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Sharia – Conflict of Law and Culture in the European Context

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Abstract

Sharia and its conflict with the private law within the EU is one of the most current problems in the conflict of laws. In accordance with the doctrine of *ordre public*, a foreign law that is otherwise applicable is disregarded if its application would violate some fundamental interest, basic policy, general principle of justice, or prevailing concept of good morals in the forum state. This doctrine is used and followed by judicial procedures not only at "the old continent" but also in Islamic countries. This article shows the basic aspects of Sharia, Islamic legal tradition and the reflection of all the connected aspects in European Union private law and legislation. Some selected chapters analyse the most important differences in the legislation and judicial practice in the EU member states.

Keywords

Sharia; Public Order; International Private Law; Legislation; Juridical Practice; Conflict of Laws; *talaq; iğmā; qiyas; urf; ādā.*

1 Introduction

Private International Law is an instrument for the solution of a conflict of legal systems in the situations, where the private relationships with international element are the reasons for the obligatory application of foreign legal systems. Especially in the situations, which are today connected to the problematics of migration and its residual symptoms, familial relationships, questions connected to free movement of goods, are not only the judge and the bride legal society in the position of legal comparatists.

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Confrontation with a foreign law and its comparison with the relevant national legal order are in many cases associated with the obligations *ex officio*.[1] From a historical point of view, we can substantiate these premises by teaching of *Nikolaus von Kues*[2] , who had clearly defined comparative science, as part of every scientific work. It is typical for legal science, than it has been viewed since the 20th century as a national scientific discipline, with exceptions to legal philosophy and platforms of international law, however, in the end of 20th century and in early 21st century we are reflecting an increase in the reterritorialization of legal science. This process is linked to aspects of the global context, of the views of legal science, technical and communication tools implemented at present time, the positive and negative effects of the Internet and aspects linked to electronic commercial matters.

All these processes and changes pose new importance to international law and private legal comparative studies, especially given by the evidence of considerable divergence in national legislations. These processes have social influence when they are combined with significant political changes. This was the also the case in the past in the fall of the Soviet Empire, when a significant wave of comparative activity as the alignment of the states of the former eastern bloc territory from the countries with the democratic community, not only within the European continent, played an important role. Another important element for the factual practical needs of comparative knowledge is European integration, where the EU states with their national legal systems resonate with the need for comparative knowledge, not only with regard to unification and harmonisation trends.

Enhanced judicial cooperation between European Union ("EU") member states also entails the need for knowledge of individual national legal systems. Finally, the migration crisis itself, seen as an external and internal platform, which represents the initiation of a conflict of laws of the states, where

1 The cases with which the European courts have been confronted over the past five years prove this in particular in connection with Islamic law and divorce in the form of repudiation (talaq).

2 Here you can refer to his file *Comparatio est omnis investigation*, see Gottlöber, S. Nikolaus Cusanus – philosophische Grundgedanken [online]. *PortalRheinische Geschichte* [cit. 20. 1. 2020]. http://rheinische-geschichte.lvr.de/Epochen-und-Themen/Themen/nikolaus-cusanus—-philosophische-grundgedanken/DE-2086/lido/57d1225a917845.06989268

migrants originate and the member states in the EU context, also underlines the need for knowledge of foreign law, as well as the ability to analyse it.

This issue is not only related to the comparative aspects, but also to an adequate approach of qualification under private international law and also to other legal sectors, as migration is also linked to the application system of the public legal sector, in particular, administrative law is linked to the decision-making of the administrative authorities. Although the principle of territoriality for the public sector means a precondition for the importance of comparative studies only for the private law sector, some initiation elements, particularly related to asylum problem areas, need to be linked also to the public sector.[3] The comparative approach has evident importance in the revision of the content of the legal order. Therefore, it is also of importance, identifying the necessity of amendments and steps toward making a reform, where it is appropriate to confront the current state of foreign legal order related to the legal tradition in such procedures.[4]

One way or another, to the comparative work under private international law should be given more attention. Attention not only within the practical field, but also in the studies of the sector itself. Students, like the practical public sector, should not only perceive legal dogmatic, but also legal comparative work as its legitimate complementary legal method.

While the courts in the Czech Republic do not meet much with the need to assess a certain legal relationship on the basis of foreign legal standards because it is not tied to an unsecularised relationship with Islam, as it is in the legal order of Syria, Afghanistan, Pakistan or Iraq. In other European countries, such as Germany, France and Austria are situation much more different. In the view of existing disproportions[5] within the social systems of EU member states, migrants, whom we cannot currently call refugees, are looking especially in those countries. Neighbouring Austria is subject to this targeting to bigger extent than the Czech Republic, which is also consistent with

3 Wieser, B., Stolz, A. *Vergleichendes Verwaltungsrecht in Ostmitteleuropa*. Vienna: Verlag Österreich, 2004, 864 p.

4 Nehne, T. M*ethodik und allgemeine Lehren des europäischen Internationalen Privatrechts*. Mohr Siebeck, 2012, p. 82.

5 See the study on refugee support within the EU Leistungen für Flüchtlinge im EU-Vergleich [online]. *dw.com*. Published in 2018 [cit. 20. 1. 2020]. https://www.dw.com/de/leistungen-f%C3%BCr-fl%C3%BCchtlinge-im-eu-vergleich/a-44287802

the current case-law of the Austrian courts. In the context of the application of standards linked to Sharia law, these decisions are linked to the question of compliance or conflict with Austria's public order and its protection.

Islamic legal institutes, such as a unilaterally pronounced divorce by a man, the issue of maintenance related to the three subsequent prolific periods of the woman after the divorce of the marriage are not only predicting already mentioned confrontation with public order but also demonstrate the need for adequate use of comparative work as the scientific methods.

2 Qur'an as a basis for Islamization – theological and legal reflection

Facing the fact, that only in Arabic language the Qur'an is authentic form an Islamic point of view, translation in another language can only be an approximate reproduction of its content, that is, in the best case, commentary, not a translation. The legal meaning of the Koran – *Qur'ān*, which contains rules of conduct for believers, is a fundamentally immutable message for religious Muslims in the "pure Arabic language". Therefore, it cannot be translated into a foreign language. Foreign-language versions refer only to approximate content. For a long time, the translation of the text into a foreign language was seen as inadmissible. However, the paradox is that only a third of Muslims are Arabs and therefore it is necessary to make the approximate content of the Qur'an available to those who do not know Arabic.[6]

The basic structural concepts of Islamic law are *Sharia* and *Figh*. Sharia (direct path to the source, self-subjugation to God) is an Islamic normative order that governs earthly life; it is a law in a narrower sense and also the life in the otherworld – five pillars of Islam. *Figh* is then a legal science and doctrine of interpretation, taking into account the fundamental difference between religious behaviour *ibādāt* and interpersonal relations *mu'āmalāt*. This point to the fact that the sanctions for violations of the law, which are considered as "sin" will be imposed in the afterlife, if individuals do not

6 For more information, see the study by the Society for Arabic Language and Literature Lisan. Der Status der arabischen Sprache im Islam [online]. *arabisch-lernen.co.* Published in 2019 [cit. 20. 1. 2020]. https://www.arabisch-lernen.co/der-status-der-arabischen-sprache-im-islam.html

respect the legal norms for social co-existence, they will be punished already in this world.[7]

The primary sources of law are following the ideological concept the *Qur'an*: "The first and fundamental source of Islamic law" and "the way of God" and *Sunna*, that is the life of the prophet, in the submission of *Hadis* "the way of the prophet."[8] Secondary sources of law are *iğmā,* the consent of the believers, *qiyās* as the parallel derivation, *'urf* and *'ādā* – the recognized customs and morals, *ra'y*, a considered personal opinion, *istihsān* is representing public interests and justice. Islam and Islamic law also include legal schools, such as Sunni Legal Schools (Madh-hābib), Hanafī Madh-hāb (Hanafit school), Mālikī Madh-hāb (Málikov School), Sāfi'ī Madh-hāb (Shahi school), Hanbalī Madh-hāb (Hanbach School) and also the Shiite Legal School – Ča'fari Madh-hāb. A clear wide range of learnings and schools can be reflected as an internal problem of interpretation of Islam. These schools are also a reason for many different interpretations of individual aspects and institutes.

Islamic law is currently in terms of its application required by many Muslims in individual *diasporas,* mainly in the judgments of the questions of divorces and inheritance law. From an economic point of view, the area for Islamic implementation of contracts and related Islamic banking and financial law is important not only for private sector. In this area, we recognize the specifics of *riba* – the prohibition of interest, *gharar* – ban on indeterminate contractual content, *maysir* – the ban on speculative trade with goods and also *qimar* – the prohibition of gambling.[9]

The Qur'an is divided into 114 sur (chapters), contains 86 430 words, in 6 666 verses[10] – of which less than 10 %. deals with legal issues. The Qur'an was communicated to the Prophet through the archangel Gabriel between 609 and 632 after Christ. He was written by Muhammad's disciples, Muhammad couldn't write. For religious Muslims, the Qur'an is not a "book created"

7 Pabel, K. Das Islamgesetz in rechtsvergleichender Perspektive. In: Hinghofer-Szalkay, S., Kalb, H. *Islam, Recht und Diversität.* Vienna: Verlag Österreich, 2018, p. 318.

8 Rohe, M. *Das islamische Recht: Eine Einführung.* Mnichov: C. H. Beck, 2013, pp. 22–36.

9 Ibid., pp. 9–13.

10 In connection with this numbering there are often different calculations and quotations of the Qur'an.

that describes Christ's life as a Bible, but an authentic, immutable, entrusted, binding word of God. The Qur'an provides the faithful Muslims with the right guidance, which is *hudā*, ordering how to behave in social and especially in family life, and sets the rules for their religious behaviour. The five pillars of Islam remain untouchable, *shahāda* – confession of faith, *salāt* – ritual prayer, *saum* – fasting in the month of Ramadan, *zakāt* – principles of alms, tax, *haǧǧ* – the aspects of pilgrimage to Mekka.[11]

In the 19th century, the Qur'an was in the Ottoman Empire complemented and supplemented by legislation. In the 20th century, Qur'an was for the first time artificially "overlaid" by a legislature influenced by Western culture. One of the consequences of the decline of the Ottoman Empire and the end of the caliphate was the demise of Ottoman civil law, where Sharia law was applied in family and inheritance law and in the obligation and substantive law where governed by the state legislature – *meğelle*.[12] Colonial powers have also brought changes into the Islamic legal system. After 1919, during the British and French mandate was the reception significant. The influence of the British colonial interests and the French law is evident in the above-mentioned era in Palestine, Syria, Lebanon and Egypt, and this have been proven mostly because of the texts in the Civil Code.[13] In Turkey, there was a strong influence because of the reception of Swiss law. The end of the system of colonies had caused a return to the Islamic legal tradition.

11 Closer to that in Rohe, M. *Das islamische Recht: Geschichte und Gegenwart*. Munich: C. H. Beck, 2009, p. 48.

12 Rohe, M. *Der Islam in Deutschland,Eine Bestandsaufnahme*. Munich: C. H. Beck, 2016, p. 53

13 See Egyptian Civil Code of 1948 Author: as-Sanhūrī (1895–1971), influenced the material-legal, civil-law codification of the following Islamic states: Syria (1949), Libya (1953), Somalia (1973), Algeria (1975), Afghanistan (1977). Meğelle's stronger influence remained in civil law in the countries of Iraq (1953), Jordan (1976), Kuwait (1980) and the United Arab Emirates (1985); Meğelle – Code of the Ottoman Empire of 1877 – the result of the Tanzimate period. So far in the legislation of some successor states of the Ottoman Empire; once again more recognized throughout the Islamic world; (not Salafity). It is limited to regulations which relate to the right of ownership (both contractual and substantive). By: Ahmad Hawdat Pasha (1822–1895); 16 books: First book: Purchase contract (bey), then: Loan contract (ujret, or .. ijar, istijar), contractual security (kefalet), debt assumption (hawale). Fifth book: Pledge contract (rehn), further: Custody contract (emanet) and donation contract (hibe). Further: Property deprivation, damage (ghasb, itlaf), co-ownership, servicing, company (shirket) and agency (vekyalet). Procedural law and rules on the duties of a judge complement the content of this codification; More on the causes of recodification in Rohe, M. *Das islamische Recht: Eine Einführung*. Mnichov: C. H. Beck, 2013, p. 53.

Under Islamic law, it is possible to distinguish between wide groups of behaviour of the believers. The range of behaviours is divided according to Islamic legal science – *fiqh* hierarchically to the acts commanded, mandatory – *wāǧib*, recommended or desirable – *mandūb*, permitted, neutral, without value – *mubāh* , rejected – *makrūh*, forbidden – *harām*. According to the *Hanafit* school, it is also *fard*, i.e. "absolutely binding".

This behaviour is then consistent with a system of sanctions, where the "otherworldly" and not legal but religious sanctions, while respecting the commanded – *wāǧib* is remunerated, violation punished; adherence to the recommended – *mandūb* is rewarded, however, it is not punished; when observance of the permitted – *mubāh* is remunerated, its violation is not punished; abstaining from the rejected – *makrūh* is remunerated, its realisation is not punishable and abstaining from the forbidden – *harām* is remunerated, the realisation is punished.[14]

3 Sharia

Sharia constitutes religious standards that set sanctions after an individual's death and also the rules of law, establishing sanctions in this world. Sharia is the subject of Islamic jurisprudence. *Fiqh* is then an interpretation of Sharia, a "paved path to the spring. *Fiqh's* tasks are clarification of the rules of God, which are not always clearly arranged in connection with the above-mentioned diversification and the different status of individual legal schools. Religious Muslims are reluctant or at least sceptical of the idea of codifying the law by the state,[15] because the traditional law is mostly given by God and is immutable. According to this understanding of the law, the sources of law differ from the sources of secular, democratically formulated state law, in which the law is based on the people's will.

Overall, the complicated position of the sources of law led to the independent development of teaching on the proper treatment of legal sources – *iǧtihād*. Sharia rules are not strictly enshrined in the form of a code, nor are

14 Krawietz, B. *Hierarchy der Rechtsquellen im Tradierten Sunnitischen Islam.* Berlin: Duncker und Humblot, 2002, p. 64 et seq.

15 Anderson, J. N. D. Codification in the Muslim World: Some Reflections. *The Rabel Journal of Comparative and International Private Law*. 1966, Vol. 30, p. 248 et seq.

the Qur'an, whose verses have less than 10 % of legal content. Islamic law is more a set of precedents, legal decisions and general principles, similar to English case law especially on the issue of private law aspects. That concerns mainly obligations, contracts, and issues of personal status – *huquq al-ibad*. In addition, the legal provisions, the rights of God, under the heading *huqq Allah*, which determine the obligations of the Islamic community and whose violation is sanctioned in the afterlife. The Sunni tradition distinguishes between primary and secondary sources of law.[16]

The primary sources of law are therefore the Qur'an – *Qur'an*, *Sunna* – the life of the Prophet in the form of *Hadís(s)* is about statements, judgments, instructions, behaviours and attitudes of the Prophet in contact with the believers – "the way of the prophet", everything that "*has been preserved about the Prophet's words, acts or its silent consent, but is not the Qur'an*".[17] Next, the Messages – *ahādīth,* are describing the Prophet's statements on the issues of religion and coexistence of believers. They were first passed only orally, later also recorded. In *ahādīth*, opinions on legal issues (*qal*) can always be found. The tradition is made up of the actions or testimony of the Prophet, which announces a chain of traditions, which together have to reach back to Muhammed (*isnād*). The reports are not equally credible and have different weights. Thus, traditions are distinguished as "real" or "perfect" (*sahīh*), "good" or "beautiful" (*hasan*), and "weak" (*da'īf*). The most important collections of Hadis were carried out by Muhammad b. Ismail al-Bukhari (810–870), so-called *Sahih Bukhari* and Muslim ibn al-Hajjajs so-called *Sahih Muslim*, (817–875), *Sunan Abu Dawud* – compiled by Abu Dawud Suleiman Ibn AlAshtah (817–888).[18]

The Qur'an contains implicit learning system, but explicitly tells a person what God expects from him or her. Above all, it is a revelation of the will of God, and sets out what people must do to please God, and how they will be judged in the last judgment. It contains several explicit commands, such as the aspects of the marriage and the division of property

16 Closer to the Formation of the Teachings of Krawietz B. *Hierarchie der Rechtsquellen im tradierten sunnitischen Islam*. Berlin: Duncker and Humblot, 2002, p. 59 et seq.

17 Hourani, A. *Die Geschichte der arabischen Völker*. Frankfurt n. M.: Fischer, 2016, p. 106.

18 Krawietz B. *Hierarchie der Rechtsquellen im tradierten sunnitischen Islam*. Berlin: Duncker and Humblot, 2002, p. 172.

after the death of a Muslim. However, there are only a few such provisions; in most cases, the God's will is expressed in the form of general principles. Commandments and principles relate to how people should worship God but also how they should behave with each other. In the period of the first caliphates and *Umaiyads*[19], there were two developments occurred. Rulers, governors and authorised representatives, *qadis* "judges", interpreted the law and decided the disputes. In doing so, they took into account the customs and laws of individual regions. At the same time, Muslims have tried to substantiate all human actions to the judgment of their religion and develop an ideal system of human behaviour. In such a system, they had to not only consider and interpret the wording of the Qur'an, but also transferred the memories of the religion. They had to examine how the Prophet allegedly acted in his usual behaviour, his teachings or *Sunna*, which increasingly adhered to traditions or *hadisses*.

4 Secondary sources of law

Secondary sources of law are mainly following institutes: *iğmā* as an agreement of believers is presented as a common journey of the community of all lawyers and believers. By applying *iğmā*, an adjustment of the immutable divine law can be achieved and in this way some change the framework of conditions for the Muslim society.[20]

Qiyās is an analogous derivation, i.e. the use of prescribed orders and prohibitions in the Qur'an for similar situations. Legal schools assess the importance of this derived resource differently. This applies, for example, to the ban on drinking wine from grapes or dates and the question of whether to extend this to all types of alcohol to prevent any form of intoxication. Does the ban on the consummation of spirit drinks from cereals, apples or stone-fruit? Are "liberal Muslims" behaving properly if they do not see consummation of whisky as a contradiction with the Qur'an and reject of analogy?

Also *'urf* and *'ādā* are recognized customs and manners. The function of customs as the sources of law is not universally recognized in the Islamic world;

19 Berger, L. *Die Entstehung des Islam: Die ersten hundert Jahre*. Munich: C. H. Beck, 2016, p. 37.
20 Krawietz, B. *Hierarchie der Rechtsquellen im tradierten sunnitischen Islam*. Berlin: Duncker und Humblot, 2002, p. 184.

rather it is an auxiliary source. The meaning of the terms *'āda* and *'urf* is not clarified enough. Some sources explain the term *'urf* as individual custom and the term *'āda* means social custom. In order to be recognized as a source of law, the habit must be correct – *'urf mu'tabar*. It must not be contrary to either the clear rule of the Qur'an, nor with the rule the *Sunna* or the consensus of scholars. Additionally, it may be ony a supplementary source of law in situations, where statements are not clearly derived from recognised sources of law.[21]

We also recognize *ra'y*, an independent, considered personal opinion. If no other sources of law can be used to address the legal issue, the final judgment of the believer, respectively of the legal scholar who is responsible for the decision, will be deciding. Therefore, it is necessary to find an answer to the new legal questions, raised by social development. In this way, the flexible application of God's inherent law can be achieved within a limited framework.

The institute *istihsān* means an appeal to the public interest; it can serve as an argument, that one of two possible legal interpretations is preferable. Citing *istihsān*, liberal Muslims promote a more modern understanding of Sharia, adapted to changing social conditions such as the perception of the role and importance of the gender.[22]

5 The Qur'an as a source of law and its linguistic mutation

Moreover, the translation of the Qur'an varies depending on the translator's personal approach to the Islamic religion. In support of this, the translation of verse 4:34 will be presented, when Henning is given the following text:[23]

"*Men are superior to women because of what Allah has given one before others, and because men give out from their property (to the women). And virtuous women are humbly devoted and guard in the absence (of their men) what Allah has commanded them to guard. And those whose disobedience you fear, warn, banish them from the bedrooms and beat them. And if they are obedient, do not look for reasons against them. Allah is noble and great.*"

21 Ibid., pp. 294–300.
22 Ibid., pp. 283–286.
23 Henning, M. *Der Koran: Vollständige Ausgabe*. Nikon, 2019, p. 109.

To the verse 4:34, the translation by *Murada W. Hofmann* can be added for to reflect the differences:[24]

"*Men are responsible for women, given that Allah has endowed one more than the other, and because men give from their property (to the women). The right women are humble and careful in preserving Allah's commanded intimate sphere. And those whose disobedience you fear, warn, banish them from the bedrooms and beat them. And if they are obedient, do nothing else for them; Allah is noble and great.*"

And the same text in HUDA translation:[25]

"*Men stand alongside women in strong solidarity with regard to the numerous gifts God has given them, and with regard to the given wealth they put into circulation. Honest women, who are open to a divine presence, are guardians of the hidden in the sense of what God has kept. But to those women, whose unsociable behaviour you fear, give them good advice, leave them to themselves in their private rooms, and strongly suggest them the change of their behaviour. But if you recognize their arguments, look for no reason to anger them. God is noble and grea*t."

What does verse 4:34 mean and how the term "*darb*" or "*daraba*" should be interpreted? It means primarily "*hitting*", but it can also mean stamping of form, or coins, roam, travel, set up protection from the sound, turn away, stay away, pull something out of something, capture, stop, separate, set up. Other meanings of the word *daraba*, however, are also a blow to the cane, the scorpion bitten, the heartbeat, someone has caused trouble, someone is looking for glory, the birds have flown, prevented something…, the camel male climbed onto a camel female, riding camels, etc.

Can a judge in the Czech Republic, Germany or Austria grant to the clause of Qu ran 4:34 a correspondent legal relevance? Does the application of this provision, according to which a man is allowed to beat an "unsubordinated" woman, violate the law and thus order public or the fundamental values of the order public? Can this 'provision' be applied only if the content of codification of material private law is supplemented? Independent to this question is the mentioned above demonstrating the problematical aspects by translations and writings in Islamic law.

24 German convert, author of many works on Islam with partially fundamentalist content. Publisher of the Quran in German language, closer to his text in Hofmann, M. W. *Der Koran. Arabisch – Deutsch, translation from German language.* Diederichs, 2001.

25 See Association of German Muslim women [online]. *Islam.de* [cit. 20. 1. 2020]. http://islam.de/1624.php

6 Family law in the System of Islamic Law

Normative foundations for family and inheritance law are found mainly in the aspects regulated through the Qur'an and Sunny. The supporting passage of the Qur'an is for this circle of legal conditions 2. and 4. *sūrah*. The relationship between a married couple within the family and the legal status of a woman in the family, as well as the relationship between parents and children, are touched by many of the *hadith* reports.[26] Inconsistencies in terms of equality can be found in the reference to the Qur'an on issues, where women are required to behave or tolerate the case of sexual suffering, referring to specific *sūrah*. The most problematic platform is the different interpretation, carried out by *fiqh* legal science. The legal systems emancipated, such as the legal order of Morocco, must be distinguished from the legal order built in the old or traditional way.[27]

As a result of colonial influences and inference of legal traditions, it was always possible to reflect the significant influence of European legal tradition on the Egyptian legal order. However, there are legal systems of countries where changes can be reflected more intense and democratic than in the Egyptian legal order. This is mainly reflected in the situation of Morocco.[28] Here, positive legislative steps have been created. These steps have transformed Islamic rules of society into a code called *Moudwana*.

The *Moudwana* Code contains a codification of the legal rules into 400 articles and is in fact the codification of family and inheritance law. Not only because of its scope, but also by individual institutes, which are introduced contrary to Islamic tradition, such as the Institute of last will, implemented through Art. 277 and the following, constitutes an important activity. The Code is designed in a similar way to the European codifications, in its

26 In fact, it is the knowledge of the behavior and teachings of the prophets, Rohe, M. *Das islamische Recht: Geschichte und Gegenwart*. Munich: C. H. Beck, 2009, p. 67.

27 See also Wohlgemuth, G. Die neue Moudawana – Ausblick auf das Marokkanische Familienrecht und Seine Reform. *FamRZ*. Bielefeld: Gieseking Verlag, 2005, pp. 1949–1960.

28 This positive excess is marked by the 1995 Moroccan political movement of women called Collectif 95 Maghreb Egalité and the development of a plan for the integration of women in relation to their rights. This plan resulted in significant recodification changes in 2004. See more Collectif 95 Maghreb Egalite [online]. *arab.org* [cit. 20. 1. 2020]. https://arab.org/directory/collectif-95-maghreb-egalite/

introductory part it contains general provisions relating in particular to the persons, followed by 1st book governing the marriage and marriage ceremony, 2nd book regulates the termination of the marriage contract. The 3rd book regulates then the birth and its legal consequences and the 4th book of legal capacity and the aspects of representation. The 5th Book represents a significant modernist attempt with the regulation of the last will. The 6th book then regulates the legal succession.

The question of polygynous marriage has not been excluded from this codification, but its implementation is the subject to significant obstacles and limitations. Persons wishing to be married must be able to marry concerning their personal status, and a gift to the bride must be guaranteed. This gift is for the purposes of this codification called *sadaq*. As a third condition, the presence of the curator of a female is necessary and it is associated with the term *wali*. Consent statements of partners must be verified by two *adulses*.[29] As for the individual conditions, it is necessary to state, that women are eligible for marriage from the age of 18 onwards, just like men. In addition, Art. 51 of that codification foresees the same rights and obligations for women as for men and women are not obliged to comply with the will of their spouses. Another significant progress is that the distinctive patriarchal elements are elsewhere replaced by parental responsibility.[30]

The Qur'an, as the primary source, requires from the faithful to marry – *nikāh,* and the foundation of a family, while celibacy is not considered as a way of approaching closer to God.[31] The verses of the Qur'an further introduce the extramarital community life as the partnerships that contradict Islam itself.[32] In the context of guaranteeing the spread of true faith, Muslim men should found families at a young age. From a sociological point of view, this factor is very important, especially with regard to the population

29 This is how a notary is referred to under traditional Islamic law. Notaries may also divorce marriages within the framework of the profession. More on this see Rohe, M. *Das Islamische Recht: Geschichte und Gegenwart*. Munich: C. H. Beck, 2009, p. 216 et seq.

30 Wohlgemuth, G. Die neue Moudawana – Ausblick auf das Marokkanische Familienrecht und Seine Reform. *FamRZ*. Bielefeld: Gieseking Verlag, 2005, pp. 1949–1960.

31 According to verse 4:16, homosexual relationships are to be punished, but without specifying the type of punishment.

32 Since extramarital forms of cohabitation are severely punished by physical punishment, the importance of marital cohabitation of *nikāh* and its proper form is increasing.

curve of European society. The family is seen as the foundation of Islamic society. A life community is formed between the spouses and their children within the marriage.

There are many contradictions and specifics regarding to marriage representation. Irrespective of whether the condition of legal personal capacity is fulfilled, or whether it is an untouched woman or a woman who wants to marry repeatedly, questions arise as to whether it is possible or necessary to marry through a *wali* representative. The scope of authority in representation is called *ijbār*, and in particular, the question of whether a representative has the right and authority to marry on behalf of the wife is interpreted differently by different legal schools. Differences arise mainly in the right of the marriage representatives to agree with the marriage without the consent of the woman herself. In many Islamic states, it is customary for a woman to be involved in the marriage through the representative, a grandfather or a father.[33]

According to Sharia, marriage is sealed only if several traditional Islamic legal conditions have been met. The primary condition is that the consent for marriage to both partners has been announced. In the marriage contract, the parties may negotiate the conditions under which the circumstances of the future life of the future spouses will be formed. It is also permissible to agree on the future matrimonial property situation and to negotiate the terms of the divorce, which may be extended to include the right for to seek divorce by both spouses, since in normal cases only a man is entitled to take such a step – *talāq*. Furthermore, the so-called *mahr* donation to a woman and man should not be neglected.

Here is a deviation from the standard practice of Western legal science and opinion reflected, following what the *mahr* is to be only a form of alimony in the event of marriage.[34] Mahr is to be understood as a gift to the wife, expressing the respect of the husband, and as such is of great importance in the marriage.[35]

33 Rohe, M. *Das islamische Recht: Geschichte und Gegenwart*. Munich: C. H. Beck, 2009, p. 210 et 227.

34 Rohe, M. *Das islamische Recht: Eine Einführung*. Mnichov: C. H. Beck, 2013, p. 24.

35 More on the nature and purpose of the morning gift available at Islam Fatwa [online]. *islamwatwa.de* [cit. 20. 1. 2020]. https://islamfatwa.de/soziale-angelegenheiten/87-verlobung-a-ehe/verlobung-a-eheschliessung

On the basis of the texts 4:4, 4:19 also 4:21 and 4:24 the *mahr* is to be given to the woman in the form of money or other property. This gift is also expected in the case of marriage to a Jewish or Christian woman. As a matter of principle, the gift is to be realized during the marriage itself; according to some legal schools, at least its exact specification is acceptable as a minimal standards or form.[36] Significantly, at the time of marriage, a precisely specified gift can be requested immediately by the wife, provided that the woman wishes so, the gift is realized later. Provided that the spouse dies before the gift is realized, the wife has a legal claim against the succession. For underage husbands, their fathers are obliged to prepare and overhand a gift. The wife acquires the right of ownership and does not have to return it, provided the marriage was consumed. The wife is entitled to this gift even if the husband has been demonstrably alone with her for a certain period of time, or at the death of one of the spouses.

An interesting situation arises in the divorce of a consumed marriage, when a man can claim half of the gift back. The legitimacy of such a request is connected to the words of Allah, who says "but if you divorce before you touch your woman, and you have already committed each other to the "*mahr* gift", you will overhand half of what you committed. It should also be reflected, that everything the father of a wife or her brother has taken from a husband as a gift, such as a dress or household items, etc., is considered to be part of the gift itself.[37]

Provided that the marriage was entered into or the marriage contract was negotiated without a specific gift, the gift must be given in the usual form to the woman without a need for written obligation. To the equal status of men and women, it should be added that, provided that the divorce of the marriage was initiated by the woman before the marriage was consumed or the husband was not alone with her, she loses the right to the gift itself. Similarly, these conditions apply, provided that the woman requests marriage annulment due to a defect on the side of her husband. If the husband is late

36 Rohe, M. *Das islamische Recht: Geschichte und Gegenwart*. Munich: C. H. Beck, 2009, p. 214.

37 Compare this to the original Arabic text: "{جَناحَ عَلَيْكُمْ إنْ طَلَّقْتُمُ النِّساءَ ما لَمْ تَمَسُّوهُنَّ أَوْ تَفْرِضُوا لَهُنَّ فَرِيضَةً}", ", for *mahr* see Islam Fatwa [online]. *islamwatwa.de* [cit. 20. 1. 2020]. https://islamfatwa.de/soziale-angelegenheiten/87-verlobung-a-ehe/verlobung-a-eheschliessung

with the donation or postponed the donation, the wife also has the right to deny him intimacy until the gift itself is realized.[38]

Barriers to marriage play an important role in Sharia law. Marriage cannot be concluded, if there are long-term obstacles or there is existence of real-time obstacles. Family relationships are considered as long-term obstacles to marriage, where Muslims are forbidden to marry with their mother, step-mother, grandmother, mother-in-law, daughter, niece, sister, aunt, grand-daughter, nurse, and apostate, all the rules are written in verse 4:23. In all Islamic countries, the bloodline is considered as an obstacle to marriage.

In addition, the husband is prohibited from entering into marriage with the mother or daughter of his wife. In the case of breastfeeding of an infant, there is an obstacle to the marriage between the infant and the wet nurse. An obstacle to foreign faith is specified in Sharia by prohibiting a Muslim from marrying a polytheistic religion, while women belonging to the Abrahamite religions, i.e. Jews and Christians, are "scriptural" persons in the context of 2:221 and 60:10 and belongs to a monotheistic religion and as such orthodox Muslim can married them.[39]

A temporary or short-term obstacle to marriage arises when a man would like to be married to sisters or wants to marry a woman before this woman is divorced. Even in these cases, the condition of verse 4:3 must be observed, where the maximum number of women is four. But strictly followed the word of the Qur'an, such approach would be only permissible

38 Rohe, M. *Das islamische Recht: Geschichte und Gegenwart*. Munich: C. H. Beck, 2009, p. 215.

39 On the text of the Qur'an itself on this issue, see http://www.vzdelavaci-institut.info/?q=system/files/Koran.pdf: 2:221 – Do not marry idolatry and believe it; and a believing slave is surely better than an idolatry, even if you like it more. Do not marry your daughters as idolaters unless they believe; and a believing slave is surely better than an idolater, even if you like it more. Such people invite you to the fire of hell, while God invites you to paradise and forgiveness, with His permission, and clarifies the signs of His people – they may recall it! And 60:10 – 10. You who believe! When the faithful women who have moved out come to you, put them to the test! But God best knows their faith; and when you find that they are believers, do not send them back to the unbelievers, for they are not allowed, nor are they allowed, but give unbelievers what they have given as their accusations! And it will not be a sin for you to marry them after you have given them their accusations, but do not crush unbelieving women in marriage and ask back what you have given as accusations, and unbelievers ask what they have given to their women. Such is the decision of God through which He decides among you – and God Knowing is wise.

if in the correspondent situation were orphans and widowed women protected, mainly in the times of war's, nature catastrophes and disasters, and provided that all these women are treated in the same way, this means that they treated equally.[40]

Marriage is also conceived as a community of different roles. This union is characterized by different rights and, in particular, obligations of the spouses with the husband which has significantly stronger position. This stronger position corresponds to his duty to protect his wife, after consuming the marriage, and also to ensure her happy life and adequate aliment. He has to pay for wife's subsistence, clothing and accommodation. The scope of these obligations is always proportionate to the social circumstances of the spouse. A woman must not tolerate any male persons in her household, regardless of whether they are relatives or not. She is also responsible for the preparation of ordinary foods and for the care of children before their sexual maturity.[41]

It is also interesting to compare the position of wife and children in marriage. When we speak about a weaker position of a woman, children are obliged to unconditionally obey their father. The husband's family is also strongly favoured, especially in establishing parents-to-children relations. In the event of a divorce, the children fall in principle to the father's family. Boys up to the age of 7 and girls up to the age of 9 may exceptionally be entrusted to the mother. Under the Islamic right is a child's interest in custody in the event of divorce disregarded. Systemically as theological-political seems the intention of spreading true faith in a measure that obliges parents to educate a Muslim child after the age of seven in the teachings of his faith.[42]

7 Divorce of the marriage

Moreover, there is big difference in the approach of Islamic law and continental or Anglo-American law. Additionally, differences also represent

40 If you fear that you will not be righteous to orphans ... marry women that are pleasing to you, two, three and four; but if you are afraid that you will not be righteous, then take only one or your right-wing rulers. And so you best avoid deflection.

41 Rohe, M. *Das islamische Recht: Geschichte und Gegenwart*. Munich: C. H. Beck, 2009, p. 214.

42 Wohlgemuth, G. Die neue Moudawana – Ausblick auf das Marokkanische Familienrecht und Seine Reform. *FamRZ*. Bielefeld: Gieseking Verlag, 2005, pp. 1949–1960.

confrontation in approach within the application of Sharia itself. Divorce of marriage is thus realized in several ways. It may be delivered by a judge at the request of one of the spouses, or it may also be made by a simple civil statement. In the case of divorce through the threefold banishment of a woman, called the *talāq* (already mentioned above), there are considerable problems in most of the confronted legal systems in recognition of this legal form of marriage dissolution. The form of *talāq* itself is realized in many formal mutations. There are forms in which the free wills of the wives themselves are involved in, or they must agree to such a divorce, or they are allowed to do so. Concerning the types, Islam recognizes form of irrevocable and revocable *talāq*. However, this method of private divorce is in modern codifications of private law and family law of Islamic states significantly reduced. In the case of a unilateral statement made three times in a row, the man can no longer marry the same woman. This obstacle ceases to exist provided that the woman is in the meantime married to another man and released by him from the marriage.[43]

8 Islamic law in the context of the European reality and case law

There is now a new, multinational Islam in Europe. More than 18 million Muslims can be registered in the EU, the number of unregistered and registered is up to 24 million, of which Germany represents more than 4,5 million, Austria officially around 600 000, unofficially around a million, France more than four million, from them more than half are citizens of France and UK about three million of Muslims. The population of Muslim citizens is increasing in all of these states and due to uncontrolled migration, the exact number is difficult to determine. This is caused also due to the absence of formal administration and registration. Given and reflecting the classical secularization of the state and religion, there are no precise surveys in the EU, especially for the situation in France.[44]

43 Compare this issue with Posch, W. Islamisierung des Rechts? *ZfRV*. 2007, No. 4, p. 124 et seq.

44 Rohe, M. *Der Islam in Deutschland: Eine Bestandsaufnahme.* Munich: C. H. Beck, 2016, p. 13, 75 and 117.

Partially, due to the growing problems of coexistence, radicalization of a minority of partially assimilated immigrant Muslims there are growing not only social phobias and various forms of extremism, but also importance of the need to know Islamic law. It is necessary not only to know Islam but also to study it because of militant forms of jihadism in connection with the activities of the IS.

European courts served with very different tendencies towards the verification and application of the legal rules of Islamic countries. In this context, the Judgment of the Supreme Court of Justice (OGH) 9Ob34/10f ("Supreme Court of Austria") should be mentioned as an example of the judgments of the Austrian courts.[45] This decision clearly demonstrates the need for an adequate approach concerning the Islamic law, not only by judges, but also by the correspondent legislative bodies. Migration in itself constitutes, in addition to the legal problems, also a political problem, which of course also affects the legislation of private international law. According to the Austrian private international law, some situations have been assessed for the benefit of Islamic law, i.e. Sharia law, while Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations ("Maintenance Regulation") changed the conflict of law criteria from nationality to the criteria of habitual residence and that has later enabled the adjudication in favour of protection of the public order of European countries.

From a substantive point of view of the presented case, a maintenance claim by an Austrian citizen, originally from Saudi Arabia, against her former spouse with whom she was divorced, has been judged. The husband, however, retained the nationality of Saudi Arabia and the Supreme Court of Austria had to make a decision under the rules of the Private International Law Act, in force at the time of the decision, when he applied Saudi Arabia law *ex officio*. The court applied Saudi Arabia law provided that the couple, together with five children, lived in Austria for a long time. The Supreme Court of Austria first examined the content of the adequate

45 Compare the whole text at Judgment of the Supreme Court (OGH) of 28 February 2011, Case No. 9Ob34/10f.

provisions of Saudi Arabian law and the Senate in question also examined the consequences of applying the discovered content of the legislation. Under Saudi Arabia provisions, a divorced woman was entitled to alimony only for three months, exactly, three fertile periods, after the divorce of the marriage. This was not at the discretion of the judges contrary to the public order of Austria. The Supreme Court of Austria found, that the application of the provisions of Islamic law was the cause of a different assessment of the alimony rights, but did not find in the differences, arising from the legislation aspects, contrary to public order of Austria. Also did not consider the intensity of those aspects which would be incompatible with public order.

It was the necessity of applying the Austrian law on private international law, which was at the correspondent time not suppressed by the preferential application of EU regulations, and led to the shocking outcome, as this verdict was called in the Austrian press. Thus, the EU legislation has brought solutions in connection with the new follow-up system in the correspondent conflict of law criteria. In the light of the conflict-of-law principle enshrined in Maintenance Regulation, which would correspond to habitual residence, the Austrian court would apply the Austrian law and the divorced spouse's claims would be judged more positively. Thus, despite the nationality of the spouse, the *idda* institute would not be used.

In addition to the aforementioned public sphere aspects, it is also worth mentioning the decision of 6 September 2018, when the Administrative Court of Justice in an emergency regime ruled against the decision of the Federal Administrative Court of Austria to assess an asylum claim of a woman, in the case with the question, whether or not a marriage under Islamic religious law is contrary to public order in Austria.[46]

This decision is particularly important in the connection to the migration crisis. As a lady of a Syrian nationality has applied for asylum at the Embassy in Damascus in accordance with the Art. 35 of the Act No. 100/2005 Coll.,

46 Decision of the Supreme Administrative Court (Verwaltungsgerichtshof (VwGH)) of 6 September 2018, Case No. Ra 2018/18/0094 against the Decision of the Federal Administrative Court (Bundesverwaltungsgerichts (BVwG)) of 3 January 2018, Case No. Zl. W144 2163719–1/2E in relation to Art. 35 Asylum Act.

Federal Act Concerning the Granting of Asylum (Republic of Austria) ("Asylum Act") stating that her husband, who is also a Syrian citizen and living in Austria has the status of authorized asylum seeker. The situation is seemingly simple, however, when describing the status quo, it should be noted, that the engaged couple entered into a traditional Muslim marriage in Syria on 1 January 2015, which was later registered in the Syrian Personal status register, but not in the period of days but months. Then the Austrian Federal Office for Foreigners – BFAM informed the Embassy in Damascus, that granting asylum to the applicant on the basis of secondary protection claims is not appropriate since the Syrian marriage and its form are incompatible with the claims of Austrian law. In his view, the marriage was not established until it was registered with a public authority, at which time the husband had already left and the woman was thus not entitled to asylum rights.

The Federal Office relied on the legal opinion, that the applicant was not a family member and as such entitled to asylum at the time when asylum to her husband has been granted. He also argued that this was a marriage in substitution, since her husband was not present in Syria at the time of its registration and, as such, the marriage was contrary to public order of the Republic of Austria.

The applicant, who has in the meantime become a complainant, documented the conclusion of marriage by traditional testimonies of many wedding guests and several witnesses, and further demonstrated, that under Syrian law the marriage was concluded on the date of the ceremony and not on the date of its registration. Furthermore, she considers the registration itself to be a simple administrative act which could have been implemented through a legal representative. However, the Federal Office maintained its legal opinion and rejected the complaint against its decision. He maintained that the applicant could not be considered as a family member at the time of granting the asylum to the husband, as the complainant states. In addition to the legal assessment of this matter, it should be noted that the marriage was to be concluded in the traditional form on 1 January 2015 and its registration took place on 27 December 2015. The Federal Administrative Court of Austria investigated the content of Syrian law and stated that

under this law, the marriage must be construed as a contract between a man and a woman concluded for the purpose of establishing a life community and raising children, this form is legally permitted and can be implemented through a representative presence or activity.

Of course, the question of the realization of religious marriage itself remains problematic in the terms of migration. The marriage between Muslims can be realized before any known *Imam*, or even before a person only trained in Sharia law.[47] If the marriage is about to be brought before a court, a Sharia law certificate would also be issued. This marriage document would be sent to a public register and this would register the marriage. In this case, however, there was no court certificate existing and the application demanded a registration of the marriage before the Imam. Thus, there is a high risk of possible tactical behaviour in the form of waiting for granted asylum rights to the husband and then applying for registration of the fictitious marriage.

The Federal Administrative Court of Austria relied on the fact that a marriage is only recognized in Syria when it was registered, arguing that "the decisive factor in this case is whether or not the marriage was recognized retroactively after the traditional ceremony and the state registration". The Federal Administrative Court of Austria found that it would be contrary to Austrian public order for marriages under Sharia law to be valid for a certain period without State registration as well as valid for the Austrian authorities. In extraordinary revision was the decisions of the Federal Administrative Court of Austria changed. With the argumentation, there is no breach of fundamental rights in this situation and, in any case, no person is or was forced into marriage.

The Administrative Court of Austria then stated that the conclusion of a marriage in a traditional form with its subsequent registration with the competent state authority is not inconsistent with Austrian public order. He also argued that it would suffice if the form envisaged for the marriage was appropriate to the law of the place, where the marriage was concluded.

47 Rohe, M. *Das islamische Recht: Geschichte und Gegenwart*. Munich: C. H. Beck, 2009, pp. 214–215.

The Administrative Court of Austria annulled the decision of the Federal Administrative Court and founded the right to asylum.

This decision brings important insights not only from the point of view of the Syrian law in question. Of course, the systematic abuse of these different approaches of the different legal systems concerned in the context of migration and asylum policy remains secondary, but also significant. With a traditional Islamic marriage by an *imam*, there is a real risk of misuse of a non-existent ceremony with recognized asylum rights refugees for later registration of a feigned ceremony, that will be subsequently confirmed by the *imam*.

In Germany, in 2007, a 26-year-old naturalized German, a former Moroccan nationality, wanted to shorten the year of separation using German divorce law under § 1565 of the German Civil Code ("BGB"), because her husband, also a Moroccan, threatened her and mistreated her. The judge dismissed this with the argument, that it was not unusual for a 'Moroccan cultural environment' to execute corporal punishment over a woman. Ignoring the Moroccan family law of *Moudawana* in 2004 and using the Qur'an verse 4:34 made the judge an important mistake in the matter.[48]

In September 2007, four members of the Islamic Jihad Union (IJU) were arrested, including two converts, who have been trained in terrorism in the Pakistan-Afghan border and made concrete preparations for large-scale bombings in Germany, with targets tied to the US military. The trial ended on 4 March 2010 before the Higher Regional Court in Düsseldorf, (OLG – Oberlandesgericht) by imposing a multi-year imprisonment of 5–12 years.[49] Does Islam tolerate killing of other believers, or is it even demanded by the Quran texts? The terrorist activities of one minority of Muslims should not be seen as typical for Islam and the beginning of "Islamophobia". The proclaimed goal of extremist Islamic movements is to reintroduce sharia as the core of efforts for Islamic world domination. This has made the concept of Sharia in the broad circles of Western Christian societies a cause

48 Posch, W. Islamisierung des Rechts? *ZfRV*. 2007, No. 4, p. 124.

49 Compare to this approach the German Decision of the Higher Regional Court in Düsseldorf more closely at Schreyer, P. Ferngelenkte Terroristen? Anmerkungen zum Prozess gegen die Sauerland-Zelle [online]. *heise.de*. Published on 13 March 2010 [cit. 20. 1. 2020]. https://www.heise.de/tp/features/Ferngelenkte-Terroristen-3384836.html

of concern. Sharia in the broader sense refers to God-given norms of the Qur'an and rules derived from the example of the Prophet – *Sunna*. On the one hand, they represent the legal norms of terrestrial sanctions but are also religious arrangements of supernatural sanctions, as purification and perdition.[50]

One understandable reason for the – often justified – reaction of the European democratic platform is the fundamentally different understanding of the law itself. *Samir Khalil Samir* says: "*God is the source of all law. To be recognized by him, God first demands the fulfilment of 'his' law: total obedience to what God wants according to the Qur'an and Sunna for man. From these two main sources proceeds Sharia, an Islamic law that is legitimized by revelation and therefore superior to any other law based on human initiative. Sharia is therefore considered to be the perfect expression of the divine will to guarantee the righteous order of human society.*"[51]

If we end with the premise, that God is the source of all law, we will come to a fundamental difference in the perception of legal systems and also the necessary future connection of cultural and theological aspects and the public order question.

9 Conclusion

Is it, and if so, how is it possible to align the aspects described above with our perception of law and the rule of law? Nor is the situation easier by the fact that Muslims in in the diaspora show a limited willingness to follow in the aspects of family law the procedures by the state courts of the country of their residence. Converting and incoming people increasingly want to marry "under Islamic law", raise their children according to the Qur'an

50 Krawietz, B. *Hierarchie der Rechtsquellen im tradierten sunnitischen Islam*. Berlin: Duncker und Humblot, 2002, p. 115.

51 The nature of his teachings can be compared with the text cit. "I think most Muslims would like peaceful Islam, fraternal Islam. But they don't rule. Until there is no a real revolution, a complete change in the concept of Islam, internal conflict will continue. The only solution is to spread the culture of coexistence! In the 1920s the slogan was expanded in Egypt: Religion belongs to God, the homeland to all. That is the principle that we want. Religion is a personal matter, but living together, living together to create a nation, working on a common project is an ideal that God also wants for all." Samir, P. Islám potřebuje vnitřní reformu [online]. *Vatican News*. Published in 28. 5. 2018 [cit. 20. 1. 2020]. https://www.vaticannews.va/cs/vatikan/news/2018-05/p-samir-islam-potrebuje-vnitrni-reformu.html

rules, inherit their property under the Qur'an, and conclude banking operations while respecting the prohibition of interest rates. To remedy "internal family conflicts", Muslims are increasingly asking permission from the ADR senates, to make their decisions under religious Islamic laws.[52]

Many scholars and legal theorists are concerned with analysing the causes of differences in cultures and Islamic law after 622 AD, especially with regard to the departure of Prophet Muhammad from Mecca to Medina and the beginning of the first Muslim community. Obviously some historical, cultural and legal developments preceded the year 622 AD, the journey of the Prophet Muhammad to Jerusalem, which was precisely the point to which direction the prayers of his fellows usually turned. There is no longer space for any speculations, what and how would be the legal-political development, if his negotiations with representatives of the Jewish religion were successful. Rather, a forward-looking perspective and questions relating to private international law and the application of Islamic law as a set of norms from a foreign state in the context of Muslims living in EU, especially in individual member states and diaspores, is of high importance.

It is obvious, that there are models under which Islamic law, beyond its militant concept, can be accepted and measured amicably with the public order of individual EU member states. Individual national regulations approach the implementation of laws that regulate the position of religious societies. These are mainly Austria and Germany, of which Austria adopted in 2015 a relatively modern law regulating the position of Islamic religious groups. In Germany, efforts for a similar rule in the legal order have escalated over the past two years.

The question of Islamic law, viewed from the perspective of a democratic society and a secularized rule of law system, will always remain a sensitive issue. Within the European cultural environment, there is no other way, than to recommend a significant extension of the knowledge base on aspects related to Islamic tradition, culture and law. Especially because the people knowing the issues currently discussed will not be in a position of targets to populist and nationalist campaigns and can more accurately identify

52 Rohe, M. *Der Islam in Deutschland: Eine Bestandsaufnahme.* Munich: C. H. Beck, 2016, p. 243.

the pros and cons of the norms and ways of the art of life coming from the Islamic environment. In conclusion, we return to the importance of comparative law, for students of law and legal science, as well as of the open access to information for the general public, since only an adequate level of knowledge can bring light into obscurantism and extremist endeavours.

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