Abu Dhabi Court of Cassation on Civil Family Law and Muslim Foreigners: Has the Tide Turned?

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The recent introduction of a civil family law regime in the United Arab Emirates – the first of its kind in the region – has attracted considerable attention, both on this blog and beyond.[1] A key unresolved issue has been the law's applicability in Abu Dhabi, particularly regarding access for Muslim foreigners to the emirate's newly established Civil Family Court. Scholars and legal practitioners navigating this new framework have long observed a surprising discrepancy, if not an ideological tension, between the law's drafters and those interpreting it, especially at the higher court level. Central to this divergence has been whether Abu Dhabi's *Law on Civil Marriage and Its Effects* (Law No. 14/2021 of 7 November 2021, as subsequently amended) and its *Procedural Regulation* (Chairman Resolution No. 8/2022 of 1 February 2022) apply exclusively to non-Muslims or extend also to Muslim foreigners who are citizens of non-Muslim jurisdictions. A recent judgment by the Abu Dhabi Court of Cassation in late October affirmed jurisdiction over Muslim foreigners with dual French-Moroccan nationality, marking a potential shift in personal jurisdiction. This ruling may expand access to a legal framework devoid of religious underpinnings for many Muslim expatriates in the UAE.

The Legal Framework

The civil family law regime in the UAE comprises three main legislative components. With the exception of Abu Dhabi, which pioneered a separate non-religious legal framework in late 2021, the *Federal Civil Personal Status Code* (Law No. 41/2022 of 3 October 2022) governs matters of marriage, divorce, child custody, and inheritance exclusively for non-Muslim citizens and non-Muslim

foreigners. The law's scope is explicitly outlined in Article 1, which clearly differentiates based on religious affiliation rather than nationality.

The earlier local legislation in Abu Dhabi, Law No. 14/2021 of 7 November 2021, initially applied only to non-Muslim foreigners but was soon amended, by Law No. 15/2021 of 15 December 2021, to significantly broaden its scope. Most notably, the terms 'foreigner' and 'non-Muslim foreigner' were replaced by 'persons covered by the provisions of this law,' a concept further clarified in Article 5 of the Procedural Regulations. Under these provisions, the law applies to civil marriage, its effects, and all civil family matters for:

1. Non-Muslim UAE citizens, and
2. Foreign nationals from countries 'that do not primarily apply Islamic Sharia in personal status matters,' as determined by the Instruction Guide issued by the Chairman of the Abu Dhabi Judicial Department. For dual citizens, the nationality associated with their UAE residency prevails.

Additionally, the law also applies to marriages concluded in countries that do not primarily apply Islamic Sharia in personal status matters, as outlined in the Instruction Guide (which has yet to be issued), as well as to all marriages conducted under the provisions on civil marriage.

The latter two cases are particularly broad, potentially also covering Muslim citizens who married abroad, yet they are rarely cited by the courts. Judicial discussions tend to focus on paragraph 2 of Article 5, which addresses foreigners from specific non-Muslim jurisdictions. The situation is further complicated by the fact that Law No. 14/2021 also includes jurisdictional provisions and scope-of-application rules, which remain equally ambiguous.[2]

Article 1 of Law No. 14/2021 defines 'persons covered by the law' as 'the foreigner or non-Muslim citizen, whether male or female.' Unfortunately, the Arabic version of this definition is open to multiple interpretations. This ambiguity arises because the adjective 'non-Muslim,' placed after the word 'citizen' and set off by commas, could be read as referring either solely to citizens or to both foreigners and citizens. As a result, debates over the phrasing of this definition are a frequent element in pleadings before the Abu Dhabi Civil Family Court.

Moreover, in its amended form, Article 3 of Law No. 14/2021 stipulates that if a marriage has been concluded in accordance with this law, it shall apply with

respect to the effects of the marriage and its dissolution. A narrow interpretation of this clause would deny jurisdiction whenever the parties did not marry before the Abu Dhabi Civil Family Court, even if they are non-Muslim foreigners married in a civil ceremony elsewhere. However, it seems clear that the drafters did not intend to exclude this core target group from the law's jurisdiction. Similarly, it is difficult to imagine that jurisdiction would be automatically assumed in cases involving Arab Muslims – even GCC citizens – who married in a civil ceremony in Abu Dhabi, where the Civil Family Court currently allows civil marriages for all but Muslim citizens of the UAE.

The ambiguity of these clauses grants considerable discretion to the courts, and current case law on personal jurisdiction for Muslim foreigners does not yet indicate a consistent approach or prevailing interpretation. For this reason, the recent judgment by the Abu Dhabi Court of Cassation may indeed mark a turning point in the application of civil family law in Abu Dhabi.

Previous Case Law

To date, the most significant ruling by the Abu Dhabi Court of Cassation regarding personal jurisdiction over Muslim foreigners was issued in late April 2024. As discussed on this blog, the judgment denied a French-Lebanese husband and his estranged Mexican-Egyptian wife access to the Abu Dhabi Civil Family Court due to their shared Muslim faith. Initially, the Civil Family Court accepted jurisdiction and, at the husband's request, dissolved the couple's brief marriage, a decision that was upheld on appeal. However, the Court of Cassation overturned this ruling, determining that the Civil Family Court lacked jurisdiction based on the parties' religious affiliation.

This case also highlights the inconsistent, and at times contradictory, approach of the Abu Dhabi Court of Appeal on this issue. The same panel of judges has sometimes upheld jurisdiction in cases involving foreign Muslims, while in other instances, it has denied the application of Law No. 14/2021. The available case law suggests that factors such as whether the individuals are Muslim by birth or by conversion, hold dual citizenship – including that of an Arab country – or have disputed religious affiliations do not consistently influence the court's jurisdictional decisions.

The Abu Dhabi Civil Family Court generally takes the broadest view of jurisdictional rules, generally affirming that Muslim foreigners may access the court. This stance persists despite frequent jurisdictional challenges by opposing parties in cases involving Muslims, who typically argue that the Muslim Personal Status Court is the proper forum for such disputes. Recently, such arguments have increasingly referenced the Federal Civil Personal Status Code and its exclusive jurisdiction over non-Muslims, a claim likely bolstered by the Court of Cassation's April 2024 ruling, which disregarded the widely accepted view that the Federal Civil Personal Status Code does not apply in Abu Dhabi.

The Abu Dhabi Court of Cassation Judgment of 30 October 2024

The case decided by the Abu Dhabi Court of Cassation in late October involved a French-Moroccan Muslim couple who had married in a civil ceremony in France. Their marriage was dissolved by the Abu Dhabi Civil Family Court in June 2023 at the husband's request. The wife contested this ruling, arguing that the court lacked both territorial jurisdiction – since their last shared residence was in Dubai – and personal jurisdiction, given their shared Muslim faith. She further contended that ongoing proceedings before the Dubai Personal Status Court, along with a pending divorce case in France, should have precluded the Abu Dhabi Civil Family Court from issuing a ruling. The Abu Dhabi Court of Appeal upheld the divorce decision, leading her to appeal to the emirate's highest court.

From a personal jurisdiction perspective, the Court of Cassation's judgment is notable for its textbook-like analysis of what constitutes the effective citizenship of dual nationals. Unlike previous cases before both the Court of Cassation and the Court of Appeal, which largely overlooked this aspect of Article 5(2) of Law No. 14/2021, this ruling explicitly concludes that the parties' French citizenship takes precedence, as it is the nationality tied to their residency in the UAE. The judgment also addresses the fact that the parties married in a civil ceremony in France, invoking Article 5(3) of Law No. 14/2021. The court explains that, since France does not 'primarily apply Islamic Sharia in personal status matters,' the conditions of Article 5(3) are also met.

By confirming personal jurisdiction over the parties based on both Article 5(2) and Article 5(3) of Law No. 14/2021, the judgment marks a turning point in two

key respects. First, it establishes the requirement to determine the effective nationality of dual citizens, affirming that no nationality, including that of an Arab-Muslim country, takes precedence unless it is linked to UAE residency. Second, by considering the type and location of the marriage, the court asserts that, from the moment a marriage is concluded, couples effectively select a legal framework – religious or civil/secular – that will govern the marriage's effects and potential dissolution, and that this choice must be honored in any subsequent legal proceedings. Although this perspective may be open to challenge, it provides greater clarity and legal certainty for foreigners of all faiths residing in the UAE.

Outlook

For the sake of legal certainty, it is to be hoped that the Abu Dhabi Court of Cassation will maintain its newly established position. The latest interpretation appears the most plausible, particularly in light of Article 5(2) of the Procedural Regulations. Nevertheless, the current provisions on jurisdiction still leave room for ambiguity regarding the law's exact scope of application, warranting clarification through reform, given the contradictory case law to date.

First, Article 5 should be revised, including paragraph (3), to specify the court's jurisdiction over anyone who has entered into a civil marriage. For instance, a rule is needed for cases where a couple has married in both a religious and a civil ceremony. Additionally, the Chairman's Instruction Guide, or at least a clear list of Muslim jurisdictions whose citizens are excluded from the law's scope, is urgently needed. It is essential to clarify whether the provision applies equally to Arab Muslims or GCC nationals without dual citizenship who have concluded a civil marriage in a non-Muslim jurisdiction. Second, refining the Arabic versions of Law No. 14/2021 and the Procedural Regulations is crucial to avoid multiple interpretations, such as whether the law applies to 'non-Muslim foreigners and citizens' versus 'foreigners and non-Muslim citizens.' Finally, with recent legislative changes allowing foreign, non-Arabic-speaking lawyers to appear before the Abu Dhabi Civil Family Court, consistent and official English translations of all relevant statutes are absolutely necessary. Current translations available through various official channels are fragmented and occasionally ambiguous.

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[1] See on this blog, Béligh Elbalti, Abu Dhabi Supreme Court on the Applicability of Law on Civil Marriage to Foreign Muslims, idem, The Abu Dhabi Civil Family Court on the Law on Civil Marriage – Applicability to Foreign Muslims and the Complex Issue of International Jurisdiction, and Lena-Maria Möller, Abu Dhabi Introduces Personal Status for non-Muslim Foreigners, Shakes up Domestic and International Family Law. See also, idem, One Year of Civil Family Law in the United Arab Emirates: A Preliminary Assessment, 38 Arab Law Quarterly (2024), 219-234.

[2] It should be noted here that with the introduction of Law No. 14/2021, a dedicated Civil Family Court was established in Abu Dhabi. Family matters falling within the scope of Law No. 14/2021 are exclusively adjudicated in this court, which applies only the civil family law statutes and no other domestic or foreign legislation. Consequently, questions of the court’s jurisdiction and the law’s scope of application are closely intertwined, if not mutually dependent.