

Comparison of Czech criminal law and Shari'a criminal law - a case study of Saudi Arabia

Abstract

The thesis provides a comprehensive comparison of the foundations and basic attributes of Czech and Shari'a criminal law. Its aim is to describe aspects of Islamic and continental legal culture in comparison. Due to the fact that Shari'a law is currently differentiated according to the individual Muslim country, apart from the classical Shari'a, the subject of this thesis is also the Saudi Arabian concept of criminal law. This is because Saudi Arabia is a Muslim country that largely retains the traditional Shari'a to this day.

The introductory part of the thesis reflects the effort to break the tendency for skepticism regarding comparability of both cultures. Before the comparison of criminal law legislations itself, readers are presented with a historical excursion into the development of relations between the West and the Islamic world, which have remained far from immune to their mutual influences throughout history. In this part, the thesis deals mainly with the influence of the West on the political and legal order of Islamic countries, which can be considered significant and important in terms of shaping the legal framework of Muslim countries. In fact, we observe interactions between the two cultures not only in the expansionist and military sense, but also in the positive way of mutual adoption and inspiration in the material and intellectual spheres.

Nevertheless, the question arises as to whether identical or similar institutes can be found in legislations that are so different at first sight. The answer is provided in the subsequent and essential part of the thesis dedicated to the comparison of criminal law itself, starting from the sources from which both legal models draw. While the breeding ground of Shari'a law is comprised of the norms that have existed for more than a millennium - according to the Islamic tradition revealed by God and determined by the life practice of the Prophet Muhammad - the sources of the Czech criminal law represent the result of a relatively flexible, state-regulated legislative process. Saudi Arabia, which largely adopts the norms of classical Shari'a and modifies them only marginally in the field of criminal law, is an example that illustrates Shari'a criminal law in practice. While the Czech legislation, with its scope of criminally protected values, prioritises human being as an individual, the primary function of Shari'a law is the preservation of divine rights, and the protection of human rights is considered only afterwards. Although the concept and overall context of the Shari'a and Czech criminal law legislation clearly show insurmountable differences, particularly with regard to the issue of punishment, the similar nature of criminal law norms cannot be denied, especially in their underlying idea.

Somewhat surprisingly, both regulations largely conceive the individual objects of criminal offenses and thus relatively identically approach the conservation of individual interests protected by particular facts of criminal offenses.

The thesis concludes with Huntington's vision of the inevitable clash of civilizations which is assumed to take place in the most escalated form between the West and the world of Islam.

Key words

Shari'a criminal law, Czech criminal law, Saudi Arabia