



EUROPEAN POLICY BRIEF



RELIGARE

Religion, Family and the Law - Innovative Approaches to Law and Policy

Ongoing project

18 November 2012

INTRODUCTION

Family law, minorities and free movement within the EU

The RELIGARE project aims at gaining and thus also offering new insights into how to open up space for individual needs and fundamental freedoms in the fields of religion and belief, while at the same time keeping within the limits imposed by the secular constitutional frameworks that apply in all states covered by the project (Belgium, Bulgaria, Denmark, France, Germany, Italy, the Netherlands, the United Kingdom, Spain, Turkey). This Policy Brief focuses on issues of family law.

Let us imagine a young couple living in the EU and this couple decides to move to another EU member state to continue their education, take a new job or start a business. Living in the EU, they can claim the right of free movement. Let us also imagine that the spouses are Muslims who married inside or outside the EU on the basis of legal rules derived from Islamic law, or according to their religious convictions. Are the borders still open for them?

While this question obviously concerns the EU as a whole, there is no single, unequivocal, European answer to it. Family law issues fall predominantly within the competence of the member states, due to the EU principle of subsidiarity. There is no direct EU competence for regulating family law.

On the other hand, family law regulations in the European member states remain strongly influenced by cultural and religious specificities, despite being governed by secular legal orders. While these legal traditions deserve respect as major resources for maintaining peace in society and at the same time guaranteeing equal rights, state law is challenged to react to a **growing diversity** if it wants to retain this function. The Muslim couple is representative of such situations.

A genuine EU interest: Freedom of Movement and EU Citizenship

It should also be noted that this increasing pluralism; this juxtaposition between various newly established cultural models of family life, is heterogeneous in nature. This creates yet another challenge for European legal orders and societies.

In many of these cases, the non-recognition of family situations – touching on the most intimate sphere of life – that cross EU borders certainly has considerable **impact** on the **effective implementation of the fundamental right of free movement** within the EU (cf. Art. 45 of the EU Charter of Fundamental Rights and the Directive 2004/38/EC), which is fostered by European legal principles of non-discrimination on the basis of nationality and the principles of legal certainty and proportionality. What person will change his/her residence if the set of rights and duties between partners is not accepted and enforceable elsewhere? Decisions of the European Court of Justice have demonstrated that even less sensitive issues - with no links to religion or belief - such as the family name, fall under EU-granted freedoms and basic rights (e.g. decision of the European Court of Justice in Grunkin and Paul from 14.10.2008, C 356/06).

The above-mentioned challenges should be a concern for the EU as a whole. Indeed, it is far from clear how the impact of cross-border family law restrictions will be judged by EU bodies in the future, not to mention Art. 9 of the EU Charter of Fundamental Rights, the implications of the EU's accession to the ECHR (particularly regarding Articles 8 and 12) or the possible implementation of the proposed Equal Treatment Directive (COM (2008) 425, Brussels, July 2, 2008). It should be also noted that in application of the new Rome III Regulation on divorce and legal separation (Regulation No 1259/2010)ⁱ and other initiatives to unify conflict of law norms relating to the family (e.g. Regulation No 650/2012 on matters of succession), family law will gain ever more relevance at EU level.

Main conflicts and tensions regarding family and the law

Case law reveals that the **main legal conflicts** around issues of religious diversity and the family that have arisen in recent decades relate to Private International Law (PIL). This is the branch of law dealing with private relationships that entails an interaction between the different national legal systems that apply in a given situation. Such interaction may result from the fact that **the parties do not share the same nationality or residence. Or it may arise from a situation of cross-border mobility**: one or several parties may be living in a country other than that of their nationality – whether temporarily or on a long-term basis – and reside there as foreign nationals. This field is of prime importance for the EU, since it concerns the obligation of mutual recognition of legal decisions, including in large areas of family law.ⁱⁱ Most relevant for a research project like RELIGARE, which focuses on religious diversity, are **cross-border family situations involving persons who come from countries where religious law formally applies to matters of personal status**. It regularly happens that questions relating to these matters continue to be governed by religious law even once the parties reside in Europe.ⁱⁱⁱ

Dealing with increasing internal plurality

In addition, a new socio-demographic evolution has to be addressed in Europe, since believers belonging to minority religions are now ever more frequently also **citizens of EU member states**: domestic laws apply in such cases. Yet, domestic law does not take account of practices that are characteristic of religious personal statuses. For example, how to handle cases of Muslim marriage contracts

Managing religious diversity in the EU: formal neutrality or 'inclusive even-handedness'?

containing provisions on dower payment to the bride, either at the time of the marriage or in case of divorce? Such arrangements, which for a long time used to be perceived as "foreign" legal provisions, have now become a genuine part of contract and family law within the internal legal order of member states. As a result, possible conflicts that come with the interpretation of such arrangements **have shifted from the application of the private international law rules to an issue of internal law**. Such issues often raise intricate questions of the accommodation of hitherto unknown legal practices that can, but do not necessarily put mainstream standards into question.

Hence the question remains: **how to address issues of religious minorities in the field of family law**. Two possible approaches could be considered here:

First, state law can confine itself to granting formal neutrality, which would mean that the equal application of laws is guaranteed, but in a purely formal sense. This approach comes down to ignoring the impact that formal neutrality on the part of the state authorities may have on people's concrete family situation. It may well be, for example, that neutrality impacts differently on majority and minority groups of the population, but that is not the responsibility of the legislators. Otherwise, formal neutrality may end up creating internal tensions in society, where some groups feel they are treated unequally by the law.

Second, state law can offer space for the development of interpretations and applications of the relevant rules that aim at **inclusive even-handedness**. Inclusive evenhandedness stands for an approach on the part of state law that strives at accommodating minority legal practices to the extent possible; in this case in the field of family law, by granting them recognition under state law. This approach, however, does not imply that specific groups in society should be granted special rights. 'Even-handedness' means that the state legal order refrains from granting unjustified advantages to any community, group or religion. The starting point is the observation that none of the EU member states - with the exception of Greece, for historical reasons - has separate personal law systems that apply to particular religions or ethnicities. Instead, inclusive even-handedness confirms the principle that state family law applies to all, while allowing space for a certain degree of individual choice and thus for religious or cultural needs.^{iv}

The data collected on family law within the framework of the RELIGARE research project offer illustrations of inclusive even-handedness in practice. An example would be the recognition, under certain circumstances, of religious divorce performed abroad, and provisions in domestic marriage contracts regarding payments to the bride according to Islamic law, which will be discussed further.

The RELIGARE approach consists of evaluating in each of the legal orders of the ten countries under investigation **when (and to what extent) a solution based on inclusive even-handedness is feasible, and what changes in national laws, if any, it would imply**. Inclusive even-handedness should thus be the overarching principle.

KEY OBSERVATIONS

Is religion or belief an issue in family law?

Religion and belief in the realm of family law give rise to challenging questions on both the international and the domestic legal levels. Since European family law institutions are based on the Christian perception of family life,^v in practice, judicial cases addressing issues of religion and belief **predominantly involve members of minority religions**. Muslims appear to be the most significant group, but there are also cases involving Jews and others. The public debate in Europe reveals that it is primarily Muslims who - in various parts of Europe - are faced with the difficulty of combining respect for the laws enacted by the state in their country of residence with respect for the precepts of Islam. The values of the latter are often endowed, in their view, with particular legitimacy,^{vi} given the fact that important parts of family law are addressed in the Quran. According to RELIGARE and other sociological data^{vii} this seems to be the case particularly among Muslims living in the UK, but is obviously not restricted to them. For example, among Jews seeking divorce the religious aspect of delivery of the “Get” to the divorced wife can play an important role.^{viii}

According to the case law material collected by RELIGARE, some of the issues most frequently submitted to the courts are;

- the **prerequisites for legally valid marriages and their recognition if concluded under religious laws abroad**,
- some specific contents like *dower* payment obligations and,
- last but not least, divorce issues (recognition of foreign divorces performed according to religious laws) and **the limits of the applicability of such foreign laws under Private International Law provisions**.

In the latter case, the invocation of public policy requirements appears to be the most recurrent argument: religious laws are evacuated for treating sexes or religions/beliefs unequally.

A gap between the existing laws and their social perception

A careful examination of the case law reveals that **interactions between secular and religious family laws and the accompanying questions of private international law remain the particular concern of people who have settled in Europe on a more or less permanent basis, but who nevertheless keep looking for solutions that would allow them to live a harmonious family life** in a way that is granted equal recognition under civil (in Europe) and religious law (in the country of origin). The sociological literature^{ix} describes the situation of such people as “transnational”. The difficulty in their case lies in articulating their (personal) status in such a way that it can effectively be recognised in the various legal orders involved: on the one hand, that of the country of emigration, and on the other hand, that of their habitual residence.^x

Different methods of setting the limits: a concrete example and its legal dimensions

In particular, **the issue of divorce by unilateral repudiation** which in Islamic law is the dissolution of the marriage on the sole initiative of the husband, without his having to give a reason (the so-called *talaq*) challenges the courts, both higher and lower. Under this law, which is in force in many Islamic countries, despite a number of recent internal reforms in favour of women, only the husband is

entitled to terminate the marriage in this way. Should this be granted recognition in the internal legal order of member states?

Such a procedure contradicts the European legal principle of equality of sexes, as well as the principle of sustainable relationship that is a characteristic of marriage and cannot be dissolved by such simple procedures. Thus, according to mainstream regulations in the national legal orders of the vast majority of EU member states, a *talaq* cannot be validly granted recognition within the internal legal order of EU member states. Moreover, the case law unanimously refuses to recognise *talaq* procedures performed abroad where EU citizens or residents are involved, either by invoking public policy requirements or by applying specific laws that explicitly state that *talaq* will under no circumstances be granted recognition (Belgium, England & Wales).

A difficult question regarding *talaq* concerns cases where the wife herself asks for the recognition. Should recognition be refused even in cases when the wife acknowledges and expresses the wish that the *talaq* be accepted? In the present situation, refusal to grant any recognition to *talaq*, even in cases where the wife consents, amounts to creating “limping marriages” by treating persons as still married even if they have formally divorced under other legal regimes relevant to their international conduct of life.

Abstract or concrete protection of human rights?

The main question here is **whether legal institutions that are in conflict with European human rights standards should be totally rejected, or whether courts and administrations should focus only on the outcome of their application and then decide whether a given outcome is acceptable for the specific persons involved.** We have noted a remarkable variation in handling such cases among the member states (notably France since 2004^{xi} and Belgium since 2005^{xii}) in the past few years.

Until the recent past, a flexible approach was preferred by most countries, and is still the one taken e.g. by German^{xiii} and Italian^{xiv} courts. *Talaq* is considered to clash with public policy only in cases where the wife was not able to assert her legitimate interests, or was not even informed of the divorce. In other cases, where the prerequisites for divorce according to the law of the land are fulfilled in a comparable way or if the wife agrees, the legality of such a divorce according to Islamic tenets is accepted. In France, by contrast, since 2004, *talaq* as such is rejected irrespective of its outcome: norms violating gender equality are considered to violate public policy *per se*. No such clear trend may be observed in the case law of the other member states.

In practice, only a flexible approach to the *talaq* offers an outcome that benefits women who consent to it.^{xv} In case of non-recognition of the dissolution of the marriage, women are forced to apply for divorce in European courts. This means they have to divorce for a second time, which often proves to be time-consuming and expensive, particularly if the husband is living in a country that is not easily accessible for judicial correspondence, or if his address is unknown. In such cases, the **abstract ‘human rights approach’ turns against the person it aims to protect.**

New challenges: Legal innovation “within”

In recent years, issues of family law and religious diversity are turning increasingly from being international issues to *internal* legal issues. Citizens identifying with religious minorities are now in most cases also nationals of member states. Furthermore, due to internal reforms in the member states and new relevant Private International Law regulations on EU level concerning divorce and legal separation (EU Regulation No 1259/2010) and succession (EU Regulation No 650/2012), the domestic law of the habitual residence of the parties applies. This poses a major challenge for legal accommodation in a non-discriminatory and culturally sensitive way under the existing substantive family law.

A concrete example and its legal dimensions

Agreements in matrimonial contracts on *dower* payments by the groom to the bride according to Islamic law (so-called *mahr* or *sadaq*) may serve as practical examples of the kinds of challenges that arise.^{xvi} Such provisions should be thoroughly examined on their own merits. They are a basic feature of Islamic marriage law, even if the function(s) of *mahr* can change in the context of migration. Courts all over the EU today are faced with such agreements. Four possible approaches to *mahr* are found in the RELIGARE countries' judicial practice: to consider it (1) in the context of law of contract (as a gift, Denmark, England); (2) as subject to the domestic matrimonial property and matrimonial relief regime (England, France, the Netherlands); (3) as a general effect of marriage (Germany); and (4) as part of maintenance (the Netherlands, Germany). The discussion of *mahr* often gets mixed up with issues such as whether the matrimonial regime in the relevant country observes the principle of common or separate matrimonial property. This is indicative of the attempt of European judges to find domestic equivalents for a foreign legal institution like *mahr*; they prefer to deal with the institutions they know, thereby dismissing claims involving 'foreign' institutions which they do not understand or cannot figure out how they fit within the applicable family law regime in their courts. It is arguable, however, that *mahr* claims will be looked at more seriously if the applicable regime allows either a choice of law to the spouses as to whether a foreign legal regime applies, or simply assumes - whether by treaty or conflicts of law principles - that a foreign law regime applies.

If there is a European point of departure, it is that *mahr* is not a legal institution of any European legal system but may seep in via a claim invoking the application of 'foreign' legal rules through private international law. As for claims where no such foreign legal regime is held to be operating, the courts will have to assess, for example, whether contract is the correct interpretation or whether a *mahr* payment should better be subsumed within the general principles allowing financial payments upon marriage breakdown to the spouses (and perhaps during the subsistence of a marriage). In some countries, the autonomy of parties making pre- or post-nuptial agreements regarding property matters is increasingly endorsed by the judiciary.^{xvii} Treating *mahr* as a contract (or as part of a contract) may be deemed appropriate for marriages that have not been registered, which now appear to represent a significant portion of marriages, particularly among Muslims.^{xviii} It would be another illustration of inclusive even-handedness.

Lastly, it should be considered whether the variations among and within the different legal systems in Europe as to the classification of *mahr* is also, in part, **a function of the ways in which claims concerning the institution are made**. It is not always the case that

women ask for the *mahr* to be enforced by a European court. In some cases men may also insist before a court that *mahr* be granted because he expects that by doing so his ex-wife will be refused access to the more beneficial provisions of the post-divorce maintenance arrangements of domestic European systems. Nevertheless, the main lesson here would be that each case should be examined on its own facts and in its own cultural context, and that no general rule can realistically be set out for the recognition or otherwise of the dower or, indeed, any other payment on marriage. It is clear that lawyers and Muslims themselves are in **need of more detailed information or advice on the issue**.

Dealing with foreign religious law

A good example of this lack of information can be seen in the question of the applicability of 'religious' provisions in secular European courts. 'Religious law' is an established, but possibly misleading term. In some cases courts have wrongly refused to apply foreign law that they considered to be 'religious' and thus not enforceable by a secular institution, e.g. concerning the Iranian law of divorce.^{xix}

Lack of easily accessible information

Ever more frequently, **courts in Europe are requested to deal with institutions of foreign family law**, regardless of whether they are familiar with these laws. The requests include application of foreign laws that are avowedly religious in nature, which is the case for family laws in most Islamic states and in the state of Israel, among others. Judges from various member states^{xx} have expressed the urgent need for accurate information about the specificities of religious family laws, and in particular those they encounter in their daily practice. Lacking **easily accessible expertise**, there is the danger of misinterpretation of such institutions. This might occur both in the **application of foreign law** according to Private International Law rules as well as under **domestic law**, e.g. regarding marriage agreement cases.

RECOMMENDATIONS FOR POLICY-MAKERS

General

The RELIGARE data clearly demonstrate that family law is still strongly linked to specific national and constitutional traditions differing from one EU member state to another, but the data also show that **there is a broad range of similar needs and challenges concerning minorities to be met by appropriate legislation or legal interpretation across the Union.**

It is recommended that the Commission assess the extent to which the intersection between religion and family law constitutes barriers at national member state levels in the correct implementation of the Citizens' Directive 2004/38. The implications of these restrictions in light of the principles of non-discrimination, legal certainty and proportionality could be significant.

If no measures are taken at EU level, at least on an **informal level - information, cooperation or education** – it is likely that the prevailing situation of low legal coherence within the EU will (continue to) prevent an increasing number of EU citizens and inhabitants from making use of their basic right to move freely within the EU. This situation clashes with the international reputation of the EU with respect to the implementation of human rights standards in an equally efficient and neutral way. In its negotiations with third countries, the EU's credibility when it comes to defending and advertising such standards is permanently at stake.

International and domestic family law

There is an urgent need for **easily accessible platforms for information (and exchange) on 'foreign' legal institutions and the existing laws in the various member states.** Courts and administrations often lack the means to thoroughly interpret such institutions and laws. As a consequence, decisions on the basis of little information tend to oversimplify the facts and to neglect the needs of the parties, which could otherwise be met appropriately under the existing laws. Databases and institutions for professional education on an EU level should be established, since insular solutions in individual member states would be unable to cover all the relevant information and to develop feasible common approaches.

In particular, there is a **lack of information on the legal prerequisites for entering into a legally valid – whether civil or religious – marriage.** Religious marriages as such have no legal effects under the family law rules of most member states. Moreover, where religious organisations are authorised to register marriages under the law of the state, as is the case for England & Wales, they often do not meet the necessary requirements, thus producing invalid marriages under civil law. In both cases, parties who trust in the validity of such marriages are unable to claim their rights in state courts and before the public authorities. Informal religious ADR (alternative dispute resolution) institutions might then be the only remedy.^{xxi} It is thus strongly recommended that the EU Commission carry out a study providing a comparative overview of the legal prerequisites for a valid marriage (civil and religious) in *all* EU member states.

The EU should **encourage and develop further efforts in fostering mutual recognition of family law decisions** by administrations and courts in the different member states. This can be achieved by either unifying Private International Law norms

according to the Rome III model (e.g. implementing the Rome IV regulation on matrimonial property and encouraging member states to join the existing regulations), or by developing common standards regarding the scope and limits of the application of public policy against foreign norms.

EU-wide uniform standards should be developed regarding (setting) limits on the application of foreign religiously inspired norms or decisions delivered abroad under such norms. The traditional approach of examining only the result of the application of foreign norms instead of examining them *as such* grants more stability in family relations and legal security for the parties, irrespective of their actual residence. In the present situation, parties too easily lose their established legal positions: when a foreign divorce is not recognised, this outcome might impact negatively on the wife, who is often in need of the recognition of the divorce instead of being 'protected' in an abstract sense only. Therefore, **a contextualised approach** should be preferred, with a view to avoiding cases of 'limping' marriages and divorces.

Awareness among citizens of the fact that European family law is derived from a Christian background, although it has been translated into secular forms, should be increased. Thus, specific needs of religious minorities should be appropriately addressed. 'Inclusive even-handedness' would be a way of maintaining a balance, as explained above. Whereas the application of the public policy exception in PIL is meant to meet the requirements of human rights and their high standards of protection, irrespective of the concrete situation of the parties involved, sustainable solutions - including for families with a religious minority background - should be given priority under the applicable law. This includes recognition of decisions delivered in the countries of origin of couples/litigants of migrant/religious minority background.

Initiatives aiming at the unification of substantive family law are already operating on an EU level. They should be encouraged further. Nevertheless, there is little hope for quick progress in this field.^{xxii} Thus, the contractualisation of family relations^{xxiii} under the respective member state laws is recommended. This means a thorough handling of religiously influenced provisions in marriage contracts.

This policy brief was drafted by Mathias Rohe (Universität Erlangen-Nürnberg, Centre for Islam and Law in Europe), with assistance from Prakash Shah (GLOCUL: Centre for Culture and Law, Queen Mary, University of London)

RESEARCH PARAMETERS

Objectives

RELIGARE focuses on the challenges for State law posed by Europe's increasing religious diversity in four important domains of social life: **the family, the labour market, the public space and state support to religions.**

RELIGARE seeks to investigate and analyse which legal frameworks and instruments are best suited to guarantee respect for the rights of all individuals to freedom of thought, conscience and religion and to non-discrimination on grounds of religion or belief. In particular, the goal is to identify those responses that adequately balance the principles of equality and non-discrimination with the freedom of thought, conscience and religion, protected as fundamental rights. This goal also includes assessing whether these responses are bound to their national contexts or are relevant across Europe, and in particular identifying solutions flexible enough to accommodate the diverging historic and political contexts in the Member States.

Methodology

The project applies an interdisciplinary approach, combining legal and empirical methods. A **comparative legal approach** is used to analyse the law in **10 countries (Belgium, Bulgaria, Denmark, France, Germany, Italy, the Netherlands, Spain, Turkey, and the UK)**. In order to evaluate how tensions are perceived and dealt with 'on the ground,' in **6 selected countries (Denmark, Turkey, Bulgaria, France, the Netherlands and the UK)** **sociological interviews** with a number of key opinion makers or stakeholders (e.g. religious or humanist leaders, judges or commissioners, lawyers or academics, politicians, NGOs, labour unions) are conducted covering issues and controversies related to the four domains of RELIGARE. The six countries provide a good cross-section of the historical and legal diversity of secularity in Europe. They also represent a wide range of systems for managing religious affairs, of socio-historical trajectories, of relationships to the construction of Europe and of experiences of religious diversity. A series of workshops bringing together policy-makers, legal practitioners and scientists is intended to systematise problems to be dealt with and identify examples of good practice for practical recommendations.

Expected Results

- To identify the various challenges in the four selected domains of social life.
- To offer more accurate knowledge of underlying challenges and responses to specific concerns related to Europe's religiously pluralist condition, drawing from the various national experiences;
- To identify and assess promising policy solutions and good practice and to offer concrete policy recommendations (to both European, national and local levels) based on perceived successful responses and national experimentalism.
- To develop a number of tools, such as a comparative case-law database with religious discrimination/freedom cases and commentaries and a comparative sociological study, which will be helpful for researchers, policy-makers and the public.

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Further reading	Current research and working papers and other work package reports are accessible at www.religareproject.eu . RELIGARE working papers in this field have already been presented by Mathias Rohe (Alternative Dispute Resolution in Europe under the Auspices of Religious Norms - working paper no. 6/January 2011) and Prakash Shah (In pursuit of the pagans: Muslim law in the English context – Working Paper no. 9/March 2012). A book bringing together the results of two workshops will be published by Ashgate in 2013 (eds. Thalia Kruger/Mathias Rohe/Prakash Shah).

ⁱ Cf. Marc Fallon, Le nouveau droit du divorce international selon le règlement Rome III: une évolution tranquille, *Revue trimestrielle de droit familial* 2-2012, pp. 291-317.

ⁱⁱ Cf. Heinz-Peter Mansel, Die kulturelle Identität im Internationalen Privatrecht, in: Georg Nolte et al. (eds.), *Pluralistische Gesellschaften und Internationales Recht*, Heidelberg 2008 (C.F. Müller), pp. 137, 181ff.

ⁱⁱⁱ See, especially J.-Y. Carlier and M. Verwilghen (eds), *Le statut personnel des musulmans. Droit comparé et droit international privé*, Brussels, Bruylant, 1992.

^{iv} Cf. John Witte Jr, The Future of Muslim Family Law in Western democracies, in: Ahdar, Rex/Aroney, Nicholas (eds.), *Shari'a in the West*, Oxford 2010 (Oxford University Press), pp. 279-292; Jeremy Waldron, Questions about the Reasonable Accommodation of Minorities, *ibid.*, pp. 103-113; Cf. André Hoekema, Does the Dutch Judiciary Pluralize Domestic Law?, in: Ralph Grillo et al. (eds.), *Legal Practice and Cultural Diversity*, Aldershot et al 2009 (Ashgate), pp. 177-198.

^v Cf. Gerhard Dilcher, Ehescheidung und Säkularisation, in: Gerhard Dilcher/Ilse Staff (eds.), *Christentum und modernes Recht*, Frankfurt a.M. 1984, pp. 304-359

^{vi} See especially N. Asayyad and M. Castells (eds), *Muslim Europe or Euro-Islam: politics, culture, and citizenship in the age of globalization*, Lanham, Lexington Books, 2002; S. Benhabib, I. Shapiro & D. Petranovic (eds), *Identities, Affiliations and Allegiances*, Cambridge, Cambridge U.P., 2007; J. Cesari and S. McLoughlin (eds), *o.c.*, 2005; H. Coward, J.R. Hinnells & R.B. Williams (eds), *The South Asian Religious Diaspora in Great Britain, Canada and the United States*, State University of New York Press, 2000; A. Erdemir, H. Rittersberger-Tiliç, A. Ergun & H. Kahveci (eds), *Rethinking Global Migration: Practices, Policies, and Discourses in the European Neighbourhood*, Ankara, KORA, 2008; M. Howard Ross (ed.), *Culture and Belonging in Divided Societies. Contestation and Symbolic Landscapes*, Philadelphia, University of Pennsylvania Press, 2009; G.F. Levey and T. Modood (eds), *Secularism, Religion and Multicultural Citizenship*, Cambridge, Cambridge U.P., 2009; J. Nielsen and S. Allievi (eds), *Muslim Networks and Transnational Communities in and Across Europe*, Leiden, Brill, 2002; Y. Yazbeck Haddad (ed.), *Muslims in the West: from Sojourners to Citizens*, Oxford, Oxford U.P., 2002.

^{vii} Cf. S.N. Shah-Kazemi, *Untying the Knot. Muslim Women, Divorce and the Shariah*, London 2001 (Nuffield Foundation); S. Bano, *An Exploratory Study of Shariah Councils in England with Respect to Family Law*, University of Reading 2 October 2012: (http://www.reading.ac.uk/web/FILES/law/An_exploratory_study_of_Shariah_councils_in_England_with_respect_to_family_law_.pdf); M. Malik, *Minority Legal Orders in the UK*, London 2012 (British Academy Policy Centre) (available for download at <http://www.britac.ac.uk/policy/Minority-legal-orders.cfm>), pp. 17-19, 28-30 in particular; J. Klausen, Jytte, *The Islamic Challenge*,

Oxford 2007, p. 190 s. For Denmark see also the RELIGARE report by N. Vinding/L. Christoffersen, *Danish Regulation of Religion, State of Affairs and Qualitative Reflections*, Copenhagen August 2012, pp. 124-127.

^{viii} Cf. J. Wegner, The Status of Women in Jewish and Islamic Marriage and Divorce law, *Harvard Women's Law Journal* 5 (1982), pp. 1ff; M. Freeman, The Jewish Get and the State, in: Richard O'Dair/Andrew Lewis (eds.), *Law and Religions. Current legal issues 2001* vol. 4, Oxford 2001, pp. 365, 377-385.

^{ix} See, especially P. Bramadat and M. Koenig (eds), *International Migration and the Governance of Religious Diversity*, Montreal & Kingston, Metropolis, 2009.

^x To this effect, see M.-Cl. Foblets and J.-Y. Carlier, *Le Code marocain de la famille. Incidences au regard du droit international privé en Europe*, Brussels, Bruylant, 2005.

^{xi} Cf. Court of Cassation 17 February 2004, No. 01.11.549 and No. 02-11.618, and of 4 November 2009, No. 08.20.574.

^{xii} Cf. Court of Appeals Mons, 20 December 2007; Civil court Liège, 26 June 2009; Labour court Brussels, 27 May 2010; For an illustration: M. Fallon and J. Erauw, *La nouvelle loi sur de droit international privé belge. La loi du 16 juillet 2004*, Antwerp, Kluwer, 2004; J.-Y. Carlier, M. Fallon, B. Martin-Bosly, *Code de droit international privé*, Brussels, Bruylant, 2008.

^{xiii} Cf. Court of Appeals Frankfurt/M, decision of 11.05.2009, 5 WF 66/09.

^{xiv} Cf. Court of Appeals Cagliari, 16 May 2008, No. 198.

^{xv} Cf. e.g. the cases decided by the German Supreme Court in 2004 (BGH FamRZ 2004, 1952) and 2007 (BGH NJW-RR 2007, 145).

^{xvi} Besides the data collected by RELIGARE cf. P. Fournier on the application of mahr provisions in Western courts (*Muslim Marriage in Western Courts*, 2010, pp. 35-100 in particular); R. Mehdi/J. Nielsen, *Embedding Mahr (Islamic Mahr) in the European Legal System*, Copenhagen 2011; P. Shah, *In Pursuit of the Pagans: Muslim law in the English context*, RELIGARE working paper No. 9, March 2012, available at <http://www.religareproject.eu/system/files/Working%20Paper%209%20Prakash%20Shah.pdf>, pp. 9ff.

^{xvii} See *Radmacher v Granatino* [2010] UKSC 42.

^{xviii} There is clear evidence for that from the RELIGARE Expert Seminar on Unregistered marriages and Alternative Dispute Resolution held at Queen Mary College, University of London, 4 September 2012. The results will be published in early 2013 in a RELIGARE volume edited by Th. Kruger/M. Rohe/P. Shah; cf. the podcast of the seminar, available at <http://www.law.qmul.ac.uk/events/podcasts/religare2012/index.html>

^{xix} See for example, Court of appeals Berlin, IPrax 2000, 126; reversed by the German federal Supreme Court, FamrZ 2004, 1952.

^{xx} E.g. in the RELIGARE seminar held in Brussels on 5-6 December 2011 with judges from several member states.

^{xxi} See the RELIGARE working paper on ADR: <http://www.religareproject.eu/content/alternative-dispute-resolution-europe-under-auspices-religious-norms>.

^{xxii} Cf. e.g. Marie-Thérèse Meulders-Klein, *Vers une européanisation du droit de la famille? Une approche politique*, in: H. Fulchiron (ed.), *Mariage – conjugalité – parenté – parentalité*, Paris, Dalloz, 2009, pp. 279-292; on the pros and cons of this recourse, see esp. J. Meeusen, M. Pertegas, G. Straetmans & Fr. Swennen (eds), *International Family Law for the European Union*, Antwerp/Oxford, Intersentia, 2007.

^{xxiii} Cf. Frederik Swennen, *Family (Self-)Governance at the Boundaries of a privatized Family Law*, *European Review of Private Law* 2-2011, pp. 209-223.