

## Chapter 5: Managing Family Conflicts – Alternatives and Mechanisms

### *Introduction*

“In Syria, disputes between spouses are mediated either by parents, grandparents, or the person who introduced the couple to each other in the first place. In Germany, this is not the case. If a couple is in a conflict, the partners have to resolve their disputes by themselves or they might resort to a marriage/psychological counsellor. Their parents would not like to interfere, and the couple also would be reluctant to involve their families.”

Mahmūd, who is married to a German woman, is aware of this cultural difference between the Syrian and the German society in terms of resolving marital conflicts. Informal institutions represented by the extended family and the norms set by them constituted the greatest guardian of family cohesion and the first refuge for resolving family disputes, particularly in rural and tribe/clan<sup>516</sup> communities.<sup>517</sup> The law is often used to resolve the

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516 Tribe means the group of people belonging to one father, or one grandfather. As for the clan, it carries a broader meaning and includes, in addition to those who belong to one grandfather, all relatives. See, Ibrāhīm Anīs et al., *Al-mu'gam alwasīt* (maqm' al-luqā al-'arabiya -maktabt al-ṣurūq al-duwaliya, 2004), pp. 602, 713. For more insight on the names and distribution of clans and tribes in Syria, see Akil Hussein, 'Division Defines Syria's Tribes and Clans', 2018 <<https://syria.chathamhouse.org/research/division-defines-syrias-tribes-and-clans>> [accessed 31 May 2022].

517 In most cities and rural Syrian provinces (Homs countryside, Hama countryside, Daraa, Damascus countryside, the countryside of Deir ez-Zor, Raqqa, Hasaka, Aleppo countryside, Quneitra countryside, etc.) the society is organized around clans or tribes. In many of these areas what is usually referred to as 'Customary Tribal Law', 'al-qadā' al-'urf al-'aṣā'iri', is prevalent as a conflict resolution tool. Syrian lawyer and researcher Rāmī Al-munādī defines it as "an informal social judiciary system dictated by customs, traditions and conflict resolution experiences in these societies." In many instances, tribal law played a crucial parallel and supporting role to the official government judiciary in Syria. In the aftermath of the Syrian crisis, tribal customary law regained power in some areas such as Al Jazeera. Tribal leaders in that region put together a document called 'Maḍbaṭat Taiy' بطاقة طيّ', which formed a special reference for tribes in the region and stated that it "contributes to resolving conflicts and organizing people's daily affairs in an internal tribal local

dispute when mediation efforts by elders of the two families or religious actors fail, or it serves to formally document the outcome of the conflict. In this context, the social historian Batatu wrote:

“For very long in most of Syria’s villages the family and, to a lesser degree, its extensions – the clan and the tribe – formed the fundamental units of life. From the standpoint of the peasants in these villages, the ties of blood and marriage transcended in significance all other social ties. In their eyes, the kin group enjoyed more moral authority than the state, which they in essence distrusted.”<sup>518</sup>

In doing so, he draws attention to an important point which is the public distrust of state institutions, particularly the judiciary, due to widespread corruption, nepotism, and bribery. It is one of the reasons why people have relatively avoided resorting to the judiciary to resolve their disputes in the Syrian context.<sup>519</sup>

In addition, resorting to formal judicial systems involves “expense, bureaucratic hassles, and social exposure”, so “it would appear reasonable that many individuals and families might avoid such a procedure of conflict resolution.”<sup>520</sup> More importantly, family affairs are broadly considered to be private matters, and there is no doubt that societal and cultural norms play a major role in the reluctance of many spouses, especially wives, to resort to the law, because of its association with “a shame culture” referred to by some of the wives that were interviewed.

As my research focuses on the factors of family disputes between Syrians, this last chapter of research examines the alternatives Syrian families resort

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manner.” In this way, the document constituted a law parallel to the law of the state. For more, see Rāmī Al-munādī and Āharīn, *Al-qadā’ al-āšā’irī fi Dir az-Zur* (Tribal Judiciary in Deir Ez-Zor) (Haramoon Center for Contemporary Studies, 2021), pp. 8–11; ‘Abd al-‘Ażīm ‘Abd Allah, ‘Sūriyā... Qānūn ‘āšā’irī la yata’āwn ma’ aš-ṣurṭah wa yahkum bi maqabti tāiy (Syria... a Tribal Law That Does not Cooperate with the Police and Rules with “Tāiy Prosecution”) <[https://snacksyrian.com/Syria - Law - Tribal - No - Cooperates - With - Police/](https://snacksyrian.com/Syria-Law - Tribal - No - Cooperates - With - Police/)> [accessed 16 September 2021].

518 Batatu, p. 217.

519 Lack of trust in the institutions and systems of native countries may be “imported” and maintained under certain living conditions in countries receiving migrants and refugees, as Mathias Rohe pointed out. See Mathias Rohe, ‘Alternative Dispute Resolution among Muslims in Germany and the Debate on “Parallel Justice”, in *Exploring the Multitude of Muslims in Europe*, ed. by Niels Valdemar Vinding, Egduñas Racius, and Jörn Thielmann (Leiden: Brill, 2018), p. 108.

520 William C. Young and Seteney Shami, ‘Anthropological Approaches to the Arab Family: An Introduction’, *Journal of Comparative Family Studies*, 28.2 (1997), 1–13.

to in resolving their disputes in the new German context. This will demonstrate the diversity and complexity of conflict resolution mechanisms and will reveal the extent to which families have returned to religious norms in general and Islamic “Sharia” in particular in their attempt to resolve or end the conflict between the parties. Although not all of the research group was Muslim, the majority of those interviewed during fieldwork were Sunni Muslims. Some of the thorny cases that have occurred in the context of asylum processes in the new German environment have emerged in this group, which I have seen as important to highlight. This does not turn a blind eye to the mechanisms used by families of different religions or communities as is shown in the data. Therefore, the focus of this chapter will be on two aspects: the first is on alternatives to the conflict resolution mechanisms which are used by Syrian family parties in the conflict through their attempt to resolve or end the conflict. The second relates to the mechanisms for resolving the conflict and the obstacles and complexities that stand in the way of practical solutions to these conflicts. In other words, these two aspects focus on where and how Syrian families settle their disputes.

### 5.1 Conceptual Framework: Normative Pluralism – the Interaction of Law, Religion, and Socio-cultural Norms

“Law is everywhere as a social phenomenon, based on cultural foundations, which the dominant positivist approach has unsuccessfully tried to ignore in order to privilege the state and its laws.”<sup>521</sup> Legal pluralism is often marginalized and questioned in legal discourse, which may be due to the dominance of Western legal theory that tends to be “monist (one internally coherent legal system), statist (the state has a monopoly of law within its territory), and positivist (what is not created or recognised as law by the state is not law).”<sup>522</sup> However, facts have proven that this belief is wrong,<sup>523</sup> as daily life shows a normative pluralism among different groups within a

521 Werner F. Menski, *Comparative Law in a Global Context. The Legal Systems of Asia and Africa* (Cambridge: Cambridge University Press, 2006), p. 82.

522 William Twining, *Globalisation and Legal Theory* (Cambridge: Cambridge University Press, 2000), p. 232. For more discussion on this point, see also Brian Z. Tamanaha, ‘Understanding Legal Pluralism: Past to Present, Local to Global’, *Sydney Law Review*, 30.3 (2008), 375–411.

523 Foblets, p. xi.

social space.<sup>524</sup> Therefore, as Rohe wrote in this context, “[n]ew mediation laws further encourage extra-Judicial conflict resolution in matters beyond the limits of mandatory law. Nevertheless, the scope and intensity of state intervention into the legal relation between private persons largely differed, and still differ in the different parts of the world. The less centralised and institutionalised states are, the more tribal, ethnic, religious, or local stakeholders are capable to exercise power in setting and enforcing legally or socially binding norms.”<sup>525</sup> This research challenges the central view of state law and calls for a new methodology for understanding the law by linking it to anthropology and its understanding of law as a social phenomenon.<sup>526</sup> Therefore, the concept of legal pluralism refers in short to “[t]hat state of affairs, for any social field, in which behavior pursuant to more than one legal order occurs.”<sup>527</sup>

In chapter three of this research, I referred to the developments in German laws with regard to integration policies that took place under the influence of the reality of increased migration from different countries to Germany. In chapter four, I reviewed some aspects of the overlap between social, customary, religious, and legal norms in the Syrian context.<sup>528</sup> The review included also the impact of new German social and legal norms on the family through the lens of conflict. For a comprehensive review, it is necessary to briefly highlight normative pluralism in Germany, its interaction with religious and social norms in general, and the cases of marriage and divorce in particular. This will form the entry point that

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524 For more insight into the debates about the admitting or non-admitting of legal pluralism, see Franz von Benda-Beckmann, ‘Who’s Afraid of Legal Pluralism?’, *The Journal of Legal Pluralism and Unofficial Law*, Vol. 34 (2002), 37–82.

525 Rohe, ‘Alternative Dispute Resolution among Muslims in Germany and the Debate on “Parallel Justice”’, p. 93.

526 Menski, pp. 82–84; Manfred O. Hinz, ‘Jurisprudence and Anthropology’, *Anthropology Southern Africa (Anthropology Southern Africa)*, 26 (2003).

527 Kalindi Kokal, *State Law, Dispute Processing, and Legal Pluralism. Unspoken Dialogues from Rural India* (London: Routledge, 2020), p. 3.

528 Islamic jurisprudence (Fiqh) has witnessed a great diversity throughout its various development stages. Social reality or “custom ‘urf” is one of the sources of this diversity. Some Islamic Sharia (Fiqhīya) rules were drafted taking into consideration customary norms and were implemented in many cases. This includes the “Habit is a Law” rule and the rule of “What is customarily known is equivalent to conditionally imposed rules”. The Syrian Personal Status Law takes into consideration these customary laws. For instance, if a wife’s dowry is not mentioned in marriage contract, the amount determined by custom will be assigned as her dowry. See Article 61, 54, 51 of the Personal Status Act.

will help understand why Syrian families are resorting to the alternative mechanisms that will be reviewed in this chapter. In other words, it will aid our understanding of the interactions within the Syrian family that exhibit tendency to avoid formal legal systems and to resort to the normative, religious, and cultural systems that they embrace.

Ever since the establishment of the Islamic Shari'a Council (ISC)<sup>529</sup> in Britain in 1982,<sup>530</sup> public political and academic debates on the application of certain Sharia norms, particularly in the family law side, have intensified in the European arena. Many of these studies have focused on the mechanism and role of these courts and how they are developed, but also on how Muslim communities negotiate by resorting to Sharia rules on resolving family disputes away from the institutions or court systems of the countries in which they live.<sup>531</sup> This controversy has also emerged in German circles, and there has been interest in topics related to the resolution of family disputes such as Parallel Justice<sup>532</sup> and Alternative Dispute Resolution (ADR).<sup>533</sup>

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529 "Shari'ah councils operate as unofficial legal bodies specializing in providing advice and assistance to Muslim communities on Muslim family law matters [...]. In essence, a Shari'ah council has three key functions, issuing Muslim divorce certificates, reconciling and mediating between parties and producing expert opinion reports on matters of Muslim family law and custom to the Muslim community, solicitors and the courts." Samia Bano, *Muslim Women and Shari'ah Councils. Transcending the Boundaries of Community and Law* (London: Palgrave Macmillan, 2012), p. 84.

530 Tanya Walker, *Shari'a Councils and Muslim Women in Britain. Rethinking the Role of Power and Authority* (Leiden: Brill, 2016), p. 46.

531 See John R. Bowen, *On British Islam* (Princeton: Princeton University Press, 2016); Mohamed M. Keshavjee, *Islam, Sharia and Alternative Dispute Resolution. Mechanisms for Legal Redress in the Muslim Community* (London: Tauris, 2013); Ihsan Yilmaz, 'Muslim Alternative Dispute Resolution and Neo-Ijtihad in England', *Alternatives: Turkish Journal of International Relations*, 2.1 (2003).

532 For more insight on the discussion on 'parallel justice', see Federal Ministry of Justice and Consumer Protection, *Is there a parallel justice system in Germany? Dispute resolution under the rule of law and Muslim traditions* (Federal Ministry of Justice and Consumer Protection, 2014), pp. 5–9; Universität Leipzig, 'Dr. Hatem Ellisie über „Parallelgesellschaften“, den Islam und die Herausforderungen für die Gesellschaft' <<https://www.uni-leipzig.de/newsdetail/artikel/dr-hatem-ellisie-ueber-parallelgesellschaften-den-islam-und-die-herausforderungen-fuer-die-gesell/>> [accessed 5 November 2021].

533 In a qualitative study together with Mahmoud Jaraba, who also published several publications on aspects of conflict resolution among Muslims in Germany, Rohe tried to examine parallel forms of justice in Berlin among Muslim communities on both sides of family law and criminal law. This was done through studying

In principle, the German Constitution grants religious groups the freedom to exercise their religious rituals, to form their own associations, and to be free to organize and manage their affairs under the condition that they remain subject to common law.<sup>534</sup> To understand the freedom to practice these rituals and their compatibility with common law (European or German), the distinction should be made between religious issues on one hand and legal ones on the other, as Mathias Rohe rightly explains:

“Religious issues are regulated by the European and national constitutional provisions granting the freedom of religion. It is mainly in the sphere of religious rules-concerning the ‘ibādāt (dealing with the relations between God and human beings) and the non-legal aspects of the mu‘āmalat (concerning the relations between human beings) – where a European sharī‘a is possibly developing.”<sup>535</sup>

Germany grants ample freedom to Muslim religious practices on its devotional side, and the Constitution preserves such religious practices and even preserves their public expression without a strict separation of state and religion, as in France or Switzerland.<sup>536</sup>

As for the legal field, the principle of legal territoriality prevails around the world. The application of foreign legal provisions, including Islamic

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informal arbitration and decision-making mechanisms among socially separated families and clans. Rohe has also written numerous articles in which he tried to reveal controls and restrictions or point at areas where Sharia can be applied in general under German/European secular laws – the Law of the land – through the alternative dispute resolution mechanism. See Rohe and Jaraba, p. 9, 12; Mahmoud Jaraba, ‘Private Dispute Mediation and Arbitration in Sunni-Muslim Communities in Germany – Family Conflicts and Divorce’, in *Marital Captivity. Divorce, Religion and Human Rights*, ed. by Susanne Rutten, Benedicta Deogratias, and Pauline Kruiniger (The Hague: Eleven International Publishing, 2019); Mahmoud Jaraba, ‘Khul’ in Action: How Do Local Muslim Communities in Germany Dissolve an Islamic Religious-Only Marriage?’, *Journal of Muslim Minority Affairs*, 40.1 (2020), 26–47.

534 § 140, 4 for. 1–2 of the Basic Law for the Federal Republic of Germany (Constitution for the Federal Republic of Germany).

535 Mathias Rohe, ‘Application of Sharī‘a Rules in Europe: Scope and Limits’, *Die Welt des Islams. Ereignisse, Entwicklungen und Hintergründe* (Frankfort: FAZ 2004), 323–50, here p. 326.

536 Ibid., Rohe, ‘Application of Sharī‘a Rules in Europe: Scope and Limits’. p. 327; Mathias Rohe, *Muslim Minorities and the Law in Europe. Chances and Challenges* (New-Delhi: Global Media Publications, 2007). p. 82–83.

provisions, is an exceptional case.<sup>537</sup> Thus, the applicability of foreign legal provisions, including Islamic provisions in Europe in general, is carried out at three levels:

A. Private international law, through rules governing conflict of laws in matters relating to civil law, including areas of family law. "The application of legal norms in Germany and in other European countries is often determined on the basis of the nationality of the persons involved rather than by their domicile. However, the application of such provisions must comply with the rules of the relevant national public policy."<sup>538</sup> Therefore, provisions of private international law are often ignored by Western courts as inappropriate.<sup>539</sup>

B. Optional civil law, where the application of certain Islamic rules relating to marriage contracts as an optional law in Germany and the acceptance by German courts of the regulation of the payment of dowry (mahr or ṣadāq) in marriage contracts is an example.<sup>540</sup> In this context, Sharia councils in Britain play a major role in trying to resolve some cases of family disputes by Islamic religious norms, especially in the case of religious divorce, particularly when the husband refuses to grant divorce, and in cases of dowry and inheritance. In Germany, arbitration decisions in such cases may be deemed invalid, especially those based on gender discrimination. Those procedures, such as marriage contracts and religious divorce, may not be recognized legally.<sup>541</sup>

C. Legal segregation with regards to religion, as some European countries (Greece, Spain, and Britain) have applied the provisions of Islamic law relating to family affairs to the Muslim population.<sup>542</sup> This is the case in some aspects of the organization of marriage and divorce contracts. In the

537 Rohe, 'Application of Sharī'a Rules in Europe: Scope and Limits', p. 334; Rohe, *Muslim Minorities and the Law in Europe*, p. 89.

538 Rohe, 'Application of Sharī'a Rules in Europe: Scope and Limits', pp. 335–36; see also, Rohe, *Muslim Minorities and the Law in Europe*, p. 45.

539 Shah, p. 3.

540 Mathias Rohe, *Der Islam in Deutschland. Eine Bestandsaufnahme*, ebook (München: Beck, 2018) <[https://play.google.com/store/books/details?id=eLxoDwAAQBAJ&rdid=book-eLxoDwAAQBAJ&rdot=1&source=gbs\\_vpt\\_read&pcampaignid=books\\_booksearch\\_viewport](https://play.google.com/store/books/details?id=eLxoDwAAQBAJ&rdid=book-eLxoDwAAQBAJ&rdot=1&source=gbs_vpt_read&pcampaignid=books_booksearch_viewport)>, p. 202; Rohe, 'Application of Sharī'a Rules in Europe: Scope and Limits', p. 339; Rohe, *Muslim Minorities and the Law in Europe*, p. 46.

541 Rohe, 'Application of Sharī'a Rules in Europe: Scope and Limits', pp. 339–42.

542 Rohe, 'Application of Sharī'a Rules in Europe: Scope and Limits', 342; Rohe, *Muslim Minorities and the Law in Europe*, p. 46.

German context, some Sharia rules can be applied through levels I and II, i.e. within the framework of Private International Law and Optional Civil Law.<sup>543</sup>

From the above discussion it can be concluded that, compared to other European countries, Germany takes a middle position on this issue. While on the one hand it accepts the application of certain religious and cultural norms of Muslim minorities under its official legal systems, it does not recognize any normative religious regulations that take place outside its legal system, except within the limits of arbitration and official mediation as long as they do not conflict with the general rules of their legal systems. For instance, even though religious marriage is permitted within religious associations,<sup>544</sup> these contracts have no legal recognition or official status.<sup>545</sup> The question arises as to how Syrian families interact with this new and different normative pluralism. This is what the following sections will attempt to review.

## 5.2 Different Forums for Conflict Resolution

Alternatives and mechanisms for resolving disputes may vary based on many criteria. Those criteria play a major role in directing the conflicting parties to these alternatives or mechanisms. The alternatives adopted may vary according to the nature of the conflict between the parties, the social environment from which they originate, the family's religiosity, the religious sect to which the spouses belong, or the family's relations with the

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543 Rohe, *Muslim Minorities and the Law in Europe*, pp. 113–114.

544 Generally, Muslims can conclude “religious” marriages totally in private if they wish to do so. One new exception is religious marriages involved with minors, which is an offense under the criminal law. § 180 para. (1) of the Criminal Law states: “Whoever promotes sexual acts of a person under sixteen years of age on or in front of a third person or sexual acts of a third person on a person under sixteen years of age 1. through his mediation or 2. by granting or procuring an opportunity is liable to a custodial sentence not exceeding three years or to a monetary penalty.” Para. (2) also states: “Any person who directs a person under the age of eighteen to perform sexual acts for remuneration on or in front of a third party or to have such acts performed on him or her by a third party, or who encourages such acts through his or her mediation, shall be punished by imprisonment for not more than five years or a fine.”

545 Pascale Fournier and Pascal McDougall, ‘False Jurisdictions: A Revisionist Take on Customary (Religious) Law in Germany’, *Texas International Law Journal*, 48.3 (2013), 435.

social environment. This section of the chapter will review the alternatives used by Syrian families while delineating some of the mechanisms that parties use to find solutions to these conflicts.

### 5.2.1 Resort to intermediaries from extended family or friends – home ownership in exchange for divorce

“The custom is that, when problems happen, the family elders or dignitaries (cousins, uncles) interfere to resolve the conflict [...]. Here [i.e. in Germany] nobody interferes.” Tāriq narrates many of the details related to the conflict and its proceedings before it ended in divorce. I mentioned earlier (in chapter 3 and 4, section 4.2.2.3) that Tāriq’s in-laws did not want to stay in Germany and thereof decided to take his wife (their daughter) with them when they returned to Syria. Following that, the parties strove to reach a solution to resolve the conflict. Tāriq turned to his cousin, who lives in Syria, because of his revered status in the family, as he describes him as “a university professor, imam of a mosque and a dentist.” His cousin suggested to the wife to communicate with her husband directly and reach an agreement with him away from her family’s interventions. However, the strictness of the wife’s family, especially the mother, during the mediator’s meeting (Tāriq’s cousin) with the wife and her family prevented him from reaching a solution that satisfied both parties. With things reaching a “dead end”, there was only the option of separation. “In matters of family law, relatives are often consulted first”, as Rohe writes.<sup>546</sup>

Tāriq generally refused to divorce, but under the insistence of his wife’s family he decided to grant the wife a divorce in exchange for his wife giving up ownership of a house that he registered under her name. Although this conflict case has reached the Syrian courts, the contribution of family mediators has been the key factor in resolving it. It is necessary to convey Tāriq’s account in this regard about the complexities of this conflict, the processes in which the divorce proceedings were conducted, and the resolution of the dispute under the mediation of his cousin:

“I bought a house in Syria, and I registered the ownership documents under my wife’s name. She was my life partner. When her family asked me to divorce her, they asked that I give her half of the property. How

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546 Mathias Rohe, *Alternative Dispute Resolution in Europe under the Auspices of Religious Norms* (RELIGARE Working Paper, 2011).

is that possible?! I paid half of the price of this house from inheritance money following the passing away of my father in Germany. I paid the rest through money I saved while here in Germany. Her family argues that I should give her half of the house because the savings were from her Job Center social benefits as well as mine. The rest I borrowed from her uncle. Half of the house! Her money only amounts to 5 percent of the house value. I told the family mediator that I will not divorce until she transfers the house property to me. I put them under pressure and told them to give up the house. Then, I would divorce. They agreed to do so under the condition that I divorced her verbally and this is what happened. Later, I completed the official divorce documents. My cousin called me and said I was on the phone speaker so that they could hear me. So, I divorced her verbally saying: I divorce you. According to Shari'a Law she is, yet this is not a valid divorce. I refused to divorce her officially until the property transfer papers were signed (which means that the divorce took place in exchange for home ownership)."

Tāriq's narrative reveals many of the problems that have permeated the conflict resolution process. Since his wife's family is in Syria, Tāriq has had to resort to intermediaries from his family to resolve the dispute between him and his wife, and this highlights the great role played by the elders of the families and the absence of civil institutions specialized in family disputes. It also shows that the law is a step behind the mediation of the elders of the family when it comes to family affairs. Tāriq argues in his account that his "verbal" divorce was coerced and therefore considered to be illegal. According to some schools of jurisprudence in Islam, his point of view is valid, since forced divorce under threat or inflicting monetary damage is considered void by most Islamic jurisprudents.<sup>547</sup> This view is in harmony with the Syrian Personal Status Law, as Article 89, paragraph 1 states that "[d]ivorce is considered void if forced or obtained under the state of intoxication or mental illness [...]."<sup>548</sup> This stage of the case (forced divorce) has not been brought before Syrian courts. In fact, some form of coercion that reached the extent of blackmailing has been exerted by both parties involved. The most difficult level of exploitation is the travel of the wife and her family with Tariq's child (2 years old) to Syria and

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547 Kamāl Bin as-Saiȳd Sālim, *Ṣaḥīḥ fiqh as-sunnah (True Fiqh of the Sunnah)* (Cairo: al-maktabah at-tawfiqiyah, 2003), Part 3, p. 42.

548 § 89 para. 1 of the Personal Status Law.

their realization that Tariq was unable to obtain any right to custody of him or even not allow Tāriq to see him through social media unless they wanted to.<sup>549</sup> Conversely, Tāriq took advantage of his right to divorce to transfer the ownership of the house to him, and the wife and her family found in his bargaining over the ownership of the house an opportunity to expedite the divorce or khul' procedures. According to classical Islamic jurisprudence, it is difficult to decide who has the right to own the house without knowing many details such as, why did the husband register the house in the name of his wife? What is the amount of money that the two parties contributed to buy the house (the narrative of the other party, i.e. the wife)? Especially since the husband's account shows a contradiction, as once he claims that he inherited half the price of the house from his father after his death, and at another time he indicates that he borrowed this amount from the wife's uncle. Extortion practices (whether justly or unjustly) are common, especially on the part of husbands, as they try to use the reconciliatory attempts led by family figures to compensate for marriage expenses such as the dowry and other costs, and this in many instances turns out to be extortionate. Basically, this case reveals several normative conflicts that the parties use in many directions.<sup>550</sup> The case also shows the complexities pertaining to the spouses' financial income (social assistance) in the German context and their impact on negotiations for a mutually satisfactory solution. The effects of economic factors on the differences between spouses were discussed in the previous chapter.

Although some families remained loyal to the role of family elders or dignitaries in mediating conflicts, the dispersal of families in many countries and their physical distance have greatly hampered the effectiveness of this aspect in the German context. Sāra points out how her uncle –her mom's brother who lives in a Gulf Arab country – came to Germany and played a big role in mediating between her parents. When the family learned of Sāra's mother's request for divorce, her brother tried to intervene in an attempt to dissuade her from this decision. "As you probably know, familial

549 Tariq indicated that at one time he was prevented from communicating with his child (who is now 8 years old) for more than a year. He also indicated that he had asked the judge "verbally" not to allow his wife and her family to deprive him from seeing his child, but his request was ignored because the judge realized that he could do nothing in this case, because he does not have any legal mechanisms obligating the wife to do so.

550 This point will be discussed in the German context in the second part of this chapter through the mechanisms and contraindications of conflict resolution.

and social ties are strong [...] [Quoting from her uncle addressing her father and mother:] You are our brother in-law. You should not desert her while in a foreign country [...]. He is your husband [...]. You also should not leave him in a foreign country." None of the couple requested the mediation of the uncle. However, his intervention was the result of social and cultural factors specific to women's status. "He did not want to see his sister's marriage collapsing. He tried to mediate between them, and he succeeded in fixing the relationship." Soon after, conflicts renewed between the couple, and the husband requested the intervention of the wife's aunt to dissuade his wife from divorce. Nonetheless, mediatory efforts were unsuccessful this time, and their relationship ended in divorce. In exile, wives became free from the pressure of parents and their extended family. This has weakened the influence of parents and family on wives in general.

Due to the weak role of extended family mediation, many of those interviewed have resorted to the network of friends surrounding them in their new environment, which constituted a robust alternative compensating for the absence of the role of parents or the extended family. I have been involved several times in attempts to resolve some of the disputes between some couples with whom I have strong friendships. Even though Sāmer has a network of German friends, he prefers to resort, as he actually did, to his Arab friends. The reason, as Sāmer points out, is that "the Germans will not understand us."<sup>551</sup> Cultural differences indeed may hinder understanding "the other" in the context of these conflicts. Alexander Collo writes about family counselling institutions in identifying the factors complicating marital disputes regarding child custody among refugees or migrants (Syrians and Afghans) in the German context: "Counselling centers are seldom staffed and organized in a qualified manner to address the situation of migrants [...]. Moreover, these centers can hardly do justice to the cultural and linguistic heterogeneity of the various cultural groups. On the whole, migrants, therefore, seldom turn to them."<sup>552</sup>

The network of friends sometimes plays a negative role, as friends often have no experience in dealing with family disputes and therefore may fall into bias on one side or suggest solutions that aggravate disputes instead of resolving them. Rāmā recalls how a friend of her husband who mediated to reconcile them tried to convince her to leave her spouse because there

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<sup>551</sup> This, in turn, is an indicator of the ineffectiveness of traditional German civil institutions in dealing with such conflicts.

<sup>552</sup> Collo, p. 28.

is “a great chance that she will find a better one.”<sup>553</sup> This in turn complicates conflicts further. Family or imam interventions carry a moral and religious dimension that is not necessarily provided by friends’ network. Consequently, the outcome of friend’s interventions might be negative and more complicated than those of other actors.

### 5.2.2 Resorting to religious actors – attempting jurisprudence

Despite many conflicts within families, the ways in which husbands and wives address them remain different and varied. Despite many cases of marital conflicts with those who were interviewed, the option of resorting to religious actors was excluded by the majority. This option may be used by a certain segment of Syrians, often those who relatively trust these imams or the religious establishment. The discussion below depends largely on interviews with religious actors and their experiences in mediating marital disputes.<sup>554</sup>

One or both of the couple’s parties are often received in the mosque or church, and religious actors sometimes meet with the parties (spouses) in their homes, as Imam Aḥmad and Pastor Burhān mention. Pastor Burhān, Duhā (his assistant) and Imam Aḥmad all point out that the majority of those who come to solve their problems are women. On the other hand, Imam Ḥālid estimates that the majority of those who seek his help are men, while Imam ‘Umar believes that the number who come to see him from both sexes are similar. This illustrates the diversity in their experiences in resolving marital conflicts.<sup>555</sup>

Solutions provided by religious actors are often of a preaching nature, including advising both parties to be patient or trying to persuade one party to cede to the other party so that the marital relationship can continue. Imam ‘Umar refers to the types of solutions they offer as “to a great extent preaching, the imam presents a preaching role.” Pastor Burhān elaborates on the aid they provide for couples:

<sup>553</sup> Especially in the new German context, where the number of males exceeds the number of females among Syrians. Women are now aware of this and exploiting this gap in their favor.

<sup>554</sup> Druze, Alawis or Ismailis have no religious references or worship places in Nuremberg. This might be the case all-around Germany. Thus, they are unlikely to resort to religious actors.

<sup>555</sup> Nuremberg, 3 February 2020.

“We have spiritual support through prayers and verses from the Bible emphasizing love, forgiveness, sacrifice, understanding, faith, and patience, this is a key part of resolving differences. The second part is to see what the problem is, and how we can solve it. Many problems arise from a misunderstanding, for example, there might be a difference in the environments they come from. What I consider as a taboo, she considers as a normal thing. What I see as right, she sees a wrong.”

Pastor Burhān generally proceeds from the Gospel’s view of men and women and the differences between them to understand the actions of each party and bring the views between the two parties closer as he indicated.

In addition to this preaching role, imams sometimes play a role in applying some Islamic Sharia rules as alternatives to resolve differences related to financial issues, such as the distribution of money provided as financial assistance between the two parties, “i.e., the dispute is material and we try to satisfy the parties, for example when the disagreement is on salary (social assistance payments) [...]. I redistribute it based on Sharia law, and usually the couple agrees to this. Especially if the woman was asking for her right in the money based on Sharia and not the law. Most of the women here are religious, and a woman in Islam has financial independence and really the salary is her right. Some cases were not solved by the way, we were reaching a dead end, they were both stubborn and things will end in divorce”, as Imam Ahmād narrated. Despite Imam Ahmād’s conviction of the classical vision of Islam regarding women’s financial independence, in other words their right to keep money and the obligation of the husband to maintain them at home, he still has another view with regards to solving these disputes in the German context:

“It is true that women are entitled to get a salary here in Germany. However, they also have an obligation to contribute to the household’s expenses. It is not reasonable that she gets hold of her Job Center salary, and at the same time the husband is required to pay for clothes, food, electricity, water [...]. Is it fair that she takes her salary and then will also have a share in the children’s money?! And then he will spend on the household! It is not right. Either they share the household expenses in half, or – as I used to suggest – the wife takes the third of her salary and then the husband will pay the household expenses. In Islam, if someone would leave a will, he is allowed to allocate up to one-third of his money. So, one is entitled to one-third of his money, and the rest is left for the inheritors. This is how I resolved it.”

Although Imam Ahmad tried to use the analogy, ‘*qiyās*’<sup>556</sup> which is one of the sub-sources of the Islamic legal system, i.e. analogous the will to divide the salary provided as financial assistance between the spouses, his jurisprudence in accordance with the same analogy rules is not correct. The testator willed that his money is disposed in this way, while the German state that provided social assistance to the wife did not request that the money provided to the wife should be divided between her and her husband, and therefore the money belongs to her. Imam Ahmad’s awareness of the new context, which is totally different from the previous context in which the couple lived, is what prompted him to issue this type of fatwa and to object that the husband bore the burden of the household budget solely.

Often, solutions provided by religious actors are confined to religious preaching and fatwas whenever they are involved in marital disputes that require radical solutions. In certain cases, their involvement might exceed that to the application of certain Sharia provisions such as in the case of divorce or ‘*khul*’.

### 5.2.3 Recourse to judicial systems

In the case of Tāriq, whose conflict with his wife and wife’s family I have described above, the dispute resolution process eventually moved into the Syrian court system and continued as the following:

“What was left was that divorce had to be made in court. The wife’s family demanded that my family should not say that I am out of the country when the court notification arrives at my family’s place of residence in Syria. This would mean that I received the court’s notification and refused to attend. In this case, the judge would be strict in his ruling and would give her all her rights (the dowry). Thus, the judge would grant her divorce with all her rights. My lawyer advised me that this would incur damages on me (the loss of the dowry money) and he also advised that my family should tell that I am outside the country. Her family filed for ‘*Khul*’.”

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<sup>556</sup> *Qiyās* or analogy is defined as the application of a sharia rule that was mentioned in Quran and Hadith to another case that is not mentioned in Quran and Hadith based on their similarity in meaning and in justification. See Birgit Krawietz, *Hierarchie der Rechtsquellen im tradierten sunnitischen Islam* (Schriften zur Rechtstheorie 208) (Berlin: Duncker & Humblot, 2002), p. 204.

The judge asked Tāriq by phone about his position vis a vis his wife, and he replied, “I do not force anyone to live with me [...]. I gave her up (meaning his wife) for the sake of taking the house; I did not give her up because I no longer want her, I agreed to divorce because I cannot be in the same place with her, I have no choice.” The unilaterality of divorce (exclusively a right of the husband) and imposing dowry payment on the husband after divorce sometimes fuel complex conflict processes, as in Tāriq’s case.<sup>557</sup>

There is still a trend among a segment of Syrians to resort to Sharia courts in Syria instead of German courts for many reasons that will be discussed below. Sāra says that

“her mother hired a lawyer in Syria to separate her from her husband [Sāra’s father]. In order to do so, the lawyer filed a khul’ lawsuit in Syria. The court notification was being sent to my grandparents’ address so that someone would attend the court hearing on behalf of my father. Nobody would attend, and consequently the court hearing would be annulled and the decision would be postponed. In Syria, the courts are usually on the side of men. So, if a husband refuses to grant divorce, the court proceedings might extend for one or two years to finalize the divorce papers depending on how experienced the lawyer is. [...] My father refused to divorce.”

However, after things reached a dead end, he agreed to divorce his wife. Sāra indicates that her father sent an audio file to his wife’s family where he utters the divorce words in accordance with Islamic teachings, and then he sent someone to represent him to finalize the divorce in court. I asked Sāra why her parents had gone to Sharia courts. She said that their marriage was not registered at the Civil Status Service, the “Standesamt”, in Germany, even though they were married for a long time in Syria.

It is remarkable that in the previous two cases the Khul’ and divorce were done through social media. Syrian courts are aware of the complex situation of expatriates, their large numbers and their growing need for such contracts, whether marriage or divorce. Syria’s first Sharia court judge, Mahmūd M’arāwī, therefore announced procedures to facilitate these transactions by conducting them on social media and in the presence of two witnesses.<sup>558</sup>

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557 Fournier and McDougall, p. 460.

558 Șawt Al-‘Aşimah, ‘Kitāb aš-ṣaiḥ mamnū’ wa tashīlāt litatbīt az-zawā’id min ḥāriq sūriyā’ (‘The Imam’s Marriage Contract Is Forbidden and Facilities Are Provided to

### 5.3 Mechanisms and Obstacles to Conflict Resolution – Causes and Results

Meanwhile, another segment of Syrian refugees preferred to resort to German courts to terminate marriage, as in the case of Wā'il, who belongs to the Druze community. After a one-year separation from his ex-wife, Wā'il hired a lawyer to finalize the divorce. Wā'il did not turn to the Druze Confessional Court to get a religious divorce, he only used German courts. Therefore, as he points out, “we are not divorced in Syria yet.” He seems not to know a lot about religious divorce in his sect. When asked, he said: “To be honest, I do not know for sure. But I think I should be uttering the divorce words three times.” The Personal Status Law of the Druze community considers that divorce is the right of the couple. That is, it is not limited to the husband, and it does not fall simply by the verbal uttering of the divorce words as in the Syrian Personal Status Act for Sunni Muslims. Only a judge of the Druze Sect Court can annul a marriage contract as stipulated in Article 37.<sup>559</sup> Thus, the sentence “Druze Sect Judge” dictates that any divorce ruling by husbands is illegal and does not terminate the marriage contract. In the case of Wā'il, his position on religion, “which means nothing to him”, as he points out, and his rebellious attitude towards societal norms explain why he did not resort to his sect’s court in order to obtain divorce.

### 5.3 Mechanisms and Obstacles to Conflict Resolution – Causes and Results

This section reviews alternative resolution methods for familial conflicts in the German context and religious jurisprudence views on family issues, particularly with regards to marriage and divorce. It also examines the implications of these views and the practical interaction of Syrian families with them in the German context. This section looks at how actors resolve their familial conflicts in the German context through alternative mechan-

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Establish Marriage from Outside Syria), *Al-āsimah, Ṣawt*, 2018 <<https://damascusv.com/archives/3264>> [accessed 13 October 2021].

559 It should be noted that lawyer Camille Mulla, director of the Druze religious courts in Israel, stated that the Personal Status Act, which is based on the Law of the Sect in Lebanon, annulled the article which required a court a sect judge ruling for divorce to become effective in 1979. The decision to divorce may therefore be valid under certain conditions without the judge’s decision. For further explanation, see Kamil Mullā, ‘At-ṭalāq fi al-qānūn al-dīnī al-durzī’ (‘Divorce in Druze Religious Law’), *Al-‘imāma (Al-Amama)*, 117 (2014) <[http://www.al-amama.com/index.php?option=com\\_content&task=view&id=1626](http://www.al-amama.com/index.php?option=com_content&task=view&id=1626)> [accessed 16 September 2021].

isms. In order to do so, I first explain the reasons for resorting to religious marriages among Syrians and the complexities of obtaining a divorce resulting from this type of marriage, before I turn to familial conflicts and divorce. I will also draw attention to how procedures in religious marriage and divorce are factors that complicate the resolution of such disputes and increase chaotic arbitration, whether it is conducted by the conflicting parties themselves or when resorting to the other parties reviewed in the first part of this chapter.<sup>560</sup>

### 5.3.1 The jurisprudence of Muslim minorities – various doctrinal opinions

I begin by introducing some necessary background information on various doctrinal opinions in the jurisprudence of Muslim minorities on how marriage and divorce should be handled. The two cases to be discussed in this section – marriage and divorce – relate to religious rules or laws or the so-called jurisprudence “al-Fiqh”. The increased interest of Muslim scholars in Muslim minorities in Western societies, especially following the great waves of immigrations of Muslims to the West, has led to the emergence of the so-called “minority jurisprudence” “*fiqh al-aqaliyāt*”. Minorities here refer to “every human group in any country, different from the majority of its people in religion, sect, race, language, and so on.” This notion refers to Muslims living outside Dār al-Islam (Land of Islam) who, in the view of Qaraḍāwī, may be natives or immigrants.<sup>561</sup> The ancient divisions in the classical jurisprudence books between Dār al-Islam and Dār al-Kufr (Land of disbelief) were somewhat reflected in jurisprudence of Muslim minorities, which eventually produced and continues to produce contradictory views regarding Muslims’ practice of their religious rituals as a minority within the European context. A current emerged that rejects these classical divisions as the jurisprudence of former jurists concerning the “description of the reality” of that specific historical moment which represented a war with the other at that time.<sup>562</sup> Nonetheless, the fatwas on the implications of

560 It should be noted that the focus in this section will be on Muslim families and Muslim religious actors, the “imams”, as the church run by Pastor Burhan – as mentioned – does not engage in any procedures related to divorce and its repercussions.

561 Yūsuf Al-Qaraḍāwī, *Fi fiqh al-aqaliyāt al-muslimah* (In the Jurisprudence of Muslim Minorities) (Cairo: Dār al-ṣurūq, 2001), pp. 15–17.

562 Faiṣal al-Mawlawī, *Al-usus aš-ṣarīya lil’alāqāt bain al-mulimīn wa ‘aīr al-mulimīn* (The Legal Foundations of Relations between Muslims and Non-Muslims) (Beirut:

this division remained contradictory, and no unified opinion was adopted to resolve this old-new dispute. This vision was reflected in fatwas on marriage and divorce issues related to Muslims living as minorities under secular legal systems.

With regards to marriage, there are two trends in relation to the legality of the civil marriage contract conducted in non-Islamic courts. The first believes in the illegality of this contract because the conditions of the religious marriage contract, which boil down to the positive acceptance between the husband and wife, the witnesses and the guardian, are not realized in such contracts.<sup>563</sup> Therefore this contract is considered “corrupt” فاسد, meaning it can still be corrected.<sup>564</sup> This view was adopted by the Sharia Scholars’ Assembly, which includes a group of scholars from various Muslim countries, and by Sālim bin ‘Abd al-Ġanī al-Rāfi‘ī, a Salafist-oriented scholar, in his dissertation on the personal status provisions of Muslims in the West and Germany.<sup>565</sup> In contrast to this view, another trend adopted by Faiṣal al-Mawlawī, Vice-President of the European Council for Research and Fatwa, believes in the legitimacy of this contract because the main pillar of Islamic marriage contract (conducted according to Sharia) is the acceptance and agreement between the two parties, a condition that is present in civil marriage contracts. According to this view, the consent of the bride’s guardian and witnesses are conditions that are not agreed upon in all Islamic doctrines. It should be noted that despite the legality of the contract, one or both parties could be considered to have sinned if one or both of them hold

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dār al-rašād al-īslāmiyah, 1987), pp. 91–106; Tahā Ĝābir al-Ulwāni, ‘Madḥal ilā fiqh al-aqaliāt’ (‘An Introduction to the Jurisprudence of Minorities’), *Islamiyah al-ma’rifah*, 5.19 (1999), 29; Rohe, *Muslim Minorities and the Law in Europe*, p. 138.

563 For more details about these conditions and the difference between Islamic schools of thought about them, see Mathias Rohe, *Islamic Law in Past and Present*, trans. by Gwendolin Goldbloom (Leiden: Brill, 2015), pp. 104–09.

564 Jurists distinguish between a corrupt and a false contract: The former is corrected, and therefore the relationship of the disabled is not adulterous, while the false contract is not considered to be the basis.

565 Assembly Members, *Kitāb al-mu’tamar at-tānī limaġma’ fuqahā’ as-ṣarī'a bi'amriķā* (The Book of the Second Conference of the Assembly of Sharia Jurists in America) (Copenhagen: Assembly of Sharia Jurists in America, 2004), pp. 37–38; Sālim bin ‘Abd al-Ġanī al-Rāfi‘ī, *Aḥkām al-āḥwāl al-ṣaḥṣiya llmuslimin fi al-ġarb* (Rulings on Personal Status for Muslims in the West) (Beirut: dār ebn ḥazm, 2002), p. 403.

the nationality of an Islamic country, because they have resorted to a non-Islamic law while being able to go to the Sharia courts in their countries.<sup>566</sup>

With regards to divorce rulings issued by Western civil courts, al-Mawlawī distinguishes, as in marriage, between the legality of divorce obtained through civil court and the sinfulness of obtaining this kind of divorce. Thus, if the divorce is filed by nationals of an Islamic country, it is a sin. The exception is those who held the nationality of the country in which the parties reside, i.e. citizens.<sup>567</sup> Al-Rāfi‘ī differentiates between three cases: 1) The husband’s willingness to divorce and the actual filing of a divorce request. The husband’s signature on the court division, in al-Rāfi‘ī’s view, is a confirmation of divorce. 2) A woman’s desire to divorce without the presence of ill-treatment on the part of the husband. In this case she has the right to *Khul'*, and a divorce issued by the court is not legal unless the husband signs the court’s decision. 3) A woman’s desire to divorce with the presence of the husband’s ill-treatment, in which case divorce occurs even if the husband refrains from divorce.<sup>568</sup> On the other hand, according to the Council of Sharia Jurists in America, the divorce of civil courts does not end marriage from a Sharia point of view, i.e., divorce is not accepted. Their justification is that women can resort easily to Islamic centers to end the marriage.<sup>569</sup>

Apart from this conflict of opinion, the three imams – Syrians and Egyptians – interviewed during fieldwork show their unconditional flexibility in accepting marriage and divorce decisions issued by German courts. Imams are aware of the complexities entailed by real situations in which it is difficult to exercise these theoretical fatwas, and they appreciate the many conflicts in which the rights of one of the parties may be lost. These conflicts occur as a consequence of the conduct of marriage contracts outside the civil registry office, and they find themselves involved in attempting to resolve them with barely any professional experience or formal frameworks to help them. Perhaps it is their awareness of this reality that has led them to adopt less stringent attitudes towards the decisions of civil courts. Nonetheless, there is another segment of imams who differ with their orientations

566 Faiṣal al-Mawlawī, ‘Aqd az-zawā‘g al-madani fi al-ġarb’ (‘Civil Marriage Contract in the West’), *Islamonline* <<https://bit.ly/4iK3sec>> [accessed 21 September 2021].

567 Faiṣal al-Mawlawī, ‘Hukm taṭliq al-qādī ġair al-muslim’ (‘Ruling on Divorcing a Non-Muslim Judge’), *European Council for Fatwa and Research* <<https://bit.ly/3XyedrJ>> [accessed 21 September 2021].

568 Al-Rāfi‘ī, pp. 619–21.

569 Assembly Members, p. 38.

and adopt the previous views (fatwas) that have been presented above. Therefore, in the face of these contradictions between theoretical fatwas on the one hand and the position of imams in the field on the other, it is important to present the interactions of families with this theoretical religious discourse, focusing on marriages and divorces that take place as practices in the daily lives of these families. Religious discourse, which was based on the division between “Muslim societies” and “non-Muslim societies”, and fatwas issued by these divisions in general<sup>570</sup> may play a major role, in one way or another, in shaping people’s perceptions of their religious practices. In other words, the public religious discourse<sup>571</sup> has been one of the main sources of building people’s religious perceptions, particularly through the process of cognitive sharing and social media discussions. This is the case even though public perceptions may not be directly rooted in the deep religious concepts on which minority jurisprudence was built. People might be even unaware of the very concept of “minority jurisprudence”.

### 5.3.2 Limping marriage – justifications for resorting to religious marriage

Many Syrians resort to religious marriage for different reasons. The term “limp marriage or divorce” is used in the context of recognition of marriage or divorce contracts in one country without another or in cases where the parties are married or divorced in accordance with State law but unmarried or divorced from the perspective of their religion or their religious or social community.<sup>572</sup> From the perspective of Syrian families themselves, it is necessary to discuss the reasons for resorting to religious marriage in this section, while in subsequent sections we have to consider how this type of marriage contract is conducted and what are the consequences and repercussions that ensue.

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570 Čālid Muhamad ‘Abd al-Qādir, *Min fiqh al-aqāliāt al-muslimah (From the Jurisprudence of Muslim Minorities)* (Doha: wizārt al-awqāf wa al-šu’ūn al-islāmiyya, 1997), pp. 60–64; Al-Qaraḍāwī, pp. 16–17; Al-Rāfi’ī, pp. 18–34.

571 Forms may vary in receiving this speech, from Jummah’s sermons (Friday sermons), to many religious platforms and sites on the Internet, to the speech of scholars in the media or social networks, to books and articles.

572 Mosa Sayed, ‘Religious Divorce in a Secularized Legal Context: The Case of Sweden’, in *Marital Captivity. Divorce, Religion and Human Rights*, ed. by Susanne Ruttén, Benedicta Deogratias, and Pauline Kruiniger (The Hague: Eleven International Publishing, 2019), p. 329.

### 5.3.2.1 Religious dimension

“Now, first of all, this is our religion, I mean, one must do this.” This is how Sāra, who has been religiously married twice, answered my question as to why people resort to mosques or imams to conclude religious marriage contracts.

Syrians are generally convinced that marriage contracts should be conducted in a religious manner, and Sāra explicitly points to religious motivation as the reason for this act.<sup>573</sup> The religious aspect plays an important role in the lives of people in Syria, especially in this aspect, which has social dimensions. In fact, this religious motivation cannot be separated from previous religious discourse, with which people interact in different and diverse ways. In general, “many Muslims, including imams and other representatives of Muslim communities, consider compliance with German marriage and divorce regulations to be sufficient, also from an Islamic religious point of view. Others exclusively acknowledge the legal impact of German family law regulations and procedures but consider additional religious affirmation and regulation necessary”<sup>574</sup>, as Rohe elaborates in this context. This compliance with the laws in this aspect among Syrians is contradictory, as many still see the need to obtain a religious contract for the marriage to be religiously admitted (شرعی) *ṣar’ī*). But is the desire to comply with religious orders the only motive for resorting to religious marriage? At the same time, how far do people resort to German law to stabilize marriage?

In general, the religious factor is a great motivation for many people. Sāra shares this vision, in faith and practice, with many of those interviewed who have been married religiously through imams. However, other factors that cannot be ignored play a role in directing Syrians, especially Muslims in general, to religious centers or imams to conduct these contracts, although some of these contracts are associated with their affirmation in German official circles or are subsequently confirmed.

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573 I also noticed many similar discussions on these issues on social media.

574 Rohe, ‘Islamisches Familienrecht in Deutschland im Wandel’, p. 85.

### 5.3.2.2 Customary dimension – كتاب الشيخ ktāb aš-šīh’ or Katb al-ktāb: marriage conducted by an imam before it is confirmed in court

“According to customs, they resort to a ktāb aš-šīh (a marriage conducted by imams), because they will be an engagement party, and by conducting a religious marriage it is religiously permissible for the bride to be with the groom [...]. In most cases the religious contract is registered in a court short time before the wedding party. In very rare cases, the religious contract is registered in courts right after it is conducted [...] these are the customs.”

Nadā describes one of the customs that is prevalent in Syria, namely, conducting marriage by an imam before it is confirmed in the courts. This is called the ktāb aš-šīh or kath al-ktāb or ‘aqd barrānī عقد برانی in Syria. All of these are different designations for a marriage contract that takes place outside the official courts. Most of those interviewed indicated that their marriage in Syria took place in this way in accordance with the following stages: the engagement ceremony, then the Sheikh’s contract (imam contract), later marriage confirmation in court. “Judicial sources revealed that 70 percent of Syrians marry according to custom, i.e. outside the court before the marriage is confirmed in a court of specialization.”<sup>575</sup>

Although this type of marriage is widespread, families have been the guarantor against any kind of conflict that may occur as a result of such contracts. In addition, the affirmation of the contract in the courts was not so complex, as such contracts were recognized when the parties resorted to registering them in the courts, especially when the spouses have children. Nadā points out that recently, during the war, this changed a little, as “many people registered the marriage in courts straight away. This became the case as the Sheik’s marriage became oral. Previously, the Sheik would write a document to confirm the marriage. The groom then takes the document to the court as a proof of marriage.” This transformation may stem from changes in the position of the courts and laws in Syria regarding these contracts.

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575 Muhammed Manār Hmīğū, ‘70 bilmī’ah mina as-sūriyīn yatazawwağūn ‘urfīyan qabla ṭaṭbitih bil-maḥkama’ (‘70 Percent of Syrians Marry by Customary Law before It Is Confirmed in Court’), *Şahifat Al-Waṭan*, 2018 <<https://alwatan.sy/archives/148192>> [accessed 24 September 2021].

In 2018, legal restrictions were imposed by placing sanctions on those who conducted this type of marriage contract. Article 2, paragraph 2 of the Penal Code states that “anyone who conducts a marriage contract outside the court of specialization prior to completing the transactions stipulated in the Personal Status Act shall be fined 10,000 to 20,000 Syrian pounds.”<sup>576</sup> It is perhaps the chaos in the conduct of contracts as a result of the war that prompted the passage of this law. Custom might be the reason why a large segment of Syrians has resorted to Islamic centers and imams in Germany to conduct such contracts before they were registered in German civil courts. It is a cultural custom with social dimensions that cannot be separated from the religious dimensions related to the relationship of the two fiancées, Nadā noted.<sup>577</sup>

### 5.3.2.3 Social aid

“Some married couples do not register the marriage in German court so that Job Center financial subsistence is not reduced.” I raised this point during my conversation with Sāra, who married religiously, as I have pointed out, trying to understand the reasons why people resort to religious marriage. Sāra laughed when she heard it, and then she commented: “Do you want me to be honest? We are like this [i.e. she married religiously for this reason] because I am now without vocational training [Ausbildung], and he [she means her husband] is no longer working. We have nothing left other than the salary of the Job Center [social assistance], and if we get married they do not give us enough money to get by.”

German social welfare laws ensure that the basic needs of livelihoods, such as food, clothing, and household items, are provided for the unemployed.<sup>578</sup> Unemployment benefit laws differentiate between married or partner and single persons. Singles are given 446 euros, while those in a relationship (partnership or marriage) are given 401 euros in monthly unemployment benefits.<sup>579</sup> In order not to lack such social assistance, a

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576 For more details about the customary marriage in Syria, see Van Eijk, p. 169–73.

577 For more details on these cultural reasons, see Mathias Rohe, ‘Shariah in Europe’, in *The Oxford Handbook of European Islam*, ed. by Jocelyne Cesari (Oxford: Oxford University Press, 2015), pp. 689–91.

578 § 20 for. 1 of the Social Act (SGB) Book (II).

579 Hartz IV Rule set; see Bundesagentur für Arbeit, ‘Merkblatt. Arbeitslosengeld II/ Sozialgeld. Grundsicherung für Arbeitsuchende, Pößneck’, 2021, p. 42.

segment of Syrians will refrain from registering marriage contracts in the Civil Status Department, as Sāra indicated.

#### 5.3.2.4 Lack of information on the mechanisms of action of the legal system

German law allows marriage to be in the presence of a witness or two if the spouses wish to do so. Article 1312 of the Family Code also makes it clear that the registrar responsible for concluding the contract must ask the spouses whether they want to marry each other, i.e. the process of affirmative action and acceptance.<sup>580</sup> Thus, the most important pillars and conditions of the Islamic marriage contract are fulfilled.<sup>581</sup> Such information is not available to some Muslims, and its lack of knowledge is an obstacle to accepting such a civil contract religiously. This leads them to religious marriage.<sup>582</sup>

Although the imams interviewed during fieldwork have embraced the legality of marriage and civil divorce, a segment of Syrians considers such marriage and divorce to be religiously illegal, either because they have not heard the views of these imams or because they are not sufficiently convinced of these views. Through fieldwork, I have observed in some discussions between Syrians a kind of accusation against imams that they would issue their fatwas under pressure imposed on them by the German-Western status quo. Consequently, this leads to their rejection of this type of fatwa either because they were not convinced with its arguments or because the fatwa contradicts their previous convictions, which were made up of contrary opinions; I have already referred to the diversity and contradiction of these views in the religious community. In this context, it is important to convey the dialogue that I had with Sāra in this regard. I asked her: “If there were facilitating procedures on the part of the Civil Affairs Department, would you accept to be married in civil court?” She answered: “Are you crazy! I mean you want me to sleep with him (her husband) outside the wedding lock!!”, meaning a religiously forbidden relationship. I replied: “Well, do you not know that there are imams here who consider civil mar-

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580 § 1312 of the Civil Act (BGB) Book 4/Family Law.

581 There remains the problem of the Custodian/Guardian ‘Wali’, whose consent is required by the majority of Islamic schools for the marriage to be valid.

582 Rohe, ‘Islamisches Familienrecht in Deutschland im Wandel’, p. 86; Rohe, ‘Shariah in Europe’, p. 690.

riage to be a legitimate شرعي (ṣar‘ī) marriage?" And for her to reply: "Really! I did not know that!"

It appears from the dialogue that Sāra, like other women or families, is unaware of these religious fatwas issued by these imams. Although there is this gap, I do not believe that closing it is sufficient to reduce families' resort to religious marriage instead of civil marriage. Rather, they must accept the views of the imams who see the legitimacy of civil marriage contracts, and this needs a long-term persuasion process to succeed.<sup>583</sup> This should be accompanied by solutions to the other factors driving the resort of religious marriage.

### 5.3.2.5 Lack of documents – the law does not protect ignorants

The completion of the legal marriage contract in the German civil status services requires some documents including:

- Birth certificate issued by the birth register.
- Proof of residence.
- Proof of nationality that requires a valid passport for both spouses.<sup>584</sup>
- Certificate of marital status for foreigners (Ehefähigkeitszeugnis).<sup>585</sup>

Most of these documents represent an obstacle for Syrians fleeing the war in two respects. The first relates to the difficulty of obtaining these documents from official departments in Syria, especially in some cities that are devoid of official government institutions to extract them. The second relates to the high cost and the exploitation they are subjected to by lawyers or others inside Syria. Some, therefore, resort to conducting the marriage in other European states that do not require such documents. Others prefer to settle for religious marriage.<sup>586</sup> "Formal reasons such as the lack of

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583 I have noticed many discussions between Syrians who sometimes reject some imams' fatwas because they are not convinced of them.

584 § 12 of the Civil/Personal Status Act (PStG).

585 § 1309 para. 1 of the Civil Act (BGB) Book 4/Family Law. See also § 39 of the Civil/Personal Status Act (PStG). For more details about the conditions of marriage in the civil registry offices, see juraforum, 'Ehefähigkeitszeugnis – Beantragung, Ausstellung, Befreiung', *Juraforum*, 2021 <<https://www.juraforum.de/lexikon/ehefaehigkeitszeugnis>> [accessed 29 September 2021].

586 For more insights into the complexities of documentation between Syrians and German bureaucratic institutions, see Veronica Ferreri and Leibniz-Zentrum Moderner Orient, 'The Wondrous Life of Legal Documents. Transformations and Continuities

documents required for marriage under the law of the land might draw immigrants to enter into informal religious marriages in order to create socially accepted fundaments for living together”, as Rohe writes.<sup>587</sup> For example, it was the difficulty of obtaining some of these documents that prompted Ali not to document his religious marriage in the Civil Registry so far, as he noted in his interview.

It should be noted that in contrast to this trend of religious marriage there is a segment that insists on documenting marriage contracts in the civil registry circles before the wedding. After that, the couple is allowed to have sexual intercourse, and the bride is permitted to move to live with the husband. This insistence is often to guarantee the rights of the wife in a context where the network of family relations between Syrians is unable to guarantee any rights for both parties. In marrying his daughter, Čalāl indicates that his daughter’s marriage contract was registered in the Civil Registry a month before the wedding. Čalāl understands the importance of religious marriage religiously and socially, but his fear of his daughter’s relationship with a young man in exile, and an attempt to protect her from problems that may occur as a result of this association, prompted him to insist on documenting the marriage in the civil registry. This shows us the different dynamics leading families to resort to German laws. As there is a segment being aware of the dangers of religious marriage without formally confirming it, Nadā commented during my discussion with her about the problem of divorce arising from a religious marriage that “the law does not protect the ignorant.”

### 5.3.3 How to conduct religious marriage contracts?

Through interviews in the fieldwork, it has been shown that religious marriage contracts between Syrians through imams are carried out in two ways:

- 1) Contracts are conducted in some form of professionalism. “There is a Syrian imam who refused to marry me because he was afraid, as

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in the Encounter of Syrian Papers with German Bureaucracy’, *Das Leibniz-Zentrum Moderner Orient (ZMO)*, 31 (2022), pp. 9-10.

587 Rohe, *Alternative Dispute Resolution in Europe under the Auspices of Religious Norms*. See also, Rohe, ‘Islamisches Familienrecht in Deutschland im Wandel’, p. 86; Rohe, ‘Shariah in Europe’, p. 689.

he thinks that one should have a marriage contract according to the regulations of the country [that he/she lives in] and then go to finalize it at the church or mosque. But I do not want to go from the beginning to have my marriage contract registered in the state official departments.” Ali refers to the process of his marriage contract, which was marred by the refusal of some imams to conduct this religious contract. Both Imams Ḥālid and ‘Umar confirm their refusal to conduct religious contracts for parties who would like to get married as in the example of Ali. They refuse to perform these contracts before they are registered with the Civil Status Department (Standesamt) or, at least, before the two parties get an appointment to register the marriage contract. In a qualitative article, in which Jaraba analyzes many marriage contracts in Germany that he collected during his fieldwork, he refers to this type of procedure by imams, in which they may require the presence of the wife’s guardian, examining the personal status of both parties (single or married) and the age of the spouses, in addition to a contract that includes this information and shows the agreement of both parties to its terms.<sup>588</sup>

- 2) A form of randomness in the conduct of contracts and non-professionalism. After more than two weeks of Ali’s search for an imam to conduct his marriage contract, he eventually found a Pakistani imam who had concluded the contract unconditionally. This chaos involves the marriage being held orally, and therefore it is not recorded or even documented. In addition, it involves a lack of information about the spouses, the failure to archive contracts, consequently the loss or sabotage of the documents due to the unstable or unregulated relationships between the imam and the mosque.<sup>589</sup> Salmā recalls that she married religiously even though her husband is officially (i.e. in German civil registry departments) married, and it is true that he is in fact separated from his wife, but they are not divorced officially. Nevertheless, her marriage was legitimized by an imam.

Although the ban on concluding a religious marriage before a civil marriage has been registered has been lifted in 2009, so that such religious marriages

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588 Mahmoud Jaraba, ‘Problems Relating to Archiving Nikah Documents in Germany’s Arab Mosques’, *Journal of Muslims in Europe*, 11.3 (2022), 315–32 <<https://doi.org/10.1163/22117954-bjal0061>>.

589 Ibid.

(without a civil marriage) can be concluded in Germany, these religious marriages have, as I mentioned earlier, no legal values.<sup>590</sup> As long as state law does not recognize such marriages, as is usually the case, disputes including “divorce” can only be resolved under alternative mechanisms.<sup>591</sup> In this context, the question that arises is: What are the dynamics that Syrian families resort to in cases of marital disputes based on these religious marriage contracts? This brings us to the next point of religious divorce and the dynamics that families use to reach the termination of these contracts.

#### 5.4 Limping divorce – the complexities of getting divorced

I once asked Fātima: “Can a woman be content with divorce obtained from the German official departments?” She answered: “She is not considered a divorced woman. The husband must pronounce the divorce (طلاق). This is our religion.” This answer illustrates the necessity of obtaining a religious divorce from the husband, as otherwise the wife is not considered religiously divorced. Syrians’ attitudes towards the divorce decision issued by German courts vary, as do the fatwas I mentioned above. A segment of the Syrians considers the official divorce a legal divorce (i.e. religiously acceptable), while another group requires a religious divorce from the husband for the wife to be considered legally divorced. The second group represents the limping divorce cases.<sup>592</sup> Despite these two different positions, the problems in conflict resolution are not only related to the Syrians’ attitude towards official divorce but, as I already mentioned, rather relate to all the divorce cases that result from religious marriages that were not registered either in Syria or in Germany. However, obtaining a religious divorce is very important for a large segment of women, as “[a] religious divorce decision within religious communities seems to affirm a sense of belonging through

590 Fournier and McDougall; Rohe, *Der Islam in Deutschland*, p. 201; Rohe, ‘Alternative Dispute Resolution among Muslims in Germany and the Debate on “Parallel Justice”’, p. 104.

591 Rohe, *Alternative Dispute Resolution in Europe under the Auspices of Religious Norms*. See also Rohe, *Der Islam in Deutschland*, p. 204.

592 Pauline Kruiniger, ‘Untying the Religious Knot’, in *Marital Captivity. Divorce, Religion and Human Rights*, ed. by Susanne Rutten, Benedicta Deogratias, and Pauline Kruiniger (The Hague: Eleven International Publishing, 2019), p. 350.

the use of regimes connected to an individual's religious and ethnic identity", as Sayed wrote in this context.<sup>593</sup>

The religious frameworks established to terminate the marriage contract between the parties also hinder divorce procedures. Basically, Islam grants the man the right to divorce, and thus he has the right to terminate the marriage contract whenever he wants, verbally or in writing, provided that he pays the full dowry named in the contract to the wife. In return, Islam gives the woman the right to *Khul'*, in which the wife returns the dowry to her husband or gives up her right to it and hence separates from him according to Sharia Law. As for the third way, it is the divorce by the judge, which is often done in special cases to remove the harm inflicted on the wife, such as the long absence of the husband or the husband's imprisonment, where the husband is not spending on her, or her being directly harmed by her husband. The judge may annul (فَسَخَ fash)<sup>594</sup> the marriage contract in some cases, such as a disease that prevents the husband or wife from having sexual relations, or one of the spouses declares apostasy from Islam.<sup>595</sup> As a consequence, husbands can take advantage of their right to divorce, while "wives are in need of mechanisms dealing with their rights to *tafriq* or *Khul'* under Islamic law. Here, imams and other representatives of religious associations are frequently consulted for assistance."<sup>596</sup>

It should be noted that the wife can obtain the right to divorce like the husband through the authorization (*at-tafwid*), meaning that the husband could grant her this right if she stipulated this condition in the marriage contract.<sup>597</sup> Nadā comments on this right: "We describe this option as if she obtained the right of divorce [the delegation of divorce, العصمة al-‘isma]. It has existed for a long time, but we do not have anyone using it, because we, as an eastern society, consider it harmful to manhood. If the wife stipulates that ‘isma [the right to divorce] be in her own hands, she can spoil the en-

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593 Sayed, p. 331.

594 There are several differences between the divorce of the judge and his annulment of the marriage contract. It can be noted, for example, that divorce does not terminate the contract until after the waiting period has ended, while annulment invalidates the contract from its foundation. The woman is also entitled to half the dowry if the annulment was due to the husband, while the wife is entitled to the full dowry in divorce.

595 For more details about ending a marriage in Islam, see Rohe, *Islamic Law in Past and Present*, pp. 116–23.

596 Rohe, 'Alternative Dispute Resolution among Muslims in Germany and the Debate on "Parallel Justice"', p. 105.

597 Rohe, *Islamic Law in Past and Present*, p. 121.

tire marriage.” Thus, there is a right to delegate divorce for the wife; yet society, in general, does not accept the presence of this condition in the contract, as its condition harms the reputation of the husband’s masculinity, as Nadā points out. That is why women usually do not dare to stipulate it, and men do not accept it.

In the face of the lack of formal recognition of such marriages in the German context, and given the options in terminating the marriage contracts, it can be said that the dynamics that families resort to in order to resolve their disputes are varied. In addition, they come sometimes with certain risks, such as threats or extortion. Below, I will present some of the cases I have collected during my fieldwork.<sup>598</sup>

#### 5.4.1 Divorce under threat

I mentioned earlier that Sāra had married religiously twice. She had been divorced from her first husband, but this divorce process had not been easy and smooth, and it involved complicated negotiations. Sāra noted that her divorce from her husband was verbal, i.e., “he said three times the term ‘you are divorced’.” When I asked Sāra about the process in which the divorce took place, she said,

“[H]e opposed it, he ran away for a week and a half. He went absent from all people. He even disappeared from WhatsApp, he disappeared altogether. He evaded divorcing me. Until lastly my dad threatened him. My father spoke with him directly saying: I will kill you; I will do anything to have you leaving my daughter. My husband reply: I want the gold set that I presented to your daughter. My father said, come, take it [...]. But when you come, you have to divorce my daughter [...]. We must guarantee our rights too. Indeed, he took the gold and divorced before he left.”

This gold presented to her maybe a gift, and in most cases it is part of the dowry agreed upon between the two parties in the contract, i.e. between

598 I mentioned earlier that there was a mutual extortion between Tāriq and his wife’s family in the Syrian context due to the loopholes in the Personal Status Law, such as prolonging the divorce period for the wife. Yet, the family could have obtained the wife’s right to separate from her husband in one of the ways I mentioned above. In the German context, the situation is different, as neither party has any official legal authority to turn to because their marriage is not registered there.

the wife's guardian and the husband. This case reveals a certain kind of negotiation between the two parties – the father of the wife and the husband – to resolve the conflict and end this relationship with divorce. This negotiation involved Sāra's father's threat to the husband, and the submission of the other in return for obtaining the gold that he gave to the wife.

#### 5.4.2 Divorce in exchange for refunds

Many imams are involved in cases similar to Sāra's. Imam Ahmād mentions that in one case a religious marriage was concluded with a girl who was residing in Spain. Arrangements were made according to which she would travel with her family to Germany to reside there with the help of her husband. Nonetheless, after bringing the wife's family, disputes arose between the two parties. The wife demanded divorce, but the husband refused to it. Imam Ahmād and another imam were threatened not to get involved in separating the wife from the husband by the way of khul' or by another way.

When Imam Ahmād sat down with the husband, the wife, and her family to resolve the dispute, he recalled that the young man declared that "he was ready to divorce her but on one condition, namely that he would regain his financial rights." The young man spent about 1,500 euros in costs for arranging the marriage, which he had signed as a result of charges during the process of moving the family to Germany and buying some new furniture for the house. Imam Ahmād refused to obligate the family to these costs because they were not included in the marriage contract and were not handed over to the wife, unlike Sāra's case. Therefore, these were responsibilities that the husband had himself committed to, and he therefore did not have the right to obligate the family to pay back as he saw fit. The husband refused to divorce the wife, and Imam Ahmād reached a dead end with the parties in trying to resolve this dispute.<sup>599</sup>

Most of divorce disputes have financial causes that can take different forms. The husband may exert pressure that can amount to accepting the divorce only in return of recovering the money spent during the engagement or marriage process. "Since all kinds of solutions stay in the hands of

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<sup>599</sup> Imam Ahmād pointed out that the girl's father later told him that the young man had agreed to divorce after turning to the young man's family to exert pressure on him, which shows how much the family has influence in resolving marital disputes.

the husband, he has the potential to exercise pressure on the wife regarding her claims to mahr [dowry], which then have to be waived in favor of the husband.”<sup>600</sup> From the point of view of Sharia, the husband has the right to take back the dowry he gave to his wife or to waive it if it is a debt (i.e. unpaid yet), provided that he is not the one who caused the spoilation of this marital relationship for one of the reasons I mentioned above, that is, if the wife is willing to separate from the husband without reason through *Khul'*. The problem in the *Khul'* allowance or compensation lies in the following question: Is it permissible for the husband to take more than the dowry or not? The majority of scholars (*fuqahā'*) hold that there is no limit to the *Khul'* allowance, while others are of the opinion that it is not permissible for the husband to take more than the dowry.<sup>601</sup> The Syrian Personal Status Law did not set a limit for the *Khul'* allowance,<sup>602</sup> and thus it has implicitly adopted the first opinion. This doctrinal and legal silence about determining the dowry allowance encourages husbands to use it as a kind of blackmail when they demand more amounts than the dowry or the expenses that were made as costs for the equipment and requirements of the marriage.<sup>603</sup>

In exchange for this pressure exercised by the husband, there is what can sometimes be called “exploitation of the conflict” by the wife, or rather often by the wife’s family, who tries to keep the gold or the money provided as gifts or as dowry. This is especially true if this dispute occurs before the wedding ceremony or the so-called Syrian custom during the engagement, which may be a religious marriage (imam’s contract), in other words before the sexual relationship between the spouses takes place. This is a gap that often gets neglected by the researchers as it is related only to the Syrian customs and is generally uncommon in other countries.<sup>604</sup>

During my fieldwork, especially in my sessions with some Syrian families, I heard that some kind of exploitation by some of the wives’ families

600 Rohe, ‘Shariah in Europe’, p. 690.

601 Kāmila Ṭwāhiriyā, ‘Aḥkām al-ḥul’ fi al-fiqh al-islāmī wa qānūn al-usra al-jazā’irī’ (‘Provisions of *Khul'* in Islamic Jurisprudence and Algerian Family Law’), *Ǧami‘ aš-ṣayḥ al-‘arabi at-tibsi*, 20.39 (2015), 315–46.

602 § 100 para. 1–2 of the Personal Status Law.

603 See for more details Jaraba, ‘*Khul'* in Action’; Jaraba, ‘Private Dispute Mediation and Arbitration in Sunni-Muslim Communities in Germany’, p. 18; Keshavjee, pp. 1–2.

604 In countries such as Palestine or Morocco (as I asked some residents of these two countries) and maybe others, religious marriage is not allowed before the marriage is confirmed in official circles. Indeed, these countries do not practice this custom of religious marriage through imams.

would take place when conflicts occur between the two parties. In my discussion with Imam 'Umar, who is an active and experienced figure in resolving such disputes, about the problem of religious divorce, he referred to this point and commented it:

"When the husband refuses to divorce, sometimes he does not reject divorce because of the love of his wife or because he wants her to stay [...]. He is not committed to the marriage because of his desire towards the wife. Rather he wants the marriage to last because he has a right [financial right] [...] i.e., she owes him financially. For example, a week ago, I came across the following dispute: The problem was that a couple got married, and after a month of marriage a disagreement ascended between the two [...]. They disagreed over very trivial things. Imagine for example that the girl told the young man that she wanted to put a ring in her belly button. He replied: 'Why are you doing this [...]. Who are you trying to imitate by doing such a thing!' They differed sharply on this matter. Then she added: 'Do you think you are a religious guy, really! Do you think that what you claim is religion! Do you think that you are the one who taught me religion!'<sup>605</sup> Then she left the house."

Their marriage was a customary marriage, and they did not register the marriage contract in the civil registry offices. The husband had paid a lot of money in order to complete the marriage.

"He almost bought her 5,000 euros in gold (mostly as a dowry), and gave her sums of money and clothes worth 3,000 euros, gifts of 1,000 euros, etc. Approximately 11,000 euros were actually paid by the husband before the marriage.<sup>606</sup> On the other hand, you find that the girl spent a month with him, only one month, and then she took her things and left [...]. When I spoke with the father, he said that he would not return any of the money to the young man, as they knew how to divorce the girl from him. He hung up the phone in my face. I really do not know how he

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605 This reason shows the religious-cultural conflict between spouses and highlights the changes that have taken place in women especially regarding their freedom in the German context, factors that were discussed in the previous chapter.

606 As a result of these disputes over divorce that have financial roots, there has become a state of fear of marriage among Syrian youth for fear of losing the money saved for marriage, in light of the trend within girls' families to exaggerate the dowries. Therefore, many of them resort to remote marriage through their parents, that is, by bringing in a wife from Syria or from other surrounding countries where Syrians are present, a topic that needs further research.

will divorce her! [...] In this case, the girl's family defrauded the young man and obtained from him 11,000 euros within one month, and he [her father] will marry her again soon.”<sup>607</sup>

This case shows the great influence of the parents and their interference in such disputes and the exploitation of this conflict by the wife's family to obtain the largest possible amount of material benefits that were granted to the wife during the courtship period and the first period of marriage.<sup>608</sup> In such disputes, the imams try to investigate the cause of the conflict and to find out who decides upon the separation. They then decide whether the husbands retrieve their money or not. In the first case, Imam Ahmad decides that the husband is not entitled to the wife or her family reimbursing the expenses he incurred. In the second case, Imam 'Umar considers that the wife is the cause of this dispute, that she has violated the husband's right to hear and obey, and that she is the one who wanted divorce. Therefore, Imam 'Umar believes that the husband has the right to recover the money he spent, regardless of the amount that he may decide in the event that the two parties agree.

#### 5.4.3 Divorce to maintain reputation

In the case of Salmā, who married and divorced religiously in Germany, the problem she was facing was not material or financial. It was rather that the husband himself was stubborn in refusing to divorce with the hope of reconciliation and her return to him. When I asked Salmā about the process in which the divorce took place, she answered: “This was done by force [...]. I went to Munich and created a scandal for him, and I am ashamed to tell you the details of that [...]. But in general, it was like skirmishes, idle talk, and stuff.” I asked her: “Can you tell me what you mean by the ‘threatening’?” She replied: “For example, one time I threatened him that

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607 Imam 'Umar refers in this context to the existence of a type of imams who exploit disputes to earn money by performing a *Khul'* for the wife in exchange for a certain amount of money, even if it is at the expense of the husband's rights, a topic that also requires further research.

608 The wives' parents, in general, achieved a strong bargaining position in the German context in light of the elimination of societal control, in which the family's reputation is important, as well as in light of the chaos of obtaining *khul'* through some imams at small costs. This does not contradict the complexities of divorce that are discussed in this context for other families.

I would expose him [...]. And he was afraid of a scandal in the face of his brothers and sisters and his family. I threatened him that I would inform his family and his brothers that he was such and such [...]. This is what happened. As a result, I told him that I would come every day to Munich, and I would make scandals to him. I know the places where his family and community are. He eventually gave in to the status quo and divorced me.”

Salmā tried to use some of her husband’s bad behavior, such as him spying on her by placing recording devices inside the house or his stinginess, etc., as means of pressuring him to obtain a divorce. Interesting are people’s different attitudes towards religious divorce. In my attempt to complete the discussion with Salmā, I asked her what she would do if her husband had insisted on refusing the divorce. Salmā commented: “The upper limit is one year [...]. I mean if a year passed without sexual intercourse. According to Sharia, I can get the divorce [...]. I know that without sexual intercourse a woman can be divorced.” I tried to inquire from Salmā about the source of this opinion, and she mentioned that she had contacted one of the imams in Syria, and he had given her a fatwa that if her husband did not provide for her and would not have sex with her, after a year she would be considered divorced by virtue of Sharia. The fatwa is somewhat shocking, and it is difficult to verify the authenticity of Salmā’s narration and who is the imam who issued the fatwa.

In Islamic jurisprudence no divorce takes place in this way. The case of abandonment can be depicted as follows. Either the husband abandons – or deserts – his wife,<sup>609</sup> and in this case the wife has the right to request a divorce or separation from the judge if the period exceeds four months or more. It is what Article 111 of the Syrian Personal Status Law stipulates.<sup>610</sup> Or the wife deserts her husband, and if there is a justification for this desertion, such as the husband not spending on her or harming her by beating or insulting, then she may ask for divorce from the judge or *Khul'*, and if it is without justification, then, in this case, some of her rights, such as her right to alimony, will be forfeited.<sup>611</sup> This case is called *recalcitrance* (نشوز nušūz),

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609 The majority of jurists did not specify the duration of the husband’s desertion, while the Maliki set it as one month and no more than four months. For more details, see Ismā’īl aš-Šandī, ‘Ahkām haġri az-zawġa fi al-fiqh al-islāmī – Dirāsa muqāraṇa’ (‘The Rulings of the Deserted Wife in Islamic Jurisprudence – A Comparative Study’), *The Journal of al-Quds Open University for Humanities and Social Studies*, 1.36 (2017).

610 § 111 para. 1 of the Personal Status Law.

611 § 73 of the Personal Status Law.

meaning disobedience, and her right to request Khul' remains. Thus, the previous fatwa has no basis in Islamic jurisprudence. Salmā does not care much about issues of religion as she mentioned, but what should not be ignored is that issues of marriage and divorce do not have a religious dimension only but are related to social acceptance within the community system, and therefore people are keen to resort to them to maintain this social acceptance.<sup>612</sup> Salmā's libertarian lifestyle may be the reason for her adoption of such views that contradict what is stated in Islamic jurisprudence, and therefore people's interpretations and practices sometimes go beyond what is prevalent in this Islamic jurisprudence and personal status laws in a pragmatic way that they are forced to resort to.

#### 5.4.4 Divorce in exchange for the threat of harassment – divorce in the shadow of state law

In one interesting case, the involvement of actors of German society in such conflicts appears. Imam Hālid told that one of the ladies in charge of an organization for supporting refugees - he thinks she is responsible for psychological support - got involved with him in solving a religious divorce case. In this case, the husband bet his wife, and as a result the wife wanted to obtain divorce, bearing in mind that the marriage was not confirmed by the official authorities. The wife resorted to this lady in charge. The husband was refusing to divorce the woman despite the mediation of Imam Hālid to resolve this dispute. In the end, this lady in charge had to put some kind of pressure on the husband in ways that circumvent the law. "She said that we wanted to solve the matter. As it began in a religious way, it must end religiously; otherwise, we would file a case against this young man [the husband] for harassment. So, when we started threatening him [...] and when he began to feel that he might pay for what he did, he gave in" and eventually agreed to divorce her.

This case, like its predecessors, indicates the complexities of resolutions and alternatives that are used, including blackmail - which sometimes carries a risk - in order to obtain a religious divorce. This is done in view of the imams' inability, in general, to provide practical resolutions in this aspect, and this leads us to discuss the next point that reviews the challenges facing imams in this field.

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<sup>612</sup> Rohe, *Alternative Dispute Resolution in Europe under the Auspices of Religious Norms*.

## 5.5 “Primitive Resolutions” and the Inability of Imams

Facing the chaos related to religious marriage contracts, and in view of the problems arising from these contracts and during the processes of conflict resolution, imams are themselves facing two facts:

### 5.5.1 Lack of expertise on family conflict resolutions

Some imams have more knowledge about family law than others. This is reflected in the fatwas they issue to people, and it comes out in the way they deal with these conflicts. Some of them show an understanding of the changes of reality, the new context of these families, and the new legal frameworks. Therefore, this group of imams tries to adapt the fatwa to these new facts even if the process of extracting the appropriate provisions for each case from the rules of the Sharia (Ijtihad) or fatwa is not consistent with the methodological rules<sup>613</sup> of the process of jurisprudence adopted by classical religious centers and institutions. I have referred earlier to some of these attempts. Others ignore the new context and appear to be strict in adopting classical jurisprudence to resolve the dispute between the parties. Rohe wrote in this context that “[r]epresentatives of religious organisations often lack information about the scope limits of German law regarding ADR as well as sound knowledge of Islamic law.”<sup>614</sup>

On the other hand, imams generally do not have sufficient experience in resolving conflicts of social and psychological dimensions, since their role, in general, and as I have pointed out above, is limited to preaching and advising parties from a religious perspective. Thus, they often neglect the social and psychological aspects associated with these conflicts. In this context, it is important to convey Imam ‘Umar’s reply to my question about how disputes are resolved:

“In my opinion, unfortunately, we are now primitive in solving these problems. Rather, we are primitive and very traditional. We do not succeed, and we have not succeeded. I am speaking very frankly: We failed because of this primitivism and spontaneity with which a Sheikh (imam)

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<sup>613</sup> Methodological rules are defined as comprehensive cases by which rulings can be deduced from evidence, such as the Qur'an and Sunnah or other evidence.

<sup>614</sup> Rohe, ‘Alternative Dispute Resolution among Muslims in Germany and the Debate on “Parallel Justice”’, p. 106.

behaves, whether in the mosque or in Islamic centers. We are unable to provide solutions to family problems [...] we are not able to do that. The problems we are facing are deep and need comprehensive solutions, not emergency ones. As for the sheikhs, they received an education that is simple in content, and perhaps this sheikh knows jurisprudence and hadith and has some knowledge in this context. However, the sheikh, who carries a primitive character composition, undeveloped indoctrination, and simple education, came to a complex society in which the psychological, social, and legal aspects are far more complicated. Take the subject of children, for example, and other issues, etc. Now the Sheikh wants to interfere with everything, and he wants to solve all the problems. But in reality, the poor Sheikh is in a very difficult position, as people come to him with their problems and demand solution [...]. He is faced with two problematic matters: if he does not answer their question, then that is a problem, and if he answers them, the problem will be greater.”

Imam ‘Umar was one of the founders of the second Conference of Syrian imams “Role of the Imam in German Society” in Nuremberg in 2018. The reason for this conference, he said, is “the increasing problems of Syrian refugees and the inability of existing Islamic institutions to solve them because they are concerned with their different generations or with the German state.”<sup>615</sup> Imam ‘Umar calls for training imams again through vocational teaching by means of which they would acquire skills to solve family and other problems that new refugees encounter, such as drugs or extremism. However, these calls still do not receive enough attention, as he sees it, and the mosque and the imam’s burdensome role and tasks in religious centers refrains these projects to be put in place. Jaraba writes in this context:

“Many Muslim religious actors have neither the accredited mediation certification nor the licences needed to engage in the profession and deal with social and family conflicts as required by law. The overwhelming majority have insufficient knowledge of the main principles of media-

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<sup>615</sup> Matthias Rohe participated in this conference and emphasized the role of imams who have sufficient experience in this field in participating in solving the social problems of Muslims. For more on the conference see Aljazeera, ‘Mu’tamar zabḥat dawr al-a’mah as-sūriyān bindimāğ müāṭinihim bi’almania’ (‘A Conference Discusses the Role of Syrian Imams in the Integration of Syrians in Germany’), *Aljazeera*, 2018 <<https://bit.ly/4c7i05l>> [accessed 11 October 2021].

tion, let alone of practice limitations and modern techniques of conflict management and negotiation. When only a small number of imams understand the fundamental principles governing Germany's personal status laws, the likelihood of imams reaching agreements with disputing parties that are in violation of, or incompatible with, German laws and norms increases.”<sup>616</sup>

### 5.5.2 Lack of authority to enforce decisions

Another problem with the work of imams is that their attempts to resolve disputes between the parties remain in the fatwa circle, and none of them has any official status to compel the parties to accept the solution.

“Thus, the imam’s role is to bring the views closer, but it does not resolve anything [...]. He cannot reach a resolution in which he says, for example, no, you are no longer the wife of so and so. He cannot say that [...]. He can only say that if an institution of the state uses and asks the imam to provide it with the religious legal ruling on this issue, if the imam then provides the ruling, even the execution of this order is not in his hands. The state will be responsible if it reaches the point of divorce or Khul’.”

In this context, Imam Hälid refers to the inability of imams and Islamic centers to implement any solutions, as they are not recognized by the German state institution.<sup>617</sup>

Most imams are well aware of this. So Imam Ahmad adds, “I do not statute on divorce and do not force anybody to divorce. I have neither the legal authority nor the religious legitimate authority to separate a relationship between two people.” Despite the imams’ lack of religious authority and thus the loss of legal recognition for religious marriage and divorce, religious rulings issued by them gain their strength from socially binding religious and cultural norms, which shows a normative conflict. This normative conflict is reflected in the chaos seen in the exercise of this religious authority and in the solutions presented to settle disputes. Imam Hälid, therefore, assumes that these solutions will be given legal

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<sup>616</sup> Jaraba, ‘Private Dispute Mediation and Arbitration in Sunni-Muslim Communities in Germany’, p. 35.

<sup>617</sup> Ibid.

regulation or official status (within the framework of German law) through the cooperation of the official institutions of the German state with imams to perform their objectives.<sup>618</sup> At the same time, this official capacity gives a kind of reassurance and protection to the work of the imams against the threats of some parties – especially husbands – due to the divorce or Khul’ procedure on the part of the imam against their desire and will. I mentioned earlier that Imam Ahmad and Imam Ḥālid were subjected to some kind of threats from one of the spouses in one of the conflicts they were seeking to resolve. Imam ‘Umar believes that solutions to conflicts today need to be institutionalized and not take place in a random way to achieve their goals, otherwise financial or other extortion will continue, and the injustice that befalls one of the parties will continue without being redressed by anyone. As long as the German state does not develop acceptable support mechanisms for arbitration and mediation procedures,<sup>619</sup> such practices will continue.<sup>620</sup> Sayed noted in his study of religious divorce in Sweden that, due to the lack of coordination between formal divorce rules of different countries, or between formal and informal/religious rules, “[t]his may in turn lead to the loss of legal rights for individuals and the inability to access and capitalize interests in multiple societal arenas (jurisdictions, family, religious community, cultural environment, etc.).”<sup>621</sup>

618 It is highly unlikely that Germany will change its system of separation between state and religions in family law affairs. The probable solution lies in establishing religious institutions recognized within the communities, as the Jews did for a long (Batei Din), as Rohe commented. However, the recognized Islamic institutions will face the dilemma of the great differences in the direction of Muslim scholars and their very diverse jurisprudential positions according to their political, sects, or Islamic schools of thought affiliations.

619 Despite the existence of a mediation law, the reasons for parties not to resort to German institutions may be similar. The lack of language and legal knowledge, in addition to the unaccustomedness of the conflicting parties to resort to such institutions in their origin societies, may be one of the most important reasons. It is worth noting that I recently conducted an interview with someone (a former judge in Syria) in charge with one of the mediation and arbitration institutions that are active in resolving disputes between Muslims in general and Syrians in particular, and they call themselves the “Islamic Sharia Court” although it is basically not a court in the legal sense. For more, see Ḥusn̄ Barhū Ḥusn̄, ‘Naṣrat al-mahkama aš-ṣarīya al-islamiyya fi Weiden-Saarland-Germany’ (‘Report of the Islamic Sharia Court in Weiden-Saarland-Germany’) <<https://islamische-familie.de/about>> [accessed 13 June 2022].

620 Rohe, *Der Islam in Deutschland*, p. 204.

621 Sayed, p. 338.

### *Conclusion*

In Syria, family structures and functions played a major role in resolving family disputes through the religious, customary, and moral authority that was rather lacking in the structure of official judicial authorities. Under the new German context, the family has significantly lost this role, and disputing parties are forced to resort to alternatives and other mechanisms to resolve their marriage disputes. The data showed that the impact of actors from the extended family on the parties to the conflict remained, but nonetheless this role was significantly weakened by the spatial segregation of families and the imbalance caused by the war in the place of these actors within the extended family.

The first part of the chapter reviewed other alternatives that families have resorted to in attempts to resolve their disputes. It has become acceptable within families or between the parties to the conflict to enter the network of friends to help resolve these conflicts, although this had not been a common trend for families in Syria who tended to preserve their privacy. Another alternative for a segment of Syrians, especially religious people, is to resort to religious actors in general and imams in Germany in particular. Imams have resorted to various mechanisms, such as preaching, fatwas, and ijтиhad, to reach legitimate provisions acceptable to the parties and as tools to resolve some of these disputes.

On the other hand, a segment of the conflict parties preferred to resort to the justice systems, especially those who do not have religious institutions, but also in the absence of actors or elders from the extended family. Resorting to judicial systems has varied. Some Syrians are resorting to the Syrian judicial authorities, others, to the German official authorities, depending on the situation of the parties of the conflict.

The second section of this chapter reviewed the challenges posed to conflict resolution in the context of a plural normative landscape and with varying interpretations of the normative requirements for marriage and divorce. It has also focused on the practical consequences of dispute resolution in such a plural normative and transnational perspective. The controversy and jurisprudential differences about the provisions of Sharia regarding marriage and divorce are reflected in one way or another on people's practices and on the dynamics that they resort to in resolving their disputes. These dynamics begin with people resorting to religious marriage. This is widespread among Syrians due to many factors, including 1) the religious dimension, which is a major motive, 2) the Syrian custom to rely

on this type of contract, “*Kitāb al-Sheikh*”, before seeking affirmation in official circles, 3) the German context and the impact of the legal dimensions of differentiation on the amount of social benefits provided to single and married couples, 4) the lack of information about the working mechanisms of the German legal system, and 5) the difficulty of obtaining the official documents required to recognize the marriage contract in Germany.

This section also reviewed how marriage contracts are conducted between Syrians in general, the chaos in which such contracts take place, and, most importantly, the seriousness of the consequences thereof, especially with regard to obtaining a divorce for women. In this context, some cases were examined in which negotiations took place in different ways to resolve the conflict between the parties and obtain a divorce, which often proceeds with a complex process, some of which are carried out under threat or blackmail. These divorce cases demonstrate the diversity of dynamics with which families deal to resolve their disputes in ways that are alternative to formal state institutions. The reason is the lack of official support mechanisms regulating religious marriage or divorce contracts, in light of the chaos in jurisprudential provisions on the theoretical level and in the conduct of contracts and resolution between the parties on the practical level. In addition, the lack of experience of religious actors in dealing with family conflict issues shows the primitiveness of the resolutions offered. It also shows the imams’ inability to implement any solutions presented in light of the loss of any legal framework for their work, which sometimes complicates these disputes.

The data generally show that for the majority, despite the different attitudes of families towards it, religion constitutes in some respects an indispensable resort, especially in matters of marriage and divorce. Therefore “people will continue to seek a sort of compromise or reconciliation between the requirements of their religion and those of civil (state) law”<sup>622</sup>, as Marie Claire Foblets writes. Thus, how individuals can reconcile the demands of civil law with the desire of family members to respect the religious norms dictated by their religious convictions within the German/European context remains in question. Legal pluralism is one of its reflections that needs further development.<sup>623</sup> Foblets suggests three possible scenarios for harmonizing religious norms with law: 1) Allowing rules based on religion

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622 Foblets, p. xiv.

623 Ibid., p. xiii.

to be applicable under civil law, as in the case of marriage. 2) Allowing persons to be independent in regulating their family relations under the law of the State in which they live. 3) Resorting to alternative dispute resolution that is based on religion in some disputes.<sup>624</sup> These perceptions may solve many of the problems that occur between families in their disputes that take place away from the eyes of the official systems if work is done to develop and organize them in a manner commensurate with the needs of those families.

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<sup>624</sup> Ibid., p. xiv.