THE APPLICATION OF ISLAMIC NORMS IN EUROPE: REASONS, SCOPE AND LIMITS

ABSTRACT

Immigration states have to face the challenges of remarkably different modes of behaviour, self-understanding, beliefs and values among some groups of immigrants. Mathias Rohe looks at whether institutionalised forms of non-judicial dispute resolution on the basis of Islamic law are desirable to meet the special needs of immigrant groups, or if that could lead to forms of legal segregation to the detriment of the weaker parties and to social coherence. He suggests that the European experience until now demonstrates that, except in the UK, the overwhelming majority of Muslims are coping well with the existing legal framework and the available means of judicial and extra-judicial dispute resolution.

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Migration is not restricted to issues concerning labour, education or political asylum. Immigration states have to face the challenges of remarkably different modes of behaviour, self-understanding, beliefs and values among some groups of immigrants. Certainly, social and cultural difference has been an integral part of European societies for a long time, and a large number of immigrants highly appreciate the legal and social framework of these societies in general. This is equally true for Muslim immigrants. The current perception of Muslims being a homogenous group of people with a strong religious affiliation is simply wrong. Nevertheless, an obviously increasing number of Muslims is eager to achieve more certainty in defining their position as European Muslims. The crucial question for them is to define Muslim identity – including the practical fulfillment of Islamic rules – within the framework of European legal orders and societal needs.[1] With regard to that question, we have to differentiate between religious and legal issues. The former are regulated by the European and national constitutional provisions. It is mainly in the sphere of religious rules – concerning the relations between God and human beings and the non-legal aspects of the relations between human beings – where a European fiqh (Islamic "law") is possibly developing.[2] As it comes to the application of *legal* rules, the conflict between possibly contradicting rules of the law of the land and the law of religious/cultural origin has to be solved.

In the field of law, most of the existing legal orders have a territorial basis: everyone within the territory of a specific state has to abide by the same laws. Only the state can decide whether and to what extent 'foreign' law can be applied and enforced on its territory. Thus the legal system is not 'multi-cultural' as far as it concerns the decisive exercise of legal power. Therefore, the application of foreign legal provisions – including Islamic ones – is an exceptional case. However, this does not mean that foreign legal principles and cultural influences are kept out. Nevertheless, the constitutional principles of the inviolability of human dignity, democracy, the rule of law with the binding force of all state power, separation of powers, majority rule and minority protection, as well as the essential elements of constitutional civil rights, such as the equality of the sexes, freedom of opinion, religious freedom and protection of marriage and family etc., are among the basic principles which cannot be dispensed with. Within this framework, foreign legal provisions can be formally applied on three different legal levels. Besides that, the state has no control on informal ways of application as long as its bodies are not called upon by one of the parties involved.

1. *Private International Law* (the rules regulating the conflict of laws in matters concerning civil[3] law) is a possible level of direct application of Islamic legal rules. In the area of civil law, the welfare of autonomously acting private persons is of prime importance. If someone has organized his/her life in accordance with a certain legal system, this deserves protection when the person crosses the border. However, it is also within the interest of the legal community that in certain matters the same law should be applicable to every resident in a particular country. This would be especially the case in matters touching the roots of legal and societal common sense, like the legal relations between the sexes or between adherents of different religions. The question as to whether foreign or national substantial law should be applied must therefore be determined, and this is done by Private International Law provisions (conflict of laws), which weigh up the relevant interests.

As it comes to the areas of family law and the law of succession, the application of legal norms in European countries is often determined on the basis of nationality of the persons involved rather than by their domicile.[4] Other than in Canada or in the U.S.[5], European courts are therefore often obliged to apply Islamic legal rules. In this respect it may generally be stated that Islamic law until today has a strong position especially within these areas. This can be explained by the fact that Islamic law in this area has a multiplicity of regulations derived from authoritative sources (*Qur'an* and *sunna*). Furthermore, a powerful lobby obviously tries to preserve this area as a stronghold due to religious convictions as well as for reasons of income and the exercise of power (which was very similar in Europe in former times). The Tunisian lawyer Ali Mezghani states that "[i]n Islamic countries, it is difficult to deny that family law is the site of conservation."[6] This is true despite the fact that in several Islamic countries reforms have taken place and still are in progress.[7]

However, the application of such provisions must comply with the rules of public policy. If the application of legislation influenced by Islamic law would lead to a result that is obviously incompatible with, for example, the main principles of German law, including constitutional civil rights, the provisions in question cannot be applied. The main conflicts between "Islamic" and European legal thinking in family law concern the constitutional (and human) rights such as equality of the sexes and of religious beliefs and the freedom of religion including the right not to believe. Conflicts mainly arise from provisions reflecting classical Islamic Law, which preserve a strict separation between the sexes with respect to their social roles and tasks as well as the far-reaching legal segregation of religions under the supremacy of Islam.

The German Supreme Court has clearly stated that there is no room for the presumption of Turkish wives living in a "typical Muslim marriage" to be deprived from autonomous decision-making in daily life.

2. A further area of – indirect – application opens up within the framework of the so-called *'optional' civil law*. Private autonomy is the core value of the liberal European Civil law orders. Thus, in matters exclusively concerning the private interests of the parties involved, these parties are entitled to create and to arrange their legal relations according to their preferences. Legal rules regulating such matters are "optional" within a certain framework.

As an example we may note the fact that various methods of investment are offered which do not violate the Islamic prohibition of usury ("riba", which according to traditional views means the general prohibition of accepting and paying interest[8]). Concerning project finance, Islamic legal institutions like the murabaha or the mudaraba can be used.[9] These are certain forms of partnerships intending to attract capital owners to participate instead of merely giving credit, the latter bearing the risk of contradicting the riba-rules. Commerce and trade have already responded to the economic/legal needs of traditional Muslims. German and Swiss banks, for instance, have issued 'Islamic' shares for investment purposes, that is to say share packages that avoid companies whose business involves gambling, alcohol, tobacco, interest-yielding credit, insurance or the sex industry, which are illegitimate in Islamic law.[10] In the UK a special concept of "Islamic mortgages" was developed, which allows Muslims willing to purchase chattel to avoid conflicts with provisions concerning riba (when paying interest on "normal" mortgages).[11] The "Islamic" mortgage consists of two separate transactions aiming at one single result. Until recently each transaction was subject to taxation. Now a reform took place of which the key issue was to abolish the double "stamp duty", because it prevented Muslims from economically successful engaging in real property due to the formal system of taxation without a sufficient substantial reason. Even the German state of Sachsen-Anhalt has recently placed an Islamic bond ("sukuk"[12], 100m Euro for the beginning), based on a Dutch foundation.[13] For traditionally orientated Muslims, the offer of such forms of investment in Europe is of considerable importance. According to my knowledge many of them have lost huge sums of money in the past to doubtful organisations from the Islamic world bearing a "religious" veil, or to similar organisations based in Europe[14].

In the field of Matrimonial law, tendencies of implementing Islamic norms into optional law can also be identified in Germany in connection with matrimonial contracts.[15] Thus, in Germany contractual conditions regulating the payment of the "Islamic" dower ("mahr" or "sadaq") are possible and generally accepted by the Courts.[16] Other contractual regulations, especially those discriminating against women, could be void according to para. 138 German Civil Code on the protection of good morals.[17] There are no court decisions on such issues so far published or known. However to my knowledge some German notaries refuse to assist in formulating wills[18] containing the classical Islamic regulation on half-shares for female heirs.

3. In addition to general rules of Private International law and optional civil law, a few European states *introduced Islamic legal provisions* concerning family and succession matters to be applied to the Muslim population. In Britain Muslim institutions may apply for being entitled to register marriages. Furthermore, according to the Divorce (Religious marriages) Act 2002, courts are enabled to require the dissolution of a religious marriage before granting a civil divorce.[19] The Adoption and Children

act 2002 amended the Children Act 1989 by provisions (sect. 14 A ss.) introducing a "special guardianship" as a legal means of parental responsibility besides adoption which is forbidden by Islamic law[20]. In Spain, since 1992 Islamic rules regulating the contracting of marriages can be applied to Muslims.[21] In order to ensure the necessary legal security there are compulsory provisions for the registration of these marriages.[22] This kind of legal segregation is very much limited, concerning mere formal regulations without any relevant material quality. Interestingly, also in Spain the legislator has amended art. 107 Código Civil regulating the right to divorce. The amendment enables women resident in Spain to get divorced even if the law of origin or of their matrimonial home prevents them from doing so. The legislator has stated expressly that this amendment was to solve problems to this respect especially regarding Muslim women.[23]

Within the European Union only in Greece the Muslims of Turkish origin are still living under traditional Shari'a rules for historical reasons[24], while the Turkish Republic has continuously reformed its civil laws and since 2002 introduced the legal equality of sexes in family law. This can hardly serve as a model for Europe. Despite widespread tendencies in the Islamic world aiming to improve women's rights, many legal orders in this region are still far from the legal standard of equality of sexes achieved in Europe. It would simply be unacceptable to implement such rules into the existing systems.

Nevertheless, in Britain the Union of Muslim Organisations of UK and Eire has formulated a resolution demanding the establishment of a separate Muslim family and inheritance law automatically applicable to all Muslims in Britain.[25] The underlying idea might to be found in the legal situation on the Indian subcontinent – being the prevailing region of origin of Muslims in Britain – which was and still is ruled by a system of religious separation in matters of family law.[26] The same is true for most of the Islamic states in past and present. But introducing a religiously or ethnically orientated multiple legal system into Europe does not represent a realistic or even desirable option:[27] Such systems may be helpful and historically even exemplary in the past, if they granted rights and freedoms for minorities, which would otherwise be lost. However, this will always result in problems in the form of an inter-religious conflict over laws as it can be seen outside Europe. Besides that, freedom of religion contains the freedom to change one's religion or not to belong to any religion. This freedom would be unduly constrained by forcing people into a legal regime defined by religion. Furthermore, there is no uniform Islamic legal system of substantial rules to be identified. The Turkish Republic, being the state of origin of the Muslim majority in Austria and Germany completely as well as in other parts of Europe abolished the Shari'a rules, and the vast majority among them would heavily reject the reintroduction of such rules in European countries. The same is true for France.

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Instead of that, Muslims are entitled to create legal relations according to their religious intentions within the framework of optional civil law.

4. Within the scope of private autonomy, the parties concerned are free to create legal relations within the limits of public policy and to agree on the ways and results of non-judicial dispute resolution. In matters of family law, relatives will often be consulted first. As it comes to Muslim immigrants, various research projects in Europe in recent years clearly demonstrate that considerable groups of them maintain the structures of family life current in their countries of origin.[28] Some of them are reluctant to use the legal remedies provided by the law of the state they are domiciled in because they believe that they are bound to legal orders different from the law of the land. Others are simply unaware of the fact that in certain matters including family law (e.g. with respect to contracting marriages and divorce) the formal legal rules of the state of domicile have to be observed; otherwise the intentions and acts of the parties involved are not legally enforceable. Thus, a marriage contracted solely according to traditional Islamic rules may be socially accepted within the community, but it deprives the spouses from legally enforceable rights in the state of domicile with respect to maintenance or inheritance usually connected to marriages. On the other hand, these women cannot obtain a divorce in states courts because they are not regarded as to be married according to the law of the land. Therefore they seek "internal" solutions within their community.[29] Besides that, some religious extremists and traditionalists openly argue that Muslims should not accept the legal norms and judgments of "infidels". They should instead of that establish their own bodies of dispute resolution and elect their own judges.[30] Would then extra-judicial dispute resolution create a viable solution for weighing up the relevant interests of the parties involved in a manner consistent with the community's standards as well as with the indispensable principles of the law of the land?

In general, there is a remarkable shift towards means and bodies of extra-judicial (alternative) dispute resolution (ADR) in many countries. The advantages of this kind of dispute resolution are obvious. The necessary confidence in persons resolving conflicts and in the quality of their decisions may increase when they are explicitly and unanimously chosen by the parties involved. In addition to that, ADR may provide a relatively quick and cheap dispute resolution. Specific reasons for ADR with respect to religious or other

minorities with an immigration background were already mentioned. Muslims adhering to the rules of traditional Muslim family law would possibly feel "respected" by society as a whole.

The key prerequisites for a successful and fair ADR are an agreement of the parties involved to prefer ADR voluntarily and for common reasons, and qualified arbitrators or mediators applying norms which equally consider the legitimate interests of each party. The question remains if the mere existence of such an agreement is sufficient. Certainly, within the scope of private autonomy agreements between adult and mentally healthy persons are supposed to be valid and fair unless there is any specific evidence for the contrary. However, in the context of migration and societal segregation, formal freedom to agree or not to agree can be factually restricted to only one option, if the relevant party has to expect substantial disadvantages in social life in case of choosing the "wrong" option. Thus, if such factual pressure on the weaker party is not a merely theoretical threat, the official recognition of communitarian bodies for ADR and their decisions could prevent the weaker party from the protection granted by the law of the land and enforced by official courts. Formal equality under conditions of material inequality usually leads to the preservation of inequality. As it was mentioned above, despite various reforms in several Islamic states Islamic Law of personal status does not grant equal rights for females and non-Muslims. We should certainly reject the simplifying picture of Muslim women being suppressed and powerless victims in general. The German Supreme Court[31] has clearly stated that there is no room for the presumption of Turkish wives living in a "typical Muslim marriage" to be deprived from autonomous decision-making in daily life. Nevertheless, remaining problems, often caused by cultural motivation, are obvious and openly discussed among Muslims themselves. The commissioner for women's affairs of the Central Council of Muslims in Germany has stated in an interview[32]: "Islam is not in need of a commissioner for women's affairs. It is not Islam who suppresses women, but men. And therefore Muslim women are indeed in need of a commissioner for women's affairs." In addition to that, it has to be noted that Shari'a and "Islamic family law" is far from being a clear and consistent body of rules. Different legal schools and opinions in the past and different legislations in the present Islamic world clearly demonstrate a wide range of substantially varying rules and solutions. For example, according to Tunisian Private International Law the application of Moroccan rules of Family law (before the reforms of 2003) contradicts the Tunisian public order, notwithstanding the fact that both countries claim to have founded their Codes of Personal Status on Shari'a rules. In a broader sense, Taj Hashmi, a member of the Muslim Canadian Congress, has expressed his concern that adopting Sharia law "may legitimize the excesses of Sharia committed elsewhere in the Muslim World", and that Shari'a in its present form is "neither Islamic nor Canadian in character and spirit". On the other hand, the suggested application of a "watered down version of Muslim personal law"[33] would lead to the question why not applying the law of the land and individually using its scope and means of private autonomy.

Thus, on one hand extra-judicial dispute resolution can serve as an instrument to achieve socially accepted solutions within a community living in far-reaching segregation from society as a whole. On the other hand, members of this community who refuse to use the community's special bodies for conflict resolution may easily face reproaches of undermining the community's position, to be a "bad" member.

As it comes to the present situation in Europe, an extraordinary example of law influenced by Islam is England, where an 'angrezi shariat' (English Shari'a) is obviously developing[34]. This seems to be due to the fact that many Muslims in Britain still have strong family relations to their respective native countries on the Indian subcontinent governed by religiously orientated laws in matters of personal status.[35] In some cases mainly concerning family relations, they seek socially acceptable solutions for legal problems within the Muslim community by the aid of accepted mediators. The Islamic Sharia Councils in England which were established since 1980/82 seem to be examples for such a kind of mediation.[36] The Councils do not have an official function, but they are occupied especially with mediation in the area of the law of personal status. There are frequently cases in which a Muslim wife has obtained an English divorce which she now wants confirmed according to 'Islamic Law' by the pronouncement of talaq (divorce) by the husband, which leads to the general acceptance of the decision in the social environment within or outside the country. Similarly, very often husbands refuse to divorce although the wife wishes to do so while being reluctant to start divorce proceedings in the civil courts.[37] Even if the matter does not go to the civil court, the Council's decision may become important; it is not legally enforceable in England, but it seems to be recognised in the state of origin as well as within the religious community.[38] Convincing the husband to pay the mahr (dower) constitutes a further possible task for the Council. The decisions of the Council appear to be based on a relatively reform-oriented approach to the legal

sources, but maintain the traditional framework of Islamic law including the unequal treatment of sexes and religions in general. Thus, the English legal system does not remain untouched by such proceedings: In some Islamic states there is a possibility for wives to obtain a divorce in court on the basis of the khul', which is a contractual or statutory right.[39] The wife, however, must then pay back the dower which will very often have been intended to serve as an old age pension. This somehow rewards the husband's persistence in refusing a divorce, which is not acceptable according to the standard of the law of the land. Certainly, the individual personal status is a solely "private matter". Nevertheless, the institutions of the law of personal status and especially the balance of rights and duties among the persons involved do not only affect society as a whole, but reflect basic common convictions of this society concerning probably the most important part of social life. Therefore it is upon the local legislator to establish an order of personal status which fulfils the most prominent task of legal orders by granting peace in society. Thus, on one hand extra-judicial dispute resolution can serve as an instrument to achieve socially accepted solutions within a community living in far-reaching segregation from society as a whole. On the other hand, members of this community who refuse to use the community's special bodies for conflict resolution may easily face reproaches of undermining the community's position, to be a "bad" member. Accepting such communitarian bodies would thus lead to an ongoing cultural segregation and to a "culturalization" of individuals seeking their individual ways within broader society.

It is remarkable in this context that the Central Council of Muslims in Germany declared in its charter on Muslim life in German society on February 20th, 2002 ("Islamic Charta"[40]) that Muslims are content with the harmonic system of secularity and religious freedom provided by the Constitution. According to article 13 of the charter, "The command of Islamic law to observe the local legal order includes the acceptance of the German statutes governing marriage and inheritance, and civil as well as criminal procedure." In the Swiss canton of Zurich, the Union of Islamic Organizations in Zürich[41] has expressly stated in its Basic declaration that the Union does not intend to create an Islamic state in Switzerland, nor does it place Islamic law above Swiss legislation (sec. 1). The union also expressly appreciates Swiss law of marriage and inheritance (sec. 5.). Similarly, the renowned French imam Larbi Kechat has stated that "Nous sommes en harmonie avec le cadre des lois, nous n'imposons pas une loi parallèle."[42] According to experiences in Belgium also, the vast majority of Muslim women living in between the rules of Muslim family law and women's rights claims the protection of Belgian substantial law.[43] One of the few voices publicly demanding the introduction of Islamic law and Muslim arbitration in Germany is the extremist founder of an Islamic centre in Berlin. In a book on "The Rules of Personal Status of Muslims in the West"[44], he constantly declares Non-Muslims to be infidels and rejects German legal rules and judgments as "rules of infidelity"[45]. Consequently, he urges Muslims in Germany to maintain the rules of traditional Islamic family law. He even argues that the traditional punishment for adultery – flogging or stoning to death – should be applied on Muslim women in Germany (!) who are married to a Non-Muslim, even if they are unaware of the "applicability" of these rules in their cases.[46] He denounces the German system of social security to be an evil, because it grants wives independence from their husband's maintenance payments and thus enables them to "disobey" their husbands.[47] The danger of empowering such persons by officially accepting them as arbitrators and opening ways for them to funds is obvious. In sum, except in the UK the European way of dispute resolution among Muslims is not communitarian, but the "common" way of judicial or informal dispute resolution.

Notes

1 Cf. Rohe (Guest Ed.), Shari'a in Europe, Die Welt des Islams - *International Journal for the Study of Modern Islam* vol. 44 no. 3 (2004), (Special issue)

2 Cf. Rohe, The Formation of a European Shari'a, in Malik (Ed.), Muslims in Europe, Münster 2004, pp. 161; excellent studies of present developments are presented by Shadid and van Koningsveld, Religious Authorities of Muslims in the West, in id. (Eds.), Intercultural Relations and Religious Authorities: Muslims in the European Union, Leuven, Paris, Dudley, 2003, 149, and by Waardenburg, Muslims and Others, Berlin, New York 2003, pp. 241, 308 and 336.

3 Of course, in the sphere of public law and especially of penal law, foreign law is not applicable. Public law regulates the activities of the sovereign himself; and penal law has to define rules which are necessary to grant a minimum consensus of common behaviour in the relevant society.

4 For further details cf. Rohe, Islamic Law in German Courts, Hawwa 1 (2003), pp. 46

5 Cf. Foblets/Overbeeke, Islam in Belgium, in: Potz/Wieshaider (Eds.), Islam and the European Union, Leuven/Paris/Dudley 2004, pp. 1, 25; Rude-Antoine, La coexistence des systèmes juridiques différents en France : l'exemple du droit familial, in: Kahn (ed.), *L'étranger et le droit de la famille*, Paris 2001, pp. 147, 161.

6 Mezghani, Le juge français et les institutions du droit musulman, J.D.I. 2003, pp. 721, 722.

7 Cf. Rohe, Der Islam – Alltagskonflikte und Lösungen, 2. ed. Freiburg/Br. 2001, pp. 53 and 112; for recent interesting developments in the Maghrib cf. Nelle, Neue familienrechtliche Entwicklungen im Maghreb, StAZ 2004, pp. 253.

8 Cf. Saeed, Islamic Banking and Interest. A Study of the Prohibition of Riba and its Contemporary Interpretation, Leiden/New York/Köln 1996; Iqbal, Islamic Banking and Finance, Leicester 2001.

9 Cf. Klarmann, Islamic Project Finance, Zurich/Bâle/Genève 2003; Bälz, A Murbaha Transaction in an English Court, ILAS 11(2004), pp. 117.

10 Cf. *Venardos*, Islamic Banking and Finance, New Jersey u.a. 2005, p. 70.

11 Cf. Iqbal Asaria, Islamic home finance arrives on UK's high streets, *Muslim News* 25 July 2003 (no. 171), p. 6.

12 It is based on a combination of leasing contracts concerning the state's real property; cf. "Finanzmarkt: Islam-Anleihe aus Magdeburg", *Die Bank* 01.01.2004.

13 Cf. "Sachsen-Anhalt bereitet erste islamische Anleihe vor", FAZ 06.11.2003, p. 31; "Anlegen mit Allahs Segen", *Handelsblatt* 14.07.2004, p. 29.

[14] Cf. the recent reports on doubtful investments in Turkey supported by certain organisations in "Neuer Markt auf Türkisch", SPIEGEL ONLINE 29.01.2004 (called on 29.01.2004 under http://www.spiegel.de/0,1518,283591,00.html).

[15] Cf. Rohe, n. 7, pp. 125 s., 130.

[16] Cf. BGH NJW 1999, p. 574; OLG Celle FamRZ 1998, pp. 374.

[17] § 138 sect. 1: "A legal transaction which offends good morals is void."; cf. Rohe, Islam und deutsches Zivilrecht, in: Ebert/Hanstein (Ed.), Beiträge zum Islamischen Recht II, 2003, pp. 35, 51.

[18] The validity of wills does not depend on such assistance according to German law of succession.

[19] Cf. Lord Nazir Ahmad, n. 26, p. 72; Khaliq, Islam and the European Union: Report on the United Kingdom, in : Potz/Wieshaider (Eds.), n. 5, pp. 219, 246 ss.

[20] Cf. Qur'an surah 33, 4. s ; art. „tabanni" in: wizarat al-awqaf, al-mawsa'at al-fiqhaya vol. 10, Kuwayt 1987; for present legal orders in the Islamic world cf. *D. Pearl/W. Menski*, Muslim Family Law, 3rd ed. London 1998, ch. 10-25 ss.

[21] Cf. Mantecón, L'Islam en Espagne, in: Potz/Wieshaider (eds.) (n. 5), pp. 109, 130 ss.

[22] Cf. Article 59 Código Civil in conjunction with the administrative provision of the general directorate of the Civil Registry and the Notary from 10 February 1993.

[23] BOE 30-09-2003, Ley Orgánica 11/2003, de 29 de septiembre, de medidas concretas en materia de seguridad ciudadana, violencia doméstica e integración social de los extranjeros, 4.

[24] Cf. Tsitselikis, The Legal Status of Islam in Greece, in Rohe (guest Ed.), n. 1, pp. 402..

[25] Cf. *Poulter*, The Claim to a Separate Islamic System of Personal Law for British Muslims, in: *Mallat/Connors* (Eds.), Islamic Family Law, London u.a., reprint 1993, 147 ss.

[26] Cf. *Levy*, The Multiculturalism of Fear, Oxford 2000, pp. 180; *Poulter*, n. 25, p. 148; Lord Nazir Ahmad, Notes on the Judicial Situation of Muslims in the United Kingdom, in: Schneiders/Kaddor (eds.), Muslime im Rechtsstaat, Münster 2005, pp. 71, 74 refering to the respective demands of the UMO and the Muslim Council of Britain.

[27] Cf. Rohe, n. 35, pp. 409.

[28] Cf. Badawi, n. 36; Simonet, L'étranger entre deux droits : les facteurs d'adhésion des populations étrangères aux systèmes judiciaire et juridique français, in : Kahn (Ed.), n. 5, pp. 118, 139 ss. ; Rude-Antoine, n. 5, pp. 161.

[29] Cf. Shah-Kazemi, n. 35, p. 47.

[30] Cf. *Ibn Baz/Uthaymeen*, Muslim Minorities – Fatawa Regarding Muslims Living as Minorities, Hounslow 1998, insbes. 71 ff.; *The Fiqh Council of the Muslim World League* on its 16. session in Mecca, reported in "A message from Muslim scholars to Muslim Minorities in the West", Daawah No. 4 1422 A.H./Feb. 2002, 8, 11. See also the comments of the Muslim lawyer *Khaled Abou El Fadl*, Speaking in God's Name. Islamic Law, Authority ad Women, Oxford 2001, 269 s.; pp. 170): „I confess that I find the virtual slavery imposed on women by the C.R.L.O. (the Saudi-Arabian Permanent Council For Scientific Research and Legal Opinions, d. Verf.) and like-minded special agents to be painfully offensive and unworthy of Shara'ah. To claim that woman visiting her husband's grave, a woman raising her voice in prayer, a woman driving a car, or a woman traveling unaccompanied by a male is bound to create intolerable seductions, strikes me as morally problematic. If men are morally so weak, why should women suffer?"

[31] BGH NJW 1999, 135.

[32] "Verschleiert, aber selbstbewußt", FAZ v. 27.02.2001, S. 14.

[33] An expression used by Syed Mumtaz Ali, the main promoter of the establishment of an Islamic arbitration board in Ontario/Canada in an Interview on February, 2, 2005 (cf. « Sharia for Canada », called on 15.09.2005 under http://www.abc.net.au/rn/talks/8.30/relrpt/stories/s1334120.htm).

[34] Cf. Pearl/Menski, n. 20,ch. 3-81.

[35] Cf. Shah-Kazemi, Untying the Knot. Muslim Women, Divorce and the Sharia, London 2001; Rohe, Religiös gespaltenes Zivilrecht in Deutschland und Europa ?, in: De Wall/Germann (Eds.) Festschrift Link, Tübingen 2003, pp. 409, 415 et seq.

[36] Pearl/Menski, n. 20,ch. 3-81 ss., particularly 3-96; Badawi, in: King (ed.), God's Law versus State Law, London 1995, pp. 75; Shah-Kazemi, n. 35.

[37] Cf. Ph. Lewis, Islamic Britain, London 1994, pp. 119 regarding the circumstances in Bradford.

[38] Cf. Pearl/Menski, n. 20, ch.. 3-100.

[39] Cf. Rohe, Die Reform des ägyptischen Familienrechts, StAZ 2001, pp. 193; Pearl/Menski, n.