Abu Dhabi Supreme Court on the Applicability of Law on Civil Marriage to Foreign Muslims

I. Introduction

Recent developments in the field of family law in the UAE, in particular the adoption of the so-called "Civil Marriage Laws", have aroused interest, admiration, curiosity, and even doubt and critics among scholars and practitioners of family law, comparative law and private international law around the world.[1] First introduced in the Emirate of Abu Dhabi,[2] and later implemented at the federal level,[3] these "non-religious" family laws, at least as originally enacted in Abu Dhabi, *primarily* intend to apply to foreign non-Muslims.[4] The main stated objective of these laws is to provide foreign expatriates with a modern and flexible family law based on "principles that are in line with the best international practices" and "close to them in terms of culture, customs and language".[5] One of the peculiar feature of these laws is that their departure from the traditional family law regulations and practices in the region, particularly in terms of gender equality in pertinent matters such as testimony, succession, no-fault divorce and joint custody.[6]

Aside from the (critical) judgment that can be made about these laws, their application raises several questions. These include, *inter alia*, the question as to whether these laws would apply to "foreign Muslims", and if yes, under which conditions. The decision of the Abu Dhabi Supreme Court (hereafter "ADSC") reported here (*Ruling No. 245/2024 of 29 April 2024*) shed some light on this ambiguity.

II. The Facts:

The case concerns a unilateral divorce action initiated by the husband (a French-Lebanese dual national, hereafter "X") against his wife (a Mexican-Egyptian dual national, hereafter "Y"). Both are Muslim.

According to the facts reported in the decision, X and Y got married in the Emirate of Abu Dhabi on 11 September 2023, apparently in accordance with the 2021 Abu Dhabi Law Civil Marriage Law[7] although some aspects of the Islamic tradition regarding marriage appear to have been observed.[8] On 6 November 2023, X filed an action for no-fault divorce with the Abu Dhabi Civil Family Court (hereafter ADCFC) pursuant to the 2021 Abu Dhabi Law Civil Marriage Law using the prescribed form.[9] Y contested the divorce petition by challenging the jurisdiction of the court. However, the ADCFC admitted the action and declared the dissolution of the marriage. The decision was confirmed on appeal.

Y then appealed to the ADSC primarily arguing that the Court of Appeal had erred in applying the 2021 Abu Dhabi Law Civil Marriage Law to declare the dissolution of the marriage because both parties were Muslim. Y's main arguments as summarized by the ADSC are as follows:

1. The Abu Dhabi courts lacked international jurisdiction because she was foreigner and did not have a place of residence in Abu Dhabi and that her domicile was in Egypt,
2. The Court of Appeal rejected her argument on the ground that X had a known domicile in Abu Dhabi,
3. Both parties were foreign Muslims and not concerned with the application of the 2021 Abu Dhabi Law Civil Marriage Law knowing that the marriage fulfilled all the necessary requirement for Islamic marriage and was concluded with the presence and the consent of Y's matrimonial guardian (her brother *in casu*).

III. The Ruling

The ADSC accepted the appeal and ruled that the ADCFC was not competent to hear the dispute, stating as follows:

"Pursuant to Article 87 of the [2022 Federal Act on Civil Procedure, hereafter "FACP"], challenges to the court's judicial jurisdiction or subject matter jurisdiction may be raised by the courts *sua sponte* and may be invoked at any stage of the proceedings. On appeal, Y argued that the court lacked subject matter jurisdiction to hear the case because she was Muslim […] and a dual national of Mexico and Egypt, while X was also a Muslim […] and holder of

French and Lebanese nationalities.

[However,] the Court of Appeal rejected Y's arguments and confirmed its jurisdiction based on Articles 3 and 4 of [the Procedural Regulation]; [although] the opening of Article 3 relied on [by the court] states that "the court is competent to hear civil family matters for non-Muslim foreigners regarding civil marriage, divorce and their effects". In addition, Article 1(1) of Federal Legislative Decree No. 41/2022 states that "The provisions of the present Legislative Decree shall apply to non-Muslim citizens of the UAE and to foreign non-Muslims residing in the UAE, unless they invoke the application of their own law in matters of marriage, divorce, succession, wills and establishment of filiation."

[Given that] it was judicially established by the parties' acknowledgement that they were Muslim, the Court of Appeal violated the Law No. 14/2021, as amended by Law No. 15/2021, and its Procedural Regulation [No. 8/2022], as well as Federal Legislative Decree No. 41/2022 by upholding the appealed decision without ascertaining the religion of the parties and ruling as it did, [therefore its decision] must be reversed".

IV. Comments

The main legal question referred to the ADSC concerned the applicability of the 2021 Abu Dhabi Civil Marriage Law and its Procedural Regulation to foreign Muslims. The ADSC answered the question in the negative, stating that the ADCFC was not competent to declare the dissolution a marriage between foreign Muslims. Although the case raises some interesting issues regarding the international jurisdiction of the ADCFC, for the sake of brevity, only the question of the applicability of the 2021 Abu Dhabi Civil Marriage Law will be addressed here.

1. Unlike the 2022 Federal Civil Personal Status, which explicitly states that its provisions "apply to *non-Muslim UAE citizens*, and to *non-Muslim foreigners* residing in the UAE" (article 1, emphasis added), the law in Abu Dhabi is rather ambiguous on this issue.

i. It should be indicated in this respect that, the 2021 Abu Dhabi Civil Marriage

Law, which was originally enacted as "The Personal Status for *Non-Muslim Foreigners* in the Emirate of Abu Dhabi" (Law No. 14/2021 of 7 November 2021, emphasis added) clearly limited its scope of application to foreign non-Muslims. This is also evident from the definition of the term "foreigner" contained in the former article 1 of the Law, according to which, the term (foreigner) was defined as "[a]ny male or female *non-Muslim* foreigner, having a domicile, residence or place of work in the Emirate." Former article 3 of the Law also defined the scope of application of the Law and limited only to "foreigners" in the meaning of article 1 (i.e. non-Muslim foreigners). Therefore, it was clear that the Law, in its original form, did not apply to "foreign Muslims" in general.[10]

ii. However, only one month after its enactment (and even before its entry into force), the Law was amended and renamed "The Law on Civil Marriage and its Effects in the Emirate of Abu Dhabi" by the Law No. 15/2021 of 8 December 2021. The amendments concerned, *inter alia* the scope of application *rationae personae* of the Law. Indeed, the Law No. 15/2021 deleted the all references to "foreigners" in the Law No. 14/2021 and replaced the term with a more neutral one: *"persons covered by the provisions of this Law [al-mukhatabun bi hadha al-qanun]"*. This notion is broadly defined to include both "foreigners" (without any particular reference to their religious affiliation) and "*non-Muslim* citizens of the UAE" (New Article 1).

Article 5 of the Procedural Regulation provides further details. It defines the terms "persons covered by the provisions of this Law" as follows:

1. Non-Muslim [UAE] citizens.
2. A foreigner who holds the nationality of a country that *does not primarily apply the rules of Islamic Sharia in matters of personal status* as determined by the Instruction Guide issued by the Chairman of the [Judicial] Department […] (emphasis added).

The wording of article 5(2) is somewhat confusing, as it can be interpreted in two manners:

(i) if read *a contrario,* the provision would mean that foreigners, irrespective to their religion (including non-Muslims), would *not* be subject to the 2021 Abu Dhabi Civil Marriage Law and its Procedural Regulation if they hold the nationality of a country that *does* "primarily apply the rules of Islamic Sharia in

matters of personal status". As a result, family relationships of Christian Algerian or Moroccan, for example, would not be governed by the 2021 Abu Dhabi Civil Marriage Law and its Procedural Regulation. However, this interpretation seems to be in opposition with the very purpose of adopting the Law, which, in its own terms, applies to non-Muslim UAE citizens.

(ii) Alternatively, the word "foreigner" here could be understood to mean "*Muslim* foreigners", but only those who hold the "the nationality of a country that does *not* primarily apply the rules of Islamic Sharia in matters of personal status". As a result, the family relationships of Muslim Canadian, French, German or Turkish (whether Tunisian would be included here is unclear) would be governed by the Law.

The latter interpretation seems to be prevalent.[11] In addition, the Abu Dhabi Judicial Department (ADJD)'s official website (under section "Marriage") presents even a broader scope since it explains that "civil marriage" is open to "anyone, *regardless of their religion*" including "*Muslims*" "as long as they are not UAE citizens".

iii. The situation becomes more complicated when the parties have multiple nationalities especially when, as in the reported decision, one is from of a predominantly Muslim country and the other from a non-Muslim country. Here, article 5 of the Procedural Regulation provides useful clarifications. According to paragraph 2 *in fine*, the nationality to be taken into account in such situation is the one used by the parties according to their [status] of residence in the UAE. If interpreted literally, family law relationships of foreign Muslims who, in addition to their nationality of a non-Muslim country, also hold a nationality of a country whose family law is primarily based on Islamic Sharia (as in the reported decision) would be governed by the 2021 Abu Dhabi Civil Marriage Law and its Procedural Regulation if, according to their status of residence, they use the nationality of their non-Muslim country nationality.

iv. In the case commented here, the parties have dual nationality (French/Lebanese, Mexican/Egyptian). Although the parties are identified as "Muslim", they appear to have used the nationality of their non-Muslim countries.[12] Accordingly, contrary to the ADSC's decision, it can be said that the 2021 Abu Dhabi Civil Marriage Law and its Procedural Regulation were applicable in this case.

2. In addition to the religion of the parties, the 2021 Abu Dhabi Civil Marriage Law and its Procedural Regulation determine other situations in which the Law applies.

i. These include, with respect to the effect of the marriage and its dissolution, the case where *"the marriage is concluded in accordance with"* the Law and its provisions (Article 3 of the 2021 Abu Dhabi Civil Marriage Law;[13] Article 5(4) of the Procedural Regulation).[14] The application of this rule does not seem to be dependent on the religion of the parties concerned. Consequently, since the marriage *in casu* was concluded pursuant to the provisions of the 2021 Abu Dhabi Civil Marriage Law,[15] its dissolution should *logically* be governed by the provisions of the same Law.

ii. However, it must be acknowledged that such a conclusion is not entirely self-evident. The confusion stems from the ADJD's official website (under section "Divorce") which states as a matter of principle that, normally, "anyone who obtained a Civil Marriage through the ADCFC" is entitled to apply for divorce in application of the 2021 Abu Dhabi Civil Marriage Law. However, the same website indicates that "[f]or applicants holding citizenship of a *country member of the Arab League countries* [sic], an official document proving the religion of the party may be required" when they apply for divorce" (emphasis added).[16] Although the ADSC made no reference to the Arab citizenship of the parties in its decision, it appears that it adheres to the idea of dissociation between *the conclusion* and the *dissolution* of marriage in dispute involving Muslims. In any case, one can regret that the ASDC missed the opportunity to examine the rule on dual nationality under article 5(2).

Concluding Remarks

1. To deny the jurisdiction of the ADCFC, the ASDC relied on article 3 of the Procedural Regulation, which the Court quoted as follows: "The [ADCFC] is competent to hear civil family matters for *foreign non-Muslims* in relation to civil marriage, divorce and its effects (emphasis added)." The problem, however, is that the ADSC *conveniently* omitted key words that significantly altered the meaning of the provision.

The provision, properly quoted, reads as follows: “The [ADCFC] is competent to hear civil family matters for *foreigners or non-Muslim citizens* in relation to civil marriage, divorce and its effects (emphasis added).” In other words, article 3 does not limit the scope of application of the Law and its Regulation exclusively to “foreign non-Muslims” as outlined above.

2. Moreover, it is quite surprising that the ADSC also referred to Article 1 of the 2022 Federal Civil Personal Status in support of its conclusions, i.e. that the taking of jurisdiction by the ADFCF “violated the law”. This is because it is accepted that the 2022 Federal Civil Personal Status does not apply to Abu Dhabi.[17] In addition, some important differences exist between the two laws such as age of marriage which fixed at 18 in the 2021 Abu Dhabi Civil Marriage Law (article 4(1)), but raised to 21 in the 2022 Federal Civil Personal Status (article 5(1)).[18] The combined (mis)application of 2021 Abu Dhabi Civil Marriage Law and the 2022 Federal Civil Personal Status appears opportunistic and reveals the ADSC’s intention to exclude *contra legem* foreign Muslims (or at least those who are binational of both a Muslim and Non-Muslim countries) from the scope of application of 2021 Abu Dhabi Civil Marriage Law and its Procedural Regulation.

[1] see on this blog, 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”, 37 *Arab Law Quarterly* (2023) 1 ff. For a particularly critical view, see Sami Bostanji, “Le droit de statut personnel au service de l’économie de marché! Reflexoins autour de la Loi n°14 en date de 7 novembre 2021 relative au statut personnel des étrangers non-musulmans dans l’Emirat d’Abou Dhabi” *in Mélanges offerts en l’honneur du Professeur Mohamed Kamel Charfeddine* (CPU, 2023) 905 ff.

[2] Law No. 14/2021 of 7 November 2021 on the “Personal Status for Non-Muslims” as modified by the Law No. 15/2021 of 8 December 2021 which changed the Law’s title to “Law on Civil Marriage and its Effects” (hereafter “2021 Abu Dhabi Civil Marriage Law”) and its Procedural Regulation issued by the Resolution of the Chairman of the Judicial Department No. 8/2022 of 1 February 2022, hereafter the “2022 Procedural Regulation”

[3] Federal Legislative Decree No. 41/2022 of 3 October 2022 on "Civil Personal Status" (hereafter "2022 Federal Civil Personal Status") and its Implementing Regulation issued by the Order of the Council of Ministers No. 1222 of 27 November 2023.

[4] See below IV(1)(i). On the difference between the 2021 Abu Dhabi Law Civil Marriage Law the 2022 Federal Civil Personal Status on this particular point, see below IV(1).

[5] Article 2 of the 2021 Abu Dhabi Law Civil Marriage Law.

[6] Article 16 of the 2021 Abu Dhabi Law Civil Marriage Law; article 4 of the 2022 Federal Civil Personal Status.

[7] The text of the decision is not clear on this point. Some comments online explain that the marriage was concluded pursuant to 2021 Abu Dhabi Civil Marriage Law.

[8] The text of the decision particularly mentions the presence and consent of Y's matrimonial guardian (*wali*), which is a necessary requirement for the validity of marriage between Muslims, but not a requirement under the 2021 Abu Dhabi Civil Marriage Law.

[9] The ADCFC, which was established specifically to deal with family law matters falling under the purview of the 2021 Abu Dhabi Civil Marriage Law, holds subject-matter jurisdiction in this regard.

[10] cf. Möller, "Abu Dhabi Introduces Personal Status for non-Muslim Foreigners" *op. cit.*

[11] For an affirmative view, see Möller, "One Year of Civil Family Law in the United Arab Emirates", *op. cit.*, 7.

[12] Some comments online explain that the marriage was concluded using foreign passports with no-Arabic names and no indication of the parties' religion.

[13] On the problems of interpretation of this provision, see Möller, "One Year of Civil Family Law in the United Arab Emirates", *op. cit.*, 7.

[14] The Procedural Regulation further expands the scope of application of the

Civil Marriage Law to cover cases where "the marriage was concluded abroad in a country whose family law is not primarily based on Islamic Sharia as determined by Abu Dhabi authorities" (Article 5(3)) and in any other case determined by the Chairman of the Judicial Department and about which an order is issued (Article 5(5)).

[15] See *supra* n (7).

[16] However, this rule appears to be devoid of any legal basis.

[17] Möller, "One Year of Civil Family Law in the United Arab Emirates", *op. cit.*, 2.

[18] For a comparision, see Möller, "One Year of Civil Family Law in the United Arab Emirates", *op. cit.*, 13-15.