

Civil Personal Status Law Litigation in the UAE - Between Lofty Ideals and Sour Realities



I. Introduction

It is not uncommon for scholars to debate whether private international law is needed as a distinct discipline, and whether it is truly indispensable. After all, could one not save the effort and complexity of applying foreign law by simply treating all cases as purely domestic? From a theoretical standpoint, the answer is yes, since no State is under an inherent obligation to apply foreign law. Yet, such an approach entails serious shortcomings, particularly when it comes to respecting vested or acquired rights, meeting the legitimate expectations of the parties, and fostering cross-border commerce. It follows that the costs of refusing to recognize and apply foreign law are far greater than the difficulties associated with maintaining a system of private international law. It is therefore unsurprising that private international law has established itself as a common language for managing the legal diversity inherent in transnational relations.

However, private international law is not uniform across jurisdictions. In some States, its operation may be severely constrained by the temptation to treat cases involving foreign elements as purely domestic. The situation becomes even more delicate when such an approach is not merely a matter of judicial practice but is elevated to explicit State policy. This is precisely the issue raised by the UAE's civil personal status legislations and related court practice, where the very *raison d'être* of the new system appears to be the avoidance of the applying foreign law. Indeed, since the application of foreign law "in practice ... could be costly, time consuming and complex", the lawmakers chose to (quasi) *substitute* it with a new system of civil personal status, described as "a better cultural fit for the expatriate community, particularly those who are non-Muslim." (Abu Dhabi Judicial Department, *Civil Marriage Law and Its Effect in the Emirate of Abu Dhabi (Q & A)*, 1st ed. 2023, p. 4).

This raises important questions about the balance between the "lofty ideals" that inspired the introduction of the civil personal status legislations and the "sour realities" of legitimate expectations being overlooked, or, at times, entirely disregarded.

II. Lofty Ideals ...

In what can surely be considered an iconoclastic initiative in the region, the Emirate of Abu Dhabi introduced in 2021 a new system regulating civil marriage and its effects ("2021 ADCML") in parallel to the existing system of personal status based on and influenced by Islamic rules and principles (the 2024 Federal Decree Law No 41 on Personal Status ("2024 PSL"), which replaced the 2005 Federal Act on Personal Status as subsequently amended). The latter constitutes the *droit commun* (*lex generalis*), codifying various aspects of Islamic family law, whereas the former operated as a special law (*lex specialis*) entirely grounded in secular, non-religious values, most notably equality and non-discrimination between the parties regardless of gender, nationality, or religion; at least insofar as parties are non-Muslims, or if foreign Muslims, are nationals of countries that do not primarily apply Islamic sharia in matters of personal status (Article 5 of the 2022 Procedural regulation concerning the Marriage and Civil Divorce Procedures in the Emirate of Abu Dhabi). The system was later extended to the entire federation through the adoption in 2022 of Federal Decree-Law No. 41 on

Civil Personal Status) (“2022 CPSL”), with the notable difference that the 2022 CPSL is strictly limited to non-Muslims, whether UEA citizens or foreigners (Article 1 of the 2022 CPSL; for a comparison between the two legislations, see my comments here).

The newly introduced system has been praised as one that “acknowledges the complexities of [the UAE’s] global population”, provides “ a comprehensive legal framework addressing family law matters through a lens of inclusivity and equality”, and “[w]hile maintaining respect for cultural sensitivities”, “embrace[s] principles long associated with international human rights and progressive family law: gender and parental equality, the imposition of greater financial consequence and obligation in divorce and the prioritisation of children’s welfare” (Byron James, *United Arab Emirates: Family Law*).

Indeed, as explicitly stated in Article 2 of the 2021 ADCML, the system aims to “provide a flexible and elaborate judicial mechanism for resolving family disputes” that is “in line with international best practices,” and which guarantees litigants “to be subject to an internationally recognised law that is close to them in terms of culture, customs and language.” The law also seeks to “consolidate the Emirate’s position and global competitiveness as one of the most attractive destinations for human talent and skills.” These ideals are reflected, *inter alia*, in article 16 of the 2021 ADCML, echoed by Article 4 of the 2022 CPSL, concerning “equality between men and women as to rights and duties” in matters of testimony evidence, inheritance, right to request (unilateral) no-fault divorce and joint custody.

In a nutshell, the newly adopted legislations, which are “specifically designed to assist the expatriate community”, strive to provide “tourists and residents” a “simple”, “effective” “modern and flexible judicial mechanism” regulating their family relationships in the UAE “in accordance with civil principles as opposed to religious principles” and “protect the rights of all individuals by providing family law principles that are in line with best international practices as well as an accessible and straightforward judicial process” (Abu Dhabi Judicial Department, *Civil Marriage Law and Its Effect in the Emirate of Abu Dhabi (Q & A)*, 1st ed. 2023, pp. 3, 5).

III. ... Sour Realities

1) Regarding the avoidance of applying foreign law

As I noted in earlier posts (see [here](#) and [here](#)), doubts remain as to whether relying almost entirely on a substantive law approach that is based on the direct application of the civil personal status legislations in disputes involving foreign elements can truly achieve the objectives of the newly introduced family law system.

In practice, this approach risks being disruptive, undermining the ideals of private international law, namely decisional harmony and respect for the parties' legitimate expectations, regardless of how well-crafted the applicable substantive law may be. Under the new framework, it is often enough for judges to assume jurisdiction on tenuous grounds (see my comments [here](#)) for the civil personal status legislations to be applied almost automatically. It makes no difference whether, under the parties' *lex patriae* or the law normally applicable according to UAE choice of law rules (the *lex loci celebrationis* according to article 13 of the 1985 Federal Act on Civil Transactions), divorce is not permitted (as in the Philippines or certain Christian communities in the Middle East), or whether divorce would not be recognized unless the parties' personal law were applied (as in India).

It is true that under the federal law (though not in Abu Dhabi, as the wording of the law suggests), either party may request the application of their own law (Article 1 of the 2022 CPSL, on this provision see my comments [here](#)). In practice, however, this mechanism has rarely proved effective, as courts not only treat foreign law as a matter of fact whose content must be established by the party invoking it, but also impose onerous requirements, rendering the application of foreign law almost illusory (see my comments [here](#)).

2) Regarding the subsidiary application of the general law based on Islamic Sharia

The lofty ideals of the newly introduced civil personal status legislations also fade when the legal issue to be addressed is not covered by them. In such cases, the matter has to be governed by "the laws and legislation in force in the State"

(Article 15 of the 2022 CPSL). In other words, the legal issue falls back on the general law of personal status (the 2024 PSL), which is based – as explained above – on Islamic rules and principles. This creates an extremely intricate situation: while the very purpose of the civil personal status law is to prevent non-Muslims from being subjected to the local Sharia-based legislation, and instead to provide them with a “an internationally recognised law that is close to them in terms of culture, customs and language” (Article 2 of the 2021 ADCML), certain matters nonetheless remain governed by the local legislation in its subsidiary application.

The question of guardianship (*wilaya*) provides a quintessential example. The civil personal status legislation regulates only custody (*hadhana*) but says nothing about guardianship (*wilaya*). In the absence of relevant rules, UAE judges turn to the general personal status law (the 2024 PSL) to fill the gap. The problem, however, is that under this law – which reflects Islamic law principles – guardianship (*wilaya*) is mainly the father’s prerogative. As a result, the combined application of the civil personal status law and the general personal status law often leads UAE judges to grant joint custody (*hadhana mushtarika*) to both parents under the civil personal status laws, while conferring sole guardianship (*wilaya*) over the person and property of the child to the father in application of the general personal status law.

Again, these provisions apply automatically, irrespective of the parties’ *lex patriae* or the law normally applicable according to UAE choice-of-law rules.

III. Reactions Abroad

The experience of many litigants, mainly wives, with civil personal status litigation in the UAE has left them with bitter memories, as the lofty ideals of the newly adopted legislations did not meet their legitimate expectations. This is particularly true when their efforts to invoke and apply their national law, permitted in principle under Article 1 of the 2022 CPSL, proved futile for the reasons mentioned above (III(1)). Many have shared their stories on social media, including dedicated Facebook accounts. Recently, local media such as newspaper articles or radio podcasts have begun to shed light on the practice of civil personal status litigation in the UAE, drawing attention to the negative aspects of

litigating personal status disputes in the UAE. For instance, a recent article published in the French newspaper *Le Parisien*, titled “ *Dubai, nouvel eldorado des divorces express* (Dubai, the new haven for first-track divorces)” describes the experiences and hardships of several women who went through such proceedings. Similar reports have also been broadcasted on radio programs in France and Switzerland. More importantly, the phenomenon risks taking a political turn, as the question of the application of civil personal status law and the protection of the rights of French citizens in the UAE has been formally brought to the attention of the French authorities through a parliamentary question addressed to the Government by a member of the Senate, concerning international divorce proceedings in the UAE involving French couples.

Last but not least, reactions from some European courts were not long in coming: they have refused to recognize divorces issued in the UAE under the civil personal status legislation on the grounds of procedural irregularities (see Alejandra Esmoris, Recognition of Abu Dhabi divorce ruling in Switzerland: Case Law Analysis). Similar reactions are likely to multiply as more parties voice dissatisfaction with the system, particularly when its operation fails to meet the procedural guarantees and substantive safeguards expected under the standards of their personal (European) law. For instance, the *Le Parisien* article mentioned above, refers to petition filed in France by a French lawyer to bar the recognition of a Dubai court’s divorce decision rendered in application of the 2022 CPSL. This trend may signal the beginning of broader scrutiny, and perhaps resistance, to the recognition of judgments rendered under the UAE’s civil personal status framework.

IV. Way forward

Several measures are needed to improve the current situation, the most important of which are a reconsideration of the role that private international law can play and the facilitation of the application of foreign law.

In addition, other procedural aspects require attention. These include the overly broad grounds for taking international jurisdiction, the complete disregard of parallel proceedings (see example, Abu Dhabi Civil Family Court, Judgment No.

86/2024 of 17 May 2024), the refusal to recognize foreign judgments and decrees unless they are first declared enforceable (see my comment here), and the practice of indiscriminately serving notifications via SMS in Arabic without English translation. The way cases are conducted online as reported in the abovementioned *Le Parisien* article (which described a party being represented by her lawyer while seated in her car with her seatbelt on, during a trial conducted by a judge who had not turned on his camera) also raises concerns. Unless such issues are addressed, judgments rendered under the civil personal status legislations will continue to face denial of recognition and enforcement abroad (see Esmoris, *op. cit.*).