous view that the 12-month period in Article 222 of the Saudi Labour Law results in CSLDs not hearing a labour suit after this period, although this does not mean the right of prescription. The rights are not dropped in Islamic Shari'ah by prescription.

The Messenger Mohammed (PBUH) said:

The rights of a Muslim is not dropped by prescription.<sup>434</sup>

This view is supported because the principle of not hearing a suit after a certain period of time has elapsed is accepted in Islamic doctrine. Most doctrine schools agree to the legality of specifying a certain period during which a lawsuit is prosecuted but there was disagreement as to whether this duration was 12 months or more.<sup>435</sup>

In addition, the principle of not hearing a suit after a certain period of time has elapsed from when the labour relationship ended is a principle that agrees with most GCC Labour Laws, such as Emirates Labour Law,<sup>436</sup> and Kuwaiti Labour Law.<sup>437</sup> However, In Egypt it is different as Egyptian legislators recognize the principle of prescription in dropping rights if the labour suit is not prosecuted within the period of time determined by the law. So, labour disputes in Egypt are subject to applying the right of prescription rules in Egyptian Civil Law.<sup>438</sup>

From the above, it can be inferred that the period stated in Article 220 of Saudi Labour Law, is not a right of prescription duration but CSLDs do not hear a suit after 12 months have elapsed from the date of the labour relationship ending.<sup>439</sup>

### 7.3.4 Order and managing judicial hearings in PCSLDs

Judicial hearings in PCSLDs are run and managed by one member of the commission, namely the member having jurisdiction over the suit. He is in charge of hearing the suit and is called the "case Examiner"

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<sup>433</sup> Al-Kialy, above n 16, 450.

<sup>434</sup> The Permanent Committee of Scientific Research and Fatwa in the Kingdom of Saudi Arabia 'Prescription' (1990) 30(2) *Journal of Scientific Research* 19  
<<http://www.alifta.net/Fatawa/FatawaDetails.aspx?View=Page&PageID=4130&PageNo=1&BookID=2>>.

<sup>435</sup> Muhammad Ibrahim, *Prescription Rules in Islamic Jurisprudence* (PhD Thesis, Cairo University, 1979).

<sup>436</sup> United Arab Emirates Labour Law, above n 185, art 6.

<sup>437</sup> Kuwaiti Labour Law, above n 190, art 144.

<sup>438</sup> Mansour, above n 193, 169.

<sup>439</sup> This produces an important result: if both parties of the relationship agree to settle disputes by arbitration, then Article 222 has no legal effect. In this case, the plaintiff may bring the labour suit and request a resolution through arbitration, even after the elapsing of 12 months. The reason is that Article 222 of Saudi labour law is concerned with hearing suits before a Commission for the Settlement of Labour Disputes and has no effect in a case where resolving the dispute is done through arbitration.

The case Examiner asks parties questions, interrogates witnesses, and grants permission for parties to present arguments and raise questions related to the dispute.<sup>440</sup>

According to Article 35, the plaintiff or his agent begins by submitting his requests concerning the suit. Then the defendant or his agent is granted the right to reply and defend himself against the plaintiff's request.<sup>441</sup> Also, the defendant may request a postponement. The arguments of the disputing parties during judicial hearings in PCSLDs may be presented orally, in writing, or both.

Article 20 gives parties to the case the right to read the proceedings of judicial hearings so that they can prepare their defence and make notes about the suit.<sup>442</sup> If the defendant refrains from replying to the issues raised by the suit or does not attend hearings without an excuse then the PCSLDs may decide to accept the plaintiff's case and requests based on Article 36 of the argument regulations.<sup>443</sup>

Also, Article 40 gives the defendant the right to request the inclusion of any person whatsoever as a litigant in the labour suit. Other people can be included in suits heard before the PCSLDs if they have some connection with the issue of the dispute.<sup>444</sup>

According to Article 41<sup>445</sup>, both disputing parties in labour suits examined by PCSLDs may agree to terminate the conflict. Stopping the conflict means stopping the labour suit even during litigation before a PCSLDs; this is allowed as long as litigation is open and the commission has not made a decision. For the process to be terminated correctly, both the plaintiff and the defendant must agree, and the suit can only be postponed for a maximum of 6 months and then needs to be started again.

It seems that the purpose of granting opponents in the labour suit the right to stop a conflict during litigation before a PCSLDs is to give the disputing parties an opportunity to resolve the conflict amicably once they want that, even when a judicial solution has already started.

Those are the main rules relating to organizing litigation sessions before labour commissions, namely PCSLDs, as set by the Regulation of Pleadings Proceedings of 1970. From this discussion, it can be said that the Regulation of 1970 lacks many of the necessary legal regulations for the management of judicial hearings. According to Dr Fakhry, the Regulation of Pleadings Proceedings of 1970 did not include a text specifying the powers given to the case Examiner, necessary for organizing the judicial session. The Regulation did not stipulate the power of the case Examiner if any party violates order in session, or in case of crime or assault on the judicial authority or the assistants. The regulations did not state the powers of the Examiner in the case where a witness has testified falsely before him.<sup>446</sup>

In addition, it can be said that there is no article in the Regulation of Pleadings Proceedings of 1970 that provides that the litigation must be conducted in public sessions before a CSLDs.

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<sup>440</sup>Regulation of Pleadings Proceedings before the Commissions for the Settlement of Labour Disputes, above n 393, art 37.

<sup>441</sup>Ibid art 35.

<sup>442</sup>Ibid art 20.

<sup>443</sup>Ibid art 36.

<sup>444</sup>Ibid art 40.

<sup>445</sup>Ibid art 41.

<sup>446</sup>Fakhry, above n 155, 144.

Hence, it can be inferred that such non-organization of legal issues related to sessions before CSLDs is a defect of this Regulation.

### **7.3.5 Closing arguments in labour suits and the issuance of the PCSLDs decision**

After both disputing parties finish argument and discussion in the labour suit heard by the Preliminary Commission, and the judge recognizes that the suit is ready for ruling, then arguments are closed and subsequently the case examiner makes a decision about the suit.

Article 51<sup>447</sup> stipulates that the decision made by PCSLDs in labour suits must include reasons for the decision. It must also include the reply to all defences raised by the defendant during sessions.

Article 22 grants the disputing parties or their legal agents the right of having an endorsed copy of the decision made by the commission in the labour suit.<sup>448</sup>

In case of ambiguity in interpreting the decision made by PCSLDs in labour suits, opponents may request interpretation from the Commission, based on Article 55 of the labour regulations.<sup>449</sup>

According to Article 52, the Preliminary Commission that made the decision may correct errors in the said decision, whether they are material, calculation, or writing errors, by a spontaneous decision or at the request of one disputing party.<sup>450</sup>

The Regulation of Pleadings Proceedings of 1970 does not include a text binding PCSLDs to issue a decision in labour suits in separate public sessions.

### **7.3.6 Pretext of the PCSLDs decisions and the extent to which they can be appealed**

According to Article 214/ 2 of the Saudi labour law:

The Preliminary Commission shall have jurisdiction to:

(2) Render preliminary decisions on:

(2.1) Labour disputes the value of which exceeds ten thousand riyals.

(2.2) Disputes over compensations for work injuries, irrespective of the amount of the compensation.

(2.3) Disputes over termination of service.

(2.4) Imposition of the punishments provided for in this Law for a violation the punishment of which exceeds five thousand riyals and violations with a combined punishment exceeding five thousand riyals.

(2.5) Imposition of punishments on violations punishable by fines and consequential punishments.<sup>451</sup>

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<sup>447</sup>Regulation of Pleadings Proceedings before the Commissions for the Settlement of Labour Disputes, above n 393 art 51.

<sup>448</sup>Ibid art 22.

<sup>449</sup>Ibid art 55.

<sup>450</sup>Ibid art 52.

<sup>451</sup>Saudi Labour Law of 2005, above n 44, art 214/2.

Previous cases the decisions made by PCSLDs are not final and can be appealed before a HCSLD. Hence, one or both parties may appeal against the decision of a PCSLDs within thirty days from the day the decision is proclaimed in the presence of the parties, and from the date of notification in other cases (when the decision is in absentia), according to Article 217 of Saudi Labour Law:

Decisions may be appealed within thirty days from the date of utterance of the preliminary circuit's decisions made in the presence of the parties and from the date of notification in other cases.<sup>452</sup>

If the decision of the PCSLDs is not appealed by any party during that period, then the Commission's decision is final, decisive, enforceable, and non-appealable, according to Article 218 of the current Labour Law:

If the decision of the preliminary circuit is not appealed within the period specified in the previous Article, the decision shall be deemed final and enforceable. All decisions of the circuits of the High Commission shall be deemed enforceable from the date of their issuance.<sup>453</sup>

On the other hand, there is an exception to the possibility of appealing decisions issued by PCSLDs before a HCSLD. Saudi Labour Law of 2005 can determine few disputes in which the decision issued by a PCSLDs is final, enforceable, and non-appealable before a HCSLD, according to Article 214/1, which states that:

The Preliminary Commission shall have jurisdiction to:

(1) Render final decisions on:

(1.1) Labour disputes, irrespective of their type, the value of which does not exceed ten thousand riyals.

(1.2) Objection to the penalty imposed by the employer upon the worker.

(1.3) Imposition of the punishments provided for in this Law for a violation of which the punishment does not exceed five thousand riyals and violations with a combined punishment not exceeding five thousand riyals.<sup>454</sup>

The reason for this exception is that such disputes are less important and it is easier to issue a decision about them because of the low sum requested in such disputes. Therefore, Saudi legislators were keen to produce quick rulings for this type of dispute, making the final decision in the interests of the disputing parties.<sup>455</sup> The finality of such decisions is a positive aspect as it reduces the number of cases examined by the HCSLD, thus not wasting the HCSLD's time on simpler, less important disputes.

#### **7.4 Rules and Procedures of litigation (*appeal*) before the HCSLD in the KSA where one or both parties have appealed against the decision made by a PCSLDs.**

If either or both of the dispute parties wish to appeal against a decision issued by the PCSLDs, then they must submit an appeal request directly to the HCSLD. Also, the

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<sup>452</sup>Ibid art 217.

<sup>453</sup>Ibid art 218.

<sup>454</sup>Ibid art 214/1.

<sup>455</sup>Al-Fawzan, above n 8, 422; Al-Shobrumi, above n 394, 49.

appealing party may submit an appeal request to the Preliminary Commission that issued the decision. That Commission then refers the appeal to the HCSLD, according to Article 66.<sup>456</sup> An appeal request before the HCSLD is the only method set by Saudi labour law for objecting to non-final decisions made by PCSLDs.<sup>457</sup>

There are four stipulations for an appeal to the HCSLD to be legal and correct. These stipulations are called the formal stipulations for accepting appeals in the HCSLD.

First, the appeal must be submitted by one party of the labour suit in which the Preliminary Commission issued a decision.<sup>458</sup> Second, the appeal must have been submitted within the legal duration for accepting appeals, which is 30 days from the date of notification of the decision issued by the Preliminary Commission.<sup>459</sup> Third, the appeal request must include the number of the Preliminary Commission's decision to be appealed, its content, and the appeal reasons and requests.<sup>460</sup> Finally, for the appeal to be formally valid, the appealed decision of the Preliminary Commission must be subject to an appeal before the HCSLD and is not final.

According to Article 70,<sup>461</sup> an appeal against the decisions of the PCSLDs submitted by one disputing party will halt the execution of the commission's decision. In that case, the HCSLD becomes the judicial authority having jurisdiction over the dispute.

#### **7.4.1 Setting the date of the appeal session before the HCSLD and informing parties.**

According to Article 63, the dates of judicial sessions before the HCSLD are determined by the president of the Commission.<sup>462</sup>

All parties to a suit are informed of the dates of appeal sessions before the HCSLD according to the same procedures followed in PCSLDs,<sup>463</sup> the details of which can be found under the section dealing with litigation procedures before a PCSLDs (see sub chapter 7.3.1).

#### **7.4.2 Rules regarding absence from appeal sessions at the HCSLD**

According to Article 68<sup>464</sup>, if one disputing party is absent from the first appeal session before the HCSLD but the other party is present, whether it be either the appellant or the party appealed against, the HCSLD postpones the appeal to another session. In this case, the absent party is to be informed of the date of the second session. However, according to the previous article, if the party absent from the first session is also absent from the second session, then the HCSLD decides upon the appeal if the party present requests it. This means that if the

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<sup>456</sup>Regulation of Pleadings Proceedings before the Commissions for the Settlement of Labour Disputes, above n 393, art 62.

<sup>457</sup>Al-Dakmy, above n 293, 18.

<sup>458</sup>Al-Kialy, above n 16, 501.

<sup>459</sup>Naal, above n 18, 298.

<sup>460</sup>Regulation of Pleadings Proceedings before the Commissions for the Settlement of Labour Disputes, above n 393, art 64.

<sup>461</sup>Ibid art 70.

<sup>462</sup>Ibid art 63.

<sup>463</sup>Al-Kialy, above n 16, 305

<sup>464</sup>Regulation of Pleadings Proceedings before the Commissions for the Settlement of Labour Disputes, above n 393, art 68.

appealer did not appear for two consecutive sessions before the HCSLD, with the party appealed against being present, then the Commission examines the appeal at the request of the party present and issues a decision to reject the appeal.

An example of a judicial precedent is when the appellant does not appear for two consecutive sessions, with the party appealed against present and requesting a decision be made about the suit. In this case, the decision issued by the HCSLD was:

As the appellant was absent in two sessions determined by the second circle of the High Commission, despite being informed of the date in both times, and as the appealed-on requested deciding upon the suit, and based on Article 68 of the arguments regulations, the High Commission accepts the request by the appealed-on to decide upon the suit. As the appellant did not appear, this shows non-concern about the appeal request he submitted. So the second circle of the Jeddah High Commission decides unanimously to reject the appeal against the Preliminary Commissions' decision no. 153.<sup>465</sup>

If all parties to the suit, appellant and the party appealed against, do not attend an appeal session before the HCSLD, the suit is crossed off according to Article 69.<sup>466</sup>

For example, in a previous suit heard by the HCSLD, the parties to the appealed suit did not appear before the HCSLD. Hence, the suit was crossed off by the Commission. The decision was:

The second circle of the High Commission determined a date for the appealed suit. Neither party was present despite being informed. Since presence is essential for confronting each party with the other party's defences, and based on Article 69 the Regulation of pleadings proceedings before the Commissions for the Settlement of Labour Disputes of 1970, the second circle of the High Commission unanimously decides to cross it off.<sup>467</sup>

The Regulation of Pleadings Proceedings of 1970 does not include any legal text stating the legal effect resulting from writing off the labour suit but the tradition in HCSLD, when the Commission crosses off the suit, is that the suit may be re-examined before that Commission if the appellant applies to the president of the HCSLD for the suit to be re-examined.

#### **7.4.3 The order and management of appeal sessions in the HCSLD**

An appeal session at a HCSLD is conducted by three members who are Case Examiners and who, together, make a decision about the appeal; one of the three is appointed head of the session. The appellant starts first by submitting his requests concerning the suit. Then the party appealed against is granted the right to reply and defend. This may take more than one judicial session.<sup>468</sup>

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<sup>465</sup>*Decision of High Commission for Settlement of Labour Disputes Second Circle in Jeddah* (Saudi Arabia), No. 873/2/431, 27 Shaban 1431 H – 08 August 2010.

<sup>466</sup>Regulation of Pleadings Proceedings before the Commissions for the Settlement of Labour Disputes, above n 393, art 69.

<sup>467</sup>*Decision of High Commission for Settlement of Labour Disputes Second Circle of Jeddah* (Saudi Arabia), No. 243/2/434, 26 Safer 1434 H – 29 January 2013.

<sup>468</sup>Al-Kialy, above n 16, 507.

According to Article 66, neither of the parties to a labour suit examined by a HCSLD is allowed to submit new requests during appeal sessions.<sup>469</sup> New requests are requests that were not previously submitted by the dispute parties during litigation before the PCSLDs.<sup>470</sup> Also, during an appeal before the HCSLD, other people who were not part of the dispute before the PCSLDs, cannot be included according to Article 67.<sup>471</sup>

#### **7.4.4 Closing arguments in an appealed suit and the issuance of the HCSLD decision**

After both parties finish their arguments and submit their requests and defences, the appointed head presents closing arguments in relation to the appeal request and subsequently issues a decision. The three HCSLD members examine the appeal together and issue a majority decision.

According to Article 71<sup>472</sup>, members of a HCSLD have jurisdiction over the appeal and are to first make sure of the formal stipulations for accepting the appeal. If the formal stipulations do not exist, then the HCSLD issues a decision to reject the appeal and confirms the Preliminary Commission's decision. If formal stipulations do exist, then the three members examine the appeal request.

If the Preliminary Commission's decision is found to be correct and not in violation of the labour law in result and content, then the HCSLD rejects the appeal and confirms the decision by the Preliminary Commission, thus making it final.<sup>473</sup> However, if the HCSLD finds the decision of the Preliminary Commission to be incorrect or in violation of labour law, then the appeal is accepted as issued and the Preliminary Commission's decision is revoked, either in part or in whole. Hence, the HCSLD issues a final decision in the labour suit under dispute.<sup>474</sup>

#### **7.4.5 Decisions of the HCSLD are final and enforceable**

Judicial decisions issued by the HCSLD are final, not liable to appeal, and enforceable, based on Article 218 of Saudi Labour Law and Article 59 of the Regulation of 1970.<sup>475</sup>

Article 218 states that:

All decisions of the circuits of the High Commission shall be deemed enforceable from the date of their issuance.<sup>476</sup>

Parties to a labour dispute are not allowed to present the dispute issue before any other judicial authority in the KSA if a final decision has been made by the CSLDs.

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<sup>469</sup>Regulation of Pleadings Proceedings before the Commissions for the Settlement of Labour Disputes, above n 393, art 66.

<sup>470</sup>Al-Shobrumi, above n 394, 51.

<sup>471</sup>Regulation of Pleadings Proceedings before the Commissions for the Settlement of Labour Disputes, above n 393, art 67.

<sup>472</sup>Ibid art 71.

<sup>473</sup>Ibid art 72.

<sup>474</sup>Ibid art 73.

<sup>475</sup>Ibid art 59.

<sup>476</sup>Saudi Labour Law of 2005, above n 44, art 218.

This is based on Article 225:

Neither of the disputing parties may bring the dispute, upon which a final decision has been rendered by one of the commissions provided for in this Part, before this Commission or other judicial bodies.<sup>477</sup>

It seems that the purpose of this article is to ensure that the judicial settlement of labour disputes is done decisively by the CSLDs. It is also done to protect the legal grounds on which the final decision was made by the CSLDs.

Moreover, according to the previous article, the ban on re-visiting a dispute in which a final decision by a CSLDs has been made is not limited to such commissions but also any other judicial authority in the KSA, such as Shari'ah Courts and the Grievance Board.<sup>478</sup> Thus, the article concludes any debate concerning the correctness of bringing labour disputes before other judicial bodies where a final verdict has been issued by CSLDs for the Settlement of Labour Disputes. This is important as it used to happen in some labour disputes under previous Saudi Labour Laws.

#### **7.4.6 The legality of relinquishment and reconciliation in labour disputes during litigation before CSLDs**

Article 47 of Regulations of 1970 grants the plaintiff the right to relinquish the labour suit during litigation before CSLDs. According to this article, for the relinquishment to be correct, it must come from the plaintiff during the session, or from his agent authorized to do so.<sup>479</sup> Also, the agreement of the defendant is not needed for relinquishment.<sup>480</sup>

The labour suit parties may, during litigation before CSLDs, resolve the dispute by way of reconciliation, provided that the HCSLD has issued no final decision. Reconciliation is to be written in official proceedings and has executive power after being documented by the commission examining the suit.<sup>481</sup>

#### **7.5 Evaluation of the judicial settlement method by way of CSLDs in resolving labour disputes currently in the KSA**

The judicial settlement procedures of labour disputes heard by the CSLDs have previously been reviewed. Now, this method of judicial settlement will be considered and evaluated in order to highlight the problems which workers and employers encounter in the KSA, especially when resolving their labour disputes by judicial settlement before CSLDs.

The discussion will be in three parts:

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<sup>477</sup>Ibid, art 225.

<sup>478</sup>Megahed, above n 49, 174.

<sup>479</sup>Regulation of Pleadings Proceedings before the Commissions for the Settlement of Labour Disputes, above n 393, art 47.

<sup>480</sup>Al-Kialy, above n 16, 478.

<sup>481</sup>Fakhry, above n 157, 148.

Part one: The effectiveness of the current legal system under which litigation procedures are conducted before CSLDs.

Part two: The duration taken by the method of judicial settlement by CSLDs.

Part three: Costs incurred by parties to the labour dispute as a result of judicial resolution by CSLDs.

## **7.5.1 The effectiveness of litigation and pleadings procedures currently used before CSLDs to resolving labour disputes in the KSA**

### **7.5.1.1 Advantages**

The most important merits of litigation procedures used for labour disputes in commissions currently used in the KSA to resolve labour disputes is that litigation before these commissions is done at two levels, the first one being the PCSLDs and the second one the HCSLD.<sup>482</sup>

As PCSLDs are considered the first level of litigation, parties to most labour dispute are entitled to appeal to the HCSLDs in relation to any decision made by a PCSLDs. There is no doubt that this right of appeal gives both litigants a chance to rectify any mistakes made during litigation before a PCSLDs and to present their defences. Also, as litigation is on two levels, it further ensures the fairness of the decision in labour disputes in Saudi Arabia where, in the case of an appeal, the HCSLD corrects the errors or mistakes made by the PCSLDs.<sup>483</sup>

This is what actually happens in many cases of labour disputes in which the decision made by the PCSLDs does not convince one of the conflicting parties and they appeal to the HCSLD where the appeal was accepted. An example of this is labour case No. 591, where a decision was taken by the Preliminary Commission in Jeddah. There the commission rejected the plaintiff's lawsuit, including all its requests, due to the lack of a labour relationship according to Saudi Labour Law between the plaintiff and the defendant.<sup>484</sup> Since the plaintiff was not convinced by that decision, he appealed it before the HCSLD First Circle in Riyadh city. And the HCSLD accepted the appeal, in both form and substance, and overturned the decision of the Preliminary Commission in Jeddah city, ruling in favour of the plaintiff instead.<sup>485</sup>

### **7.5.1.2 Disadvantages**

It could be argued that there are many disadvantages and problems related to the procedures and rules of litigation that currently apply in CSLDs. One of these disadvantages is that the Regulation of Pleadings Proceedings before the CSLDs of 1970 is outdated and lacks many modern legal regulations. Other disadvantages include: the lack of an official translation of the Regulation of Pleadings Proceedings of 1970; court sessions before the CSLDs are closed

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<sup>482</sup>Al-Fawzan, above n 8, 420.

<sup>483</sup>Khafagi, above n 10, 126.

<sup>484</sup>*Decision of Preliminary Commission for the Settlement of Labour Disputes branch of Jeddah* (Saudi Arabia), No 491, 24 Ramadan 1424 H – 19 November 2003, Case no. 591.

<sup>485</sup>*Decision of High Commission for Settlement of Labour Disputes First Circle in Riyadh* (Saudi Arabia), No. 814/1/1291, 27 Muharam 1427 H – 26 February 2006.

to the public; non-lawyers are permitted to attend court hearings and argue before labour dispute settlement commissions on behalf of the parties of the labour dispute; and, a labour dispute cannot be heard by a CSLDs after a lapse of 12 months from the date when the labour relationship ended.

Most of these disadvantages and problems are related to the Regulation of Pleadings Proceedings before the CSLDs of 1970, through which litigation and arguments are done before the CSLDs. The most prominent of these problems will now be discussed.

First, among the disadvantages of the Regulation of Pleadings Proceedings before the CSLDs of 1970 currently still in force (use) before CSLDs in the KSA is the fact that they lack many of the modern legal regulations relating to the procedure of litigation before the labour judicial authority. The reason for this is the fact that the Regulation of 1970 was issued more than 44 years ago in an era when labour disputes in the KSA were fewer and simpler.<sup>486</sup>

However, as labour relationships have become more complicated and labour disputes in the KSA more frequent, the Regulation of Pleadings Proceedings of 1970 is no longer effective or appropriate for organizing procedures and rules of litigation before the CSLDs and need several additions and amendments. This was shown at the beginning of this chapter when discussing litigation proceedings before CSLDs where it was found that the Regulation of pleadings proceedings of 1970 lacked many modern important regulations for organizing the arguments and litigation procedures to be used by those commissions. For example, the 1970 Regulation does not include any text that regulates the rules of evidence nor external requests and does not specify the cases involving the recusal and disqualification of commission members. It also does not include the identification of crimes heard before commissions and the authority of the President of the Commission, the rules of postponing hearings in the absence of the plaintiff, how cases are annulled, and the resulting legal consequences. Also, the Regulations does not include any legal organization regarding the rules of executing decisions of CSLDs.

Second, another disadvantage of the Regulation of pleadings proceedings before the CSLDs of 1970 is the lack of any official translation into English or any other language. The existence of an official translation of the regulations of 1970 is crucial as expatriate workers (non-Saudi) in the private sector, who are subject to the labour law, are estimated to number 6,937,020 which is 89% of private sector workers in the KSA in 2012.<sup>487</sup> Many of the expatriate workers in the KSA are from non-Arab countries and are not fluent in Arabic, with English currently being the language used in many private sector facilities and companies.

The problem of a lack of translation has been confirmed by some jurists. For example, according to lawyer Al-Shemari:

The problem in litigation procedures of dispute settlement commissions is that they are not based on clear litigation and pleadings regulation, translated into foreign

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<sup>486</sup> Regulation of Pleadings Proceedings before the Commissions for the Settlement of Labour Disputes, above n 393.

<sup>487</sup> Ministry of Labour (Saudi Arabia), *The Annual Statistical Book for 2012* (15 July 2014) <<http://portal.mol.gov.sa/ar/Statistics/Pages/default.aspx?m=8>>.

languages. This is passive, as most of the beneficiaries of its services are foreigners working in the Saudi market.<sup>488</sup>

Thus, the lack of an official translation of the Regulation of Pleadings Proceedings before the CSLDs of 1970 into different languages means that non-Arabic workers are not aware of the rules and procedures for the judicial settlement of labour disputes. Besides, they also do not know the rights of litigants before the CSLDs.

Third, another disadvantage is the lack of the application of the principle of public hearings by CSLDs when ruling on labour suits. If litigation sessions are open to the public, then anyone, the public or the media, can attend court sessions from the outset and witness all proceedings in relation to the case. The principle of publicity also obliges the judicial commission to pronounce its rulings in public sessions, in addition to the obligatory publication of judgments and judicial decisions. However, the principle of sessions being public is not absolute. There is an exception, for example, if the judge on his own or at the request of a litigant closes the hearing in order to maintain order, observe public morality, or to safeguard the privacy of families involved.<sup>489</sup>

The principle of public litigation sessions is one of the basic principles of comparative law. Public sessions allow for the supervision of proceedings and the monitoring of the work of judicial commissions during the trial stage. There is no doubt that this generates confidence and trust in the impartiality of the judiciary, and encourages judges to take care and commit to the full application of the law, and to achieve the requirements of justice.<sup>490</sup>

The principle of public sessions is applied in Shari'ah courts in the KSA.<sup>491</sup> Also, the principle of public sessions is applied in most labour courts in Arab and GCC countries; for example, stipulations relating to this are found in the Kuwaiti Procedures Act 64<sup>492</sup> and the Egyptian Procedures Act, Article no.101.<sup>493</sup>

In contrast, The CSLDs in the KSA do not apply the principle of public court hearings when ruling in labour cases; in litigation sessions in labour disputes, whether in PCSLDs or HCSLD, only parties to the dispute and their representatives are allowed to be present, with

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<sup>488</sup> Muhammad Al-Shemari, 'Development of the Commissions for the Settlement of Labour', *Al-Sharq* (online), 15 March 2012 <<http://www.alsharq.net.sa/2012/03/15/165361>>.

<sup>489</sup> Naasr Al-Joffan, 'Public Sessions of Litigation in Kingdom of Saudi Arabia' (2004) 5 (1) *Journal of Justice* 10,34 <[http://adl.moj.gov.sa/topic\\_d\\_d.aspx?ID=5&IDd=95](http://adl.moj.gov.sa/topic_d_d.aspx?ID=5&IDd=95)>.

<sup>490</sup> T Dewedar and M Kouman, *Comments on Provisions of Legitimate Pleading Law in Kingdom of Saudi Arabia* (Monshaah Al-Maaraf, 2001) 78.

<sup>491</sup> Law of Procedure Before Shariah Courts (Saudi Arabia), above n 317, art 62. It states that 'Proceedings shall be in open court unless the judge on his own or at the request of an litigant closes the hearing in order to maintain order, observe public morality, or for the privacy of the family'.

<sup>492</sup> *Kuwait Civil and Commercial Procedure Law No. 38 of 1980* (State of Kuwait), art 64 <<http://www.gcc-legal.org/BrowseLawOption.aspx?country=1&LawID=1008>>.

It states that 'The argument shall be public, unless the court from its own motion or at the request of one of litigants to make it secret ,for keeping public order, or for considerations of ethics, or the sanctity of the family'.

<sup>493</sup> *Egyptian Civil and Commercial Procedure Law No. 13 of 1968* (Arab Republic of Egypt), art 101. (Copy in Arabic on file with author) It states that 'The argument shall be public unless the court of its own motion or at the request of one of the litigants to make it secret , for keeping public order, or for considerations of ethics, or the sanctity of the family'.

no public allowed to attend. In addition, the CSLDs in the KSA do not publish their judgments and they are not allowed to be seen by anyone not involved in the conflict.

It seems that the main reason for not applying the principle of public hearings in CSLDs is the absence of an explicit provision in Regulation of pleadings proceedings before the CSLDs of 1970 allowing such sessions to be made public. Another factor is the lack of large venues appropriate for the public hearing of litigation in all branches of CSLDs. This represents an obstacle to people attending sessions in such commissions. Usually, the trial proceedings are conducted in very small rooms that can barely accommodate the parties to the labour suit in the heard case.<sup>494</sup>

Nevertheless, it seems clear that not allowing litigation sessions to be public is a problem for the labour judicial system in the KSA as it results in litigation losing an important controlling guarantee for the sound application of law and justice. It also causes litigants to have doubts about decisions issued by commissions.

Moreover, it could be argued that one of disadvantage of the current litigation procedures before the CSLDs in the KSA is allowing parties to the labour dispute to appoint non-lawyers to file a labour suit, attend sessions, and argue before commissions on their behalf.

It was previously found that the Regulation of Pleadings Proceedings before the CSLDs of 1970 and the current Saudi Labour Law of 2005 allow parties to labour law suits to appoint others to come and plead on their behalf in all stages of court sessions before CSLDs in the KSA. However, the 1970 Regulation and the Saudi Labour Law of 2005 do not require that the agent in labour cases must be a lawyer licensed to practise the legal profession in the KSA. Also, Saudi legal practice does allow non-licensed lawyers to plead before all jurisdictions under specific restrictions.<sup>495</sup>

As a result, litigation hearings held before CSLDs are viewed negatively because, in many labour suits, parties to the dispute hire people who are not lawyers (referred to as "Da'uajjiah") to attend sessions and plead on their behalf. This is done mainly because of their cheap fees compared with those of lawyers.

Da'uajjiah are ordinary people who do not have any academic qualifications to practise law and do not know even the simplest provisions of the labour law and the legal rules of litigation applying to hearings held before the CSLDs. Consequently, they may in fact be fraudulent swindlers, pretending to be lawyers and exploiting the weaknesses of the regulations pertaining to the legal profession in the KSA.

Allowing Da'uajjiah to plead before CSLDs has caused many problems. The most important one is the loss of their clients' rights in many labour cases, and wasting the time of the commission, because of the large number of requests to postpone hearings and their infrequent presence at sessions. The chairman of the Saudi National Committee for Saudi lawyers confirmed that non-lawyers called "Dauajjiah" are in charge of argument on behalf of

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<sup>494</sup>Asem Algendy, *The Absence of Appropriate Halls Hinders the Application of Session Publicity in Saudi Courts*. (18 April 2010) Arab Lawyers Network  
< <http://www.mohamoon-ksa.com/>>.

<sup>495</sup>Muhammad Al-Fawzan, *Comments on Saudi Attorney Law* (Economy and Legal Library, 2<sup>nd</sup> ed, 2008) 122-129.

the lawsuit parties in 90% of cases heard in Saudi Arabian courts and judicial commissions, including CSLDs.<sup>496</sup>

Therefore, most lawyers in the KSA demand that the legislative authority eliminate this problem by stating in the Saudi legal practice law, as well as in all pleadings laws limitations applying to hearings before all judicial commissions, including CSLDs that only the litigating parties themselves or lawyers authorized to practise the law may represent parties at such hearings.<sup>497</sup>

This already applies in most Arab and GCC countries where the right to appoint others to address the lawsuit or present arguments before the judicial authorities on behalf of the dispute parties is limited only to lawyers. Examples of this are Article 54<sup>498</sup> stipulated by the Kuwaiti Procedure Law and the Egyptian Procedure Act Article no. 72.<sup>499</sup> These articles mean that Kuwait and Egypt do not allow the dispute parties, in the case of labour disputes, to hire non-lawyers to attend on their behalf, either at court hearings or to appear before the judicial authorities of labour disputes; the only exception to this is the case where there is a blood relation between the agent and one of the lawsuit parties.

Finally, arguably another disadvantage is the refusal to hear a labour dispute by a CSLDs after the lapse of 12 months from the date of ending the labour relationship.

At the beginning of this chapter it was shown that, according to Article no. 222 of the Saudi Labour Law of 2005, if the plaintiff does not bring the labour suit within a period of 12 months from the date of the end of the labour relationship, then the CSLDs may refuse to accept the case. This is called the principle of not hearing the labour suit due to the passing of the deadline for bringing the suit. However, some jurists see the time limitation on hearing labour dispute cases as positive and an advantage. For example, Al-Dakmy states that when the CSLDs does not accept the case because it has not been brought within a period of 12 months from the date of ending of the labour relationship, then this has benefits. The most important benefit is that this ensures the stability of the legal status of the parties to the labour suit, even after the legal duration has passed without the plaintiff bringing the suit. So, each party would not remain threatened by a labour suit after the lapse of a year from the end of the contract, thus impacting on the productivity and stability of labour relations.<sup>500</sup>

However, it could be argued that applying the principle of not hearing a suit after 12 months from the date of the expiration of the labour relationship has a potentially negative impact on

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<sup>496</sup> A Al-Qarni and M Al-Humaidan, 'Demands the abolition of the litigants in the informal courts', *Al-Egtisadiyah* (online), 17 February 2012

< [http://www.aleqt.com/2012/02/17/article\\_627315.html](http://www.aleqt.com/2012/02/17/article_627315.html) >.

<sup>497</sup> Nassar Al-Qosy, 'Dauajjiah Steal Litigate in the Courts', *Shms* (online), 28 April 2011

< <http://www.shms.com.sa/html/story.php?id=132848> >.

<sup>498</sup> Kuwait Civil and Commercial Procedure Law No. 38 of 1980, above n 492, art 54. It states that 'Litigants themselves attend in the designated day for the consideration of the case or bring others, on their behalf, from lawyers. The court may accept agents of their choice who are related with them by marriage, kinship or intermarriage to the fourth degree'.

<sup>499</sup> Egyptian Civil and Commercial Procedure Law No. 13 of 1968, above 493, art 72. It states that 'On the specified day for the consideration of the case, attends litigants, themselves or whom on their behalf a from lawyers, and the court will accept their representatives, of the spouses or relatives or intermarriage to the third degree'.

<sup>500</sup> Al-Dakmy, above n 293, 352.

workers' rights. For example, some employers may exploit it as follows: an employer might postpone paying workers' wages by asking workers to give him more time to pay them, and then 12 months elapse without giving workers their rights. Therefore, there must be some restrictions in Saudi labour law that limit the application of the principle of not hearing cases in order to protect workers' rights.

The idea is applied in some GCC Labour laws, specifically Kuwait, where in Kuwaiti labour law restrictions are imposed on the application of the principle of not hearing a labour suit in order to protect the rights of the worker and do not allow employers to exploit the principle. According to Article no. 144 of the Kuwaiti Labour Law,<sup>501</sup> and Article no. 422/2 of the Kuwaiti Civil law,<sup>502</sup> applying the non-hearing principle is restricted by the employer's denial of the right disputed. Also, the employer is obliged to swear that the disputed right has been given.<sup>503</sup> If the employer refuses to swear that the worker took his rights, the labour court decides the suit, even if it is brought to court after a year. Of course this restriction supports the interest of the non-hearing principle and prevents employers using it.

Another factor to consider is that 12 months is a short duration, and has an impact on workers' rights earned under Saudi Labour Law. This is further confirmed by the fact that labour laws in some Arab countries apply the non-hearing principle but after two years have elapsed from the date of ending the labour relationship. An example is the Jordanian Labour Law in Article 138/B.<sup>504</sup>

### **7.5.2 Duration taken by the method of judicial settlement in CSLDs in the KSA for resolving labour disputes**

The current Saudi Labour Law of 2005 states that the CSLDs must resolve labour disputes as soon as possible. This is according to Article 221:

Cases arising from the provisions of this Law shall be reviewed promptly.<sup>505</sup>

Also, Article 26 of the Regulation of Pleadings Proceedings of 1970 states:

Labour suits shall be promptly examined.<sup>506</sup>

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<sup>501</sup> Kuwaiti Labour Law, above n 190, art 144. It states that 'Cannot be heard when denounced - with the lapse of a Year from the date of the expiration of the labour contract, the lawsuits that are brought by workers, on the basis of the provisions of this law, applied to denouncing are the provisions of paragraph (2) of Article 442 of the Civil Act'.

<sup>502</sup> *Civil Law No. 67 of 1980* (State of Kuwait), art 442/2

<<http://www.gcc-legal.org/BrowseLawOption.aspx?country=1&LawID=1011>> (Translator with the author),

Art 442/ 2 states that 'to hold on to non-hearing, you must swear of paying the debt (the demanded sum). If a heir to the debtor or his agent, he swears of not knowing about the debt or knowing that it was paid. The court demands oath of its own'.

<sup>503</sup> Rizk, above n 277, 651.

<sup>504</sup> *Jordanian Labour Law no. 8 of 1996* (Kingdom of Jordan), art 138/ B. (Copy in Arabic on file with author) It states that 'any lawsuit for claiming any right given by this law cannot be considered after two years have passed since the reason for claiming such rights and wages arose'; Ahmed Abo-Shanab, *Explain the New Jordanian Labour Law* (Dar Al-Thaqafa for Publication and Distribution, 1997).

<sup>505</sup> Saudi Labour Law of 2005, above n 44, art 221.

The aim of these articles is to encourage the CSLDs to quickly decide upon labour disputes, as delays would prevent workers from obtaining their rights, thus causing hardship and poverty to them during litigation. It would also harm the interests of employers and their industrial facilities.<sup>507</sup> However, most parties involved in labour suits complain about the lengthy time taken by the judicial settlement method in CSLDs.<sup>508</sup>

In fact, there are various reports and articles published in Saudi newspapers confirming that delays in litigation procedures before CSLDs have become a serious problem. According to a report published in *Okaz* in 2013,<sup>509</sup> numerous workers involved in labour suits before commissions were complaining about their slowness in deciding upon suits which took longer than three years. Most such lengthy suits relate to disputed rights such as delays by employers in paying their wages or disputes of abusive discharges. The published report mentioned that workers stated that lengthy delays harmed them and their families as they often have no source of income and their future careers depend on the decisions made in such suits.

Given the importance of the problem of delays in the litigation and resolution of labour issues by CSLDs it is necessary to assess the effectiveness of the method of judicial settlement. In this regard, it is important to note that there are no previous statistics or academic studies about the duration taken for litigation before CSLDs in the KSA. Therefore, it is crucial to conduct a simple study on a sample of labour suits resolved by CSLDs in order to measure the duration taken for litigation before such commissions and determine whether decisions were made quickly or slowly.

Consequently, with the approval of the Saudi Ministry of Labour, a random sample was taken of 30 recent labour cases in different individual and collective suits decided upon by the Preliminary Commission in Jeddah. Also, the sample contained 30 labour cases appealed before the Jeddah second circle of the High Commission.<sup>510</sup> All previous cases decisions were issued in 2012.

The aim of collecting this sample was to study the time taken by the method of judicial settlement to resolve labour disputes before PCSLDs and the duration taken by appeals heard before HCSLD.

The following table and chart shows the time taken for litigation before the Jeddah Preliminary Commission for 30 suits in different labour disputes. Durations were measured

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<sup>506</sup> Regulation of Pleadings Proceedings before the Commissions for the Settlement of Labour Disputes, above n 393, art 26.

<sup>507</sup> Al-Tweijri, above n 344, 74.

<sup>508</sup> Caesar Mattawa, 'Labour Lawsuits and Delays in Adjudication', *Okaz* (online), 24 July 2012

<<http://www.okaz.com.sa/new/Issues/20120724/Con20120724519761.htm>>.

<sup>509</sup> Saleh Al-Zahrani, 'Labour Suits are Double Loss', *Okaz* (online), 26 January 2013

<<http://www.okaz.com.sa/new/Issues/20130126/Con20130126567466.htm>>.

<sup>510</sup> The sample was taken from Jeddah for many reasons: Jeddah is a metropolitan city in the Kingdom of Saudi Arabia and the economic capital. Second: Jeddah has thousands of workers in international companies and factories. Third: Jeddah's Preliminary Commission (PCSLDs) is one of the oldest and largest commissions. Fourth: Jeddah accommodates the second circle of the High commission (HCSLD). Thirty suits were selected because this the average number of decisions issued by the Jeddah preliminary and supreme commissions, and the only number we were allowed to have a copy of, after having the permission of the Minister of Labour because Commissions' decisions can't be published or seen.

starting from the dates that the suits were brought to the Preliminary Commission until the time when a decision was made by the Commission.

Sample number	Labour suit number	Duration taken until the Preliminary Commission's decision was issued, measured in months
1	814 <sup>511</sup>	29
2	997 <sup>512</sup>	21
3	1131 <sup>513</sup>	23
4	1186 <sup>514</sup>	19
5	1022 <sup>515</sup>	18
6	2152 <sup>516</sup>	65
7	330 <sup>517</sup>	16
8	1075 <sup>518</sup>	16
9	951 <sup>519</sup>	23
10	944 <sup>520</sup>	27
11	879 <sup>521</sup>	20
12	799 <sup>522</sup>	13
13	802 <sup>523</sup>	14

<sup>511</sup> *Decision of Preliminary Commission for Settlement of Labour Disputes Branch of Jeddah* (Saudi Arabia), No. 29, 18 Muharram 1434 H - 02 December 2012, Case No. 814.

<sup>512</sup> *Decision of Preliminary Commission for Settlement of Labour Disputes Branch of Jeddah* (Saudi Arabia), No. 83, 02 Muharram 1434 H - 16 November 2012, Case No. 997.

<sup>513</sup> *Decision of Preliminary Commission for Settlement of Labour Disputes Branch of Jeddah* (Saudi Arabia), No. 111, 28 Muharram 134 H - 12 December 2012, Case No. 1131.

<sup>514</sup> *Decision of Preliminary Commission for Settlement of Labour Disputes Branch of Jeddah* (Saudi Arabia), No. 118, 02 Safar 1434 H 16 December 2012, Case No 1186.

<sup>515</sup> *Decision of Preliminary Commission for Settlement of Labour Disputes Branch of Jeddah* (Saudi Arabia), No. 88, 21 Muharram 1434 H – 05 December 2012, Case no. 1032.

<sup>516</sup> *Decision of Preliminary Commission for Settlement of Labour Disputes Branch of Jeddah* (Saudi Arabia), No. 251, 13 Rabia Awal 1433 H – 06 February 2012, Case no. 2152.

<sup>517</sup> *Decision of Preliminary Commission for Settlement of Labour Disputes Branch of Jeddah* (Saudi Arabia), No. 139, 05 Safar 1432 H - 19 December 2012, Case no. 330.

<sup>518</sup> *Decision of Preliminary Commission for Settlement of Labour Disputes Branch of Jeddah* (Saudi Arabia), No. 97, 25 Muharram 1443 H – 09 December 2012, Case no. 1075.

<sup>519</sup> *Decision of Preliminary Commission for Settlement of Labour Disputes Branch of Jeddah* (Saudi Arabia), No. 59, 20 Muharram 1434 H – 13 December 2012, Case no. 951.

<sup>520</sup> *Decision of Preliminary Commission for Settlement of Labour Disputes Branch of Jeddah* (Saudi Arabia), No. 51, 19 Muharram 1443 H – 13 December 2012, Case no. 944.

<sup>521</sup> *Decision of Preliminary Commission for Settlement of Labour Disputes Branch of Jeddah* (Saudi Arabia), No. 43, 19 Muharram 1434 H – 13 December 2012, Case no. 879.

<sup>522</sup> *Decision of Preliminary Commission for Settlement of Labour Disputes Branch of Jeddah* (Saudi Arabia), No. 14, 17 Muharram 1443 H - 17 December 2012, Case no. 799.

14	798 <sup>524</sup>	9
15	1476 <sup>525</sup>	11
16	967 <sup>526</sup>	12
17	1027 <sup>527</sup>	11
18	1269 <sup>528</sup>	20
19	804 <sup>529</sup>	18
20	336 <sup>530</sup>	25
21	161 <sup>531</sup>	15
22	1030 <sup>532</sup>	14
23	1078 <sup>533</sup>	15
24	1311 <sup>534</sup>	13
25	948 <sup>535</sup>	14
26	817 <sup>536</sup>	15
27	2104 <sup>537</sup>	36
28	528 <sup>538</sup>	19

<sup>523</sup>Decision of Preliminary Commission for Settlement of Labour Disputes Branch of Jeddah (Saudi Arabia), No. 45, 19 Muharram 1434 H – 03 December 2012, Case no. 802.

<sup>524</sup>Decision of Preliminary Commission for Settlement of Labour Disputes Branch of Jeddah (Saudi Arabia), No. 15, 17 Muharram 1434 H – 01 December 2012, Case no. 798.

<sup>525</sup>Decision of Preliminary Commission for Settlement of Labour Disputes Branch of Jeddah (Saudi Arabia), No. 208, 9 Safar 1434 H - 23 December 2012, Case no. 1476.

<sup>526</sup>Decision of Preliminary Commission for Settlement of Labour Disputes Branch of Jeddah (Saudi Arabia), No. 92, 21 Muharram 1434 H - 05 December 2012, Case no. 967.

<sup>527</sup>Decision of Preliminary Commission for Settlement of Labour Disputes Branch of Jeddah (Saudi Arabia), No. 100, 25 Muharram 1434 H - 09 December 2012, Case no. 1027.

<sup>528</sup>Decision of Preliminary Commission for Settlement of Labour Disputes Branch of Jeddah (Saudi Arabia), No. 133, 4 Safar 1434 H - 18 December 2012, Case no. 1269.

<sup>529</sup>Decision of Preliminary Commission for Settlement of Labour Disputes Branch of Jeddah (Saudi Arabia), No. 22, 18 Muharram 1434 H- 02 December 2012, Case no. 804.

<sup>530</sup>Decision of Preliminary Commission for Settlement of Labour Disputes Branch of Jeddah (Saudi Arabia), No. 5, 10 Muharram 1434 H - 24 November 2012, Case no. 336.

<sup>531</sup>Decision of Preliminary Commission for Settlement of Labour Disputes Branch of Jeddah (Saudi Arabia), No. 136, 4 Safar 1434 H - 18 December 2012, Case no. 161.

<sup>532</sup>Decision of Preliminary Commission for Settlement of Labour Disputes Branch of Jeddah (Saudi Arabia), No. 94, 24 Muharram 1434 H - 08 December 2012, Case no. 1030.

<sup>533</sup>Decision of Preliminary Commission for Settlement of Labour Disputes Branch of Jeddah (Saudi Arabia), No. 107, 28 Muharram 1434 H - 12 December 2012, Case no. 1078.

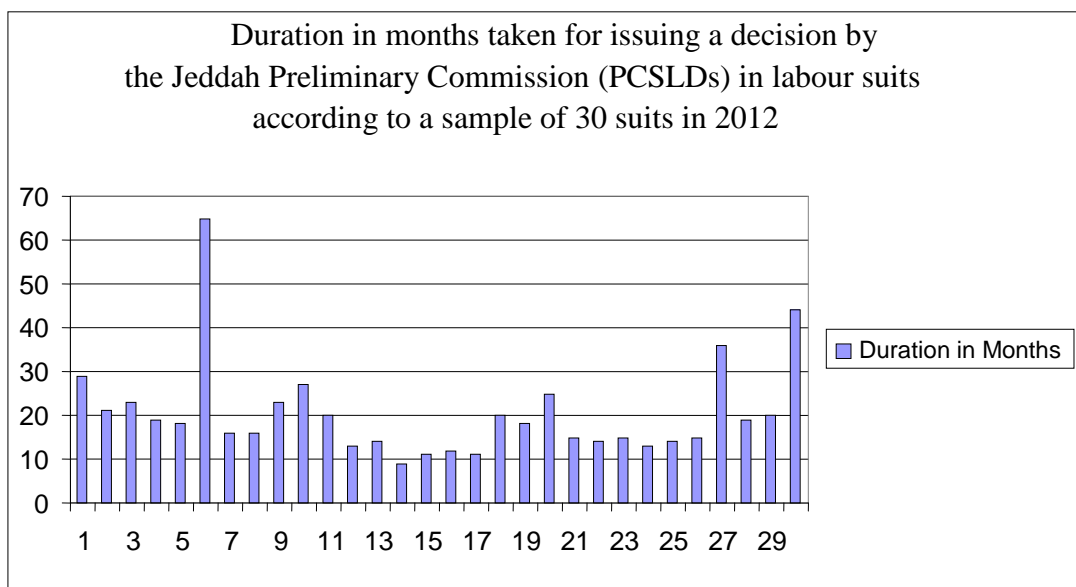
<sup>534</sup>Decision of Preliminary Commission for Settlement of Labour Disputes Branch of Jeddah (Saudi Arabia), No. 137, 5 Safar 1434 H - 19 December 2012, Case no. 1311.

<sup>535</sup>Decision of Preliminary Commission for Settlement of Labour Disputes Branch of Jeddah (Saudi Arabia), No. 56, 20 Muharram 1434 H - 04 December 2012, Case no. 948.

<sup>536</sup>Decision of Preliminary Commission for Settlement of Labour Disputes Branch of Jeddah (Saudi Arabia), No. 32, 18 Muharram 1434 H - 02 December 2012, Case no. 817.

<sup>537</sup>Decision of Preliminary Commission for Settlement of Labour Disputes Branch of Jeddah (Saudi Arabia), No. 867, 21 Jumaada Thani 1433 H -13 May 2012, Case no. 2104.

29	531 <sup>539</sup>	20
30	2175 <sup>540</sup>	44



The above table and chart of a 30-suit sample in 2012 shows that the shortest duration for the resolution of labour disputes by the PCSLDs branch of Jeddah was 9 months, with 65 months being the longest. The average duration in 2012 was 20.5 months.

The following table and chart shows the duration taken in litigation before the HCSLD for 30 suits in 2012 in different labour disputes. The duration is measured from the starting date of submitting appeals by a dispute party to the commission until a decision is made.

Sample number	Decision and labour suit number	Duration taken until the High Commission decision was issued, measured in months
1	433/2/918 <sup>541</sup>	17
2	433/2/798 <sup>542</sup>	23

<sup>538</sup> *Decision of Preliminary Commission for Settlement of Labour Disputes Branch of Jeddah (Saudi Arabia), No. 184, 22 Muharram 1433 H - 17 January 2012, Case no. 528.*

<sup>539</sup> *Decision of Preliminary Commission for Settlement of Labour Disputes Branch of Jeddah (Saudi Arabia), No. 1031, 30 Rajab 1433 H- 30 June 2012, Case no. 531.*

<sup>540</sup> *Decision of Preliminary Commission for Settlement of Labour Disputes Branch of Jeddah (Saudi Arabia), No. 255, 15 Rabia Awal 1433 H - 08 February 2012, Case no. 2175.*

<sup>541</sup> *Decision of High Commission for Settlement of Labour Disputes Second Circle in Jeddah (Saudi Arabia), No. 918/2/433, 6 Ramadan 1433 H –25 July 2012.*

<sup>542</sup> *Decision of High Commission for Settlement of Labour Disputes Second Circle in Jeddah (Saudi Arabia), No. 798/2/433, 23 Rajab 1433 H – 13 June 2012.*

3	433/2/1194 <sup>543</sup>	16
4	433/2/474 <sup>544</sup>	11
5	433/2/1160 <sup>545</sup>	16
6	433/2/1077 <sup>546</sup>	12
7	433/2/660 <sup>547</sup>	11
8	433/2/457 <sup>548</sup>	11
9	433/2/634 <sup>549</sup>	16
10	434/2/246 <sup>550</sup>	15
11	433/2/636 <sup>551</sup>	16
12	433/2/635 <sup>552</sup>	16
13	433/2/245 <sup>553</sup>	15
14	434/2/244 <sup>554</sup>	15
15	433/2/798 <sup>555</sup>	16
16	433/2/921 <sup>556</sup>	17
17	434/2/243 <sup>557</sup>	15

<sup>543</sup> *Decision of High Commission for Settlement of Labour Disputes Second Circle in Jeddah* (Saudi Arabia), No. 1194/2/433, 1 Dhul-Hijjah H – 17 October 2012.

<sup>544</sup> *Decision of High Commission for Settlement of Labour Disputes Second Circle in Jeddah* (Saudi Arabia), No. 474/2/433, 22 Jumaada Awal 1433 H – 14 April 2012.

<sup>545</sup> *Decision of High Commission for Settlement of Labour Disputes Second Circle in Jeddah* (Saudi Arabia), No. 1160/2/433, 23 Dhul-Qi'dah 1433 H – 09 October 2012.

<sup>546</sup> *Decision of High Commission for Settlement of Labour Disputes Second Circle in Jeddah* (Saudi Arabia), No. 1077/2/433, 10 Dhul-Qi'dah 1433 H – 26 September 2012.

<sup>547</sup> *Decision of High Commission for Settlement of Labour Disputes Second Circle in Jeddah* (Saudi Arabia), No. 660/2/433, 17 Jumaada Thani 1433 H – 10 May 2012.

<sup>548</sup> *Decision of High Commission for Settlement of Labour Disputes Second Circle in Jeddah* (Saudi Arabia), No. 475/2/433, 18 Jumaada Awal 1433 H – 10 April 2012.

<sup>549</sup> *Decision of High Commission for Settlement of Labour Disputes Second Circle in Jeddah* (Saudi Arabia), No. 634/2/433, 15 Jumaada Thani 1433 H – 7 May 2012.

<sup>550</sup> *Decision of High Commission for Settlement of Labour Disputes Second Circle in Jeddah* (Saudi Arabia), No. 264/2/434, 18 Safar 1434 H – 31 December 2012.

<sup>551</sup> *Decision of High Commission for Settlement of Labour Disputes Second Circle in Jeddah* (Saudi Arabia), No. 636/2/433, 15 Jumaada Thani 1433 H – 7 May 2012.

<sup>552</sup> *Decision of High Commission for Settlement of Labour Disputes Second Circle in Jeddah* (Saudi Arabia), No. 635/2/433, 15 Jumaada Thani 1433 H – 7 May 2012.

<sup>553</sup> *Decision of High Commission for Settlement of Labour Disputes Second Circle in Jeddah* (Saudi Arabia), No. 245/2/433, 26 Safar 1433 H – 21 January 2012.

<sup>554</sup> *Decision of High Commission for Settlement of Labour Disputes Second Circle in Jeddah* (Saudi Arabia), No. 244/2/434, 18 Safar 1434 H – 31 December 2012.

<sup>555</sup> *Decision of High Commission for Settlement of Labour Disputes Second Circle in Jeddah* (Saudi Arabia), No. 637/2/433, 15 H Jumaada Thani 1433 – 7 May 2012.

<sup>556</sup> *Decision of High Commission for Settlement of Labour Disputes Second Circle in Jeddah* (Saudi Arabia), No. 921/2/433, 6 Ramadan 1433 H – 25 July 2012.

18	433/2/638 <sup>558</sup>	16
19	433/2/920 <sup>559</sup>	17
20	434/2/202 <sup>560</sup>	12
21	433/2/639 <sup>561</sup>	16
22	434/2/248 <sup>562</sup>	15
23	433/2/305 <sup>563</sup>	22
24	433/2/919 <sup>564</sup>	17
25	434/2/247 <sup>565</sup>	15
26	433/2/397 <sup>566</sup>	29
27	433/2/1240 <sup>567</sup>	14
28	433/2/1104 <sup>568</sup>	15
29	433/2/1078 <sup>569</sup>	12
30	433/2/1086 <sup>570</sup>	19

<sup>557</sup> *Decision of High Commission for Settlement of Labour Disputes Second Circle in Jeddah* (Saudi Arabia), No. 243/2/434, 18 Safar 1434 H – 31 December 2012.

<sup>558</sup> *Decision of High Commission for Settlement of Labour Disputes Second Circle in Jeddah* (Saudi Arabia), No. 638/2/433, 15 Jumaada Thani 1433 H – 07 May 2012.

<sup>559</sup> *Decision of High Commission for Settlement of Labour Disputes Second Circle in Jeddah* (Saudi Arabia), No. 920/2/433, 6 Ramadan 1433 H – 25 July 2012.

<sup>560</sup> *Decision of High Commission for Settlement of Labour Disputes Second Circle in Jeddah* (Saudi Arabia), No. 202/2/434, 15 Safar 1434 H – 28 December 2012.

<sup>561</sup> *Decision of High Commission for Settlement of Labour Disputes Second Circle in Jeddah* (Saudi Arabia), No. 639/2/433, 15 Jumaada Thani 1433 H – 7 May 2012.

<sup>562</sup> *Decision of High Commission for Settlement of Labour Disputes Second Circle in Jeddah* (Saudi Arabia), No. 248/2/434, 26 Safar 1433 H – 21 January 2012.

<sup>563</sup> *Decision of High Commission for Settlement of Labour Disputes Second Circle in Jeddah* (Saudi Arabia), No. 305/2/433, 5 Rabia Thani 1433 H – 28 February 2012.

<sup>564</sup> *Decision of High Commission for Settlement of Labour Disputes Second Circle in Jeddah* (Saudi Arabia), No. 919/2/433, 6 Ramadan 1433 H – 25 July 2012.

<sup>565</sup> *Decision of High Commission for Settlement of Labour Disputes Second Circle in Jeddah* (Saudi Arabia), No. 274/2/433, 18 Safar 1433 H – 31 December 2012.

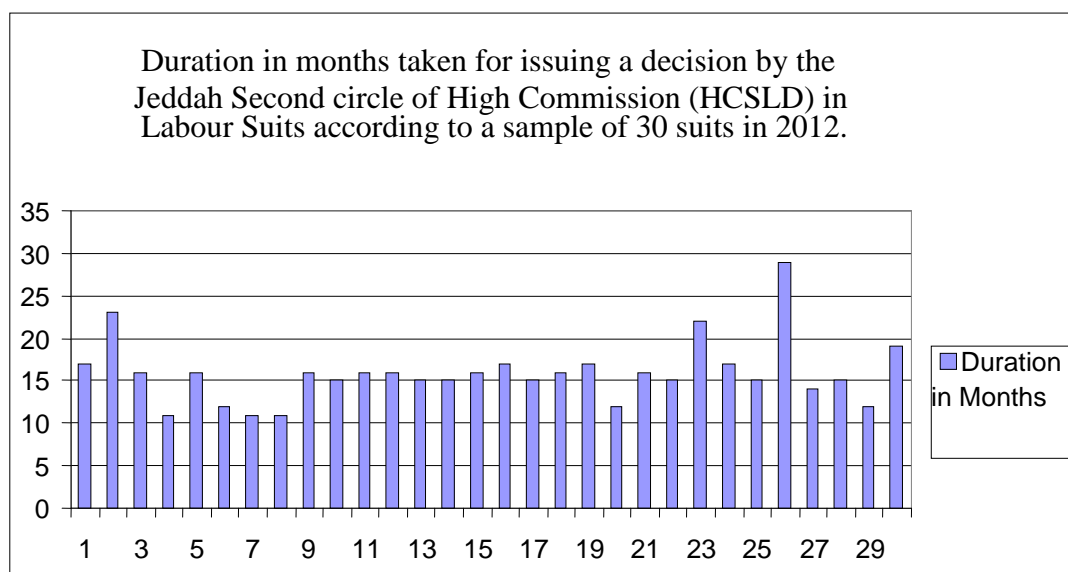
<sup>566</sup> *Decision of High Commission for Settlement of Labour Disputes Second Circle in Jeddah* (Saudi Arabia), No. 397/2/433, 27 Rabia Thani 1433 H – 21 March 2012.

<sup>567</sup> *Decision of High Commission for Settlement of Labour Disputes Second Circle in Jeddah* (Saudi Arabia), No. 1240/2/433, 10 Dhul-Qi'dah 1433 H – 26 September 2012.

<sup>568</sup> *Decision of High Commission for Settlement of Labour Disputes Second Circle in Jeddah* (Saudi Arabia), No. 1104/2/433, 12 Dhul-Qi'dah 1433 H – 28 September 2012.

<sup>569</sup> *Decision of High Commission for Settlement of Labour Disputes Second Circle in Jeddah* (Saudi Arabia), No. 1078/2/433, 10 Dhul-Qi'dah 1433 H – 26 September 2012.

<sup>570</sup> *Decision of High Commission for Settlement of Labour Disputes Second Circle in Jeddah* (Saudi Arabia), No. 1086/2/433, 25 Dhul-Hijjah 1433 H – 10 November 2012.



The above table and chart of a 30-suit sample shows that the shortest duration taken by the HCSLD second circle in Jeddah was 11 months, with 29 months being the longest. The average duration in 2012 was 16 months.

#### 7.5.2.1 What can be inferred from the above study?

The previous study confirms that using the judicial settlement method by the CSLDs for resolving labour disputes in the KSA takes a long time; it takes two years at best until a final decision is made. That is why the method of judicial settlement by CSLDs is deemed very slow in resolving labour disputes.

It is of interest that the promptness principle is found in Saudi Labour Law of 2005 in Article 221. This is totally impractical and contrary to what actually happens now in the CSLDs in the KSA.

The lengthy duration of litigation before commissions makes the resolution of labour disputes in the KSA by the commissions a significant problem, as it is the only judicial method currently used for resolving individual and collective labour disputes. The lengthy time taken to resolve disputes make the judicial resolution by commissions an exhausting one to all parties of the dispute, leaving all parties financially and psychologically damaged.

It could be said that the extended duration of resolving labour disputes also negatively affects job security and suitable work environments in the private sector, as workers are not protected against abuse by employers and are not encouraged to demand their rights. This affects young people looking for private sector jobs in the KSA, as well as foreign workers. However, employers too are harmed by the lengthy handling of labour suits. It leads to unstable legal positions of workers in the workplace and has a negative influence on labour relationships with workers and their productivity. As a result, foreign companies are not willing to work and invest in the KSA.

### 7.5.2.2 What reasons make the judicial method of resolving labour disputes by CSLDs in the KSA take such a long time to resolve the dispute?

It is very important to determine the reasons for the delays of the judicial resolution of labour disputes in the KSA by CSLDs. Once the reasons are known, it becomes easier for Saudi authorities to suggest solutions.

It seems that there are four main reasons for the slow resolution of disputes by such commissions. The first and most important of these reasons is the small number of judges (Case Examiners) available to examine suits. Second, is the low level of services available to judges in commissions. Third is the increase in the number of labour disputes in the KSA. And last, but not least, is the current legal litigation system used in such commissions. These reasons are discussed below.

Firstly, it could be argued that a major reason for the length of time taken to resolve labour disputes by CSLDs in the KSA is the small number of commissions members "Case Examiners" who are available for the much greater numbers of suits examined before such commissions.

The general manager of legal affairs in the Saudi Ministry of Labour confirmed that "Delays by CSLDs in deciding upon disputes is attributed to a shortage of judges working in these commissions."<sup>571</sup>

Also, the president of the Jeddah Preliminary Commission admits that this shortage exists and attributes delays to one reason of lengthy litigation durations before the PCSLDs is the large number of suits compared to the small number of judges assuming decision in such suits.<sup>572</sup>

Lawyers Al-Moshawah<sup>573</sup> and Osman<sup>574</sup> argue that the small number of judges in PCSLDs and HCSLD in the KSA is the main reason for the lengthy duration of litigation in labour suits. This small number of judges leads to the postponement of sessions for three to seven months due to the unavailability of earlier dates because of the large number of suits. Moreover, the study of the official statistics provided by the Saudi Ministry of Labour regarding the number of labour suits before CSLDs reveals that the number of judges is insufficient compared to the number of suits examined by those commissions. For example, the number of judges in the Jeddah Preliminary Commission is eight, whereas the number of labour suits brought there in 2012, based on official statistics issued by the Saudi Ministry of Labour, was 2051. If this figure is added to last year's 2062 unfinished suits, then the total

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<sup>571</sup>Sami Al-Ali, 'Lawyers Complaining about Delay of Hearing Labour Disputes in Commissions for the Settlement of Labour Disputes', *Middle East* (online), 18 April 2009  
<<http://www.aawsat.com/details.asp?issueno=10992&article=515556>>.

<sup>572</sup>Ahmed Al-Juhani, 'Customers of the Preliminary Commission in Jeddah Complain about Lengthy Litigation Durations', *AL-Madina* (online), 18 November 2011  
<<http://www.al-madina.com/node/338981>>.

<sup>573</sup>Muhammad Al-Moshwah, 'Labour Commissions Oh! Minister of Labour'. *Okaz* (online), 12 May 2011  
<<http://www.okaz.com.sa/New/Issues/20110512/Con20110512418963.htm>>.

<sup>574</sup>Khalid Osman, 'Slow Litigation before the High Commission for the Settlement of Labour Disputes', *Al-Egtisadiyah* (online), 01 March 2008  
<[http://www.aleqt.com/2008/03/01/article\\_11680.html](http://www.aleqt.com/2008/03/01/article_11680.html)>.

number of examined suits in the Jeddah Preliminary Commission in this year alone is 4113 labour suits.<sup>575</sup>

In addition, the problem of too few judges is also found in the HCSLD; however, there it is exacerbated. The HCSLD has only two circuits in the KSA: one in Riyadh and the other in Jeddah (as found in Chapter 5). There were only 12 " Case Examiners/ Judges" for the HCSLD in Riyadh and Jeddah in 2012<sup>576</sup>, with 3059 suits were brought to the HCSLD in that year, with 1975 in Riyadh, and 1084 in Jeddah.<sup>577</sup> It is clear that the huge disproportionate ratio of suits to judges leads to untimely decisions regarding appeals submitted to the High Commission.

The above shows that the small number of commission judges in labour commissions in Saudi Arabia is a crucial factor in lengthening the time it takes to make decisions on labour suits.

Secondly, it seems that another reason why litigation durations in labour suits are extended is the absence of legal assistants to members of such commissions; there is no recorder for the sessions; nor is there a secretary for each member. Consequently, members carry out administrative work in addition to their judicial work. This increases their work loads and leads to the slow issuance of decisions in labour suits.<sup>578</sup>

Thirdly, it can be argued that another reason for slow decisions in labour disputes by Commissions for the Settlement of Labour Disputes is the noticeable increase in the number of labour disputes in Saudi Arabia. The following table shows that in 2011 alone, labour disputes in Saudi Arabia increased by 25% compared to 2010.<sup>579</sup>

**Number of labour disputes in the KSA in the period 2010 to 2011**

Years	Number of labour disputes brought to the Ministry of Labour	Percentage change
2010	19380	-
2011	24353	25.66

The above table shows a significant increase in the number of labour disputes in the last two years in the KSA. Of course, such an increase is an addition to the burden laid on the CSLDs,

<sup>575</sup>Ministry of Labour (Saudi Arabia), *The Annual Statistical Book for 2012*, Above n 335, 29.

<sup>576</sup>Saudi Council of Ministers Announcing Names of the Members of the High Commission for the Settlement of Labour Disputes in the KSA', *Nabbaa* (online), 3 January 2011.  
< <http://www.nabbaa.com/article-aid-6564.html>>.

<sup>577</sup>Ministry of Labour (Saudi Arabia), *The Annual Statistical Book for 2012*, above n 335, 96-98.

<sup>578</sup> Ahmed Al-Juhani, above n 572.

<sup>579</sup>Ministry of Labour (Saudi Arabia), *The Annual Statistical Book for 2010*, above 383, 82.

Ministry of Labour (Saudi Arabia), *The Annual Statistical Book for 2011* (13 February 2013) 88

< <http://portal.mol.gov.sa/ar/Statistics/Pages/default.aspx?m=8>>.

such commissions as these are the only judicial method currently used for resolving labour disputes.

Finally, it can be said that the one reason for extending the duration of litigation in labour disputes is that litigation can sometimes be a two-stage process as it may go before both PCSLDs and a HCSLD. As previously demonstrated in this chapter, most decisions by PCSLDs can be appealed before a High Commission. This would extend the duration of litigation until a final decision is issued. Some employers exploit this to harm workers and avoid paying their wages for some time.

One solution that may reduce the duration of litigation is to disallow a Preliminary Commission's decision to be appealed before a HCSLD, only allowing for cassation of nullity in case the issued decision violates the law.

This would mean that litigation in labour disputes becomes a one-stage process: appearance before a Preliminary Commission, with the High Commission becoming a cassation authority for decisions, not an appeal authority. This already applies in some Arab countries such as Lebanon. Lebanese labour law does not accept objection by appeal to decisions issued by labour courts except by cassation, without appeal and retrial.<sup>580</sup>

### **7.5.3 Costs of the judicial settlement method by CSLDs in the KSA**

It can be argued that one advantage of using CSLDs in the KSA is that litigation is free for both PCSLDs and HCSLD; litigants do not have to pay any judicial fees.<sup>581</sup> This is true for all types of labour disputes where Saudi and non-Saudi parties, employers and workers absorb all expenses related to litigation before such commissions.<sup>582</sup> Exemption from judicial fees in labour disputes is not only limited to suit fees and legal documents, but also includes administrative fees associated with copies, certificates, summaries, execution fees, and judicial advertisements fees.

The principle of free litigation is applied in all courts and judicial authorities in the KSA, although this is currently an issue of debate.

Opponents of free litigation think that enacting fees on litigation is more useful than the currently applied principle of no fees in all courts, including CSLDs. For example, lawyer Al-Shemari thinks that enacting fees in litigation in the KSA would limit the number of vexatious suits, thereby reducing the number of suits before courts and judicial authorities. Enacting litigation fees might also provide financial resources for judicial authorities, thus lightening the burden carried by the government.<sup>583</sup>

On the other hand, advocates of free litigation think that enacting litigation fees would harm litigants and would not stop vexatious suits because those who bring them would be willing

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<sup>580</sup> Hussein Hamdan, *Labour Law: Comparative Study* (Halaby Publication, 2009) 650.

<sup>581</sup> Ministry of Labour (Saudi Arabia), *Guidelines for Services Provided by the Ministry of Labour in Saudi Arabia*, above n 384, 35.

<sup>582</sup> Al-Kialy, above n 16, 422.

<sup>583</sup> Muhammad Al-Shemari, 'Reconsidering Free Litigation', *Al-Sharq* (online) 29 December 2011 <<http://www.alsharq.net.sa/2011/12/29/65645>>.

to pay such fees.<sup>584</sup> Also, enacting litigation fees is not accepted in Islam, as long as the country is rich and not in need of such fees.<sup>585</sup>

Arguably, it is important that the Saudi judicial system offer litigation at no cost because most plaintiffs in labour suits are workers with middle/low income who have to bring the suit because of injustices done to them by employers. Also, free litigation in labour disputes is aligned with systems in other Arab and GCC countries. However, litigation in most Arab countries incurs judicial and administrative fees.

For example, Kuwaiti,<sup>586</sup> Emirate<sup>587</sup> and Egyptian<sup>590</sup> Labour Laws exempt labour suits from all litigation fees.

Although litigation is free before CSLDs in the KSA, resolving labour disputes by such commissions is still very costly to parties, workers and employers. This is because litigation before CSLDs takes a long time, as has been shown. There is no doubt that extending the duration of litigation before CSLDs in the KSA results in more material and psychological costs to both parties. The most important of these is wasting the parties' time during litigation. Time is wasted until a decision is made, with no compensation possible. Also, extending the duration of litigation leads to an increase in lawyers' and agents' fees and, moreover, great financial losses are incurred by employers, particularly in unfair dismissal cases.

For example, in case no. 6/ 55626, a PCSLDs found in favour of the worker. The employer was obliged to return him to work and pay all salaries and allowances to the worker from the date he was discharged to the time he returned to work. In this case judicial judgment took 13 months.<sup>588</sup>

Litigation before such commissions incurs travel expenses, particularly before the HCSLD which has two circuits, in Riyadh and Jeddah, producing financial costs to both parties.

Although the Saudi Labour Law states in Article 227 that the commission may oblige the losing party to pay to the other party all or some expenses, the judgment here is an estimating authority granted to the commission to rule once it is convinced, and not an automatic right of the winning party.<sup>589</sup> However, the losing party is not always required to pay any compensation to the other party for suit expenses.

Hence, it can be said that litigation before CSLDs in the KSA costs both parties much, despite the fact that there are no judicial fees. Also, this method of judicial settlement costs the Saudi government and place a financial burden on the Ministry of Labour which has to

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<sup>584</sup>Nafisa Dabl, 'The Principle of Free Judiciary Requirement to Guarantee the Rights Litigation', *Alwasat Newspaper* (Manama), 3 January 2011.

<sup>585</sup>Written Workshop in the Saudi Ministry of Justice, 'Judicial Fees in Kingdom of Saudi Arabia and its Influence on Limiting Malicious Claims' (2011) (2) *Judicial Journal* 288, 306.

<sup>586</sup>Kuwaiti Labour Law, above n 190, art 144.

<sup>587</sup>United Arab Emirates Labour Law, above n 185, art 5.

<sup>588</sup>*Decision of Preliminary Commission for Settlement of Labour Disputes Branch of Riyadh* (Saudi Arabia), No 1188, 3 Rabia Thani 1434 H -14 February 2013, Case no.6 / 55626; It decision stated that: 'The defendant is obliged to return the discharged worker to his job and pay all his wages from the date he was discharged till he was returned, and considering the duration of continuous service'.

<sup>589</sup> Saudi labour Law of 2005, above n 44, art 227 states that: 'The Commission may order the losing party to pay the other party all or part of the costs incurred by him'.

pay all litigation expenses, the salaries of labour commission members and employees, legal document costs, etc.

## **7.6 Conclusion**

Previously in sub-chapter 2, the method of judicial settlement for resolving labour disputes in the KSA was discussed and evaluated. It was made clear that the judicial resolution of labour disputes in Saudi Arabia means the resolution of disputes by litigation before CSLDs. Litigation in these commissions is a two-stage process: the first stage occurs in the PCSLDs and the second in the HCSLD, which is used as an appeal authority. Also, it was explained that the law which organizes litigation procedures before CSLDs in the KSA is the 1970 Regulation of Pleadings Proceedings before the CSLDs, because the new Regulations based on the current Saudi Labour Law of 2005, have yet to be issued. Finally, in this sub-chapter, it was stated that Arabic is the only language used in procedures of judicial settlement for labour disputes in CSLDs.

In sub-chapter 3, the litigation procedures before PCSLDs were discussed, along with other factors such as: determining hearing dates; informing procedures; rules of presence and absence from judicial sessions; the organization of sessions and arguments; formal rules for accepting labour suits in PCSLDs; closing arguments; and the issuing of PCSLDs decisions in labour suits. Also, it was found that the labour arguments system allows parties to agree to postpone a labour dispute being examined in a PCSLDs for no longer than six months.

Sub-chapter 4 discussed the litigation procedures before the HCSLD where a case appealing a decision issued by a PCSLDs is heard. These procedures are: submission of an appeal; determining a date for sessions in the HCSLD; rules of presence and absence in the HCSLD; formal stipulations of appeal; procedures of appeal sessions; closing arguments in the HCSLD; and issuing decisions by the HCSLD. The discussion revealed that decisions issued by a HCSLD are final and enforceable. In addition, it was found that the 1970 Regulation of Pleadings Proceedings allows the plaintiff to relinquish the labour suit and permit a resolution by reconciliation during litigation before CSLDs.

In sub-chapter 5, the aim was to evaluate the method of judicial settlement for resolving labour disputes by determining and discussing the advantages and disadvantages of litigation heard by CSLDs. Discussion showed that one advantage of the judicial settlement method is that litigation is done in two stages, resulting in the protection of litigants' interests by ensuring justice and allowing appeals. However, there are many disadvantages in the litigation rules and pleadings procedures applying to CSLDs. It was found that the Regulation of Pleadings Proceedings of 1970, which stipulates litigation procedures in the CSLDs, is not aligned with many modern legal rules; moreover, there is no translation into other languages and court sessions are not open to the public.

Furthermore, non-lawyers are permitted to plead before CSLDs without any restrictions. Such people are usually after money and are not qualified, thus harming the parties' interests and wasting the Commissions' time. Also, there is the problem of not accepting labour suits

brought after 12 months. This duration is too short and, applied without restrictions, would infringe workers' rights.

The second part of sub-chapter 5 evaluated the effectiveness of the judicial settlement method of resolving labour disputes. It tackles the time span taken by judicial settlement via CSLDs. An examination of 30 samples of cases already decided upon by the PCSLDs branch of Jeddah, and 30 other cases of appealed suits before the HCSLD, revealed that the resolution of labour disputes in the KSA by such commissions takes a long time, often no less than two years to issue a final decision in the labour dispute. The harm to both parties of the dispute resulting from prolonging the litigation period was also discussed, as were the possible reasons for such long delays.

Several reasons were considered, the main reason being the small number of Case Examiners "judges" compared to the number of labour suits. Also, Examiners have no assistants such as session recorders, and there has been an increase in the number of labour disputes in the KSA in the last two years, with no other judicial substitutes available to CSLDs. A final reason for such delays is that it is a two-stage process involving PCSLDs (first) and HCSLD (on appeal). This leads to final decisions in disputes taking a long time to be reached.

The third part of sub-chapter 5 addressed the cost of the judicial resolution. One prominent feature of litigation by CSLDs is that it is free, with no judicial fees incurred by the disputing parties. However, it was found that resolving disputes by judicial settlement costs parties anyway as the duration taken is long, resulting in time-wasting and higher lawyer fees. In addition, litigation before such commissions incurs travel expenses, particularly before the HCSLD, which has two circuits, Riyadh and Jeddah, producing financial costs to both parties. Furthermore, the CSLDs do not oblige, in most cases, the losing party to pay for losses incurred by the other party in the labour suit. This makes a judicial resolution by commissions very costly to both parties to the dispute. Finally, it was found that because it is a free service, the KSA government incurs the costs associated with labour disputes heard by the CSLDs.

## **Chapter 8**

### **The Labour Arbitration Method as an Optional Method for Resolving Labour Disputes in the KSA**

#### **8.1 Overview**

The purpose of this chapter is to examine and evaluate the optional labour arbitration method as an alternative judicial method to CSLDs in the KSA.

This chapter will answer important questions regarding the research topic: what is meant by the arbitration method for resolving labour disputes in the KSA?; How is arbitration proceedings carried out in labour disputes currently in Saudi Arabia? And lastly, how effective is the use of arbitration method to resolve labour disputes in the KSA?

These objectives and questions are going to be addressed through a detailed discussion of several topics related to the arbitration method in the KSA. A distinction will be made between compulsory arbitration and optional arbitration in labour disputes in the KSA. Compulsory arbitration in labour disputes in several Arab and GCC countries will be briefly discussed, and whether there is compulsory arbitration in labour disputes in the KSA.

Optional arbitration in labour disputes will also be addressed in detail, as will the legitimacy of optional arbitration for resolving labour disputes in the KSA and whether the optional arbitration method can be used to resolve individual and collective labour disputes in Arab and GCC countries.

Also in this chapter, the arbitration law currently applicable when both parties to a labour dispute choose the arbitration method for resolving the dispute will be defined. Furthermore, the rules and proceedings of labour arbitration in the KSA will be discussed, and the importance of using the arbitration method in resolving labour disputes will be evaluated.

This chapter will be divided into 6 sub-chapters. Sub-chapter 1 is an overview of the chapter. Sub-chapter 2 includes a definition of the arbitration method in resolving labour disputes in the KSA. Sub-chapter 3 addresses the rules and proceedings of labour arbitration in the KSA. Sub-chapter 4 evaluates the expected advantages and disadvantages of using the arbitration method for resolving labour disputes in the KSA according to the current Saudi Arbitration Law of 2012. Finally, sub-chapter 5 concludes the chapter.

#### **8.2 Labour arbitration methods for resolving labour disputes in the KSA**

In labour disputes, the arbitration method is accepted as an alternative to formal justice proceedings in the KSA for resolving individual and collective labour disputes. Originally, the arbitration method for resolving labour disputes was an optional method, as it is not adopted for labour disputes unless the parties to a dispute agree to resolve the dispute through

arbitration. This is called “optional arbitration” (that is, arbitration is *quasi-judicial*)<sup>590</sup>. This method of arbitration is the one applied in the KSA as a means of resolving labour disputes.

Optional arbitration means that the parties to a dispute willingly choose the arbitration method to resolve the dispute, and also choose the arbitrators, the proceedings, and the arbitration rules. Therefore, the choice of optional arbitration is by the will of the parties to a dispute. An agreement on optional arbitration has two forms:<sup>591</sup> first, the parties of the labour relation agree on arbitration for resolving any labour dispute that might arise from this relation in the future; whether the arbitration clause is stipulated in the labour contract or in a separate agreement; and second, the agreement on arbitration between the parties of labour dispute after the dispute has occurred.

However, arbitration can also be compulsory for resolving some labour disputes, such as collective disputes, in some Arab labour laws.<sup>592</sup> The source of compulsory arbitration in resolving labour disputes is legislation. The labour law includes legal statements that oblige the parties to a labour dispute to resolve the dispute through compulsory arbitration by an arbitration tribunal. The law determines the members of such arbitration tribunals according to binding rules and procedures. However, compulsory arbitration (that is, arbitration that is quasi-legislative) for resolving labour disputes is not used in the KSA nevertheless, the concept and method of compulsory arbitration as a means of resolving labour arbitration will be briefly addressed. The purpose is to distinguish optional arbitration, the subject of our study, from compulsory arbitration.

### **8.2.1 Compulsory arbitration (that is, arbitration that is quasi-legislative) for resolving labour disputes**

Compulsory arbitration as a means of resolving disputes is arbitration that is based on legislative text in law. Compulsory arbitration for resolving disputes is imposed by the force of law; thus, it does not need the consent of the two parties to a labour dispute.<sup>593</sup>

As discussed in Chapter 4, compulsory arbitration is most common in labour laws in some Arab and GCC countries which adopt the compulsory arbitration method in resolving collective disputes.<sup>594</sup> For example, this is stated in Articles 127, 128 and 129 of Kuwaiti Labour Law,<sup>595</sup> Articles 130 and 131 of Qatari Labour Law,<sup>596</sup> and Articles 160 and 161 of Emirati Labour Law.<sup>597</sup> Compulsory arbitration method shall be adopted only after the failure of all other means of reaching an amicable settlement determined by labour law for resolving

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<sup>590</sup> Mahmoud Al-Tahawy, *Types of Arbitration and its Differentiate with Conciliation, Mandate and Experience* (Dar Al-Matboaat Al-Gamiaya, 2002) 79.

<sup>591</sup> Muhammad Al-Zaaby, *Arbitration Law* (Monshaah Al-Maaraaf, 2010) 58; Mahmoud Younis, *The Reference for Arbitration Principles* (Dar Al-Nahda Al-Arabia, 2009) 150-156.

<sup>592</sup> Al-Toro, above 252, 13.

<sup>593</sup> Ahmed Sheta, *Explanation of Arbitration Law* (Dar Al-Nahda, 4<sup>th</sup> ed, 2009) 59.

<sup>594</sup> Abdelhameed Al-Hafeny, *Arbitration in Collective Labour Disputes* (Kuwait University Press, 1995) 34.

<sup>595</sup> Kuwaiti Labour Law, above n 190, art 127

<sup>596</sup> Qatar Labour Law, above n 261, art 130.

<sup>597</sup> United Arab Emirates Labour Law, above n 185, art 16.

labour disputes, such as negotiations, reconciliation and mediation. The main goal of some countries using the compulsory arbitration method is to resolve collective labour disputes rapidly in order to avoid strikes.<sup>598</sup>

According to Dr Abdul-Latif, the compulsory arbitration of collective labour disputes stated in most Arab labour laws is totally different from the concept of optional arbitration stated in arbitration laws, which is commonly used to resolve commercial and civil disputes.

He sees that:

the source of compulsory arbitration in collective labour disputes is legislative text in labour law not an agreement between the parties to a dispute. Also, in the compulsory arbitration in collective labour disputes, forming the arbitration tribunal is determined by a legal text. The arbitration proceedings and rules are mostly stated in labour law, and the parties to disputes have no freedom in choosing and determining compulsory arbitration rules. On the contrary, optional arbitration gives the parties to a dispute complete freedom in choosing an arbitration method for resolving the dispute and in choosing arbitrators, the arbitration's duration, and arbitration rules and proceedings.<sup>599</sup>

According to Dr Nael:

The legal nature of compulsory arbitration in collective labour laws currently in force in most Arab countries is not arbitration, but it is a special exceptional court for collective disputes. The reason is that in compulsory arbitration in collective labour disputes there is no will of the parties to dispute.<sup>600</sup>

However, unlike some Arab and GCC countries, in the KSA there is no compulsory arbitration for the resolution of any labour disputes, including collective disputes.<sup>601</sup> The reasons for this are presented below.

As stated in the fourth chapter of this thesis, all previous and current Saudi Labour Laws do not distinguish between the methods for resolving individual and collective disputes, as all labour disputes are subject to one resolution method. In addition, the compulsory arbitration method in labour disputes adopted in most Arab and GCC countries is used to resolve collective disputes to which labour unions are a party. Moreover, the KSA does not have these kinds of collective disputes as there are no labour unions in the KSA. At present, striking (lockout) is prohibited by law in the KSA and is not a workers' right.<sup>602</sup> the KSA has not acceded to any international convention that recognizes the right of workers to strike.<sup>603</sup>

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<sup>598</sup> Al-Sayed Naal, *Arbitration in Collective Labour Disputes* (Sayed Wahba Library, 1987) 18.

<sup>599</sup> Khalfi Abdullateef, *The Peaceful Methods of Settling Collective Labour Disputes* (PhD Thesis, Ain Shams University, 1987) 393-395.

<sup>600</sup> Naal, above n 598, 104.

<sup>601</sup> Al-Toro, above n 252, 14-15.

<sup>602</sup> According to *Royal Decree* (Saudi Arabia), No. 2639/23/17 (02 Dhul-Qadah 1375 H – 11 June 1956) art 1 states that: 'The workers of companies and workers of private organizations which performs activities for the public benefits or execute public projects for the government are prohibited from leaving work or stopping to work (striking) if this was a result of agreement among three of them or more. The violator shall be recompensed by imprisonment for duration not less than one week. Everyone who incited workers or employees to leave or stop working shall be recompensed by imprisonment for duration not less than one year.'

### 8.2.2 Optional arbitration for resolving labour disputes

Dr Al Hafeny defines optional arbitration in labour disputes as arbitration that is based on the will of the parties to a dispute, not on a binding legislative text in labour law.<sup>604</sup> Therefore, optional arbitration cannot be adopted except by the agreement of the two parties to a labour dispute.

The current Saudi Labour Law of 2005 affirms the right of the parties to a dispute to choose the arbitration method as an alternative means to resolve labour disputes than formal labour justice in the KSA (CSLDs).

This is according to Article 224, which states:

The work contract parties may incorporate a clause in the work contract providing for settlement of disputes through arbitration or may agree to do so after the dispute arises. In all cases, the provisions of the Arbitration Law and its Implementing Regulations in force in the KSA shall apply.<sup>605</sup>

Dr Bardan affirms the legitimacy of using the arbitration method to resolve labour disputes in the KSA, as he says:

Saudi Arabia is the only Arab country in which the labour law includes explicit statement that grants the parties to labour relationship the right to choose resolving any individual or collective labour dispute through optional arbitration.<sup>606</sup>

Unlike the Saudi Labour Law, there are no articles in Arab and GCC labour laws that explicitly state the right of the parties to a labour relationship to choose the optional arbitration method as a means of resolving individual labour disputes and this has made this subject controversial in some countries.

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Article 2: 'The workers and employees of companies and organizations referred to in Article 1 shall not participate in a demonstration or strike with the intention of presenting any demands, even if such participation was not a result of a prior agreement. The violator shall be recompensed by imprisonment for duration not less than one year'.

Article 3: 'Everyone who uses force, violence, terror, threat, damage or otherwise of illegitimate means of violence shall be recompensed by imprisonment for duration less than two years; whether this was with the intention of facilitation of committing one of the crimes stated in the two previous articles, the intention of preventing workers and employees (referred to in the two previous articles) from working or forcing them to stop working, or the intention of forcing those who are responsible for managing the companies and organizations referred to in the two previous articles to employ or not employ one of the workers or employees or stop working.'

Article 4: 'Employer may dismiss the worker who commits one of the crimes referred to in the above three articles'.

Article 5: 'The Prince of the concerned area may decide when needed to commit the employer to dismissing any worker for committing one of the crimes referred to in Articles 1-2'.

<sup>603</sup> Turkey Al-Yahia, *Labour Strike* (Master Theses, Al-Imam Muhammad Ibn Saud Islamic University, 2008) 99.

<sup>604</sup> Al-Hafeny, above n 594, 56.

<sup>605</sup> Saudi Labour Law of 2005, above n 44, art 224.

<sup>606</sup> Eyad Bardan, *Arbitration and Public Legal System* (Halaby Legal Publication, 2004) 227.

In Lebanon, for example, some jurists consider the optional arbitration method in resolving individual labour disputes as illegal, as the rules of resolving individual disputes as stated in Lebanese labour law are related to public policy and cannot be violated.<sup>607</sup>

Meanwhile, Dr Bardan has a different opinion. He notes that:

The Lebanese Labour Law does not allow resolving individual labour disputes through optional arbitration before the end of work contract. However, after the end of a work contract, optional arbitration method may be adopted to resolve individual labour disputes.<sup>608</sup>

On the contrary, it seems that in most Arab and GCC countries there is nothing preventing the parties to a labour dispute choosing the arbitration method for resolving individual labour disputes, whether the work contract is current or after it ends.

This opinion is supported by the fact that in the provisions of the labour laws in Arab and GCC countries, there is no legal statement that prevents optional arbitration from being used to resolve individual labour disputes. In addition, under the current arbitration laws in Arab and GCC countries, individual labour disputes may be resolved through the optional arbitration method.

For example, all the provisions in Article 203 of Emirati Arbitration Law,<sup>609</sup> Article 173 of Kuwaiti Arbitration Law,<sup>610</sup> Article 190 of Qatari Arbitration Law<sup>611</sup>, Article 9 of Jordanian Arbitration Law,<sup>612</sup> and Article 11 of Egyptian Arbitration Law,<sup>613</sup> determine the specific disputes that cannot resort to arbitration. And labour disputes are not among these disputes. This means that individual labour disputes in these countries can be resolved through optional arbitration if the parties to a dispute choose this method. The optional arbitration method may be used in resolving individual labour disputes in most Arab and GCC countries, as affirmed by many researchers and jurists in Arab countries.

Al- Atten says states:

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<sup>607</sup> Esam Al-Kaysi, *Lebanon Labour Law: Collective and Individual Contracts and the Judicial of Labour* (Eshar for Publication, 3<sup>rd</sup> ed, 1997) 544.

<sup>608</sup> Bardan, above n 606, 230.

<sup>609</sup> *Arbitration Law of 1992* (United Arab Emirates), Issued Among the Civil Procedure Law No.11/1992, Chapter 3, art 203/3  
<<http://www.gcc-legal.org/BrowseLawOption.aspx?country=2&LawID=3129>>.

<sup>610</sup> *Arbitration Law of 1980* (State of Kuwait), Issued Among the Civil and Commercial Law No. 38 of 1980, Chapter 12, art 173  
<<http://www.gcc-legal.org/BrowseLawOption.aspx?country=1&LawID=1008>>.

<sup>611</sup> *Arbitration Law of 1980* (State of Qatari), Issued Among the Civil and Commercial Law No. 38 of 1980, Chapter 13, art 190  
<<http://www.gcc-legal.org/BrowseLawOption.aspx?country=3&LawID=3274>>.

<sup>612</sup> *Arbitration Law No. 31 of 2001* (Kingdom of Jordan), art 9  
<<http://www.job.gov.jo/AR/Pages/AdvancedSearch.aspx>>.

<sup>613</sup> *Arbitration Law No.27 of 1994* (Arab Republic of Egypt) as Amended by Law no, 9 of 1997, art 1-11 ( Copy in Arabia on file with author).

According to the Arab arbitration laws and the Jordanian Arbitration Law, individual labour disputes are among the disputes that are legally valid to be resolved through optional arbitration method.<sup>614</sup>

Dr Ali Emara sees that:

The optional arbitration according to the Egyptian Arbitration Law of 1994 is a legal means for resolving individual and collective labour disputes in the new Egyptian Labour Law if the parties to dispute agree to adopt it for resolving the labour dispute.<sup>615</sup>

The Moroccan President of the Bar, Abdullah Darmish says:

Although the Moroccan Labour Law does not include any statement related to the admissibility of resolving individual labour disputes through optional arbitration, through research and study I see that resolving individual labour disputes through optional arbitration is legally admissible when the parties to dispute agree on it.<sup>616</sup>

In addition, it can be said that the practical importance and the real advantages of optional arbitration in resolving individual labour disputes are many. Therefore, arbitration as a means of resolving labour disputes is in the interests of the workers. The key purpose of all labour laws is to protect the workers and their interests, and this makes the optional arbitration method a legitimate method for resolving individual labour disputes.<sup>617</sup>

Concerning the use of the optional arbitration method as an alternative means of resolving collective labour disputes, it is found that in a few Arab countries, parties to collective disputes have the rights, if amicable settlement methods fail, to choose between compulsory arbitration according to the rules and regulations stated in labour law or optional arbitration according to the arbitration laws in these countries.

For example, unlike individual labour disputes under Lebanese labour law, according to Article 47/2,<sup>618</sup> parties to collective disputes may choose the optional arbitration method to resolve their labour disputes in Lebanon, instead of resolving them through compulsory arbitration by an arbitration tribunal as stated in Lebanese Labour Law.<sup>619</sup> Also, the current Egyptian Labour Law, according to Article 191<sup>620</sup>, in case of the failure of amicable settlement methods in resolving collective labour disputes, the parties to the collective dispute have the right to choose between resolving such a dispute through a compulsory arbitration tribunal, as stated in Egyptian Labour Law, or adopting the optional arbitration

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<sup>614</sup>Omar Al-Atten, 'Arbitration in Labour Lawsuits' (2009) 15(2) *Amanar Journal in AL-al-Bayt University* 181,184.

<sup>615</sup>Ali Omara, *The New Labour Law* (Dar Al-Nahda, 5<sup>th</sup> ed, 2008) 621.

<sup>616</sup>Abdullah Darneesh, 'Arbitration in Labour Disputes' (2000) 84 *Moroccan Courts Journal* 39, 44

<sup>617</sup>Al-Atten, above n 614, 190.

<sup>618</sup>*Law of Collective Labour Contracts, Mediation and Arbitration of 1964* (Republic of Lebanon), Presidential Decree No. 17386 (02 September 1964) art 47 / 2; Qsame Agroush, *Texts of Lebanese Labour Laws* (Zein Legal Publications, 2011) 84-95.

<sup>619</sup>Arelet Gresati, 'Arbitration and Labour Cases' (2011) 4 (5) *Lawyers Journal in Lebanon*, 19; Bardan, above n 605, 241.

<sup>620</sup>Egyptian Labour Law , above n 186, 191.

method to resolve the dispute<sup>621</sup> If the parties to a collective labour dispute choose the optional arbitration method, such arbitration shall be subject to the application of Egyptian Arbitration Law provisions. This law allows them to choose arbitrators, arbitration proceedings, and the arbitration's duration.<sup>622</sup>

From the previous discussion, it can be said that the concept of labour arbitration as a means of resolving labour disputes in the KSA is optional arbitration (that is, arbitration is *quasi-judicial*).

### **8.3 Rules and procedures of Labour Arbitration method used for resolving labour disputes in the KSA.**

The Saudi Arbitration Law is applicable to arbitration proceedings when parties to a labour dispute choose arbitration. This is confirmed by Article 224 of the current Saudi Arbitration Law of 2005, as referred to above in Chapter 2. Article 57 of the Saudi Arbitration Law of 2012 includes an explicit statement cancelling the Saudi Arbitration Law of 1983 and its executive regulation of 1985, as it states:

This Law shall supersede the Law of Arbitration promulgated by Royal Decree No. (M/46) dated 12/7/1403H- 1983.<sup>623</sup>

Thus, the Saudi Arbitration Law of 2012 becomes the applicable law when labour dispute parties choose arbitration to resolve labour disputes as an alternative method to the traditional judicial solution by the CSLDs.

As discussed in Chapter 2, the scope of the Saudi Arbitration Law of 2012 is not limited to specific disputes, but applies to all kinds of internal disputes in Saudi Arabia.<sup>624</sup> For example, it can be used in commercial, administrative, labour, and other disputes whenever the parties to a dispute agree on resolving it through arbitration. This kind of arbitration is used in the KSA, according to Article 2.<sup>625</sup>

All the relevant clauses in the Saudi Arbitration Law are also applicable when the arbitration in labour disputes such as the arbitration agreement in Articles 9 and 10,<sup>626</sup> the appointments of arbitrators in article 15,<sup>627</sup> the venue of arbitration in Article 28<sup>628</sup>, language of the arbitration in article 29,<sup>629</sup> the arbitration award in Article 39,<sup>630</sup> and nullify the arbitration award in articles 49 and 50.<sup>631</sup>

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<sup>621</sup>Omara, above n 615, 621.

<sup>622</sup>Al-Sayed Naal, *Arbitration in Collective Labour Disputes* (Legal Centre in Ain Shams University, 2009) 4.

<sup>623</sup>Saudi Arbitration Law of 2012, above 143, art 57

<sup>624</sup>Mahmoud Omar, *The New Saudi Arbitration Law* (Khwarezm Scientific Publisher, 2013) 122.

<sup>625</sup>Saudi Arbitration Law of 2012, above 143, art 2.

<sup>626</sup>*Ibid* art 9-10.

<sup>627</sup>*Ibid* art 15.

<sup>628</sup>*Ibid* art 28.

<sup>629</sup>*Ibid* art 29.

<sup>630</sup>*Ibid* art 39.

<sup>631</sup>*Ibid* art 49-50.

But the difference is in the identity of the official court competent to judge the dispute as it has been given powers by this law. The official court differs according to the nature of the dispute before arbitration.

Article 8 of this law states:

The court of appeal originally deciding the dispute shall have jurisdiction to consider an action to nullify the arbitration award and matters referred to the competent court pursuant to this Law.<sup>632</sup>

Therefore, according to the Article above, the HCSDL is currently the competent authority to settle the action to nullify an arbitration award in labour disputes in the KSA because it is considered the official authority of appeal in labour disputes in the KSA (as already explained in Chapter 7 of this thesis). The authority of the HCSDL, when considering the action for nullification of an arbitration award in labour disputes, is only restricted to accepting the request for nullification, rejecting the request or ruling on the nullification of the award, without any authority to consider the subject of the dispute, issue a new award in the dispute subject or amend the arbitration award, According to Article 50/4.<sup>633</sup>

Although The Saudi Arbitration Law of 2012 grants the arbitration parties the right to choose the law applicable to the subject of dispute, it is certainly inadmissible for the parties to the labour arbitration to agree on any law other than the current Saudi Labour Law of 2005 to be applicable to the subject of the dispute. This is because the current Saudi labour law, according to Article 5, is applicable to all labour disputes in the KSA, except whatever is excluded under this law.<sup>634</sup> Applying the Saudi Labour Law to labour disputes in the KSA is considered public policy. Article 38 of the Saudi Arbitration Law explicitly states that the choice of the law applicable to the subject of the dispute by the parties to the dispute is restricted as it cannot contravene public policy of the KSA, which can never be violated.<sup>635</sup>

According to the Saudi Arbitration Law of 2012, the arbitration proceedings in labour disputes start from the day the claimant party presents the arbitration request concerning the subject of the dispute to the respondent party, unless both parties agree otherwise.<sup>636</sup> The claimant shall send a written statement of claim to the respondent and the arbitration tribunal within the period agreed upon by the two parties to arbitration, or the period determined by the arbitration tribunal if the two parties do not agree on a specific period.<sup>637</sup> Also, the respondent shall respond in writing to the statement of claim and state his or her defence.<sup>638</sup>

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<sup>632</sup>Ibid art 8.

<sup>633</sup>Ibid art 50/4.

<sup>634</sup>Ibid art 5.

<sup>635</sup>Ibid art 38.

<sup>636</sup>Ibid art 26.

<sup>637</sup>Ibid art 30/1.

<sup>638</sup>Ibid art 30/2.

According to Article 32, the two parties to arbitration in labour disputes may amend their requests, defences, and responses or finish them within the arbitration period, unless the arbitration tribunal refuses this in order to prevent delaying the issuance of an award.<sup>639</sup>

The arbitration tribunal in labour disputes holds oral hearings to resolve the dispute. It also has the right to not hold the hearings, deeming it sufficient to have the memos submitted by the parties to the labour dispute, unless the parties to the arbitration agree otherwise.<sup>640</sup> If the arbitration tribunal decides to hold hearings, then it shall notify the parties of the session date in sufficient time prior to the sessions.<sup>641</sup>

In addition, according to Article 35, the absence of one of the parties to arbitration from arbitration sessions, despite notifying him/her, is not considered a reason for delaying arbitration proceedings. In this case, the arbitration tribunal has the right to proceed with arbitration proceedings and issue its award.<sup>642</sup>

After each litigant in the labour arbitration case presents his requests and defences, the arbitration tribunal decides closure of the pleadings in the arbitration case. Then the confidential deliberations among the members of the arbitration tribunal starts, and they issue the award, either by a majority or unanimously, according to Article 39/1.<sup>643</sup>

The arbitration award in labour disputes is issued within the period specified by the parties to the arbitration. If they do not agree on a specific period, then the award is issued within 12 months from the start of arbitration.<sup>644</sup> However, the labour arbitration tribunal has the right, in all cases, to extend this period only once and for no more than six months.<sup>645</sup>

If the arbitration tribunal of labour disputes does not issue an arbitration award within the extra six-month period as stated in Article 40/2, then any party to the arbitration may return to the HCSLD and request an end to or extension of arbitration.<sup>646</sup>

#### **8.4 Evaluation of the Arbitration Method in Resolving Labour Disputes in the KSA, according to the Current Saudi Arbitration Law of 2012**

This section will evaluate the method of arbitration in resolving labour disputes in Saudi Arabia by discussing its expected advantages and disadvantages. The purpose of this evaluation is to determine the importance of using the arbitration method to resolve labour disputes in the KSA. It should be noted that to date, there have been no previous cases of arbitration in labour disputes in accordance with the current Saudi Arbitration Law of 2012. This was shown by the data collected in the KSA at the end of 2013 pertaining to information

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<sup>639</sup>Ibid art 32.

<sup>640</sup>Ibid art 33/1.

<sup>641</sup>Ibid art 33/2.

<sup>642</sup>Ibid art 35.

<sup>643</sup>Ibid art 39.1.

<sup>644</sup>Ibid art 40/1.

<sup>645</sup>Ibid art 40/2.

<sup>646</sup>Ibid art 40/3.

and cases related to the subject of this research. The data from the Ministry of Labour, labour offices, and the CSLDs in the KSA indicated that only one labour case has been resolved by arbitration under the old Saudi Arbitration Law of 1983.<sup>647</sup>

So, this section is theoretical in nature and relies on the reading of legislation and academic writing. Also, it is based on general arbitration law theory and practices.

#### **8.4.1 Advantages**

It seems that using the arbitration method to resolve labour disputes in the KSA has many advantages. First, it will speed up the process of resolving labour disputes. Second, it gives the parties to the labour dispute freedom in the selection of processes to resolve the dispute as well as arbitrators. Third, it applies the Saudi Arbitration Law of 2012 to the labour arbitration proceedings. Finally, the arbitration method helps the official competent authorities to resolve labour disputes currently pending in the KSA.

##### **84.1.1 Speed of resolving labour disputes in the KSA**

It could be argued that one of the most important expected advantages for using the arbitration method to resolve labour disputes according to the Saudi Arbitration Law of 2012 will contribute significantly to the speed of resolving labour disputes in Saudi Arabia when compared with the method of arbitration in labour disputes under the old Saudi Arbitration Law of 1983, as well as when compared with the current judicial method used to settle labour disputes in the KSA by CSLDs. This is true for several reasons.

First, as noted already in this chapter, according to the -Saudi Arbitration Law of 2012 arbitration proceedings can be started directly without requiring the adoption of an arbitration instrument by the PCSLDs. This is different to the old Saudi Arbitration Law of 1983 which required adoption of the arbitration instrument first, something that was considered a major stumbling block in the speed of arbitration in resolving disputes, because the adoption of an arbitration instrument used to take several months, resulting in delaying arbitration proceedings.<sup>648</sup>

Second, when choosing a method of arbitration to resolve labour disputes in Saudi Arabia, the parties to labour disputes may resort to the arbitration method to resolve the dispute directly without the need to start resolving that dispute through an amicable settlement in the labour office. This is the exact opposite of a judicial solution by CSLDs, where the Saudi Labour Law, as mentioned before in Chapter 6, requires an attempt to resolve a dispute through amicable settlement before resorting to a judicial solution through the CSLDs. When the amicable settlement method fails to resolve a dispute, the parties may resort to a judicial solution before the CSLDs. Thus, it is found that when the parties to a dispute choose the method of arbitration to resolve labour disputes in the KSA, it results in saving the time taken

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<sup>647</sup>Case No. 19, Preliminary Commissions for the Settlement of Labour Disputes Branch of Jeddah (Saudi Arabia), Decision no, 531 ( 08 Rajab 1428 H - 3 August 2006).

<sup>648</sup>Mohammed Al-Jarbaa, 'Features of the New Saudi Arbitration Law', *Al-Jazirah* (online), 08 June 2012 <<http://www.al-jazirah.com/2012/20120608/ec13.htm>>.

by labour offices in attempting to reach an amicable settlement to resolve labour disputes before resorting to a judicial solution.

Third, choosing the method of arbitration in resolving labour disputes gives the parties to a dispute the right to determine the period within which the arbitration tribunal shall issue the final award of the dispute. This is one of the reasons that the method of arbitration is a quick and efficient means of resolving labour disputes, compared with the labour dispute resolution by CSLDs in the KSA, where there is no defined period to settle labour disputes, often resulting in years being taken for such settlements to be executed, as discussed in Chapter 7.

Dr Hazboun and Dr Alaidat support this view, stating:

One of the positive aspects of the arbitration method to resolve disputes is its ability to resolve disputes quickly, because the method of arbitration makes the arbitration tribunal restricted by the issuance of the arbitration award within the duration specified by the parties to the dispute, unlike resolving the dispute through the official justice, where the judge is not restricted by a defined duration to issue the award.<sup>649</sup>

The fourth reason for describing the method of arbitration in resolving labour disputes as a quick means of dispute resolution is that the arbitration tribunal is dedicated to the settlement of that dispute subject.<sup>650</sup> On the contrary, when resolving labour disputes before the CSLDs in Saudi Arabia, the members of such commissions (Case Examiners / judges) who are competent to settle disputes have many other labour issues; thus, litigation takes a long time in such commissions compared to the method of labour arbitration.

Sixth, using arbitration for labour disputes according to the Saudi Arbitration Law of 2012, gives the parties to arbitration the right to determine the rules of notices and notifications relevant to the arbitration.<sup>651</sup> It could be argued that this will make the proceedings of notifications in the arbitration of labour disputes in the KSA quick. On the contrary, the rules of notifications applied in the CSLDs are subject to the notification rules provided in the Regulations of Pleadings and Arguments before the CSLDs of 1970. These are complex formal rules that cannot be violated by the parties to the arbitration that again causes prolonged litigation.

The researcher, Dabas, also expresses this view:

An advantage of the arbitration method of resolving disputes is that it does not restrict the arbitration tribunal by litigation proceedings and law of Pleadings followed by a presentation before the official courts. However, the arbitration tribunal is restricted by what is included in the agreement of the parties to the arbitration, and this is considered to be one of the main reasons that make the

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<sup>649</sup>George Hasboon and Radwan Abedat 'Obligatory of Arbitration Award and its Execution Effectiveness in International and Internal Arbitration' (2006) (26) *Electronic Journal of Sharia and Law in UAE University* 463, 473.

<sup>650</sup>Ahmed Khalil, *Arbitration Rules* (Halaby Legal Publication, 2003) 10.

<sup>651</sup>Saudi Arbitration Law of 2012, above n 143, art 6.

method of arbitration, as opposed to official courts, a quick method for resolving disputes.<sup>652</sup>

Finally, the arbitration award in labour disputes under the Saudi Arbitration Law of 2012 is not subject to appeal or objection, except for an action to nullify an arbitration award according to cases specified of this law.<sup>653</sup> So, this will make the arbitration method of resolving labour disputes in the KSA under the law of 2012 a very quick method compared with the arbitration method under the old law of 1983 which was subject to objection and appeal.<sup>654</sup>

According to the old Saudi Arbitration Law of 1983, when choosing the arbitration method for resolving labour disputes, the labour dispute was considered before three levels of litigation: the first level is before the arbitration tribunal, the second is for objections against the arbitration award, which is before the PCSLDs, and the third one is an appeal before the HCSLD.

Therefore, according to the old Saudi Arbitration Law of 1983, the arbitration method for resolving labour disputes took longer time and was not able to resolve the dispute in a timely manner.

Also, the arbitration award in labour disputes under the Saudi Arbitration Law of 2012 is not subject to appeal or objection. This will make it a quick method compared with resolving labour disputes by the CSLDs, as most of the decisions of the PCSLDs are subject to appeal before the HCSLD, as mentioned in Chapter 7.

Dr Rifaay supports this opinion as he says:

The inability to appeal against the arbitration awards in accordance with the Saudi Arbitration Law of 2012 is considered to be a significant positive term in the new law, because it leads to the speed of arbitration method in resolving the disputes, and this is a unique advantage that is not found in the traditional method in resorting to the official justice in Saudi Arabia.<sup>655</sup>

#### **8.4.1.2 The parties to the labour dispute have freedom in the selection of processes to resolve the dispute as well as arbitrators.**

It could be said that another advantage of choosing the method of arbitration to resolve labour disputes is that it gives the disputing parties the freedom to select the processes to resolve the dispute, and the arbitrators. For example, according to Article 25/1, the parties to arbitration in labour disputes have the right to choose and determine the proceedings to be followed by

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<sup>652</sup> Basma Dabas, *Conditions Agreement of Arbitration Conciliation and its Influence* (PhD Thesis, Cairo University, 2005) 10.

<sup>653</sup> Saudi Arbitration Law of 2012, above 143, art 49.

<sup>654</sup> Bakhshab, above n 86, 171.

<sup>655</sup> Fahd Al-Rifaay, *New Saudi Arbitration Law and its Arranging Rules for the Arbitration Process Compared with what is Stated in Some Arab and Foreign Laws* (28 August 2012) Center of Arabs Arbitration for International Arbitration  
< [http://www.tahkem-arab.com/?page\\_id=3965](http://www.tahkem-arab.com/?page_id=3965)>.

the arbitration tribunal for resolving the labour dispute. They may also agree to subjecting such proceedings to the effective rules of local arbitration centres.<sup>656</sup>

Second, according to Article 28, the parties to the arbitration are free to choose the location of the arbitration proceedings.<sup>657</sup> Accordingly, the parties have the right to choose the location of arbitration such as the workplace or any convenient place to them. This makes the labour dispute resolution process by arbitration easy for the parties concerned, and spares them the trouble of moving between labour offices and CSLDs in Saudi Arabia.

Third, Article 29 gives the parties to the labour dispute the right to select the language of the arbitration.<sup>658</sup> In contrast to the labour arbitration method under Saudi Arbitration Law in 2012, the old Saudi Arbitration Law did not allow any language other than the Arabic to be used in labour arbitration<sup>659</sup>. However, if the labour dispute is resolved by the CSLDs, all litigation proceedings are conducted in Arabic, as mentioned in Chapter 7.

It seems that the freedom to choose the language of arbitration by the parties to the labour dispute will make the method of arbitration in resolving labour disputes favourable to many employees and employers in Saudi Arabia, especially foreign employees who do not speak Arabic, as well as foreign employers and companies or those who use English in their dealings. As found in Chapter 7, the majority of employees in the private sector in the KSA are non-Saudi.<sup>660</sup>

Finally, one of the advantages of using arbitration to resolve labour disputes is that it gives the disputing parties the freedom to choose qualified arbitrators to settle the dispute.<sup>661</sup> According to the Arbitration Law of 2012, there are no longer restrictions related to the sex of the arbitrator or to his or her religion, unlike the old Saudi Arbitration Law of 1983.<sup>662</sup> Accordingly, the method of arbitration in resolving labour disputes in the KSA currently gives the parties to a labour dispute the right to choose female arbitrators. This would make the arbitration method of resolving labour disputes favourable to female employees and businesswomen in Saudi Arabia, since women in the KSA prefer to deal with women more with than men in most issues. This is due to cultural and social traditions as well as religious concepts that are prevalent in Saudi society, which is described as a conservative society that does not favour women dealing with men. This is the exact opposite of resolving the dispute through CSLDs in the KSA where members of these commissions are all men.

#### **8.4.1.3 Application of the Saudi Arbitration Law of 2012 in labour arbitration**

It could be said that the application of the current Saudi Arbitration Law of 2012 in labour arbitration is advantageous for several reasons.

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<sup>656</sup>Saudi Arbitration Law of 2012, above n 143, art 25/1.

<sup>657</sup>Ibid art 28.

<sup>658</sup>Ibid art 29.

<sup>659</sup>Implementation Regulation of the Arbitration Law of 1985, above n 125, art 25.

<sup>660</sup>Ministry of Labour (Saudi Arabia), *The Annual Statistical Book for 2012*, above n 487, 16.

<sup>661</sup>Saudi Arbitration Law of 2012, above n 143, art 15.

<sup>662</sup>Eid Al-Kasas, *Arbitration Award* (Dar Al-Nahda Al-Arabia, 2004) 49.

First, most of the legal provisions contained in the Saudi Arbitration Law of 2012 are new and unprecedented in the old Saudi Arbitration Law of 1983, and are positive additions to the method of arbitration in resolving labour disputes in the KSA.<sup>663</sup> For example, the-Saudi Arbitration Law of 2012 gives the arbitration tribunal in labour disputes a broad authority which did not exist under the old Saudi Arbitration Law of 1983.

According to Article 39/5, the arbitration tribunal in labour disputes has the authority to issue interim or conservatory awards or summary awards in relation to parts of the claim until an award is issued covering the complete subject of the labour arbitration.<sup>664</sup> Finally, according to Article 23, the arbitration tribunal in labour disputes has the authority to request help from the formal the CSLDs in arbitration proceedings, such as requesting the taking of conservatory measures, requesting judicial delegation, requesting the bringing of witnesses or any other procedures related to the arbitration of labour disputes.<sup>665</sup>

Second, the Saudi Arbitration Law of 2012 remedies the negative aspects of the old Saudi Arbitration Law of 1983. A major negative aspect, for example, of the old Saudi Arbitration Law of 1983 was remedied by the Saudi Arbitration Law of 2012 as mentioned in this chapter. The arbitration awards in labour disputes under the Arbitration Law of 2012 are not subject to appeal or objection, except for filing an action to nullify an arbitration award in cases defined by such law, which is unlike the arbitration awards in labour disputes under the old Saudi Arbitration Law of 1983 that were subject to objection and appeal. Articles 18 and 19 of the old Saudi Arbitration Law of 1983 allow the parties to a dispute to object to the arbitration award.<sup>666</sup> The fault in these two articles is that they do not define objection and do not specify the cases in which objections to an arbitration award are allowed. This made arbitration awards, according to this law, subject to objection, appeal, and nullification.<sup>667</sup>

This is emphasized by Dr Al-Jarbaa who says:

Among the features of the new Saudi Arbitration Law of 2012, is that the arbitration award under such law is not subject to objection or appeal, which leads to avoiding legal loophole and flaws existed in the old Saudi Arbitration Law, in Articles 18-19 in particular, which give the parties to arbitration the right to object and appeal against the arbitration award.<sup>668</sup>

Another example of negative aspects of labour arbitration under old Saudi law of 1983 that are addressed in the law of 2012 are that the Saudi Arbitration Law of 2012 is distinguished by limiting the role and authority of labour justice institutions, such as the CSLDs, on arbitration proceedings in labour disputes; this was very prominent in the old Saudi Arbitration Law of 1983. The old Saudi Arbitration Law of 1983 included a number of articles that give the CSLDs a great deal of supervisory authority over arbitration proceedings

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<sup>663</sup> Ahmed Makhoulf, 'The Newest in the New Saudi Arbitration Law of 2012' (2013) 53 (2) *Journal of Institute of Public Administration* 459, 461

<sup>664</sup> Saudi Arbitration Law of 2012, above 143, art 39/5.

<sup>665</sup> Ibid, art 23.

<sup>666</sup> Saudi Arbitration Law of 1983, above n124, art 18-19

<sup>667</sup> Al-Ahdab, above n 127, 498.

<sup>668</sup> Al-Jarbaa, above n 648.

as a formal labour justice authority in the KSA. For example, according to Article 5 of the old Saudi Arbitration Law of 1983, it is required to submit the arbitration document to the PCSLDs for adoption before starting any labour arbitration proceedings.<sup>669</sup> Also, According to Article 8 and Article 9 of the old law,<sup>670</sup> the clerk of the PCSLDs has the authority to send all notices and notifications related to the labour arbitration process and to carry the responsibilities of the arbitration tribunal secretariat.

Unlike old Saudi Arbitration Law of 1983,<sup>671</sup> the Saudi Arbitration Law of 2012 no longer requires the approval of the arbitration instrument by the PCSLDs before starting labour arbitration proceedings in labour disputes as a condition for the validity of the arbitration. Also, under the law of 2012, the clerk of the PCSLDs no longer has the authority to send notifications and notices relevant to arbitration.

Therefore, under the Saudi Arbitration Law of 2012, the arbitration method in labour disputes has become more independent of the CSLDs than it was under the old Saudi Arbitration Law of 1983.

Many legal experts are in agreement concerning the most positive aspects of the Saudi Arbitration Law of 2012 that address the negative aspects of the old Saudi Arbitration Law of 1983 that did not encourage recourse to voluntary arbitration to resolve internal conflicts in Saudi Arabia.<sup>672</sup> For example, Dr Al-Saud states that “the Saudi Arbitration Law of 2012 is a developed law which remedies deficiencies and negatives in the old Saudi Arbitration Law.”<sup>673</sup>

Moreover, Dr Al-Nwaisir declares that:

The - Saudi Arbitration Law of 2012 remedies a lot of legal gaps and errors that were in the old Saudi Arbitration Law, therefore, it is expected that the new Arbitration Law will have a positive effect in promoting the use of arbitration method to resolve disputes in Saudi Arabia, as well as dispelling many of the concerns felt by parties to the conflict when choosing arbitration as a means to resolve disputes in Saudi Arabia.<sup>674</sup>

Therefore, according to the above, it can be argued that the legal provisions contained in the Saudi Arbitration Law of 2012 and the application of this law to arbitration proceedings in

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<sup>669</sup>Saudi Arbitration Law of 1983, above n 124, art 5.

<sup>670</sup>Ibid art 8; Implementation Regulation of the Arbitration Law of 1985, above n 125, art 9.

<sup>671</sup>This is emphasized by the researcher Al-Fazairy who states: “The Saudi Arbitration Law of 1983 in Article 5 introduced a kind of supervisions of judicial authority of the state over the arbitration proceedings through the condition of adopting the arbitration document by the authority originally competent to hear the dispute. This condition does not exist in any arbitration laws in the Arab and Gulf countries”; Amal Al-Fezairy, *The Role of Judicial State in Achieving Arbitration Efficiency* (Monshaah Al-Maaraaf, 1993) 183-184.

<sup>672</sup>Salah Al-Hejailan, 'Study and Analysis of New Saudi Arbitration Law' (2012) 16 *Global Journal of Arbitration*, 20, 24.

<sup>673</sup>Omar, above n 624, 7.

<sup>674</sup>Muhammad Haydar, 'An interview with the Chairman of the Commercial Arbitration Council of Saudi Chambers Dr Khalid Al-Nwaisir ' *Al- Riyadh* (online), 14 October 2012 <<http://www.alriyadh.com/776253>>.

labour disputes will encourage the parties to a labour dispute to choose the method of arbitration.

#### **8.4.1.4 Helping the Official Authorities Competent to resolve labour disputes currently in the KSA**

It could be argued that one of the expected advantages of using arbitration for labour disputes in Saudi Arabia is that it will decrease the number of labour cases and disputes considered by the CSLDs. This would ease the burdens of the CSLDs and help to expedite litigation before such commissions

As previously noted in Chapter 7, the official statistics of the Saudi Ministry of Labour indicates a significant increase in the number of labour disputes annually. In 2012 the number of labour disputes in the KSA increased by about 33% compared with 2011.<sup>675</sup> There is no doubt that the increase in the number of labour disputes in Saudi Arabia results in an increase in the number of labour issues and the burdens of the official authorities competent to resolve labour disputes currently in the KSA.

Moreover, using arbitration for resolving labour disputes in the KSA will decrease the burdens on the labour offices related to the Ministry of Labour, by decreasing the number of disputes to be resolved by amicable settlement.

#### **8.4.2 Disadvantages**

It may be argued that the major disadvantage of choosing the arbitration method in resolving labour disputes in Saudi Arabia is the cost of arbitration. Arbitration is not a free method of resolving labour disputes, as the parties to arbitration incur the arbitrators' fees and other costs of the arbitration.<sup>676</sup> This is unlike litigation before the official labour justice (CSLDs) in the KSA that is free, as stated in Chapter 7.

According to Article 24,<sup>677</sup> the parties to a labour arbitration, when appointing an arbitrator, shall conclude an independent contract with him or her stating the fees; if the parties to arbitration and the arbitrator do not agree on the fees, then the fees shall be determined by the HCSLD, and its decision is final.

Raghy confirmed this disadvantage when he says that:

One of the disadvantages of the arbitration method in resolving disputes is the cost that the parties to dispute bear, which includes the arbitrators and experts' fees, unlike resorting to the official justice in many countries which is free.<sup>678</sup>

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<sup>675</sup>Ministry of Labour (Saudi Arabia), *The Annual Statistical Book for 2012*, above n 487, 54.

<sup>676</sup>Omar, above n 624, 126.

<sup>677</sup>Saudi Arbitration Law of 2012, above n 143, art 24,

<sup>678</sup>Elias Al-Rajhy, *The Responsibility of the Arbitrator in the Saudi Arbitration Law* (Master Thesis, Naif Arab University for Security Sciences, 2008) 30.

Also, Dr Qahtan states that “One of the main disadvantages of arbitration is the cost of arbitrators.”<sup>679</sup>

In addition, some researchers argued that another anticipated disadvantage of choosing the arbitration method in resolving labour disputes in the KSA is that the inability to object or appeal against the arbitration award in labour disputes. According to the researchers "Rajhi" and Dr Zaid, one of the disadvantages of arbitration is the inability to appeal against the arbitration awards, as it is considered risky and the consequences are depriving the opponents of the right to object and appeal in order to remedy errors in the award.<sup>680</sup>

On the other hand, many legal experts believe that the most prominent feature of arbitration in modern regulations in general, and in the Saudi Arbitration Law for 2012 in particular, is the provision forbidding the right to object to or appeal against the arbitration awards, thereby providing another advantage of the arbitration method.

According to Dr Awa, one of the advantages of arbitration in most of the modern arbitration laws is the stipulation that there can be no appeal against the arbitration awards. This enables the prevailing party to obtain his rights unhindered by an appeal, since the right of appeal may be exploited by the losing party in order to delay giving rights to the prevailing party, as happens in cases of litigation before official courts.<sup>681</sup>

In addition, Dr Suwailem believes that the main feature of the new Saudi Arbitration Law for 2012 is to safeguard the arbitration awards against objections and appeals, because this adds legal protection to the arbitration awards in the KSA and enables the arbitration method to resolve the disputes once and for all<sup>682</sup>

Also, it could totally support previous views which state that the inability to object to or appeal against arbitration awards is one of the main advantages of using the labour arbitration method. As discussed in this chapter, arbitration will help to expedite the resolution of labour disputes. Moreover, it can also be said that the Saudi Arbitration Law does not make the labour arbitration award without supervision or control; rather, it gives the parties to the labour arbitration the right to file a nullify suit against the arbitration award, and this suit shall not be accepted except for those cases specified in Article 50.<sup>683</sup>

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<sup>679</sup> Qahtan Al-Darawy, *Arbitration Contract in Islamic Fikh and Law* (Fourkan for Publishing and Distribution, 2002) 35.

<sup>680</sup> Zaid Al-Zaid, *The Arbitrator Job in Islamic Figh* (Al-Tadmreya, 2006) 50, 51; Al-Rajhy, above n 678, 30-31.

<sup>681</sup> Muhammad Al-Awa, *Studies in Egyptian and Comparative Arbitration Law* (Arabic Centre for Arbitration, 2007) 288.

<sup>682</sup> Ali Suwailem, *Lecture to Explain the New Saudi Arbitration Law* (29 May 2012) Chamber of Commerce and Industry in Riyadh

<<http://www.riyadhchamber.org.sa/search/results.aspx/Results.aspx?k=%D8%A7%D8%B6%D9%88%D8%A7%D8%A1%20%D8%B9%D9%84%D9%89%20%D9%86%D8%B8%D8%A7%D9%85%20%D8%A7%D9%84%D8%AA%D8%AD%D9%83%D9%8A%D9%85>>.

<sup>683</sup> Saudi Arbitration Law of 2012, above n 143, art 50.

## 8.5 Conclusion

In this chapter, the method of arbitration was discussed in detail as an optional means of resolving labour disputes in the KSA.

In sub-chapter 2, the significance of arbitration in labour disputes in the KSA was discussed, and it was found that recourse to arbitration to resolve labour disputes in the KSA is optional; that is, arbitration is quasi-judicial, and is based on an agreement between the parties to a labour dispute. It was found that the Saudi Labour Law of 2005 stated clearly in Article 224 the right of the parties to a labour dispute to choose the method of arbitration as an alternative means to resolve all kinds of labour disputes, distinguishing this law from all other labour laws in the Arab and Gulf countries.

Moreover, this research discovered that compulsory arbitration in labour disputes, that is, arbitration that is quasi-legislative, is required by law to resolve the labour dispute and does not often require the consent of the parties to the dispute; nor do the parties to the dispute have the right to choose the arbitrators and the rules and proceedings of the arbitration. Furthermore, it was found that compulsory arbitration in labour disputes is used in some Arab countries to resolve collective labour disputes. However, there is no compulsory arbitration in labour disputes in the KSA.

Sub-chapter 3 presents the rules and proceedings of the arbitration method when used to resolve labour disputes under Saudi Arbitration Law.

It was found that when parties to a labour dispute choose the arbitration method to resolve the dispute, the Saudi Arbitration Law is the law applicable to the arbitration proceedings. Currently, the Saudi Arbitration Law of 2012 is the law applicable when the arbitration method to resolve labour disputes is chosen by the parties to a labour dispute in the KSA.

It was found that the agreement to use the arbitration method in accordance with this law is stated in two forms: either through the existence of an arbitration clause before the dispute takes place, or through the arbitration agreement after the dispute takes place. In accordance with the Saudi Arbitration Law of 2012, in order for the arbitration agreement to resolve labour disputes to be valid, it must be stated in writing. It was found that when there is an arbitration agreement between the parties to a labour dispute, such an agreement is binding and, if the respondent holds to it, this dispute cannot be resolved by any means other than arbitration.

It was also found that the process of choosing arbitrators and defining the arbitration rules, such as choosing the arbitration venue, arbitration language and arbitration proceedings is carried out in accordance with the Saudi Arbitration Acts of 2012.

It became clear through the discussion that under the law of 2012 the HCSLD is the competent authority to settle a request for nullification of an arbitration award in labour disputes.

In sub-chapter 4, the arbitration method used for resolving labour disputes in accordance with the Saudi Arbitration Law of 2012 was evaluated by examining the advantages and disadvantages of using arbitration to resolve labour disputes. It was found that arbitration as a means of resolving labour disputes in the KSA has many advantages.

The main expected advantage of using the arbitration method to resolve labour disputes in Saudi Arabia is the speed with which such disputes can be resolved.

Moreover, arbitration as a means of resolving labour disputes in accordance with the Saudi Arbitration Law of 2012 will give the parties to labour disputes many advantages. It was found that labour arbitration gives the parties to labour disputes in the KSA freedom to choose arbitrators and processes to resolve the dispute, such as the arbitration venue and arbitration language.

In addition, the application of the Saudi Arbitration Law of 2012 in labour arbitration is one of the advantages of using the method of arbitration in resolving labour disputes in Saudi Arabia. The Saudi arbitration law of 2012 is a well-developed law without the negative aspects of the old Saudi Arbitration Law of 1983.

However, through this discussion, it was found the main disadvantage of using the method of arbitration for resolving labour disputes in the KSA is that of cost.

## **Chapter 9: Conclusion and Recommendations**

### **9.1 Overview**

This thesis discusses the importance of using arbitration in settling current labour disputes in the KSA.

The research hypothesis assumed that the use of arbitration to resolve labour disputes has no advantages for parties to labour disputes in the KSA.

By discussing and analyzing Saudi Labour Law, including the recent Saudi Arbitration Law of 2012 and comparing it with the law of 1983, as well as examining previous labour issues and evaluating the current method of settling labour disputes in the KSA, it could be said that this current study has found that there is no support for the research hypothesis. This is because the use of arbitration to settle labour disputes in the KSA will now bring many benefits to both parties to any labour dispute.

This thesis has been divided into eight chapters, the contents of which will now be summarized.

### **Chapter 1**

This chapter introduced the research and includes a discussion of the research issue: that arbitration used as an optional method to settle labour disputes was provided years ago in Saudi labour laws, although it was very rare for the method to be used. In addition, there have been no previous studies or research in the KSA that addressed this issue and its implications for both parties to a labour dispute in the KSA. This chapter also discusses the importance of the research, its goals and how they can be achieved. It also discusses the questions of the research and the obstacles relating to the research and states the research hypothesis which is that the use of arbitration to resolve labour disputes provides no advantages for the parties to labour disputes in The KSA.

Finally, Chapter 1 describes the research methodology used in this thesis, which is a qualitative design of data analysis and comparison, and the structure of the thesis is reviewed.

### **Chapter 2**

This chapter discussed the stages of the historical development of labour laws and arbitration laws, as well as labour arbitration laws, in the KSA from its foundation until now.

From this chapter, it appears that the KSA has recently witnessed a substantial and rapid development in legislation and labour laws, as well as in arbitration and labour arbitration, compared with the modern Saudi kingdom, which is no older than 82 years as the KSA was founded in 1932.

It also seems from discussions that before the foundation of the KSA and the first stages after foundation, there was no written legislation or laws for arbitration or labour. During this period, professional custom and the principals of Islamic Shari'ah regulated labour relations.

On the other hand, with the discovery of petroleum in the KSA in commercial amounts in 1938, and the development of labour relationships and industries and diverse job opportunities in the KSA, the first labour law was issued in 1947.

After this law, labour laws in the KSA witnessed many developments through a succession of labour laws being issued. In 1947, the second Saudi Labour and Workers Law was issued, then the third in 1969, and finally, in 2005, the fourth Saudi Labour Law was issued; this is the current valid one.

As regard to the development of arbitration laws, the first canonical regulation for optional arbitration to settle commercial disputes was issued, dependent on the provisions of the commercial court law. And institutional arbitration was introduced into the KSA by applying the law of the Chambers of Commerce in 1945 and 1980.

Arbitration laws in the KSA witnessed a substantial development in 1983 with the issuing of the first independent Saudi Arbitration Law that regulates the procedures and rules of optional arbitration in various kinds of internal disputes, with the executive Regulations of this law being issued in 1985. The application of this law continued for 29 years until it was abolished in 2012 when a new one was issued.

The Arbitration Law of 2012 is the second arbitration law in the KSA and the one applicable now. It includes the areas of applying the whole kind of optional arbitration in the KSA whether for internal disputes such as commercial, civil, labour and administrative disputes or the arbitration of international commerce.

As regards labour arbitration in the KSA, it can be seen from the discussion of this chapter that optional arbitration in settling labour disputes in the KSA has been admitted since the issuance of the second Saudi Labour Law in 1947. Since the issuance of this law until now, the arbitration method has been available in labour laws in the KSA.

The Saudi Labour Law of 2005 includes explicit provision that allows both parties to labour disputes to choose arbitration in settling labour disputes as an alternative to using the official commissions for settling labour disputes.

### **Chapter 3**

This chapter included a discussion and definition of the concepts of labour relations according to the current Saudi Labour Law of 2005.

The discussion reveals that labour relations in the KSA means labour relations between the employer and the workers which are subjected to the application of the provisions of Saudi Labour Law.

Through the discussion in this chapter it has been determined that the current Saudi Labour Law excludes some labour groups from being subjected to its rules and it defines these groups exclusively.

According to the current Saudi Labour Law of 2005, there are four labour groups which shall be subject to Saudi labour law, and all of these groups shall be subject to the application of all of the provisions of this law.

The first group is workers for an employer in the KSA under an employment contract and under the employer's supervision and management and working for a wage. These workers may be described as workers of the private sector in the KSA whenever the previous conditions have been met and they shall be subject to the rules of the Saudi Labour Law of 2005.

The second group subject to the rules of the Saudi Labour Law is workers for corporations and government bodies. Originally, government workers in the KSA were not subject to the rules of the labour law but to the rules of the Saudi civil services law, although the Saudi Labour Law includes a small group of corporate workers and government bodies as subject to Saudi Labour Law. These workers contract with the government corporations under an employment contract with a defined period for specific and simple work and they are not employed under an administrative employment resolution.

The third labour group subjected to the rules of the Saudi Labour Law is workers under an employment contract working for charities that provide free services.

The fourth labour group subject to the rules of the Saudi Labour Law is farm workers of agricultural and pastoral firms in the private sector that employ ten or more workers and the workers of agricultural firms that process their own products, besides the ones who operate or repair agricultural machinery on a permanent basis.

The discussion in this chapter reveals that the current Saudi Labour Law defines three labour groups that have been excluded from being under some rules of labour law and those are trainees of an employer working under a training contract and other than those who work for him, and part-time workers, besides seasonal workers, who have temporary jobs.

In addition, according to the current Saudi Labour Law there is a labour group that has been excluded from all the rules of Saudi labour law and the relation between the employer and workers is not deemed to be a labour relation. These are an employer's family members, namely the spouse, the ascendants and descendants who constitute the only workers of the firm, domestic helpers and the like, workers who work on board sea vessels with a load of less than five hundred tons, non-Saudi workers who enter the kingdom to perform a specific task for a period not exceeding two months, and players and coaches of sports clubs and federations.

#### **Chapter 4**

This chapter discussed the concept of labour disputes and their different types in the KSA according to Saudi Labour Law.

The discussion revealed that the meaning of labour disputes in the KSA is the disputes and controversies that arise between both parties of the labour relation, which is the employer on

the one hand and the worker or groups of workers on the other, which are subjected to the provision of Saudi labour law; such disputes shall be related to the provision of Saudi labour law or disputes arising from employment contracts.

Currently, individual disputes are the more common ones in the KSA that is disputes between the employer and the worker. Although, there are collective disputes they are few compared with individual ones; collective disputes in the KSA means labour disputes of the parties are a group of three or more workers and the employer.

In addition, labour syndicates do not play a role in collective disputes in the KSA, unlike most Gulf and Arab countries, due to the lack of labour syndicates in the KSA, whether for workers or employers.

It has been revealed through this chapter that current Saudi Labour Law of 2005 does not distinguish between individual and collective disputes as both types have the same kind of methods of settlement and the same procedures and they go to the same official bodies to settle the dispute.

## **Chapter 5**

This chapter included defining and studying the official authorities currently competent to resolve labour disputes in the KSA. It revealed that the authority to resolve all types of labour disputes which are subjected to the application of labour law in the KSA, whether individually or collectively, lies with two official bodies in the KSA namely, Labour Offices and CCSLDs.

Labour offices means the administrative bodies specialized in organizing labour issues in the KSA and which are affiliated to the Saudi Ministry of Labour, which has many branches in most cities of the KSA.

The role of Labour Offices in labour disputes is limited to receiving all types of labour complaints and claims and trying to settle labour disputes amicably without any jurisdictional competence.

CSLDs are the only have jurisdictional competence to settle all types of labour disputes subjected to Saudi Labour Law in the KSA. They are independent from Labour Offices and general tribunals (Shari'ah) and not affiliated to the Justice Ministry but to the Saudi Labour Ministry.

The history of these commissions in the KSA runs from 1947 and the reason for their creation is that Shari'ah courts in the KSA refused to apply Saudi Labour Law because it is considered secular, which contradicts Islamic Shari'ah.

CSLDs are divided into two levels. The first level is the PCSLDs. Most of its judgments are preliminary and subject to appeal. The second level is the HCSLD. It is an appeal body that has enforceable final decisions.

It has been revealed from the discussion of this chapter that although the current Saudi Judicial law of 2007 provided for establishing courts specialized in labour disputes as part of general tribunals in the KSA (Shari'ah courts) that are affiliated with Saudi Ministry of Justice to become the judicial power in labour disputes in the KSA instead of the current CSLDs. Although eight years has passed, the law does not have any effect and no courts have been established. So, the CSLDs are still the only jurisdictional authority in labour disputes in the KSA.

## **Chapter 6**

This chapter discussed the amicable settlement method of labour disputes through labour offices in the KSA and evaluated this method. It was obvious from the discussion that labour claims in the KSA are raised by the plaintiff or the lawyer before the labour office of his place of residence. In this case, the labour office shall settle the dispute by the amicable method. Using the amicable method to settle labour disputes in the KSA means that labour offices are an official intermediary between dispute parties and settle the dispute amicably by appointing sessions. When both parties accept this method, they make a sign of acceptance as a submission of obligation. However, if one or both parties do not accept the result of the settlement then the labour office investigator shall record the failure in an official report and turn the labour claim to the CSLDs to solve the dispute. The discussion in this chapter makes it clear that an amicable settlement is an effective way for solving many labour disputes now in the KSA.

## **Chapter 7**

This chapter discussed and studied the judicial solution method to settle labour disputes used in the CSLDs in the KSA. The discussion reveals that the judicial method for settling labour disputes, as used now in the KSA, means resolve the labour dispute by the CSLDs.

The Saudi Labour Law of 2005, Regulation of Pleadings Proceedings before the CSLDs of 1970 are the rules responsible for organizing the procedures and rules of litigation before these commissions.

Juridical settlement procedures of labour claims begin with the juridical session in one of the PCSLDs, according to the place of residence. Most judgments issued by the PCSLDs are preliminary and subject to appeal.

According to Saudi labour law, one party or both may appeal the decision of the PCSLDs before the HCSLD within 30 days from the date of notification. If appealing then a session is appointed in the HCSLD to consider the appeal, with decisions of the HCSLD being final and enforceable and not open to objections, appeals or challenges to the validity of the decision.

Through the discussion in the chapter, it is clear that the solution of labour disputes by the CSLDs in the KSA have many disadvantages such as the long litigation term and the lack of modern legal regulations for litigation before those commissions. So, the settlement of labour disputes in the KSA now causes financial and moral harm for both parties to labour disputes.

## Chapter 8

This chapter discussed and studied the arbitration method for the settlement of labour disputes in the KSA and tried to evaluate the method and its expected positives and negatives upon using it. It was found that the meaning of arbitration for the settlement of labour disputes in the KSA is optional arbitration that results from the agreement of dispute parties to arbitrate as an alternative method of dispute settlement by the Commissions for the Settlement of Labour Disputes.

It seems that the KSA doesn't have any obligatory arbitration to settle labour disputes. According to the current Saudi labour law, when dispute parties choose arbitration to settle labour disputes, the Saudi Arbitration Law of 2012 will be enforceable.

Although there is no any previous case of arbitration for the settlement of labour disputes according to the Saudi arbitration of 2012, studying and analysing arbitration law of 2012 in this chapter, it become clear that labour arbitration method according to that law has been witnessed a lot of changes and developments which can add many advantages for both parties of the labour dispute upon choosing arbitration to settle labour dispute in the KSA, such as the rapid settlement of labour disputes and granting the parties of labour disputes the freedom to determine the procedures of settling labour disputes.

### 9.2 Findings

Findings in this study include the importance of using arbitration to settle labour disputes in the KSA now and are as follows.

#### **Current Saudi labour law does not provide legal protection for some labour groups in the KSA**

Current Saudi labour law does not provide legal protection for some labour groups in the KSA; it excludes some working groups from being subject to all the rules of the labour law, as was shown in Chapter 3. It excludes workers working on small ships at sea, workers of agricultural and pastoral firms that employ less than ten workers and domestic helpers and the like.

#### **Saudi labour law does not distinguish between individual and collective labour disputes and their settlement method**

One of the important findings that was reached is that both the previous and current Saudi Labour Law do not distinguish between individual and collective labour disputes, whether in terms of the concept or solution methods which is unlike most laws in GCC and Arab countries that distinguish between individual and collective disputes in terms of the definition and concept, besides the jurisdiction and methods of settlement. According to the Saudi labour law, all labour disputes have the same nature and are subject to the same procedures to

settle the dispute as it does not admit to any differences between individual and collective disputes.

### **There are just two official bodies in the KSA that are specialized in settling labour disputes**

Official bodies currently specialized in settling labour disputes in the KSA are as follows. First, labour offices, which receive labour complaints and claims and try to settle disputes amicably. Labour offices don't have any jurisdictional competence to settle labour disputes. Second, CSLDs which involve two degrees of litigation, PCSLDs and HCSLD. CSLDs are considered now the jurisdictional authority in labour disputes in the KSA, and are affiliated administratively to the Saudi Ministry of Labour.

Although a Judicial Law has been issued in 2007 in the KSA to establish labour courts affiliated to the Ministry of Justice to be specialized in settling labour disputes and to replace CSLDs, the law has not been activated yet and no labour courts have been established at present. Also, there are no labour syndicates for employers or workers in the KSA to help settle labour disputes as happens in other GCC and Arab countries.

### **Labour disputes are increasing in the KSA**

By studying labour disputes and measuring their rate in the KSA, it can be said that labour disputes have increased annually; between 2010 and 2012, they increased from 25% to 33%, which was revealed in Chapters 7 and 8.

### **There are three methods for settling labour disputes in the KSA**

According to current Saudi labour law, there are three methods to settle labour disputes. The first method is the amicable method, the second is judicial settlement, and the third is arbitration as an alternative method. The first two methods are the most often used now in settling all kinds of labour disputes, while it appeared from the research that the arbitration method is not used in practice.

### **The amicable method has an effective impact in settling many labour disputes in the KSA**

The amicable method of settling labour disputes by labour offices in the KSA is considered the only official method to settle labour disputes amicably. This method is distinguished by non-binding results for both parties of the dispute unless both parties agree to accept it.

The disadvantages of the amicable method for settling labour disputes in the KSA are considered minor compared with its benefits and its effective role in settling labour disputes. One of the main negatives considered through this research into the amicable method was the undefined period of settling the labour dispute by labour offices. In addition, no party to a labour dispute can resort to a solution before the CSLDs directly until after the failure of settling the dispute amicably; this is considered as a restriction on the labour dispute parties.

In contrast, the amicable settlement method has many positives. It keeps good relations between the worker and the employer during settlement of the dispute because an amicable settlement does not happen until both parties accept it. Besides, it is a free method where no party has to pay for it. By studying and analysing the official statistics of the labour ministry, it can be said that the amicable settlement method now has a large efficient impact on settling labour disputes in the KSA; it has settled 66% of the total number of disputes in the KSA from 2006 to 2010, as shown in Chapter Six of this thesis.

### **Settling labour disputes judicially through CSLDs harms the parties to a dispute**

The thesis has found that the settlement of disputes through CSLDs has many negatives that harm the parties to a dispute. The most significant negative is that the legal regulations of the procedures before CSLDs which is applicable now is old, and omits many rules and other modern legal regulations; this makes this method inflexible and complex to use. Also, the method of the commissions misses an important insurance of realizing justice, namely the public hearings of its sessions.

By examining a random sample of the previous labour disputes that were addressed before CSLDs, it was found that one of the negative factors of their procedures is the slowness of settling disputes, which can take years. This happens for many reasons: the low number of commission members; the lack of available capabilities; the ability to appeal on most of the decisions of the PCSLDs; and the annually increasing number of labour disputes in the KSA.

One of the other disadvantages of this method is the cost. Although jurisdiction before CSLDs is free, this solution is costly because of the lengthy time it takes to arrive at a resolution, as mentioned previously. The long period taken results in increased financial and psychological costs for both parties to a dispute.

### **Using arbitration to settle labour disputes will result in many benefits for both parties to a labour dispute in the KSA**

The Saudi Labour Law has distinguished itself from all other labour laws in GCC and Arab countries by including a clear text to grant parties to labour disputes the right to arbitrate for settling such disputes. The arbitration method in Saudi labour disputes has been an obvious and useful development of the Saudi Arbitration Law issued in 2012; it is the applicable law for the regulation and procedures of labour arbitration. This law has avoided many of the negatives of the arbitration labour method of the Saudi Arbitration Law of 1983, such as the ability to appeal on the rules of the arbitration and the wide censorship and control commissions for settlement have on arbitration according to the old law.

This thesis concludes an important finding: that using arbitration to settle labour disputes in the KSA will be useful for both parties to the dispute, because this method provides many benefits for parties to a dispute and the official bodies specialized in settling these kinds of disputes in the KSA.

The current thesis concluded that the expected useful factors and positives for both labour dispute parties when using arbitration to settle labour disputes in the KSA is that arbitration is

quick and gives the disputing parties the freedom to choose the arbitrators and the regulations and procedures, such as the language, place and time of the arbitration.

Moreover, arbitration helps official bodies specialized in settling labour disputes to decrease their burdens and the number of labour suits they have to handle. However, the issue of cost is the most negative aspect of arbitration when settling disputes.

### **9.3 Discussion of Findings**

The findings of this thesis reveal that there is an annual increase in the number of labour disputes in the KSA. Furthermore it highlights the negative aspects associated with the official ways currently used to settle labour disputes, especially the judicial solution, so it's important to develop methods of settling disputes and activate the optional arbitration for settling labour disputes; as was seen in Chapter 8, arbitration has not been used yet for settling labour disputes.

Moreover, the thesis concluded that using arbitration in the KSA would include many benefits for the dispute parties, benefits which do not exist when settling labour disputes using the official bodies or using the current traditional methods in the KSA. The most significant benefits of arbitration are its speed and flexibility in settling labour disputes and granting the disputing parties the right to choose the regulations and procedures for settling labour disputes, and to choose arbitrators.

According to those findings, there is no doubt that the arbitration option will create a more suitable labour environment for Saudi and foreign workers in the private sector by providing a guarantee of their rights. It is unlikely that the settling of labour disputes will be done by judicial means as they can take years, as explained in Chapter 7. It is expected that arbitration will encourage foreign workers who cannot speak Arabic to work in the KSA, as one of the advantages of using arbitration, as found in Chapter 8, is the right to choose the language of arbitration.

Most of the positives and benefits expected from using arbitration, as stated in this thesis, relate to the new Saudi Arbitration Law issued at the end of 2012, which abolished the Arbitration Law of 1983. The law of 2012 is now applicable in the procedures of labour arbitration in the KSA. It is expected that this law will encourage parties to labour disputes to choose arbitration to settle labour disputes in the KSA.

As was shown in Chapter 8, the Arbitration Law of 2012 added new benefits to the arbitration used for settling labour disputes which were not provided in the old arbitration law. It also dealt with and amended negative aspects of the old law of 1983.

This research has shown that the arbitration method for settling labour disputes in the KSA has a disadvantage, namely the costs associated with arbitration and arbitrators' fees; however, there are many more advantages to using this method which makes this negative aspect not a major obstacle.

By comparing the Saudi Labour Law with the current Labour Laws in GCC and Arab countries, Saudi Labour Law has been distinguished by granting the right for parties to a dispute to choose arbitration as a means of settling labour disputes, as shown in Chapter 8. No doubt, the provision of an optional arbitration method to settle labour disputes is a positive thing that distinguishes Saudi labour law.

However, this thesis has shown that there are defects in the Saudi labour law regarding the settlement of labour disputes, and in the regulations regarding the legal arrangement and procedural rules of the current official methods used to settle labour disputes in the KSA, and in the amicable method and the solution used in the Commission for the Settlement of Labour Disputes.

Although the amicable method has resolved more than half the labour disputes, it lacks several legal arrangements which could increase its efficiency, such as determining a specific period within which all procedures must be finalised so as to ensure a speedy resolution, as shown in Chapter 6.

Although the judicial solution used in the CSLDs is now the sole judicial official method, it lacks modern regulations for hearings and procedures, as the current applied regulation is old and lacks many important legal rules. This means that resolutions of disputes through commissions can take years, as shown in Chapter 7.

It is noted that the current Saudi Labour Law of 2005 lacks a means of settling collective labour disputes, unlike the labour laws of the GCC and Arab countries that have established specific ways to settle collective labour disputes so as to resolve them quickly. There is no doubt that not resolving collective disputes quickly will lead to greater harm for workers and employers and influence the way in which workers' rights in the KSA are perceived. So, the lack of a specific means of settling collective labour disputes in the KSA is a defect in the Saudi labour law.

It is also noted that labour syndicates in the KSA have disappeared, unlike many other Arab countries. These are necessary to ensure the labourer's and the employer's rights, and to settle labour disputes through negotiation. So, it is a negative not to have labour syndicates in the KSA and this can affect labour relations and prevent the settlement of labour disputes.

It is also obvious that the lack of establishing labour courts that Saudi judicial Law has provided as an alternative to the CSLDs since 2007. This ensures the weakness of the administrative and human abilities and reflects incapability of the juridical authority in the KSA.

Saudi Labour Law of 2005 excludes some labour groups from being subject to the Saudi labour law, as shown in Chapter 3. This is legally unjustified and is a negative issue, as it prevents workers from having rights in the KSA according to this law and it harms them and leaves them open to oppression by employers, as long as there is no defined and clear law that specifies their rights and obligations.

## 9.4 Recommendations

- 1- The official methods for settling labour disputes currently used in the KSA, and the amicable method and the judicial method used in the Commissions for the Settlement of Labour Disputes, all urgently and quickly need amendments and developments without disadvantaging parties to labour disputes. It is important that these current obstacles be overcome so that official dispute resolution methods can deal with the increased frequency of labour disputes in the KSA.
- 2- There is an urgent need for the Saudi Labour Ministry to develop the commissions for labour disputes by increasing the number of employees given the increase in labour disputes in the KSA; also, it needs to establish new branches for the preliminary and high commissions in various places in the KSA.
- 3- It is obvious that there is a need to put mechanisms and plans in place to activate the optional arbitration for settling labour disputes in the KSA so as to encourage parties to labour disputes to choose this method. The Saudi Labour Ministry should conduct research and studies in order to encourage arbitration, and hold conferences and seminars to disseminate knowledge about the importance and the benefits of labour arbitration. It also needs to establish and provide specialized centres with low-cost arbitrators for arbitrating labour disputes to overcome the problem of arbitration costs.
- 4- It is very important for judicial authorities to activate the Saudi Judicial Law of 2007 by establishing labour courts and avoiding the current negative aspects regarding the Commissions for the Settlement of Labour Disputes. It also has to create judicial labour courts able to settle disputes quickly and justly to ensure the rights of both parties and provide employment security for workers in the private sector in the KSA.
- 5- The legislative authority in the KSA should develop new labour laws in the KSA that ensure the settling of labour disputes more efficiently, and facilitate the quick settlement of collective disputes. It should establish labour syndicates for workers and employers for all types of work in the KSA to contribute to settling labour disputes. The authority should also reconsider the legal provisions regarding the current labour law which excludes some labour groups from being subject to the rules of Saudi labour law.
- 6- It is important also to develop and modernize the current legal laws and regulations regarding judicial procedures and the hearings before CSLDs, and to develop ministerial decisions regarding the organization of the amicable settlement method.

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