

Judicial Discretion Adjusting Trial Procedure Dates Under Saudi Procedural Laws

Dr. Fahd bin Muhammad bin Fahd Al-Qahtani¹, Dr. Ahmed Hamza Mansour²

Abstract

This study investigates regulatory authority of judicial discretion to set procedure dates in terms of content, time length and identify its scope and requirements. The inductive research approach is utilized in this study through examination of several provisions of chief procedural laws which are the law of civil proceedings, the law of pleadings before the board of grievances, the law of criminal procedures and the law of commercial courts. Legislative authority in KSA keeps charge to prescribe both the content and duration of most trial procedures, though delegates some authority to judges- both absolute and restricted- to adjust procedures dates which are mainly for emergency and unusual reasons considering the circumstances of litigants. This study is the first to inspect through an inductive study of KSA procedural laws, the judicial discretion in setting and rescheduling procedure dates based on litigants' unusual circumstances, to present the flexibility of litigation under Saudi court systems. Not much research examines this issue especially in English language, and most research describes general litigation steps under KSA courts through different procedural laws, without studies investigating the extent of freedom delegated to KSA judicial institutions to adjust procedure dates based on emerging circumstances of litigants during processing cases, thus this study aims to fill this gap in the existing studies. This study suggest that trial judges must not employ this powerful authority in conflict with statutory provisions of laws, and the use of this authority must be consistent with the regulatory objectives considering the rights and circumstances of the litigants, and appropriate to the type of procedure under this authority, all while respecting the principle of complete access to justice and speedy delivery of rights.

Keywords: *procedural dates, discretion authority, KSA procedural laws, pleadings, competent judges.*

Introduction

Lawsuits actions and proceedings are of most prominent importance for procedural scholarship, and essential to ensure the regularity of trials, define control and contain access to justices (Subrin 1997). Procedural laws provide procedure guidelines that both natural and juridical persons as "litigants" or "parties" must abide by appearing before the court to defend themselves or claim their rights. They safeguard rights of litigants granting them sufficient times to claim rights or defend themselves when formally settling legal disputes with the judicial authority, given that status, no law, or procedural law is devoid of observing these dates, and specifying the time period for each procedure that must be followed accurately (Brems, 2014). Procedural laws are many under in the Kingdom of Saudi Arabia (KSA) depends on the area of substantive law they cover i.e.

¹ College of Law, Prince Sultan University, Saudi Arabia

² College of Law, Prince Sultan University, Saudi Arabia

civil, administrative, criminal laws and others (Farouk, Alsamara, 2023; Meškić, Duraković, 2024). Though, to what extent judicial authorities in KSA can modify or adjust prescribed procedure dates by law in case there are emerging circumstances that require reconsidering initiating a particular procedure? what is the nature of such authority if there is, and what requirements must be met? Very few research in KSA tackles these questions considering judicial discretion entrusted to judges as well as competent courts, in view of key KSA procedural laws. Thus, the motivation for the study is investigating the existence of judicial authority to set and reschedule time for initiating judicial procedures to observe regulatory flexibility to litigants' emerging circumstances that may arise during the processing of case, in both normal and expedited trials in Saudi court systems (Minow, Brodin, et al, 2020). There is no research examines this issue especially in English language, and most research describes general litigation steps under KSA courts through different procedural laws, without studies investigating the extent of freedom delegated to KSA judicial institutions to adjust procedure dates based on emerging circumstances of litigants during processing cases, thus this study aims to fill this gap in the existing studies.

This research uses inductive approach to examine regulatory delegation to judicial authorities to set procedure dates, through investigating several provisions of basic procedural laws in KSA which are the Law of Civil Proceedings, the Law of Pleadings Before, the Board of Grievances, the Law of Criminal Procedures, and the Law of Commercial Courts, they form the main venues available to citizens to access justices. The purpose of this examination is identifying a comprehensive perception of the existence of judicial authority to prescribe procedure dates, scope and requirements. In fact, the Saudi procedural laws to a certain extent grant a competent trial court a discretionary charge to change procedure dates, this authority is different in scope i.e absolute and restricted in view of the circumstance of each situation, as a reflection to the flexibility of these laws.

PART I: Procedural Laws in Saudi Kingdom

1. Proceeding Dates Under KSA Procedural laws

Procedure or dates refers to the time set for completing a task, and legal periods are, in fact, set of time lengths prescribed by law or other rulemaking to start proceedings such as issuing claims, confirming legal positions, or forfeiting a right through particulars of claim either at the request of a claimant or a defendant (Struve, 2001). These procedure dates, whether its subject is related to procedural or substantive aspects, is divided into substantive dates, which are periods affecting substantive rights, covered by substantive law, including the statute of limitations limiting the maximum time frame during which legal proceedings – civil or criminal – can be initiated, the periods for the extinction of the right to claim, as well as periods for fulfilling legal obligations under particular types of contracts as prescribed by the labor law (Lambert, 2014, Mockbee, 1973). The second type of dates, which are the subject of this research are case-filing procedures dates: which are designated to sets times for litigation, which have beginnings and ends, that must be strictly followed to claim rights before trial courts during procedural filing (Oakley, Coon, 1986; Brems, 2014).

Some researchers have defined the procedure dates as a period of time, which may be long or short, prescribed by the law, the judge, or the litigants, in which a specific proceeding action must be carried out either before, during, or after a particular time begins, or during which it is prohibited to carry out a certain action by either a claimant or a defendant and others defined procedural dates as time periods or dates that are calculated in years, months, days, or hours as deadlines fixed by the law to initiate a procedure or not, aiming to organize access to justice and courts, and provide a time opportunity for the litigants, so that they can prepare their proceedings claims, as convenient promptly (Ibrahim, 2016). Now, both definitions provide different

perspectives, because the first definition views procedure dates based on the authority that promulgates them, either by law, a judge, or litigants in very exceptional circumstances. This definition also considers the dates during which it is forbidden to take a legal action during the duration of these prescribed dates. The second definition looks at the overall objectives from fixing dates such as securing the just, prompt, and less costly decision making of every legal, judicial action and procedure and provide an equal opportunity to "litigants" or "parties", appearing before the court to defend themselves or claim their rights (Nelson, 2020).

2. Types of Procedure Dates Under Saudi Judicial System:

According to former definitions of case-filing procedures dates, there are many types of procedures in KSA serving different considerations (Almutairi, Mohammed, 2024). First, procedures dates can be classified based on rule makers into statutory, judicial, and as agreed. Statutory proceeding dates are prescribed by law directly and both individuals or juridical institutions are not permissible to violate these dates or adjust their time length, such as deadlines for objection by requesting appeal, deadlines for objection by requesting reconsideration, which are unofficially called "rigid dates," and they are - often - dates relating to public order in a country, they aim to achieve the public interest (Tate, 1960). Judicial proceeding dates are dates in which law awards special statutory authorization to judges or a circuit court to adjust the time length of procedure dates for initiating and continuing in a lawsuit, in view of the circumstances of claims such as the grant of persons filing a lawsuit enough time to prepare their claims and defenses, for example, in Article (65) of the law of civil procedure in KSA, the law gives the trial court an authority to award parties to a lawsuit enough time essential to review and respond to the documents in a case (Yeazell, Schwartz, et al, 2021). Finally as agreed-dates, are dates in which the law grants litigants the opportunity to determine its duration in a especial circumstances as a special right for them to stop a judicial dispute as a result of reconciliation between the opponents to end a dispute or a filed lawsuit, as in the law of civil procedure under Article (86), that does not exceed six months after the court's permission.

Second, procedures dates under KSA can be classified based on breaching-penalty into imperative proceeding dates and regulatory proceeding dates. Imperative dates are strictly prescribed by the law, for example, prescribed proceeding dates to challenge a decision taken by the court and the non-observance of these precise date entails non-complaint a procedural penalty such as the invalidation of the procedure, loss of the right to claim it. Furthermore, regulatory proceeding dates, are the dates for which the law does not impose a penalty if litigants do not strictly follow, and they are not binding, such as dates fixed for appearing before a general court cannot be less than eight days from the date of serving the statement of claim to litigants, under KSA law. Though, their purpose is expediting decision making and progress of a lawsuit and organizing the work conduct of judges and their assistants, including clerks and bailiffs, yet violating these proceedings dates does not result in the invalidation of a claim proceeding or the forfeiture of a right.

Third, procedures dates can be further classified based on the duration period of the prescribed date, which includes, complete proceeding dates, which are their time limits must expire completely before a particular proceeding action is taken by either a competent court or litigants, for example, a motion for expedited decision cannot be requested until the prescribed duration time of the date is completely expired, then an action can be initiated. The objective of this type of deadlines is to give litigants a sufficient period to file complaints. Additionally, incomplete proceeding dates are dates within which an action must be taken before its expiry, and it is called "incomplete" because the action must be taken within a time limitation, and thus part of the time limit is missing. This type is prevalent in procedural laws under KSA, for example, dates for appeal through an objection to a court's decision. Finally, under the KSA law there are reverse proceeding dates, which are dates with which a procedure must be commenced

before the start of the date, for example, prescribed dates for depositing the defense memorandum, under the law of civil procedure stipulates that a defendant must deposit the defense memorandum three days before the first session. Here, there is no beginning of the date in the present tense, but rather its beginning, which can begin counting at the first session.

PART II: Judicial Discretionary Power Setting Procedure Dates in Saudi Kingdom

1. The Scope of Judicial Discretion

In general terms, discretion is the power of a public official or private party to behave based on the dictates of their own judgment and conscience within general legal principles. Judicial discretion refers to a judge or circuit court's power to issue a judicial decision according to their individualized evaluation, with assistance from the principles of law, and this authority provide judges with immense power that is exercised whenever rule makers warrants such usage to achieve justice (Dick, 2020; Molina, 2020). 'Discretion' also indicates a degree of individual freedom that assists in making a determinative judgment with an authority to interpret or deploy sentencing law and procedure to provide innovative or constructive solutions (Henham, 2022). Though, this discretion authority can be subject to abuse, when judges make decisions baseless, fanciful, or unreasonable (Thomas, Radzinowicz, 1970). Though, can trial judges change a prescribed time duration for initiating a trial procedure through according to their individualized evaluation under KSA. According to studying many provisions of procedural laws, judges are given discretion authorities to act according to the dictates of their own conscience providing that this is consistent with regulatory objectives and Sharia law. However, rule makers retain generally the exclusive charge to precisely prescribe the content and time duration of specific "imperative" procedure dates and without rooms for judicial interference, and this perhaps to prevent disturbances of public order that may threaten the collective security access to justices in the Kingdom of Saudi Arabia. Despite that, it grants trial judges as well as court circuits, in very special occasions both an absolute or restricted authority to amend a statutory procedure dates, either by decreasing or extending time limits durations, or specify the beginning of a date in which a procedure shall be initiated within, according to the circumstances (Bookman, Shanahan, 2022), in the interest of providing some flexibility in the litigation procedures, achieving justice and guarantees the rights of litigants, however, this granted authority narrows and expands according to reasons triggering the proceeding date or time limit.

A. absolute judicial discretion:

Trial judges have absolute discretion powers when the law mentions reasons for a particular procedure and then explicitly authorizes judges to estimate the proceeding duration length, without limits or requirements, for example, when the law says: (to the court) (to the judge) (to the circuit) (...he shall return to his estimation..) or the law prescribes the procedure, but leave fixing its duration, such as saying: (...The court must defer processing of the case to a next session...) and then law does not mention particular time limit duration of this postponing or the date of the session. In these terms, the procedure law awards authorization to the judge or the circuit to fix the duration of the procedure that must be taken. In fact, there are many examples under the KSA procedural laws of such power, for example, under the law of civil procedures, a competent judge has authority to determine sufficient time limits for some actions according to Article (65) presenting arguments in courts shall be oral as well as submitting written document memoranda, and the judge have the authority to award litigants enough time to consult and probably respond to the documents when essential. In addition, in Article (68) if litigants make a valid defense and asks for a response from the other party who asks for postponement, the competent court can adjourn processing the case, if necessary, but deferment shall not be awarded repeatedly to respond to the same request except for new justifications appear to the court. Additionally, the executive regulations of the previous

article (65/1) stated that the circuit shall arrange a preparatory hearing session before the pleading session in commercial cases, if it determines the time limit for the lawsuit procedures and the expected period duration of the trial. Moreover, according to Article (12) of the law of civil procedure, a process may not be served at a place of residence before sunrise or after sunset or during official holidays, unless there are compelling situations and after securing an approval from the competent authority. Furthermore, a trial court judge has authority to determine times limits for conducting hearing sessions, and even postpone them at its consideration, non- observing dates found in Article (43) shall not null the statement of claim, and if litigants voluntarily appear before a court, and for a hearing their dispute, this court shall promptly hear the lawsuit, if possible, or fix another hearing session.

Judicial discretion does also appear in many KSA provisions law of procedure before the board of grievances. For instance, a court is given the authority to determine the date of trial sessions and postponing it under Article (11), which indicates that in consideration of administrative lawsuits, the circuit may instruct a judge to process the lawsuit for arguments after preparations are completed, and accordingly, the judge shall report on the facts and matters of the case, and most importantly, after which a session shall be fixed for further investigation of the case by a trial court. In addition, the court in Article (15), in cases that the defendant fails to appear, shall postpone the hearing, to a later session and notify the defendant thereof. If the defendant fails to appear again, the court shall decide the case and the judgment shall be deemed a judgment in presence. Moreover, under Article (54), in connection with the challenge petition to a trial court judgment, the competent circuit shall have the authority to review it, If the circuit decides that the challenge is valid, it shall base on its discretionary power set a hearing date for consideration of such challenge, and in Article (57), the circuit may, as an exception, allow the parties to the challenge to submit supplemental memoranda if, upon examination of the case, it finds that it is necessary for rendering a decision. In such case, consideration of the challenge shall be adjourned to another hearing. The circuit shall set the dates for filing such memoranda.

On a similar context, in considering the KSA law of criminal procedure, trial courts have authority to estimate the period of suspension of judgment in a criminal case due to its connection to another case, this authority springs from Article (133), which mentions that if a judgment in a criminal lawsuit is contingent on decision in another criminal case, the proceedings shall be stayed for obtaining a final court decision on the other lawsuit. Furthermore, a trial court is awarded a power to determine the time limitation given to the accused to prepare his defense, as under Article (136), if the accused appears and asks the court to grant him time to prepare his defense, the competent judge shall award him sufficient time. Furthermore, the court under Article (159), unless deliberations are closed, may at any time, permit the prosecutor to amend the indictment, and shall notify the accused of such amendment and the court shall afford him ample opportunity to prepare his defense regarding such amendment, in accordance with the law. In addition, the criminal court may determine the duration of the expert's assignment, and the court under Article (171) may assign one or more experts to provide opinion on any technical issue related to the case within a prescribed time, submit to the court a written report stating his opinion.

Under the law of commercial Courts, a court may determine the dates of hearing and judgement-rendering sessions and the periods for their postponing, because Article (27) permitted the postponement of the session, when necessary and left the estimation of the duration to the court circuit, since trial court sessions may not be postponed except for a reason that requires it and that is recorded in its minutes, and according to Article (30), if a defendant or his representative does not appear and has been notified in person other than himself, the court must postpone consideration of the case to a next session. Similarly, in Article (90) of the law stipulates in fixing a session date to consider the

objection request submitted to the Supreme Court: If the court circuit deems that the objection deserves consideration, the circuit shall set a session to consider it.

b. Restricted judicial discretion

The former subsections discuss judge's absolute authority to prescribe dates for procedure, yet in other procedural laws, judges have only restricted discretionary charge in which statutory texts authorize estimation of the statutory date or period, yet with based on upper or lower time limits that judicial authorities cannot exceed, or place restrictions based on meeting particular requirements, and accordingly, the authority is restricted either to a maximum or a minimum time limit, or a conditional discretionary power. For example, a court has an authority to add an additional period of time to the scheduled date for those whose residence is outside KSA, under Article (21) of the law civil procedure, which adds extra sixty days to the dates, and the court may, when necessary, increase it for a similar period, however the grant of the additional period must not exceed sixty days. The court also, under Article (80), in connection with its authority to add a new person into a claim, may - on its own initiative or upon the request of one of the litigants - order the joinder of a person if it would serve the interest of justice or to reveal the truth, and the court shall set a date not exceeding fifteen days for the attendance of whomever it orders to be join and whoever requests it, in accordance with the usual procedures for filing a lawsuit. In another context, the court under Article (166), within a time limit not exceeding (twenty days) from the pronouncement of the court decision, the judge shall issue a decree summarizing the case, responses, valid counter claims, verbatim testimony of witnesses in addition with attestation of their characters. On a similar perspective, under the law of procedure before the board of grievances and the criminal procedure law, a judge has a restricted authority to fix the date for submitting a copy of a court decision in expedite trials according to Article (26), draft judgments containing the facts and reasons, signed by the circuit judges, shall be kept in the case file upon pronouncement of a judgment, and after pronouncement of a judgment, a date shall be set by the competent trial court for delivering a copy thereof not later than 24 hours in summary judgments and 15 days in other judgments. Furthermore, under Article (193) of the criminal procedure law, after pronouncing the ruling, the court shall fix a maximum time limit of ten days for receiving a copy of the ruling instrument. Under the KSA law of commercial courts, the trial court has given authority to set dates for several proceedings, but at maximum period, as found in Article (18) the commercial court may decide rule on lack of subject-matter jurisdiction in a duration period not that does not exceed 20 days from the motion date. Additionally, under Article (34) a summary petition shall be sent to the competent circuit immediately after filing, and a judgment shall be render within a period not exceeding three days starting from the date of referral.

C. Conditional judicial discretion

As a result of many considerations surrounding the incident, the KSA procedure laws delegate judges an authority to fix proceeding dates, but within a specific framework, on the condition that he meets stipulations. For instance, under the civil procedure law Article (44), the date of appearance in a civil, labor, commercial and family court cannot be less than eight days or four days from the time the statement of claim is served. Though, the competent court can shorten the prescribed time to 24 hours in cases arising from traffic accidents, or when necessary, on the condition that the litigant is served in person and is able to get to the trial court in time, and before which the lawsuit is filed. Furthermore, under Article (68), if either party presents a valid defense or requests a response from the other party who asks for postponement, the judge may postpone the case if he deems it necessary, but postponement may not be granted again for responding to the same request except for a reason acceptable to the judge. Finally, under Article (207), litigants can appear in summary courts within a time of 24 hours, and such duration can, in particular circumstances, be shorten by the competent trial court.

The same conditional authority is stated in the procedural law before the board of grievances in Article (8) where the judge may rule an annulment case in summary trials where the petition to stay the enforcement of the administrative decision sought to be annulled because it meets the stipulations for filing a grievance, and the competent judge shall promptly examine the motion to stay enforcement of said judgement, and investigate the subject-matter of the case upon the lapse of the statutory grievance time limit, but no more than before to the lapse of prescribed period.

Under the criminal procedure law, a judge has a conditional authority to reduce the time to appear before the court, as according to Article (136) of the law stipulates the appearing date in a criminal cases shall be scheduled after a period not less than three days from of the date of serving a notice to the parties, though, time limit may, if necessary, be shorten to one hour if the party notified in person, as well as he can reach the court, this reduction after taking a permission from the trial court judge investigating the lawsuit. Furthermore, under Article 214, the trial court judge rendering a judgment of conviction and imposition of punishment have an authority to order stay of execution of a criminal judgment based on material reasons specified in its grounds for judgment. The order shall specify the period of such stay. Under the KSA commercial procedure law, under Article (27) a hearing may not be adjourned, except for a reason necessitating such adjournment which shall be entered into the record. A hearing may not be adjourned for the same reason more than once.

2. Measures for KSA judicial discretion in adjusting procedure dates:

Judge's discretionary authority to precisely prescribe procedure time length should not be perceived as an absolute authority, even its source is the KSA law maker itself, however, this authority is restricted by watching regulatory objectives, increasing public understanding of the citizen's legal rights and duties; protecting and promoting the public interest, supporting the constitutional principle of the rule of law; and lastly enhancing access to justice, (Knill, Schulze, Tosun, 2012) in a manner that does not affect the progress of the case or the rights of the parties to the dispute. In fact, using this discretionary authority is one of the duties entrusted to judges that he must be utilized for efficient processing of the case. Therefore, it is not permissible to exercise discretionary authority in any procedural deadline that the law stipulates as mandatory and prescribe its time length precisely and does not leave the judge room for his discretion, otherwise this is considered an aggression to constitutional rights and fair access to litigation facilities. A competent court must consider adjusting procedure dates, as the intent of legislating deadlines to provide benefits to the parties appearing in a lawsuit by enabling them to prepare whatever evidence, defenses, or documents they must support their position, and other particulars of proceedings claims. This shows a respect to the rights of the litigants, and a dedication to the principle of justice upon which the judiciary is based. Accordingly, it seems not correct for the judge to set a date for a specific procedure that negatively downgrades protected rights of litigants in a lawsuit. Moreover, a judge must keep a balance between the principle of complete justice and respecting the procedural rights of the litigants. Just as the judge have an authority to set and reschedule dates length for actions and proceedings to give the disputing parties an equal and prompt opportunity to claim their rights, he must, in return, aim to expedite the procedures of litigation and not prolong them, and hence delay prompt access to justices.

Finally, a competent court must consider the circumstances of the parties to the case when it prescribes the timeframe of the proceeding periods and deadlines. Just as the judge must consider the content of procedure in estimating the duration or date, he must also weight the circumstances of the litigants initiating the procedure, so that the time limit shall be longer if the opponent's circumstances do not allow him to comply with the target procedural action. The foundation of this measure is akin to Article (21) of the civil procedure law, which mentions that a time duration of sixty days shall be added to the dates required by law for litigants who reside outside KSA, and the trial court judge may,

if essential, increase it for a similar duration. In a similar context, a judge must consider urgent cases or requests that requires expedited court decisions in “fast-track trial”, while exercising his discretion to adjust procedural deadlines (Bouffard, Bouffard, 2011). If the case or request is one of the cases received by the law as urgent; a competent court must have the dates and durations that it prescribes to be short in view of the urgent situation (Gensler, Cantone, 2020). Indeed, the dates and periods stipulated in the procedural regulations with regard to urgent lawsuits and requests differ from the dates in regular cases and requests, and this is clear from reading Article (207) of the law of civil proceedings, which mentions that the time limit for attendance in urgent cases shall be twenty-four hours, and incase that there is an extreme necessity, this period may be reduced by a decision from the court.

Conclusions

At the conclusion of this study, examining key procedural laws in KSA, the regulatory rule maker grants judicial discretion to trial courts a charge to reschedule time and length of many procedures that suits processing cases, for mostly emergency and unusual reasons, as a safeguard to allow equal opportunities to litigants, improve access to justice, and takes multiple forms, as sometimes it may be in present when a judge reschedules procedure time limit stipulated by the law, reducing, extending, or even close it. However, the rule maker in the KSA still retains the exclusive and predominate authority to prescribe dates and periods on a regular basis in ordinary conditions of lawsuits, leaving the assessment of emergency as well as unusual conditions and facts to judicial discretion to each case. This reflects flexibility of these laws and their adjustment to whatever circumstances may arise and emerge during trials. The discretion granted by the KSA to judges is not an absolute authority with no limits, which may lead to abuse of this authority. Rather, it is sometimes restricted by time limits, or meeting specific requirements before this authority can be exercised. More research should investigate further procedure deadlines under KSA procedural laws, especially after the utilization of electronic litigation and remote pleading procedures after Covid19, completing many litigation procedures in a short time and has reduced the delay in processing cases examined under the KSA judicial authorities, which questions frequently the extent of procedural dates time durations, as affected by this technical development.

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