

1 Reasons for the Application of Shari'a in the West¹

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Introduction

Shari'a – or 'Islamic law',² in the narrow understanding – is broadly perceived to be the opposite of a secular legal order. The heated debate that took place in the aftermath of the Archbishop of Canterbury's famous speech about the possible introduction of some parts of shari'a law into the English legal system is but one example of this.³ On the other hand, some of the small extremist groups that promote shari'a in the West, which bluntly reject the ruling secular legal order, such as 'shari'a4Belgium' and 'shari'a4Holland', seem to justify such prejudice against shari'a. Very often, the fact that there is little information about the meaning of shari'a and about the scope and limits of its application in the West leads to simplistic debates on all sides. The public climate has become unfavourable even for an academic debate on these issues. I myself was repeatedly denounced for promoting the replacement of the German legal order by shari'a, simply because I wanted to inform the public about the *existing* German legal order with respect to the treatment of Islamic norms.⁴ This has convinced me all the more that it is necessary to address such issues, since they are real phenomena concerning a considerable number of people living in Western countries.

This chapter is confined to the legal provisions of shari'a, which only constitute a part of shari'a. While religious provisions, such as those on ritual prayer, fasting, and so forth, fall under the freedom of religion according to international and Western constitutional law, the application of foreign legal rules is an exception in legal orders all over the world. This is due to the now ruling principle of territoriality of legal orders, which replaced personal law systems in Western states centuries ago. The system of territoriality creates unified legal orders that grant internal plurality, thus retaining the right to make a final decision on whether foreign laws can apply or not.

With regard to the application of shari'a in Western secular states, the reasons for this are twofold. They are 'external' insofar as the law of the land simply prescribes the application of such norms in a given

case, more or less irrespective of the intention of the parties involved. 'Internal' reasons are those rooted in the desires of the parties themselves. The latter can be sub-divided into technical/institutional, cultural and religious reasons. In some cases, external and internal reasons may meet where the law of the land creates spaces for the optional application of such norms, should the parties choose to do so. In addition, there is a difference between formal and informal application of these rules: whereas formal application requires recognition by the law of the land and enforcement by its institutions, informal application only depends on the free will and consent of the persons involved. We will discuss those categories in which shari'a may be applied below.

External Reasons for the Formal or Informal Application of Shari'a in the West

There are *four fields* of law where Islamic norms may be applicable or recognized for mainly external reasons. First, private international law may lead to the application of shari'a within the limits of public policy; second, in some states Islamic norms have been integrated into the existing law of the land; third, given legal facts created under shari'a may be recognized under Western laws for social reasons; and lastly, there are cases of maintaining personal law systems, including shari'a for Muslims, for historical reasons. We will elaborate on these reasons below. The possibilities for applying shari'a in the West are clearly restricted to the field of private law. Public law, and penal law in particular, are necessarily homogeneous in every country according to common international standards; thus, in these fields, the law of the land alone can and has to be applied.⁵

PRIVATE INTERNATIONAL LAW

Private international law (the rules regulating the conflict of laws in matters concerning civil law⁶) is a possible level of direct application of shari'a legal rules. To be precise, shari'a as such cannot be applied here, but only state laws based on shari'a rules. In the area of civil law, the welfare of autonomously acting private persons is of prime importance. If someone has organized his or her life in accordance with a certain legal system, this deserves protection when the person crosses the border. However, it is also within the interest of the legal community that in certain matters, the same law should be applicable to everyone who is resident in a particular country. This is especially the

case in matters touching the roots of legal and societal common sense, like the legal relations between the sexes or between adherents of different religions.

When it comes to the areas of family law and the law of succession, the application of legal norms in European countries is often determined on the basis of the nationality of the persons involved, rather than by their domicile.⁷ Other than in Canada, the United States,⁸ or Switzerland, many European courts, such as those in Germany, France and Austria, are therefore often obliged to apply Islamic legal rules when these are the national law of the persons involved. In this respect it may generally be stated that until now, shari'a has had a particular strong position in family law and the law of succession. This can be explained by the fact that shari'a in these areas has a multiplicity of regulations derived from authoritative sources (Qur'an and *sunna*). Furthermore, a powerful lobby is obviously trying to preserve this area as a stronghold due to religious convictions, as well as for reasons of income and the exercise of power (which is very similar to the situation in Christian Europe in the past). The Tunisian lawyer Ali Mezghani states that '[i]n Islamic countries, it is difficult to deny that family law is the site of conservation.'⁹ This is true despite the fact that reforms have taken place in several Islamic countries, and still are in progress.¹⁰

However, the application of such provisions must comply with the rules of public policy. If the application of legislation influenced by shari'a leads to a result that is obviously incompatible with, for example, the main principles of German law, including constitutional civil rights, the provisions in question cannot be applied. In family law, the main conflicts between 'Islamic' and European legal thinking concern the constitutional (and human) rights such as equality of the sexes and of religious beliefs and the freedom of religion, including the right not to believe. Conflicts mainly arise from provisions reflecting classical shari'a, which preserve a strict separation between the sexes with respect to their social roles and tasks (for example, in marriage and divorce laws, and in matters of guardianship, custody and inheritance), as well as the far-reaching legal segregation of religions under the supremacy of Islam.¹¹

INTRODUCTION OF ISLAMIC LEGAL PROVISIONS

In addition to general rules of private international law, a few European states have introduced legal provisions concerning family and succession matters to be applied in general, or to the Muslim population in particular, allowing a *de facto* application of shari'a rules.

In the United Kingdom, Muslims may apply to have their marriage registered. Furthermore, according to the Divorce (Religious marriages) Act 2002, courts are enabled to require the dissolution of a religious marriage before granting a civil divorce.¹² The Adoption and Children Act 2002 amended the Children Act 1989 by provisions (Sect. 14 A) introducing 'special guardianship' as a legal means of parental responsibility besides adoption, which is forbidden by shari'a.¹³ This institution may have been aimed at accommodating Muslims in particular, but it is open to everyone, thus bridging the borders between separate legal systems.

In Spain, it has been possible to apply Islamic rules regulating the contracting of marriages to Muslims since 1992.¹⁴ In order to ensure the necessary legal security, there are compulsory provisions for the registration of these marriages.¹⁵ This kind of legal segregation is very limited, concerning mere formal regulations without any relevant material quality. Interestingly, the legislator in Spain has also amended Article 107 of the Código Civil regulating the right to divorce. The amendment enables women resident in Spain to get divorced even if the law of origin or of their matrimonial home prevents them from doing so. The legislator stated expressly that this amendment was intended to solve problems in this respect, especially regarding Muslim women.¹⁶

RECOGNITION OF LEGAL FACTS CREATED UNDER FOREIGN SHARI'A LAWS

The third legal reason for the applicability of shari'a is the legal recognition of facts created under shari'a, such as polygamous marriages. This must be distinguished from the aforementioned implementation of foreign norms under international private law. German social security laws treat polygamous marriages as legally valid, provided that the marriage contracts are valid under laws applicable to them at the place of their formation.¹⁷ (Of course, polygamy fundamentally contradicts German and other European legal standards; therefore it cannot be contracted legally in Europe and is even punishable under German law, Par. 172 Penal Code.) The legal reasoning behind the recognition of these polygamous marriages is to avoid depriving these women of their marital rights, including maintenance. Thus, according to German social security law,¹⁸ widow pensions are divided among widows who were living in polygamous marriages. However, German law differentiates between mainly private aspects of marriage and predominantly public ones, especially those relating to immigration law. Law governing the latter aspects provides only the first wife in polygamous marriages with marital privileges within its scope of application, such as residence

permits.¹⁹ The treatment of polygamous marriages in Germany differs from that in other European countries. In the United Kingdom, the courts rejected the claim to a widow's pension by a woman who was engaged in a polygamous marriage, resulting in none of the wives in the marriage receiving a payment.²⁰

PERSONAL LAW SYSTEMS

The fourth reason why shari'a can be applicable is in the case of a system of personal law that has remained in existence due to historical reasons. Thus, in Greece, the Treaty of Lausanne (1923) contained rules, which are still in force, leading to the application of traditional shari'a law on Muslims of Turkish origin (see chapter 7 in this volume),²¹ while the Turkish Republic has continuously reformed its civil laws and introduced legal equality of the sexes in family law in 2002. This can hardly serve as a model for Western secular states. Despite widespread efforts in the Islamic world to improve women's rights, many legal orders in this region are still far from the legal standard of equality of the sexes achieved in the West. It would simply be unacceptable to implement such rules in the existing systems, and – apart from the United Kingdom (see chapter 4 in this volume) – it is highly unlikely that any European public or legal order would be ready to concede legal pluralism in family matters at the expense of current public policy.

In Britain, the Union of Muslim Organisations of the United Kingdom and Eire has formulated a resolution demanding the establishment of a separate Muslim family and inheritance law that is automatically applicable to all Muslims in Britain,²² without any effect so far. Some developments in recent years suggest that a considerable number of Muslims in the United Kingdom do indeed desire the application of shari'a rules in these fields. According to a poll taken of 500 British Muslims in 2006, 40 per cent supported the introduction of shari'a law in predominantly Muslim areas of Britain.²³ The underlying idea might be found in the legal situation on the Indian subcontinent – being the prevailing region of origin of Muslims in Britain – which was and still is ruled by a system of religious separation in matters of family law.²⁴ The same is true for most Muslim states in the past and present. But introducing religiously or ethnically-orientated multiple legal systems in Europe does not represent a realistic or even desirable option.²⁵ Such systems may have been helpful and even exemplary in the past, when they granted rights and freedoms to minorities that would otherwise have been disregarded. However, this will always result in problems in the form of inter-religious conflict over laws, as can be seen in Egypt,

for example.²⁶ Besides that, freedom of religion contains the freedom to change one's religion or not to belong to any religion. This freedom would be unduly constrained by forcing people into a legal regime defined by religion. Furthermore, there is no uniform Islamic legal system of substantial rules to be identified. In addition to that, the former Ottoman territories in the Balkans, as well as the Turkish Republic, abolished shari'a law a long time ago. Most of the Muslims who are natives of these states – constituting the vast majority of Muslims in a considerable number of European states, such as Austria, Germany and Switzerland – would reject the re-introduction of such rules in European countries. In France, such issues are not even debated publicly.

Instead of such institutionalized forms of religious-based family law systems, Muslims are entitled to create legal relations according to their religious intentions within the framework of optional civil law (see further below). This system reflects the emergence of relatively strong states claiming to regulate or at least supervise family matters according to legally consented principles.

Internal Reasons for the Formal or Informal Application of Shari'a in the West

In addition to the external reasons that may lead to the application of shari'a in the West, there are also internal reasons. These fall into four categories:

TECHNICAL/INSTITUTIONAL REASONS

In cases of intermarriage and the conduct of 'international' lives, the persons involved may have a mere 'technical' interest in creating legal relations that are recognized in all of the countries involved, irrespective of the specific content or the religious connotation of the law. Problems arise when some religiously-founded foreign state laws refuse to recognize decisions by secular states (administrations or courts) in matters of family law, while they would recognize informal acts by religious personnel or alternative dispute resolution (ADR) decisions on the basis of their religiously-orientated laws. This is the case not only with respect to some Muslim states, but also to the state of Israel regarding Jews.²⁷ In these cases, the resort to such informal bodies is likely to be based on the technical aspect of recognition rather than on personal affiliation to religious law. In this regard, international efforts to improve mutual recognition of state decisions are urgently needed if state

institutions want to preserve their prerogative. As long as recognition is in doubt, improvised solutions can be found even in state courts or administrations. For example, in cases of divorce, courts might mention that the husband has agreed to the procedures followed in Western law, which could be then recognized as a *talaq* (repudiation) under shari'a law. In addition, Muslim witnesses could be invited to document this.²⁸

In other cases, mere formal reasons such as the lack of documents required for marriages under the law of the land might draw immigrants to enter into informal religious marriages in order to create a socially accepted fundament for living together. Iraqi refugees in Germany who were willing to marry under German law are currently facing this problem with regard to documents proving their capability to marry under Iraqi law (which in this case is applicable according to German private international law: Art. 13 EGBGB). So far as these marriages are not recognized by state law – as is usually the case – conflicts including 'divorces' can only be resolved under the informal mechanisms provided, such as through mosques or Muslim organizations by applying shari'a, often in hybrid forms rather than according to a particular Islamic state law.

CULTURAL REASONS

When it comes to Muslim immigrants, various research projects in Europe in recent years have clearly demonstrated that considerable numbers of them maintain the structures of family life that they had in their countries of origin.²⁹ Some of them are reluctant to use the legal remedies provided by the law of the state of their new domicile, because they believe that they are bound to legal orders other than the law of the land. Others are simply unaware of the fact that in certain matters, including family law (for example, with respect to contracting marriages and divorce), the formal legal rules of the state of domicile have to be observed; otherwise, the intentions and acts of the parties involved are not legally enforceable.

Thus, a marriage that is contracted solely according to traditional Islamic rules may be socially accepted within a community, but it deprives the spouses of legally enforceable rights in the state of domicile with respect to the maintenance or inheritance usually connected to marriages. On the other hand, these women cannot obtain a divorce in state courts because they are not regarded as married according to the law of the land. Therefore they seek 'internal' solutions within their community.³⁰ Here, accessible information about the rules of the law of the land for immigrants is needed.

Furthermore, the socio-legal orders in many of the persons' countries of origin tend to perceive family matters as private matters, except for extreme cases of violence or other conflicts. This can lead to the avoidance of 'intervention' or conflict resolution on the part of the state, and for groups of immigrants to opt for merely informal, socially-accepted solutions. Again, there is a need for information about the protective function of state law for weaker parts of the family.

In addition, a lack of cultural sensitivity in some state institutions, including courts, may lead to distrust and reluctance. Evidence such as that from Canada³¹ supports this view. To this respect, courses or other means of information for state officials should become more established. The aim is certainly not to change the applicable law. Nevertheless, in my experience as a judge for several years, the feeling of being personally understood is in many cases crucial for sustainable conflict resolution, particularly in matters open to settlement.

Last but not least, new forms of socio-legal navigating are emerging, in particular among younger Muslim couples. They deliberately use the lack of legal validity of mere 'religious' marriages. By this, they can combine social acceptance of their relationship within the family and the community with avoiding the legal consequences of a valid civil marriage. Evidence from Denmark,³² for example, shows that such couples marry validly under the law of the land when children are born or when they decide to purchase real property. Apart from the religious legitimization aiming at the social environment, this behaviour very much reflects common usage in contemporary Western societies. Chapter 8 of this volume elaborates these cultural strategies in detail with respect to the Netherlands.

RELIGIOUS REASONS

With regard to religious reasons, we have to make a fundamental distinction between the case of using the law of the land under religious auspices on the one hand, and the rejection of that law by consequently applying shari'a in an informal way on the other.

Islamic norms may be applied *within the existing framework of the law of the land* as far as this law is dispositive for the parties involved. This is the case, for instance, in vast parts of contract law. As an example we may note the fact that various methods of investment are offered, which do not violate the Islamic prohibition of usury (*riba*, which according to traditional views means the general prohibition of accepting and paying interest).³³ Concerning project finance, Islamic legal institutions such as the *murabaha* or the *mudaraba* can be used.³⁴

These are certain forms of partnership intending to attract capital owners to participate instead of merely granting credit, the latter bearing the risk of contradicting the *riba*-rules. Commerce and trade have already responded to the economic and legal needs of traditional Muslims. German and Swiss banks, for instance, have issued 'Islamic' shares for investment purposes; that is to say, share packages that avoid companies whose business involves gambling, alcohol, tobacco, interest-yielding credit, insurance or the sex industry, all of which are illegitimate in shari'a.³⁵

In the United Kingdom, a special concept of 'Islamic' mortgages has been developed, which allows Muslims willing to purchase real estate to avoid conflicts with provisions concerning *riba* (when paying interest on 'normal' mortgages).³⁶ An Islamic mortgage consists of two separate transactions aiming at one single result. Until recently, each transaction was subject to taxation. Now the double 'stamp duty' has effectively been abolished, because it had been preventing Muslims from successfully engaging in the real property market due to the formal system of taxation without sufficient reason. Even the German state of Saxony-Anhalt placed an Islamic bond (*ṣukuk*),³⁷ 100 million euros as a start) based on a Dutch foundation a few years ago.³⁸ For traditional Muslims, the availability of such forms of investment in Europe is of considerable importance. To my knowledge, many of them lost huge sums of money in the past to doubtful organizations from the Islamic world bearing a 'religious' veil, or to similar organizations based in Europe.³⁹

In the field of matrimonial law, the tendency of implementing Islamic norms in optional law can also be identified in Germany in connection with matrimonial contracts.⁴⁰ Thus, in Germany contractual conditions regulating the payment of the 'Islamic' dower (*mahr* or *sadaq*) are possible and generally accepted by the courts (see chapter 9 in this volume).⁴¹ Other contractual regulations, especially those discriminating against women, could be void according to Paragraph 138 of the German Civil Code on the protection of good morals.⁴² So far there have been no court decisions on such issues, published or known. However, to my knowledge some German notaries refuse to assist in formulating wills⁴³ containing the classical Islamic regulation on half-shares for female heirs.

The second case – fundamentally different from the one above – is the informal application of Islamic norms for reasons of religiously driven *rejection of 'worldly' laws* given by 'infidels'.⁴⁴ 'Eternal god-given law' is then (wrongly⁴⁵) opposed to 'weak man made law'.⁴⁶ In Germany, one of the few voices publicly demanding the introduction of shari'a and Muslim arbitration to avoid any application of 'infidel' laws

is the extremist founder of an Islamic centre in Berlin. In a book on 'The Rules of Personal Status of Muslims in the West',⁴⁷ he repeatedly declares non-Muslims to be infidels and rejects German legal rules and judgments as 'rules of the infidel'.⁴⁸ Consequently, he urges Muslims in Germany to maintain the rules of traditional Islamic family law. Incredibly, he even argues that the traditional punishment for adultery – flogging or stoning to death – should be applied to Muslim women in Germany who are married to non-Muslims, even if they are unaware of the 'applicability' of these rules in their cases.⁴⁹ He denounces the German system of social security as evil, because it grants wives independence from their husbands' maintenance payments and thus enables them to 'disobey' their husbands.⁵⁰

Some other religious extremists and traditionalists also argue that Muslims should not accept the legal norms and judgments of 'infidels'. They should instead establish their own bodies of dispute resolution and elect their own judges.⁵¹ But would extra-judicial dispute resolution then create a viable solution for weighing up the relevant interests of the parties involved in a manner consistent with the community's standards, as well as with the indispensable principles of the law of the land (see the next section below)?

These two different situations illustrate the possible conflicts between the law of the land and a parallel normative order: it is up to the law of the land – representing the community of citizens and inhabitants of a country – to decide on the space and limits of optional law. Liberal legal orders tend to open up a broad space for individual choice for good reason. Nevertheless, there are sensitive areas of legal relations where typically parties with different kinds of bargaining power meet. The family and its legal interrelations is such a case in many respects. Here, the need for state protection for the weaker parties is obvious. In general, compulsory norms in all spheres of law are justified by this protective goal. In addition to this, they grant necessary common standards defined by legislation and thus peace in society. These standards are obviously subjected to changing social convictions and lifestyles; legislation will react to such changes sooner or later, legally protected same-sex relations being only one striking example of this. In any case, it is up to the law of the land given by the sovereign to define the limits of normative plurality. Thus, the establishment of informal structures opposing the principles of the law of the land is certainly a threat to the latter – and to the individuals protected by it.

Alternative Dispute Resolution (ADR) and Shari'a

Within the scope of private autonomy, the parties concerned are free to create legal relations within the limits of public policy and to agree on the ways and results of non-judicial dispute resolution. In matters of family law, relatives will often be consulted first. Should that fail, informal or existing formal dispute resolution bodies might be involved, as well as state courts. Certain decisions, such as officially recognized divorces, are restricted to state courts in Europe. Others might be open to ADR mechanisms. Some of the reasons for choosing ADR may particularly apply to family disputes: confidentiality and the choice of arbitrators on the basis of personal trust can be even more attractive than in other ADR cases, such as those concerning economic claims. Besides that, the specific reasons for preferring ADR are threefold: institutional, cultural and religious, as suggested above.

With regard to ADR in family matters, we can discern both a major advantage and a disadvantage. The advantage is that the official acceptance of ADR, which allows for freedom in choosing the rules applicable to the case at hand, might create a feeling of religio-cultural acceptance among those interested in preserving religiously based laws and conflict resolution mechanisms. On the other hand, there is a danger that the institutional homogenization of conflict resolution within a community such as the Muslim community may neglect existing internal diversity within that community, and may even increase internal pressure on 'weak' members of the community ('the paradox of multicultural vulnerability' according to Ayalet Shachar⁵²) to make use of the ADR mechanisms against their interest and will. This danger is real, since religiously based family laws tend to treat the sexes and religions unequally according to the patriarchal structures underlying these laws. Thus, in opting for ADR, one has to decide which interests are to prevail: those of religious communities as a whole (which means mainly the interests of their leaders) or the interests of individuals.

When it comes to the present situation in Europe, we find an extraordinary example of law and ADR influenced by Islam in the United Kingdom, where an 'angrezi shariat' (English shari'a) appears to be developing.⁵³ This seems to be due to the fact that many Muslims in Britain still have strong family ties to their respective native countries on the Indian subcontinent, governed by religiously orientated laws in matters of personal status.⁵⁴ In some cases, mainly those concerning family relations, they seek socially acceptable solutions for legal problems within the Muslim community through the aid of accepted mediators. The Islamic Sharia Councils in England, which were established in 1980-82, seem

to be examples of such a kind of mediation.⁵⁵ The Councils do not have an official function, but they focus in particular on mediation in the area of the law of personal status. There are frequently cases in which a Muslim wife has obtained an English divorce that she subsequently wants confirmed according to shari'a by the pronouncement of *talaq* (divorce) by the husband, so that the divorce will be accepted in the social environment within or outside the country. Similarly, it is very often the case that a husband refuses to divorce, and that while the wife wishes to do so, she is reluctant to start divorce proceedings in the civil courts.⁵⁶ Even if the matter does not go to the civil court, the Council's decision may become important; it is not legally enforceable in England, but it seems to be recognized in the state of origin as well as within the religious community.⁵⁷ Convincing the husband to pay the *mahr* (dower) constitutes a further possible task for the Council.

While the decisions of the Sharia Councils appear to be based on a relatively reform-oriented approach to the legal sources, they maintain the traditional framework of shari'a, including unequal treatment of the sexes and religions in general. Thus, the English legal system does not remain untouched by such proceedings, since they differ considerably from basic decisions in English family law. For example, the councils use the instruments given in some Islamic states for wives to obtain a divorce in court on the basis of the so-called *khul'*, which is a contractual or statutory right.⁵⁸ The wife, however, must then pay back the dower, which will very often have been intended to serve as an old-age pension. This somehow rewards the husband's persistence in refusing a divorce, which is not acceptable according to the standard of the law of the land. Certainly, an individual's personal status is a 'private matter', thus leaving scope for individual preferences, including those based on religious or cultural convictions in general. Nevertheless, the institutions of the law regarding personal status and, in particular, the balance of rights and duties among the persons involved not only affect society as a whole, but also reflect this society's basic common convictions concerning what is probably the most important part of social life. Therefore it is up to the national legislator to establish a legal personal status order that grants protection to everyone living in the country.

Thus, on the one hand, ADR can serve as an instrument to achieve socially accepted solutions within a community living at a certain distance from society as a whole. It might give access to groups that would otherwise refrain from any kind of formal (non-violent) conflict resolution. On the other hand, members of that community who refuse to use the community's special bodies for conflict resolution may well be accused of undermining the community's position, and of being a 'bad'

member. This could press individuals into using a religiously-driven system of conflict resolution against their will or interests, as the Canadian example concerning the debate on introducing shari'a boards in the Province of Ontario clearly demonstrates.⁵⁹ As a consequence, unconditionally accepting communitarian bodies such as these could lead to ongoing cultural segregation and to a 'culturalization' of individuals seeking their individual ways within a broader society. Introducing parallel power structures may endanger socio-legal cohesion: where common legal standards, such as those regarding equal rights of the sexes, religions and convictions, are considered to be fundamental for society as a whole, solutions that deviate from these will certainly cause massive tensions. At the same time, individual religious choices are endangered if these individuals are unable to avoid the application of religiously-based laws containing provisions that promote unequal treatment.⁶⁰ This is why most European legal orders do not allow family status disputes to be formally decided by ADR mechanisms.

Even in cases where ADR is formally accepted by state laws (for example, with respect to religious arbitration bodies such as the Beth Din and the Muslim Arbitration Tribunals in the United Kingdom⁶¹), the question remains as to whether the mere existence of an ADR agreement is sufficient. Certainly, within the scope of private autonomy, agreements between adult and mentally healthy persons are supposed to be valid and fair unless there is any specific evidence to the contrary. However, in the context of migration and societal segregation, formal freedom to agree or not to agree can be factually restricted to just one option, if the relevant party has to expect substantial disadvantages in social life in the case that they choose the 'wrong' option. Thus, if factual pressure on the weaker party is not a merely theoretical threat, the official recognition of communitarian bodies for ADR and their decisions could prevent the weaker party from obtaining the protection granted by the law of the land and enforced by official courts. As suggested above, despite various reforms in several Muslim states, shari'a of personal status does not grant equal rights to females and non-Muslims.

We should certainly reject the simplistic picture of Muslim women generally being oppressed, powerless victims. The German Supreme Court⁶² has stated that there is no room for the presumption that Turkish wives living in 'typical Muslim marriages' are deprived of autonomous decision-making in their daily lives. Nevertheless, the problems that do arise, which are often caused by cultural motivation, are obvious and openly discussed among Muslims themselves. The commissioner for women's affairs at the Central Council of Muslims in Germany has stated in an interview that, 'Islam is not in need of a commissioner for

women's affairs. It is not Islam that suppresses women, but men. And therefore Muslim women are indeed in need of a commissioner for women's affairs.⁶³ It should be mentioned in this context that the Central Council of Muslims in Germany declared in its charter on Muslim life in German society on 20 February 2002 (the 'Islamic Charta'⁶⁴) that Muslims are content with the harmonious system of secularity and religious freedom provided by the Constitution. According to Article 13 of the charter, 'The command of shari'a to observe the local legal order includes the acceptance of the German statutes governing marriage and inheritance, and civil as well as criminal procedure.' In the Swiss canton of Zurich, the Union of Islamic Organizations in Zurich⁶⁵ has expressly stated in its Basic Declaration that the Union does not intend to create an Islamic state in Switzerland, nor does it place shari'a above Swiss legislation (Section 1). The Union also expressly appreciates Swiss law concerning marriage and inheritance (Section 5). Similarly, the renowned French *imam* Larbi Kechat has stated that 'Nous sommes en harmonie avec le cadre des lois, nous n'imposons pas une loi parallèle.'⁶⁶ According to Belgian experience, the vast majority of Muslim women living in between the rules of Muslim family law and women's rights also claim the protection of Belgian substantive law.⁶⁷ Thus, initiatives aiming at the promotion of shari'a by ADR mechanisms should not be overestimated regarding their importance for Muslims living in the West.

Finally, advantages and disadvantages concerning the reliability of mediators and arbitrators have to be weighed up against each other. The idea of promoting officially-recognized ADR mechanisms for Muslims in Canada was to grant the arbitrators the necessary personal and technical skills, including legal knowledge, by creating a system of education and recognition for them. Indeed, one should be aware that refusing to recognize 'official' ADR bodies would not prevent people from using unofficial mechanisms involving persons of unclear background and skills. Two solutions are possible here: either to implement a system of official ADR or – the preferable approach in the author's opinion, for the reasons given above – to heighten the cultural sensitivity of the state court system and implement information programmes focusing on the advantages of the existing legal system.

The situation is entirely different when the ADR deals with conflicts other than those relating to marriage and divorce. Recently, a book appeared in Germany on how 'shari'a judges' settle criminal disputes among Muslims in the country.⁶⁸ While forms of mediation between perpetrators and victims are established in penal cases – usually under the supervision of the state (for example, according to Article 46a of the German Penal Law Code), the limits should be clear: the exercise

of pressure on victims or witnesses cannot be tolerated by the state. Nevertheless, the relatively small number of cases reported does not indicate the establishment of a parallel 'shari'a' system. Rather, it seems to be restricted to parts of the population originating from huge Middle Eastern family clans that are used to 'settling' conflicts according to their *cultural* traditions. In addition, special motifs relating to an immigration background may be well involved: official criminal prosecution in major cases would often lead to the loss of the perpetrator's residence permit, thus possibly affecting his whole family living within the country or family members in the country of origin dependent on his financial support. In such cases, there might be a tendency not to involve state bodies, so as to avoid such effects. Another case involving Salafis was reported in Spain in 2009. According to these reports, a group of seven persons originating from North Africa allegedly 'sentenced' a woman who had committed adultery to death in a 'shari'a court' condoned by the victim's family.⁶⁹ They were later set free because the woman had disappeared and thus could not identify the accused before the court. Until now, little research has been done in this field.

Preliminary Conclusions

In general, legal plurality does not usually endanger socio-legal cohesion in mere 'international' cases. If persons only stay temporarily, developing few links to the state of residence, far-reaching legal diversity can be seen as a natural phenomenon in a globalized world. But 'internal' cases involving considerable normative differences and citizens or long-time residents do have such potential. Thus, they require greater homogeneity in basic legal decisions. How, then, to properly differentiate between 'international' and 'internal'? In this regard, I would favour the choice of forms of residence as the most significant connecting factor in family law issues, as immigration countries usually do for good reason. Concerning internal law, it is necessary to undertake thorough studies of the scope and limits of dispositive law and ADR. In the field of family relations, state protection seems to be indispensable; thus, most Western legal orders are restricting the options available, especially with respect to basic legal institutions and ADR.

To overcome mere technical or institutional problems by applying the law of the land, international efforts to improve the mutual recognition of state decisions are needed. In those cases where documents are lacking, administrations and courts should be ready to find creative solutions or make more use of hardship rules.

Besides that, immigrants from countries maintaining a personal law system and their descendants should be reasonably informed about the legal situation of their new home country. Research in the United Kingdom in particular has shown that to a considerable extent, religious marriages have been concluded under the misguided impression that they are valid under the law of the land. This includes information about the role of state law and institutions in family-related issues: in the West, the state and its legal system have achieved a strong position in recent last centuries. Economic solidarity within extended families has been largely replaced by more or less state-run systems of social security. At the same time, the state has assumed the role of the main protector of weaker family members, particularly children and wives in patriarchal cultural environments.

Problems remain in cases where parties are reluctant to bring their cases to state courts for various reasons. If they refrain from doing so, without any alternative available, the conflicts will continue and might even escalate. Thus, if state court solutions are to be maintained, it is absolutely necessary to respond to people's reasons for rejecting these courts; something that can be achieved without touching the content of the law, for example, by increasing cultural sensitivity among judges and in administrations. In Germany, for instance, the Academies for Judges (*Richterakademien*), which serve as institutions for the training of judges and other legal personnel already in office, provide a number of short courses (up until now mainly taught by myself). Much more could be done in this field.

Practical experience proves that non-lawyers tend not to be interested in the law as such, but in the outcome of its application as far as they are personally concerned. Thus, in cases of differing options, the choice of the respective norms is often driven much more by personal worldly interest than by more abstract convictions about how the law should be in general. Therefore, the demand for shari'a should not necessarily be seen as a general refusal to accept the ruling law of the land. Nevertheless, the latter attitude does exist and is highly problematic in terms of social cohesion. In any case, it is mandatory to carry out a sound analysis of the considerably varying aspects – technical/institutional, cultural and religious – in order to provide acceptable solutions from the perspective of the legal order, as well as those affected by the law.

It is essential that the basic rules of secular legal orders in liberal societies are accepted by society as a whole. But can such legal orders not only be obeyed, but also accepted by devout Muslims, and seen as 'theirs' as well? The overwhelming majority of Muslims living in

the West seem to answer in favour of that. They recognize that these legal orders are also engaged in a search for justice. Understanding the 'maqasid al-shari'a', the deeper reasons for Islamic rules, in the search for an overlapping consensus between the latter and the rules of secular states, could be a viable solution at a contemporary intellectual level (see also chapters 12 and 13 in this volume).

Examples of public discourse by Muslims in recent European fora express aspects of the thinking behind this approach. At a conference held in Sarajevo in 2007, the prominent Bosnian Muslim lawyer Enes Karić, who teaches at the Islamic Faculty there, explicitly stated that the caliphate is not part of the religion of Islam. He considers shari'a to be a set of rules with moral goals, and secular states to be products of their actions. Therefore, in his view, 'A state which is willing to provide a sufficient social structure, e.g. funds for students or pensions, which intends to establish economic and social justice, which respects and promotes human rights, is an Islamic state in this sense.' (He also cited the Islamic maxim *adl al-dawla iman-ha, zulm al-dawla kufr-ha* – justice is the belief of a state, injustice is its unbelief – and said that the concept of citizenship is a major European achievement.) Finally, he said that the European secular democratic state under the rule of law fulfils the conditions for justice, and concluded: 'Therefore, we don't need a double system.'⁷⁰

It would thus be highly advisable to support a Muslim research and educational system driven by such thinking, dealing with the conditions of life in secular societies and their basic values. Muslims should play their fair part in the debate about the future of our common laws.

Notes

- 1 This article is based on research that took place in the context of RELIGARE (see www.religareproject.eu), a three-year project funded under the Socio-economic Sciences & Humanities programme of DG Research, under the European Commission's Seventh Framework Research Programme.
- 2 There are two fundamentally different understandings of shari'a. In a narrow sense, which is common among non-Muslims but also to be found among Muslims, shari'a stands for draconic penal sanctions, such as stoning to death or cutting off hands, and for unequal treatment of the sexes and religions. In a broader sense, shari'a means the totality of Islamic normativity, including religious commands and the set of methods for discerning and interpreting norms (*usul al-fiqh*). See Mathias Rohe, 'Application of Shari'a Rules in Europe', *Die Welt des Islams* special issue, 2004 (Vol. 44, No. 38), p. 323.

- 3 See Rowan Williams, 'Civil and Religious Law in England, a religious perspective' (lecture delivered on 7 February 2008), available at <http://www.archbishopofcanterbury.org/articles.php/1137/archbishops-lecture-civil-and-religious-law-in-england-a-religious-perspective>.
- 4 E.g. by the equally fanatic and poorly informed German feminist Alice Schwarzer, see Patrick Bahners, *Die Panikmacher, Die deutsche Angst vor dem Islam*, München: C.H. Beck, 2011, pp. 233-251, and the statement by the author, available at <http://www.zr2.jura.uni-erlangen.de/aktuelles/kanal.shtml>.
- 5 See Mathias Rohe, 'Islamic Norms in Germany and Europe,' in: Ala Al-Hamarneh and Jörn Thielmann (eds.), *Islam and Muslims in Germany*, Leiden/Boston: Brill, 2008, pp. 49, 62.
- 6 Of course, in the sphere of public law and especially of penal law, foreign law is not applicable. Public law regulates the activities of the sovereign himself, and penal law has to define rules that are necessary to grant a minimum consensus of common behaviour in the relevant society.
- 7 For further details see Mathias Rohe, 'Islamic Law in German Courts,' *Hawwa* 2003 (No. 1) p. 46.
- 8 See Marie-Claire Foblets and Adriaan Overbeeke, 'Islam in Belgium,' in: Richard Potz and Wolfgang Wieshaider (eds.), *Islam and the European Union*, Leuven: Peeters, 2004, p. 25; Edwige Rude-Antoine, 'La coexistence des systèmes juridiques différents en France: l'exemple du droit familial,' in: Philippe Kahn (ed.), *L'étranger et le droit de la famille*, Paris: La Documentation française (Mission 'Droit et Justice'), 2001, pp. 147, 161.
- 9 Ali Mezghani, 'Le juge français et les institutions du droit musulman,' *Journal de Droit International* 2003, pp. 721-722.
- 10 See Mathias Rohe, *Das islamische Recht. Geschichte und Gegenwart*, 3rd ed., Munich: C.H. Beck, 2011, pp. 171-181; 207-234.
- 11 For details see Mathias Rohe, 'Islamic Law in German Courts,' *Hawwa*, 2003 (No. 1), pp. 46.
- 12 See Lord Nazir Ahmad, 'Notes on the Judicial Situation of Muslims in the United Kingdom,' in: Thorsten Schneiders and Lamy Kaddor (eds.), *Muslimen im Rechtsstaat*, Münster: LIT Verlag Münster, 2005, pp. 71-72; Urfan Khaliq, 'Islam and the European Union: Report on the United Kingdom,' in: Potz and Wieshaider (eds.), *Islam and the European Union*, 2004, pp. 219, 246.
- 13 This prohibition is based on Qur'an surah 33: 4; for present legal orders in the Islamic world see D. Pearl and W. Menski, *Muslim Family Law*, 3rd ed. London: Sweet&Maxwell, 1998, chapters 10-25.
- 14 See Joaquín Mantecón, 'L'Islam en Espagne,' in: Potz and Wieshaider (eds.), *Islam and the European Union*, 2004, pp. 109, 130-132.
- 15 See Article 59 Código Civil in conjunction with the administrative provision of the general directorate of the Civil Registry and the Notary of 10 February 1993.
- 16 BOE 30-09-2003, Ley Orgánica 11/2003, de 29 de septiembre, de medidas concretas en materia de seguridad ciudadana, violencia doméstica e integración social de los extranjeros, 4.

- 17 See LG Frankfurt a.M. FamRZ 1976, p. 217; LG Osnabrück NJW-RR 1998, p. 582; AG Bremen StAZ 1991, pp. 232, 233; BFHE 152, 537; Staatsanwaltschaft bei dem LG Muenchen I IPRspr. 1996 No. 62; VG Kassel NVWZ-RR 1999, pp. 274, 275.
- 18 See Para. 34, Sect. 2 Social Code I.
- 19 See OVG Koblenz 12.03.2004 (10 A 11717/03), unpublished.
- 20 Court of Appeal in Bibi v. Chief Adjudication Officer [1998] 1 FLR 375. None of the women were accepted legally as widows. See the critical remarks by David S. Pearl, *Islamic Family Law and Its Reception by the Courts in England*, Harvard Law School Islamic Legal Studies program, Occasional Publications, May 2000, p. 14.
- 21 See Konstantinos Tsitselikis, 'The Legal Status of Islam in Greece,' in: Mathias Rohe (guest ed.), *Shari'a in Europe, Die Welt des Islams – International Journal for the Study of Modern Islam*, 2004 (Vol. 44 No. 3), pp. 402; Konstantinos Tsitselikis, in: Jorgen Nielsen et al. (eds.), *Yearbook of Muslims in Europe*, Leiden: Brill 2010 (Vol. 2), pp. 233-237, 242.
- 22 See Sebastian Poulter, 'The Claim to a Separate Islamic System of Personal Law for British Muslims,' in: Chibli Mallat and Jane Connors (eds.), *Islamic Family Law*, London: Graham&Trotman, reprint 1993, p. 147.
- 23 Available at http://www.icmresearch.co.uk/pdfs/2006_february_sunday_telegraph_muslims_poll.pdf (p. 14).
- 24 See Jacob Levy, *The Multiculturalism of Fear*, Oxford: Oxford University Press, 2000, p. 180; Sebastian Poulter, n. 22, p. 148; Lord Nazir Ahmad, n. 12, pp. 71 ss, 74 referring to the respective demands of the UMO and the Muslim Council of Britain.
- 25 See Mathias Rohe, 'Religiös gespaltenes Zivilrecht in Deutschland und Europa?,' in: Heinrich De Wall and Michael Germann (eds.), *Festschrift Link*, Tübingen: Duncker&Humblot, 2003, p. 409.
- 26 Shari'a applies there not only if Muslims are involved in inter-religious relations, but even in any other inter-religious cases, e.g. between Christians of different denominations; see Mathias Rohe, n. 11, pp. 208 s.; 379. Also: Maurits S. Berger, *Sharia and Public Policy in Contemporary Egyptian Family Law* (PhD thesis), Groningen: Hephaestus Press, 2006.
- 27 See for legal problems relating to the Jewish get (divorce), see Michael Freeman, 'The Jewish Get and the State,' in: Richard O'Dair and Andrew Lewis (eds.), *Law and Religions. Current legal issues* 2001 (Vol. 4), pp. 365, 377.
- 28 See e.g. the procedures in an unpublished Iranian divorce case in the local court of Siegburg/Germany in November 2011 (unpublished). Cf. the report 'Scheidung mit Richter und Mullah,' KStA 16.11.2012, available at <http://www.ksta.de/region/amtsgericht-scheidung-mit-richter-und-mullah,15189102,12032204.html>.
- 29 See Zaki Badawi, in: Michael King (ed.), *God's Law versus State Law*, London: Grey Seal, 1995, pp. 73, 75; Marion Simonet, 'L'étranger entre deux droits: les facteurs d'adhésion des populations étrangères aux systèmes judiciaire et juridique français,' in: Kahn (ed.), *L'étranger et le droit de la famille*, 2001, pp. 118, 139-141.

- 30 See S.N. Shah-Kazemi, *Untying the Knot. Muslim Women, Divorce and the Shari'a*, London: Nuffield Foundation, 2001, p. 47.
- 31 See Anne Saris, Jean-Mathieu Potvin, Naïma Bendriss, Wendy Ayotte and Samia Amor, *Étude de cas auprès de Canadiennes musulmanes et d'intervenants civils et religieux en résolution de conflits familiaux*, Montréal, 2007, pp. 44.
- 32 Report given by Anika Liversage on a RELIGARE expert seminar on Unregistered Marriages and Alternative Dispute Resolution in European Legal Systems on 4 Sept. 2012 in London (papers to be published with Ashgate in 2013).
- 33 See Abdullah Saeed, *Islamic Banking and Interest. A Study of the Prohibition of Riba and its Contemporary Interpretation*, Leiden/New York/Köln: Brill, 1996; Munawar Iqbal, *Islamic Banking and Finance*, Leicester: Islamic Foundation, 2001; Mathias Rohe, 'Islamisches Wirtschaften aus rechtlicher Sicht', in: Harald Herrmann and Kai-Ingo Voigt (eds.), *Globalisierung und Ethik*, Heidelberg: Springer, 2005, pp. 103, 107.
- 34 See Reinhard Klarmann, *Islamic Project Finance*, Zurich/Bâle/Genève: Schulthess, 2003; Kilian Bälz, 'A Murabaha Transaction in an English Court', *ILAS*, 2004 (Vol. 11), p. 117.
- 35 See Angelo Venardos, *Islamic Banking and Finance*, New Jersey: World Scientific, 2005, p. 70.
- 36 See Iqbal Asaria, 'Islamic home finance arrives on UK's high streets', *Muslim News* 25 July 2003 (No. 171), p. 6.
- 37 It is based on a combination of leasing contracts concerning the state's real property; see 'Finanzmarkt: Islam-Anleihe aus Magdeburg', *Die Bank* 1 January 2004.
- 38 See 'Sachsen-Anhalt bereitet erste islamische Anleihe vor', *FAZ* 06.11.2003, p. 31; 'Anlegen mit Allahs Segen', *Handelsblatt* 14 July 2004, p. 29.
- 39 See the reports on dubious investments in Turkey supported by certain organizations in 'Neuer Markt auf Türkisch', *SPIEGEL ONLINE* 29 January 2004 (accessed on 29 November 2004 at <http://www.spiegel.de/o,1518,283591,00.html>); 'Der verlorene Schatz', *Die Zeit* 29.11.2006, available at www.zeit.de/2006/46/G-Holy-Holdings?page=4; BGH VI ZR 57/09 23.03.2010, available at <http://beck-online.beck.de/?vpath=bibdata\zeits\dstr\2010\cont\dstr.2010.1040.1.htm&hl-words=#xhlhit>
- 40 See Rohe, n. 10, pp. 366.
- 41 See BGH NJW 1999, p. 574; OLG Celle FamRZ 1998, p. 374.
- 42 § 138 Sect. 1: 'A legal transaction which offends good morals is void'; see Rohe, n. 11, p. 366.
- 43 The validity of wills does not depend on such assistance according to German law of succession.
- 44 See only the clear statement of the extremist criminal Faisal Shahzad ('We do not accept your democracy or your freedom, because we already have shari'a law and freedom', 'Bomb plotter receives life sentence', *Washington Post* 6 October 2010, p. 10), who had planned to blow up a car bomb in Times Square in New York in May 2010.

- 45 Legal norms always need human interpretation when they are applied, irrespective of the reason for their validity; secular law has immunized its core rights (human rights rules) against democratic majority decisions which could try to restrict or abolish them; see Rohe, 'Islam and the Democratic state under the Rule of Law – and Never the Twain Shall Meet?', in: Marie-Claire Foblets and Jean-Yves Carlier (eds.), *Crises are Challenges*, Leuven, 2010, pp. 215-236.
- 46 See e.g. the very superficial and incorrect juxtaposition of shari'a and secular law in teaching materials written by Amir Zaidan (director of the IRPI – Islamisches Religionspädagogisches Institut – in Vienna). In his course 'Einführung in die Scharia – Kurs 1' (p. 16) he describes secular law as a matter in need of constant adjustment because of human incapability, as dependent on individual and particular group interests, as a mere reaction to social developments, as mostly confined in time and space and without giving any help with orientation. Obviously he has no conception of the very same challenges for shari'a in the past and present.
- 47 Sālim Ibn 'Abd al-Ghanī al-Rāfi'ī, *Ahkām al-ahwāl al-šakhsiya li-l-muslimin fi al-gharb*, Riyadh 2001. See Rohe, 'Islamisten und Schari'a', in: Berlin, Senatsverwaltung für Inneres, Islamismus, Berlin 2005, pp. 98, 109.
- 48 Rohe, 'Islamisten und Schari'a', 2005, p. 618.
- 49 Rohe, 'Islamisten und Schari'a', 2005, p. 394. See also the results of an essay competition among Muslims in Britain on issues concerning penal law (Abdullah Mohammed in: *The Federation of Students Islamic Societies, Essays on Islam, Essay Competition, Winning Entries 1995*, Leicester, 1995, pp. 14, 37). The winner quotes a Muslim author saying that Europeans are afraid of the application of Islamic penal norms (ordering harsh corporal punishments which are contradicting human rights) because they have a criminal nature and wish to commit unjustifiable crimes.
- 50 Rohe, 'Islamisten und Schari'a', 2005, p. 79.
- 51 See Ibn Baz and Uthaymeen, *Muslim Minorities – Fatawa Regarding Muslims Living as Minorities*, Hounslow, 1998, esp. pp. 71; The Fiqh Council of the Muslim World League on its 16th session in Mecca, reported in 'A message from Muslim scholars to Muslim Minorities in the West', *Daawah* No. 4 1422 A.H./Feb. 2002, pp. 8, 11.
- 52 Ayalet Shachar, 'The Puzzle of Interlocking Power Hierarchies,' *Harvard Civil Rights-Civil Liberties Law Review* 2000 (Vol. 35), pp. 385, 386, and also *Multicultural Jurisdictions. Cultural Differences and Women's Rights*, Cambridge: Cambridge University Press, 2001, p. 62.
- 53 See Pearl and Menski, 1998, pp. 3-81.
- 54 See Shah-Kazemi, 2001; Mathias Rohe, 'Religiös gespaltenes Zivilrecht in Deutschland und Europa?', in: De Wall and Germann (eds.), *Festschrift Link*, 2003, pp. 409, 415.
- 55 Pearl and Menski, 1998, pp. 3-81; Zaki Badawi, in: Michael King (ed.), *God's Law versus State Law*, London: Grey Seal, 1995, pp. 73, 75-80; Shah-Kazemi, n. 30.
- 56 See Ph. Lewis, *Religion, Politics and Identity among British Muslims: Bradford since the 1990s*, London: I.B. Tauris, 1994, p. 119 regarding the circumstances in Bradford; Shah-Kazemi, 2001.

- 57 See Pearl and Menski, 1998, pp. 3-100.
- 58 See Mathias Rohe, 2011, pp. 222-226; Pearl and Menski, 1998, pp. 3-100.
- 59 See Mathias Rohe, 2011, pp. 319.
- 60 See e.g. the decision in Re S 'Abduction: Intolerable Situation: Beth Din' [2000] 1 Family Law Report 454, 460; there, a Jewish lady was not allowed to bring her case under laws granting equal treatment, since it was her own religion that made Israeli Jewish courts competent to decide.
- 61 These should certainly be main issues of our research, if they are accessible.
- 62 BGH (Federal Supreme Court) NJW, 1999, 135.
- 63 "Verschleiert, aber selbstbewußt", FAZ 27.02.2001, p. 14.
- 64 An English version can be found at <http://www.islam.de/?site=sonstiges/events/charta&di=en> (accessed on 30.01.2004).
- 65 Vereinigung der Islamischen Organisationen in Zürich (VIOZ), Grundsatzklärung 27 March 2005.
- 66 Larbi Kechat, 'Le coran a été relevé au VII^e siècle: dans le contexte socioculturel de l'époque, entretien réalisé par Guy Gauthier', in *Panoramiques* 1997 (Vol. 29), L'islam est-il soluble dans la République, pp. 183, 189.
- 67 See Marie-Claire Foblets and Adriaan Overbeeke, 'Islam in Belgium', in: Potz and Wieshaider (eds.), *Islam and the European Union*, 2004, p. 34.
- 68 Joachim Wagner, 'Richter ohne Gesetz. Islamische Paralleljustiz gefährdet unseren Rechtsstaat', Berlin, 2011.
- 69 See 'Juicio islámico por adulterio a una mujer en Reus' (Salud Muñoz), *Elmundo*. es 06.12.09, available at <http://www.elmundo.es/elmundo/2009/12/06/espana/1260084030.html>.
- 70 Lecture held during a conference in Sarajevo organized by the German Friedrich Ebert-Stiftung on 19 November 2007. See also Enes Karić, 'Islam und Säkularismus', in: Hamideh Mohagheghi and Klaus van Stosch, *Moderne Zugänge zum Islam*, Paderborn: Schöningh, 2010, pp. 115, 121-124.