ADMINISTRATIVE TRADITION AND CIVIL JURISDICTION OF THE CORDOBAN *ṢĀḤIB AL-AḤKĀM* * (I)

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«The shoemakers of Cordoba rallied against a *muḥtasib* who had warned publicly about the bad quality of their work. They demanded from the *wazīr ṣāḥib al-aḥkām* Ibn al-Layṯ that he should be expelled from their market and be detained from acting within it. The document presented by the claimant to Ibn al-Layṯ as judge attested to the damage caused by the *muḥtasib* and his use of force against them (*tasalluṭuhū 'alayhim*), thus deserving expulsion from their market. In consequence, the *wazīr ṣāḥib al-aḥkām* Ibn al-Layṯ consulted the jurists whether this claim should be granted.»

This case taken from the *fatāwā*-collection *al-Aḥkām al-kubrā* by the *qāḍī* Ibn Sahl (d. 468/1093)[1] might, in a broader Islamic context, be interpreted as a complaint against the market inspector (*muḥtasib*) addressed to a higher official, namely the *wazīr ṣāḥib al-aḥkām*. In the Cordoban setting, however, it is quite evident that the shoemakers sued a private person who had caused damage to them by his conduct. In describing this person as *muḥtasib,* i.e. someone acting on behalf of the Koranic formula «demanding good and forbidding evil»,[2] the source already alludes to the rightfulness of his action: We learn that both jurists consulted gave a legal response (*fatwā*) strongly objecting to the shoemakers' claim. According to the famous jurisconsult Muḥammad Ibn 'Attāb (d. 462/1070), «anybody opposing him [i.e. the *muḥtasib*] is more apt for expulsion from the market than he is. Their unsolid work is to the considered fraud and usury of Muslims' property and should

* This article is a revised version taken from various chapters of my book, *Gerichtspraxis im Stadtstaat Cordoba. Zum Recht der Gesellschaft in einer mālikitisch-islamischen Rechtstradition des 5/11. Jahrhunderts,* Leiden, 1999; I have included additional cases. I owe special gratitude to Mitch Cohen from the Berliner Wissenschaftskolleg and to Axel Havemann, who went through my draft with so much care.

[1] Partially edited by Azemmouri, T., «Les Nawāzil d'Ibn Sahl. Section relative à l'*ihtisāb*», *Hespéris-Tamuda* 14 (1973), 7-108, here p. 22, and more recently in several books by Khallāf, M., here in: *Waṯā'iq fī šu'ūn al-ḥisba fi'l-Andalus,* Cairo, 1985, p. 51f. The complete edition by Nu'aymī, R., *An Edition of Dīwān Al-Aḥkām al-Kubrā by 'Īsā b. Sahl (D. 486 A.H./1093 A.D.). Unpublished Ph.D thesis submitted to the Faculty of Arts, The University of St. Andrews, Scotland for the Degree of Doctor of Philosophy.* St. Andrews, 1978, I used with the kind permission of the faculty. I will refer to it as «*Aḥkām*». The abovementioned case is cited *ibid.,* 1007.

[2] For this meaning of *muḥtasib* in the context of al-Andalus, see Chalmeta, P., *El Señor del zoco en España,* Madrid, 1973, 403-6.

therefore be cut into pieces». His colleague Aḥmad Ibn al-Qaṭṭān (d. 460/1068) agreed and demanded that the sentence be passed accordingly.[3] It is to be assumed that the shoemakers had been criticized before, as «people had complained that whatever work-piece they bougth collected holes within a very short time»,[4] and that this widespread dissatisfaction was the reason for this veredict. Ibn al-Layṯ passed his decision (*ḥukm*) accordingly and had a new pair of slippers be cut to pieces with a knife. His secretary Ibn Sahl, the compiler of our source, personally witnessed this public punishment take place.[5]

This case is part of a whole series presented to the same Muḥammad b. al-Layṯ Ibn Ḥarīš[6] during the years 456/1064 to around 461/1069, covering quite different aspects of municipal jurisdiction. What makes historical analysis rather difficult but also rewarding is the fact that Ibn Ḥarīš is addressed under quite different titles which seem to cut across borders set up in Muslim legal literature. Besides the most frequent *al-wazīr ṣāḥib al-aḥkām* we also find *al-wazīr ṣāḥib al-šurṭa wa-l-sūq*, with both expressions sometimes lacking the honorific *wazīr*.[7] Within the same source, Ibn Ḥarīš was also called *ṣāḥib aḥkām al-šurṭa*,[8] *ḥakam*[9] or simply *al-wazīr*,[10] and in the juridical *ṭabaqāt*-literature, Ibn Ḥarīš was referred to as *ḥākim*.[11]

The use of *wazīr* in connection of other offices may be regarded as a mostly honorific title for members of the administrative and military elite,[12] but all other names need further explanations. The expression *ṣāḥib* («companion») used in connection with a specific assignment designates an office or a title within the political-administrative context. (It may be assumed that this use of *ṣāḥib* referred to a relationship between officeholder and ruler, the latter delegating part

[3] Ibn Sahl, *Aḥkām,* 1007.

[4] *Ibid.*

[5] *Ibid.* On Ibn Sahl's activities as secretary see my *Gerichtspraxis im Stadtstaat Cordoba,* Leiden, 1999, 3f., on this case see *ibid,* 249f.

[6] On the vowels in this name see Ibn 'Abd al-Malik al-Marrākušī, *Kitāb al-Ḏayl wa-l-takmila li-kitābay al-mawṣūl wa-l-ṣila* (vol. I, ed. M. Benšarīfa), Beirut s. d., 406, n.° 596.

[7] For *«al-wazīr ṣāḥib al-aḥkām»* see Ibn Sahl, *Aḥkām,* 374, 419, 441, 611, 620, 1007, 1071, 1089 (without name), without *al-wazīr ibid.,* 572, 627, 736; for *«al-wazīr ṣāḥib al-šurṭa wa-l-sūq»* see *ibid.,* 52, 330, without *al-wazīr, ibid.,* 562.

[8] *Ibid.,* 839.

[9] *Ibid.,* 433.

[10] *Ibid.,* 346; cases in which he is named without any title *ibid.,* 421, 454, 577, 616, 629, 732, 843.

[11] Appendix of Qāḍī 'Iyāḍ, *Tartīb al-Madārik wa-taqrīb al-masālik bi-ma'rifat a'lām maḏhab Mālik,* ed. Muḥammad b. Tāwīt al-Tanǧī et al., Rabat, 1965-83, vol. VIII, 183 (Ibn Ǧarīs).

[12] On the vizirate in Muslim Spain see Muhammad Meouak, «Notes sur le vizirat et les vizirs en al-Andalus à l'époque umayade (milieu du IIe/VIIIe siècle-fin du IV/Xe siècles)», *Studia Islamica* 78 (1993), 181-190.

of his authority to the *ṣāḥib* without abandoning it altogether.)[13] Both offices, *šurṭa*, conventionally translated as «police», and *sūq*, the supervision of the market, have different traditions going back to the Umayyad Caliphate in the East, whereas the *ṣāḥib al-aḥkām* is only referred to in later sources in al-Andalus. Any change in office by Ibn Ḥarīš can be excluded as a reason for changing titles, since both terms, *«šurṭa wa-l-sūq»* and *«aḥkām»* (generally «jurisdiction»), were used in parallel cases during the year 457/1065 and later on. Beyond doubt, both titles were used alternatively.

In his recent book on jurisdiction in al-Andalus *Ta'rīkh al-qaḍā' fī 'l-Andalus,*[14] Muḥammad 'Abd al-Wahhāb Khallāf sets up two categories for some of the cases Ibn Ḥarīš dealt with: *ḥisba,* or the maintenance of public order, including the supervision of the market (*sūq*); and *šurṭa,* usually understood as the «police».[15] He does not give the reasons he has for attributing specific cases to specific categories. Puzzlingly, Khallāf seems to equate the *ṣāḥib al-aḥkām* with the *šurṭa* office,[16] although he categorizes some of the cases presented to the *ṣāḥib al-aḥkām* Ibn Ḥarīš under *ḥisba.*[17] He also regards some cases presented to the *qāḍī* in Cordoba as belonging to *ḥisba.*[18] But, if both assignments, *šurṭa* and *ḥisba,* were always strictly separated, as Khallāf maintains,[19] why did Ibn Ḥarīš bear a title unifying the two, *ṣāḥib al-šurṭa wa-l-sūq?* This said, Khallāf's approach seems to be based on some universalistic concepts of «Islamic» types of jurisdictions,[20] which he calls «religious assignments» (*khuṭaṭ dīniyya*) and under which he summarizes all information and related cases. His interest, however, does not primarily concern historical analysis of differences in judicial assignments and their competences.[21]

[13] Compare Meouak, «Notes sur les titres, les surnoms et les *kunya*-s du premier émir hispano-umayyade 'Abd al-Raḥmān b. Mu'āwiya», *Al-Qantara* 12 (1991), 361.

[14] *Ta'rīkh al-qaḍā' fī 'l-Andalus min al-fatḥ al-islāmī ilā nihāyat al-qarn al-khāmis al-hiǧrī (al-ḥādī 'ašar al-mīlādī),* Cairo, 1992.

[15] Khallāf, *Ta'rīkh al-qaḍā',* 393f., 425f. and 437-9 on *ḥisba,* and 508-512 in his chapter on the *šurṭa* office.

[16] Compare biographical notes Khallāf, *Ta'rīkh al-qadā',* 502f.

[17] *Ibid.,* 425 and 437.

[18] The vast majority of cases from the 4th/10th century that Khallāf categorizes as *ḥisba* in 399-415 were dealt with by the *qāḍī* Ibn Ziyād.

[19] Khallāf, *Ta'rīkh al-qaḍā',* 514.

[20] Compare the typology in al-Māwardī, *al-Aḥkām al-sulṭāniyya* (reprint Beirut, 1990), 129-170 and 361-415, al-Qarāfī, *al-Ḏakhīra,* 14 vols. (ed. M. Ḥaǧǧī *et al.,* Beirut, 1994), X, 32-58, Ibn Farḥūn, *Tabṣirat al-ḥukkām fī uṣūl al-aqḍiya wa-manāhiǧ al-aḥkām,* ed. T. Sa'd, 2 vols. (Cairo s.d.), esp. I, 19f., Wanšarīsī, *Kitāb al-wilāyāt,* ed. and trans. H. Bruno and M. Gaudefroy-Demombynes, *Le Livre des magistratures* (Collection de textes arabes publiée par l'Institute des Hautes-Études Marocaines, vol. VIII), Rabat, 1937, 13, 27, 29f.

[21] On differences between *qāḍī* and other forms of jurisdiction, see Johansen, B., «Vérité et Torture: *ius commune* et droit musulman entre le Xe et le XIIIe siècle», in: F. Héritier (ed). *De la Violence,* Paris, 1996, 129-131.

Facing these problems, I suggest a different approach: Using data from historiographical and biographical sources, I will describe each of the titles attributed to the judge Ibn Ḥarīš in the 5th/11th century separately and, if necessary, in comparison with each other. Considering this information, the second part of the article will deal with the juridical and institutional aspects of cases presented to the *ṣāḥib al-šurṭa wa-l-sūq* or *ṣāḥib al-aḥkām.* Thus we may eventually come to some conclusions regarding judicial activities and authority of this non-*qāḍī* judge.

UMAYYAD TRADITION OF *ŠURṬA* AND *SŪQ* OFFICE IN AL-ANDALUS

The term *ṣāḥib al-šurṭa wa-l-sūq,* «head of the police and supervisor of the market», refers to offices going back to the Eastern Umayyad Caliphate prior to the year 132/750. The *ṣāḥib al-sūq* supervised the markets and prevented fraud.[22] Literally designating a subunit with special insignia,[23] the *šurṭa* was originally the Caliph's or his official's guard in the newly-founded garrison towns whose task was to keep public order. The non-Koranic term *šurṭa* was used throughout Islamic history to designate police functions in a wider sense as well as penal jurisdiction.[24] Although Khallāf considers the *šurṭa* a religious office, there was no general theory or concept to connect the *šurṭa* with the Koran or with pre-Islamic institutions.[25]

After the loss of the Eastern Caliphate, Umayyad emirs continued the old administrative system regardless of changes in the Abbasid Caliphate[26]. As one of the few very obvious differences, the market inspector was still called *ṣāḥib al-sūq,* and not *muḥtasib* as in the rest of the Islamic lands. The oldest names of market inspectors in Cordoba are known from the 2nd/8th century.[27] The *šurṭa*

[22] This title had replaced the older *'āmil al-sūq* in the Ist/7th century, Chalmeta, *Señor del zoco,* 351.

[23] Ibn Manẓūr, *Lisān al-'arab* (ed. Beirut, 1990), VII, 330, compare Khallāf, *Ta'rīkh al-qaḍā',* 467, refering to Qalqašandī.

[24] Tyan E., *Histoire de l'organisation judiciaire en pays d'Islam,* Leiden, 1960, 573-616, and Marín, M., «Shurṭa» in *EI²,* IX, 510-511. For historical studies on *šurṭa,* see e.g. Hoexter, M., «La shurṭa ou la répression des crimes à Alger à l'époque Turque», *Studia Islamica* 56 (1982), 117-146; and Havemann, A., *Ri'āsa und qaḍā'. Institutionen als Ausdruck wechselnder Kräfteverhältnisse in syrischen Städten vom 10. bis zum 12. Jahrhundert,* Freiburg, 1975, 51ff.

[25] Hoexter, *Shurṭa,* 117f. Schacht traces *šurṭa* back to the Latin «cohorte», c.f. Tyan, *Histoire,* 578.

[26] Meouak, «Notes historiques sur l'administration centrale», *Hespéris-Tamuda* 30 (1992), 9-20, here p. 10.

[27] The first known market inspector, Qar'aws, must have held the office well before Mālik's death in 179/793. His son (d. 220/835) allegedly reported to Mālik on his father's practice, Ibn al-Faraḍī, *Ta'rīkh 'ulamā' al-Andalus* (ed. Cairo, 1966), n.° 1084; Ibn Ḥayyān, *al-Muqtabas min anbā ahl al-Andalus,* part. II (ed. M. 'A. Makkī Cairo, 1971), p. 214; contrary to Chalmeta, who considers Fuṭays b. Sulaymān (d. 197/812-3 or 207/822-3) the first known market inspector in al-Andalus, *Señor del zoco,* 362, 364f. For a listing of Cordoban market inspectors until the 5th/11th century, see *ibid.,* 364-369 and 374-379.

also continued to exist in Umayyad Spain with many a *ṣāḥib al-šurṭa* exercising important military and administrative functions.[28] Interestingly enough, these «police officers» were very often descendants of enfranchised slaves, who were personally bound to the Umayyad ruler as clients (*mawālī*).[29]

The Umayyad emir Ḥakam I (180/796-206/822) divided the *šurṭa* by inaugurating the «small police» (*šurṭa ṣugrā*).[30] He also ordered «the construction of an enclosure in the gallery of the Great Mosque of Cordova, beside the position occupied by the *ḳāḍī* for the submission of affairs subject to the jurisdiction of the *šurṭa*»[31] —for the new *ṣāḥib al-šurṭa al-ṣugrā,* one should add.[32] The reason for this is not quite clear. Marín sees these activities as an effort to mark a jurisdiction separate from that of judges (*quḍāh*), which should be seen in the context of this emir's troubled relation with Cordovan *'ulamā'*.[33] The site of the *šurṭa*-jurisdiction seems to have remained in the Great Mosque, since a later *wālī al-šurṭa,* Layṯ b. Sa'd had convicts lashed in the Mosque, an action subject to some controversy.[34]

According to the 14th-century author Ibn Khaldūn, the *šurṭa ṣugrā* in al-Andalus was concerned with matters of the common people (*'āmma*) while the *šurṭa 'ulyā* dealt with the «elite» (*khāṣṣa*) of officials and members of the ruling family[35]. There is, however, no historical evidence backing this assumption. Following Ibn Khaldūn, Lévi-Provençal found it hard to define a social group

[28] Marín, *Shurṭa,* 511; see Khallāf, *Tārikh al-qaḍā'*, 471, for a listing of early *šurṭa*-holders.

[29] Besides persons named in Marín, *Shurṭa,* 511, see also 'Abd al-Gāfir Ibn Abī 'Abda at the times of Hišām I, Ibn al-Abbār, *Kitāb al-ḥulla al-siyarā'*, 2 vols. (ed. Ḥ. Mu'nis Cairo, ²1985), I, 30; Ibn 'Iḏārī, *Kitāb al-Bayān al-Mugrib* (ed. É. Lévi-Provençal and G. S. Colin, Beirut, ²1980), vol. II, 61 and 68.

[30] Ḥakam I invested the first *ṣāḥib al-šurṭa al-ṣugrā,* Ḥāriṯ b. Abī Sa'd, who held office until his death in 221/836, Ibn Ḥayyān, *Muqtabas* II, 231, Qāḍī 'Iyāḍ, *Tartīb* (ed. Beirut, 1968), II, 22, and most detailed al-Khušanī, Muḥammad b. Ḥāriṯ, *Akhbār al-fuqahā' wa-l-muḥaddiṯīn (Historia de los alfaquíes y tradicionistas de al-Andalus,* ed. M. L. Ávila and Luis Molina, Madrid, 1992, 79f. (I am grateful to Manuela Marín for drawing my attention to this reference). This quote must have slipped past Makkī, the editor of Ibn Ḥayyān's *Muqtabas* part II, who supposed together with López Ortiz that only his successor, 'Abd al-Raḥmān II, introduced the gradings of the police, *ibid.,* p. 331, note 297, and López Ortiz, *La recepción de la escuela malequí en España,* Madrid, 1931, 79.

[31] Marín, *Shurṭa,* 511, refering to Khušanī, *Fuqahā',* 79f.

[32] This is made clear by the *amara 'l-khalīfatu (!)* [...] *an yabtaniya lahū* [i.e. Ḥāriṯ b. Abī Sa'd] *al-mušabbaka,* Khušanī, *Fuqahā,* 80.

[33] Marín, *Shurṭa,* 511.

[34] Khušanī, *Kitāb al-quḍāh bi-Qurṭuba* (ed. I. al-Abyārī, Cairo-Beirut, 1982), 129.

[35] Ibn Khaldūn, *Muqaddima* (Beirut, 1982), 445f., cited by Lévi-Provençal, *Histoire de l'Espagne musulmane,* Paris/Leiden 1950-1953, vol. III, 155f. According to Tyan, a social grading of the *šurṭa* existed in 9th-century Bagdad; the division in 8th-century Cairo was merely geographical, idem, *Histoire,* 579f.

corresponding to the «middle police», which was inaugurated in the year 317/929-30. During the late 10th century, when *šurṭa* offices were held by many officials simultaneously, governors of provinces were invested with the «high police» and judges (*quḍāh*) of smaller towns with the «small police».[36] The Abbasid notion of *«aḥkām al-šurṭa»* as penal justice should not be transferred to the historical situation in al-Andalus without further investigation.[37]

A new step in the evolution of *šurṭa* and *sūq* occurred under the emir 'Abd al-Raḥmān II (206/822-238/852). According to the Cordoban chronicler Ibn Ḥayyān (d. 469/1076), this ruler inaugurated a «graduation of offices» (*marātib al-khidma*) with the sovereign on top, who payed each official a fixed salary (*rizq*).[38] Ibn Ḥayyān also asserts that

> 'Abd al-Raḥmān II separated the superintendence of the market (*wilāyat al-sūq*) from [those] police «jurisdictions» (*aḥkām al-šurṭa*) which are <among us> called town-inspectorship (*wilāyat al-madīna*). He made the [superintendence of the market] a separate office and granted its bearer a monthly salary of 30 Dīnār. The town inspector received 100 Dīnār.[39]

In this quotation, the term «jurisdiction, areas of authority» (*aḥkām*) is set apart from «assignment» (*wilāya*), whose executive (*wālī*) is paid a salary. Since the assignments of *sūq* and *šurṭa* were held by different persons prior to 'Abd al-Raḥmān II's reign and continued to be so besides the new *ṣāḥib al-madīna,*[40] the term *aḥkām al-šurṭa* must not refer to an —in this source unmentioned— *ṣāḥib al-šurṭa* nor is the *šurṭa*-jurisdiction restricted to this official. Once *aḥkām al-šurṭa* is understood in this context as abstract authority and not as the title of a specific office[41] the parallel

[36] See below.

[37] Makkī in Ibn Ḥayyān, *Muqtabas* II, 285 note 151.

[38] Ibn Ḥayyān cf. Ibn 'Iḏārī, *Bayān,* II, 91.

[39] *Mayyaza wilāyata s-sūqi 'an aḥkāmi š-šurṭati al-musammāti <'indanā> bi-wilāyati l-madīna fa-afradahā bi wālin bi dātīha wa-ṣayyara li-wālīhā ṯalāṯīna dīnāran fi š-šahri wa li-wālī l-madīnati mi'ata dīnārin,* c.f. Ibn Sa'īd, *al-Mugrib fi ḥulā al-Magrib,* 2 vols. (ed. Š. Ḍayf. Cairo, ²1964), I, 46. The additional «among us» in brackets is cited in a *Muqtabas*-fragment from the first part of 'Abd al-Raḥmān II's reign, which was lost since the death of Lévi-Provençal in the year 1956, and was rediscovered and published in a facsimile edition only after the manuscript of the present article had been completed: Vallvé, J. (ed.) Ben Haián de Córdoba (m. 469 H/1076 J.C.). *Muqtabis II. Anales de los Emires de Córdoba Alhaquém I, Abderramán II.* Madrid, 1999, here p. 100, fol. 142 v, formerly Lévi-Provençal. *Histoire* III, 154.

[40] Al-Khušanī, *Quḍāh,* 132f., Ibn Ḥayyān, *Muqtabas* II, 168-170, 180 ff. Vallvé's examples of an earlier *«zalmedina»* in fact refer to the Christian *comes,* rather than the Arabic *ṣāḥib al-madīna,* Vallvé, «El zalmedina de Córdoba», *Al-Qanṭara* 2 (1981) 277-318, here 278-287. On the *ṣāḥib al-madīna,* see also Khallāf, *Ta'rīkh al-qaḍā',* 441-466 and idem, «Ṣāḥib al-madīna fī l-Andalus», *Maǧallat ma'had al-tarbiya li-l-mu'allimīn* (Kuwait) 1 (1978), 53-63; further Lévi-Provençal, *Histoire,* III, 158f.

[41] Whether this use of *aḥkām al-šurṭa* was anachronistic or referred to the introduction of the «justice répressive» in al-Andalus, as Lévi-Provençal believes, idem, *Histoire* III, 154, can not be decided at present.

existence of *šurṭa* and *sūq* officials poses no contradiction. In consequence, the quotation reads as follows: 'Abd al-Raḥmān II ordered to split up from the *sūq*-assignment this part of police-authority (*aḥkām al-šurṭa*) which was to be called *wilāyat al-madīna* in Cordoba (i.e. «among us»). The emir invested the *sūq* office separately and granted its executive (*wālī*) 30 Dinar, whereas the new executive of the *madīna* office received 100 Dinar per month.

This reading is corroborated by sources specifying the *madīna* office of Cordoba as *šurṭa*[42] or combing both offices in one title.[43] For centuries, the *ṣāḥib al-madīna* dealt with capital crime within the city.[44] He commanded unmounted police forces (*šuraṭ,* sing. *šurṭī*) and cavalry (*fursān*).[45] Yet, the *šurṭa* office was not exclusively called *«madīna»* in al-Andalus, as later chroniclers like Ibn Khaldūn and Ibn Sa'īd suppose.[46] Both offices existed simultaneously during the 3rd/9th and 4th/10th centuries. In the second half of the 4th/10th century, provincial governors were generally invested with the «high police» during the reign of al-Ḥakam II, but no such representative existed in the city (*madīna*) of Cordoba. The *ṣāḥib al-madīna* of Cordoba ranked after the chamberlain (*ḥāǧib*), above governors and high-police commanders during court ceremonies.[47] We have every reason to believe that the *ṣāḥib al-madīna* was in the charge of the «high police» within the Umayyad capital.[48] For the present enquiry on the *ṣāḥib al-šurṭa wa-l-sūq,* it is most interesting that, in Cordoba, the fight against crime and the penal justice, which are usually connected to the concept of *šurṭa,* were not the sole responsibility of nor restricted to the officer bearing the term *«šurṭa»* in his title.

Our main source on holders of the *sūq* and *šurṭa* office are biographical dictionaries on religious scholars invested with these assignments.[49] Although

[42] Ibn Ḥayyān, *al-Muqtabas fi akhbār balad al-Andalus,* part. VII (ed. A. al-Ḥaǧǧī, Beirut, 1965), 143.

[43] Ibn 'Iḏārī, *Bayān,* II 235 and *ibid.,* III, 104f. on persons called *«ṣāḥib šurṭat al-madīna (Qurṭuba)»,* with *Qurṭuba* only first citation.

[44] Cases e.g. Ibn al-Qūṭiyya, *Ta'rīkh iftitāḥ al-Andalus* (ed. I. al-Abyārī, Beirut/Cairo, 1982), 85, al-Khušanī, *Quḍāh,* p. 158, Ibn Sahl, *Aḥkām,* p. 114ff. Compare also Vallvé, *Zalmedina,* 288-93 and Khallāf, *Ta'rīkh al-Qaḍā',* 448-450 and 452.

[45] Nubāhī, *Kitāb al-marqaba al-'ulyā* (ed. Beirut, s.d.), 79.

[46] Ibn Khaldūn, *Muqaddima,* 445; Ibn Sa'īd cf. Maqqarī, *Nafḥ al-Ṭīb,* 8 vols. (ed. I. 'Abbās, Beirut, ²1988), I, 218.

[47] Ibn Ḥayyān, *Muqtabas,* VII, 22, 30, 94, 118, 136, 184, 198, 212, 230.

[48] This would also explain the invocation «amoung us» in the lost *Muqtabas*-fragment, mentioned above in note 39, whose author, Ibn Ḥayyān was a citizen or Cordoba. Compare also Müller, *Gerichtspraxis,* 111-117.

[49] Compare references collected in Chalmeta, *Señor del zoco,* 403, and Khallāf, *Ta'rīkh al-qaḍā',* 389.

displaying a longer chronological perspective, religious prosopographical literature, however, is a poor guide to administrative offices and titles. In most biographical notes of any scholar, neither the period in office nor its exact designation are given. Hardly ever, for example, were the distinct *šurṭa*-categories mentioned, although they continued to exist since the end of the 2nd/8th century. With the division of the *šurṭa* into two and later three categories, however, the designation *ṣāḥib al-šurṭa,* which we find quite frequently in the biographical notes, could not possibly have been the official title. This lack of accuracy can be explained by the character of these sources, which are more concerned with the transmision of religious knowledge than with administrative assignments of a scholar.[50] We are therefore not always in a position to decide whether offices mentioned in a biography were held simultaneously or consecutively.

The inaccuracy of religious biographical literature may be demonstrated by two examples in conjunction with annalistic sources. According to an ordinary biographical note in one of the biographical dictionaries, Yaḥyā b.'Abd Allāh al-Qabrī (d. 326/938) held the offices to *šurṭa ṣugrā, sūq* and the mint (*sikka*).[51] However, we learn from a fragment of Ibn Ḥayyān's annals, *al-Muqtabas,* that in this specific case al-Qabrī held these offices consecutively for short terms. Besides that, he was also an officer of the «high police» (*šurṭa kubrā*) and town inspector, although neither office was mentioned in his scholary biography.[52] The second example is the *ṣāḥib al-radd* (judge of repulsion) Muḥammad b. Muḥammad b. Abī Zayd ['Abd al-Raḥmān] (d. 333/944-5).[53] Not mentioned in his note on scholary biography, however, were his appointments as *ṣāḥib al sūq, ṣāḥib al-šurṭa, al-'ulyā* and *ṣugrā*.[54] Although both examples are from the reign

[50] Compare Gilliot, C., *«ṭabaḳāt»* in *EI²,* X, 7-10, esp. 8.

[51] Ibn Al-Abbār, «Apéndice a la edición Codera de la 'Tecmila' de Aben al-Abbār», ed. M. Alarcón and A. González Palencia, *Miscelánea de estudios y textos árabes.* Madrid, 1915, 174-690, n.° 2.727.

[52] Appointed in the year 311 as *šurṭa ṣugrā* 313 as *sūq* and later to the office of inheritance (*mawārīṯ*), (Ibn 'Iḏārī, *Bayān,* II, 185 and 191). After a gap in our sources until the year 319, when he was appointed to the *madīna* and also dismissed (*ibid.,* p. 205 and Ibn Ḥayyān, *al-Muqtabas,* part V, ed. P. Chalmeta, F. Corriente and M. Ṣubḥ, Madrid/Rabat, 1979, 314), he was appointed to the mint (*sikka*) in the year 320 and dismissed one year thereafter (*Muqtabas* V, 243 and 330); from 322 to 323 he held the *sūq* office (*ibid.,* 355 and 376).

[53] As such in Ibn al-Faraḍī, *Ta'rīkh,* n.° 1.241.

[54] At the inauguration of 'Abd al-Raḥmān III in the year 300/912 still *ṣāḥib aḥkām al-sūq,* he was appointed in the same year to the «low police», and dismissed two years later *(Una crónica anónima de 'Abd al-Raḥmān III al-Nāṣir,* ed. E. García and E. Lévi-Provençal, Madrid, 1950, 30, Ibn 'Iḏārī, *Bayān,* II, 159, *Muqtabas* V, 103). Appointed to the «high police» in 303 (*Muqtabas* V, 111 and Ibn 'Iḏārī, *Bayān,* II, 168), he was dismissed however in 304 from *radd-* and *šurṭa ṣugrā* office (*Muqtabas* V, 134). In 305, he held the *šurṭa 'ulyā* (*ibid.,* 146), and in 310 he was degraded from «high» to «low police» (*ibid.,* 182). Dismissed in the year 311 from the «low police» (*šurṭa ṣugrā*) (Ibn 'Iḏārī, *Bayān,* II, 185), he was mentioned in 326 as *ṣāḥib al-radd* (*Muqtabas* V, 409).

of 'Abd al-Raḥmān III and biographical data is available to scholars over many centuries, such discrepancies have to be accounted for less by this ruler's personality, but because chronicles as well-documented as the *Muqtabas* of Ibn Ḥayyān are lacking for most other periods. There is no reason to believe that in other times biographical entries on scholars were more precise in regard to administrative offices, which were unimportant or even detrimental to a scholar's reputation.

As a consequence, the exact designation of the Cordoban *«ṣāḥib al-šurṭa wa-l-sūq»* cannot be studied exclusively on the basis of biographical dictionaries. The more exact chronological literature, however, and even the most detailed *Muqtabas* by Ibn Ḥayyān, offers tantalizingly little information on the *ṣāḥib al-sūq,* an office which was not closely connected to the Umayyad court.[55] Nevertheless, a decisive shift can be observed between the reign of 'Abd al-Raḥmān III (300/912-350/961) and that of his successor, al-Ḥakam II (350/961-366/976). During the first period, superintendence of the market (*sūq*) is always mentioned on its own, without connection to the *šurṭa*. The office is called *«Khuṭṭat al-sūq»*[56] and demisssions or appointments in office refer to the *«sūq»* assignment.[57] During that historical stage, the *ṣāḥib al-sūq* had an office in the central markets,[58] and part of the *šurṭa* office maintained a presence in the Great Mosque.[59] In contrast to this, the superintendent of the market, during the years 361/971-364/975, is always designated as *ṣāḥib al-šurṭa wa-l-sūq* by the same author Ibn Ḥayyān.[60] It seems from all appearances that, at some point or another, the *šurṭa* became regulary attached to the *«sūq»* office. This connection must have been so institutionalized that Ibn Ḥayyān, with all this diligence in matters of titles and hierarchies, did not find it necessary to add the respective *šurṭa*- ranking, be it high, middle or low, to this officer's designation. There is therefore strong reason to believe that *ṣāḥib al-šurṭa wa-l-sūq* was the official title of the superintendent of the markets in the capital Cordoba since the second half of the 4th/10th century. Unfortunately, the stages of this transformation cannot be examined more closely, due to a gap in historical documentation between the years 330/942 to 361/971, that is the period between the so-called fifth and seventh parts of the *Muqtabas* fragments.

[55] Later chronicles like the *al-Bayān al-mugrib* of Ibn 'Iḏārī ignore this office completely.

[56] Ibn Ḥayyān, *Muqtabas* V, 355, 376, 428, and *idem,* part III (ed. I. al'Arabī, Casablanca, 1990), 20.

[57] *'uzila fulānun 'an as-sūqi bi-fulānin,* Ibn Ḥayyān in *Muqtabas* V, 97, 376, 428, 448, for the years 301/913 and 323/935 to 330/942; regarding an appoinment, *wulliya s-sūqa, ibid.,* 103.

[58] See Ibn Ḥayyān, *Muqtabas,* III, 20, for the times of the emir 'Abd Allāh (275/888-300/912).

[59] See above, 61.

[60] *Muqtabas* VII, 66, 71, 77, 100, 153, 198, 212f.

Such a transformation of titles —not to speak of changes in competences— could hardly have happened in the form of merging two independent imperial offices (*šurṭa* and *sūq*) into a single one, which would have implied a substantial reduction in administrative personnel. In fact, the opposite was the case: at the beginning of 'Abd al-Raḥmān III's rule in 300/912, each division of the *šurṭa,* big and small, was invested by a single person, and in 317/929 the *šurṭa al-wusṭā,* «middle police», was inaugurated in the same manner.[61] This situation had completely changed half a century later: each police division was granted simultaneously to several state officials. Governors of provinces held either the «high police» or the «middle police»,[62] judges of smaller towns were often invested with the «small police».[63] The multiplication of *šurṭa* posts may be explained by an increasing need for loyal officers administrating those regions that came under Caliphal control during the 4th/10th century. There was a strong link between «high police» and military responsibilities.[64] Manuela Marín's statement that the *šurṭa* «has become a kind of official rank or grade in the hierarchy of the Caliphal administration in close association with the army»,[65] definitely is true for the «high» and «middle police». The difference in ranking and payment between «high» and «small police», however, was enormous. As *qāḍī* in the province holding the «small police» received 30 Dīnār monthly,[66] an amount the superintendent of the markets in Cordoba had received one century earlier.[67] The payment of a holder of «high police», who usually held the rank of a *wazīr,* must have been considerably higher.[68]

In the second half of the 4th/10th century, the Cordoban market-police officer (*ṣāḥib al-šurṭa wa-l-sūq*) had the same rank as commanders of the «small police»

[61] For the single appointments of *šurṭa* offices see Ibn Ḥayyān, *Muqtabas* V, 65, 67, 304, 313, 318, 328; *ibid.,* p. 252 for the «middle office», shorter in Ibn 'Iḏārī, *Bayān,* II, 202, to this office compare Lévi-Provençal, *L'Espagne musulmane au X^e siècle,* Paris, 1932, 91.

[62] The «high police» was granted to governors of Tortosa and Valencia, Ibn Ḥayyān, *Muqtabas* VII, 20, 46-52, Zaragoza, *ibid.,* 68f, 237f, Lérida, *ibid.,* 69 and Jaén, *ibid.,* 72, 170. Badajoz was governed by a *wālī* of the «middle police», *ibid.,* 149 and 200, the same ranking as the then *qāḍī* of Seville and later chamberlain al-Manṣūr, *ibid.,* 72.

[63] *Ibid.,* VII, 81, 86, 106 and 117; also Lévi-Provençal, *Espagne,* 93, with a building inscription by the *qāḍī* of Ecija and officer of the «small police» from the year 367/977.

[64] Besides the admiral of the fleet 'Abd al-Raḥmān b. Rumāḥis and the military leader 'Ubayd b. Aḥmad b.Ya'lā, the commander of the mercenaries Qāsim b. Muḥammad b. Ṭumlus also held the office of «high police», Marín, *Shurṭa,* 511, for the latter, see *Muqtabas* VII, 106 and Index. For another example, see *Crónica anónima,* 52.

[65] Marín, *Shurṭa,* 511.

[66] Ibn Ḥayyān, *Muqtabas* VII, 81.

[67] See, p. 62.

[68] Even if we hold the figure of an annual 80 000 Dīnār for the double-*wazīr* Ibn Šuhayd to be greatly exaggerated, compare Lévi-Provençal, *Histoire,* III, 21f.

and was at a clear distance from officers of the «high» and «middle police».[69] If these divisions did in fact correspond to a certain penal authority, the one of the *ṣāḥib al-šurṭa wa-l-sūq* could not have been another than the one of the «small police». This hypothesis that combined titulation as *al-šurṭa wa-l-sūq* arose in the framework of multiple *šurṭa* officers since the 4th/10th century, seems, at first sight, to be proved wrong by the example of two scholars from the 3rd/9th century.[70] Some anecdotes of the *ṣāḥib aḥkām al-šurṭa wa-l-sūq* Aḥmad b. ʿĀṣim —possibly identical with Ibrāhīm b. ʿĀṣim (d. 256/870)[71]— referred to his time in the *sūq,* and only the *sūq,* office.[72] The succession of two different offices is even more evident in the second example of the *ṣāḥib al-šurṭa wa-l-sūq* Muḥammad b. al-Ḥāriṯ (d. 260/874), who held the «small police» and was later additionally invested with the *sūq* office.[73] The Cordoban superintendent of the market, at that time, was not automatically invested with the *šurṭa,* nor was it unnecessary to mention his *šurṭa* ranking.

The title *sāḥib al-šurṭa wa-l-sūq* for the Cordoban market inspector developed in the 4th/10th century and survived the fall of the Umayyad Caliphate in 422/1031. Whereas in other city-states the expression *wilāyat al-sūq* or *aḥkām al-sūq* prevailed throughout the 5th/11th century, the Cordoban market inspector was always referred to as *ṣāḥib al-šurṭa wa-l-sūq* during Ǧahwarid rule.[74] By that time, the *šurṭa* office in an Umayyad tradition had lost much of its former importance. When the Umayyad Caliph al-Mustakfī (414/1024-416/1025) tried to revitalize the old imperial offices, he could not find adequate candidates and sold the office of «high police» without being able to pay salaries later on. These offices never bore any real power.[75] References to the police categories disappear from the sources, with one exception from Zīrid Granada.[76] In the course of time, even in Cordoba the expression *ṣāḥib al-šurṭa wa-l-sūq* was sometimes substituted by the designation *«ṣāḥib al-aḥkām»,* which was less connected with the Umayyad administrative tradition.[77]

[69] Ibn Ḥayyān, *Muqtabas* VII, 153, 198 and 212f.

[70] Compare Lévi-Provençal, *Histoire,* III, 150.

[71] Qāḍī ʿIyāḍ, *Tartīb* (ed. Beirut), II, 146f., compare Ibn al-Faraḍī, *Taʾrīkh,* n.º 3.

[72] Qāḍī ʿIyāḍ, *Tartīb, ibid.*

[73] Ibn al-Faraḍī, *Taʾrīkh,* n.º 1.107.

[74] For Cordoba see Ibn Baškuwāl, *Kitāb al-ṣila,* 2 vols. (ed. Cairo, 1966), n.^{os} 312, 703 and 1.210; for the other city-states see *ibid.,* n.º 374 and Ibn al-Abbār, *al-Takmila li-kitāb al-Ṣila* (ed. ʿI. al-Ḥusaynī, Cairo, 1956), n.º 2.731, as well as Chalmeta, *Señor,* 379, biographical notes n.^{os} 32-34.

[75] Ibn Ḥayyān in Ibn Bassām al-Šantarīnī, *Al-Ḏakhīra fi maḥāsin ahl al-ǧazīra,* 8 vols. (ed. I.ʿAbbās, Beirut, 1978-79), I, 435.

[76] Marín, *Shurṭa,* 511.

[77] Compare above for the designations of Ibn Ḥariš.

To sum up this discussion, we find the term *al-šurṭa wa-l-sūq* to be a fixed expression for over one century designating one specific office. To categorize some of Ibn Ḥarīš's cases as *šurṭa,* as Khallāf has done, does not make much sense as long as which specific authority is not known.[78] In this context, we have to see the Cordoban *ṣāḥib al-šurṭa wa-l-sūq* more as the superintendent of markets with additional *šurṭa* functions than as the police commander controlling the markets. Ibn Sahl, when talking about the rise of the market inspector Abū 'Alī Ibn Ḏakwān to the *qāḍī* office in 435/1043, called his assignment *aḥkām al-šurṭa wa-l-sūq*,[79] but used the term *ṣāḥib al-sūq* in case records of the same judge.[80]

THE *ṢĀḤIB AL-AḤKĀM* AS NON-*QĀḌĪ* JUDGE IN THE REALM OF *ḤISBA*

Contrary to *ṣāḥib al-šurṭa wa-l-sūq,* the Cordoban market inspector since the Umayyad Caliphate in the 4th/10th century, the term *ṣāḥib al-aḥkām* is used for scholars exercising a judicial office in the post-Umayyad-tradition of the 5th/11th century, mostly in the biographical literature.[81] Whereas *«šurṭa»* and *«sūq»* reflect Umayyad administrative traditions, the term *ṣāḥib al-aḥkām* designates a judicial function in general, and a non-*qāḍī* judge specifically. Juridically speaking, *«aḥkām»,* the plural of *«ḥukm»,* means «binding judgments», and in consequence the «holder of judgments» *(ṣāḥib al-aḥkām)* had the authority to pass such judgments. Sometimes *aḥkām* was used attributively to the name of an assignment, like *aḥkām al-šurta,*[82] *aḥkām al-šurṭa wa-l-sūq,*[83] but also *aḥkām al-qaḍā',*[84] thus designating explicitly which kind of judgments the official was authorized to. We have some reason to believe that *«aḥkām»* was used for a specific judicial office by the second half of the 5th/11th century, whose holder was designated as *ṣāḥib al-aḥkām.*[85] Biographical

[78] Khallāf's explanation of *šurṭa* with *aḥkām* or *ḥākim,* Khallāf, *Ta'rīkh al-qaḍā',* 467 and 487, disregards the historical development of these titles as well as their specific context in various sources.

[79] Ibn Sahl, *Aḥkām,* 7.

[80] *Ibid.,* 473, 594 and 1032 (also *'Umrān,* 52).

[81] Ibn al-Abbār, *al-Takmila li-kitāb al-Ṣila* (ed. F. Codera, 2 vols., Madrid, 1886-7), 306, n.° 923, idem (ed. A. Bel and M. Ben Cheneb, Algier, 1920), 281, n.° 633, Ibn al-Khaṭīb, *al-Iḥāṭa fi akhbār Garnāṭa* (ed. 'A. Šaqūr, Tetwān, 1988), 170 n.° 178, the other example is, of course, the Cordoban judge Ibn Ḥarīš.

[82] Qāḍī 'Iyāḍ, *Tartīb* (ed. Beirut), II, 442.

[83] Ibn Baškuwāl, *Ṣila,* n.^{os} 703, 1142.

[84] Ibn Sa'īd, *Mugrib,* I, p. 161, Ibn Baškuwāl, *Ṣila,* n.^{os} 119, 133, 337, 1472, Qāḍī 'Iyāḍ, *Tartīb* (ed. Rabat), VII, 176.

[85] Next to the examples of a *ṣāḥib al-aḥkām* in note 81, see references to a *khuṭṭat al-aḥkām* in Ibn al-Abbār, *Takmila* (ed. Codera), 452 (n.° 1.296), *ibid.* (ed. Bel/Ben Cheneb), 45 (n.° 99), people

dictionaries use the term *ṣāḥib al-aḥkām* to differentiate a judicial office from the *qāḍī*.[86] The term *ṣāḥib al-aḥkām,* therefore, is not a short form of *ṣāḥib aḥkām al-qaḍā',*[87] but designates a non-*qāḍī* judge. At the end of the 5th/11th century, the *«aḥkām»* office stood in close relation to the superintendence of the market (*sūq*), be it that the same person held both offices or that both designations meant about the same.[88] In two cases of the last quarter of the year 464/1072, Muḥammad b. Makkī was titled *«ṣāḥib al-sūq»* and *«ṣāḥib al-aḥkām wa-l-aḥbās»*.[89] In 'Āmirid times at the end of the 4th/10th century, we find scholars «appointed to *šurṭa* and *aḥkām*».[90]

The third term used for the Cordoban judge Ibn Ḥarīš by Ibn Sahl was *al-ḥakam*.[91] Contrary to the use of *ṣāḥib al-aḥkām* or *aḥkām* [office] throughout the 5th/11th to the end of the 6th/12th century, *al-ḥakam* obviously was not restricted to a specific office nor to non-*qāḍī* judges. It was applied to a judge in Carmona,[92] the *ṣāḥib al-maẓālim* in Cordoba,[93] and even referred to the *qāḍī* of Cordoba.[94] Such use also differs from the general understanding of *ḥakam* as arbiter.[95] Later collections substituted the possibly unfamiliar expression *ḥakam* with *qāḍī*.[96]

Yet another term for «judge» is in our sources. Ibn Sahl uses the expression *«ḥākim»,* pl. *ḥukkām,* generally understood as judicial magistrate,[97] in an abstract

nominated for *«al-aḥkām»,* Ibn Baškuwāl, *Ṣila,* n.os 746, 754 and 824, Ibn al-Abbār, *Takmila* (ed. Codera), n.os 723, 754 and 824, Ibn al-Abbār, *Takmila* (ed. Codera), n.os 723, 1.738, 1.766 and ibid. (ed. Bel/Ben Cheneb), n.° 571, and those holding *al-naẓar fi l-aḥkām,* Ibn Baškuwāl, *Ṣila,* n.° 127.

[86] *qāḍī* and *ṣāḥib al-aḥkām* are regarded as different offices in the biography of Ibn Ğaḥḥāf, Ibn al-Abbār, *Takmila* (ed. Bell/Ben Cheneb), 281, n.° 633. The Cordoban *ṣāḥib al-aḥkām* Ibn Sayyid became *qāḍī* of Granada in 485, at a time when Ibn Adham (d. 486) was still *qāḍī* of Cordoba, Ibn al-Khaṭīb, *Iḥāṭa* (ed. Šaqūr), 170 n.° 178.

[87] On this term, see only Ibn Baškuwāl, *Ṣila,* n.° 337.

[88] See e.g. the Valencian Ibn Ğaḥḥāf as holder of the *khuṭṭat al-sūq wa-naẓar fi'l-aḥkām,* Chalmeta, *Señor del zoco,* 379, n.° 34, or the Cordoban *ṣāḥib al-aḥkām* Ibn Sayyid (d. 489/1096), Ibn al-Khaṭīb, *Iḥāṭa* (ed. Šaqūr), 170 n.° 178; as *ṣāḥib aḥkām al-sūq,* Ibn al-Abbār, *Takmila* (ed. Cordera) n.° 1.565.

[89] Ibn Sahl, *Aḥkām,* 827 and 1003.

[90] Qāḍī 'Iyāḍ, *Tartīb* (ed. Rabat), VII, 163f, 193, and Ibn Baškuwāl, *Ṣila,* n.° 1.099.

[91] Ibn Sahl, *Aḥkām,* 330, 332, 433f, 573, 620, 630, 633, 733, 738, 830, 1089 (also *Nawāzil,* 61 and *'Umrān,* p. 112), as regards to other persons, *ibid.,* 7, 716 and 830.

[92] *Ibid.,* 839-41.

[93] Ibn Sahl, *Aḥkām,* 834.

[94] *Ibid.,* 31, in the headline to case of the *qāḍī al-ğamā'a* Ibn Ziyād who let a claimant choose any other judge from the *ḥukkām,* and *ibid.* 971, in a remark of Ibn Mālik concerning a *qāḍī*-case.

[95] Tyan, *Histoire,* 41ff, 64ff and 73ff, also idem, «Ḥakam», in *EI²,* III, 72.

[96] E. g. Wanšarīsī, *Kitāb al-mi'yār al-mu'rib wa-l-ğāmi' al-mugrib 'an fatāwī 'ulamā' Ifrīqiya wa-l-Andalus wa-l-Magrib,* 13 vols. (ed. M. Ḥağğī *et. al.,* Rabat, 1981-1983), IV, 68, instead of *Aḥkām,* 433f.

[97] Tyan, «Ḥakam», in *EI²,* III, 72, and *idem, Histoire,* 561f.

sense within juridical arguments, but not for a specific person.[98] As an exception, the *ḥākim* of Sevilla is mentioned in a case from the year 476/1083-4, which, however, does not belong to the original body of the text and is transmitted in one manuscript only.[99] In juridical literature, *ḥākim* may designate any judge including the *qāḍī,* but more specifically it referred to a non-*qāḍī* judge.[100]

In Andalusian biographical dictionaries, the use of *ḥākim* was restricted to non-*qāḍī* judge and only applied in the biographical sketches of third persons: the father,[101] son[102] or non-*qāḍī* judge for whom the portrayed person worked as a secretary,[103] was called *«ḥākim»* in biographical notes on others.[104] From their biographical notes, however, we learn that these persons either held various non-*qāḍī* offices or, from the end of the 5th/11th through the 6th/12th century, were designated as *ṣāḥib al-aḥkām.*[105] Thus, the *«ḥākim Qurṭuba»* Ibn 'Abd al-Ra'ūf (d. 425/1034)[106] was *ṣāḥib al-maẓālim,*[107] and the *«ḥākim wa-ṣāḥib al-šurṭa* of Cordoba» Yaḥyā b. 'Ubayd Allāh Ibn Aslam, who flourished in the 4th/10th century,[108] held many different offices.[109] As a hypothesis based on these examples, we may claim that the term *«ḥākim»* was used by later compilers in a summarizing manner, but not by Ibn Ḥayyān. Besides, from the end of the 5th/11th through the 6th/12th century, the term *«ḥākim»* was increasingly applied to the same persons as were called *ṣāḥib al-aḥkām.*[110]

[98] Compare Ibn Sahl, *Aḥkām,* 103, 349 and 639.

[99] *Aḥkām,* 1203 (also ed. Khallāf, *Ḥisba,* 130).

[100] Generally Tyan, *Histoire,* 561f, comp. also *Aḥkām,* 31, 349; for the specific use, compare Ibn 'Abd al-Barr, *Al-Kāfi fi fiqh ahl al-Madīna al-mālikī,* Beirut, 1987, 499, on the limited authority of a *ḥākim.* Ibn Sahl uses the terms *ḥākim, ḥukm* or *aḥkām* on several occasions in contrast to *qāḍī* or *qaḍā',* e. g. *Aḥkām,* 2, 71, 103 and 916.

[101] Ibn Baškuwāl, *Ṣila,* n.° 1.228 and *ibid.,* n.° 1.079 with Qāḍī 'Iyāḍ, *Tartīb* (ed. Rabat), VII, 188f (for their sons, see Ibn Baškuwāl, *Ṣila* n.os 754 and 824).

[102] Ibn Baškuwāl, *Ṣila,* n.° 705, who was also called *ḥākim* in his successor's biographical note, Qāḍī 'Iyāḍ, *Tartīb,* VII, 169. For his own biographical note see Ibn Baškuwāl, *Ṣila,* n.° 194 and Qāḍī 'Iyāḍ, *Tartīb,* VII, 192f.

[103] Qāḍī 'Iyāḍ, *Tartīb,* VIII, 183 (Ibn Ǧarīš, referring to the *ṣāḥib al-aḥkām* Ibn Ḥarīš).

[104] Another example is Ibn Sahl's biographical note: the *«ḥākim»* of Cordoba made him leave the city, Ibn Farḥūn, *Al-Dībāǧ al-muḏhab fi ma'rifat a'yān 'ulamā' al-maḏhab,* (ed. M. al-Aḥmadī, Cairo s.d.), vol. II, 71.

[105] For the latter, see examples in notes 101-102.

[106] Qāḍī 'Iyāḍ, *Tartīb,* VIII, 11.

[107] Ibn Baškuwāl, *Ṣila,* n.° 1126 and Ibn Sahl, *Aḥkām,* 1016 (also *Nawāzil,* 26 and *Ḥisba,* 65).

[108] Ibn al-Abbār, *Takmila* (Apéndice), n.° 2.741.

[109] Ibn Ḥayyān, *Muqtabas,* VII, 72, 170, 216.

[110] Tyan's explanation of the *ḥākim* in Muslim Spain, which he regards as synonymous with *ṣāḥib al-aḥkām,* must therefore be seen with some reservations. As a matter of fact, his examples of a *ḥākim,* Tyan, *Histoire,* 563, note 5 and 6, refer to the *ṣāḥib al-aḥkām.*

In Almoravid times, along with this summarizing use in biographical literature, the term *ḥākim* designated a specific office. Ibn 'Abdūn, the Sevillian writer of the turn of the 5th/11th century, informs us that the *ḥākim* was a judge with limited jurisdiction, subordinate to the *qāḍī*.[111]

Contrary to the *ṣāḥib al-aḥkām* in an Umayyad tradition of *šurṭa wa-sūq,* the Almoravid *ḥākim* was appointed by the *qāḍī*. He was supposed to attend the latter's sessions and consult the *qāḍī* in all important affairs.[112] Such an obligation to attend the *qāḍī's* session, however, contradicts Tyan's assumption that *«ḥākim»* in al-Andalus generally referred to a judge in a small town.[113] It is true that before the Almoravid conquest, judges in smaller cities were also called *«ḥākim»,* but they do not resemble the *ḥākim* office described by Ibn 'Abdūn. The *ḥākim* of towns like Bayyāsa (Baeza), al-Šumuntān (Somontín) and Ṭiškar (Tíscar), was appointed by the ruler and not by a *qāḍī*.[114] This reality is reflected in the biographical literature, which mentions a link between *ṣāḥib al-aḥkām* and *qāḍī* only for scholars at the end of the 5th/11th and during the 6th/12th century.[115]

With the *muḥtasib,* a second office subordinate to the judge existed during the Almoravid period. According to Ibn 'Abdūn, the *muḥtasib* was nominated by the *qāḍī* with the acknowledgement of the ruler.[116] This obligation to inform the ruler is not mentioned for the *ḥākim*. Further differences between the two offices may be concluded from Ibn 'Abdūn's account. The *muḥtasib* should only judge according to the obligatory rules of the divine law (*šarī'at al-islām*), both in matters of property (*ruqāb al-amwāl*) and in litigation (*khiṣām*). His office was supposed to help the *qāḍī* establish the rightful religious order and prevent the decay of public conduct.[117] The emphasis on a *šarī'a*-guided jurisdiction of the

[111] Ibn 'Abdūn, «Risāla fī'l-qaḍā' wa-l-ḥisba», (ed. E. Lévi-Provençal, *Trois traités hispaniques de ḥisba,* Cairo, 1955, 3-61, especially 9, 11-13; translated by idem and E. García Gómez, *Sevilla a comienzos del siglo XII: el tratado de Ibn 'Abdūn,* Madrid, 1948). On Ibn 'Abdūn and his work, compare Chalmeta, *Señor del zoco,* 414-423.

[112] Ibn 'Abdūn, *Ḥisba,* 13. For a certificate of appointment (*siǧill*) to a *ṣāḥib al-šurṭa* by an Umayyad Emir, see Ibn 'Iḏārī, *Bayān,* II, 235.

[113] Tyan, *Histoire,* 563; but his source, the 7th/13th century historian Ibn Sa'īd quoted in Maqqarī, *Nafḥ,* I, 218, explains that the judge (*ḥākim*) of sacred jurisdiction (*al-ḥukm al-šar'ī*) in a small city is specially called *musaddad* —whereas a *qāḍī* was to be found in big cities only. For a *ḥākim* of Cordoba, see Qāḍī 'Iyāḍ, *Tartīb,* VIII, 11, 183, Ibn Farḥūn, *Dībāǧ,* 71; for a *ḥākim* of Sevilla, see Ibn Sahl, *Aḥkām,* 1203 (also *Ḥisba,* 130).

[114] Compare the example of Ibn Sahl in the year 443/1052, *Aḥkām,* 502.

[115] See Ibn al-Abbār, *Takmila* (ed. Codera) I, 212, n.° 723 (d. 559) and II, 417, n.° 1.194 (d. 560) and 631, n.° 1.766 (d. after 603).

[116] See Ibn 'Abdūn, *Ḥisba,* 20f, compare Chalmeta, *Señor del zoco,* 473.

[117] Ibn 'Abdūn, *Ḥisba,* 20f.

muḥtasib under the control of the *qāḍī* may be explained by the Almoravids' claims to be religious reformers.[118] Most of the *ḥākim*'s jurisdiction, on the contrary, aimed at settlement (*iṣlāḥ*) between people, and he had to be experienced as a notary as well.[119] This describes him as a judge for everyday affairs rather than as a bulwark of religious purity. But both offices, *ḥākim* and *muḥtasib,* give rise to some unanswered questions: why are they not clearly distinguished in the Andalusian biographical literature? In this respect, the subordination of the *ṣāḥib al-aḥkām* under a *qāḍī* mentioned for that period[120] is common to both offices and does not help to identify them. Nor do we know from Ibn 'Abdūn's account whether the Almoravid *muḥtasib* lacked the authority to pass a *ḥukm,* as al-Qarāfī later postulated in his concept of the *muḥtasib* office.[121]

The Almoravids introduced the office of *«muḥtasib»* as superintendent of markets and public moral in al-Andalus at the end of the 11th century.[122] Before that, the market inspector of Cordoba was never called *muḥtasib.* In cases collected by Ibn Sahl in his *al-Aḥkām al-kubrā, «muḥtasib»* always referred to the claimant in the court of a judge, but never to the judge himself.[123] In the middle of the 5th/11th century, a claimant was called *muḥtasib* when he had no personal or contractual legal claim against the defendant, but based the suit on a violation of public order or morals: he acted privately in pursuit of the Koranic *ḥisba* maxim «to promote good and forbid evil».[124] Ibn Ḥazm's reference to a *muḥtasib* in pre-Islamic Mecca is to be understood in this sense, not as an office.[125] To the best of my knowledge, there was no connection between «public mandate» and the *muḥtasib* as guardian of public morals[126] in the Mālikī

[118] Chalmeta, *Señor,* 409-423.

[119] Ibn 'Abdūn, *Ḥisba,* 11.

[120] See above, note 115.

[121] Al-Qarāfī, *al-Iḥkām fi tamyīz al-fatāwā 'an al-aḥkām wa-taṣarrufāt al-qāḍī wa-l-imām* (ed. 'Abd al-Fattāḥ Abū Ġidda, Alep, 1967), 168, *idem, al-Ḏakhīra,* X, 49 and ff.; see also Wanšarīsī, *Wulāt,* 5.

[122] Chalmeta, *Señor del zoco,* 396f. and 472, and Makkī, M. 'A., «Naṣṣ ǧadīd fī l-ḥisba: Kitāb aḥkām al-sūq li-Yaḥyā b.'Umar al-Andalusī», *Revista del Instituto Egipcio de Estudios Islámicos* 4 (1956), 59-151, esp. 94.

[123] Besides the case of the shoemakers at the beginning of this article, compare Ibn Sahl, *Aḥkām,* 441-5, 1007, 1010f., 1011 and 1032-5 (the last four also edited in *Ḥisba,* 51-60, *'Umrān,* 53-63, and *Nawāzil* p. 22-4 and 34-6), see also al-Khušanī, *Quḍāh,* 226.

[124] Compare Chalmeta, *Señor del zoco,* 406-8; *ibid.,* p. 396f. and 472, for the title of the superintendent of the market in al-Andalus, *ibid,* 346-51, on *ḥisba* and *sūq* office. See Tyan, *Histoire,* 618-622 for the Koranic source of *ḥisba* and its collective obligation to all Muslims as *farḍ kifāya.*

[125] Howeverf Buckley, R. P., «The Muḥtasib», *Arabica* 39 (1992), 59, note 1.

[126] Santillana, D., *Istituzioni di diritto musulmano malichita con riguardo anche al sistema sciafiita,* 2 vols., Rome, 1926-1938, esp. I, 23.

literature of al-Andalus. The comportment of a *muḥtasib,* however, reflects exactly this notion.[127]

The term *ḥisba* seems to have gradually replaced the older *«sūq»* since the second half of the 5th/11th century, although *«sūq»* was retained as a local expression by authors like Ibn Baškuwāl (d. 578/1183).[128] Ibn Sahl explains that the *ṣāḥib al-sūq* was also called *ṣāḥib al-ḥisba,* because his main task was to investigate fraud as well as false weights and measures in the market.[129] In 11th century al-Andalus, the *ṣāḥib al-šurṭa wa-l-sūq* Ḥasan Ibn Ḏakwān (d. 451) was referred to as *«mutaqallad al-ḥisba».*[130] The office of *ḥisba* was therefore known as well as the old Umayyad expression *wilāyat al-sūq.* But we must firmly warn against viewing the terms *ḥisba* and *iḥtisāb* as synonyms; nor was the person holding the *ḥisba* office (*ṣāḥib al-ḥisba*) called *muḥtasib* at that time.[131]

Ibn Sahl used the term *iḥtisāb* to designate court action in cases of mostly public —sometimes also private— interest which did not violate any contractual rights. His «chapter on *iḥtisāb»*[132] contains a variety of cases from the markets, public order and construction, disputes between neighbors as well as penal suits. These cases did not all involve the supervision of the markets, nor did they all fall within the purview of the *ṣāḥib al-sūq.* As a matter of fact, only a few cases in the *«iḥtisāb*-chapter» of Ibn Sahl were presided over by the *ṣāḥib al-šurṭa wa-l-sūq;* most of them were heard by the *qāḍī* and some by the *ṣāḥib al-madīna.* This disjunction between the *sūq* or *ḥisba* office and the *iḥtisāb* is most evident in a case labeled as *«iḥtisāb»,* in which the *wazīr* Ibn Salīm (d. 302/914) had his garden wall extended by narrowing the public path. Apart from the fact that cases from this period generally were collected from the *qāḍī al-ǧamā'a* Aḥmad b. Ziyād (d. 312/924),[133] one of the *fatāwā* addressing the presiding judge referred to the *«quḍāh* before you».[134] There is no indication that in such a context *«iḥtisāb»* was restricted to a specific judicial authority in the way later authors,

[127] Compare Ibn 'Abd al-Barr, *Kāfī,* 394ff, on *wakāla.*

[128] Ibn Baškuwāl, *Ṣila,* n.° 678, on 'Abd al-Raḥmān Ibn al-Maššāṭ (d. 397/1007), who «held the *ḥisba* jurisdiction (*aḥkām al-ḥisba*) which was called *wilāyat al-sūq* with us, i.e. in al-Andalus». Compare also biographical notes of the Almoravid period confirming the connection of *ḥisba* and *sūq,* Chalmeta, *Señor del zoco,* 413f.

[129] *Aḥkām,* 6, comp. Wanšarīsī, *Wulāt,* 5.

[130] Ibn Ḥayyān in Ibn Sa'īd, *Mugrib,* 160, n.° 103; similar Qāḍī 'Iyāḍ, *Tartīb,* VII, 176; however Ibn Baškuwāl, *Ṣila,* n.° 312, referred to his office as *aḥkām al-šurṭa wa-l-sūq,* see also *Aḥkām,* 7.

[131] But Khallāf, *Ta'rīkh al-qaḍā',* 381-4.

[132] *Aḥkām,* 1007-1186, *Nawāzil* passim.

[133] See my *Gerichtspraxis,* 13.

[134] Ibn Sahl, *Waṯā'iq fī šu'ūn al-ḥisba,* 153, the whole case *ibid.,* 143-183. See however Khallāf, *Ta'rīkh al-qaḍā',* 577, note 2.

like al-Māwardī or the Mālikī jurists al-Qarāfī and Ibn Farḥūn, defined the *ḥisba* office.[135] Khallāf's comments on the *ḥisba* reflect this broad use, but do not say what the office implied in the Cordoban setting.

JURISDICTION OF THE MARKET INSPECTOR

We will now turn to the judicial cases of the Cordoban *ṣāḥib al-šurṭa wa-l-sūq* or *ṣāḥib al-aḥkām.* According to Ibn Sahl, the *ṣāḥib al-sūq* was called *ṣāḥib al-ḥisba* because most of his jurisdiction concerned forgery, or more precisely, counterfeit (*gišš*), deception (*khadī'a*), debts (*dayn*) and manipulation of weights and measures in the market.[136] Cases dealt with by this official during the 5th/11th century, however, reveal much wider judicial activities than supervision of markets, nor are they confined to those cases found in Ibn Sahl's chapter on *iḥtisāb.* From more than 20 cases heard by Ibn Ḥarīš between the years 456/1064 and about 461/1069, five more heard by other judges around 460/1068 to 464/1072,[137] and four cases from the first half of the 5th/11th century,[138] we learn that the market inspector of Cordoba dealt with contract law in commerce, marriage and divorce, as well as with all kind of disputes within families, between neighbors and over real estate.

When dealing with this kind of claims, the market inspector applied the Mālikī law of procedure, insofar as can be drawn from our sources. He employed a court secretary (*kātib*) like a *qāḍī,* who notarized all material facts of court proceedings.[139] His court sessions were —at least sometimes— held in the Great Mosque[140] situated in the midst of the markets, possibly by using the same enclosure in the gallery of the Great Mosque that was set up for the *ṣāḥib al-šurṭa* by al-Ḥakam I next to the one for the *qāḍī al-ǧamā'a.*[141] In all known

[135] Al-Māwardī, *al-Aḥkām al-sulṭāniyya,* 391-4, al-Qarāfī, *al-Ḏakhīra,* X, 47-58, idem, *Tamyīz,* 167f, Ibn Farḥūn, *Tabṣira,* 19f.

[136] Ibn Sahl, *Aḥkām,* 6f.

[137] Two cases before Muḥammad b. Makkī (superintendent of the market) in 464/1072, *Aḥkām,* 827, 1003, another without a name in 462/1070 and three cases of unnamed market inspectors shortly before the year 460/1068.

[138] One anonymous prior to 426/1034-5 and three before Ḥasan Ibn Ḏakwān prior to 431/1039-40.

[139] Ibn Sahl, the compiler of *al-Aḥkām al-kubrā,* was secretary to the market inspector Ibn Ḥarīš, Qāḍī 'Iyāḍ, *Tartīb,* VIII, 183, a fact which explains the number of cases from this particular judge.

[140] Ibn Sahl, *Aḥkām,* 1011, also in *Ḥisba* (ed. Khallāf), 60. Compare also Chalmeta, *Señor del zoco,* 400f.

[141] See above, p. 61.

cases, the market inspector conferred with the city's board of legal consultants (*šūrā*);[142] there is no indication that the latter are anyone else than those the *qāḍī* would confer with.[143] The market inspector adopted the legal opinions of these eminent scholars of Mālikī *fiqh.* His jurisdiction was not regarded as purely secular or administrative in quality. Otherwise he could not have presided over a real estate case after the sudden death of the presiding *qāḍī* in 464/1072. In other cases, the jurisconsults opted for a *ḥukm bi-l-qaḍiyya,* i.e. a ruling based on full evidential proof according to sacred law. They must have considered Ibn Ḥarīš capably of providing such evidence in his court sessions.[144] When we look for differences between *qāḍī* and market inspector jurisdiction, we realize that accepting witnesses (*šāhid,* pl. *šuhūd*) or refusing them did play a larger part with the market inspector than with the *qāḍī.* In my view, this is not to say that the market inspector was more particular about accepting witnesses than the *qāḍī;* it rather means that the latter only accepted cases in which he knew witnesses and accepted them.[145] The market inspector, then, was supposed to deal with all kinds of litigations; those litigations we know from our sources were the only ones with such a degree of legally evidential proof to make them interesting for juridical discussion.

This acting of the market inspector as judge does not, however, allow any conclusions on his —in our source unmentioned— activities as supervisor of the markets. There, he may have acted in a manner contrary to the rules of evidence set up by the sacred law, which compelled a judge to restrict his judgments to things evident (*ẓāhir*) or firmly known to him (*'ilm al-qāḍī*) without further investigation. A market inspector was supposed «to promote good and forbid evil» (*al-amr bi-l-ma'rūf wa-l-nahy 'an al-munkar*) and therefore investigated suspected, but not necessarily evident frauds used in the markets.[146]

[142] The *šūrā* of the *qāḍī* was a well-established institution in Cordoba which can be traced back to the times of 'Abd al-Raḥmān II (206/822-238/852), Khušanī, *Quḍāh,* 112; on the *šūrā* in al-Andalus, see M. Marín, «*Šūrà* et *ahl al-šūrà* dans al-Andalus», *Studia Islamica,* 62 (1985), 25-51; Tyan, *Histoire,* 230-236; and Lévi-Provençal, *Histoire,* 127f.

[143] In contrast to Chalmeta, who considers scholars called «*muftī fī sūq Qurṭuba*» to be special jurisconsults of the market inspector, *Señor del Zoco,* 393f, also Khallāf, *Ta'rīkh al-qaḍā',* 390f. They may, however, have been legal experts consulted by traders and artisans.

[144] See below.

[145] A good example of this is the case the *qāḍī al-ǧamā'a* Ibn Ziyād refused to hear from a woman because her witnesses were unknown to him and his staff. She was told to find other judges, *ḥukkām,* who could accept her witnesses, Ibn Sahl, *Aḥkām,* 31; referred to by Ibn Farḥūn, *Tabṣira,* I, 58.

[146] See above note 135 on juridical definitions on the *ḥisba* office. The historian Ibn Sa'īd (d. 685/1286) explains that a superintendent of the markets (here a *muḥtasib* in the later usage), was authorized to interrogate without former notice or any claim, cf. Maqqarī, *Nafḥ,* I, 218f.

Some of the judicial cases of the *ṣāḥib al-aḥkām,* however, are closely connected to the markets and may be considered as an extension, if not part, of his control activities.[147] Another case that came before Ibn Ḥarīš, aside from the one of the shoemakers cited at the beginning, also concerned production methods and quality control in the market: a private *muḥtasib* claimed that the use of tin instead of silver in the varnish (*sandarūs*) used for stirrups, saddles and the like, was fraudulent practice. He presented an *istir'ā'* document[148] attesting to its signatories' knowledges that, from old habit (*'āda*) and custom (*'urf*), the varnish put on the leather of shoes, saddles and bridles was made of silver exclusively. According to these witnesses, the use of tin —the less precious material— was fraud and damaging to the markets. Even if the producer could distinguish between both materials, any buyer incapable of doing so was subject to fraud and damage. As required for an *istir'ā'* document, the signatories testified to its content in the judge's tribunal held in the Great Mosque of Cordoba. The defendant alleged that he had always produced varnish on the basis of tin. The market inspector conferred with the board of jurisconsults, whose opinions in this case suggested various rulings: Ibn 'Attāb considered the use of tin legitimate, since the sacred law forbids men to use silver except for signet-rings, swords and copies of the Quran. Ibn al-Qaṭṭān, on the other hand, wanted to punish the use of tin, which he considered in contradiction to old custom and thus fraud, and the third jurist, Ibn Mālik, looked at the case on an individual level: he conceded that the defendant should bring testimonial evidence for his alleged custom of using tin, which, so we can conclude, could free him from being charged of fraudulently inaugurating tin varnish. It is important to note that he was not requested to prove a general custom of using tin. From this case, we learn that silver varnish must have been widely used in Cordoba in contradiction to norms of the *fiqh.* These three *responsa* (juridical expertises) touch different layers of legal rights: Ibn 'Attāb deals with a set of legal norms rendering certain products illicit for a certain group of people, Ibn al-Qaṭṭān protects consumers against fraudulent innovations based on a notion of local custom, and Ibn Mālik grants to the individual the right to pursue one's own way of producing things if this has not been challenged before. In contrast to the formerly cited shoemakers' case, here it is not known which ruling was implemented: acquittal as proposed

[147] In presenting these cases, it is not my intent to go into every detail of the juridical discussion, this will only be mentioned as far as necessary for an understanding of the case and its major problems.

[148] The *'aqd al-istir'ā'* notarizes a testimony for memory, intented for possible later oral repetition in court. On this practice in Cordoban courts, see my *Gerichtspraxis,* 183-88.

by Ibn 'Attāb; fraud as suggested by Ibn al-Qaṭṭān; or continuation of the lawsuit if the defendant submits new testimonial evidence.[149]

Other cases in the realm of economic activities rather concern contractual law than the general supervision of the market. The claimants in these cases are never called *muḥtasib,* which indicates that their claim was based on a contract with the defendant.

In Cordoba, businessmen contracted weavers to produce a defined amount and quality of cloth, for which they payed in advance. In the court of Ibn Ḥarīš, Muḥammad b. Aḥmad b. Ṣafwān acknowledged the receipt of a certain amount of gold from the brothers 'Abd Allāh and Muḥammad Ibn Khayra in return for weaving ten silk garments. This was confirmed by 'Abd Allāh Ibn Khayra, who claimed that the six garments the weaver brought to court were handed to him. In an *istir'ā'* document presented to the court, some witnesses had attested that they knew both sons of Khayra, 'Abd Allāh and Muḥammad, to be general mandate partners (*šarīkān mutafāwiḍān*)[150] at the time the document was drawn up in Ǧumādā I 458 (April, 1066). This testimony was duly certified by witnesses in court (*ṭabata*) as was his brother's absence while away in the North African city of Fez for the last year. If both parties, weaver and cloth merchant, had hoped for a quick resolution by the judge, they were mistaken: Ibn Ḥarīš had the garments confiscated and consulted the jurists.[151] He may have become aware of the legal dangers involving rights of absentees through a case of the repayment of a debt owed by an absentee, which took place at that time.[152] The legal problem was that any renewed claim for delivery by the absent brother could only be ruled out if the second employer was in fact the general mandate partner of his brother. Ibn 'Attāb held that the partnership was legally attested. After the brother had sworn an oath that their partnership was not dissolved, the garments could be delivered and the absentee's right of legal hearing was deferred (*irǧā' al-ḥuǧǧa*).[153] The other jurists, Ibn al-Qaṭṭān and Ibn Mālik, considered the testimony of the partnership to be very weak. Ibn al-Qaṭṭān held that the partnership was not considered a legal fact unless it was attested to on the basis of personal knowledge; not if this assertion was based on 'hearsay', as

[149] Ibn Sahl, *Aḥkām,* 1011, *Nawāzil,* 24, *Ḥisba,* 60.

[150] On the Mālikī *mufāwaḍa* partnership, see Udovitch, *Partnership and Profit in medieval Islam,* Princeton, 1970, 144f.

[151] Ibn Sahl, *Aḥkām,* 620-7.

[152] Compare below, part II of this article.

[153] Deferment of legal hearing, *irǧā' al-ḥuǧǧa,* was very common in the Cordoban cases. It meant the right of an absent defendant to resume court action after his return in order to question a binding ruling passed against him. Compare my *Gerichtspraxis,* 404-11.

in the presented document. Ibn Mālik proposed that two of the document's witnesses should testify to their knowledge about this kind of partnership and then attest the existence of such a partnership between both brothers. Then the judge should accept the partnership and declare the present brother to be the proxy of the absentee. Since a proxy could acknowledge the delivery on behalf of the absentee, the weaver would be protected from any further claims. Our source does not reveal the outcome of the case, but Ibn Sahl considered the last *fatwā* to be the most complete of all three.[154]

In another case, a weaver had fled town without delivering the cloth, and the man contracting to have labor performed (*musta'mil*) later claimed compensation should be payed from the inheritance of the inheritance of the weaver's father. In the court of Ibn Ḥarīš, the *musta'mil* Muḥammad b. Aḥmad had a contract certified, dating from Ša'bān 451 (beginning with September 12, 1059). This contract stipulated a payment of «10 good old gold *miṯqāl*» to Mufarriğ b. Mubārak for the weaving of 40 garments in a given quality. Muḥammad asserted the acquittal of payment to Mufarriğ on the grounds that the weaver had started his work. Mufarriğ, however, never delivered, but left town in the company of his brother for the East Coast (Šarq al-Andalus). The father must have died three years later in Cordoba; and the *musta'mil* ten months later sued the father's widow for Mufarriğ's share of the inheritance, which he specified as 12 hand mills and their leases. The court duly certified two *istir'ā'* documents: the one attesting to the death of Mubārak and his heir, his widow Munağğāt and his sons from another marriage, Mufarriğ and Muḥammad. The other *istir'ā'* document attested to the brother's departure for the East Coast, three years ago, without having returned, to the best of the witnesses' knowledge. Summoned to court, the widow acknowledged the inheritance of 12 hand mills which happened to be in their house in the quarter of the Jews Gate, in 'Ibn 'Abd Allāh'-street. Since the death of her husband ten months ago, she had leased them. She claimed expenses for the reconstruction and the use of the mills.[155]

The jurists disputed whether the testimony in its present form was sufficient to rule out the possibility that Mufarriğ had already died before becoming his father's heir and whether the brothers were in fact far enough away not to be summoned to court. Only if these points had been resolved positively, so the answer of Ibn 'Attāb, would the claimant have to find ways to prove the father's

[154] *Aḥkām,* 624.

[155] On this case, see Ibn Sahl, *Aḥkām,* 629-639, it is reduced to a question-and-answer situation in Wanšarīsī, *Mi'yār,* X, 88-92, with full documentation of the *responsa* given, compare also a short hint in Ibn Farḥūn, *Tabṣira,* I, 100.

ownership of the mills. He could then swear to his claim, and the hand mills would be sold at an appropriate price. Mufarriğ's share would go to the claimant to cover the debts, any sum remaining and the brother's share were to be deposited. In this case the weaver should ge his right for a legal hearing postponed (*irğā' al-ḥuğğa*). If the claimant failed to establish his rights, the mills need not to be sold and could continue to be leased. In a *fatwā* much criticized by Ibn Sahl later on, Ibn al-Qaṭṭān saw no problems in the question whether Mufarriğ was still alive at his father's death or not, nor with his unknown place of residence, but said that the property rights of the defendants should be attested to.[156]

The next steps in this case are unknown to us, but eventually the *musta'mil* must have succeeded in getting the hand mills sold, because Ibn 'Attāb commented in a second *fatwā* on how the demands of the *musta'mil* should be calculated. According to his opinion, the calculation must be based on the 10 gold-*miṯqāl* given as advance, rather than on the work to be done or its value. The reason given was that the advance was intended to prevent the employed (*musta'ğar*) from changing his *musta'mil*- which is nothing more or less than indentured service. Such a dependency was allowed by all other jurists who totally agreed with Ibn 'Attāb's second *fatwā*.

In the following case, damages were claimed for an injury of the horse's leg after the seller had already left town.[157] A man had bought a horse considered to be healthy for 24 Carmonian gold-*miṯqāl* which he paid to the seller Baḥrī al-Ṭalbī. He alleged that the horse was affected by an old injury. In order to confirm his right to damages, he had the contract of the sale from the end of Ramaḍān 457 (the beginning of September, 1065) certified in the court of Ibn Ḥarīš. Two expert witnesses attested in court on 14th Ḏū'l-Qa'da (October, 18) of the same year to injuries of the horse that were older than the date of the sale and therefore called for a reduction of the price. In contrast to other cases of claims for damages, e.g. for a slave girl[158] or for houses,[159] what was disputed here was not the amount or kind of damage, but how the buyer could recover his money from

[156] Ibn Sahl criticized Ibn 'Attāb for different reasons, which would take us to far afield, *Aḥkām,* 632-6.

[157] On this case, see Ibn Sahl, *Aḥkām,* 562-9, and *Ṭibb,* 85-95; further *fatāwā* on sales of riding animals in al-Andalus are studied by Vidal, F., «Venta de caballerías en el Toledo taifa y cristiano (siglos XI-XII): dos demandas judiciales desde Valencia y Córdoba», *Qurṭuba, estudios andalusíes* 2 (1997), 215-247.

[158] This was brought to the petition judge Ibn Adham, see Ibn Sahl, *Aḥkām,* 545-9, and idem *Waṯā'iq fi'l-ṭibb al-islāmī* (ed. M. Khallāf, Cairo, 1982), 60-65.

[159] On cases dealt with by the market inspector, see below part II of this article; on those brought before the *qāḍī* see Ibn Sahl, *Aḥkām,* 579-84, also partially in Wanšarīsī, *Mi'yār* VI, 265-7.

the absent seller. Several witnesses attested in court that they knew Baḥrī al-Ṭalbī personally and by name, and that, until then, he had enjoyed a good reputation. However, he had left Cordoba one month ago with an unknown destination.

The market inspector provided the jurists with a written summary of the case, including copies of all three documents, the contract of sale, testimony of damages to the horse and testimony on the person of the seller. The major legal problem was the fact that the absent seller could not be summoned to exercise his right of legal hearing, since his destination was not known. To reach a decision in such cases, the buyer was allowed to an oath, in which he confirmed his claim and that he had not yet renounced it, thus preventing a repetitive claim on the same grounds. This aspect was formulated by Ibn ʿAttāb. Two jurists, Ibn al-Qaṭṭān and Ibn ʿAbd al-Ṣamad, wanted a final deadline (*talawwum*) before the claimant could take this oath, and Ibn Mālik did not mention its second half, the denial of renunciation. After the oath, so Ibn ʿAttāb, the horse would be sold in the market, its price being handed over to the claimant, who retained claim to the remaining sum. Should the selling price exceed the original price, the surplus had to be deposited for the absentee. In contrast, Ibn al-Qaṭṭān recommended that additional property belonging to the absentee should be sold to cover the remaining debt. Ibn Mālik added that the judge should keep a record of this case in copy and postpone the defendant's right of legal hearing in court.

Somewhat different from this claim for damages was the case of a horse that had been sold and resold in various cities of al-Andalus and had finally died from exhaustion before it could be returned to its original owner. At the beginning, the original owner of a mare claimed for restitution of property rights (*istiḥqāq,* hereinafter referred to as 'vindication') against a horse dealer before the *ḥakam* of Carmona. After his property rights had been attested and he had taken the necessary oath, the judge issued a ruling that included the assessed value of the animal.[160] The dealer in turn had bought the mare from a man in Cordoba. He therefore asked the judge for a document of 'vindication' (*mustaḥiqqa)* addressed to the Cordovan *ṣāḥib al-aḥkām* Ibn Ḥarīš to substantiate his rights vis-à-vis the seller. He deposited the assessed value of the mare in Carmona and rode on her to Cordoba. In Cordoba, dealer and seller went to the market inspector Ibn Ḥarīš, and the document of 'vindication' issued in Carmona was certified. The seller acknowledged the sale and asserted that he in his turn had bought the mare from a Toledan man, who had left the city some time ago. The

[160] Compare Ibn ʿAbd al-Barr, *Kāfī,* 454, for the procedure in a claim of *istiḥqāq*.

procedure was repeated, and the Cordoban seller had the value of the mare assessed at 40 *miṯqāl,* a sum five *miṯqāl* more than in Carmona. The Cordoban received a document of 'vindication' addressed to the *qāḍī* Ibn al-Ḥaššā' of Toledo (450/1058-460/1068), then deposited the assessed value of the mare and rode with it to Toledo. Upon this return from Toledo, the Cordoban seller asserted his agreement with the former owner (*ṣāḥib*) in Toledo and handed the mare over to the horse dealer.[161] Usually, he would then receive his deposit, 40 *miṯqāl,* and the horse dealer would take the mare back to Carmona, return it to its original proprietor and receive his own deposit in turn. But things went differently: the mare died one day after the horse dealer took her. He, as a consequence, sued the Cordoban seller in the court of Ibn Ḥarīš, alleging that the defendant had killed the mare by riding too fast and outstripping his travel company from Toledo by a whole day. The parties found a compromise and the horse dealer received 15 *miṯqāl*.

Informed about the mare's death, the proprietor claimed from the horse dealer those 15 *miṯqāl* he had received possibly in addition to the amount deposited for the mare in Carmona. In a first *fatwā* in this case, Ibn 'Attāb conceded to the proprietor the 40 *miṯqāl* assessed for the mare in Cordoba, but nothing else. The market inspector seems to have passed a ruling accordingly.

By doing so, he assumed that the assessed value in Carmona had been 35 *miṯqāl,* the amount certified in the 'vindication' document issued by the *ḥakam* of Carmona.[162] The proprietor, however, alleged that this sum had in fact been assessed at 45 *miṯqāl* and not at 35. The proprietor went to Carmona and returned with the written confirmation from its judge addressed to Ibn Ḥarīš that his first writing had contained a mistake and that the mare had indeed been assessed in Carmona at 45 *miṯqāl*. Asked for their opinion, Ibn al-Qaṭṭān and Ibn Mālik held that this confirmation must be accepted and that the horse trader should be liable to 45 *miṯqāl*. Ibn 'Attāb, however, objected to lifting the former assessment of Ibn Ḥarīš, which he considered a binding ruling (*ḥukm*), and insisted on the sum of 40 *miṯqāl*. Quite astonishing in this complicated case is how easily legal rights were claimed in various cities. The legal difficulty did not arise from the mare's sale and resale in the different places —which at that time belonged to different political entities— but from its death in Cordoba which resulted in a ruling based on the wrong account of the assessement in Carmona. It must be assumed that «leasing» a horse against an assessed deposit

[161] On this case, see Ibn Sahl, *Aḥkām,* 839-842.

[162] Ibn 'Attāb asserts that the proprietor should receive the highest assessed value in case of a loss, *Aḥkām,* 841.

for security was common practice in al-Andalus. Legally, it was constructed in terms of a *salam,* a sale with deferred delivery.[163]

Three cases concerning the operation of henna mills near Cordoba, a claim for breach of contract by installing a mill, and a contract of sale combined with the agency to supervive cultivation work in the sold vineyard, belong to the jurisdiction of the *ṣāḥib al-šurṭa wa-l-sūq* Abū 'Alī Ibn Ḏakwān before he became *qāḍī al-ǧamā'a* in 435/1043. In the first case, the act of the lease of henna mills at the river of Cordoba, issued by the jurist Ibn Daḥḥūn (d. 431/1039-40), stipulated that [Aḥmad] leased from Sulaymān b. Aḥmad, a great-great-grandson of 'Abd al-Raḥmān III, for two years beginning on such-and-such a date, all his and his minor children's shares[164] in the mills attributed as property (*al-mansūbatu li-milkin*), and for which the leaseholder (*mutaqabbil*) Aḥmad was to pay a given amount after some given time. At the end of this contract, Aḥmad was obliged to concede that he knew these mills would work only in summer, not in winter.

When Aḥmad claimed before the *ṣāḥib al-sūq* Ibn Ḏakwān for the right to operate the mills also during winter, the jurists held contradicting views. The question was whether the mills, or rather their output, were guaranteed (*ma'mūn*) and whether the contract of lease (*qibāla*) was permissible or not. Ibn 'Attāb explains that the acknowledged self-obligation of the leaseholder becomes a contractual condition. Stipulating payment in advance, *ta'ǧīl al-naqd,* for the lease of mills is only allowed if these are guaranteed (*ma'mūn*). They are not *ma'mūn,* however, if a decrease in the water of the rivers is to be feared, because this includes 'illegal risk' (*garar*) in the contract. If the claimant proved that the mills are not guaranteed, so Ibn 'Attāb, the lease for the remaining period must be annulled because of the stipulated advance payment. If this cannot be proved, the lease was valid and the leaseholder was entitled to operate the mills during summer and winter.[165] The jurist al-Qurašī considered the mills to be not guaranteed and the contract not valid; Ibn Ǧurǧ, on the contrary, thought the contract valid, the mills guaranteed and the leaseholder permitted to work the mills during the whole year.[166]

An unnamed market inspector dealt with a breach of contract concerning the sale of a vestibule (*usṭuwān*) within a piece of real estate. The contract of sale,

[163] On this, see Ibn Rušd (d. 520/1126) in Wanšarīsī, *Mi'yār,* IX, 595-8. Ibn Sahl refers to another case in which Ibn Ḥarīš received a brief by the *qāḍī* of Gāfiq (Belalcázar), Muḥammad Ibn Šammākh (d. 459/1067) on behalf of a female mule (*bagl*) which had been successfully claimed before Ibn 'Ataba, a deputy judge (*mustakhlaf*) in Ḥiṣn Miknāsa, *Aḥkām,* 14.

[164] This may indicate that the mills were part of a family endowment.

[165] *Aḥkām,* 593f.

[166] *Aḥkām,* 593-5.

drawn up by the jurist Ibn al-Šaqqāq (d. 426/1035), stipulated that part of a vestibule (*usṭuwān)* of a given estate in Cordoba was sold including the surrounding walls, its door and doorstep, everything belonging to a room on top of it and its entrance and an entrance to the (main) door of the estate, under the conditions that the seller had the separating door built on a firm fundament in good brick, and that the buyer did not set up a mill (*ṭāḥūna*). However, the buyer had a mill installed in the same vestibule, and the seller filed claim against it before the market inspector.

Two jurists, Ibn Daḥḥūn and Masīlī, held that the sale was valid without its stipulation forbidding a mill, and Masīlī added that no detriment (*ḍarar*) should be caused [by a mill]. Ibn Ǧurǧ considered the contract of sale and the stipulation forbidding a mill to be valid, whereupon the buyer had to dismantle the mill. According to Ibn 'Attāb, this was a sale with a reprehensible (*makrūh*) stipulation, in which to make the sale valid the seller must either repell the stipulation or, if he insisted, the sale would be annulled. If the sold good had ceased to exist, the stipulation was to be omitted (*usqiṭa*) and the seller to get the value (*qīma*) of the sold good. If the vestibule was still in the same condition as on the day of sale, the seller might choose to omit the stipulation and validate the sale; otherwise the sale was annulled. But if the vestibule was destroyed, either by dismantling or by new constructions, the stipulation was to be omitted and the seller to receive its value, but not more than the selling price, since he previously had agreed on it under that binding stipulation, and omission of this stipulation gives him no judicial claim (*ḥuǧǧa*). Should the seller certify a detriment (*ḍarar*) caused by the mill, he should be granted that.[167] Unfortunately, we are not informed about the market inspector's ruling in this case. Ibn Sahl must have favored Ibn 'Attāb's opinion, which he displayed in great detail.

The seller of half a vineyard presented the contract to the market inspector Ibn Ḏakwān and asked whether it was legally binding. The contract, drawn up by the jurist Abū Muḥammad Ibn Daḥḥūn (d. 431/1039-40), stipulates that Faraǧ buys half a vineyard, specified in the document, from the seller Sulaymān. As to the price, the contract stipulates that Faraǧ owes Sulaymān 15 *miṯqāl* which accumulate during three consecutive years beginning from the date of the contract, and that he adds to this sum the same amount from his own funds. The buyer is given the responsibility to spend the whole amount on construction and cultivation of the vineyard within the coming three years, specified as follows: at the beginning of the first year, 2 *miṯqāl* for cutting the branches and 8 *miṯqāl* for

[167] *Aḥkām,* 471-3.

fortifying the whole area with a wall to make it a garden; to pay for the pruning and hoeing, current revenues (*galla*) are used; [expenses] for pruning and hoeing in the third year completing the stipulated amount. The buyer Faraǧ has to supervise this work during the agreed period and accepts that he is the legal agent of Sulaymān. At the end of the period, he will receive half of the bordered vineyard in the form of joint property by a fully valid sale. The document concludes with the agreement of both sides and the implementation of the contract.[168]

Ibn Daḥḥūn and al-Masīlī considered the contract to be valid, but were cited only briefly. Instead, the negative answer of Ibn Ǧurǧ and Ibn 'Attāb was given in great detail. Ibn Ǧurǧ objected that Faraǧ had actually bought half the vineyard for 15 *miṯqāl* under the condition of cultivating all of it out his own money during three years, but was to become owner only after that period. This, according to Ibn Ǧurǧ, was an invalid contract with Mālik. He held that the contract was to be annulled and Faraǧ had to pay the value for half the vineyard in its state when he took possession of it.

Ibn 'Attāb considered the buyer's obligation to pay Sulaymān 15 *miṯqāl* in addition to his money earmarked for specified cultivation work to be a void *«dayn bi-dayn»* contract consisting in the exchange of two liabilities (*ḍamīn*). The stipulation that the buyer uses the revenue (*galla*) for specified cultivation works makes the seller profit from the money of other people, which is illicit. Aside from other objections that would take us too far afield, the contract is also void because expenses are fixed for three years, although Faraǧ is not a full owner and gets the benefits only after this period. Authorizing someone to spend borrowed money, as Sulaymān has done with the 15 *miṯqāl* Faraǧ is liable for, is only valid if the seller is not absent. From this we can conclude that the seller Sulaymān was an absentee landlord who had sold his vineyard on credit to someone supervising cultivation on site. Unfortunately, it is not possible to reconstruct either Ibn Ḏakwān's ruling or who was to profit from it, since we do not know if the seller wanted the sale to be annulled.

(To be continued.)

[168] *Aḥkām,* 473f.